



Boston City Council

Committee on Government Operations

Michael F. Flaherty, *Chair*

Report of Committee Chair

May 13, 2015

Dear Councillors:

The Committee on Government Operations held a hearing on **Docket #0700, ordinance reducing fuel emissions**. This matter was sponsored by Councilor Stephen J. Murphy, was referred to the Committee on Government Operations on April 8, 2015 and was heard at a public hearing on Tuesday, April 28, 2015 where public comment was taken.

Docket #0700 would amend the City of Boston Code by adding a new section that would require a reduction in diesel emissions and the retrofitting of city vehicles and vehicles subject to city contracts with costs in excess of \$2,000,000.00. **Docket #0700** establishes emissions standards for vehicles and requires the use of ultra-low sulfur diesel fuel. **Docket #0700** also contains provisions to enforce idling laws. Carl Spector, Executive Director of the Air Pollution Control Commission ("APCC") offered testimony on behalf of the Administration in support of the docket. Mr. Spector explained that **Docket #0700** would provide the city with additional tools to improve air quality. Mr. Spector explained that **Docket #0700** would clarify the authority of the City of Boston in enforcing idling limits by expressly giving the authority to the Air Pollution Control Commission, the Boston Police Department, and the Transportation Department to enforce idling limits and clarifies fine structure and mechanisms for idling. The committee discussed the cost of retrofitting vehicles which is approximately \$3,000.00 depending on the size and type of vehicle and the standards for retrofit equipment.

Representatives from the contractor and trucking industries offered testimony that reflected support in reducing diesel emissions but expressed concerns about language provisions in the ordinance. The representatives from the contractor industry expressed concern regarding verified equipment versus certified equipment explaining that the state allows certified equipment by the manufacturer and that the city ordinance should reflect the state standards. The contractor industry also expressed concern over different standards for city vehicles and contractor vehicles under the ordinance and suggested allowing a cost benefit analysis for contractors. Representatives of the trucking industry expressed similar concerns regarding the verified language and suggested including the certified standard as well. The trucking industry also discussed having further clarification in the ordinance regarding the treatment of on-road vehicles and the ten day on-site exemption as well as federal preemption. Representatives from Alternatives for Community and Environment ("ACE") offered testimony in support of the docket explaining that the docket will improve the quality of life for residents by improving air quality. ACE also supported stronger enforcement of idling laws.

Based upon discussion at the hearing, changes were made to **Docket #0700**. The changes include: allowing covered entities to use certified retrofit technology in addition to verified; increasing the amount of days to fewer than 30 days from fewer than 10 days for exemption purposes applying to on-site vehicles and equipment not owned by the contractor; adding a provision under the exemption section that would exempt on-road vehicles used solely for the delivery of products or goods to the City of Boston; adding language that provides an exemption to the retrofit technology requirement if such equipment would reduce the safe operation of the equipment or vehicle; adds additional provisions that allow the APCC to review the manufacturer's certification for retrofit technology and to review the length of time that diesel vehicles or equipment not owned by the contractor may remain on project sites without having emissions reduction or retrofit technology. Technical changes were also made to **Docket #0700** to remove superfluous language and a change in the title.

Docket #0700 in its amended version expands upon environmental protections for air quality in the City of Boston by clarifying idling provisions and enforcement; placing ultra-low sulfur diesel fuel requirements and emissions standards for city vehicles and vehicles that enter into contracts with the City of Boston. The language changes address industry concerns regarding application and consistency with state regulations and allow for verified or certified retrofit technology.

By the Chair of the Committee on Government Operations, to which the following was referred:

Docket #0700, ordinance reducing fuel emissions,

submits a report recommending that this docket ought to pass in a new draft.

For the Chair:



Michael F. Flaherty, *Chair*

Committee on Government Operations



CITY OF BOSTON

IN THE YEAR TWO THOUSAND FIFTEEN

An Ordinance to Protect Air Quality throughout the City Of Boston by Reducing Fuel Emissions

WHEREAS, the City of Boston is committed to ensuring health, safety, and well-being of its residents; and

WHEREAS, in order to protect air quality throughout the community, the City must control emissions of air pollutants; and

WHEREAS, air pollution has their deleterious effects on human life, animal life, urban agriculture, personal property and limits citizens' activities in the communities; and

WHEREAS, the Mayor and Boston City Council continue to have a vital interest in reducing fuel emissions to improve the air quality all City of Boston residents; now, THEREFORE,

Be it ordained by the City Council of Boston, as follows:

That the City of Boston Code, Chapter VII, entitled "Environmental Protection" is hereby amended by adding the following as Section 7-2.3, "Diesel Emissions Reductions":

a. Purpose. The purpose of this ordinance is to minimize the public health risks associated with exposure to diesel particulate emissions by establishing requirements relating to the use of ultra-low sulfur diesel fuel and diesel emissions control technology by non-road and on-road diesel vehicles used in City projects and services, and by City owned, leased or operated diesel vehicles.

It is further the purpose of this ordinance to protect the public health and the environment by reducing vehicular emissions and conserving fuel.

b. Definitions. When used in this section, unless a contrary intention clearly appears, the following terms shall have the following meaning:

APCC means the Air Pollution Control Commission.

CARB means the California Air Resources Board or any successor agency.

Consumer Price Index means the annual average Consumer Price Index (CPI-U) as determined by the U.S. Bureau of Labor Statistics.

Diesel equipment means any diesel-powered equipment greater than fifty brake-horsepower.

EPA means the United States Environmental Protection Agency or any successor agency.

Non-road vehicle means a vehicle that is powered by a non-road diesel engine fifty brake-horsepower or greater and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, backhoes, bulldozers, compressors, cranes, excavators, generators, and similar equipment; non-road vehicles do not include locomotives or marine vessels.

On-road vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel and that has a gross vehicle weight rating of 14,000 pounds or more.

Ultra low sulfur diesel fuel means diesel fuel that has a sulfur content of no more than fifteen parts per million.

Verified or certified retrofit technology means diesel emissions control technology that appears on the Verified Retrofit Technologies List of EPA or CARB or any successor list or that has been certified by its manufacturer as meeting or exceeding emissions reductions provided by emission control technology on such a list, the adequacy of such certification being subject to review by the City of Boston.

c. *Idling.*

1. It shall be the duty of every Police Officer, every official or employee of the Transportation Department assigned the responsibilities provided in Boston Code 6-6.2, and every official or employee of the Air Pollution Control Commission who takes cognizance of a violation of any provision of M.G.L. c. 90 §§ 16A and 16B, as now or hereinafter amended, or any regulation, as now or hereinafter amended, promulgated by the Registry of Motor Vehicles pursuant to M.G.L. c. 90 § 16B, to issue a written warning or to issue a written violation and to give the offender a notice to appear before the Parking Clerk, during regular office hours, not later than twenty-one (21) days after the date of the violation. The offender has the right to appeal a violation to the Parking Clerk, and that such hearings before the Parking Clerk will be conducted pursuant to G.L. c. 30A.

2. The fine for any violation of the provisions of M.G.L. c. 90 § 16A, as now or hereinafter amended, shall be one hundred dollars for the first offense, and five hundred dollars for each succeeding offense.

The fine for any violation of the provisions of M.G.L. c. 90 § 16B and 540 CMR 27.00 *et seq.*, as now or herein after amended, shall be one hundred dollars for the first offense, and five hundred dollars for each succeeding offense.

3. Any violation issued pursuant to this section, and any appeal of such violation to the Office of the Parking Clerk, shall be done in accordance with the procedures set forth in G.L. c. 90, s. 20A 1/2.

d. City Vehicles All on-road vehicles, non-road vehicles, and diesel equipment owned, leased, or operated by the City of Boston shall:

1. Be powered by ultra-low-sulfur diesel fuel; and

2. Meet EPA emissions standards for new vehicles in effect in 2007 or later for their respective classes of vehicle or have verified or certified retrofit technology that removes at least 20 percent of particulates from the exhaust stream.

3. Notwithstanding the requirements of 7-2.3(d)(2), the Commissioner of Public Works, in consultation with the Air Pollution Control Commission, may determine, if supported by data concerning annual vehicle usage, fuel consumption, and emission rates, that a greater net reduction in diesel emissions can be achieved at a lesser cost to the city by withholding the installation of diesel emission control equipment from certain vehicles and installing higher-yield diesel emission control equipment on other vehicles. In such cases, equipment installation shall follow said determination. Vehicles receiving higher-yield emission control equipment and vehicles receiving none on this basis shall be specifically identified in the annual report required by 7-2.3(f) (2).

4. All on-road vehicles, non-road vehicles, and diesel equipment owned, leased, or operated by the City of Boston shall meet this requirement set forth in 7-2.3(d) by December 31, 2015.

5. Exemptions: The following are exempt from the requirements of 7-2.3(d):

(a) Emergency vehicles, including but not limited to vehicles operated by the Boston Police Department, Boston Fire Department, and Boston Emergency Medical Services.

(b) On-road vehicles, non-road vehicles, and diesel equipment used solely for snow removal,

(c) On-road vehicles, non-road vehicles, and diesel equipment in operation for fewer than 100 hours a year,

(d) On-road vehicles, non-road vehicles, and diesel equipment to be sold, surplus, or removed from service before December 31, 2015, as determined by the Director of Central Fleet Management, and

(e) On-road vehicles, non-road vehicles, and diesel equipment identified in a cost-effectiveness determination, as specified in 7-2.3(d) (3).

e. Contract Requirements: All contracts entered into by the City of Boston for construction projects and other projects and services having a total estimated cost in excess of \$2,000,000.00 adjusted annually to reflect changes in the Consumer Price Index, shall require that on-road vehicles, non-road vehicles, and diesel equipment used to fulfill the contract or any subcontracts:

1. Be powered by ultra-low-sulfur diesel fuel; and
2. Meet EPA emissions standards for new vehicles and equipment in effect in 2007 or later for their respective classes of vehicle or equipment; or have verified or certified retrofit technology that removes a significant percentage of particulates from the exhaust stream, as follows:

(a) For contracts entered into on or after July 1, 2015 and before July 1, 2016, verified or certified retrofit technology shall be present on at least one half of all on-road vehicles, non-road vehicles, and diesel equipment used to fulfill the contract and requiring retrofit technology, and shall remove at least 20 percent of particulates from the exhaust stream.

i. Exemptions. The following on-road vehicles, non-road vehicles, and diesel equipment are exempt from the requirements relevant to contracts entered into on or after July 1, 2015 and before July 1, 2016 as provided in §§ 7-2.3(e)(2)(a):

(A) On-road vehicles, non-road vehicles, and diesel equipment, which are not owned by the contractor and on site for fewer than 30 days during the life of the project, or any lesser period of time as determined by the APCC pursuant to section (f)(4), and

(B) On-road vehicles, non-road vehicles, and diesel equipment used solely for snow removal.

(C) On-road vehicles used solely for the delivery of products or goods to the City of Boston.

(b) For contracts entered into on or after July 1, 2016 and before July 1, 2017, verified or certified retrofit technology shall be present on all on-road vehicles, non-road vehicles, and diesel equipment used to fulfill the contract and requiring retrofit technology.

i. Exemptions. The following on-road vehicles, non-road vehicles, and diesel equipment are exempt from the requirements relevant to contracts entered on or after July 1, 2016 and before July 1, 2017 as provided in §§ 7-2.3(e)(2)(b):

(A) On-road vehicles, non-road vehicles, and diesel equipment, which are not owned by the contractor and on site for fewer than 30 days during the life of the project, or any lesser period of time as determined by the APCC pursuant to section (f)(4), and

(B) On-road vehicles, non-road vehicles, and diesel equipment used solely for snow removal.

(C) On-road vehicles used solely for the delivery of products or goods to the City of Boston.

(c) For contracts entered into on or after July 1, 2017, verified or certified retrofit technology:

i. Shall, if available for the vehicle or equipment, remove at least 85 percent of particulates from the exhaust stream.

ii. If equipment required by sub-paragraph (i) is not available, the verified or certified retrofit technology shall remove the highest possible percentage of particulates from the exhaust stream. All equipment within a five-(5-) point range shall be considered equivalent.

iii. Notwithstanding the requirements of subsections (i) and (ii), no retrofit technology shall be required that reduces the safety of operation for any vehicle or equipment, as determined by the requirements of the U.S. Occupational Safety and Health Administration or other similarly recognized national organization.

iv. Exemptions. The following on-road vehicles, non-road vehicles, and diesel equipment are exempt from the requirements relevant to contracts entered on or after July 1, 2017 as provided in §§ 7-2.3(e)(2)(c)(i)-(ii):

(A) On-road vehicles, non-road vehicles, and diesel equipment retrofit before July 1, 2017, to meet the requirements of subsection 7-2.3(e)(2)(b);

(B) On-road vehicles, non-road vehicles, and diesel equipment, which are not owned by the contractor and on site for fewer than 30 days during the life of the project, or any lesser period of time as determined by the APCC pursuant to section (f)(4), and

(C) On-road vehicles, non-road vehicles, and diesel equipment used solely for snow removal.

(D) On-road vehicles used solely for the delivery of products or goods to the City of Boston.

3. Compliance with these requirements shall be deemed a cost of doing business and shall be considered incidental to the cost of the contract.

f. Implementation. The Air Pollution Control Commission shall:

1. Issue guidance to all City of Boston departments and agencies for implementing the requirements of this section; obtaining documentation of compliance; and providing application procedures and deadlines about available local, State and Federal public incentive programs to retrofit, re-power, or replace older, more polluting diesel equipment;

2. Issue an annual report on the overall progress of implementation to the Mayor and City Council;
3. Upon request of a contracting agency or as determined by the Commission, review the adequacy of manufacturer's certification for *retrofit technology*;
4. From time to time, after public hearing, , review and change the length of time that diesel vehicles or equipment not owned by contractors may remain on project sites without having emissions reduction or retrofit technology. Any such change by the Commission shall apply to all contracts described in section (e) of this ordinance and shall take effect in the following fiscal year;
5. Every five years, review and, as appropriate, recommend to the Mayor changes in requirements for diesel emissions control equipment for all City and contract vehicles and equipment subject to this section;
6. Notwithstanding other paragraphs of this section, the Commission may participate in or offer grant programs to assist owners of diesel vehicles and equipment in reducing emissions from their vehicles.

g. Enforcement and sanctions

Upon request, the Commission shall provide assistance to the contracting agency in determining non-compliance with the ordinance. In the event of non-compliance, the contracting agency shall immediately utilize all remedies available under the contract to address and halt the non-compliance, including, where appropriate, termination of the contract.

h. Applicability If any provision of this section imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy then the provisions of this section control. Nothing in this Ordinance shall be construed to restrict or abrogate any of the duties, powers, or responsibilities of any official or employee of the city of Boston existing prior to the enactment of this Ordinance.

i. Severability If any provision of this section is to be held invalid by a court of competent jurisdiction then such provision should be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

j. Date of Effectiveness The provisions of this section are effective immediately upon passage.

Filed in City Council: May 13, 2015