

<b>MAYOR AND CABINET</b>			
<b>Report Title</b>	Enforcement against idling vehicles to bring local air quality improvement		
<b>Contributors</b>	Executive Director for Community Services Head of Law	Item No.	
<b>Class</b>	Part 1 (Open)	Date:	18 September 2019

## **1. Purpose of the report**

- 1.1 To provide a rationale for adopting the provisions, with recommendations on what officers consider the most effective approach for enforcement. The report will also provide identification of potential issues if the provisions are not adopted and plan/s as to how it will work in practice, along with risks and financial implications.

## **2. Recommendations**

- 2.1 Approve the making of a Traffic Management Order applicable to roads in the borough to allow for Penalty Charge Notices to be issued in contravention of the order under the provisions of the Road Traffic Regulation Act 1984 (as amended by section 87 of the Environment Act 1995), throughout the borough.
- 2.2 Authorise the Head of Parking Operations, acting in his name and on his behalf, to authorise traffic marshals to exercise the powers.
- 2.3 To seek agreement that officers should, where appropriate, utilise the powers to allow for Penalty Charge Notices to be issued in contravention of the order under the provisions of the Road Traffic Regulation Act 1984 (as amended by section 87 of the Environment Act 1995).

## **3. Policy Context**

- 3.1 The Council's vision is to work together to 'make Lewisham the best place in London to live, work and learn'. The key corporate strategic document is the Authority's Performance Plan, which sets out the objectives, targets and performance of the authority.
- 3.2 The Council's seven corporate priorities determine what contribution the Council will make towards delivery of the shaping our future. The priorities focus on the needs of local people and are geared towards ensuring that, in delivering services, the Council focuses on its residents, is transparent and responds to changing needs and demands. This power of authorisation will

specifically contribute towards 'Delivering and defending: health, social care and support; and Making Lewisham greener.

- 3.3 The Council, along with all other Local Authorities has a legal responsibility to manage air quality within its borough. Part IV of the Environment Act 1995 sets out a Local Air Quality Management (LAQM) process that the boroughs have to follow and where levels exceed, or are likely to exceed, predefined levels of pollutants in the air, the Local Authority is required to declare Air Quality Management Areas (AQMA).
- 3.4 Where an AQMA is declared, the local authority is then required to develop an Air Quality Action Plan (AQAP) detailing the measures that will be employed to help. Under the Cleaner transport section the following actions are included to control localised emissions and impact: Action 28 'Discouraging unnecessary idling by vehicles near schools' and Action 28A 'Carry out a Council wide anti-idling campaign discouraging unnecessary idling by vehicles'.
- 3.5 Further to 3.4 the enforcement of idling vehicles was also a criteria for acceptance of the pan-London Round 3 Mayors Air Quality funding for running Idling Action events for 2019-2022. Cabinet approval was given for this with a letter submitted to the GLA prior to the bid application being made. See Appendix A for the letter from Councillor Barnham.

#### **4. Background**

- 4.1 During the development of the Council's Air Quality Action Plan 2016- 2021, approved by Mayor and Cabinet in December 2016, the AQAP made a commitment to discouraging unnecessary idling by vehicles near schools. The AQAP provides actions that the Council is taking to satisfy its statutory obligation under the Environment Act 1995, Part IV.
- 4.2 Currently Lewisham is taking an advisory approach, providing details on the adverse effects on air quality and encouraging drivers to therefore turn off their engines when parked (see section 5 for further information).
- 4.3 There is a new application process for MAQF Round 3: 2019-2022 funding. The pan-London application being offered to all boroughs now requires all participating boroughs to be enforcing or starting to enforce vehicle idling regulations.
- 4.4 Without this MAQF we will not have provision for running events at schools. Also without enforcement powers we will, in addition, not be able to offer any action for this important aspect of air quality improvement.
- 4.5 Emissions from stationary vehicles can generate high levels of localised pollution which can trigger the symptoms of asthma and other respiratory diseases in vulnerable people. It is also an unnecessary activity, which does not have any benefit to both driver and local community, particularly children who are most at risk.

- 4.6 The Council has made significant steps in prioritising air quality and introducing strategies, measures and actions around road-traffic-related air pollution to manage and reduce its impact on health, an example of which is the recent parking policy review. These delegated powers for enforcement of idling vehicles by civil enforcement officers will further strengthen the Council's commitment to tackling poor air pollution.

## **5.0 Public Awareness**

- 5.1 Awareness raising on the issues and problems around idling has primarily been carried out around schools. This year seven idling action event are being held around schools. The Environmental Protection Team through the Young Mayor's Primary School Council has recently presented information on idling to 16 schools. There was also an anti-idling card launched at the National Clean Air Day on 20<sup>th</sup> June, which is being widely distributed to schools and Councillors. There has also been meetings at local assemblies and community groups by Councillor Krupski and others, where issues around idling has been raised along with the use of social media and an article in Lewisham Life.
- 5.2 The proposal is to increase awareness further over the months leading up to the enforcement, which subject to approval by this committee would progress at the beginning of 2020. Lewisham council is part of a wider consortium of boroughs [www.idlingaction.london](http://www.idlingaction.london) which has had Mayor's Air Quality Funding (MAQF). Through this Lewisham officers will continue to use resources available to increase the messaging to the borough residents and will continue the running of idling action events.
- 5.3 The enforcement of idling is now considered by Council officers and also Councillors as being a required action to deal with the unnecessary practice which increases up to twice as much exhaust emissions as an engine in motion. Air quality in London is a public health crises and urgent action is needed, and this proposal along with other actions is seen as being important.

## **6.0 Options Available**

- 6.1 There are two methods of enforcement which deal with idling vehicles by way of penalty notices. The council could issue fixed penalty notices under Regulation 6(3) of The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 which allows a local authority to authorise any officer of the authority, or any other person, in any area of that authority, to issue a fixed penalty notice in respect of a stationary idling offence committed in its area. Regulation 6(3) also allows authorised persons to stop the commission of stationary idling offences by requiring vehicle engines to be switched off. Traffic marshals, being employed by an outside contractor are not officers of the council and require authorisation to be able to issue fixed penalty notices.
- 6.2 Alternatively, Penalty Charge Notices could be issued in contravention of a

traffic management order under the provisions of the Road Traffic Regulation Act 1984 (as amended by section 87 of the Environment Act 1995). It in effect, means that 'engine idling' is considered to be a road traffic contravention and, as such, is subject to civil enforcement.

- 6.3 Many boroughs in London currently issue fixed penalty notices, BUT this has presented issues from the perspective of enforcement. They are 'on the spot' fine for committing offences requiring details of the person's name and address, together with proof of identity, requiring the cooperation of the driver. There have been issues with drivers, driving off before the fixed penalty notice can be issued.
- 6.4 Several London boroughs have recently used powers to issue Penalty Charge Notices such as Westminster, Lambeth, Southwark and Hounslow, as examples.
- 6.5 A traffic management order (TMO) corresponding to all roads in the borough will need to be made. The Penalty Charge Notice allow for charges up to £80, depending on the Banding and whether it qualifies as a lower or higher level penalty (see Appendix B for details). They are issued if idling motorists do not turn off their engine after being asked and given time to comply. There is no time period specified legally although other boroughs have identified a 5 minute period, in line with the approach taken for vehicles parking on a yellow line, but other Councils are currently considering lower time periods. A 3 minute time period after being asked before issuing a notice is being proposed as part of Lewisham's approach.
- 6.6 For the above reasons, council officers propose that the making of a TMO to allow for the issuance of penalty charge notices is a more effective tool in tackling idling vehicles than issuing fixed penalty notices.
- 6.7 Should this committee approve this approach, the proposal is to authorise civil enforcement officers to issue penalty charge notices for idling vehicles while on patrol. Most of the borough is within Band B, so the proposal would be for the lower level penalty fine of £60 to be issued to motorist with a 50 % discount to £30 if paid within 14 days. Civil enforcement officers will be provided with training before enforcement commences.

## 6.8 **Restrictions on Enforcement**

- 6.8.1 The following will be detailed in the TMO:

Every person causing or permitting any vehicle to wait in a street shall stop the action of any machinery attached to or forming part of the vehicle so far as may be necessary for the prevention of exhaust emissions. This however shall not apply under the following conditions:

- a) when a vehicle is stationary owing to the necessities of traffic;

- b) where the driver is obliged to work the machinery forming part of that vehicle for the purposes of avoiding an accident;
- c) so as to prevent the examination or working of the machinery where the examination is necessitated by any failure or derangement of the machinery or where the machinery is required to be worked for a purpose other than driving the vehicle;
- d) when the driver is unable to stop the action of any machinery attached to or forming part of the vehicle so far as may be necessary for the prevention of noise or of exhaust emissions owing to a failure or derangement of that machinery over which they have no control;
- e) for the purposes of enabling any person to board or alight from a vehicle or to load thereon or unload therefrom their personal luggage;
- f) to an ice cream van or lorry where engine use is required for refrigeration of produce and where no alternative separate power supply is available and/or possible;
- g) to an electric vehicle;
- h) in respect of a vehicle propelled by gas produced in plant carried on the vehicle, to such plant;
- i) to a vehicle being used for fire brigade, police or ambulance purposes;
- j) to anything done with the permission or at the direction of a police constable in uniform; or
- k) to any person who causes any vehicle to proceed in accordance with any restrictions or requirement indicated by traffic signs placed pursuant to section 66 or section 67 of the Road Traffic Regulation Act 1984.

## **7. Financial implications**

- 7.1 This report recommends that traffic marshals be authorised to issue Penalty Charge Notices where idling vehicles contravene a new Traffic Management Order made under the provisions of the Road Traffic Regulation Act 1984 (as amended by section 87 of the Environment Act 1995), throughout the borough.
- 7.2 The cost estimate for production of the Traffic Management Order and associated documents (notice of proposal, notice of making and statement of reason) and also for advertising the Gazette and South London Press will come to £4,800, but costs for this will be funded externally through Local Implementation Plan funds. The enforcement of the PCN will be carried out as part of the duties of the parking enforcement officers and there is not anticipated at this stage to be any requirement for increase in budget to accommodate this added function. Conversely, the income generated through PCNs is not expected

to be substantial. The enforcement will be reviewed as part of the annual Parking Policy Review, to consider what, if any, additional resources will be needed to provide an appropriate level of enforcement.

## **8. Legal implications**

- 8.1 Penalty Charge Notices would be issued under the provisions of the Road Traffic Regulation Act 1984 (as amended by section 87 of the Environment Act 1995) to require drivers to switch off engines when parked will help improve local air quality by reducing unnecessary exhaust emissions from vehicles.
- 8.2 Section 82 of the Environment Act 1995 provides that every local authority is under a duty to review the air quality within its area. Section 83 of the 1995 Act requires local authorities to formally designate an air quality management area (AQMA) where air quality objectives are not being achieved, or are not likely to be achieved within the relevant period, as set out in the Air Quality (England) Regulations 2000.
- 8.3 Following designation of an AQMA, an air quality “Action Plan” should be completed. Under the London Local Air Quality Management process, London Boroughs are to provide Annual Status Reports to the GLA on progress with Air Quality Actions and reporting on air quality monitoring. Previously Progress Reports were submitted to DEFRA.
- 8.4 In the Mayor of London’s Policy Guidance 2016 (LLAQM.PG (16)) it states the following: ‘The establishment of the LLAQM system reflects the fact that the Mayor has broad powers of intervention under section 85 of the 1995 Act... Specifically, under section 85(5), the Mayor may give directions to boroughs requiring them to take such steps specified in the directions as he considers appropriate for the implementation of any European Union air quality obligations (e.g. under relevant EU directives). This is particularly relevant in the context of the current breach of NO<sub>2</sub> air quality objectives and limit values under the EU Ambient Air Quality Directive (2008/ 50/ EC) in parts of London.’ Also the Localism Act 2011, enables the Government, if a fine is imposed on the UK by the European Court of Justice, to require public bodies it considers responsible for the infraction to pay a financial penalty. The Mayor of London’s Policy Guidance states: ‘Proper participation in the LLAQM system and compliance with the relevant Mayoral advice and guidance should render statutory intervention by the Mayor unnecessary.’
- 8.5 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.6 In summary, the Council must, in the exercise of its function, have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and persons who do not share it.

8.7 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

8.8 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

8.9 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

8.10 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

## **9. Crime and Disorder Implications**

9.1 The London Borough of Lewisham has a statutory responsibility under the Crime and Disorder Act 1998 to work with partners to reduce crime, disorder and substance misuse.

9.2 There are no crime and disorder implications associated with this report.

## **10. Equalities Implications**

- 10.1 This TMO will apply to all roads within the borough. However, council officers expects that there will be “hot spots” such as outside train stations and schools. Furthermore, the majority of the AQMAs declared are to the north of A205, encompassing all of the north of the borough.
- 10.2 It is acknowledged that children being dropped off at school and being picked up from school will be undertaken by mothers more than fathers and so the application of this anti-idling measure potentially will have a greater impact on women more than men.
- 10.3 It is also recognised that poor air quality is often associated with areas of deprivation and consequently tends to disproportionately affect the health of the most disadvantaged. There is no data on the specific households affected by the exceedances of NO<sub>2</sub> within the AQMAs but the Index of Multiple Deprivation suggests that there are many areas to the north of the borough that are deprived which fall within an AQMA.
- 10.4 Measures aimed at tackling poor air quality tend to have wider benefits and the actions within the AQAP aim to manage air quality across the whole of the borough. The proposal for enforcement of idling will be introduced borough-wide.
- 10.5 The equality duty is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. Officers have had due regard to the impact that this anti-idling measure would have on women (carrying out the school run) and on other protected characteristics. However, officers consider with the anti-idling measure has benefits which outweigh the limited adverse impact on protected groups.

## **11. Environmental Implications**

- 11.1 There will be environmental benefits in introducing this scheme. A synergy exists between actions aimed at improving the quality of the air we breathe locally and tackling carbon emissions and improving public health and well-being.
- 11.2 The approval for the enforcement will allow the local authority to fulfil its statutory obligations under the Environment Act 1995 which are aimed at improving air quality.

If there are any queries on this report please contact Christopher Howard, Senior Environmental Protection Officer, on 020 8314 6418, or by email at: [christopher.howard@lewisham.gov.uk](mailto:christopher.howard@lewisham.gov.uk) and Seamus Adams, Parking Service Manager, [seamus.adams@lewisham.gov.uk](mailto:seamus.adams@lewisham.gov.uk)

## Appendix A



Poppy Lyle  
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Dear Poppy Lyle

### **Re: Authorising anti-idling enforcement**

I am writing on behalf of the London Borough of Lewisham's Mayor and Cabinet.

It is our understanding that the Pan-London Idling Action application for Mayor's Air Quality Fund now requires confirmation of boroughs that they are either already authorising anti-idling enforcement or that the ambition is to introduce enforcement by December 2019. Please accept this letter as confirmation that it is the ambition of Lewisham Council to introduce enforcement by this timescale.

Yours sincerely



**Cllr Chris Best**

Deputy Mayor

## Appendix B

### Parking and traffic charges in London

*By London Councils 03 March 2011*

The current levels of Penalty Charge Notices in London are set out below. These are valid from 15 April 2011.

#### Current levels of Penalty Charge Notice

	Higher	Lower
Band A	£130	£80
Band B	£110	£60

Higher level penalties apply to contraventions which are considered more serious, such as parking on yellow lines or where an obstruction is caused. Lower level penalties apply generally where parking is permitted but the regulations are contravened, such as overstaying on a pay and display bay.

#### Bus lane and minor moving traffic contraventions

Bus lane contraventions	£130
Minor moving traffic contraventions	£130

#### London Lorry Control Scheme contraventions

For drivers	£130
For operators	£550

#### Discount for early payment

Payment within 14 days (or within 21 days for parking contraventions issued by CCTV)	50%
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