

**Decision Maker:** ENVIRONMENT AND COMMUNITY SERVICES PORTFOLIO HOLDER

For Pre-Decision Scrutiny by the Environment & Community Services PDS Committee on:

**Date:** 28 August 2019

**Decision Type:** Non-Urgent Executive Key

**Title:** ANTI-IDLING LEGISLATION

**Contact Officer:** Alexander Baldwin-Smith  
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**Chief Officer:** Colin Brand, Director of Environment & Public Protection

**Ward:** (All Wards)

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**1. Reason for report**

This report is seeking approval to introduce a new Fixed Penalty Notice (FPN) and charge for engine idling in the Borough under the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, which are made under Section 87 of the Environment Act 1995 to reduce polluting emissions from unnecessary engine idling by road vehicles. This fulfils the commitment in Bromley's LIP3 to investigate powers to discourage unnecessary idling.

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**2. RECOMMENDATIONS**

That the Portfolio Holder agrees to: -

- 2.1 Authorise the use of powers under Regulations 12, 13 and 14 of the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 to enforce against drivers who allow their vehicle engines to run unnecessarily when parked anywhere in the Borough.**
- 2.2 Delegate authority to the Director of Environment & Public Protection, to authorise, Environmental Protection Officers, Bromley Council Street Enforcement Officers (BCSEOs) and Civil Enforcement Officers of the Council to make use of these powers to issue FPNs, and take legal proceedings for stationary engine idling offences.**
- 2.3 Allocate £53.8k from the Members Initiative Earmarked Reserve for Environmental Projects, to meet the cost of the two additional CEO's for the initial 12 month trial period and the 5 air quality sensors.**

### Impact on Vulnerable Adults and Children

1. Summary of Impact: Reducing pollutants from idling vehicles, especially in high-sensitivity areas such as around schools should have a positive impact on the health of all people but particularly for children whose height can increase their exposure to pollutants.
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### Corporate Policy

1. Policy Status: Existing Policy: Bromley's third Local Implementation Plan recognises idling vehicles as a cause of unnecessary emissions, and committed the Borough to participate in the London-wide anti-idling campaign funded from the Mayor's Air Quality Fund, including investigate powers to discouraging unnecessary idling.
  2. BBB Priority: Quality Environment Healthy Bromley
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### Financial

1. Cost of proposal: £53.8k
  2. Ongoing costs: – N/A as trial pilot scheme for 12 months
  3. Budget head/performance centre: Members Initiatives Fund for Environmental projects
  4. Total current budget for this head: £491k
  5. Source of funding: Earmarked Reserve for Member Initiatives
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### Personnel

1. Number of staff (current and additional): 2ftes via Contract
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: Non-Statutory - Government Guidance: Further Details
  2. Call-in: Applicable:
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### Procurement

1. Summary of Procurement Implications: Can be procured within current APCOA contract
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Whole Borough
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? All Ward Members were invited to submit comments to the LIP3 consultation, where the proposal was initially consulted on in 2018.
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

- 3.1 Bromley's third Local Implementation Plan recognises idling vehicles as a cause of unnecessary emissions, and committed the Borough to participate in the London-wide anti-idling campaign funded from the Mayor's Air Quality Fund, including investigating powers to discouraging unnecessary idling. The bid to the Mayor's Air Quality Fund for the Pan London Idling Action Project was led by the City of London and Camden. This project has two strands, education and enforcement, which requires the adoption of new enforcement powers for boroughs such as Bromley, who are yet to adopt the powers.
- 3.2 The project fund will provide a number of educational resources to the Borough such as idling action events, school assemblies, anti-idling banner workshops, an advertising campaign developed and implemented through borough communications channels, and fleet engagement & training. These will be primarily delivered by the Council's Road Safety Education team and supplemented by interested local volunteer groups, who will be invited to support the educational campaign.
- 3.3 It is also proposed that for an initial trial period of 12 months two additional CEOs (Civil Enforcement Officers) will be employed through the APCOA parking contract, at an estimated costs of £49.8k. These two CEOs would be involved in both educating drivers parked with their engines running and in issuing PCNs/FPNs to any driver who ignores the education, ignores a warning issued and lets their engine run. Having two additional CEOs on the parking enforcement contract will have added value, helping the Council address the growing number of one-off requests from the public for parking enforcement (e.g. blocked driveways) and to support the Council's ongoing campaign to address Blue Badge fraud. These two CEOs will also carry out the normal parking enforcement duties.
- 3.4 A requirement of the project to obtain these educational resources is to adopt the powers of enforcement. Idling vehicle engines contribute to emissions of nitrogen dioxide unnecessarily and have been a concern to some residents and Members. Therefore the emerging Air Quality Action Plan (AQAP) contains an action to establish effective ways to prevent drivers leaving vehicle engines idling unnecessarily within the borough.
- 3.5 The ability to issue FPNs for stationary idling vehicles will enable the Council to deliver on the commitment made in the AQAP to reduce emissions caused by transport and improve local air quality within the borough through a combination of education and enforcement activities.
- 3.6 The alternative option is to not authorise officers to issue FPNs. However, this would mean the Borough would not be able to fulfil its LIP commitment and would lose the education resources that come with the MAQF funded Anti-Idling project. The campaign may also be unsuccessful if there are no enforcement powers available to back-up the educational aspect.
- 3.7 It is proposed that the main focus for enforcement will be around schools and children's clubs, such as dance studios, about which the Council has received correspondence from concerned parents, citing examples of other parents/carers sitting in cars with engines running, whilst children are waiting on the footway nearby.
- 3.8 An optional enhancement to this project would be for the CEOs educating and enforcing anti-idling to be equipped with body-worn sensors to monitor pollution, so that over time the level of emissions can be monitored. There is a cost of approximately £4k for 5 air quality sensors, the number that might be needed for this added element of the scheme.
- 3.9 It is proposed that the scheme is considered as a pilot for the coming 12 months. During this time the benefit of the scheme can be considered. Also during this 12 month period the additional benefit to the Borough of having two more CEOs to support other activities, as

mentioned in 3.3 above, can be monitored. It is possible that additional income will be generated from the issuing of additional PCNs, for example for School Keep Clear parking offences and for other routine parking contraventions. As set out in another report on this PDS Agenda, "APCOA Contractor Performance Review", it is believed that the level of enforcement of parking contraventions in Bromley could be improved with the investment of additional resources.

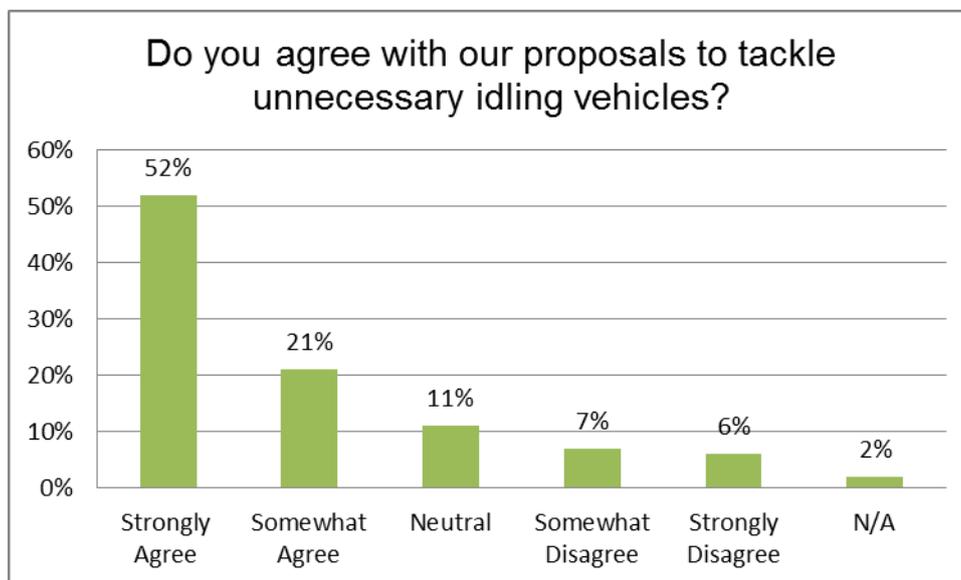
- 3.10 It is proposed that the cost of the 2 additional CEOS and the 5 air quality sensors totalling £53.8k will be funded from the Members Initiatives fund for Environmental projects.

### **Powers for engine idling enforcement**

- 3.11 The Road Traffic (Vehicle Emission) (Fixed Penalty) (England) Regulations 2002 gives power to local authorities to issue FPNs to drivers who allow their vehicle engines to run unnecessarily while the vehicle is parked.
- 3.12 Guidance issued by the Secretary of State for Transport in 2002 ("Guidance on powers to require drivers to switch off engines") under section 88 of the Environment Act 1995 states that FPNs would mainly be used as a deterrent and should be issued only as a last resort. FPNs would be issued in very limited circumstances, and only if a driver refused to turn their vehicle engine off when asked to do so by an authorised officer of the Council.
- 3.13 Regulation 98(2) of the Road Vehicles (Construction and Use) Regulations 1986 sets out the circumstances where vehicles are permitted to be stationary with the engine running:
- When vehicles are queuing at traffic lights;
  - Where an engine is being run so that a defect can be traced and rectified;
  - Where machinery on a vehicle requires the engine to be running e.g. where the engine powers refrigeration equipment or the compaction equipment in a refuse vehicle;
  - Where a vehicle is propelled by gas produced by the functioning of plant carried on the vehicle.
- 3.14 The guidance encourages a common sense approach that should be followed when using these powers. FPNs should only be issued when a driver is uncooperative and refuses to switch off their engine when advised to do so by an authorised officer.
- 3.15 Regulation 4 indicates there is no requirement to apply for designated authority status from the Secretary of State for engine idling powers only as the Authority has previously declared an Air Quality Management Area.
- 3.16 The regulation stipulates the penalty for an offence is £20 which will increase to £40 if not paid within 28 days. There is no discretion to amend the charge.

### **Consultation**

- 3.17 Consultation will not be required as investigation of these powers formed part of the proposals set out in the Borough's LIP3 consultation in 2018. The results of which are shown below:-



#### **4. IMPACT ON VULNERABLE ADULTS AND CHILDREN**

- 4.1 This initiative will have the opportunity to improve localised air quality around areas of vehicular concentration i.e. around schools. This will give the opportunity to improve localised air quality and therefore have a positive impact on the health of children.

#### **5. POLICY IMPLICATIONS**

- 5.1 Bromley's third Local Implementation Plan recognises idling vehicles as a cause of unnecessary emissions, and committed the Borough to participate in the London-wide anti-idling campaign funded from the Mayor's Air Quality Fund, including investigate powers to discouraging unnecessary idling. Adoption of these powers therefore fulfils a commitment of the LIP and allows the Borough to receive the anti-idling educational resources provided by the MAQF project.

#### **6. FINANCIAL IMPLICATIONS**

- 6.1 This report seeks the authorisation of the use of powers under the Road Traffic (Vehicle Emissions) Fixed Penalty) (England) Regulations 2002 and delegate authority to Corporate Director, Place to make use of these powers to issue Fixed Penalty Notices (FPNs) and take legal proceedings for stationary engine idling offences.
- 6.2 It is proposed that two additional CEOs will be engaged via the APCOA contract for the initial trial period of 12 months and five air quality sensors purchased totalling £53.8k. This cost will be met from the Members Initiative Fund for Environmental Projects held in an earmarked reserve, which currently has an unallocated balance of £491k.
- 6.3 Any income generated from the FPNs, which local authorities are permitted to retain, is anticipated to be minimal as the issuing of FPNs will only be carried out as a last resort.
- 6.4 As the additional CEOs will also be used to support other activities, including the enforcement of school keep clear markings, additional income may be generated from any PCNs issued for parking contraventions. Should this level of income be enough to cover the cost of the two extra CEOs on a permanent basis, it is proposed that the budget be adjusted to reflect this in future years. This would then enable the idling enforcement and Blue Badge fraud enforcement to be continued on an on-going basis.

6.5 As mentioned above, the regulation stipulates the penalty for an offence is £20 which will increase to £40 if not paid within 28 days. There is no discretion to amend the charge.

## 7. PERSONNEL IMPLICATIONS

7.1 There will be no direct personnel implications in implementing the scheme, as existing systems for the issuing of FPNs and recovery of fines will be utilised.

7.2 The function for issuing the FPNs can be added to the existing enforcement activities of the borough via the APCOA parking enforcement contract. An additional resource will be utilised to educate and enforce anti-idling, primarily at school arrival and departure times, with the proposed new resource being utilised outside of these times for additional parking enforcement. At a minimum, there must be a capability and a public commitment to enforce so that idling problems and complaints can be dealt with effectively.

## 8. LEGAL IMPLICATIONS

8.1 The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 (“the 2002 Regs”) empowers local authorities to issue fixed penalty notices to users within their areas who contravene or fail to comply with Section 98 of the Road Vehicles (Construction and Use) Regulations 1986. These regulations are concerned with emissions of smoke, vapour etc. and allow enforcement by Fixed Penalty Notice (“FPN”).

8.2 Regulation 6(3) of the 2002 Regulations states that a local authority “may authorise any officer of the authority, or any other person, in any area of that authority to (a) stop the commission of stationary idling offences; and (b) to issue a fixed penalty notice ”

8.3 Regulation 7 of the 2002 Regulations states that FPNs can be issued in relation to stationary /idling motor vehicles if a driver unreasonably refused a request to turn off their motor vehicle subject to certain exceptions e.g. owing to the necessities of traffic e.g. when vehicles are queuing at traffic lights or where an engine is being run so that a defect can be traced and rectified.

8.4 Any offence in relation to regulation 12 (see para 3.11 above) can attract a fine not exceeding level 3 on the standard scale i.e. up to the sum of £1,000.

8.5 Section 101 of the Local Government Act 1972 enables the Council to delegate authority to the Corporate Director, PLACE to authorise officers to make use of these powers to issue fixed penalty notices.

8.6 When considering these proposals, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). To inform the Council in discharging this duty, an Equalities Impact Assessment was undertaken as part of the development of Bromley’s LIP3.

<b>Non-Applicable Sections:</b>	<b>Procurement Implications</b>
Background Documents: (Access via Contact Officer)	<b>Appendices</b> <ul style="list-style-type: none"> <li>• Appendix 1- The enforcement process</li> </ul> <b>Background Documents – Local Authorities (Executive</b>

**Arrangements)(Access to Information)(England) Regulations 2012**

- The Department for Transport guidance on powers to require drivers to switch off engines
- The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002
- Bromley's Transport for the Future, Bromley's Third Local Implementation Plan
- Bromley's Third Local Implementation Plan, Draft Consultation Report 2019
- Letter form the Portfolio Holder for Environment & Community Services re. *Bromley Inclusion in pan-London anti-idling project*

## Appendix 1- The enforcement process

Regulation 12 of The Road Traffic (Vehicle Emission) (Fixed Penalty) (England) Regulations 2002 (“the RTVE”) sets out the enforcement process as:

- *12. Stopping of engine when vehicle stationary*
- *An authorised person who has reasonable cause to believe that the driver of a vehicle that is stationary on a road is committing a stationary idling offence may, upon production of evidence of his authorisation, require him to stop the running of the engine of that vehicle.*
- *A person who fails to comply with a requirement under paragraph (1) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.*
- Regulation 13 of the RTVE states that an FPN will only be issued where a driver refuses to turn off the engine when requested to do so by an authorised officer. Enforcement would not occur in case of the offence occurring accidentally or there is a genuine reason for not complying.
- The regulation stipulates the penalty for an offence as £20 which will increase to £40 if not paid within 28 days. There is no discretion to amend the charge.
- A further FPN could be issued if a vehicle is found stationary during the initial 28 day period with its engine running unnecessarily on a second or subsequent occasion. The offence is absolute and applies equally on every occasion the offence occurs.
- Local authorities are permitted to retain income generated from Fixed Penalty Notices issued. The level of income is expected to be minimal as FPNs will only be issued as a last resort.
- There is no formal appeal procedure to support enforcement. A formal route of appeal is not recommended as regulations do not require the introduction of an appeals process to support enforcement.
- A recipient of an FPN could informally query it with the Council, using the complaints process. Alternatively a request in writing for a hearing can be made no later than 28<sup>th</sup> day after the day the FPN was issued. A hearing is effectively a prosecution in court. The FPN falls once a hearing has been requested.
- Regulation 14 of the RTVE allows authorised officers in discharging their functions under regulation 12 (see para 3.11 above) to require the driver of the vehicle to disclose his name, address and date of birth and if the vehicle is not registered in his name, to give the name of that person. A person who fails to provide the information shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.