

LEGISLATIVE COUNCIL BRIEF

MOTOR VEHICLE IDLING (FIXED PENALTY) BILL

INTRODUCTION

A At the meeting of the Executive Council on 2 March 2010, the Council ADVISED and the Chief Executive (CE) ORDERED that the Motor Vehicle Idling (Fixed Penalty) Bill (the Bill), at **Annex A**, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

2. Idling motor vehicles with running engines (idling vehicles) cause air pollution, heat and noise nuisances to the nearby pedestrians and shops. These environmental nuisances aggravate roadside air pollution and their impact is more acute during bad air pollution days. To tackle the problem, CE pledged in the 2007-08 Policy Address that, subject to public consultation, the Government would introduce a statutory prohibition against idling vehicles (idling prohibition).

3. We completed a five month public consultation in March 2008. In general, the majority of respondents indicated support for the proposal, whereas the transport trades raised a number of concerns regarding its impact on their operations and requested further exemptions. Having considered the cases, the effectiveness of the proposal in mitigating environmental nuisances caused by idling vehicles and enforcement practicability, we put forward a revised proposal, which included further exemptions for drivers of taxis, green minibuses, red minibuses, non-franchised buses and commercial vehicles equipped with turbochargers, to the LegCo Panel on Environmental Affairs (EA Panel) for discussion in January and February 2009¹. While the revised proposal would better meet the operational needs of the transport trades, there were still concerns on

¹ Members of the Panel on Transport and major stakeholders such as representatives of the transport trades and green groups were also invited to the meetings.

whether the proposed exemptions could fully meet the needs of different drivers, particularly on extremely hot or rainy days.

4. To address the views of different quarters in the community, we further propose to follow Canada's practice to provide a grace period of three-in-sixty-minutes to drivers of all motor vehicles. This arrangement will also enable drivers of motor vehicles equipped with turbochargers to follow the vehicle manufacturers' recommendation to idle the internal combustion engines (ICEs) for a few minutes after the vehicles have become stationary, thereby avoiding aggravation of the wear-and-tear of the engine components. We also propose to exempt drivers of certain motor vehicles for operational needs or protecting public health. In addition, we propose to exempt drivers who must idle a motor vehicle for emissions testing or vehicle repairs.

5. We consider that the revised proposal will strike a reasonable balance between the operational needs of the transport trades and the need to protect the public from environmental nuisances caused by idling vehicles. In fact, many advanced countries, including those with hot and humid summer such as Singapore and Japan, already have laws prohibiting idling vehicles².

6. We believe that the introduction of the idling prohibition, together with our continued efforts in promoting the good driving practice of switching off the ICEs of motor vehicles while they are stationary, will go a long way in cultivating behavioural changes among drivers. The success of the idling prohibition after its implementation should thus be gauged by such behavioural changes instead of the number of penalty notices issued.

Details of the Prohibition

Prohibition

7. Our original proposal was that, unless an exemption applies, a driver (who is the person in charge of, or assisting in the control of, the motor vehicle) should be prohibited from causing or permitting any ICE of a motor vehicle to operate while the vehicle is stationary³. However, for the reasons set out in

2 Other countries with laws prohibiting idling vehicles include Canada, Finland, the United Kingdom and Switzerland.

3 Electric vehicles are not powered by ICEs, and they do not emit pollutants during operation or idling. Thus, the idling prohibition should not apply to them. Likewise, the idling prohibition should not apply to hybrid vehicles when operating in electric mode (when hybrid vehicles are operating in electric mode, they will not have any vibration, emission or noise; in contrast, when they are operating in fuel mode, they will vibrate, emit exhaust fumes and make engine noise, similar to idling vehicles powered by petrol, diesel or liquefied

paragraph 4 above, we now propose that the idling prohibition should only apply if the motor vehicle has been idled for more than three minutes in any sixty-minute period. The idling prohibition should apply to all motor vehicles on all roads, including private roads.

Exemptions

8. After careful consideration of the operational needs of different motor vehicles and the transport trades, the views collected during public consultation and the overseas practices, we propose that the idling prohibition should not apply to –

- (a) a driver of a motor vehicle that is stationary because of traffic conditions, such as traffic congestion, traffic accident and stopping as directed by a traffic light, traffic sign, road marking or police officer;
- (b) a driver who cannot prevent a motor vehicle from idling because of a mechanical difficulty over which he or she has no control;
- (c) a driver of a motor vehicle while a passenger is boarding or alighting from the vehicle;
- (d) a driver of any of the first five taxis at a taxi stand (subject to the size of the taxi stand concerned⁴);
- (e) a driver of a taxi which is in a queue of taxis any of which is moving into a taxi stand;
- (f) a driver of any of the first two green minibuses on a particular scheduled service at a green minibus stand (subject to the size of the green minibus stand concerned);
- (g) a driver of any of the first two red minibuses at a red minibus stand (subject to the size of the red minibus stand concerned);
- (h) a driver of a red minibus at a red minibus stand with any passenger on board;

petroleum gas).

4 As the size of taxi stands varies, the Bill does not provide a fixed number of exempted taxis but instead allows the exemption to be made by subsidiary legislation. For those taxi stands which could accommodate less than five taxis, the number of exempted taxis would be reduced to the maximum number permissible. We propose using suitable road signs to identify the exempted areas at all taxi stands to facilitate taxi drivers' compliance with the idling prohibition.

- (i) a driver of a red minibus at a red minibus stand which is immediately behind another red minibus at the stand with any passenger on board;
- (j) a driver of a non-franchised bus with any passenger on board;
- (k) a driver who must idle a specified medical, emergency or law enforcement vehicle, such as an ambulance, a fire engine or a police patrol car, for conducting an operational activity, including a training activity, related to any medical, emergency or law enforcement purpose;
- (l) a driver who must idle a motor vehicle for assisting in an emergency or accident;
- (m) a driver who must idle a specified motor vehicle carrying any live animal for conducting a related operational activity or protecting public health, such as a vehicle of the Agriculture, Fisheries and Conservation Department;
- (n) a driver who must idle a security transit vehicle which is operated by a licensee under the Security and Guarding Services Ordinance (Cap. 460) as described in Schedule 1 to the Bill;
- (o) a driver who must idle a motor vehicle of the Hong Kong Garrison of the Chinese People's Liberation Army (the Garrison) for conducting an operational activity, including a training activity of the Garrison;
- (p) a driver who must idle a motor vehicle, which is lawfully designed for a purpose other than carriage of the driver, any passenger and their personal effects, for the primary purpose of such vehicle, such as –
 - (i) a driver who must idle a refrigerator truck for carrying perishable freight at specified low temperatures;
 - (ii) a driver who must idle a tipper lorry for operating a tipping system for loading and unloading refuse;
 - (iii) a driver who must idle a recovery vehicle for providing vehicle recovery and towing services;
 - (iv) a driver who must idle a vehicle equipped with a water jetting unit for clearing blocked drains;
 - (v) a driver who must idle a hydraulic platform vehicle for

- operating a cage for truncating tree branches;
- (vi) a driver who must idle a refuse collection vehicle for collecting refuse or waste;
 - (vii) a driver who must idle a street washing vehicle for washing the streets; and
- (q) a driver who must idle a motor vehicle for emissions testing or vehicle repairs.

9. In addition, to cater for some unique circumstances, we propose that the Director of Environmental Protection (DEP) may exempt a driver or class of drivers from complying with the idling prohibition, subject to any conditions he or she thinks fit. If a request is related to a particular local community, DEP would consider the views of the District Council (DC) concerned when deciding on the exemption. In respect of vehicles which cannot be readily identified by the enforcement agents on their eligibility for exemption, the drivers concerned may produce appropriate documentary proof, for example copies of licences or permits to support their exemption status.

Fixed Penalty System

10. To provide necessary deterrence against contravention of the idling prohibition, we propose to introduce a fixed penalty system to enforce the idling prohibition, which is largely modelled on the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) and the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600). The proposed fixed penalty is \$320, which is the same as that for illegal parking under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237). Details of the operation of the fixed penalty system are set out at **Annex B**.

B

THE BILL

11. The Bill contains four Parts and two Schedules.

12. Part 1 stipulates that the Bill, if enacted, would take effect on a day to be appointed by the Secretary for the Environment (SEN) by notice published in the Gazette. This Part also defines the scope of application of the Bill and sets out the definitions of various terms adopted in the Bill.

13. Part 2 describes what constitutes idling, prohibits drivers from causing or permitting motor vehicles to be idling for more than three minutes

in any sixty minute period and, together with Schedule 1, provides exemptions from the idling prohibition.

14. Part 3 provides for matters related to the fixed penalty which mainly include –

- (a) the liability for a fixed penalty for contravention of the idling prohibition;
- (b) the issuance and withdrawal of penalty notices and demand notices;
- (c) an offence of failure to provide personal particulars or produce driving authority or proof of identity for inspection and an offence of supplying false information;
- (d) recovery of fixed penalty if default;
- (e) proceedings if a person disputes liability; and
- (f) distress for non-payment.

15. Part 4 mainly sets out the powers and functions of the authorized officers, creates an offence of obstruction of authorized officers and empowers SEN to make regulations and amend Schedule 1 or 2.

16. Schedule 1 sets out certain circumstances in which the idling prohibition does not apply, while Schedule 2 specifies the Authority and authorized officers.

LEGISLATIVE TIMETABLE

17. The legislative timetable will be –

Publication in the Gazette	16 April 2010
First Reading and commencement of	28 April 2010
Second Reading debate	
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

C
18. The proposal has financial, civil service, economic as well as environmental and sustainability implications as set out at **Annex C**. It is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will apply to all motor vehicles and drivers, including those of the Government and of the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region⁵.

PUBLIC CONSULTATION

19. We conducted a five-month public consultation on the proposal from November 2007 to March 2008. We conducted 44 meetings with the stakeholders, including the EA Panel, the Advisory Council on the Environment, all the 18 DCs, the transport trades, the green groups, the professional bodies and other relevant parties. We also carried out telephone surveys and invited discussion at the Public Affairs Forum to gauge the views of the general public.

20. The public consultation revealed a broad-based community support for the proposal. For the transport trades, while they expressed in principle support for the proposal, some of them have been requesting further or even blanket exemption and phased implementation. On the other hand, the green groups cautioned that too many exemptions would nullify the effect of the idling prohibition and demanded a more stringent control. The current proposals, as reflected in the Bill, have taken on board many of the suggestions received during the public consultation and seek to strike a balance between the operational needs of the transport trades and effective implementation of the idling prohibition.

PUBLICITY

21. We will issue a press release on 15 April 2010. A spokesman will respond to media enquiries.

22. We have been publicizing the voluntary act of switching off the engines of idling vehicles. We will continue to step up the publicity and educational measures to further promote this green driving practice and raise public awareness of the idling prohibition.

⁵ "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region" means the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region, the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region and the Garrison.

ENQUIRIES

23. For enquiries about this brief, please contact Mr W C MOK, Assistant Director of Environmental Protection (Air Policy), at 2594-6031.

Environmental Protection Department
15 April 2010

MOTOR VEHICLE IDLING (FIXED PENALTY) BILL

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A BILL

To

Prohibit the idling of motor vehicles; provide exemptions from the prohibition; impose a fixed penalty for contravention of the prohibition; provide for recovery of the fixed penalty and provide for incidental and related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Motor Vehicle Idling (Fixed Penalty) Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance –

“Authority” (當局) means a person specified in column 1 of Schedule 2;

“authorized officer” (獲授權人員) means a person specified in column 2 of Schedule 2;

“complaint” (申訴) means a complaint under Division 4 of Part 3;

“demand notice” (繳款通知書) means a notice served under section 11(2);

“Director” (署長) means the Director of Environmental Protection;

“driver” (司機), in relation to a motor vehicle, means any person who is in charge of, or assisting in the control of, the vehicle;

“driving authority” (駕駛權限) means a driving licence, a domestic driving permit, a domestic driving licence or an international driving permit within the meaning of the Road Traffic Ordinance (Cap. 374);

“fixed penalty” (定額罰款) means the fixed penalty referred to in section 7;

“idling” (引擎空轉) has the meaning given by section 4;

“internal combustion engine” (內燃引擎) has the same meaning as in the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A);

“judgment amount” (判決款額) means an amount ordered by a magistrate to be paid by a person (other than a complainant) under this Ordinance, whether by way of fixed penalty, additional penalty or costs;

“motor vehicle” (汽車) means any mechanically propelled vehicle that is constructed or adapted for use on a road;

“passenger” (乘客), in relation to a motor vehicle, means a person carried in or on the vehicle other than the driver;

“penalty notice” (罰款通知書) means a notice referred to in section 8;

“proof of identity” (身分證明文件) has the same meaning as in section 17B of the Immigration Ordinance (Cap. 115);

“road” (道路) means –

(a) a road within the meaning of the Road Traffic Ordinance (Cap. 374); or

(b) a private road within the meaning of that Ordinance.

(2) Where this Ordinance includes an example of the operation of a provision –

(a) the example is not exhaustive; and

(b) if the example is inconsistent with the provision, the provision prevails.

3. Application

This Ordinance applies to all motor vehicles and drivers in the Hong Kong Special Administrative Region, including those of the Government and of the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region.

PART 2

MOTOR VEHICLE IDLING PROHIBITED

4. What is idling

For the purposes of this Ordinance, a motor vehicle is idling if any internal combustion engine forming part of, attached to or situated in or on the vehicle is operating while the vehicle is stationary.

5. Idling prohibited

(1) The driver of a motor vehicle must not cause or permit the vehicle to be idling on a road for more than 3 minutes in any 60-minute period.

(2) This section does not apply to –

(a) a driver referred to in Schedule 1; or

(b) a driver who is exempted, or is in a class of drivers that is exempted, under section 6.

6. Exemptions by Director

(1) The Director may exempt a driver or class of drivers from section 5 subject to any conditions the Director thinks fit.

(2) For the purposes of subsection (1), the Director may determine a class of drivers in any manner the Director chooses, including a class determined by the type of motor vehicle or the type of activity in which the driver is engaging.

(3) An exemption may apply generally or be limited to a particular area or a particular time or both.

(4) If the Director exempts a driver, the Director must give the driver written notice of the exemption.

(5) If the Director exempts a class of drivers, the Director must publish notice of the exemption in the Gazette.

(6) A notice of exemption is not subsidiary legislation.

PART 3

FIXED PENALTY

Division 1 – Liability for Fixed Penalty

7. Fixed penalty

(1) A person who contravenes section 5 does not commit an offence but is liable to pay a fixed penalty of \$320 for the contravention.

(2) The Legislative Council may, by resolution, amend the amount of the fixed penalty specified in subsection (1).

Division 2 – Penalty Notices and Demand Notices

8. Authorized officer may give penalty notice

(1) If an authorized officer has reason to believe that a person is contravening or has contravened section 5, the officer may give the person a notice in the prescribed form requiring him or her to pay the fixed penalty for the contravention.

(2) The notice may be given to the person personally or by affixing it to the motor vehicle.

9. Power to demand personal details, proof of identity and driving authority

(1) If an authorized officer has reason to believe that a person is contravening or has contravened section 5, the officer may, for the purpose of issuing or serving a summons or other document in relation to the contravention, require the person to –

- (a) supply his or her name, date of birth, address and contact telephone number (if any); and
- (b) produce for inspection his or her proof of identity and driving authority (if any).

(2) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (1) commits an offence and is liable to a fine at level 2.

10. Supply of false information

A person who, in purported compliance with a requirement made under section 9(1), supplies any information that he or she knows is false or misleading commits an offence and is liable to a fine at level 2.

11. Demand notice if person fails to pay fixed penalty or refuses to accept penalty notice

- (1) This section applies if a person –
- (a) fails to pay the fixed penalty within 21 days after being given a penalty notice; or
 - (b) refuses to accept a penalty notice intended to be given to him or her.
- (2) The Authority may serve on the person a notice in the prescribed form –
- (a) demanding payment of the fixed penalty;
 - (b) informing the person that he or she must notify the Authority in writing if he or she wishes to dispute liability for the contravention to which the fixed penalty relates; and
 - (c) stating that the payment or notification must be made within 10 days after the date of service of the notice.
- (3) A demand notice cannot be served later than –

- (a) if subsection (1)(a) applies, 6 months after the date on which the penalty notice was given; or
- (b) if subsection (1)(b) applies, 6 months after the date of the refusal.

(4) A demand notice may be served by sending it by post to the person's address.

(5) A certificate of posting in the prescribed form purporting to be signed by or for the Authority is admissible in evidence in any proceedings under this Ordinance and, unless there is evidence to the contrary, it must be presumed that –

- (a) the certificate was signed by or for the Authority; and
- (b) the demand notice to which the certificate relates was duly served.

12. Withdrawal of penalty notice or demand notice

(1) The Authority may withdraw a penalty notice or demand notice at any time –

- (a) before an order is made under section 13; or
- (b) before the issuing of a summons commencing proceedings under Division 4.

(2) If a penalty notice or demand notice is withdrawn –

- (a) the Authority must serve notice of the withdrawal on the person to whom the penalty notice or demand notice applied; and
- (b) on application by the person, the Authority must refund, through the Director of Accounting Services, any amount paid in respect of the fixed penalty.

Division 3 – Recovery of Fixed Penalty if Default

13. Recovery of fixed penalty if default

(1) This section applies if a person on whom a demand notice has been served fails to pay the fixed penalty or notify the Authority in accordance with the notice.

(2) On an application made in the name of the Secretary for Justice and production of the documents referred to in subsection (3), a magistrate must order the person to pay, within 14 days after the date of service of notice of the order –

- (a) the fixed penalty;
- (b) an additional penalty equal to the amount of the fixed penalty; and
- (c) \$300 by way of costs.

(3) The documents are –

- (a) a copy of the demand notice;
- (b) a certificate of posting the demand notice under section 11(5); and
- (c) a certificate under section 24.

(4) The magistrate must cause notice of the order to be served on the person to whom it applies and it may be served by sending it by post to the person's address.

(5) An application under this section may be made in the absence of the person and the Secretary for Justice may appoint any person or class of persons to make it.

(6) The Legislative Council may, by resolution, amend the amount specified in subsection (2)(c).

14. Application for review of magistrate's order

(1) A person to whom an order made under section 13 applies may apply to a magistrate for review of the order.

(2) An application must be made within 14 days after the date on which the order first came to the personal attention of the applicant.

(3) The applicant must give reasonable notice of the application to the Authority.

(4) An application may be made in person or by counsel or solicitor and the magistrate, for the purpose of securing the attendance of witnesses and generally for conducting the proceedings, has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).

15. Outcome of review

(1) On application under section 14, a magistrate may rescind an order made under section 13 if the magistrate is satisfied that the demand notice did not come to the personal attention of the applicant without any fault on the part of the applicant.

(2) If the magistrate rescinds the order and the applicant wishes to dispute liability for the contravention to which the order relates, the magistrate must order that the matter be determined in accordance with Division 4.

(3) If the magistrate rescinds the order and the applicant does not wish to dispute liability for the contravention, the magistrate –

(a) must order the applicant to pay the fixed penalty within 10 days after the date of the order; and

(b) must order that, if the applicant fails to pay the fixed penalty within that period, the applicant must immediately pay –

(i) the fixed penalty;

(ii) an additional penalty equal to the amount of the fixed penalty; and

(iii) \$300 by way of costs.

(4) The Legislative Council may, by resolution, amend the amount specified in subsection (3)(b)(iii).

Division 4 – Proceedings if Person Disputes Liability

16. Proceedings if person disputes liability

- (1) This section applies if –
 - (a) a person who is given a penalty notice notifies the Authority in writing, before being served with a demand notice, that he or she wishes to dispute liability for the contravention to which the penalty notice relates;
 - (b) a person on whom a demand notice is served notifies the Authority in accordance with the demand notice that he or she wishes to dispute liability for the contravention to which the demand notice relates; or
 - (c) a magistrate makes an order under section 15(2).

(2) If this section applies, the matter is to be determined in accordance with this Division by a magistrate in a summary way, on a complaint made in the name of the Secretary for Justice.

(3) The Secretary for Justice may appoint any person or class of persons to make a complaint.

- (4) A complaint cannot be made later than –
 - (a) if subsection (1)(a) or (b) applies, 6 months after the person notifies the Authority that he or she wishes to dispute liability; or
 - (b) if subsection (1)(c) applies, 6 months after the date of the order under section 15(2).

17. Summons to defendant

A summons may be issued and served on the person who is the subject of a complaint in accordance with section 8 of the Magistrates Ordinance (Cap. 227).

18. Proceedings in absence of defendant

(1) If a person served with a summons does not appear at the time and place appointed for the hearing, or at any adjourned hearing, the magistrate may, subject to this section, proceed to hear and determine the complaint in the absence of the person.

(2) The magistrate must not hear the complaint in the absence of the person unless –

- (a) service of the summons is proved under section 8 of the Magistrates Ordinance (Cap. 227) and the magistrate is satisfied that it was served a reasonable time before the time appointed for the hearing; or
- (b) the person has appeared on a previous occasion to answer the complaint.

(3) If the complaint is heard in the absence of the person, the substance of the complaint may be proved by production of –

- (a) a copy of the demand notice;
- (b) a certificate of posting the demand notice under section 11(5); and
- (c) a certificate under section 24.

(4) If the complaint is heard in the absence of the person, the magistrate must send by post to the person's address a copy of any order made in relation to the complaint.

19. Hearing of complaint

(1) The magistrate must hear and determine the complaint and, for that purpose, the magistrate has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227), including –

- (a) the power to issue a summons for the appearance of witnesses; and
- (b) the power to adjourn the hearing.

(2) If the defendant does not admit the truth of the complaint at the hearing, the defendant must state the nature of his or her defence.

(3) If the defendant does not at that time expressly put in issue any allegation of fact stated in a certificate under section 24 that has been produced by the complainant, the defendant cannot at any later time dispute or adduce evidence to contradict that fact.

20. Additional penalty

(1) This section applies if –

- (a) a complaint is heard in the absence of the defendant; or
- (b) the defendant offers no defence to a complaint or a defence that is frivolous or vexatious.

(2) If this section applies, the magistrate must order that the defendant pay a penalty equal to the amount of the fixed penalty, in addition to the fixed penalty and any costs ordered in the proceedings.

21. Costs orders

(1) If a magistrate dismisses a complaint, the magistrate may at the same time make an order for the payment of costs by the complainant of not less than \$600 or more than \$1,500.

(2) If, on a complaint, a magistrate orders a person to pay a fixed penalty (with or without an additional penalty), the magistrate may at the same time make an order for the payment of costs by the person of not less than \$600 or more than \$1,500.

(3) The Legislative Council may, by resolution, amend an amount specified in subsection (1) or (2).

22. Discontinuance of complaint

(1) A complainant may discontinue the complaint at any stage before the magistrate has commenced to hear it, on giving written notice to the defendant and the magistrate.

- (2) Leave of the magistrate is not required for the complainant to do so.

23. Payment of fixed penalty after summons

(1) A person who is served with a summons to answer a complaint may pay the following amounts in accordance with subsection (2) –

- (a) the fixed penalty;
- (b) an additional penalty equal to the amount of the fixed penalty; and
- (c) \$500 by way of costs.

(2) Payment must be made to a magistrate's court not later than 2 clear working days before the day specified in the summons for the hearing of the complaint and the person must produce the summons when making the payment.

(3) Payment in accordance with this section terminates the proceedings on the complaint.

(4) The Legislative Council may, by resolution, amend the amount specified in subsection (1)(c).

(5) In this section –
 “clear working days” (整個工作天) excludes the day specified in the summons for the appearance of the person and intervening public holidays.

Division 5 – General Provisions for Proceedings

24. Evidentiary certificate

(1) A certificate in the prescribed form stating the matters in subsection (2) and purporting to be signed by or for the Authority is admissible in evidence in any proceedings under this Ordinance.

- (2) The matters are –
- (a) that a specified motor vehicle was at a specified time idling at a specified location in contravention of section 5;
 - (b) that a specified person was at a specified time the driver of a specified motor vehicle;

- (c) that a specified address was at a specified time the address of the specified person referred to in paragraph (b);
 - (d) that payment of the fixed penalty for a contravention specified in a specified demand notice had not been made before a specified date; and
 - (e) (if applicable) that the person specified in the demand notice referred to in paragraph (d) had not notified the Authority before a specified date of his or her wish to dispute liability for the contravention.
- (3) Unless there is evidence to the contrary –
- (a) it must be presumed that the certificate was signed by or for the Authority; and
 - (b) the certificate is evidence of the facts stated in it.

25. Distress for non-payment

(1) If a person fails to pay any part of a judgment amount within one month after the date of the order to pay the amount, a magistrate, on an application made in the name of the Secretary for Justice, may order that the following amounts be levied on any goods of the person by distress and sale –

- (a) the judgment amount or, if the application under this section is in respect of more than one judgment amount, the total of those amounts; and
- (b) the costs of the application for an order under this section (being an amount not less than \$50 or more than the amount of the fixed penalty).

(2) An application under this section may be made in the absence of the person and the Secretary for Justice may appoint any person or class of persons to make it.

26. Power to rescind order on application by the Authority

At any time, a magistrate may for good cause, on an application made by the Authority, rescind –

- (a) any order for the payment of a fixed penalty, an additional penalty or costs; and
- (b) any other order made under this Ordinance in the same proceedings.

PART 4**GENERAL****27. Powers and functions of authorized officers**

(1) The powers and functions of authorized officers under this Ordinance may be exercised or performed on all roads including private roads.

(2) The powers and functions of traffic wardens and senior traffic wardens under this Ordinance are in addition to any powers and functions they have under the Road Traffic Ordinance (Cap. 374) or any other Ordinance.

28. Protection of the Authority and authorized officers

(1) The Authority or an authorized officer is not personally liable for anything done or omitted to be done by the Authority or officer in good faith in the exercise of a power or performance of a function or purported exercise of a power or purported performance of a function under this Ordinance.

(2) The protection conferred by subsection (1) does not affect any liability of the Government for the act or omission.

29. Obstruction of authorized officers

A person who obstructs an authorized officer in the exercise of a power or performance of a function under this Ordinance commits an offence and is liable to a fine at level 4 and to imprisonment for 6 months.

30. Delegation by the Authority

The Authority may, in writing, delegate any power or function of the Authority under this Ordinance (including this power of delegation) to a public officer.

31. Regulations

The Secretary for the Environment may make regulations –

- (a) prescribing any notice or certificate for the purposes of this Ordinance;
- (b) specifying how fixed penalties and other amounts payable under this Ordinance may be paid, the information to be supplied by persons paying them and the duties of persons receiving them;
- (c) providing for the erection or placement of traffic signs for the purposes of this Ordinance; and
- (d) providing generally for the better carrying out of this Ordinance.

32. Amendment of Schedules

The Secretary for the Environment may, by notice published in the Gazette, amend Schedule 1 or 2.

SCHEDULE 1

[ss. 5(2)(a) & 32]

DRIVERS TO WHOM IDLING PROHIBITION DOES NOT APPLY

1. Vehicles generally

Section 5 does not apply to –

- (a) a driver of a motor vehicle that is stationary because of traffic conditions;

- (b) a driver of a motor vehicle who cannot prevent the vehicle from idling because of a mechanical difficulty over which the driver has no control; or
- (c) a driver of a motor vehicle while a person (other than the driver) is boarding or alighting from the vehicle.

2. **Taxis, green and red minibuses and buses**

(1) Section 5 does not apply to a driver of a taxi that is –

- (a) within the designated area of a taxi stand; or
- (b) in a queue of taxis any of which is moving into a taxi stand.

(2) Section 5 does not apply to a driver of a green minibus at a green minibus stand if the minibus is the first or second minibus on a particular scheduled service at the stand.

(3) Section 5 does not apply to a driver of a red minibus at a red minibus stand if –

- (a) the minibus is the first or second red minibus at the stand;
- (b) any passenger is on board; or
- (c) the minibus is immediately behind another red minibus at the stand that has any passenger on board.

(4) Section 5 does not apply to a driver of a bus, other than a franchised bus, that has any passenger on board.

(5) In this section –

“bus” (巴士) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

“designated area” (指定範圍) of a taxi stand, means an area at the taxi stand indicated by traffic signs erected or placed in accordance with a regulation made under section 31(c);

“franchised bus” (專利巴士) means a bus in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230);

“green minibus” (綠色小巴) means a public light bus on a scheduled service;

“green minibus stand” (綠色小巴站) means, subject to subsection (6), an area of road that is designated under the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) as a stand for public light buses on a scheduled service only;

“public light bus” (公共小巴) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

“red minibus” (紅色小巴) means a public light bus on a service other than a scheduled service;

“red minibus stand” (紅色小巴站) means, subject to subsection (6), an area of road that is designated under the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) as a stand for public light buses on a service other than a scheduled service;

“scheduled service” (專線服務) has the same meaning as in the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D);

“taxi” (的士) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

“taxi stand” (的士站) has, subject to subsection (6), the same meaning as in the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D).

(6) For the purposes of this section, an area of road is not a taxi stand, green minibus stand or red minibus stand at any time when a suspension is in force in relation to the area under regulation 32 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D).

3. **Vehicles idling for medical, emergency or law enforcement purposes**

(1) Section 5 does not apply to –

- (a) a driver of a medical, emergency or law enforcement vehicle if idling the vehicle is necessary for conducting an operational activity (including a training activity) for or related to medical, emergency or law enforcement purposes; or

- (b) a driver of a motor vehicle who is assisting in an emergency or accident if idling the vehicle is necessary for that purpose.

(2) In this section –

“medical, emergency or law enforcement vehicle” (醫療、緊急或執法車輛)

means a motor vehicle used by any of the following bodies –

- (a) the Auxiliary Medical Service;
- (b) the Civil Aid Service;
- (c) the Correctional Services Department;
- (d) the Customs and Excise Department;
- (e) the Fire Services Department;
- (f) the Fish Marketing Organization;
- (g) the Government Flying Service;
- (h) the Hong Kong Police Force;
- (i) the Hong Kong St. John Ambulance;
- (j) the Hospital Authority;
- (k) the Immigration Department;
- (l) the Independent Commission Against Corruption.

4. **Vehicles carrying live animals idling for operational needs or protecting public health**

(1) Section 5 does not apply to a driver of a motor vehicle for a specified body, or for or as a contractor of a specified body, if –

- (a) the vehicle is carrying any live animals; and
- (b) idling the vehicle is necessary for conducting an operational activity or protecting public health.

(2) In this section –

“contractor” (承辦商) includes service provider;

“operational activity” (運作活動) –

- (a) in relation to a specified department, means an activity conducted for the purpose of the operations of the department;
- (b) in relation to a specified licence or permit holder, means an activity conducted under the holder's licence, permit or special permit;

“specified body” (指明團體) means –

- (a) a specified department; or
- (b) a specified licence or permit holder;

“specified department” (指明部門) means –

- (a) the Agriculture, Fisheries and Conservation Department;
- (b) the Food and Environmental Hygiene Department; or
- (c) the Leisure and Cultural Services Department;

“specified licence or permit holder” (指明牌照或許可證的持有人) means the holder of a licence, permit or special permit granted or issued under any of the following provisions –

- (a) regulation 57A of the Public Health (Animals and Birds) Regulations (Cap. 139 sub. leg. A);
- (b) regulation 5(1) of the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139 sub. leg. B);
- (c) regulation 4(1) or 8(1) of the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139 sub. leg. F);
- (d) regulation 5(1) of the Public Health (Animals) (Boarding Establishment) Regulations (Cap. 139 sub. leg. I);
- (e) regulation 5(1) of the Public Health (Animals) (Riding Establishment) Regulations (Cap. 139 sub. leg. J);
- (f) section 12 of the Rabies Regulation (Cap. 421 sub. leg. A).

5. **Security transit vehicles**

(1) Section 5 does not apply to a driver of a security transit vehicle if idling the vehicle is necessary for providing armoured transportation services.

(2) In this section –

“security transit vehicle” (護衛押運車輛) means a motor vehicle operated by a licensee within the meaning of the Security and Guarding Services Ordinance (Cap. 460) for the provision of armoured transportation services.

6. **Garrison vehicles**

Section 5 does not apply to a driver of a motor vehicle of the Hong Kong Garrison of the Chinese People’s Liberation Army if idling the vehicle is necessary for conducting an operational activity (including a training activity) of the Garrison.

7. **Vehicles necessarily idling for certain purposes**

Section 5 does not apply to a driver of a motor vehicle if –

- (a) the vehicle is lawfully designed primarily for a purpose other than the carriage of the driver, any passengers and their personal effects; and
- (b) idling the vehicle is necessary for a purpose for which the vehicle is primarily designed.

Examples:

1. A refrigerator truck carrying perishable freight that is required to be kept at a low temperature.
2. A tipper lorry that is required to idle to operate a tipping system for loading and unloading refuse.
3. A recovery vehicle that is required to idle to provide vehicle recovery and towing services.

4. A refuse collection vehicle that is required to idle to provide refuse collection services.
5. A street washing vehicle that is required to idle to provide street washing services.

8. **Emissions testing or repairs**

Section 5 does not apply to a driver of a motor vehicle if idling the vehicle is necessary for –

- (a) testing the vehicle in accordance with a requirement under section 77B of the Road Traffic Ordinance (Cap. 374) or to determine whether the vehicle complies with the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311 sub. leg. J); or
- (b) carrying out on the vehicle any maintenance, repairs or other works that is or are necessary to enable the vehicle to be removed without undue delay.

SCHEDULE 2

[ss. 2 & 32]

THE AUTHORITY AND AUTHORIZED OFFICERS

Column 1

Column 2

Authority

Authorized officers

Director of Environmental Protection

Traffic Warden

Senior Traffic Warden

Environmental Protection Inspector

Senior Environmental Protection Inspector

Chief Environmental Protection Inspector

Explanatory Memorandum

The purposes of this Bill are to prohibit the idling of motor vehicles, provide exemptions from the prohibition, impose a fixed penalty for contravention of the prohibition and provide for recovery of the fixed penalty.

2. Clause 1 sets out the short title of the Bill and provides for commencement on a day to be appointed.

3. Clause 2 defines certain terms used in the Bill. A number of terms are defined by reference to definitions contained in the Road Traffic Ordinance (Cap. 374).

4. Clause 3 provides for the Bill to apply to all motor vehicles and drivers in the HKSAR, including those of the Government and of the Offices set up by the Central People's Government in the HKSAR.

5. Clause 4 describes what constitutes idling. A motor vehicle is idling if any internal combustion engine forming part of, attached to or situated in or on the vehicle is operating while the vehicle is stationary.

6. Clause 5 prohibits the driver of a motor vehicle from causing or permitting it to be idling on a road for more than 3 minutes in any 60-minute period. The idling prohibition does not apply to drivers referred to in Schedule 1, or drivers or classes of drivers who are exempted under clause 6.

7. Clause 6 empowers the Director of Environmental Protection to exempt drivers or classes of drivers from the idling prohibition.

8. Clause 7 imposes a fixed penalty of \$320 on a person who contravenes the idling prohibition. The amount of the fixed penalty may be amended by resolution of the Legislative Council. The clause also makes it clear that contravention of the prohibition is not an offence.

9. Clause 8 allows an authorized officer who has reason to believe that a person is contravening or has contravened the idling prohibition to give the person a penalty notice. It may be given personally or by affixing it to the motor vehicle. Schedule 2 specifies who is an authorized officer.

10. Clause 9 allows an authorized officer who has reason to believe that a person is contravening or has contravened the idling prohibition to require the person to supply personal details (such as their name and contact information) and produce proof of identity and a driving licence or permit (if they have one), for the purpose of issuing or serving a summons or other document in relation to the contravention. It is an offence to fail to comply with this requirement without reasonable excuse.

11. Clause 10 creates an offence for a person to supply any information that he or she knows to be false or misleading in response to a requirement of an authorized officer under clause 9(1).

12. Clause 11 provides for the Authority to serve a demand notice on a person who fails to pay a fixed penalty within 21 days after being given a penalty notice, or who refuses to accept a penalty notice. Schedule 2 specifies who is the Authority. The demand notice will demand payment of the fixed penalty within 10 days after the date of service of the notice. Alternatively, the person may notify the Authority within 10 days after the date of service if the person wishes to dispute liability. A 6-month time limit is imposed on serving a demand notice.

13. Clause 12 provides for the withdrawal of a penalty notice or demand notice and the refund of any penalty paid under a notice that is withdrawn.

14. Clause 13 provides that, if a demand notice served under clause 11 is not acted on, a magistrate, on an application made in the name of the Secretary for Justice and production of specified documents, must order payment of the fixed penalty, an additional penalty equal to the fixed penalty, and costs of \$300. The amount of costs may be amended by resolution of the Legislative Council.

15. Clause 14 provides for a person to apply for review of an order made against them under clause 13.

16. Clause 15 provides for the conduct of a review of an order made under clause 13 on application under clause 14. The magistrate may rescind the order if satisfied that the demand notice did not come to the personal attention of the applicant without any fault on the part of the applicant. If the applicant wishes to

dispute liability for the contravention, the magistrate must order the matter to be dealt with by complaint under Division 4. If not, the magistrate must order the applicant to pay the fixed penalty within 10 days and that, if the applicant fails to do so, the applicant must pay the fixed penalty, an additional penalty equal to the fixed penalty, and costs of \$300. The amount of costs may be amended by resolution of the Legislative Council.

17. Clause 16 provides for proceedings if a person notifies the Authority that he or she wishes to dispute liability for a contravention of the idling prohibition, or a magistrate makes an order under clause 15(2) on a review. In those cases, proceedings will take place before a magistrate on a complaint made in the name of the Secretary for Justice. A 6-month time limit is imposed on making a complaint.

18. Clause 17 provides for the issue and service of a summons under section 8 of the Magistrates Ordinance (Cap. 227) on a person who is the subject of a complaint made under clause 16.

19. Clause 18 provides for a complaint to be heard in the absence of the defendant if the defendant does not appear at the time and place of the hearing or at an adjourned hearing. The clause also provides for proof of the complaint at a hearing held in the defendant's absence.

20. Clause 19 provides for the hearing of a complaint by adopting the powers in the Magistrates Ordinance (Cap. 227) for a magistrate hearing a complaint. The clause also imposes certain requirements on the defendant.

21. Clause 20 provides for an additional penalty (equal to the fixed penalty) to be imposed on a defendant if the complaint is heard in the defendant's absence or the defendant offers no defence, or a defence that is frivolous or vexatious.

22. Clause 21 permits a magistrate to make a costs order on a complaint. If a complaint is dismissed, costs may be awarded against the complainant. In other cases, costs may be awarded against the person ordered to pay the fixed penalty. An order for costs may be between \$600 and \$1,500. Those amounts may be amended by resolution of the Legislative Council.

23. Clause 22 allows a complaint to be discontinued by the complainant at any stage before the magistrate commences to hear it. This does not require leave of the magistrate.

24. Clause 23 enables a person to pay a fixed penalty after the service of a summons for a complaint but at least 2 clear working days before the scheduled hearing. The person must also pay an additional penalty equal to the fixed penalty, and costs of \$500. The amount of costs may be amended by resolution of the Legislative Council.

25. Clause 24 provides for an evidentiary certificate for use in proceedings under the Bill. Unless there is evidence to the contrary, the certificate is evidence of the facts stated in it.

26. Clause 25 provides for a magistrate to make a distress order if a person does not pay an amount under the Bill within one month after being ordered to pay it. On an application made in the name of the Secretary for Justice, a magistrate may order that the amount and an amount for costs be levied on the person's goods by distress and sale.

27. Clause 26 allows a magistrate, for good cause, to rescind any order made under the Bill. This power is exercisable on an application by the Authority.

28. Clause 27 ensures that the powers and functions of authorized officers under the Bill may be exercised or performed on private roads as well as public roads. The clause also clarifies that the powers and functions of traffic wardens and senior traffic wardens under the Bill are in addition to any other powers and functions they have under other legislation.

29. Clause 28 protects the Authority and authorized officers from personal liability for acts or omissions in good faith while exercising powers or performing functions under the Bill. However, it does not affect any liability the Government may have for those acts or omissions.

30. Clause 29 creates an offence. It is an offence to obstruct an authorized officer who is exercising powers or performing functions under the Bill.

31. Clause 30 enables the Authority to delegate powers or functions under the Bill to a public officer.
32. Clause 31 enables regulations to be made by the Secretary for the Environment for the purposes of the Bill.
33. Clause 32 enables the Secretary for the Environment to amend Schedule 1 or 2 by notice published in the Gazette.
34. Schedule 1 sets out certain circumstances in which the idling prohibition does not apply. These include where a motor vehicle is stationary because of traffic conditions or where a person other than the driver is boarding or alighting. Idling is also permitted in certain circumstances for motor vehicles such as taxis, minibuses and non-franchised buses and certain other types of vehicle.
35. Schedule 2 specifies the Authority and authorized officers.

PROPOSED FIXED PENALTY SYSTEM

Penalty

We propose that it should not be an offence to contravene the idling prohibition, but the person concerned should be liable to pay a fixed penalty of \$320 for the contravention within 21 days.

Enforcement, Issuance of Penalty Notices and Demand Notices

2. Traffic wardens (TWs) and senior traffic wardens (STWs) will be the main enforcement agents. At the same time, while the main duty of environmental protection inspectors (EPIs), senior environmental protection inspectors (SEPIs) and chief environmental protection inspectors (CEPIs) is to conduct publicity and educational programmes, they will also have the power to enforce the idling prohibition in order to supplement the enforcement action of TWs and STWs during blitz operations.

3. We propose that if any of these authorized officers has reason to believe that a person is contravening or has contravened the idling prohibition, for example by observing that a motor vehicle is vibrating, emitting smoke or making engine noise, the officer may give the person a penalty notice requiring him or her to pay the fixed penalty for the contravention. The authorized officer may require the person to supply his or her personal particulars and produce his or her proof of identity and driving authority, if any, for inspection.

4. To deter drivers from being uncooperative with the authorized officers, it should be an offence if a person fails to supply his or her personal particulars or produce his or her proof of identity and driving authority, if any, or knowingly supplies any false or misleading information to an authorized officer. The person should be liable on conviction as decided by the court to a fine at level 2 (i.e. \$5,000). It should also be an offence if a person obstructs an authorized officer in the exercise of his or her powers or performance of his or her functions. In this case, the person should be liable to a fine at level 4 (i.e. \$25,000) and to imprisonment for six months.

5. Upon receipt of a penalty notice, a person should pay the fixed penalty within 21 days. However, if the person does not pay the fixed penalty during this period, or if he or she refuses to accept the penalty notice intended to be given to him or her, the enforcement authority (who is intended to be the Commissioner of Police if the penalty notice is issued by a TW or STW, or DEP

if the penalty notice is issued by an EPI, a SEPI or CEPI) may serve another notice (i.e. a demand notice) to the person by post, requiring him or her, within 10 days, to pay the fixed penalty or notify the enforcement authority that he or she wishes to dispute liability.

Recovery of Fixed Penalty if Default

6. If a person still does not pay the fixed penalty in full or notify the enforcement authority of his or her intention to dispute liability for the contravention within 10 days after the date of service of the demand notice, we propose that the person should be considered to have defaulted in payment of the fixed penalty. The enforcement authority, in the name of the Secretary for Justice (SJ), may make an application to the magistrate for an order requiring the person to pay the fixed penalty, an additional penalty equal to the amount of the fixed penalty and costs of \$300 (i.e. \$940 in total) within 14 days.

Dispute of Liability

7. If a person wishes to dispute liability for the contravention, he or she may do so by notifying the enforcement authority of his or her intention in writing within 10 days after the date of service of the demand notice. The enforcement authority should apply for a summons from a magistrate for the person. The summons should be served on the person by a court official or police officer under section 8 of the Magistrates Ordinance (Cap. 227). If the person later changes his or her mind and wishes to discharge liability by paying the fixed penalty, he or she may do so not later than two clear days before the hearing date by paying the fixed penalty, an additional penalty equal to the amount of the fixed penalty and costs of \$500 (i.e. \$1,140 in total).

8. In other cases, the magistrate should hear and determine the complaint in a summary way. If the person offers no defence or a defence that is frivolous or vexatious at the hearing, or the complaint is heard in the absence of the person, we propose to provide that the magistrate should order him or her to pay the fixed penalty, an additional penalty equal to the amount of the fixed penalty and costs of \$600 to \$1,500 (i.e. \$1,240 to \$2,140 in total).

Distress for Non-payment

9. To deter non-payment, we propose that if a person does not pay any judgment amount in full within one month after the date of the order to pay, the enforcement authority, in the name of SJ, may make an application to a magistrate for an order levying the judgment amount and costs of \$50 to \$320 on any goods of the person by distress and sale.

10. The proposed fixed penalty system aims to strike a balance between the advantages of avoiding court hearings for less serious breaches of law by dealing with them through administrative means, and the need to safeguard a person's right to opt for a court hearing.

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

To implement the proposal, the Administration will create (a) 18 Traffic Warden posts and one Senior Inspector of Police/Inspector of Police post, involving an annual cost of \$4.048 million for the law enforcement work and back-end processing of fixed penalties and summonses; (b) one Environmental Protection Officer/Assistant Environmental Protection Officer post and one Environmental Protection Inspector (EPI) post, which are both time-limited from 2010-11 to 2011-12, at an annual cost of \$0.789 million for supporting the work of the Environmental Protection Department (EPD). In fact, one Senior EPI post and one EPI post have already been created in 2009-10 in EPD to prepare for the enforcement work.

2. It is estimated that an annual cost of \$2.07 million would be required for the maintenance and operation of the IT system, provision of technical support, service charges of the payment collection agents (i.e. PPS, JETCO, ATM and Hongkong Post) and maintenance of traffic signs. EPD anticipated that a one-off requirement of about \$0.6 million would be required for the manufacture and erection of traffic signs for demarcating the exemption areas at taxi stand. In addition, a non-recurrent funding of about \$9 million would be required for setting up an IT system to support the operation of the fixed penalty system.

Economic Implications

3. The proposal will help mitigate air pollution and other environmental nuisances caused by idling vehicles, while better air quality will be conducive to enhancing Hong Kong's attractiveness as an international business centre.

Environmental Implications

4. Air pollution, heat and noise nuisances caused by idling vehicles affect the quality of the environment and public health. The proposal will help to protect the community, particularly those working or living nearby and those suffering from respiratory illnesses, from the environmental nuisances and health impacts caused by idling vehicles.

Sustainability Implications

5. The proposal is in line with the sustainability principles of avoiding environmental problems for present and future generations, seeking to find opportunities to enhance environmental quality, as well as providing a living environment which promotes and protects the physical health of the people of Hong Kong.