

CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

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JESSE R. BODINE
District Manager

February 9, 2022

Vincent Sapienza
Commissioner
NYC Department of Environmental Protection
59-17 Junction Boulevard, 13th Floor
Flushing, NY 11373

Re: Proposed Changes to the Idling Law

Dear Commissioner Sapienza,

Manhattan Community Board 4 (MCB4) is deeply concerned to learn that the Department of Environmental Protection (DEP) is proposing to, by agency rule, create a major loophole in the New York City idling laws. While this proposed rule purports to “define” the “processing device” language in the idling law, in fact it seeks to overturn clear language in the idling law duly passed by the City Council. There is a hearing planned for March 2, 2022. At MCB4’s February 2nd Full Board meeting, by a vote of 41 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible, we ask that you suspend this initiative and leave any such modification or overturning of the legislation to the City Council, which was duly elected to handle such legislative matters.

Our district is inundated with vehicles of all kinds which idle constantly: New Jersey buses, intercity buses, armored trucks, road repair trucks, utility vehicles, trash trucks, etc. District 4 has the third worst air quality in the city.

There are already a number of exemptions in the language of the idling law itself, which were carefully considered by the City Council. For example, the idling law exempts idling of a short period—less than three minutes, or less than one minute in front of a school. It exempts “legally authorized emergency motor vehicle[s],” a term specifically defined by the New York Vehicle and Traffic Law as including ambulances and fire vehicles, to name a few.¹ It exempts vehicles that are not parked, standing, or stopped (again, each with reference to the specific definitions of

¹ <https://law.justia.com/codes/new-york/2015/vat/title-1/article-1/101/>.

the Vehicle and Traffic Law). It also exempts vehicles using their engine to operate a “loading, unloading, or processing device.”

So that the exception would not swallow the rule, the City Council clearly defined “processing device” by explicitly including a very narrow, specific definition of the word “process” in the definitions section applicable to the idling law.²

Now, DEP is proposing to rewrite and expand the definition of “processing device” to mean:

(1) a device necessary to accomplish the work for which the vehicle or equipment was designed, other than transporting goods or people, including operating a lift, crane, pump, drill, hoist, mixer or other auxiliary equipment other than a heater or air conditioner; or

(2) a system designed to control the environment of temperature-sensitive cargo or substances, including but not limited to food.

These exemptions, which the City Council wisely decided not to include in its own definition of “processing device,” would create an argument that just about any activity that requires power in a vehicle is an idling defense. Essentially charging a phone or a computer, keeping headlights on would become an excuse for idling, for example because it could be argued the vehicle “was designed” to charge a phone or turn on headlights. Similarly, running the AC while the operator enjoys (or even claims to be keeping in the back seat for enjoying later) a single ice cream cone or sushi (each, a temperature-sensitive food substance) would seem to fall within part (2) of the DEP’s proposed exemption. The DEP’s proposed broad and vague language is unacceptable. It would eviscerate the idling law that the City Council created.

We would suggest instead that should DEP continue to assert it has the authority to redefine “processing device” as used in Section 24-163 of the Administrative Code, DEP should adapt its definition into the following much clearer definition, which would by its terms apply only to specific equipment for which idling is actually necessary:

“an industrial lift, industrial crane, industrial pump, industrial drill, industrial hoist, or industrial mixer necessary to accomplish, and actually being used at the time of the idling to accomplish, the work for which the vehicle or equipment was designed, and having such a power consumption requirement as to be incapable of being powered by commercially available auxiliary equipment, including but not limited to a battery, backup battery, generator, or auxiliary engine.”

The success of the citizen reporting procedure is very important in curtailing idling and improving our collective health. The objective of fines is to encourage operators to either change their poor practices or upgrade their equipment. Many refrigerated trucks are now equipped with an auxiliary engine to avoid idling while still maintaining power to the cold chambers. It is now time that all the other trucks and buses acquire such common and relatively inexpensive

² <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAAdmin/0-0-0-42992>.

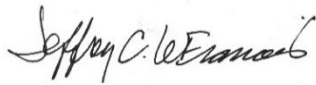
solutions and use them instead of idling and ruining the air quality and the environment in New York City.

It is not the time to give in to the pressure of few ill-behaved operators who would rather sacrifice the health of our population instead of investing in clean air solutions. Please suspend this effort that will make it easier to idle and pollute the air in our city.

The DEP, of all agencies, should respect, and not seek to limit or overturn, the efforts of City Council to protect our lungs and our planet. The DEP, of all agencies, should likewise be inspired and guided by the newly and overwhelmingly enacted “right to clean air” in the New York Constitution’s Bill of Rights.

Also, we would appreciate a written response to our rule-making request letter dated November 9, 2021 – seeking specific stronger deterrents to idling. The DEP has already exceeded the mandatory time frame (60 days)³. We understand that our rule-making request, which simply asks for a shift in penalties within the range already duly authorized by the City Council, is well within the DEP’s power.

Sincerely,



Jeffrey LeFrancois
Chair
Manhattan Community Board 4



Christine Berthet
Co-chair
Transportation Planning Committee



Dale Corvino
Co-chair
Transportation Planning Committee

CC: Hon. Jerry Nadler, U.S. Congressman
Hon. Brad Hoylman, NYS Senator
Hon. Richard Gottfried, NYS Assembly Member
Hon. Erik Bottcher, NYC Council Member
Hon. Gale A. Brewer, NYC Council Member
Hon. Mark Levine, Manhattan Borough President

³ CAPA 1043(g) (<https://nyccharter.readthedocs.io/c45/>).