

Title of meeting: Cabinet

Date of meeting: 5th October 2021

Subject: Clean Air Zone Charging Order

Report by: Tristan Samuels, Director of Regeneration

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 Central Government has imposed a Ministerial Direction on the City Council to deliver a Class B charging Clean Air Zone (CAZ) to reduce levels of nitrogen dioxide to comply with at least the legal limit value in the shortest possible time.
- 1.2 To enable the CAZ charges to be introduced for non-compliant vehicles entering the zone a charging order is required. The purpose of this report is to gain approval from Cabinet to formally make the charging order.

2. Recommendations

It is recommended that Cabinet:

- 2.1 **Approve the making of the Portsmouth Clean Air Zone Charging Order 2021 (the Charging Order) substantially in the form provided as Appendix A to this report, to take effect in time for the CAZ launch date of the 29th November 2021.**
- 2.2 **Delegate authority to the Assistant Director for Transport jointly with the City Solicitor (or their delegate) to agree and authorise any non-material changes to the Charging Order prior to making, in consultation with the Leader and Cabinet Members for: Traffic and Transportation; Climate Change and the Green Recovery; and Community Safety & Environment.**
- 2.3 **Authorise the City Solicitor to seal and make the Portsmouth Clean Air Zone Charging Order including any changes to the version of the Order provided as Appendix A as may be necessary in accordance with recommendation 2.2 above.**



3. Background

- 3.1 Air pollution is known to have a significant effect on public health, and poor air quality is the largest environmental risk to public health in the UK. Epidemiological studies have shown that long-term exposure to air pollution reduces life expectancy and exacerbates pre-existing conditions such as respiratory and cardiovascular diseases.
- 3.2 The main pollutant of concern in Portsmouth is Nitrogen Dioxide (NO₂). Public Health England advise that it is well established that NO₂, particularly at high concentrations, is a respiratory irritant that can cause inflammation of the airways. There is currently no clear evidence of a threshold concentration of NO₂ in ambient air below which there are no harmful effects for human health.
- 3.3 As a result of ongoing breaches of legal NO₂ limits the Government has identified Portsmouth as one of a number of UK cities that must take action to achieve clean air compliance in the shortest possible time. The Government suggests that Charging Clean Air Zones are an effective way to do this.
- 3.4 Charging CAZs define areas that vehicle owners are required to pay a charge if they drive through or within. The charge only applies to older, more polluting vehicles, specifically diesel vehicles that are older than Euro 6 and petrol vehicles that are older than Euro 4.
- 3.5 The Government's Clean Air Zone Framework sets out four different classes of charging CAZ, detailing the types of vehicles subject to a charge under each class:
- Class A: Buses, coaches, taxis and private hire vehicles
 - Class B: Buses, coaches, taxis, private hire vehicles and heavy goods vehicles
 - Class C: Buses, coaches, taxis, private hire vehicles, heavy goods vehicles and light goods vehicles
 - Class D: Buses, coaches, taxis, private hire vehicles, heavy goods vehicles, light goods vehicles and cars
- 3.6 The types of vehicles charged under each of class of CAZ are set by central government as set out above. It is not possible to pick and choose which vehicles to charge under each class of CAZ. Because Portsmouth City Council has been directed by central government to implement a Class B CAZ, it would not be possible to decide that either buses, coaches, taxis, private hire vehicles or heavy goods vehicles would not be charged in the city.
- 3.7 Portsmouth CAZ will be a Class B CAZ and will be the third in the country to launch. Bath & North East Somerset's Class C CAZ launched in March 2021 and Birmingham's Class D CAZ launched in June 2021. Other cities that are expected to be required to implement CAZs include (but are not limited to) Bradford, Bristol, Manchester, Sheffield and Newcastle.



- 3.8 The Portsmouth CAZ is intended to achieve compliance with legal limits for nitrogen dioxide in the shortest possible time. Once compliance has been achieved and monitoring shows that it can be maintained, Portsmouth City Council will agree with central government the timetable to decommission the CAZ.
- 3.9 The CAZ is only one of a number of measures that Portsmouth City Council has delivered and continues to deliver to reduce air pollution in the city. This includes, but is not limited:
- The retrofitting of 105 buses in the city so that they operate at euro 6 standard
 - The replacement of many of our own fleet of vehicles with electric and hybrid vehicles
 - The installation of rapid vehicle charging points in on-street and off-street locations around the city
 - The planting of trees and green infrastructure, as outlined in the Green Infrastructure Delivery Plan
 - The installation of bike hangars to encourage increased uptake of cycling and shift away from using private cars
 - Operating school travel planning initiatives including Stomp for Stamps and School Streets to encourage cleaner, greener and safer travel to school

4.0 Portsmouth CAZ Charging Order

- 4.1 The Charging Order is the legal instrument that allows the Council to implement the CAZ and introduce charges for non-compliant vehicles entering it. The Charging Order has been drafted in accordance with the approved business case submission to central government, the feedback from public consultation, decisions made by this Cabinet in October 2019, October 2020, December 2020 and June 2021, and the necessary requirements of the Transport Act 2000. The Portsmouth CAZ Charging Order found at Appendix A to this report details the following:

The boundary of the CAZ

- 4.2 Article 2 of the Charging Order includes plans showing the precise boundary of the charging zone. The plans can be found at Appendix B to this report. The location and size of the CAZ has been developed to target the two NO₂ exceedance locations on the A3 Alfred Road and A3 Commercial Road. The boundary has been amended following public consultation, and as agreed by this Cabinet on 29th October 2019 and 6th October 2020. The location and size of the CAZ has been submitted to, and approved by central government's Joint Air Quality Unit through the Portsmouth Local Air Quality Plan Full Business Case.

Vehicles to be charged

- 4.3 Article 3 of the Charging Order specifies the type or classification of vehicles that will be charged in the Portsmouth CAZ, that is: non-compliant buses, coaches,

taxis, private hire vehicles and heavy goods vehicles. Private cars or light goods vehicles (vans) will not be charged in the Portsmouth CAZ, as specified in article 4 of the Charging Order.

- 4.4 Portsmouth City Council is unable to pick and choose which vehicles are charged in the CAZ as the vehicle types charged under each class of CAZ are specified by Central Government through the Clean Air Zone Framework.

Emissions standards for compliant vehicles

- 4.5 Article 6 of the Charging Order sets out the emissions standards required for a vehicle to be considered CAZ compliant. The standards are per Government guidelines, meaning that diesel vehicles Euro 6 standard or higher and petrol vehicles Euro 4 standard or higher are CAZ compliant.

Refunds and administration fees

- 4.6 Article 11 of the Charging Order explains that refunds can be requested in certain instances, and a transaction fee of £3 will be levied against refunds processed.

Charges for non-compliant vehicles and penalty charges for non-payment

- 4.7 Articles 7, 8 and 9 of the Charging Order lists the daily charge to be paid if a non-compliant vehicle enters the CAZ. If payment is not made a penalty charge is payable, the cost of which is reduced if paid within 14 days of issue per the legislation. Details of the penalty charges are detailed in article 12 of the Charging Order. The Charging Order confirms that the daily CAZ charge is payable in addition to the Penalty Charge. Charges for the Portsmouth CAZ are listed in the table below:

	Bus or Coach	Taxi or Private Hire Vehicle	Heavy Goods Vehicle	Light Goods Vehicle	Car
Daily CAZ Charge	£50	£10	£50	£0	£0
Penalty charge for non-payment	£120	£120	£120	£0	£0
Reduced penalty charge (if paid within 14 days)	£60	£60	£60	£0	£0

Exemptions and sunset periods

- 4.8 Article 10 of the Charging Order, supplemented by annexes 2 and 4, lists those non-compliant vehicles that will be granted an exemption for the lifetime of the CAZ, or a time limited sunset period. There are also some vehicles which will be granted an exemption for a set number of days each year, or one off exemptions in emergency circumstances. The Order clarifies which of these have been set by central government, and which have been decided upon locally, as agreed by this Cabinet on 1st December 2020 and 22nd June 2021.



- 4.9 The vehicles that are exempt from the Portsmouth CAZ charges are: emergency service vehicles; specialist heavy vehicles, including recovery vehicles; and emergency replacement buses and coaches. These are locally set exemptions and may not apply to CAZs in other local authority areas.
- 4.10 The vehicles that will be given time limited exemptions for the Portsmouth CAZ are: wheelchair accessible taxis and private hire vehicles (exempt for first 6 months of CAZ operation); school and community transport (exempt for the first 2 years of CAZ operation); horse transporters classified as HGVs (exempt for 10 trips per year); and non-commercial vintage buses (exempt for 10 trips per year). These are locally set sunset periods and time limited exemptions and may not apply to CAZs in other local authority areas.

Methods of Payment

- 4.11 The Charging Order confirms that payments for entry into the CAZ should be made through the Central Clean Air Zone Service. This is a service provided by central government which all CAZ authorities must use to process CAZ payments. Drivers or vehicle operators who enter into the CAZ can use the service to pay online or over the phone.

Plan for applying any funds generated

- 4.12 The Charging Order includes a 5 year and a 10 year plan for using any income generated from the CAZ after operation and maintenance costs and fees for the Clean Air Zone Service are deducted. It is not anticipated that the proposed Scheme would generate substantial net proceeds, and it should be noted that the CAZ is not intended as a revenue raising scheme- its purpose is to reduce levels of NO₂ in the city by encouraging a reduction in vehicle use and the use of cleaner vehicles. The Charging Order states that any net proceeds will be used to directly or indirectly facilitate the achievement of the transport policies set out in Portsmouth Transport Strategy (LTP4).

5. Reasons for recommendations

- 5.1 It is recommended that Cabinet approve the recommendations set out in paragraphs 2.1 to 2.3 of this report because the Clean Air Zone Charging Order is required to implement the CAZ and ultimately deliver improvements to air quality in the city.
- 5.2 Should the Cabinet not approve the implementation of the Charging Order, the Clean Air Zone project will be delayed and it is unlikely that clean air compliance will be achieved in the shortest possible time, with a resultant risk of incurring significant but as of yet unspecified fines.

6. Integrated impact assessment

- 6.1 An integrated impact assessment has been undertaken which demonstrates that the making of the Charging Order will lead to improvements in air quality as it is the legal tool through which CAZ charges can be made against polluting vehicles. The assessment has demonstrated that the making of the Charging Order may have a negative impact on low income groups due to the charges issued to drivers and operators of non-compliant vehicles, such negative impacts are being mitigated through the distribution of the Clean Air Fund which can be used for replacement or retrofit of non-compliant vehicles. The assessment has also found that due to the inclusion of local exemptions and sunset periods any potential negative impacts on equality and diversity have been mitigated.

7. Legal implications

- 7.1 The Ministerial Direction dated 25 March 2020 requires the Council to implement the local plan for NO₂ compliance to ensure compliance with the legal limit value for NO₂ is achieved within the Council's area in the shortest possible time, and by 2022 the latest. Under section 85(7) of the Environment Act 1995, it is the duty of the Council to comply with any direction given to it.
- 7.2 As part of the submission of the Full Business Case to the Secretary of State back in December 2020, the Council was required to prepare and submit a draft Charging Order which needed to meet the requirements set out in the Transport Act 2000.
- 7.3 The Charging Order has been drafted in accordance with the statutory powers pursuant to Part 3 of the Transport Act 2000, The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013, and of all other enabling powers in order to establish the road-user charging scheme (CAZ). The Charging Order is the legal instrument that practically implements the Full Business Case for the CAZ and sets out the requirement for road users who are subject to charging in the CAZ.
- 7.4 Part of 1 of Annex 5 of the Charging Order sets out a 5-year plan and also a 10-year plan for applying any of the net proceeds which the CAZ may generate as required under Schedule 12 to the Transport Act 2000. Part 2 of Annex 5 of the Charging Order sets out a detailed programme for applying the net proceeds generated during the opening five year period of the operation of the CAZ.
- 7.5 The decisions of the Cabinet meetings dated 1 December 2020 and 22 June 2021 have been reflected in the latest draft Charging Order.
- 7.6 The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 (SI 2013/1783) provides for the civil enforcement of a penalty charge notice imposed by the Charging Order made under Part 3 of the Transport Act 2000.

8. Director of Finance's comments

- 8.1 The charges for non-compliant vehicles and penalty charges for non-payment outlined in this document are consistent with those used in the Financial Model supporting the Full Business Case.
- 8.2 The set-up, running and decommissioning costs of the Clean Air Zone will be covered by both the initial grant from the Joint Air Quality Unit (JAQU) and the subsequent income from non-compliant vehicles. It is not anticipated that the proposed Scheme would generate surplus income. The risk of a deficit is borne by JAQU.

.....
Signed by:

Appendices:

Appendix A- Portsmouth CAZ Charging Scheme Order (DRAFT)

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Cabinet Report 09/09/2019 Local Air Quality Plan Progress Update	https://democracy.portsmouth.gov.uk/documents/s23892/Air%20Quality%20Local%20Plan%20Update%20Report.pdf
Cabinet Report 29/10/2019 Local Air Quality Plan Outline Business Case	https://democracy.portsmouth.gov.uk/documents/s24649/Cabinet%2029.10.19-%20Local%20Air%20Quality%20Plan%20OBC%20cover%20report.pdf
Cabinet Report 06/10/2020 Clean Air Zone: Consultation Feedback	https://democracy.portsmouth.gov.uk/documents/s28269/Cabinet%2006%20Oct%2020%20-%20Clean%20Air%20Zone%20report.pdf
Cabinet Report 01/12/2020 Clean Air Zone - Exemptions, Sunset Periods & Hours of Operation	https://democracy.portsmouth.gov.uk/documents/s29058/Clean%20Air%20Zone%20-%20Exemptions%20Sunset%20Periods%20Hours%20of%20Operation.pdf
Cabinet Report 22/06/2021 Clean Air Zone - Additional Exemptions, Sunset Periods and Fee Waivers	https://democracy.portsmouth.gov.uk/documents/s30956/Clean%20Air%20Zone%20-%20Additional%20Exemptions%20Sunset%20Periods%20and%20Fee%20Waivers.pdf
Clean Air Zone Framework	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863730/clean-air-zone-framework-feb2020.pdf

The recommendation(s) set out above were approved/ approved as amended/ deferred/
rejected by on

.....
Signed by: