



GOVERNMENT OF THE DISTRICT OF COLUMBIA

POLICE COMPLAINTS BOARD

OFFICE OF POLICE COMPLAINTS

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PCB POLICY REPORT #17-2: NOTICE OF INFRACTION FOR EXCESSIVE IDLING

Summary of Issue:

On February 29, 2016, a community member filed a complaint with the Office of Police Complaints (OPC). Among the allegations made against several officers, was one allegation of harassment based on an unlawful Notice of Infraction (NOI) for excessive idling of the complainant's personal vehicle on February 26, 2016. A complainant examiner sustained this allegation of harassment because Section 2418.3 of Title 18 of the DCMR clearly exempts private passenger vehicles from the regulation.¹

This is the most recent example of the harassment complaints made with OPC for unlawful NOIs for excessive idling. Over the past few years, the investigators at OPC have taken note of this complaint being made on different occasions, causing concern that MPD officers are unclear on the law regarding excessive idling. This report examines the law and makes recommendations for MPD to ensure that all officers have a clear understanding of it.²

Discussion:

Section 2418.3 of Title 18 of the DCMR states, "No person operating or having control over the engine of a gasoline or diesel powered motor vehicle... shall allow the engine to idle for more than three (3) minutes while the motor vehicle is parked, stopped, or standing, including for the purpose of operating air conditioning equipment in those vehicles, on public or private space except as follows: (a) To operate private passenger vehicles...."³

Section 9901 of Title 18 of the DCMR defines passenger vehicles as "any vehicle other than a commercial vehicle, with more than three (3) wheels, designed, used, or maintained for passenger, recreational, or other non-commercial purposes..."⁴ Thus operations of a personal automobile for non-commercial purposes are exempted from the excessive idling statute because it is a private passenger vehicle.

¹ Findings of Fact and Merits Determination, Complaint No. 16-0148 and 16-0149, available at <http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Merits%20Determination%20-%202016-0148%20%26%2016-0149.pdf>.

² The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

³ Available at <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=18-2418>.

⁴ Available at <http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=18-99>.

On May 28, 2004, MPD issued CIR-04-06: Excessive Idling of Vehicles.⁵ The stated purpose of the circular was to remind members of Section 2418.3 of Title 18 of the DCMR, and the circular quoted the exact language of the regulation, including the exception for private passenger vehicles. In addition, the circular explicitly states that the major concern is large vehicles, including tour buses, excessively idling causing the emission of dangerous exhaust fumes into the air. MPD was clearly encouraging officers to be vigilant for excessive idling of large commercial vehicles and to issue NOIs when they observed violations.

However, despite the circular published in 2004, some officers seem to be unaware of the exception in the regulation for private passenger vehicles.⁶ In addition to the harassment complaint received by OPC on February 29, 2016, OPC has also received other similar harassment complaints, which were likewise sustained through the complaint examination process. All of these harassment complaints involved the complainant receiving a NOI for excessive idling while in a private passenger vehicle. These complaints indicate a need for corrective action. They also raise the concern that other members of the community are receiving similar NOIs, but, not knowing that they are unlawful they are not contesting the NOI through the Bureau of Traffic Adjudication or filing a complaint with OPC. And even though those receiving tickets are given a remedy at law through the adjudication process, the harm to the person is already done when the unlawful ticket is issued in the first place.

Recommendations:

To help improve and facilitate better relations and increase trust between MPD officers and community members, the Police Complaints Board recommends that MPD take immediate action to further educate officers on Section 2418.3 of Title 18 of the DCMR, specifically the exception for private passenger vehicles.

There are several actions that MPD could take to rectify officers' understanding and use of the excessive idling regulation:

1. Issue an updated circular that discusses the exception for private passenger vehicles, and does not merely quote it in the context of the full regulation;
2. Issue a teletype requiring that Section 2418.3 of Title 18 of the DCMR and the exceptions be read at roll call; and/or
3. Develop new training for officers on Section 2418.3 of Title 18 of the DCMR.

Notwithstanding the option selected, MPD should view this is an opportunity for the department to reinforce fairness, which is part of the stated MPD mission.⁷ MPD must ensure that officers are only issuing NOIs when the infraction was actually committed-enforcing the regulation's purpose, to stop large commercial vehicles, particularly tour buses, from idling and polluting the air.

⁵ Available at <https://go.mpdconline.com/GO/CIR-04-06.pdf>.

⁶ A contributing factor to officer's apparent unfamiliarity with MPD written guidance is the complicated and outdated system used by MPD to provide written directives, a subject of PCB Policy Report #17-1 "Ensuring MPD Policy and Procedures are Current," published on November 18, 2016, and available at http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Ensuring%20MPD%20Policies%20and%20Procedures.FINAL_.pdf.

⁷ Mission of the Metropolitan Police Department, available at <http://mpdc.dc.gov/node/132982>.