



City of Cambridge

Agenda # 26

IN CITY COUNCIL

July 30, 1990

- WHEREAS: The City Manager has submitted to this City Council a draft **Memorandum of Agreement** relating to the **"Parking Freeze"** dated July 30, 1990; and
- WHEREAS: Said draft is a response to this City Council's earlier request to review the terms of such an agreement prior to execution by the City Manager; and
- WHEREAS: This City Council approves the terms of said agreement, including amendments incorporated therein; now therefore be it
- RESOLVED: That this City Council is satisfied that the City Manager has authority to execute the necessary documents to accomplish the purposes and terms of the draft Memorandum of Agreement, received by the City Council on this date.

In City Council July 30, 1990.
Adopted as amended by a yea and nay vote:
Yeas 9; Nays 0; Absent 0.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in black ink, reading "Joseph E. Connarton". The signature is written in a cursive style with a large, stylized "J" and "C".

Joseph E. Connarton, City Clerk.

City of Cambridge

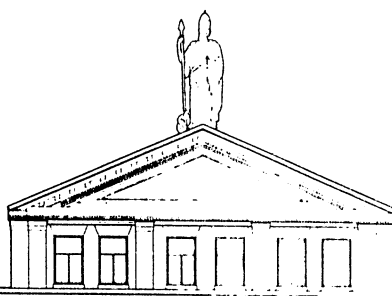
MASSACHUSETTS

In City Council July 20 199*C. Cyr**Graffiti Modification AS Amended*

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr	<i>1</i>				
Mr. Francis H. Duehay	<i>1</i>				
Mr. Jonathan S. Myers	<i>1</i>				
Mr. Kenneth E. Reeves	<i>1</i>				
Mrs. Sheila T. Russell	<i>1</i>				
Mr. Walter J. Sullivan	<i>1</i>				
Mr. Timothy J. Toomey, Jr.	<i>1</i>				
Mr. William H. Walsh	<i>1</i>				
Mayor Alice K. Wolf	<i>1</i>				

*9**0**0*

C. C. 106
11/1/90
PC



THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Francis H. Duehay
Cambridge City Councillor
26 Lowell Street
Cambridge, Massachusetts 02138

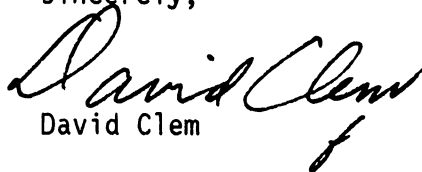
Dear Councillor Duehay:

Please find the enclosed copy of our Motion for Summary Judgment in the McManus, et als. vs. Teso, et als. lawsuit. This lawsuit has caused considerable anguish and hardship on The Athenaeum Group and, no doubt, considerable political fallout for you.

In the interests of keeping you informed and educating the general public about a complicated matter, I have enclosed the motion for your review and comment. It is our sincere desire that it will prompt reconsideration on your part on matters relating to the MOA and proposed ordinance regulating parking.

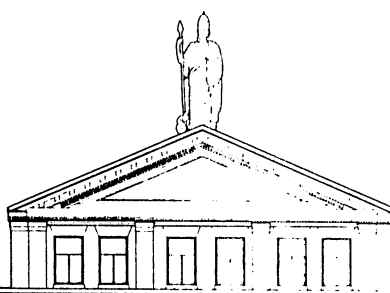
Please feel free to contact me if you have questions (492-2155).

Sincerely,


David Clem

DEC:rmf
Enclosure

Copy



THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Jonathan S. Myers
Cambridge City Councillor
5 Hollis Street
Cambridge, Massachusetts 02140

Dear Councillor Myers:

Please find the enclosed copy of our Motion for Summary Judgment in the McManus, et als. vs. Teso, et als. lawsuit. This lawsuit has caused considerable anguish and hardship on The Athenaeum Group and, no doubt, considerable political fallout for you.

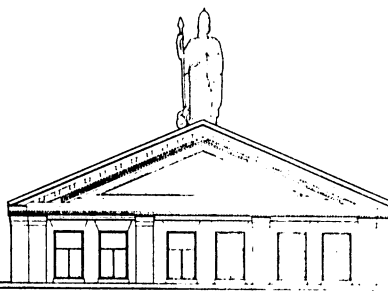
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Sincerely,

David Clem
David Clem

DEC:rmf
Enclosure



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THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Kenneth E. Reeves
Cambridge City Councillor
11 Everett Street
Cambridge, Massachusetts 02138

Dear Councillor Reeves:

Please find the enclosed copy of our Motion for Summary Judgment in the McManus, et als. vs. Teso, et als. lawsuit. This lawsuit has caused considerable anguish and hardship on The Athenaeum Group and, no doubt, considerable political fallout for you.

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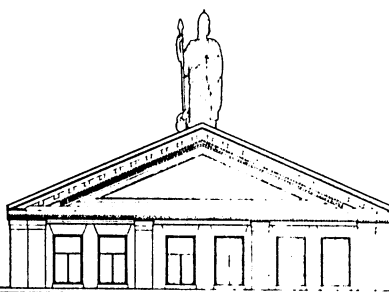
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Sincerely,

David Clem
David Clem

DEC:rmf
Enclosure

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THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Sheila T. Russell
Cambridge City Councillor
5 Hawthorne Park
Cambridge, Massachusetts 02138

Dear Councillor Russell:

Please find the enclosed copy of our Motion for Summary Judgment in the McManus, et als. vs. Teso, et als. lawsuit. This lawsuit has caused considerable anguish and hardship on The Athenaeum Group and, no doubt, considerable political fallout for you.

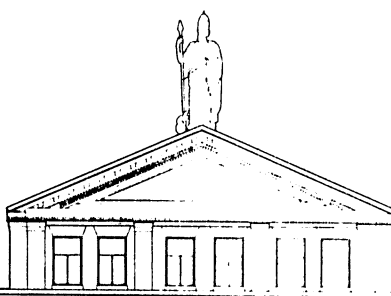
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Sincerely,

David Clem
David Clem

DEC:rmf
Enclosure



Copy

THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Walter J. Sullivan
Cambridge City Councillor
28 Putnam Avenue
Cambridge, Massachusetts 02139

Dear Councillor Sullivan:

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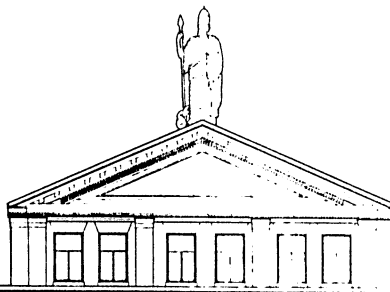
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Sincerely,

David Clem
David Clem

DEC:rmf
Enclosure



Copy

THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Timothy J. Toomey, Jr.
Cambridge City Councillor
88 Sixth Street
Cambridge, Massachusetts 02141

Dear Councillor Toomey:

Please find the enclosed copy of our Motion for Summary Judgment in the McManus, et als. vs. Teso, et als. lawsuit. This lawsuit has caused considerable anguish and hardship on The Athenaeum Group and, no doubt, considerable political fallout for you.

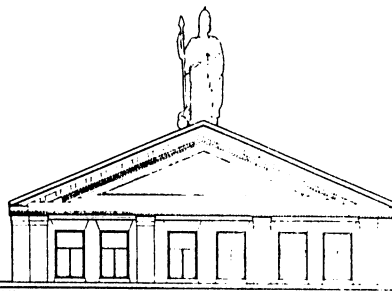
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Sincerely,

David Clem
David Clem

DEC:rmf
Enclosure



Copy

THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

William W. Walsh
Cambridge City Councillor
26 Hurlbut Street
Cambridge, Massachusetts 02138

Dear Councillor Walsh:

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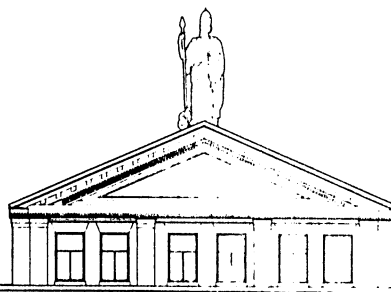
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Sincerely,

David Clem
David Clem
6

DEC:rmf
Enclosure



THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Cambridge City Councillor
Cambridge, Massachusetts 02138

Dear Councillor _____:

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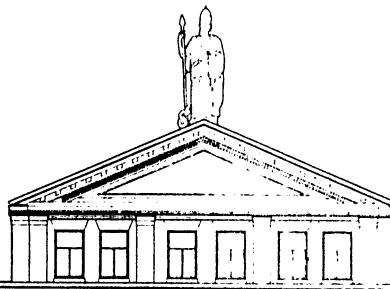
Please feel free to contact me if you have questions (492-2155).

Sincerely,

David Clem
David Clem
6

DEC:rmf
Enclosure

COPY FOR: MAYOR ALICE K. WOLF
48 HURON AVENUE
CAMBRIDGE, MA 02138



*Original
Copy of Letter
that is
enclosed in each
package.*

THE ATHENAEUM GROUP

Athenaeum House
215 First Street
Cambridge, Massachusetts 02142
617-492-2155

October 25, 1990

Ed Cyr
Cambridge City Councillor
106 Dudley Street
Cambridge, Massachusetts 02140

Dear Councillor Cyr:

Please find the enclosed copy of our Motion for Summary Judgment in the McManus, et als. vs. Teso, et als. lawsuit. This lawsuit has caused considerable anguish and hardship on The Athenaeum Group and, no doubt, considerable political fallout for you.

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Please feel free to contact me if you have questions (492-2155).

Sincerely,

David Clem
David Clem

DEC:rmf
Enclosure

Chen Copy
Enclosure

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.
Superior Court
Civil Action No. 88-6603

DEBRA McMANUS, et als.,
Plaintiffs

v.

GEORGE TESO, et als.,
Defendants.

MOTION FOR SUMMARY JUDGMENT

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

AFFIDAVIT OF DAVID L. KLEBANOFF

AFFIDAVIT OF ROBERT A. JONES

Defendants
The Athenaeum Group and Old Binney Realty Trust
By their attorneys,

Robert E. McLaughlin (BBO 337480)
David L. Klebanoff (BBO 274550)
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, Massachusetts 02210
(617) 482-1900

COMMONWEALTH OF MASSACHUSETTS

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470 Atlantic Avenue
Boston, Massachusetts 02210
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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court
Civil Action
No. 88-6603

DEBRA McMANUS, et als.,
Plaintiffs

v.

GEORGE TESO, et als.,
Defendants.

MOTION FOR
SUMMARY JUDGMENT

Now come the Defendants, The Athenaeum Group and Old Binney Realty Trust, and move pursuant to Mass. R. Civ. P. 56 for judgment on Counts I, III and V of Plaintiffs' Complaint. In support hereof, Defendants refer the Court to the materials and argument contained in their Memorandum in Support of Motion for Summary Judgment and the Affidavits of Robert A. Jones and David L. Klebanoff.

WHEREFORE, Defendants respectfully request judgment enter in their favor on Counts I, III and V.

Respectfully submitted,
Defendants, The Athenaeum Group
and Old Binney Realty Trust,

By their attorneys,

 
Robert E. McLaughlin (BBO 837480)
David L. Klebanoff (BBO 274550)
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, Massachusetts 02210
(617) 482-1900

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court
Civil Action No. 88-6603

DEBRA McMANUS, et als.,
Plaintiffs

v.

GEORGE TESO, et als.,
Defendants.

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MEMORANDUM IN
SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

INTRODUCTION

This memorandum is submitted on behalf of the defendants, Athenaeum Group and Old Binney Realty Trust¹ (hereinafter "Old Binney") seeking summary judgment on Counts I, III and V of plaintiffs' Complaint. Old Binney will demonstrate that on the undisputed material facts it is entitled to judgment under Mass. R. Civ. P. Rule 56 which judgment should dismiss Counts I and III and enter a declaration of Old Binney's rights under Count V.

Briefly, plaintiffs' Complaint alleges that Old Binney required so-called commercial parking permits in order to construct a 1530 car garage in Cambridge (the "garage"). These permits are said to be issued by Cambridge as a prerequisite to a commercial parking facility being constructed. Plaintiffs maintain that Old Binney's duty to obtain these permits stems from the Commonwealth's alleged inclusion of a parking freeze in Massachusetts' State Implementation Plan (SIP). This freeze

¹ As set forth in defendants' Motion to Dismiss filed in 1988, neither entity is a proper party to this action since the Athenaeum Group is a d/b/a and a trust is not subject to suit. That motion has not been acted upon.

is further identified as part of an "indirect source review program" allegedly "incorporating" a regulation "previously required by the EPA" (Plaintiffs' Complaint at ¶10). No other source of this freeze or need for permits is cited.

The Complaint also brings claims against Old Binney and the City of Cambridge based upon the City's having determined that the garage is exempt from the freeze (Complaint Counts III and IV). That determination is called erroneous because (i) the definition employed by Cambridge detailing which facilities require permits is claimed to differ from what is alleged to be an EPA regulation and (ii) the defendant, George Teso, the head of the department to which operational authority over the parking freeze has been purportedly delegated, is claimed to have had no authority to take any action due to alleged procedural defects.

Old Binney will argue below as follows:

1. There is in fact no parking freeze. Congress revoked the Environmental Protection Agency's (EPA) authority to promulgate or enforce any such regulation and neither Massachusetts nor Cambridge ever properly adopted any statute, regulation or ordinance embodying such a restriction in Cambridge.
2. Even if, arguendo, there is a parking freeze, both the Federal and the City version of such a regulation exempts parking for employees, customers, tenants and guests.

I. FACTUAL BACKGROUND

Old Binney is the owner of a parcel of land on Binney Street in Cambridge, Massachusetts which, even before its acquisition by the defendants in 1982, had been used as the site of employee parking for adjacent uses at the One Kendall

Square site (Affidavit of Robert A. Jones, hereinafter "Jones" at 5.) In 1982, the trustees of Old Binney bought the Binney Street parcel as well as the adjacent real estate holdings of the American Biltrite Corp.

Prior to this acquisition, the industrial buildings of American Biltrite were used for the manufacture of rubber products. Boston Woven Hose, division of American Biltrite manufactured hoses and other rubber products as part of its industrial output (Jones at 4-5).

When Boston Woven Hose closed, American Biltrite sold all of the real estate to the several entities controlled by the individuals who are the trustees of Old Binney. Over the years they have renovated the individual buildings on the Biltrite site and have leased the resulting space for commercial, office, retail and research laboratory use. Each of these uses is permitted in the IB-1 (heavy industrial) zone in which all of this property is located.

Under the Cambridge Zoning Ordinance, all use of real estate creates a need for provision of off-street parking. That parking must be provided on the site of the use or, under certain parameters, on proximate sites. Both Boston Woven Hose and the trustees have historically used the Binney Street site for provision of the required parking.

The Biltrite buildings, now partially renovated and known as One Kendall Square, began to be occupied in 1984. The success of early efforts led the trustees to consider renovation of additional structures in the complex. Such future development ran into the limitations of the Binney

Street site's ability to provide sufficient parking. The Trustees investigated the possibility of constructing a garage. Eventually, discussion with the City of Cambridge led to a requirement that a garage be built before permits would be granted for renovation of additional buildings (Jones at 8,9).

The use of the site for any kind of parking garage is permitted on the garage site. In an IB zone even commercial parking, as opposed to that deemed accessory to an expressly permitted use, is allowed (Jones at 12). It is undisputed that the use, dimensional characteristics, etc. of the garage comply in all respects with zoning, building codes and all other requirements applicable to the site and use. The only claim made is that the garage violates the parking freeze.

On January 30, 1988 the Athenaeum Group applied for a building permit and submitted plans for the garage to the Cambridge building department. The permit application was held pending determination by the Cambridge Traffic and Parking Department whether the garage was subject to the so-called "parking freeze".

Cambridge administers a permitting system for construction of "commercial parking facilities" pursuant to the provisions of a document known as the "Cambridge Criteria"².

² Procedures, Criteria and Memorandum of Agreement Among the Traffic & Parking Department, Community Development Department, Inspectional Services Department and the Board of Licensing Commission of the City of Cambridge, Massachusetts for the Purpose of Issuing Commercial Parking Permits Pursuant to 40 CFR Section 52.1135 (Exhibit 1) hereinafter "Criteria".

This document is an agreement executed by several City departments in furtherance of enforcing a parking freeze (Exhibit 1). It is undisputed that the Cambridge Criteria is not an ordinance or by-law of Cambridge, nor is it a regulation of any department of the City. Neither the Cambridge Criteria nor any other alleged freeze regulation affecting Cambridge appears in any Cambridge or Massachusetts statute or regulation.

On February 5, 1988, defendant, George Teso, Director of Traffic and Parking, notified the building department that since the garage was not a "commercial parking facility", it was exempt from the requirement of parking permits (Exhibit 2). Subsequently, the City issued the requested building permit. Part of plaintiffs' case is the claim that Teso had no authority to offer an opinion upon this exemption (Complaint at ¶22, Count IV).

Plaintiffs also assert that the text of a "previously required" federal regulation appearing at 40 CFR §52.1135 is stricter than the text of the Cambridge Criteria (Complaint at ¶10, Regulation at Exhibit 3) and that the stricter rule governs. Yet, it is the state adopted "State Implementation Plan" (SIP), not the federal regulation or Cambridge Criteria which is claimed by plaintiffs to be enforceable (Complaint at ¶¶11 and 12). Plaintiffs' entire case against Old Binney is based upon the text difference between the federal and the City documents. Old Binney will show instead that no freeze is enforceable and that in the overlap of SIP revisions and

Congressional amendment to the Clean Air Act, the freeze was invalidated and never properly resurrected.

The resolution of this issue is of critical importance to Old Binney. First, despite having completely abided by Cambridge's rules (a fact admitted by counsel for plaintiffs, Exhibit 4), Old Binney has been held up to the public as a lawbreaker. Second, the confusion engendered by this suit and the subsequent political firestorm, have blocked Old Binney's ability to permanently finance the garage forcing the trustees to pay higher construction loan rates (Jones at 11). Third, the same confusion has interfered with One Kendall Square's ability to obtain tenants since potential lessees are unsettled as to whether they will have employee parking available (Jones at 11). Finally, certain plaintiffs, the City and other individuals and government officials have begun to link the status of the garage under the parking freeze to a host of other permits and approvals although such action is clearly in violation of the parameters of those approval requirements. The latter is now the part of a separate suit before the Court, Jones, et al. v. Teso, 90-6444E.

II. ARGUMENT

A. There is No Enforceable Parking Freeze

1. Introduction.

One of the ironies of this suit is that all of the issues raised by Plaintiffs become irrelevant in light of the fact that there is no parking freeze. A series of enactments, amendments and assumptions left the general public with the

misunderstanding that a parking freeze exists in Cambridge. Close scrutiny, however, reveals that it does not.

2. Background of the Clean Air Act

(i) Structure of the Act

The Clean Air Act, 42 USC 7401, et seq. (the "Act") was originally promulgated in the 1960s. As first passed, it left most enactment and enforcement authority to the states, a circumstance which resulted in little substantive improvement in air quality. In 1970, however, amendments to the Act strengthened Federal involvement and set up the system described below. Troublesome issues of the state/federal balance required by the Act have dogged it ever since. See United States v. Ford Motors Co., 814 F.2d 1099 (6th Cir. 1987), Brown v. EPA, 521 F.2d 827 (9th Cir. 1975), District of Columbia v. Train, 521 F.2d 971 (D.C. Cir. 1975).

The Act begins by setting target levels of various classes of pollutants³. It makes determination of these "attainment standards" a purely federal undertaking and requires that the United States Environmental Protection Agency (EPA) establish both primary standards (those necessary to achieve public health) and stricter secondary standards (those

³ The provisions of the Act have been reputed to be so complex as to "virtually swim before one's eyes". United States Steel Corp. v. U.S.E.P.A., 444 U.S. 1035, 1038 (1980) (Rehnquist). Useful capsule descriptions of the structure, intent and operation of the Act can be found in virtually every case cited and particularly Connecticut Fund for the Environment v. EPA, 672 F.2d 998, 1000-1002 (2d Cir. 1981), Friends of the Earth v. EPA, 499 F.2d 1118 (2d Cir. 1974) (overview of 1970 amendments at 1120), American Lung Association of N.J. v. Kean, 670 F. Supp. 1285 (D. N.J. 1987), District of Columbia v. Train, supra.

deemed "requisite to protect the public welfare") for "each air pollutant for which air quality criteria have been issued". 42 USC §7409(a)(b).

Upon establishment of the standards, their attainment is to be achieved by means of a "State Implementation Plan". 42 USC §7410. The SIP mechanism allows the states to craft a plan to achieve the standards set, balance the hardships sure to result and decide policy issues concerning who will bear the burdens of the steps necessary to achieve pollution reduction. Connecticut, supra, Sierra Club v. Indiana-Kentucky Electric, 716 F.2d 1145 (7th Cir. 1983).

Deadlines were set in the Act for the states to submit their SIPs. Upon the expiration of these deadlines, if no acceptable SIP had been provided by any particular state, the EPA was obligated to promulgate its own SIP which became enforceable as a federal regulation. National Resources Defense Council, Inc. v. EPA, 475 F.2d 968 (D.C. Cir. 1973). The EPA also has the authority to reject, on substantive grounds, some or all of a state's SIP and in those circumstances is again obligated to impose a Plan or parts thereof. Id. Once a SIP is in place, the EPA can accept state revisions to either previously accepted or rejected SIPs. Gradually, it is hoped, the entire plan will be that of the state.

In reality, the result of this process is a patchwork of state and federal regulation which, taken together, is intended to meet National Ambient Air Quality Standards (NAAQS). The typical SIP has tended to be one which was

originally federally imposed and then gradually replaced by state regulations which satisfy the attainment goals. This somewhat unwieldy setup has been described by the Court of Appeals for the District of Columbia as emanating from twin concerns. The first is Congress' desire to avoid intrusive federal regulations. (Thus, the EPA's power to promulgate federal regulations but not to compel the states to pass or enforce state regulations.) The second is the EPA's perceived reluctance to enforce its federal regulations.

"The regulations ultimately issued by the Administrator are a carefully constructed device to get around the dilemma posed by his lack of means for forcing the states to submit adequate implementation plans...and his reluctance to undertake enforcement of his own regulations."

District of Columbia v. Train at 982.

As an example, the Massachusetts SIP is reprinted as Exhibit 5. It incorporates by reference those binding commitments and regulations adopted by Massachusetts as "revisions" to the SIP which the EPA originally promulgated in 1972, upon Massachusetts' default. The SIP recounts the State's regulations which have been approved by the EPA and which replace federal elements of the original plan (§52.1123)⁴. It sets forth the provisions conditionally approved (52.1123(a)). It also contains those elements of the SIP not replaced by satisfactory state regulations, and

⁴ A complete listing of the regulations adopted by Massachusetts in furtherance of its obligations under the SIP is reprinted at Table 52.1167 (Exhibit 6).

therefore, remaining from the SIP promulgated by the EPA. The parking freeze (40 CFR 52.1135) is one of the regulations in this last class.

Although the states initially propose the elements of the SIP (and the EPA then approves or disapproves), the SIP is not a contract. American Lung Association at 1290. It begins in the nature of a proposal by the state, listing those steps it will take to achieve air quality. Those steps requiring action by the public must next become regulations. Sierra Club, supra, Brown, supra. Those steps capable of execution by the government itself such as inventories (52.1120(44)), steps to reduce pollution by government emitters (52.1120(71)), and changes in roads and bridges (52.1163) need not become state regulations. However, upon approval of the SIP by the EPA, those "promises" become federal regulations binding against the state. Friends of the Earth v. Carey 552 F.2d 25 (2d Cir. 1977).

After early experiences with SIP promises which were either vague in their detail or without the will or funds for state enforcement, the EPA has steadfastly insisted on "written evidence that the state...[has] adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules..." 42 USC §7502. See also, §7410(F)(i) requiring written proof that the state has adequate "authority to carry out such implementation plan".

Accordingly, each SIP includes a legal opinion authored by the state and intended to demonstrate that each

element of the SIP is backed by either a regulation or proper statutory authority in the government entity to be bound to the reduction set forth. A true and accurate copy of the legal opinion of Willard Pope, General Counsel to the Massachusetts DEQE is attached as Exhibit 7.

As of the deadline for SIP approval, a state will have a plan either (1) entirely crafted by EPA, (2) partially impressed by EPA and partially state created and approved by EPA or (3) entirely produced by the state and approved by EPA. Thereafter, revisions occur due to stricter standards, substitution of abatement methodologies or the desire to replace the federal portions of the plan with one created by the state. Before the EPA will relinquish those provisions it imposed upon the states, it again demands assurances that adequate authority exists at the state or local level to promulgate and enforce the regulations to be implemented⁵.

The original Massachusetts SIP was promulgated in 1972 (40 CFR §52.1120(b)). It has been revised piecemeal ever since by the substitution of validly enacted regulations and binding commitments by state, local and regional bodies which together accomplish the attainment goals prescribed.

⁵ The most lenient approval encountered by counsel was the EPA's approval of a "firm commitment" to adopt regulations. Friends of the Earth v. EPA, 499 F.2d 1118 (2d Cir. 1974) as described in Connecticut, *supra* at 1009 fn. 23. In Connecticut, a "commitment" was held sufficient so long as specific regulations were to follow. Otherwise binding, properly promulgated state regulations are required in order to permit state enforcement to replace the federal element of the SIP. State of California v. EPA, 774 F.2d 1437 (9th Cir. 1985).

Once approved, the SIP becomes a federal regulation. American Lung Association, supra at 1288. Enforcement of those elements remaining from the federal imposition of SIP provisions, as well as those elements constituting commitments made by governmental agencies to the EPA, are enforceable by the EPA.⁶ Those elements of the SIP which were enacted as valid state regulations are enforceable by the states but the EPA cannot compel their enforcement by the states. Brown, supra, Brown v. EPA, 566 F.2d 665 (9th Cir. 1977) ("Brown II"), District of Columbia v. Train, supra.

Therefore, even though an approved SIP becomes, in total, a federal regulation, only those elements originally propounded by EPA, or constituting binding commitments by the state are directly enforceable by the EPA. State regulations, while included in the SIP, have independent validity and their enforcement depends on state law. Enforcement of state regulation by the EPA occurs only in the event of default by the state. Brown I at 834.

Consistent with this distinction, an invalidly enacted state regulation does not become enforceable by either the state or federal government merely by virtue of its inclusion in a SIP. Sierra Club v. Indiana-Kentucky Electric, 716 F.2d. 1145 (7th cir. 1983). The EPA's acceptance, as part of a SIP, of an invalid regulation is a "nullity" and the EPA must properly notice and hold hearings in order to obtain a valid

⁶ An exception exists for the parking freeze. See part II.B below.

substitute. Id. at 1154. Thus, while an approved SIP is said to be a federal regulation, inclusion of an invalid state regulation in a SIP does not either make that regulation enforceable as a federal regulation nor does it somehow launder any deficiency in adoption. Sierra Club, supra and Citizens for a Better Environment v. EPA, 649 F.2d 522, 525 (7th Cir. 1981).

In sum, there are three types of "SIP regulations". First, those placed in the SIP by the EPA due to state failure to produce an adequate element of a SIP. These are enforceable by the EPA (or the public under the Citizen suit provisions) as federal regulations. Carey, supra at 37. Substantially different is the federal regulation which the SIP becomes by virtue of its EPA approval. As such, the SIP is enforceable against the state by the EPA or public if there is a failure to abide by a commitment undertaken. Id., American Lung Association at 1288. The third class is the state or local regulation, validly enacted at that level of government, the purpose or effect of which is to satisfy an element of the SIP. These are enforceable by the state, city or agency propounding the regulation.

"To the extent that the state implementation plans incorporate state law and regulations, they are enforceable, like other state enactments, by the state agencies, under state laws which generally provide for administrative enforcement and for both civil and criminal penalties, as well as injunctive relief".

Grad, Treatise on Environmental Law, 1989, §2.03.

3. The Enactment of a Parking Freeze

In the early 1970s, the EPA created a number of programs for reduction of pollutants for the Boston region. The most controversial were those aimed at abating carbon monoxide and ozone by regulating some aspect of the automobile. A history of the variety of programs proposed for Boston can be found in South Terminal Corp v. EPA, 504 F.2d 646, 671 (1st Cir. 1974).

Soon thereafter, in reaction to National Resources Defense Council, Inc. v. EPA, 475 F.2d 968 (D.C. Cir. 1973), and the failure of then current programs to achieve results, the EPA expanded its approach. In addition to regulation of mobile sources, committed by law to federal regulation, People of California v. Navy, 431 F. Supp. 1271 (N.D. Cal. 1977), aff'd, 624 F.2d. 885 (9th Cir. 1980), and stationary sources, intended to be subject to state regulation, id., the EPA undertook to regulate "indirect sources".

(i) The Birth of Indirect Source Regulation

Unlike stationary and mobile sources of pollution, indirect "sources" are those things which attract pollution emitting automobiles. Sports complexes, highways, airports and parking garages are examples of indirect sources. Connecticut, supra at 1012. In order to get a regulatory handle on these projects, a pre-approval permitting system was devised.

To implement that system, the EPA passed a blanket indirect source review regulation and inserted it in the SIPs of any state which did not adopt its own. 40 CFR 52.22.

Connecticut at 1012, City of Highland Park v. Train, 519 F.2d. 681, 687 (7th Cir. 1975). The EPA imposed an indirect source review program on Massachusetts. 40 CFR 52.1124(b) (Exhibit 5).

Thereafter, review of a wide variety of land use projects commenced nationwide. Suits charged large real estate projects with attracting polluting automobiles and tried to block those projects by projecting NAAQS violations. Subjects of indirect source review and subsequent lawsuits included casinos, League to Save Lake Tahoe v. Trounday, 589 F.2d 1164 (9th Cir. 1979), marinas, Natural Resources Defense Council, Inc. v. EPA, 725 F.2d 761 (D.C. Cir. 1984), shopping centers, City of Highland Park, supra, and parking garages 40 CFR §52.22(b)(i), City of Highland Park at 687, South Terminal at 668, 670.

In addition to the general indirect source review program set out at 40 CFR 40.22, specific programs were enacted by the EPA, as federal regulations. The parking freeze enacted at 40 CFR 52.1135 is one such example. Its final form was promulgated on June 12, 1975 as a federal regulation (Exhibit 3).

(ii) The Death of Indirect Source Regulation

Indirect source regulation proved unpopular and many proposed regulations never made it to approved SIPs. The parking freeze did, and it was immediately challenged as lacking a legitimate basis in statutory authority. South Terminal. The court found the requisite authority in 42 USC 1857c-5(a)(2)(B), in the provisions vesting EPA with power to

enact both "land use" and "transportation control" regulations. South Terminal at 668.

While the courts endorsed federal indirect source regulation, the public's dissatisfaction had reached Congress. In 1974, an amendment to the Act "authorized" the Administrator of the EPA to "suspend" all parking control regulations and further demanded EPA provide a report as to why the regulations were necessary. P.L. 93-319, §4(b)(2)(c) (June 22, 1974). South Terminal at 669.

If such a report was made, it apparently failed to impress Congress which "reacted by adding riders to appropriations bills forbidding the EPA to administer any ISR programs (except for airports and highways). Eq. Pub. L. No. 93-245, 87 Stat. 1071 (1974)". Connecticut at 1012. The EPA, as one commentator put it, "got the message and suspended the indirect source regulations indefinitely". Currie, "Air Pollution, Federal Law and Analysis", (Callaghan 1981 at §4.26.) It specifically suspended parking regulations in California. Brown I, supra. It eviscerated its general source review program already incorporated into most state SIPs, by adding paragraph 16 to §52.22, which paragraph serves to suspend the entire provision (Exhibit 8).

Congress' intent was clear and the EPA reacted. It was "Congressional hostility to that portion of 40 CFR §52.22(b) covering parking related facilities (footnote omitted)..." which led the EPA to "suspen[d] that portion of its regulations. 40 F. Reg. 28064-65 (July 1975)". Brown II at 670. Although the suspension in paragraph 16 was treated by some circuits as a revocation, technically, the EPA's attempt

to regulate parking facilities as "indirect sources" had been merely suspended. Id.

In 1977, Congress ended all doubt and turned the "suspension" into a revocation. The Clean Air Act Amendments of 1977 were largely directed at increasing federal control in the face of continued state failures and recalcitrance. The amendments have been described as directed primarily to moving away from mere federal standards to a "firmer guiding hand" in implementation. Connecticut at 1007. EPA authority was generally strengthened by the amendments.

In the area of indirect source regulation, however, the authority was eviscerated. Substantial revisions to the Act resulted in the following version of 42 USC §7410:

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under section 110(a) [42 USCS § 7410(a)] to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under section 110(c) [42 USCS § 7410(c)] respecting indirect source review

programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of section 110(c)(2)(D)(ii) [42 USCS § 7410(c)(2)(D)(ii)]), including regulation of existing off-street parking but such term does not include new or existing on-street parking.

(Emphasis added)

A clearer example of Congressional intent is hard to imagine. Parking garages are specifically singled out as beyond federal regulation in this portion of the amendments. The EPA's ability to regulate "land use", one of South Terminal's twin statutory underpinnings, was removed from the statutory enabling act. Transportation controls, while remaining a subject of EPA SIP regulation, did so only so long as "the term 'transportation control measure' does not include any measure which is an indirect source review program" again eliminating the ability to review a garage. 42 USC §7410(5)(E). "This caveat (to the definition of transportation control measures) makes explicit congressional intent that the Administrator not be authorized to require inclusion of indirect source review provisions in state implementation plans." League to Save Lake Tahoe at 1170-71, see, also Brown II at 671.

Federal regulation of parking garages was dead. The only possible indirect source review regulation was that

adopted by the state voluntarily. The EPA could neither include, nor condition SIP approval upon, indirect source review. 42 USC §7410(5)(A)(i). The outer limit of federal power is the ability to compel the state to retain its own indirect source regulation which the state voluntarily included in its SIP until the EPA approves its withdrawal. League to Save Lake Tahoe at 1167⁷.

This complete revocation of indirect source review authority, with its unmistakable intent being the elimination of federal parking garage regulation, became the rule of Congress and the EPA. Curiously, §52.22 remains in CFR, in black and white, yet emasculated by paragraph 16 and barred by §7410. The original hope for only "suspension" has been wiped out by definitive legislation and it cannot be seriously questioned that even were the EPA to lift the suspension, no federal indirect source review is legal. It remains in the text by inertia⁸.

⁷ There Nevada passed a statute to revoke Nevada Air Quality Reg. §3.22, which had created an indirect source review program for Nevada. Nevada included the same in the SIP. This regulation was held enforceable until revoked. Even this holding is doubtful in light of other cases holding that the federal government cannot compel a state to enforce state regulations, Brown I, II, though a state can be held to its promises otherwise. Carey, supra.

⁸ This situation is not atypical. Several SIPs in the Washington, D.C. area once included parking "surcharges" designed to discourage driving to work. Some, but not all, were revoked by the EPA and subsequently all were banned by Congress. 42 USC §1857c-5(c)(2)(B). Columbia v. Train confronted the vestigial regulations and noted: (continued on next page)

B. The Fate of the Freeze

Where once forty states had §52.22 incorporated in their SIPs, and subsequently removed, only Massachusetts had a specific parking "freeze" creating a bank of spaces for lots, garages and other "facilities". Among the 718 pages of SIPs sits 40 CFR 52.1135, enacted two years before the 1977 amendments wiped out EPA's authority to enforce or require its provisions. As with §52.22 and the District of Columbia's surcharge regulations, the freeze was never deleted from the text of the Code of Federal Regulations.

In 1977, Harley Laing, Assistant Regional Counsel for the EPA, and Robert C. Thompson, Regional Counsel, were asked their opinion concerning the continuing validity of the freeze. Their opinion is brief and direct (Exhibit 9). "...The parking freeze can be enforced by the state and city agencies but EPA cannot enforce the regulation." The authors noted that while the 1977 amendments do not clearly prohibit enforcement of pre-existing indirect source regulation and specifically the freeze, "such enforcement would seem to be inconsistent with the apparent purpose of the amendments which is to limit the EPA's role in this case to federally assisted, owned or operated facilities". Consistent with the "state

"While the others apparently have not yet been specifically revoked, the EPA concedes that the regulations relating to employee parking and federal parking facilities fall within the definition of "parking surcharge regulation" in Section 1857c-5(c)(2)(D)(i) and thus are void". Train at 980.

adoption" language of §7410(5)(A)(i), the authors concluded that only voluntary adoption of the freeze by state and local agencies was permitted. There is, therefore, no federal freeze. The EPA can neither enforce it nor compel its enforcement. Plaintiffs' case thus depends upon a binding state or local regulation. See e.g. League to Save Lake Tahoe, supra.

Both the Massachusetts Department of Environmental Protection (DEP) and municipal government have statutory authority to enact a parking freeze. Auto Parks v. Boston, 389 Mass. 79 (1983). G.L. c.111 is the enabling legislation which permits implementation of air pollution requirements by passage of a state or local regulation. Natural Resource Defense Council, Inc. v. EPA, 478 F.2d 875 (1st Cir. 1973). These can be included as part of the State's SIP commitment or simply be passed independently.

In fact, Boston employed G.L. c.111 and enacted a parking freeze, adopted under state law and enforceable as such (Exhibit 10). This freeze went through a public hearing process and vote. Adopted regulations of the Boston Air Pollution Control Commission, approved by the DEQE, created the Boston freeze.

Further, the DEP has validly enacted parking freezes for both Boston and Massport/Logan Airport as state regulations. 310 CMR 7:30-31 (Exhibit 11). These official regulations of the Commonwealth are presumably sufficient to create a legally binding parking freeze under c.111. These too must have been the subject of the hearings and advertising

requirements of G.L. c.30A. No comparable state or local ordinance or regulation exists for Cambridge. Plaintiffs are therefore left with the Cambridge Criteria, which they allege is "contrary to law" (Complaint at ¶38) or the SIP itself in order to have a freeze.

C. Neither the SIP nor the Cambridge Criteria
is Enforceable as a Regulation or Ordinance

Enactment of Administrative regulations in Massachusetts is governed by M.G.L. c.30A. Section 2 of this Chapter provides for a public hearing for the adoption, amendment or repeal of a regulation and further provides for notice. M.G.L. c.30A, §5 provides for the manner in which the above regulations shall be filed with the state Secretary. Finally, M.G.L. c.30A, §6 requires that the state Secretary publish all regulations and notices filed in accordance with the chapter in the Massachusetts Register. Neither the Cambridge Criteria nor the SIP went through these procedures. Failure to follow these provisions and properly file with the Secretary of State renders the "regulation" void. Mass. General Hospital v. City of Cambridge, 347 Mass 519 (1964); Commissioner of Department of Community Affairs v. Boston Redevelopment Authority, 362 Mass. 602 (1972). "Invalid" regulations do not have legal force. Mass. General Hospital v. Rate Setting Commissioner, 371 Mass. 705 (1977). Town of Northbridge v. Town of Natick, 474 N.E.2d 551 (Mass. 1985). Accordingly, neither document is enforceable as a state regulation.

The freeze is also not a by-law, ordinance or even a duly enacted regulation of a city agency. Cambridge has adopted the Plan E form of city government, as provided for in M.G.L. c.43, §§93 to 116, inclusive. The "affirmative vote of a majority of all the members elected to the City Council shall be necessary for the passage of any order, ordinance, resolution or vote..." No vote of the City Council ever took place in an effort to "pass" the Cambridge Criteria or SIP as such an ordinance. McQuillin, Municipal Corporations, 3d Ed., Vol. 5, §16.28 states:

There can be no valid ordinance until it is properly passed by the legally constituted legislative body of a municipality, and "pass" as applied to enactment of local laws comprehends all necessary steps to create the law. The passage of an ordinance requires that it be introduced, read and approved by the lawmaking body of the city in a legal, official, and formal session, which may, in some instances at least, be a special session. . .The ordinance must be passed by the vote prescribed, and the vote recorded in the manner required, and it must be published, posted, or notice of it otherwise given, as required by law. An ordinance becomes valid and enforceable when all legal requirements prescribed for its passage, publication and effectiveness are observed.

See also Hallenborg v. Town Clerk of Billerica, 275 N.E.2d 525, 360 Mass. 513 (1971); Gricus v. Superintendent & Inspector of Buildings of Cambridge, 345 Mass. 687 (1963).

The Cambridge Criteria is nothing more than an internal agreement which anticipates enforcement, but has no enforceable basis in law. The SIP is a compendium of state regulations, governmental undertakings and federal regulations imposed by the EPA. Both documents reference 40 CFR §52.1135,

and both appear to have been drafted assuming its validity and intending on their face to implement its provisions. Neither provide any independent legal basis for doing so.

It is instructive that Cambridge apparently originally intended to follow Boston's path. Early plans called for creation of a Cambridge Pollution Control Commission (Exhibit 12). However, the creation of the Commission and the proper promulgation of a valid regulation never occurred. Instead, the Cambridge Criteria was executed and George Teso ostensibly became vested with the authority to administer the Cambridge Criteria.

The Cambridge Parking Freeze is absent from any state or local statute, regulation, by-law or ordinance. Its text, whether treated as the Cambridge Criteria or 40 CFR §52.1135, cannot be found in a single source of state or local law. Its enforcement is prohibited as a matter of federal law. Neither an agreement among city agencies nor unpublished references to a revoked federal regulation is sufficient to enact a regulation binding upon the people of Massachusetts⁹.

⁹ Plaintiffs' Complaint includes those documents alleged to "include an indirect source review program incorporating the Commercial Parking Freeze." Complaint at ¶¶10 and 11, documents reprinted as Exhibit 13. Yet, the most those documents prove is that Massachusetts assumed it remained bound by 40 CFR §52.1135. In what way such "incorporation" becomes law is unexplained. The SIP contains no regulations, no promise to enact regulations, and no procedure to enforce the federal regulation. If a parking freeze were to be adopted by Massachusetts, Mr. Pope's legal opinion would, by law, need to address the ability to have it enforced. Yet, the only mention of Cambridge therein is its obligation to institute a resident parking sticker program (Exhibit 7 at p. 14). The DEP is also not

[continued on page 25]

D. Other Evidence that there is no Freeze

Extrinsic evidence also demonstrates the absence of a parking freeze in Cambridge. First, the elements of the Massachusetts SIP published at 40 CFR 52.1120 contain no mention of such a freeze as having been adopted, or as alleged "incorporated", in Massachusetts, Boston or Cambridge. Next, the proper passage by Boston of the Boston freeze, followed by the state enacted Boston and MassPort freeze, each with the attendant adherence to the niceties of regulatory enactment, clearly indicate the necessity of taking those time consuming steps. If Plaintiffs are correct, all of these legitimate regulations are surplusage. Third, the recent discussions of the fact that there is no freeze has led DEQE (now the Department of Environmental Protection (DEP)) to consider and actually draft proper state regulations for Cambridge (Exhibit 15). This approach was apparently abandoned when, in settlement of plaintiffs federal lawsuit concerning Cambridge's administration of the freeze, the EPA and DEP elected to attempt to require Cambridge to enact a valid ordinance creating a freeze (draft of same at Exhibits 16 and 17). All this activity leads unmistakably to the conclusion that EPA and DEP also believe that there is presently no enforceable freeze in Cambridge. Cambridge is on record in this court as also taking that position.

referenced as able to enforce a freeze. Elsewhere, the SIP explicitly rejects adoption of indirect source review (Exhibit 14). Finally, it is hard to believe that entries on tables in the back of a document seen by, maybe, 100 people can be elevated to the force of law.

Old Binney does not doubt that the absence of an enforceable freeze went undetected by most. DEP and Cambridge appear to have been unaware of the revocation of federal authority and the resulting invalidity of the freeze as a federal regulation. The EPA can fairly be said to have avoided rocking the boat, content with Cambridge's administration of the gutted regulations and the ability to avoid the public process which would be required to impose enforceable rules.

Yet, now that the "freeze" has become the cudgel to attack Old Binney, a hard look at the major gaps in enabling legislation proves that no valid freeze exists. Moreover, the absolute chaos which has followed the bringing of this suit, the inability of any governmental body involved to explain what is regulated, the scrambling to create valid regulations, and the secret, unilateral disposition of individual cases by high governmental officials (without either standards or authority) argue further for why no freeze is enforceable.

In summary, The Cambridge Criteria is not a validly adopted regulation, the only manner in which private behavior can be regulated. Since it is not properly adopted, it is invalid and void under state law. Citizens for a Better Environment, supra at 525. Its arguable coupling to a SIP does not render it enforceable. Sierra Club, supra. The SIP itself also fails to create a freeze. Therefore, no freeze appears in any enforceable form. Unlike Boston and Massport, no regulations have ever been enacted for Cambridge. There is no valid parking freeze in Cambridge.

III. THIS COURT IS THE PROPER FORUM
TO INVALIDATE THE CAMBRIDGE FREEZE

Although the freeze had its birth in a federal regulation, the question of its validity as a state law (the claim made by plaintiffs, see Complaint ¶10-11) is for this court to decide. Issues of irregularity in state procedures for adoption, enactment, and enforcement of administrative regulations are issues to be resolved within the state. Indeed, decisions have held that parties have "a right to challenge the reasonableness of state plans in state court." See e.g., Sierra Club v. Indiana-Kentucky Electric Corp., 716 F.2d 1145, 1149 (1983); Indiana and Michigan Electric Co. v. EPA, 509 F.2d 839, 847 (1975); People of State of Illinois v. Celotex, 516 F.Supp. 716 (1981).

Many Circuit Courts which have been confronted with the review of state SIPs, have held that the state is the proper forum, if not the only forum, for resolution of state procedural issues. In Sierra Club, supra at 1151, the Seventh Circuit held that in the state and federal partnership established under the Clean Air Act, "state court review of plan adoption is an available, if not a mandatory, means of review which certainly is meant to be meaningful." That Court further held that the review afforded state courts under the Act would be meaningless unless that review was given effect. The state court's decision is thus binding on the federal courts. Id.

In Ohio Environmental Council v. E.P.A., 593 F.2d 24 (1979), the Sixth Circuit criticized the Plaintiff's failure to

pursue state based procedural challenges in an Ohio state court. Among the procedural challenges advanced by the Ohio Environmental Council was that a SIP revision was never validly "adopted" under Ohio law due to a lack of formal rulemaking proceedings.

In Appalachian Power Company v. E.P.A., 579 F.2d 846 (1978), the Fourth Circuit went so far as to suggest, in dicta, that a party's failure to pursue available state remedies could result in a lack of standing to sue in federal court. The party there was also challenging whether state procedures had been properly followed. Accordingly, this Court has the duty and power to pass on the validity of the freeze and must declare that the freeze has never been properly enacted in Cambridge.

IV. IF THERE IS A FREEZE, IT EXEMPTS EMPLOYEES,
RESTAURANT RETAIL PATRONS AND HOTEL GUESTS

Plaintiffs' case in chief against Old Binney is that Mr. Teso's recognition that commercial parking permits are not required for the facility was based upon an "extra" exemption in the Cambridge parking freeze. Assuming for purposes of this section there is a freeze at all, Old Binney will show that the exemption from a requirement for permits for employees, customers, tenants, etc. is valid. This is so whether the freeze is deemed to be embodied at 40 CFR §52.1135, or within the Cambridge Criteria.

A. The History of the Freeze to South Terminal

If the court feels the need to get as far as construing the text of the various freeze documents, it will find its job pleasantly simplified by the fact that the First

Circuit Court of Appeals has already reviewed the freeze in depth and set forth an unambiguous statement concerning the permissible boundaries of its reach.

The prologue to the freeze began on July 21, 1973, when the EPA published notice of proposals it was considering as part of its Massachusetts Air Quality Control Plan. 38 F.2d Reg. 17689 et Seq. (Exhibit 18). Among the automobile related elements proposed were: (1) a ban on on-street parking in the Boston Core from 6 to 10 a.m. and 4 to 6 p.m. weekdays, a \$5.00 surcharge on off-street parking from 6 to 10 a.m., a seasonal prohibition of vehicle use 1 day out of 5 (with a colored sticker system for enforcement), bus lanes, reduced flow on the Mystic River Bridge and turnpike and gasoline rationing.

Public reaction to this proposal was such that the Administrator substantially revised the proposal and most of the more controversial provisions were absent from the regulations eventually adopted. On November 8, 1973, the Administrator published final regulations. 38 Fed. Reg. 30961. For the first time the "parking freeze" appeared (Exhibit 19).

The original parking freeze was described in the Federal Register as follows:

"There shall be a freeze effective on October 15, 1973, on the number of employee parking spaces in the core¹⁰ and spaces in off-street commercial facilities in a freeze area encompassing the Boston Core area, Logan Airport, Cambridge and parts of Somerville." (emphasis added) 38 FR 30961

The codified regulation maintained this distinction between employee parking and commercial parking.

The regulations separately defined "commercial parking facility", "employee parking space" and "residential parking facility". The "freeze" applied to "any parking facility" with the following exceptions:

1. residential parking facilities;
2. free customer parking provided the facility was not used as a commercial or employee parking facility;
3. Employee parking located outside of the Boston core¹⁰.

The regulation also included numerous requirements for employers, including a mandated reduction in employee parking spaces, an "action plan" to meet the reduction, a procedure by which employers must ensure that their employees "do not park outside the employer's designated employee parking area", and a program of assistance to employees for any "necessary adjustment from single occupancy automobile transportation to carpooling or mass transit usage..."

Therefore, after the 1973 regulations the following is clear. First, the freeze regulations clearly distinguished "commercial parking" from employee and from free customer parking. Second, the freeze on employee parking never applied to Cambridge, but only to the Boston core. Finally, the regulations were broadly drafted, applicable to "any" parking facility, with detailed enumerated exceptions.

¹⁰ The "core" was a geographically defined area which did not include Cambridge.

As discussed above, a variety of affected entities appealed to the First Circuit challenging the regulations. South Terminal Corp. v. Environmental Protection Agency, 504 F.2d 646 (1st Cir. 1974). They made a number of charges, two of which are pertinent here. First, plaintiffs alleged that the EPA had no authority to regulate parking facilities. Their argument was that parking lots and garages do not pollute, but merely attract mobile sources of pollution. Since garages are only a so-called "indirect source" of pollution, the EPA could not regulate them. This argument was rejected based upon the provisions of 42 USC § 18570-5 (a) (2)(B) (now 42 USC §7410) which permitted SIPs to include land-use and transportation controls. 504 F.2d 646, 670. (As set forth above, those twin foundations have since been revoked or altered to prevent a federal freeze.)

The second relevant argument was that the parking freeze is arbitrary and capricious. The Court first reviewed the freeze noting that among the "important exceptions" was "employee parking outside the Boston core (so long as it complies with the separate employee parking restrictions), and free customer parking". 504 F.2d at 671. The Court next considered the petitioners assertion that, as drafted, "the regulations appear to encompass residential as well as commercial parking". In response, EPA represented that it intends an amendment "to clarify that residential parking spaces, free customer spaces and employee parking spaces are exempt". The court approved the regulation "as so interpreted

but not otherwise". The court then ordered a suspension of the parking freeze "until further order of this court". South Terminal at 671-2.

On June 12, 1975, the EPA promulgated what it called "Final Amendments to Transportation Control Plan - Boston Massachusetts" (Exhibit 3).

The introduction to those regulations indicated that the amendments stem in part from the South Terminal decision (see Exhibit 3, pp. 25152). Referring to those portions of the new regulations relevant to the freeze, the EPA noted it was "adopting new definitions" in "order to clarify the intention of the regulation". This "clarification" appears directly related to the promise quoted in South Terminal.

The 1975 freeze amendments did the following:

1. Narrowed the applicability of the freeze from "all parking facilities" to only "Commercial Parking facilities".
2. Re-defined Commercial Parking facility from a facility "in which parking a motor vehicle is permitted for a fee" (1973) to one in which motor vehicles are "temporarily parked for a fee" other than residential or on-street parking. (1975)
3. Deleted most of the employer regulations such as the 25% reduction.

A comparison of the two regulations, particularly in light of South Terminal indicates that free customer and employee parking remained exempt. In the 1973 regulations "any parking facility" was regulated except free customer parking and employee parking outside the Boston core unless these facilities were also commercial parking facilities. By 1975, only commercial parking facilities (a term which by the

contradistinction used in 1973 could not include free customer parking or employee parking) were regulated. Since the regulated facilities did not include customer or employee parking, there was no need to exempt them.¹¹ The Administrator declared that the 1975 amendments were effective immediately, except "Section 52.1135 will become effective only at such time as the court removes its suspension order." 40 F.R.25161.

Therefore, the permissible boundaries of a federal freeze, if any, are clear. No freeze can include employee and customer spaces and the regulation is only approved with those exception "but not otherwise".

All levels of government have acknowledged the res judicata effect of South Terminal. In a letter jointly written to Cambridge by authorized employees of the EPA and DEP, the authors rejected plaintiffs' theory of the "extra" exemption and accepted the Cambridge Criteria definition as "consistent with South Terminal" (Exhibit 20). This court should do likewise.

V. THE FREEZE IN PRACTICE

Since the very beginning of the freeze, and completely independent of the text of any freeze, employee and customer parking has been exempt. As noted above, one ramification of

¹¹ The fact that they were specifically exempted in the 1973 regulations stems from the fact that "all parking facilities" were then regulated, as was employee parking in the Boston Core.

Old Binney's discovery that there is no freeze was a sudden attempt to draft and implement valid regulations. The draft DEP freeze regulations for Cambridge (Exhibit 15) repeat the old EPA freeze and attempt to revise 40 CFR §52.1135 in only two respects, one of which is the explicit inclusion of the "extra" Cambridge exemption. The draft regulations declare that "this term (commercial parking facility) will be interpreted under the [proposed] state regulation as it has been historically...(as) excluding parking for the exclusive use of hotel guests and facilities for the exclusive use of employees." (Emphasis added) (Exhibit 15).

The EPA has also, albeit with regret, acknowledged that both Boston and Cambridge have employed the employee exemption throughout the history of the freeze (see cover letters to so-called EPA audits at Exhibit 21). While it now criticizes that fact, it is evident that the EPA and DEP were both provided copies of the Boston regulations and the Cambridge Criteria (Exhibits 22) and were on notice of this course of regulation. A review of Boston City records suggests further that the EPA's professed shock at the "extra" exemption may be self-serving.

In 1978, Boston proposed to reform its freeze regulation to remove the employee exception contained in its rules. Beginning in October, 1978, the Boston Air Pollution Control Commission (APCC) sought arguments favoring the re-definition of the freeze to exempt only residential spaces. (Exhibit 23)

This proposal met intense opposition. (See Exhibit 24). Eventually, the chairwoman of the APCC recommended that the City not seek the re-definition. (Memo of December 15, 1978) (Exhibit 25). In a subsequent Decision Memorandum (12/28/78 - Exhibit 26), the DEQE discussed the proposed revision of the Boston Criteria which would have "changed the definition of spaces included in the freeze to encompass employee parking". The DEQE refused to adopt the change, choosing "further study" and recommended that the Boston Criteria not be included in the "Transportation Element" of the SIP (TESIP). Soon thereafter, DEQE wrote to the EPA noting that "you are also aware that changes in the regulations of the City of Boston" were considered at public hearing and informing EPA that "The Department has decided not to approve the proposed changes at this time". (Letter of 1/12/79-Exhibit 27). The letter further informed EPA that the parking freeze would not be included in the TESIP.

Therefore, as of 1979 at the latest, all three levels of government unmistakably knew that Boston and Cambridge exempted employee parking from the freeze. Contemporaneous administrative practice is wholly consistent with that fact.

This knowledge and acquiescence is significant. Regardless of the technical language, a "course of dealing" has been held relevant to consideration of the scope of SIP regulations. American Lung Association v. Kean, 670 F. Supp. 1285 (D.N.J. 1987).

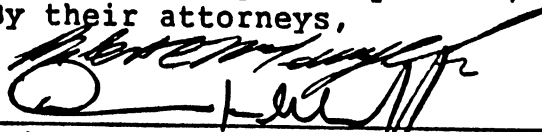
In conclusion, despite present public posturing, the employee exemption has existed as long as any freeze (longer if the 1973 regulations are considered). It has been embodied in Boston's regulations, Cambridge's criteria and is a clear prerequisite to validity under South Terminal. Should this court find a valid freeze exists in Cambridge, the exemption recognized by Teso must constitute part of that freeze.

VI. CONCLUSION

On the undisputed facts before the court, it is clear that there is no enforceable parking freeze in Cambridge. The clear course of the rise and fall of the freeze prove that Congress revoked all EPA authority in the area. As a practical matter, it repealed the federal freeze. It is equally clear that Cambridge, unlike Boston, never replaced the freeze with a local regulation. Further, while DEP promulgated valid regulations for MassPort and Boston, it left out Cambridge. Neither, the assumptions of validity by any government body, nor its contractual "Criteria" can possibly fill the void left by the absence of a valid regulation.

In the alternative, should this court determine that a freeze exists, it must declare that Old Binney's garage is exempt so long as parking is for tenants, employees, customers and hotel guests.

Defendants, The Athenaeum Group
and Old Binney Realty Trust,
By their attorneys,



Robert E. McLaughlin (BBO 337480)
David L. Klebanoff (BBO 274550)
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, Massachusetts 02210
(617) 482-1900



City of Cambridge

Agenda # 26

IN CITY COUNCIL

July 30, 1990

- WHEREAS: The City Manager has submitted to this City Council a draft **Memorandum of Agreement** relating to the **"Parking Freeze"** dated July 30, 1990; and
- WHEREAS: Said draft is a response to this City Council's earlier request to review the terms of such an agreement prior to execution by the City Manager; and
- WHEREAS: This City Council approves the terms of said agreement, including amendments incorporated therein; now therefore be it
- RESOLVED: That this City Council is satisfied that the City Manager has authority to execute the necessary documents to accomplish the purposes and terms of the draft Memorandum of Agreement, received by the City Council on this date.

In City Council July 30, 1990.
Adopted as amended by a yea and nay vote:
Yeas 9; Nays 0; Absent 0.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in black ink, reading "Joseph E. Connarton". The signature is written in a cursive style with a large, stylized "J" and "C".

Joseph E. Connarton, City Clerk.



City of Cambridge

Agenda # 26

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OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

AUGUST 8, 1990

TO: MICHAEL P. GARDNER
PERSONNEL DIRECTOR

FROM: JOSEPH E. CONNARTON *JEC*
CITY CLERK

SUBJECT: EMPLOYEE BENEFITS/MARY E. COSGROVE

Subsequent to your response regarding employee benefits for the above named individual I have obtained additional information relative to her employment with the City of Cambridge.

It has been brought to my attention that Mrs. Cosgrove was employed in a clerical position, as a contract employee, for the City Solicitor from February 17, 1988 to May 20, 1988.

Given the additional time she was employed would you please advise me if this changes her benefits status.

Your early response to this inquiry will be greatly appreciated.

If you have any questions, please feel free to contact me.



City of Cambridge

Agenda # 26

IN CITY COUNCIL

July 30, 1990

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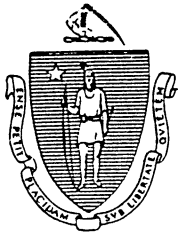
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Joseph E. Connarton, City Clerk.



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

SEP -3 11 4 39
COMMONWEALTH OF MASS.

MICHAEL S. DUKAKIS
GOVERNOR

JOHN DeVILLARS
SECRETARY

August 15, 1990

Don Drisdell
Law Department
City Hall
795 Massachusetts Ave.
Cambridge, MA 02139

Dear Don:

This to inform you that Commissioner Greenbaum signed the MOA on the Parking Freeze on August 15, 1990. That is the date the Agreement was executed.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Savitz", written over the word "Sincerely,".

Andrew Savitz
General Counsel

AS/ie

August 10, 1990

MEMORANDUM OF AGREEMENT

BETWEEN

THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE

WHEREAS, the City of Cambridge (City) and the Massachusetts Department of Environmental Protection (DEP) (collectively, the "parties") have agreed to cooperate in an effort to amend the State Implementation Plan (SIP) required by the Clean Air Act 42 U.S.C. s. 7401 et seq., regarding the measures to be taken by the City for the attainment and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region; and

WHEREAS, the City of Cambridge and DEP are parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge, and the parties hereto enter this agreement without waiving any rights or claims they have asserted relative to said legal dispute; and

WHEREAS, the final SIP amendments will include transportation control measures, including but not limited to parking restrictions, and a parking freeze, and

WHEREAS, a parking freeze is consistent with the policies of the City of Cambridge to reduce vehicle miles travelled, and to encourage and develop greater use of public transit, bicycles, walking, and other alternative modes of travel; and

LAW DEPARTMENT
'90 AUG 28 AM 10 53

WHEREAS, enforcement of a parking freeze will demonstrate the commitment of all parties to support the Clean Air Act by discouraging auto traffic to the City, and

WHEREAS, future revisions to the SIP may appropriately emphasize limits upon and/or reductions of all-day parking available to commuters, while at the same time retaining parking opportunity for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the parties hereby commit themselves to the terms of this agreement for the period until a SIP amendment is approved, said period to be known as the "interim period."

NOW, THEREFORE, the parties to this agreement agree to work cooperatively to implement the following interim policies and procedures during the interim period.

A. GENERAL PROVISIONS

DEFINITIONS. The definitions appearing in this Memorandum are only applicable to this Memorandum and shall only be effective in Cambridge during the interim period. As used in this Memorandum, the following terms shall have the following meanings:

CPS "Controlled Parking Space" - A parking space within a controlled parking facility (CPF).

CPF "Controlled Parking Facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, and (iii) parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority.

CPFP "Controlled Parking Facility Permit"- permits issued by the City for Controlled Parking Facilities. Each permit will be for a specific number of CPS's.

IPCC "Interim Parking Control Committee"

1. The City agrees that during the interim period the City will not issue controlled parking facility permits

except in accordance with the requirements of this Memorandum.

2. The parties agree that, during the interim period, the Director shall continue to make determinations of exclusion from the parking freeze pursuant to the provisions in sections B & C of this agreement.
3. No person shall be granted a permit to build or modify a parking facility to increase the number of parking spaces within the City of Cambridge without first obtaining a controlled parking facility permit or a determination that the facility is excluded from the definition of a controlled parking facility as that term is defined herein, as per sections B and C below. "Person" shall be defined in the same manner as said term is defined by Section 1-6 of the City Code, and shall, moreover, include for the purposes of these procedures all state, regional and political subdivisions, agencies, departments, authorities and boards.
4. No person shall operate a parking facility within the City of Cambridge unless said person shall first obtain or shall have first obtained a determination of exclusion or a CPFP under the terms of this Memorandum. If a determination of exclusion or a commercial parking facility permit was required and was obtained prior to the execution of this agreement, that determination or permit shall not be subject to the provisions of this

Memorandum, except for the enforcement provisions, and said facility shall be required to operate within the terms of that determination or commercial permit. Facilities that were not subject to the parking freeze prior to the execution of this Memorandum shall not be subject to the terms of this Memorandum unless they seek to increase the number of parking spaces in the facility.

5. Any modification of an existing parking facility or lot which increases the number of parking spaces available is subject to the requirements of this Memorandum.
6. Rights to eliminated parking spaces cannot be transferred between any persons but must revert back to the City for allocation through the permit process.
7. The City Manager of Cambridge shall within fourteen days of the execution by all parties of this Memorandum present to the Cambridge City Council a proposed ordinance which will embody the provisions contained herein, and shall support the enactment of said ordinance.
8. The City shall provide to DEP a Freeze Enforcement strategy within 30 days of the execution of this Memorandum . This strategy shall include at a minimum a specific schedule for accomplishing the following tasks including a commitment to perform at least a set number of each type of inspection each month:
 - a) Inspection of all facilities holding a commercial

parking facility permit issued prior to the execution of this Memorandum to ensure compliance with the terms and conditions of the permits. The City will take enforcement action against violators to ensure compliance with such terms and conditions.

- b) Inspection of all facilities holding a determination of exclusion made prior to the execution of this Memorandum to ensure compliance with the terms of the determination. The City will take enforcement action against violators to ensure compliance with such terms.
- c) Inspection of all facilities holding a determination of exclusion or a controlled parking facility permit made or issued after the execution of this Memorandum to insure compliance with the terms of the determination or permit. The City will take enforcement action against violators to ensure compliance with such terms.
- d) Inspection of facilities which have no approval under the parking freeze (whether said facilities came into use before or after the execution of this Memorandum) and which appear to be operating without such necessary approval. The City will take enforcement action against violators to ensure compliance with the parking freeze.

- e) The enforcement actions referred to in subsections (a), (b), (c), and (d) above may include, but need not be limited to, (i) imposing fines at a rate of \$10.00 per day per space for every day that the space was illegally operated, (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion, and/or (iii) eliminating those spaces or facilities found to be operating with no approval under the parking freeze. At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces ,or as controlled spaces as defined herein, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to determine the number of spaces within a facility that are operating in violation of the terms of their determination of exclusion, and to impose

finer or revoke determinations of exclusion.

Nothing in this Agreement shall prohibit the owner of spaces which have been improperly used from applying for a new determination of exclusion or a CPFP in accordance with the terms of this Agreement.

- f) The City agrees to carry out inspections pursuant to this section at the locations listed on Addendum A attached hereto within 30 days of the execution of this Memorandum . The City will take enforcement actions to enjoin violations found by such inspections and secure other relief to ensure compliance with the freeze.
9. The City agrees to devote its best efforts to facilitate the submission to DEP in final form of a State Implementation Plan (SIP) revision, approved by the Boston Metropolitan Planning Organization (MPO), which incorporates parking restrictions on all spaces other than residential parking and spaces within park-and-ride facilities operated by or in conjunction with the Massachusetts Bay Transit Authority. The City agrees also to examine its zoning ordinances toward furthering the effectiveness of parking restrictions contained in the SIP revision.

The City agrees to cooperate with DEP and the MPO to

submit the SIP revision to the Department within six months of the date of this agreement.

10. The City shall within sixty days of the execution of this Memorandum provide DEP an inventory of all types of parking spaces existing in the City as of the date of the execution of this Memorandum .
11. The City shall compile and maintain a Parking Freeze Report, the format of which is left to the discretion of the City. This report shall contain an up-to-date accounting of all actions taken by the City which result in a change in the number of CPS. All determinations of exclusion and enforcement actions shall also be reported. Each of these actions shall be annotated with descriptive information on the number of spaces, their location, and their purpose. For spaces granted a determination of exclusion , a description of the means by which use of the spaces by the general public will be prevented shall be noted. The City of Cambridge will submit to the Department on a quarterly basis a copy of the preceding quarter's ledger entries. This quarterly reporting requirement will remain in effect until superseded by any reporting requirements associated with the SIP revision contemplated in this agreement.
12. During the interim period the City may issue new commercial parking facility permits or determinations of exclusion pursuant to the procedures set forth in the

Memorandum of Agreement dated November 15, 1984, for and with respect to spaces for which an application was filed with the City on or before November 10, 1988, said date being the date of the initial agreement among the City, EPA, and DEP pursuant to which the City first agreed to halt the issuance of new commercial parking facility permits pending the cooperative effort of the parties to establish interim regulations leading to a new SIP.

13. During the interim period the City shall be authorized through the terms of this Memorandum to issue permits for up to 500 controlled parking spaces plus an amount of CPFP's equal to the number of parking spaces which the City has eliminated or against which the City has initiated enforcement actions to eliminate, in accordance with paragraphs A.8 and A.14, or through the reallocation of commercial parking spaces which have been permitted in accordance with the November 15, 1984 MOA and which are no longer being used and thus have returned their commercial parking space designation to the City for redistribution.

14. For purposes of this Memorandum, initiated enforcement action shall mean the issuance by the Traffic Director of an administrative order, which is not subject to further appeal, resulting in physical elimination of the space.

Unless the owner of a facility complies with an administrative order to eliminate spaces under this

section, and waives any further appellate rights, the City shall not be authorized to issue new CPFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City further agrees that it shall only be authorized to issue new CPFPs for 50% of the number of spaces sought to be eliminated by court action upon the filing of said action. The remaining 50% of said spaces will only be available for issuance as new spaces when and if the City prevails on the merits of said court action. The City agrees to aggressively prosecute any such court action to compel compliance with said administrative order. The status of all such actions shall be reported as set forth in paragraph A.11.

15. Upon execution of this agreement the City may act upon any applications that meet the requirements of paragraph A.12 above.
16. The City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they

apply to the City, then no CPFP's or determinations of exclusion shall be issued pursuant to paragraph A.13 until the City has corrected said failure of compliance. In addition to the suspension of authority to issue permits and exclusions provided in the preceding sentence, the City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then the City shall be subject to a daily penalty of \$500.00 for each day of noncompliance to be imposed by the DEP after an administrative hearing. All parties agree that the foregoing suspension and monetary penalties shall only attach if the failure of the City to meet deadlines or comply with the terms of this Memorandum is a result of the City's inaction and not attributable to the actions or inactions of third parties beyond the control of the City and its officials.

17. The City agrees that it shall not be authorized to issue CPFP's pursuant to paragraph A.13 above until it has enacted an ordinance which embodies the provisions contained herein.

B. PROCEDURES AND CRITERIA FOR DETERMINATIONS OF EXCLUSION

A determination of exclusion may be obtained only according to the following procedures and criteria:

1. An application shall be submitted to the Director of Traffic and Parking on a form available at the Traffic and Parking Department offices at 57 Inman Street in Cambridge.
2. The application shall be reviewed by an Interim Parking Control Committee (Committee) comprised of three Cambridge residents with appropriate experience appointed by the City Manager of Cambridge. One member of the Committee shall be appointed from a list of five nominees submitted to the City Manager by the Cambridge Citizens for Livable Neighborhoods. No person shall be appointed to the Committee who has a financial interest in commercial parking in Cambridge. The Committee will be appointed and functional no later than 30 days after the date of execution of this Memorandum.
3. The Committee shall maintain complete and accurate records of all applications for determinations of exclusion.
4. The Committee shall process all such applications in accordance with these procedures. The Committee shall be required to process any applications already on file with the Traffic Director at the time of the execution of this Memorandum in the order of the filing of said pending applications. All amendments to pending applications shall be deemed to relate back to the original date of filing. Any pending application relating to a project

for which there is an Agreement for Traffic Mitigation (ATM) executed by the City Manager shall be processed and acted upon by the Committee, in accordance with the limits established in paragraph A.13 above, subject to the requirement that any permit or determination of exclusion shall be conditioned upon compliance by the applicant with the terms of the ATM and upon no other conditions, and without any modification of the application by the Committee.

5. In carrying out its duties the Committee shall consult with and seek the assistance of other appropriate departments and agencies in the City, state and federal governments such as the Department of Community Development, the License Commission, the Inspectional Services Department, the Department of Traffic and Parking, DEP, and the United States Environmental Protection Agency (EPA).
6. Prior to granting any determination of exclusion, the Director shall obtain the approval of the Committee, which shall determine that the facility for which the exclusion is sought is not a controlled parking facility as defined in this memorandum. The Committee and the Director shall impose any conditions necessary to ensure that excluded facilities operate in a manner that prevents commercial use of spaces in the facility by the general public.

C. APPLICATION AND HEARING PROCESS

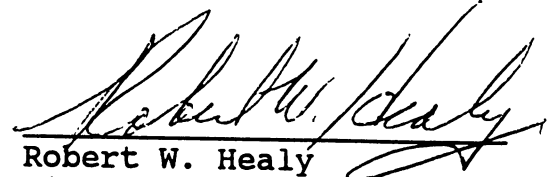
1. The Interim Parking Control Committee shall hold hearings for applications for CPFP's and determinations of exclusion on the fourth Wednesday of every month, provided there is a pending application for such CPFP's or determinations.
2. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.
3. The Committee will be responsible for causing publication in at least one local weekly newspaper a notice of the proposals and hearing. The notice shall set forth a specific hearing date not less than two (2) weeks and not more than thirty days from the date of publication, as well as the time and place of such hearing; said notice shall indicate that a copy of the application(s) is available for public inspection at the Traffic Department. A notice of all applications to be heard at the hearing shall be sent at least two (2) weeks before the hearing to the DEP .
4. Every application for a CPFP or determination of exclusion shall be submitted on forms to be provided by the Interim Parking Control Committee, and shall include the following information:
 - a. Name and address of owner.
 - b. Name and address of proposed facility.

- c. Type of facility (parking lot or garage).
 - d. Type of construction (new or modification) proposed.
 - e. Number of existing spaces and who uses them.
 - f. Number of proposed spaces and who will use them.
 - g. Proposed change in number of spaces by use.
 - h. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
 - i. Detailed information on how use of the spaces will be controlled for each category of use.
 - j. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
 - k. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
 - l. A site plan and floor plans of the proposed lot or garage, showing the location of the facility, the layout space, and the entry and exit points.
5. Six copies of every application shall be submitted, with the above information, to the Interim Parking Control Committee, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts 02139. A copy thereof shall be sent by the Committee to the Commissioner, Massachusetts Department of Environmental Protection, 1 Winter Street, Boston, Massachusetts 02108.

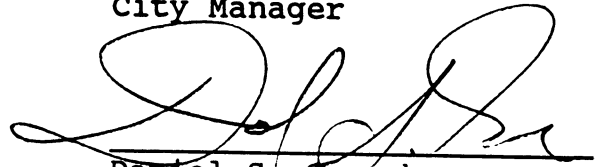
6. No less than 14 days before the hearing date, the Interim Parking Control Committee shall send to each applicant which has submitted a complete and timely application an analysis of the application in regard to the criteria set out above. This analysis will highlight any further information required in order to make a full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.
7. Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CPFP or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the determination the conditions, if any, upon which approval is given. Such conditions may include reasonable traffic mitigation requirements to reduce air quality impacts of the proposed facility or spaces. A copy of said approval shall be sent to the applicant and the Commissioner, Massachusetts Department of Environmental Protection.
8. The Director shall approve or disapprove the application in accordance with the Committee's determination. When the decision is made to approve an application, the decision shall state the name, address and authorized number of spaces of the facility and any conditions upon

which the application is approved. Any approval of a CPFP for a facility that applied after November 10, 1988 shall include reference to inventory data showing that the spaces issued come either from any spaces remaining of the 500 spaces referred to in paragraph A.13 above or an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.14, which serve as the basis for issuance of the CPFP pursuant to paragraph A.13. All CPFPs shall include a provision requiring that any spaces in the facility for which there will be an hourly or daily fee shall not be available for occupancy prior to 9:30 a.m. on weekdays.

The terms of this Memorandum become effective upon signing by all parties.



Robert W. Healy
City Manager



Daniel S. Greenbaum
Commissioner, DEP

ADDENDUM "A"

LOCATION/ADDRESS	DESCRIPTION
1. Hurley Street (between 1st & 2nd)	flat lot
2. 1st Street Lechmere	Garage
3. McGrath/East St.	flat lot
4. 3rd Street (#310 approx)	flat lot
5. Main St./Ames St.	flat lot
6. 1 Athenaeum Street	garage
7. 1 Memorial Drive	garage
8. Technology Square (180 Broadway)	garage
9. 1000 Mass. Ave.	garage
10. 29 Charles St.	flat lot
11. One Kendall Sq.	garage

LAW DEPARTMENT
AUG 23 AM 10 53

AMENDED MEMORANDUM OF AGREEMENT

Agenda # 26

In City Council

July 30, 1990

MEMORANDUM OF AGREEMENT

BETWEEN

THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE

WHEREAS, the City of Cambridge (City), the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP) (collectively, the "parties") have agreed to cooperate in an effort to amend the State Implementation Plan (SIP) required by the Clean Air Act 42 U.S.C. s. 7401 et seq., regarding the measures to be taken by the City for the attainment and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region; and

WHEREAS, the City of Cambridge, DEP, and EPA are parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge , and the parties hereto enter this agreement without waiving any rights or claims they have asserted relative to said legal dispute; and

WHEREAS, the final SIP amendments will include transportation control measures, including but not limited to parking restrictions, and a parking freeze, and

WHEREAS, a parking freeze is consistent with the policies of the City of Cambridge to reduce vehicle miles travelled, and to

encourage and develop greater use of public transit, bicycles, walking, and other alternative modes of travel; and

WHEREAS, enforcement of a parking freeze will demonstrate the commitment of all parties to support the Clean Air Act by discouraging auto traffic to the City, and

WHEREAS, future revisions to the SIP may appropriately emphasize limits upon and/or reductions of all-day parking available to commuters, while at the same time retaining parking opportunity for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the parties hereby commit themselves to the terms of this agreement for the period until a SIP amendment is approved, said period to be known as the "interim period."

NOW, THEREFORE, the parties to this agreement agree to work cooperatively to implement the following interim policies and procedures during the interim period.

A. GENERAL PROVISIONS

DEFINITIONS. The definitions appearing in this Memorandum are only applicable to this Memorandum and shall only be effective in Cambridge during the interim period. As used in this Memorandum, the following terms shall have the following meanings:

CPS "Controlled Parking Space" - A parking space within

a controlled parking facility (CPF).

CPF "Controlled Parking Facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, and (iii) parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority.

CPFP "Controlled Parking Facility Permit"- permits issued by the City for Controlled Parking Facilities. Each permit will be for a specific number of CPS's.

IPCC "Interim Parking Control Committee"

1. The City agrees that during the interim period the City will not issue controlled parking facility permits except in accordance with the requirements of this Memorandum.
2. The parties agree that, during the interim period, the Director shall continue to make determinations of exclusion from the parking freeze pursuant to the provisions in sections B & C of this agreement.
3. No person shall be granted a permit to build or modify a parking facility to increase the number of parking spaces within the City of Cambridge without first obtaining a controlled parking facility permit or a determination that the facility is excluded from the definition of a controlled parking facility as that term is defined herein, as per sections B and C below. "Person" shall be defined in the same manner as said term is defined by Section 1-6 of the City Code, and shall, moreover, include for the purposes of these procedures all state, regional and political subdivisions, agencies, departments, authorities and boards.
4. No person shall operate a parking facility within the City of Cambridge unless said person shall first obtain or shall have first obtained a determination of exclusion or a CPFP under the terms of this Memorandum. If a determination of exclusion or a commercial parking facility permit was required and was obtained prior to

the execution of this agreement, that determination or permit shall not be subject to the provisions of this Memorandum, except for the enforcement provisions, and said facility shall be required to operate within the terms of that determination or commercial permit. Facilities that were not subject to the parking freeze prior to the execution of this Memorandum shall not be subject to the terms of this Memorandum unless they seek to increase the number of parking spaces in the facility.

5. Any modification of an existing parking facility or lot which increases the number of parking spaces available is subject to the requirements of this Memorandum.
6. Rights to eliminated parking spaces cannot be transferred between any persons but must revert back to the City for allocation through the permit process.
7. The City Manager of Cambridge shall within fourteen days of the execution by all parties of this Memorandum present to the Cambridge City Council a proposed ordinance which will embody the provisions contained herein, and shall support the enactment of said ordinance.
8. The City shall provide to DEP a Freeze Enforcement strategy within 30 days of the execution of this Memorandum . This strategy shall include at a minimum a specific schedule for accomplishing the following tasks including a commitment to perform at least a set number

of each type of inspection each month:

- a) Inspection of all facilities holding a commercial parking facility permit issued prior to the execution of this Memorandum to ensure compliance with the terms and conditions of the permits. The City will take enforcement action against violators to ensure compliance with such terms and conditions.
- b) Inspection of all facilities holding a determination of exclusion made prior to the execution of this Memorandum to ensure compliance with the terms of the determination. The City will take enforcement action against violators to ensure compliance with such terms.
- c) Inspection of all facilities holding a determination of exclusion or a controlled parking facility permit made or issued after the execution of this Memorandum to insure compliance with the terms of the determination or permit. The City will take enforcement action against violators to ensure compliance with such terms.
- d) Inspection of facilities which have no approval under the parking freeze (whether said facilities came into use before or after the execution of this Memorandum) and which appear to be operating without such necessary approval. The City will

take enforcement action against violators to ensure compliance with the parking freeze.

- e) The enforcement actions referred to in subsections (a), (b), (c), and (d) above may include, but need not be limited to, (i) imposing fines at a rate of \$10.00 per day per space for every day that the space was illegally operated, (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion, and/or (iii) eliminating those spaces or facilities found to be operating with no approval under the parking freeze. At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces ,or as controlled spaces as defined herein, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to determine the number of spaces within a facility

that are operating in violation of the terms of their determination of exclusion, and to impose fines or revoke determinations of exclusion.

Nothing in this Agreement shall prohibit the owner of spaces which have been improperly used from applying for a new determination of exclusion or a CPFP in accordance with the terms of this Agreement.

- f) The City agrees to carry out inspections pursuant to this section at the locations listed on Addendum A attached hereto within 30 days of the execution of this Memorandum . The City will take enforcement actions to enjoin violations found by such inspections and secure other relief to ensure compliance with the freeze.
9. The City agrees to devote its best efforts to facilitate the submission to DEP in final form of a State Implementation Plan (SIP) revision, approved by the Boston Metropolitan Planning Organization (MPO), which incorporates parking restrictions on all spaces other than residential parking and spaces within park-and-ride facilities operated by or in conjunction with the Massachusetts Bay Transit Authority. The City agrees also to examine its zoning ordinances toward furthering the effectiveness of parking restrictions contained in

the SIP revision.

The City agrees to cooperate with DEP and the MPO to submit the SIP revision to the Department within six months of the date of this agreement.

10. The City shall within sixty days of the execution of this Memorandum provide DEP an inventory of all types of parking spaces existing in the City as of the date of the execution of this Memorandum .
11. The City shall compile and maintain a Parking Freeze Report, the format of which is left to the discretion of the City. This report shall contain an up-to-date accounting of all actions taken by the City which result in a change in the number of CPS. All determinations of exclusion and enforcement actions shall also be reported. Each of these actions shall be annotated with descriptive information on the number of spaces, their location, and their purpose. For spaces granted a determination of exclusion , a description of the means by which use of the spaces by the general public will be prevented shall be noted. The City of Cambridge will submit to the Department on a quarterly basis a copy of the preceding quarter's ledger entries. This quarterly reporting requirement will remain in effect until superseded by any reporting requirements associated with the SIP revision contemplated in this agreement.
12. During the interim period the City may issue new

commercial parking facility permits or determinations of exclusion pursuant to the procedures set forth in the Memorandum of Agreement dated November 15, 1984, for and with respect to spaces for which an application was filed with the City on or before November 10, 1988, said date being the date of the initial agreement among the City, EPA, and DEP pursuant to which the City first agreed to halt the issuance of new commercial parking facility permits pending the cooperative effort of the parties to establish interim regulations leading to a new SIP.

13. During the interim period the City shall be authorized through the terms of this Memorandum to issue permits for up to 500 controlled parking spaces plus an amount of CPFP's equal to the number of parking spaces which the City has eliminated or against which the City has initiated enforcement actions to eliminate, in accordance with paragraphs A.8 and A.14, or through the reallocation of commercial parking spaces which have been permitted in accordance with the November 15, 1984 MOA and which are no longer being used and thus have returned their commercial parking space designation to the City for redistribution.
14. For purposes of this Memorandum, initiated enforcement action shall mean the issuance by the Traffic Director of an administrative order, which is not subject to further appeal, resulting in physical elimination of the space.

Unless the owner of a facility complies with an administrative order to eliminate spaces under this section, and waives any further appellate rights, the City shall not be authorized to issue new CPFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City further agrees that it shall only be authorized to issue new CPFPs for 50% of the number of spaces sought to be eliminated by court action upon the filing of said action. The remaining 50% of said spaces will only be available for issuance as new spaces when and if the City prevails on the merits of said court action. The City agrees to aggressively prosecute any such court action to compel compliance with said administrative order. The status of all such actions shall be reported as set forth in paragraph A.11.

15. Upon execution of this agreement the City may act upon any applications that meet the requirements of paragraph A.12 above.
16. The City agrees that if it fails for more than 30 days to

meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then no CPFP's or determinations of exclusion shall be issued pursuant to paragraph A.13 until the City has corrected said failure of compliance. In addition to the suspension of authority to issue permits and exclusions provided in the preceding sentence, the City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then the City shall be subject to a daily penalty of \$500.00 for each day of noncompliance to be imposed by the DEP after an administrative hearing. All parties agree that the foregoing suspension and monetary penalties shall only attach if the failure of the City to meet deadlines or comply with the terms of this Memorandum is a result of the City's inaction and not attributable to the actions or inactions of third parties beyond the control of the City and its officials.

17. The City agrees that it shall not be authorized to issue CPFP's pursuant to paragraph A.13 above until it has enacted an ordinance which embodies the provisions contained herein.

B. PROCEDURES AND CRITERIA FOR DETERMINATIONS OF EXCLUSION

A determination of exclusion may be obtained only according to the following procedures and criteria:

1. An application shall be submitted to the Director of Traffic and Parking on a form available at the Traffic and Parking Department offices at 57 Inman Street in Cambridge.
2. The application shall be reviewed by an Interim Parking Control Committee (Committee) comprised of three Cambridge residents with appropriate experience appointed by the City Manager of Cambridge. One member of the Committee shall be appointed from a list of five nominees submitted to the City Manager by the Cambridge Citizens for Livable Neighborhoods. No person shall be appointed to the Committee who has a financial interest in commercial parking in Cambridge. The Committee will be appointed and functional no later than 30 days after the date of execution of this Memorandum.
3. The Committee shall maintain complete and accurate records of all applications for determinations of exclusion.
4. The Committee shall process all such applications in accordance with these procedures. The Committee shall be required to process any applications already on file with the Traffic Director at the time of the execution of this Memorandum in the order of the filing of said pending applications. All amendments to pending applications

shall be deemed to relate back to the original date of filing. Any pending application relating to a project for which there is an Agreement for Traffic Mitigation (ATM) executed by the City Manager shall be processed and acted upon by the Committee, in accordance with the limits established in paragraph A.13 above, subject to the requirement that any permit or determination of exclusion shall be conditioned upon compliance by the applicant with the terms of the ATM and upon no other conditions, and without any modification of the application by the Committee.

5. In carrying out its duties the Committee shall consult with and seek the assistance of other appropriate departments and agencies in the City, state and federal governments such as the Department of Community Development, the License Commission, the Inspectional Services Department, the Department of Traffic and Parking, DEP and EPA.
6. Prior to granting any determination of exclusion, the Director shall obtain the approval of the Committee, which shall determine that the facility for which the exclusion is sought is not a controlled parking facility as defined in this memorandum. The Committee and the Director shall impose any conditions necessary to ensure that excluded facilities operate in a manner that prevents commercial use of spaces in the facility by the

general public.

C. APPLICATION AND HEARING PROCESS

1. The Interim Parking Control Committee shall hold hearings for applications for CPFP's and determinations of exclusion on the fourth Wednesday of every month, provided there is a pending application for such CPFP's or determinations.
2. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.
3. The Committee will be responsible for causing publication in at least one local weekly newspaper a notice of the proposals and hearing. The notice shall set forth a specific hearing date not less than two (2) weeks and not more than thirty days from the date of publication, as well as the time and place of such hearing; said notice shall indicate that a copy of the application(s) is available for public inspection at the Traffic Department. A notice of all applications to be heard at the hearing shall be sent at least two (2) weeks before the hearing to the DEP .
4. Every application for a CPFP or determination of exclusion shall be submitted on forms to be provided by the Interim Parking Control Committee, and shall include the following information:

- a. Name and address of owner.
 - b. Name and address of proposed facility.
 - c. Type of facility (parking lot or garage).
 - d. Type of construction (new or modification) proposed.
 - e. Number of existing spaces and who uses them.
 - f. Number of proposed spaces and who will use them.
 - g. Proposed change in number of spaces by use.
 - h. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
 - i. Detailed information on how use of the spaces will be controlled for each category of use.
 - j. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
 - k. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
 - l. A site plan and floor plans of the proposed lot or garage, showing the location of the facility, the layout space, and the entry and exit points.
5. Six copies of every application shall be submitted, with the above information, to the Interim Parking Control Committee, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts 02139. A copy thereof shall be sent by the Committee to the Commissioner, Massachusetts

Department of Environmental Protection, 1 Winter Street,
Boston, Massachusetts 02108.

6. No less than 14 days before the hearing date, the Interim Parking Control Committee shall send to each applicant which has submitted a complete and timely application an analysis of the application in regard to the criteria set out above. This analysis will highlight any further information required in order to make a full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.
7. Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CPFP or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the determination the conditions, if any, upon which approval is given. Such conditions may include reasonable traffic mitigation requirements to reduce air quality impacts of the proposed facility or spaces. A copy of said approval shall be sent to the applicant and the Commissioner, Massachusetts Department of Environmental Protection.
8. The Director shall approve or disapprove the application in accordance with the Committee's determination. When the decision is made to approve an application, the

decision shall state the name, address and authorized number of spaces of the facility and any conditions upon which the application is approved. Any approval of a CPFP for a facility that applied after November 10, 1988 shall include reference to inventory data showing that the spaces issued come either from any spaces remaining of the 500 spaces referred to in paragraph A.13 above or an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.14, which serve as the basis for issuance of the CPFP pursuant to paragraph A.13. All CPFPs shall include a provision requiring that any spaces in the facility for which there will be an hourly or daily fee shall not be available for occupancy prior to 9:30 a.m. on weekdays.

The terms of this Memorandum become effective upon signing by all parties.

Robert W. Healy
City Manager

Daniel S. Greenbaum
Commissioner, DEP

Julie Belaga
Regional Administrator
EPA

ADDENDUM "A"

LOCATION/ADDRESS	DESCRIPTION
1. Hurley Street (between 1st & 2nd)	flat lot
2. 1st Street Lechmere	Garage
3. McGrath/East St.	flat lot
4. 3rd Street (#310 approx)	flat lot
5. Main St./Ames St.	flat lot
6. 1 Athenaeum Street	garage
7. 1 Memorial Drive	garage
8. Technology Square (180 Broadway)	garage
9. 1000 Mass. Ave.	garage
10. 29 Charles St.	flat lot
11. One Kendall Sq.	garage

In City Council July 30, 1990.

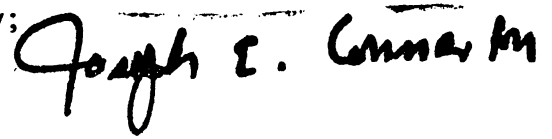
Adopted as amended by a yeas and nays vote:-

Yeas 9; Nays 0; Absent 0.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in black ink, appearing to read "Joseph E. Connarton". The signature is written in a cursive, flowing style with a large initial "J".

Joseph E. Connarton, City Clerk

AMENDED MEMORANDUM OF AGREEMENT

Agenda # 26

In City Council

July 30, 1990

MEMORANDUM OF AGREEMENT

BETWEEN

THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE

WHEREAS, the City of Cambridge (City), the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP) (collectively, the "parties") have agreed to cooperate in an effort to amend the State Implementation Plan (SIP) required by the Clean Air Act 42 U.S.C. s. 7401 et seq., regarding the measures to be taken by the City for the attainment and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region; and

WHEREAS, the City of Cambridge, DEP, and EPA are parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge , and the parties hereto enter this agreement without waiving any rights or claims they have asserted relative to said legal dispute; and

WHEREAS, the final SIP amendments will include transportation control measures, including but not limited to parking restrictions, and a parking freeze, and

WHEREAS, a parking freeze is consistent with the policies of the City of Cambridge to reduce vehicle miles travelled, and to

encourage and develop greater use of public transit, bicycles, walking, and other alternative modes of travel; and

WHEREAS, enforcement of a parking freeze will demonstrate the commitment of all parties to support the Clean Air Act by discouraging auto traffic to the City, and

WHEREAS, future revisions to the SIP may appropriately emphasize limits upon and/or reductions of all-day parking available to commuters, while at the same time retaining parking opportunity for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the parties hereby commit themselves to the terms of this agreement for the period until a SIP amendment is approved, said period to be known as the "interim period."

NOW, THEREFORE, the parties to this agreement agree to work cooperatively to implement the following interim policies and procedures during the interim period.

A. GENERAL PROVISIONS

DEFINITIONS. The definitions appearing in this Memorandum are only applicable to this Memorandum and shall only be effective in Cambridge during the interim period. As used in this Memorandum, the following terms shall have the following meanings:

CPS "Controlled Parking Space" - A parking space within

a controlled parking facility (CPF).

CPF "Controlled Parking Facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, and (iii) parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority.

CPFP "Controlled Parking Facility Permit"- permits issued by the City for Controlled Parking Facilities. Each permit will be for a specific number of CPS's.

IPCC "Interim Parking Control Committee"

1. The City agrees that during the interim period the City will not issue controlled parking facility permits except in accordance with the requirements of this Memorandum.
2. The parties agree that, during the interim period, the Director shall continue to make determinations of exclusion from the parking freeze pursuant to the provisions in sections B & C of this agreement.
3. No person shall be granted a permit to build or modify a parking facility to increase the number of parking spaces within the City of Cambridge without first obtaining a controlled parking facility permit or a determination that the facility is excluded from the definition of a controlled parking facility as that term is defined herein, as per sections B and C below. "Person" shall be defined in the same manner as said term is defined by Section 1-6 of the City Code, and shall, moreover, include for the purposes of these procedures all state, regional and political subdivisions, agencies, departments, authorities and boards.
4. No person shall operate a parking facility within the City of Cambridge unless said person shall first obtain or shall have first obtained a determination of exclusion or a CPFP under the terms of this Memorandum. If a determination of exclusion or a commercial parking facility permit was required and was obtained prior to

the execution of this agreement, that determination or permit shall not be subject to the provisions of this Memorandum, except for the enforcement provisions, and said facility shall be required to operate within the terms of that determination or commercial permit. Facilities that were not subject to the parking freeze prior to the execution of this Memorandum shall not be subject to the terms of this Memorandum unless they seek to increase the number of parking spaces in the facility.

5. Any modification of an existing parking facility or lot which increases the number of parking spaces available is subject to the requirements of this Memorandum.
6. Rights to eliminated parking spaces cannot be transferred between any persons but must revert back to the City for allocation through the permit process.
7. The City Manager of Cambridge shall within fourteen days of the execution by all parties of this Memorandum present to the Cambridge City Council a proposed ordinance which will embody the provisions contained herein, and shall support the enactment of said ordinance.
8. The City shall provide to DEP a Freeze Enforcement strategy within 30 days of the execution of this Memorandum . This strategy shall include at a minimum a specific schedule for accomplishing the following tasks including a commitment to perform at least a set number

of each type of inspection each month:

- a) Inspection of all facilities holding a commercial parking facility permit issued prior to the execution of this Memorandum to ensure compliance with the terms and conditions of the permits. The City will take enforcement action against violators to ensure compliance with such terms and conditions.
- b) Inspection of all facilities holding a determination of exclusion made prior to the execution of this Memorandum to ensure compliance with the terms of the determination. The City will take enforcement action against violators to ensure compliance with such terms.
- c) Inspection of all facilities holding a determination of exclusion or a controlled parking facility permit made or issued after the execution of this Memorandum to insure compliance with the terms of the determination or permit. The City will take enforcement action against violators to ensure compliance with such terms.
- d) Inspection of facilities which have no approval under the parking freeze (whether said facilities came into use before or after the execution of this Memorandum) and which appear to be operating without such necessary approval. The City will

take enforcement action against violators to ensure compliance with the parking freeze.

- e) The enforcement actions referred to in subsections (a), (b), (c), and (d) above may include, but need not be limited to, (i) imposing fines at a rate of \$10.00 per day per space for every day that the space was illegally operated, (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion, and/or (iii) eliminating those spaces or facilities found to be operating with no approval under the parking freeze. At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces ,or as controlled spaces as defined herein, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to determine the number of spaces within a facility

that are operating in violation of the terms of their determination of exclusion, and to impose fines or revoke determinations of exclusion.

Nothing in this Agreement shall prohibit the owner of spaces which have been improperly used from applying for a new determination of exclusion or a CPFP in accordance with the terms of this Agreement.

- f) The City agrees to carry out inspections pursuant to this section at the locations listed on Addendum A attached hereto within 30 days of the execution of this Memorandum . The City will take enforcement actions to enjoin violations found by such inspections and secure other relief to ensure compliance with the freeze.
9. The City agrees to devote its best efforts to facilitate the submission to DEP in final form of a State Implementation Plan (SIP) revision, approved by the Boston Metropolitan Planning Organization (MPO), which incorporates parking restrictions on all spaces other than residential parking and spaces within park-and-ride facilities operated by or in conjunction with the Massachusetts Bay Transit Authority. The City agrees also to examine its zoning ordinances toward furthering the effectiveness of parking restrictions contained in

the SIP revision.

The City agrees to cooperate with DEP and the MPO to submit the SIP revision to the Department within six months of the date of this agreement.

10. The City shall within sixty days of the execution of this Memorandum provide DEP an inventory of all types of parking spaces existing in the City as of the date of the execution of this Memorandum .
11. The City shall compile and maintain a Parking Freeze Report, the format of which is left to the discretion of the City. This report shall contain an up-to-date accounting of all actions taken by the City which result in a change in the number of CPS. All determinations of exclusion and enforcement actions shall also be reported. Each of these actions shall be annotated with descriptive information on the number of spaces, their location, and their purpose. For spaces granted a determination of exclusion , a description of the means by which use of the spaces by the general public will be prevented shall be noted. The City of Cambridge will submit to the Department on a quarterly basis a copy of the preceding quarter's ledger entries. This quarterly reporting requirement will remain in effect until superseded by any reporting requirements associated with the SIP revision contemplated in this agreement.
12. During the interim period the City may issue new

commercial parking facility permits or determinations of exclusion pursuant to the procedures set forth in the Memorandum of Agreement dated November 15, 1984, for and with respect to spaces for which an application was filed with the City on or before November 10, 1988, said date being the date of the initial agreement among the City, EPA, and DEP pursuant to which the City first agreed to halt the issuance of new commercial parking facility permits pending the cooperative effort of the parties to establish interim regulations leading to a new SIP.

13. During the interim period the City shall be authorized through the terms of this Memorandum to issue permits for up to 500 controlled parking spaces plus an amount of CPFP's equal to the number of parking spaces which the City has eliminated or against which the City has initiated enforcement actions to eliminate, in accordance with paragraphs A.8 and A.14, or through the reallocation of commercial parking spaces which have been permitted in accordance with the November 15, 1984 MOA and which are no longer being used and thus have returned their commercial parking space designation to the City for redistribution.
14. For purposes of this Memorandum, initiated enforcement action shall mean the issuance by the Traffic Director of an administrative order, which is not subject to further appeal, resulting in physical elimination of the space.

Unless the owner of a facility complies with an administrative order to eliminate spaces under this section, and waives any further appellate rights, the City shall not be authorized to issue new CFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City further agrees that it shall only be authorized to issue new CFPs for 50% of the number of spaces sought to be eliminated by court action upon the filing of said action. The remaining 50% of said spaces will only be available for issuance as new spaces when and if the City prevails on the merits of said court action. The City agrees to aggressively prosecute any such court action to compel compliance with said administrative order. The status of all such actions shall be reported as set forth in paragraph A.11.

15. Upon execution of this agreement the City may act upon any applications that meet the requirements of paragraph A.12 above.
16. The City agrees that if it fails for more than 30 days to

meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then no CPFP's or determinations of exclusion shall be issued pursuant to paragraph A.13 until the City has corrected said failure of compliance. In addition to the suspension of authority to issue permits and exclusions provided in the preceding sentence, the City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then the City shall be subject to a daily penalty of \$500.00 for each day of noncompliance to be imposed by the DEP after an administrative hearing. All parties agree that the foregoing suspension and monetary penalties shall only attach if the failure of the City to meet deadlines or comply with the terms of this Memorandum is a result of the City's inaction and not attributable to the actions or inactions of third parties beyond the control of the City and its officials.

17. The City agrees that it shall not be authorized to issue CPFP's pursuant to paragraph A.13 above until it has enacted an ordinance which embodies the provisions contained herein.

B. PROCEDURES AND CRITERIA FOR DETERMINATIONS OF EXCLUSION

A determination of exclusion may be obtained only according to the following procedures and criteria:

1. An application shall be submitted to the Director of Traffic and Parking on a form available at the Traffic and Parking Department offices at 57 Inman Street in Cambridge.
2. The application shall be reviewed by an Interim Parking Control Committee (Committee) comprised of three Cambridge residents with appropriate experience appointed by the City Manager of Cambridge. One member of the Committee shall be appointed from a list of five nominees submitted to the City Manager by the Cambridge Citizens for Livable Neighborhoods. No person shall be appointed to the Committee who has a financial interest in commercial parking in Cambridge. The Committee will be appointed and functional no later than 30 days after the date of execution of this Memorandum.
3. The Committee shall maintain complete and accurate records of all applications for determinations of exclusion.
4. The Committee shall process all such applications in accordance with these procedures. The Committee shall be required to process any applications already on file with the Traffic Director at the time of the execution of this Memorandum in the order of the filing of said pending applications. All amendments to pending applications

shall be deemed to relate back to the original date of filing. Any pending application relating to a project for which there is an Agreement for Traffic Mitigation (ATM) executed by the City Manager shall be processed and acted upon by the Committee, in accordance with the limits established in paragraph A.13 above, subject to the requirement that any permit or determination of exclusion shall be conditioned upon compliance by the applicant with the terms of the ATM and upon no other conditions, and without any modification of the application by the Committee.

5. In carrying out its duties the Committee shall consult with and seek the assistance of other appropriate departments and agencies in the City, state and federal governments such as the Department of Community Development, the License Commission, the Inspectional Services Department, the Department of Traffic and Parking, DEP and EPA.
6. Prior to granting any determination of exclusion, the Director shall obtain the approval of the Committee, which shall determine that the facility for which the exclusion is sought is not a controlled parking facility as defined in this memorandum. The Committee and the Director shall impose any conditions necessary to ensure that excluded facilities operate in a manner that prevents commercial use of spaces in the facility by the

general public.

C. APPLICATION AND HEARING PROCESS

1. The Interim Parking Control Committee shall hold hearings for applications for CPFP's and determinations of exclusion on the fourth Wednesday of every month, provided there is a pending application for such CPFP's or determinations.
2. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.
3. The Committee will be responsible for causing publication in at least one local weekly newspaper a notice of the proposals and hearing. The notice shall set forth a specific hearing date not less than two (2) weeks and not more than thirty days from the date of publication, as well as the time and place of such hearing; said notice shall indicate that a copy of the application(s) is available for public inspection at the Traffic Department. A notice of all applications to be heard at the hearing shall be sent at least two (2) weeks before the hearing to the DEP .
4. Every application for a CPFP or determination of exclusion shall be submitted on forms to be provided by the Interim Parking Control Committee, and shall include the following information:

- a. Name and address of owner.
 - b. Name and address of proposed facility.
 - c. Type of facility (parking lot or garage).
 - d. Type of construction (new or modification) proposed.
 - e. Number of existing spaces and who uses them.
 - f. Number of proposed spaces and who will use them.
 - g. Proposed change in number of spaces by use.
 - h. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
 - i. Detailed information on how use of the spaces will be controlled for each category of use.
 - j. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
 - k. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
 - l. A site plan and floor plans of the proposed lot or garage, showing the location of the facility, the layout space, and the entry and exit points.
5. Six copies of every application shall be submitted, with the above information, to the Interim Parking Control Committee, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts 02139. A copy thereof shall be sent by the Committee to the Commissioner, Massachusetts

Department of Environmental Protection, 1 Winter Street,
Boston, Massachusetts 02108.

6. No less than 14 days before the hearing date, the Interim Parking Control Committee shall send to each applicant which has submitted a complete and timely application an analysis of the application in regard to the criteria set out above. This analysis will highlight any further information required in order to make a full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.
7. Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CPFP or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the determination the conditions, if any, upon which approval is given. Such conditions may include reasonable traffic mitigation requirements to reduce air quality impacts of the proposed facility or spaces. A copy of said approval shall be sent to the applicant and the Commissioner, Massachusetts Department of Environmental Protection.
8. The Director shall approve or disapprove the application in accordance with the Committee's determination. When the decision is made to approve an application, the

decision shall state the name, address and authorized number of spaces of the facility and any conditions upon which the application is approved. Any approval of a CPFP for a facility that applied after November 10, 1988 shall include reference to inventory data showing that the spaces issued come either from any spaces remaining of the 500 spaces referred to in paragraph A.13 above or an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.14, which serve as the basis for issuance of the CPFP pursuant to paragraph A.13. All CPFPs shall include a provision requiring that any spaces in the facility for which there will be an hourly or daily fee shall not be available for occupancy prior to 9:30 a.m. on weekdays.

The terms of this Memorandum become effective upon signing by all parties.

Robert W. Healy
City Manager

Daniel S. Greenbaum
Commissioner, DEP

Julie Belaga
Regional Administrator
EPA

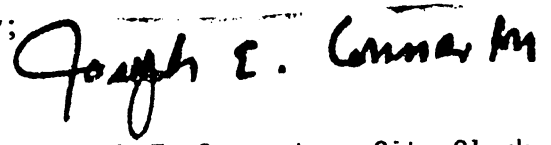
ADDENDUM "A"

LOCATION/ADDRESS	DESCRIPTION
1. Hurley Street (between 1st & 2nd)	flat lot
2. 1st Street Lechmere	Garage
3. McGrath/East St.	flat lot
4. 3rd Street (#310 approx)	flat lot
5. Main St./Ames St.	flat lot
6. 1 Athenaeum Street	garage
7. 1 Memorial Drive	garage
8. Technology Square (180 Broadway)	garage
9. 1000 Mass. Ave.	garage
10. 29 Charles St.	flat lot
11. One Kendall Sq.	garage

In City Council July 30, 1990.
Adopted as amended by a yea and nay vote:-
Yeas 9; Nays 0; Absent 0.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in black ink, reading "Joseph E. Connarton". The signature is written in a cursive style with a large, stylized "J" and "C".

Joseph E. Connarton, City Clerk

AMENDED MEMORANDUM OF AGREEMENT

Agenda # 26

In City Council

July 30, 1990

MEMORANDUM OF AGREEMENT

BETWEEN

THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE

WHEREAS, the City of Cambridge (City), the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP) (collectively, the "parties") have agreed to cooperate in an effort to amend the State Implementation Plan (SIP) required by the Clean Air Act 42 U.S.C. s. 7401 et seq., regarding the measures to be taken by the City for the attainment and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region; and

WHEREAS, the City of Cambridge, DEP, and EPA are parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge, and the parties hereto enter this agreement without waiving any rights or claims they have asserted relative to said legal dispute; and

WHEREAS, the final SIP amendments will include transportation control measures, including but not limited to parking restrictions, and a parking freeze, and

WHEREAS, a parking freeze is consistent with the policies of the City of Cambridge to reduce vehicle miles travelled, and to

encourage and develop greater use of public transit, bicycles, walking, and other alternative modes of travel; and

WHEREAS, enforcement of a parking freeze will demonstrate the commitment of all parties to support the Clean Air Act by discouraging auto traffic to the City, and

WHEREAS, future revisions to the SIP may appropriately emphasize limits upon and/or reductions of all-day parking available to commuters, while at the same time retaining parking opportunity for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the parties hereby commit themselves to the terms of this agreement for the period until a SIP amendment is approved, said period to be known as the "interim period."

NOW, THEREFORE, the parties to this agreement agree to work cooperatively to implement the following interim policies and procedures during the interim period.

A. GENERAL PROVISIONS

DEFINITIONS. The definitions appearing in this Memorandum are only applicable to this Memorandum and shall only be effective in Cambridge during the interim period. As used in this Memorandum, the following terms shall have the following meanings:

CPS "Controlled Parking Space" - A parking space within

a controlled parking facility (CPF).

CPF "Controlled Parking Facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, and (iii) parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority.

CPFP "Controlled Parking Facility Permit"- permits issued by the City for Controlled Parking Facilities. Each permit will be for a specific number of CPS's.

IPCC "Interim Parking Control Committee"

1. The City agrees that during the interim period the City will not issue controlled parking facility permits except in accordance with the requirements of this Memorandum.
2. The parties agree that, during the interim period, the Director shall continue to make determinations of exclusion from the parking freeze pursuant to the provisions in sections B & C of this agreement.
3. No person shall be granted a permit to build or modify a parking facility to increase the number of parking spaces within the City of Cambridge without first obtaining a controlled parking facility permit or a determination that the facility is excluded from the definition of a controlled parking facility as that term is defined herein, as per sections B and C below. "Person" shall be defined in the same manner as said term is defined by Section 1-6 of the City Code, and shall, moreover, include for the purposes of these procedures all state, regional and political subdivisions, agencies, departments, authorities and boards.
4. No person shall operate a parking facility within the City of Cambridge unless said person shall first obtain or shall have first obtained a determination of exclusion or a CPFP under the terms of this Memorandum. If a determination of exclusion or a commercial parking facility permit was required and was obtained prior to

the execution of this agreement, that determination or permit shall not be subject to the provisions of this Memorandum, except for the enforcement provisions, and said facility shall be required to operate within the terms of that determination or commercial permit. Facilities that were not subject to the parking freeze prior to the execution of this Memorandum shall not be subject to the terms of this Memorandum unless they seek to increase the number of parking spaces in the facility.

5. Any modification of an existing parking facility or lot which increases the number of parking spaces available is subject to the requirements of this Memorandum.
6. Rights to eliminated parking spaces cannot be transferred between any persons but must revert back to the City for allocation through the permit process.
7. The City Manager of Cambridge shall within fourteen days of the execution by all parties of this Memorandum present to the Cambridge City Council a proposed ordinance which will embody the provisions contained herein, and shall support the enactment of said ordinance.
8. The City shall provide to DEP a Freeze Enforcement strategy within 30 days of the execution of this Memorandum . This strategy shall include at a minimum a specific schedule for accomplishing the following tasks including a commitment to perform at least a set number

of each type of inspection each month:

- a) Inspection of all facilities holding a commercial parking facility permit issued prior to the execution of this Memorandum to ensure compliance with the terms and conditions of the permits. The City will take enforcement action against violators to ensure compliance with such terms and conditions.
- b) Inspection of all facilities holding a determination of exclusion made prior to the execution of this Memorandum to ensure compliance with the terms of the determination. The City will take enforcement action against violators to ensure compliance with such terms.
- c) Inspection of all facilities holding a determination of exclusion or a controlled parking facility permit made or issued after the execution of this Memorandum to insure compliance with the terms of the determination or permit. The City will take enforcement action against violators to ensure compliance with such terms.
- d) Inspection of facilities which have no approval under the parking freeze (whether said facilities came into use before or after the execution of this Memorandum) and which appear to be operating without such necessary approval. The City will

take enforcement action against violators to ensure compliance with the parking freeze.

- e) The enforcement actions referred to in subsections (a), (b), (c), and (d) above may include, but need not be limited to, (i) imposing fines at a rate of \$10.00 per day per space for every day that the space was illegally operated, (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion, and/or (iii) eliminating those spaces or facilities found to be operating with no approval under the parking freeze. At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces ,or as controlled spaces as defined herein, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to determine the number of spaces within a facility

that are operating in violation of the terms of their determination of exclusion, and to impose fines or revoke determinations of exclusion.

Nothing in this Agreement shall prohibit the owner of spaces which have been improperly used from applying for a new determination of exclusion or a CPFP in accordance with the terms of this Agreement.

f) The City agrees to carry out inspections pursuant to this section at the locations listed on Addendum A attached hereto within 30 days of the execution of this Memorandum . The City will take enforcement actions to enjoin violations found by such inspections and secure other relief to ensure compliance with the freeze.

9. The City agrees to devote its best efforts to facilitate the submission to DEP in final form of a State Implementation Plan (SIP) revision, approved by the Boston Metropolitan Planning Organization (MPO), which incorporates parking restrictions on all spaces other than residential parking and spaces within park-and-ride facilities operated by or in conjunction with the Massachusetts Bay Transit Authority. The City agrees also to examine its zoning ordinances toward furthering the effectiveness of parking restrictions contained in

the SIP revision.

The City agrees to cooperate with DEP and the MPO to submit the SIP revision to the Department within six months of the date of this agreement.

10. The City shall within sixty days of the execution of this Memorandum provide DEP an inventory of all types of parking spaces existing in the City as of the date of the execution of this Memorandum .
11. The City shall compile and maintain a Parking Freeze Report, the format of which is left to the discretion of the City. This report shall contain an up-to-date accounting of all actions taken by the City which result in a change in the number of CPS. All determinations of exclusion and enforcement actions shall also be reported. Each of these actions shall be annotated with descriptive information on the number of spaces, their location, and their purpose. For spaces granted a determination of exclusion , a description of the means by which use of the spaces by the general public will be prevented shall be noted. The City of Cambridge will submit to the Department on a quarterly basis a copy of the preceding quarter's ledger entries. This quarterly reporting requirement will remain in effect until superseded by any reporting requirements associated with the SIP revision contemplated in this agreement.
12. During the interim period the City may issue new

Unless the owner of a facility complies with an administrative order to eliminate spaces under this section, and waives any further appellate rights, the City shall not be authorized to issue new CPFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City further agrees that it shall only be authorized to issue new CPFPs for 50% of the number of spaces sought to be eliminated by court action upon the filing of said action. The remaining 50% of said spaces will only be available for issuance as new spaces when and if the City prevails on the merits of said court action. The City agrees to aggressively prosecute any such court action to compel compliance with said administrative order. The status of all such actions shall be reported as set forth in paragraph A.11.

15. Upon execution of this agreement the City may act upon any applications that meet the requirements of paragraph A.12 above.
16. The City agrees that if it fails for more than 30 days to

meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then no CPFP's or determinations of exclusion shall be issued pursuant to paragraph A.13 until the City has corrected said failure of compliance. In addition to the suspension of authority to issue permits and exclusions provided in the preceding sentence, the City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then the City shall be subject to a daily penalty of \$500.00 for each day of noncompliance to be imposed by the DEP after an administrative hearing. All parties agree that the foregoing suspension and monetary penalties shall only attach if the failure of the City to meet deadlines or comply with the terms of this Memorandum is a result of the City's inaction and not attributable to the actions or inactions of third parties beyond the control of the City and its officials.

17. The City agrees that it shall not be authorized to issue CPFP's pursuant to paragraph A.13 above until it has enacted an ordinance which embodies the provisions contained herein.

B. PROCEDURES AND CRITERIA FOR DETERMINATIONS OF EXCLUSION

A determination of exclusion may be obtained only according to the following procedures and criteria:

1. An application shall be submitted to the Director of Traffic and Parking on a form available at the Traffic and Parking Department offices at 57 Inman Street in Cambridge.
2. The application shall be reviewed by an Interim Parking Control Committee (Committee) comprised of three Cambridge residents with appropriate experience appointed by the City Manager of Cambridge. One member of the Committee shall be appointed from a list of five nominees submitted to the City Manager by the Cambridge Citizens for Livable Neighborhoods. No person shall be appointed to the Committee who has a financial interest in commercial parking in Cambridge. The Committee will be appointed and functional no later than 30 days after the date of execution of this Memorandum.
3. The Committee shall maintain complete and accurate records of all applications for determinations of exclusion.
4. The Committee shall process all such applications in accordance with these procedures. The Committee shall be required to process any applications already on file with the Traffic Director at the time of the execution of this Memorandum in the order of the filing of said pending applications. All amendments to pending applications

shall be deemed to relate back to the original date of filing. Any pending application relating to a project for which there is an Agreement for Traffic Mitigation (ATM) executed by the City Manager shall be processed and acted upon by the Committee, in accordance with the limits established in paragraph A.13 above, subject to the requirement that any permit or determination of exclusion shall be conditioned upon compliance by the applicant with the terms of the ATM and upon no other conditions, and without any modification of the application by the Committee.

5. In carrying out its duties the Committee shall consult with and seek the assistance of other appropriate departments and agencies in the City, state and federal governments such as the Department of Community Development, the License Commission, the Inspectional Services Department, the Department of Traffic and Parking, DEP and EPA.
6. Prior to granting any determination of exclusion, the Director shall obtain the approval of the Committee, which shall determine that the facility for which the exclusion is sought is not a controlled parking facility as defined in this memorandum. The Committee and the Director shall impose any conditions necessary to ensure that excluded facilities operate in a manner that prevents commercial use of spaces in the facility by the

general public.

C. APPLICATION AND HEARING PROCESS

1. The Interim Parking Control Committee shall hold hearings for applications for CPFP's and determinations of exclusion on the fourth Wednesday of every month, provided there is a pending application for such CPFP's or determinations.
2. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.
3. The Committee will be responsible for causing publication in at least one local weekly newspaper a notice of the proposals and hearing. The notice shall set forth a specific hearing date not less than two (2) weeks and not more than thirty days from the date of publication, as well as the time and place of such hearing; said notice shall indicate that a copy of the application(s) is available for public inspection at the Traffic Department. A notice of all applications to be heard at the hearing shall be sent at least two (2) weeks before the hearing to the DEP .
4. Every application for a CPFP or determination of exclusion shall be submitted on forms to be provided by the Interim Parking Control Committee, and shall include the following information:

- a. Name and address of owner.
 - b. Name and address of proposed facility.
 - c. Type of facility (parking lot or garage).
 - d. Type of construction (new or modification) proposed.
 - e. Number of existing spaces and who uses them.
 - f. Number of proposed spaces and who will use them.
 - g. Proposed change in number of spaces by use.
 - h. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
 - i. Detailed information on how use of the spaces will be controlled for each category of use.
 - j. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
 - k. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
 - l. A site plan and floor plans of the proposed lot or garage, showing the location of the facility, the layout space, and the entry and exit points.
5. Six copies of every application shall be submitted, with the above information, to the Interim Parking Control Committee, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts 02139. A copy thereof shall be sent by the Committee to the Commissioner, Massachusetts

Department of Environmental Protection, 1 Winter Street,
Boston, Massachusetts 02108.

6. No less than 14 days before the hearing date, the Interim Parking Control Committee shall send to each applicant which has submitted a complete and timely application an analysis of the application in regard to the criteria set out above. This analysis will highlight any further information required in order to make a full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.
7. Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CPFP or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the determination the conditions, if any, upon which approval is given. Such conditions may include reasonable traffic mitigation requirements to reduce air quality impacts of the proposed facility or spaces. A copy of said approval shall be sent to the applicant and the Commissioner, Massachusetts Department of Environmental Protection.
8. The Director shall approve or disapprove the application in accordance with the Committee's determination. When the decision is made to approve an application, the

decision shall state the name, address and authorized number of spaces of the facility and any conditions upon which the application is approved. Any approval of a CPFP for a facility that applied after November 10, 1988 shall include reference to inventory data showing that the spaces issued come either from any spaces remaining of the 500 spaces referred to in paragraph A.13 above or an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.14, which serve as the basis for issuance of the CPFP pursuant to paragraph A.13. All CPFPs shall include a provision requiring that any spaces in the facility for which there will be an hourly or daily fee shall not be available for occupancy prior to 9:30 a.m. on weekdays.

The terms of this Memorandum become effective upon signing by all parties.

Robert W. Healy
City Manager

Daniel S. Greenbaum
Commissioner, DEP

Julie Belaga
Regional Administrator
EPA

ADDENDUM "A"

LOCATION/ADDRESS	DESCRIPTION
1. Hurley Street (between 1st & 2nd)	flat lot
2. 1st Street Lechmere	Garage
3. McGrath/East St.	flat lot
4. 3rd Street (#310 approx)	flat lot
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In City Council July 30, 1990.

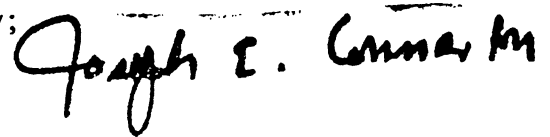
Adopted as amended by a yea and nay vote:-

Yeas 9; Nays 0; Absent 0.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in black ink, appearing to read "Joseph E. Connarton". The signature is written in a cursive, flowing style with a large initial "J".

Joseph E. Connarton, City Clerk

~~their CPS designation to the City for redistribution.~~

14. For purposes of this Memorandum, ~~successfully completed~~ initiated enforcement action shall mean the issuance by the Traffic Director of an administrative order, which is not subject to further appeal, resulting in physical elimination of the space. ~~In the event that the~~ Unless ~~the owner of a facility does not comply~~ complies with an administrative order to eliminate spaces under this section, and waives any further appellate rights, the City shall not be ~~entitled~~ authorized to issue new CPFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate ~~being operated improperly at said facility~~ until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City further agrees that it shall only be authorized to issue new CPFPs for 50% of the number of spaces sought to be eliminated by court action upon the filing of said action. The remaining 50% of said spaces will only be available for issuance as new spaces when and if the City prevails on the merits of said court action. The City agrees to aggressively prosecute any such court action to

Original test

July 30, 1990

MEMORANDUM OF AGREEMENT

BETWEEN

THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE

WHEREAS, the City of Cambridge (City), the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP) (collectively, the "parties") have agreed to cooperate in an effort to amend the State Implementation Plan (SIP) required by the Clean Air Act 42 U.S.C. s. 7401 et seq., regarding the measures to be taken by the City for the attainment and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region; and

WHEREAS, the City of Cambridge, DEP, and EPA are parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge, and the parties hereto enter this agreement without waiving any rights or claims they have asserted relative to said legal dispute; and

WHEREAS, the final SIP amendments will include transportation control measures, including but not limited to parking restrictions, and a parking freeze, and

WHEREAS, a parking freeze is consistent with the policies of the City of Cambridge to reduce vehicle miles travelled, and to

encourage and develop greater use of public transit, bicycles, walking, and other alternative modes of travel; and

WHEREAS, enforcement of a parking freeze will demonstrate the commitment of all parties to support the Clean Air Act by discouraging auto traffic to the City, and

WHEREAS, future revisions to the SIP may appropriately emphasize limits upon and/or reductions of all-day parking available to commuters, while at the same time retaining parking opportunity for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the parties hereby commit themselves to the terms of this agreement for the period until a SIP amendment is approved, said period to be known as the "interim period."

NOW, THEREFORE, the parties to this agreement agree to work cooperatively to implement the following interim policies and procedures during the interim period.

A. GENERAL PROVISIONS

DEFINITIONS. The definitions appearing in this Memorandum are only applicable to this Memorandum and shall only be effective in Cambridge during the interim period. As used in this Memorandum, the following terms shall have the following meanings:

CPS "Controlled Parking Space" - A parking space within

a controlled parking facility (CPF).

CPF "Controlled Parking Facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, and (iii) parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority.

CPFP "Controlled Parking Facility Permit"- permits issued by the City for Controlled Parking Facilities. Each permit will be for a specific number of CPS's.

IPCC "Interim Parking Control Committee"

1. The City agrees that during the interim period the City will not issue controlled parking facility permits except in accordance with the requirements of this Memorandum.
2. The parties agree that, during the interim period, the Director shall continue to make determinations of exclusion from the parking freeze pursuant to the provisions in sections B & C of this agreement.
3. No person shall be granted a permit to build or modify a parking facility to increase the number of parking spaces within the City of Cambridge without first obtaining a controlled parking facility permit or a determination that the facility is excluded from the definition of a controlled parking facility as that term is defined herein, as per sections B and C below. "Person" shall be defined in the same manner as said term is defined by Section 1-6 of the City Code, and shall, moreover, include for the purposes of these procedures all state, regional and political subdivisions, agencies, departments, authorities and boards.
4. No person shall operate a parking facility within the City of Cambridge unless said person shall first obtain or shall have first obtained a determination of exclusion or a CFPF under the terms of this Memorandum. If a determination of exclusion or a commercial parking facility permit was required and was obtained prior to

the execution of this agreement, that determination or permit shall not be subject to the provisions of this Memorandum, except for the enforcement provisions, and said facility shall be required to operate within the terms of that determination or commercial permit. Facilities that were not subject to the parking freeze prior to the execution of this Memorandum shall not be subject to the terms of this Memorandum unless they seek to increase the number of parking spaces in the facility.

5. Any modification of an existing parking facility or lot which increases the number of parking spaces available is subject to the requirements of this Memorandum.
6. Rights to eliminated parking spaces cannot be transferred between any persons but must revert back to the City for allocation through the permit process.
7. The City Manager of Cambridge shall within fourteen days of the execution by all parties of this Memorandum present to the Cambridge City Council a proposed ordinance which will embody the provisions contained herein, and shall support the enactment of said ordinance.
8. The City shall provide to DEP a Freeze Enforcement strategy within 30 days of the execution of this Memorandum . This strategy shall include at a minimum a specific schedule for accomplishing the following tasks including a commitment to perform at least a set number

of each type of inspection each month:

- a) Inspection of all facilities holding a commercial parking facility permit issued prior to the execution of this Memorandum to ensure compliance with the terms and conditions of the permits. The City will take enforcement action against violators to ensure compliance with such terms and conditions.
- b) Inspection of all facilities holding a determination of exclusion made prior to the execution of this Memorandum to ensure compliance with the terms of the determination. The City will take enforcement action against violators to ensure compliance with such terms.
- c) Inspection of all facilities holding a determination of exclusion or a controlled parking facility permit made or issued after the execution of this Memorandum to insure compliance with the terms of the determination or permit. The City will take enforcement action against violators to ensure compliance with such terms.
- d) Inspection of facilities which have no approval under the parking freeze (whether said facilities came into use before or after the execution of this Memorandum) and which appear to be operating without such necessary approval. The City will

take enforcement action against violators to ensure compliance with the parking freeze.

- e) The enforcement actions referred to in subsections (a), (b), (c), and (d) above may include, but need not be limited to, (i) imposing fines at a rate of \$10.00 per day per space for every day that the space was illegally operated, (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion, and/or (iii) eliminating those spaces or facilities found to be operating with no approval under the parking freeze. At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces ,or as controlled spaces as defined herein, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to determine the number of spaces within a facility

that are operating in violation of the terms of their determination of exclusion, and to impose fines or revoke determinations of exclusion.

Nothing in this Agreement shall prohibit the owner of spaces which have been improperly used from applying for a new determination of exclusion or a CPFP in accordance with the terms of this Agreement.

- f) The City agrees to carry out inspections pursuant to this section at the locations listed on Addendum A attached hereto within 30 days of the execution of this Memorandum . The City will take enforcement actions to enjoin violations found by such inspections and secure other relief to ensure compliance with the freeze.
9. The City agrees to devote its best efforts to facilitate the submission to DEP in final form of a State Implementation Plan (SIP) revision, approved by the Boston Metropolitan Planning Organization (MPO), which incorporates parking restrictions on all spaces other than residential parking and spaces within park-and-ride facilities operated by or in conjunction with the Massachusetts Bay Transit Authority. The City agrees also to examine its zoning ordinances toward furthering the effectiveness of parking restrictions contained in

the SIP revision.

The City agrees to cooperate with DEP and the MPO to submit the SIP revision to the Department within six months of the date of this agreement.

10. The City shall within sixty days of the execution of this Memorandum provide DEP an inventory of all types of parking spaces existing in the City as of the date of the execution of this Memorandum .
11. The City shall compile and maintain a Parking Freeze Report, the format of which is left to the discretion of the City. This report shall contain an up-to-date accounting of all actions taken by the City which result in a change in the number of CPS. All determinations of exclusion and enforcement actions shall also be reported. Each of these actions shall be annotated with descriptive information on the number of spaces, their location, and their purpose. For spaces granted a determination of exclusion , a description of the means by which use of the spaces by the general public will be prevented shall be noted. The City of Cambridge will submit to the Department on a quarterly basis a copy of the preceding quarter's ledger entries. This quarterly reporting requirement will remain in effect until superseded by any reporting requirements associated with the SIP revision contemplated in this agreement.
12. During the interim period the City may issue new

commercial parking facility permits or determinations of exclusion pursuant to the procedures set forth in the Memorandum of Agreement dated November 15, 1984, for and with respect to spaces for which an application was filed with the City on or before November 10, 1988, said date being the date of the initial agreement among the City, EPA, and DEP pursuant to which the City first agreed to halt the issuance of new commercial parking facility permits pending the cooperative effort of the parties to establish interim regulations leading to a new SIP.

13. During the interim period the City shall be authorized through the terms of this Memorandum to issue up to 500 controlled parking facility permits (CPFP's) plus an amount of CPFP's equal to the number of parking spaces which the City has eliminated or against which the City has initiated enforcement actions to eliminate, in accordance with paragraphs A.8 and A.14, or through the reallocation of commercial parking spaces which have been permitted in accordance with the November 15, 1984 MOA and which are no longer being used and thus have returned their commercial parking space designation to the City for redistribution.
14. For purposes of this Memorandum, initiated enforcement action shall mean the issuance by the Traffic Director of an administrative order, which is not subject to further appeal, resulting in physical elimination of the space.

Unless the owner of a facility complies with an administrative order to eliminate spaces under this section, and waives any further appellate rights, the City shall not be authorized to issue new CPFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City agrees to aggressively prosecute any such court action to compel compliance with said administrative order. The status of all such actions shall be reported as set forth in paragraph A.11.

15. Upon execution of this agreement the City may act upon any applications that meet the requirements of paragraph A.12 above.
16. The City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then no CPFP's or determinations of exclusion shall be issued pursuant to paragraph A.13 until the City has corrected said failure of compliance. In addition to the suspension of authority to issue

permits and exclusions provided in the preceding sentence, the City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then the City shall be subject to a daily penalty of \$500.00 for each day of noncompliance to be imposed by the DEP after an administrative hearing. All parties agree that the foregoing suspension and monetary penalties shall only attach if the failure of the City to meet deadlines or comply with the terms of this Memorandum is a result of the City's inaction and not attributable to the actions or inactions of third parties beyond the control of the City and its officials.

17. The City agrees that it shall not be authorized to issue CPFP's pursuant to paragraph A.13 above until it has enacted an ordinance which embodies the provisions contained herein.

B. PROCEDURES AND CRITERIA FOR DETERMINATIONS OF EXCLUSION

A determination of exclusion may be obtained only according to the following procedures and criteria:

1. An application shall be submitted to the Director of Traffic and Parking on a form available at the Traffic and Parking Department offices at 57 Inman Street in Cambridge.

2. The application shall be reviewed by an Interim Parking Control Committee (Committee) comprised of three Cambridge residents with appropriate experience appointed by the City Manager of Cambridge. One member of the Committee shall be appointed from a list of five nominees submitted to the City Manager by the Cambridge Citizens for Livable Neighborhoods. No person shall be appointed to the Committee who has a financial interest in commercial parking in Cambridge. The Committee will be appointed and functional no later than 30 days after the date of execution of this Memorandum.
3. The Committee shall maintain complete and accurate records of all applications for determinations of exclusion.
4. The Committee shall process all such applications in accordance with these procedures. The Committee shall be required to process any applications already on file with the Traffic Director at the time of the execution of this Memorandum in the order of the filing of said pending applications. All amendments to pending applications shall be deemed to relate back to the original date of filing. Any pending application relating to a project for which there is an Agreement for Traffic Mitigation (ATM) executed by the City Manager shall be processed and acted upon by the Committee, in accordance with the limits established in paragraph A.13 above, subject to

the requirement that any permit or determination of exclusion shall be conditioned upon compliance by the applicant with the terms of the ATM and upon no other conditions, and without any modification of the application by the Committee.

5. In carrying out its duties the Committee shall consult with and seek the assistance of other appropriate departments and agencies in the City, state and federal governments such as the Department of Community Development, the License Commission, the Inspectional Services Department, the Department of Traffic and Parking, DEP and EPA.
6. Prior to granting any determination of exclusion, the Director shall obtain the approval of the Committee, which shall determine that the facility for which the exclusion is sought is not a controlled parking facility as defined in this memorandum. The Committee and the Director shall impose any conditions necessary to ensure that excluded facilities operate in a manner that prevents commercial use of spaces in the facility by the general public.

C. APPLICATION AND HEARING PROCESS

1. The Interim Parking Control Committee shall hold hearings for applications for CPFP's and determinations of

exclusion on the fourth Wednesday of every month, provided there is a pending application for such CPFP's or determinations.

2. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.
3. The Committee will be responsible for causing publication in at least one local weekly newspaper a notice of the proposals and hearing. The notice shall set forth a specific hearing date not less than two (2) weeks and not more than thirty days from the date of publication, as well as the time and place of such hearing; said notice shall indicate that a copy of the application(s) is available for public inspection at the Traffic Department. A notice of all applications to be heard at the hearing shall be sent at least two (2) weeks before the hearing to the DEP .
4. Every application for a CPFP or determination of exclusion shall be submitted on forms to be provided by the Interim Parking Control Committee, and shall include the following information:
 - a. Name and address of owner.
 - b. Name and address of proposed facility.
 - c. Type of facility (parking lot or garage).
 - d. Type of construction (new or modification) proposed.
 - e. Number of existing spaces and who uses them.

- f. Number of proposed spaces and who will use them.
 - g. Proposed change in number of spaces by use.
 - h. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
 - i. Detailed information on how use of the spaces will be controlled for each category of use.
 - j. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
 - k. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
 - l. A site plan and floor plans of the proposed lot or garage, showing the location of the facility, the layout space, and the entry and exit points.
- 5. Six copies of every application shall be submitted, with the above information, to the Interim Parking Control Committee, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts 02139. A copy thereof shall be sent by the Committee to the Commissioner, Massachusetts Department of Environmental Protection, 1 Winter Street, Boston, Massachusetts 02108.
 - 6. No less than 14 days before the hearing date, the Interim Parking Control Committee shall send to each applicant which has submitted a complete and timely application an analysis of the application in regard to the criteria set

out above. This analysis will highlight any further information required in order to make a full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.

7. Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CPFP or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the determination the conditions, if any, upon which approval is given. Such conditions may include reasonable traffic mitigation requirements to reduce air quality impacts of the proposed facility or spaces. A copy of said approval shall be sent to the applicant and the Commissioner, Massachusetts Department of Environmental Protection.
8. The Director shall approve or disapprove the application in accordance with the Committee's determination. When the decision is made to approve an application, the decision shall state the name, address and authorized number of spaces of the facility and any conditions upon which the application is approved. Any approval of a CPFP for a facility that applied after November 10, 1988 shall include reference to inventory data showing that the spaces issued come either from any spaces remaining

of the 500 spaces referred to in paragraph A.13 above or an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.14, which serve as the basis for issuance of the CPFP pursuant to paragraph A.13. All CPFPs shall include a provision requiring that any spaces in the facility for which there will be an hourly or daily fee shall not be available for occupancy prior to 9:30 a.m. on weekdays.

The terms of this Memorandum become effective upon signing by all parties.

Robert W. Healy
City Manager

Daniel S. Greenbaum
Commissioner, DEP

Julie Belaga
Regional Administrator
EPA

ADDENDUM "A"

LOCATION/ADDRESS	DESCRIPTION
1. Hurley Street (between 1st & 2nd)	flat lot
2. 1st Street Lechmere	Garage
3. McGrath/East St.	flat lot
4. 3rd Street (#310 approx)	flat lot
5. Main St./Ames St.	flat lot
6. 1 Athenaeum Street	garage
7. 1 Memorial Drive	garage
8. Technology Square (180 Broadway)	garage
9. 1000 Mass. Ave.	garage
10. 29 Charles St.	flat lot
11. One Kendall Sq.	garage

July 27, 1990

MEMORANDUM OF AGREEMENT

BETWEEN

THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE

WHEREAS, the City of Cambridge (City), the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP) (collectively, the "parties") have agreed to cooperate in an effort to amend the State Implementation Plan (SIP) required by the Clean Air Act 42 U.S.C. s. 7401 et seq., regarding the measures to be taken by the City for the attainment and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region; and

WHEREAS, the City of Cambridge, DEP, and EPA are parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge , and the parties hereto enter this agreement without waiving any rights or claims they have asserted relative to said legal dispute; and

WHEREAS, the final SIP amendments will include transportation control measures, including but not limited to parking restrictions, and a parking freeze, and

WHEREAS, a parking freeze is consistent with the policies of the City of Cambridge to reduce vehicle miles travelled, and to

encourage and develop greater use of public transit, bicycles, walking, and other alternative modes of travel; and

WHEREAS, enforcement of a parking freeze will demonstrate the commitment of all parties to support the Clean Air Act by discouraging auto traffic to the City, and

WHEREAS, future revisions to the SIP may appropriately emphasize limits upon and/or reductions of all-day parking available to commuters, while at the same time retaining parking opportunity for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the parties hereby commit themselves to the terms of this agreement for the period until a SIP amendment is approved, said period to be known as the "interim period."

NOW, THEREFORE, the parties to this agreement agree to work cooperatively to implement the following interim policies and procedures during the interim period.

A. GENERAL PROVISIONS

DEFINITIONS. The definitions appearing in this Memorandum are only applicable to this Memorandum and shall only be effective in Cambridge during the interim period. As used in this Memorandum, the following terms shall have the following meanings:

CPS "Controlled Parking Space" - A parking space within

a controlled parking facility (CPF).

CPF "Controlled Parking Facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, and (iii) parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority.

CPFP "Controlled Parking Facility Permit"- permits issued by the City for Controlled Parking Facilities. Each permit will be for a specific number of CPS's.

IPCC "Interim Parking Control Committee"

1. The City agrees that during the interim period the City will not issue controlled parking facility permits except in accordance with the requirements of this Memorandum.
2. The parties agree that, during the interim period, the Director shall continue to make determinations of exclusion from the parking freeze pursuant to the provisions in sections B & C of this agreement.
3. No person shall be granted a permit to build or modify a parking facility to increase the number of parking spaces within the City of Cambridge without first obtaining a controlled parking facility permit or a determination that the facility is excluded from the definition of a controlled parking facility as that term is defined herein, as per sections B and C below. "Person" shall be defined in the same manner as said term is defined by Section 1-6 of the City Code, and shall, moreover, include for the purposes of these procedures all state, regional and political subdivisions, agencies, departments, authorities and boards.
4. No person shall operate a parking facility within the City of Cambridge unless said person shall first obtain or shall have first obtained a determination of exclusion or a CPFP under the terms of this Memorandum. If a determination of exclusion or a commercial parking facility permit was required and was obtained prior to

the execution of this agreement, that determination or permit shall not be subject to the provisions of this Memorandum, except for the enforcement provisions, and said facility shall be required to operate within the terms of that determination or commercial permit. Facilities that were not subject to the parking freeze prior to the execution of this Memorandum shall not be subject to the terms of this Memorandum unless they seek to increase the number of parking spaces in the facility.

5. Any modification of an existing parking facility or lot which increases the number of parking spaces available is subject to the requirements of this Memorandum.
6. Rights to eliminated parking spaces cannot be transferred between any persons but must revert back to the City for allocation through the permit process.
7. The City Manager of Cambridge shall within fourteen days of the execution by all parties of this Memorandum present to the Cambridge City Council a proposed ordinance which will embody the provisions contained herein, and shall support the enactment of said ordinance.
8. The City shall provide to DEP a Freeze Enforcement strategy within 30 days of the execution of this Memorandum . This strategy shall include at a minimum a specific schedule for accomplishing the following tasks

including a commitment to perform at least a set number of each type of inspection each month:

- a) Inspection of all facilities holding a commercial parking facility permit issued prior to the execution of this Memorandum to ensure compliance with the terms and conditions of the permits. The City will take enforcement action against violators to ensure compliance with such terms and conditions.
- b) Inspection of all facilities holding a determination of exclusion made prior to the execution of this Memorandum to ensure compliance with the terms of the determination. The City will take enforcement action against violators to ensure compliance with such terms.
- c) Inspection of all facilities holding a determination of exclusion or a controlled parking facility permit made or issued after the execution of this Memorandum to insure compliance with the terms of the determination or permit. The City will take enforcement action against violators to ensure compliance with such terms.
- d) Inspection of facilities which have no approval under the parking freeze (whether said facilities came into use before or after the execution of this Memorandum) and which appear to be operating

without such necessary approval. The City will take enforcement action against violators to ensure compliance with the parking freeze.

- e) The enforcement actions referred to in subsections (a), (b), (c), and (d) above may include, but need not be limited to, (i) imposing fines at a rate of \$10.00 per day per space for every day that the space was illegally operated, (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion, and/or (iii) eliminating those facilities found to be operating with no approval under the parking freeze. At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces ,or as controlled spaces as defined herein, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to

determine the number of spaces within a facility that are operating in violation of the terms of their determination of exclusion, and to impose fines or revoke determinations of exclusion.

Nothing in this Agreement shall prohibit the owner of spaces which have been improperly used from applying for a new determination of exclusion or a CPFP in accordance with the terms of this Agreement.

- f) The City agrees to carry out inspections pursuant to this section at the locations listed on Addendum A attached hereto within 30 days of the execution of this Memorandum . The City will take enforcement actions to enjoin violations and secure other relief to ensure compliance with the freeze.
9. The City agrees to devote its best efforts to facilitate the submission to DEP in final form of a State Implementation Plan (SIP) revision, approved by the Boston Metropolitan Planning Organization (MPO), which incorporates parking restrictions on all spaces other than residential parking and spaces within park-and-ride facilities operated by or in conjunction with the Massachusetts Bay Transit Authority. The City agrees also to examine its zoning ordinances toward furthering

the effectiveness of parking restrictions contained in the SIP revision.

The City agrees to cooperate with DEP and the MPO to submit the SIP revision to the Department within six months of the date of this agreement.

10. The City shall within sixty days of the execution of this Memorandum provide DEP an inventory of all types of parking spaces existing in the City as of the date of the execution of this Memorandum .
11. The City shall compile and maintain a Parking Freeze Report, the format of which is left to the discretion of the City. This report shall contain an up-to-date accounting of all actions taken by the City which result in a change in the number of CPS. All determinations of exclusion and enforcement actions shall also be reported. Each of these actions shall be annotated with descriptive information on the number of spaces, their location, and their purpose. For spaces granted a determination of exclusion , a description of the means by which use of the spaces by the general public will be prevented shall be noted. The City of Cambridge will submit to the Department on a quarterly basis a copy of the preceding quarter's ledger entries. This quarterly reporting requirement will remain in effect until superseded by any reporting requirements associated with the SIP revision contemplated in this agreement.

12. During the interim period the City may issue new commercial parking facility permits or determinations of exclusion pursuant to the procedures set forth in the Memorandum of Agreement dated November 15, 1984, for and with respect to spaces for which an application was filed with the City on or before November 10, 1988, said date being the date of the initial agreement among the City, EPA, and DEP pursuant to which the City first agreed to halt the issuance of new commercial parking facility permits pending the cooperative effort of the parties to establish interim regulations leading to a new SIP.
13. During the interim period the City shall be authorized through the terms of this Memorandum to issue up to 500 controlled parking facility permits (CPFP's) plus an amount of CPFP's equal to the number of parking spaces which the City has eliminated or against which the City has initiated enforcement actions to eliminate, in accordance with paragraphs A.8 and A.14, or through the reallocation of commercial parking spaces which have been permitted in accordance with the November 15, 1984 MOA and which are no longer being used and thus have returned their commercial parking space designation to the City for redistribution.
14. For purposes of this Memorandum, initiated enforcement action shall mean the issuance by the Traffic Director of

an administrative order, which is not subject to further appeal, resulting in physical elimination of the space.

Unless the owner of a facility complies with an administrative order to eliminate spaces under this section, and waives any further appellate rights, the City shall not be authorized to issue new CPFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City agrees to aggressively prosecute any such court action to compel compliance with said administrative order. The status of all such actions shall be reported as set forth in paragraph A.11.

15. Upon execution of this agreement the City may act upon any applications that meet the requirements of paragraph A.12 above.
16. The City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then no CPFP's or determinations of

exclusion shall be issued pursuant to paragraph A.13 until the City has corrected said failure of compliance. In addition to the suspension of authority to issue permits and exclusions provided in the preceding sentence, the City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then the City shall be subject to a daily penalty of \$500.00 for each day of noncompliance to be imposed by the DEP after an administrative hearing. All parties agree that the foregoing suspension and monetary penalties shall only attach if the failure of the City to meet deadlines or comply with the terms of this Memorandum is a result of the City's inaction and not attributable to the actions or inactions of third parties beyond the control of the City and its officials.

17. The City agrees that it shall not be authorized to issue CPFP's pursuant to paragraph A.13 above until it has enacted an ordinance which embodies the provisions contained herein.

B. PROCEDURES AND CRITERIA FOR DETERMINATIONS OF EXCLUSION

A determination of exclusion may be obtained only according to the following procedures and criteria:

1. An application shall be submitted to the Director of

Traffic and Parking on a form available at the Traffic and Parking Department offices at 57 Inman Street in Cambridge.

2. The application shall be reviewed by an Interim Parking Control Committee (Committee) comprised of three Cambridge residents with appropriate experience appointed by the City Manager of Cambridge. One member of the Committee shall be appointed from a list of five nominees submitted to the City Manager by the Cambridge Citizens for Livable Neighborhoods. No person shall be appointed to the Committee who has a financial interest in commercial parking in Cambridge. The Committee will be appointed and functional no later than 30 days after the date of execution of this Memorandum.
3. The Committee shall maintain complete and accurate records of all applications for determinations of exclusion.
4. The Committee shall process all such applications in accordance with these procedures. The Committee shall be required to process any applications already on file with the Traffic Director at the time of the execution of this Memorandum in the order of the filing of said pending applications. All amendments to pending applications shall be deemed to relate back to the original date of filing. Any pending application relating to a project for which there is an Agreement for Traffic Mitigation

(ATM) executed by the City Manager shall be processed and acted upon by the Committee subject to the requirement that any permit or determination of exclusion shall be conditioned upon compliance by the applicant with the terms of the ATM and upon no other conditions, and without any modification of the application by the Committee.

5. In carrying out its duties the Committee shall consult with and seek the assistance of other appropriate departments and agencies in the City, state and federal governments such as the Department of Community Development, the License Commission, the Inspectional Services Department, the Department of Traffic and Parking, DEP and EPA.
6. Prior to granting any determination of exclusion, the Director shall obtain the approval of the Committee, which shall determine that the facility for which the exclusion is sought is not a controlled parking facility as defined in this memorandum. The Committee and the Director shall impose any conditions necessary to ensure that excluded facilities operate in a manner that prevents commercial use of spaces in the facility by the general public.

C. APPLICATION AND HEARING PROCESS

1. The Interim Parking Control Committee shall hold hearings for applications for CPFP's and determinations of exclusion on the fourth Wednesday of every month, provided there is a pending application for such CPFP's or determinations.
2. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.
3. The Committee will be responsible for causing publication in at least one local weekly newspaper a notice of the proposals and hearing. The notice shall set forth a specific hearing date not less than two (2) weeks and not more than thirty days from the date of publication, as well as the time and place of such hearing; said notice shall indicate that a copy of the application(s) is available for public inspection at the Traffic Department. A notice of all applications to be heard at the hearing shall be sent at least two (2) weeks before the hearing to the DEP .
4. Every application for a CPFP or determination of exclusion shall be submitted on forms to be provided by the Interim Parking Control Committee, and shall include the following information:
 - a. Name and address of owner.
 - b. Name and address of proposed facility.
 - c. Type of facility (parking lot or garage).
 - d. Type of construction (new or modification)

proposed.

- e. Number of existing spaces and who uses them.
 - f. Number of proposed spaces and who will use them.
 - g. Proposed change in number of spaces by use.
 - h. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
 - i. Detailed information on how use of the spaces will be controlled for each category of use.
 - j. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
 - k. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
 - l. A site plan and floor plans of the proposed lot or garage, showing the location of the facility, the layout space, and the entry and exit points.
5. Six copies of every application shall be submitted, with the above information, to the Interim Parking Control Committee, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts 02139. A copy thereof shall be sent by the Committee to the Commissioner, Massachusetts Department of Environmental Protection, 1 Winter Street, Boston, Massachusetts 02108.
 6. No less than 14 days before the hearing date, the Interim Parking Control Committee shall send to each applicant

which has submitted a complete and timely application an analysis of the application in regard to the criteria set out above. This analysis will highlight any further information required in order to make a full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.

7. Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CPFP or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the determination the conditions, if any, upon which approval is given. A copy of said approval shall be sent to the applicant and the Commissioner, Massachusetts Department of Environmental Protection.
8. The Director shall approve or disapprove the application in accordance with the Committee's determination. When the decision is made to approve an application, the decision shall state the name, address and authorized number of spaces of the facility and any conditions upon which the application is approved. Any approval of a CPFP for a facility that applied after November 10, 1988 shall include reference to inventory data showing that the spaces issued come either from any spaces remaining of the 500 spaces referred to in paragraph A.13 above or

an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.14, which serve as the basis for issuance of the CPFP pursuant to paragraph A.13. All CPFPs shall include a provision requiring that any spaces in a facility for which there will be an hourly or daily fee shall not be available for occupancy prior to 9:30 a.m. on weekdays.

The terms of this Memorandum become effective upon signing by all parties.

Robert W. Healy
City Manager

Daniel S. Greenbaum
Commissioner, DEP

Julie Belaga
Regional Administrator
EPA

ADDENDUM "A"

LOCATION/ADDRESS	DESCRIPTION
1. Hurley Street (between 1st & 2nd)	flat lot
2. 1st Street Lechmere	Garage
3. McGrath/East St.	flat lot
4. 3rd Street (#310 approx)	flat lot
5. Main St./Ames St.	flat lot
6. 1 Athenaeum Street	garage
7. 1 Memorial Drive	garage
8. Technology Square (180 Broadway)	garage
9. 1000 Mass. Ave.	garage
10. 29 Charles St.	flat lot
11. One Kendall Sq.	garage

CONFIDENTIAL

DRAFT

July 27, 1990

MEMORANDUM OF AGREEMENT

BETWEEN

THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE

WHEREAS, the City of Cambridge (City), the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP) (collectively, the "parties") have agreed to cooperate in an effort to amend the State Implementation Plan (SIP) required by the Clean Air Act 42 U.S.C. s. 7401 et seq., regarding the measures to be taken by the City for the attainment and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region; and

WHEREAS, the City of Cambridge, DEP, and EPA are parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge, and the parties hereto enter this agreement without waiving any rights or claims they have asserted relative to said legal dispute; and

WHEREAS, the final SIP amendments will include transportation control measures, including but not limited to parking restrictions, and a parking freeze, and

WHEREAS, a parking freeze is consistent with the policies of the City of Cambridge to reduce vehicle miles travelled, and to

encourage and develop greater use of public transit, bicycles, walking, and other alternative modes of travel; and

WHEREAS, enforcement of a parking freeze will demonstrate the commitment of all parties to support the Clean Air Act by discouraging auto traffic to the City, and

WHEREAS, future revisions to the SIP may appropriately emphasize limits upon and/or reductions of all-day parking available to commuters, while at the same time retaining parking opportunity for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the parties hereby commit themselves to the terms of this agreement for the period until a SIP amendment is approved, said period to be known as the "interim period."

NOW, THEREFORE, the parties to this agreement agree to work cooperatively to implement the following interim policies and procedures during the interim period.

A. GENERAL PROVISIONS

DEFINITIONS. The definitions appearing in this Memorandum are only applicable to this Memorandum and shall only be effective in Cambridge during the interim period. As used in this Memorandum, the following terms shall have the following meanings:

~~CPS~~ ~~"Commercial Parking Space"~~ ~~A parking space within~~
~~a CPF on or in which motor vehicles are temporarily~~

~~parked for a fee and which has not been determined to be excluded pursuant to this Agreement.~~

~~CPFP — Commercial parking facility permits issued by the City. Each permit will be for a specific number of CPS's.~~

~~CPF — "Commercial parking facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are temporarily parked for a fee, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, (iii) commercial parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority, and (iv) parking spaces which are owned or operated by a commercial entity, whose primary business is other than the operation of parking facilities, for the exclusive use of its or its lessees' employees, patrons, customers,~~

~~clients, patients, or guests, and which do not charge an hourly or daily fee, and further which are not available for use by the general public at any time as determined by the Interim Parking Control Committee in accordance with Section B.6 below.~~

CPS "Controlled Parking Space" - A parking space within a controlled parking facility (CPF).

CPF "Controlled Parking Facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, unless such facility has been granted a determination of exclusion from the parking freeze by the Cambridge Director of Traffic and Parking (the Director) in accordance with the procedures set forth in this Memorandum. Such a determination of exclusion shall be granted only for: (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific group of residential buildings, (ii) parking on public streets, and (iii) parking facilities designated as park-and-ride facilities to be operated in conjunction with Massachusetts Bay Transit Authority.

CPFP "Controlled Parking Facility Permit"- permits issued by the City for Controlled Parking Facilities. Each permit will be for a specific number of CPS's.

IPCC "Interim Parking Control Committee"

1. The City agrees that during the interim period the City will not issue ~~new commercial~~ controlled parking facility permits except in accordance with the requirements of this Memorandum.
2. The parties agree that, during the interim period, the Director shall continue to make determinations of exclusion from the parking freeze pursuant to the provisions in sections B & C of this agreement. ~~Except that the parties further agree that the city shall make no determinations of exclusion until enforcement has been successfully completed against those facilities listed in Addendum A which are operating illegally.~~
3. No person shall be granted a permit to build or modify a parking facility to increase the number of parking spaces within the City of Cambridge without first obtaining a ~~commercial~~ controlled parking facility permit or a determination that the facility is excluded from the definition of a ~~commercial~~ controlled parking facility as that term is defined herein, as per sections B and C

below. "Person" shall be defined in the same manner as said term is defined by Section 1-6 of the City Code, and shall, moreover, include for the purposes of these procedures all state, regional and political subdivisions, agencies, departments, authorities and boards.

4. No person shall operate a parking facility within the City of Cambridge ~~for which a building permit was issued prior to the execution of this agreement,~~ unless said person shall first obtain or shall have first obtained a determination of exclusion or a CPFP under the terms of this Memorandum. If a determination of exclusion or a CPFP commercial parking facility permit was required and was obtained prior to the execution of this agreement, that determination or permit shall not be subject to the provisions of this Memorandum, except for the enforcement provisions, and said facility shall be required to operate within the terms of that determination or commercial permit. Facilities that were not subject to the parking freeze prior to the execution of this Memorandum shall not be subject to the terms of this Memorandum unless they seek to increase the number of parking spaces in the facility.
5. Any modification of an existing parking facility or lot which increases the number of parking spaces available is subject to the requirements of this Memorandum.

6. Rights to eliminated parking spaces cannot be transferred between any persons but must revert back to the City for allocation through the permit process.
7. The City Manager of Cambridge shall within fourteen days of the execution by all parties of this Memorandum present to the Cambridge City Council a proposed ordinance which will embody the provisions contained herein, and shall support the enactment of said ordinance.
8. The City shall provide to DEP a Freeze Enforcement strategy within 30 days of the execution of this Memorandum . This strategy shall include at a minimum a specific schedule for accomplishing the following tasks including a commitment to perform at least a set number of each type of inspection each month:
 - a) Inspection of all facilities holding a CPFP commercial parking facility permit issued prior to the execution of this Memorandum to ensure compliance with the terms and conditions of the permits. The City will take enforcement action against violators to ensure compliance with such terms and conditions.
 - b) Inspection of all facilities holding a determination of exclusion made prior to the execution of this Memorandum to ensure compliance with the terms of the determination. The City will

take enforcement action against violators to ensure compliance with such terms.

- c) Inspection of all facilities holding a determination of exclusion or a controlled parking facility permit made or issued after the execution of this Memorandum to insure compliance with the terms of the determination or permit. The City will take enforcement action against violators to ensure compliance with such terms.
- d) Inspection of facilities which have no approval under the parking freeze (whether said facilities came into use before or after the execution of this Memorandum) and which appear to be operating without such necessary approval. The City will take enforcement action against violators to ensure compliance with the parking freeze.
- e) The enforcement actions referred to in subsections (a), (b), (c), and (d) above may include, but need not be limited to, (i) imposing fines at a rate of \$10.00 per day per space for every day that the space was illegally operated, (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion, and/or (iii) eliminating those facilities found to be operating with no approval under the parking freeze. At any hearing held by

the IPCC to decide if excluded spaces have been operated as commercial spaces ,or as controlled spaces as defined herein, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to determine the number of spaces within a facility that are operating in violation of the terms of their determination of exclusion, and to impose fines or revoke determinations of exclusion.

Nothing in this Agreement shall prohibit the owner of spaces which have been improperly used from applying for a new determination of exclusion or a CFPF in accordance with the terms of this Agreement.

- ~~e) The enforcement actions referred to in subsections (a) and (b) above may include, but need not be limited to, (i) imposing fines at a rate of \$5.00 per day per space for every day that the space was~~

~~illegally operated, and/or (ii) revoking determinations of exclusions for those spaces operated in violation of their determinations of exclusion. At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of its determination of exclusion shall be presumed to have all of its spaces operating in violation of the terms of its determination of exclusion unless the operator demonstrates to the satisfaction of the IPCC that a distinct and identifiable portion of the spaces have been operated in accordance with the terms of their determination of exclusion. It shall be the responsibility of the IPCC to determine the number of spaces within a facility that are operating in violation of the terms of their determination of exclusion, and to impose fines or revoke determinations of exclusion.~~

~~Nothing in this Agreement shall prohibit the owner of exempt spaces which have been improperly used, and therefor revoked, from applying for a new determination of exclusion or a CPFP in accordance with the terms of this Agreement.~~

~~d) Inspection of facilities which have neither a CPFP~~

~~or a determination of exclusion and which appear to be operating as a commercial parking facility. The City will take enforcement actions to enjoin these activities and secure other relief to ensure compliance with parking freeze requirements.~~

ef) The City agrees to carry out inspections pursuant to this section at the locations listed on Addendum A attached hereto within 30 days of the execution of this Memorandum . The City will take enforcement actions to enjoin violations and secure other relief to ensure compliance with the freeze.

9. The City agrees to devote its best efforts to facilitate the submission to DEP in final form of a State Implementation Plan (SIP) revision, approved by the Boston Metropolitan Planning Organization (MPO), which incorporates parking restrictions on all spaces other than residential parking and spaces within park-and-ride facilities operated by or in conjunction with the Massachusetts Bay Transit Authority. The City agrees also to examine its zoning ordinances toward furthering the effectiveness of parking restrictions contained in the SIP revision.

The City agrees to cooperate with DEP and the MPO to submit the SIP revision to the Department within six months of the date of this agreement.

10. The City shall within sixty days of the execution of this Memorandum provide DEP an inventory of all types of parking spaces existing in the City as of the date of the execution of this Memorandum .
11. The City shall compile and maintain a Parking Freeze Report, the format of which is left to the discretion of the City. This report shall contain an up-to-date accounting of all actions taken by the City which result in a change in the number of CPS. All determinations of exclusion and enforcement actions shall also be reported. Each of these actions shall be annotated with descriptive information on the number of spaces, their location, and their purpose. For spaces granted a determination of exclusion , a description of the means by which use of the spaces by the general public will be prevented shall be noted. The City of Cambridge will submit to the Department on a quarterly basis a copy of the preceding quarter's ledger entries. This quarterly reporting requirement will remain in effect until superseded by any reporting requirements associated with the SIP revision contemplated in this agreement.
12. During the interim period the City may issue new ~~CPPPs~~ commercial parking facility permits or determinations of exclusion pursuant to the procedures set forth in the Memorandum of Agreement dated November 15, 1984, for and with respect to spaces for which an application was filed

with the City on or before November 10, 1988, said date being the date of the initial agreement among the City, EPA, and DEP pursuant to which the City first agreed to halt the issuance of new CPFPs commercial parking facility permits pending the cooperative effort of the parties to establish interim regulations leading to a new SIP.

13. During the interim period the City shall be authorized through the terms of this Memorandum to issue up to 500 controlled parking facility permits (CPFP's) plus an amount of CPFP's equal to the number of parking spaces which the City has eliminated or against which the City has initiated enforcement actions to eliminate, in accordance with paragraphs A.8 and A.14, or through the reallocation of commercial parking spaces which have been permitted in accordance with the November 15, 1984 MOA and which are no longer being used and thus have returned their commercial parking space designation to the City for redistribution.

~~13. Additional new CPFPs can only be granted for spaces being operated improperly as CPSS against which the City has successfully completed enforcement actions to ensure compliance with the freeze, in accordance with paragraph 8, or through the reallocation of CPSS which have been permitted in accordance with the November 15, 1984 MOA and which are no longer being used and thus have returned~~

~~their CPS designation to the City for redistribution.~~

14. For purposes of this Memorandum, ~~successfully completed~~ initiated enforcement action shall mean the issuance by the Traffic Director of an administrative order, which is not subject to further appeal, resulting in physical elimination of the space. ~~In the event that the~~ Unless the owner of a facility ~~does not comply~~ complies with an administrative order to eliminate spaces under this section, and waives any further appellate rights, the City shall not be entitled authorized to issue new CPFPs for spaces in amounts equal to the number of spaces the City is seeking to eliminate ~~being operated improperly at said facility~~ until the City has initiated enforcement action including filing a complaint in court with an application for a preliminary injunction, to compel compliance with the administrative order. The City agrees that it shall initiate said court action no later than 30 days following the issuance of the administrative order if the facility has not complied. The City agrees to aggressively prosecute any such court action to compel compliance with said administrative order. The status of all such actions shall be reported as set forth in paragraph A.11.

~~The provisions of this section allowing the issuance of new CPFPs based on spaces successfully enforced against shall only apply to enforcement actions with~~

~~respect to the facilities listed in Addendum A attached hereto. The City agrees that it will take enforcement actions against facilities other than those listed in Addendum A which it finds to be out of compliance with parking freeze requirements, but shall not be authorized to issue additional new CPFPs based on successful enforcement with regard to such facilities without the written agreement of all parties hereto to the amendment of Addendum A. In no event shall the total number of spaces for which CPFPs are issued during the interim period exceed 900.~~

15. Upon execution of this agreement the City may act upon any applications that meet the requirements of paragraph A.12 above.

16. The City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then no CPFP's or determinations of exclusion shall be issued pursuant to paragraph A.13 until the City has corrected said failure of compliance. In addition to the suspension of authority to issue permits and exclusions provided in the preceding sentence, the City agrees that if it fails for more than 30 days to meet any of the deadlines agreed to herein or fails to comply with the requirements of this Memorandum as they apply to the City, then the City shall be subject

to a daily penalty of \$500.00 for each day of noncompliance to be imposed by the DEP after an administrative hearing. All parties agree that the foregoing suspension and monetary penalties shall only attach if the failure of the City to meet deadlines or comply with the terms of this Memorandum is a result of the City's inaction and not attributable to the actions or inactions of third parties beyond the control of the City and its officials.

17. The City agrees that it shall not be authorized to issue CPFP's pursuant to paragraph A.13 above until it has enacted an ordinance which embodies the provisions contained herein.

B. PROCEDURES AND CRITERIA FOR DETERMINATIONS OF EXCLUSION

A determination of exclusion may be obtained only according to the following procedures and criteria:

1. An application shall be submitted to the Director of Traffic and Parking on a form available at the Traffic and Parking Department offices at 57 Inman Street in Cambridge.
2. The application shall be reviewed by an Interim Parking Control Committee (Committee) comprised of three Cambridge residents with appropriate experience appointed by the City Manager of Cambridge. One member of the Committee shall be appointed from a list of five nominees

submitted to the City Manager by the Cambridge Citizens for Livable Neighborhoods. No person shall be appointed to the Committee who has a financial interest in commercial parking in Cambridge. The Committee will be appointed and functional no later than 30 days after the date of execution of this Memorandum.

3. The Committee shall maintain complete and accurate records of all applications for determinations of exclusion.
4. The Committee shall process all such applications in accordance with these procedures. The Committee shall be required to process any applications already on file with the Traffic Director at the time of the execution of this Memorandum in the order of the filing of said pending applications. All amendments to pending applications shall be deemed to relate back to the original date of filing. Any pending application relating to a project for which there is an Agreement for Traffic Mitigation (ATM) executed by the City Manager shall be processed and acted upon by the Committee subject to the requirement that any permit or determination of exclusion shall be conditioned upon compliance by the applicant with the terms of the ATM and upon no other conditions, and without any modification of the application by the Committee.
5. In carrying out its duties the Committee shall consult

with and seek the assistance of other appropriate departments and agencies in the City, state and federal governments such as the Department of Community Development, the License Commission, the Inspectional Services Department, the Department of Traffic and Parking, DEP and EPA.

6. Prior to granting any determination of exclusion, the Director shall obtain the approval of the Committee, which shall determine that the facility for which the exclusion is sought is not a ~~commercial~~ **controlled** parking facility as defined in this memorandum. ~~and, in the case of facilities described in clause (iv) of the definition section above that the measures proposed by the applicant to prevent commercial use of spaces in the facility by the general public will be adequate. The Committee and the Director shall impose any conditions necessary to ensure that excluded facilities operate in a manner that prevents commercial use of spaces in the facility by the general public.~~

C. APPLICATION AND HEARING PROCESS

1. The Interim Parking Control Committee shall hold hearings for applications for CFP's and determinations of exclusion on the fourth Wednesday of every month, provided there is a pending application for such CFP's

or determinations.

2. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.
3. The Committee will be responsible for causing publication in at least one local weekly newspaper a notice of the proposals and hearing. The notice shall set forth a specific hearing date not less than two (2) weeks and not more than thirty days from the date of publication, as well as the time and place of such hearing; said notice shall indicate that a copy of the application(s) is available for public inspection at the Traffic Department. A notice of all applications to be heard at the hearing shall be sent at least two (2) weeks before the hearing to the DEP .
4. Every application for a CPFP or determination of exclusion shall be submitted on forms to be provided by the Interim Parking Control Committee, and shall include the following information:
 - a. Name and address of owner.
 - b. Name and address of proposed facility.
 - c. Type of facility (parking lot or garage).
 - d. Type of construction (new or modification) proposed.
 - e. Number of existing spaces and who uses them.
 - f. Number of proposed spaces and who will use them.
 - g. Proposed change in number of spaces by use.

- h. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
 - i. Detailed information on how use of the spaces will be controlled for each category of use.
 - j. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
 - k. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
 - l. A site plan and floor plans of the proposed lot or garage, showing the location of the facility, the layout space, and the entry and exit points.
5. Six copies of every application shall be submitted, with the above information, to the Interim Parking Control Committee, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts 02139. A copy thereof shall be sent by the Committee to the Commissioner, Massachusetts Department of Environmental Protection, 1 Winter Street, Boston, Massachusetts 02108.
6. No less than 14 days before the hearing date, the Interim Parking Control Committee shall send to each applicant which has submitted a complete and timely application an analysis of the application in regard to the criteria set out above. This analysis will highlight any further information required in order to make a full assessment

of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.

7. Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CPFP or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the determination the conditions, if any, upon which approval is given. A copy of said approval shall be sent to the applicant and the Commissioner, Massachusetts Department of Environmental Protection.
8. The Director shall approve or disapprove the application in accordance with the Committee's determination. When the decision is made to approve an application, the decision shall state the name, address and authorized number of spaces of the facility and any conditions upon which the application is approved. Any approval of a CPFP for a facility that applied after November 10, 1988 shall include reference to inventory data showing that the spaces issued come either from any spaces remaining of the 500 spaces referred to in paragraph A.13 above or an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.14, which serve as the basis for issuance of the CPFP pursuant to paragraph A.13. All CPFPs shall

include a provision requiring that ~~commercial spaces~~
~~allowed under the permit shall not be available for~~
~~occupancy prior to 9:00 a.m. on weekdays.~~ any spaces in
a facility for which there will be an hourly or daily fee
shall not be available for occupancy prior to 9:30 a.m.
on weekdays.

The terms of this Memorandum become effective upon signing by all parties.

Robert W. Healy
City Manager

Daniel S. Greenbaum
Commissioner, DEP

Julie Belaga
Regional Administrator
EPA

ADDENDUM "A"

LOCATION/ADDRESS	DESCRIPTION
1. Hurley Street (between 1st & 2nd)	flat lot
2. 1st Street Lechmere	Garage
3. McGrath/East St.	flat lot
4. 3rd Street (#310 approx)	flat lot
5. Main St./Ames St.	flat lot
6. 1 Athenaeum Street	garage
7. 1 Memorial Drive	garage
8. Technology Square (180 Broadway)	garage
9. 1000 Mass. Ave.	garage
10. 29 Charles St.	flat lot
11. One Kendall Sq.	garage



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 498-9011

FAX. 868-8159

EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

July 30, 1990

To the Honorable, the City Council:

Enclosed for your consideration is the revised memorandum of agreement that was introduced to the City Council on June 25, 1990, as City Council Order #60, for which a Charter Right was exercised.

These revisions reflect the status of complex negotiations over the past months. These negotiations will continue throughout the weekend and I may have additional revisions on Monday evening.

Very truly yours,

Robert W. Healy,
City Manager

RWH/dls

Agenda # 26

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Memorandum of Agreement between the
U.S. Environmental Protection Agency
and the Mass. Dept. of Environmental
Protection and the City of Cambridge
on the PARKING FREEZE.

In City Council,

July 30, 1990

*Adopted as
Amended
9-0-0.*