

Councillor Cyr

60.
June 25, 1990

Ordered

That with the distribution of the document

entitled "DRAFT" memorandum of agreement between the

U.S. Environmental Protection Agency, the Massachusetts

Department of Environmental Protection and the City of Cambridge

said document be discussed and reviewed by the

City Council

Charter Right Exercised by

C. Sullivan

CONFIDENTIAL

DRAFT

June 21, 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.

1. The City agrees that during the interim period the City will not issue new commercial 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 within the City of Cambridge without first obtaining a commercial parking facility permit or a determination that the facility is excluded from the definition of a commercial 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. If a determination of exclusion or a CPFP 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.
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 inspections each month:

- a) Inspection of all facilities holding a CPFP 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 to ensure compliance with the terms of the determination. The City will take enforcement action against violators to ensure compliance with such terms.
- c) 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.
- e) 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. 12. During the interim period the City may issue new CPFPS 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 pending the cooperative effort of the parties to establish interim regulations leading to a new SIP.
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 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 owner of a facility does not comply with an administrative order under this section, and waive any further appellate rights, the City shall not be entitled to issue new CPFPs for spaces in amounts equal to the number of spaces being operated improperly at said facility until the City has initiated court action to compel compliance with the administrative order. 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 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.

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. 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.
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 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 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 an identification of the location and number of spaces against which enforcement action has been taken pursuant to paragraph A.8, which serve as the

basis for issuance of the CPFP pursuant to paragraph A.12. 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.

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

Robert W. Healy
City Manager

Daniel S. Greenbaum
Commissioner, DEP

Paul A. Keough
Acting 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

60.

IN CITY COUNCIL

June 25, 1990

COUNCILLOR CYR

ORDERED: That with the distribution of the document entitled "DRAFT" Memorandum of Agreement between the U.S. Environmental Protection Agency, the Massachusetts Department of Environmental Protection and the City of Cambridge; said document be discussed and reviewed by the City Council.

CHARTER RIGHT EXERCISED BY COUNCILLOR SULLIVAN.

Order # 60

395
Councillor Cyr re: draft memo of agree-
ment between EPA and DEP and the City
of Cambridge.

In City Council,

June 25, 1990

CHARTER RIGHT EXERCISED BY
COUNCILLOR SULLIVAN

Placed on file