



# 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

April 13, 1990

TO: DONALD DRISDELL, ESQUIRE  
LAW DEPARTMENT

FROM: JOSEPH E. CONNARTON *JEC*  
CITY CLERK

SUBJECT: CAMBRIDGE PARKING FREEZE HEARING.

Please be advised that the City Council has scheduled a public hearing on the Cambridge Parking Freeze for Monday, April 23, 1990 at 7:30 P. M. in the Sullivan Chamber, City Hall, Cambridge, Massachusetts.

You have been requested to attend this hearing.

Thank you for your cooperation in this matter.



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JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

April 13, 1990

TO: BIRGE ALBRIGHT, ESQUIRE  
LAW DEPARTMENT

FROM: JOSEPH E. CONNARTON *JEC*  
CITY CLERK

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JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

April 13, 1990

TO: GEORGE TESO, DIRECTOR,  
TRAFFIC AND PARKING DEPARTMENT

FROM: JOSEPH E. CONNARTON *JEC*  
CITY CLERK

SUBJECT: CAMBRIDGE PARKING FREEZE HEARING.

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JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

April 13, 1990

TO: LAUREN PRESTON  
TRAFFIC AND PARKING DEPARTMENT

FROM: JOSEPH E. CONNARTON *JEC*  
CITY CLERK

SUBJECT: CAMBRIDGE PARKING FREEZE HEARING.

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JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

April 13, 1990

TO: MICHAL ROSENBERG,  
ASSISTANT CITY MANAGER FOR COMMUNITY DEVELOPMENT

FROM: JOSEPH E. CONNARTON *JEC*  
CITY CLERK

SUBJECT: CAMBRIDGE PARKING FREEZE HEARING.

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You have been requested to attend this hearing.

Thank you for your cooperation in this matter.



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(617) 498-9017

JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

April 13, 1990

TO: RICHARD EASLER  
ASSISTANT CITY MANAGER FOR COMMUNITY DEVELOPMENT

FROM: JOSEPH E. CONNARTON *JE*  
CITY CLERK

SUBJECT: CAMBRIDGE PARKING FREEZE HEARING.

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(617) 498-9017

JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

April 13, 1990

TO: SUSAN GOLDWITZ  
COMMUTER MOBILITY COORDINATOR  
COMMUNITY DEVELOPMENT DEPARTMENT

FROM: JOSEPH E. CONNARTON *JEC*  
CITY CLERK

SUBJECT: CAMBRIDGE PARKING FREEZE HEARING.

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JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

April 13, 1990

Mr. Norman Abend  
304 Concord Road  
Wayland, MA 01778

Dear Mr. Abend:

Please be advised that the City Council has scheduled a public hearing on the Cambridge Parking Freeze for Monday, April 23, 1990 at 7:30 P. M. in the Sullivan Chamber, City Hall, Cambridge, Massachusetts.

You have been requested to attend this hearing.

Thank you for your cooperation in this matter.

Very truly yours,  
*Joseph E. Connarton*

Joseph E. Connarton  
City Clerk

JEC/dl



# OFFICE OF THE MAYOR

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9090

Alice K. Wolf  
Mayor

TO: The Honorable Members of the City Council

FROM: Alice K. Wolf, Mayor *AKW*

RE: **THE CAMBRIDGE PARKING FREEZE**

DATE: March 23, 1990

I am attaching correspondence regarding the Cambridge parking freeze sent by the U.S. Environmental Protection Agency (EPA).

In summary, the correspondence says that there are a number of ways in which the City is not meeting the requirements of the State implementation program:

1. Cambridge's permit procedures do not ensure that all parking facilities obtain parking permits;
2. Managers of parking facilities are generally not aware of their responsibilities with respect to the parking freeze;
3. Cambridge has no compliance or enforcement program to adequately prevent facilities from violating their permits; and
4. The definition of commercial parking spaces in Cambridge's "Procedures, Criteria and Memorandum of Agreement" is not consistent with the definition in the federally approved State Implementation Plan.

Of these, the most important is the EPA's opinion that Cambridge's definition of "commercial" parking spaces is incorrect.

I recommend that the City Council set a hearing date prior to May 1, 1990, when the City Manager's response is requested, to review the city's policies with regard to this matter.

AKW/smb

Attachment



## 1.0 INTRODUCTION

### 1.1 BACKGROUND

On June 12, 1975, EPA published a final rulemaking (40 FR 25152) establishing a Transportation Control Plan for the Metropolitan Boston Air Quality Control Region. This plan included a "freeze" on commercial parking spaces in Cambridge.

Massachusetts incorporated the Cambridge parking freeze, as defined in the June 12, 1975 Federal Register, in both the 1979 revision to the State Implementation Plan (45 FR 61293) and the 1982 revision to the State Implementation Plan (48 FR 51481). The Code of Federal Regulations describes the Cambridge parking freeze as contained in the federally approved Massachusetts State Implementation Plan, beginning at 40 CFR 52.1128. The freeze requires that the number of commercial parking spaces within the boundaries of the City of Cambridge not exceed that number existing within the same area as of October 15, 1973 except as allowed in 40 CFR 52.1135.

This federally approved State Implementation Plan defines a commercial parking facility as "any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are temporarily parked for a fee" (40 CFR 52.1135(a)(5)). This requirement encompasses all facilities that charge a fee, whether an hourly and/or daily fee, monthly, or other longer term fee.

On June 15, 1984, the City of Cambridge Traffic Director was delegated the authority to implement the Cambridge parking freeze by the Governor of the Commonwealth of Massachusetts. Cambridge is required to submit an annual report to EPA detailing the administration of the parking freeze. On September 20, 1988, Cambridge submitted the first and only report detailing the administration of exempt and commercial spaces. This report also defines the process that Cambridge used to determine the parking freeze limit.

### 1.2 CAMBRIDGE'S PERMITTING PROCEDURES

The Traffic Director for the City of Cambridge issues permits for the Cambridge parking freeze. On November 15, 1984, the Traffic Director, Assistant City Manager for Community Development, Commissioner of the Department of Inspectional Services and Chairperson of the License Commission adopted a document entitled "Procedures, Criteria and Memorandum of Agreement". This document describes the requirements and procedures a parking facility must follow to obtain a parking permit or exemption. Cambridge's Traffic Director reviews applications for consistency with the requirements outlined in the November 15, 1984 document, maintains records, conducts enforcement, makes determinations on exemptions and issues parking permits.

An applicant within the freeze area requesting Cambridge's approval to operate a new off-street parking facility or modify an existing off-street facility must submit an application describing the facility and its operation. The facilities for which applications are recorded with the Traffic Director can be divided into three categories:

- 1) Commercial parking facilities: facilities that are open, entirely or in part, to the public, and in which vehicles are parked for a fee.
- 2) Exempt facilities: facilities which have been granted exemptions by the Traffic Director that are limited exclusively to residents and guests of residents of a residential building; parking on public streets; and facilities that are limited exclusively to lessees, employees, patrons, customers, clients, patients, and guests, and which are not available for use by the general public at any time.
- 3) Combined commercial and exempt facilities (Mixed): facilities that have both spaces that are open to the public for a fee and spaces granted exemptions by the Traffic Director that are limited exclusively to residents and guests of residents, lessees, employees, patrons, customers, clients, patients, and guests and which are not available for use by the general public at any time.

Applications for parking permits are reviewed by the Traffic Director with respect to the criteria in Section B of Cambridge's "Procedures, Criteria and Memorandum of Agreement." In general, these criteria address traffic and safety issues. Once an application is responsive to these review criteria, the Traffic Director decides to approve or disapprove the permit application.

Parking facilities must also obtain permits for the fuel storage (vehicle gas tanks) and construction of a parking structure. Until recently, these permits were issued independently of each other by separate City departments allowing for the possibility of a parking facility being constructed or modified without obtaining a parking permit or exemption. In an attempt to prevent this from occurring in the future, the Traffic Director has notified the building department that building permits for parking facilities are not to be issued until the parking and fuel storage permits have been issued.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

March 13, 1990

Mr. Robert W. Healy, City Manager  
Cambridge City Hall  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

RECEIVED  
MAR 14 1990  
Ans'd.....

Dear Mr. Healy:

Massachusetts' 1982 State Implementation Plan requires that a parking freeze program be implemented in the City of Cambridge to reduce automobile emissions. Implementation of the parking freeze by the City of Cambridge has helped improve air quality in the Cambridge area. However, we are still a long way from attaining the air quality standards. EPA expects that the parking freeze will continue to play a role in reducing vehicle emissions.

Over the past year, personnel from the City of Cambridge, Massachusetts Department of Environmental Protection and EPA have been meeting to discuss a revision to the State Implementation Plan (SIP) that would improve the effectiveness of the parking freeze. We expect this effort to continue towards developing a SIP revision in the near future.

During the latter part of April 1989, EPA and the Department of Environmental Protection (DEP) conducted an audit of the Cambridge parking freeze program. The purpose of the audit was to evaluate the City's management of the parking freeze program.

As you know, EPA's audit program consisted of meeting with the City of Cambridge to discuss the operation of the parking freeze program, reviewing files and observing the operation of parking facilities. The results of our audit indicate that review of applications for parking permits and recordkeeping by your office have been consistent with the City's freeze procedures. However, certain implementation problems in meeting the SIP requirements were identified:

- 1) Cambridge's permit procedures do not ensure that all parking facilities obtain parking permits;
- 2) Managers of parking facilities are generally not aware of their responsibilities with respect to the parking freeze;

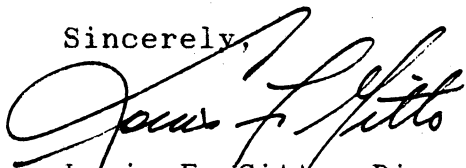
- 3) Cambridge has no compliance or enforcement program to adequately prevent facilities from violating their permits; and
- 4) The definition of commercial parking spaces in Cambridge's "Procedures, Criteria and Memorandum of Agreement" is not consistent with the definition in the federally approved State Implementation Plan.

One of the more striking findings of the audit is that once permits or exemptions have been granted, follow-up enforcement and education activities are not ongoing in Cambridge. Enforcement activities are essential to ensuring effective implementation of the parking freeze.

Enclosed is a copy of EPA's 1989 audit report of the Cambridge parking freeze program. A draft audit report was sent to you for review and comment on June 23, 1989, and on July 21, 1989, you responded to EPA. Because the majority of your comments address issues related to the SIP revision, I have decided to append your letter to EPA's audit report.

We request that the City of Cambridge develop a plan to address the audit findings by May 1, 1990. This plan should include corrective measures for the problem areas identified in EPA's audit report and a schedule for their implementation. Based on this plan, EPA recommends that Cambridge work with DEP to develop and submit a proposed SIP revision to EPA. If you have any suggested changes or questions regarding this report, please contact Thomas Wholley of my staff at (617) 565-3233.

Sincerely,



Louis F. Gitto, Director  
Air, Pesticides and Toxics Management Division

Enclosure

cc: A. Wolf, Mayor of Cambridge  
D. Drisdell, City of Cambridge  
L. Preston, City of Cambridge  
J. Grafe, DEP  
S. Studlien, EPA  
T. Wholley, EPA

## 2.0 AUDIT

### 2.1 OFFICE VISIT

The purpose of EPA's audit is to evaluate Cambridge's implementation of the parking freeze. This is the first audit of the Cambridge parking freeze since the program began. On April 11, 1989, EPA conducted an office visit to the Cambridge City Hall annex. In attendance at this meeting were Donald A. Drisdell and Lauren Preston, City of Cambridge; Jerome Grafe, Department of Environmental Quality Engineering (DEQE); Susan Studlien and Thomas Wholley, Environmental Protection Agency (EPA).

At this meeting, we discussed the purpose of the audit, the audit schedule, air pollution issues, the status of EPA's Post'87 Policy and Cambridge's procedures for implementation of the parking freeze. Following the introductory meeting, EPA conducted a review of Cambridge's permit files. Cambridge has issued approximately forty (40) permits for commercial (16), exempt (22), and mixed (5) facilities since implementing the freeze program in 1973. EPA reviewed nineteen (19) files consisting of commercial, exempt and mixed facilities (Attachment I). These files were found to be complete and well organized, containing the application and the permit.

On May 3, 1989, Jerome Grafe (DEQE) and Thomas Wholley (EPA) met with Lauren Preston, City of Cambridge to review the 1973 inventory of parking spaces. These files indicate that Cambridge has a reasonable inventory of the commercial spaces that existed prior to the implementation of the freeze as well as the spaces permitted and exempted since freeze has been implemented.

The City of Cambridge does not conduct inspections of permitted or exempt facilities and no records are maintained of compliance or enforcement actions.

### 2.2 FIELD REVIEW

On April 13 and 18, 1989, staff from the City of Cambridge, DEQE and EPA conducted on-site inspections of sixteen (16) parking facilities (Attachment II). EPA selected facilities to verify adequate permit implementation. Some facilities were chosen at random and some had been called to EPA's attention. Our findings are as follows:

1. The five (5) commercial facilities visited complied with their permit.

2. Three (3) of the five (5) exempt facilities visited were in violation of their permits. Two of these facilities were open to the public for a fee on a twenty-four (24) hour basis, advertising for commercial parking with a large "P" sign providing parking for activities in the surrounding area as well as for the site of the facility. Another facility had increased its total number of parking spaces subsequent to a permit being issued, without notifying or reapplying to the City of Cambridge.

3. Of the three (3) mixed facilities visited, one (1) was in violation of its permit. This facility had increased its total number of parking spaces subsequent to a permit being issued, without notifying or reapplying to the City of Cambridge.

4. One (1) facility was observed operating as a parking facility that did not appear in Cambridge's records as having a permit, an exemption or as a facility that existed prior to October 15, 1973.

One problem identified during the field review was that virtually all the exempt and mixed facilities charged fees for exempt spaces. Such fees were being collected whether it was hourly, daily, a monthly fee paid for a card allowing entrance and exit from the facility or a charge on a hotel bill.

These exemptions have been allowed under Section A.4 of Cambridge's "Procedures, Criteria and Memorandum of Agreement" which states that "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, excluding (I) a parking facility, the use of which is limited exclusively to residents (and guests of residents) of a residential building or group of buildings under common control, (II) parking on public streets, (III) parking spaces which are reserved for the exclusive use of employees, restaurant, retail store patrons or hotel guests throughout the day (24 hour period), and not available for use by the general public, and (IV) commercial parking facilities designated as park-and-ride facilities to be operated in conjunction with Mass Transit Service. All parking spaces available for use by the general public for a fee at anytime of the day which are not excluded are covered by these procedures and criteria." However, this provision is in conflict with the State Implementation Plan requirement which references the Code of Federal Regulations at Chapter 40, subsection 52.1135(a)(5). This requirement pertains to parking facilities that charge a fee, and does not allow exceptions to this requirement other than for residential spaces and mass transit facilities.

3.0 SUMMARY

The file records maintained by the City of Cambridge adequately document the history of Cambridge's implementation of the parking freeze. Although Cambridge has implemented the freeze in a manner consistent with Cambridge's procedures, these procedures are not consistent with the State Implementation Plan as approved by EPA. These problems were first identified when Cambridge submitted its September 20, 1988 status report.

In summary, the problems identified during the audit were:

- o Cambridge's permit procedures do not ensure that all parking facilities obtain parking permits.
- o Managers of parking facilities are generally not aware of their responsibilities with respect to the parking freeze or of the requirement under the freeze to reapply to the City for any modifications of their facility or operations.
- o Cambridge has no enforcement program.
- o The definition of commercial parking spaces in Cambridge's "Procedures, Criteria and Memorandum of Agreement" is not consistent with the definition in the federally approved State Implementation Plan, permitting more facilities which are charging fees to acquire exemptions for commercial parking spaces.

4.0 RECOMMENDATIONS

- 1) Cambridge must develop written procedures to describe the process a parking permit applicant must follow, which ensures that future parking facilities are not allowed to operate without a permit.
- 2) Cambridge must develop a compliance and enforcement plan that includes at least the following:
  - a) An education program for managers of parking facilities;
  - b) Periodic review of facilities' compliance with permit requirements;
  - c) Periodic covert inspection of facilities' compliance with the parking freeze requirements and permits;
  - d) A penalty schedule for violators; and
  - e) Provisions for revocation of permits for serious violations.
- 3) Cambridge must update its inventory to insure that all parking facilities in the freeze area are included.
- 4) Cambridge must revise the definition of commercial parking facility in its "Procedures, Criteria and Memorandum of Agreement" document to be consistent with the State Implementation Plan definition of commercial parking facility, which appears at 40 CFR 52.1135(a)(5).
- 5) Cambridge should consider revising its "Procedures and Criteria for Issuance of Parking Freeze Permits" document to expand the permit criteria so that it includes air quality improvement strategies as part of the permit application such as:
  - a) Commuter mobility plans;
  - b) Preferential treatment for carpool/vanpool spaces;
  - c) Rate incentives for off peak parking;
  - d) Reserving spaces for off peak parking; and
  - e) Other parking strategies that Cambridge wants to implement to improve traffic flow.



JUL 21 1989

JUL 26 1989

## CITY OF CAMBRIDGE

Office of the City Solicitor  
City Hall

795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

(617) 498-9020

Russell B. Higley  
City Solicitor

Donald A. Drisdell  
Deputy City Solicitor

Michael C. Costello  
Assistant City Solicitor

Birge Albright  
Legal Counsel

Gail S. Gabriel  
Legal Counsel

Joseph M. Kaigler  
Legal Counsel

Hand Delivered

July 21, 1989

Mr. Louis F. Gitto, Director  
Air Management Division  
U.S. Environmental Protection Agency  
J.F.K. Federal Building  
Boston, MA 02203

Re: Audit of Cambridge Parking Freeze Program

Dear Mr. Gitto:

Thank you for your letter of June 23, enclosing a copy of EPA's draft audit report on the Cambridge parking freeze, dated June 22, 1989. Our comments are as follows:

1.0 Introduction

1.1 Background

We disagree with your statement of the background of the Cambridge parking freeze. Our disagreement, as you know, relates, in part, to the definition of "commercial parking facility."

As you know, the EPA first proposed a Transportation Control Plan, including a parking freeze, for greater Boston in 1973. The freeze was upheld in South Terminal Corp. v. EPA, 504 F2d 646 (1st Cir., 1974). The

Mr. Louis F. Gitto, Director  
July 21, 1989  
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Court, however, stated (at pp. 671-672):

EPA represents that it intends an amendment "to clarify that residential parking spaces, free customer spaces and employee parking spaces are exempt." We approve the regulation as so interpreted but not otherwise.

Although this language did not find its way into the EPA regulation issued June 12, 1975 (40 CFR, s. 52.1135(a)(5)), it was incorporated into the definition of "Commercial parking facility" contained in the Boston "Procedures and Criteria for Issuance of Parking Freeze Permits," which were adopted in 1978 by the Boston Air Pollution Control Commission and approved by DEQE. This definition states, inter alia, that "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 not available for use by the general public at any time are not subject to the requirements of the parking freeze."

We believe that when Cambridge adopted its own procedures and criteria in 1984, it used the Boston document as a model. Therefore, the Cambridge definition of "Commercial parking facility" is essentially the same as the Boston definition, and contains language similar to that quoted above. The City sent its procedures and criteria to EPA in early 1985, but did not hear any criticism of its definition until 1988.

The discrepancy between the definition of "commercial parking facility" in 40 CFR, s. 1135(a)(5) and the definition in the Cambridge procedures and criteria became an issue in 1988, and, on July 13, 1988, Birge Albright of the Cambridge Law Department wrote to Harley Laing, Regional Counsel for

Mr. Louis F. Gitto, Director  
July 21, 1989  
Page 3

EPA, requesting his opinion as to the validity of the Cambridge definition.

This request was answered on October 25, 1988 in a letter from Mr. Laing and Willard Pope, General Counsel of DEQE, to Donald A. Drisdell, the City's Deputy City Solicitor. In that letter, Messrs. Laing and Pope state:

EPA and DEQE have concluded that the City of Cambridge's definition of "commercial parking" as contained in your letter to EPA of July 13, 1988 is acceptable, as long as the term "for a fee" is interpreted in a manner consistent with 40 C.F.R. s. 52.1135. We are aware that this definition has been employed by both Boston and Cambridge in administering their parking freeze programs for many years. In addition, the definition comports with the First Circuit's decision in South Terminal Corp. v. EPA, 504 F.2d 646 (1st Cir. 1974).

We regard this statement as an endorsement of the Cambridge definition.

Speaking more generally, we also have serious doubts regarding the continuing validity of the parking freeze.

As you know, Congress in 1977 amended the Clean Air Act to provide that implementation plan provisions written by EPA could no longer contain so-called "indirect source" review programs, except with respect to federally-funded projects. The legislative history of the 1977 Amendments makes clear that Congress included parking management regulations in the prohibition against indirect source review programs. Congress provided that parking management regulations could be included in State Implementation Plans (SIP's), but only if developed pursuant to state law and voluntarily submitted by the state for EPA approval.

Massachusetts submitted to EPA in 1978 the Transportation Elements of the State Implementation Plan (TESIP). The 1978 TESIP states "the parking freeze, as it appears in the June 12, 1975 Federal Register will continue to

Mr. Louis F. Gitto, Director  
July 21, 1989  
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be in effect in the City of Cambridge" and further states that the freeze will be administered by the "newly established Commercial Parking Control Committee." See, 1978 TESIP p. 72. No such Committee was ever established.

The elements of a SIP are enforceable only insofar as they have been adopted by state statute, state regulation, or local ordinance. Massachusetts set forth the existing legal authority to carry out the SIP elements in an Appendix to the 1978 TESIP prepared by DEQE General Counsel. The Cambridge parking freeze is characterized in the memorandum in support of legal authority as a "commitment" of the TESIP. According to the memo Cambridge has the authority to implement the parking freeze under its police power.

While other commitments in the SIP were adopted by DEQE as state regulations pursuant to M.G.L. c. 111, ss. 142A-J, neither the Boston nor the Cambridge parking freeze were formally adopted by DEQE through state regulation. A Boston ordinance created the Boston Air Pollution Control Commission, but there was no similar entity created by ordinance in Cambridge. The Boston parking freeze criteria were formally adopted pursuant to M.G.L. c. 111, s. 31C, which empowers a board of health, or other legal authority constituted for such purpose by vote of City Council, to have jurisdiction to regulate and control "atmospheric pollution." The Boston freeze criteria were approved by DEQE in 1978 pursuant to M.G.L. c. 111, s. 31C. Cambridge has not adopted its parking freeze criteria pursuant to M.G.L. c. 111, s. 31C or pursuant to any local ordinance or regulation. The Memorandum of Understanding submitted by Cambridge to DEQE and EPA is not an ordinance or regulation duly promulgated in accordance with any applicable law.

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July 21, 1989  
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It is our conclusion that the 1977 Amendments to the Clean air Act apparently voided 40 CFR, s. 52.1135. While the 1978 TESIP purports to continue a parking freeze in Cambridge by making reference to 40 CFR, s. 52.1135, neither the State nor Cambridge ever adopted the terms of 40 CFR, s. 52.1135 pursuant to any State or local ordinance or regulation. In addition, the 1978 TESIP at page 33 describes the Cambridge parking freeze as Cambridge City officials understood it to exist, but in a manner that is in apparent conflict with the provisions of 40 CFR, s. 52.1135. For these and other reasons recited above we conclude that it is doubtful whether any legally enforceable parking freeze exists in Cambridge at the present time.

We are sure that you can understand the City's reluctance to enforce regulations which may be held to be invalid, thus subjecting the City to the risk of lawsuits by affected landowners.

There is a third issue which must be addressed here. As you know, 40 CFR, s. 52.1135 provides that the City must maintain the same number of commercial parking spaces as existed on October 15, 1973, but s. 52.1135(n) states that if

effective measures have been implemented ... to prevent (on-street parking spaces used by commuters) from being used by such commuters, then (the City) may issue permits for construction of additional new commercial parking spaces equal to one-half of the number of spaces removed from regular use by such commuters and the total quantity of commercial parking spaces allowable in Cambridge under this section shall be raised accordingly.

Section 52.1135(a)(b), however, limits the number of additional spaces which may be added under subsection (n) to 10% of the total commercial parking spaces available for use on October 15, 1973.

Mr. Louis F. Gitto, Director  
July 21, 1989  
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The City maintains, and has always maintained, that, as it converted on-street commuter parking to resident sticker parking, it would be allowed to count one-half of the eliminated on-street spaces as part of its bank of spaces available for future development of off-street commercial parking. Furthermore, the City has always maintained that the 10% limitation did not apply to this "1 for 2" swap.

After the 1974 decision in the South Terminal Case, the EPA held further public hearings on the proposed "parking freeze" in Boston and Cambridge. City officials who attended those hearings represented to EPA that the parking problem in Cambridge was very different from that of Boston. Boston had a significant number of off-street commercial parking facilities, while Cambridge had relatively few off-street parking spaces. The result was heavy use by commuters of unregulated on-street parking, estimated at about fifty percent (50%) of available on-street spaces. Cambridge voluntarily offered to include the entire City in the freeze with the understanding that it could swap two eliminated on-street spaces for one commercial off-street space. The on-street commuter spaces were eliminated through the implementation of the Cambridge Resident Parking Sticker Program. See Commonwealth v. Petralia, 372 Mass. 452 (1977).

The goal of the parking freeze was to prohibit expansion of parking available to commuters at levels that existed on October 15, 1973. City officials of Cambridge understood that the heavy on-street commuter parking was to be counted as part of the commercial parking that existed in Cambridge on that date.

EPA regulation 40 CFR, s. 52.1135 as promulgated on June 12, 1975, did

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not accurately reflect the understanding of Cambridge City officials. EPA had never discussed the ten percent (10%) rule in 40 CFR, s. 52.1135(a)(6) with Cambridge officials, and they did not agree to it. Furthermore, the apparent requirement in subsection (n) that the City prove that eliminated spaces had been used by "commuters" did not accurately reflect the understanding of Cambridge officials during the hearings.

Support for the Cambridge position can be found in the 1978 TESIP, which describes the Cambridge parking freeze as follows:

Parking Freeze - Cambridge

The City of Cambridge has agreed to limit off-street non-residential parking to October 1973 levels. Any newly-constructed public off-street spaces would be matched to a corresponding reduction in other such parking spaces. Federal regulations allow a "2 for 1" program, where one off-street parking space is permitted for every two on-street spaces eliminated through posting for resident parking. This has meant that some 9,000 - 10,000 off-street spaces in parking lots, garages and commercial garages may take the place of 20,000 on-street spaces once available to commuters. The "2 for 1" program complies with the requirement to maintain the October 1973 level for total quantity of off-street parking spaces available.

1978 TESIP, p. 33.

This provision accurately reflects the understanding of Cambridge City officials as to the calculation of the October 15, 1973 inventory.

1.2 Cambridge's Permitting Procedures

In general, your description of the administration of the Cambridge parking freeze in this section of the draft audit report is accurate. There are, however, some points in this section that are inaccurate and they require clarification.

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You accurately note that the Cambridge parking freeze is administered in accordance with the provisions of the "Procedures, Criteria and Memorandum of Agreement" (hereinafter the "Procedures") adopted in 1984 by the Traffic Director, Assistant City Manager for Community Development, Commissioner of Inspectional Services, and Chairperson of the License Commission.

Your description of the duties of the Traffic Director under the "Procedures" is accurate regarding the maintenance of records and the issuance of commercial parking permits. Your suggestion that the Traffic Director makes determinations of exemptions under the "Procedures" raises some questions. The "Procedures" do not expressly grant authority to the Traffic Director to make determinations of exemption. Indirectly the Commissioner of Inspectional Services and License Commission agreed not to process or approve any application to build, modify, occupy, use, or license a proposed parking facility until the Traffic Director either issued a Commercial Parking Permit or "advised" the Commissioner of Inspectional Services and the License Commission that no such permit is necessary. By implication the Traffic Director must make a determination of exemption or issue a Commercial Parking Permit, but the "Procedures" do not clearly identify what procedure is necessary for making a determination of exemption. The "Procedures" are clearer regarding the process to be followed by the Traffic Director in issuing a Commercial Parking Permit.

We feel that some clarity is needed regarding determinations of exemption, and hope to work with EPA and DEQE officials to improve the process on an interim basis and ultimately by a final SIP revision. See the draft Memorandum of Agreement, which we recently sent to EPA and DEQE.

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You also suggest that the "Procedures" include provisions for the Traffic Director to "conduct enforcement" of the freeze. As you know, we have repeatedly noted that neither the "Procedures" nor any valid state or federal regulation regarding the parking freeze clearly provides for any enforcement authority on the part of the Traffic Director or other officials. While a building permit or a license may be denied initially, many questions arise regarding authority on the part of the City to enter upon the premises of any existing facility or to order any particular action by an owner or operator of an existing facility. As you know, this is another area which we have suggested should be addressed by the City, DEQE, and EPA on an interim basis and by a final SIP revision.

In addition to the questions regarding legal authority to enforce the parking freeze, fiscal constraints have placed limitations on enforcement. As early as 1974 the City applied to state and federal agencies seeking grants to assist in financing the administration of the freeze. No such financial assistance has ever been provided.

Your discussion of the responsibilities of an "applicant" on page 2 of the draft report is inaccurate in some respects. The "Procedures" themselves deal only with applications for Commercial Parking Permits. As noted above, a determination of exemption is triggered indirectly by the "Procedures" when the Commissioner of Inspectional Services or the License Commission seeks "advice" from the Traffic Director as to whether a facility needs a Commercial Parking Permit. In practice many landowners "apply" first to the Traffic Director for a determination of exemption, and the City encourages that process. Again, we think that the process for

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determinations of exemption should be clarified on an interim basis, and in a final SIP revision.

The three categories you list on p. 2 of facilities reviewed by the Traffic Director is incomplete in several respects. We think the full quote of the "Procedures" definition of "Commercial Parking Facility" on p. 4 of your draft is a more accurate method for identifying the categories of facilities reviewed by the Traffic Director.

You state at the end of p. 2 that:

Until recently, these permits were issued independently of each other by separate City departments allowing for the possibility of a parking facility being constructed or modified without obtaining a parking permit or exemption.

In fact, the "Procedures" themselves were created to attempt to avoid that outcome. It is possible that some facilities obtained permits or licenses without the relevant issuing authority first obtaining the advice of the Traffic Director. Reasonable efforts have been made by the City, however, to try to avoid such an occurrence. It is also possible that a landowner might have established a parking lot without seeking any permits from the Inspectional Services Department or the License Commission, rightly or wrongly. As we have said, better clarity on procedures for exemptions and clear authority on enforcement are goals that the City hopes to accomplish by working with you and DEQE on interim procedures and a final SIP revision.

## 2.0 Audit

### 2.1 Office Visit

Regarding your reference to the City's inventory of commercial spaces

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that existed prior to the implementation of the parking freeze, we think it is important to note that there were some limitations on the inventory. When Norman Abend performed the survey he relied on City records such as building permits and gasoline storage permits, among other things. We think it is probable that some facilities that existed prior to October 15, 1973 were not identified in the inventory. Furthermore, Mr. Abend conducted his survey in 1977 and was unable to identify facilities that may have existed in 1973, but were discontinued prior to 1977.

Regarding compliance and enforcement actions, we reiterate our concerns about resources and legal authority as discussed above in Section 1.2 of these comments.

## 2.2 Field Review

Regarding your reference to specific facilities either operating without a permit or operating inconsistently with a determination of exemption, we welcome further information from you on the specific sites. Again, resources and enforcement authority issues must be resolved before the City can clearly identify an appropriate response. We are concerned that there is no clear legal authority to inspect these facilities or to order specific actions on the part of the owners or operators. The City must be concerned with the potential for lawsuits against the City brought by owners or operators claiming harm to their financial interests, unless the City clearly has legal authority to take particular actions.

You state your position that the Federal Regulation at 40 CFR subsection 52.1135(a)(5) does not allow exceptions to facilities that charge a fee other than for residential spaces and mass transit facilities. First, s. 52.1135(a)(5) does not even mention "mass transit facilities" but in fact

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mentions residential spaces and parking on public streets. Second, as we have pointed out in Section 1.1 of these comments, Cambridge and Boston have long used the employees, customers, patrons, clients, patients and guests exemptions in their respective "Procedures." Your agency and DEQE have long known about these exemptions as indicated in the October 25, 1988 letter to Donald Drisdell from Harley Laing and Willard Pope.

The federal regulation at 40 CFR 52.1135 defines Commercial Parking Facility as one that is available to the general public for temporarily parking for a fee. In light of the decision in the South Terminal case that employee parking is exempt from the freeze, we believe that "temporarily" parking for a fee is purposely aimed at a facility that issues a ticket to the general public for hourly rates and requires payment upon departure.

We believe that the customer and employee exemption in our "Procedures" does not require that such spaces be totally "free," and that such a view does not conflict with 40 CFR 52.1135.

More importantly, we reiterate our concern that a landowner whose property rights were burdened by 40 CFR 52.1135 had that burden removed in 1977 when Congress voided 40 CFR 52.1135 by amending the Clean Air Act. The fact that two years later the state made reference to the voided federal regulation does not appear to be sufficient due process to reimpose that burden on a landowner without the procedure of adopting an independent state or local regulation, neither of which has been done. The City cannot expose itself to the major financial risk of liability for interfering with the property rights of affected landowners when the authority to do so is so highly questionable. We have repeatedly offered to work with you and DEQE to properly promulgate a local regulation that will assure proper authority.

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### 3.0 Summary

As stated above, we think that our procedures are consistent with the SIP, but we believe your interpretation of the SIP ignores the serious questions we have raised regarding the enforceability of the freeze.

Your comment that Cambridge's permit procedures do not ensure that all parking facilities obtain parking permits seems to overlook the fact that not all facilities need obtain a permit.

Regarding your comment that "Managers" of parking facilities are not aware of their responsibilities with respect to the freeze, many questions are raised concerning the City's authority over "Managers." Even the City's authority regarding owners of facilities is open to many questions. There is no reference in the "Procedures" in any way relating to "Managers." Once again we believe that a clear, legally enforceable interim procedure and final SIP revision are necessary to address these problems.

You make reference to a definition of commercial parking spaces in the SIP, when in fact there is no such definition in the SIP. There is only a reference in the 1979 and 1982 SIP revisions to a federal regulation that was voided in 1977.

You suggest that Cambridge is allowing exemptions for commercial parking spaces. The City does not exempt commercial spaces. We do apply the exemptions in our "Procedures" to determine whether or not a space is a commercial space by definition.

### 4.0 Recommendations

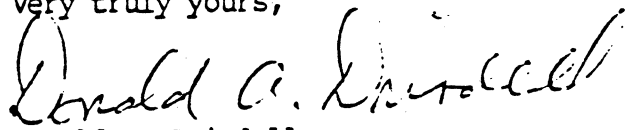
We agree in principle with all of the recommendations that you have made with the exception of paragraph 4. As we have stated in our comments


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to other sections of your draft report, we believe our current definition is consistent with the intent of the definition in the former federal regulation.

We understand that you now believe our parking freeze should be redrafted in stricter terms to address current conditions. We are willing to work with you to accomplish that goal. We think that any change in definitions, as well as any provisions for compliance and enforcement must be accomplished by a process that assures legal enforceability and fairness to all parties.

Very truly yours,

  
Donald A. Drisdell

  
Birge Albright

DAD:BA/jml

cc: Robert W. Healy  
George Teso  
Lauren Preston  
J. Grafe, DEQE  
Attorney Susan Studlien, EPA  
T. Wholley, EPA

1.  
REPORTS FROM CITY OFFICERS. 5-402

Communication from Mayor Alice Wolf  
relative to the Cambridge Parking  
Freeze.

In City Council,

March 26, 1990

Hearing to be  
scheduled on motion  
of Councillor Myers.

Hearing Scheduled  
4/23/90 @ 7:30 P.M.

Interested persons  
notified of hearing  
4/13/90 @