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SHARE THE SPIRIT OF THE SEASON
OFFICE OF THE SCHOOL COMMITTEE
458 Broadway
Cambridge, MA 02138
Sealed bids will be received at the Office of the Manager of Procurement, 150 Thimble Street, Cambridge, Massachusetts 02141, until December 13, 1990 at 11:00 A.M. at which time they will be publicly opened and read for:
Dry Cleaning Services
Specifications and forms of proposals will be available at the office of the Manager of Procurement on and after Thursday, November 22, 1990. Attention is called to requirements for equal opportunity employment on part of vendors. The department encourages participation in this bid of minority and women owned businesses.
Mary Lou McGrath
Superintendent of Schools

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COMMONWEALTH OF MASSACHUSETTS
Middlesex, ss. No. 9052393P1
PROBATE COURT
To Robert Erwin and Sara K. Erwin, both of Cambridge, in this County of Middlesex and to all other persons interested.
A petition has been presented to said Court by Robert Erwin of Cambridge in the County of Middlesex representing that he holds as tenant in common one undivided half part or share of certain land lying in Cambridge in said County of Middlesex and briefly described as follows:
The following premises in the Harvard Mesa Condominium in Cambridge, created by Master Deed dated January 8, 1980 recorded on January 8, 1980 with the Middlesex South Registry of Deeds, Book 13875, Page 359.
Unit No. 10C in building H of the Condominium, the address of which is 324 Harvard Street, said Cambridge, together with an undivided 14.54 percent interest appurtenant to the said Unit in the Common Areas and Facilities of the said Condominium and together with the rights and easements appurtenant to the said Unit as set forth in the said Master Deed.
For our title, see Middlesex South Registry of Deeds at Book 13874, Page 099.
It is hereby ordered that all the following described part of said land may be sold at private sale for not less than \$250,000.00 dollars, and praying that partition may be made of all the said aforesaid according to law, and to that end that a commissioner be appointed to make such partition and be ordered to make sale and conveyance of all or any part of said land which the Court finds cannot be advantageously divided either at private sale or public auction, and be ordered to distribute the net proceeds thereof.
If you desire to object thereto now or your attorney should file a written appearance in Cambridge, Ma. to consider the application of First City Rental Properties Corporation for a Control-Order Partition Permit or a Determination of Exclusion from the Cambridge Parking Freeze for the construction of a parking garage at 55 Franklin Street, Cambridge, Ma. 02139.
A copy of the application is available for public inspection at the Department of Traffic & Parking, 57 Inman St., Cambridge, Ma. 02139.
(C)Nov. 29

PUBLIC NOTICE
RELATIVE TO ZONING CITY OF CAMBRIDGE MASSACHUSETTS
Office of the City Clerk
Copies of this notice are in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Commission on Ordinances, composed of the entire membership of the City Council, will hold a public hearing on Wednesday, December 19, 1990 at 6:00 P.M. in the Sullivan Chamber, City Hall, Cambridge, Massachusetts at a petition by the City Council to amend the text of the Zoning Ordinance of the City of Cambridge in Article 7.000 - Signs and Illuminations.
The purpose of the amendment is to limit the size of individual signs and lighted signs and the circumstances under which damaged nonconforming signs can be replaced. The following is a list of the proposed modifications: reduce the total sign area allowed on a lot, further reduce the size of freestanding and projecting signs, cap the size of wall signs, limit the circumstances under which internally illuminated signs can be employed, prohibit such illumination for freestanding and projecting signs, modify the current mechanism for review of all nonresidential designs, require the removal of some of the more visually offensive nonconforming signs, modify the current mechanism for review of the design of proposed signs and limit the height of all signs.
Copies of this petition are on file in the office of the City Clerk, City Hall, Cambridge, Massachusetts. All persons interested in this matter may appear at the time and be heard.
For the Committee,
Councillor Francis H. Dunbar,
Chairman
(C)Nov. 29

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
PROBATE OF WILL WITH SURETIES
Middlesex Division, Docket No. 90SP357E
Estate of Christian Cross
Last of Cambridge
Died Oct. 5, 1990
In the County of Middlesex
NOTICE
A petition has been presented in the above-captioned matter praying that a certain instrument purporting to be the last will of said Sara L. Crossage of Cambridge in the County of Middlesex be appointed executrix without giving surety on her bond.
If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said Court at Cambridge on or before 10:00 in the forenoon on December 13, 1990.
In addition you must file a written affidavit of objections to the petition, stating the specific facts and grounds upon which the objection is based, within (30) days after the return day (or such other time as the Court, on motion with notice to the petitioner, may allow) in accordance with Probate Rule 16.
Witness, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, the eighth day of November in the year of our Lord one thousand nine hundred and ninety.
Thomas J. Larkin
Registrar of Probate
(C)Nov. 29
The First Supplemental Environmental Impact Report (SEIR) for the Central Entry/Tunnel Project is available for Public Review at the following local libraries:
Boston Public Libraries
Main Library, 665 Bay Street, Boston
Charlestown
East Boston, 276 Meridian Street, East Boston
East Heights Branch, 18 Barnes Avenue, East Boston

MORTGAGEE'S SALE OF REAL ESTATE
By virtue and in execution of the Power of Sale contained in a certain mortgage by Rosevelt White and Lois C. Hartley to The Boston Five Cents Savings Bank FSB dated June 7, 1984, recorded with Deeds at Book 19515, Page 243, of which mortgage the undersigned is the present holder for breach of the conditions of said mortgage and for the purpose of enforcing the same was sold at Public Auction at 10:00 o'clock a.m. on December 11, 1990 upon the mortgaged premises hereafter described all and singular the premises described in said mortgage.
To-Wit:
That certain parcel of land with the buildings there situated in Cambridge and known as numbered 62 Mt. Pleasant Street and being shown as Lot 4 on a plan entitled, "Subdivision of Land in Cambridge," dated May 26, 1961, by Edward

Smith, Register of Deeds, recorded with Middlesex South District Registry of Deeds, Record Book 7302, Page 208, to which plan reference is hereby made for a more particular description and containing 4,565 square feet of land according to said plan.
Together with and subject to right of way as set forth in Middlesex District Registry of Deeds, Book 6817, Page 220 and as shown on said plan.
A West End Branch, 151 Cambridge Street, Boston
Boston Redevelopment Authority Library, Boston City Hall, 3rd Floor, Boston
State House Library, Boston
Cambridge Public Library, 449 Broadway, Cambridge
Massachusetts Institute of Technology, Rm. 449, Cambridge
Malden Public Library, 38 Salem Street, Malden
Revere Public Library, 179 Beach Street, Revere
Winthrop Public Library, 2 Metalf Square, Winthrop
To receive a summary, call: Frances Asano at (617) 657-3413.
(C)Nov. 29
Sales of Sale: Said premises will be sold subject to any and all unpaid taxes and assessments, taxes, tax liens and other municipal liens and other liens, if any there are, and Ten Thousand (\$10,000.00) Dollars in cash, treasurer's check or certified check will be required to be paid by the purchaser at the time and place of sale as a non-refundable deposit and the balance will be due in thirty (30) days. The Buyer shall pay all costs of recording the deed including, without limitation, all state transfer stamp charges.
Other terms to be announced at the time and place of sale.
Dated: November 7, 1990
The Boston Five Cents Savings Bank FSB
(Present holder of said mortgage)
By: Wayne J. Ferguson,
Vice President and Assistant Treasurer
Harrison & Maguire, P.C.,
21 State Street,
Boston, MA 02108
617-422-3810
(C)Nov. 15, 22, 29

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1990 OCT 26 PM 3:46

CAMBRIDGE MA.

DRAFT

The Committee on Ordinances conducted a public hearing on Thursday, October 4, 1990 beginning at 7:50 p.m. in the Sullivan Chamber, City Hall. The purpose of the hearing was ^{to} review and receive testimony from city officials and the general public relative to a proposed amendment to the Municipal code relative to the "Parking Freeze". Members present were: Councillor Francis Duehay, Chairman, Councillor William Walsh, Vice Mayor Kenneth Reeves, Mayor Alice Wolf, Councillor Sheila Russell, Councillor Jonathan Myers, Councillor Ed Cyr, Councillor Timothy Toomey, Councillor Walter Sullivan and City Clerk Joseph Connarton.

Councillor Duehay, Chair of the Committee opened the hearing by introducing everyone and outline^d the rules and procedures of the committee. He indicated sign up sheets had been placed on the table outside the railing for those who wish to speak either in favor or opposition and that those wishing to speak in favor would be called first, then to be followed by those in opposition. Councillor Duehay further outlined to the Committee he ^d has been contacted relative to the possibility of having the hearing video taped and that he had contacted the City Manager's office.

City Manager Robert Healy stated he had reviewed C.39 M.G.L.A. with Deputy Solicitor Donald Drisdell and stated the law allowed for such taping. He further stated that the cost was not being paid by the city, it was being paid privately.

Councillor Russell questioned who was paying for the video taping.

THE City Manager responded by stating he believed a private concern in conjunction with the Cambridge Community Television and Continental Cablevision had made an arrangement to video tape.

Councillor Walsh questioned whether or not any litigation was pending on this ²⁶⁷proposal ordinance for which the video tape could be used. City Manager Healy responded by stating ^{Healy was} no pending litigation on the ordinance, but there was on the Memorandum of Agreement. Councillor Walsh further questioned what, if any liability the City Council had relative to the Memorandum of Understanding.

Mr. Healy responded by stating the City Council by law is ^{IN DEMINIFIED} ~~not~~ from personal liability for actions performed in their official capacity as policy makers.

Councillor Myers stated he believed the City Council had the right to know just who wanted the hearing video taped.

The City Council then heard from David Vickery, Acting Chair of the Cambridge Chamber of Commerce Committee on Government Affairs who stated the Chamber of Commerce was responsible for taping and no public funds were being used.

Councillor Duehay declared the public hearing would proceed and requested the City Manager outline the proposed amendment to the Municipal code.

City Manager Healy outlined a brief historical history of the ^{EVOLUTION} ~~evaluation~~ of this document dating back to 1988 and referred to the "draft" amendment dated October 3, 1990. He stated that only minor language changes have been made within the current document. Mr. Healy further stated that the "Memorandum of Agreement" which has been executed now restricts the number of parking spaces during the interim period until the "State Implementation Plan" (SIP). The law firm of Foley, Hoag and Eliot ^{HAS} ~~have~~ been retained by the City, he said, to assist in the development of this ordinance and the Memorandum of Agreement. He further stated that everyone needs to understand that the so-called parking freeze is not the only element of the (SIP). Furthermore he stated, he believed the city can arrive at an S.I.P. which will not stop the economic ^o ~~growth~~ of Cambridge and which will achieve better air quality.

Speaking in support of the proposed amendment to the municipal code were:

Dan Geer
40 Bellis Circle
Cambridge, MA 02139

Walter Grant
302 Brookline Street
Cambridge, MA 02139

Jennie Bush
302 Brookline Street
Cambridge, MA 02139

Fred Small
80 Aberdeen Avenue
Cambridge, MA 02138

Robert Edbrooke
20 Prescott Street
Cambridge, MA 02138

Peter Valentine
55 Blanche Street
Cambridge, MA 02139

Steve Kiezer
191 Hamilton Street
Cambridge, MA 02139

All of whom voiced strong support for the proposed amendment and some of whom expressed their disappointment^{ment} in the opposition of the members of the Cambridge Chamber of Commerce.

Councillor Cyr questioned Fred Small as to whether or not EQO. Environmental Citizens Organization had taken a position regarding the proposed amendment. Mr. Small responded in the negative.

Mr. Kiezer offered an amendment to the proposal in § 10.16.060 entitled: Procedure for obtaining CFPF or Determination of Exclusion; said amendment would add certain language relative to applications for "controlled parking facility permits" also being reviewed by the state's Executive Office of Environmental Affairs.

At 8:45 p.m. Councillor Duehay, after asking if anyone else wished to speak in favor of the proposal and hearing, no one, then declared this section of the hearing closed and asked if anyone now wished to speak in opposition.

The Committee then heard from:

Mr. David Vickery
88 Grozier Road
Cambridge, MA 02138

Mr. Vickery, in his capacity as Acting Chair of the Cambridge Chamber of Commerce, Government and Community Affairs Committee. Mr. Vickery stated he was representing a broad based coalition of businesses, institutions and neighborhoods, all of whom were opposed to the proposed amendment to the Municipal Code. This group, he stated, represents nine out of ^{the} ten largest employers in Cambridge, the tenth being the City itself. He stated his group represents over 30,000 people who live or work in Cambridge. Furthermore he stated the business community deeply resented the fact that they were denied the right to participate in the negotiation process leading up to the recently signed Memorandum of Agreement between the City of Cambridge and the Department of Environmental Protection.

Vice Mayor Reeves questioned if there was any reason why small businesses within Cambridge were not included in the group being represented by the Chamber.

Mr. Vickery responded by stating there was no reason other than the fact his group which had only been together themselves for the past 6 weeks had not yet done any outreach with the small business people.

Councillor Myers questioned whether or not Mr. Vickery saw any problem with how people get around in the city.

Mr. Vickery responded by stating he would like to hold off answering any questions until all speakers had an opportunity to voice their opposition.

At this time discussion followed as to whether or not councillors would be allowed to question speakers as they made individual presentations.

Councillor Duehay, as Chair of the Committee stated he had outlined the committee process to Mr. Vickery indicating that each councillor had the right to ask questions of any one making a presentation, but that if speakers did not wish to respond that they could not be forced to do so.

Also speaking in opposition were:

Mr. Robert Bryant, Business Agent
Local 40 Carpenter's Union

Mr. Bryant stated he had 1500 members from Cambridge many of whom were women and minorities. Furthermore he stated that currently 1000 jobs for his members were on hold because financing for new development is in serious jeopardy because of this proposed ordinance.

Councillor Cyr stated that failure by the City Council to pass this ordinance would prohibit any construction jobs from being created because the City is currently in excess of 8500 unlawful parking spaces. This ordinance he continued, establishes a permitting process.

Councillor Toomey stated he disagreed with Councillor Cyr's position.

Mayor Wolf stated she hoped that the City Council could develop an ordinance which will allow for a better Cambridge for all its residents. Furthermore, she stated that if the Council failed to adopt this ordinance, the city would be out of compliance with the Memorandum of Agreement.

Councillor Toomey questioned the current status of the temporary Lechmere garage. City Manager Healy responded by stating that the garage had a temporary permit which will expire on October 1st, 1990 and ~~if the City is granted the authority as outlined within the proposed amendment, it will not contest its opening.~~ under the Memorandum of Agreement

the closing of this temporary garage will be credited to the City's "bank" of spaces available for development during the interim period until a SIP amendment is completed. The owners of the temporary garage are not contesting its closing.

Councillor Myers questioned Mr. Bryant of the Carpenter's Union whether or not he believed people had a problem getting around Cambridge. Mr. Bryant stated he did not see that as being relevant.

Councillor Cyr stated he believed the three potentially biggest construction jobs in Cambridge were the development of Northpoint, which he said is exempted from the freeze, ~~the continuing development of Forest Cities, which could be permitted and the further development of the Alewife area, for which spaces will be banished.~~ ^{in an b.e.d.} Furthermore, he stated that he could only support the proposed amendment if in his heart he believed it will take everyone out of the ^u courts while developing a process which regulates parking spaces and automobiles for the future.

The Committee then heard from Joann ^{Shotwell} Shortwell, Esq. representing the Chamber of Commerce and the coalition, who stated that there currently is no legal requirement for a parking freeze and that no such freeze currently exists in Cambridge. Attorney ^{Shotwell} Shortwell read a prepared text (copy attached). Furthermore she stated that what the Council should be doing is developing an amendment to the Zoning Ordinance and not to the Municipal Code. Mayor Wolf in response to Attorney ^{Shotwell} Shortwell's presentation stated that the Environmental Protection Agency exempted businesses, residential and employee parking, what is left? Attorney Shortwell responded by stating commercial development.

David Vickery, in the absence of a representative from Lotus Development Corporation read a letter from its director of real estate and facilities (copy attached.)



City of Cambridge

The Committee then heard from David Vickery in his capacity as a principal in the firm of Reynolds, Vickery, Messina and Griefen Company, who provided a summation on behalf of the coalition and submitted a letter **IN CITY COUNCIL** outlining his position (copy attached). He stated that his group was appalled at the closed door meetings which took place between a small interest group and a very few city officials. Furthermore he stated he believed this he

City Manager Healy responded by stating that the garage had a temporary permit which will expire on October 1, 1990 and under the Memorandum of Agreement the closing of this temporary garage will be credited to the City's "bank of spaces available for development during the interim period until a SIP amendment is completed. The owners of the temporary garage are not contesting its closing.

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The Committee then heard from Joann Shotwell, Esq. representing the Chamber of Commerce and the coalition, who stated that there currently is no legal requirement for a parking freeze and that no such freeze currently exists in Cambridge. Attorney Shotwell read a prepared text (copy attached.)

The Committee then heard from Kathleen M. Fennell, Director of Personnel for Bioran, who stated her company operates on a 24 hour basis and employs approximately 450 people, some of whom are working mothers, who work the late shift and do not want to use public transportation but who prefer to take their cars to work.

Also speaking in opposition and submitting a prepared text (copies of which are attached) were:

Mr. Richard Fott, President
Young Men's Christian Association
820 Massachusetts Avenue
Cambridge, MA 02139

Mr. Paul Casey
ComEnergy Company
One Main Street
Cambridge, MA 02139

Mr. Eric Benson, Senior Manager
Corporate Real Estate
Polaroid Corporation
Cambridge, MA 02139

Responding to Mr. Casey, Councillor Cyr questioned what would land values of ComEnergy be if the city had to wait to ~~utilize~~ ^{eliminate the illegal} ~~legal~~ the 8500 excess parking spaces currently identified by the EPA. Councillor Duehay stated he hoped all the speakers understood that the City had been working on this issue for a long time, and that much thought had been put into the proposed ordinance. *check w/Don*

Councillor Russell questioned Mr. Benson as to whether or not Polaroid had any involvement in the process leading up to the Memorandum of Agreement.

Mr. Benson responded in the negative.

Councillor Russell stated she did not understand just who were parties to the negotiations ^{if} of the business community was not involved and she continued, she knew ^{as the member of the City Council,} ~~that~~ she was not involved.

Councillor Myers stated that although the business interest^s within Cambridge ^{are} ~~is~~ important but so aren't the citizens of Cambridge and he believed everyone should work constructively towards resolving the parking and traffic problem.

Also speaking in opposition were:

Mr. Kevin Casey
Director of State Relations
Harvard University

Ms. Sarah J. ^(EUSOEN?) ~~Euschen~~
Office of the President
Massachusetts Institute of Technology

Councillor Duehay questioned Ms. ^{EUSOEN} ~~Euschen~~ as to whether or not her testimony had been approved by the President of M.I.T. Ms. ^{EUSOEN} ~~Euschen~~ responded by stating her testimony had been approved.

The Committee then heard from David Vickery in his capacity as a principal in the firm of Reynolds, Vickery, Messina and Griefen Company, who provided a summation on behalf of the coalition and submitted a letter outlining his position (copy attached). He ^Tstated that his group was appalled at the closed door meetings which took place between a small interest group and a very few city officials. Futhermore he stated he believed this hearing to be a "pro-forma" sham~~e~~ given the fact they had been told very little change will occur from the previously stated position of the City.

This will not pass MUSTER he said, with the Clean Air Act.

Vice Mayor Reeves stated he took great exception with the reference of closed door, 11th hour deals since he believed the business community could have participated throughout the process but chose to remain silent.

Councillor Myers stated this was not a sham and informed Mr. Vickery he felt the comment was totally inappropriate.

Chub w/Don
OK
Mayor Wolf then read in part from a letter dated March 13, 1990 to the City Manager from the Environmental Protection Agency which clearly identified what needed to be done to bring Cambridge into compliance.

Attorney Shoftwell stated that it would appear from the testimony and questions being raised at this hearing, which is required under the statute, that the outcome is not pre-determined.

Relative to earlier statements made by Attorney Shoftwell, Councillor Cyr questioned whether the Environmental Protection Agency agreed with her stated position regarding the freeze. Attorney Shoftwell responded by stating it is the EPA's opinion that there never was a freeze in effect since 1977 when the United States Congress amended the Clean Air Act it basically put the EPA out of the local parking regulation business. Furthermore she said, the 1982 State Implementation Plan (SIP) declined to impose a parking freeze, but clearly some sort of local pressure has been brought to bear on Cambridge to establish such a freeze.

Vice Mayor Reeves requested that the Committee be provided with the documents from which legal counsel bas^es her argument.

Attorney Shortwell stated that the document was within her package submitted this evening.

The Committee then heard from Robert Lewis, Vice President of the Cambridge Chamber of Commerce who reiterated the position of the Chamber and stated that some small businesses were represented within the Chamber and many of them support its position on this issue.

The Committee then heard from Dan Geer, who provided a summation for the proponents. Mr. Geer stated he believed he was speaking for every neighborhood ^{when} ~~within~~ he says that the passage of this ordinance is vital to clean air in Cambridge. It is clear he said that the E.P.A. and D.E.P. require this freeze.

Councillor Duheay questioned if any one else wished to come forward in opposition, ^{hearing} ~~having~~ none he declared this section of the hearing closed.

Councillor Russell pressed her inquiry to the City Manager as to just who the people were who negotiated the Memorandum of Agreement and this ordinance. The City Manager once again provided the committee with a historical overview of the facts leading up to the present discussion on the proposed ordinance including the recent E.P.A. audit and two lawsuits. These factors, he continued required the city to negotiate not only with the plaintiffs but with E.P.A.. The Law Department, he said has held multiple discussions with many people.

Councillor Russell questioned the City Manager as to whether or not any City Councillors were sitting in on negotiations.

The City Manager responded in the negative. Furthermore he stated that to his knowledge councillors only sat in on update meetings with the Department of Environmental Protection. (D.E.P.)

Responding to Councillor Russell's inquiry Councillor Cyr stated he was no longer a plaintiff to the suit and was not involved in any discussions at any level prior to removing himself from the suit.

Deputy City Solicitor Donald Drisdell informed the Committee that Councillor Cyr had requested and was provided with a legal opinion on this very point and he followed the advise^s provided to him.

Councillor Russell stated she found it difficult to understand why only one City Councillor, if the rumors are true, was involved in many discussions with the City Manager, Law Department and officials from the State. Mr. Healy responded by stating he did not believe he informed any one councillor any more than another and as always attempted to keep councillors abreast of an ~~ear~~^{area} of particular concern to him or her.

Councillor Myers requested the City Manager outline the (S.I.P.) process. The City Manager responded by stating he has developed a matrix for the process, which will be implemented once the ordinance is adopted and it will bring Cambridge into compliance. Responding to Councillor Walsh's statement that Attorney Sho~~t~~well had stated forcefully this evening that the parking freeze doesn't exist, Mr. Healy stated that at one^{time} that was the position the City had taken, but they have been informed by the E.P.A. that the City was incorrect and they would put their full force behind fighting us.

The hearing was adjourned at 12:16 a.m.

For the Committee

Councillor Francis H. Duehay
Chairman

d

Harvard Square Business Association

ESTABLISHED 1910 CITY CLERK

18 BRATTLE STREET, CAMBRIDGE, MASSACHUSETTS 02138

Telephone: (617) 491-3434

CAMBRIDGE MA.

OFFICERS

October 4, 1990

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RICHARD R. BEATY
Ingram Rettig & Beaty

Vice-President

ROBERT F. GRAY
BayBank/Harvard Trust

Vice-President

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Harvard Square
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RICHARD K. GETZ
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Sheraton Commander Hotel

JOHN R. LESANTO
Cambridge Trust Company

PAUL J. MACDONALD
Leavitt & Peirce

ALICE G. MANDIS
Rogers of Harvard Square

RAOUL F. MOORE
Charles Square Associates

DONALD O. MORSE
Dole Publishing Company

JOAN E. O'CONNOR
Attorney at Law

RICHARD M. OLKEN
Bicycle Exchange

ALLAN E. POWELL
The Harvard Coop

MARC REDLICH
Law Offices of Marc Redlich

JUSTIN H. SLATE
Bob Slate's Stationers

MADLYN TUCKER
Cherry Webb Touraine

EDWARD P. VER PLANCK
Dickson Bros. Hardware

SCOTT E. ZIEGLER
Tabloid Newspapers

Councillor Francis Duehay
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA. 02139

Frank!
Dear Councillor ~~Duehay~~:

The Board of the Harvard Square Business Association and I felt that it would be important to let you know that we are concerned that the parking freeze, particularly an aspect which might involve imposing restrictions upon private development and existing employee parking, could seriously impact business in Cambridge.

Cleaner air is something which we all can support in concept, but it is the scope of the proposed ordinance which needs to be carefully assessed before moving forward.

As you are probably aware, our Association has various committees, one dealing specifically with community affairs and one, with parking; each report to the full Board each month. We would be delighted to be of assistance, either by attending a future meeting or by polling our membership at large. Please let me know.

Thank you for all of your good work on behalf of all of us,

Sincerely,

Trd

~~Richard R. Beaty~~, President

8.

Comm. from Richard R. Beaty, President,
Harvard Square Business Association,
transmitting the association's concern
with the Parking Freeze Ordinance.

In City Council,

October 15, 1990

*Referred to the
petition*



FRANCIS P. LYNCH
President

RECEIVED BY
OFFICE OF CITY CLERK
1990 OCT 10 PM 1:15
CAMBRIDGE MA.

MOUNT AUBURN HOSPITAL

330 Mount Auburn Street
Cambridge, Massachusetts 02238
Tel.: (617) 492-3500

October 4, 1990

The Honorable Francis Duehay
City Councillor
Chairman of the Ordinance Committee
City Hall
Cambridge, Massachusetts 02139

Dear Chairman Duehay:

Mount Auburn Hospital wishes to be recorded in strong opposition to the proposed parking freeze ordinance before your committee. As you know, Mount Auburn Hospital has been concerned and active on the issues of traffic and parking in the surrounding neighborhood. As a health care institution, we are committed to the minimization of pollution and to clean air in the city. However, the proposed freeze does not effectively address these important issues.

Mount Auburn Hospital employs 1912 people, 280 of whom are Cambridge residents. Our main concern with the parking freeze is that it does not exempt employee parking and could severely limit the institution's ability to continue to provide needed jobs and health care services to the residents of Cambridge.

Sincerely,

Francis P. Lynch
President

FPL:pg

7.

Comm. from Francis P. Lynch, President,
Mt. Auburn Hospital, in opposition to
the Parking Freeze Ordinance.

In City Council,

October 15, 1990

*Referred to the
petition*

Spaulding & Slye

1990 OCT -5 AM 11: 01
CAMBRIDGE MA.

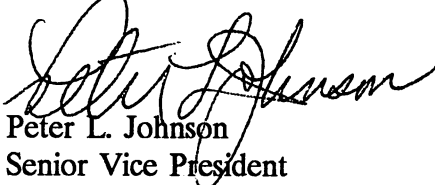
October 3, 1990

Chairman of Council
Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Chairman:

Spaulding & Slye has been developing first-class commercial property in Cambridge since 1968. We currently manage over 600,000 square feet in Cambridge with more than thirty tenants and approximately 1,500 employees. Spaulding & Slye also pays over \$2.3 million in real estate taxes annually. Spaulding & Slye is opposed to the parking freeze ordinance.

Sincerely,


Peter L. Johnson
Senior Vice President

PLJ/meg

4.

Comm. from Peter L. Johnson, Senior Vice
President, Spaulding & Slye in opposition
to the Parking Freeze Ordinance.

In City Council,

October 15, 1990

*Referred to the
petition*

Committee on Ordinance

Present - Councillor Francis Duchay

10/4/90

7:50 P.M.

- ① C. Walsh
- ② C. Reeves
- ③ Mayor
- ④ C. Russell
- ⑤ C. Myers
- ⑥ C. G. Y.
- ⑦ C. Tommy
- ⑧ C. Sullivan
- ⑨ C. Duchay

C. Duchay

opened by outlining procedure
of committee

C. Myers

debated C. 39 MOLA in
public meeting last week -
focusing. The cost is not being
borne by city

C. Russell

who requested the

C. My.

I believe a private concern in conjunction w/ CCTV. and Com & m arbal Cable

I assume its charter of Commerce.

C. Walsh

Q. pending litigation on this.

C. My.

Not on this ordinance, but on the M O A

Q. any liability of a city councillor

C. My.

You are indemnified as a councillor as long as you are acting in your capacity as a policy maker

C. Myers

I think we should have a right to know who has asked for this zoning.

David Usher
Acting Chair
CCU/Board &
Community Affairs

We asked for the signing
no public funds

Peter Valentini
55 Clarendon St

You gave privilege
to view paper, show against
sttd great loss

C. my.

Spoke to David dated
Oct. 3, 1990 w/ minor variations
changes are minor w/ only
language changes.

Historical background.

E. O. A. in 1988 said we
had more space than
allowed.

Jan. 1990 they re-activated the
provision about w/ OEP

MOA restricts # of spaces during interim period until new plan is commenced.

Outlined provisions of ordinance before c/c tonight

Retain Foley Hoag and Elot to assist us.

Public freeze not only element in SIP - state Supplemental Plan

I think we can arrive at a SIP which would stop the economic growth of this city and achieve better air quality.

Don Geer
40 Bellin Circle

Supports ordinance as submitted
we thank c/c for its leadership
on this issue

walter Grant
302 Brookline st.

Supports amendment.
Good for Cambridgeport

Jennie Bush
302 Brookline st.

.. ..

Ernie Small
80 Aberdeen Ave.

" " " "
Disappointed in Charles's
position.
The country will continue
to grow beyond the automobile

C. Cyr.

Has 5-10 labor jurisdiction

E. Small

No, we have not been asked

Bob Edhouse
20 Prescott st.

Supports proposed amendment.
Cambridge has most job density
in state (greater than Prof)
Profess needs mitigation.

Peter Valentini
55 Blanche st

Angry @ materialism and
capitalism

Steve Keizer
191 Hamilton St.

Supp. Ordinance.
Too much traffic.
Subscribers are overloaded.
Developers should understand
this and stop trying to
transfer their burdens to
the city.

Amendment

10.16.06 : NO app. shall be
approved w/o written
statement from S.E.O. that
it is full compliance
w/ C. 30 M.C.L.A § 62
NO app. shall be
approved if any re-
voked app. for
state permits

8:45 P.M.

Opponents

① David Uibery
88 Grozier Rd.

Opposed to amendment.
Representing a broad coalition
of business, institutions
and neighborhoods.

Wine out of ten top employers
w/in city. Our group employs
over 30,000 people.

We deeply resent the fact
we were denied the right
to participate in this process.

C. Renee

Is there a reason that small
business not represented.

D. Uibery

No we just haven't reached
out yet.

C. Myers

Do you see any problems
how people get around

I'd like to hold your
question to the end of the
meeting

2

Robert Bryant
Local 40, BU
109 Smith St.
Cam.

opposed to ordinance
We serve 1500 members from
Cambridge / 28% women and minorities
Average sal. \$20,000 plus benefits
but union paid city support
by the union.

1000 jobs of our members are
on hold because financing
for new developers is jeopardized.

Our members need the work
desperately

C. Cyr.

Failure to pass the ordinance
will not allow any construction
jobs. This sets up a permitting
process.

C. Toomey

Voiced concern over C. Cyr's comments

May 01

C. Sullivan in chair
9:10 PM

Hopes we can develop an ordinance which will allow for a better Cambridge.

If we don't pass this, we as a city will be out of compliance.

C. Toomey

Gen. Lubner Garage

C. Myr.

Temp-permit expires on 10/10/90 and if we have authority we want contest it?

C. Myers.

Do you think there is a traffic problem in Camb.

R. Bryant

I'm not sure how that relates to this issue

C. Cyr

Three biggest potential jobs are:

- Northpoint (exempt)
- Forest City (can be permitted)
- Alameda (spare banks)

I can only support this if in my heart I believe this will take us out of the courts and develop a process to regulate spare and car for the future.

9:24 AM

C. Overby
re: memo

3

Jason Shattwell, Eng.
Gadsby & Hanner
12 Myrtle Bank
Arlington

No legal requirement for a freeze nor does one exist @ this time in Cambridge.
Read prepared text

This is a zoning ordinance and must be treated as such.

Mayor EPA exempted bus. res. and employees
whose left

Jo Ann Shattwell Commercial development

④ Davis Unbesy
For Lotus Dev. They occupy 100,000,000
sq. ft. pay \$2m in taxes
They have + already done
their own traffic mitigation
w/ shuttle buses, T passes etc.

⑤ Catherine Pennell
415 Mass. Ave. Bio-ran Co. we operate
24 hours per day, and we
are concerned w/ safety
of our employees, they don't
want to take T during night
shift.

⑥ Phil and Food
YMCA Opposed to amendment
61 Small Office read prepared text.
Need have Building new Y will need
spaces.

C. Cyr.

Que. when Y thinks space won't be granted so Y gives fact variances will

Mayor

Supports Y development

2

Paul Casey
Comm/Energy
5 Wadlow Ave
Brookline

Largest taxpayer in Cambridge
Opposed to ordinance
I PSD still is not resolved
that huts our development.

C. Cyr.

Que. what would Com/Energy land values would be if we had to wait from 8500 parking spaces.

C. J. Vehey

Hope you understand we have been giving a lot of thought to this entire issue

②

Eric Benson
Polaroid Corp.
55 Johnson Rd.
Worcester

opposed to plan, had
prepared staff.

worked w/ city over the
years.

\$3m in taxes, Cambridge employees.
Shocked @ lack of public
process.

C. Russell

had any involvement w/
process prior to July

NO

"

who were parties to agreement
and conversations.

C. May 10

Business interest is important
but so is our citizens.
we still work constructively.

E. Benson

We have demonstrated a care
and concern for all of Cambridge.

(9)

Karin Casey
Harvard University
State Relations

opposed to ordain
Cheryl C/C to re-negotiate
Expressed lack of confidence
w/ same table.

C. Myers

How many spaces does Huel
provide

K. Casey

3,000 or 10, but I will
get exact number

C. Reeves

Indigent that Huel is in the
midst of this issue.

FHO - 10:51 P.M.
Resumed chat

(10) Sarah Evers?

M.I.T.

71 Cabot Hill Rd

Brighton

M.I.T. opposed
well prepared staff

Has Pres. of MIT approved
funding

This is approved funding

David Dubery
PUM Dem.

opposed to ordinance

3600 - 4000 permanent jobs
if we are in full
conservation

Business will not gain
any \$ during "interim
parking freeze".

We are allowed 2000 spaces
but only 600 on 600.

Rever

again varied issue of small
business

11:05 P.M.

David Dubery

Provided summation
on behalf of coalition
- prepared text -

Closed door meeting w/
small interest group and a
very few city officials

This ^{hearing} is a "pro-forma" sham

11:14 A.M.

This will not pass muster w/ Clean Air Act.

C. Reeves

Take exception to how deal and smoke screens. All have been more participation.

C. Myers

This is not a sham. Highly inappropriate you make that kind of statement.

May or
check letter

Read from 3/13/90 letter to C. Myers from EPA.

11:21 P.M.

Go Ann Shattuck

Hearing required by law. Outcome is not pre-determined as I am hearing this tonight.

C. Cyr

Does EPA agree w/ you

There has never been a freeze in effect was there opinion since 1977 EPA was out of business

The 1982 SIC declines to impose a parking freeze, but some sort of pressure has been brought to bear on Cambridge to do this.

P. Rives Old legal counsel provide these documents

In our document.

11:26 A.M.

Robert Lewis
U.P. CCC
993 Main Ave
Arlington

Small business is represented by our chamber. Many of them support our position.

11:26 P.M.

Dan Green

I speak for every neighborhood when I say this ordinance is wild & alien air. EPA/DOE & A. require this freeze change in of the program.

C. Russell

Ques. just who were the people working on this.

C. My.

Two issues:

- EPA audit
- Two lawsuits

required us to negotiate w/ EPA, Law Dept. multiple discussions with many people.

C. Russell

Did any C/C sit in on negotiations

C. My.

no I don't think that's true.

"

C/C's sat in on an update w/ DEP.

C. Russell

I've heard C. My was in discussion on this

C. My

I was not a plaintiff in this action during these discussions.

D. Orindell

C. Cyr. did request a legal opinion on this issue and it was provided and he followed our advice.

C. Russell

I find it difficult to understand why one councillor was in on this and every one else shut out.

May or

I was aware and had discussions w/ C. Myr. and Laura Dept. I think that's quite appropriate

C. Myers

By C. Myr. to outline S/P process.

C. Myr.

I have a matrix of the process.

11

This will bring us in compliance w/ the Clean Air Act

A parking freeze is NOT the
key element of the SIP.

C. Walsh

Atty. Shorswell is saying freeze
doesn't exist.

We took that position ourselves.
once.

C. Murphy

EPA told us it was in force
and they would put all their
resources to work to prove it.

C. Gosney

Bob

12:06 A.M.

City of Cambridge

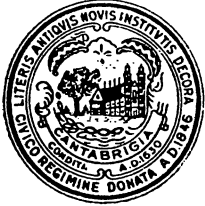
MASSACHUSETTS

In City Council Oct. 4 1990

Mayor - Refer to full City Council w/o Recommendation
action

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

5 4



City of Cambridge

In the Year One Thousand, Nine Hundred

DRAFT
October 3, 1990

AN ORDINANCE

In amendment to an ordinance designated as the "Cambridge Municipal Code."

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, the City of Cambridge (City), and the Massachusetts Department of Environmental Protection (DEP) (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 and DEP were parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge; and

WHEREAS, the parties, as part of a settlement of said dispute, entered into a Memorandum of Agreement (MOA), dated August 15, 1990, which requires that the Cambridge City Manager present to the Cambridge City Council an ordinance to implement the provisions of said MOA; 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 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 the City to support the Clean Air Act by discouraging automobile 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 opportunities for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the City hereby commits itself to the terms of this ordinance for the period until a SIP amendment is approved, said period to be known as the "interim period."

Now, THEREFORE, be it ordained by the City Council of the City of Cambridge as follows:

Title 10 of the Code (Vehicles and Traffic) is hereby amended by adding thereto the following new Chapter 10.16 (Parking Freeze):

Chapter 10.16

PARKING FREEZE

Sections:

10.16.010	Time period of Chapter
10.16.020	Definitions
10.16.030	Building or operation of parking facilities
10.16.040	Pre-existing applications, permits and determinations
10.16.050	Interim Parking Control Committee
10.16.060	Procedure for Obtaining CFPF or Determination of Exclusion
10.16.070	Number of CFPFs to be issued
10.16.080	Enforcement
10.16.090	Memorandum of Agreement of August 15, 1990

10.16.010 Time period of Chapter

This Chapter will remain in effect only during the interim period, as defined in s. 10.16.020.

10.16.020 Definitions

"Controlled parking facility" (CPF) means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, except (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific residential building or group of buildings, or, (ii) parking on public streets, and (iii) a parking facility

designated as a park-and-ride facility to be operated in conjunction with the Massachusetts Bay Transportation Authority.

"Controlled parking facility permit" (CPFP) means a permit issued by the Director of the Cambridge Department of Traffic and Parking, which allows the construction or modification of a CPF and the operation of a CPF. Each permit will be for a specific number of Controlled parking spaces.

"Controlled parking space" (CPS) means a parking space in a Controlled parking facility (CPF).

"Determination of exclusion" means a determination by the Director of the Cambridge Department of Traffic and Parking that a parking facility does not come within the definition of a Controlled parking facility.

"Director" means Director of the Cambridge Department of Traffic and Parking.

"Interim Parking Control Committee" (IPCC) means the committee established by this Chapter which decides whether to issue Controlled parking facility permits and Determinations of exclusion. These decisions by the IPCC are binding on the Director.

"Interim period" means the period ~~starting August 15, 1990 and ending with~~ ~~between the enactment of this Chapter and the approval~~ of an amendment to the State Implementation Plan (SIP), required by the Clean Air Act (42 U.S.C., s. 7401 et seq.), regarding 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.

"Memorandum of Agreement" or "Memorandum" means the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 10, 1990 and executed August 15, 1990.

"Parking facility" means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked.

"Person" means and includes a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization, any state, regional or political subdivision, agency, department, authority or board, and any other group acting as a unit, as well as a natural person.

10.16.030 Building or operation of parking facilities

No person shall be granted a permit to build a parking facility in Cambridge, or modify a parking facility so as to increase the number of parking spaces therein, and no person shall operate a parking facility, unless said person shall have first obtained a controlled parking facility permit or a determination of exclusion under the procedures set forth in this Chapter.

10.16.040 Pre-existing applications, permits and determinations

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. And if a commercial parking facility permit or a determination of exclusion was obtained before August 15, 1990, that permit or determination shall not be subject to the provisions of this Chapter. The City, however, may enforce the terms and conditions of any permit or determination of exclusion, regardless of when it was issued.

Parking facilities which, prior to August 15, 1990, were generally regarded as not being "commercial parking Facilities" under the Memorandum of November 15, 1984, shall not be subject to the terms of this Chapter unless the ~~owner or~~ operator of the facility seeks to increase the number of parking spaces therein.

10.16.050 Interim Parking Control Committee

All applications for controlled parking facility permits and determinations of exclusion shall be reviewed by an Interim Parking Control Committee (IPCC or Committee) comprised of three Cambridge residents with appropriate experience, appointed by the City Manager. 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 no later than September 15, 1990. The Committee shall maintain complete and accurate records of all applications for CPFs and determinations of exclusion. 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, the Massachusetts Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency.

10.16.060 Procedure for obtaining CPFP or Determination of Exclusion

a) An application for a CPFP or determination of exclusion shall be submitted to the Director on a form available at the Cambridge Traffic and Parking Department. The IPCC shall hold hearings on such applications on the fourth Wednesday of every month, if necessary. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.

b) The IPCC will publish in at least one local weekly newspaper a notice of the hearing. The notice shall set forth a specific hearing date not less than fourteen days 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 and Parking Department. A notice of all applications to be heard at the hearing shall be sent at least two weeks before the hearing to the DEP.

c) Every application for a CPFP or determination of exclusion shall include the following information:

1. Name and address of owner.

2. Name and address of proposed facility.
3. Type of facility (parking lot or garage).
4. Type of construction (new or modification) proposed.
5. Number of existing spaces and who uses them.
6. Number of proposed spaces and who will use them.
7. Proposed change in number of spaces by use.
8. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
9. Detailed information on how use of the spaces will be controlled for each category of use.
10. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
11. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
12. 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.

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.

- d) The Committee shall be required to process any

applications already on file with the Director at the time of the adoption of this Chapter 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 section 10.16.070, 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.

e) At least 14 days before the hearing, the Interim Parking Control Committee shall send to each applicant which has submitted a complete 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 application shall be so notified at that time.

f) Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CFPF or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the CFPF or 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.

g) 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 CPFPP 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 section 10.16.070 or an identification of the location and number of spaces against which enforcement action has been taken pursuant to section 10.16.080, which serve as the basis for issuance of the CPFPP pursuant to section 10.16.080. All CPFPPs 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.

10.16.070 Number of CPFPP's to be Issued

The City, in accordance with the procedures set forth in this Chapter, may issue permits for up to 500 controlled parking spaces. In addition, the City may issue a number of CPFPPs equal to

a) The number of parking spaces which the City has eliminated or against which the City has initiated an enforcement action in accordance with section 10.16.080; plus

b) The number of commercial parking spaces which were

permitted in accordance with the November 15, 1984 MOA and which are no longer being used.

Rights to eliminated parking spaces eliminated by enforcement cannot be transferred between persons, but must revert back to the City for allocation under the procedure set forth in s. 10.16.060.

10.16.080 Enforcement

a) If any person, after a hearing before the IPCC, is found to have operated a parking space illegally, either under the provisions of the November 15, 1984 MOA or under the provisions of this Chapter, such person may will be subject to a fine of \$10 per day per space for every day that the space was illegally operated. In addition, the Director, after such a hearing, may revoke a determination of exclusion for spaces operated in violation of their determinations, or eliminate those spaces or facilities found to be operating with no required permit or determination of exclusion.

At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, or as controlled parking spaces as defined in s. 10.16.020, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of said determination shall be presumed to have all of its spaces operating in violation of the terms of its determination 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. 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 the determination.

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 CPFPP in accordance with the terms of this Chapter.

Upon the expiration of any temporary permit or exclusion the Director may issue an administrative order to cease operations at the facility without any requirement of a hearing before the IPCC.

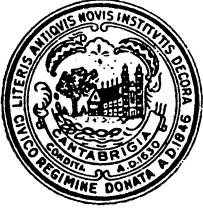
b) The phrase "initiated an enforcement action," appearing in s. 10.16.070, means the issuance by the Director of an administrative order ordering a person to eliminate a parking space or spaces.

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 CPFPPs 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 prosecute aggressively any such court action to compel compliance with said administrative order.

10.16.090 Memorandum of Agreement of August 15, 1988

The City agrees to fulfill all its obligations contained in the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.



City of Cambridge

In the Year One Thousand, Nine Hundred

DRAFT
October 3, 1990

AN ORDINANCE

In amendment to an ordinance designated as the "Cambridge Municipal Code."

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, the City of Cambridge (City), and the Massachusetts Department of Environmental Protection (DEP) (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 and DEP were parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge; and

WHEREAS, the parties, as part of a settlement of said dispute, entered into a Memorandum of Agreement (MOA), dated August 15, 1990, which requires that the Cambridge City Manager present to the Cambridge City Council an ordinance to implement the provisions of said MOA; 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 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 the City to support the Clean Air Act by discouraging automobile 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 opportunities for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the City hereby commits itself to the terms of this ordinance for the period until a SIP amendment is approved, said period to be known as the "interim period."

Now, THEREFORE, be it ordained by the City Council of the City of Cambridge as follows:

Title 10 of the Code (Vehicles and Traffic) is hereby amended by adding thereto the following new Chapter 10.16 (Parking Freeze):

Chapter 10.16
PARKING FREEZE

Sections:

10.16.010	Time period of Chapter
10.16.020	Definitions
10.16.030	Building or operation of parking facilities
10.16.040	Pre-existing applications, permits and determinations
10.16.050	Interim Parking Control Committee
10.16.060	Procedure for Obtaining CFPF or Determination of Exclusion
10.16.070	Number of CFPFs to be issued
10.16.080	Enforcement
10.16.090	Memorandum of Agreement of August 15, 1990

10.16.010 Time period of Chapter

This Chapter will remain in effect only during the interim period, as defined in s. 10.16.020.

10.16.020 Definitions

"Controlled parking facility" (CPF) means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, except (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific residential building or group of buildings, or, (ii) parking on public streets, and (iii) a parking facility

designated as a park-and-ride facility to be operated in conjunction with the Massachusetts Bay Transportation Authority.

"Controlled parking facility permit" (CPFP) means a permit issued by the Director of the Cambridge Department of Traffic and Parking, which allows the construction or modification of a CPF and the operation of a CPF. Each permit will be for a specific number of Controlled parking spaces.

"Controlled parking space" (CPS) means a parking space in a Controlled parking facility (CPF).

"Determination of exclusion" means a determination by the Director of the Cambridge Department of Traffic and Parking that a parking facility does not come within the definition of a Controlled parking facility.

"Director" means Director of the Cambridge Department of Traffic and Parking.

"Interim Parking Control Committee" (IPCC) means the committee established by this Chapter which decides whether to issue Controlled parking facility permits and Determinations of exclusion. These decisions by the IPCC are binding on the Director.

"Interim period" means the period ~~starting August 15, 1990 and ending with~~ ~~between the enactment of this Chapter and the approval~~ of an amendment to the State Implementation Plan (SIP), required by the Clean Air Act (42 U.S.C., s. 7401 et seq.), regarding 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.

"Memorandum of Agreement" or "Memorandum" means the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 10, 1990 and executed August 15, 1990.

"Parking facility" means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked.

"Person" means and includes a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization, any state, regional or political subdivision, agency, department, authority or board, and any other group acting as a unit, as well as a natural person.

10.16.030 Building or operation of parking facilities

No person shall be granted a permit to build a parking facility in Cambridge, or modify a parking facility so as to increase the number of parking spaces therein, and no person shall operate a parking facility, unless said person shall have first obtained a controlled parking facility permit or a determination of exclusion under the procedures set forth in this Chapter.

10.16.040 Pre-existing applications, permits and determinations

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. And if a commercial parking facility permit or a determination of exclusion was obtained before August 15, 1990, that permit or determination shall not be subject to the provisions of this Chapter. The City, however, may enforce the terms and conditions of any permit or determination of exclusion, regardless of when it was issued.

Parking facilities which, prior to August 15, 1990, were generally regarded as not being "commercial parking Facilities" under the Memorandum of November 15, 1984, shall not be subject to the terms of this Chapter unless the ~~owner or~~ operator of the facility seeks to increase the number of parking spaces therein.

10.16.050 Interim Parking Control Committee

All applications for controlled parking facility permits and determinations of exclusion shall be reviewed by an Interim Parking Control Committee (IPCC or Committee) comprised of three Cambridge residents with appropriate experience, appointed by the City Manager. 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 no later than September 15, 1990. The Committee shall maintain complete and accurate records of all applications for CPFs and determinations of exclusion. 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, the Massachusetts Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency.

10.16.060 Procedure for obtaining CPFPP or Determination of Exclusion

a) An application for a CPFPP or determination of exclusion shall be submitted to the Director on a form available at the Cambridge Traffic and Parking Department. The IPCC shall hold hearings on such applications on the fourth Wednesday of every month, if necessary. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.

b) The IPCC will publish in at least one local weekly newspaper a notice of the hearing. The notice shall set forth a specific hearing date not less than fourteen days 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 and Parking Department. A notice of all applications to be heard at the hearing shall be sent at least two weeks before the hearing to the DEP.

c) Every application for a CPFPP or determination of exclusion shall include the following information:

1. Name and address of owner.

2. Name and address of proposed facility.
3. Type of facility (parking lot or garage).
4. Type of construction (new or modification) proposed.
5. Number of existing spaces and who uses them.
6. Number of proposed spaces and who will use them.
7. Proposed change in number of spaces by use.
8. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
9. Detailed information on how use of the spaces will be controlled for each category of use.
10. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
11. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
12. 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.

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.

- d) The Committee shall be required to process any

applications already on file with the Director at the time of the adoption of this Chapter 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 section 10.16.070, 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.

e) At least 14 days before the hearing, the Interim Parking Control Committee shall send to each applicant which has submitted a complete 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 application shall be so notified at that time.

f) Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CFPF or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the CFPF or 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.

g) 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 CPFPP 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 section 10.16.070 or an identification of the location and number of spaces against which enforcement action has been taken pursuant to section 10.16.080, which serve as the basis for issuance of the CPFPP pursuant to section 10.16.080. All CPFPPs 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.

10.16.070 Number of CPFPP's to be Issued

The City, in accordance with the procedures set forth in this Chapter, may issue permits for up to 500 controlled parking spaces. In addition, the City may issue a number of CPFPPs equal to

a) The number of parking spaces which the City has eliminated or against which the City has initiated an enforcement action in accordance with section 10.16.080; plus

b) The number of commercial parking spaces which were

permitted in accordance with the November 15, 1984 MOA and which are no longer being used.

Rights to ~~eliminated~~ parking spaces ~~eliminated by enforcement~~ cannot be transferred between persons, but must revert back to the City for allocation under the procedure set forth in s. 10.16.060.

10.16.080 Enforcement

a) If any person, after a hearing before the IPCC, is found to have operated a parking space illegally, either under the provisions of the November 15, 1984 MOA or under the provisions of this Chapter, such person ~~may~~ will be subject to a fine of \$10 per day per space for every day that the space was illegally operated. In addition, the Director, after such a hearing, may revoke a determination of exclusion for spaces operated in violation of their determinations, or eliminate those spaces or facilities found to be operating with no required permit or determination of exclusion.

At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, or as controlled parking spaces as defined in s. 10.16.020, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of said determination shall be presumed to have all of its spaces operating in violation of the terms of its determination 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. 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 the determination.

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 CPFPP in accordance with the terms of this Chapter.

~~Upon the expiration of any temporary permit or exclusion the Director may issue an administrative order to cease operations at the facility without any requirement of a hearing before the IPCC.~~

b) The phrase "initiated an enforcement action," appearing in s. 10.16.070, means the issuance by the Director of an administrative order ordering a person to eliminate a parking space or spaces.

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 CPFPPs 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 prosecute aggressively any such court action to compel compliance with said administrative order.

10.16.090 Memorandum of Agreement of August 15, 1988

The City agrees to fulfill all its obligations contained in the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.



City of Cambridge

In the Year One Thousand, Nine Hundred

DRAFT
October 3, 1990

AN ORDINANCE

In amendment to an ordinance designated as the "Cambridge Municipal Code."

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, the City of Cambridge (City), and the Massachusetts Department of Environmental Protection (DEP) (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 and DEP were parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge; and

WHEREAS, the parties, as part of a settlement of said dispute, entered into a Memorandum of Agreement (MOA), dated August 15, 1990, which requires that the Cambridge City Manager present to the Cambridge City Council an ordinance to implement the provisions of said MOA; 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 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 the City to support the Clean Air Act by discouraging automobile 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 opportunities for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the City hereby commits itself to the terms of this ordinance for the period until a SIP amendment is approved, said period to be known as the "interim period."

Now, THEREFORE, be it ordained by the City Council of the City of Cambridge as follows:

Title 10 of the Code (Vehicles and Traffic) is hereby amended by adding thereto the following new Chapter 10.16 (Parking Freeze):

Chapter 10.16

PARKING FREEZE

Sections:

10.16.010	Time period of Chapter
10.16.020	Definitions
10.16.030	Building or operation of parking facilities
10.16.040	Pre-existing applications, permits and determinations
10.16.050	Interim Parking Control Committee
10.16.060	Procedure for Obtaining CPF or Determination of Exclusion
10.16.070	Number of CPFs to be issued
10.16.080	Enforcement
10.16.090	Memorandum of Agreement of August 15, 1990

10.16.010 Time period of Chapter

This Chapter will remain in effect only during the interim period, as defined in s. 10.16.020.

10.16.020 Definitions

"Controlled parking facility" (CPF) means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, except (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific residential building or group of buildings, or, (ii) parking on public streets, and (iii) a parking facility

designated as a park-and-ride facility to be operated in conjunction with the Massachusetts Bay Transportation Authority.

"Controlled parking facility permit" (CPFP) means a permit issued by the Director of the Cambridge Department of Traffic and Parking, which allows the construction or modification of a CPF and the operation of a CPF. Each permit will be for a specific number of Controlled parking spaces.

"Controlled parking space" (CPS) means a parking space in a Controlled parking facility (CPF).

"Determination of exclusion" means a determination by the Director of the Cambridge Department of Traffic and Parking that a parking facility does not come within the definition of a Controlled parking facility.

"Director" means Director of the Cambridge Department of Traffic and Parking.

"Interim Parking Control Committee" (IPCC) means the committee established by this Chapter which decides whether to issue Controlled parking facility permits and Determinations of exclusion. These decisions by the IPCC are binding on the Director.

"Interim period" means the period ~~starting August 15, 1990 and ending with~~ ~~between the enactment of this Chapter and~~ the approval of an amendment to the State Implementation Plan (SIP), required by the Clean Air Act (42 U.S.C., s. 7401 et seq.), regarding 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.

"Memorandum of Agreement" or "Memorandum" means the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated ~~August 10, 1990 and executed~~ August 15, 1990.

"Parking facility" means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked.

"Person" means and includes a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization, any state, regional or political subdivision, agency, department, authority or board, and any other group acting as a unit, as well as a natural person.

10.16.030 Building or operation of parking facilities

No person shall be granted a permit to build a parking facility in Cambridge, or modify a parking facility so as to increase the number of parking spaces therein, and no person shall operate a parking facility, unless said person shall have first obtained a controlled parking facility permit or a determination of exclusion under the procedures set forth in this Chapter.

10.16.040 Pre-existing applications, permits and determinations

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. And if a commercial parking facility permit or a determination of exclusion was obtained before August 15, 1990, that permit or determination shall not be subject to the provisions of this Chapter. The City, however, may enforce the terms and conditions of any permit or determination of exclusion, regardless of when it was issued.

Parking facilities which, prior to August 15, 1990, were generally regarded as not being "commercial parking Facilities" under the Memorandum of November 15, 1984, shall not be subject to the terms of this Chapter unless the ~~owner or~~ operator of the facility seeks to increase the number of parking spaces therein.

10.16.050 Interim Parking Control Committee

All applications for controlled parking facility permits and determinations of exclusion shall be reviewed by an Interim Parking Control Committee (IPCC or Committee) comprised of three Cambridge residents with appropriate experience, appointed by the City Manager. 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 no later than September 15, 1990. The Committee shall maintain complete and accurate records of all applications for CPFs and determinations of exclusion. 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, the Massachusetts Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency.

10.16.060 Procedure for obtaining CPFPP or Determination of Exclusion

a) An application for a CPFPP or determination of exclusion shall be submitted to the Director on a form available at the Cambridge Traffic and Parking Department. The IPCC shall hold hearings on such applications on the fourth Wednesday of every month, if necessary. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.

b) The IPCC will publish in at least one local weekly newspaper a notice of the hearing. The notice shall set forth a specific hearing date not less than fourteen days 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 and Parking Department. A notice of all applications to be heard at the hearing shall be sent at least two weeks before the hearing to the DEP.

c) Every application for a CPFPP or determination of exclusion shall include the following information:

1. Name and address of owner.

2. Name and address of proposed facility.
3. Type of facility (parking lot or garage).
4. Type of construction (new or modification) proposed.
5. Number of existing spaces and who uses them.
6. Number of proposed spaces and who will use them.
7. Proposed change in number of spaces by use.
8. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
9. Detailed information on how use of the spaces will be controlled for each category of use.
10. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
11. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
12. 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.

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.

- d) The Committee shall be required to process any

applications already on file with the Director at the time of the adoption of this Chapter 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 section 10.16.070, 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.

e) At least 14 days before the hearing, the Interim Parking Control Committee shall send to each applicant which has submitted a complete 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 application shall be so notified at that time.

f) Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CFPF or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the CFPF or 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.

g) 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 CFPF 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 section 10.16.070 or an identification of the location and number of spaces against which enforcement action has been taken pursuant to section 10.16.080, which serve as the basis for issuance of the CFPF pursuant to section 10.16.080. All CFPFs 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.

10.16.070 Number of CFPF's to be Issued

The City, in accordance with the procedures set forth in this Chapter, may issue permits for up to 500 controlled parking spaces. In addition, the City may issue a number of CFPFs equal to

a) The number of parking spaces which the City has eliminated or against which the City has initiated an enforcement action in accordance with section 10.16.080; plus

b) The number of commercial parking spaces which were

permitted in accordance with the November 15, 1984 MOA and which are no longer being used.

Rights to eliminated parking spaces eliminated by enforcement cannot be transferred between persons, but must revert back to the City for allocation under the procedure set forth in s. 10.16.060.

10.16.080 Enforcement

a) If any person, after a hearing before the IPCC, is found to have operated a parking space illegally, either under the provisions of the November 15, 1984 MOA or under the provisions of this Chapter, such person may will be subject to a fine of \$10 per day per space for every day that the space was illegally operated. In addition, the Director, after such a hearing, may revoke a determination of exclusion for spaces operated in violation of their determinations, or eliminate those spaces or facilities found to be operating with no required permit or determination of exclusion.

At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, or as controlled parking spaces as defined in s. 10.16.020, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of said determination shall be presumed to have all of its spaces operating in violation of the terms of its determination 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. 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 the determination.

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 CPFPP in accordance with the terms of this Chapter.

Upon the expiration of any temporary permit or exclusion the Director may issue an administrative order to cease operations at the facility without any requirement of a hearing before the IPCC.

b) The phrase "initiated an enforcement action," appearing in s. 10.16.070, means the issuance by the Director of an administrative order ordering a person to eliminate a parking space or spaces.

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 CPFPPs 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 prosecute aggressively any such court action to compel compliance with said administrative order.

10.16.090 Memorandum of Agreement of August 15, 1988

The City agrees to fulfill all its obligations contained in the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.



City of Cambridge

In the Year One Thousand, Nine Hundred

DRAFT
October 3, 1990

AN ORDINANCE

In amendment to an ordinance designated as the "Cambridge Municipal Code."

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, the City of Cambridge (City), and the Massachusetts Department of Environmental Protection (DEP) (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 and DEP were parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge; and

WHEREAS, the parties, as part of a settlement of said dispute, entered into a Memorandum of Agreement (MOA), dated August 15, 1990, which requires that the Cambridge City Manager present to the Cambridge City Council an ordinance to implement the provisions of said MOA; 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 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 the City to support the Clean Air Act by discouraging automobile 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 opportunities for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the City hereby commits itself to the terms of this ordinance for the period until a SIP amendment is approved, said period to be known as the "interim period."

Now, THEREFORE, be it ordained by the City Council of the City of Cambridge as follows:

Title 10 of the Code (Vehicles and Traffic) is hereby amended by adding thereto the following new Chapter 10.16 (Parking Freeze):

Chapter 10.16

PARKING FREEZE

Sections:

10.16.010	Time period of Chapter
10.16.020	Definitions
10.16.030	Building or operation of parking facilities
10.16.040	Pre-existing applications, permits and determinations
10.16.050	Interim Parking Control Committee
10.16.060	Procedure for Obtaining CFPF or Determination of Exclusion
10.16.070	Number of CFPFs to be issued
10.16.080	Enforcement
10.16.090	Memorandum of Agreement of August 15, 1990

10.16.010 Time period of Chapter

This Chapter will remain in effect only during the interim period, as defined in s. 10.16.020.

10.16.020 Definitions

"Controlled parking facility" (CPF) means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, except (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific residential building or group of buildings, or, (ii) parking on public streets, and (iii) a parking facility

designated as a park-and-ride facility to be operated in conjunction with the Massachusetts Bay Transportation Authority.

"Controlled parking facility permit" (CPFP) means a permit issued by the Director of the Cambridge Department of Traffic and Parking, which allows the construction or modification of a CPF and the operation of a CPF. Each permit will be for a specific number of Controlled parking spaces.

"Controlled parking space" (CPS) means a parking space in a Controlled parking facility (CPF).

"Determination of exclusion" means a determination by the Director of the Cambridge Department of Traffic and Parking that a parking facility does not come within the definition of a Controlled parking facility.

"Director" means Director of the Cambridge Department of Traffic and Parking.

"Interim Parking Control Committee" (IPCC) means the committee established by this Chapter which decides whether to issue Controlled parking facility permits and Determinations of exclusion. These decisions by the IPCC are binding on the Director.

"Interim period" means the period ~~starting August 15, 1990 and ending with~~ ~~between the enactment of this Chapter and~~ the approval of an amendment to the State Implementation Plan (SIP), required by the Clean Air Act (42 U.S.C., s. 7401 et seq.), regarding 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.

"Memorandum of Agreement" or "Memorandum" means the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 10, 1990 and executed August 15, 1990.

"Parking facility" means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked.

"Person" means and includes a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization, any state, regional or political subdivision, agency, department, authority or board, and any other group acting as a unit, as well as a natural person.

10.16.030 Building or operation of parking facilities

No person shall be granted a permit to build a parking facility in Cambridge, or modify a parking facility so as to increase the number of parking spaces therein, and no person shall operate a parking facility, unless said person shall have first obtained a controlled parking facility permit or a determination of exclusion under the procedures set forth in this Chapter.

10.16.040 Pre-existing applications, permits and determinations

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. And if a commercial parking facility permit or a determination of exclusion was obtained before August 15, 1990, that permit or determination shall not be subject to the provisions of this Chapter. The City, however, may enforce the terms and conditions of any permit or determination of exclusion, regardless of when it was issued.

Parking facilities which, prior to August 15, 1990, were generally regarded as not being "commercial parking Facilities" under the Memorandum of November 15, 1984, shall not be subject to the terms of this Chapter unless the ~~owner or~~ operator of the facility seeks to increase the number of parking spaces therein.

10.16.050 Interim Parking Control Committee

All applications for controlled parking facility permits and determinations of exclusion shall be reviewed by an Interim Parking Control Committee (IPCC or Committee) comprised of three Cambridge residents with appropriate experience, appointed by the City Manager. 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 no later than September 15, 1990. The Committee shall maintain complete and accurate records of all applications for CPFs and determinations of exclusion. 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, the Massachusetts Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency.

10.16.060 Procedure for obtaining CFPF or Determination of Exclusion

a) An application for a CFPF or determination of exclusion shall be submitted to the Director on a form available at the Cambridge Traffic and Parking Department. The IPCC shall hold hearings on such applications on the fourth Wednesday of every month, if necessary. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.

b) The IPCC will publish in at least one local weekly newspaper a notice of the hearing. The notice shall set forth a specific hearing date not less than fourteen days 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 and Parking Department. A notice of all applications to be heard at the hearing shall be sent at least two weeks before the hearing to the DEP.

c) Every application for a CFPF or determination of exclusion shall include the following information:

1. Name and address of owner.

2. Name and address of proposed facility.
3. Type of facility (parking lot or garage).
4. Type of construction (new or modification) proposed.
5. Number of existing spaces and who uses them.
6. Number of proposed spaces and who will use them.
7. Proposed change in number of spaces by use.
8. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
9. Detailed information on how use of the spaces will be controlled for each category of use.
10. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
11. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
12. 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.

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.

- d) The Committee shall be required to process any

applications already on file with the Director at the time of the adoption of this Chapter 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 section 10.16.070, 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.

e) At least 14 days before the hearing, the Interim Parking Control Committee shall send to each applicant which has submitted a complete 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 application shall be so notified at that time.

f) Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CFPF or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the CFPF or 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.

g) 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 CPFPP 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 section 10.16.070 or an identification of the location and number of spaces against which enforcement action has been taken pursuant to section 10.16.080, which serve as the basis for issuance of the CPFPP pursuant to section 10.16.080. All CPFPPs 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.

10.16.070 Number of CPFPP's to be Issued

The City, in accordance with the procedures set forth in this Chapter, may issue permits for up to 500 controlled parking spaces. In addition, the City may issue a number of CPFPPs equal to

a) The number of parking spaces which the City has eliminated or against which the City has initiated an enforcement action in accordance with section 10.16.080; plus

b) The number of commercial parking spaces which were

permitted in accordance with the November 15, 1984 MOA and which are no longer being used.

Rights to ~~eliminated~~ parking spaces ~~eliminated by enforcement~~ cannot be transferred between persons, but must revert back to the City for allocation under the procedure set forth in s. 10.16.060.

10.16.080 Enforcement

a) If any person, after a hearing before the IPCC, is found to have operated a parking space illegally, either under the provisions of the November 15, 1984 MOA or under the provisions of this Chapter, such person ~~may~~ will be subject to a fine of \$10 per day per space for every day that the space was illegally operated. In addition, the Director, after such a hearing, may revoke a determination of exclusion for spaces operated in violation of their determinations, or eliminate those spaces or facilities found to be operating with no required permit or determination of exclusion.

At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, or as controlled parking spaces as defined in s. 10.16.020, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of said determination shall be presumed to have all of its spaces operating in violation of the terms of its determination 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. 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 the determination.

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 Chapter.

~~Upon the expiration of any temporary permit or exclusion the Director may issue an administrative order to cease operations at the facility without any requirement of a hearing before the IPCC.~~

b) The phrase "initiated an enforcement action," appearing in s. 10.16.070, means the issuance by the Director of an administrative order ordering a person to eliminate a parking space or spaces.

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 CFPFs 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 prosecute aggressively any such court action to compel compliance with said administrative order.

10.16.090 Memorandum of Agreement of August 15, 1988

The City agrees to fulfill all its obligations contained in the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.



THE ATHENAEUM GROUP

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

October 4, 1990

Frank Duehay, Chairman
Ordinance Committee
Cambridge City Council
City Hall
Cambridge, MA 02142

Re: **PROPOSED PARKING FREEZE ORDINANCE**

Dear Councillor Duehay:

The Athenaeum Group is the parent company of a number of real estate developments and local businesses in Cambridge. We currently employ 142 persons, and a significant number of them are Cambridge residents. According to the City's latest budget document, The Athenaeum Group is the fifth largest taxpayer in Cambridge.

We are opposed to the parking freeze ordinance and uniquely qualified to comment. Our One Kendall Square Garage touched off the controversy when three of eleven abutters joined in a lawsuit against the City and The Athenaeum Group protesting the parking facility.

Lost in the controversy, is the simple truth that the One Kendall Square Garage was required by law. It was constructed in conformity with all local ordinances and building codes. No variances were required or requested. For two years our company has been subjected to litigation, regulatory threats, and administrative harassment because of a garage we were required, by law, to build. There is something wrong in Cambridge when good corporate citizens are subjected to the treatment we have experienced.

The proposed ordinance is bad policy. It is the result of political deal-making of the worse kind. The evolution of this issue has exceeded all bounds of fairness and due process. When the truth is finally known, it will be a sad day for Cambridge.

It is our sincere hope that a majority of City Councillors will realize that this ordinance is a mistake, that it has nothing to do with clean air, and that it is not too late for the City to abandon a flawed and corrupt process.

Sincerely,

A handwritten signature in cursive script that reads "David Clem".

David Clem

DEC:rmf

Bioran

415 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel: 617-547-8900

October 4, 1990

The Honorable Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

The Honorable Cambridge City Council:

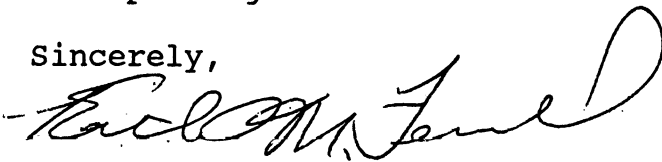
Bioran Medical Laboratory has been located in Cambridge since its inception in 1964 and has grown from a company with two employees to the largest and most prominent medical testing facility in New England and the seventh largest laboratory in the United States. We presently employ approximately 450 employees in Cambridge. Bioran operates 24 hours a day, within three main shifts. We provide employee parking during all three shifts.

On July 30, 1990, the City Council approved a Memorandum of Agreement that extends a Parking Freeze to include employee parking. Our ability to provide employee parking directly affects our success in attracting and maintaining our work force.

Many employees consider driving to work a necessity. For example, women who work late shifts feel unsafe walking to and riding the T during odd hours. Parents trying to coordinate child care schedules with work schedules often rely on a car. Even parents who live in Cambridge find it difficult to juggle dropping off and picking up a child in time without the aid of a car. By providing employee parking, Bioran makes it possible for many people to successfully coordinate their work with other important responsibilities.

We urge the City Council to recognize the necessity of employee parking and to protect a Cambridge company's ability to provide such parking.

Sincerely,



Kathleen M. Fennell
Director of Personnel



1 October 1990

To: The Honorable City Council
c/o City Clerk
City Hall
Cambridge, MA 02139

Re: Proposed Ordinance Dealing with a Parking Freeze in Cambridge

Dear Members of the Council:

Bolt Beranek and Newman Inc. has been a Cambridge-based firm since its beginning in 1948. The company currently employs approximately 1,800 persons in Cambridge, of which 10% are Cambridge residents. We occupy approximately 833,000 sq. feet of space and pay over \$2,350,000 in real estate taxes annually.

We at BBN strongly object to the Parking Freeze Ordinance currently under review by the City Council. This ordinance will have a negative effect on our employees and it will limit our ability to attract new employees. These negative influences will restrict our growth by limiting our expansion, therefore making BBN less competitive.

Very truly yours,

BOLT BERANEK AND NEWMAN INC.

A handwritten signature in black ink, appearing to read 'Michael Nacey', is written over the typed name.

Michael Nacey
Vice President - Administration

CAMBRIDGE FAMILY

October 4, 1990

The Honorable City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

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BURDETTE A. JOHNSON

K. GEORGE NAJARIAN

The Honorable Cambridge City Council:

The proposed "parking freeze ordinance" (developed subsequent to the Memorandum of Agreement) under consideration by the Cambridge City Council would, if enacted, threaten the ability of the Cambridge Family YMCA to survive as an institution. The Cambridge Family YMCA urges the Cambridge City Council to reconsider this approach to addressing the issue of "clean air" in Cambridge.

After a decade of self-study and community assessment, the Cambridge Family YMCA is embarking on a visionary program to construct a new YMCA facility to meet the ever-increasing community call for YMCA services. Community program demands in such areas as affordable transitional housing, childcare, senior adult and special needs services and health and fitness have prompted the YMCA to advance this project. The YMCA cannot remain in its 94-year old building and meet this century's community programming needs.

By making use of the present YMCA facility on Massachusetts Avenue as a real estate investment, the YMCA will be able to underwrite a substantial portion of the construction of a new YMCA. Subject to appropriate municipal approvals, the YMCA will construct a 70,000 square foot program facility on the site of its Green Street parking lot. Contiguous to this new Y will rise a 136-room transitional housing complex replacing that function in the present building.

Subsequently, the existing YMCA facility on Massachusetts Avenue will be converted to a commercial use of approximately 100,000 square feet. A critical component of the program, particularly in terms of financial feasibility and market acceptability, is to provide parking. While the YMCA benefits from its proximity to the Central Square MBTA station, the YMCA's current projections result in a net increase of 59 spaces from the current 108 parking spaces.

THIS AGENCY IS
SUPPORTED BY



United Way

Page 2
The Honorable Cambridge City Council
October 4, 1990

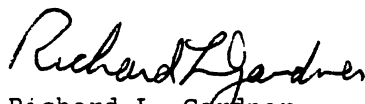
The YMCA has entered into an agreement with Robert F. Walsh Associates of Boston, completed a developmental study, and expended funds to advance this major capital project. The proposed ordinance threatens the viability of the YMCA project and further endangers . . .

- o the preservation of 136 affordable housing rooms - the largest transitional supportive service housing program in the city, serving a growing population of disenfranchised.
- o the creation of 54 new day care slots - at a time when youth and family services are critically needed.
- o the development of recreation and social services for over 500 youth and young adults
- o services to senior adults and those with special needs
- o YMCA Programs and services for over 2,000 Cambridge residents

It is no longer tenable for the YMCA to remain in the present facilities. The YMCA has developed a creative and innovative solution to its facility and finance dilemma. The YMCA does not have experimental capital to risk on this project. The parking freeze and traffic mitigation ordinances, if enacted, would imperil the YMCA as an institution.

The Cambridge Family YMCA asks that the Cambridge City Council reconsider the ordinance and work with community leaders to craft other strategies to address the issues of "clean air".

Sincerely,


Richard L. Gardner
Chairman of the Board



COM/Energy Services Company
One Main Street
Post Office Box 9150
Cambridge, Massachusetts 02142-9150
Telephone (617) 225-4000

October 3, 1990

City Councillor Francis H. Duehay
Chairman, City Council Ordinance Committee
City Hall
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Councillor Duehay:

As the largest taxpayer and one of the largest employers in the City of Cambridge, we are opposed to the adoption of the proposed Parking Freeze Ordinance.

In 1983, when we were contemplating relocating our corporate headquarters, we made a conscious decision to remain in the City of Cambridge because of our historic ties to the City and our strong relationship with City of Cambridge officials. However, today we find our existence in Cambridge jeopardized due to the proposed adoption of the Parking Freeze Ordinance, which threatens to impact our employee parking program. Our ability to provide convenient and safe parking for our employees is critical to our attracting and retaining qualified professionals, many of whom are working mothers with an even greater need for convenient parking. These employees are also the same people who frequent the local business establishments. They fuel Cambridge's economic engine, breeding life into the local economy, which translates into revenue for the City's treasury. The proposed Parking Freeze Ordinance does not give any consideration to the negative impact it will place upon employers in Cambridge and, for this reason alone, the adoption of the Ordinance should be reconsidered.

As a property owner in Cambridge, we have a keen interest in the future of the City. As you may all well know, we have made a substantial investment in the Kendall Square area with the construction of the Riverfront Office Park Complex, an investment that has benefitted the City in terms of the number of jobs created and the amount of property taxes generated.

We also plan to develop our Research Park site on Third Street into an office park, which will further benefit the City. However, for two (2) years now, our plans to develop this site have been stalled due to the continual imposition of the East Cambridge Interim Planning Overlay District (EC-IPOD), which has deprived us of our property rights. Now, as we understand, the enactment of the Parking Freeze Ordinance will directly impact the resolution of the EC-IPOD by causing the rezoning to drag on through the end of 1990, and well into 1991.

It should also be noted that the apparent motivation for the proposal of the Parking Freeze Ordinance is not clean air but to allay the fears of development by a minority of Cambridge residents, who perceive development as unpopular. If the issue was truly about clean air, then the solution to the problem would be to support mitigation measures such as emission controls, requiring automobiles to burn cleaner fuels.

The proposed Parking Freeze Ordinance, if adopted, will have a detrimental impact on the City of Cambridge and the people who live and work here. In these troubled economic times we should be working together in concert to do all we can do restore the Massachusetts economy, in addition to cleaning up the environment. Therefore, we ask that you reconsider the proposal to adopt the Parking Freeze Ordinance and instead work with the business community toward finding workable solutions to these problems.

Sincerely,



Michael P. Sullivan
Vice President

CESV
310/90/bmc



The Charles Stark Draper Laboratory, Inc.

555 Technology Square, Cambridge, Massachusetts 02139

Telephone (617) 258-3508

Vice President and Treasurer
D.C. Driscoll

October 3, 1990

Committee on Ordinances
Cambridge City Council
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Members of the Ordinance Committee:

The Laboratory strongly opposes the enactment of an ordinance to implement the Memorandum of Agreement concerning the so-called Parking Freeze.

We compete nationally as well as throughout the local area for scientists and engineers who provide the core of our research and development activities. The ability to attract and hold these individuals has allowed us to receive continued support and to employ significant numbers of Cambridge citizens in support as well as technology roles.

Parking is essential for us to compete for employees with Routes 128 and 495 firms as well as firms from the southeast and southwestern states. Other research and development firms will all have recruiting difficulties if they do not have the ability to provide employee parking.

The "Parking Freeze" will not provide us with clean air but will send a message to employers that Cambridge is unfriendly to them.

The Council should be attempting instead to lure employers like Draper to Cambridge. Employers who pay high taxes, provide jobs to Cambridge residents, attempt to address traffic problems (Industrial B landowners), and support civic and city needs such as the Cambridge Youth Job Opportunity Program.

A different signal could be sent if the Council reversed its July 30, 1990 position of endorsing the Memorandum of Agreement.

Very truly yours,

David C. Driscoll
Vice President and Treasurer

GRACE

October 2, 1990

D. L. Wightman
Vice President, Administration

Construction Products Division

W.R. Grace & Co.
Cambridge, MA 02140

(617) 876-1400

Mr. Francis H. Duehay
Chairman of the Ordinance Committee
City Hall
Cambridge, Massachusetts 02139

Dear Mr. Chairman:

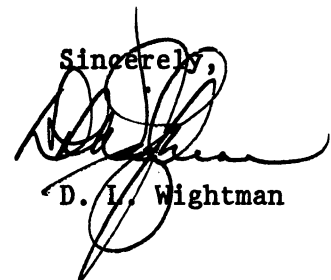
W. R. Grace & Co. and its predecessor, the Dewey and Almy Chemical Company, have been employers and active contributors to the Cambridge community since 1918. Although our facilities have changed over the years from primarily manufacturing to exclusively office and research, we continue to be a major contributor to the City's quality of life.

We currently employ over 500 salaried and hourly workers with a Cambridge payroll in excess of \$15 million. In addition to the contribution to the City's economy resulting from the patronage of Cambridge business by our employees and facility services, we are active in support of schools and many other social service organizations meeting the needs of Cambridge residents. This is over and above the benefits derived by the citizens of Cambridge from property taxes approaching three quarters of a million dollars paid annually by Grace.

W. R. Grace & Co. is in opposition to the proposed parking freeze ordinance because of its potential to restrict parking for our employees, which is absolutely essential if we are to attract and retain quality employees. Further, it is in conflict with Chapter 40A of the Cambridge Zoning Ordinances and, if enacted, will restrict our ability to enlarge our office facilities in the future to meet the business growth needs of our company.

We are not adverse to traffic mitigation measures to help relieve traffic congestion or to other efforts to improve the quality of our environment. However, passing ordinances which freeze or significantly restrict employee parking is not an effective way to achieve the above goals.

Sincerely,



D. L. Wightman

DLW/BLD

Harvard Square Business Association

ESTABLISHED 1910

18 BRATTLE STREET, CAMBRIDGE, MASSACHUSETTS 02138

Telephone: (617) 491-3434

OFFICERS

President
RICHARD R. BEATY
Ingram Rettig & Beaty

Vice-President
ROBERT F. GRAY
RayBank/Harvard Trust

Vice-President
KATHY SPIEGELMAN
Harvard Manning Group

Treasurer
JAMES H. SMITH
Cambridge Center
for Adult Education

Secretary
ROBERT BANKER
Banker Real Estate Co.

Executive Director
SALLY ALDORN
Harvard Square
Business Association

DIRECTORS

PAMELA R. BAILLY
Crate & Barrel Furniture

ALAN D. BELL
Bell Associates

FRED COHEN
Out of Town News

RICHARD K. GETZ
Richard Getz Associates

EDWARD N. GULEBERIAN
Sheraton Commander Hotel

JOHN R. LASANTO
Cambridge Trust Company

PAUL J. MACDONALD
Leavitt & Peirce

ALGER G. MANDIS
Rogers of Harvard Square

KADUL F. MOORE
Charles Square Associates

DONALD O. MORSE
Dole Publishing Company

JOAN E. O'CONNOR
Attorney at Law

RICHARD M. OLKEN
Bicycle Exchange

ALLAN F. POWELL
The Harvard Coop

MARC REDLICH
Law Offices of Marc Redlich

JUSTIN H. SLATE
Bob Slate's Stationery

MARLENE TUCKER
Cherry Webb Touraine

EDWARD P. VAN FRANCK
Dickson Bros. Hardware

SCOTT E. ZILBER
Tabloid Newspapers

October 4, 1990

Councillor Francis Duehay
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA. 02139

Frank!
Dear Councillor Duehay:

The Board of the Harvard Square Business Association and I felt that it would be important to let you know that we are concerned that the parking freeze, particularly an aspect which might involve imposing restrictions upon private development and existing employee parking, could seriously impact business in Cambridge.

Cleaner air is something which we all can support in concept, but it is the scope of the proposed ordinance which needs to be carefully assessed before moving forward.

As you are probably aware, our Association has various committees, one dealing specifically with community affairs and one, with parking; each report to the full Board each month. We would be delighted to be of assistance, either by attending a future meeting or by polling our membership at large. Please let me know.

Thank you for all of your good work on behalf of all of us,

Sincerely,

Ted
Richard R. Beaty, President

HARVARD UNIVERSITY

SALLY ZECKHAUSER
VICE PRESIDENT FOR ADMINISTRATION

MASSACHUSETTS HALL
CAMBRIDGE, MASSACHUSETTS 02138
617-495-1512

October 4, 1990

Francis Duehay
Chair, Cambridge City Council Ordinance Committee
Cambridge City Hall
Cambridge, Massachusetts 02139

Re: Parking Freeze Ordinance

Dear Councillor Duehay:

Harvard University joins many other employers in Cambridge in objecting to the recent Memorandum of Agreement and proposed "interim" parking freeze ordinance.

Harvard objects to the language of the Memorandum of Agreement and the proposed interim ordinance which eliminates exemptions for employee parking. Although the Memorandum of Agreement represents a fundamental shift in policy, affected employers and other interested parties were not allowed to participate in the process that led to the July 30 vote by the City Council. The "grandfathering" language is vague and open to interpretation, causing Harvard and many others to be concerned about the status of their existing spaces under the proposed ordinance.

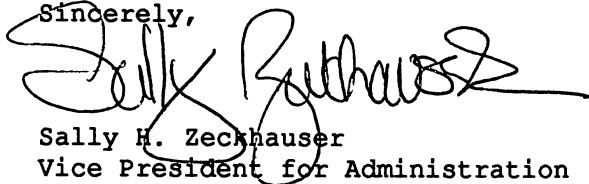
The proposed interim ordinance would put landowners in a dilemma, trying to reconcile the zoning ordinance requirements for parking with arbitrary freeze restrictions. In fact, the proposed interim ordinance appears to be an attempt to treat an anti-development ordinance as an environmental one in order to avoid the requirements of Massachusetts General Laws, Chapter 40A. There is no scientific evidence to support a freeze on parking in the City of Cambridge. In fact, there appears to be no authority under the Clean Air Act to impose such a freeze. The proposal denigrates the efforts being made by many citizens, businesses, institutions and public officials to protect our environment, and in this sense represents an abuse of the Clean Air Act.

Harvard University has 14,262 employees, 9,856 of whom work in Cambridge. The University's total payroll for 1989-1990 was \$437 million. As you know, Harvard is the largest employer of Cambridge residents, with more than 3,500 residents on the payroll. The University contributes well over \$5 million each year to the City of Cambridge in taxes and other direct payments.

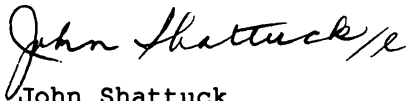
Francis Duehay
October 4, 1990
Page 2

The Memorandum of Agreement and the proposed ordinance jeopardize Harvard University's current parking structure and its ability to be responsive to the needs of our employees in the future.

Sincerely,



Sally H. Zeckhauser
Vice President for Administration



John Shattuck
Vice President for Government, Community and Public Affairs

cc: Joseph Connarton, City Clerk

Ivanhoe Inc.

October 4, 1990

500
Boylston Street
Suite 1860
Boston, MA
02116

Chairman Duehay
Ordinance Committee
Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: PROPOSED PARKING FREEZE ORDINANCE

Dear Honorable Members of the Ordinance Committee:

I am writing to you to express my deep concern and dissatisfaction with the proposed Parking Freeze Ordinance which is the subject of a hearing before your Committee on October 4, 1990. I am a long-time resident of Cambridge, and I am currently developing the retail and office project known as One Brattle Square. I previously developed several units of housing at 931 Massachusetts Avenue. My activities have added in excess of \$50,000,000.00 to the tax base for Cambridge.

I am in complete agreement with the employers, employees, labor representatives, human service providers, representatives of institutions located in Cambridge, and other citizens of Cambridge who believe that the parking freeze currently proposed for Cambridge is an anti-job and anti-development proposal in the guise of a clean air proposal. I can assure you that if the Parking Freeze Ordinance is adopted as proposed, my confidence in those who were elected to represent all of us will be unalterably changed.

Tel:
617 267-4567
Fax:
617 236-8761

Sincerely,



Gregory Rudolph

GR/kdb

Arthur D Little

Arthur D. Little, Inc.
Acorn Park
Cambridge, Massachusetts
02140-2390
USA

Telephone 617.864.5770
Telefax 617.661.5830
Telex 921436

October 3, 1990

The Honorable Francis Duehay
Chairman, Ordinance Committee
Cambridge City Council
City Hall
Cambridge, Massachusetts
02138

Dear Mr. Duehay:

Arthur D. Little, Inc. joins other members of the Cambridge community of businesses and institutions in expressing their concerns about the proposed ordinance to establish a parking freeze in the City of Cambridge. We urge the City Council not to adopt the ordinance, particularly as it applies to parking for employees.

Arthur D. Little is an international management and technology consulting firm whose world-wide headquarters are located in Cambridge. The Company has been a corporate citizen of Cambridge for over 70 years and employs approximately 1,150 people in its Cambridge facilities, the largest of which is located adjacent to Route 2 at the Cambridge/Arlington/Belmont border. The Company is owned by its employees, approximately 120 of whom live in the City of Cambridge. As a major Cambridge employer, it injects millions of dollars each year into the Cambridge economy, including over \$1,200,000 in real estate taxes. In addition, the Company supports a number of Cambridge programs and institutions, including Teen Work, the Cambridge Community Center, the Cambridge Art Association's Summer Art Program, the Winning Edge Program at Cambridge Rindge and Latin School, the Cambridge Food Pantry Network/CEOC, and the Mount Auburn Hospital.

Arthur D. Little wholeheartedly endorses the City Council's goal of improving air quality by reducing vehicle miles traveled and encouraging use of public transit and other alternatives to the automobile. The Company currently has several programs aimed at reducing automobile use, including Caravan, car pooling, and shuttle service to the Alewife MBTA station. We support the view that the implementation of thoughtfully conceived traffic mitigation measures will do much to improve Cambridge as a place to live and to work. However, we believe the quickly contrived parking ban under current consideration would degrade the attractiveness of Cambridge for everyone concerned.

Amsterdam
Brussels
Cambridge
Caracas
Copenhagen
Hong Kong
Houston
London
Los Angeles
Madrid
Mexico City
Milan
New York
Paris
Riyadh
San Francisco
São Paulo
Singapore
Taipei
Tokyo
Toronto
Washington
Wiesbaden

Arthur D Little

October 3, 1990 Page 2

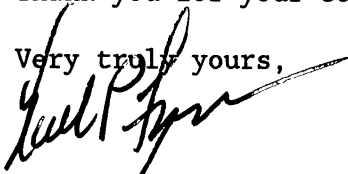
The Honorable Francis Duehay
Chairman, Ordinance Committee
Cambridge City Council

In addition to the general objections to the freeze on employee parking expressed by the business community, Arthur D. Little has its own unique objections arising out of its location outside the perimeter of readily available public transportation. Since the Company is located west of the Alewife park-and-ride facility, most of our employees have no reasonable alternative than to drive to work. A restriction on the Company's ability to expand its employee parking would have the practical effect of making it impossible for us to continue to grow and prosper in Cambridge, thereby forcing us to consider alternative locations--a result we think would be unfortunate for the Company and the City. Furthermore, a move of our facilities away from Cambridge would probably have the effect of increasing, rather than decreasing, the number of miles traveled in the metropolitan area, since many of our employees would have to either drive further or discontinue their current use of public transportation.

We urge your committee and the City Council to focus on improving air quality through traffic mitigation rather than a parking freeze, and to take into account the interests of all, including the City's residents, employees, businesses, and institutions.

Thank you for your consideration of this matter.

Very truly yours,



Karl P. Fagans
Vice President

United Brotherhood of Carpenters and Joiners of America

LOCAL UNION No. 40

109 SMITH PLACE
CAMBRIDGE, MASSACHUSETTS 02138
TEL (617) 547-8511 • FAX: (617) 547-0371



October 4, 1990

Councilman Francis Duehay
Cambridge City Council
Cambridge City Hall
Cambridge, MA

Dear Councilman Duehay:

Local 40 of the Carpenter's Union opposes the proposed parking freeze ordinance.

As a Cambridge-based union, Local 40 serves as a referral hall for our 1600+ members. A great many of our members are women and minorities as well as Cambridge residents. The majority of our members are heads of households. The average carpenter's salary is \$25,000 plus benefits. We have an apprenticeship program which includes 28%--30% women and minorities and Cambridge residents.

Over the last ten years, we have accepted into our apprenticeship program Cambridge, Rindge and Latin grads. The union has actively participated in the school's vocational career days. We have been strong supporters of Cambridge's Just-A-Start program.

Our members have shared their talents with the City by volunteering thousands of hours. We have constructed handicapped access ramps throughout the City for elder centers, community centers and handicapped programs. We have also restored many of the City's churches.

The impact of the parking freeze threatens all of this.

We estimate that over 1000 jobs currently slated for our carpenters are on hold because developers can't secure the financing. Financing which is tied to parking capacity. The parking you want to freeze is freezing our members out of work.

continued ...

Councilman Francis Duehay
October 4, 1990
Page Two

If our carpenters are out of work, there are:

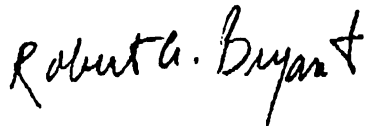
- No paychecks to nearly 500 Cambridge members.
- No benefits, particularly health benefits, which spells disaster to carpenter's families.
- No apprenticeship program opportunities for Cambridge residents and;
- We will no longer be able to volunteer our services to Cambridge because our members will need to be out looking for work.

With the local economy the way it is, 35% - 40% of our members are out of work. Now with the freeze, we know that more than half of our members will be without work.

The City Council and the City Administration are hiding behind the notion that this is about clean air. It is not. It is about insider politics and the blind willingness to appease two dozen concerned citizens at the expense of thousands of working people. For the City of Cambridge to chose this time of economic chaos for working people in Cambridge and across the nation to suddenly agree to be partners with a small group of elitist anti-growth forces plus the Dukakis Administration is irresponsible.

Together the Union and the City have faced many problems. This one is different. The Council's actions have excluded us from the process and are set out to deny us out of our livelihoods. We urge you to reconsider.

Sincerely,



Robert A. Bryant
Business Agent
Carpenters Union Local #40

RAB:kw

Lotus

October 3, 1990

Chairman of Ordinance Committee
City Hall
Cambridge, MA 02142

Re: Parking Freeze Ordinance

Dear Chairman:

Lotus Development Corporation began in the City of Cambridge and has grown up here.

We employ approximately 2700 employees. We occupy over 1,000,000 square feet of real estate and we contribute in excess of Two Million Dollars (\$2,000,000) per year to the City of Cambridge in real estate taxes.

Lotus has always complied with any traffic mitigation the City has requested. We provide our own shuttle bus service for our employees to travel between buildings and the public transportation system. We encourage our employees to use public transportation and pay 100% for "T" passes. We also provide our employees with parking.

To limit our employee parking growth does not make sense to us and we object to the Parking Freeze Ordinance currently under review by the City Council. We feel this ordinance will become a hardship on our employees, our Company, and the growth of Lotus Development Corporation within the City of Cambridge.

We would like to continue our growth in Cambridge and ask you to help us work to that end.

Very truly yours,

Lotus Development Corporation



Nancy Busnach
Director
Real Estate and Facilities

cc: City Council

NB/kg



OFFICE OF THE PRESIDENT

CAMBRIDGE, MASSACHUSETTS 02139

October 4, 1990

Mr. Francis H. Duehay
Chairman
Ordinance Committee
Cambridge City Hall
Cambridge, MA 02139

Dear Chairman Duehay:

MIT must voice concern regarding the interim Parking Freeze ordinance which is before the Ordinance Committee tonight.

As you know, MIT's primary interest is in education, certainly here on our campus, but also in Cambridge's high schools and other academic institutions within this community and beyond.

However, MIT is also interested in the fabric of the City of Cambridge which is home to hundreds of companies, institutions, organizations and families.

At MIT, we have explored, along with others in the community, traffic and parking issues that affect both the Institute and the City. We support sound and carefully-crafted traffic mitigation efforts. We are a member of the Mayor's Blue Ribbon Committee on Traffic Mitigation and participate in the traffic mitigation studies in Kendall Square. We want to educate, learn, and live in an environment of clean air.

We believe that the proposed interim Parking Freeze ordinance is not the solution to issues of air and noise pollution, traffic and parking. It does not fully represent the interests of all sectors of Cambridge who care about clean air and who will ultimately be affected by the implementation of such policy.

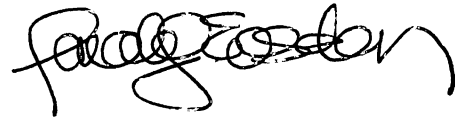
In fiscal year 1990, MIT was the City's second largest taxpayer with a payment in lieu of taxes gift of \$793,500 and a payment of \$3,798,203 on non-academic properties, totaling \$4,591,703. MIT is also the City's second largest employer with just under 10,000 employees. We are a steadfast member of the community, and hope to continue to contribute as such.

The MIT community and its operations, as well as hundreds of other businesses and institutions, will be adversely affected by the interim Parking Freeze ordinance if it is adopted in its current form. We, therefore, urge the Council to consider all perspectives on this matter before taking future action.

Sincerely,



Ronald P. Suduiko



Sarah J. Eusden



MOUNT AUBURN HOSPITAL

330 Mount Auburn Street
Cambridge, Massachusetts 02238
Tel.: (617) 492-3500

FRANCIS P. LYNCH
President

October 4, 1990

The Honorable Francis Duehay
City Councillor
Chairman of the Ordinance Committee
City Hall
Cambridge, Massachusetts 02139

Dear Chairman Duehay:

Mount Auburn Hospital wishes to be recorded in strong opposition to the proposed parking freeze ordinance before your committee. As you know, Mount Auburn Hospital has been concerned and active on the issues of traffic and parking in the surrounding neighborhood. As a health care institution, we are committed to the minimization of pollution and to clean air in the city. However, the proposed freeze does not effectively address these important issues.

Mount Auburn Hospital employs 1912 people, 280 of whom are Cambridge residents. Our main concern with the parking freeze is that it does not exempt employee parking and could severely limit the institution's ability to continue to provide needed jobs and health care services to the residents of Cambridge.

Sincerely,

Francis P. Lynch
President

FPL:pg

October 4, 1990

Polaroid

Councillor Francis H. Duehay,
Chairman of the Ordinance Committee
Cambridge City Hall
Cambridge, MA 02139

Dear Chairman Duehay:

Polaroid Corporation has been working with the City in recent months on several activities which deal with the subject of traffic and parking. Three of these activities are:

- a) The Company has been engaged with City agencies and with other area landowners in an ongoing study of the Industry B Zoning District. These studies include a traffic and parking component.
- b) The Company recommended to the Council in a letter dated April 4, 1990, the establishment of a Blue Ribbon Committee to form a traffic strategy for the City. We suggested that part of the charge to the Committee should be "a city-wide organized effort to engage major landowners, employers, and residents in pursuing voluntary measures to address traffic problems". This suggestion was later embraced by the Cambridge Chamber of Commerce in its letter to the Council of May 14, 1990 and the Council subsequently created the Blue Ribbon Committee.
- c) The Company has joined with other members of the Industry B Landowners Group and has signed on to participate in the City's Commuter Mobility Program being coordinated by Caravan for Commuters.

On July 30, 1990 the City Council endorsed a Memorandum of Agreement without providing an opportunity for prior public comment. A part of this Agreement eliminated the long standing exemption for employee parking under the so-called Parking Freeze. The Council by this action and by the method of its implementation, has allowed a vocal minority of its residents to upset the delicate balance which exists in the City between government, business, and the community.

We have subsequently joined with other employers to determine how best to express our collective concern to the Council over the sudden changing of the rules under which we operate our businesses in Cambridge. For Polaroid, the action of the Council has regrettably diverted our attention from the other activities mentioned above which we had entered into in a spirit of cooperation. The activities of the Blue Ribbon Committee also appear to have been preempted.

Polaroid is among the City's top ten employers ranked by number of employees, not including the many consultants and vendors, contractors and service firms, many of whom are local, which are an integral part of our day-to-day operations.

Polaroid's name does not appear among the City's top ten property taxpayers, but when you reconstitute the taxes which are paid as part of our rent at Technology Square and several other leased facilities, and add them to the taxes on our owned facilities, we pay close to \$3,000,000 in taxes, a figure which would place us well up among the top ten taxpayers in the City.

Polaroid Corporation was established in Cambridge in 1937. Its worldwide corporate headquarters is located in Cambridge along with administrative offices, marketing, research and engineering. Over 90 percent of the Company's space and employees within the United States is located in Eastern Massachusetts. Sites in Waltham, Needham, Norwood, New Bedford, and Freetown house virtually all of the Company's U.S. manufacturing facilities. Our employees must travel frequently between the Cambridge headquarters and our manufacturing sites, often coupled with a trip to or from home to start or end the work day. This network of facilities is not well served by public transportation.

Within Cambridge, Polaroid currently owns or leases approximately 1,200,000 square feet of space in thirteen buildings, all but two of which are within walking distance of each other and are within the Industry B area.

Parking for employees, employee visitors from the outlying sites, business visitors and customers is provided in Polaroid-owned parking lots or is incorporated with building leases.

Some of the Polaroid occupied buildings in the Industry B area are older buildings which were built before the automobile became the primary means of transportation. Of necessity, in the late 1960's and early 1970's, employees were parking in the adjacent residential areas of Neighborhood 4, which led to conflicts with the neighborhood. Therefore, when opportunities became available, Polaroid acquired properties within the Industry B area, demolished the buildings, created surface parking lots there, and vacated both its scattered parking lots and on-street parking in Neighborhood 4. In doing so, the Company was able to make these scattered lots in Neighborhood 4 available for reuse, and negotiated a friendly taking of the properties by the City which was approved by the City Council.

The City's Zoning Ordinance "requires development of adequate parking facilities to meet the reasonable needs of all building and land users...". Employee parking has been exempt from the so-called Parking Freeze until the endorsement by the Council on July 30, 1990 of the Memorandum of Agreement.

We believe that we have been a responsible corporate citizen of Cambridge and have not done something terrible by providing parking to support our operations here.

We are stunned that a City Council which espouses a process approach and represents itself as a thoughtful, positive force for the future, would take such a precipitative action. We urge the Council to reconsider its action and to seek a more reasoned solution to this issue with participation from all affected parties.

Very truly yours,

POLAROID CORPORATION



Eric V. Benson
Senior Manager
Corporate Real Estate

EVB/jbr

cc: Members of the City Council
Robert W. Healy, City Manager
Michael H. Rosenberg, Assistant City Manager
for Community Development

I. MacAllister Booth, President
and Chief Executive Officer
William J. O'Neill, Jr., Group Vice President
and Chief Financial Officer
Graham M. Brown, Jr., Vice President
and Treasurer
Richard F. deLima, Vice President, Secretary
and General Counsel



REYNOLDS, VICKERY, MESSINA AND GRIEFEN CO.

October 4, 1990

City Councillor Francis W. Duehay
Chairperson
Parking Freeze Ordinance Subcommittee
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Councillor Duehay:

This letter is written concerning the proposed parking freeze and its impact on Alewife Center.

As you may recall, Alewife Center is a development of some 900,000 to 1,050,000 square feet of development on 20 acres of land bounded by Whittemore Avenue, Russell Field, Rindge Avenue and Alewife Brook Parkway at the end of Route 2 in North Cambridge. Alewife Center has a subway entrance in the middle of the parcel.

I have been working on the planning and permitting of Alewife Center for the past seven and one-half years. This process has involved presentations and discussions with residential neighbors and various City boards in more than 50 meetings during this period. The results of that process was support of the project by the neighborhood and Planning Board with the issuance of all comprehensive permits required by the City. My PUD permit contains traffic mitigation requirements and, in addition, I have also agreed with the State Executive Office of Transportation to provide further mitigation measures including a new signal at the intersection of Massachusetts Avenue and Alewife Brook Parkway.

Alewife Center will provide some 1,000 construction jobs over a period of years, as well as conservatively some 3600 permanent jobs. The estimated payroll of those permanent employees on an annual basis would be \$140,000,000. Real estate taxes paid at present rates would exceed \$3,500,000 annually.

The proposed parking freeze ordinance stops Alewife Center. Let me tell you why. No lender will lend the necessary funds for our infrastructure improvements (estimated at \$4,000,000) which will provide open space, landscaping, roadways, sewer & water lines, etc. without our ability to show that we can, in fact, build what the City has permitted. This infrastructure cost has to be paid for by a total of six buildings. Our PUD requires the completion of open space, landscaping, and cleaning up of Jerry's Pond in the first phases of building construction.

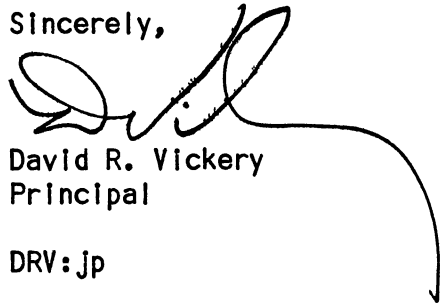
City Councillor Francis W. Duehay
October 4, 1990
Page Two

This ordinance gives no certainty to myself or our lenders that we can move forward on the basis of a comprehensive permit for a phased development issue by the City and supported by my residential neighbors.

I am in favor of clean air, however, restricting parking spaces does not address a clean air agenda. The process or lack of process that has generated the MOA and an ordinance that "cannot be amended" has encouraged a lack of trust in Cambridge city government. This comes at a time when jobs and taxes are critical to Cambridge, and when Massachusetts has a populous overwhelmingly dissatisfied with government actions.

Therefore, my partners and I at Alewife Center are opposed to this ordinance.

Sincerely,



David R. Vickery
Principal

DRV:jp

dv/1-190

Spaulding & Slye

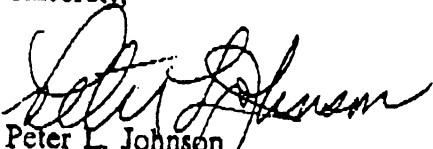
October 3, 1990

Chairman of Council
Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Chairman:

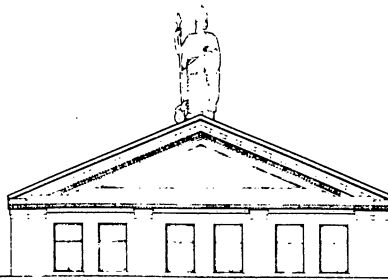
Spaulding & Slye has been developing first-class commercial property in Cambridge since 1968. We currently manage over 600,000 square feet in Cambridge with more than thirty tenants and approximately 1,500 employees. Spaulding & Slye also pays over \$2.3 million in real estate taxes annually. Spaulding & Slye is opposed to the parking freeze ordinance.

Sincerely,



Peter L. Johnson
Senior Vice President

PLJ/meg



THE ATHENAEUM GROUP

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

October 4, 1990

Frank Duehay, Chairman
Ordinance Committee
Cambridge City Council
City Hall
Cambridge, MA 02142

Re: **PROPOSED PARKING FREEZE ORDINANCE**

Dear Councillor Duehay:

The Athenaeum Group is the parent company of a number of real estate developments and local businesses in Cambridge. We currently employ 142 persons, and a significant number of them are Cambridge residents. According to the City's latest budget document, The Athenaeum Group is the fifth largest taxpayer in Cambridge.

We are opposed to the parking freeze ordinance and uniquely qualified to comment. Our One Kendall Square Garage touched off the controversy when three of eleven abutters joined in a lawsuit against the City and The Athenaeum Group protesting the parking facility.

Lost in the controversy, is the simple truth that the One Kendall Square Garage was required by law. It was constructed in conformity with all local ordinances and building codes. No variances were required or requested. For two years our company has been subjected to litigation, regulatory threats, and administrative harassment because of a garage we were required, by law, to build. There is something wrong in Cambridge when good corporate citizens are subjected to the treatment we have experienced.

The proposed ordinance is bad policy. It is the result of political deal-making of the worse kind. The evolution of this issue has exceeded all bounds of fairness and due process. When the truth is finally known, it will be a sad day for Cambridge.

It is our sincere hope that a majority of City Councillors will realize that this ordinance is a mistake, that it has nothing to do with clean air, and that it is not too late for the City to abandon a flawed and corrupt process.

Sincerely,

David Clem

DEC:rmf

Bioran

415 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel: 617-547-8900

October 4, 1990

The Honorable Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

The Honorable Cambridge City Council:

Bioran Medical Laboratory has been located in Cambridge since its inception in 1964 and has grown from a company with two employees to the largest and most prominent medical testing facility in New England and the seventh largest laboratory in the United States. We presently employ approximately 450 employees in Cambridge. Bioran operates 24 hours a day, within three main shifts. We provide employee parking during all three shifts.

On July 30, 1990, the City Council approved a Memorandum of Agreement that extends a Parking Freeze to include employee parking. Our ability to provide employee parking directly affects our success in attracting and maintaining our work force.

Many employees consider driving to work a necessity. For example, women who work late shifts feel unsafe walking to and riding the T during odd hours. Parents trying to coordinate child care schedules with work schedules often rely on a car. Even parents who live in Cambridge find it difficult to juggle dropping off and picking up a child in time without the aid of a car. By providing employee parking, Bioran makes it possible for many people to successfully coordinate their work with other important responsibilities.

We urge the City Council to recognize the necessity of employee parking and to protect a Cambridge company's ability to provide such parking.

Sincerely,



Kathleen M. Fennell
Director of Personnel



1 October 1990

To: The Honorable City Council
c/o City Clerk
City Hall
Cambridge, MA 02139

Re: Proposed Ordinance Dealing with a Parking Freeze in Cambridge

Dear Members of the Council:

Bolt Beranek and Newman Inc. has been a Cambridge-based firm since its beginning in 1948. The company currently employs approximately 1,800 persons in Cambridge, of which 10% are Cambridge residents. We occupy approximately 833,000 sq. feet of space and pay over \$2,350,000 in real estate taxes annually.

We at BBN strongly object to the Parking Freeze Ordinance currently under review by the City Council. This ordinance will have a negative effect on our employees and it will limit our ability to attract new employees. These negative influences will restrict our growth by limiting our expansion, therefore making BBN less competitive.

Very truly yours,

BOLT BERANEK AND NEWMAN INC.

A handwritten signature in black ink, appearing to read 'Michael Nacey', is written over a white background.

Michael Nacey
Vice President - Administration

CAMBRIDGE FAMILY

October 4, 1990

The Honorable City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

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K. GEORGE NAJARIAN

The Honorable Cambridge City Council:

The proposed "parking freeze ordinance" (developed subsequent to the Memorandum of Agreement) under consideration by the Cambridge City Council would, if enacted, threaten the ability of the Cambridge Family YMCA to survive as an institution. The Cambridge Family YMCA urges the Cambridge City Council to reconsider this approach to addressing the issue of "clean air" in Cambridge.

After a decade of self-study and community assessment, the Cambridge Family YMCA is embarking on a visionary program to construct a new YMCA facility to meet the ever-increasing community call for YMCA services. Community program demands in such areas as affordable transitional housing, childcare, senior adult and special needs services and health and fitness have prompted the YMCA to advance this project. The YMCA cannot remain in its 94-year old building and meet this century's community programming needs.

By making use of the present YMCA facility on Massachusetts Avenue as a real estate investment, the YMCA will be able to underwrite a substantial portion of the construction of a new YMCA. Subject to appropriate municipal approvals, the YMCA will construct a 70,000 square foot program facility on the site of its Green Street parking lot. Contiguous to the new Y will rise a 136-room transitional housing complex replacing that function in the present building.

Subsequently, the existing YMCA facility on Massachusetts Avenue will be converted to a commercial use of approximately 100,000 square feet. A critical component of the program, particularly in terms of financial feasibility and market acceptability, is to provide parking. While the YMCA benefits from its proximity to the Central Square MBTA station, the YMCA's current projections result in a net increase of 59 spaces from the current 108 parking spaces.

THIS AGENCY IS
SUPPORTED BY



United Way

Page 2

The Honorable Cambridge City Council

October 4, 1990

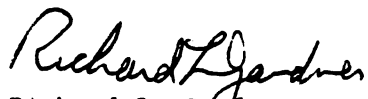
The YMCA has entered into an agreement with Robert F. Walsh Associates of Boston, completed a developmental study, and expended funds to advance this major capital project. The proposed ordinance threatens the viability of the YMCA project and further endangers . . .

- o the preservation of 136 affordable housing rooms - the largest transitional supportive service housing program in the city, serving a growing population of disenfranchised.
- o the creation of 54 new day care slots - at a time when youth and family services are critically needed.
- o the development of recreation and social services for over 500 youth and young adults
- o services to senior adults and those with special needs
- o YMCA Programs and services for over 2,000 Cambridge residents

It is no longer tenable for the YMCA to remain in the present facilities. The YMCA has developed a creative and innovative solution to its facility and finance dilemma. The YMCA does not have experimental capital to risk on this project. The parking freeze and traffic mitigation ordinances, if enacted, would imperil the YMCA as an institution.

The Cambridge Family YMCA asks that the Cambridge City Council reconsider the ordinance and work with community leaders to craft other strategies to address the issues of "clean air".

Sincerely,


Richard L. Gardner

Chairman of the Board



COM/Energy Services Company
One Main Street
Post Office Box 9150
Cambridge, Massachusetts 02142-9150
Telephone (617) 225-4000

October 3, 1990

City Councillor Francis H. Duehay
Chairman, City Council Ordinance Committee
City Hall
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Councillor Duehay:

As the largest taxpayer and one of the largest employers in the City of Cambridge, we are opposed to the adoption of the proposed Parking Freeze Ordinance.

In 1983, when we were contemplating relocating our corporate headquarters, we made a conscious decision to remain in the City of Cambridge because of our historic ties to the City and our strong relationship with City of Cambridge officials. However, today we find our existence in Cambridge jeopardized due to the proposed adoption of the Parking Freeze Ordinance, which threatens to impact our employee parking program. Our ability to provide convenient and safe parking for our employees is critical to our attracting and retaining qualified professionals, many of whom are working mothers with an even greater need for convenient parking. These employees are also the same people who frequent the local business establishments. They fuel Cambridge's economic engine, breeding life into the local economy, which translates into revenue for the City's treasury. The proposed Parking Freeze Ordinance does not give any consideration to the negative impact it will place upon employers in Cambridge and, for this reason alone, the adoption of the Ordinance should be reconsidered.

As a property owner in Cambridge, we have a keen interest in the future of the City. As you may all well know, we have made a substantial investment in the Kendall Square area with the construction of the Riverfront Office Park Complex, an investment that has benefitted the City in terms of the number of jobs created and the amount of property taxes generated.

We also plan to develop our Research Park site on Third Street into an office park, which will further benefit the City. However, for two (2) years now, our plans to develop this site have been stalled due to the continual imposition of the East Cambridge Interim Planning Overlay District (EC-IPOD), which has deprived us of our property rights. Now, as we understand, the enactment of the Parking Freeze Ordinance will directly impact the resolution of the EC-IPOD by causing the rezoning to drag on through the end of 1990, and well into 1991.

It should also be noted that the apparent motivation for the proposal of the Parking Freeze Ordinance is not clean air but to allay the fears of development by a minority of Cambridge residents, who perceive development as unpopular. If the issue was truly about clean air, then the solution to the problem would be to support mitigation measures such as emission controls, requiring automobiles to burn cleaner fuels.

The proposed Parking Freeze Ordinance, if adopted, will have a detrimental impact on the City of Cambridge and the people who live and work here. In these troubled economic times we should be working together in concert to do all we can do restore the Massachusetts economy, in addition to cleaning up the environment. Therefore, we ask that you reconsider the proposal to adopt the Parking Freeze Ordinance and instead work with the business community toward finding workable solutions to these problems.

Sincerely,



Michael P. Sullivan
Vice President

CESV
310/90/bmc



The Charles Stark Draper Laboratory, Inc.

555 Technology Square, Cambridge, Massachusetts 02139

Telephone (617) 258-3508

Vice President and Treasurer
D.C. Driscoll

October 3, 1990

Committee on Ordinances
Cambridge City Council
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Members of the Ordinance Committee:

The Laboratory strongly opposes the enactment of an ordinance to implement the Memorandum of Agreement concerning the so-called Parking Freeze.

We compete nationally as well as throughout the local area for scientists and engineers who provide the core of our research and development activities. The ability to attract and hold these individuals has allowed us to receive continued support and to employ significant numbers of Cambridge citizens in support as well as technology roles.

Parking is essential for us to compete for employees with Routes 128 and 495 firms as well as firms from the southeast and southwestern states. Other research and development firms will all have recruiting difficulties if they do not have the ability to provide employee parking.

The "Parking Freeze" will not provide us with clean air but will send a message to employers that Cambridge is unfriendly to them.

The Council should be attempting instead to lure employers like Draper to Cambridge. Employers who pay high taxes, provide jobs to Cambridge residents, attempt to address traffic problems (Industrial B landowners), and support civic and city needs such as the Cambridge Youth Job Opportunity Program.

A different signal could be sent if the Council reversed its July 30, 1990 position of endorsing the Memorandum of Agreement.

Very truly yours,

David C. Driscoll
Vice President and Treasurer

Harvard Square Business Association

ESTABLISHED 1910

18 BRATTLE STREET, CAMBRIDGE, MASSACHUSETTS 02138

Telephone: (617) 491-3434

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Dickson Bros. Hardware

SCOTT E. ZELNER
Tabloid Newspapers

October 4, 1990

Councillor Francis Duehay
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA. 02139

Frank!
Dear Councillor Duehay:

The Board of the Harvard Square Business Association and I felt that it would be important to let you know that we are concerned that the parking freeze, particularly an aspect which might involve imposing restrictions upon private development and existing employee parking, could seriously impact business in Cambridge.

Cleaner air is something which we all can support in concept, but it is the scope of the proposed ordinance which needs to be carefully assessed before moving forward.

As you are probably aware, our Association has various committees, one dealing specifically with community affairs and one, with parking; each report to the full Board each month. We would be delighted to be of assistance, either by attending a future meeting or by polling our membership at large. Please let me know.

Thank you for all of your good work on behalf of all of us,

Sincerely,

TR

Richard R. Beatty, President

HARVARD UNIVERSITY

SALLY ZECKHAUSER
VICE PRESIDENT FOR ADMINISTRATION

MASSACHUSETTS HALL
CAMBRIDGE, MASSACHUSETTS 02138
617-495-1512

October 4, 1990

Francis Duehay
Chair, Cambridge City Council Ordinance Committee
Cambridge City Hall
Cambridge, Massachusetts 02139

Re: Parking Freeze Ordinance

Dear Councillor Duehay:

Harvard University joins many other employers in Cambridge in objecting to the recent Memorandum of Agreement and proposed "interim" parking freeze ordinance.

Harvard objects to the language of the Memorandum of Agreement and the proposed interim ordinance which eliminates exemptions for employee parking. Although the Memorandum of Agreement represents a fundamental shift in policy, affected employers and other interested parties were not allowed to participate in the process that led to the July 30 vote by the City Council. The "grandfathering" language is vague and open to interpretation, causing Harvard and many others to be concerned about the status of their existing spaces under the proposed ordinance.

The proposed interim ordinance would put landowners in a dilemma, trying to reconcile the zoning ordinance requirements for parking with arbitrary freeze restrictions. In fact, the proposed interim ordinance appears to be an attempt to treat an anti-development ordinance as an environmental one in order to avoid the requirements of Massachusetts General Laws, Chapter 40A. There is no scientific evidence to support a freeze on parking in the City of Cambridge. In fact, there appears to be no authority under the Clean Air Act to impose such a freeze. The proposal denigrates the efforts being made by many citizens, businesses, institutions and public officials to protect our environment, and in this sense represents an abuse of the Clean Air Act.

Harvard University has 14,262 employees, 9,856 of whom work in Cambridge. The University's total annual payroll for 1989-1990 was \$437 million. As you know, Harvard is the largest employer of Cambridge residents, with more than 3,500 residents on the payroll. The University contributes well over \$5 million each year to the City of Cambridge in taxes and other direct payments.

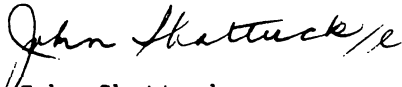
Francis Duehay
October 4, 1990
Page 2

The Memorandum of Agreement and the proposed ordinance jeopardize Harvard University's current parking structure and its ability to be responsive to the needs of our employees in the future.

Sincerely,



Sally H. Zeckhauser
Vice President for Administration



John Shattuck
Vice President for Government, Community and Public Affairs

cc: Joseph Connarton, City Clerk

Ivanhoe Inc.

October 4, 1990

500
Boylston Street
Suite 1860
Boston, MA
02116

Chairman Duehay
Ordinance Committee
Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: PROPOSED PARKING FREEZE ORDINANCE


Dear Honorable Members of the Ordinance Committee:

I am writing to you to express my deep concern and dissatisfaction with the proposed Parking Freeze Ordinance which is the subject of a hearing before your Committee on October 4, 1990. I am a long-time resident of Cambridge, and I am currently developing the retail and office project known as One Brattle Square. I previously developed several units of housing at 931 Massachusetts Avenue. My activities have added in excess of \$50,000,000.00 to the tax base for Cambridge.

I am in complete agreement with the employers, employees, labor representatives, human service providers, representatives of institutions located in Cambridge, and other citizens of Cambridge who believe that the parking freeze currently proposed for Cambridge is an anti-job and anti-development proposal in the guise of a clean air proposal. I can assure you that if the Parking Freeze Ordinance is adopted as proposed, my confidence in those who were elected to represent all of us will be unalterably changed.

Tel:
617 267-4567
Fax:
617 236-8761

Sincerely,


Gregory Rudolph

GR/kdb

Arthur D Little

Arthur D. Little, Inc.
Acorn Park
Cambridge, Massachusetts
02140-2390
USA

Telephone 617.864.5770
Telefax 617.661.5830
Telex 921436

October 3, 1990

The Honorable Francis Duehay
Chairman, Ordinance Committee
Cambridge City Council
City Hall
Cambridge, Massachusetts
02138

Dear Mr. Duehay:

Arthur D. Little, Inc. joins other members of the Cambridge community of businesses and institutions in expressing their concerns about the proposed ordinance to establish a parking freeze in the City of Cambridge. We urge the City Council not to adopt the ordinance, particularly as it applies to parking for employees.

Arthur D. Little is an international management and technology consulting firm whose world-wide headquarters are located in Cambridge. The Company has been a corporate citizen of Cambridge for over 70 years and employs approximately 1,150 people in its Cambridge facilities, the largest of which is located adjacent to Route 2 at the Cambridge/Arlington/Belmont border. The Company is owned by its employees, approximately 120 of whom live in the City of Cambridge. As a major Cambridge employer, it injects millions of dollars each year into the Cambridge economy, including over \$1,200,000 in real estate taxes. In addition, the Company supports a number of Cambridge programs and institutions, including Teen Work, the Cambridge Community Center, the Cambridge Art Association's Summer Art Program, the Winning Edge Program at Cambridge Rindge and Latin School, the Cambridge Food Pantry Network/CEOC, and the Mount Auburn Hospital.

Arthur D. Little wholeheartedly endorses the City Council's goal of improving air quality by reducing vehicle miles traveled and encouraging use of public transit and other alternatives to the automobile. The Company currently has several programs aimed at reducing automobile use, including Caravan, car pooling, and shuttle service to the Alewife MBTA station. We support the view that the implementation of thoughtfully conceived traffic mitigation measures will do much to improve Cambridge as a place to live and to work. However, we believe the quickly contrived parking ban under current consideration would degrade the attractiveness of Cambridge for everyone concerned.

Amsterdam
Brussels
Cambridge
Caracas
Copenhagen
Hong Kong
Houston
London
Los Angeles
Madrid
Mexico City
Milan
New York
Paris
Riyadh
San Francisco
São Paulo
Singapore
Taipei
Tokyo
Toronto
Washington
Wiesbaden

Arthur D Little

October 3, 1990 Page 2

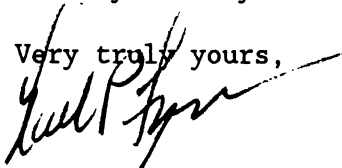
The Honorable Francis Duehay
Chairman, Ordinance Committee
Cambridge City Council

In addition to the general objections to the freeze on employee parking expressed by the business community, Arthur D. Little has its own unique objections arising out of its location outside the perimeter of readily available public transportation. Since the Company is located west of the Alewife park-and-ride facility, most of our employees have no reasonable alternative than to drive to work. A restriction on the Company's ability to expand its employee parking would have the practical effect of making it impossible for us to continue to grow and prosper in Cambridge, thereby forcing us to consider alternative locations--a result we think would be unfortunate for the Company and the City. Furthermore, a move of our facilities away from Cambridge would probably have the effect of increasing, rather than decreasing, the number of miles traveled in the metropolitan area, since many of our employees would have to either drive further or discontinue their current use of public transportation.

We urge your committee and the City Council to focus on improving air quality through traffic mitigation rather than a parking freeze, and to take into account the interests of all, including the City's residents, employees, businesses, and institutions.

Thank you for your consideration of this matter.

Very truly yours,



Karl P. Fagans
Vice President

United Brotherhood of Carpenters and Joiners of America

LOCAL UNION No. 40

109 SMITH PLACE
CAMBRIDGE, MASSACHUSETTS 02138
TEL (617) 547-8511 • FAX: (617) 547-0371



October 4, 1990

Councilman Francis Duehay
Cambridge City Council
Cambridge City Hall
Cambridge, MA

Dear Councilman Duehay:

Local 40 of the Carpenter's Union opposes the proposed parking freeze ordinance.

As a Cambridge-based union, Local 40 serves as a referral hall for our 1600+ members. A great many of our members are women and minorities as well as Cambridge residents. The majority of our members are heads of households. The average carpenter's salary is \$25,000 plus benefits. We have an apprenticeship program which includes 28% - 30% women and minorities and Cambridge residents.

Over the last ten years, we have accepted into our apprenticeship program Cambridge, Rindge and Latin grads. The union has actively participated in the school's vocational career days. We have been strong supporters of Cambridge's Just-A-Start program.

Our members have shared their talents with the City by volunteering thousands of hours. We have constructed handicapped access ramps throughout the City for elder centers, community centers and handicapped programs. We have also restored many of the City's churches.

The impact of the parking freeze threatens all of this.

We estimate that over 1000 jobs currently slated for our carpenters are on hold because developers can't secure the financing. Financing which is tied to parking capacity. The parking you want to freeze is freezing our members out of work.

continued ...

Councilman Francis Duehay
October 4, 1990
Page Two

If our carpenters are out of work, there are:

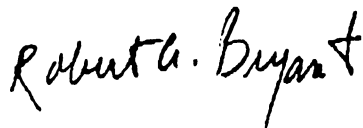
- No paychecks to nearly 500 Cambridge members.
- No benefits, particularly health benefits, which spells disaster to carpenter's families.
- No apprenticeship program opportunities for Cambridge residents and;
- We will no longer be able to volunteer our services to Cambridge because our members will need to be out looking for work.

With the local economy the way it is, 35% - 40% of our members are out of work. Now with the freeze, we know that more than half of our members will be without work.

The City Council and the City Administration are hiding behind the notion that this is about clean air. It is not. It is about insider politics and the blind willingness to appease two dozen concerned citizens at the expense of thousands of working people. For the City of Cambridge to chose this time of economic chaos for working people in Cambridge and across the nation to suddenly agree to be partners with a small group of elitist anti-growth forces plus the Dukakis Administration is irresponsible.

Together the Union and the City have faced many problems. This one is different. The Council's actions have excluded us from the process and are set out to deny us out of our livelihoods. We urge you to reconsider.

Sincerely,



Robert A. Bryant
Business Agent
Carpenters Union Local #40

RAB:kw

Lotus

October 3, 1990

Chairman of Ordinance Committee
City Hall
Cambridge, MA 02142

Re: Parking Freeze Ordinance

Dear Chairman:

Lotus Development Corporation began in the City of Cambridge and has grown up here.

We employ approximately 2700 employees. We occupy over 1,000,000 square feet of real estate and we contribute in excess of Two Million Dollars (\$2,000,000) per year to the City of Cambridge in real estate taxes.

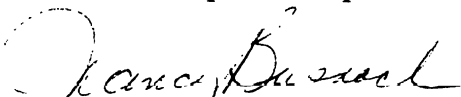
Lotus has always complied with any traffic mitigation the City has requested. We provide our own shuttle bus service for our employees to travel between buildings and the public transportation system. We encourage our employees to use public transportation and pay 100% for "T" passes. We also provide our employees with parking.

To limit our employee parking growth does not make sense to us and we object to the Parking Freeze Ordinance currently under review by the City Council. We feel this ordinance will become a hardship on our employees, our Company, and the growth of Lotus Development Corporation within the City of Cambridge.

We would like to continue our growth in Cambridge and ask you to help us work to that end.

Very truly yours,

Lotus Development Corporation



Nancy Busnach
Director
Real Estate and Facilities

cc: City Council

NB/kg



OFFICE OF THE PRESIDENT

CAMBRIDGE, MASSACHUSETTS 02139

October 4, 1990

Mr. Francis H. Duehay
Chairman
Ordinance Committee
Cambridge City Hall
Cambridge, MA 02139

Dear Chairman Duehay:

MIT must voice concern regarding the interim Parking Freeze ordinance which is before the Ordinance Committee tonight.

As you know, MIT's primary interest is in education, certainly here on our campus, but also in Cambridge's high schools and other academic institutions within this community and beyond.

However, MIT is also interested in the fabric of the City of Cambridge which is home to hundreds of companies, institutions, organizations and families.

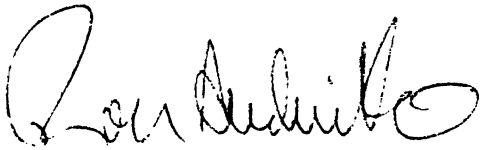
At MIT, we have explored, along with others in the community, traffic and parking issues that affect both the Institute and the City. We support sound and carefully-crafted traffic mitigation efforts. We are a member of the Mayor's Blue Ribbon Committee on Traffic Mitigation and participate in the traffic mitigation studies in Kendall Square. We want to educate, learn, and live in an environment of clean air.

We believe that the proposed interim Parking Freeze ordinance is not the solution to issues of air and noise pollution, traffic and parking. It does not fully represent the interests of all sectors of Cambridge who care about clean air and who will ultimately be affected by the implementation of such policy.

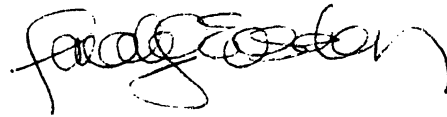
In fiscal year 1990, MIT was the City's second largest taxpayer with a payment in lieu of taxes gift of \$793,500 and a payment of \$3,798,203 on non-academic properties, totaling \$4,591,703. MIT is also the City's second largest employer with just under 10,000 employees. We are a steadfast member of the community, and hope to continue to contribute as such.

The MIT community and its operations, as well as hundreds of other businesses and institutions, will be adversely affected by the interim Parking Freeze ordinance if it is adopted in its current form. We, therefore, urge the Council to consider all perspectives on this matter before taking future action.

Sincerely,



Ronald P. Suduiko



Sarah J. Eusden



FRANCIS P. LYNCH
President

MOUNT AUBURN HOSPITAL

330 Mount Auburn Street
Cambridge, Massachusetts 02238
Tel.: (617) 492-3500

October 4, 1990

The Honorable Francis Duehay
City Councillor
Chairman of the Ordinance Committee
City Hall
Cambridge, Massachusetts 02139

Dear Chairman Duehay:

Mount Auburn Hospital wishes to be recorded in strong opposition to the proposed parking freeze ordinance before your committee. As you know, Mount Auburn Hospital has been concerned and active on the issues of traffic and parking in the surrounding neighborhood. As a health care institution, we are committed to the minimization of pollution and to clean air in the city. However, the proposed freeze does not effectively address these important issues.

Mount Auburn Hospital employs 1912 people, 280 of whom are Cambridge residents. Our main concern with the parking freeze is that it does not exempt employee parking and could severely limit the institution's ability to continue to provide needed jobs and health care services to the residents of Cambridge.

Sincerely,

Francis P. Lynch
President

FPL:pg

October 4, 1990

Polaroid

Councillor Francis H. Duehay,
Chairman of the Ordinance Committee
Cambridge City Hall
Cambridge, MA 02139

Dear Chairman Duehay:

Polaroid Corporation has been working with the City in recent months on several activities which deal with the subject of traffic and parking. Three of these activities are:

- a) The Company has been engaged with City agencies and with other area landowners in an ongoing study of the Industry B Zoning District. These studies include a traffic and parking component.
- b) The Company recommended to the Council in a letter dated April 4, 1990, the establishment of a Blue Ribbon Committee to form a traffic strategy for the City. We suggested that part of the charge to the Committee should be "a city-wide organized effort to engage major landowners, employers, and residents in pursuing voluntary measures to address traffic problems". This suggestion was later embraced by the Cambridge Chamber of Commerce in its letter to the Council of May 14, 1990 and the Council subsequently created the Blue Ribbon Committee.
- c) The Company has joined with other members of the Industry B Landowners Group and has signed on to participate in the City's Commuter Mobility Program being coordinated by Caravan for Commuters.

On July 30, 1990 the City Council endorsed a Memorandum of Agreement without providing an opportunity for prior public comment. A part of this Agreement eliminated the long standing exemption for employee parking under the so-called Parking Freeze. The Council by this action and by the method of its implementation, has allowed a vocal minority of its residents to upset the delicate balance which exists in the City between government, business, and the community.

We have subsequently joined with other employers to determine how best to express our collective concern to the Council over the sudden changing of the rules under which we operate our businesses in Cambridge. For Polaroid, the action of the Council has regrettably diverted our attention from the other activities mentioned above which we had entered into in a spirit of cooperation. The activities of the Blue Ribbon Committee also appear to have been preempted.

Polaroid is among the City's top ten employers ranked by number of employees, not including the many consultants and vendors, contractors and service firms, many of whom are local, which are an integral part of our day-to-day operations.

Polaroid's name does not appear among the City's top ten property taxpayers, but when you reconstitute the taxes which are paid as part of our rent at Technology Square and several other leased facilities, and add them to the taxes on our owned facilities, we pay close to \$3,000,000 in taxes, a figure which would place us well up among the top ten taxpayers in the City.

Polaroid Corporation was established in Cambridge in 1937. Its worldwide corporate headquarters is located in Cambridge along with administrative offices, marketing, research and engineering. Over 90 percent of the Company's space and employees within the United States is located in Eastern Massachusetts. Sites in Waltham, Needham, Norwood, New Bedford, and Freetown house virtually all of the Company's U.S. manufacturing facilities. Our employees must travel frequently between the Cambridge headquarters and our manufacturing sites, often coupled with a trip to or from home to start or end the work day. This network of facilities is not well served by public transportation.

Within Cambridge, Polaroid currently owns or leases approximately 1,200,000 square feet of space in thirteen buildings, all but two of which are within walking distance of each other and are within the Industry B area.

Parking for employees, employee visitors from the outlying sites, business visitors and customers is provided in Polaroid-owned parking lots or is incorporated with building leases.

Some of the Polaroid occupied buildings in the Industry B area are older buildings which were built before the automobile became the primary means of transportation. Of necessity, in the late 1960's and early 1970's, employees were parking in the adjacent residential areas of Neighborhood 4, which led to conflicts with the neighborhood. Therefore, when opportunities became available, Polaroid acquired properties within the Industry B area, demolished the buildings, created surface parking lots there, and vacated both its scattered parking lots and on-street parking in Neighborhood 4. In doing so, the Company was able to make these scattered lots in Neighborhood 4 available for reuse, and negotiated a friendly taking of the properties by the City which was approved by the City Council.

The City's Zoning Ordinance "requires development of adequate parking facilities to meet the reasonable needs of all building and land users...". Employee parking has been exempt from the so-called Parking Freeze until the endorsement by the Council on July 30, 1990 of the Memorandum of Agreement.

We believe that we have been a responsible corporate citizen of Cambridge and have not done something terrible by providing parking to support our operations here.

We are stunned that a City Council which espouses a process approach and represents itself as a thoughtful, positive force for the future, would take such a precipitative action. We urge the Council to reconsider its action and to seek a more reasoned solution to this issue with participation from all affected parties.

Very truly yours,

POLAROID CORPORATION



Eric V. Benson
Senior Manager
Corporate Real Estate

EVB/jbr

cc: Members of the City Council
Robert W. Healy, City Manager
Michael H. Rosenberg, Assistant City Manager
for Community Development

I. MacAllister Booth, President
and Chief Executive Officer
William J. O'Neill, Jr., Group Vice President
and Chief Financial Officer
Graham M. Brown, Jr., Vice President
and Treasurer
Richard F. deLima, Vice President, Secretary
and General Counsel



SYNOUDS, MCKERY, MESSINA AND GREBLEN, CO

October 4, 1990

City Councillor Francis W. Duehay
Chairperson
Parking Freeze Ordinance Subcommittee
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Councillor Duehay:

This letter is written concerning the proposed parking freeze and its impact on Alewife Center.

As you may recall, Alewife Center is a development of some 900,000 to 1,050,000 square feet of development on 20 acres of land bounded by Whittemore Avenue, Russell Field, Rindge Avenue and Alewife Brook Parkway at the end of Route 2 in North Cambridge. Alewife Center has a subway entrance in the middle of the parcel.

I have been working on the planning and permitting of Alewife Center for the past seven and one-half years. This process has involved presentations and discussions with residential neighbors and various City boards in more than 50 meetings during this period. The results of that process was support of the project by the neighborhood and Planning Board with the issuance of all comprehensive permits required by the City. My PUD permit contains traffic mitigation requirements and, in addition, I have also agreed with the State Executive Office of Transportation to provide further mitigation measures including a new signal at the intersection of Massachusetts Avenue and Alewife Brook Parkway.

Alewife Center will provide some 1,000 construction jobs over a period of years, as well as conservatively some 3600 permanent jobs. The estimated payroll of those permanent employees on an annual basis would be \$140,000,000. Real estate taxes paid at present rates would exceed \$3,500,000 annually.

The proposed parking freeze ordinance stops Alewife Center. Let me tell you why. No lender will lend the necessary funds for our Infrastructure Improvements (estimated at \$4,000,000) which will provide open space, landscaping, roadways, sewer & water lines, etc. without our ability to show that we can, in fact, build what the City has permitted. This infrastructure cost has to be paid for by a total of six buildings. Our PUD requires the completion of open space, landscaping, and cleaning up of Jerry's Pond in the first phases of building construction.



City Councilor Francis W. Duehay
October 4, 1990
Page Two

This ordinance gives no certainty to myself or our lenders that we can move forward on the basis of a comprehensive permit for a phased development issue by the City and supported by my residential neighbors.

I am in favor of clean air, however, restricting parking spaces does not address a clean air agenda. The process or lack of process that has generated the MOA and an ordinance that "cannot be amended" has encouraged a lack of trust in Cambridge city government. This comes at a time when jobs and taxes are critical to Cambridge, and when Massachusetts has a populous overwhelmingly dissatisfied with government actions.

Therefore, my partners and I at Alewife Center are opposed to this ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Vickery', with a long, sweeping underline that extends to the right and then curves downwards.

David R. Vickery
Principal

DRV:jp

dv/1-190

Spaulding & Slye


October 3, 1990

Chairman of Council
Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Chairman:

Spaulding & Slye has been developing first-class commercial property in Cambridge since 1968. We currently manage over 600,000 square feet in Cambridge with more than thirty tenants and approximately 1,500 employees. Spaulding & Slye also pays over \$2.3 million in real estate taxes annually. Spaulding & Slye is opposed to the parking freeze ordinance.

Sincerely,



Peter L. Johnson
Senior Vice President

PLJ/meg

0-54B



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 498-9011

FAX. 868-8159

1990 AUG 28 PM 3:36

CAMBRIDGE MA.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

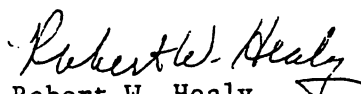
TO: Joseph Connarton
City Clerk

FROM: Robert W. Healy
City Manager

DATE: August 28, 1990

Transmitting a copy of the Parking Freeze Ordinance submitted by the Law Department.

Very truly yours,


Robert W. Healy
City Manager

RWH/dls



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CITY CLERK

CITY OF CAMBRIDGE AUG 28 PM 3:36

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City Hall

CAMBRIDGE MA.

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Cambridge, Massachusetts 02139

(617) 498-9020

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August 27, 1990

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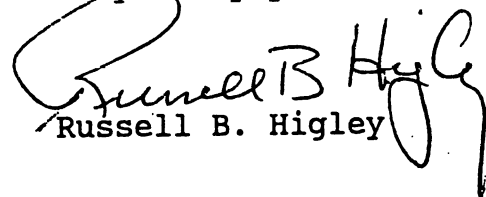
Re: Parking Freeze Ordinance

Dear Mr. Healy:

I enclose an ordinance which is intended to implement the provisions contained in the Memorandum of Agreement, dated August 15, 1990, between the City and the Massachusetts Department of Environmental Protection.

Pursuant to the terms of the Memorandum, this ordinance should be submitted to the City Council before August 29, 1990.

Very truly yours,


Russell B. Higley

RBH:dc
Enclosure

ORD#3\PKGFREEZ



City of Cambridge

In the Year One Thousand, Nine Hundred Ninety

AN ORDINANCE

In amendment to an ordinance designated as the "Cambridge Municipal Code."

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, the City of Cambridge (City), and the Massachusetts Department of Environmental Protection (DEP) (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 and DEP were parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge; and

WHEREAS, the parties, as part of a settlement of said dispute, entered into a Memorandum of Agreement (MOA), dated August 15, 1990, which requires that the Cambridge City Manager present to the Cambridge City Council an ordinance to implement the provisions of said MOA; 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 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 the City to support the Clean Air Act by discouraging automobile 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 opportunities for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the City hereby commits itself to the terms of this ordinance for the period until a SIP amendment is approved, said period to be known as the "interim period."

Now, THEREFORE, be it ordained by the City Council of the City of Cambridge as follows:

Title 10 of the Code (Vehicles and Traffic) is hereby amended by adding thereto the following new Chapter 10.16 (Parking Freeze):

Chapter 10.16

PARKING FREEZE

Sections:

- 10.16.010 Time period of Chapter
- 10.16.020 Definitions
- 10.16.030 Building or operation of parking facilities
- 10.16.040 Pre-existing applications, permits and determinations
- 10.16.050 Interim Parking Control Committee
- 10.16.060 Procedure for Obtaining CPF or Determination of Exclusion
- 10.16.070 Number of CPFs to be issued
- 10.16.080 Enforcement
- 10.16.090 Memorandum of Agreement of August 15, 1990

10.16.010 Time period of Chapter

This Chapter will remain in effect only during the interim period, as defined in s. 10.16.020.

10.16.020 Definitions

"Controlled parking facility" (CPF) means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, except (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific residential building or group of buildings, or (ii) a parking facility designated as a park-and-ride facility to be operated in conjunction with the Massachusetts Bay Transportation Authority.

"Controlled parking facility permit" (CPFP) means a permit issued by the Director of the Cambridge Department of Traffic and Parking, which allows the construction or modification of a CPF and the operation of a CPF. Each permit will be for a specific number of Controlled parking spaces.

"Controlled parking space" (CPS) means a parking space in a Controlled parking facility (CPF).

"Determination of exclusion" means a determination by the Director of the Cambridge Department of Traffic and Parking that a parking facility does not come within the definition of a Controlled parking facility.

"Director" means Director of the Cambridge Department of Traffic and Parking.

"Interim Parking Control Committee" (IPCC) means the committee established by this Chapter which decides whether to issue Controlled parking facility permits and Determinations of exclusion. These decisions by the IPCC are binding on the Director.

"Interim period" means the period between the enactment of this Chapter and the approval of an amendment to the State Implementation Plan (SIP), required by the Clean Air Act (42 U.S.C., s. 7401 et seq.), regarding 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.

"Memorandum of Agreement" or "Memorandum" means the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.

"Parking facility" means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked.

"Person" means and includes a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization, any state, regional or political subdivision, agency, department, authority or board, and any other group acting as a unit, as well as a natural person.

10.16.030 Building or operation of parking facilities

No person shall be granted a permit to build a parking facility in Cambridge, or modify a parking facility so as to increase the number of parking spaces therein, and no person shall operate a parking facility, unless said person shall have first obtained a controlled parking facility permit or a determination of exclusion under the procedures set forth in this Chapter.

10.16.040 Pre-existing applications, permits and determinations

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. And if a commercial parking facility permit or a determination of exclusion was obtained before

August 15, 1990, that permit or determination shall not be subject to the provisions of this Chapter. The City, however, may enforce the terms and conditions of any permit or determination of exclusion, regardless of when it was issued.

Parking facilities which, prior to August 15, 1990, were generally regarded as not being "commercial parking Facilities" under the Memorandum of November 15, 1984, shall not be subject to the terms of this Chapter unless the operator of the facility seeks to increase the number of parking spaces therein.

10.16.050 Interim Parking Control Committee

All applications for controlled parking facility permits and determinations of exclusion shall be reviewed by an Interim Parking Control Committee (IPCC or Committee) comprised of three Cambridge residents with appropriate experience, appointed by the City Manager. 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 no later than September 15, 1990. The Committee shall maintain complete and accurate records of all applications for CPFs and determinations of exclusion. 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, the Massachusetts Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency.

10.16.060 Procedure for obtaining CPFPP or Determination of Exclusion

a) An application for a CPFPP or determination of exclusion shall be submitted to the Director on a form available at the Cambridge Traffic and Parking Department. The IPCC shall hold hearings on such applications on the fourth Wednesday of every month, if necessary. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.

b) The IPCC will publish in at least one local weekly newspaper a notice of the hearing. The notice shall set forth a specific hearing date not less than fourteen days 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 and Parking Department. A notice of all applications to be heard at the hearing shall be sent at least two weeks before the hearing to the DEP.

c) Every application for a CPFPP or determination of exclusion shall include the following information:

1. Name and address of owner.
2. Name and address of proposed facility.
3. Type of facility (parking lot or garage).
4. Type of construction (new or modification) proposed.

5. Number of existing spaces and who uses them.
6. Number of proposed spaces and who will use them.
7. Proposed change in number of spaces by use.
8. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
9. Detailed information on how use of the spaces will be controlled for each category of use.
10. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
11. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
12. 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.

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.

d) The Committee shall be required to process any applications already on file with the Director at the time of the adoption of this Chapter 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 section 10.16.070, 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.

e) At least 14 days before the hearing, the Interim Parking Control Committee shall send to each applicant which has submitted a complete 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 application shall be so notified at that time.

f) Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CFPF or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the CFPF or 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.

g) 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 CFPF 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 section 10.16.070 or an identification of the location and number of spaces against which enforcement action has been taken pursuant to section 10.16.080, which serve as the basis for issuance of the CFPF pursuant to section 10.16.080. All CFPFs 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.

10.16.070 Number of CFPF's to be Issued

The City, in accordance with the procedures set forth in this Chapter, may issue permits for up to 500 controlled parking spaces. In addition, the City may issue a number of CFPFs equal to

a) The number of parking spaces which the City has eliminated or against which the City has initiated an enforcement action in accordance with section 10.16.080; plus

b) The number of commercial parking spaces which were permitted in accordance with the November 15, 1984 MOA and which are no longer being used.

Rights to eliminated parking spaces cannot be transferred between persons, but must revert back to the City for allocation under the procedure set forth in s. 10.16.060.

10.16.080 Enforcement

a) If any person, after a hearing before the IPCC, is found to have operated a parking space illegally, either under the provisions of the November 15, 1984 MOA or under the provisions of this Chapter, such person will be subject to a fine of \$10 per day per space for every day that the space was illegally operated. In addition, the Director, after such a hearing, may revoke a determination of exclusion for spaces operated in violation of their determinations, or eliminate those spaces or facilities found to be operating with no required permit or determination of exclusion.

At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, or as controlled parking spaces as defined in s. 10.16.020, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of said determination shall be presumed to have all of its spaces operating in violation of the terms of its determination 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. 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 the determination.

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 CPFPP in accordance with the terms of this Chapter.

b) The phrase "initiated an enforcement action," appearing in s. 10.16.070, means the issuance by the Director of an administrative order ordering a person to eliminate a parking space or spaces.

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 CPFPPs 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 CPFPPs 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 prosecute aggressively any such court action to compel compliance with said administrative order.

10.16.090 Memorandum of Agreement of August 15, 1988

The City agrees to fulfill all its obligations contained in the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 498-9011

FAX. 868-8159

1990 AUG 28 PM 3:36

CAMBRIDGE MA.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

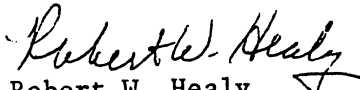
TO: Joseph Connarton
City Clerk

FROM: Robert W. Healy
City Manager

DATE: August 28, 1990

Transmitting a copy of the Parking Freeze Ordinance submitted by the Law Department.

Very truly yours,


Robert W. Healy
City Manager

RWH/dls



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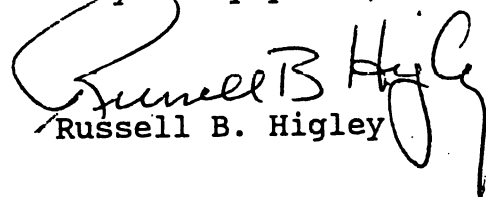
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Russell B. Higley

RBH:dc
Enclosure

ORD#3\PKGFREEZ



City of Cambridge

In the Year One Thousand, Nine Hundred Ninety

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Parking facilities which, prior to August 15, 1990, were generally regarded as not being "commercial parking Facilities" under the Memorandum of November 15, 1984, shall not be subject to the terms of this Chapter unless the operator of the facility seeks to increase the number of parking spaces therein.

10.16.050 Interim Parking Control Committee

All applications for controlled parking facility permits and determinations of exclusion shall be reviewed by an Interim Parking Control Committee (IPCC or Committee) comprised of three Cambridge residents with appropriate experience, appointed by the City Manager. 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 no later than September 15, 1990. The Committee shall maintain complete and accurate records of all applications for CPFs and determinations of exclusion. 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, the Massachusetts Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency.

10.16.060 Procedure for obtaining CPFPP or Determination of Exclusion

a) An application for a CPFPP or determination of exclusion shall be submitted to the Director on a form available at the Cambridge Traffic and Parking Department. The IPCC shall hold hearings on such applications on the fourth Wednesday of every month, if necessary. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.

b) The IPCC will publish in at least one local weekly newspaper a notice of the hearing. The notice shall set forth a specific hearing date not less than fourteen days 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 and Parking Department. A notice of all applications to be heard at the hearing shall be sent at least two weeks before the hearing to the DEP.

c) Every application for a CPFPP or determination of exclusion shall include the following information:

1. Name and address of owner.
2. Name and address of proposed facility.
3. Type of facility (parking lot or garage).
4. Type of construction (new or modification) proposed.

5. Number of existing spaces and who uses them.
6. Number of proposed spaces and who will use them.
7. Proposed change in number of spaces by use.
8. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
9. Detailed information on how use of the spaces will be controlled for each category of use.
10. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
11. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
12. 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.

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.

d) The Committee shall be required to process any applications already on file with the Director at the time of the adoption of this Chapter 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 section 10.16.070, 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.

e) At least 14 days before the hearing, the Interim Parking Control Committee shall send to each applicant which has submitted a complete 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 application shall be so notified at that time.

f) Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CFPF or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the CFPF or 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.

g) 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 CFPF 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 section 10.16.070 or an identification of the location and number of spaces against which enforcement action has been taken pursuant to section 10.16.080, which serve as the basis for issuance of the CFPF pursuant to section 10.16.080. All CFPFs 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.

10.16.070 Number of CFPF's to be Issued

The City, in accordance with the procedures set forth in this Chapter, may issue permits for up to 500 controlled parking spaces. In addition, the City may issue a number of CFPFs equal to

a) The number of parking spaces which the City has eliminated or against which the City has initiated an enforcement action in accordance with section 10.16.080; plus

b) The number of commercial parking spaces which were permitted in accordance with the November 15, 1984 MOA and which are no longer being used.

Rights to eliminated parking spaces cannot be transferred between persons, but must revert back to the City for allocation under the procedure set forth in s. 10.16.060.

10.16.080 Enforcement

a) If any person, after a hearing before the IPCC, is found to have operated a parking space illegally, either under the provisions of the November 15, 1984 MOA or under the provisions of this Chapter, such person will be subject to a fine of \$10 per day per space for every day that the space was illegally operated. In addition, the Director, after such a hearing, may revoke a determination of exclusion for spaces operated in violation of their determinations, or eliminate those spaces or facilities found to be operating with no required permit or determination of exclusion.

At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, or as controlled parking spaces as defined in s. 10.16.020, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of said determination shall be presumed to have all of its spaces operating in violation of the terms of its determination 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. 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 the determination.

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 CPFPP in accordance with the terms of this Chapter.

b) The phrase "initiated an enforcement action," appearing in s. 10.16.070, means the issuance by the Director of an administrative order ordering a person to eliminate a parking space or spaces.

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 CPFPPs 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 CPFPPs 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 prosecute aggressively any such court action to compel compliance with said administrative order.

10.16.090 Memorandum of Agreement of August 15, 1988

The City agrees to fulfill all its obligations contained in the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.



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:

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
David Clem

DEC:rmf
Enclosure

Clear Copy

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

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	<u>Page</u>
INTRODUCTION	1
I. FACTUAL BACKGROUND	2
II. ARGUMENT	6
A. THERE IS NO ENFORCEABLE PARKING FREEZE	6
1. Introduction	6
2. Background of the Clean Air Act	7
(i) Structure of the Act	7
3. The Enactment of a Parking Freeze	14
(i) The Birth of Indirect Source Regulation	14
(ii) The Death of Indirect Source Regulation	15
B. THE FATE OF THE FREEZE	20
C. NEITHER THE SIP NOR THE CAMBRIDGE CRITERIA IS ENFORCEABLE AS A REGULATION OR ORDINANCE	22
D. OTHER EVIDENCE THAT THERE IS NO FREEZE	25
III. THIS COURT IS THE PROPER FORUM TO INVALIDATE THE CAMBRIDGE FREEZE	26
IV. IF THERE IS A FREEZE, IT EXEMPTS EMPLOYEES, RESTAURANT RETAIL PATRONS AND HOTEL GUESTS	28
V. THE FREEZE IN PRACTICE	33
CONCLUSION	35

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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 "susp[en]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).

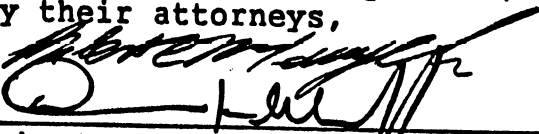
In conclusion, despite present public posturing, the employee exemption has existed as long as any freeze (longer if the 1973 regulations are considered). It has been embodied in Boston's regulations, Cambridge's criteria and is a clear prerequisite to validity under South Terminal. Should this court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

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MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR

Walsh

1990 SEP 10 PM 11:12
CAMBRIDGE MA.

Date

Councillor Walsh has filed reconsideration of the action taken on September 10, 1990 referring to the Ordinance Committee the proposed amendment to the Municipal Code of the City of Cambridge in Chapter 10.16 entitled "PARKING FREEZE".

Wm H Walsh

Signature

2000 /
Reconsideration filed by Councillor Walsh
on the action taken on September 10, 1990
referring to the Ordinance Committee the
proposed amendment to the Municipal Code
of the City of Cambridge in Chapter 10.16
entitled "PARKING FREEZE".

In City Council,

Sept. 17, 1990

*Reconsideration
failed*

*Action taken on 9/10/90
Referring Ordinance to
Ordinance Committee
Stands.*

*Copy sent to Ord Committee
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CAMBRIDGE CHAMBER OF COMMERCE

CAMBRIDGE MA.

August 30, 1990

To: The Honorable City Council
c/o City Clerk
City Hall,
Cambridge, MA 02139

Re: Proposed Ordinance Dealing with a Parking Freeze in Cambridge

Dear Members of the Council:

At its Monday, July 30, 1990 meeting, the City Council approved an amended draft of a Memorandum of Agreement between the U.S. Environmental Protection Agency, the Massachusetts Department of Environmental Protection, and the City of Cambridge, with respect to a Parking Freeze in Cambridge. It was explained that this Agreement would permit settlement of a law suit against the parties to the Memorandum of Agreement, the plaintiffs being essentially members of a group calling itself the Cambridge Citizens for Liveable Neighborhoods (CCLN).

The Agreement differed substantially from a prior draft which was submitted to the Council at its meeting on Monday, June 25, 1990 in several respects:

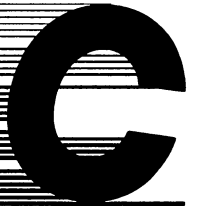
- a) it decreased the number of future controlled parking spaces available in the City to a bank of 500 spaces.
- b) it changed the definition of spaces to be covered by the Freeze to include not only paid commercial spaces, but also employee parking (formerly exempt), thereby dramatically increasing the number of circumstances under which one would have to apply for spaces from the bank, and
- c) it created a three person citizen committee to grant permits, one member of which must be a candidate chosen from a list submitted by CCLN.

The basis for the Freeze is cited as the Federal Clean Air Act of 1973. While we all subscribe to the desire for clean air, there are a variety of ways to work toward this goal and experts will differ on those methods which are most effective. For example, California has controls on automobile emissions, considered a primary source of air pollution.

CAMBRIDGE MA.

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CAMBRIDGE CHAMBER OF COMMERCE

-2-

In the 1977 Amendments to the Clean Air Act, Congress placed limits on the EPA's authority under the Act and prohibited the EPA from requiring controls on "indirect sources", such as parking garages.

We now understand that the EPA may be reluctant to sign the three party Memorandum of Agreement and we speculate that this may be because it might put the Agency into conflict with the instructions from Congress under the Clean Air Act Amendments of 1977.

The primary goal of the plaintiffs in the law suit was to stop development in Cambridge. They have used the Clean Air Act to facilitate reaching their objectives.

We submit that controlling development, and traffic associated with development, is properly a function of thoughtful City planning expressed through the City's zoning ordinances. Indeed, a number of property owners have been working cooperatively with City agencies and citizen groups on rezoning efforts in East Cambridge, Cambridgeport, and the Industry B District near Kendall Square. Parking and traffic are important components of these discussions. The Council also recently established a Blue Ribbon Committee to recommend a traffic strategy for the City. It would appear that all of these efforts are being pre-empted.

Accordingly, we suggest that the next step of translating the principles of the Memorandum of Agreement into a City ordinance should be accomplished through the procedures set forth under the State Zoning Enabling Act, Chapter 40A.

Through this procedure, there will be assurance of an opportunity for input from all sectors of the City, including those to be most affected by the proposed ordinance. This also will provide a formal opportunity for the Planning Board to reconcile zoning provisions that today require parking, with the concept of the proposed ordinance which will severely limit parking.

We urge the Council to use restraint in taking the next step in developing the ordinance. There is a potential for diminishing property values and property assessments and an increased likelihood of lawsuits, some to be initiated by the City.

Other potential long term impacts of this shift in City policy may adversely affect the number and mix of jobs available in the City, and may create new pressures on the housing inventory in the City, as commuting to work becomes more expensive and more of a hassle.

The business community is concerned about the way in which the Council has allowed the settlement of a lawsuit to mandate a new City ordinance with no opportunity having been provided for those to be affected by the settlement to present their views.



CAMBRIDGE CHAMBER OF COMMERCE

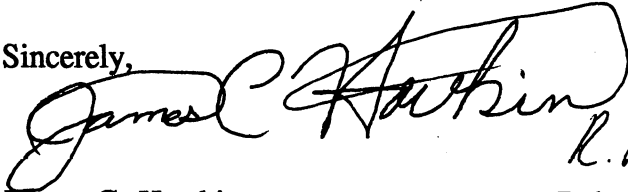
-3-

For the past few weeks, members of the business community and institutions have been meeting together and with attorneys to discuss these issues. Although the press reported a quote that "developers in town won't be happy", the Council should note that the concerned group includes not only developers, but a number of employers, including eight of the top ten employers in the City, all with long term interests here. The other two employers in the top ten are the City of Cambridge and the Federal Department of Transportation. This employer group provides a customer base for many small businesses and also provides significant support to the many non-governmental agencies which serve the City's residents.

The Cambridge Chamber of Commerce continues to hope that this City will be governed in an atmosphere of public/private cooperation for the benefit of all of its constituencies. In recent weeks that atmosphere has been severely damaged.

We urge the Council to make every effort to provide an opportunity for those to be affected by the proposed ordinance to be heard and for their concerns to be addressed in a reasonable manner.

Sincerely,



James C. Hawkins,
President



Robert D. Lewis,
Executive Vice President

Copies to:

Robert W. Healy, City Manager
Richard Rossi, Deputy City Manager
Michael H. Rosenberg, Assistant City Manager for Community Development
Russell B. Higley, City Solicitor
Donald A. Drisdell, Deputy City Solicitor
Paul Dietrich, Chairman, Cambridge Planning Board

Michael S. Dukakis, Governor
Frederick P. Salvucci, Secretary of Transportation
John DeVillars, Secretary of Environmental Affairs
Alden Raine, Secretary of Economic Affairs
Daniel S. Greenbaum, Commissioner, Department of Environmental Protection

Julie Belaga, Regional Administrator, United States Environmental Protection Agency

The Boston Globe
The Boston Herald

The Cambridge Chronicle
The Cambridge Tab

19.

Comm. from the Cambridge Chamber of Commerce
relative to the proposed ordinance
amendment relating to the Parking Freeze.

In City Council,

Sept. 10, 1990

*Referred to the
petition*



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 498-9011

FAX. 868-8159

RECEIVED BY
OFFICE OF CITY CLERK

1990 AUG 28 PM 3:36

CAMBRIDGE MA.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

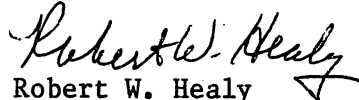
TO: Joseph Connarton
City Clerk

FROM: Robert W. Healy
City Manager

DATE: August 28, 1990

Transmitting a copy of the Parking Freeze Ordinance submitted by the Law Department.

Very truly yours,


Robert W. Healy
City Manager

RWH/dls



RECEIVED BY
OFFICE OF CITY CLERK

CITY OF CAMBRIDGE AUG 28 PM 3:36

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel

Office of the City Solicitor
City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

(617) 498-9020

CAMBRIDGE MA.

Gail S. Gabriel
Legal Counsel

Joseph M. Kaigler
Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Edward J. O'Connell
Legal Counsel

August 27, 1990

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

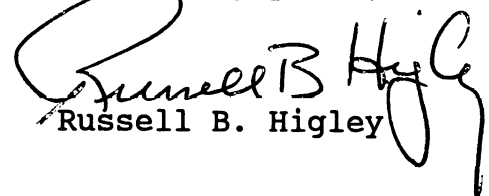
Re: Parking Freeze Ordinance

Dear Mr. Healy:

I enclose an ordinance which is intended to implement the provisions contained in the Memorandum of Agreement, dated August 15, 1990, between the City and the Massachusetts Department of Environmental Protection.

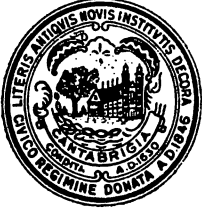
Pursuant to the terms of the Memorandum, this ordinance should be submitted to the City Council before August 29, 1990.

Very truly yours,


Russell B. Higley

RBH:dc
Enclosure

ORD#3\PKGFREEZ



City of Cambridge

In the Year One Thousand, Nine Hundred Ninety

AN ORDINANCE

In amendment to an ordinance designated as the "Cambridge Municipal Code."

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, the City of Cambridge (City), and the Massachusetts Department of Environmental Protection (DEP) (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 and DEP were parties in a legal dispute pertaining to the terms and implementation of a parking freeze in Cambridge; and

WHEREAS, the parties, as part of a settlement of said dispute, entered into a Memorandum of Agreement (MOA), dated August 15, 1990, which requires that the Cambridge City Manager present to the Cambridge City Council an ordinance to implement the provisions of said MOA; 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 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 the City to support the Clean Air Act by discouraging automobile 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 opportunities for shoppers, occasional visitors, and non-peak hour visitors, and

WHEREAS, the SIP amendment process will take approximately one year and the City hereby commits itself to the terms of this ordinance for the period until a SIP amendment is approved, said period to be known as the "interim period."

Now, THEREFORE, be it ordained by the City Council of the City of Cambridge as follows:

Title 10 of the Code (Vehicles and Traffic) is hereby amended by adding thereto the following new Chapter 10.16 (Parking Freeze):

Chapter 10.16

PARKING FREEZE

Sections:

- 10.16.010 Time period of Chapter
- 10.16.020 Definitions
- 10.16.030 Building or operation of parking facilities
- 10.16.040 Pre-existing applications, permits and determinations
- 10.16.050 Interim Parking Control Committee
- 10.16.060 Procedure for Obtaining CPF or Determination of Exclusion
- 10.16.070 Number of CPFs to be issued
- 10.16.080 Enforcement
- 10.16.090 Memorandum of Agreement of August 15, 1990

10.16.010 Time period of Chapter

This Chapter will remain in effect only during the interim period, as defined in s. 10.16.020.

10.16.020 Definitions

"Controlled parking facility" (CPF) means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked, except (i) a parking facility, the use of which is limited exclusively for the benefit of the residents of a specific residential building or group of buildings, or (ii) a parking facility designated as a park-and-ride facility to be operated in conjunction with the Massachusetts Bay Transportation Authority.

"Controlled parking facility permit" (CPFP) means a permit issued by the Director of the Cambridge Department of Traffic and Parking, which allows the construction or modification of a CPF and the operation of a CPF. Each permit will be for a specific number of Controlled parking spaces.

"Controlled parking space" (CPS) means a parking space in a Controlled parking facility (CPF).

"Determination of exclusion" means a determination by the Director of the Cambridge Department of Traffic and Parking that a parking facility does not come within the definition of a Controlled parking facility.

"Director" means Director of the Cambridge Department of Traffic and Parking.

"Interim Parking Control Committee" (IPCC) means the committee established by this Chapter which decides whether to issue Controlled parking facility permits and Determinations of exclusion. These decisions by the IPCC are binding on the Director.

"Interim period" means the period between the enactment of this Chapter and the approval of an amendment to the State Implementation Plan (SIP), required by the Clean Air Act (42 U.S.C., s. 7401 et seq.), regarding 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.

"Memorandum of Agreement" or "Memorandum" means the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.

"Parking facility" means any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are parked.

"Person" means and includes a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization, any state, regional or political subdivision, agency, department, authority or board, and any other group acting as a unit, as well as a natural person.

10.16.030 Building or operation of parking facilities

No person shall be granted a permit to build a parking facility in Cambridge, or modify a parking facility so as to increase the number of parking spaces therein, and no person shall operate a parking facility, unless said person shall have first obtained a controlled parking facility permit or a determination of exclusion under the procedures set forth in this Chapter.

10.16.040 Pre-existing applications, permits and determinations

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. And if a commercial parking facility permit or a determination of exclusion was obtained before

August 15, 1990, that permit or determination shall not be subject to the provisions of this Chapter. The City, however, may enforce the terms and conditions of any permit or determination of exclusion, regardless of when it was issued.

Parking facilities which, prior to August 15, 1990, were generally regarded as not being "commercial parking Facilities" under the Memorandum of November 15, 1984, shall not be subject to the terms of this Chapter unless the operator of the facility seeks to increase the number of parking spaces therein.

10.16.050 Interim Parking Control Committee

All applications for controlled parking facility permits and determinations of exclusion shall be reviewed by an Interim Parking Control Committee (IPCC or Committee) comprised of three Cambridge residents with appropriate experience, appointed by the City Manager. 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 no later than September 15, 1990. The Committee shall maintain complete and accurate records of all applications for CPFs and determinations of exclusion. 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, the Massachusetts Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency.

10.16.060 Procedure for obtaining CFPF or Determination of Exclusion

a) An application for a CFPF or determination of exclusion shall be submitted to the Director on a form available at the Cambridge Traffic and Parking Department. The IPCC shall hold hearings on such applications on the fourth Wednesday of every month, if necessary. Only applications received at least 30 days prior to the scheduled hearing will be considered at such hearing.

b) The IPCC will publish in at least one local weekly newspaper a notice of the hearing. The notice shall set forth a specific hearing date not less than fourteen days 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 and Parking Department. A notice of all applications to be heard at the hearing shall be sent at least two weeks before the hearing to the DEP.

c) Every application for a CFPF or determination of exclusion shall include the following information:

1. Name and address of owner.
2. Name and address of proposed facility.
3. Type of facility (parking lot or garage).
4. Type of construction (new or modification) proposed.

5. Number of existing spaces and who uses them.
6. Number of proposed spaces and who will use them.
7. Proposed change in number of spaces by use.
8. Calculations showing parking space determination according to the appropriate section of the Cambridge Zoning Ordinance.
9. Detailed information on how use of the spaces will be controlled for each category of use.
10. Traffic mitigation measures which will be used to reduce vehicle trips to the project.
11. A detailed description of the need for the proposed facility and the type of development and patrons it will serve.
12. 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.

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.

d) The Committee shall be required to process any applications already on file with the Director at the time of the adoption of this Chapter 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 section 10.16.070, 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.

e) At least 14 days before the hearing, the Interim Parking Control Committee shall send to each applicant which has submitted a complete 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 application shall be so notified at that time.

f) Within 14 days after the hearing, the Interim Parking Control Committee shall approve or disapprove the application for a CFPF or determination of exclusion after full consideration of all the facts contained in the application. The Committee's approval shall indicate on the CFPF or 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.

g) 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 CFPF 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 section 10.16.070 or an identification of the location and number of spaces against which enforcement action has been taken pursuant to section 10.16.080, which serve as the basis for issuance of the CFPF pursuant to section 10.16.080. All CFPFs 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.

10.16.070 Number of CFPF's to be Issued

The City, in accordance with the procedures set forth in this Chapter, may issue permits for up to 500 controlled parking spaces. In addition, the City may issue a number of CFPFs equal to

a) The number of parking spaces which the City has eliminated or against which the City has initiated an enforcement action in accordance with section 10.16.080; plus

b) The number of commercial parking spaces which were permitted in accordance with the November 15, 1984 MOA and which are no longer being used.

Rights to eliminated parking spaces cannot be transferred between persons, but must revert back to the City for allocation under the procedure set forth in s. 10.16.060.

10.16.080 Enforcement

a) If any person, after a hearing before the IPCC, is found to have operated a parking space illegally, either under the provisions of the November 15, 1984 MOA or under the provisions of this Chapter, such person will be subject to a fine of \$10 per day per space for every day that the space was illegally operated. In addition, the Director, after such a hearing, may revoke a determination of exclusion for spaces operated in violation of their determinations, or eliminate those spaces or facilities found to be operating with no required permit or determination of exclusion.

At any hearing held by the IPCC to decide if excluded spaces have been operated as commercial spaces, or as controlled parking spaces as defined in s. 10.16.020, any facility holding a determination of exclusion, which is found to have any spaces operating in violation of the terms of said determination shall be presumed to have all of its spaces operating in violation of the terms of its determination 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. 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 the determination.

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 Chapter.

b) The phrase "initiated an enforcement action," appearing in s. 10.16.070, means the issuance by the Director of an administrative order ordering a person to eliminate a parking space or spaces.

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 CFPFs 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 CFPFs 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 prosecute aggressively any such court action to compel compliance with said administrative order.

10.16.090 Memorandum of Agreement of August 15, 1988

The City agrees to fulfill all its obligations contained in the Memorandum of Agreement between the City and the Massachusetts Department of Environmental Protection, dated August 15, 1990.

1. #10-54B
COMMUNICATIONS & REPORTS FROM CITY
OFFICERS.

Comm. from City Clerk transmitting a communication from City Manager which was received by the Office of the City Clerk on August 28, 1990 transmitting a proposed amendment to the Cambridge City Code in Chapter 10.16 entitled "PARKING FREEZE," pursuant to the terms of the Memorandum of Agreement.

*Passed to be ordained
11/26/90*

In City Council,

Sept. 10, 1990

*Referred to Ordinance
Committee
Councillor Walsh
filed reconsideration
on referral.*