



## CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139  
TEL. 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

HAND DELIVERED

RICHARD C. ROSSI  
Deputy City Manager

October 28, 1988

Harley F. Laing  
Regional Counsel  
Environmental Protection Agency, Region I  
J. F. Kennedy Building  
Boston, MA 02203-2211

Williard R. Pope  
General Counsel  
Massachusetts Department of Environmental  
Quality Engineering  
100 Cambridge Street  
Boston, MA 02202

Dear Mr. Laing and Mr. Pope:

We are writing in response to your letter dated October 25, 1988. We will have completed our re-examination of statistics by October 31, 1988 and will be happy to meet with you and your staff at any mutually convenient time thereafter. To assure that the meeting will be productive, we are taking this opportunity to outline several concerns of the City of Cambridge which should be addressed during the meeting.

At the September 30, 1988 meeting, and again in your letter of October 25, 1988, you indicated that it appeared to you that the City of Cambridge had issued more permits for commercial parking spaces than allowed by 40 C.F.R. section 52.1135. Research by the City indicates that Cambridge has not exceeded any freeze upon the number of commercial parking spaces available in the City.

After the decision of the United States Court of Appeals for the First Circuit in the case of South Terminal Corp. v. EPA, 504 F.2d 646 (1st Cir. 1974), the EPA held further public hearings on the proposed "parking freeze" in Boston and Cambridge. City officials who attended those hearings represented to EPA that the parking problem in Cambridge was very different from that of Boston. Boston had a significant number of off-street commercial parking facilities, while Cambridge had relatively few off-street parking spaces. The result was heavy use by commuters of unregulated on-street parking, estimated at about fifty percent (50%) of available on-street spaces. Cambridge offered to voluntarily include the entire city in

the freeze with the understanding that as Cambridge converted on-street parking to resident sticker parking the City would be allowed to count one-half of the eliminated on-street spaces as part of its bank of spaces available for future development of off-street commercial parking.

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

EPA regulation 40 C.F.R. section 52.1135 as promulgated on June 12, 1975, did not accurately reflect the understanding of Cambridge City officials. EPA had never discussed the ten percent (10%) rule in 40 C.F.R. section 52.1135(a)(6) with Cambridge officials. The provision of 40 C.F.R. section 52.1135 (n) which allowed for only one-half of eliminated on-street spaces once used by commuters did not accurately reflect Cambridge officials' understanding during the hearings.

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

Massachusetts submitted to EPA in 1978 the Transportation Elements of the State Implementation Plan (TESIP). The 1978 TESIP states "the parking freeze, as it appears in the June 12, 1975 Federal Register will continue to be in effect in the City of Cambridge" and further states that the freeze will be administered by the "newly established Commercial Parking Control Committee". See, 1978 TESIP p. 72. No such Committee was ever established.

It is also important to note that the 1978 TESIP describes the parking freeze in Cambridge as follows :

#### Parking Freeze - Cambridge

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

1978 TESIP p. 33. This provision of the 1978 TESIP accurately reflects the understanding of Cambridge City officials as to the calculation of the October 15, 1973 inventory.

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

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

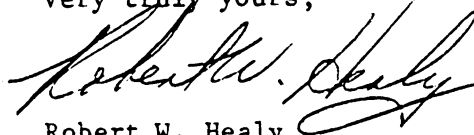
It is our conclusion that the 1977 Amendments to the Clean Air Act apparently voided 40 C.F.R. section 52.1135 at least as an enforceable federal regulation. While the 1978 TESIP purports to continue a parking freeze in Cambridge by making reference to 40 C.F.R. section 52.1135, neither the state nor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

We are prepared to work with you and your staff in reviewing the inventory and annual reports referenced in your letter of October 25, 1988. We feel strongly that Cambridge has, in good faith, complied with the terms of the supposed parking freeze essentially as it was described in the 1978 TESIP and the MOU submitted by Cambridge to your agencies. We maintain that the level of commercial parking spaces available in Cambridge on October 15, 1973 correctly includes one-half of the on-street spaces converted by the City to resident sticker parking.

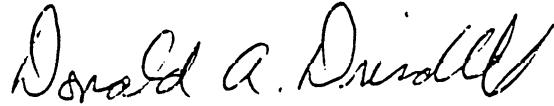
In an effort to resolve the many problems presented by the complex chain of events leading to the current situation, we have drafted proposed regulations to be adopted by the Cambridge Commissioner for Health and

Hospitals pursuant to M.G.L. c. 111, Section 31C. In the alternative we have drafted a proposed ordinance to create a Commercial Parking Control Committee pursuant to the police power of the City of Cambridge. These proposals were presented to Secretary Hoyt, Secretary Salvucci, and Commissioner Greenbaum at a meeting with the City Manager on October 21, 1988. We include copies herein. We welcome any guidance and assistance that you and your staff may offer as we work toward a final proposal to create an effective parking freeze in Cambridge.

Very truly yours,



Robert W. Healy  
City Manager



Donald A. Drisdell  
Deputy City Solicitor

RWH/DAD/mbf

cc: Michael Deland, Regional Administrator,  
Environmental Protection Agency  
James Hoyt, Secretary, Environmental Affairs  
Frederick Salvucci, Secretary, Office of  
Transportation and Construction  
Daniel Greenbaum, Commissioner, Department of  
Environmental Quality Engineering



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

October 25, 1988

Donald Drisdell, Deputy City Solicitor  
City Hall Law Department, Room 105  
795 Massachusetts Avenue  
Cambridge, MA 02139

Dear Mr. Drisdell:

On September 30, 1988, staff from the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Quality Engineering met with you to discuss the off-street and on-street parking inventory and annual reports that you had submitted on September 20, 1988. It appeared to us at that time that the City of Cambridge had issued substantially more permits for commercial parking spaces than allowed by 40 C.F.R. § 52.1135. You requested time to reexamine your statistics, stating that you would communicate with us as soon as your reexamination was complete. We have not heard from you.

Given the apparent discrepancies between the requirements of 40 C.F.R. § 52.1135 and Cambridge's submittal and their legal ramifications, we must insist that you report to us the results of your further study of the parking inventory and annual reports by no later than ten (10) days from the date of this letter.

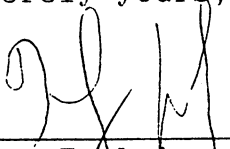
EPA and DEQE have concluded that the City of Cambridge's definition of "commercial parking" as contained in your letter to EPA of July 13, 1988 is acceptable, as long as the term "for a fee" is interpreted in a manner consistent with 40 C.F.R. § 52.1135. We are aware that this definition has been employed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

Our conditioned approval of this definition, however, does not diminish the urgent need to address the apparent exceedance of the limit on "commercial parking" in Cambridge. Until we hear from you definitively regarding your 1973 parking inventory and 1973-1988 annual reports so that we can make our final determination on the submittal and advise you accordingly, we

expect that Cambridge will cease issuing further permits for parking spaces of any kind.

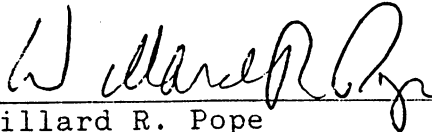
We await receipt of your revised submittal. We stand ready to work with you in addressing the situation in a constructive and environmentally sound manner.

Sincerely yours,



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Harley F. Laing  
Regional Counsel  
Environmental Protection  
Agency, Region I



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Willard R. Pope  
General Counsel  
Massachusetts Department of  
Environmental Quality  
Engineering



## CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 498-9011

EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI  
Deputy City Manager

October 31, 1988

To the Honorable, the City Council:

Enclosed for your information is my most recent communication to the Environmental Protection Agency and the Department of Environmental Quality Engineering regarding the issue of parking spaces.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy  
City Manager

RWH/mbf  
Enc.

S-656

Re: enclosing the most recent comm. to EPA &  
DEQE on the issue of parking spaces.

In City Council,

October 31, 1988

10-31-PP

Placed on file.