

THE CITY OF BOSTON
AIR POLLUTION CONTROL COMMISSION

PROCEDURES AND CRITERIA
FOR ISSUANCE OF
PARKING FREEZE PERMITS

Amended and approved by vote of the Air Pollution Control Commission, 4/11/94,
2/27/02, 3/15/06.

SECTION III. CITY OF BOSTON/SOUTH BOSTON PARKING FREEZE

PREAMBLE

On March 15, 1993, the Massachusetts Department of Environmental Protection (“DEP”) adopted the City of Boston/South Boston Parking Freeze Regulations, 310 Code of Massachusetts Regulations (“CMR”) 7.33. The Regulations were published in the Massachusetts Register on April 9, 1993, and became effective on that date. The City of Boston/South Boston Parking Freeze Regulations establish a freeze on the availability of motor vehicle parking spaces in two zones in South Boston: the Piers Zone and the Industrial/Commercial Zone. In addition, a freeze was placed on the availability of remote parking spaces in the South Boston/Residential Zones. No owner, operator or tenant within the South Boston Parking Freeze Area Piers Zone and Industrial/Commercial Zones shall allow for the parking of motor vehicles in excess of the allowed number of motor vehicle parking spaces established by the parking freeze. No person within the South Boston Residential Zone shall allow for the parking of motor vehicles in excess of the allowed number of remote parking spaces established by the parking freeze.

The Regulations require that the Boston Air Pollution Control Commission take the following steps:

1. Prepare and submit to the Department, a detailed inventory of all existing motor vehicle parking spaces as well as motor vehicle parking spaces part of any project submitted for MEPA as of August 1, 1990. This inventory must include a map with supporting materials that identifies the location and quantity of motor vehicle parking spaces for a wide range of uses, including parking for commercial, remote, employee and off-peak use. In addition, parking spaces eliminated during

the Central Artery/Third Harbor Tunnel project construction must also be identified in the inventory. [310 CMR 7.33]

2. Prepare and submit to the Department a detailed Parking Freeze Plan setting forth the procedures by which the parking freeze shall be implemented and enforced and how the permitting of parking facilities shall be administered. This plan must identify city agencies and other entities that will be responsible for implementing and enforcing the parking freeze, describe modifications to laws and ordinances that may be needed to implement and enforce the parking freeze, prepare procedures for allocation of motor vehicle parking spaces from parking freeze banks, prepare a draft of the proposed text of the City “Procedures and Criteria for Issuance of Parking Freeze Permits”, and prepare a procedure that will insure that motor vehicle parking spaces designated as off-peak parking spaces are not used between the hours of 7:30 AM and 9:30 AM. [310 CMR 7.33(6)]
3. Implement and enforce the Parking Freeze Plan and the Permitting of all parking facilities. [310 CMR 7.33(6)]
4. Prepare and submit to the Department an inventory of motor vehicle parking spaces available in the South Boston Piers Zone when Central Artery/Third Harbor Tunnel is open for use by the general public. [310 CMR 7.33 (8)]
5. Monitor and track the use of restricted parking spaces in the parking freeze area and provide detailed reports to the Department annually related to the use of such spaces. In addition, where such use exceeds six days in any year, the City must prepare a plan and schedule for initiating actions to reduce such use. [310 CMR 7.33 (9)]
6. Prepare and submit to the Department on an annual basis a report that details the progress and status of each provision of 310 CMR 7.33 during the proceeding year. Additionally, every third year that report shall include a fully updated inventory of parking spaces in the parking freeze area. [310 CMR 7.33 (13)]

A. DEFINITIONS

The definitions below are applicable only to this Section III of the Procedures and Criteria.

BOSTON TRANSPORTATION DEPARTMENT (BTD) means the agency within the City of Boston responsible for transportation and traffic-related activities, including the regulation of off-street parking spaces in the City under M.G.L. c. 148. s. 56.

COMMISSION means the Boston Air Pollution Control Commission.

MOTOR VEHICLE means any equipment or mechanical device propelled primarily on land and licensed to travel on public ways by power other than muscular power, but does not include railroad and railway engines, railcars or rolling stock. This definition

includes, but is not limited to, vehicles powered by gasoline and mixtures of simple alcohols and gasoline, diesel fuel and other petroleum products.

CLEAN-FUEL VEHICLES--The Commission may grant exemptions from the parking freeze for vehicles utilizing clean-fuel technologies such as compressed natural gas, propane, or electricity.

MOTOR VEHICLE PARKING SPACE means any lot, garage, building, structure or vessel on or in which motor vehicles are temporarily stored regardless of whether a fee is charged or whether parking spaces are demarcated as such, except Residential Spaces and On-Street Parking (see below).

OFF-PEAK PARKING SPACES means motor vehicle parking spaces not available for use between the hours of 7:30 AM and 9:30 AM on weekdays.

ON-STREET PARKING SPACES means legal parking spaces on public ways authorized by BTM. These spaces are not subject to the Parking Freeze and are not counted as part of the inventory.

OFF-STREET PARKING SPACES means parking spaces on private or public property adjacent to and/or with access to, but not located on a public roadway.

RESIDENTIAL PARKING SPACES means off-street parking that is for the exclusive use of residents, guests, visitors, and/or staff of an adjacent or nearby residential structure.

NEW RESIDENTIAL PARKING means residential parking built after the date of adoption by the Commission of this Section III of the Procedures and Criteria. New Residential Spaces shall be exempt from the Parking Freeze where the ratio is one space per dwelling unit or less. Residential Parking in excess of one space/unit is subject to the Freeze and the excess spaces must be allocated from the South Boston Parking Freeze Bank pursuant to Section III.

PARCEL OF LAND means land owned by the same person or entity and shall include one or more parcels provided such parcels are contiguous.

PARKING FREEZE means a limitation on the number of Off-Street motor vehicle parking spaces available for a specific geographic area. The "South Boston Parking Freeze" is a limit on the availability of motor vehicle parking spaces within the South Boston Piers Zone and the Industrial/Commercial Zone and a freeze on the availability of remote parking spaces within the South Boston Residential Zone within the South Boston Parking Freeze Area (as defined, below). No owner, operator or tenant within the South Boston Parking Freeze Area Piers Zone and Industrial/Commercial Zones shall allow for the parking of motor vehicles in excess of the allowed number of motor vehicle parking spaces established by the parking freeze. No person within the South Boston Parking

Freeze Area Residential Zone shall allow for the parking of motor vehicles in excess of the allowed number of remote parking spaces established by the parking freeze.

FREEZE BANK SPACES as defined by 310 CMR 7.33 (5) means that part of the inventory of parking spaces for South Boston held by the Commission, which are not currently available for parking but which can be allocated by the Commission pursuant to these Procedures and Criteria.

REMOTE PARKING SPACES means any parking space which serves end uses outside of a parking freeze area including, but not limited to, parking for airport use, for Downtown Boston parking, and for remote employee parking.

NEW RESIDENTIAL SPACES means new residential spaces in excess of one (1) space/unit. Those seeking to build New Residential Spaces shall apply to the BAPCC for permits. These spaces must be allocated by the Commission from the Freeze Bank pursuant to Section III.

RESTRICTED USE parking means temporary parking in excess of the permitted number of spaces. Such parking may only be provided in the parking freeze area administered by the BAPCC in the South Boston Piers Zone or the South Boston Industrial/Commercial Zone for up to ten days per year.

STATE IMPLEMENTATION PLAN (“SIP”) means the most recently prepared plan or revision thereof required by the Federal Clean Air Act, submitted by the Commonwealth of Massachusetts, and approved by the U.S. EPA.

B. SOUTH BOSTON PARKING FREEZE AREA

The South Boston Parking Freeze Area, as established in 310 CMR 7.33, shall be divided into three zones defined as: 1) the South Boston Piers Zone; 2) the South Boston Industrial/Commercial Zone; and 3) the South Boston Residential Zone. The geographic boundary of each zone is as follows:

THE SOUTH BOSTON PIERS ZONE: beginning at the point where Mount Washington Street meets the high water line of the Fort Point Channel and continuing in a westerly direction to the center point of the Channel; then northeasterly along the imaginary center line of the Channel to the Boston Inner Harbor; then continuing southeasterly along the high water line to the southern center point of the Reserved Channel and continuing westerly in a straight line along the Channel direction to a point where it meets Summer Street; then following Summer Street in a northwesterly direction to a point where it meets Fargo Street; then following Summer Street in a northwesterly direction to a point along Fargo Street where it meets B Street; then westerly along an imaginary straight line back to the point where Mount Washington meets the high water line.

THE SOUTH BOSTON INDUSTRIAL/COMMERCIAL ZONE: beginning at the point where Southampton Street meets the railroad tracks and continuing northerly along the

railroad tracks, to the West Fourth Street Bridge; then southeasterly along the Bridge to the center point of the Fort Point Channel; then north and northeasterly along the center line of the Channel to the point where it meets the imaginary line extending to the point to the beginning of the Piers Zone to its end point where it meets the imaginary line extending easterly along the center line of Reserved Channel and then southerly in a straight line to the point where it meets the northeastern edge of the residential Zone boundary line; then following said boundary line westerly, northerly, and southerly back to the point where Southamptton Street meets the railroad tracks.

THE SOUTH BOSTON RESIDENTIAL ZONE: Beginning at the point where Southamptton Street meets Dorchester Avenue, and continuing in a northerly direction along Dorchester Avenue, to West Second Street; then southeasterly along West Second Street, to B Street; then northwesterly along B Street to West First Street; then southerly along West First Street to the point where it meets East First Street and continuing along East First Street to the point where it meets Day Boulevard; then following along Day Boulevard in a southwesterly direction to the point where it meets Preble Street and continuing along Preble Street back to the point where Southamptton Street meets Dorchester Avenue.

C. RESPONSIBILITIES OF THE BOSTON AIR POLLUTION CONTROL COMMISSION

(1) The Boston Air Pollution Control Commission (the “Commission”) is a five (5) member body established pursuant to the City of Boston Code, Ordinances, Chapter 7, Section 2. It is provided full jurisdiction to regulate and control atmospheric pollution under Chapter 111, Section 31C of the Massachusetts General Laws and other applicable laws, ordinances and regulations.

(2) The Commission shall, by majority vote, approve, disapprove or approve with conditions all applications for Parking Freeze Permits under this Section III of the procedures and Criteria, provided, however, that it may delegate its authority as provided herein.

(3) The Commission shall have the power to enforce the provisions of these Procedures and Criteria and the provisions of 310 CMR 7.33, as amended, and to modify, amend or rescind its approval of a Parking Freeze Permit.

(4) The Commission or its designee may, as far as it deems it necessary in carrying out the provisions herein, enter upon any lands subject to a permit at reasonable times in order to conduct inspections related to compliance with the terms and conditions of a Parking Freeze Permit.

(5) The Commission shall coordinate and administer the City of Boston/South Boston Parking Freeze (“South Boston Parking Freeze”). In carrying out this responsibility, the Commission shall perform, or cause to be performed, the following duties, among others:

(a) Maintain to the extent possible, complete and accurate records which indicate the

current inventory of motor vehicle parking spaces within the South Boston Parking Freeze Area; (b) Process Parking Freeze Permits; (c) Prepare an annual report to the Regional Administrator of the Environmental Protection Agency and the Commissioner of the DEP; and (d) Consult with and seek the assistance of other appropriate agencies and departments of the city, state, and federal governments, including the Boston Redevelopment Authority, the Boston Transportation Department and the Mayor's Office.

D. GENERAL PRINCIPLES FOR ADMINISTRATION OF THE PARKING FREEZE

(1) No owner, operator or tenant within the South Boston Parking Freeze Area Piers Zone and the Industrial/Commercial Zone shall allow for the parking of motor vehicles in excess of the number of motor vehicle parking spaces established by the parking freeze under 310 CMR 7.33. No person within the South Boston Freeze Area Residential Zone shall allow for the remote parking of motor vehicles in excess of the number of remote parking spaces established by the parking freeze under 310 CMR 7.33. The total number of motor vehicle parking spaces established by the parking space inventory conducted by the Commission pursuant to 310 CMR 7.33 ("base inventory") shall be submitted to DEP for approval and incorporated herein in as Appendix D.

(2) No owner, operator or tenant within the South Boston Parking Freeze Area Piers Zone and the Industrial/Commercial Zone shall use, or allow to be used, real property or vessels under its ownership or control for the purpose of a motor vehicle parking space unless the real property or vessel containing such parking spaces has the applicable Permit from the Commission issued under the provisions of this Section III of the Procedures and Criteria. No owner, operator or tenant within the South Boston Parking Freeze Area Residential Zone shall use, or allow to be used, real property or vessel under its ownership or control for the purpose of a remote motor vehicle parking space unless the real property or vessel containing such parking spaces has the applicable Permit from the Commission issued under the provisions of this Section III of the Procedures and Criteria.

(3) The following information shall be set forth on the face of all Permits: name of property owner; address of property, mailing address of owner, if different; the maximum number of motor vehicle parking spaces allowed on such property, any restrictions or conditions to the use of the motor vehicle parking spaces, the location of all entrances and exits to the parking areas, and the use of such property.

(4) A Permit issued hereunder shall, unless sooner suspended or revoked, expire on the first day of July in the year next succeeding the year in which it takes effect, or on such earlier date as may be specified in the Permit. The Commission will annually renew existing permits. Permit holders must petition the Commission for any modifications to an existing permit as outlined herein. A Permit may be suspended or revoked as provided herein.

(5) Permits may be approved only by the Commission, provided that the Commission may delegate its authority to Commission staff to approve Renewal Permits and to issue conditional approval for any Permit, subject to the Commission's final approval, for a period of up to three (3) months.

(6) There shall be four (4) types of Permits, as follows:

- i. *Initial Permit* shall be a permit issued to the owner of a parking space on a parcel of land included in the base inventory.
- ii. *Renewal Permit* shall be a permit issued to a current Permit holder after the Initial, Modified or New Permit expires when there is no change to the Permit, as provided in (iii) below.
- iii. *Modified Permit* shall be a permit issued to the holder of an Initial Permit or a Renewal Permit where there is a change in the Permit including any of the following changes: 1) changes to the overall number of permitted parking spaces; 2) changes in the use of the parking spaces that may affect traffic patterns, 3) or changes in the ingress or egress to the parking facility. Modified Permits may be renewed pursuant to III D (6)(ii), above.
- iv. *New Permits* shall be Permits issued to operators of parking facilities where the parking spaces are allocated from the parking freeze bank to be established hereunder. Holders of New Permits may seek a Modified Permit pursuant to III D (6)(iii), above.

(7) Initial Permits shall be issued by the Commission by way of the following procedure. The Commission shall notify by Certified Mail each owner of a parcel of land included in the base inventory, for which a permit shall be issued. All of the information provided in Section III(3), above, to the extent then known, shall be included in said notice. The owner shall be provided 30 days, from the receipt of the Certified Mail notice, in which to respond, by Certified Mail, to amend or correct any such information. If the information in the Initial Permit is correct, the owner shall remit the appropriate fee pursuant to III (E)(10) and Appendix III.B. and the Initial Permit shall be issued. If no response is received by the Commission within 30 days, the number of spaces in said Initial Permit shall be presumed correct and may not be disputed by the owner without a hearing before the Commission, as provided for in Section III, E. below, but the permit shall not issue until the appropriate fee has been received. Operation of a parking facility without a valid Parking Freeze permit may subject the owner/operator to the enforcement provisions of Section III J of these regulations. The Commission reserves the right to rescind permits so issued if, after notice to the permit holder and opportunity to be heard at a public hearing, the Commission finds that said permit was issued in error.

(8) Renewal Permits shall be issued by the Commission by way of the following procedure: The Commission shall notify each holder of an Initial Permit or a Renewal Permit that a Renewal Permit shall be issued without any modification unless within 30 days said owner provides updated information. Any modifications proposed by an owner

that is a change as provided in (6)(iii), above, or any request for additional parking spaces, shall be considered a Modified Permit and must comply with the procedures set forth in Section III, E. below.

(9) The Commission may establish a parking freeze bank which shall initially consist of an amount equal to 10% of the base inventory. Additionally, motor vehicle parking spaces which have been physically eliminated may be added to the parking freeze bank. The Commission may, by majority vote at a Public Hearing, permanently eliminate spaces from the Freeze Bank and South Boston Parking Freeze Inventory.

(10) Modified Permits and New Permits shall be issued by the Commission by way of the following procedure. A hearing before the Commission, as provided for in Section III, E. below.

(11) The issuance of a Permit hereunder shall in no way be considered or construed to provide the owner, operator or tenant with any rights or approvals to use such parking spaces under any other law, ordinance or regulation and shall not be construed to confer a "property right".

E. PERMIT APPLICATION AND HEARING PROCESS

(1) Modified Permits and New Permits may be issued only by way of filing an application on a form prescribed by the Commission. Every permit application shall be submitted on the attached form (see Appendix III-C) or on such form as the Commission may, from time to time, designate. All information and required design and site plans shall be furnished. Seven paper copies and one electronic copy of every application for a Permit and the design and site plans (one set full size, 6 sets on 8.5x11, 8.5x14 or 11x17 format, and one electronic version) shall be submitted to the Boston Air Pollution Control Commission, Boston City Hall, Room 805, Boston, MA 02201. If an application is incomplete in any respect, it may be rejected.

(2) The Commission shall hold hearings from time to time as necessary. Hearings may be conducted only by a quorum of the Commission, which shall be a majority of the members of the Commission then in office. The Commission may, by majority vote, continue a hearing pending additional information. Approval of permits shall be by a majority vote of a quorum.

(3) Permit approval is subject to compliance with the provisions of these Procedures and Criteria, 310 CMR 7.33 and the terms and conditions in the Permit, which shall include the maximum number of motor vehicle parking spaces allowed. Modified Permits and New Permits may be subject to additional conditions including, without limitation, the number of parking spaces, conditions governing the use of the parking space, location of the parking facility, the location of the ingress and egress to said facility, landscaping, design and signage.

(4) Applications for Modified Permits or New permits must be received at least sixty (60) days prior to the next scheduled hearing to be considered at that date, unless the Commission, at its discretion, has granted permission in writing for a late filing and the applicant is capable of meeting all notification requirements.

(5) The Commission shall provide the applicant a Notice of Public Hearing which must be published by the applicant, at its expense, in both a South Boston newspaper and a Citywide newspaper of general circulation. The notice shall set forth a specific hearing date not less than twenty-eight (28) days and not more than thirty-five (35) days from the date of publication. The notice shall include the time and place of such hearing, a brief description of the application, and shall indicate that a copy of the application(s) is available for public inspection at the office of the City of Boston Environment Department. A copy of the Notice, as published, and the date, page and name of the publication shall be submitted to the Commission prior to the hearing by the applicant. A copy of the Notice shall also be submitted to the Office of Neighborhood Services and to each District City Councilor representing any part of the South Boston Parking Freeze area, not less than ten (10) days prior to the hearing date. The Applicant shall make reasonable efforts to provide abutters with a copy of the Notice at least twenty-one (21) days but not more than twenty-eight (28) days prior to the hearing. Evidence of these efforts shall be supplied to the Commission prior to the hearing date. Abutters shall include the owners of property that directly abuts any parking facility location, and the owners of property within three hundred (300) feet from the property line of any location.

(6) The Commission shall notify the Regional Administrator of the Environmental Protection Agency (EPA) and the Commissioner of the DEP of the time and place of all hearings.

(7) To the extent practicable, the Commission shall, within seven (7) days before the hearing date, send to each applicant who has submitted a complete and timely application a joint staff report which analyzes the application, presents transportation and planning facts and data relevant to the criteria set out in Section III. F. and describe any further information required in order to make full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at this time.

(8) Within twenty-one (21) days after the hearing, the Commission shall, based upon the criteria set forth in Section III. F. and, in consideration of the information contained in the application and presented at the public hearing, approve or disapprove the Permit application, or approve the Permit application with conditions. The Commission's findings and determination shall be in writing and shall indicate the location of the parking, the number of parking spaces allowed and any conditions.

(9) The Commission shall cause to be made a record of its proceedings indicating the vote of its members upon each question.

(10) Fees for processing Initial Permits and New or Modified Permit applications shall be paid by check, made out to the City of Boston-Air Pollution Control Commission, and

submitted along with the application. No permit shall be issued until the application fee has been collected. The Fee Schedule is set forth in Appendix III-B. In addition, the applicant shall be responsible for the costs of the advertising fees associated with the publication of the notice of hearing, pursuant to Section III (5), above.

SECTION III. F. CRITERIA FOR ISSUANCE OF PARKING FREEZE PERMITS

The following criteria shall be used for the issuance of Parking Freeze Permits (“Permits”) for motor vehicle parking spaces in the South Boston Freeze area. All motor vehicle parking spaces will be permitted as either public or private parking spaces. Depending on the use of the parking spaces, permit conditions, set forth below, shall be required. In addition, each permit, regardless of type, shall include standard conditions as set forth in Appendix III-A attached to these regulations.

(1) Initial Parking Space Permits

Initial permits shall be issued by the Commission to all owners of property with motor vehicle parking spaces in the South Boston Piers area and the South Boston Industrial/Commercial area, and owners of property in the South Boston Residential area with remote parking spaces. Each permit will specify the number of public and/or private parking spaces included in the inventory, as well as all permit conditions. This will include a description of the site including such things as ingress and egress, thereto.

(2) Modified or New Motor Vehicle Parking Space Permits

The Commission shall consider the following factors in its review and approval/denial of Modified Permits and New Permit Applications: the location of the facility, the anticipated number of vehicles and the times at which vehicles will enter and leave the facility during the course of each day, the turning movements required for vehicles that enter and leave the facility, the anticipated vehicular volumes on streets and intersections in the vicinity of the facility, pedestrian volume counts in the vicinity of the facility, accident experience in the vicinity of the facility and other factors including, without limitation, vehicle miles traveled by vehicles utilizing the parking facility, adverse impacts or contributions to air pollution or traffic congestion on local and arterial streets, the overall impacts on travel demand management and mode share, and the level of support and commitment to implement available transportation alternatives and demand management programs and plans.

(3) Off Peak Parking Spaces

The Commission shall require all parking facilities in the South Boston Piers Zone as part of their initial permit to set aside 10% of their total parking supply for off-peak use, and it shall not be available for parking between 7:30AM and 9:30AM. At the opening of service of the South Boston Transitway, permits will

be amended to reflect a 20% set-aside of Off-Peak parking in the South Boston Piers Zone. Lot owners and/or operators shall ensure the off-peak set aside through use of bollards and chains, gates, fencing or other means to physically block access to the off-peak spaces until after 9:30AM, or utilize an suitable electronic parking inventory control system to ensure the availability of the required off-peak spaces, subject to the approval of the BAPCC.

(4) Restricted Use Parking Spaces

The Commission shall consider the following factors in its review and approval/denial of Restricted Parking Spaces: the location of the facility, the anticipated number of vehicles and the times at which vehicles will enter and leave the facility during the course of the day, the turning movements required for vehicles that enter and leave the facility, the anticipated vehicular volumes on streets and intersections in the vicinity of the facility, pedestrians volume counts in the vicinity of a facility, accident experience in the vicinity of a facility, and other factors including, without limitation, vehicle miles traveled by vehicles utilizing a parking facility, adverse impacts or contributions to air pollution or traffic congestion on local and arterial streets, the level of support and commitment to implement available transportation alternatives and demand management programs and plans, and the commitment by the proponent to take appropriate actions to reduce the necessity of making requests for Restricted Use Parking in the future.

(5) Remote Parking Spaces

The Commission shall not allocate remote parking spaces over and above the existing remote parking space inventory established. Remote parking spaces returned to the BAPCC Bank will be reallocated as motor vehicle parking spaces within the Piers or Industrial/Commercial zones. To this end, shuttle bus services, from parking facility to end uses outside the parking freeze area, may not be provided by parking facility operators or owners who do not hold a remote parking facility permit for that property.

(6) Central Artery Displaced Parking Spaces

The Commission will grant initial permits to all property owners who have parking spaces displaced by the Central Artery Construction Project, as the total number of 1) spaces documented in the Central Artery Final EIR as displaced and 2) spaces remaining on the property. (Final Supplement EIR Central Artery Third Harbor Tunnel Project, Summary of Changes to Appendices, Figure 2.4 South Boston/South Boston Bypass Road Area –Parking Impacts). Spaces permanently displaced by the project will be banked by the BAPCC and earmarked for the affected property owner for two (2) years after the opening of the Central Artery mainline to general traffic , after which time they will become part of the available motor vehicle parking freeze bank. Spaces temporarily displaced project will be banked by the BAPCC and earmarked for the affected property

owner for one year after the property taken temporarily by the Central Artery Project is returned to the property owner's control, after which time they will become part of the available motor vehicle parking freeze bank.

G. CRITERIA RELATED TO THE RELOCATION OF PARKING SPACES

Spaces may only be moved from the Piers Zone to the Commercial Industrial Zone if they are not needed in the Piers area and, either: 1) are on contiguous or abutting parcels of land, or; 2) the parking spaces were temporarily or permanently impacted or displaced by the CA/T project, and/or; 3) the BAPCC determines that the relocation of the motor vehicle spaces will reduce adverse impacts or contributions to air pollution or traffic congestion on local and arterial streets.

H. PROCEDURE RELATED TO CONDUCTING AN INVENTORY AFTER THE CENTRAL ARTERY/THIRD HARBOR TUNNEL PROJECT IS OPEN

At such time as the Central Artery/Third Harbor Tunnel project is open for general public use, an inventory of existing motor vehicle parking spaces, available in the South Boston Piers Zone shall be submitted by the Commission to the DEP. Following DEP re-certification of the parking freeze number for the South Boston Piers Zone, 10% of the inventory of all motor vehicle parking spaces, including remote and off-peak parking spaces, may, after public hearing and vote by the Commission, be added to the BAPCC bank.

I. PROCEDURE RELATED TO PROPERTY TRANSFERS INVOLVING THE MASSACHUSETTS AUTHORITY

In the event that the Massachusetts Port Authority (Massport) acquires any interest in property in the South Boston Freeze Area, which interest shall include only the acquisition of property by purchase or a lease with a term of more than one year, the number of motor vehicle parking spaces on such property shall be deleted from the inventory of parking spaces, provided that Massport has provided the Commission with actual notice of said acquisition by way of a copy of the deed where the property is acquired by purchase or a copy of the lease where the property is acquired by lease. In the event that Massport conveys an interest in property in the South Boston Freeze Area, which interest shall include only the conveyance of property by sale, the number of motor vehicle parking spaces on such property shall be added to the inventory of parking spaces.

J. ENFORCEMENT PROCEEDINGS

The provisions of these Procedures and Criteria and of 310 CMR 7.33., and the terms and conditions in the Permits issued hereunder, shall be enforced by the Commission or its designee by way of the provisions provided herein or by filing an action in a court of competent jurisdiction in accordance with Massachusetts law. The Commission is not

required to commence or complete the enforcement provisions provided herein prior to seeking enforcement by filing a court action.

Permits may be suspended or revoked as set forth in this Section III, provided, however, that where an alleged violation threatens the public health or welfare, Permits may be suspended or revoked prior to initiating the procedures herein. Enforcement measures shall take into consideration the severity and frequency of the violation. Where enforcement includes the suspension or revocation of the Permit it shall be implemented in a progressive manner, as follows: the first violation may result in a suspension or revocation of a Permit for not more than five (5) days; the second violation may result in a suspension or revocation of not more than ten (10) days; the third violation may result in a suspension or revocation of a Permit for not more than fifteen (15) days. Further violations may result in the indefinite suspension or revocation of the Permit.

Pursuant to MGL Ch. III S. 31C, violations of Section III may be punishable, for the first offense, by a fine of not less than one thousand nor more than five thousand dollars and for a subsequent offense, by a fine of not less than five thousand nor more than ten thousand dollars. For the purpose of this paragraph each day and part thereof of violation of such an order, rule or regulation whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. In addition, upon authorization by the Department of Environmental Protection, the Commission may issue penalties pursuant to 310 CMR 7.52 and MGL Ch. 111 s. 142B.

If the Commission or its designee takes cognizance of a violation of the provisions herein, including the terms and conditions of the Permits issued hereunder or of 310 CMR 7.33, the Commission or its designee may, as an alternative to instituting criminal proceedings, utilize the procedures provided under Chapter 40, Section 21D of the Massachusetts General Laws.

In addition to the enforcement provisions provided above, the Commission or its designee may commence enforcement proceedings by issuing a Notice of Probable Violation (“NOPV”), if the Commission or its designee has reason to believe that a violation has occurred or is continuing to occur. The NOPV shall state factual basis for the allegation of a violation and the proposed remedial action to be taken by the person served (“respondent”) if the Commission or its designee finds a violation. The NOPV shall state that the respondent must: (a) reply in writing to the NOPV within fifteen (15) days from the date of the NOPV; and (b) appear at an informal conference with the Commission or its designee on a designated day which is at least fifteen (15) days from the date of the NOPV.

The written reply must be filed with the Commission and must be signed by the respondent or the respondent’s designee. It must include a complete statement of all relevant facts and authority, and a full description of the reasons that the respondent disputes the violation(s) alleged in the NOPV.

If the respondent or his representative fails, either to file a written reply or to appear at the informal conference, the respondent shall be deemed to have admitted the accuracy of the factual allegations and legal conclusions stated in the NOPV, and the respondent shall be held liable to take the remedial action proposed in the NOPV.

A hearing officer designated by the Commission shall conduct an informal review. The informal review shall consist of an informal conference and an analysis of the respondent's written reply.

At any informal conference, the respondent shall have the right to be represented by an attorney or other person, and shall have the right to present relevant documents to the hearing officer. The hearing officer shall make available to the respondent any evidence in the Commission's possession which indicates that the respondent may have committed a violation, and the respondent or his representative shall have the opportunity to rebut this evidence. However, this informal conference shall not be construed to be adjudicator proceedings as defined in G.L. C. 30A.

The hearing officer shall make a decision in writing. If the respondent is not satisfied with the decision, he may request a hearing by the Commission, provided that the respondent makes such a request in writing within seven (7) calendar days of the date the decision is issued. Failure to request a hearing by the Commission will be considered an admission of the factual allegations and legal conclusion stated in the hearing officer's decision, and the respondent shall be held liable to take the remedial action proposed in the NOPV.

A hearing before the Commission shall be de novo. The notice provisions provided in Section III. E. shall not apply. At the hearing, the respondent may be represented by an attorney or other person. The Commission may require the production of records and documents and compel the attendance and testimony of witnesses before it, (pursuant to City of Boston Code-Ordinances 7-2).

If the Commission finds, after the hearing, that the respondent has committed a violation, it may take appropriate enforcement action including, but not limited to, rescinding or modifying the Permit, issuing an administrative penalty or initiating an enforcement proceeding in a court of competent jurisdiction.

K. PROCEDURES FOR AMENDING SECTION III

The APCC may from time to time, amend these regulations by simple majority vote of a quorum of Commission members (a majority of members then in office) at a public hearing on the record. Notice of such proposed amendments must be advertised on a single day for two successive weeks in a newspaper of general circulation at least 21 days in advance of the hearing date and a notice shall be posted with the Boston City Clerk.

Copies of the proposed amendments shall be made available to the public upon request. The Commission shall give the public an opportunity to be heard at the public hearing

and shall consider testimony received in its deliberations on the proposed change to the regulations. Upon adoption of any amendment, the revised version of the regulations shall be transmitted to the Massachusetts Department of Environmental Protection and the U.S. Environmental Protection Agency Region 1 Office in Boston.

L. SEVERABILITY

The provisions of this Section III are severable and if any of its provisions shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

END