

THE CITY OF BOSTON
AIR POLLUTION CONTROL COMMISSION

PROCEDURES AND CRITERIA

FOR ISSUANCE OF

PARKING FREEZE PERMITS

Adopted under the provisions of Section 31C, Chapter 111, General Laws.

Amended and approved by vote of the Air Pollution Control Commission, 7/17/78, 12/19/78, 2/15/91, 3/15/06.

SECTION I. CITY OF BOSTON/DOWNTOWN PARKING FREEZE

A. PREAMBLE

A.1. HISTORY

On June 12, 1975, the United States Environmental Protection Agency published (40 Fed. Reg. 25152) final amendments to the Transportation Control Plan for the Metropolitan Boston Interstate Air Quality Control Region. This plan is one of the measures required by the Clean Air Act for the achievement and maintenance of the national primary air quality standards necessary to protect public health in the Boston Region. Prior to the adoption of the final amendments, public hearings on the original plan and final amendments were promulgated to meet the ruling of the United States Court of Appeals for the First Circuit, *South Terminal Corp. v. EPA*, 504 F.2d 646 (1st Cir. 1974), in response to a number of petitions to review the original plan.

The final plan calls for a variety of measures to minimize air pollution in the Boston Region by reducing vehicle miles traveled, including the establishment of a “freeze” on new parking construction in a portion of Boston, and restrictions on on-street parking in downtown Boston. The parking freeze regulations established a “freeze” as of October 15, 1973 on construction of new commercial parking facilities in the downtown area of Boston shown on the attached map and at Logan Airport. In order to modify or construct new commercial parking facilities in this area, parking operators must have a Parking Freeze Permit which can be issued

only if an equivalent number of off-street or legal on-street parking spaces have been physically eliminated within the freeze area. The City of Boston Air Pollution Control Commission is the issuing agency for these permits.

The parking freeze is consistent with policies of the City and State established since 1972 to discourage automobile use in downtown Boston, to reduce vehicle miles traveled in the region, and to encourage and develop greater use of public transit. The parking freeze is consistent with planning objectives of maximizing pedestrian use downtown, using prime real estate for office, commercial, residential, and cultural uses that vitalize the downtown, rather than filling this area with parked automobiles.

The parking freeze does not mean that no more off-street commercial parking can be built in downtown Boston. Rather, the freeze means that new commercial parking must be accompanied by the elimination of spaces at least equal to the number of new spaces being created. The freeze applies only to commercial spaces where cars are temporarily parked for a fee. Residential parking spaces are exempt.

These procedures and criteria were originally adopted by vote of the City of Boston Air Pollution Control Commission July 16, 1976, amended August 3, 1976, pursuant to the delegation of authority from the Governor of the Commonwealth of Massachusetts to issue Parking Freeze Permits within Boston Proper, in accordance with 40 CFR s. 52.1135.

A.2. SUMMARY OF THE PROCEDURES AND CRITERIA.

These procedures and criteria have been adopted by the Air Pollution Control Commission under the provisions of Section 31C, Chapter 111, General Laws.

The Air Pollution Control Commission will coordinate and administer the parking freeze within the City of Boston proper. Other City agencies will work in cooperation with the Commission. No person shall commence construction or modification of a commercial parking facility within that area without a Parking Freeze Permit. Rights to eliminated parking spaces cannot be transferred between persons or entities. Any reduction in commercial parking spaces shall be reported to the Commission.

Hearings on requests for permits will be held on at least a quarterly basis for all applications received at least 60 days prior to the next scheduled hearing. All applications shall be complete and on the form provided. The applicant to the extent practicable will be sent a joint staff report at least 7 days before the hearing. The report will include analysis of the transportation and planning information provided in the application which, in the opinion of the staff, is relevant to the selection criteria. The Commission shall approve or disapprove the application within 28 days of the hearing. Criteria for allocation of available spaces shall include compliance with the freeze requirements and consistency with transportation planning

objectives. The parking freeze contributes to meeting the primary air quality standards by achieving a reduction in region-wide vehicle miles of travel. Thus the criteria do not include an evaluation of the localized incremental air pollution impacts associated with a proposed new or modified commercial parking facility. Rather, they emphasize design and traffic management factors.

B. RESPONSIBILITIES OF BOSTON AIR POLLUTION CONTROL COMMISSION

B.1. The Air Pollution Control Commission shall, on behalf of the City of Boston, coordinate and administer the issuance of Parking Freeze Permits. 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 that indicate the current inventory of commercial parking facilities located within the freeze area constructed subsequent to October 15, 1973 (the effective date of the freeze), the current number, location, and date of commercial parking spaces and legal on-street parking spaces physically eliminated or retired after the effective date of the freeze; and the current number and location of commercial parking spaces that remain available for allocation pursuant to these procedures and criteria;
- b. In accordance with the procedures set below, process all applications for Parking Freeze Permits, and
- c. Prepare an annual report to the Regional Administrator of the Environmental Protection Agency and Commissioner of the Commonwealth of Massachusetts Department of Environmental Protection.

B.2. In carrying out these duties, the Commission shall consult with and seek the assistance of other appropriate agencies of the city, state, and federal governments, including:

- a. Requesting that the Boston Redevelopment Authority (BRA), the Boston Transportation Department (BTD), and the Mayor's Office analyze and make recommendations on applications for Parking Freeze Permits.
- b. Using the information provided by the BRA and the BTD as to the number of commercial parking spaces available for allocation to new or modified commercial parking facilities.

C. GENERAL PRINCIPLES FOR APPLICATION OF PARKING FREEZE

C.1. Henceforth, no person shall commence construction or modification of a commercial parking facility within Boston Proper without first obtaining a Parking Freeze Permit from the Air Pollution Control Commission. "Person" shall be defined to include all state,

regional, and local political subdivisions, agencies, departments, authorities, and an individual, partnership, association, firm, syndicate, company, trust, corporation, or any other entity recognized by law as the subject of rights and duties. Any person who has commenced or completed construction or modification of such a facility subsequent to October 15, 1973 shall obtain a Parking Freeze Permit pursuant to these procedures and criteria.

C.2. Any modification of an existing parking facility or lot that increases the number of parking spaces available is subject to the requirements of the parking freeze.

C.3. "Commercial parking facility" shall be defined to include any lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are temporarily parked for a fee, excluding:

- a parking facility, the use of which is limited exclusively to residents (and guests of residents) of a residential building or group of buildings under common control, or a facility operated solely and exclusively for the benefit of the residents of a specific group of residential buildings, and
- parking on public streets.

C.4. Parking spaces that are owned or operated by a commercial entity, the primary business of which is not the operation of parking facilities, and are used exclusively by the entity or its lessees, employees, patrons, customers, clients, patients, or guests, and not available for use by the general public at any time, are not subject to the requirements of the parking freeze. For the purpose of this section, an exemption shall exist only if granted by the Commission and only upon a finding by the Commission that the facility is operated in a manner such that the general public is effectively excluded from parking in the facility. Any parking space that is available for use by the general public for a fee at any time of the day is covered by these procedures and criteria.

C.5. In determining the number of commercial parking spaces available for allocation hereunder, only commercial parking spaces and legal on-street parking spaces that have been physically eliminated shall be counted. Removal of legal on-street parking spaces by administrative regulation of parking restriction shall not be considered. The number of spaces shall be determined according to the following formula whenever the spaces are not conspicuously delineated:

- self-parking facility - 1 space/300 sq. ft.
- attended parking facility - 1 space/200 sq. ft.

C.6. Rights to eliminated parking spaces cannot be transferred by or between any person or entities but shall revert back to the City for listing and use as spaces available for allocation.

C.7. “Boston Proper” is shown on the attached map, Appendix A.

C.8. Any modification or closing of a commercial parking facility that reduces the number of commercial parking spaces available at a specific site shall be reported to the Air Pollution Control Commission in writing, and shall specify the exact number and location of spaces eliminated and the reasons for the elimination. All such spaces will then be added to the listing of spaces available for allocation within the freeze area pursuant to these procedures and criteria; provided, that the temporary decrease for less than one year in the number of commercial parking spaces available at a lot or facility does not have to be reported, if after the interim period the original number of spaces is not exceeded and the entrances and the exits are not changed.

C.9. Any Parking Freeze Permit for a temporary lot that is granted pursuant to these procedures and criteria shall expire at the end of the calendar year or on such other date as may be established by the Commission. At the expiration date, the spaces in the temporary lot shall revert back to those available for allocation. Any holder of such permit may reapply pursuant to these procedures and criteria for an extension of the permit. All temporary permits issued are subject to the right of the Commission to reallocate its spaces to a permanent parking facility. Any parking facility within the parking freeze area that is permanently closed shall physically block access to the site by motor vehicles at any time.

C.10 All new Parking Freeze Permits shall be issued with the condition that within six (6) months for open-air parking facilities and one (1) year for garages of the issuance thereof, the applicant shall apply to the City of Boston Inspectional Services Department for all necessary building, occupancy, or change of use permits.

C.11. Any construction or modification of a commercial parking facility authorized pursuant to a permit issued under these procedures and criteria shall be carried out in accordance with the site plan and design submitted with the application. The Air Pollution Control Commission shall approve any change in said plan or design prior to the applicant undertaking such construction or modification.

C.12. All commercial parking facilities (excluding garages) shall comply with the City of Boston Transportation Department’s Rules Regulating Open-Air Parking Spaces.

C.13. No commercial parking facility shall at any time exceed its approved capacity.

D. PERMIT APPLICATION AND HEARING PROCESS.

D.1. The Air Pollution Control Commission shall hold hearings for Parking Freeze Permit applications at least quarterly on or about the 15th day of March, June, September, and December, provided there are parking spaces available for reallocation within the limits of the freeze and provided there are applications submitted by the due date. An advance notice of the

date of the next hearing will be published in a newspaper of general circulation with the Boston Proper Freeze Area at least 10 days prior to said hearing.

D.2. Only applications received at least 60 days prior to the next scheduled hearing will 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. The Commission shall provide the applicant a Notice of Public Hearing which must be published by the applicant, at its expense, in a newspaper of general circulation in the Boston Proper Freeze Area. The notice shall be published at least 28 days and not more than 35 days in advance of the hearing and shall state the data, time and place of such hearing as well as a description of the premises, including a street address, if any, and a brief description of the request; 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 date. The applicant shall make reasonable efforts to provide abutters of the affected premises with a copy of the public hearing notice at least 21 but not more than 28 days prior to the hearing. Evidence of these efforts shall be supplied to the Commission prior to the hearing date. Abutters shall mean owners of land abutting the affected premises and owners of land directly opposite on any public or private street or way, and direct abutters within 300 feet of the property line of the affected premises. A notice of all applications to be heard at the hearing shall be sent to the Regional Administrator, Environmental Protection Agency, and to the Commissioner, Massachusetts Department of Environmental Protection.

D.3. Every application for a permit shall be submitted on the attached form (see Appendix 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. If an application is incomplete in any respect, it may be rejected.

D.4. Seven (7) paper copies and one electronic copy of every application for a permit and site plan shall be submitted to the Boston Air Pollution Control Commission, Boston City Hall, Room 805, Boston MA 02201.

D.5. To the extent practicable, the Air Pollution Control Commission will send, seven (7) days before the hearing date, to each applicant who has submitted a complete and timely application a joint staff report that analyzes the application, presents transportation and planning facts and data relevant to the criteria set out in Section E, and highlights any further information required in order to make a full assessment of the application. Any applicant who has filed an incomplete or late application shall be so notified at that time.

D.6. Within 28 days after the hearing, the Air Pollution Control Commission shall approve or disapprove the application for a Parking Freeze Permit based upon the criteria set forth in Section E and on consideration of the information contained in the application and presented at the public hearing. The Commission's findings and determination shall be in writing

and shall indicate the location of the facility, the number of permitted spaces including, where relevant, the number pre-existing the freeze and the reason therefor and the conditions, if any, upon which approval is given. All permits for temporary open-air parking lots shall expire at the end of the calendar year.

E. CRITERIA FOR ISSUANCE OF PARKING FREEZE PERMITS

The Commission may approve an application for a Parking Freeze Permit only if all of the following criteria are met:

E.1. All requirements as set forth herein have been met including, without limitation, that enough spaces are available for allocation.

E.2. The proposed facility will be consistent with the following transportation planning objectives:

- a. it will not add commercial off-street parking in an area that is already adequately served by existing parking facilities or that has adequate transit access;
- b. it will not contribute significantly to traffic flows during peak traffic periods;
- c. it is located and designed so that the surrounding sidewalks and streets are sufficient to accommodate pedestrians and vehicular movements;
- d. it has satisfactory access to the major highways serving the area;
- e. it directly serves development in the surrounding area; and
- f. its design, including height, bulk, ground floor use, and landscaping, is in accordance with, and consistent with, architectural and land use patterns in the surrounding area and is itself esthetically pleasing.

F. PROCEDURE FOR AMENDING SECTION I

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. Such proposed amendments must be advertised in a newspaper of general circulation at least twenty-one (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 deliberation on the proposed change to the regulation. 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.

G. SEVERABILITY

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