

**East Boston Parking Freeze
Procedures and Criteria
for Issuance of Parking Freeze Permits**

VERSION APPROVED BY THE CITY OF BOSTON AIR POLLUTION CONTROL COMMISSION ON JANUARY 10, 1992, PURSUANT TO CHAPTER 111, SECTION 31C OF THE MASSACHUSETTS GENERAL LAWS, AND SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR ITS APPROVAL

SECTION II. CITY OF BOSTON/EAST BOSTON PARKING FREEZE

PREAMBLE

On November 24, 1989, the Massachusetts Department of Environmental Protection (“DEP”) adopted the City of Boston/East Boston Parking Freeze regulations, 310 Code of Massachusetts Regulations (“CMR”) 7.31 and the Massport/Logan Airport Parking Freeze Regulations, 310 CMR 7.30. The City of Boston/East Boston Parking Freeze Regulations established a freeze on the availability of park and fly parking spaces and rental motor vehicle parking spaces in the East Boston Parking Freeze Area. In addition, the regulations provide that the Boston Air Pollution Control Commission take the following steps: complete an inventory of park and fly parking spaces and rental motor parking spaces in the East Boston Parking Freeze Area (“Inventory”); develop a parking freeze plan related to the implementation of the East Boston Parking Freeze; and amend the existing Procedures and Criteria for Issuance of Parking Freeze Permits (“Procedures and Criteria”) in order to provide for the administration and management of the East Boston Parking Freeze. The Inventory was submitted to the DEP on November 19, 1991, and notice of DEP approval was provided by way of letter dated April 26, 1991.

This amendment is accomplished by adding a new Section to the existing Procedures and Criteria, and is adopted pursuant to the authority of Chapter 111, Section 31C of the Massachusetts General Laws.

SECTION II. A. DEFINITIONS

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

BOSTON TRANSPORTATION DEPARTMENT 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.

COMMERCIAL PARKING SPACES means parking spaces provided for a fee, excluding employee parking spaces.

COMMISSION means the Boston Air Pollution Control Commission.

EAST BOSTON PARKING FREEZE means the freeze on the number of park and fly and rental parking spaces within the East Boston Parking Freeze Area established pursuant to 310 CMR 7.31.

EMPLOYEE PARKING SPACES means parking spaces provided for use by employees of MASSPORT and employees of tenants at Logan Airport.

MASSPORT/LOGAN AIRPORT PARKING FREEZE means the freeze on the number of commercial and employee parking spaces within the Logan Airport Parking Freeze Area established pursuant to 310 CMR 7.30.

MOTOR VEHICLE means any equipment or mechanical device propelled primarily on land by power other than muscular power but does not mean railroad and railway engines and cars, vehicles operated by the system known as trolley motor or trackless trolley, or devices used for domestic purposes.

PARK AND FLY PARKING SPACES means privately owned and operated off-street parking spaces located in the East Boston Parking Freeze Area provided for use by Logan Airport air travelers and visitors.

PARKING FREEZE means a limitation on the number of parking spaces available for specific uses within a specific geographic area.

PARKING SPACE means that area of public or private property that is designated or used for the parking or storage of one motor vehicle, excluding the areas use for the loading and unloading of goods.

RENTAL MOTOR VEHICLE PARKING SPACES means off-street parking spaces for rental/leased passenger motor vehicles at a facility owned, operated and/or leased by a motor vehicle rental company.

SECTION II. B. EAST BOSTON PARKING FREEZE AREA

The boundary of the East Boston Parking Freeze Area, as established in 310 CMR 7.31 (1) (b), is as follows:

Beginning at the point where Waldemar Avenue meets Walley Street and continuing in a westerly direction along Waldemar Avenue to the William McClellan Highway and continuing in a northwesterly direction in a straight line to the Chelsea River;

then southwesterly along the high water line of the River to the Boston Inner Harbor;

then continuing generally southeasterly along the high water line of the Harbor to the Logan Airport boundary; then following along the westerly boundary of the Airport, (which in this area runs generally northwesterly along Maverick Street, northeasterly along Geneva Street, and southeasterly, northeasterly, northwesterly around Memorial Stadium) to the Massachusetts Bay Transportation Authority (MBTA) Blue Line right-of-way, just north of the Blue Line Airport Station;

then northeasterly along the Blue Line right-of-way to the southerly edge of property known as the Robie Industrial Park;

then easterly, northerly and westerly along the boundary of said Park and extending along an imaginary straight line to the MBTA Blue Line right-of-way;

then northeasterly along the Blue Line right-of-way and the Airport boundary, in the vicinity of the southerly end of Moore Street

then southeasterly along the airport boundary to the high water mark of the harbor;

then northeasterly along the high water mark of the Harbor to the Belle Isle Inlet,

then generally northerly along the Belle Isle Inlet to Bennington Street in East Boston;

then southwesterly along Bennington Street to the intersection with Leverett Avenue;

then northwesterly along an imaginary straight line to the point of beginning (the "East Boston Parking Freeze Area"). In the event that property described herein as Robie Industrial Park shall be owned and leased by Massport at some point in the future, then at the time of such purchase or lease, the Robie Industrial Park parcel shall become part of the Logan Airport Parking Freeze.

Area.

SECTION 11 C. RESPONSIBILITIES OF THE BOSTON AIR POLLUTION CONTROL COMMISSION

- (1) The Boston Air Pollution Control Commission (“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 II 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 731, as amended, and to modify, amend or rescind its approval of a Parking Freeze Permit.
- (4) The Commission or its designed may, as far as they deem 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/East Boston Parking Freeze (“East 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 park and fly and rental motor vehicle parking spaces within the East Boston Parking Freeze Area, and the current number and location of park and fly and rental motor vehicle parking spaces which may be available for allocation pursuant to these Procedures and Criteria;
 - (b) Process all applications for 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.

SECTION II.D. GENERAL PRINCIPLES FOR APPLICATION OF PARKING FREEZE

- (1) No Owner, operator or lessee of park and fly parking spaces or rental motor vehicle parking spaces shall allow for the parking of motor vehicles in excess of the number of park and fly parking spaces or rental motor vehicle parking spaces available for use on the effective date of 310 CMR 7.31, which is set forth in the Inventory, and/or as set forth in the Parking Freeze Permit (“Permit”). The total number of park and fly parking spaces available for use as of the effective date of 310 CMR 7.31 is two thousand four hundred and seventy five (2,475). The total number of rental motor vehicle parking spaces available for use as of the effective date of 310 CMR 7.31 is four thousand and twelve (4,012).
- (2) No owner, operator or lessee shall operate, construct or modify a parking facility without first obtaining the applicable Permit from the Commission under the provisions of this Section II of the Procedures and Criteria, provided, however, that where a parking facility is listed in the Inventory, said facility must file an application for an Initial Permit within sixty (60) days from the effective date hereof, and obtain the Permit no later than one hundred and twenty (120) days from the effective date hereof.

(3) A parking facility shall include the entire operation conducted by an operator without regard to the number of locations where the operation may be conducted, unless the Commission determines that one or more of the locations require a separate Permit. This determination will be based upon the daily volumes of motor vehicles entering or leaving any location and the impact on the adjacent street network, and the number of parking spaces at any location.

(4) A Permit issued hereunder shall, unless sooner suspended or evoked, 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. 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 is a permit issued to parking facilities listed in the Inventory prepared by the Commission and approved by the DEP. Such permits shall be approved by the Commission provided that the parking facility is listed in the Inventory and the application is properly completed.

(ii) Renewal Permit is permit issued to a current Permit holder when there is no change, as provided in (iii) below, in the operation of the parking facility. Such permits shall be approved by the Commission where there is no change, as provided in (iii) below, in the operation of the parking facility, in place of submitting a new application, permittees may submit a signed copy of the Certification Form provided by the Commission.

(iii) Modified Permit is a permit issued to the holder of an Initial Permit or a Renewal Permit where there is a change in the operation of the parking facility that

- (a) adversely impacts or contributes to traffic congestion to local and arterial streets or
- (b) results in the relocation of all or a significant portion of permitted parking spaces.

Without limitation, any of the following changes may require a Modified Permit: a change in the physical location of the parking facility; or a change in the vehicular ingress or egress at any of the locations of a parking facility. The operational activities conducted in a parking facility shall not be considered in determining whether there is a change in the operation of a parking facility.

(iv) New Permit is a permit issued to the operator of a parking facility where the parking spaces are allocated from the inventory of available parking spaces that may be established hereunder

(7) Prior to filing a Modified Permit application, the holder of an Initial Permit or a Renewal Permit may request a determination from the Commission as to whether any proposed change in the operation of the parking facility will require the issuance of a Modified Permit.

(8) Any modification or closing of a parking facility which reduces the number of parking spaces available at a parking facility shall be reported to the Commission in writing, specifying the exact number and location of parking spaces eliminated.

(9) Where either park and fly parking spaces or rental motor vehicle parking spaces are eliminated, the Commission may establish an inventory that consists of one (1) parking space for every two (2) parking spaces eliminated for each category of parking spaces and may, following a public hearing, reallocate these parking spaces pursuant to the procedures set forth herein. Eliminated parking spaces cannot be transferred between owners, operators or leasees.

(10) In determining the number parking spaces that are available for reallocation, only park and fly and rental motor vehicle parking spaces which have been physically eliminated may be counted, provided, however, that the elimination of parking spaces by way of governmental action, including, land variance or zoning and land use requirements, shall not be considered.

(11) No Permit shall be issued unless the applicant has obtained all necessary building, occupancy, or change of use permits that may be required, provided, however, that the permit has been issued with the stated condition that the approval must be obtained within a reasonable period of time.

(12) The operation, construction or modification of a parking facility authorized pursuant to a Permit issued hereunder shall be carried out in accordance with the site plan and design submitted with the application. The Commission shall approve any change in said plan or design prior to the applicant undertaking such operation, construction or modification.

(13) Open air parking spaces, subject to the provisions of Section 56 of Chapter 148 of the General Laws, shall comply with the City of Boston Transportation Department's Rules Regulating Open-Air Parking Spaces.

SECTION II. E. PERMIT APPLICATION AND HEARING PROCESS

(1) All Permits, other than Renewal 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 IIA). All information and required design and site plans shall be furnished. Four (4) copies of every application for a Permit and the design and site plans shall be submitted to the Boston Air Pollution Control Commission, Boston City Hall, Room 802, Boston, MA 02201. If an application is incomplete in any respect, it may be rejected. The application for Renewal Permits may be made by way of submission of the attached Certification Form (see Appendix IIB).

(2) Initial and Renewal Permits may be approved, by vote of the Commission, without a hearing. New Permits may be issued only following a hearing by the Commission. Modified Permits may be issued without a hearing by the Commission. The Commission shall hold hearings on applications from time to time as necessary. Hearings may be conducted only by a quorum by the Commission, which shall be a majority of the members of the Commission. The Commission may, by majority vote, continue a hearing. Approval of permits shall be by a majority vote of its members.

(3) Permits approval is subject to compliance with the provisions of these Procedures and Criteria, 310 CMR 7.31 and the terms and conditions in the Permit, which shall include the maximum number of parking spaces permitted at a parking facility. Modified Permits and New Permits may be subject to additional conditions including, without limitation, the number of parking spaces, the location of the parking facility and the location of the ingress and egress to said facility.

(4) Applications for New Permits will be approved within twenty one (21) days of receipt by the Commission, provided that the parking facility is listed in the Inventory and the applications are complete. Applications for Renewal Permits shall be reviewed and approved within twenty-one (21) days of receipt by the Commission provided that the applications are complete and there is no change in the operation of the parking facility, as provided in Section II, D. 6. (iii), above.

(5) Applications for Modified Permits or New Permits must be received at least twenty one (21) days prior to the next scheduled hearing will be considered at that date. Applications received less than twenty one (21) days prior to the next hearing will be considered at the following hearing.

(6) The Commission shall provide the applicant a Notice of Public Hearing which must be published by the applicant, at its expense, in an East Boston newspaper of general circulation. The notice shall set forth a specific hearing date not less than ten (10) days and not more than twenty one (21) days from the date of publication, as well as the time and place of such hearing; shall provide 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 at least seven (7) days prior to the hearing. 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 East 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 seven (7) but not more than twenty one (21) 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.

(7) 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.

(8) 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 II. F., and highlights 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 the time.

(9) Within twenty-one (21) days after the hearing, the Commission shall, based upon the criteria set forth in Section II.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 facility, and the number of permitted parking spaces.

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

(11) Fees for processing Permit applications shall be as follows:

(i) Initial Permits and Renewal Permits: \$50 for parking facilities with up to 500 parking spaces; \$75 for parking facilities with between 501 and 1,000 parking spaces; and \$125 for parking facilities with more than 1,000 parking spaces.

(ii) Modified Permits: \$100 for parking facilities with up to 500 parking spaces; \$150 for parking facilities with between 501 and 1,000 parking spaces; and \$250 for parking facilities with more than 1,000 parking spaces.

(iii) New Permits: \$200 for parking facilities with up to 500 parking spaces; \$300 for parking facilities with between 501 and 1,000 parking spaces; and \$500 for parking facilities with more than 1,000 parking spaces.

Payment therefore must accompany the Permit application and shall be by way of check payable to the City of Boston.

In addition, the applicant shall be responsible for the costs of the advertising fees associated with the publication of the notice of hearing.

SECTION II F. CRITERIA FOR ISSUANCE OF PARKING FREEZE PERMITS

The Commission shall apply the following criteria to its review and approval of Modified Permits and New Permits: the extent to which, the location of a facility, the anticipated number of vehicles and the times at which vehicles will enter and leave a facility during the course of each day, the turning movements required for vehicles that enter and leave a facility, the anticipated vehicular volumes on streets in the vicinity of a facility, the existing background vehicular volumes on streets in the vicinity of a facility, pedestrian 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 with the East Boston Parking Freeze Area by vehicles utilizing a parking facility, adverse impacts or contributions to air pollution or traffic congestion on local and arterial streets.

SECTION II G. PROCEDURE FOR THE RELOCATION OF PARKING SPACES FROM THE EAST BOSTON PARKING FREEZE AREA TO THE MASSPORT/LOGAN AIRPORT PARKING FREEZE AREA

Park and fly parking spaces may be relocated from the East Boston Parking Freeze Area to the Massport/Logan Airport Parking Freeze area only where Massport has taken steps provide for in the plan developed pursuant to the provisions of 310 CMR 7.30 and 7.31. No such relocation shall be available where park and fly parking spaces are eliminated in the East Boston Parking Freeze Area for any other reason including, but not limited to: rescission or nonrenewal of a permit by the Commission; a taking of property by any governmental body that results in the reduction of parking spaces; or where a Permit holder does not seek renewal of its Permit.

SECTION II H. ENFORCEMENT PROCEEDINGS

- (1) The provisions of these Procedures and Criteria and of 310 CMR 7.31., 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.
- (2) Permits may be suspended or revoked as set forth in this Section II. H., 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; and 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.
- (3) Violations shall be punished by a fine of fifty dollars (\$50) for the first offense and one hundred dollars (100) for each subsequent offense. Each day on which a violation exists shall constitute a separate offense.
- (4) 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 7.31, the Commission or its designee may, as an alternative to instituting criminal proceedings, utilize the procedures provided under Chapter 40, Section 21 D of the Massachusetts General Laws.

(5) 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 the 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 has a right to choose either of the following courses of action: (a) to reply in writing to the NOPV within fifteen (15) days from the date of the NOPV; or (b) to 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.

(6) 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.

(7) 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.

(8) An informal review shall be conducted by a hearing officer designated by the Commission. The informal review shall consist of an informal conference, if the respondent has chosen this option, or an analysis of the respondent’s written reply.

(9) 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 an adjudicatory proceeding as defined in G.L. C. 30A.

(10) 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) 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.

(11) A hearing before the Commission shall be de novo. The notice provisions provided in Section II.E shall not apply. At the hearing, the respondent may be represented by an attorney or other person.

(12) 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 or initiating an enforcement proceeding in a court of competent jurisdiction.

SECTION II.L SEVERABILITY

The provisions of this Section II. 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.