



CITY OF BOSTON

THE ENVIRONMENT DEPARTMENT

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June 20, 2003

Ms. Christine Kirby, Division of Air Quality Control
Department of Environmental Protection
1 Winter Street
Boston, Massachusetts 02108

Re: South Boston Parking Freeze response to comments from 1/28/03 public hearing

Dear Ms. Kirby:

I am writing to clarify three points that came out of the January public hearing at DEP. First, several reviewers asked for more information on the inventory process. There was also an issue as to how a change in ownership affects permitted parking freeze spaces. Finally, many commentors raised concerns over the lack of a clearly defined process for non-renewal of annual permits. This "uncertainty", they said, would make it difficult to obtain financing for development projects. There were several suggestions for amended language to cure this perceived problem in the City of Boston-Air Pollution Control Procedures and Criteria for Issuance of Parking Freeze Permits. Set out below is additional information in response to the above questions.

Also, I have attached a spreadsheet with responses to those property owners who challenged the base inventory numbers for their properties. In light of those comments, I am recommending an adjustment to the base inventory submitted by the City. Further investigation indicates that 121 spaces from the City of Boston base inventory for South Boston should be transferred to Massport, pursuant to 310 CMR 7.33 (3)(d), to reflect their current ownership or control of sites identified in the attached TABLE 1. In addition, the 1994 base inventory should be increased by 1,634 to 25,121 to reflect the inclusion of spaces missed during the inventory process *net* those spaces eliminated (*see* TABLE 3) which came to light as a result of the public hearings. This *de minimus* change is based on newly received facts and is necessary to the fair treatment of South Boston property owners. In addition, the base inventory number of 25,121 is nearly 8,000 spaces less than the Y2000 inventory previously submitted. Therefore this adjustment should not require further public process by DEP or APCC.

Antonia M. Pollak, Director

Thomas M. Menino, Mayor

Inventory Methodology

The 1994 "draft" inventory submitted by the City of DEP was based on field counts by City staff with confirmation by checking existing City permits and through meetings with individual property owners and facility operators. Where there were large paved lots without striping, we calculated the number using a formula of 300 sq. ft. per parking space (including aisles). We also counted buses and trucks as 3 vehicles as (we reasoned) they take up at least that much space and their diesel engines generate much more air pollution. After preparation of the draft inventory, we received numerous letters from businesses and property owners who claimed that we had either under counted, or in some cases, missed altogether their parking facilities. We compiled a list based on their representations and submitted it as an amendment to the inventory. This resulted in a total count of approximately 30,000 spaces.

In DEP's 1994 decision letter on the inventory, DEP required the City to go back and confirm ownership information and disputed counts and to submit a further amended inventory. But due to lack of funding, the City was unable to go forward with those tasks at that time.

In 2000, faced with a number of proposed development projects that required parking freeze permits, the City undertook on its own, an update of the inventory. The initial effort by the City's consultant, (using the 1994 methodology as well as newly obtained aerial photos taken at about the same time and through additional direct meetings with property owners) uncovered an additional 3,000 spaces for a total of about 33,000. When we presented this information in draft form to you and Sonia Hamel of EOEA we came to understand that there were some fundamental differences in our interpretation of the state regulation (310 CMR 7.33) as to how the base inventory was to be calculated. Based on the understanding we reached at that meeting, we directed our consultant to re-calculate the base inventory number using only marked or clearly active parking spaces and counting all vehicles (cars, trucks, buses, etc) as one space each. In addition, we agreed to segregate those parcels "taken" by the Boston Convention and Exhibition Center (BCEC) from the base inventory and set aside the 2,435 spaces for the exclusive use of BCEC on its site. Any unused spaces will not be returned to the "bank" but held for BCEC. This re-calculation and re-count resulted in a reduction of nearly 8,000 spaces from the base inventory. The "base" inventory we now submit for your review and approval is 25,121 (see attached "Base Inventory" spreadsheet).

Effect of Ownership Change on Freeze Permits

As with the Downtown Parking Freeze, it has been and will continue to be the policy and practice of the Boston Air Pollution Control Commission that, absent a change in the way a parking facility is operated (i.e., change in hours, traffic patterns, number of spaces, ingress/egress, type of clientele, etc.) that may impact air quality, a change in ownership or operator will not affect the validity of the permit then in force.

We will require that current owners notify us upon conveyance of the facility and provide us with the name and contact information for the new owner/operator (who will assume the current

continued.

C. Kirby, DEP, South Boston Parking Freeze 6/20/03, B. Glascock, BAPCC, p.3 of 3, continued

permit and be bound by the conditions). At such time as the permit is renewed (annually), the new permit will reflect the change in ownership, the new owner will have the opportunity to seek a Modified Permit should changes in the operation so dictate.

This issue occasionally comes up with respect to the Downtown Freeze and we have been able to satisfactorily address any concerns through a confirmatory letter.

Criteria for "Non-renewal" and Consideration of MEPA/Zoning Article 80 Approvals

Several commentors expressed concern that the Commission would refuse to renew an otherwise valid permit in without sufficient due process or fail to consider prior decisions made during the environmental review process under MEPA or Boston Zoning Article 80. Perhaps more likely, was that lenders would see the discretionary quality of annual permit renewal as a serious liability for structured parking facilities, making it difficult if not impossible to fund construction. Our informal discussions with several developers, property appraisers and others has lead us to believe that this is a legitimate concern. Therefore, I am proposing amending the APCC Procedures and Criteria for Issuance of Parking Freeze Permits in South Boston with the section set out in the attached "PROPOSED AMENDMENTS". I will submit these proposed amendments to the Commission at our next hearing (not yet scheduled) and while I cannot guaranty their adoption, there is clearly a strong case for making these changes. As for the implications for the DEP review process, neither amendment is required by 310 CMR 7.33, therefore there should be no need to withhold DEP approval pending APCC action.

Response to Comments on Inventory

Several property owners raised objections to the inventory submitted by the City and submitted additional supporting documents to bolster their claims. We have reviewed those documents as well as the information on which our original count was based. Set out in the attached Tables 1, 2 & 3 are the specific sites and the rationale for adjusting (or not) the base inventory.

The Boston Air Pollution Control Commission appreciates the assistance and cooperation you and your agency have provided as we move forward with this complex program, especially in light of the difficult budgetary situation faced by both the City and the State. As always, I am available to DEP and EOEA to address any issues in need of further clarification but, hopefully, with this letter, there should be few if any remaining.

For the Commission,

Bryan Glascock, Executive Director
Boston Air Pollution Control Commission

Enclosures

PROPOSED AMENDMENT TO CITY OF BOSTON PROCEDURES AND CRITERIA FOR
ISSUANCE OF PARKING FREEZE PERMITS, SECTION III, SOUTH BOSTON

Proposed language to replace Section III. D(8)

"(8) Renewal Permits shall be issued by the Commission through the following procedure: The Commission shall notify each holder of a Permit that a Renewal Permit shall be issued without any modification provided that within 30 days said owner provides written confirmation that no modifications constituting a change as provided in Section III.D(6)(iii), *above*, have been made. Renewal Permits shall be deemed to have been issued by the Commission upon receipt of such written confirmation together with any Renewal Permit fee then due. Any modification proposed by an owner that is a change as provided in (6)(iii), *above*, or any request for additional parking spaces, shall be considered as a Modified Permit and must comply with the procedures set forth in Section III.E., *below*. The Commission may refuse renewal of a permit only upon a finding of non-compliance with this section, (D)(8), or pursuant to an enforcement proceeding under Section III.J., *below*."

Proposed modification (*underlined and bolded type*) of Section III. F. (2)

(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, **and the Commission shall consider any approvals granted under the Massachusetts Environmental Policy Act review, M.G.L. Ch 30 § 61-62H, 301 CMR 11.00, and/or under Boston Zoning Code Article 80 review.**