

# **PROCEDURES AND CRITERIA FOR THE ISSUANCE OF PARKING FREEZE PERMITS**



## **BOSTON AIR POLLUTION CONTROL COMMISSION ARTICLE 1: DOWNTOWN PARKING FREEZE**

Approved by vote of the Boston Air Pollution Control Commission, 9/16/2020

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## **Section I. Introduction and Purpose**

### **A. Establishment of the Parking Freeze**

The Downtown Boston Parking Freeze (the “Parking Freeze”) was established by the U.S. Environmental Protection Agency through the final amendments to the Transportation Control Plan for the Metropolitan Boston Interstate Air Quality Control Region (40 Code of Federal Regulations 25152) as required by the Clean Air Act. The Parking Freeze covers “Boston Proper,” specifically including Downtown Boston, Back Bay, and the South End.

The Parking Freeze established a cap on the total quantity of commercial parking spaces in Boston Proper at the 1973 level of 35,556. Residential parking is outside the scope of the Parking Freeze, as delineated in the definition of Commercial Parking Facility in Section II below. Developers may request a determination of non-applicability of the Parking Freeze to residential parking pursuant to Section III(E).

These Procedures and Criteria were originally adopted by vote of the City of Boston Air Pollution Control Commission 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 § 52.1135.

The Parking Freeze contributes to meeting the primary air quality standards by achieving a reduction in region-wide vehicle miles traveled. 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 capacity, design, and traffic management factors.

### **B. Statement of Jurisdiction**

These Procedures and Criteria have been adopted by the Boston Air Pollution Control Commission (the “Commission”) under the provisions of M.G.L. Chapter 111, § 31C.

The Commission will coordinate and administer the Parking Freeze within Boston Proper. Other City agencies will work in cooperation with the Commission.

## **Section II. Definitions**

BOSTON PROPER or FREEZE AREA means the geographic area subject to the Downtown Parking Freeze bounded by Boston Harbor and Fort Point Channel to the East, the Charles River to the North, Massachusetts Avenue to the West, and the Massachusetts Avenue Connector and Interstate 93 to the South; as detailed in Appendix A.

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. Chapter 148, § 56.

COMMENCE CONSTRUCTION means to engage in a continuous program of on-site construction, including site clearance, grading, dredging, or land filling specifically designed for a Parking Facility in preparation for the fabrication, erection, or installation of the building components of the facility. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether a construction or modification program is continuous.

COMMENCE MODIFICATION means to engage in a continuous program of on-site modification, including site clearance, grading, dredging, or land filling in preparation for a specific modification of the Parking Facility.

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:

- I. 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,
- II. any facility classified as an Exempt Parking Facility, and
- III. parking on public streets.

COMMERCIAL PARKING SPACE means any Motor Vehicle Parking Space located in a Commercial Parking Facility.

COMMISSION means the Boston Air Pollution Control Commission.

EXEMPT PARKING FACILITY shall be defined to include any lot, garage, building, or structure, or combination or portion thereof that is owned or operated by an entity, the primary business of which is not the operation of parking facilities, that is used exclusively by the entity or its lessees, employees, patrons, customers, clients, patients, or guests, and that is not available for use by the general public at any time.

EXEMPT PARKING SPACE means any Motor Vehicle Parking Space located in an Exempt Parking Facility.

EXEMPTION CERTIFICATION shall be a certification issued to an owner or

operator of an Exempt Parking Facility pursuant to Section V of these Procedures and Criteria.

FREEZE or PARKING FREEZE means to maintain at all times after October 15, 1973, the total quantity of Commercial Parking Spaces available for use in Boston Proper at the same number as were available for use prior to said date.

FREEZE BANK means that part of the inventory of Parking Spaces for Boston Proper 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.

MODIFICATION shall constitute any of the following changes to a Parking Facility:

- I. changes to the overall number of Parking Spaces;
- II. changes in the use of the Parking Spaces;
- III. changes in the layout of the Parking Spaces;
- IV. changes in the ingress or egress; or
- V. changes in ownership of the Parking Facility locus.

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, or electricity.

MOTOR VEHICLE PARKING SPACE or PARKING SPACE means the area of public or private property that is designed or used for the parking or storage of a motor vehicle, excluding areas used for the temporary loading or unloading of goods.

ON-STREET PARKING SPACE means a legal parking space on a public way authorized by BTD. These spaces are not subject to the Parking Freeze and are not counted as part of the inventory.

OFF-STREET PARKING SPACE means a parking space on private or public property adjacent to and/or with access to, but not located on a private or public way.

PARCEL OF LAND means an area of land in one ownership, with definite boundaries. When an area of land is comprised of more than one lot, the lots share a common boundary and are owned or controlled by the same entity or individual(s), and the lots combined are used for the same purpose or enterprise, the Commission may consider the lots as a single merged lot for the purposes of

applying the provisions herein.

PARKING FACILITY means any lot, garage, building, or structure, or combination or portion thereof, on or in which motor vehicles are temporarily parked, including a Commercial Parking Facility or Exempt Parking Facility, as defined herein.

PARKING FREEZE PERMIT means any permit issued to an owner or operator of a Parking Facility where the Parking Spaces are allocated from the Freeze Bank pursuant to Section V of these Procedures and Criteria.

PERSON shall be defined to include all federal, 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.

SURROUNDING AREA shall be defined as 300 feet from the development project's limit.

### **Section III. Responsibilities of the Air Pollution Control Commission**

- A. 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 M.G.L. Chapter 111, § 31C and 40 Code of Federal Regulations 52.1135, and other applicable laws, ordinances, and regulations.
- B. The Commission shall, on behalf of the City of Boston, coordinate and administer the issuance of Parking Freeze Permits, as well as Exemption Certifications. In carrying out this responsibility, the Commission shall perform, or cause to be performed, the following duties, among others:
  - i. Maintain to the extent possible complete and accurate records that indicate the current inventory of allocated Commercial Parking Spaces and Exempt Parking Spaces located within the Freeze Area and the current number of Commercial Parking Spaces that are available for allocation pursuant to these Procedures and Criteria;
  - ii. In accordance with the procedures set below, process all applications for Parking Freeze Permits, as well as Exemption Certifications; and
  - iii. Prepare an annual report to the Regional Administrator of the Environmental Protection Agency and Commissioner of the Commonwealth of Massachusetts Department of Environmental

Protection.

- C. 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 requesting that the Boston Redevelopment Authority, doing business as the Boston Planning and Development Agency (the “BPDA”), or any successor Agency, and the BTD or any successor Department, analyze and make recommendations on applications for Parking Freeze Permits and Exemption Certifications.
- D. The Commission shall, by majority vote, approve, disapprove, or approve with conditions all applications for Parking Freeze Permits and Exemption Certifications, provided, however, that it may delegate its authority as provided herein.
- E. The Commission or its designee shall, upon request, review documentation regarding proposed construction or modification of Parking Spaces to determine whether the proposed construction or modification concerns Commercial Parking Spaces or Exempt Parking Spaces. Should the Commission or its designee determine that the Parking Freeze and these Procedures and Criteria are not applicable, the Commission or its designee shall issue a letter stating said determination.
- F. The Commission shall have the power to enforce the provisions of these Procedures and Criteria and the provisions of 40 CFR 52.1135 and to modify, amend, or rescind its approval of a Parking Freeze Permit or Exemption Certification.
- G. The Commission or its designee may, as far as it deems necessary in carrying out the provisions herein, enter upon any lands subject to a Parking Freeze Permit, at reasonable times and without prior notice, in order to conduct inspections related to compliance with the terms and conditions of a Parking Freeze Permit or Exemption Certification.

#### **Section IV. General Provisions**

- A. Any owner or operator of a Commercial Parking Facility must maintain a valid Parking Freeze Permit pursuant to Section V of these Procedures and Criteria. Likewise, any owner or operator of an Exempt Parking Facility must maintain a valid Exemption Certification pursuant to Section V of these Procedures and Criteria.

- B. No person shall commence construction or modification of a Commercial Parking Facility or Exempt Parking Facility within Boston Proper without first obtaining a Parking Freeze Permit or Exemption Certification from the Commission.
- C. Any Parking Facility with both Commercial Parking Spaces and Exempt Parking Spaces must obtain a Parking Freeze Permit. Said Parking Freeze Permit shall indicate the location of the Commercial Parking Spaces and Exempt Parking Spaces, the number of Commercial Parking Spaces and Exempt Parking Spaces, the means by which the general public will be excluded from the Exempt Parking Spaces, and the special conditions, if any, upon which approval is given. The Parking Facility need not obtain a separate Exemption Certification.
- D. Any modification of an existing Commercial Parking Facility or Exempt Parking Facility that solely decreases the number of parking spaces at the existing Parking Facility, or changes the layout of existing parking spaces, may be approved administratively by the Commission's designee. The requirements of Section V(A)(iii) and Section V(D) shall not apply to such modifications.
  - i. The Commission's designee shall approve such modification, provided the permittee under the existing Parking Freeze Permit or Exemption Certification provides the Commission an up-to-date site plan and justification for such change or decrease, to be reflected in the Commission's records. Failure to do so shall constitute a violation of these Procedures and Criteria and may result in enforcement action pursuant to Section VII. Said site plan must include, at a minimum, the existing conditions, the proposed project, grading and spot elevations, location of the facility, layout of all the spaces, entry and exit locations, and total square footage of the parking area.
- E. Any modification of an existing Commercial Parking Facility or Exempt Parking Facility that solely changes the ownership of the existing Parking Facility may be approved administratively by the Commission's designee. The requirements of Section V(A)(iii) and Section V(D) shall not apply to such modifications.
  - i. The Commission's designee shall approve such proposed modification, provided the permittee provides notice to the Commission within



fourteen (14) days of the change. Failure to do so shall constitute a violation of these Procedures and Criteria and may result in enforcement action pursuant to Section VII. Notice shall include (i) a copy of the instrument evidencing the transfer of the rights and obligations under such Parking Freeze Permit or Exemption Certification to the successor-owner and assumption by the successor-owner of said rights and obligations and (ii) the name and address of the new owner, to be reflected in the Commission's records.

- F. Exempt Parking Facilities are not subject to the Freeze Bank but are subject to requirements of these Procedures and Criteria. For the purpose of these Procedures and Criteria, an Exemption Certification shall only be granted by the Commission upon a determination by the Commission that the facility is operated in a manner such that the general public is effectively excluded from parking in the facility. The applicant for an Exemption Certification shall have the burden of proving by a preponderance of evidence that the parking spaces are not subject to the requirements of the Freeze Bank. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny an application for an Exemption Certification. Any parking space that is available for use by the general public for a fee at any time of the day is covered by the Parking Freeze and these Procedures and Criteria.
- G. 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. The number of Parking Spaces shall be determined according to the following formula whenever the Parking Spaces are not conspicuously delineated:
  - i. self-Parking Facility - 1 space/300 sq. ft.
  - ii. attended Parking Facility - 1 space/200 sq. ft.
- H. Rights to eliminated Parking Spaces cannot be transferred by or between any person or entities, or between parcels of land, but shall revert back to the City for inclusion in the Freeze Bank.
- I. Any modification or closing of a Commercial Parking Facility that reduces the number of Commercial Parking Spaces available at a specific site must be reported to the Commission in writing, and shall specify the exact number

and location of spaces eliminated and the reasons for the elimination, pursuant to Section IV(D). Failure to do so shall constitute a violation of these Procedures and Criteria and may result in enforcement action pursuant to Section VII. All such spaces will then be added to the Freeze Bank and be available for allocation within the Freeze Area pursuant to these Procedures and Criteria. Provided that the decrease in the number of Commercial Parking Spaces available at a lot or facility is temporary and for less than one year, that after the interim period the original number of spaces is not exceeded and the entrances and the exits are not changed, and that the decrease and the date at which the decrease takes effect are noted in the facility's records in a detailed manner, the decrease need not be reported.

- J. Any modification or closing of an Exempt Parking Facility that reduces the number of Exempt Parking Spaces available at a specific site must be reported to the Commission in writing, and shall specify the exact number and location of spaces eliminated and the reasons for the elimination, pursuant to Section IV(D). Failure to do so shall constitute a violation of these Procedures and Criteria and may result in enforcement action pursuant to Section VII. Provided that the decrease in the number of Exempt Parking Spaces available at a lot or facility is temporary and for less than one year, that after the interim period the original number of spaces is not exceeded and the entrances and the exits are not changed, and that the decrease and the date at which the decrease takes effect are noted in the facility's records in a detailed manner, the decrease need not be reported.
- K. Parking Spaces allocated to a Commercial Parking Facility pursuant to these Procedures and Criteria shall be returned to the Freeze Bank when the holder of a Parking Freeze Permit has failed to complete the construction or modification of the Commercial Parking Facility within three (3) years from the date of issuance, unless an extension has been granted by the Commission. If, at the end of the three-year period the project is not completed, an extension may be requested, in writing, from the Commission. Such request must show (a) good cause exists for the delay in proceeding, and (b) the holder of a Parking Freeze Permit has continued to pursue the project diligently in other forums in the intervening period; provided, however, that unfavorable financial circumstances shall not constitute good cause for delay. If an extension is not granted, any Parking Spaces associated with Parking Freeze Permit shall be returned to the Freeze Bank.
- L. Any holder of a Parking Freeze Permit or Exemption Certification must notify

the Commission in writing, if, at the end of the construction or modification of the Commercial or Exempt Parking Facility, the number of Commercial Parking Spaces and/or Exempt Parking Spaces in the Parking Facility is less than the number of Parking Spaces allocated in the Parking Freeze Permit or Exemption Certification. Such notification shall specify the exact number of Commercial and/or Exempt Parking Spaces in the Parking Facility and request the Parking Freeze Permit or Exemption Certification be modified pursuant to Section IV(D). Any Commercial Parking Spaces not included in the modified Parking Freeze Permit shall be returned to the Freeze Bank.

- i. Failure to report that the number of Commercial Parking Spaces and/or Exempt Parking Spaces in the Parking Facility is less than the number of Parking Spaces allocated in the Parking Freeze Permit or Exemption Certification, provided the decrease is not a temporary change recorded pursuant to Section IV(J), shall constitute a violation of these Procedures and Criteria and may result in enforcement action pursuant to Section VII, up to and including modification, suspension or revocation of the Parking Freeze Permit or Exemption Certification.
- M. Any construction or modification of a Commercial or Exempt Parking Facility authorized pursuant to a Parking Freeze Permit or Exemption Certification issued under these Procedures and Criteria shall be carried out in accordance with the site plan and design submitted with the application. Said site plan must include, at a minimum, the existing conditions, the proposed project, grading and spot elevations, location of the facility, layout of all the spaces, entry and exit locations, and total square footage of the parking area. Should the applicant wish to alter the site plan or design submitted with the application subsequent to issuance of the Parking Freeze Permit or Exemption Certification, the Commission must approve any change in said plan or design prior to the applicant undertaking such construction or modification.
- N. Prior to requesting a modification to a Parking Freeze Permit or Exemption Certification, the holder of a Parking Freeze Permit or Exemption Certification may request a determination from the Commission as to whether any proposed change in the operation of the Parking Facility will require a modification to the Parking Freeze Permit or Exemption Certification.
- O. All Commercial Parking Facilities (excluding garages) shall comply with the

City of Boston Transportation Department's Rules Regulating Open-Air Parking Spaces.

- P. No Commercial Parking Facility or Exempt Parking Facility shall at any time exceed its approved capacity.
- Q. The issuance of a Parking Freeze Permit or Exemption Certification hereunder shall in no way be considered or construed to provide the owner, operator or tenant of a Commercial Parking Facility or Exempt Parking Facility 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".

**Section V. Applications and Public Hearings of the Air Pollution Control Commission**

- A. Procedures for Obtaining or Modifying a Parking Freeze Permit or Exemption Certification
  - i. Any new or existing Commercial Parking Facility or Exempt Parking Facility is subject to these Procedures and Criteria, and must submit an application for a Parking Freeze Permit or Exemption Certification, prior to commencing construction or modification.
  - ii. Every application for a Parking Freeze Permit or Exemption Certification shall be submitted on such a 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.
  - iii. Fees for processing applications for a Parking Freeze Permit or Exemption Certification shall be paid by check, made out to the City of Boston Air Pollution Control Commission, and submitted along with the application. No Parking Freeze Permit or Exemption Certification shall be issued until the application fee, as designated by the Commission in Appendix B, has been collected. In addition, the applicant shall be responsible for the costs of the advertising fees associated with the publication of the notice of hearing.
  - iv. One (1) paper copy and one (1) electronic copy of every application for a Parking Freeze Permit or Exemption Certification, including the associated site plan, shall be submitted to the Boston Air Pollution Control Commission. Hard copies can be mailed or hand delivered to

Boston City Hall, Room 709, Boston, MA 02201.

B. Procedures for Renewing a Parking Freeze Permit or Exemption Certification

- i. A Parking Freeze Permit or Exemption Certification issued hereunder shall, unless said Parking Freeze Permit or Exemption Certification has been suspended or revoked, expire on the first day of July in the year succeeding the year in which it was issued. Every holder of a Parking Freeze Permit or Exemption Certification must annually renew said Parking Freeze Permit or Exemption Certification on or before the first day of July by submitting the renewal form as designated by the Commission, as well as any required documentation.
- ii. The Commission, through its designee, will annually renew existing Parking Freeze Permits and Exemption Certifications for a fee, as designated by the Commission in Appendix B, when the applicant certifies there have been no modifications to the Commercial Parking Facility or Exempt Parking Facility.
- iii. After the first day of July, the Commission may allow a grace period of up to 10 business days to allow any holders of a Parking Freeze Permit or Exemption Certification to renew their Parking Freeze Permit or Exemption Certification. Holders of a Parking Freeze Permit or Exemption Certification that fail to renew their Parking Freeze Permit or Exemption Certification on or before the first day of July or during the allotted grace period, shall be subject to enforcement proceedings listed in Section VII of these Procedures and Criteria.

C. Renewal Requirements

- i. Any holder of a Parking Freeze Permit shall at the time of renewal, unless said Parking Freeze Permit has been suspended or revoked, submit a signed renewal form, as the Commission may, from time to time, designate, which shall report any reduction in the number of Commercial Parking Spaces available in the Parking Facility and the reasons for the elimination. All such spaces included within the reduction will then be added to the Freeze Bank and be available for allocation within the Freeze Area pursuant to these Procedures and Criteria.

A Parking Freeze Permit will not be renewed should an applicant fail to

provide the renewal form or renewal fee.

- ii. Any holder of an Exemption Certification shall at the time of renewal, unless said Exemption Certification has been suspended or revoked, submit a signed certification form, as the Commission may, from time to time, designate, and an annual report detailing the measures and methods employed to exclude use by the general public.

An Exemption Certification will not be renewed should an applicant fail to provide the signed certification form or annual report, or to demonstrate to the Commission's satisfaction that the general public is effectively excluded from the Parking Facility.

- iii. Any holder of a Parking Freeze Permit issued hereunder to a Parking Facility with both Commercial Parking Spaces and Exempt Parking Spaces shall at the time of renewal, submit a signed renewal form, as the Commission may, from time to time, designate, which shall report any reduction in the number of Commercial Parking Spaces available in the Parking Facility and the reasons for the elimination. All such spaces will then be added to the Freeze Bank and be available for allocation within the Freeze Area pursuant to these Procedures and Criteria. Additionally, said holder must also submit a signed certification form, as the Commission may, from time to time, designate, and an annual report detailing the measures and methods employed to exclude use by the general public.

A Parking Freeze Permit for a Parking Facility with both Commercial Parking Spaces and Exempt Parking Spaces will not be renewed should an applicant fail to provide the signed renewal form, the signed certification form, or annual report, or to demonstrate that the general public is effectively excluded from the Exempt Parking Spaces.

#### D. Time Periods

- i. The Commission shall hold hearings regarding applications for Parking Freeze Permits or Exemption Certifications at least quarterly on or about the 15th day of March, June, September, and December, provided there are applications for Parking Freeze Permits or Exemption Certifications submitted by the filing deadline.

- ii. Only applications received at least thirty (30) 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. All applications to request a new or to modify an existing Parking Freeze Permit or Exemption Certification, not handled administratively pursuant to Section IV(D) or Section IV(E), will be considered in the order received.
- iii. 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 Freeze Area. The notice shall be published at least fourteen (14) days, but not more than twenty-one (21) days in advance of the hearing and shall state the date, 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. The notice 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.
- iv. The applicant shall provide notification in writing, or by other means such as the Commission may determine, to all abutters of the affected premises with a copy of the public hearing notice at least fourteen (14) but not more than twenty-one (21) days prior to the hearing. Written notice shall be provided by hand delivery or certified mail (return receipt requested), or by certificates of mailing. Evidence of these efforts shall be supplied to the Commission prior to the hearing date.
  - a. 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 owners of land within 300 feet of the property line of the affected premises.
  - b. Abutter notices shall be sent in both English and the second most commonly spoken language(s) in the neighborhood(s) where the project is proposed, per the instructions outlined in the Commission's Filing Guide.

- v. Fourteen (14) days before the hearing date, the Commission's designee will complete a joint staff report, on such a form as the Commission may, from time to time, designate, that analyzes the application, presents transportation and planning facts and data relevant to the criteria set out in Section VI, and highlights any further information required in order to make a full assessment of the application, incorporating any additional information provided by the BTM, the BPDA, or the Mayor's Office.
- vi. An advance notice of the date of the next hearing will be published at least ten (10) days prior to said hearing by the Boston City Clerk.
- vii. 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, by the Commission's designee. Notice shall also be sent to the Office of Neighborhood Services and to each District City Councilor representing any part of the Freeze Area at least ten (10) days prior to the hearing date.
- viii. Within thirty (30) days after the hearing, the Air Pollution Control Commission shall approve or disapprove the application for a Parking Freeze Permit or Exemption Certification based upon the criteria set forth in Section VI 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 Commercial Parking Facility or Exempt Parking Facility and the number of Commercial Parking Spaces and Exempt Parking Spaces, including the special conditions, if any, upon which approval is given.

**Section VI. Criteria for the Issuance of a Parking Freeze Permit or Exemption Certification**

The Commission may approve an application for a Parking Freeze Permit or Exemption Certification only if all requirements as set forth herein have been met including, without limitation:

- A. Enough spaces are available in the Freeze Bank for allocation to a Commercial Parking Facility.



- B. The proposed Parking Facility is currently and shall remain in compliance with all local, state, and federal permit requirements and applicable laws, including these Procedures and Criteria and any Parking Freeze Permit or Exemption Certification issued hereunder.
- C. The proposed Parking Facility will be consistent with the following transportation planning objectives:
  - i. it will not add off-street parking in an area that is already adequately served by existing Commercial Parking Facilities or that has adequate transit access;
  - ii. it will not contribute significantly to traffic flows during peak traffic periods;
  - iii. it is located and designed so that the surrounding sidewalks and streets are sufficient to accommodate pedestrians and vehicular movements;
  - iv. it directly serves development in the surrounding area; and
  - v. 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 aesthetically pleasing.
- D. The proposed Parking Facility will be consistent with the requirements as adopted by the Commission, including not limited to the electric vehicle readiness policy, the off-street bicycle parking guidelines, parking ratios as established by the BTD, and any other sustainable mobility and travel demand management policies, as appropriate and as adopted at the time an application is filed with the Commission.
- E. That, should a Commercial Parking Facility include Exempt Parking Spaces, the Commercial Parking Facility is operated in a manner such that the general public is effectively excluded from parking in said Exempt Parking Spaces.

## **Section VII. Enforcement Proceedings**

The provisions of these Procedures and Criteria and of 40 CFR 52.1135, and the terms and conditions in the Parking Freeze Permits or Exemption Certifications 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.

The Commission or its designee may commence enforcement proceedings by issuing a Notice of Probable Violation (the "NOPV"), if the Commission or its designee has reason to believe that a violation of these Procedures and Criteria, of 40 CFR 52.1135, or of the terms and conditions of a Parking Freeze Permits or Exemption Certification 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 (the "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 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 subject to the enforcement action proposed in the NOPV.

A hearing officer designated by the Commission shall conduct an informal review of the violation which shall consist of the 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 an adjudicatory proceeding as defined in M.G.L. Chapter 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 subject to the enforcement action proposed in the NOPV.

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

If the Commission finds, after a hearing, that the Respondent has committed a violation, it may take appropriate enforcement action including, but not limited to, rescinding or modifying the Parking Freeze Permit or Exemption Certification, issuing a fine or initiating an enforcement proceeding in a court of competent jurisdiction. Parking Freeze Permits or Exemption Certifications may be suspended or revoked as set forth in this Section, provided, however, that where an alleged violation threatens the public health or welfare, Parking Freeze Permits or Exemption Certifications 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 Parking Freeze Permit or Exemption Certification, it shall be implemented in a progressive manner, as follows:

- A. the first violation may result in a suspension or revocation of a Parking Freeze Permit or Exemption Certification for not more than five (5) days;
- B. the second violation may result in a suspension or revocation of a Parking Freeze Permit or Exemption Certification for not more than ten (10) days;
- C. the third violation may result in a suspension or revocation of a Parking Freeze Permit or Exemption Certification for not more than fifteen (15) days.
- D. Further violations may result in the indefinite suspension or revocation of the Parking Freeze Permit or Exemption Certification.

Following or in addition to the suspension or revocation of a Parking Freeze Permit or Exemption Certification, or in response to a violation of the provisions of these Procedures and Criteria or of 40 CFR 52.1135, the Commission or its designee may undertake enforcement proceedings pursuant to M.G.L. Chapter 111, § 31C, which states violations may be punishable:

- A. for the first offense, by a fine of not less than one thousand (\$1,000) nor more than five thousand dollars (\$5,000), and
- B. for a subsequent offense, by a fine of not less than five thousand (\$5,000) nor more than ten thousand dollars (\$10,000).

For the purpose of this Section, each day and part thereof on which a violation of such an order, rule, or regulation occurs, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. Additionally, for the purpose of this Section, each Parking Space in 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 M.G.L. Chapter 111, § 142B.

If the Commission or its designee takes cognizance of a violation of the provisions herein, including the terms and conditions of the Parking Freeze Permits or Exemption Certification issued hereunder or of 40 CFR 52.1135, the Commission or its designee may, as an alternative to instituting criminal proceedings, utilize the procedures provided under M.G.L. Chapter 40, § 21D.

### **Section VIII. Amendments**

The Commission may, from time to time, amend these Procedures and Criteria 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 changes to the Procedures and Criteria. Upon adoption of any amendment, the revised version of the regulations shall be transmitted to the Massachusetts Department of Environmental Protection for approval and the U.S. Environmental Protection Agency Region 1 office in Boston.

### **Section IX. Severability**

The invalidity of any section or provision of these Procedures and Criteria shall not invalidate any other section or provision thereof, nor shall it invalidate any Parking Freeze Permit, Exemption Certification, approval, or determination which previously has been issued.

### **Section X. Effective Date**

These Procedures and Criteria shall take effect on January 1, 2021.

**Appendix A: Boston Proper**



## **Appendix B: Fees**

### **A. Application Fees**

Pursuant to Section V(A), at the time of filing an application, the applicant shall pay a filing fee as specified below. No application shall be deemed complete or timely without the payment of all required fees.

The application fee is set at \$20 per space effective January 1, 2021.

### **B. Renewal Fees**

Pursuant to Section V(B), the Commission, through its designee, will annually renew existing Parking Freeze Permits and Exemption Certifications for a fee, so far as there is no change to the Parking Freeze Permit or Exemption Certification or it has been modified administratively pursuant to Sections IV(D) and IV(E).

The renewal fee is set at \$20 per space effective July 1, 2021.