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Barney S. Heath
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MEMORANDUM

DATE: May 20, 2022
MEETING DATE: May 24, 2022
TO: Land Use Committee of the City Council
FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Katie Whewell, Senior Planner
CC: Jonah Temple, Deputy City Solicitor

#35-22 Discussion with city departments regarding internal processes for special permit council orders
COUNCILORS LAREDO, LIPOF, DOWNS, RYAN, KALIS, NORTON, WRIGHT, LUCAS, DANBERG, MALAKIE, GROSSMAN, BOWMAN AND KELLEY requesting a discussion with the Planning and Inspectional Services Departments regarding the current internal processes for ensuring compliance with special permit council orders and the ways in which these processes can be improved.

#36-22 Review and analysis with city departments regarding standard language and special permit council orders
COUNCILORS LAREDO, DOWNS, MALAKIE, LIPOF, ALBRIGHT, BOWMAN, WRIGHT, OLIVER, GREENBERG, KELLEY, NORTON, BAKER, LEARY, LUCAS AND DANBERG requesting a review and analysis with Planning, Inspectional Services and Law Departments regarding standard language and special permit council orders for the purpose of improving the language used in such orders including provisions regarding undergrounding utilities, bicycle storage, construction hours and other construction rules, vibrations, rodent control, electrification, landscaping and other similar provisions.

#81-22 Discussion with city departments regarding internal processes for special permit council orders
COUNCILORS MARKIEWICZ, LAREDO, LIPOF, DOWNS, WRIGHT, LUCAS, DANBERG, ALBRIGHT requesting a discussion with the Law and Planning and Development Departments regarding how the City Council currently sets mitigation contributions and fees for special permit projects and the establishment of standards for such contributions and fees.

#124-22 Request for amendment to Section 7.3 Special Permit Review of the Zoning Code
COUNCILORS LAREDO, LIPOF, DANBERG, GROSSMAN, LUCAS, MALAKIE, AND WRIGHT requesting an amendment to Section 7.3 Special Permit Review of the Zoning Code to require the submission of designs for the placement of underground utility service lines for projects above a certain size.

The above docket items intend to streamline, standardize, or otherwise improve the special permit process. The four items docketed by Councilors address the internal process for ensuring special permit compliance, standardizing the language used for conditions in special permit council orders, discussing the process for including mitigation contributions or fees in special permits, and discussion of an effort to standardize the undergrounding of utilities. This memo will primarily focus on standardizing the conditions for council orders. Planning staff welcome an initial discussion of the other docket items as well and will follow up at a future meeting.

Standard Conditions

Special permit council orders range from the simple, such as minor additions to single family homes, to the very complex for large mixed-use developments. While some conditions are unique to a particular project or concern, many conditions are applied to a broad range of projects. The attached document (Attachment A) is a compiled list of typical conditions for projects ranging from small to large. This list is intended to act as a menu for staff to pull from, with some guidance as to when certain conditions should be applied. This list is not exhaustive, there will often be project-specific conditions that are applied, and staff will continue to add to this list. While it is clear when some conditions would apply (such as affordable housing or sustainability conditions), there still needs to be some flexibility in setting thresholds for applying many of the conditions as each project has unique factors. Standardized language will ensure consistency across projects when such conditions are incorporated.

This review also represents an opportunity to revisit conditions that have been used in the past to streamline them, update language to reflect the new process with NewGov, and to address recent challenges that have come up as conditions have been implemented. The goal is to use consistent, clear language that can be easily implemented in order to ensure compliance while also reducing unnecessary steps in the process. For example, we have taken a look at any condition that requires submittal to or approval by multiple departments. In some cases, it is necessary that multiple departments review and approve a document but in many cases this process can be streamlined. The new permitting system, NewGov, also reduces the need for submitting multiple copies of documents to different departments. The document can be uploaded as part of the building permit application and all departments will have access to it.

Most of the attached conditions represent language that has been refined through the Land Use Committee on prior projects. Conditions that are new, modified, or have presented particular challenges to implement are highlighted below.

Construction Conditions

- Pest Control: This condition was developed to address city-wide complaints of pest activity due to excavation. This condition has been applied to most every project that involves excavation. This condition requires the applicant to hire a licensed pest control operator to assess the property for pest and rodent activity in advance of demolition or excavation and to develop and implement a remediation action plan. The plan must be approved by Inspectional Services, and it requires the operator to maintain written records of all pest control measures performed. Prior to a certificate of occupancy, the operator is required to file a report summarizing the methods used, frequency and dates of service, and a post-construction assessment of the site and neighborhood. If the construction activity causes off-site migration, the applicant is then responsible to offer and pay for rodent abatement services on an as-needed basis for direct abutters and abutters to abutters.
 - This condition has posed challenges to homeowners seeking a certificate of occupancy and having to file detailed reports from a pest control operator. It is also difficult to implement a condition that requires a determination of whether the subject construction activity caused off-site migration and to then enforce the provision requiring on-going pest abatement to neighbors. This condition as written may be more appropriate for large-scale projects and

Planning recommends creating a simplified version for smaller projects. A simplified version could still require an applicant retain a pest control operator and that they do a site assessment and provide a remediation plan.

- **Vibration Control:** This condition has been applied to medium to large projects and is intended to reduce and mitigate the impacts of vibration during construction on nearby properties. This condition requires that prior to demolition, foundation or building permit the applicant shall establish a \$100,000 vibration mitigation fund. Claims to this fund must be administered by a third party hired by the applicant. This amount has proven challenging for some projects and Planning staff recommend a discussion around a sliding scale for the mitigation fund.

Development Standards

- **Inclusionary zoning:** Planning, Law and Housing staff have further refined the standard conditions for projects with inclusionary zoning requirements for affordable housing.
- **Sustainability:** Planning staff have created standard conditions for projects that involve the construction or substantial reconstruction of at least 20,000 square feet of floor area. These projects are required to meet the requirements of a green rating system (LEED, Passive House, or Enterprise Green Communities) as well an energy narrative. Additional commitments, such as electrification will need to be discussed and applied on a project-by-project basis.
- **Accessibility:** Planning staff have been working with Inspectional Services and the City's ADA/504 Coordinator to develop conditions meant to ensure compliance with the accessibility requirements of the Massachusetts Architectural Access Board. The proposed conditions are still being internally reviewed. at a minimum, the conditions would require the applicant retain a qualified accessibility consultant to closely review the building permit plans prior to submittal and for larger projects to do on-site inspections during construction to reduce the need for variance requests once something has been constructed.

Special Permit Compliance

Docket item #35-22 requests a discussion regarding internal processes for ensuring Special Permit compliance. Staff previously presented to the committee on the City's new online permitting system, NewGov. The Planning Department is now taking online applications through NewGov for all Planning applications. In addition to allowing online applications, NewGov allows for easier enforcement of Special Permits. The new system includes a page for every property in the City with basic property information and links to every building permit and Planning record (special permits, variances, historic decisions, conservation decisions, etc.). All of this is accessible to the public as well. Internally, the system allows staff to place flags on properties with special permits (or in historic or conservation districts) and to attach any Council Orders to the main property page so they are easily accessed. All of this will make it far easier for Inspectional Services to see that there is a special permit on a property and to quickly find the Council Order.

In addition to the above improvements, NewGov includes internal workflows for City departments. This includes the ability to add workflow steps when there are conditions that will occur post-occupancy, which is the most difficult type of condition to track. These workflow steps also include the ability to set due dates and reminders to alert someone in advance of the due date. Staff will continue working to improve the process and better understand the ways that NewGov can automate and streamline compliance processes.

While NewGov will play an important role in special permit compliance, there is still significant staff time involved in following up on these conditions and in creating better internal processes. Given the scale and complexity of recently approved projects the Planning Department has requested an additional staff position in the Current Planning division, a Deputy Chief Planner, to assist in these efforts.

Mitigation

Docket item #81-22 requests a discussion regarding mitigation measures and payments on special permit projects. The attached document includes a standard condition for I&I payments, both for the portion that goes towards inflow and infiltration improvements as well as any portion set aside for other improvements or mitigations. Planning staff are also working on a standard policy for transportation demand management (TDM). TDM commitments have previously been applied on an ad hoc basis and staff would like to see a more formalized method of determining the level of TDM commitment required and creating a menu of options for TDM measures, including financial contributions. Planning staff will present this proposal at a future meeting.

Other mitigation measures or payments are difficult to standardize as they should be project specific and related to particular impacts from the project.

Undergrounding Utilities

Docket item #124-22 requests an amendment to the special permit submittal requirements to include a plan for undergrounding utilities. Planning staff have concerns with this proposal as past experience has shown efforts to underground utilities to be difficult to coordinate with utility companies, time consuming, and very expensive. The costs and ability to underground also vary depending upon the utilities along the frontage and the length of the project's frontage. For these reasons, staff recommend additional discussion and analysis on the feasibility prior to determining a threshold for requiring the undergrounding of utilities.

Next Steps

Following a discussion with the Land Use Committee, Planning, Law, and Inspectional Services staff will follow up on the above items at future meetings.

ATTACHMENTS

Attachment A: Draft Standard Conditions

Standard Conditions

Plan Reference

All projects, references approved plans which are compared at building permit phase

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Site Plan Set
 - b. Architectural Plan Set
 - c. Landscape Plan
 - d. Etc.

ANR Subdivision:

Combining multiple lots

2. Prior to the issuance of any building permit for the Project, the petitioner shall provide an Approval Not Required (“ANR”) plan combining the # of lots into one lot to the City Engineer for review and approval. Once approved, the ANR plan must be recorded at the Middlesex South Registry of Deeds. A recorded copy of the ANR plan shall be submitted to the Engineering Division of Public Works and submitted with the building permit application.

Operations and Maintenance Plan

When Stormwater management is required per §5.3.B

3. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall provide a final Operations and Maintenance Plan (the “O&M Plan”) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M Plan must be adopted by the Petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.

Pest Control

Currently used for any project with excavation

4. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the Petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. A copy of such approval shall be provided to the Department of Planning and Development.

- c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
- d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development and Inspectional Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment and neighborhood.
- e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.

Construction Management Plan

Medium and large projects, commercial projects such as a marijuana establishment, multi-unit building or where substantial redevelopment is involved:

5. Prior to the issuance of any Building Permit, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, the Commissioner of Public Works, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor.
 - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction materials and delivery vehicles and equipment, and location of any security fencing and erosion control.
 - d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - f. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.

- g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
- h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.

Construction Hours

Optional - these are the maximum hours allowed by ordinance, can be tailored for individual projects:

- 6. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding federal, state, and local holidays, unless waived by the Mayor in accordance with Revised Ordinances, § 20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.

Additional Construction Conditions

Medium and large projects

- 7. The Petitioner shall underground all lateral utility connections from the right of way to the structure(s).
- 8. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
- 9. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by construction activities or any construction vehicles traveling to or from the site. All repair work shall be done prior to the issuance of the final certificate of occupancy, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.

Vibration Control

Medium to Large projects – consider both size of project, adjacent structures, and type and extent of construction

- 10. The Petitioner shall implement the following measures to mitigate and reduce significant vibration impacts caused by construction equipment:
 - a. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall conduct a pre-construction survey of all buildings and structures within 250 feet of the Project, with owner approval and at no charge to the owners. Subject to owner approval, photos must be taken both inside and outside prior to construction to set a baseline of existing conditions.
 - b. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall establish a \$100,000 vibration mitigation fund (or other security in a form satisfactory to the City Solicitor) so that the funds are available for payment of valid claims for damage caused by vibration impacts to private property within 250 feet of the project. Claims shall be administered in conjunction with a responsible third party hired and paid for by the Petitioner, subject to review and approval by the City Solicitor. Notice shall be provided to such private

- property owners on how to make a claim for damages. This condition is not intended to limit any claims for damages for any amount through private action.
- c. The Petitioner shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:
 - i. Measurements of static ground vibration prior to construction.
 - ii. Vibration level limits for demolition and construction activities based on building conditions and soil conditions. The limit should be determined using industry standards, provided that vibration level limits shall not exceed .50 peak particle velocity (PPV).
 - iii. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
 - iv. Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
 - v. A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.
 - d. The Petitioner shall submit the vibration control plan to the Commissioner of Inspectional Services for review and approval prior to the issuance of any demolition, foundation or building permit.
 - e. The Petitioner shall implement the approved vibration control plan. Vibration levels shall be regularly monitored during demolition and construction. The Petitioner shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
 - f. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the construction activity causing the vibration shall cease and not resume until mitigation measures are implemented and notice is provided to the Commissioner of Inspectional Services.
 - g. The Petitioner shall provide written notice to all property owners within 250 feet of the Project 48 hours prior to vibration-related activity that includes an explanation of the proposed activity, address of the site, date and time of the work, and contact information of the contractor overseeing the work.
 - h. Following construction, the Petitioner shall re-inspect all homes, with approval of the owners, subject to the pre-construction survey to determine any damages caused by vibration. The Petitioner shall maintain records of all complaints it receives for vibration-related damages. All claims submitted to the mitigation fund shall be fully administered prior to the issuance of the final certificate of occupancy for the Project. Any monies remaining in the fund upon issuance of the final certificate of occupancy shall be retained by the Petitioner.

Undergrounding Utilities

Threshold to be reviewed as part of future discussions

11. The Petitioner shall make best efforts to diligently obtain all necessary utility, private party, and municipal approvals to relocate all overhead utility service lines along the Project's frontage. If such approvals are received, the Petitioner shall relocate the utility service lines at its own expense as soon as practically feasible and in no event later than the issuance of the last temporary residential unit occupancy in the Project.

Infiltration & Inflow (I&I)

For projects subject to the 75% to 25% split between local improvements and sewer mitigation. The below figures are for reference only.

12. The Petitioner shall make payments in the aggregate amount of \$60,000 to the City for infrastructure improvements for infiltration and inflow (I&I). Payments shall be made as follows:
 - a. \$30,000 at the issuance of any Building Permit for the Project.
 - b. \$30,000 at the first dwelling unit certificate of occupancy (temporary or final) in the Project

The Petitioner shall make payments in the aggregate amount of \$180,000 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows:

- a. \$90,000 at the issuance of any Building Permit for the Project.
- b. \$90,000 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.

Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.

Inclusionary Zoning-Rental:

Residential or Mixed-Use projects with seven or more residential rental units

13. The Project shall contain X dwelling units. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, the Project shall include X affordable housing units (the "Inclusionary Units"), as follows:
 - a. X of the dwelling units shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.
 - b. X of the dwelling units shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Units").
14. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City's Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
15. The Petitioner shall provide a fractional cash payment of \$X in accordance with the City's Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy.

16. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the City of Newton Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.
17. Prior to the issuance of any temporary or final occupancy certificates, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.
18. Prior to the issuance of any temporary or final occupancy certificates, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Units in perpetuity.
19. No dwelling unit shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the plans referenced in Condition #1.
20. Any guest suites or temporary housing that meet the definition of a dwelling unit under the zoning ordinance shall be counted as a dwelling unit for purposes of calculating the Project's inclusionary zoning requirement.

Inclusionary Zoning - Ownership

Residential or Mixed-Use projects with seven or more residential ownership units

21. The Project shall contain X dwelling units. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, the Project shall include X (X) affordable housing units (the "Inclusionary Units"), as follows:
 - a. X (X) of the residential units in the Project shall be made available to households earning 50%-80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.
 - b. X (X) of the residential units in the Project shall be affordable to households earning up to 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Unit").
22. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City's Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
23. The Petitioner shall provide a fractional cash payment of \$X in accordance with the City's Zoning

Ordinance, §5.11, prior to the issuance of any certificate of occupancy.

24. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the City of Newton Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.
25. Prior to the issuance of any temporary or final occupancy certificates, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.
26. Prior to the issuance of any temporary or final occupancy certificates, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Units in perpetuity.
27. No dwelling unit shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the plans referenced in Condition #1.
28. Any guest suites or temporary housing that meet the definition of a dwelling unit under the zoning ordinance shall be counted as a dwelling unit for purposes of calculating the Project's inclusionary zoning requirement.

Parking

29. Parking stall(s) shall be (leased/sold) separately from the cost of a unit, provided, however that the cost of one parking stall shall be included in the price of an Inclusionary Unit.

Accessibility:

30. All residential units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.
31. The applicant shall retain a qualified accessibility consultant to independently review the building permit plans for compliance with MAAB requirements. The applicant shall submit the consultant's qualifications to the Inspectional Services Department. Prior to the issuance of a building permit, the consultant shall submit a report to the Inspectional Services Department detailing compliance with MAAB and identifying any variances needed.

For larger projects:

32. Prior to the issuance of a building permit, the applicant shall submit a scope of work for the accessibility consultant including on-site inspections for compliance with MAAB.
33. Prior to the issuance of a certificate of occupancy, the applicant's accessibility consultant shall submit

reports certifying the construction complies with MAAB and identifying any variances granted.

Sustainability

Pertains to projects over 20,000 square feet OR if petitioner commits to achieve a sustainability level not required by the Ordinance

34. All buildings shall be designed and constructed to achieve (LEED Silver or Gold (projects with more than 50,000 square feet)/Passive House/Enterprise Green Communities) in accordance with the Sustainable Development Requirements set forth in Section 5.13.4 of the Zoning Ordinance.

Prior to building permit:

35. Prior to issuance of a building permit, the Petitioner shall submit to the Planning Department the following:

- a. an updated Rating System Checklist enumerating the criteria set forth in the applicable green building rating system and indicating which technical and design requirements will be met in the green building project design and the resulting rating level of the project.
- b. an updated Rating System Narrative describing the technical and design elements of the project that will be utilized to achieve compliance with the applicable green building rating system.
- c. an updated Energy Narrative, describing the energy efficiency, renewable energy, and other technical and design elements of the project that serve to minimize energy use, make use of renewable energy sources, and demonstrate how close the project is to achieving net zero energy use status.
- d. a document demonstrating the credentials of the project's designated green building professional.
- e. an affidavit signed by the green building professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project is being designed to achieve (LEED v. Silver/Gold, Passive House, Enterprise Green Communities).
- f. The credentials of the project's green commissioning agent.

Additional building permit conditions for Passive House:

- g. the credentials of the Passive House rater/verifier who will perform testing and verification and letter of intent stating they have been hired to complete the on-site verification process.
- h. the credentials of the Certified Passive House Consultant who has provided design, planning, or consulting services.

Prior to Certificate of Occupancy:

36. The Petitioner shall submit to the Planning Department any updates to the above referenced documents along with the following:

- a. an affidavit certifying that the pre-construction commissioning process requirements of (LEED/Passive Housing/Enterprise Green Communities) have been met and that the post-construction commissioning process requirements of Section 5.13 of the Zoning Ordinance were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.

- b. Credentials of the project's accredited Green Building Professional and an affidavit signed by that professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project was built to achieve the requirements of Section 5.13 of the Zoning Ordinance.

Additional CO condition for Passive House:

- c. Credentials of the project's accredited Green Building Professional and an affidavit signed by that professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project was built to achieve the requirements of Section 5.13 of the Zoning Ordinance.

Electric Vehicle Charging Stations

For projects with more than 20,000 square feet which include a new or rebuilt parking facility OR if petitioner commits to providing EV Charging but are not required by the Ordinance

37. The parking facility shall provide access to electric vehicle charging stations for a minimum of 10% of parking spaces (up to a maximum of 40 spaces). An additional 10% of parking spaces must be electric vehicle charging station ready, meaning the electrical systems and conduit are prepared to expand the number of charging stations as demand increases.

Conservation:

38. Any portions of the project subject to the jurisdiction of the Conservation Commission must receive an Order of Conditions from the Conservation Commission prior to the issuance of any building permit for work on the project that is subject to such jurisdiction.

Historic:

39. The Petitioner shall preserve the existing proportions, substrate and architectural details that contribute to the historic significance of the existing structure including but not limited to all exterior walls, roof structure, and window openings. Any replacement in kind or deviation shall be by prior approval only by Preservation Planning and ISD staff.
40. No building permit, including foundation permit, shall be issued without approval from the Newton Historical Commission.

Tree Removal:

41. The petitioner shall comply with the City's Tree Preservation Ordinance §21-80 et seq.

Building Permit Checklist (choose those that are applicable):

42. No building permit (other than a demolition permit) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
 - b. Submitted an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with this Order, and §5.11.8 of the Zoning Ordinance.

- c. Submitted a recorded lot consolidation plan to the City Engineer and included a copy with the building permit in accordance with this Order.
- d. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with this Order.
- e. Submitted a Final CMP for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer in accordance with this Order.
- f. Received approval for the Pest Control inspection report and the remediation action plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.
- g. Received approval for the vibration control plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.
- h. Submitted a LEED Checklist prepared and certified by a LEED Accredited Professional to the Director of Planning and Development, indicating which points the building intends to realize to demonstrate LEED certifiability at X Level.

Occupancy Certificate Checklist (choose those that are applicable):

- 43. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Filed with the building permit application statements by a registered architect and a professional land surveyor certifying compliance with Condition #1.
 - b. Submitted final as-built survey plans in digital format.
 - c. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Affordable Housing Restriction in accordance with this Order.
 - d. Provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.
 - e. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed.
 - f. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.

- g. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
- h. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that: (i) all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements for "Group 1" units.
- i. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground for the portions of the Project for which a certificate of occupancy is requested to the extent required by this Order, or submit evidence that best efforts have been made to underground the utilities.
- j. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for X level of construction (LEED, PH, Green Communities) of the subject building have been satisfied.

Ongoing:

- 44. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.

For multifamily and commercial projects

- 45. The trash and recycling disposal shall be handled by a private entity and shall comply with the City's Noise Control Ordinance.