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M E M O R A N D U M

DATE: July 8, 2022
MEETING DATE: July 13, 2022
TO: City Council
FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
CC: Jonah Temple, Deputy City Solicitor

#310-22 Discussion and possible amendment to the City Council Rules regarding the time restrictions for filing Special Permits for Major Projects

COUNCILORS LIPOF, KELLEY, BOWMAN, DANBERG, DOWNS, GREENBERG, LAREDO, LUCAS, MARKIEWICZ and WRIGHT requesting a discussion with the Planning Department and possible amendment to the language in Article X, Section 5 of the City Council Rules and Orders pertaining to time restrictions for filing Special Permits for Major Project.

Major Projects Criteria and Rules

The 2022-2023 City Council Rules (**Attachment A; p. 27-28**) state that:

“Due to the City Council's reduced summer schedule for meetings as well as the need to afford the public an opportunity to participate at the public hearing, the City Clerk shall not accept for filing a completed application for a proposed project that is classified as a Major Project during the period from June 1st through July 20th in any year... (p.28)

...The purpose of this rule is to avoid scheduling public hearings during the months of July or August, or during the months of November or December in the last year of the Council's term for Major Projects. Major Projects are projects that are likely to require the submission of Additional Information and which may involve significant land use issues either due to the location of the proposed use, the type of proposed use, or the size of the proposed use. Holding public hearings for Major Projects during the aforementioned months may not allow sufficient opportunity for public comment, review by the Land Use Committee and City departments or agencies, or deliberation by the City Council. This rule shall not apply to special permit/site plan projects that are not classified as Major Projects.”(p.27)

Planning Staff have observed many projects which fall under the Major Projects Criteria file during the last week in May, guaranteeing a public hearing during the month of July. Due to noticing requirements and the requirement to open a public hearing within 65 days of filing, the Land Use Committee typically has to open the public hearing for these Major Projects in July. This is inconsistent with the intent of the Council Rules.

Smaller, simpler petitions such as an FAR request, or extension of a nonconformity filed after the deadline are scheduled around the major project petitions. Typically, smaller petitions can be scheduled for a public hearing in the month following the filing of the application. The city is finding it more difficult to schedule the smaller petitions in an efficient manner, often running right up against the 65 days due to the limited number of summer meetings and the influx of Major Projects prior to the blackout period. It becomes challenging to schedule these smaller items when the July and August agendas have several items as well as the need to account for the pending Major Projects.

City Staff believes the current time restriction does not achieve its intended purpose to *allow sufficient opportunity for public comment, review by the Land Use Committee and City departments or agencies, or deliberation by the City Council*. City Staff present three alternatives to the existing rule. The first two alternatives shift the dates to allow for flexibility to open the public hearing by September and reflects the current restriction of 50 days. Another alternative is to eliminate the time restriction entirely, which may allow for a more even distribution of projects and doesn't present a rush to file before a given deadline. The table below shows the 65-day window for hearings filed before the first date and after the latter date of an adjusted time restriction. For example, if a petition is filed May 15, the City would have until July 19 to open a public hearing under the preferred option. City Staff believes this would allow more major projects to open the public hearing in June than the existing rule allows. Under the same time restriction, if an application is filed July 15, the City has until September 18 to open the public hearing.

Time Restriction for Major Projects	Deadlines to open the public hearing
June 1- July 20 (current)	Before August 5 - after September 23
May 20 – July 9 (preferred)	Before July 24 - after September 12
June 15 – August 4	Before August 19 - after October 8
Remove Time Restriction Entirely	Potentially allow for a more spread-out schedule, however no mechanism to prevent Major Projects from filing for a July or August hearing.

By adjusting or eliminating the period of which Major Projects are allowed to file staff have more flexibility to schedule major projects in May, June, or September and make it easier to schedule smaller petitions more quickly in the summer.

ATTACHMENTS

Attachment A: City Council Rules relative to Major Projects

where appropriate, to receive such additional or supplemental information. The Land Use Committee may consider the Director's comments on the adequacy of the information submitted in the application for a special permit or site plan approval in deciding whether to continue a public hearing for the receipt of additional or supplemental information.

Section 5. Time Restrictions for Filing Special Permits/Site Plan Projects for Major Projects

Purpose

The purpose of this rule is to avoid scheduling public hearings during the months of July or August, or during the months of November or December in the last year of the Council's term for Major Projects. Major Projects are projects that are likely to require the submission of Additional Information and which may involve significant land use issues either due to the location of the proposed use, the type of proposed use, or the size of the proposed use. Holding public hearings for Major Projects during the aforementioned months may not allow sufficient opportunity for public comment, review by the Land Use Committee and City departments or agencies, or deliberation by the City Council. This rule shall not apply to special permit/site plan projects that are not classified as Major Projects.

Criteria for Major Project Classification

If any of the following criteria apply, the Director shall determine that a proposed project qualifies as a Major Project:

- Projects that require a waiver of more than five (5) parking stalls from the parking ordinance; seek to locate required parking off-site, or seek to locate a parking facility in a residential district that is accessory to business or manufacturing use.
- Projects that involve a multi-level parking structure constructed either above or below ground.
- Projects likely to generate more than 500 cars per day or 50 cars per peak hour.
- Projects that increase average daily traffic or peak hour traffic along the adjacent street(s) by more than 10%.
- Projects where the proposed use(s), principal or accessory, involve(s) activities that include designated pick-up/drop-off times.
- Projects that involve the construction of 20,000 or more square feet in gross floor area, or the renovation of 10,000 or more square feet in gross floor area.
- Projects that involve a non-residential use that immediately abuts a residential zone.

- Projects that exceed six (6) residential units and trigger the Inclusionary Zoning Ordinance (see Section 30-5.11).
- Projects that involve the construction of a tower associated with a radio or television transmission station.
- Projects that include a Newton Landmark Preservation Site (see Section 22-90 to Section 22-103).
- Projects that involve a use identified in G.L. c. 40A, §3.

Time Restrictions

Due to the City Council's reduced summer schedule for meetings as well as the need to afford the public an opportunity to participate at the public hearing, the City Clerk shall not accept for filing a completed application for a proposed project that is classified as a Major Project during the period from June 1st through July 20th in any year.

Due to the expiration of the two-year term for councilors at the end of every odd-numbered calendar year and the need for sufficient time for the Land Use Committee to review proposed projects and the Council to reach a decision regarding such projects, the City Clerk shall not accept for filing a completed application for a proposed project that is classified as a Major Project after the second Tuesday after the first Monday in September through November 15th during the last year of any term of the City Council.

Suspension of Time Restrictions

The time restrictions in this section of these Rules may be suspended by the Council pursuant to Article IX, Section 1 of the Council Rules at the request of a petitioner for a special permit or site plan review. Such requests must be made by filing such a request with the Clerk of the Council by the docketing deadline for the next regular Council meeting. The request must have appended to it the subject application, and provide summary information sufficient to indicate the nature of the Major Project and that the application for a special permit is otherwise complete for filing with the City Clerk under these Rules but for this time restriction. The request shall be presented for decision by the Council at Second Call at the beginning of the Land Use Committee Report, if any, and if this Rule is suspended, the item shall be deemed docketed and accepted by the City Clerk at that time. In such instance, the Chair of Land Use or his designee may then request an assignment of the item for a public hearing within 65 days of such acceptance. If this Rule is not so suspended then all the provisions of these Rules relating to time restrictions would continue to apply.

Section 6. Additional Notification Requirements

Any applicant for site plan approval or a special permit shall be required to erect and maintain in legible condition, one or more public notification panels at the site for which the site plan approval or special permit relief is requested. The panels shall be secured by the applicant from the Department and shall be paid for by the applicant. For Major Projects, the method of