



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

#35-22, #36-22, #81-22,  
#124-22, #496-22, #7-23

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

**Barney S. Heath**  
Director

---

**M E M O R A N D U M**

**DATE:** December 8, 2023  
**MEETING DATE:** December 12, 2023  
**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, Chief Planner for Current Planning  
**CC:** Jonah Temple, Deputy City Solicitor  
**SUBJECT:** End of year update on pending discussion items

---

There are several discussion items that were docketed in the 2021-2023 Council term which staff have been working on and developing in greater detail as they relate to the operations of the Land Use Committee and other city matters. There are four distinct “groups” that govern the docket items thematically. The first relates to the online permitting software, NewGov, which garnered interest as it was rolled out for Special Permit applications in May 2022. The second relates to the special permit process and one of the items, #35-22, has some overlap with the NewGov items in post occupancy conditions imposed upon special permits. Group 3 has items relating to ongoing construction projects. Lastly, Group 4 is intended to cover docket items around specific special permits.

This memorandum is intended to provide an end of year update for the following items.

**Group 1 – NewGov**

**#34-22 Discussion with city staff regarding the new permitting software**

COUNCILORS MARKIEWICZ, LIPOF, KELLEY, LAREDO, NORTON, CROSSLEY, MARKIEWICZ, WRIGHT, AND BAKER requesting periodic updates and discussion with the Planning, Inspectional Services and Information Technology Departments regarding process improvements and the benefits of the implementation of the new permitting software.

**#496-22 Request for discussion regarding the OpenGov System**

COUNCILORS MARKIEWICZ, BOWMAN, GREENBERG, KELLEY, LAREDO, AND LUCAS requesting a discussion with the Planning Department, Inspectional Services Department, Information Technology Department, and the Chief Operating Officer regarding the use of the OpenGov system to record and track actions required by conditions

specified in the Council special permit. These conditions are ones requiring follow-up and/or enforcement by City Departments.

***Update:***

The Planning Department issued a joint update with the Inspectional Services Department regarding the online permitting system, NewGov, in the [9/22 Friday Packet](#). The system overall works very well and as the City is only in year 2 of the software, the City is constantly making tweaks to the software with all users in mind. Staff are confident in the direction the software is going and will continue to work with the Council and provide updates.

## **Group 2 – Special Permit Process**

### **#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.

***Update:***

This item has considerable overlap with the NewGov items. In the 9/22 update (linked above), the Deputy Chief Planner, Alyssa Sandoval, is working on a system of tracking “post occupancy conditions”. It is set up with timelines and due dates. Ms. Sandoval is testing these records in the beta test phase and fine tuning it to roll out to other projects. As special permit construction projects move through the various stages (building permit, occupancy) Planning will continue to test this record type and ensure it works as planned.

### **#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.

***Update:***

Attached is the document (**Attachment A**) that the Planning and Law Departments use when compiling a complete Special Permit Council Order (and Comprehensive Permits). This document is organized by the threshold or aspect of the project which triggers a certain condition. Planning and Law are confident in this document to inform the conditions around special permits and are diligent in making tweaks to it as necessary based on discussions at the Land Use Committee and as these conditions are applied at the building permit and certificate of occupancy phases to ensure clarity and usefulness to both staff and the petitioner. It is a vast improvement in recent years that serves as a centrally located place for Planning and Law staff to pull conditions from to ensure consistency in how these conditions are applied. This item has been discussed at meetings of the Land Use Committee on May 20, 2022 and February 28, 2023, which led to a well-developed “menu” of conditions for staff to rely on when compiling a special permit council order.

### **#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.

***Update:***

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.

Other mitigation measures or payments are difficult to standardize as they should be project specific. Planning Staff are brainstorming process improvements for identifying projects to benefit from mitigation funding. Depending on the size of the project, it may make more sense for mitigation funds to be tied to geographic areas within the city. Mitigation funding is made available based on a recommendation from the City Engineer for projects with five units or more and whether an abatement of 75% of the I&I funds is appropriate to be redirected towards other mitigation from impacts of the project. Projects with roughly 5-50 units often provide a relatively small amount of mitigation set-aside, which makes it difficult to find an impactful mitigation project before an approval of the project. Any funds received for mitigation are appropriated in accordance with municipal finance law.

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. Following a vacancy in the Director of Transportation Planning position, the position is now filled by Joshua Ostroff, and the Planning Department looks forward to discussing TDM recommendations as well as mitigation abatement with the Committee as requested.

**#7-23 Request for discussion with City Staff regarding the process for creating and enforcing landscape plans pertaining to Special Permits**

COUNCILORS LAREDO, ALBRIGHT, LEARY, MALAKIE, NORTON, OLIVER, GREENBERG, AND WRIGHT, requesting discussion with the Planning Department, the Inspectional Services Department, and the Tree Warden regarding the process for creating and enforcing landscape plans (including, but not limited to, trees) in the special permit process and enforcing the zoning code and the tree ordinance in connection with by right projects.

***Update:***

While not required, it is typical that landscape plans are provided with special permit projects which feature new construction. Following the discussion on February 28, 2023, a feature was built in to NewGov at the initial special permit application review. Planners who conduct a completeness review of a special permit application can check a box that adds Marc Welch, the Tree Warden, to the special permit application review. Mr. Welch will review the plans and provide comments on whether the plan complies with the Tree Ordinance and any issues he foresees with the species of trees shown on the plans. Planning then provides feedback to the petitioner and will include in their land use memorandums on the project. Again, Mr. Welch's expertise as an arborist only permits him to offer his opinion on trees, the caliper inch analysis and determining whether a replacement tree is suitable for a previously designated tree type.

Without an Ordinance or codified guidance of best practices, it is primarily the responsibility of the project's landscape architect to ensure plantings are appropriate for the region and site. Post occupancy enforcement around landscape plans is treated the same as any other zoning or special permit violation. An interested party files a request for zoning enforcement and the Zoning Enforcement Officer (Andy Mavrelis, ISD) will conduct a review of the special permit, its requirements and will go out to the site to fact find and work with the Law Department on the most appropriate measure of enforcement.

When the concerns around landscape plan compliance were first raised, City staff created a condition that required affidavits at building permit and certificate of occupancy to ensure compliance with the special permit

landscape plan. This condition was crafted and implemented beginning in November 2022. This is similar in practice for surveyors and architects to submit statements of compliance with the special permit site and architectural plans, including the as built FAR. Another condition governing landscape plans is as follows: 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.

### **Group 3 – Construction**

#### **#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.

#### ***Update:***

There are two conditions for underground utilities: 1. Lateral connections from the right of way to the structures and 2. Along the project's frontage.

The first condition governs lateral connections from the right of way to the building. This condition is intended to be applied to medium to large projects and as requested by the City Council.

The latter is a more rigorous version of the condition that requires undergrounding of utilities as well as poles along the project's frontage. However, Planning and, in particular, our DPW Engineering team have deep concerns with this proposal as 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 of the feasibility prior to determining a threshold for requiring the undergrounding of utilities. Planning has the language for this condition but will only include it upon request from the Council and agreement of the petitioner.

#### **#321-22 Request for a discussion on complex excavation projects**

COUNCILORS KALIS, LIPOF, AND RYAN requesting a discussion on how to weigh neighbors' rights vs. developers with regard to complex excavation projects.

#### ***Update:***

Based on the language provided, staff believes this docket item is intended to cover vibration mitigation measures, standardized construction management plan and/or how height is measured and potential grade manipulation to offset the dimensional controls of the Zoning Ordinance.

Working across teams within Engineering, Inspectional Services and Public Works, Planning and Law staff have made considerable progress in the adoption of a Vibration Control Ordinance by the City Council which will govern both by right and special permit projects.

Due to the transition of leadership in Inspectional Services, there are no updates for a standardized construction management plan. Staff anticipates revisiting in the future.

City Staff look forward to discussing next term and requests additional guidance on the intent of this discussion item, if this is docketed in the next Council term.

### **Group 4– Specific Special Permits**

**#372-22 Discussion with city staff regarding TRIO's survey results**

COUNCILORS LAREDO, LIPOF, LUCAS, GREENBERG, MARKIEWICZ, DANBERG, LEARY, MALAKIE, BAKER, WRIGHT, OLIVER requesting a discussion with the Planning Department regarding the results of TRIO's survey of its residents about their transportation needs and habits. The discussion should include information on:

---

- The demographics of the TRIO residents, including information on the number of residents (a) who do not or cannot drive at all; (b) who work from home (part-time and full-time); per unit and, if there are children, what ages are the children
- How many residents own or lease cars and how many of those cars are parked at TRIO
- What forms of transit are residents using instead of cars?
- For residents who do not own or lease a car, why have they made that decision – the availability of amenities in Newtonville; the ability to use Lyft and Uber; the current cost of new and used cars; other factors
- Are residents getting subsidized transit passes from their employers
- How much are residents using the bike racks and storage on site?
- What is the utilization of electric charging stations on site?

***Update:***

Mark Development, the management of Trio conducted a survey to obtain information on transportation patterns of residents. The survey only garnered 30 responses (140 residential units in the project), if we assume that 30 different unit occupants filled out the survey, this potentially represents 21% (in units) of the project. Mark Development struggled to get responses to transportation survey, Planning staff will work closely with them to get responses to these specific questions and want to ensure that there is enough data to make reasonable inferences based on transportation patterns within a larger, mixed-use development.

For more information on parking demand, MAPC conducted a [parking demand and utilization study](#) of Metro Boston multifamily developments, which included ten Newton multifamily developments.

**Next Steps**

These items will not carry forth to the new Council term, city staff request any items that are docketed during the next Council term have clear directives and back up materials for staff to work with in order to provide a clear update to the Council.

**ATTACHMENTS**

**Attachment A:** Draft Standard Conditions

## **Standard Conditions for Special Permit and Comprehensive Permit Projects**

### **Plan Reference**

*All projects, this condition references approved plans which are compared at building permit phase and certificate of occupancy.*

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.

### **Accessory Apartment**

3. The petitioner shall comply with the City’s Accessory Apartment and Short Term Rental Ordinances - Chapter 30 §6.7.1. and Article IX Sec. 20-159.

### **Operations and Maintenance Plan**

*When Stormwater management is required per §5.3.B*

4. 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, should a system be required. 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**

*a-c: single family, two family, less than 50 units and tear downs*

*a-e: 50+ units*

5. 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.
  - 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 assessment of the site and the 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**

*Threshold is 3-5 units depending on nature of project, commercial projects such as a marijuana establishment, multi-unit building or where substantial redevelopment is involved:*

6. 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 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. This information shall also be posted in a clear and visible manner at the construction site.
  - 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: watering, 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.

Upon conferring with Inspectional Services, they stated they only need construction vehicle routes on larger projects.

- i. Construction Vehicle Routes to and from the site.

**Construction Hours**

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

- 7. 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.

**Additional Construction Conditions**

*Medium and large projects*

*#8 requires undergrounding all utility service lines from the street to the project. Does not intend to capture utility poles.*

- 8. The Petitioner shall underground all lateral utility connections from the right of way to the structure(s).
- 9. 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.
- 10. Deliveries of construction materials shall not occur before 7:00 am or after 5:00 pm.
- 11. Construction vehicles may not park on surrounding residential streets or public sidewalks.
- 12. 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.

**Undergrounding Utilities (project frontage)**

*Threshold to be reviewed as part of future discussions; only include when requested by Councilors at the hearing and agreed to by the developer/proponent.*

- 13. 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.

**Vibration Control**

*Ordinance has been adopted, but if Council asks for additional measures use the below:*

The Petitioner shall implement the following measures to mitigate and reduce significant vibration impacts caused by construction equipment:

- a. Prior to the issuance of a demolition or building permit for any demolition, site work, or construction activities that require (i) the driving of piles or piers, (ii) the removal or alteration



of ledge, or (iii) soil reinforcement or compaction by vibratory roller, other than compaction of soil for decks, patios, landscaping work, sidewalks, driveways, retaining walls or accessory buildings under 700 square feet, the Petitioner shall submit the following to the Commissioner of Inspectional Services:

1. A vibration control plan signed and stamped by a licensed and insured geotechnical consultant that determines the scope of preconstruction surveys needed; the basis for that determination; and the recommended vibration level limits and monitoring services to be provided for the duration of the construction activity.
  2. Proof of notice to all properties within such scope that a preconstruction survey was offered at no cost to the property owner.
  3. A list of all properties that were surveyed.
  4. Any other plans or specifications as the Commissioner of Inspectional Services may require, including but not limited to revisions to the submitted vibration control plan.
- b. As an alternative to the required vibration control plan and other required submissions set forth in Sec. 5-23(a) above, the Petitioner may submit a signed and stamped letter from a licensed and insured geotechnical consultant stating that a vibration control plan and monitoring are not necessary based on the scope of the work, site conditions or construction methods. Such letter must detail the basis of the opinion that no vibration control plan, monitoring or controls are necessary. No additional submissions will be required unless the Commissioner of Inspectional Services or their designee determines that compliance with Sec. 5-23(a) is necessary due to the nature of site or the proposed work.
- c. The submitted vibration control plan shall be implemented and adhered to during all relevant construction activity. The Petitioner shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
- d. Following construction and prior to the issuance of a certificate of occupancy, all properties subject to a preconstruction survey shall, subject to owner approval, be reinspected to determine any damages caused by vibration.

In the event the City subsequently adopts an Ordinance that governs the vibration impacts of construction and such ordinance is applicable to this Project and in effect prior to the issuance of a building permit, that Ordinance in its entirety shall apply to this special permit in place of this condition.

**IF CITY COUNCIL WANTS TO ADD FUND OR ADDITIONAL CONDITIONS, PICK FROM BELOW**

- 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 (as measured from the Project's property lines) for which the owner of the building or structure has granted approval at no charge to the owners. The survey must

include photos taken both inside and outside prior to construction to set a baseline of existing conditions. Copies of the survey and photos shall be provided to owners.

- b. Prior to the issuance of any demolition permit, 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).
- c. If a property owner has consented to a pre- and post- construction survey as set forth in this condition and the property owner believes its buildings or structures have suffered damage due to vibration impacts from the Project, the property owner may make a claim to the vibration mitigation fund by submitting its claim, along with supporting documentation and photographs, to an independent third party hired and paid for by the Petitioner, subject to review and approval by the City Solicitor, for the independent third party's review. Notice shall be provided to such private property owners on how to make a claim for damages. Only those property owners who consent to a pre-construction survey as set forth above shall be eligible to make a claim to the vibration mitigation fund. If a claim is approved by the independent third party, property owners receiving payment from the mitigation fund must sign a release of claims as a condition to the receipt of such payment. In lieu of seeking payment from the vibration mitigation fund, a property owner may pursue a claim for damages for any amount through private action.
- d. The Petitioner shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:
  - e. Measurements of static ground vibration prior to construction.
  - f. 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) at the property line of the Project.
  - g. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
  - h. Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
  - i. A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.
  - j. 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.
  - k. 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.
  - l. 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.
- m. 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.
- n. 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.

### **Infiltration & Inflow (I&I) and Mitigation Abatement Funds**

*Applies to projects with 5 or more units, however City Council can approve an abatement/waiver of the fee (I&I Ordinance). If City Engineer recommends an abatement of the I&I fee, projects are subject to the 75% to 25% split between local improvements and sewer mitigation. The example below reflects \$100,000 I&I calculation and subsequent 75/25 split.*

14. The Petitioner shall make payments in the aggregate amount of \$25,000 to the City for infrastructure improvements for infiltration and inflow (I&I). Payments shall be made as follows:
  - a. \$12,500 prior to the issuance of any Building Permit for the Project.
  - b. \$12,500 prior to the issuance of any certificate of occupancy (temporary or final) for the Project.
  
15. The Petitioner shall make payments in the aggregate amount of \$75,000 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. \$37,500 prior to the issuance of any Building Permit for the Project.
  - b. \$37,500 prior to the issuance of any certificate of occupancy (temporary or final) for 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*

16. 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").

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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*

24. 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 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 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").
25. 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.

26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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: Cash Payment Election (Senior Housing and Fractional Cash Payment)**

32. The Petitioner shall provide a cash payment of \$X in accordance with the City's Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy.

**Inclusionary Zoning: Voluntary Cash Payment**

33. The Petitioner shall make a payment of \$100,000.00 to the Newton Affordable Housing Trust:
  - a. \$50,000.00 prior to certificate of occupancy (temporary or final) for the X dwelling unit; and,
  - b. \$50,000.00 prior to certificate of occupancy (temporary or final) for the X dwelling unit.

**Unbundled Parking**

34. 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, if applicable. Prior to the issuance of any certificate of occupancy (temporary or final), the Petitioner shall provide evidence of such separation (such as a lease) to the Director of Planning and Development.

**Accessibility:**

*For larger projects (Comp Permits, Riverside, Northland size project):*

35. 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.
36. 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.
37. 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. These conditions mirror the requirements set forth in the Ordinance.*

38. 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:*

39. 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:*

40. 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*

41. 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.

### **All Electric**

42. All appliances and utilities for the building shall be all-electric, including heating and cooling.

### **Conservation:**

43. 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:**

44. 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.
45. No building permit, including foundation permit, shall be issued without approval from the Newton Historical Commission.

### **Tree Removal:**

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

### **Building Permit Checklist (choose those that are applicable):**

47. No building permit (other than a demolition permit) and unless otherwise specified 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. Prior to vertical construction, the petitioner shall submit 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 from Inspectional Services for the Pest Control inspection report and the remediation action plan.
- g. Received approval for the vibration control plan from Inspectional Services 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.
- i. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.

**Occupancy Certificate Checklist** (choose those that are applicable):

Multifamily: add “for the portion of the project for which occupancy is requested” to a, b,

48. 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 record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1, including the as built FAR.
- b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.



- c. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced Condition #1.
- d. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Affordable Housing Restriction in accordance with this Order.
- e. Provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.
- f. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. 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 Conditions**

#### *Any project with a landscape plan submitted*

- 49. 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.
- 50. Provided that all other requirements in Condition #XX are satisfied and the project is substantially complete, the Commissioner of Inspectional Services may in their discretion, issue one or more

certificates of temporary occupancy for all or portions of the building prior to completion of final landscaping (including hardscape improvements).

*For multifamily (5 units or more) and commercial projects*

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

*Snow and sidewalks (as requested)*

52. The Petitioner may store snow on the Site to the extent that it does not impede parking and circulation and pedestrian movements. To the extent snow removal is necessary, such removal will be conducted pursuant to a Snow Removal Plan, which shall be maintained on file at the Project and be available for review upon request by the Director of Planning and Development. The Petitioner shall remove snow along the sidewalks abutting the Site in accordance with the City's snow removal ordinance. Petitioner shall not use salt as part of its removal of snow or maintenance of roadways or sidewalks.
53. The Petitioner shall replace the sidewalks along the entire frontage of the Project in accordance with Section 29-185 of the City of Newton Revised Ordinances.
54. The driveway areas shown in said Building Permit plans should include pervious pavement areas to the greatest extent feasible, subject to review and approval by the Engineering Division and the Director of Planning and Development.