



Office of the City Manager

PUBLIC HEARING

December 3, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Zoning Ordinance Amendments: Keep Innovation in Berkeley

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt first reading of an Ordinance amending Berkeley Municipal Code Title 23 to encourage Research and Development (R&D) uses in Berkeley.

SUMMARY

The Planning Commission has recommended the City Council adopt the following zoning ordinance amendments (**Attachment 1**):

1. Revise the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), C-NS (North Shattuck Commercial) and C-DMU (Downtown Mixed-Use) zoning districts to allow R&D uses under 20,000 square feet with a Zoning Certificate (ZC) and R&D uses 20,000 square feet or larger with an Administrative Use Permit (AUP);
2. Revise the “District Purpose” sections of the MM (Mixed Manufacturing) and MU-LI (Mixed Use-Light Industrial) zoning districts to specifically encourage R&D;
3. Remove the regulation of Biosafety Level (BSL) Class organisms in the MU-LI zoning district;
4. Revise minimum parking requirements for R&D uses to 1 per 1,000 square feet for locations outside of a half mile radius of a high-quality transit corridor; and
5. Revise the definition of the Laboratory use to clarify the difference between a testing laboratory and a laboratory associated with research or experimentation.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments are intended to simplify the planning review process for R&D uses, including new business starts and expansions. The proposed amendments may result in a modest increase in business license tax and sales tax revenues due to increased business activity. The proposed amendments may also result in a modest decrease in staffing-related expenditures and land use permitting fee collections, as more uses would be permitted at a lower permit threshold.

CURRENT SITUATION AND ITS EFFECTS

The proposed Zoning Ordinance amendments are in response to the *Keep Innovation in Berkeley* referral, adopted on September 13, 2022. The referral was ranked #12 overall in the Re-Weighted Range Voting (RRV) prioritization process undertaken by the City Council in April 2023, and was the highest-ranked referral to the Planning and Development Department that year.

The proposed Zoning Ordinance amendments are intended to encourage the growth and retention of innovative companies by reducing permit review processing times for R&D uses. In addition to providing jobs and supporting local economic development, R&D companies create solutions that improve human health and community well-being, combat global warming, and address other social and environmental challenges. Staff with the City's Office of Economic Development (OED) have indicated that there is a clear demand for R&D space from companies who have outgrown their facilities on the UC Berkeley campus, or in local incubators and coworking spaces.¹ These companies seek to grow their enterprises close to UC Berkeley and/or Lawrence Berkeley National Laboratory (LBNL) talent, facilities, and entrepreneur support programs. An amended zoning code that permits R&D uses and streamlines land use approval processing will give the City of Berkeley a competitive advantage for business retention and attraction.

R&D firms operate differently than they did in past decades, and current permitting and land use requirements have not kept pace with changes in the industry. Over the past five years, OED staff have spoken with Berkeley R&D business leaders, real estate brokers, and others involved with supporting local startups, and have attended group discussions of the Berkeley Startup Cluster Advisor meeting, the Berkeley Real Estate Working Group, and a "Keep Innovation in Berkeley" land use policy feedback session for others involved in Berkeley's innovation ecosystem. Berkeley based business owners and operators, industry groups, educational institutions, and sector leaders shared their experiences with the City's land use regulations. They identified that R&D regulations were more restrictive or onerous compared to neighboring jurisdictions. This is especially true for startups, early-stage R&D businesses, or small enterprises lacking expertise or financial resources to navigate the existing permitting process.

¹ City of Berkeley, Office of Economic Development (OED), [Berkeley's Innovation Ecosystem](#), published to the Berkeley Planning Commission, February 1, 2023.

On May 1, 2024 the Planning Commission held a discussion on the *Keep Innovation in Berkeley Referral Response (Attachment 3)* and provided policy direction to staff. On July 17, 2024, the Planning Commission held a public hearing (**Attachment 4**) and recommended that the following proposed zoning amendments be forwarded for City Council adoption (M/S Sanderson/Merker. Ayes: Merker, Shere, Capitelli, Sanderson, and Ghosh. Noes: Oatfield. Abstain: Mikiten and Twu. Absent: Moore. (5-1-2-1)).

Revise Permit Requirements for R&D Uses

Currently, R&D is permitted in the C-W zoning district (with an AUP), the MM and MU-LI zoning districts (with a ZC if under 20,000 square feet and an AUP if over 20,000 square feet), and in the C-T, C-C, C-NS and the C-DMU zoning districts (with an AUP with additional findings).

Permitting R&D spaces under 20,000 square feet with a ZC supports businesses looking to relocate off campus and/or access the labor pool of university students, professors, and others who spend a portion of the work week at UC Berkeley and LBNL. Furthermore, permitting R&D in the University Avenue commercial corridor (C-U) would play an important role in connecting West Berkeley and UC Berkeley, the city's two primary hubs of innovation.² A threshold of 20,000 square feet for such projects would also ensure that larger R&D uses would be subject to additional staff analysis. This square foot permit threshold is consistent with the requirements in the MM and MU-LI zoning districts for R&D uses.

Consistent with the *Keep Innovation in Berkeley* referral, staff presented to the Planning Commission a recommendation to revise permit requirements for R&D uses in the C-T, C-W, C-U, and C-DMU zoning districts to a ZC for R&D uses under 20,000 square feet and an AUP for uses 20,000 square feet or larger.

At its May 1, 2024 meeting the Planning Commission recommended expanding this revision to include the C-NS (North Shattuck) district. The rationale for revising the permit requirements in the C-T (Telegraph), C-DMU (Downtown) and C-U (University) zoning districts was based on the proximity of these zoning districts to UC Berkeley. The Planning Commission noted that including the C-NS zoning district, which is similarly close to campus, was consistent with the policy direction recommended in the referral.

The revised permit requirements would apply only to R&D uses. New construction, new added floor area, and reconfigurations of tenant floor area would still be subject to the permit requirements included in BMC Section 23.204.030 (Commercial Districts – Additional Permit Requirements) and BMC Section 23.206.030 (Manufacturing Districts – Additional Permit Requirements).

² See map of Berkeley's innovation sector companies here: <https://berkeleystartupcluster.com/startups/> (February 2024).

Additionally, the C-W (San Pablo) zoning district includes designated nodes (BMC Section 23.204.140(D)) which restrict ground-floor uses to intensify retail activity and reinforce pedestrian-oriented uses. The proposed zoning amendments would not change these regulations; R&D would not be permitted on the ground floor in the C-W zoning district's designated nodes.

Add R&D to District Purpose Statements

The District Purpose sections of the Zoning Ordinance identify the intent of each zoning district, detailing which uses characterize the district and the types of uses that are encouraged to further the City's goals. When approving an AUP for any use, the Zoning Officer or Zoning Adjustment Board must find that the proposed use is compatible with the Purposes of the district in which the business would be located.

In the MM and MU-LI zoning districts, R&D is currently permitted with a Zoning Certificate for uses less than 20,000 square feet and with an AUP for uses larger than 20,000 square feet. The Purpose sections do not mention R&D, despite calling out similar uses, such as manufacturing, industrial, and laboratory, by name. An explicit mention of R&D provides greater transparency to potential applicants that R&D uses are encouraged in these locations.

Staff presented a recommendation to the Planning Commission to revise the purpose statements for the MM and MU-LI zoning districts to explicitly note that R&D uses were encouraged in those zoning districts. The Planning Commission expressed support for these changes, which are included in the proposed zoning amendments.

Removal of Regulation of Biosafety Level (BSL) Class Organisms

The referral also called for staff to consider amending or repealing BMC sections that include regulation of Biosafety Level. Staff reviewed the BMC's language in this area to ensure that it was consistent with neighboring jurisdictions and was not an unnecessary obstacle to the establishment of R&D uses in Berkeley.

Biological Safety Levels (BSL) are defined by the Centers for Disease Control (CDC) and the National Institute of Health (NIH) to prescribe the work practices, engineering controls, personal protective equipment, and facility requirements required for working with biological agents in a lab setting. BSL levels, ranked from one to four (BSL-1 to BSL-4), are designated based on the agents or organisms that are being researched or used in the laboratory and the level of risk associated with them, as determined by the CDC and NIH. The lower the number, the lower the risk, where the factors considered in the rating include the nature of the work conducted and the infectivity, severity of disease, and transmissibility associated with the biological agents used in the lab.

For example, in a BSL-1 lab, the microbes studied are not known to consistently cause disease in healthy adults and present minimal potential hazard to lab workers or the

environment. BSL-2 labs work with pathogenic or infectious organisms that pose a moderate health hazard and therefore must include enhanced measures, in addition to the standard microbial practices as BSL-1 labs. BSL-2 labs are typically utilized by biotechnology companies, and many are located on research university campuses, including UC Berkeley. BSL-3 labs (of which there are only three in California) and BSL-4 labs (of which there are none on the West Coast and just over a dozen nationwide)³ work with microbes that can cause serious or potentially lethal disease through inhalation and microbes that are often fatal without treatment or vaccines, respectively, and therefore have even more stringent requirements, and the lab setting is strictly controlled by a number of government agencies.

Staff has reviewed the zoning ordinances of Bay Area jurisdictions,⁴ as well as other cities across California and the nation that support a broad range of R&D uses, such as Sacramento, San Diego, and Cambridge, Massachusetts. The City of Berkeley's regulation of BSL activities is more restrictive than all of these jurisdictions; most nearby jurisdictions do not note BSL at all in their zoning ordinances.⁵ Generally, local zoning ordinances do not regulate labs. Rather, health, safety, toxic substances and hazardous materials regulations at the city, state and federal levels typically regulate labs. UC Berkeley, comprising more than 1,200 acres within the city, has many BSL-2 labs within 500 feet from other types of buildings, including student housing and classrooms, and has not encountered safety problems associated with such co-location.

The prevalence of potentially hazardous materials has been a longstanding community concern in Berkeley, particularly in areas covered by the West Berkeley Plan that include manufacturing uses in proximity to residential uses. However, the West Berkeley Plan includes a policy to "periodically review the City's regulation of biotechnology to assure that it both meets City regulatory objectives and does not unnecessarily interfere with the creation and expansion of biotechnology firms."

At the May 1, 2024 Planning Commission meeting, Commissioners expressed support for removing the provision in the BMC that regulates BSL activities for uses in the MU-LI zoning district. The Planning Commission reasoned that biological resources, hazardous materials, hazardous waste and other potential hazards are regulated through a variety of existing local, state and federal regulations and agencies, and given

³ Global locations of BSL 3-4 labs can be viewed on this interactive map (<https://www.globalbiolabs.org/map>).

⁴ Including the cities of Alameda, Belmont, East Palo Alto, Emeryville, Fremont, Hayward, Menlo Park, Millbrae, Milpitas, Mountain View, Oakland, Redwood City, San Bruno, San Francisco, San Leandro, San Jose, San Mateo, Santa Clara, and South San Francisco.

⁵ The cities of Alameda, Belmont, East Palo Alto, Emeryville, Hayward, Menlo Park, Millbrae, Milpitas, Mountain View, Sacramento, San Bruno, San Jose, San Leandro, San Mateo, Santa Clara, and South San Francisco do not reference BSLs or organism risk groups at all in their zoning ordinances. Oakland prohibits only BSL-4; Palo Alto permits up to BSL-3; and Richmond permits BSL-3 with a conditional use permit.

the extent of existing regulations, the inclusion of BSL-related rules in the Zoning Ordinance was redundant, and served as more of an obstacle to the establishment of R&D uses rather than a necessary rule to protect public health and safety.

Accordingly, the Planning Commission recommended removal of the provision regulating BSL in the MU-LI zoning district and removal of the definitions of Class 1, 2 and 3 BSL Organism(s) in the Glossary (BMC 23.502.020.L.1, c,d,e).

Revise Parking Requirements for R&D Uses

Staff presented recommendations to the Planning Commission to revise minimum off-street parking requirements for R&D uses, to align with other similar uses.

BMC 23.322.030 (Required Parking Spaces) details the minimum off-street parking spaces required for each use. R&D uses are required to provide 2 spaces per 1,000 square feet of floor area in manufacturing zoning districts. In contrast, laboratory uses require 1 space per 650 square feet of floor area. R&D uses typically include similar numbers of employees and visitors per square foot as laboratory uses, and R&D uses are often at a disadvantage when required to provide more parking. The proposed zoning amendments include revising the off-street parking requirements for R&D uses to 1 space per 1,000 square feet of floor area to bring the standard closer to that for laboratories.

Notwithstanding the proposed change, BMC Section 23.322.020.D (Applicability-Location Exemption) reflects recent State law (AB 2097) changes that prohibit a public agency from imposing any minimum automobile parking requirement on most residential, commercial, or other development project that is located within one-half mile of public transit. R&D uses proposed within these areas would have no required off-street parking.

The Planning Commission expressed support for these changes, which are included in the proposed zoning amendments.

Revise Definition of Laboratory

The *Keep Innovation in Berkeley* referral included a request that any additional recommendations identified by staff or the Planning Commission that would encourage R&D in Berkeley be presented to the City Council.

Consistent with that request, the Planning Commission recommended the following revision to the definition of Commercial Physical or Biological Laboratory in BMC Section 23.502.020(L)(1):

- (a) Commercial Physical or Biological Testing. A facility that provides controlled conditions in which scientific or technological testing research, experiments, and measurements may be performed. Any facility established as a Commercial

Physical or Biological Laboratory to conduct scientific or technological research, experiments and measurements prior to [effective date of the ordinance] shall be considered a conforming Commercial Physical or Biological Testing use.

Staff had noted that the current definition of Commercial Physical or Biological Laboratory overlaps with the definition of R&D in the Glossary.⁶ Both definitions include the words “biological,” “scientific,” and “research” in relation to laboratories. Such overlap has led to confusion as to how a proposed use would be classified, a difficulty that is exacerbated by the fact that there are different permit requirements for Laboratory and R&D uses in the same zoning districts. There is a concern that an otherwise permitted R&D use may mischaracterize itself as a Laboratory and exclude itself from considering certain locations in Berkeley due to stricter permit requirements for Laboratories.

The proposed revision attempts to clarify the type of use that constitutes a Commercial Physical or Biological Laboratory. Such a use would be characterized by the testing or measurement of materials that are collected or received on-site, but are not part of new research or product or process development. The most common use that would meet this new definition would be a laboratory that processes blood samples for a hospital or other health service use. Laboratories that are engaged in scientific or product research would more easily be classified under R&D with this clarification.

The Planning Commission received public testimony from some existing R&D businesses expressing concerns about the revision of the definition of Laboratory. These R&D businesses were established before the BMC included a R&D definition and land use category, so were approved as Laboratory uses.

As shown above, the current definition of Laboratory includes the words “research” and “experiments,” which provided the rationale for approving R&D uses as Laboratory uses before an R&D definition was in the BMC. However, existing R&D businesses that are approved as Laboratory uses are concerned that their approved use may be considered legally non-conforming or even Not Permitted if the definition of Laboratory were to remove “research” or “experiments,” as proposed above. While these existing R&D uses would fit into the existing R&D definition, without formal action to reclassify each of these uses as R&D, these businesses were concerned of the potential adverse impacts of being considered legally non-conforming or Not Permitted.

The Planning Commission did not want the proposed change in the definition of Laboratory to adversely impact these existing permitted R&D uses. To address this concern, additional language has been added to the definition to clarify that any existing

⁶ BMC Section 23.502.020.R.8: 8. *Research and Development*. An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

R&D use that was approved as a Commercial Physical or Biological Laboratory prior to this change of definition would be considered a conforming use after the definition change is effective. The definition modification is being made to ensure that current and future occupants of facilities with the established Use of Commercial Physical or Biological Laboratory (such as those developed by Wareham Development in West Berkeley on Seventh Street, Potter Street, Anthony Street and Heinz Avenue) can continue to legally perform the research, experiment and measurement activities permitted under that use.

BACKGROUND

In response to the September 13, 2022 *Keep Innovation in Berkeley* referral (**Attachment 2**), and previous work on the March 10, 2020 referral to *Update the Definition of Research and Development*, OED gathered input from a number of scientists and business leaders in the biotechnology, clean technology, hardware and other local innovation industries. *Keep Innovation in Berkeley* referred to the Planning Commission a set of four items and accompanying zoning changes to provide relief from regulations that are “inhibit[ing] innovation in Berkeley.”

The 2023 Berkeley Economic Dashboard (published by OED in Q1 2024) reported robust growth opportunities in the innovation sector.⁷ As of December 2023, the City of Berkeley had 400 businesses in the “innovation sector.” The number included 325 startups⁸ in software, biotechnology, clean technology and other technology industries, as well as established and subsidiary companies conducting R&D, incubators and coworking facilities supporting the local innovation ecosystem, and other STEM (science, technology, engineering and math) consulting companies. The “innovation sector” includes established businesses such as Bayer, which unveiled a new Cell Therapy Launch Facility in 2023, and subsidiary companies like Carmot Therapeutics, a startup which was acquired in 2023 by the multinational firm, Roche Pharmaceutical. It also includes early-stage startups focused on new product design and development.

Of Berkeley’s innovation companies, 35% develop life science and healthcare technologies, 32% develop software, and 14% develop clean technologies to support environmental sustainability and address climate change. In addition to creating local jobs, these companies attract investment in the city: in 2023 alone, 84 Berkeley companies raised \$840 million of venture and seed capital and 11 companies received nearly \$17 million in federal and state government grants for R&D.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

⁷ View the full report online: [Economic Dashboards and Reports | City of Berkeley \(berkeleyca.gov\)](https://www.berkeleyca.gov/economic-development/economic-dashboards-reports)

⁸ Startups are defined as companies or for-profit businesses that sell innovative technology products or services or substantively use innovative technologies to develop and manufacture their products or provide their services and are developing repeatable and scalable business models that aren’t yet profitable.

The Planning Commission recommendation includes the removal of existing provisions that regulate Class 2 and Class 3 organisms, defined as organisms classified as BSL-2 and BSL-3 by the CDC, respectively. As removal of this provision would permit these uses in areas where they are currently prohibited, further CEQA analysis was performed.

Activities undertaken in R&D and Laboratory uses that involve Class 2 and Class 3 organisms, the use of hazardous materials, or produce hazardous waste are required to follow federal, state and local regulations. This overlapping regulatory regime imposes extensive environmental, health, and safety regulations on these labs. The oversight of Class 2 and Class 3 organisms, as well other potentially infectious disease-causing agents, falls under the jurisdiction of the California Department of Public Health (CDPH), which serves as the Local Enforcement Agency (LEA) for Berkeley. CDPH regulates the generation, handling, storage, treatment, and disposal of medical waste by providing oversight for the implementation of the Medical Waste Management Act (MWMA). Hazardous materials and waste regulations are enforced by a Certified Unified Program Agency (CUPA), a local agency certified by the California Environmental Protection Agency (CalEPA). The City of Berkeley's Toxics Management Division (TMD) is the CUPA for Berkeley. It oversees subsurface drilling and stormwater pollution prevention, reviewing building plans and permit applications with potential toxics implications, and enforces five state hazardous waste and materials regulatory management programs. These plans and permits ensure that the City has an accurate inventory of hazardous materials, and that they are being stored and disposed of in ways that ensure community health and safety, as well as ensure businesses follow environmental best practices. In light of these regulatory requirements, the existing zoning restrictions are not necessary to regulate environmental impacts. Therefore, the zoning code amendments that would remove zoning restrictions for facilities handling Class 2 and Class 3 organisms would not result in any additional new environmental impacts.

Further, the proposed amendments would not affect building potential; they are limited to changes to allowed uses and permit requirements, while standards such as building height, lot coverage, setbacks and general operational controls would remain essentially unchanged in the affected zoning districts.

Based on the above analysis, the proposed Zoning Ordinance amendments meet the requirements of CEQA Guidelines Section 15061(b)(3) because "[i]t can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Therefore, staff have determined that the proposed Zoning Ordinance amendments are exempt from CEQA.

RATIONALE FOR RECOMMENDATION

The proposed Zoning Ordinance amendments are intended to encourage the growth and retention of innovative companies in Berkeley by reducing permit review processing times for R&D uses, particularly smaller startups that would be located close to UC

Berkeley and would utilize existing commercial spaces. An AUP requirement for larger R&D uses, and existing permit requirements for new buildings, substantial additions and major tenant reconfigurations, would ensure that larger-scale R&D uses are not permitted without an opportunity for more detailed staff review, public comment, and the ability to appeal.

ALTERNATIVE ACTIONS CONSIDERED

On July 17, 2024, the Planning Commission held a public hearing, received public testimony, and discussed the proposed amendments. Topics discussed by the Planning Commission included limiting the applicability of the proposed permit changes to certain subareas along University and San Pablo Avenues and limiting the establishment of R&D uses on the ground floor in certain districts.

CONTACT PERSONS

Justin Horner, Principal Planner, Planning and Development, 510-981-7476
Elizabeth Redman Cleveland & Eleanor Hollander, Office of Economic Development, 510-981-7530.

Attachments:

- 1: Ordinance
- 2: *Keep Innovation in Berkeley Referral*, September 13, 2022
- 3: *Planning Commission Staff Report*, May 1, 2024
- 4: *Planning Commission Staff Report*, July 17, 2024
- 5: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE COMMERCIAL DISTRICT CHAPTER (BMC 23.204),
MANUFACTURING DISTRICT CHAPTER (BMC 23.206), PARKING AND LOADING
REGULATIONS CHAPTER (BMC 23.322) AND GLOSSARY (BMC 23.502), TO
SUPPORT BERKELEY'S INNOVATION BUSINESSES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the line named "Research and Development" in Table 23.204-1 in BMC Section 23.204.020 is amended, and a new line "Research and Development, 20,000 sq. ft. of larger" is added, to read:

Table 23.204-1 Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	Commercial Districts											USE- SPECIFIC REGULATI ONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Research and Development <u>Under 20,000 sq. ft.</u>	<u>ZC</u>	<u>ZC</u>	=	=	<u>ZC</u>	=	<u>ZC</u>	=	<u>ZC</u>	<u>ZC</u>	=	
<u>Research and Development, 20,000 sq. ft. or larger</u>	<u>AUP</u>	<u>AUP</u>	=	=	<u>AUP</u>	=	<u>AUP</u>	=	<u>AUP</u>	<u>AUP</u>	=	

Section 2. That BMC Section 23.206.070(A)(3) and 23.206.070(A)(5) are amended to read:

3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;

5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;

Section 3. That BMC Section 23.206.080(A)(7) is amended to read:

7. Provide the opportunity for laboratory development and research and development facilities in appropriate locations;

Section 4. That a line named “Research and Development” is added to Table 23.322-2 in BMC Section 23.322.030(B) to read:

Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

<u>Research and Development</u>	<u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>All Other Commercial Districts: 1 per 1,000 sq. ft.</u>
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Section 5. That a line named “Research and Development” is added to Table 23.322-4 in BMC Section 23.322.030(C) to read:

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

<u>Research and Development</u>	<u>1 per 1,000 sq. ft.</u>
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Section 6. That BMC Section 23.206.080(B)(5) to B(13) are amended to read:

~~5. Commercial Physical or Biological Laboratories. Commercial physical or biological laboratories using Class 3 organisms are not permitted the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.~~

6.5. General Retail. Allowed general retail uses in the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted. Food product stores are not permitted if over 2,000 square feet. Building materials and garden supplies stores are permitted with an AUP if under 20,000 square feet and with a Use Permit if 20,000 square feet or more.

7.6. Pharmaceuticals Manufacturing. Pharmaceuticals manufacturing is allowed in the MU-LI district only in locations at least 500 feet from a Residential District or the MU-R district.

8.7. Public Market, Open Air. Open air markets in the MU-LI district with 5,000 square feet or less of lot area are allowed with AUP.

~~9-8.~~ Recycling Facilities. Recycled materials processing and recycling redemption centers are allowed in the MU-LI district only on lots greater than 20,000 square feet.

~~10-9.~~ Theaters. Only live stage performances are allowed in a theater in the MU-LI district. Motion picture theaters are not permitted.

~~11-10.~~ Vehicle Wrecking. Permits required for vehicle wrecking the MU-LI district is determined by size of lot, not floor area.

~~12-11.~~ Vocational Schools. A vocational school in the MU-LI district must provide training for occupations and/or industries found in the West Berkeley Plan area.

~~13-12.~~ Wholesale Trade Proximity to Residential Use. For wholesale trade use in the MU-LI district otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.

Section 7. That BMC Section 23.502.020(L)(1) is amended to read:

1. Laboratories.

(a) Commercial Physical or Biological Testing. A facility that provides controlled conditions in which scientific or technological ~~testing research, experiments, and measurements~~ may be performed. Any facility established as a Commercial Physical or Biological Laboratory to conduct scientific or technological research, experiments and measurements prior to [effective date of ordinance] shall be considered a conforming Commercial Physical or Biological Testing use.

(b) Cannabis Testing. A facility for the testing of the properties of cannabis intended for consumer use.

~~(c) Class 1 Organism. A microbe or biological agent classified as Biosafety Level 1 (BSL-1) by the U.S. Centers for Disease Control and Prevention.~~

~~(d) Class 2 Organism. A microbe or biological agent classified as Biosafety Level 2 (BSL-2) by the U.S. Centers for Disease Control and Prevention.~~

~~(e) Class 3 Organism. A microbe or biological agent classified as Biosafety Level 3 (BSL-3) by the U.S. Centers for Disease Control and Prevention.~~

Section 8. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall

be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR

September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), Mayor Jesse Arreguin (Co-Sponsor), and Councilmember Kate Harrison (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.
 - a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances.
2. Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

POLICY COMMITTEE RECOMMENDATION

On July 19, 2022, the Land Use, Housing, & Economic Development Policy Committee adopted the following action: M/S/C (Robinson/Bartlett) to approve the item with a positive recommendation. Vote: All Ayes.

BACKGROUND

The City of Berkeley has over 400 “innovation sector” businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based companies receiving a total of nearly \$9 million in federal and state grants for R&D.¹ 35% of Berkeley’s innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city’s coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.² There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City’s zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.³ This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguin and Councilmember Wengraf.

The original definition read:

Research and Development. An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities:

¹ <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf>

² <https://berkeleystartupcluster.com/>

³ <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

Research and Development: An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

Recommendation #1: Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.

BMC 23.204.020.A Table 23.204-1⁴ and 23.206.020.A Table 23.206-1⁵ lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley. Furthermore, permitting R&D in the University Avenue commercial corridor (C-U) would play an important role in connecting West Berkeley and UC Berkeley, the City's two primary hubs of innovation.

⁴ <https://berkeley.municipal.codes/BMC/23.204.020>

⁵ <https://berkeley.municipal.codes/BMC/23.206.020>

Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

However, noise disruption and biohazard safety are of particular concern when permitting new uses in commercial districts due to their mixed-use residential buildings and proximity to residential districts. It is important that staff and the Planning Commission consider strategies for mitigating any impacts of R&D in C-prefixed districts, including the use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, are an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

One example that the City of Berkeley can look towards is the City of Fremont. Fremont utilizes performance standards in their industrial districts, which house R&D activities, to ensure that "adjoining properties, persons and the community as well as the region are provided protection against adverse conditions which may be created by the various uses operating within the industrial zoning districts." The performance standards regulate noise, vibration, glare or heat, fire hazards, liquid or solid wastes, fissionable or radioactive material, and aesthetics.⁶ See Attachment 1.

The City of San Diego serves as a case study of how R&D can co-exist with commercial and residential uses. In 2019, the San Diego City Council approved the creation of two new mixed-use zones, RMX (Residential Mixed-Use) and EMX (Employment Mixed-Use).⁷ The stated purpose of the zones was to "provide housing and jobs near commercial centers and corridors to reduce dependency on the automobile, promote access to transit and multi-modal transportation systems, and to provide for a walkable, pedestrian-oriented setting, including infill of existing development." In both RMX and EMX zones, R&D is permitted by-right alongside multi-family residential development, retail, and most commercial services. San Diego also permits R&D in several of its commercial zones.⁸

Recommendation #2: Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.

⁶ <https://www.codepublishing.com/CA/Fremont/#/html/Fremont18/Fremont1850.html> (18.50.040 Performance Standards)

⁷ <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division07.pdf>

⁸ <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division05.pdf>

The “District Purpose” sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City’s goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

23.206.070 MM Mixed Manufacturing District.

- A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
1. Implement the West Berkeley Plan MM designation;
 2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
 3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
 4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
 5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;
 6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
 7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
 8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

23.206.080 MU-LI Mixed Use-Light Industrial District.

- A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:
1. Implement the West Berkeley Plan Light Manufacturing District designation;
 2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

Recommendation #3: Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City’s Climate Action Plan goals. For the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under “All non-residential uses except uses listed below,” (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.

In addition to considering the following changes to BMC 23.322.030 Table 23.322-2 and Table 23.322-4, staff and the Commission may take up the R&D parking discussion in concert with other Council referrals that address off-street parking, such as Councilmember Taplin's "Parking Minima for Mixed-Use Projects and Manufacturing Districts" item referred on June 28, 2022.

Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings, including Group Living Accommodations	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
Non-Residential Uses	
All non-residential uses except uses listed below	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft.
Hotels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft.
Motels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites

	C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Manufacturing	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
<u>Research and Development</u>	<u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>C-W District: 1 per 1,000 sq. ft [1]</u> <u>All Other Commercial Districts: 2 per 1,000 sq. ft.</u>
Wholesale Trade	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

Notes:

[1] Spaces must be on the same lot as building it serves.

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings	None required
Group Living Accommodation	None required
Non-Residential Uses	

All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
<u>Research and Development</u>	<u>1 per 650 sq. ft.</u>
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

Notes:

[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

Recommendation #4: Reviewing Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of

R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.⁹

Chart of Biosafety Levels¹⁰

Biosafety Level	BSL-1	BSL-2	BSL-3	BSL-4
Description	· No Containment · Defined organisms · Unlikely to cause disease	· Containment · Moderate Risk · Disease of varying severity	· High Containment · Aerosol Transmission · Serious/Potentially lethal disease	· Max Containment · "Exotic," High-Risk Agents · Life-threatening disease
Sample Organisms	E.Coli	Influenza, HIV, Lyme Disease	Tuberculosis	Ebola Virus
Pathogen Type	Agents that present minimal potential hazard to personnel & the environment.	Agents associated with human disease & pose moderate hazards to personnel & the environment.	Indigenous or exotic agents, agents that present a potential for aerosol transmission, & agents causing serious or potentially lethal disease.	Dangerous & exotic agents that pose a high risk of aerosol-transmitted laboratory infections & life-threatening disease.
Autoclave Requirements	None	None	Pass-thru autoclave with Bioseal required in laboratory room.	Pass-thru autoclave with Bioseal required in laboratory room.

Another way of classifying biological agents and organisms is using Risk Groups 1-4. While these two classification methods often align (e.g. BSL-2 equals Risk Group 2), they do not always. Biosafety Levels prescribe the work practices, engineering controls, personal protective equipment, and facility requirements required for working with biological agents. The Risk Group classification is only one factor to consider when determining the appropriate Biosafety Level for a particular agent. Other factors to

⁹ <https://www.cdc.gov/training/quicklearns/biosafety/>

¹⁰ <https://consteril.com/biosafety-levels-difference/>

consider include the mode of transmission, pathogenicity, manipulations that will be conducted, volume, experience of staff, and more.¹¹

4 RISK CLASSIFICATIONS OF INFECTIOUS MATERIAL			
Risk Group	Individual	Community	Examples
1 (lowest) Basic Laboratory, clean open bench, no BSC needed (unlikely to cause disease in healthy workers/animals/plants)	Low	Low	-non-infectious bacteria -E. coli -Lactobacillus spp.
2 Biological safety cabinet needed Pathogens spread via ingestion, inoculation and mucous membrane routes	Moderate	Low	-Influenza virus -Herpes simplex -Hepatitis (A, B, C, D, E) -Tetanus
3 Pathogen transmitted by aerosols HEPA filtration required, respiratory protection	High	Low	-Hepatitis (some C's) -West Nile -Anthrax -TB
4 (highest) serious human disease that may not be treatable, easily transmitted self-contained lab	High	High	-Ebola virus -Herpes B

BMC 23.206.080.B.5¹² reads:

Commercial Physical or Biological Laboratories. Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. The BMC is silent on BSL regulations in districts other than MU-LI, or for non-laboratory uses such as research and development.

A preliminary review finds that the City of Berkeley is more restrictive than other Bay Area cities in our regulation of Biosafety Levels. For example, the Cities of Emeryville,

¹¹ <https://www.safetypartnersinc.com/are-biosafety-levels-and-risk-groups-the-same/#:~:text=Biosafety%20levels%20prescribe%20the%20work,level%20for%20a%20particular%20age nt.>

¹² <https://berkeley.municipal.codes/BMC/23.206.080>

San Jose, Mountain View, Alameda, San Leandro, South San Francisco, and San Mateo do not reference BSLs or Risk Groups in their zoning ordinances. The Cities of Fremont, Oakland, Palo Alto, and San Francisco permit BSL-1, BSL-2, and BSL-3 (or the Risk Group equivalents) in varying degrees. See Attachment 2.

Moreover, laboratories that work with Risk Group 1-3 agents are already allowed on the UC Berkeley campus. Most campus experiments use agents classified as Risk Group 1 or 2, although work with Risk Group 3 is permitted with a biological use authorization (BUA) application approved by UC Berkeley's Committee for Laboratory and Environmental Biosafety.¹³

Staff and the Commission should conduct further research into nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological research facilities where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

Recommendation #5: Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

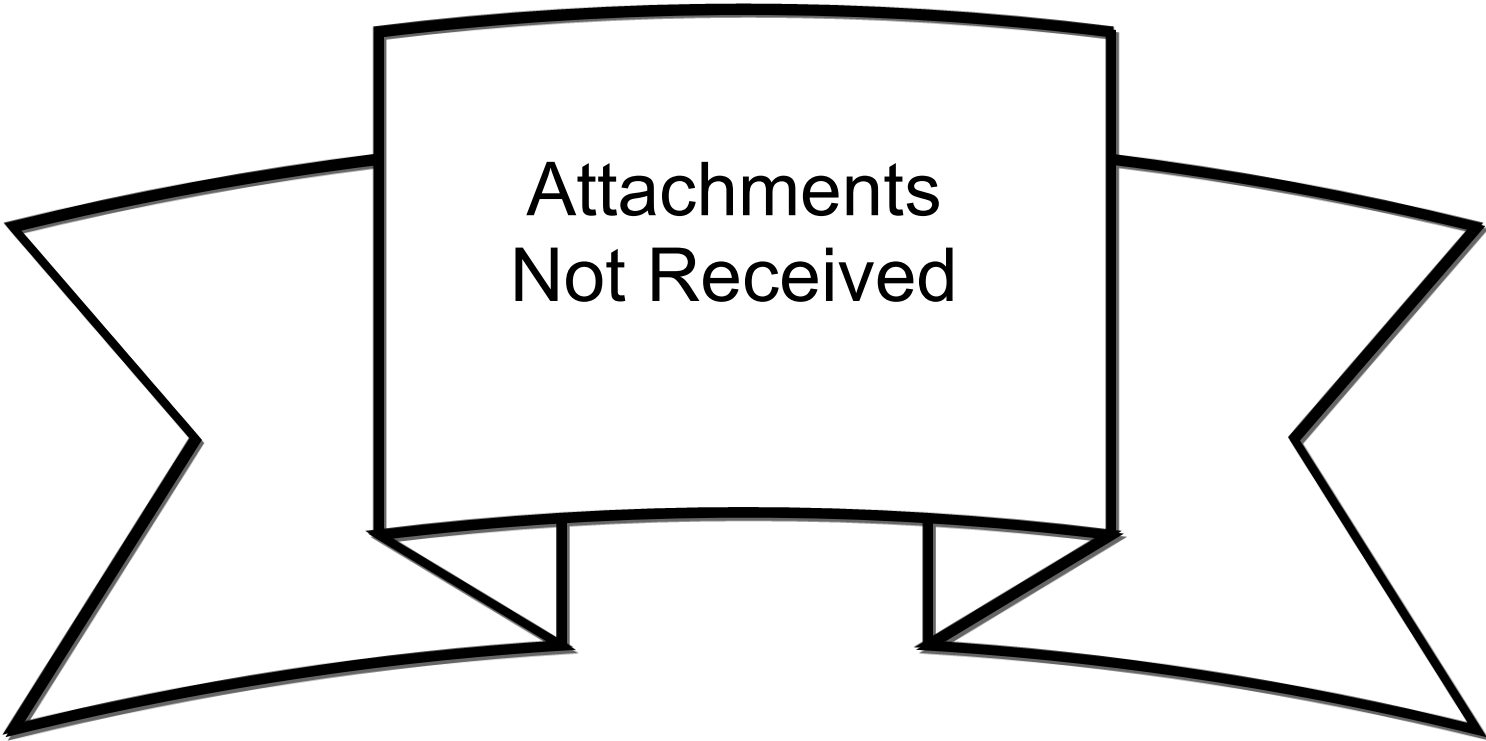
CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Assistant

¹³ <https://ehs.berkeley.edu/sites/default/files/biosafetymanual.pdf>

Attachments:

- 1: City of Fremont performance standards
- 2: BSL regulations in neighboring jurisdictions



Attachments
Not Received

These attachments have not been received from the submitting office.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

The City of Berkeley, City Council's Web site:
<http://www.cityofberkeley.info/citycouncil/>



Planning and Development Department
Land Use Planning Division

STAFF REPORT

May 1, 2024

TO: Members of the Planning Commission

FROM: Justin Horner, Planning and Development Department

SUBJECT: Referral Response: Keep Innovation in Berkeley or Zoning Amendments to Support Innovation in Berkeley

RECOMMENDATION

Staff recommends the Planning Commission receive a staff report, public comment, discuss the proposed amendments, and provide direction to staff to prepare zoning ordinance amendments for Planning Commission recommendation to the City Council.

In response to a 2022 City Council referral (**Attachment 2**), City staff have prepared zoning ordinance amendments (**Attachment 1**) that include the following:

1. Permit Research and Development (R&D) with a Zoning Certificate (ZC), for uses 20,000 square feet and under, in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), and C-DMU (Downtown Mixed-Use) zoning districts.
2. Revise the “District Purpose” sections of the MM (Mixed Manufacturing) and MU-LI (Mixed Use-Light Industrial) zoning districts to specifically encourage R&D.
3. Revise minimum parking requirements for R&D uses.

In addition, staff is asking the Planning Commission to provide direction on the revision or removal of the regulation of Biosafety Level (BSL) in the Zoning Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Research and outreach conducted by the City's Office of Economic Development (OED) indicates that firms engaged in R&D operate differently than they did in past decades, and current permit thresholds and land use requirements may not have kept pace with the state of the art in the R&D sector. Berkeley business owners and operators, industry groups, educational institutions, and innovation sector leaders shared their experiences where land use regulations in Berkeley for R&D were more restrictive or cumbersome than in neighboring jurisdictions, and how, in some cases, lack of clarity was a deterrent to locating or growing their business in Berkeley. This is especially true for startups, early-stage R&D businesses, or small enterprises without the expertise or financial runway to navigate the existing permitting process, but are yet keen to locate in Berkeley to be close to the talent, innovation, educational, and research opportunities afforded by UC Berkeley, Lawrence Berkeley National Lab and other anchor institutions.

BACKGROUND

In response to this September 13, 2022 referral (*Keep Innovation in Berkeley*), and previous work on the March 10, 2020 referral to *Update the Definition of Research and Development*, OED gathered input from a number of business operators and leaders in the biotechnology, clean technology and other R&D industries that are innovating locally. They were asked about their experiences, challenges and perceptions of innovating and conducting business in Berkeley, including their experience with the city's existing land use policies and business permitting processes.

For example, the March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. Prior to the update, the former definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The revised definition of Research & Development (R&D) adopted in 2022 successfully reflects evolving business practices and provides flexibility for R&D establishments to occupy spaces that meet their operating needs. During the initial outreach for the development of the updated definition of R&D, conducted between 2020 and 2022, a number of additional requested changes surfaced, which were reflected in the September 2022 referral "Keep Innovation in Berkeley."

On September 13, 2022, City Council referred Planning Commission a set of four items and accompanying zoning changes to provide relief from regulations that are "inhibit[ing] innovation in Berkeley."

The proposed zoning ordinance amendments are summarized in Table 1, below. They are based on examples from zoning codes in nearby cities (as well as other cities with a critical mass of innovation companies), and conversations with local real estate professionals, property owners, industry associations (e.g. Biocom California), small business owners, technology startup founders, established innovation company leaders, and other industry stakeholders.

Table 1 Referral Actions and Zoning Ordinance Amendments

Referral Action	BMC Section(s)
Permit R&D with a Zoning Certificate (ZC) , in the C-T, C-C, C-W, C-U, and C-DMU zoning districts. (Attachment 2 Referral, dated 9/13/22)	23.204.020. Allowed Land Uses (Commercial Districts) Table 23.204-1. Allowed Uses in Commercial Districts 23.204.040(G) Use-Specific Permit Requirements and Regulations
Add R&D to District Purpose Statements in MM and MU-LI districts. Update the District Purpose sections of the MM and MU-LI districts to specifically encourage R&D. (Attachment 2 Referral, dated 9/13/22)	23.206.070 A MM Mixed Manufacturing District. 23.206.080 A MU-LI Mixed Use-Light Industrial District.
Revise Parking Requirements for R&D uses. (Attachment 2 Referral, dated 9/13/22)	23.322.030 Required Parking Spaces Table 23.322-4 Table 23.322-2

DISCUSSION

The proposed Zoning Ordinance amendments are intended to encourage the growth and retention of innovative companies in Berkeley by reducing permit review processing times for R&D uses. In addition to providing jobs and fueling economic development locally, R&D companies create solutions that improve human health and community well-being, combat climate change, and address other social and environmental challenges. OED has indicated that there is a clear demand for R&D space from

companies who have grown out of their facilities on the UC Berkeley campus, or in local incubators and coworking spaces.¹ These companies seek to grow their enterprises close to UC Berkeley and/or Lawrence Berkeley National Laboratory (LBNL) talent, facilities and entrepreneur support programs. Neighboring jurisdictions including Oakland, Emeryville, San Leandro, and Alameda have a wider selection of eligible real estate opportunities. Updated zoning codes which permit R&D uses and streamlined permitting processes will give the City of Berkeley a competitive advantage for business retention and attraction.

The 2023 Berkeley Economic Dashboard (published in Q1 2024) reported robust growth opportunities in the innovation sector. As of Dec. 2023, the City of Berkeley had 400 businesses in the “innovation sector”. The number included 325 startups² in technology, biotechnology, clean technology and other technology industries, as well as established and subsidiary companies conducting R&D, incubators and coworking facilities supporting the local innovation ecosystem, and other STEM (science, technology, engineering and math) industry consulting companies. In addition to early-stage startups focused on new product design and development, the “innovation sector” includes established businesses such as Bayer, which unveiled a new Cell Therapy Launch Facility in 2023, and subsidiary companies like Carmot Therapeutics, a startup which was acquired in 2023 by the multinational firm, Roche Pharmaceutical.

Of Berkeley’s innovation companies, 35% develop life science and healthcare technologies, 32% develop software, and 14% develop clean technologies to support environmental sustainability and address climate change. In addition to creating local jobs, these companies create new wealth for our community: in 2023 alone, 84 Berkeley companies raised \$840 million of venture and seed capital and 11 companies received nearly \$17 million in federal and state government grants for R&D.

To allow startups and R&D companies to bring economic benefits to the economy citywide, staff recommends the following:

¹ City of Berkeley, Office of Economic Development (OED), [Berkeley’s Innovation Ecosystem](#), published to the Berkeley Planning Commission, February 1, 2023.

² Startups are defined as companies or for-profit businesses that sell innovative technology products or services or substantively use innovative technologies to develop and manufacture their products or provide their services and are developing repeatable and scalable business models that aren’t yet profitable.

Proposed Zoning Ordinance Amendments

- 1. Recommendation:** *Permit R&D with a Zoning Certificate, in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), and C-DMU (Downtown Mixed-Use) zoning districts.*

Permit Requirements

Currently, R&D is permitted in three zoning districts across the city: the C-W zoning district (with an Administrative Use Permit (AUP)) and the MM and MU-LI zoning districts (with a Zoning Certificate if under 20,000 square feet and an AUP if over 20,000 square feet). The C-T, C-C, and the C-DMU zoning districts currently allow R&D uses with an AUP with additional findings, despite being the zoning districts closest to UC Berkeley. Allowing R&D spaces under 20,000 square feet to be permitted with a ZC close to campus would encourage businesses looking to relocate off campus and/or access the labor pool of university students, professors, and others who spend a portion of the work week at UC Berkeley and LBNL. Allowing R&D uses by right in these districts would create opportunities to retain local the innovation and talent. Furthermore, permitting R&D in the University Avenue commercial corridor (C-U) would play an important role in connecting West Berkeley and UC Berkeley, the city's two primary hubs of innovation.³ Including a threshold of 20,000 square feet for such projects would also ensure that larger R&D uses would be subject to additional staff analysis. This threshold mirrors the requirements in the MM and MU-LI zoning districts for R&D uses.

Considerations for R&D Uses

Noise, odors and safety are evaluated when permitting R&D uses in commercial districts due to their mixed-use character and proximity to residential districts. All businesses in Berkeley are required to comply with the Community Noise Ordinance (BMC Chapter 13.40), which includes specific noise thresholds, as well as a general rule prohibiting

³ See map of Berkeley's innovation sector companies here: <https://berkeleystartupcluster.com/startups/> (February 2024).

excessive noise. In addition, BMC Chapter 23.304.130 (Non-Residential Districts Abutting a Residential District) includes a specific requirement that exhaust air ducts include equipment that mitigates odors.

Companies that use hazardous materials or produce hazardous waste may be required to create plans and follow Federal, State and local regulations. These regulations are enforced by a Certified Unified Program Agency (CUPA), a local agency certified by the California Environmental Protection Agency (CalEPA). The City's Toxics Management Division (TMD) is the CUPA for Berkeley and it oversees subsurface drilling and stormwater pollution prevention, in addition to reviewing plans and enforces five state hazardous waste and materials regulatory management programs:

- Hazardous Materials Business Plan (HMBP);
- Hazardous Waste and Tier Permitting, including the Hazardous Waste Generator (HWG) program;
- Aboveground Petroleum Storage Act (APSA) ;
- California Accidental Release Prevention (CalARP); and
- Underground Storage Tank (UST)

These plans and permits ensure that the City has an accurate inventory of hazardous materials, and that they are being stored and disposed of in ways that ensure community health and safety, as well as ensure businesses follow environmental best practices.

In addition, the City of Berkeley's Fire Prevention Division enforces the Fire Code, the Building Department enforces the Building Code and Environmental Health permits and inspects food handling.

After receiving preliminary signoff by the above-mentioned departments for a business license and operational permit, any R&D company using hazardous materials is required to create a HMBP and renew it annually. The Fire Code defines the quantities of different types of chemicals that require an operational permit. The Fire Department also inspects facilities and issues permits based on the quantity of specific chemicals that are stored on site or transported through pipes within a facility. A company with a laboratory is also subject to inspection at any time by the State of California Division of Occupational Safety and Health (Cal/OSHA) and thus these types of companies often hire an Environmental Health and Safety compliance specialist to perform routine internal audits.

In some innovation industries, the health and safety regulatory environment is more comprehensive and inspections are more frequent. For example, a company producing medical waste must also create a Medical Waste Management Plan and have it certified annually, subject to inspection by TMD and Cal/OSHA. A laboratory developing antibiotics, hormones, vaccines, fuels, foods, or other bio-based substances in Berkeley may be subject to additional regulatory requirements, protocols, inspections, certifications, licenses, accreditations, and audits by the following organizations:

- Food & Drug Administration (if food or medicines are produced);
- International Organization for Standardization (ISO) (if a regulated product is produced);
- Drug Enforcement Administration (if controlled substances are required by the company);
- Centers for Disease Control (if using special biologic agents and drugs);
- Centers for Medicare and Medicaid Services (after product approval);
- Bay Area Air Quality Management (if the building has a generator);
- United States Department of Agriculture (if research involves animals and plants);
- National Institutes of Health (if a federal R&D grant has been awarded);
- Office of Laboratory Animal Welfare (if granted a R&D award involving animal research); or
- California Department of Public Health (if clinical trials involve human subjects).

There may still be instances, particularly with larger projects, where additional staff analysis of these areas may be warranted. Therefore, the proposed zoning amendments include a requirement that proposed facilities that are 20,000 square feet or larger require an AUP. This additional discretionary process would allow the imposition of conditions of approval if staff analysis concludes that noise, odor or safety issues could not be adequately addressed through existing regulations.

2. Recommendation: Update the District Purposes” of the MM and MU-LI zoning districts to specifically encourage R&D.

The District Purpose sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses characterize the district and the types of uses that are encouraged to further the City’s goals. In the MM and MU-LI zoning districts, where R&D is currently permitted with a Zoning Certificate for uses less than 20,000 square

feet, the Purpose sections do not mention “R&D”, despite calling out similar uses, such as manufacturing, industrial, and laboratory, by name.

Specific land uses should be included in a zoning district’s Purpose statement if city policy is to encourage those uses. When approving an AUP for any use, the Zoning Officer or Zoning Adjustment Board must find that the proposed use is compatible with the Purposes of the district in which the business would be located. An explicit mention of R&D would increase an applicant’s confidence that their proposal would be accepted.

The proposed Zoning Ordinance amendments include the following changes:

23.206.070 MM Mixed Manufacturing District.

A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:

... 3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses, including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;

... 5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses.

23.206.080 MU-LI Mixed Use-Light Industrial District.

A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

... 7. Provide the opportunity for laboratory development and research and development facilities in appropriate locations;

3. Recommendation: Revise on-site parking requirements for R&D uses in manufacturing and commercial zoning districts.

BMC 23.322.030 (Required Parking Spaces) details the minimum off-street parking spaces required for each use. Currently, in manufacturing zoning districts, R&D uses are required to provide 2 spaces per 1,000 square feet of floor area. In contrast, laboratory uses require 1 space per 650 square feet of floor area. R&D uses typically include similar numbers of employees and visitors per square foot as laboratory uses, and R&D uses are often at a disadvantage when required to provide more parking. The proposed zoning amendments include revising the off-street parking requirements for R&D uses to 1 space per 1,000 square feet of floor area to bring the standard closer to that for laboratories.

Notwithstanding the proposed change, BMC Section 23.322.020.D (Applicability-Location Exemption) reflects recent State law (AB 2097) changes that prohibit a public agency from imposing any minimum automobile parking requirement on most residential, commercial, or other development project that is located within 1/2 mile of public transit. Like most other uses, R&D uses proposed within these areas would have no required off-street parking.

Discussion: Revision or removal of the regulation of Biosafety Level (BSL) class organisms from the Zoning Ordinance.

Biological Safety Levels (BSL) are defined by the Centers for Disease Control (CDC) and the National Institute of Health (NIH) to prescribe the work practices, engineering controls, personal protective equipment, and facility requirements required for working with biological agents in a lab setting. BSL levels, ranked from one to four (BSL-1 to BSL-4), are designated based on the agents or organisms that are being researched or used in the laboratory and the level of risk associated with them, as determined by the CDC and NIH. The lower the number, the lower the risk, where the factors considered in the rating include the nature of the work conducted and the infectivity, severity of disease, and transmissibility associated with the biological agents used in the lab.

BSL regulations govern the overall design of facilities, as well as the types of required on-site safety equipment. For example, in a BSL-1 lab, the microbes studied are not known to consistently cause disease in healthy adults and present minimal potential hazard to lab workers or the environment. As such, a BSL-1 lab is not required to be

isolated from surrounding facilities, and is permitted to house activities that require only standard microbial practices, such as biohazard signs, safe sharps handling, daily decontamination of all work surfaces, hand washing, prohibition of food, drink and smoking materials in the lab setting, and staff wearing personal protective equipment (PPE) such as eye protection, gloves and lab coats or gowns.

BSL-2 labs, however, are required to maintain the same standard microbial practices as BSL-1 labs, but must include enhanced measures such as: performing all procedures that can cause infection from aerosols or splashes within a biological safety cabinet (BSC), having an autoclave, or an alternative method of decontamination, for proper disposal, having self-closing, lockable doors to the laboratory, and providing a readily-available sink and eyewash station. BSL-2 labs are typically utilized by biotechnology companies and are ubiquitous on research university campuses such as UC Berkeley. BSL-3 labs (of which there is only one in California) and BSL-4 labs (of which there are none in California and just over a handful nationwide),⁴ accordingly have more stringent requirements, and the lab setting is often strictly controlled by a number of government agencies.

The Zoning Ordinance currently includes references to BSL in two sections:

- BMC Section 23.206.080.B.5 (MU-LI Mixed Use-Light Industrial Districts – Land Use Regulations) states:
 - 5. *Commercial Physical or Biological Laboratories.* Commercial physical or biological laboratories using Class 3 organisms are not permitted the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.
- BMC Section 23.502.020 (Glossary-Defined Terms) includes BSL in the definition of Laboratories:
 - 1. Laboratories.
 - (a) Commercial Physical or Biological. A facility that provides controlled conditions in which scientific or technological research, experiments, and measurement may be performed.

⁴ Global locations of BSL 3-4 labs can be viewed here: <https://www.globalbiolabs.org/map>

(b) Cannabis Testing. A facility for the testing of the properties of cannabis intended for consumer use.

(c) Class 1 Organism. A microbe or biological agent classified as Biosafety Level 1 (BSL-1) by the U.S. Centers for Disease Control and Prevention.

(d) Class 2 Organism. A microbe or biological agent classified as Biosafety Level 2 (BSL-2) by the U.S. Centers for Disease Control and Prevention.

(e) Class 3 Organism. A microbe or biological agent classified as Biosafety Level 3 (BSL-3) by the U.S. Centers for Disease Control and Prevention.

Staff has reviewed the zoning ordinances for a number of Bay Area jurisdictions,⁵ as well as other cities across the country that support a broad range of R&D uses, such as Sacramento, San Diego, and Cambridge, Massachusetts, and has found that the City of Berkeley's regulation of BSL activities is more restrictive than all of these jurisdictions, as most nearby jurisdictions do not note BSL at all in their zoning ordinances.⁶ As mentioned above, health, safety, toxic substances and hazardous materials regulations at the city, state and federal levels typically regulate labs, not local zoning ordinances. Further, UC Berkeley, comprising more than 1,200 acres within the city of Berkeley, has many labs utilizing class 2 organisms within 500 feet from other types of buildings, including student housing and classrooms, and has not encountered safety problems associated with such co-location.

⁵ Alameda, Belmont, East Palo Alto, Emeryville, Fremont, Hayward, Menlo Park, Millbrae, Milpitas, Mountain View, Oakland, Redwood City, San Bruno, San Francisco, San Leandro, San Jose, San Mateo, Santa Clara, and South San Francisco.

⁶ Alameda, Belmont, East Palo Alto, Emeryville, Hayward, Menlo Park, Millbrae, Milpitas, Mountain View, Sacramento, San Bruno, San Jose, San Leandro, San Mateo, Santa Clara, and South San Francisco, do not reference BSLs or organism risk groups at all in their zoning ordinances. Oakland prohibits only BSL-4; Palo Alto permits up to BSL-3; and Richmond permits BSL-3 with a conditional use permit.

The prevalence of potentially hazardous materials has been a longstanding community concern in Berkeley, particularly in areas covered by the West Berkeley Plan that include manufacturing uses in proximity to residential uses. However, the West Berkeley Plan includes a policy to “periodically review the City’s regulation of biotechnology to assure that it both meets City regulatory objectives and does not unnecessarily interfere with the creation and expansion of biotechnology firms.”

As detailed under recommendation #1, above, biological, chemical and hazardous materials are typically regulated under existing Federal, state and local regulations. Consistent with ongoing efforts to streamline and simplify land use regulations, staff is considering revising or removing BSL-related regulations in the Zoning Ordinance that may be duplicative of other existing regulations. There is also the possibility that Berkeley’s additional limitations on laboratory uses may put the city at a competitive disadvantage compared to nearby jurisdictions that do not supplement existing regulations with city-specific regulations.

Staff requests that the Planning Commission provide direction to staff on the possible revision or removal of BSL-related regulations in the Zoning Ordinance.

NEXT STEPS

Based upon Planning Commission feedback, staff will revise zoning ordinance amendments (**Attachment 1**) and prepare for a public hearing at Planning Commission and subsequent recommendation to the City Council.

CONTACT PERSON

Justin Horner, Planning and Development Department, 510-981-7476

Attachments:

- 1: Proposed Zoning Ordinance Amendments
- 2: City of Berkeley, *Referral: Keep Innovation in Berkeley*, Item 30, Berkeley City Council, September 13, 2022.

**Planning and Development Department**

Land Use Planning Division

PUBLIC HEARINGJuly 17, 2024

TO: Members of the Planning Commission

FROM: Justin Horner, Planning and Development Department

SUBJECT: Public Hearing: Zoning Amendments to Keep Innovation in Berkeley

RECOMMENDATION

Staff recommends the Planning Commission hold a public hearing, take public comment, discuss the proposed zoning ordinance amendments (**Attachment 1**), and provide a recommendation to the City Council.

City Staff have prepared zoning ordinance amendments (**Attachment 1**) that include the following:

1. Revise permit requirements for Research and Development (R&D) in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), C-NS (North Shattuck Commercial) and C-DMU (Downtown Mixed-Use) zoning districts to allow R&D uses under 20,000 square feet with a Zoning Certificate (ZC) and R&D uses 20,000 square feet or larger with an Administrative Use Permit (AUP);
2. Revise the “District Purpose” sections of the MM (Mixed Manufacturing) and MU-LI (Mixed Use-Light Industrial) zoning districts to specifically encourage R&D;
3. Remove the regulation of Biosafety Level (BSL) Class organisms from the zoning ordinance;
4. Revise minimum parking requirements for R&D uses to 1 per 1,000 square feet for locations outside of a half mile radius of a high-quality transit corridor; and

5. Revise the definition of the Laboratory use to clarify the difference between a testing laboratory and a laboratory associated with research or experimentation.

CURRENT SITUATION AND ITS EFFECTS

Firms engaged in R&D operate differently than they did in past decades, and current permit thresholds and land use requirements have not kept pace with the state of the art in the R&D sector. Berkeley business owners and operators, industry groups, educational institutions, and innovation sector leaders shared their experiences where land use regulations in Berkeley for R&D were more restrictive or cumbersome than in neighboring jurisdictions, and how, in some cases, the lack of clarity was a deterrent to locating or growing their business in Berkeley. This is especially true for startups, early-stage R&D businesses, or small enterprises without the expertise or financial runway to navigate the existing permitting process but are yet keen to locate in Berkeley to be close to the talent, innovation, educational, and research opportunities afforded by UC Berkeley, Lawrence Berkeley National Lab and other anchor institutions.

BACKGROUND

In response to the September 13, 2022 *Keep Innovation in Berkeley (Attachment 2)*, and previous work on the March 10, 2020 referral to *Update the Definition of Research and Development*, the Office of Economic Development (OED) gathered input from a number of business operators and leaders in the biotechnology, clean technology and other R&D industries that are innovating locally.

On September 13, 2022, City Council referred Planning Commission a set of four items and accompanying zoning changes to provide relief from regulations that are “inhibit[ing] innovation in Berkeley.” On May 1, 2024 Planning Commission held a discussion on the *Keep Innovation in Berkeley Referral Response (Attachment 3)*, and provided policy direction to staff.

Proposed zoning ordinance amendments consistent with that direction are included in **Attachment 1** and are summarized in Table 1, below.

Table 1 Proposed Zoning Ordinance Amendments

	Proposed Amendments	BMC Section(s)	Change from May 1?
1	Revise permit requirements for R&D in the C-T, C-C, C-W, C-U, C-NS, and C-DMU zoning districts: - Under 20,000 square feet: Zoning Certificate (ZC) 20,000 square feet or larger: Administrative Use Permit (AUP)	Table 23.204-1. Allowed Uses in Commercial Districts	Yes
2	Add R&D to District Purpose Statements in MM and MU-LI districts.	23.206.070.A MM Mixed Manufacturing District. 23.206.080.A MU-LI Mixed Use-Light Industrial District.	No
3	Remove regulation of BSL Class organisms from the Zoning Ordinance.	23.206.080.B.5 MU-LI Mixed Use-Light Industrial District. 23.502.020.L.1 Defined Terms	Yes
4	Revise Parking Requirements for R&D uses to 1 space per 1,000 square feet.	Table 23.322-4 Table 23.322-2 Required Parking Spaces	No
5	Revise definition of Laboratory to clarify difference between testing laboratories and research-laboratories.	23.502.020.L.1 Defined Terms	Yes

DISCUSSION

On May 1, 2024, the Planning Commission held a discussion on the *Keep Innovation in Berkeley* referral and provided feedback and policy direction to staff. The staff report for that meeting (**Attachment 3**) includes background information on the referral and policy development process, as well as rationales for each of staff's proposed zoning ordinance amendments. Additional discussion and rationale are included below for items that were revised as a result of Planning Commission discussion on May 1, 2024.

Proposed Zoning Ordinance Amendments

Revise Permit Requirements for R&D Uses

Consistent with the *Keep Innovation in Berkeley* referral, staff presented to the Planning Commission a recommendation to revise permit requirements for R&D uses in the C-T, C-W, C-U, and C-DMU zoning districts to a ZC for R&D uses under 20,000 square feet and an AUP for uses 20,000 square feet or larger.

At their May 1, 2024 meeting, the Planning Commission recommended expanding this revision to include the C-NS district. As the rationale for revising the permit requirements in the C-T, C-DMU and C-U zoning districts was based on the proximity of these zoning districts to UC Berkeley, the Planning Commission felt that including the C-NS zoning district, which is similarly close to campus, was consistent with the policy direction recommended in the referral.

Add R&D to District Purpose Statements

Consistent with the *Keep Innovation in Berkeley* referral, staff presented to the Planning Commission a recommendation to revise the purpose statements for the MM and MU-LI zoning districts to explicitly note that R&D uses were encouraged in those zoning districts.

At their May 1, 2024 meeting, the Planning Commission expressed support for these changes, which are included in the proposed zoning amendments.

Removal of Regulation of Biosafety Level (BSL) Class Organisms

Consistent with the *Keep Innovation in Berkeley* referral, staff had reviewed the BMC's language related to Biosafety Level (BSL) to ensure that it was consistent with neighboring jurisdictions and was not an unnecessary obstacle to the establishment of R&D uses in Berkeley. The referral also called for staff to consider amending or repealing BMC sections that include regulation of BSL.

At the May 1, 2024 meeting, Planning Commissioners expressed support for removing the one provision in the BMC that regulates BSL for uses in the MU-LI zoning district. The Planning Commission reasoned that the regulation of biological resources, hazardous materials, toxics and other potential hazards are regulated through a variety of existing local, State and Federal regulations and agencies, and that, given the extent of existing regulation, the inclusion of BSL-related rules in the BMC was redundant and served as more of an obstacle to the establishment of R&D uses than a necessary rule to protect public health and safety.

Accordingly, the proposed zoning amendments include the removal of the provision regulating BSL in the MU-LI zoning district. Additionally, as the removed provision was the only instance of BSL in the BMC, there is no longer any use to note BSL levels in the BMC's Glossary. Therefore, language explaining BSL levels was removed from the Glossary.

Revise Parking Requirements for R&D Uses

Consistent with the *Keep Innovation in Berkeley* referral, staff presented to the Planning Commission recommendations to revise minimum off-street parking requirements for R&D uses to align with other similar uses.

At their May 1, 2024 meeting, the Planning Commission expressed support for these changes, which are included in the proposed zoning amendments.

Revise Definition of Laboratory

The *Keep Innovation in Berkeley* referral included a request that any additional recommendations identified by staff or the Planning Commission that would encourage R&D in Berkeley be presented to the City Council.

Consistent with that request, staff recommends that the Planning Commission consider the following revision to the definition of Commercial Physical or Biological Laboratory in BMC Section 23.502.020(L)(1):

- (a) Commercial Physical or Biological Testing. A facility that provides controlled conditions in which scientific or technological ~~testing research, experiments,~~ and measurements s may be performed.

Staff had noted that the current definition of Commercial Physical or Biological Laboratory overlaps with the definition of R&D in the Glossary.¹ Both definitions include the words “biological,” “scientific,” and “research” in relation to laboratories. Such overlap has led to confusion as to how a proposed use would be classified, a difficulty that is exacerbated by the fact that there are different permit requirements for Laboratory and R&D uses in the same zoning districts. There is a concern that an otherwise permitted R&D use may mischaracterize itself as a Laboratory and exclude from consideration certain locations in Berkeley due to stricter permit requirements for Laboratories.

The proposed revision attempts to clarify the type of use that constitutes a Commercial Physical or Biological Laboratory. Such a use would be characterized by the testing or measurement of materials that are collected or received on-site, but are not part of new research or product or process development. The most common use that would meet this new definition would be a laboratory that processes blood samples for a hospital or other health service use. Laboratories that are engaged in scientific or product research would more easily be classified under R&D with this clarification.

NEXT STEPS

Hold a Public Hearing, and advance zoning ordinance amendments (**Attachment 1**) for recommendation to the City Council.

¹ BMC Section 23.502.020.R.8: 8. *Research and Development*. An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

Zoning Amendments to Support Innovation in Berkeley
Page 7 of 7

Item #11
July 17, 2024

CONTACT PERSON

Justin Horner, Planning and Development Department, 510-981-7476

Attachments:

- 1: Proposed Zoning Ordinance Amendments
- 2: Keep Innovation in Berkeley Referral – September 13, 2022
- 3: Planning Commission Staff Report – May 1, 2024
- 4: Public Hearing Notice

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
ZONING ORDINANCE AMENDMENTS TO ENCOURAGE RESEARCH
AND DEVELOPMENT USES (KEEP INNOVATION IN BERKELEY)**

The public may participate in this hearing by remote video or in-person.

The Planning and Development Department is proposing zoning ordinance amendments to encourage Research and Development (R&D) uses in the City of Berkeley. Proposed zoning ordinance amendments would revise permit requirements in a number of commercial districts (BMC 23.204.020); revise the District Purpose statements for the Mixed Manufacturing (MM) and Mixed-Use Light Industrial (MU-LI) zoning districts to specifically encourage R&D (BMC 23.206.070, BMC, 23.26.080); remove the regulation of Biosafety Level (BSL) from the zoning ordinance (BMC 23.206.080, BMC 23.502.202); revise minimum off-street parking requirements for R&D uses (BMC 23.322.030); and revise the definition of Laboratory use (BMC 23.502.020).

The proposed zoning ordinance amendments would apply to all parcels currently located in in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), C-NS (North Shattuck Commercial) and C-DMU (Downtown Mixed-Use), MM and MU-LI zoning districts. The zoning map is available online:

<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfaebb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Base%20Data;Planning%20and%20Building>

The hearing will be held on, December 3, 2024 at 6:00 pm in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of November 21, 2024. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Justin Horner, Principal Planner, Department of Planning and Development at 510-981-7476.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact

information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Published: November 22, 2024 – The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 21, 2024.

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Mark Numainville, City Clerk

