



Office of the City Manager

PUBLIC HEARING
March 22, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development Department
Subject: Referral Response: Research and Development (R&D) Definition

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of a Zoning Ordinance amendment that modifies the land use definition of Research and Development (R&D) [Berkeley Municipal Code (BMC) Division 5: Glossary – Defined Terms 23.502.020].

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On March 20, 2020 the City Council adopted a referral from Mayor Arreguin and Councilmember Wengraf to update the definition of R&D in the Zoning Ordinance (Title 23 of the Berkeley Municipal Code). The current definition is:

Research and Development

A Research and Development facility is an establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The March 2020 referral observed that the current definition does not adequately reflect present-day business activities. For example, the current definition prohibits R&D establishments from including office space and requires 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 business needs.

Modifications to the R&D definition supports the City’s Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Planning Commission Recommendation

Planning Commission discussed this referral on December 16, 2020 and June 2, 2021, and held a public hearing on October 6, 2021. Planning Commission focused not only on the substance of the definition but also on its formatting, aiming to present the words in a clear and logical manner. Below is the definition that Planning Commission recommended for City Council's consideration:

Research and Development

An establishment engaged in the following activities:

- *Industrial, biological, or scientific research; and*
- *Product or process*
 - *Design, or*
 - *Development, or*
 - *Prototyping, or*
 - *Testing.*

This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

Subsequent to the Planning Commission hearing, Planning & Development staff were informed that unordered, bulleted lists are not acceptable formatting for the Berkeley Municipal Code (BMC). As such, the Planning Commission's recommended definition is represented below in paragraph format for City Council consideration:

Research and Development

An establishment engaged in the following activities: 1) industrial, biological or scientific research; and 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 recommended definition addresses the referral—accommodating innovation in the R&D business sector—while maintaining consistency with Berkeley's regulatory practices. In addition, the Planning Commission recommendation included the following four elements that were developed in the course of their deliberations. Discussions took into consideration research and analysis presented in staff reports (which covered Berkeley's existing R&D regulations, R&D definitions adopted by other Bay Area jurisdictions, and consistency with the West Berkeley Plan), presentations and material provided by Berkeley's Office of Economic Development, and input from the public.

- Clearly state the required and acceptable land use activities of an R&D land use.

An R&D land use is characterized by a continuum of activities - research, development, prototyping, and testing. It is this continuum of activities that necessitates the need for an R&D land use, since an establishment conducting

research without development or development without research could be permitted with existing “stand-alone” land uses in the BMC. The proposed definition provides a list of required land use activities, making it clear that an R&D land use must include on-going production that results in the design, development, prototyping, or testing of a product, prototype, or process. The proposed definition reflects the interrelated functions of an R&D establishment while creating a distinction between businesses with R&D land uses and stand-alone labs, offices, or light manufacturing land uses.

- Remove prohibition on any office space.

The current definition of R&D prohibits office space. This is problematic because modern businesses with R&D land uses conduct research both in laboratory settings—which may include clean rooms, hoods, work benches, and machinery—as well as within office space, which may include desks and small-scale computer equipment. As referenced, the current definition intentionally prohibited office space in order to avoid office land uses from encroaching on limited industrial space in West Berkeley. The full prohibition of office space is problematic and inconsistent with the allowance of ancillary¹ office space and with the multi-faceted activities required of an R&D firm. The proposed definition allows for office space to be part of a business with an R&D land use. This is consistent with current business practices and R&D regulations in other cities.

- Address Planning Commission’s concerns about software development firms.

Planning Commission, sensitive to the unique physical needs of R&D establishments, wanted to ensure that office-based software firms would not compete for space and/or drive up land costs for R&D establishments. The referral requested the addition of “technological” research to emphasize the need for computer-intensive activities associated with businesses that use the R&D land use category. The proposed definition achieves this goal by allowing industrial, biological or scientific research *and* design, development, prototyping and testing in laboratories and offices. This modification would allow for technological research that utilizes custom and proprietary software, but directs R&D businesses that are purely office-based to locate in other commercial districts where lower impact office uses are allowed. This solution reserves limited industrial space for R&D facilities where larger experimental space may be needed for the purposes of research, design, and prototyping or where activities generate noise, odor or vibrations.

¹ BMC Definition: Use, Ancillary - A use that is both dependent on and commonly associated with the principal permitted use of a lot and/or building and that does not result in different or greater impacts than the principal use.

- Do not encroach on protected space in the West Berkeley Plan Area.

During the Planning Commission meeting on December 16, 2020, several concerns were raised regarding the possible encroachment of R&D facilities on space designated for protected manufacturing uses. Planning Commission's recommended amendments do not remove or modify existing protections for the conversion of protected space. Since the adoption of the protected space conversion provisions in 2011, no more than 30,000 square feet of protected space has been converted for the purposes of R&D. That relatively small volume of converted space is an indication that the existing regulations for the conversion of protected space are robust and achieving their intended effect. Planning Commission's recommended definition will not alter how R&D land uses are regulated relative to protected space.

The draft Zoning Ordinance amendments update the R&D definition to provide clarity and reflect existing practices within the sector and regulatory practices in other cities. The definition also provides more flexibility to existing and prospective operations in Berkeley. In addition, the amendments to the R&D definition are consistent with the West Berkeley Plan as they do not imbalance the economic mix of the Plan Area, and they advance the goal of supporting the growth of an evolving industry that is creating local jobs.

BACKGROUND

The current definition for R&D was created as a result of the 2007-2011 West Berkeley Project.² As part of this project, the Planning Commission developed amendments to address various challenges industries experienced in the West Berkeley Plan area.³ This project resulted in new land use definitions (including R&D and Arts and Crafts), the revision of protected use regulations, and other amendments that eased regulatory obstacles related to industrial business growth and opportunity in West Berkeley.

Planning Commission discussed this referral three times between December 2020 and October 2021. Staff support of the Commission's development of a recommendation included analysis of related definitions and regulations in the BMC, a survey of how other jurisdictions regulate R&D land uses (including Emeryville, Richmond, San Leandro and Oakland), an overview of the West Berkeley Plan, and a thorough analysis of emerging business sectors in Berkeley—with a particular focus on economic development in West Berkeley—provided by the Office of Economic Development.

As noted above, the Zoning Ordinance currently includes protections of manufacturing space in Berkeley as outlined in BMC23.206.050 [Protected Uses]. This Section of the

² [West Berkeley Project](https://www.cityofberkeley.info/WBP_Archive.aspx)

https://www.cityofberkeley.info/WBP_Archive.aspx

³ West Berkeley Plan (1993)

[https://www.cityofberkeley.info/Planning_and_Development/Redevelopment_Agency/West_Berkeley_Plan_\(The\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Redevelopment_Agency/West_Berkeley_Plan_(The).aspx)

BMC ensures that existing manufacturing spaces be maintained for a manufacturing land use or be replaced (at an alternate location within the zoning district) if a change of use occurs. The proposed R&D definition does not weaken these protections in the BMC.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Modifications to the R&D definition will not substantially change the primary activities of a business with an R&D land use classification or exacerbate detrimental impacts related to noise, vibration, odors, and the like within the mixed-use West Berkeley context. Existing performance standards and standard Use Permit conditions of approval would remain in place.

RATIONALE FOR RECOMMENDATION

The existing R&D definition is more restrictive compared to neighboring jurisdictions that permit this type of use. The proposed modifications to the definition of R&D reflect existing practices within the sector and regulatory practices in other cities. The definition also provides more flexibility to existing and prospective operations in Berkeley. The changes in the R&D definition are consistent with the West Berkeley Plan as they do not imbalance the economic mix of the Plan Area and advance the goal of supporting the growth of an evolving industry that is creating local jobs.

ALTERNATIVE ACTIONS CONSIDERED

Planning Commission considered multiple iterations of the R&D definition and also considered expanding the referral response to include updates to additional definitions, changes to levels of discretion and permitting thresholds, and modifications to regulations regarding protected spaces in West Berkeley and the West Berkeley Plan in general. Ultimately Planning Commission made a limited recommendation regarding the definition at this time. Council could take no action and continue to utilize the existing R&D definition, with no modifications.

CONTACT PERSON

Katrina Lapira, Assistant Planner, Planning & Development Department, 510-981-7488
Alene Pearson, Principal Planner, Planning & Development Department, 510-981-7489

Attachments:

- 1: Draft Ordinance
- 2: Council Referral from March 20, 2020
- 3: October 6, 2021 Planning Commission Meeting Final Minutes
- 4: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.502 TO MODIFY THE RESEARCH
AND DEVELOPMENT LAND USE DEFINITION

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

Section 1. That Berkeley Municipal Code 23.502.020 R.8 is amended to read as follows:

23.502.020 R.8

8. ***Research and Development*** An establishment engaged in the following activities: 1) industrial, biological or scientific research; and 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.

Section 2. 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.

ATTACHMENT 2

CONSENT CALENDAR

March 10, 2020

TO: Honorable Members of the City Council

FROM: Mayor Arreguín and Councilmember Wengraf

SUBJECT: Referral: Update the definition of “Research and Development”

RECOMMENDATION

Refer to the Planning Commission to update the definition of “Research and Development.”

BACKGROUND

In the 21st century, Research and Development has evolved to take on many new forms, such that it can be performed in spaces that may, at first glance, appear to be an office or light industrial environment rather than a traditional “laboratory” with, for example, benches and sinks.

The Planning Commission is encouraged to update the definition of “Research and Development”¹ to reflect evolving business practices and consider language such as:

Research and Development: An establishment comprised of laboratory or other associated and ancillary space, engaged in one or more of the following activities: industrial, technological, biological or scientific research; product design; associated software development; development and testing; and limited fabrication and/or manufacturing necessary for the production and assemblage of prototypical products.”

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

CONTACT

Mayor Jesse Arreguín
 mayor@cityofberkeley.info | 510-981-7100

¹ BMC — 23F.04.010 Definitions



Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
October 6, 2021**

The meeting was called to order at 7:02 p.m.

Location: Virtual meeting via Zoom

1. ROLL CALL:

Commissioners Present: Barnali Ghosh, Robb Kapla, Elisa Mikiten, Chip Moore, Christina Oatfield, Alfred Twu, Jeff Vincent (arrived 7:40), and Brad Wiblin.

Commissioners Absent: Savlan Hauser.

Staff Present: Secretary Alene Pearson, Katrina Lapira, Samantha Updegrave, and Eleanor Holander.

2. ORDER OF AGENDA: No changes.

3. PUBLIC COMMENT PERIOD: 0

4. PLANNING STAFF REPORT:

- City Council
 - September 14 – BZO presentation and deliberation
 - September 28 – BZO first reading adopted
 - Takes effect December 1, 2021
 - October 12 – Accessory Dwelling Units Ordinance and second reading of the BZO
- Objective Standards – ZORP Phase II
 - Proposing December 15 subcommittee meeting

Information Items:

- September 28 – City Council: Item 32 Baseline Zoning Ordinance (BZO) Zoning Ordinance Revision Project – BZO Document ([Link](#))

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Communications:

- BART Communications

Late Communications: *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two

- Supplemental Packet Three

5. CHAIR REPORT:

- None

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- None.

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wiblin/Moore) to approve the Planning Commission Meeting Minutes from

Ayes: Kapla, Mikiten, Moore, Oatfield, Twu, and Wiblin. Noes: None. Abstain: Ghosh. Absent: Hauser and Vincent. (6-0-1-2)

8. FUTURE AGENDA ITEMS AND OTHER PLANNING:

- Planning Commission
 - October 20
 - Bayer Development Agreement (Public Hearing)
 - November 3
 - BART Development Zoning Standards and EIR (Public Hearing)
 - Tentative Tract Map (Public Hearing)
 - 2022 Planning Commission Meetings Calendar
 - November 17
 - Housing Element EIR Scoping Meeting
 - Citywide Affordable Housing Requirements (Public Hearing)
 - December 1 – Several items
 - December 15 ZORP Subcommittee meeting (HOLD)

AGENDA ITEMS

9. Public Hearing: Business Support Zoning Amendment Referrals – Research and Development (R&D) Definition

Staff provided background information on the referral and shared the proposed R&D definition. After staff's presentation, the Planning Commission held a public hearing, received comments, discussed the proposed amendments, and made a recommendation for the consideration of City Council.

Motion/Second/Carried (Kapla/Vincent) to recommend that the City Council adopt the following land use definition for Research and Development.

Research and Development

An establishment engaged in the following activities:

- *Industrial, biological, or scientific research; and*
- *product or process:*
 - *design, or*
 - *development, or*
 - *prototyping, or*
 - *testing.*

This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

Ayes: Ghosh, Kapla, Mikiten, Moore, Twu, Vincent, and Wiblin. Noes: Oatfield. Abstain: None. Absent: Hauser. (7-1-0-1)

Motion/Second/Carried (Vincent/Wiblin) close the public hearing on the Business Support Zoning Amendment Referrals – Research and Development (R&D) Definition at 9:11pm

Ayes: Ghosh, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Hauser. (8-0-0-1)

Public Comments: 2

10. Action: Gentrification and Displacement Referral

Planning Commission re-established a subcommittee to address the Gentrification and Displacement referral.

Motion/Second/Carried (Kapla/Vincent) to appoint Commissioners Moore, Hauser, and Kapla (alternate) to the Gentrification and Displacement subcommittee.

Ayes: Ghosh, Hauser, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Hauser. (8-0-0-1)

Public Comments: 5

Motion/Second/Carried (Vincent/Mikiten) to adjourn the Planning Commission meeting at 9:27pm.

Ayes: Ghosh, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Hauser. (8-0-0-1)

Members in the public in attendance: 27

Public Speakers: 7

Length of the meeting: 2hr 25minutes



Alene Pearson

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
AMENDMENTS TO BMC CHAPTER 23.502 -- UPDATING THE RESEARCH AND
DEVELOPMENT (R&D) DEFINITION AND CORRESPONDING REFERENCES IN THE
ZONING ORDINANCE**

The City Council will consider amendments to the Research and Development land use definition in response to the Planning Commission recommendation and City Council referral to clarify provisions of the definition and to accommodate innovation in the R&D business sector, consistent with regulation in other jurisdictions. The amendments would apply in the Manufacturing Districts. This action is considered exempt from the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations (CEQA Guidelines) 15378(a) and 15060(c)(2), environmental review is not required because the proposed Zoning Ordinance amendment does not meet the definition of a Project under CEQA Guidelines Section 15378(a), nor does it constitute an activity covered by CEQA under CEQA Guidelines Section 15060(c)(2) because passage of amendments do not constitute a direct physical impact on the environment, nor would it result in an indirect, reasonably foreseeable physical impact on the environment. The proposed amendment does not include any provisions that would exempt or otherwise reduce environmental review required under CEQA for individual development projects.

The hearing will be held on **Tuesday, March 22, 2022 at 6:00 p.m.** The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **March 10, 2022**. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

For further information, please contact Alene Pearson, Principal Planner, Planning and Development Department at (510) 981-7489, or by e-mail at apearson@cityofberkeley.info.

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. 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 981-6900 or clerk@cityofberkeley.info for further information.

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City Clerk shall publish a notice at least 10 days prior to the date of the public hearing with the date, hour, and place of the public hearing for annual levy and collection of assessments in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Section 6061 of the Government Code.

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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 **March 10, 2022**.



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Mark Numainville, City Clerk