



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, May 1, 2024

6:00 PM

North Berkeley Senior Center

1901 Hearst Avenue, Berkeley

See “**MEETING PROCEDURES**” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

PRELIMINARY MATTERS

- 1. Roll Call:** **Merker, Blaine**, appointed by Councilmember Kesarwani, District 1
Vincent, Jeff, Chair, appointed by Councilmember Taplin, District 2
Moore III, John E. “Chip”, appointed by Councilmember Bartlett, District 3
Oatfield, Christina, appointed by Councilmember Harrison, District 4
Mikiten, Elisa, appointed by Councilmember Hahn, District 5
Marthinsen, Emily, appointed by Councilmember Wengraf, District 6
Twu, Alfred, appointed by Councilmember Robinson, District 7
Hauser, Savlan, appointed by Councilmember Droste, District 8
Ghosh, Barnali, Vice Chair, appointed by Mayor Arreguín
- 2. Land Acknowledgement:** The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

- 3. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 4. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “Public Testimony Guidelines” below):
- 5. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: June 5, 2024**
- 6. **Chairperson’s Report:** Report by Planning Commission Chair.
- 7. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 8. **Approval of Minutes:** Approval of Draft Minutes from the regular meeting on April 3, 2024.
- 9. **Future Agenda Items and Other Planning-Related Events:** None.

AGENDA ITEMS: All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- 10. **Discussion:** **Keep Innovation in Berkeley**
- Recommendation:** 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.
- Written Materials:** Attached.
- Presentation:** N/A

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Information Items: None.

Communications: None.

Late Communications: (Received after the packet deadline):

Late Communications: (Received and distributed at the meeting):

ADJOURNMENT

Meeting Procedures

Public Testimony Guidelines:

Speakers are customarily allotted up to two minutes each and may not cede their time to another speaker. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. ***To speak during Public Comment or during a Public Hearing, please line up behind the microphone.*** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

Consent Calendar Guidelines:

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

Procedures for Correspondence to the Commissioners:

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than 20 pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the day just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning of, the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records 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 a City board, commission, or committee, 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 Secretary of the relevant board, commission, or committee. 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 Secretary to the relevant board, commission, or committee for further information.

Written material may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours.

Note: *If you object to a project or to any City action* or procedure relating to a project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three business days before the meeting date.

Please refrain from wearing scented products to public meetings.



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **April 3, 2024**

3 The meeting was called to order at 6:03 p.m.

4 **Location:** North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley, CA 94709

5 • **ROLL CALL:**

6 **Commissioners Present:** Laurie Capitelli (alternate for Blaine Merker), Todd Andrew
7 (alternate for Jeff Vincent), Christina Oatfield, Elisa Mikiten, Emily Marthinsen, Alfred Twu,
8 Savlan Hauser, and Barnali Ghosh.

9
10 **Commissioner Absent:** Blaine Merker (excused), Jeff Vincent (excused), and John E.
11 Moore.

12
13 **Staff Present:** Secretary Alisa Shen, Clerk Zoe Covello, Justin Horner, and Robert Rivera.

14 • **LAND ACKNOWLEDGEMENT.**

15 The City of Berkeley recognizes that the community we live in was built on the territory of
16 xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-
17 chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the
18 sovereign Verona Band of Alameda County. This land was and continues to be of great
19 importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin
20 our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the
21 documented 5,000-year history of a vibrant community at the West Berkeley Shellmound,
22 and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's
23 residents have and continue to benefit from the use and occupation of this unceded stolen
24 land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating
25 the City of Berkeley, it is not only vital that we recognize the history of this land, but also
26 recognize that the Ohlone people are present members of Berkeley and other East Bay
27 communities today. The City of Berkeley will continue to build relationships with the Lisjan
28 Tribe and to create meaningful actions that uphold the intention of this land
29 acknowledgement.

30 • **ORDER OF AGENDA:** No changes.

31 • **PUBLIC COMMENT PERIOD:** 1.

32 • **PLANNING STAFF REPORT:**

- 33 • May agenda items still in discussion.

34 **Information Items:** None.

35 **Communications:**

- 36 • General.

37 **Late Communications:**

- 38 • Supplemental 1.

39

40 • **CHAIR REPORT:**

- 41 • None.

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

44

- 45 • None.

46 **8. APPROVAL OF MINUTES:**

47 Motion/Second/Carried (Twu/Mikiten) to approve the Planning Commission Meeting Minutes
48 from February 7, 2024.

49

50 Ayes: Oatfield, Mikiten, Marthinsen, Twu, Hauser, and Ghosh. Noes: None. Abstain: Capitelli
51 and Andrew. Absent: Moore. (6-0-2-1)

52

53 **9. OTHER PLANNING RELATED EVENTS:**

- 54 • None.

55

56 **AGENDA ITEMS**

57 **10. Public Hearing: Middle Housing General Plan Amendment**

58 Associate Planner Justin Horner presented on amendments to the General Plan, which were
59 updated for consistency with the Planning Commission's recommendation on Middle Housing
60 Zoning Amendments at the February 7, 2024 Planning Commission meeting.

61 Motions/Second/Carried (Oatfield/Mikiten) to close the public hearing at 6:42 pm.

62

63 Ayes: Capitelli, Andrew, Oatfield, Mikiten, Marthinsen, Twu, Hauser, and Ghosh. Noes: None.
64 Abstain: None. Absent: Moore. (8-0-0-1)

65

66 Motions/Second/Carried (Twu/Capitelli) to recommend that City Council adopt staff's
67 recommended General Plan updates with the following revisions:

68
69 1. Change the land use classification of "Low Medium Density Residential" to "Lower Density
70 Residential",

71
72 2. Change the land use classifications for Lower Density Residential to "one to 50 dwelling
73 units per acre" and for Middle Density Residential to "20 to 80 dwelling units per acre", and

74
75 3. Change the language to say "building intensity can range", instead of "building intensity will
76 range" under the Land Use Classifications, and

77
78 4. Direct staff to confirm that the highest density included in the proposed General Plan text
79 amendments comports with the Commission's recommendation on the middle housing zoning
80 ordinance amendments, and to confer with the City Attorney's office to ensure that the highest
81 density included in proposed General Plan changes does not confer more development
82 capacity than intended by the Planning Commission's recommendation on the middle housing
83 zoning ordinance amendments, and make any necessary changes, at 7:47 pm.

84
85 Ayes: Andrew, Capitelli, Marthinsen, Twu, Hauser, and Ghosh. Noes: Mikiten and Oatfield.
86 Abstain: None. Absent: Moore. (6-2-0-1)
87

88 **Public Comments: 5**

89 **11. Discussion: San Pablo Specific Plan**

90 Senior Planner Robert Rivera provided an update to the Planning Commission on the San Pablo
91 Specific Plan, including giving an overview of key existing conditions data and summarizing the
92 feedback collected at the Community Open House hosted on January 24, 2024.

93 **Public Comments: 5**

94 Motion/Second/Carried (Oatfield/Mikiten) to adjourn the meeting at 9:03 pm.

95
96 Ayes: Capitelli, Andrew, Oatfield, Mikiten, Marthinsen, Twu, Hauser, and Ghosh. Noes: None.
97 Abstain: None. Absent: Moore. (8-0-0-1)
98

99 **Members in the public in attendance: 11**

100 **Public Speakers: 11**

101 **Length of the meeting: 3 hr**



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.

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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 excessive noise. In addition, BMC Chapter 23.304.130 (Non-Residential Districts

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

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

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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.

Zoning Amendments to Support Innovation in Berkeley

Item 10
May 1, 2024

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 duplicitous 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.

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), TO SUPPORT BERKELEY’S
 INNOVIATION 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, within BMC Section 23.204.020 is amended, and a line named “Research and Development, 20,000 sq. ft. or 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 REGULATIONS
	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>Research and Development, 20,000 sq. ft. or larger</u>	AUP	AUP	--	--	--	--	AUP	--	AUP	AUP	--	

Section 2. That Berkeley Municipal Code 23.206.070.A.3 and 23.206.070.A.5 be 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 Berkeley Municipal Code 23.206.080.A.7 be 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” in Table 23.322-2, within BMC Section 23.322.030.B.1, is added to read:

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

<u>Research and Development</u>	<u>1 per 1,000 sq. ft.</u>
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Section 5. That a line named “Research and Development” in Table 23.322-4, within BMC Section 23.322.030.C.2, be added 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. 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.



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

Referral: Keep Innovation in Berkeley

CONSENT CALENDAR September 13, 2022

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 Arreguín 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>

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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

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	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	

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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	<ul style="list-style-type: none"> · No Containment · Defined organisms · Unlikely to cause disease 	<ul style="list-style-type: none"> · Containment · Moderate Risk · Disease of varying severity 	<ul style="list-style-type: none"> · High Containment · Aerosol Transmission · Serious/Potentially lethal disease 	<ul style="list-style-type: none"> · 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/>

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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>

Referral: Keep Innovation in Berkeley

CONSENT CALENDAR September 13, 2022

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/>