



CITY COUNCIL AGENDA REPORT

Meeting Date: March 2, 2023

From: John Swiecki, Community Development Director

Subject: Second Reading, SP-CRO Sierra Point Commercial District; Zoning Text Amendment 2022-RZ-4; Zoning text amendment to Title 17, Chapter 17.18 of the Brisbane Municipal Code (BMC) to update existing research and development use provisions and performance standards; and finding that this project is exempt from environment review under CEQA Guidelines Section 15183(a).

RECOMMENDATION

Receive second reading and consider adoption of an ordinance amending Chapter 17.18 of the Brisbane Municipal Code, to update existing research and development use provisions and related performance standards.

BACKGROUND

This ordinance was introduced at the regular City Council meeting held on February 16, 2023 and passed 3-2, with a modification to continue to have City Council serve as the reviewing authority for conditional use permits rather than the Planning Commission, for facilities that would exceed National Institute of Health (NIH) Biosafety Level 3.

City Council also directed staff to conduct additional outreach, through the City's Economic Development Director, to the Sierra Point biotechnology tenants regarding the proposed changes to the animal testing use provisions. While this is underway no comments have been received as of the writing of this staff report. If any comments are received prior to tonight's hearing they will be relayed to the City Council for consideration.

ATTACHMENTS

1. Draft Ordinance Amending SP-CRO R&D Provisions, with redlined modification from the first reading
2. February 16, 2023 staff report



John Swiecki, Community Development Director



Clay Holstine, City Manager

ATTACHMENT 1

ORDINANCE NO. 677
AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTIONS 17.18.020, 17.18.030 AND 17.18.045 AND
DELETING SECTION 17.18.035
OF THE BRISBANE MUNICIPAL CODE
CONCERNING RESEARCH AND DEVELOPMENT USES IN THE
SP-CRO SIERRA POINT COMMERCIAL DISTRICT

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Sections 17.18.020 and 17.18.030 are amended to read as follows:

17.18.020 - Permitted Uses

The following uses shall be allowed in the SP-CRO district:

1. Offices;
2. Hotels;
3. Retail sales and rental;
4. Restaurants;
5. Bars;
6. Financial institutions;
7. Personal services;
8. Commercial gyms and health facilities;
9. Meeting halls;
10. Marinas;
11. Research and development, unless the use is classified as a conditional use pursuant to Section 17.18.030.F. Research and development may include the use of live invertebrate animals, such as insects, or any of the following live vertebrate animals: fish, amphibians, reptiles or rodents. Research and development involving the use of other live animals not listed here is prohibited. All research and development uses are subject to the performance standards set forth in [Section 17.18.045](#).

17.18.030 – Conditional uses.

The following conditional uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to [Chapter 17.40](#) of this title:

- A. Child care centers when:
 - a. Located more than five hundred (500) feet from the edge of the eastern-most lane of the Bayshore Freeway (U.S. 101);
 - b. Located within an area with a community noise equivalent level (CNEL) of not more than sixty (60) dB as determined by a professionally-prepared acoustical analysis report; or

located within an area with a community noise equivalent level (CNEL) of sixty to eighty (60—80) dB and designed with the noise insulation features identified in a professionally-prepared acoustical analysis report so as to comply with Figure 2 in Appendix C of the state of California General Plan Guidelines 2003; and

- c. Designed and operated so to comply with the noise levels specified in Brisbane Municipal Code [Section 8.28.040](#), as per the recommendations of a professionally-prepared acoustical analysis report.
- B. Medical facilities.
- C. Commercial recreation.
- D. Transit/transportation facilities.
- E. Temporary uses.
- F. Research and development utilizing biological agents exceeding Risk Group 3 or Biosafety Level 3 as defined by the National Institute of Health or the Center for Disease Control, **except that for such research and development uses the City Council shall act as the reviewing authority instead of the Planning Commission. All research and development uses are subject to the performance standards set forth in Section 17.18.045.**

SECTION 3: Section 17.18.035 is deleted in its entirety.

SECTION 4: Sections 17.18.045 is amended to read as follows:

17.18.045 - Performance standards.

- A. All research and development uses shall submit to the planning department a risk analysis performed by a qualified hazardous or biologic materials professional specifying all hazardous or biologic materials to be utilized and methods of safe handling and disposal prior to building permit or business license issuance.
- B. Research and development involving the use of live animals, specifically permitted in Section 17.18.020.K, shall be conducted in compliance with the Institute of Laboratory Animals Resources' Guide for the Care and Use of Laboratory Animals, and in compliance with all applicable federal, state and local laws and regulations as most recently amended.
- C. Research and development uses involving the use of biological agents shall comply with all design standards set forth in the most current Center for Disease Control (CDC) Office of Health and Safety document "Biosafety in Microbiological and Biomedical Laboratories."
- D. Research and Development involving cannabis is subject to the requirements set forth in [Chapter 17.33](#).
- E. Lighting shall be designed to avoid excessive glare as viewed from offsite locations, in compliance with the California Green Building Standards Code.

SECTION 11: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 12: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____ 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Legal Counsel



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COMMUNITY GOAL/RESULT

Safe Community - Residents and visitors will experience a sense of safety.

PURPOSE

To update the research and development (R&D) permitted and conditional use provisions contained in the SP-CRO Sierra Point Commercial District zoning, Brisbane Municipal Code Chapter 17.18.

RECOMMENDATION

Decide on the draft ordinance to amend the SP-CRO Sierra Point Commercial District R&D provisions (see Attachment 1).

BACKGROUND

BMC Section 17.02.675 defines research and development as *“a use engaged in studying, testing, designing, analyzing and experimenting with potential or existing products, processes or services, including cannabis and cannabis products.”*

On June 16, 2008, City Council adopted zoning provisions, via Ordinance 528, allowing for R&D uses as either permitted by-right or as conditional uses in the Sierra Point Commercial District. With regards to using live animals, the ordinance provisions permitted by-right, R&D on live insects, rodents, rabbits, fish, and amphibians. R&D involving the use of live dogs, cats or nonhuman primates was prohibited. Use of other live animals that are not named as permitted or prohibited are subject to a conditional use permit. Additionally, a provision was included

that City Council is named as the approving authority instead of the Planning Commission, as is the case with all other use permits.

In 2022, Bristol-Myers Squibb (BMS) applied for a use permit to conduct R&D using minipigs at 1400 Sierra Point Parkway. That has been the only R&D use permit application filed to date pursuant to the regulations described above. That application was heard by City Council on May 19, 2022, continued for further public hearing and then withdrawn by the applicant on August 26th, before a decision was made. Following the withdrawal of that application, the City Council directed staff to initiate a zoning code amendment to consider updates to the live animals testing provisions. An ad hoc City Council subcommittee (Councilmembers Cunningham and Mackin) met on October 31, 2022 and indicated a desire to consider prohibiting the use of all animals except those expressly permitted under the ordinance, thereby eliminating the category of conditionally permitted animal use. The subcommittee also expressed interest in considering the removal of rabbits from the R&D permitted uses list.

A public hearing was held at the Planning Commission on January 26, 2023 to consider the following draft amendments:

- Elimination of the use permit category of R&D using live animals. Thus, R&D using specifically named live animal groups would be permitted by right, and the use of all other animals would be prohibited.
- Rabbits would be removed from the permitted R&D uses category.
- Permitted R&D uses would be expanded beyond insects to the larger category of invertebrates (i.e. animals without a backbone such as insects, spiders, worms, etc.). Permitted uses would also be expanded from amphibians to also include reptiles.
- Aside from animal testing, use permits for R&D utilizing biological agents exceeding National Institute of Health (NIH) Risk Group 3 would still be required, but the approving authority would be the Planning Commission, instead of City Council, with Council still being the authority on appeal of a Planning Commission decision, as is the process for other use permits.
- An organizational cleanup of the performance standard provisions was also included in the draft ordinance.

The January 26, 2023 Planning Commission report and minutes are attached for reference. The Planning Commission, by a vote of 3-1, recommended that City Council deny the proposed ordinance. The Planning Commission resolution, draft minutes and agenda report are provided in Attachments 3, 4 and 5. Public correspondence to the Commission is provided in Attachment 6.

DISCUSSION:

A summary of the Planning Commission's discussion of the draft ordinance is provided in the draft minutes, Attachment 4. In summary, the Commissioners voting against the amendment expressed their concern over limiting R&D using live animals as proposed and expressed a desire to allow the scientific community to take the lead regarding the need for animal studies, while the dissenting Commissioner spoke in favor of further limiting animal testing as proposed.

There was also some discussion of FDA Modernization Act 2.0, passed by Congress in December 2022, which removed the requirement to use animal testing in drug development. It allows drug companies the option of using "nonclinical test" instead of tests on animals when making new drug submissions to the U.S. Food and Drug Administration (FDA). This allows for a shift away from mandated animal studies for FDA approval, but does not go so far as to prohibit animal studies. Note that animal care at R&D facilities is the purview of the U.S. Dept of Agriculture (USDA).

The City Council has a few options with this application.

1. Vote to deny the zoning text amendment, thereby affirming the Planning Commission's recommendation. This would keep the existing provisions of BMC Chapter 17.18 unchanged. Note that under the current ordinance, there are no special findings provided for R&D use permits, but rather the standard findings contained in BMC Section 17.40.060 apply. That is, *"In considering an application, the planning commission shall consider and give due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question. The planning commission shall determine whether or not the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit."* These findings focus on potential impacts to neighbors, but do not specifically address issues of animal use related to R&D work. It does not appear the current findings are well suited to address concerns regarding animal testing.
2. Council may reject the Commission's recommendation and adopt the zoning text amendment as proposed. Clean and redlined versions of the draft ordinance are provided in Attachments 1 and 2.

3. Council may adopt an amendment that is different from what has been provided. In this case, depending on Council's direction, staff may need to bring a revised draft ordinance back to Council for consideration. Council may provide direction and refer this matter back to the Planning Commission for further study.

FISCAL IMPACT

None.

MEASURE OF SUCCESS

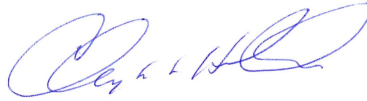
To provide clear R&D provisions in the BMC.

ATTACHMENTS

1. Draft Ordinance Amending SP-CRO R&D Provisions
2. Redlined Draft Ordinance
3. Planning Commission Resolution 2022-RZ-4
4. Draft Planning Commission Meeting Minutes, January 26, 2023
5. Planning Commission Agenda Report, January 26, 2023
6. Correspondence



John Swiecki, Community Development Director



Clay Holstine, City Manager