



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** May 7, 2019  
**TO:** Christine Daniel, City Manager  
**FROM:** Charles S. Bryant, Community Development Director  
**SUBJECT:** **Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations To Allow The Research and Development Use Type In The Mixed Use With Residential Zone (CEQA Status: General Plan EIR Certified by City Council on October 13, 2009)**

### RECOMMENDATION

The Planning Commission and staff recommend that the City Council amend the Planning Regulations to allow the Research and Development use type in the MUR (Mixed Use with Residential) zone with a conditional use permit.

### BACKGROUND

An application to amend the Planning Regulations to allow the Research and Development (R&D) use type in the MUR (Mixed Use with Residential) zone with a conditional use permit was received on March 11, 2019.

The Research and Development use type is defined in Section 9-2.421 of the Planning Regulations as “Research of an industrial or scientific nature, including associated office space. Typical uses include indoor laboratories and testing facilities. This use type may include fabrication and small scale-up facilities as part of the research function but excludes Manufacturing use types.”

Section 9-3.102(a)(4) states that the purpose of the MUR zone “is to implement the provisions of the General Plan applicable to the Mixed Use with Residential land use classification.”

The Mixed Use with Residential land use classification is defined in section 2.4 of the General Plan as “One or more of a variety of residential and nonresidential uses, including but not limited to offices, retail and hotels. On larger sites, a mix of residential and non-residential uses is required; on smaller sites, a single use may be permitted.” Adding the Research and Development use type as a conditionally permitted use to the MUR zone is consistent with section 2.4 and Land Use Diagram, Figure 2.2 in the General Plan.

Research and Development is currently only permitted in the OT (Office/Technology) and INL (Light Industrial) zones; requires a minor conditional use permit in the MUN (Mixed Use with Non-Residential) zone; and is conditionally permitted in the OT/DH (Office/Technology

Doyle Hollis North Area) and INH (Heavy Industrial) zones, as indicated below in an excerpt from Table 9-3.202 of the Planning Regulations, “Uses Permitted, Conditionally Permitted and Prohibited”. As noted below, Research and Development is currently prohibited in the MUR (Mixed Use with Residential) zone.

**Table 9-3.202**

	Base Zones													Overlay Zones					
	RM	RMH	RH	MUR	MURS	MUN	OT	OT/DH	INL	INH	P	M	PO	SM	UT	PA	NR	RR	TH
<b>Use Classifications</b>																			
Research and Development	X	X	X	X	X	CM	P	C	P	C	X	X	X	X	X				

The applicant owns Jellybean Square, which is zoned MUR. In their letters to the Planning Commission, the applicant explains that they have received many inquiries from R&D establishments interested in leasing space, but they are unable to lease to them due to the prohibition of the R&D use in the MUR zone. The applicant also notes that, while there are other zones and buildings available for R&D in Emeryville, the existing spaces that cater to R&D are generally for larger labs and are not what start-ups or smaller labs need. The applicant posits that allowing R&D in the MUR with a conditional use permit would help Emeryville attract and serve a greater variety of R&D uses.

In order to conditionally permit R&D in the MUR zone, the only change that needs to be made to the Planning Regulations is to change the “X” on Table 9-3.202 at the intersection of “Research and Development” and “MUR” to “C.”

The proposed zoning text amendment was considered by the Planning Commission at their March 28, 2019 meeting. The Planning Commission inquired about potential impacts to neighboring uses, specifically in regard to safety and noise from roof top equipment. Staff explained the review process for new R&D uses, which includes assessing impacts depending on the specific use; reviewing all roof top equipment for compliance with City noise regulations; and coordinating review of a potential use with the Building Division and Fire Department for safety. Staff noted that many R&D uses function very similarly to office uses, and often do not require specialized infrastructure such as venting hoods. There was no public comment. After hearing staff’s explanation of the review process for conditionally permitted R&D uses, the Planning Commission voted unanimously to recommend that the City Council approve the proposed zoning text amendment.

**DISCUSSION**

As the Research and Development use classification covers a diversity of establishments with varying potential impacts, the proposal is for the use to require a conditional use permit in the MUR zone. This would require that findings be made per Section 9-7.505, and that potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and

vibration be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations.

The Research and Development use classification was not initially included to the MUR zone when the new Planning Regulations were adopted in 2013 because of concerns about potential impacts of co-locating R&D and residential uses. However, staff recognizes that many R&D uses are very low-impact, and that many buildings in the MUR zone only contain commercial uses. Over the past few years, staff has fielded many inquiries about locating R&D uses throughout the city in the MUR zone, none of which appeared objectionable in the proposed locations.

Therefore, with the safeguards afforded by the discretionary review process, staff feels that it is appropriate to allow R&D uses in the MUR zone with a conditional use permit.

## **ENVIRONMENTAL REVIEW**

The environmental impacts of the Emeryville General Plan were identified and analyzed in the Environmental Impact Report (EIR) adopted and certified by the City Council by Resolution No. 09-207 on October 13, 2009. The proposed amendments to Table 9-3.202 of the Planning Regulations are minor in substance and effect and thus the impacts of the proposed Planning Regulations Amendment are no different than those analyzed in the EIR. Since certification of the EIR (i) there are no substantial changes in the Emeryville General Plan which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, (ii) there are no substantial changes with respect to the circumstances under which the Emeryville General Plan is undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, and (iii) there is no new information of substantial importance which was not known at the time the EIR was certified which would show that (a) the project will have one or more significant effects not discussed in the EIR, or (b) significant effects previously examined will be more severe than shown in the EIR, or (c) mitigation measures or alternatives found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the General Plan, or (d) mitigation measures or alternatives which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment. Accordingly, no Subsequent EIR is required pursuant to Section 15162 of the State CEQA Guidelines and likewise no Supplement to the EIR is required pursuant to Section 15163 of the State CEQA Guidelines.

## **REQUIRED FINDINGS**

In order to approve an amendment to the Planning Regulations, the City Council must be able to make the findings listed in the Amendment Procedure at Section 9-7.1305. In the Planning Commission's view, these findings can be made as follows:

- (a) The proposed amendment is consistent with the General Plan.

**The proposed amendment to the Planning Regulations to allow the Research and Development use type in the MUR Mixed Use with Residential zone with a conditional use permit is consistent with the following General Plan goals and policies:**

***LU-G-1 An overall balance of uses—Employment, residential, cultural, destination and local retail—as well as a full range of amenities and services necessary to support a vibrant community.***

The proposed Planning Regulations amendment to allow the Research and Development use type in the MUR zone adds to the overall balance of uses in the city by providing a wider range of locations and building types for Research and Development uses. This proposed amendment will potentially add to the diversity of employment opportunities in Emeryville and the vibrancy of the community.

***LU-G-2 A mixed use city—Mixed-use development in various parts of the city, with the range of permitted and required uses varying to meet the needs of specific districts and neighborhoods.***

The proposed Planning Regulations amendment to allow the Research and Development use type in the MUR zone increases the mix of uses conditionally permitted in a mixed use zone. The MUR zone is located throughout the city, providing opportunities for Research and Development uses to meet varying needs in different districts and neighborhoods.

***LU-G-11 A wide range of economic activity—An economy that capitalizes on Emeryville’s central location, strengthens the City’s tax base, and ensures that Emeryville has adequate fiscal resources to fund high quality public services for its residents and businesses.***

The proposed Planning Regulations amendment to allow the Research and Development use type in the MUR zone provides a greater range of potential economic activities by conditionally permitting a use that captures a diversity of activities, from small start-ups to large international businesses, that may capitalize on Emeryville’s central location, strengthen the City’s tax base, and ensure that Emeryville has adequate fiscal resources.

***LU-G-13 Local employment opportunities—encourage establishment of businesses that will employ and serve Emeryville residents.***

**The proposed Planning Regulations amendment to allow the Research and Development use type in the MUR zone will provide a greater diversity of locations and building types available for Research and Development use types that will provide local employment opportunities for Emeryville residents.**

***LU-P-1 Land uses will be consistent with the Land Use Classifications in section 2.4 and the Land Use Diagram, Figure 2-2.***

**The Mixed Use with Residential land use classification is defined in section 2.4 of the General Plans as “One or more of a variety of residential and nonresidential uses, including but not limited to offices, retail and hotels. On larger sites, a mix of residential and non-residential uses is required; on smaller sites, a single use may be permitted.” Adding the Research and Development use type as a conditionally permitted use to the MUR zone is consistent with section 2.4 and Land Use Diagram, Figure 2.2 in the General Plan.**

***LU-P-9 Zoning performance measures will ensure health and safety compatibility for industrial uses bordering residential uses.***

**As the Research and Development use classification covers a diversity of establishments with varying potential impacts, the proposed Planning Regulations amendment would require a conditional use permit for the Research and Development use type in the MUR zone. This would require that findings be made per Section 9-7.505 of the Planning Regulations, and that potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and vibration be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations.**

***LU-P-29 The City will encourage the development and retention of small business, startup firms, partnership incentives, and buildings that accommodate these businesses.***

**The proposed Planning Regulations amendment to allow the Research and Development use type in the MUR zone will provide a greater diversity of locations and building types available for Research and Development use types which include small businesses and start-up firms.**

***LU-P-30 The City will encourage development of dynamic, leading edge industries, based in high technology, medical/bio engineering, bio***

***technology, and media that provide good quality jobs with the potential for career advancement.***

**The proposed Planning Regulations amendment to allow the Research and Development use type in the MUR zone will provide a greater diversity of locations and building types available for Research and Development uses which covers a wide range of businesses that include dynamic, leading edge industries, based in high technology and engineering that provide good quality jobs with potential for career advancement.**

- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.

**The proposed amendment to the Planning Regulations will protect the public health, safety, and general welfare by requiring a conditional use permit in the Mixed Use with Residential zone. The proposed amendment will be of benefit to the public by adding to the diversity of economic and employment opportunities in the city.**

- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

**The Environmental Impact Report for the General Plan was certified by the City Council by Resolution No. 09-207 on October 13, 2009. Since that time, there have been no substantial changes in the General Plan nor in the circumstances under which it is undertaken, nor any new information of substantial importance, that would require the preparation of a Subsequent EIR or Supplement to the EIR. Thus, the General Plan EIR applies to the proposed Planning Regulations Amendment.**

- (d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.  
**No changes to the Zoning Maps are proposed.**

#### **FISCAL IMPACT**

None.

#### **STAFF COMMUNICATION WITH THE PUBLIC**

As required by the Planning Regulations, a legal advertisement was published in the Oakland Tribune. As noted above, the Planning Commission unanimously recommended adoption of the Planning Regulations amendment at its March 28, 2019 meeting.

## **CONCLUSION**

The Planning Commission and staff recommend that the City Council take the following actions:

1. Introduce the Ordinance after a motion to read by title only.
2. Take public testimony regarding the Ordinance.
3. Adopt the first reading of the Ordinance.

**PREPARED BY:** Navarre Oaks, Assistant Planner

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

## **ATTACHMENTS**

- Attachment 1 - Applicant Request Letter
- Draft Ordinance