



CITY OF SAN CARLOS

SAN CARLOS PLANNING AND TRANSPORTATION COMMISSION

Tuesday, February 6th, 2023
7:00 PM
San Carlos City Hall, Council Chambers
600 Elm Street, San Carlos, CA 94070
www.cityofsancarlos.org

APPROVED MINUTES

COMMISSIONERS

Jim Iacoponi, Chair
Kristen Clements, Vice Chair
David Roof
Ellen Garvey
Janet Castaneda

ADVISORY

Al Savay, Community and Economic Development
Director
Andrea Mardesich, Assistant Community
Development Director
Greg Rubens, City Attorney
Lisa Costa Sanders, Principal Planner, Consultant

1. MEETING CALLED TO ORDER

The meeting was called to order at 7:01 pm.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC COMMENT

Debbie Baldocchi suggested the City to use another publication for Public Notices such as the San Mateo Daily Journal which is more well-read.

5. APPROVAL OF MINUTES

- a. Approval of the Minutes from the Planning and Transportation Commission Meeting of January 3, 2023

M/S Clements/Roof motioned and seconded to approve the minutes of January 3, 2023, Planning and Transportation Commission Meeting.

The motion passed 5-0 by the following roll call vote:

Ayes: Roof, Castaneda, Garvey, Clements, Iacoponi

Noes: None

- b. Approval of the Minutes from the Planning and Transportation Commission Meeting of January 17, 2023

M/S Clements/Garvey motioned and seconded to approve the minutes of January 17, 2023, Planning and Transportation Commission Meeting with the edits noted by Commissioner Castaneda.

The motion passed 5-0 by the following roll call vote:

Ayes: Roof, Castaneda, Garvey, Clements, Iacoponi

Noes: None

6. PUBLIC HEARING

- a. Consider a Resolution Recommending the City Council Adopt an Ordinance Amendment to the City of San Carlos Municipal Code Section 18 to Regulate Laboratories with Biosafety Levels (BSL)

Lisa Costa Sanders, Principal Planner, Consultant presented the item.

Vice Chair Clements wanted to know the typical proximity to other uses when a Biosafety Level 3 (BSL-3) Lab is put in place. She also wanted to know if there are examples of BSL-3 facilities.

Lisa Costa Sanders shared that in San Francisco and South San Francisco there have been occasions where BSL-3 Labs have been utilized and those were more a campus environment.

Carol Johnson, Consulting Planner, shared that they were unable to locate the specific address for BSL-3 facilities because they were commissioned and then decommissioned, therefore trying to find a current list is very difficult. Carol Johnson added that in San Francisco, BSL-3 Labs are allowed with a Conditional Use Permit (CUP) in mixed-used areas such as office uses, and multi-family uses. She stated that many jurisdictions allow them in a mixed-use setting and do not require separation from sensitive uses.

Vice Chair Clements wanted to know whether the City would be in a disadvantage position or out of step with the market demand for facilities if it bans BSL-3.

Lisa Costa Sanders shared that there is only about 1% of BSL-3 Lab spaces. She added that based on some feedback from developers, businesses may choose to locate elsewhere in a jurisdiction that does not have BSL restrictions.

Commissioner Roof disclosed that he works for a pharmaceutical company, Genentech, but it will not impact his judgement on this item. He wanted to know if the County and State regulations prevent BSL-3 and BSL-4 Labs.

Lisa Costa Sanders stated that the County and State regulations do not prevent BSL-3 and BSL-4 Labs. She noted that the Airport Compatibility Zones restricts BSL-3 and BSL-4 labs in certain areas close to the airport.

Commissioner Roof asked about the choice of language, “banning BSL-3 and BSL-4 facilities” in the report as opposed to “prevents the use of Level 4 ideological agents”. He shared that there may be companies wanting to build a BSL-3 facility and use it for BSL-2 work.

Carol Johnson stated that in their research of various agencies at different jurisdictions that had adopted regulations specific to biosafety levels there is a preponderance of using the word “facility.” She added there are other jurisdictions that used the phrase “agent”, and Fremont is one of them. Carol Johnson shared that the choice of language can be part of the Commission’s deliberation and a recommendation to modify the text as they so choose.

Commissioner Castaneda wanted to know if there are only seven BSL3 Labs in the Bay Area.

Lisa Costa Sanders stated that is a difficult to find accurate information on current facilities, but it is the best research they were able to locate.

Commissioner Castaneda wanted to confirm that there are only 1% of labs classified in BSL3.

Lisa Costa Sanders stated that is correct at any given time.

Commissioner Castaneda wanted to know who inspects those BSL-3 Labs in the Bay Area.

Carol Johnson shared that in the City of San Francisco there is no prescribed annual inspection.

Commissioner Garvey wanted to know if any BSL-3 Labs have ever been commissioned in the Peninsula, for example, Stanford.

Carla Boragno, Former Vice President of Site Services, Genentech shared that those labs are rare, and she is aware of one lab in San Francisco, but she is not at liberty to share the name. She added that Genentech in the 90s built and commissioned that type of lab for a particular research program for HIV, and when the lab was no longer needed it was decommissioned.

Carla Boragno added that there are clear and specific guidelines around the design and commissioning of those labs and when combined with design control and the containment along with administrative processes with regards to training and standard operating procedure, those labs are designed to be operated in a very safe way.

Chair Iacoponi referred to the Airport Compatibility Zone and the dotted purple line in the presentation. He wanted to know if the Airport Zone, which excludes BSL-3 and BSL-4 covers most of San Carlos.

Lisa Costa Sanders clarified that it is the dark purple area that does not allow BSL-3 or BSL-4. The purple dotted line is Compatibility Zone 6, which has no restriction.

Chair Iacoponi wanted to know the thinking behind allowing BSL-1 and BSL-2 only when other cities do not see the need to regulate this.

Lisa Costa Sanders stated that the City receive feedback from the public of their concern with BSL-3 and BSL-4, and the City received some direction from the City Council with the adoption of the General Plan Policy to consider prohibiting BSL-3.

Chair Iacoponi wanted to know the logic behind the cut off at BSL-3.

Lisa Costa Sanders explained that BSL-1 and BSL-2 do not have the same level of safety protocols requirements, and at BSL-3 there is a big step-up.

Vice Chair Clements wanted to know why the City proposed to ban BSL-3 and not suggest a strict CUP with a strict monitoring program. She wanted to know the pros and cons.

Al Savay, Community and Economic Development Director explained that since it was just 1% of usage of BSL-3 facilities in the area and from an economic impact point of view, the City did not believe that it was significant. He stated that the City weighted the economic issues, community safety and concern, the City felt that they should move forward with the recommendation to the Planning and Transportation Commission, because it does not have a significant impact on the marketplace.

Vice Chair Clements wanted to know why the City wanted to put in such regulations when there are other agencies already regulating. She also wanted to know who the City would work with amongst the other agencies.

Lisa Costa Sanders stated that from their research the existing regulations are independent and specific to the kind of operations and agents that the facility is dealing with. She added that if the City were to regulate, one thing that could happen is that the City would act as an umbrella, receiving all the compliance reports from the labs stating they have met all regulations, which to the public the City is another check point and would provide additional reassurance.

Lisa Costa Sanders shared that in some jurisdictions in the East Coast have committees to review this, but the City of San Carlos does not have the staff expertise. She added that perhaps the County could establish that level of oversight at the regional level.

Greg Rubens, City Attorney stated that City oversight is part of the City's general police power and general health and safety regulation. He stated that he would want to look at the overlay with the County and State regulation to see whether there is some level of preemption, where it's duplicative of what is already been done.

Vice Chair Clements wanted to know if the City would be preempted by something should they start to monitor CUPs.

Greg Rubens shared that the City has many standard conditions in the CUP review process that deal with interagency issues. He gave a few examples. Greg Rubens stated that the City in essence is adopting those standards as part of the CUP approval process. He added that if someone does not follow those standards, the City could conduct a proceeding to revoke their permit or report to the appropriate agency who would have their own administrative process to create compliance with the rules.

Lisa Costa Sanders stated that the City's role is to verify that the labs received all the appropriate approvals required by the other agencies and not to deny or review them.

Commissioner Castaneda wanted to know would the effect of preemption by the state or federal emergency declaration still allow the City to help in a national emergency if the City were to limit operations at BSL-2.

Greg Rubens explained that should there be a situation where a BSL-2 Lab could do something to help the national emergency but would require them to be a BSL-3 Lab, and they were the only lab that could do that, there may be some emergency power that could apply to make that happen. He added that the City could also amend the Zoning Ordinance if required to help solve the national emergency.

Chair Iacoponi wanted to better understand the approval and on-going enforcement of a CUP for BSL-3.

Lisa Costa Sander explained that findings would need to be made to grant CUP approval, and the City needs to develop what those findings are. She added that there are no annual reporting requirements for other CUPs, it would only be enforced when there is a violation.

Carol Johnson stated that the other CUPs did not have any unique findings, only the general conditional use findings for the jurisdiction such as compliance with the General Plan and no detriment to the public health safety.

Greg Rubens shared that the City could develop a special finding for local conditions for granting a CUP if that is something the Commission wanted.

Vice Chair Clements wanted to know how much it cost and what it entails to set up a CUP Monitoring Program.

Al Savay stated that it would be significant. He shared that he does not know of any other cities that have a monitoring program. Al Savay added that there is an informal oversight program that is complaint based and is very effective. He explained that once there is a complaint, the City would investigate and talk to related parties to verify facts. That process usually would get the CUP back in compliance, and if not, the City has the ability to revoke the CUP.

Commissioner Garvey wanted to know how easy is it to retrofit a BSL-2 to BSL-3 or whether it make financial sense to start out with a BSL-3.

Lisa Costa Sanders stated that is would be difficult to retrofit later, therefore one should build a lab assuming they will want a BSL-3 lab in the future.

PUBLIC COMMENT

Ryan Guibara from MBC Biolabs stated that if the City bans BSL-3 that sends a clear message to the market that the City does not want biotechnology in San Carlos. He added that when a potential company is looking for space and compare the pros and cons of each city, the banning of BSL-3 will deter them from choosing San Carlos and would have a drastic impact to building a biotechnology community.

Ryan Guibara shared that retrofitting a BSL-2 to BSL-3 Lab is possible but difficult. He added that in general only a very small component of a BSL-2 Lab is a BSL-3 Lab.

Vice Chair Clements wanted to know what can be done in a BSL-3 Lab.

Ryan Guibara explained that some COVID work is done in a BSL-3 Lab and Ebola is done in a BSL-4 Lab. He added that a BSL-3 Lab has higher safety requirements, which makes it foolproof for agents that are in there.

Commissioner Castaneda wanted to know the cost of retrofitting to a BSL-3 Lab. Ryan Guibara stated that it would be expensive.

Commissioner Garvey wanted to know if the BSL-3 Lab is similar to a semiconductor clean room where there are airlocks, HVAC, frequent air changes and filters.

Ryan Guibar explained that there are similarities and differences.

Caller 1 David Crabbe from the Sierra Club shared that he is against BSL-3 because of health and safety issues, particularly air born transmitted disease. He added that by putting these labs in the middle of the peninsula does not make sense. David Crabbe stated that the labs have control of what is within their facility, but the City has control of what is outside the facility, that is the distance between labs and other buildings.

Caller 1 David Crabbe agreed that with a CUP there needs extensive manpower to monitor and enforce, therefore by banning BSL-3, it would eliminate the problem entirely. He shared that BSL-3 is a real safety issue especially the City is in an earthquake area coupled with sea level rising.

Caller 3 Gary Baldocchi shared that labs that perform research on life-threatening pathogens have no place in densely populated residential neighborhoods. He shared his concerns of the consequences of flooding these BSL-3 labs would have on the east and northeast side of San Carlos neighborhood. Gary Baldocchi added that the cost of monitoring, establishing committees, and passing new ordinance would be costly and he felt that taxpayers should not bear that burden. He agreed with City Staff that BSL-3 and BSL-4 should be banned.

Caller 4 Debbie Baldocchi strongly supported the banning of BSL-3 and BSL-4. She is concerned that it appears most of the Planning and Transportation Commission is opposed to banning BSL-3. Debbie Baldocchi urged the commissioners to read the links she shared in her first comment letter and hear what the experts have to say on unregulated private labs. Debbie Baldocchi also stated that flooding would have negative impact to the east and northeast area.

Caller 5 Steven Goodale, a member of the Sierra Club who is part of the working group that looked into the life science and biotech firms. He shared that they met some east coast experts in land use and permitting to give a webinar called Planning for Life Science Development in the Bay Area Communities on March 2nd. Steven Goodale stated he sent a save-the-date invite to the Commissioners and hope they would attend.

Chair Iaconi stated that he did receive the invite and thanked Steven Goodale.

Caller 6 Christy Shirilla Policy Manager from BioCom shared that BioCom is the State's oldest and largest association for the life sciences, advocating on behalf of 1700 members. She stated that companies are developing life-saving treatments and cures for all human ailments improving health outcomes and quality of life, and the industry is highly regulated and has a high rate of compliance. Christy Shirilla proposed to allow BSL-3 with a CUP.

Caller 7 Paul Magginietti, board member of the Greater East Side San Carlos (GESC) Neighborhood Association shared a list of questions he posed to the Commission. He stated that if the Commission does not know the answers to the questions, then they are making an uninformed decision on BSL-3 Labs. Paul Magginietti shared that private commercial BSL-3 labs are not subject to regulations or oversight like publicly funded BSL-3 labs. He added that it is unwise to permit building of BSL-3 labs until there is a concrete action plan to address the unthinkable.

Caller 8 Jeff Maley a member of the GESC Board shared that he is very concerned with labs processing dangerous toxins anywhere near where his family lives. He wanted everyone to ask themselves how close is comfortable living near some of those labs.

Caller 9 Jennifer Rosse a member of the GESC Board shared that many of them live very close to the purple area in the presentation. She applauded the Staff for making the recommendation and she is in support of the Ordinance in banning BSL-3 and BSL-4 Labs in San Carlos. Jennifer Rosse echoed the other callers who are supportive of the ban. She did a Google search and shared that most of the BSL-3 facilities are in biotech campuses that are secluded from residential area. Jennifer Rosse added that San Carlos is unique because it has residential backing right up to life science companies. She urged the Commission to educate themselves before deciding and recommended them to approve the motion.

Caller 10 Anna Axiaq, resident of Greater East Side, urged the Commission to listen to the staff report and thanked the City Staff for their hard work.

Caller 11 Dimitri Vandellos shared that there are only 13 BSL-4 facilities in the entire United States. He added that unless the City is completely prepared, understands the situation, and

have an infrastructure in place, the City should not be considering BSL-3 facilities. Dimitri Vandellos stated that if a CUP is considered as a potential way to allow BSL-3, then strict guidelines need to be put in place and there needs to be an open process where the San Carlos residents are informed and understand the types of pathogens involved.

M/S Garvey/Castaneda motioned and seconded to close the public comment.

The motion passed 5-0 by the following roll call vote:

Ayes: Roof, Castaneda, Garvey, Clements and Iacoponi

Noes: None

Lisa Costa Sanders clarified a public comment regarding the prohibited location of BSL-3 & BSL-4. She stated that they looked at all the zoning regulations where research and development are allowed, and those areas are where all the BSL-3 labs are prohibited.

Lisa Costa Sanders added that for Planned Development (PD) Zones, they could only allow uses that are permitted or conditional in the City therefore they could not pull in a prohibited use with a PD.

Commissioner Garvey wanted to know if private labs are subject to the same county, state and federal regulations as government labs.

Carla Boragno stated that private labs are subject to the same regulations as government labs, however, there is a distinction as it relates to companies that have National Institute of Health (NIH) funding. She explained that a company that is funded by NIH would have to follow NIH and Center for Disease Control and Prevention (CDC) guidelines.

COMMISSION DISCUSSION

Commissioner Roof shared that they must weigh the risk and perhaps San Carlos' specific risk against the value of having BSL-3 facilities. He added that it is important to take into consideration the image the City projects and how to oversee the industry. Commissioner Roof shared that the most important point for him is weighing the risk of something that may go wrong and the opportunity to research potentially life saving technologies that are important for society. He shared that he is hesitant to have an across-the-board ban, but he is also not ready to agree with the recommendation until there is more specific information. Commissioner Roof stated that he could land on the conditional use for BSL-3.

Commissioner Castaneda shared that after reading and hearing the public comments there are good reasons to support banning BSL-3 and there are good reasons to look at the issues of having labs near major public transportation arteries and flood zones. She wondered if they should investigate banning the lab itself versus the agent. Commissioner Castaneda supported the CUP for BSL-3 but emphasized that it would need to be narrowly tailored and she was also concerned about the City's ability to monitor.

Vice Chair Clements shared that this is a difficult decision because it is a technical subject matter and having to balance the concern over health and safety versus to create a biotech hub and other business opportunities. She pondered about a CUP for BSL-3 with an active monitoring program paid for by the applicant would be feasible if the cost involved was plausible. She also shared that she appreciated the additional knowledge that the public brought to the conversation. Vice Chair Clements stated that she could see it both ways. She added that her first reaction was not to be the community to ban anything that was out of fear and not out of facts.

Vice Chair Clements wanted to get clarification on government code section 835.2. Her understanding is that the code pertains to public property.

Greg Rubens clarified that Section 835.2 refer to dangerous condition on public property.

Commissioner Garvey shared that she appreciated everyone's comment and she is supportive of banning BSL-4. She echoed Commissioner Roof's point of weighing the risk of BSL-3 versus the value that it may gain from allowing life-saving technologies that may impact the health of residence of San Carlos.

Commissioner Garvey shared that she is sitting on the fence with BSL-3 and the one thing that is on top of her mind is supporting a CUP process that has strict monitoring. She liked the suggestion of an open process that was brought up by the public. She added that the CUP process gives the City an opportunity to review each of the developments on a case-by-case basis and put in the conditions that are strict for that development.

Commissioner Garvey shared that she could support a ban on BSL-3 with the commitment to revisit the issue in nine months.

Chair Iacoponi thanked the Staff for working on this in a short period of time. He shared that he is also on the fence with BSL-3, and he does not know enough to make a permanent ban on BSL-3. Chair Iacoponi acknowledged the cost of a monitoring program and wondered if the CUP recipient should pay for the cost for the duration. He echoed Commissioner Garvey's point on more work needed to be done to define what a CUP should look like. He stated that it is too premature to decide.

Commissioner Roof pointed out that the CDC developed BSL-3 Facility Standards that are used across the country and has no accidents or evidence of those being inadequate. He stated that he has not heard of any accidents that led to death or caused trouble in the news.

Vice Chair Clements suggested to potentially make a motion asking for additional information of the issue before moving forward with any recommendation to the City Council because they would want the same information. She then shared a list of questions that needs to be answered.

Chair Iacoponi wanted to hear from staff their recommendation for next step.

Al Savay stated that they would prefer to defer action on this item and come back with additional information.

Greg Rubens stated that there is no need for a motion for the Commission to give direction. He summarized that the Commission would like to see a CUP option for a BSL-3 lab and the related findings and additional information on what it takes to ensure public safety. He added that the Staff would bring both options, the original recommendation, and a CUP option for the Commission to make a final decision.

The Commission supported the direction as outlined by the City Attorney, Greg Rubens.

Vice Chair Clements added that staff should come back with information on business benefit or lack of by the additional cost involved in the CUP, the risk, CDC guidelines and a proposal of the CUP Program.

Greg Rubens stated that when the Commission wants to come back with a topic after the close of the Public Hearing, typically the Commission should reopen the hearing so that all the members of the public would be able to continue to comment on the new idea or concept in the next meeting when the Staff brings the item back.

Greg Rubens on behalf of staff recommended the Commission continue to a date certain, to March 6, 2023.

M/S Iacoponi/Clements motioned and seconded to continue the public hearing date certain to March 6, 2023 and to reopen the public comment period.

The motion passed 5-0 by the following roll call vote:

Ayes: Roof, Castaneda, Garvey, Clements and Iacoponi

Noes: None

7. REPORTS, CORRESPONDENCE AND GENERAL INFORMATION

a. Report on recent City Council actions

Andrea Mardesich, Assistant Community Development Director gave the following updates:

At the January 23, 2023 City Council meeting the City Council adopted the 2023-2031 Housing Element and it has been sent to the State Department of Housing and Community Development (HCD) for certification, and at the same meeting the Council also adopted the associated zoning ordinance amendments.

City Council denied the 703 Knoll Drive appeal thereby upholding the Planning and Transportation Commission's decision to approve the project.

b. Planning and Transportation Commission comments or reports - None

c. Correspondence

Andrea Mardesich stated that Planning Division received several letters regarding the public hearing item this evening and copies of those were emailed to the Planning and Transportation Commission and available here in the Chamber.

d. Planning Staff comments, reports and updates of current projects

Andrea Mardesich gave the following updates:

Currently there are no item scheduled for the February 21, 2023 Planning and Transportation Commission Meeting.

The Downtown Specific Plan Workshop is scheduled for February 15, 2023 at 7:00 pm. It is a virtual Community Workshop, and more information could be found at www.sancarlosdowntownplan.com.

Lisa Costa Sanders gave the following update on 808 Alameda de Las Pulgas.

The public review and comment period on the Draft Environmental Impact Report has closed and the City received about 56 written comments in addition to the comments received at the Planning and Transportation Commission Meeting.

The consultant team is currently working through those comments. Once they have organized and the contact information redacted, they would post them to the project webpage.

The comments were very similar to what the Commission heard at the meeting.

8. ADJOURNMENT

The meeting was adjourned at 8:55 pm.