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NYC Zoning Reform: Siting Your Lab in the City of Yes

LIFE SCI NYC

NYC / EDC

**NYC
PLANNING**



Why NYC

New York City is an economic powerhouse and the commercial capital of the world. The city's energy and concentration of talent make it a unique home for businesses across industries. More Fortune 500 companies are headquartered here than anywhere else in the nation, and leading companies in every major industry have a foothold here. The city's unique strengths have enabled it to evolve and thrive amid global economic changes, and New York City is now a leading international hub for life sciences, healthcare, tech, advertising, media, and finance.

New York City is one of the fastest-growing life sciences markets in the nation, drawing on its strengths in science, technology, and healthcare. The metro area is home to over 150K life sciences jobs and nearly 5,100 businesses. Combined with its innovation in public and personal health, nearly 20 academic medical or research centers, and over \$2.5B of annual National Institutes of Health (NIH) grants, the city's booming life sciences ecosystem is the hub of the largest regional life sciences economy in the country.

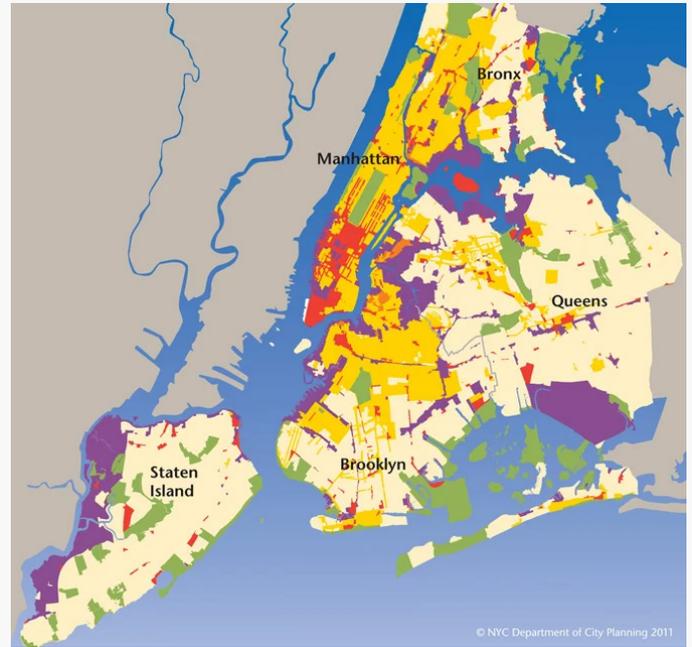
Thanks to recent zoning reforms adopted through *City of Yes for Economic Opportunity*, laboratories and life sciences businesses now have more regulatory flexibility to site their labs as-of-right in more locations. In New York City, as-of-right uses do not require review by the City Planning Commission, so applications can be directed to agencies that enforce codes, rules, and existing zoning, especially the Department of Buildings. This flexibility will enable continuous evolution of lab space layouts that are poised to develop the next generation of vaccines, therapeutics, medical devices, and sustainable bioeconomy solutions. Additionally, new floor plans and site plans will not need to wait for State or City environmental review, as long as their uses are as-of-right.



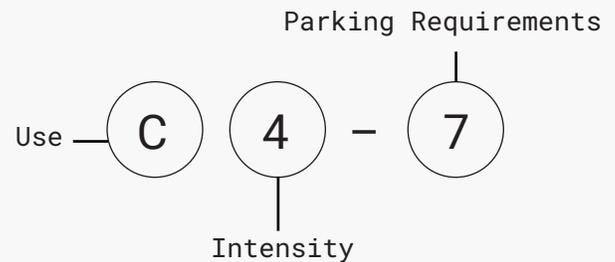
Zoning 101

- New York City is divided into three basic zoning districts: Residential (R), Commercial (C), and Manufacturing (M). Zoning districts may be mapped as a single type (such as C1) or as a combination (such as R6/C2-4 or R7A/M1-5).
- **Residence Districts** can range in density from R1 to R12 and may contain Community Facilities, such as hospitals, like NYU Langone, or universities, such as Columbia University.
- **Commercial Districts** range in intensity from C1 to C8. C1 and C2 districts typically are located along neighborhood commercial corridors (Second Avenue in Manhattan, Fifth Avenue in Park Slope), whereas C4, C5, C6, and C7 districts tend to be in more central and dense parts of the city. C8 districts are general service districts that often function as automotive servicing corridors (such as Coney Island Avenue in Brooklyn or Boston Road in the Bronx).
- **Manufacturing Districts** range in intensity from M1 to M3, with M1 districts for light industrial activities, M2 for medium industry, and M3 for heavy industry.

The City is divided into three basic zoning districts



	Residential (R)	R1–R12
	Commercial (C)	C1–C8
	Manufacturing (M)	M1–M3



Uses and Use Groups

- The NYC Zoning Resolution (ZR) divides all activities into “uses” within each zoning district. Each use in the ZR contains a symbol that denotes when a use may be:
 - Permitted as-of-right (“•”);
 - Permitted as-of-right in some instances, but with broad use limitations on as-of-right applicability, either by district or geographic restrictions (“◊”);
 - Allowed by special permit (“o”) of the Board of Standards and Appeals or the City Planning Commission; or
 - Not permitted in the district (“–”).

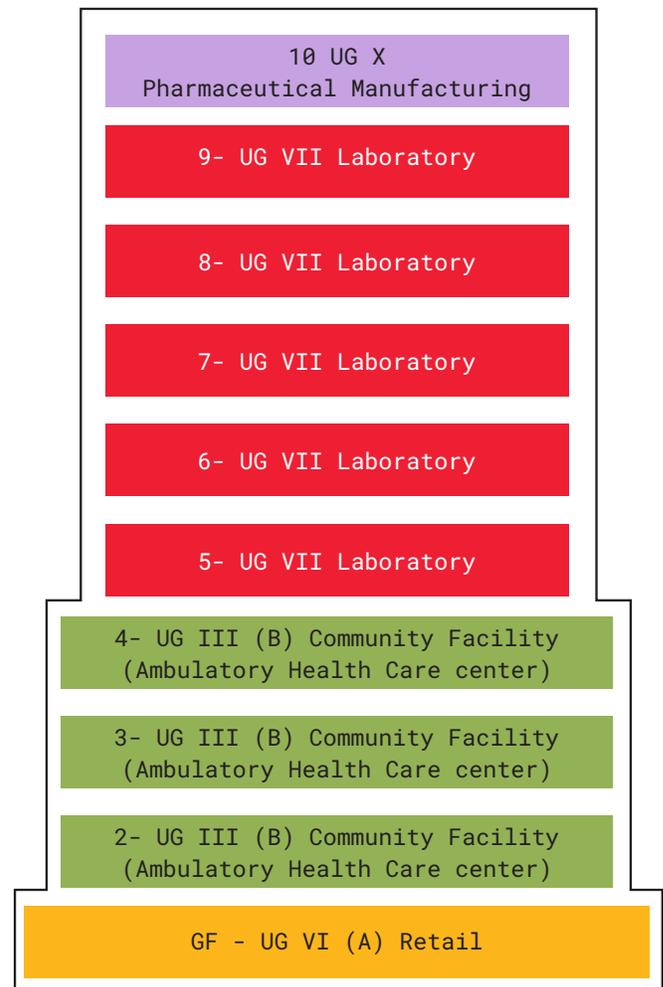
Use Groups

I	Agriculture & Open Uses
II	Residences
III	Community Facilities
IV	Public Service Facilities and Infrastructure
V	Transient Accommodations
VI	Retail & Services
VII	Office and Laboratories
VIII	Recreation, Entertainment, and Assembly Spaces
IX	Storage
X	Production

- In some zoning districts, uses may have additional allowances or restrictions on the as-of-right use, such as size restrictions (“S”), additional conditions such as environmental standards (“P”), or open-use allowances (“U”).
- Every use in the ZR has been classified and combined into 10 separate Use Groups with similar characteristics. The table above depicts NYC’s Use Groups.
- Multiple uses on a single floor of a site may be categorized as “primary/principal” and “accessory”. Accessory uses are uses that are incidental to and customarily found in connection with the principal use of a site and are either under the same ownership as the principle use or are operated and maintained substantially for the benefit or convenience of those associated with the principal use. By this definition, accessory uses are necessarily limited to a small share of a floor or a site. See [NYC Zoning Resolution Section 12-10](#) “accessory use, or accessory” for a complete definition.

- The Use Group (UG), and subsequent Building Code and other regulatory conditions, is typically determined by the primary/principal use. Within a multi-story building, the Use Group for each floor is determined independently. For instance, in the diagram below, a life sciences building may contain multiple uses and Use Groups. The ground floor may contain Use Group VI (B) Retail, Floors 2-4 may contain UG III (B)–Community Facilities without sleeping accommodations, Floors 5-9 may contain Use Group VII Laboratories, and Floor 10 may contain Use Group X – Pharmaceutical or Medical Device Manufacturing.

Example Stacking Plan





Laboratories and Zoning

- **Institutional research laboratories** are commonly found in university or hospital settings and may be permitted in any zoning district as a Community Facility use under Use Group III.
- **Non-production laboratories** are permitted under a Use Group VII Laboratories use to 2.0 FAR in most C1 and C2 districts and may be located without size limitations in C4, C5, C6, C7, and C8 districts, as well as M1, M2, and M3 districts. Outside of Manhattan, non-production laboratories may not locate in C1 districts.
- **Production laboratories** are permitted under Use Group X Production may locate in C1-C8 subject to additional size and environmental regulations, or in M1, M2, and M3 districts.

 Institutional research laboratories are permitted as-of-right

 Non-production laboratories are permitted as-of-right

 Production laboratories are permitted as-of-right

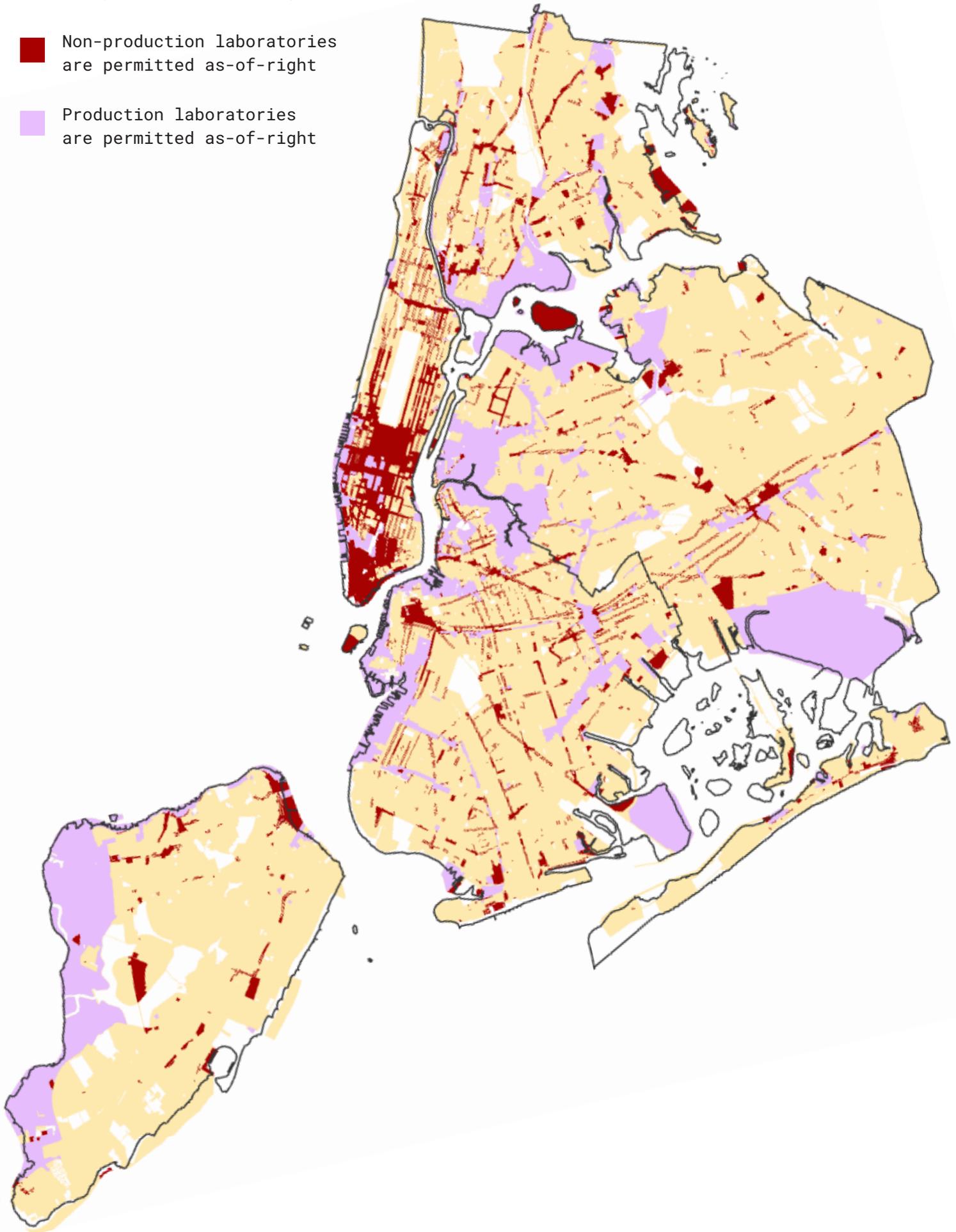


Table A: Where laboratories are allowed as-of-right



Type of laboratory	Institutional research laboratories	Non-production laboratories	Production laboratories
Principle Zoning Use Group and Use	III(B) - Community Facilities Without Sleeping Accommodations	VII - Laboratory	X - Pharmaceutical and Medicine Manufacturing (3254), Medical Equipment and Supplies Manufacturing (3391)
As-of-right Locations by Zoning District	R1-R10, C1-C8, M1-M3	C1 (in Manhattan), C2-C8 (citywide), M1-M3	See table B below
Building Occupancy Classification and Relevant Building Code Section**	Group B (BC 427) or Group H (BC 307)	In C Districts: Group B (BC 427) In M Districts: Group B (BC 427) or H (BC 307)	Group F (BC 306) or Group H (BC 307)

** Must also comply with BC 428 if radiation generating equipment is present

Examples of Laboratory Activities As-of-right in a Commercial District

	<p>Helaina: A women-owned and operated biotech company that replicates functional proteins found in the human body, making them available as new nutrients. Helaina resides at Deerfield’s CURE in a C6 Commercial Zoning District.</p>
	<p>Lexeo: A clinical-stage genetic medicine company dedicated to reshaping heart health by applying pioneering science to fundamentally change how cardiovascular diseases are treated. The publicly traded biotech is advancing a portfolio of therapeutic candidates that take aim at the underlying genetic causes of conditions and devastating diseases with high unmet need. Lexeo resides at Deerfield’s CURE in a C6 Commercial Zoning District.</p>
	<p>Graviton: A clinical-stage biotech focused on therapies for patients with fibrotic, autoimmune, and CBS diseases. The drug discovery and development company is located at West End Labs in a C4 Commercial Zoning District.</p>

Activities Permitted As-of-Right in a Use Group VII Laboratory

Within a Use Group VII Laboratory, life sciences research and development is typically performed in facilities that also include offices, meeting rooms, common pantries, and medical laboratory space. With specialized and appropriate mechanical, electrical, plumbing and ventilation systems, these commercial laboratories accommodate the safe operation of research and testing protocols, including but not limited to:

- **Chemistry** experimentation and synthesis
- **Molecular biology and biotechnology** experimentation or biological engineering
- **Food science** experimentation and research
- **Vivarium** for the purpose of life sciences research or testing
- Limited **production or physical prototype development** activities, such as 3D printing, assembly of devices or materials, or other small-scale current Good Manufacturing Practice (cGMP) space, for the purpose of on-site research and development of technologies with commercialization potential, or the development and piloting of processes to enable such research and development. This type of prototype development activity has limitations as noted below and may include, but is not limited to the following examples:
 - Production or prototyping of therapeutics technologies *for the purpose of on-site testing or research*, including:
 - Small molecules
 - Biologics
 - Gene therapies
 - Cell therapies
 - Vaccines
 - Production or prototyping of non-therapeutics technologies *for the purpose of on-site testing or research*, including:
 - Mechanical/electronic medical devices (e.g. prosthetics)
 - Diagnostic devices (e.g. EKG sensors)
 - Molecular diagnostics (e.g. genetic tests)

- Treatment devices (e.g. intravenous pumps)
- Research instrumentation (e.g. gene sequencing machines)
- Biomaterials (e.g. artificial tissue)
- To be considered UG VII, the fabrication, piloting, or limited production activity must be *accessory*: It must be on the same zoning lot as the lab and integral to the principal use of research and testing within a UG VII Laboratory. As a part of the lab, it also must meet the requirements of Building Code Section 427.
- Portions of a building dedicated to production or fabrication for the purpose of off-site resale or wholesale may be considered Use Group X and permitted in a Commercial District, subject to the environmental conditions of ZR 32-203 (see more below).
- Imaging modalities that support research and development, including but not limited to microscopy (confocal, EM, AFM, TEM, etc.); mass spectrometry; biomolecular imaging; X-ray; computed tomography; positron emission tomography; SPECT; magnetic resonance; ultrasound; fluorescence; optical coherence tomography; bioluminescence; photoacoustic; and others.

Building Code Regulations for Siting Use Group VII Laboratories in a Commercial District (BC 427)

- To be considered Use Group VII, all Laboratory activities must meet the requirements of New York City Building Code Section 427.
- Building Code section 427 provides detailed standards for:
 - Prohibition of certain substances
 - Fire protection and separation
 - Quantity limitations of liquids, solids, and other materials
 - Storage rooms
 - Ventilation
- NYC Fire Code and Mechanical Code sections standards also must be met. Businesses should consult with a registered design professional on applicable code regulations.
- Laboratories utilizing radioactive materials or radiation-producing equipment that are required to register under the requirements of the New York City Health

Code, in addition to complying with Building Code Section 427, shall comply with the requirements of Building Code Sections 428.3.1 through 428.3.7. X-ray imaging equipment is required to register with the Department of Health and Mental Hygiene (DOHMH).

- The City Planning Commission may permit Use Group VII Laboratories that are not otherwise allowed by the underlying use regulations, such as those with non-accessory production. See ZR 74-171 for more detail.

Activities Permitted As-of-Right under Use Group X in a Commercial District

- In a Commercial District or in a Mixed Use (M/R) district, those seeking to conduct life sciences activities related to off-site resale or wholesale, non-accessory production or manufacturing can do so as-of-right, subject to additional environmental conditions.
- Table B below identifies the most common Use Group X Production uses associated with life sciences activities. Other Production uses may be considered. See ZR 32-20 for more information.

Table B: Other types of life sciences uses in the zoning and where they can locate

Principle zoning Use Group and Use	X - Pharmaceutical and medicine manufacturing (3254)	X - Medical equipment and supplies manufacturing (3391)
Locational ability by zoning district	C2-C8 (with additional limits in ZR 32-202 and ZR 32-203), M1-M3	C1-C8 (with additional limits in ZR 32-202 and ZR 32-203), M1-M3
Building Occupancy Classification and relevant Building Code Section	In C districts: Group F (BC 306) In M districts: Group F or H (BC 306 or 307)	In C districts: Group F (BC 306) In M districts: Group F or H (BC 306 or 307)
Example life sciences activities	Large-scale or commercial cGMP space	Large-scale or commercial cGMP space

- Environmental intensity is regulated in the zoning by *performance standards*: regulations that limit the amount and type of industrial nuisances permitted for a variety of potentially noxious elements including noise, vibration, smoke, odor and fire hazard. Use Group X Production uses in Commercial Districts and in M/R districts have the most stringent performance standards and additional conditions.
- Use Group X Production uses in Commercial Districts must also comply with the environmental standards of ZR 32-203:
 - Such use does not have a New York City or New York State environmental rating of “A”, “B” or “C” under Section 24-153 of the New York City Administrative Code for any process equipment requiring a New York City Department of Environmental Protection operating certificate or New York State Department of Environmental Conservation state facility permit; and
 - Such use is not required, under the City Right-to-Know Law, to file a Risk Management Plan for Extremely Hazardous Substances.
- If a UG X lab will have industrial process equipment requiring a DEP permit for air emissions, including odors, or hazmat that requires a DEP Risk Management Plan, Zoning requires such a lab be sited in a Manufacturing District.

Discretionary Laboratory Siting Opportunities

Use Special Permit (ZR 74-171)

- For circumstances in which an applicant would like to site a laboratory otherwise not allowed by as-of-right zoning regulations, these laboratories may be permitted by special permit of the City Planning Commission (Section 74-171).
- Examples of when a laboratory Special Permit may be sought include:
 - Locating a sizeable commercial laboratory incubator space on a university or hospital campus in a Residence District
 - Production of medical devices, vaccines, or therapeutics for retail or wholesale
 - Modifications to underlining sign regulation-
 - Utilization of community facility floor area available to the applicant
 - Laboratory buildings built to provide maximum flexibility for startups to grow without zoning presenting a barrier to innovation
 - To be eligible for this Special Permit, the laboratory must:
 - Conform to the performance standards as applicable in M1 districts
 - Occupy a zoning lot containing no residential use

- In Residence Districts, occupy a large-scale community facility development or occupy either a single zoning lot used predominantly for community facility uses that has an area of at least 40,000 square feet
- A City Planning Commission Special Permit requires a vote by the City Council and City Planning Commission and potential recommendations by the Borough President and local Community Board in which the laboratory is to be located.

Bulk Special Permit (ZR 74-901)

- For situations in which an applicant may wish to modify the permitted bulk (i.e. height, setbacks, yard requirements, etc.) of a proposed building, the City Planning Commission may permit these modifications via special permit.
- The special permit cannot modify the floor area ratio of a proposed development.
- The proposed development may not:
 - Unduly affect the essential character or impair the future use and development of the surrounding area
 - Unduly obstruct the access of light and air to adjoining properties or public streets

To explore whether these circumstances may apply to your site, reach out to the NYC Planning Zoning Help Desk at 212.720.3291.

Non-zoning Regulations for Siting Labs (from Safety Partners)

City

- Fire Department of the City of New York (FDNY)
 - The Fire Department of the City of New York, or the FDNY, requires a non-production laboratory unit permit in order to store and use chemicals. This permit involves a thorough review of DOB-approved floor plans and associated documents to confirm that the lab facility is constructed in accordance with the NYC Fire Code. The laboratory sections of the Fire Code are based on NFPA 45, which is the National Fire Protection Association standard for laboratories.

- It also involves an initial FDNY inspection where the inspector compares floor plans with the facility, ensures that chemicals are stored and used appropriately within established maximum allowable quantities, and confirms that approved chemical storage and fire protection equipment are in place. The lab unit permit is renewed annually and is contingent on passing an annual inspection.
 - The FDNY also requires a Certificate of Fitness holder to be present whenever lab work is taking place and the holder of this certificate must demonstrate competency with Fire Code regulations and safe chemical work practices by passing an exam or providing documentation of appropriate academic and/or lab work experience. This requirement is unique to NYC.
- Department of Sanitation (DSNY)
 - What about hazardous material that could end up in a landfill? The Department of Sanitation, or DSNY, requires annual reports from generators of bio/medical waste. This report must include documentation of disposal through a licensed waste hauler that will treat biological waste so it does not contain biohazardous material.

State

- Department of Environmental Conservation (DEC)
 - The Department of Environmental Conservation, or DEC, regulates bio/medical waste generated at research labs. The regulation outlines how the waste is stored while onsite and stipulates that generators must use a licensed waste hauler to remove bio/medical waste offsite. Generators must keep waste tracking forms as evidence of appropriate offsite removal and treatment. Generators that treat bio/medical waste onsite must register with the DEC. The DEC, along with the federal Environmental Protection Agency, or EPA, regulates hazardous chemical waste. Generally, labs must register for a site ID in order to generate waste. The regulations also outline how the waste must be stored and labeled while onsite, and the waste must be removed offsite by a licensed waste hauler for proper treatment and disposal.

Federal

- Occupational Safety and Health Administration (OSHA)
 - OSHA regulatory standards cover the specifics of chemical and biological safety, and include, among other requirements, training and documented procedures. The OSHA Hazard Communication Standard stipulates the methods for communicating information concerning hazards to employees. The OSHA Lab Standard applies to non-production laboratories to protect workers from chemical and physical hazards. Laboratories that work with human source materials, such as cells, blood and tissues, are covered by the OSHA Bloodborne Pathogens Standard.

- OSHA's General Duty Clause requires employers to provide a place of employment that is free from recognized hazards that are causing or are likely to cause harm to employees. This clause allows OSHA to reference any regulation, standard or advisory document, such as the Biosafety in Microbiological and Biomedical Laboratories, or BMBL, when making this determination. The BMBL, published by the Centers for Disease Control and Prevention and National Institutes of Health, is considered the cornerstone of biosafety practice. Protecting employees also serves to protect the environment and public.

Further Zoning Questions?

- You can find the zoning district for any address by using NYC DCP's Zoning and Land Use Map, or ZoLa, at zola.planning.nyc.gov.
- Those with specific zoning use interpretation questions can reach out to constructioncodes@buildings.nyc.gov. For case-by-case review on which Use Group may be considered for a particular development, which use and Use Group a proposed activity may be classified, and whether a proposed use is as-of-right or subject to discretionary processes, you can seek pre-determination from the Department of Buildings.

To learn more about how to file a pre-determination request at DOB, go to nyc.gov/site/buildings/industry/determinations.page.

