



# Memorandum

**TO:** City Council

**FROM:** Mayor Sam Liccardo  
Councilmember David Cohen  
Councilmember Sergio Jimenez

**SUBJECT:** SEE BELOW

**DATE:** June 18, 2021

Approved

Date: 6/18/2021

**SUBJECT: PDC17-051 - PLANNED DEVELOPMENT ZONING FOR REAL PROPERTY LOCATED AT 1590 BERRYESSA ROAD AND GP20-008 & C21-001 - CITY-INITIATED GENERAL PLAN AMENDMENT AND CONFORMING REZONING FOR THE BERRYESSA BART URBAN VILLAGE PLAN.**

## RECOMMENDATION

- 1) Accept the Planning Commission's recommendations.
- 2) Accept the applicant's amendment of its rezoning application to include various measures to assist the approximately 430 vendors on the subject property by imposing as conditions of approval of the rezoning the following obligations on the applicant/property owner, and any successors in interest to the subject property:
  - a) The property owner shall provide at least one-year advance written notice to all vendors of any planned closure, gap in operation, or relocation of The Flea Market on site, some other market location, or any other location in San Jose. The notice would not be initiated prior to July 1, 2023.
  - b) Commencing September 1, 2021, the owner shall submit a written quarterly status report to the Director of PBCE that summarizes all construction planning and permitting activities (soil remediation, utilities, infrastructure, grading, building construction) that may result in construction impacts to the existing Flea Market operations. The Report must include estimated dates of when the earliest construction impact may occur, if known. This report shall be provided to the City no later than 30 days following the end of the quarter for which it is due.
  - c) The approximately five-acre Urban Market area designated in the Berryessa BART Urban Village Plan as the publicly accessible plazas of the new development is intended to provide the existing Flea Market vendors an opportunity to relocate within the new development on the subject property.
  - d) The property owner shall provide Flea Market vendors with a current month to month space rental agreement the first opportunity to move to the Urban Market area.
  - e) The property owner shall set rents in the Urban Market area in an amount comparable to other open-air markets in the Bay Area such as The Capital Flea Market and any other similar markets in existence at the time of the offer of relocation from the property owner to the vendors.

- f) A Vendor Business Transition Fund will be established and managed by the City or its designee. The general purpose of this fund is to mitigate direct expenses the vendors may experience when moving to any temporary site and/or Urban Market area on site, some other market location, or any other retail location in San Jose.
- g) The property owner shall endow the Vendor Business Transition fund with \$2.5 million, in accordance with the following schedule:
  - (1) Within 120 calendar days of the effective date of the Planned Development Zoning File No. PDC17-051, the property owner shall transfer \$500,000 to the City in early funding to support the initiation of the Flea Market Advisory Group and Vendor Business Transition fund; and
  - (2) On the date that the property owner issues the one-year notice to the vendors in accordance with Section 2.a above, the property owner shall transfer \$2 million to the City's Vendor Business Transition Fund.
- h) A Flea Market Advisory Group consisting of representatives of the property owner/developer, the Flea Market vendors, and the City will be created, in accordance with item i), with the intention of ensuring Flea Market vendors have a meaningful voice and role in determining the use of the transition funds and guiding the development of the urban market concept by providing the following:
  - (1) Recommendations to the property owner and City on the design, operation, and associated parking of the Urban Market area;
  - (2) Funding decisions for the Vendor Business Transition Fund including the general purposes of the fund described in item g), and additional resources the vendors may require including but not limited to data, relevant existing models of public/private markets, and examples of self-sustaining operational methods in order to inform the recommendations outlined above.
  - (3) Regular communication with all of the Flea Market vendors on the status and progress of the Flea Market transition, decisions, and recommendations made by the Flea Market Advisory Group, as well as the opportunity for Flea Market vendors who are not part of the Advisory group to provide feedback to the Advisory Group.
  - (4) Establishing protocols for determining how Flea Market vendors with a month-to-month rental agreement will be offered the opportunity to relocate to the new Urban Market.
- i) Upon receipt of the first contribution to the City by the property owner, the City or its designee will form a Flea Market Advisory Group by drafting a charter that shall include at a minimum the purpose of the group, the number of members of the group, the composition of the group, and which members shall have voting rights. The City or its designee shall convene an initial group of vendors and stakeholders, including the property owner, to draft and approve the Flea Market Advisory Group charter.
- j) The property owner shall introduce the City to any successor in interest to the Urban Market site at least 60 calendar days prior to the close of escrow in order to engage in a conversation about the Urban Market project.
- k) The property owner shall ensure that all affordable housing units required by the City's Inclusionary Housing Ordinance (San Jose Municipal Code Chapter 5.08) are constructed on the subject property in the manner required by that ordinance.

- l) The property owner agrees that all vendors who follow the rules and terms in their Rent Agreement shall not be evicted from The Flea Market prior to the planned closure or relocation of the market.
- 3) Add the following conditions of approval to the ordinance rezoning the subject property:
  - a) Include a provision that any future Planned Development Permit that specifically authorizes the detailed architectural design of a future urban market and the actual vendor stalls shall be considered for approval by the City Council.
  - b) Prior to submittal of an application for the PD permit referenced in 3.a, Property owner shall make and complete a reasonable evaluation of the financial feasibility of a denser/multi-level urban market and associated parking.
- 4) The City and the property owner may explore:
  - a) The potential utilization of public and private streets for expanded market operations.
  - b) Creative partnership models for the Urban Market site.
- 5) Direct City staff from the Office of Economic Development to work with the property owner to assess the flea market vendor community and the job retention and creation potential that will inform the design of a future market. The Office of Economic Development should consider a consultant/community partner to assist in this effort and fund the study with the funds from the first contribution to the City by the property owner and only after that contribution is received by the City.
- 6) Direct staff from the Office of Economic Development to assist in linking resources that can support the vendor's current operations as well as support future operations as the market evolves. Additionally, staff from the Office of Economic Development shall utilize the early funding provided by the applicant to coordinate the initiation of the Flea Market Advisory Group and Vendor Business Transition Fund.
- 7) Direct staff to work with the applicant to ensure that the Phase 1 Turnkey park improvements submittal, as defined in the Berryessa BART Urban Village Parks Master Plan, are approved by August 2, 2021 so that the construction of Mercado and Bruzzone Parks can be completed by Q1 2022.

## **BACKGROUND**

Ever since 2003 when the decision was made to locate San Jose's first BART station adjacent to the 120-acre Berryessa Flea Market, its closure has been a forgone conclusion. The City Council led by Mayor Ron Gonzales put forth a strategic direction for future councils to implement, expanding BART to downtown via stations located on the Eastside of San Jose. The intent being to revitalize these areas with vibrant transit-oriented urban villages where housing, jobs, and placemaking amenities can propel the transformation of our car driving present to a public transit riding future.

In 2016, a Planned Development Conforming Rezoning ordinance (PDC16-001) was unanimously approved by Council to eliminate the school land use that had been previously approved. As a condition of approval, the property owner was directed to rezone the south side of the Flea Market site to increase the number of housing units, and the density of the commercial/retail/industrial space. This condition of approval was spearheaded by Mayor Liccardo recognizing that the current zoning did not contain nearly enough commercial space for the number of jobs that would necessitate a successful Urban Village. These land use items,

PDC17-051, GP20-008, and C21-001, fulfill the condition of approval from the 2016 council direction.

Throughout the past 18 years there has been no clear direction given on how to address the displacement of the merchants at the Flea Market. A condition of approval to the original 2007 zoning was to keep the Flea Market open for the following 5 years, however, beyond keeping the market open, there were no additional plans to protect the vendors from displacement. Today, the City Council has the opportunity to approve the rezoning of the south side of the site which will increase the number of new housing units - including the affordable housing required by the City's Inclusionary Housing Ordinance, increase the amount of commercial space to support up to 11,000 jobs, fulfill our Climate Smart goals, build the neighborhood parks, creek trails and amenities that the existing residents want, and give clear direction that finally begins to address the displacement of Flea Market vendors.

### **DISCUSSION**

Lawmakers in San Jose and the Bay Area have long understood that building vibrant high-density Urban Villages along public transit routes is the most effective way to transition from car culture to public transit culture. Other cities along BART, such as Milpitas and Fremont, have already created these transit-oriented Urban Villages. Now that BART is operating at the Berryessa station, it is imperative to have density development that leverages our investment in rapid transit.

Unfortunately, the displacement of the small, mostly immigrant owned, businesses at the Flea Market has not been addressed in any of the zoning decisions for the Berryessa Urban Village site. The property owners did commit in 2007 to try to find a permanent alternative location where the flea market could be moved. Regrettably, none of the sites that were pursued have come to fruition.

Even before taking office in January of 2021, Councilmember Cohen wanted to see the preservation of the Flea Market in the new Urban Village. In numerous meetings and conversations with the Flea Market vendor advocates they have expressed the following priorities for the new plan:

1. Space for a reimagined market
2. Security – maintaining the current operations for as long as possible and provide as much advance notice as possible for any changes to the location, and configuration of the market, or interruptions to business operations
3. Economic Relief for all vendors
4. Participation in determining the design and operation of the future Urban Market.

The offer that the applicant has made addresses each of these concerns as summarized in the following table.

Space for a reimagined market	<ul style="list-style-type: none"> <li>✓ 5 acres set aside and zoned for an Urban Market</li> </ul>
Security – maintaining the current operations for as long as possible and provide as much advance notice as possible for any changes to the location, and configuration of the market, or interruptions to business operations	<ul style="list-style-type: none"> <li>✓ 1-year notice would be provided before any displacement of current vendors could occur</li> <li>✓ Such notice would not be provided before July 1, 2023</li> <li>✓ A commitment that all vendors who follow the rules and terms of their Rent Agreement shall not be evicted from the Flea Market prior to closure</li> </ul>
Economic Relief for all vendors	<ul style="list-style-type: none"> <li>✓ Property owners will provide \$500,000, 120 days after approval of this zoning to set up a Vendor Business Transition Fund</li> <li>✓ Property owners will endow the Fund with \$2 million when the 1-year notice is given</li> <li>✓ Additional fundraising will occur, and grants will be sought to build the Fund balance above the \$2.5 million provided by the property owners</li> </ul>
Participation in determining the design and operation of the future Urban Market.	<ul style="list-style-type: none"> <li>✓ Flea Market Advisory Group will be created that includes members of the vendor community</li> <li>✓ The Advisory Group will make recommendations on the design, operation, and parking of the Urban Market area</li> <li>✓ The Advisory Group will make funding decisions for the Vendor Business Transition Fund</li> <li>✓ Establish protocols for how the current vendors will be offered space at the new market</li> </ul>

There are several other important provisions in this agreement that are worth noting. One is that any future Planned Development Permit for a future urban market would have to be brought to the council for approval rather than a Director’s Hearing. The property owner will also be required to provide quarterly updates to the PBCE department reporting progress made and any changes to the status of the development. While the zoning calls out five acres to be set aside for the urban market, it doesn’t specify how that space will be used. There is no intention to limit the market to a single-story market. The developer will evaluate how a multi-story market can be constructed on the site in the spirit of other vibrant urban markets around the world and in order to accommodate more vendors.

## **SUMMARY**

The approval of this rezoning will achieve important objectives for the city of San Jose. The location of the property next to the new BART station means that it is a crucial site to achieve our Climate Smart goals and provide transit-oriented development. The development will include:

- up to 3.4 million square feet of commercial space for up to 11,000 jobs
- up to 3,450 total residential units with the developer committing to building the affordable housing on site rather than paying in-lieu fees
- ensuring that new parks (Mercado and Bruzzone) will be completed and additional open space with trails will be revitalized along Coyote Creek and Penitencia Creek.

This is also an opportunity to finally provide some long-term plans to prevent the displacement of hundreds of flea market vendors who operate small businesses and provide a vibrant community amenity that brings millions of visitors to the area. For the first time in 15 years, a portion of the property will be zoned for an Urban Market, allowing a pathway forward to La Pulga 2.0. The current vendors will be guaranteed first opportunity to move into the new spaces, which will be offered at rents comparable to other open-air markets in the region.

The agreement also sets up a Vendor Business Transition Fund to be used to assist the vendors with expenses that arise due to any disruptions that might arise during construction. The property owner will provide the first \$2.5 million dollars for the fund and community donations and grants will augment those resources. The vendors will receive a one-year notice of any changes that could lead to displacement and that notice will not come before July 2023, meaning that there is a minimum of three years before any changes could occur. During that time, there is a plethora of opportunity for collaboration in the design of the market.

It is incredibly important that the voices of the vendors are an integral part of the process going forward. That's why this vote would lead to the creation of a Flea Market Advisory Group, which will include representatives of the vendors. The Advisory Group will make recommendations on the design of the new Urban Market and will make all decisions regarding the allocation of the Transition Fund.

In closing, the authors of this memorandum acknowledge that the voice of the vendors has not been included in the process for the past 15 years. We are confident that this action lays the groundwork for collaboration as the development plans move forward. This Council action begins a new collaborative process and we look forward to working together to carry this inclusive project across the finish line.

*The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.*