



City Clerk

## CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk  
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STATE OF CALIFORNIA)  
COUNTY OF SANTA CLARA)  
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 30646**", the original copy of which is attached hereto, was passed for publication of title on the **29th day June, 2021**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **3rd day of August, 2021**, by the following vote:

AYES: ARENAS, CARRASCO, COHEN, DAVIS, ESPARZA, FOLEY,  
JONES, JIMENEZ, MAHAN, PERALEZ, LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said Ordinance is effective as of the **3rd day of September, 2021**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **5th Day of August, 2021**.

(SEAL)

TONI J. TABER, CMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL

/rmk

**ORDINANCE NO. 30646**

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING, SUBJECT TO CONDITIONS, CERTAIN REAL PROPERTY OF APPROXIMATELY 61.5 GROSS ACRES SITUATED ON THE SOUTH SIDE OF BERRYESSA ROAD, EAST OF COYOTE CREEK, WEST OF THE BART TRACKS CORRIDOR AND NORTH OF MABURY ROAD (THE SAN JOSE FLEA MARKET; APNS: 254-17-052, 254-17-053, 254-17-007, 254-17,084, AND 254-17-095), FROM THE A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO THE CP(PD) PLANNED DEVELOPMENT ZONING DISTRICT**

**WHEREAS**, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described (“Subject Property”); and

**WHEREAS**, the approximately 61.5 gross acre site encompassed by the proposed rezoning was the subject of that certain Final Environmental Impact Report for the San José Flea Market Southside Rezoning Project, File No. PDC17-051 (“FEIR”), which evaluated the impact of developing up to 3,450 residential units and up to 3.4 million square feet of commercial uses; which FEIR was certified and adopted by the City Council on June 29, 2021; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to CP(PD) Planned Development Zoning District; and

**WHEREAS**, this Council of the City of San José has considered, approved, and adopted said FEIR and related Mitigation Monitoring and Reporting Program under separate Council Resolution No. 80168 prior to taking any approval actions on this project; and

**WHEREAS**, the Subject Property has been used for several decades as a flea market commonly referred to in the San Jose community as “La Pulga” (the Flea) and the property owner applicant rents approximately 700 vending spaces in the market to approximately 430 vendors on month-to-month and periodic use licenses on Wednesdays through Sundays; and

**WHEREAS**, the vending businesses on the Subject Property provide employment and a livelihood for underrepresented and vulnerable communities in the City of San Jose; and

**WHEREAS**, in light of the economic, social, and cultural importance of the historic use of the Subject Property as a flea market, the City Council of the City of San José approves the rezoning with the inclusion of specified conditions of approval proposed by the property owner in order to provide a reasonable and orderly transition of the flea market from its current site to a the 5-acre Urban Market included in the last plan set submittal, received on May 21, 2021 (“Plan Set”), and on file in the office of the Director of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein; and

**WHEREAS**, the proposed rezoning is consistent with the designation of the site in the applicable General Plan and in the amended Berryessa BART Urban Village Plan;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** The recitals above are incorporated herein.

**SECTION 2.** All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as CP(PD) Planned Development Zoning District, subject to all of the conditions of approval, including but not limited to those proposed by the applicant property owner, specified in the approved development plan, described in Exhibit “B,” for the subject property entitled, "Planned Development Zoning

for Market Park”, last revised on June 29, 2021 (“Planned Development Zoning”), and which shall be binding upon the property owner and its successors in interest.

**SECTION 3.** Additionally, the following directions to City staff are conditions of approval that apply to the rezoning of the subject property:

- A. 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.
- B. 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.
- C. 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.
- D. Explore financial tools to complete development of the new five-acre Urban Market on the project site, including public funding options should gap financing be required.
- E. Explore potential partnerships with BART and potential off-site market options.
- F. Work with the Flea Market Advisory Group to allocate the \$5 million dollars in the Vendor Business Transition Fund to direct vendor support and to consultant services and non-profit, as needed.

G. Subject to the limitations in Subsection 3.J.(2)(a) below, the City Manager to match the \$2.5 million dollars Vendor Business Transition fund by allocating money from the American Rescue Plan reserve. The Office of Economic Development to expand opportunities for continued viability and survivability for vendors facing displacement from the flea market by exploring the following:

- 1) Explore policies that can help in the transition by addressing opportunities and obstacles currently in practice.
- 2) Find alternative locations for pop-up shops, farmer markets and brick and mortar.
- 3) Expand Eastside Business Manager from part-time to full-time to assist vendors.
- 4) Identify additional City, State, Federal or philanthropic resources to support the Berryessa Flea Market Vendors Association or its designated partners, in capacity building, including technical and legal assistance and developing new partnerships.

H. Acknowledge the following agreement the applicant is offering to Flea Market Vendors:

The Flea Market, Inc. will allow any existing vendor of record on July 1<sup>st</sup>, 2021 to opt-in to a 6-month license agreement. The "6-month" term will be fixed blocks of time from July 1<sup>st</sup> to December 31<sup>st</sup> and January 1<sup>st</sup> to June 30<sup>th</sup> each year.

I. Recognize that City staff from the Office of Economic Development looks forward to engaging the Berryessa Flea Market Vendor Association (BFVA) and other interested vendors as the future of the urban market takes shape, as well as activating business support services for vendors. Contracts for consultant services will follow City procurement requirements, with opportunities for vendor participation in RFP review panels.

J. The City Manager will:

- 1) Communicate to the Valley Transportation Authority (VTA) the intention of the City

of San Jose, and of each of the participating board members, to formally request that VTA (and if necessary, BART) evaluate and negotiate to offer a lease or easement of VTA-owned areas in and around the BART station to dramatically expand the footprint of the Flea Market on Saturdays and Sundays. After VTA staff has analyzed the options, the matter should be brought to the full VTA Board for discussion.

2) Return in the Fall for Council action after exploration of sources for additional funding from the City, and the County, to assist Berryessa Flea Market Vendors in any transition that they might need to make in 2024 or thereafter. Potential sources could include, but are not limited to:

a) American Rescue Plan (ARP) dollars, if eligible based on pending federal regulations, so long as any ARP contribution would be decided no later than December 31, 2021;

b) Taxes and fees emanating from the development on the Berryessa site, which might be advanced from City accounts upon the issuance of a building permit;

c) Economic Development grants, such as those recently received by the City, that assist small businesses in recovery, and support filling vacant storefronts.

K. Work with the vendor community to:

1) Identify financial tools including gap financing options if needed, and

2) Explore vacant retail space opportunities for vendors.

L. Identify potential public land that could serve as a new Flea Market space, including County owned sites, and report back to Council with these findings.

M. Allow for the full 5 million dollars to be used to explore non-profit and other community partners to assist in Flea Market transition as needed, with support from the vendors.

**SECTION 4.** The base district zoning of the subject property shall be the CP Commercial Pedestrian Zoning District. The CP(PD) Planned Development zoning of the subject property shall be as specified in the Planned Development Zoning.

Said Planned Development Zoning is on file in the office of the Director of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein, and said Planned Development Zoning is by this reference adopted and incorporated herein the same as if it were fully set forth herein.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

**SECTION 5.** The district map of the City is hereby amended accordingly.

**SECTION 6.** The land development approval that is the subject of City File No. PDC17-051 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

**SECTION 7.** Any Planned Development (PD) Permit that includes market-rate dwelling units shall be approved only after, or at the same time, that a Planned Development Permit that includes the new market space is brought to Council. If the Flea Market finds an alternative location, then the other elements as appropriate are no longer needed, and all appropriate language changes shall made to the ordinance and resolutions.

PASSED FOR PUBLICATION of title this 29<sup>th</sup> day of June, 2021 by the following vote:

AYES: ARENAS, CARRASCO, COHEN, DAVIS, ESPARZA,  
FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ,  
LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



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SAM LICCARDO  
Mayor

ATTEST:



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TONI J. TABER, CMC  
City Clerk



## EXHIBIT A

### LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

#### PARCEL ONE:

Commencing at an iron pipe found at the intersection of the Northeasterly boundary of that certain 14.107 acre Parcel No. 1 shown on the Record of Survey Map recorded December 9, 1936 in [Volume 2 of Maps, Page 13](#), Santa Clara County Records, with the Westerly line of land and right of way (60 feet wide) of the Western Pacific Railroad Company; thence along said Northeasterly boundary of said Parcel No. 1, and the Northwesterly prolongation thereof N. 43° 00' 00" W., 847.71 feet to the Southerly line Berryessa Road, as established by survey of County Surveyor of Santa Clara County, in 1933; thence along said Southerly line of Berryessa Road, on the following courses: Southwesterly, on a curve with a radius of 625.00 feet, deflecting to the right from a tangent bearing S. 49° 28' 23" W., through a central angle of 10° 24' 37" an arc distance of 113.56 feet; thence S. 59° 53' 00" W. 62.15 feet to the Southeasterly prolongation of the Northeasterly line of that certain parcel described in Deed from William C. Shore, et ux, to Gain B. McNeal, recorded November 9, 1882 in [Book 65 of Deeds, Page 374](#), as last said line was retraced by survey of Herrmann in 1936, and shown on Record of Survey Map recorded December 9, 1936 in [Book 2 of Maps, Page 13](#), Santa Clara County Records; thence S. 59° 53' 00" W. 47.38 feet to a point of beginning of curve; thence Southwesterly on a curve with a radius of 1475.00 feet, deflecting to the left from tangency with last said course, through a central angle of 5° 27' 00" an arc distance of 140.30 feet; thence S. 54° 26' 00" W. 313.19 feet; thence Southwesterly on a curve with a radius of 475.00 feet, deflecting to the left from tangency with last said course, through a central angle of 22° 13' 00" an arc distance of 184.18 feet; thence S. 32° 13' 00" W. 122.30 feet; thence Southwesterly on a curve with a radius of 2025.00 feet, deflecting to the right from tangency with last said course, through a central angle of 6° 39' 30", an arc distance of 235.32 feet; thence S. 38° 52' 30" W., 264.63 feet; thence leaving said Southerly line of Berryessa Road S. 38° 47' 25" E. 119.03 feet to that certain parcel conveyed in the Deed to David Levin, et al., recorded December 20, 1955 in [Book 3366 of Official Records, Page 161](#); thence North 44° 24' 00" E. (along boundary of Levin's parcel) 39.30 feet; thence (continuing along said Levin's parcel) S. 38° 39' 00" E., 59.91 feet; S. 54° 50' 00" E. 288.42 feet; S. 56° 20' 00" E. 499.62 feet and S. 45° 35' 00" E. 255.49 feet to the Southerly corner of that certain parcel granted to Central Eureka Mining, by Deed recorded September 15, 1952, Recorder's [Serial Number 823347](#); thence along the boundary of said last mentioned parcel N. 46° 01' 00" E. 1059.87 feet to said Westerly line of land and right of way of the Western Pacific Railroad Company; thence along said Westerly line of the Western Pacific Railroad Company, N. 15° 00' 25" W. 403.91 feet to the point of commencement, and being shown on that certain Record of Survey filed June 21, 1962 in [Map Book 148, at Page 39](#), Santa Clara County Records.

EXCEPTING THEREFROM all that portion thereof described as follows:

Commencing at an iron pipe found at the intersection of the Northeasterly boundary of that certain 14.017 acre Parcel No. 1, shown on the Record of Survey Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 9, 1936 in [Book 2 of Maps, Page 13](#), with the Westerly line of the land and right of way, (60 feet wide), of the Western Pacific Railroad Company; thence along said Northeasterly boundary of said Parcel No. 1, as shown on said Map, N. 43° 00' 00" W. 773.52 feet to a 3/4 inch iron pipe found and the true point of beginning of this description; thence from said true point of beginning, S. 44° 24' 00" W. 1471.41 feet to the most Westerly corner of that certain parcel of land conveyed in the Deed to David Levin, et al., recorded December 20, 1955 in [Book 3366, of Official Records, Page 161](#); thence N. 38° 47' 25" W. 119.03 feet to a point in the Southeasterly line of Berryessa Road, (50 feet wide) as established by Survey of Santa Clara County, in 1933; thence along said last named line N. 38° 52' 30" E. 42.26 feet; thence leaving said line N. 63° 07' E. 178.59 feet; thence N. 51° 55' 00" E., 100.90 feet; thence N. 41° 05' 00" E. 100.00 feet; thence N. 29° 49' 00" E. 309.50 feet; thence N. 46° 45' 00" E. 100.00 feet; thence South 83° 13' 00" E. 68.03 feet; thence N. 36° 07' 00" E. 37.53 feet; thence N. 42° 45' 30" W., 17.82 feet; thence N. 45° 25' 00" E. 197.20 feet; thence N. 68° 45' 00" E. 80.00 feet; thence N. 44° 50' 00" E. 300.00 feet to a 2" x 2" hub set in the Northwesterly prolongation of the Northeasterly line of said 14.017 acre Parcel No. 1, hereinabove referred to; thence along said last named prolonged line S. 43° 00' 00" E. 62.00 feet to the true point of beginning.

[APN: 254-17-084](#)

## EXHIBIT A (Continued)

### PARCEL TWO:

Beginning at the point of intersection of the Southwesterly line of the Western Pacific Railroad Right of Way with the Northeasterly line of that certain 13.645 acre parcel of land as shown on the Record of Survey filed June 21, 1962 in [Book 148 of Maps, Page 39](#), Santa Clara County Records; thence along the Northeasterly line of said 13.645 acre parcel, North 43° 00' 00" West 773.52 feet to a point on the Southeasterly line of the former Southern Pacific Company Right of Way; thence along said Right of Way, North 44° 24' 00" East 417.11 feet, more or less, to a point on the Southwesterly line of the Western Pacific Railroad Right of Way; thence along said Southwesterly line South 14° 56' East 885.00 feet, more or less, to the point of beginning.

[APN: 254-17-007](#)

### PARCEL THREE:

A parcel of land situate in the City of San Jose, County of Santa Clara, State of California, being all of Parcels 6 and 7 and a portion of Parcel 8 as said Parcels are described in deed dated March 30, 1939 from San Jose Railroads to Southern Pacific Railroad Company, recorded April 3, 1939, in [Volume 927, Page 162](#), Official Records of said County, described as follows;

Beginning at the intersection of the Southeasterly line of said Parcel 8 with the Westerly line of land (60 feet wide) of Western Pacific Railroad; thence North 15° 00' 25" West, along said Westerly line, 58.09 feet to the Northwesterly line of said Parcel 8; thence South 44° 24' West (shown as South 44° 50' West in said Deed) 447.20 feet to the Northeasterly line of said Parcel 7; thence North 43° 00' West, along said Northeasterly line, 11.95 feet to the Northwesterly line of said Parcel 7; thence along said Northwesterly line, as follows; South 44° 50' West 300.00 feet, South 68° 45' West 80.00 feet and South 45° 25' West 197.20 feet (shown as South 45° 25' West 204.0 feet in said deed), to the Southwesterly line of Parcel 7; thence South 42° 45' 30" East shown as South 43° 00' East in said deed, 17.82 feet to the Northwesterly line of said Parcel 6; thence along last said Northwesterly line, as follows; South 36° 07' West 37.53 feet (shown as South 37° 02' West 73.6 feet in said deed), North 83° 13' West 68.03 feet (shown as North 82° 18' West 45.0 feet in said deed), South 46° 45' West (shown as South 47° 40' West in said deed) 100.00 feet; South 29° 49' West (shown as South 30° 44' West in said deed) 309.50 feet South 41° 05' West (shown as South 42° 00' West in said deed) 100.00 feet, South 51° 55' West, (shown as South 52° 50' West in said deed) 100.90 feet, South 63° 07' West 178.59 feet (shown as South 64° 02' West 185.3 feet in said deed) and South 38° 52' 30" West 42.26 feet (shown as South 44° 50' West 35.0 feet in said deed) to the Southwesterly line of said Parcel 6; thence South 38° 47' 25" East, along last said Southwesterly line 119.03 feet (shown as South 38° 19' East 125 feet in said deed) to the Southwesterly corner of said Parcel 6; thence North 44° 24' East (shown as North 44° 24' East (shown as North 44° 50' East in said deed), along the Southeasterly lines of said Parcels 6, 7 and 8, a distance of 1891.32 feet to the point of beginning.

Excepting therefrom that portion of said property lying below a depth of five hundred (500) feet measured vertically from the contour of the surface thereof; provided, however, that said grantor, its successors and assigns, shall not have the right for any and all purposes to enter upon, into or through the surface of the portion of said property lying above 500 feet, measured vertically from the contour of the surface of said property.

ALSO EXCEPTING THEREFROM all that portion conveyed to the Santa Clara Valley Transportation Authority by Final Order of Condemnation - Action in Eminent Domain, recorded June 6, 2012, as [Instrument No. 21699548, of Official Records](#).

ALSO EXCEPTING THEREFROM all that portion conveyed to the Santa Clara Valley Transportation Authority by Grant Deed recorded November 19, 2018, as [Instrument No. 24066187, of Official Records](#).

### PARCEL FOUR:

## EXHIBIT A (Continued)

Beginning at a 6" x 6" corner fence post marked BB standing at the Southernmost corner of Borchers's Land in the Northern line of lands of Geremia Fattalini, et al, formerly owned by W.F. Babcock in 500 acre Lot 28, former City Lands of San Jose; thence along the Southeastern line of lands of Borchers and Stocklin North 46° 17' East 10.32 chains to a stake marked BCX standing in fence corner at the common corner for lands of C. Geissman and Geremia Fattalini, et al, in the Southeasterly line of Mrs. Stocklin's Land; thence along fence line between lands of said G. Fattalini, et al, and C. Geissman, South 37° 56' East 9.96 chains to a stake marked B5 being the common corner for lands of King and G. Fattalini, et al, in the Southwesterly line of said Geissman's Land; thence along the line between the lands of said Fattalini, et al, on the North and the lands of King McKiernan and R. Summers on the South, South 48° West 13.24 chains to a stake marked JP2 standing at the Northernmost corner of 5.32 acres deeded by J.P. Hall to Manuel A. Vierra, by Deed dated of October 13, 1988, being also the Westernmost corner of R. Summers land; thence along the line between the lands of said Summers and G. Fattalini, et al, South 40° 20' East 8.84 chains to a stake marked JP1 standing at the Easternmost corner of the above mentioned 5.32 acre tract formerly owned by M.A. Vierra and in the center of Mabury Road; and thence along the center of Mabury Road being also the line between 500 acre Lots 27 and 28, South 50° 30' West 6.24 chains to the center of Coyote River and the Western Line of said above mentioned 5.32 acre tract; thence along the center of Coyote River with the following courses and distances: North 38° 35' West 4.31 chains, North 41° 30' West 4.20 chains to a stake marked BF and H2 standing in present channel of Coyote River and the Eastern line of 10.23 acre tract in 500 acre Lot 28, sold by Jacob Heft to Edwards and Dudley by Deed dated May 8, 1874; and thence along the Eastern line of said 10.23 acre lot or tract, North 44 1/4° West 9.35 1/2 chains to a stake marked B3; and thence leaving said Coyote channel and Eastern line of said 10.23 acre tract and running North 46° 17' East 10.15 chains to the point of beginning.

Being part of 500 acre Lot No. 28 of former Pueblo of San Jose, courses true. Variation 16 1/2° East.

Excepting therefrom that portion thereof as conveyed by Rolando Nicora and Clementine Nicora, his wife, to the Western Pacific Railroad Company, a corporation, by Deed dated May 2, 1921 and recorded July 16, 1921, in [Book 536 of Deeds, Page 487](#), described as follows:

A strip of land 60 feet in width lying 30 feet on each side of, at right angles to, and parallel with the located center line of the Western Pacific Railroad Company's branch line of railroad, from Niles or near Niles in Alameda County to San Jose, as the same is staked out and located across the land conveyed to Rolando Nicora, by Giovanni Nobile by Deed recorded May 31, 1892, in [Book 147 of Deeds, Page 420](#).

The center line is described as follows:

Beginning at a point in the property line between the lands now or formerly of Rolando Nicora and C.A. Borchers, said beginning point being South 46° 07' West 256.39 feet along the said property line from a stake marked B.G. standing at the Northeasterly corner of said land of Rolando Nicora; thence South 14° 58' East 732.25 feet along the located center line of the Western Pacific Railroad Company, to a point in the property line between the lands now or formerly of Rolando Nicora and Cesare and Adolfo Delgrande, said point being South 47° 40' West 564.47 feet from a stake marked B5 standing at the most Easterly corner of said land conveyed to Rolando Nicora.

Excepting therefrom all those parcels of land described as Parcels 17, 25 and 27, as shown on a Record of Survey recorded November 27, 1963 in [Book 170 of Maps, Pages 10, 11 and 12](#), in the office of the County Recorder of Santa Clara County.

Excepting therefrom all of that property above described lying within the bounds of Parcels A, B and C, as shown upon that Parcel Map filed for record September 26, 1984, in [Book 534 of Maps, at Pages 36 and 37](#), Santa Clara County Records.

### PARCEL FIVE:

All that certain real property situate in the County of Santa Clara, State of California, described as follows;

## EXHIBIT A (Continued)

Beginning at a stake marked "JP1" in the center of Mabury Road, said stake being the Southwesterly corner of that certain 4.18 acre tract of land conveyed to the Standard Realty and Development Company by Joseph Lavagnino, et ux, by Deed dated October 6, 1920, records of Santa Clara County, said stake also standing on the boundary line between 500 acre Lots 27 and 28 of the Pueblo Lands, of the City of San Jose; running thence North 50° 46' East along the center of said road and boundary line a distance of 13.99 feet to a point which point is 30 feet, distant at right angles Southwesterly from the located center line of the Western Pacific Railroad Company's branch line of railroad as the same is staked out and located across the said tract of land conveyed by Joseph Lavagnino, et ux, to the Standard Realty and Development Company; thence North 14° 58' West parallel to said located center line a distance of 656.41 feet to a point in the Northerly boundary line of the said tract of land deeded by Lavagnino, et ux, to the Standard Realty and Development Company; thence South 47° 40' West 293.43 feet, along said Northerly boundary line of said tract of land to a stake marked "JP2"; thence South 40° 12' East 582.60 feet, along the Western boundary of said tract of Land deeded by Lavagnino, et ux, to the Standard Realty and Development Company, to the point of beginning.

Excepting therefrom Parcels Four and Five above described all that certain property granted to the County of Santa Clara by Deed recorded September 30, 1980 in [Book F615, Page 574](#), Official Records, and being more particularly described as follows:

### PARCEL A:

Beginning at the most Easterly corner of that certain 2.06 acre parcel of land described as Parcel Two in the Judgment of Final Distribution on Waiver of Accounting filed for record in [Book C189, of Official Records, at Page 360](#), Santa Clara County Records, said point of beginning also lying on the center line of Mabury Road; thence leaving said point of beginning along the general Southeasterly line of said parcel and the Southeasterly line of that certain 25.32 acre parcel of land as described as Parcel One in the hereinabove mentioned Judgment of Final Distribution of Waiver of Accounting and said Southeasterly lines being the center line of Mabury Road South 50° 53' 44" West 136.39 feet and South 50° 10' 41" West 281.10 feet to the most Southerly corner of said Parcel One; thence along the Southwesterly line of said Parcel One North 38° 18' 27" West 25.01 feet to point on a line parallel with and distant 25.00 feet Northwesterly measured at right angles from said Southeasterly line of the 25.32 acre parcel; thence leaving said Southwesterly line of Parcel One along said parallel line North 50° 10' 41" East 280.58 feet to an angle point in said parallel line; thence continuing along last described parallel line and along a line parallel with and distant 25.00 feet Northwesterly measured at right angles from said Southwesterly line of the 2.06 acre parcel North 50° 53' 44" East 147.81 feet to a point on the Northeasterly line of said Parcel Two; thence leaving last described parallel line along said Northeasterly line of Parcel Two South 14° 52' 20" East 27.42 feet to the point of beginning.

### PARCEL B:

Beginning at a point on the Southwesterly line of the hereinabove mentioned Parcel One distant thereon North 38° 18' 27" West 25.01 feet from The most Southerly corner of said Parcel One; thence leaving said point of beginning along said Southwesterly line North 38° 18' 27" West 8.01 feet to a point on a line parallel with and distant 33.00 foot Northwesterly measured at right angles from the Southeasterly line of said Parcel One; thence leaving said Southwesterly line along said parallel line North 50° 10' 41" East 86.89 feet; thence leaving said parallel line along a tangent curve to the right with a radius of 1810.00 feet through a central angle of 4° 05' 46" for an arc length of 129.40 feet; thence North 54° 16' 27" East 43.66 feet; thence North 50° 53' 44" East 20.65 feet to a point in a line parallel with and distant 25.00 feet Northwesterly measured at right angles from said Southeasterly line of Parcel One; thence along said parallel line South 50° 10' 41" West 280.58 feet to the point of beginning.

### PARCEL C:

Beginning at a point on the Northeasterly line of the hereinabove mentioned Parcel Two distant thereon North 14° 52' 20" West 27.42 feet from the most Easterly corner of said Parcel Two said point being on a line parallel with and distant 25.00 feet Northwesterly measured at right angles from the general Southeasterly line of said Parcel

## EXHIBIT A (Continued)

Two; thence leaving said point of beginning and said Northeasterly line along said parallel line and its Southwesterly prolongation South 50° 53' 44" West 168.46 feet; thence leaving said parallel line South 54° 16' 27" West 43.66 feet; thence along a tangent curve to the left with a radius of 1810.00 feet through a central angle of 1° 45' 50" for an arc length of 55.72 feet; thence North 50° 53' 44" East 269.95 feet to a point on said Northeasterly line of Parcel Two; thence along said Northeasterly line South 14° 52' 20" East 5.48 feet to the point of beginning.

Excepting therefrom that certain property granted to the City of San Jose, a municipal corporation, by Deed recorded March 28, 1984 in [Book 1409, Page 343](#), Official Records, and being more particularly described as follows:

Commencing at the most Easterly corner of that certain 2.06 acre parcel of land described as Parcel Two in the Judgment of Final Distribution of Waiver of Accounting filed for record in [Book C189 of Official Records, at Page 360](#), Santa Clara County Records, said point also lying on the center line of Mabury Road; thence leaving said point along the Northeasterly line of said Parcel Two North 14° 52' 20" West 27.42 feet to the point of beginning; thence from said point of beginning and along said Northeasterly line North 14° 52' 20" West 21.42 feet; thence South 47° 30' 18" West 205.15 feet to a point on a line parallel with and distant 33.00 feet Northwesterly measured at right angles from said center line of Mabury Road; thence along said parallel line South 50° 10' 41" West 145.39 feet to a point of cusp; thence Northeasterly along a tangent curve to the right with a radius of 1,810.00 feet through a central angle of 4° 05' 46" for an arc length of 129.40 feet; thence North 54° 16' 27" East 43.66 feet to point on a line; thence North 50° 53' 44" East 168.46 to the point of beginning and the terminus of this description.

Excepting therefrom all that certain property as granted to the City of San Jose, a municipal corporation by Deed recorded December 23, 1986 in [Book J970, Page 1682](#), Official Records, and being more particularly described as follows:

Commencing at the Easterly corner of that certain 2.06 acre parcel described as Parcel Two in the Judgment of Final Distribution on Waiver of Accounting filed for Record in [Book C189, of Official Records at Page 360](#), Santa Clara County Records, said point also lying on the center line of Mabury Road; thence along the Northeasterly line of said Parcel Two North 14° 52' 29" West 48.84 feet to the true point of beginning of this description; thence along said Northeasterly line of said Parcel Two North 14° 52' 20" East, 7.90 feet; thence South 47° 30' 18" West, 84.05 feet; thence South 41° 48' 16" West, 70.47 feet; thence North 47° 30' 18" East, 150.51 feet back to the true point of beginning of this description.

Also EXCEPTING THEREFROM all that portion conveyed to the Santa Clara Valley Transportation Authority by Grant Deed recorded November 19, 2018, as [Instrument No. 24066188, of Official Records](#)

Also EXCEPTING THEREFROM all that portion conveyed to the Santa Clara Valley Transportation Authority by Grant Deed recorded November 19, 2018, as [Instrument No. 24066189, of Official Records](#)

**EXHIBIT A  
(Continued)**

PARCEL SIX:

Rights over Parcels 25 and 27 as shown on Record of Survey recorded November 27, 1963 in [Book 170 of Maps, Pages 10](#) to 12, inclusive, as reserved in the Deed from Clementina Nicora to Santa Clara County Flood Control and Water District recorded January 29, 1965 in [Book 6831 at Page 675](#), which provides among other things the following:

- A) The right to cross said parcels with irrigation lines, water lines, public street, public utilities, roadways, and with railroad tracks to connect with the tracks now owned by Western Pacific Railroad Company,
- B) The right to park vehicles on and to pave said parcels.

**FILE NO. PDC17-051**  
**1590 BERRYESSA ROAD (SAN JOSE FLEA MARKET)**  
**DEVELOPMENT STANDARDS**  
**06/29/2021**

*\*In all cases where the graphic plans and text may differ, this text takes precedence.\**

## **RESIDENTIAL AREAS**

### **Permitted Uses**

- Permitted uses of the R-M Multiple Residence Zoning District as set forth in Title 20 of the San José Municipal Code, as may be amended.
- Permitted and Administrative uses of the CP Commercial Pedestrian Zoning District as set forth in Title 20 of the San José Municipal Code, as may be amended.
- Live/Work units are allowed on public or arterial streets only, as designated in the Berryessa BART Urban Village (BBUV) Plan circulation chapter. Live/Work units must be in compliance with Section 20.80.740 of the San José Municipal Code, as may be amended.
- Existing Flea Market-related uses allowed as interim uses consistent with the Berryessa BART Urban Village Plan land use policies.
- Supportive housing as defined in Section 50675.14 of the Health and Safety Code.

### **Conditional and Special Uses**

- Special and Conditional uses of the R-M Multiple Residence Zoning District as set forth in Title 20 of the San José Municipal Code, as may be amended, with the issuance of a Planned Development Permit or Planned Development Permit Amendment.
- Special and Conditional uses of the CP Commercial Pedestrian Zoning District as set forth in Title 20 of the San José Municipal Code, as may be amended, with the issuance of a Planned Development Permit or Planned Development Permit Amendment.

### **Prohibited Uses**

- Detached single-family, two-family, townhomes.
- Hospitals
- Vehicle-related uses as enumerated in Zoning Ordinance Table 20-90, as may be amended

- Cemeteries, mortuary, and funeral services
- Live/Work units are not allowed on the main streets located along the central open space in the Flea Market South District of the Berryessa BART Urban Village Plan. Live/Work units must be in compliance with Section 20.80.170 of the San José Municipal Code, as may be amended.
- Residential care/service facilities for 7 people or more persons, and single-room occupancy hotels.

## **Development Standards**

### Density

- Minimum of 1,700 multifamily residential units and up to 3,450 units.
- Residential development as low as 95 dwelling units per acre (DU/Acre) may be permitted if it can be demonstrated to the satisfaction of the Director of Planning, Building and Code Enforcement that residential development at a density as low as 95 DU/Acre combined with other development in the areas identified for residential use on the Land Use Plan (Sheet 2.3) would not inhibit the attainment of a minimum aggregate of 1,700 residential units with an overall average density of 150 DU/Acre net.

### Building Height

- Building heights shall be consistent with the height limits described in the Urban Design chapter of the Berryessa BART Urban Village Plan, as may be amended. (Note: Include in the final submittal the building height diagram of the BBUV Plan. This diagram is shown in the BBUV land use and urban design chapters).

### Architecture & Site Design

- Residential development shall be consistent with the goals, policies, and standards as described in the Urban Design chapter of the Berryessa BART Urban Village Plan, as may be amended. Residential building design shall be consistent with the San José Citywide Design Standards and Guidelines, as may be amended.

### Perimeter Setbacks

- Residential development setbacks: Minimum 0 feet setback permitted, Maximum 3 feet (except portion of building perimeter with stoops). For building perimeter with stoops, the setbacks are 6 feet to 10 feet. All setbacks are measured from the frontage property lines.

### Parking

- Vehicle parking shall be designed in accordance with Title 20 of the San José Municipal Code, as may be amended.



- Motor vehicle parking supply, parking management, and parking reduction for each subsequent Planned Development Permit shall be governed by the goals, strategies, and parking polices described in the Berryessa BART Urban Village Plan parking chapter, as may be amended.
- Bicycle parking shall be provided as required per Title 20 of the San José Municipal Code, as may be amended.

#### Private Open Space

- Projects shall provide private open space at a minimum of 30 square feet on at least 50% of the residential units. Private open space is defined as direct access to a balcony, patio, deck, rear yard, or roof terrace.
- The private open space requirement is calculated based on the total number of units and each development (Planned Development Permit).

#### Signage

- Per the San José Municipal Code, Title 23, as may be amended.

### **COMMERCIAL AREAS**

#### Permitted Uses

- Permitted and administrative uses of the CP Commercial Pedestrian Zoning District as set forth in Title 20 of the of the San José Municipal Code, as may be amended.
- Office and research and development (R&D) uses.

#### Conditional and Special Uses

- Special and Conditional uses of the CP Commercial Pedestrian Zoning District as set forth in Title 20 of the San José Municipal Code, as may be amended, with the issuance of a Planned Development Permit or Planned Development Permit Amendment.

#### Prohibited Uses

- Vehicle-related uses
- Private clubs/lodges
- Amusement arcades with more than 19 games
- Bowling establishments
- Storage
- Hospitals

- Cemeteries, mortuary, and funeral services
- Emergency residential shelters, residential care/service facilities for 7 people or more persons, and single-room occupancy hotels
- Live/Work units

## **Development Standards**

### Commercial Development and Floor Area Ratio

- A minimum of 1,500,000 square feet and up to 3,400,000 square feet of commercial uses.
- Commercial development with a Floor Area Ratio (FAR) as low as 3.5 net, as defined in the Berryessa BART Urban Village Plan, may be permitted if it can be demonstrated to the satisfaction of the Director of Planning, Building and Code Enforcement that an FAR as low as 3.5 combined with other development FARs in the areas identified for commercial on the Land Use Plan (Sheet 2.3) would not inhibit the attainment of a minimum aggregate of 1,500,000 square feet.

### Building Height

- Building heights shall be consistent with the goals, policies, and height limits described in the Urban Design chapter of the Berryessa BART Urban Village Plan. (Include in the final submittal the building height diagram of the BBUV Plan. This diagram is shown in the BBUV land use and urban design chapters. Note: One diagram will suffice for both commercial and residential areas.)

### Architecture & Site Design

- Commercial development shall be consistent with the goals, policies, standards and design guidelines of the Urban Design chapter of the Berryessa BART Urban Village Plan, as may be amended.

### Perimeter Setbacks

- Commercial development setbacks: Minimum 0 feet permitted, Maximum 3 feet along Green Street as defined in the BBUV transportation and circulation system and zero-lot-line or zero setbacks along other streets. All setbacks are measured from the frontage property lines.

### Parking

- Vehicle parking shall be designed in accordance with Title 20 of the San José Municipal Code, as may be amended.
- Motor vehicle parking supply, parking management, and parking reduction for each subsequent Planned Development Permit shall be governed by the goals,

strategies, and parking policies described in the Berryessa BART Urban Village Plan parking chapter, as may be amended.

- Bicycle parking shall be provided as required per Title 20 of the San José Municipal Code, as may be amended.

### Signage

- Per the San José Municipal Code, Title 23, as may be amended.

## **PUBLIC PARKS/PRIVATELY OWNED, PUBLICLY ACCESSIBLE OPEN SPACE/OPEN SPACE/RIPARIAN CORRIDOR AREAS**

### **Permitted Uses**

- All permitted uses per policies of the Berryessa BART Urban Village Plan Open Space chapter.
- Commercial uses (dining, retail, outdoor sales, farmers markets, urban markets etc.) are permitted within these areas.
- Existing Flea Market-related uses in the current configuration are allowed as interim uses consistent with the Berryessa BART Urban Village Plan land use policies.
- New Urban Market-related uses in the designated BART Plaza and Central Open Space.

### **Prohibited Uses**

- All uses prohibited or not supported by the policies of the Berryessa BART Urban Village Plan Open Space chapter.

### **Development Standards**

- All proposed development, including buildings, placemaking uses, and related activities in the Public Parks/Open Space districts shall meet the intent, goals, and policies of the Berryessa BART Urban Village Plan, and as described in the Open Space chapter.

## **GENERAL NOTES**

- Portions of the existing Flea Market site may be removed at any time. Interim land use policies described in the Berryessa BART Urban Village Plan land use chapter are applicable.

## ENVIRONMENTAL MITIGATION

- Implement the mitigation measures identified in the certified San José Flea Market Planned Development Rezoning Project Environmental Impact Report for File No. PDC17-051, and related mitigation monitoring and reporting program, as may be amended.

## CONDITIONS OF APPROVAL

**In addition to the conditions of approval specified in Section 3 of the applicable Planned Development Zoning Ordinance, all of the following conditions of approval shall apply to any and all land use permits and approvals for sites located within the zoning district that is the subject of this rezoning action.**

**Berryessa BART Urban Village (BBUV) Plan:** The subject rezoning is located in a designated Urban Village established under the Envision San José 2040 General Plan. Urban Villages are designated to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth and reduce impacts transportation, greenhouse gas emission, air quality impacts, and other environmental and other impacts. Development approved under this rezoning is subject to the policies in Berryessa BART Urban Village Plan, including each of the following conditions related to transportation demand management:

### Transportation Demand Management (TDM)

1. Unbundle all off-street parking from the rental, lease, or sale of each residential unit in the project.
2. Price all off-street private parking spaces at market rate for users.
3. Consistent with the Berryessa BART Urban Village Parking and TDM plan and the anticipated Citywide Transportation Demand Management Policy, the project is required to implement the following Mandatory TDM measures:
  - a) Form the Berryessa BART Urban Village Transportation Management Association (TMA) as applicable and as specified below in Sections 5 through 7 below. Join as an active member of the TMA and participate in the TDM programs offered by the TMA.
  - b) Join as an active member of the TMA and participate in the TDM programs offered by the TMA.
  - c) Transit Pass Subsidy: Provide contributions or incentives towards the equivalent cost of a VTA monthly pass for on-site residences and employees. The monthly contributions or incentives can be spent on VTA/BART fare tickets or monthly

- passes. The project shall meet this requirement by participating in the TDM program offered by the TMA, or by procuring the service on its own.
- d) Education, Marketing, and Outreach: Provide employees and/or residents with information on available travel options. The project shall meet this requirement by participating in the TDM program offered by the TMA, or by procuring the service on its own.
4. In addition to the Mandatory TDM measures, the project is required to implement a set of Additional TDM measures, selected from a menu of options based on the TDM Point System framework as defined in the Berryessa BART Urban Village Parking and TDM plan and the anticipated Citywide Transportation Demand Management Policy. The project is required to submit a project-level TDM Plan comprised of selected TDM measures at the Planned Development Permit stage.

**Transportation Management Association (TMA):**

5. The first development project to obtain a building permit within any of the four Districts in the BBUV Plan area established by that Plan shall, in conjunction with the City of San José, form the Berryessa BART Urban Village Transportation Management Association (TMA) in order to manage and administer the City-approved TDM Plans for development projects and uses within the four Districts in the BBUV Plan area. This TMA shall be established prior to occupancy of the first building. The TMA shall facilitate shared TDM services as appropriate; provide transportation-related marketing for TDM-related programs and services; coordinate annual monitoring, evaluation, and reporting to the City of San José in accordance with the relevant approvals and legally binding documents for each respective development project and use within the four Districts of the BBUV Plan area, with TMA approval prior to submittal to the City of San José. Appropriate funding mechanisms for the TMA shall be established no later than the date of occupancy of the first building following the BBUV Plan approval in any of the four BBUV Districts. The developer/property owner that forms the TMA shall be a member of the TMA and other developers/property owners of projects within the four Districts of the BBUV shall join the TMA for the purposes stated above.
6. Projects approved under subsequent PD permits are required to join the TMA established in Section 5 above, and property owners shall pay a portion of the costs of any adopted funding mechanism(s) to implement the City and TMA functions under the Parking and Transportation Management Entity.
7. Development approved under this rezoning shall work with the City and the TMA to make adjustments in the project-level TDM Plan as appropriate to meet the TDM compliance and monitoring requirements set forth in the anticipated Citywide Transportation Demand Management Policy.

**Additional Conditions of Approval Offered by Property Owner and Accepted By City Council:**

Accept applicant's amendment of its rezoning application to include various measures to assist all vendors operating on the subject property and the property owner's revised offer dated June 28, 2021, as follows:

8. 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 onsite, some other market location, or any other location in San Jose. The notice would not be initiated prior to July 1, 2023.
9. Commencing September 1, 2021, the owner shall submit a written quarterly status report to the Director of PBCE and the Community and Economic Development Committee 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. The report will also specify whether any vendors have been displaced, relocated, or terminated. This report shall be provided to the City no later than 30 days following the end of the quarter for which it is due. The Community and Economic Development will consider the Owner's reports twice each year.
10. 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.
  - a) 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.
  - b) 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 any open air market in the Bay Area including, but not limited to, the Capitol Flea Market, De Anza Flea Market, and Laney College Flea Market.
11. 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 José.
12. The property owner shall endow the Vendor Business Transition fund with \$5.0 million, in accordance with the following schedule:

- a) 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
  - b) On the date that the property owner issues the one-year notice to the vendors in accordance with Section a above, the property owner shall transfer \$2 million to the City's Vendor Business Transition Fund.
  - c) On the date that the existing Flea Market ceases operation on-site, the property owner shall transfer an additional \$2.5 million to the City's Vendor Business Transition Fund.
13. A Flea Market Advisory Group consisting of representatives of the property owner/developer, the City, and a supermajority of Flea Market vendors including members from any vendors' association 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:
- a) Recommendations to the property owner and City on the design, operation, and associated parking of the Urban Market area;
  - b) Funding decisions for the Vendor Business Transition Fund including the general purposes of the fund described in item f, 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.
  - c) 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.
  - d) 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.

The composition of the Flea Market Advisory Group shall be determined by the City Council in accordance with Section 14 below.

14. 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.

15. 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.
16. 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.
17. The property owner agrees that all vendors who follow the rules and terms in their Rent Agreement shall continue to have their Rent Agreement renewed and shall not be evicted from The Flea Market prior to the planned closure or relocation of the market.
18. The conditions of approval of the Flea Market rezoning ordinance shall apply to successors in interest of the property.

**Additional Conditions of Approval:**

19. Prior to submittal of an application for the PD permit referenced in Section 21 below, Property owner shall make and complete a reasonable evaluation of the financial feasibility of a denser/multi-level urban market and associated parking. The evaluation should study all scenarios including comparable cities that have successfully implemented a similar market model.
20. 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.

**Planned Development Permit Approval:**

21. Any Planned Development (PD) Permit that includes market-rate dwelling units to be approved only after, or at the same time, that a Planned Development Permit that includes the new market space is brought to Council. If the Flea Market finds an alternative location, then the other elements as appropriate are no longer needed, and all appropriate language changes shall made to the ordinance and resolutions.