

Dear Mayor, City Council, and San Jose Planning Commissioners Caballero, Bonilla, Casey, Garcia, Lardinois, Oliverio, and Torrens,

We write to you as concerned community members and supporters of the Berryessa Flea Market Vendors Association regarding the Draft Berryessa BART Urban Village (BBUV) Plan and San Jose Flea Market Planned Development Rezoning Project's. Both the Plan and Project have had insufficient engagement, consideration, assessment, and policies to deal fully and directly with the displacement of the Berryessa Flea Market. We call upon you to take meaningful action to protect the 750+ businesses and thousands of jobs that depend on the market and consider strategies to reimagine and recreate the market into a 21st century multicultural and affordable marketplace in the context of a densifying area.¹

Along with the [more than 5,000 people](#) that signed a petition in a span of five days (petitions in Attachment D below), we urge the Planning Commission to recommend denial of the proposed Plan and Project until adequate engagement, analysis, and planning is conducted in order for better plans to be formed that can ensure equitable development without displacement.

As cited by a July 2020 letter by multiple non-profit organizations, "the loss of "La Pulga de San José" could become the most blatant example of displacement for small minority-owned businesses facilitated by government action in the entire state in generations." But for government action--upzoning and billions of dollars of public investment in the form of the taxpayer funded BART extension-- this redevelopment would not be possible. The Planning Commission and the City Council have the obligation and authority to protect this community resource and the people whose lives will be impacted by its displacement.

We urge you to recommend denial and substantive changes to the City Council because we believe it is the only way to have any real hope and assurance that the needs raised by the community will be addressed. It is clear that the City has not acted with the level of interest and urgency demanded by the vendors and the community over the last 15 years regarding the issue of the displacement of this vital community resource, even when staff were directed by the City Council to work towards relocation options in 2007.

In order to create a win-win for developers and the community, it is essential that the City go above and beyond the legal minimum requirements and devote the kind of attention, initiative, creativity, strategies, and resources typically put forth to attract major events and major corporations to town. The City must embark on a process to address the displacement of the market, deeply engage the merchants as a key stakeholder in the process, and fully assess strategies to preserve the market before adoption of the Plan and Project

We recommend action and initiative, including, but not limited to, the following strategies:

Commission a robust economic analysis to adequately assess the economic and equity impacts of the closure of the flea market. The analysis should include both direct and indirect

¹ See the SPUR's ideas in Appendix B below

economic impacts to the vendors and inability to contribute to the economy, as well as the ramifications of the elimination of the region's largest business incubator. It should also assess the viability of various different market formats for a future marketplace in a different form, including a more urban, multi-level market, helping scope out a path forward for its continuation in a way that maximizes sustainability and growth potential for merchants.

Develop a community benefits agreement to ensure the economic fruits of development are broadened beyond the privileged few. Tremendous taxpayer resources have gone into the BART extension to San Jose that has stimulated public and private plans for the property that are now creating windfall economic rewards for the owners of the flea market. Now the Berryessa Flea Market Rezoning Project applicant, the Bumb family, is requesting \$100 million in highway interchange funding subsidies from the City. The public is entitled to a return on its investment in the form of incorporation or relocation of the market.

Incorporate policies, strategies, and conditions of approval into the Urban Village Plan and the Rezoning Project to help ensure the continuation of the market, whether it be incorporation within the development and/or relocation within the Urban Village Plan area. Both the Plan and the Project should provide much greater detail and attention to policies and conditions of approval to deal with displacement. For example:

- Incorporate policies and conditions of approval to mitigate for commercial and residential displacement in future entitlements.
- Commit to a target number of vending spaces and square footage, as well as affordability and first right or return language for existing vendors. Previous City redevelopment efforts have included anti-displacement provisions for local businesses, such as "a 10% set aside of retail space for the previously existing small businesses".²
- Include language on sequencing, ensuring that the vending spaces are created before the flea market, in its current form, is developed, ensuring a smooth transition and reducing economic hardship for vendors. An economic assistance package for flea market merchants between the closure of the market and when a new market begins operations should also be seriously considered.

Finally, this is an issue of institutional racism and we believe it is one of the best examples of why Citywide racial equity policies and commitments must be instituted. What were the equity goals and outcomes of the Plan and Project? Equity is not mentioned at all in either staff report. If a proposal of this sort were proposed on Lincoln Ave in Willow Glen, would this be the City's response to displacement of the businesses there? Would such a proposal even be allowed? Would the City be so quick to claim that they have no power or responsibility to address the displacement? The merchants and community deserve better - far more than a one year eviction notice. The City cannot build trust with immigrants and people of color communities nor truly make strides on addressing inequality when it provides a helping hand with one department or project but deeply hurts or fails to protect the community with projects and plans of this nature with the other.

² <https://www.forworkingfamilies.org/sites/default/files/documents/CIMCBA.pdf>

Sincerely,

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Discussion:

Not one or the other, but both:

Planning for growth in places with existing residents and businesses, should consist of an us + them approach to development, respecting existing residents and businesses while making room for new ones. The Rezoning Project staff report calls the new development “attractive to the City’s projected growing demographic groups (i.e. an aging population and young workers seeking)” and “new housing and job growth attractive to an innovative workforce”, while staying silent on the demographics of the existing tenants, workers, and visitors at the flea market.³

Furthermore, there seems to be an implicit assumption in the context of the Urban Village Plan and the proposed Flea Market Rezoning Project that public marketplaces like the flea market and the people that depend on them are somehow incompatible with a dense urban environment. In fact, the opposite is true. Some of the world’s largest and most vibrant open air markets exist in the densest of cities, from Mumbai to Bangkok, Paris, to Mexico City. To compare the value that the flea market provides to the type of development that is being proposed is like comparing apples and oranges. Great cities have both traditional brick and mortar forms of urban development as well as more organic commercial and public spaces like the flea market.⁴

By creating plans with an either-or approach, the City and the applicant are replacing something with very unique economic and social benefits for a very different set of benefits, and prioritizing one set of residents, business owners, and workers over another. We believe this is not just unjust, it’s counterproductive towards the City’s own goals, for example to create vibrant, healthy, and diverse places that people from all walks of life will be drawn to.

Ironically, one of the main components of the BBUV Plan is to increase vibrant commercial space, which the Flea Market already provides. Through redevelopment, this existing, vibrant, historic, and cultural piece of commercial space would be lost and the City would have to start over again, potentially forming spaces and places that cannot live up to the degree of vibrancy that the flea market provides today or could provide in the future in a different format. As is the case with creating vibrant commercial districts, there are many other examples of General Plan policies that the flea market or a similar open air market conforms with, as highlighted in Appendix C below.

Public engagement that is not engaging:

A growing number of cities across the US are acknowledging racial equity in their plans, projects, and processes. The Cities of Portland and Seattle, for example, have established Racial Equity Toolkits that go far beyond San Jose’s decades old City Council Policy 6-30,

³ Pg. 5 of <https://www.sanjoseca.gov/Home/ShowDocument?id=70500>

⁴ Please see further below in Appendix A for a more robust discussion of the role that urban markets like the flea market play in cities.

laying out the types of steps required of staff for small to large projects and plans to obtain equitable outcomes and more equitably engage impacted communities along the way.⁵ Part of the problem with the City of San Jose's existing public engagement policy, is that it does not have an equity lens and does not place any sort of priority on engaging disadvantaged populations and those most likely to be impacted by development. This may be a big part of the reason why vendors at the flea market have complained that they have not felt informed and engaged in the latest plans for flea market development. It may be time to take a fresh look at the City's engagement policies and make necessary adjustments to avoid this kind of situation in the future.

A key element of equitable and effective public engagement is to identify and engage in a focused manner those most likely to be affected by development in a culturally appropriate manner. As we describe below, the outreach conducted by the City as part of the BBUV Plan process and the property owner through the Rezoning Project have not met our expectations of effective community engagement. In the case of the outreach performed by the Flea Market owners/management/workers/development consultant, there have been additional concerns, consisting of reports to placate, manipulate, and misinform, and even intimidate. These of course are among the least empowering forms of public engagement, as noted in the graphics below of best practices in the field.

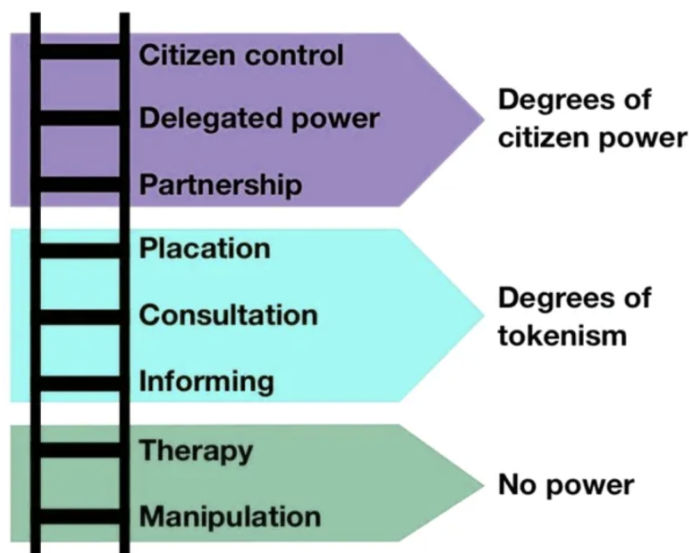


Image: Arnstein's Ladder of Citizen Participation⁶

⁵ <https://www.portlandoregon.gov/oehr/71685>,
https://www.seattle.gov/Documents/Departments/RSJI/RacialEquityToolkit_FINAL_August2012.pdf,
<https://www.sanjoseca.gov/home/showpublisheddocument?id=12813>

⁶ <https://www.good-governance.org.uk/blog-post/community-engagement-and-voice/>

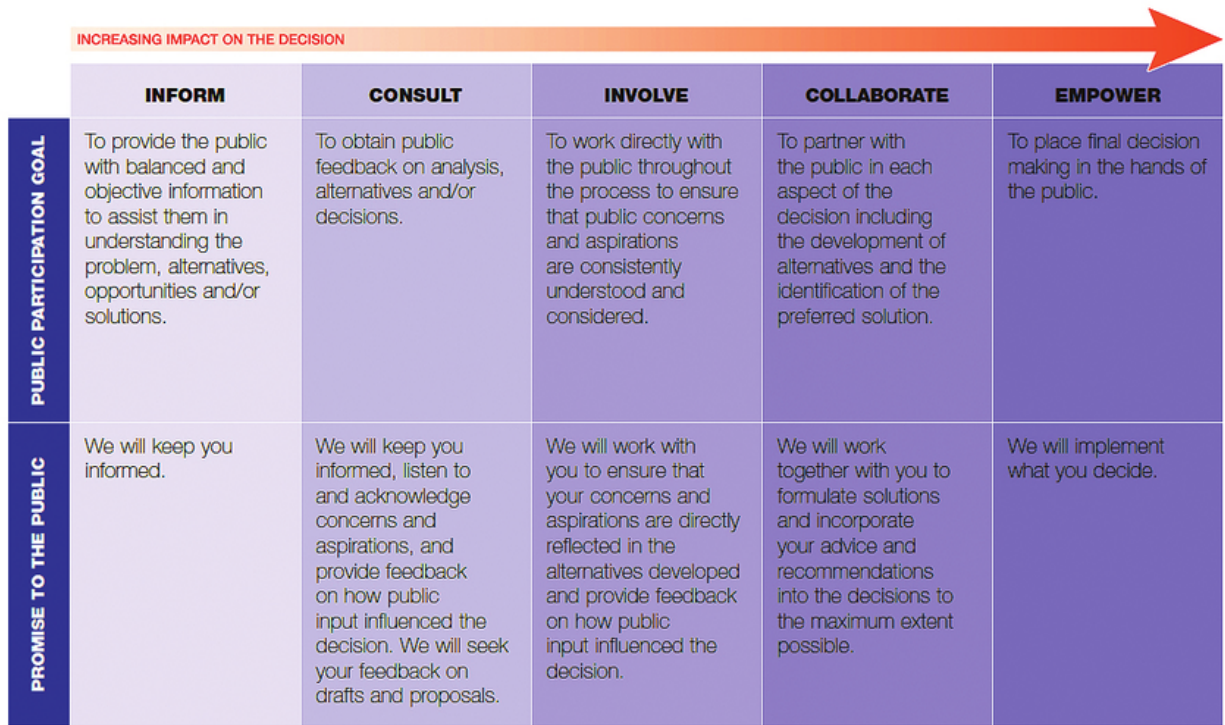


Image: International Association for Public Participation, *Spectrum of Public Participation*⁷

On pg 19 of the BBUV Plan staff report, staff write “The City conducted an extensive community outreach and civic engagement process during the BBUV Plan preparation... All neighborhood residents, property owners, business owners, and other interested individuals were invited to participate and provide input on the formation of this Plan.”⁸

We would like to know how this “extensive community outreach and civic engagement” was measured. We ask that the City provide proof that that effective outreach was conducted, particularly to those who would be most impacted by the Plan and Project:

- Did the City develop a public participation plan and track its implementation, particularly outreach to the vendors, workers, and customers of the flea market?
- Did the City specifically notify the merchants as part of the BBUV process and did they do so when there was still an opportunity to inform the development of the Draft Plan? Did the outreach provide the merchants opportunities to provide input leading up to each key step in the process?
- If any direct outreach was conducted directly to these impacted populations, in what languages did they offer the information and input opportunities to the vendors and workers at the flea market? Was the information provided clear and easily understood at a reading level as is common practice among public agencies?

⁷

https://www.researchgate.net/figure/IAP2-Spectrum-of-Participation-From-the-International-Association-for-Public_fig3_301627763

⁸ <https://www.sanjoseca.gov/Home/ShowDocument?id=70456>

- What were the demographics of the participants of the City's public meetings and survey responses? Were there any merchants that participated in any of the City's meetings or took any of the City's surveys?

According to the testimony of dozens of merchants we've spoken with, there was no direct outreach conducted by the City nor the applicant to the merchants or employees of the flea market during the heart of the development of the Draft BBUV Plan & Rezoning Project CEQA public input period. It was only until outcries by the community in recent months that outreach took place with the merchants by the project applicant. Even when outreach was finally conducted, merchants complained that such outreach was not conducive to their participation.

Despite the project applicant's claims, it is our understanding based on evidence from vendors, that the project noticing that was provided over the course of the BBUV Plan and the 2020-2021 rezoning was only provided in English. Merchants complained that the notices were not useful or hard to decipher as to the relevance and importance of the upcoming meetings. For example, one set of notices, shown below, lacks information about the project, contact information for the City, and translation to the most commonly spoken languages at the market.

Vendor Open House

To Answer Your Questions About BART, The Future of The Flea Market
and the Planned Transit Village

There are NO changes planned for The Flea Market anytime soon. We are planning for a successful year in 2021.

However, we do continue to work with the City to increase the amount of future housing and office development that can happen on the Flea Market property someday.

If you have questions about the future development or The Flea Market operations, please drop by one of these open house sessions:

Sunday, December 6th

10:00am to 1:00pm

At the South End of the Pavilion

-or-

Sunday, December 20th

8:00am to 10:00am

At the Rent Window

If you cannot attend, you may contact Erik Schoennauer at (408) 947-7774 or es@stanfordalumni.org with your questions and comments.

Image: Flyer distributed by the FM Rezoning project applicant with meetings taking place only after the close of the CEQA public input period, no information linking to the City's plans, no City staff person to contact directly for questions, and no translation in any of the languages that are prevalent at the flea market.

Finally, when the “open houses” did take place by the project applicant, they appear to be used as an attempt to diffuse potential vendor concerns of the development plans (we’re happy to substantiate these claims if need be). But just as importantly, if these “open houses” were considered public outreach, then, where is the input that was obtained? Did the applicant share this input with City staff and the general public? Was this input then incorporated in some way into the UV Plan or the Project?

Finally, as noted above, there have been multiple reports of vendors who were told that the meetings were not important, and worse, reports of intimidation by flea market security towards vendors passing out information about the meetings to their colleagues (vendors documented some of these interactions and would be happy to substantiate these reports).

In the days leading up to the hearings, the Flea Market owners/management/spokespeople have even spoken to the media and through various social media channels claiming that the development plans are simply rumors, in what seems to be a clear attempt to diffuse public concern.



Image: Instagram post in March 2021 stating “The San Jose Flea Market is NOT closing. Rumors of the Flea Market’s potential closure have been around for the past 20 years, and through it all we’ve been open every weekend, year-round.

The stories and social media posts that have been written about The Flea Market and its potential closure over the years have been written without our knowledge, and therefore, without our input. We are NOT closing, and have no intention to close.

We continue to invest in our business, and we are looking forward to a great 2021 and beyond!”⁹

Public input to nowhere:

Let’s assume that the public engagement of both the City as part of the BBUV Plan and the applicant as part of the FM Rezoning Project were legally and morally defensible. An important facet of a public process is to meaningfully incorporate the perspective and concerns of the community in the plans and policies that are developed.

Despite the fact that it is quite possible that not a single flea market merchant or employee attended the BBUV Plan community meetings, the City’s own public record as part of the planning process shows substantial community input noting the historic/cultural value of the flea market and an interest in preserving it within the development plans. Furthermore, such input extends well past the dates of the BBUV Plan process itself in prior discussions around the topic. Clearly there has been a strong interest by the community for development plans to consider and mitigate the impacts of development, but this input has not translated into sufficient safeguards, policies, and initiative to create a win-win scenario.

The long “paper trail” in Attachment B seems to indicate that there is a disconnect between input received and the content of the Plan and Project, raising many questions:

- Why was the input below not meaningfully incorporated?
- Why weren’t the spirit of these comments included on the BBUV Plan summary of comments on pg 20-21 of the staff report and incorporated as policies to continue the market in some way/form?
- Why are all the Rezoning Project policies regarding commercial displacement only surface mitigations such as documenting the historic value of the flea market and putting up signage? Why hasn’t a more realistic alternative than the “reduced footprint alternative in the EIR” been explored?

Greater attention required:

In staff’s analysis of conformance of the Draft BBUV Plan Parks, Plaza, and Placemaking chapter with the City’s General Plan, the staff report “The [Draft BBUV] Plan recommends a central open space in the Flea Market South District that extends from the BART station. This central open space will be the main amenity and placemaking area in the Plan, and supports “activating uses” such as vendor kiosks and community activities... Immediately adjacent to the BART station, the first component of this central open space is a public plaza surrounded by mid- to high-rise buildings... Additionally, a planned neighborhood park in the Facchino District will provide open space opportunities for residents and employees in this area of the urban village.”¹⁰

⁹ <https://www.radio.com/alt1053/latest/despite-reports-san-jose-flea-market-not-closing>

¹⁰ Pg. 9 of <https://www.sanjoseca.gov/Home/ShowDocument?id=70456>

While this language seems to point towards the possibility of some sort of vendor spaces at the flea market site, there is no detail in the BBUV Plan or the Rezoning Project as to how many spaces or square footage would be included as part of this concept, nor any additional strategies directly connecting the welfare of the vendors at the flea market with these vending spaces, such as affordability of the spaces, first right of return, and sequencing to limit the disruption of business activities. There are also no broader strategies in the BBUV Plan that may be applicable beyond the flea market site to encourage relocation of vending spaces.

The reality is that the City has not provided anywhere near the kind of attention, study, and initiative that is warranted for an issue of this magnitude. For these, and other reasons laid out in this document, the BBUV Plan and the Flea Market Rezoning Project are half-baked and need to go back to the drawing board.

Conclusion:

Regardless of the extent of public engagement related to the issue of displacement or the legal minimum level of action or effort necessary by the City as it relates to the issue of displacement, the bottom line is that the City has a moral obligation to address this issue. Roughly 15 years after the last General Plan Amendment and Rezoning for the property, the City and the Project applicant have nothing to show. The protection of thousands of immigrants, people of color, and low income populations are in the Planning Commission and City Council's hands. If you do not act, the thousands of people that depend on the market and the millions that treasure it, will be left with no protection by the City when the Pulga de San Jose is bulldozed. In its place, at least according to one of the laughable mitigations to the cultural/historical impacts of the planned development, will be the tombstone of the Flea Market, in the form of a plaque where the market once stood.

Appendix A - The role that urban markets like the flea market play in dense urban environments:

A report by UC Berkeley's Center for Community Innovation, assesses some of the economic benefits of the Berryessa Flea Market and lays out many of the unique benefits that markets like the flea market provide. "Public markets have existed as long as there have been cities. From the agora of Ancient Greece to Paris' Les Halles to New York's Union Square Greenmarket, markets have been important civic, social and commercial places within the urban landscape... Markets provide opportunities for full-time self employment or supplemental income for vendors, and low-cost consumer goods generate considerable consumer surpluses for low-income shoppers (Morales, Balkin and Persky 1995)... The Project for Public Spaces has found that public markets often act like retail anchors by drawing shoppers not only to the market itself, but to surrounding businesses as well (PPS 2003)."



Images: Istanbul, Turkey Grand Bazaar - one of the largest and oldest covered markets in the world¹¹

The report continues, “Markets can generate substantial economic benefits, particularly for low-income, immigrant and minority entrepreneurs, who often lack access to traditional forms of capital. Public markets serve as business incubators for new businesses, allow existing entrepreneurs to experiment with minimal risk, and become a vehicle for individual and family self-empowerment (Morales 2009). They are not merely tools for increasing economic activity in traditionally capital-poor communities; they can create opportunities for upward mobility and asset building (PPS 2002)... Public markets and street vending also provide opportunities for self-employment to workers who face limited employment options in formal labor markets.”¹²



Image: Colaba Causeway, Mumbai, India¹³

Finally, the report proclaims, “The San Jose Flea Market is a unique institution that has considerable cultural, social and economic significance for residents of Northern California. Over the past five decades, it has evolved into something much more than just a market for inexpensive new and used consumer goods. It has become a vital, family-oriented public space, particularly for Latino and Asian immigrants. It is home to a unique retail environment with goods and services not found elsewhere in the Bay Area, and in a shopping environment that accommodates people of all walks of life. Over the years, it has become a job center that accommodates hundreds of local entrepreneurs, most of whom are San Jose residents and low- and moderate income immigrants. For hundreds, if not thousands, of other workers, the market provides part-time jobs in street vending, retail sales, security, maintenance, food service and

¹¹ <https://tourist2townie.com/culture-food/grand-bazaar-in-istanbul/>

¹² <https://www.reimagineerpe.org/files/SanJoseFleaMarket-CR-Campion-Mo.pdf>

¹³

https://www.123rf.com/photo_103204352_mysore-india-december-25th-2017-view-of-devaraja-market-in-mysore-.html

janitorial work. Even though it may not be as visible as Ebay or Hewlett Packard, the Flea Market is one of San Jose's largest employers and is possibly its largest source of jobs for immigrants and people of color."

Another report by SPUR, a regional urban planning research organization think tank, reinforces the findings from UC Berkeley, "The San Jose Flea Market is a destination in its own right... It is the largest flea market in the western United States and a major economic development and social amenity for the city... a place where entrepreneurs, many of whom are immigrants and/or lower-income, start their own businesses selling food and wares. The sales that vendors make at the flea market are a major contributor to their household incomes. Selling at the market has also provided numerous vendors with experiences that they have used to move their businesses to brick and mortar locations... In addition to the economic benefit to the families of the vendors, the market provides a unique shopping and social experience not found anywhere else in the region. It is authentic, varied and has historical value."



Image: San Jose flea market¹⁴

The spirit of the CCI's research findings and SPUR's description of the flea market are reflected in many of the public's comments in the attached petition, including:

- "This is essential to my people. This creates jobs for all walks of life and benefits the Bay Area." - Danielle Vega
- "The San Jose flea market is a staple in the city and an attraction across the Bay Area. I don't live in San Jose but have visited the flea market many times. It's a cultural hub and economically supports many families. Do not displace the people and culture." - Tania Pulido
- "The Berryessa Flea Market is the lifeline of our community and an incredible piece of San Jose's history. It should be the future too. Replacing this vibrant, entrepreneurial hub

¹⁴ <https://www.mercurynews.com/2007/04/22/flea-market-and-way-of-life-at-risk/>

with gentrified housing would be a significant and irreplaceable loss for the city as a whole and for the community.” - Patricia Black

- “The flea market is more than just a place to create family memories. It’s part of our community, our history, and our culture. \$20 at the flea market goes a long way for families who don’t have much. It supports small businesses and people as well as creating a space where we don’t have to be reminded of the increasing gentrification going on in our city. We have lost so much already, please don’t take away more.” - Corrina Barrera
- “The flea market has been my family’s livelihood for over 30 years. The closure of the flea market will not only affect my family but hundreds of other immigrant families that are just trying to make through these hard times.” - Adryanna Gutierrez
- “From the immigrant owned businesses to the high school workers who are helping to support their families, the economic loss is going to be devastating in our community.” - Ailyn Rangel
- “I am proud to be Mexican and my family worked 20+ years at the Berryessa flea market. I spent my childhood running around, eating candy, and buying toys. This hurts us more than anything in the world because we see our people struggle to have a job already. Don’t take this opportunity away from our people.” - Ashley Diaz

Appendix B - Where did all the public input go?

In November 2018, the City hosted its first workshop on the Berryessa BART Urban Village Plan. When it came to valuing what's in the area/existing assets, and wanting to preserve what's already there, almost all of the tables in the workshop mentioned the flea market.¹⁵ The summary of notes from the meeting state that “over 130 participants (approximately 95 community members, 35 staff and community partners) participated in the... workshop... Participants included neighborhood residents, property owners, and other individuals interested in gaining insight into the planning process.”¹⁶

The following are the documented comments of the workshop participants related to the flea market:

- **What do you like/love/want to preserve in the area?**
 - Table 1: Placemaking: Culture and history of flea market
 - Table 2: Placemaking: Preserve cultures identities that are already existing; Services: Flea market
 - Table 3: Services: Keep some element of the Flea Market; it is big, supports small business, and has: entry level jobs, variety, produce, and diversity
 - Table 4: Services: Flea Market
 - Table 5: Land Use: Flea Market; important to keep the spirit; Neighborhood: Preserve economic and social diversity
 - Table 8: Land Use: Flea Market; Make it a smaller version; Brings community together
 - Table 9: Like Flea Market
- **What are the assets in the area?**
 - Table 5: Land Use: Flea market; Flea market existed before people; Multi-generational
 - Table 9: Land Uses: Flea Market, Night market (would like entertainment), Diversity
- **Values:**
 - Table 10 - Participants were interested in neighborhood services and concerned with displacing current businesses; Neighborhood service uses and avoid displacement of current businesses.

In July 2020, a coalition of organizations put forth a comment letter regarding the flea market redevelopment that included Catalyze SV, the Santa Clara & San Benito Counties Building & Construction Trades Council, the Sprinkler Fitters Local 483, Latinos United for a New America (LUNA), Greenbelt Alliance, TransForm, BART Transit Village Advocates, UA Local Union 393, Working Partnerships USA, IBEW 332, South Bay YIMBY, and SOMOS Mayfair. The letter raised concerns and recommendations regarding several elements of the Plan, including the displacement of the flea market:

¹⁵ <https://www.sanjoseca.gov/home/showpublisheddocument?id=37885>

¹⁶ <https://www.sanjoseca.gov/home/showpublisheddocument?id=37887>

“The Flea Market has been a significant part of San Jose’s culture for 60 years. As part of the project’s build-out of public space, let’s find a way to provide the recreational and economic benefits of the Flea Market. In our Valley, we often fall prey to ignoring our history and demolishing its legacy. Let’s not do that again with this final phase of development by washing away what has been one of San Jose’s biggest attractions for decades.”

“We are confident the developer can find a way to recreate aspects of the Flea Market and continue its legacy in a more compact, urban design. With an extremely large development site like this one, there is a greater opportunity to dedicate public and recreational space to uses such as those of a public market. We would like to see a portion of the development recapture the characteristics, businesses, customers, affordability of goods, and culture of the current Flea Market. One way to do so would be by creating a new indoor/outdoor market space that dedicates space to existing sellers, in the form of so many other world-class urban markets such as Pike Place in Seattle, Granville Island Public Market in Vancouver, Viktualienmarkt in Munich, Germany, Mercado Municipal Paulistano in Sao Paulo Brazil, and Mercado Libertad in Guadalajara, Mexico.”

“Let’s keep these businesses and workers in San Jose by providing them with meaningful support (in the same way actions are being taken at all levels of government in response to the economic crisis resulting from the current pandemic). Another way to prevent displacement would be to subsidize or guarantee stabilized rents for existing businesses.”

In October, 2020, the City hosted three online webinars, which largely consisted of presentations of various elements of the BBUV Plan, with time for Q&A. At the Berryessa BART Workshop 3 Webinar 1 - a question was asked about the future of the flea market.¹⁷

Staff’s response was “To be clear, the City does not have direct control of that. The Bumb family owns the land of the flea market, so we don’t have an idea of how that’s going to be closed or when; however, what we do have is policies in the land use that call for ideas of what happens with the flea market. So, for instance, we have an idea that if there is a relocation within the area, where that’s going to happen, how’s that going to happen? We acknowledge that the functioning of the flea market has a really powerful potential for placemaking purposes, so we’re trying to, as much as possible, at least have one policy that calls for relocation of that within the site, but to be very clear, the ultimate decision of what happens to the flea market is really out of the control of the City, but we will work very closely with the project applicant to explore ideas about that.”

Two questions emerge from staff’s response above.

- First, what happened to that policy that the City was proposing to put forth? Was this the assurance that the City consistently provided the community as plans for the Urban Village were being discussed?
- Second, at the same time City staff have consistently pointed to the owners of the flea market as the ones fully controlling the fate of the flea market. Why haven’t alternative

¹⁷ <https://www.youtube.com/watch?v=1LGB2Cm-XgA>

strategies been considered to ensure that regardless of whether the owners and developers decide to incorporate or relocate the flea market, that the merchants and workers that depend on the space, will be protected - and to ensure this valuable regional destination continues into the future and ideally preserved in perpetuity?

Similarly, under Interdepartmental and External Government Coordination on pg 20, it states “The City also held discussions and presentations with outside City agencies and organizations including SPUR and San Jose State University”.

What was their input? Did any of these agencies and organizations raise questions about displacement of the market or offer up solutions? At least one of the organizations cited has spoken up about the importance of the flea market and suggested ideas to preserve it in a different form, while still creating an affordable shopping and recreational experience. In 2014, SPUR released a report on the Berryessa Flea Market plans called “The Future of the Berryessa BART Station.”¹⁸

On pages 26-29 in the report, SPUR writes: **“Recommendation 2: Retain the flea market as a central attraction in the station area and as a natural catalyst to promote innovative development in the area...** Our proposal calls for allowing the flea market to remain located in the station area over time as the area is built out. In the initial years, the flea market could remain on the southern portion of the site, and some vendors could focus on commuter services (coffee, snacks, dry cleaning, etc.) with their stalls located immediately near the station entrance.”

“In addition, there are ways to work with current vendors and other entrepreneurs who are ready to make the leap to more permanent space by leasing affordable pop-up space. Some models exist for using shipping containers to help build out retail spaces at relatively low cost. It should be noted that the flea market is currently one of the only locations in San Jose to repurpose shipping containers for retail uses. Additionally, the flea market, in collaboration with Moveable Feast, hosts a seasonal night market where food trucks and local businesses create a weekly festival for visitors.”

“A new nonprofit entity, working with local partners, could be created to curate the space with an eye toward creating an exciting mixture of uses to attract new audiences. As the businesses become more permanent, there may be an opportunity over time to create a retail or office hub around a central square, adjacent to Berryessa Station, while moving the flea market to the southern end of both the current flea market site and the site that VTA owns.”

“Given that the flea market is most active on weekends, it would be ideal to find a way to share the parking facilities at the BART station. Doing so would make use of the parking garage during

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https://www.spur.org/sites/default/files/2015-08/SPUR_The_Future_of_the_Berryessa_BART_Station.pdf

weekend hours and not require the construction of additional parking for the flea market. Hopefully some flea market patrons would choose to take BART as well.”

“The flea market is an important asset to San Jose and the region. If it is infeasible to keep the market in its current location, the city should work with the market’s owners to find an alternative suitable location.”¹⁹

The following are examples and images from “The Future of the Berryessa BART Station”:

Boxpark, London



Image: “Boxpark in Shoreditch, East London, is a pop-up retail development built from 60 old shipping containers. Photo by Yukino Miyazawa”

Downtown Container Park, Las Vegas

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https://www.spur.org/sites/default/files/2015-08/SPUR_The_Future_of_the_Berryessa_BART_Station.pdf

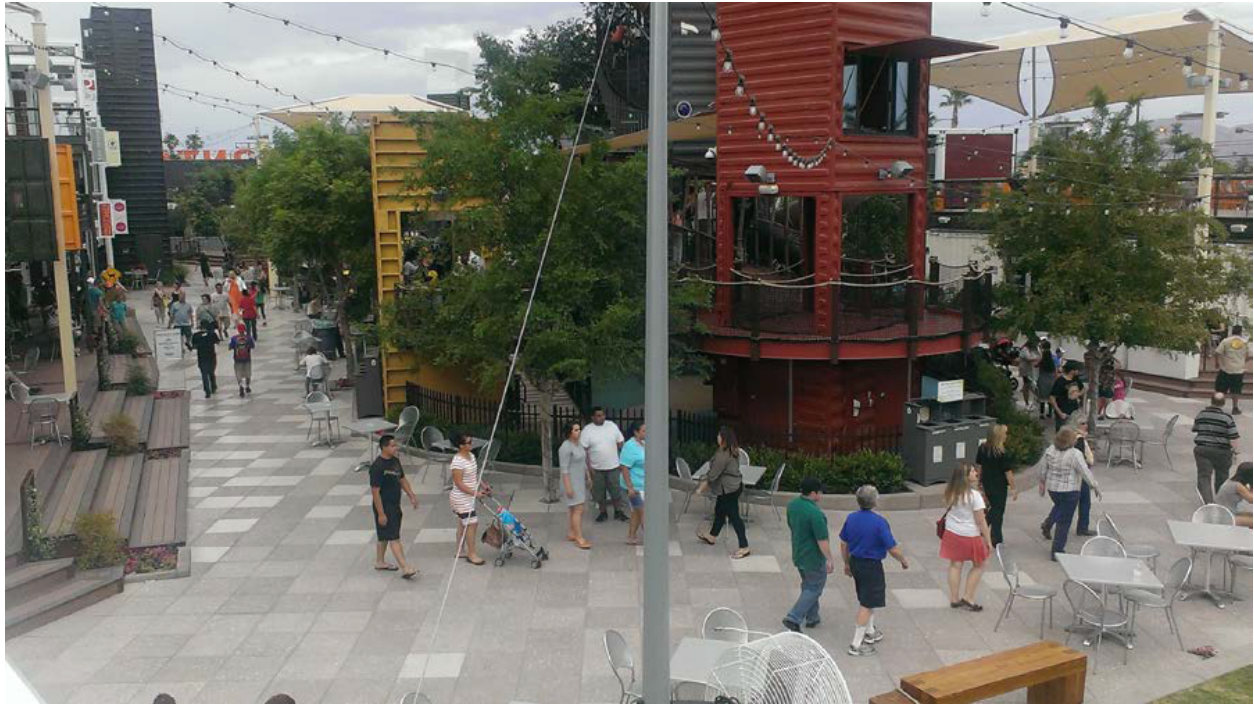


Image: “Downtown Container Park, developed by Zappos CEO Tony Hsieh in Las Vegas, is an example of a shipping container project that has transformed the urban fabric. It includes 30 shipping containers and 41 metal cubes ringing a well-used open space. Photo by Mark Pritchard”

Future Urban Core at Berryessa



Image: “The flea market site presents an opportunity to create a lively container park right next to a future urban core public space.”

Appendix C - The flea market and other urban markets of its sort conform to the City's own General Plan policies:

The following are several General Plan policies noted in the City's BBUV Plan staff report that are also consistent with a flea market or other similar types of urban markets:

- Innovative Economy - Land Use and Employment Policy E-1.2: Plan for the retention and expansion of a strategic mix of employment activities at appropriate locations throughout the City to support a balanced economic base, including industrial suppliers and services, commercial/retail support services, clean technologies, life sciences, as well as high technology manufacturers and other related industries. - pg. 7
 - The flea market adds to the mix of the City's employment activities as there are very few permanent markets of this sort with low barrier to entry that serve as a business incubator, in particular for demographic groups with barriers to entry into some of the very types of employment options the City is attempting to attract to the City.
- Innovative Economy - Land Use and Employment Policy IE-1.6: Plan land uses, infrastructure development, and other initiatives to maximize utilization of existing and planned transit systems including fixed rail (e.g., High-Speed Rail, BART and Caltrain), LightRail and Bus Rapid Transit facilities, promote development potential proximate to these transit system investments compatible with their full utilization. - pg. 7
 - There has been no analysis of the difference between a scenario with a market vs no market in regards to transit ridership. Neither the City or the rezoning applicant have any basis for such a claim.
- Land Use – Efficient Use of Residential and Mixed-Use Lands Policy LU-10.1: Develop land use plans and implementation tools that result in the construction of mixed-use development in appropriate places throughout the City as a means to establish walkable, complete communities. - pg. 7
 - There is no more walkable place with a greater concentration of retail than the Berryessa Flea Market, not just in San Jose, but arguably on the West Coast, and possibly the nation.
- Implementation – Urban Village Planning Policy IP-5.1(1): Job and Housing Growth Capacity: Identify suitable areas for retail and other employment uses, giving careful consideration to existing and future demand for retail space, the appropriate location and design of retail spaces, opportunities for large-scale and small-scale retail uses, and adequate and appropriate sites for other employment uses consistent with the total planned job capacity for the particular Growth Area. Identify suitable areas for residential development, capable of supporting the full amount of planned residential growth capacity. Apply corresponding Land Use / Transportation Diagram or zoning designations to support the proposed employment and residential density ranges. - pg. 7
 - How much sense does it make to eliminate the greatest concentration of retail in the City - retail that is surviving under the pandemic and that will likely thrive as the economy reopens and people seek places to recreate and socialize?

On page 9 of the BBUV Plan staff report, staff note many parks, plaza, and placemaking strategies consistent with the flea market:

- Community Design – Function Policy CD-2.4, Function: Incorporate public spaces (squares, plazas, etc.) into private developments to encourage social interaction, particularly where such spaces promote symbiotic relationships between businesses, residents, and visitors.
- Vibrant Neighborhoods - Cultural Opportunities Policy VN-4.3: Consider opportunities to include spaces that support arts and cultural activities in the planning and development of the Downtown, new Urban Village areas and other Growth Areas.
- Implementation – Urban Village Planning Policy IP-5.1(4): Infrastructure: Identify locations for parks, plazas, public and quasi-public open spaces, and sites to potentially incorporate libraries, public safety facilities and other public uses, along with other infrastructure needs. A Village Plan should also consider the adequacy of public and private utilities to serve the planned growth capacity.

Appendix D - Petition Signatures to Save the Flea Market: Attached