

## **BALLOT QUESTION**

Shall the West Berkeley Plan and the Zoning Ordinance be amended to allow development flexibility on up to 6 large sites, each under the same ownership, during the next 10 years, allowing a maximum height of 75' with a site-wide average height of 50', and only if community and environmental benefits are provided to West Berkeley?

## **TEXT OF MEASURE**

### **ORDINANCE NO. #,### - N.S.**

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN AS FOLLOWS:

#### **Section 1. Findings.**

The People of the City of Berkeley find as follows:

A. The City of Berkeley ("City") adopted the West Berkeley Plan in 1993; and adopted Zoning Ordinance amendments to implement that Plan in 1999.

B. Beginning in 2006, the City Council requested that staff revise land use regulations in West Berkeley to allow flexibility to facilitate development of large multi-parcel sites and to encourage building reuse and expansion.

C. In addition to various Zoning Ordinance revisions, the revised regulations include revisions to the Land Use Chapter of the West Berkeley Plan, *Section VII. Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* to reflect the proposed changes to zoning regulations.

D. The West Berkeley Plan is incorporated by reference into the General Plan, and therefore such revisions are also amendments to the General Plan.

E. The City has prepared an Environmental Impact Report (EIR) and a Supplemental Environmental Impact Report (SEIR) on the revised regulations and the City Council has certified those documents.

F. On June 12, 2012, the Council adopted Resolution No. 65,782-N.S. certifying the EIR as supplemented by the SEIR with respect to the plan and zoning amendments set forth in this measure.

G. The proposed amendments to the West Berkeley Plan Land Use Chapter, *Section VII. Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* are consistent with the Purposes of the West Berkeley Plan, including

maintaining the full range of land uses and economic activities, maintaining the ethnic and economic diversity, and maintaining and improving the quality of life.

H. The proposed amendments are also consistent with West Berkeley Plan goals and policies, including, but not limited to allowing modification to zoning regulations to improve the West Berkeley industrial business climate, to attract emerging business sectors, and to retain, to the degree feasible, the economic diversity of West Berkeley businesses, and especially space for artists and crafts-people and jobs for residents of Berkeley who may be underemployed or unemployed.

## **Section 2. Amendment of West Berkeley Plan and General Plan.**

The West Berkeley Plan is hereby amended as follows, and the General Plan, of which the West Berkeley is a part, is hereby also amended by reference in the same manner.

A. Revision to Table 1-5, “Recommended Development Standards by Zone”, page 53. The Residential Density standard for the Mixed-Use Residential zone is amended as follows:

Residential Density: max. 1 unit/1,250 sq. ft. land, except for Master Use Permit sites.

B. The “Large Site Development Process”, page 56 is amended to read:

Rationale:

West Berkeley has a few large sites—sites of 5 acres or more under a single ownership—which present special challenges and opportunities for planning and development in West Berkeley. These large sites—such as the Miles or (ex)Colgate property—are of a scale where they have a major impact on the area around them, and noticeable impacts on West Berkeley as a whole. They also may require modification of the uses and development standards in a district to facilitate a feasible large scale project.

For these reasons, the West Berkeley Plan incorporates a concept of a Large Site Development Process. While the process remains to be defined, the concept is that a special approval process would be used for certain projects. Because of the importance of these projects, the Planning Commission would be involved in the process. The process would also provide a formal mechanism for early citizen input. The rezoning will propose a Zoning Ordinance amendment to provide for a Master Plan Permit. It would be a middle ground alternative between the Use Permit and the Development Agreement. While a master permit could be issued for a multi-building project, there would be a procedure for review of individual buildings at their time of construction. This alternative could incorporate many of the master planning features of a Development Agreement,

but would be acted upon under the procedures of the Zoning Ordinance, rather than as a separate contract.

It is important to note that no special process would be required of large scale projects which conform in all substantive respects to the uses and development standard of their district. Such a project, however large, would require simply the normal Use Permit(s) and environmental review (an Environmental Impact Report or other appropriate documentation).

**201244 Update:** The Master Use Permit (MUP) section of the Zoning Ordinance (Chapter 23B.36) is modified. The Regulations noted in the Plan are no longer accurate. Please reference the proposed revisions to Chapter 23B.36 for the updated Master Use Permit regulations.

Regulation:

Projects which are eligible for the Large Site Development Process are those which:

- ~~On~~ Are located on sites of at least 4 (~~modified 2011~~) acres or one full City block under the same ownership; and
- ~~Proposing to incorporate~~ Incorporate uses which would not otherwise be permitted in the district, but would be permitted in other zoned land within the Master Use Permit site; or
- Requesting an “alternative” land use entitlement, such as a Development Agreement. Another possibility is a Master Plan Permit, whereby a single permit would be issued for the development of a number of buildings and/or uses within a given range.

### **Section 3. Amendment of Zoning Ordinance.**

Chapter 23B.36 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

#### **Chapter 23B.36 MASTER USE PERMITS**

- 23B.36.010 Applicability
- 23B.36.020 Purposes
- 23B.36.030 Master Use Permit Application—Process
- 23B.36.040 Reserved
- 23B.36.050 Permissible Alterations of Development Standards and Permitted Uses
- 23B.36.060 Master Use Permit excludes other alterations of development standards
- 23B.36.070 Contents of Master use Permit
- 23B.36.080 Vesting

## 23B.36.090 Findings

### **23B.36.010 Applicability**

This Chapter applies to sites that met and continue to meet the eligibility requirements set forth in this Section as of August 1, 2011, and is limited to the sites as they existed at that time.

- A. In order for a site to be eligible for a Master Use Permit (“MUP”), at least 50% of its land area must be:
  1. located in one or more of the MU-LI, MM, or M districts;
  2. the site must consist of either
    - a. at least 4 contiguous acres in area under the same ownership (whether or not in a single parcel); or
    - b. a full city block under the same ownership (whether or not in a single parcel);
- B. An MUP site may include property located in the C-W or M-UR districts subject to the additional regulations in Section 23B.36.050.A.
- C. The City may not approve more than 6 MUPs during the 10 years immediately following the effective date of this Chapter.
- D. Notwithstanding Section 23B.56.100, an MUP project shall secure a building permit within 24 months of the project’s approval. Failure to do so may result in the lapse of the MUP, pursuant to Chapter 23B.56. Once lapsed, that MUP shall not be counted for purposes of this Section.
- E. For purposes of this Chapter, parcels shall be considered to be in the “same ownership” if the same person or entity has a greater than 50% ownership of each parcel.

### **23B.36.020 Purposes**

The purposes of this Chapter are to provide flexibility in zoning requirements for projects in West Berkeley that are located on large sites in order to:

- A. Facilitate the implementation of the West Berkeley Plan;
- B. Facilitate the reuse of large and multi-user sites which might otherwise prove difficult to reuse;
- C. Facilitate the development and reuse of large, multi-user sites as integrated units, designed to produce an environment of stable and desirable character that will benefit the occupants, the neighborhood, and the city as a whole;
- D. Consolidate the review of the impacts of the development and reuse of large and multi-user projects;
- E. Improve Berkeley’s competitiveness in attracting, incubating, retaining and growing businesses by allowing businesses to develop and commence operation on a site quickly once overall development requirements have been established;
- F. Attract and retain businesses, especially those engaged in diverse, comparatively clean, and environmentally beneficial industrial activities;
- G. Attract businesses in emerging sectors of the economy;
- H. Retain and provide space for artists;

- I. Reduce or mitigate circulation, access and parking problems by improving transportation infrastructure, reducing vehicle use by employees and providing adequate parking;
- J. Expand the availability of and access to jobs and job training programs; and
- K. Raise funds for programs and initiatives that further the goals and purposes of the West Berkeley Area Plan.

### **23B.36.030 Master Use Permit Application — Process**

- A. Master Use Permit applications shall include:
  - 1. all materials required by Section 23B.24.030, except that they shall not be required to include architectural plans or drawings for phases subsequent to the first phase(s);
  - 2. a detailed phasing plan that shows the character, scale, general location and timing of all physical development, including on- and off-site infrastructure, and locations of proposed uses;
  - 3. a proposed benefits package that is consistent with 23B.36.090.B. The proposed benefits package must include benefits beyond what would otherwise be provided and must specify the types of benefits, the method of delivering and guaranteeing these benefits, and their net present value. In addition, the proposal must demonstrate how the proposed benefits are a reasonable exchange for the requested changes in development standards for the proposed project, recognizing that the zoning ordinance does not require the benefits to equal or exceed the full value to the developer of such modifications to development standards. The City may require the applicant to pay for an independent consultant to provide technical assistance to the City in reviewing the information provided. Measures to mitigate the land use impacts of the proposed project shall not be considered benefits under this Chapter; and
  - 4. the applicant's commitment to enter into a binding Community Benefits Agreement that meets the City's requirements to guarantee provision of the proposed benefits if the application is approved.
- B. Applications for Master Use Permits shall be subject to the provisions under Chapter 23B.32, except that the public notice area required by 23B.32.020 shall be expanded to five hundred (500) feet of the subject property and notice of public hearing shall be posted and mailed 30 days in advance.

### **23B.36.040 Reserved**

### **23B.36.050 Permissible Alterations of Development Standards and Permitted Uses**

- A. An applicant for a Master Use Permit may request, and the Board may approve, the following alterations to the lot development standards and permissible uses set forth in the underlying applicable zoning district regulations:
  - 1. Parking Requirements: Reduction of off-street parking requirements of up to 50%;
  - 2. Height Limitations: increases in permitted maximum height up to 75 feet, except as provided in paragraph 3 below, with a site-wide average height not to exceed

50 feet, and except as further limited by the existing height limits in areas of an MUP site zoned C-W (Chapter 23E.64) and MU-R (Chapter 23E.84). Development in a MUP site is limited by the following:

- i. buildings shall be setback five (5) feet from any property line that abuts or confronts an MU-R zone not located within the MUP site;
  - ii. in a MU-R zone within a MUP site buildings shall be no higher than 35 feet at the property line or setback line, whichever applies, and may increase to a maximum height of 45 feet provided they do not intersect a plane starting at 35 feet high and sloping on a 30 degree angle from horizontal inward toward the lot; and
  - iii. in a MU-R zone within a MUP site any height granted using the density bonus provisions may not intersect the plane described in Section 23B.36.050.A.2.ii unless the applicant can demonstrate that adherence to this provision would be in violation of state law.
3. [Reserved];
  4. Floor Area Ratio (FAR) Restrictions: increases in permitted maximum FAR of up to 3.0 except in the MU-R District, where FAR is limited by the MU-R District regulations. For purposes of this section, above grade parking structures count for lot coverage calculations but not for FAR calculations;
  5. Setbacks: reduced setbacks from residential uses;
  6. Spacing Requirements: use separation standards may be reduced;
  7. Uses: Land Uses permitted by the underlying zoning of the land that comprises a Master Use Permit site may be located within the site without regard to the zoning district boundaries, subject to the thresholds and permit requirements of the Master Use Permit, except that:
    - i. residential uses shall not be allowed in the M, MM or MU-LI portions of an MUP site,
    - ii. residential density in the MU-R portion of an MUP site shall be calculated using the standards applicable in the C-W district, although the height limits for MU-R residential uses shall conform with Section 23B.36.050(A)(2)(ii) , and flexibility regarding parking may be allowed pursuant to paragraph 1, above,
    - iii. the following MU-LI uses are prohibited in MU-R portions of an MUP site: construction products manufacturing, pharmaceutical manufacturing, testing and commercial biological research laboratories, and commercial excavation, and
    - iv. any research and development use that may be allowed in an MU-R portion of an MUP site is only allowed subject to the findings in Section 23B.36.090.E;
  8. The replacement of Manufacturing, Warehouse, Wholesale, or Material-Recovery activities with Other Industrial uses permitted in any of the zoning districts in which the subject property is located.
  9. The maximum lot coverage allowed for an MUP site is 75% and there must be a minimum of 10% publicly accessible open space, not including surface parking.
- B. The Gross Floor Area allocated for each use may vary from that set forth in the Master Use Permit by up to ten percent (10%) with a Zoning Certificate, as long as

the new use allocations meet all requirements of the Zoning Ordinance. Variations of more than ten percent (10%) but less than twenty-five percent (25%) from the stated Gross Floor Area for any use may be authorized by the Zoning Officer; variations of more than twenty-five percent (25%) may be authorized by the Board. Any such change shall still be subject to the requirements set forth in the approved MUP, including the finding required by Section 23B.32.040.A.

- C. Notwithstanding the conversion requirements applicable in the underlying districts within an approved MUP, spaces within an MUP site may be divided, aggregated and/or converted in any manner, as a matter of right as long as such division, aggregation or conversion is consistent with the gross floor area limitations for uses and findings and requirements set forth in the MUP.

#### **23B.36.060 Master Use Permit excludes other alterations of development standards**

The flexibility provided under this Chapter to alter development standards is exclusive and supersedes all other provisions of this Title under which development standards may be altered, except as provided under Section 23B.44.050. In cases where this Chapter applies, Chapter 23B.48 shall not apply, and *vice versa*.

#### **23B.36.070 Contents of Master Use Permit**

In addition to the information and requirements that are normally contained in a Use Permit, as well as any specific additional conditions or requirements the Board may impose, a Master Use Permit shall include the number of square feet of buildings and land to be used for Industrial (Manufacturing, Wholesaling and Warehousing), Office (exclusive of offices ancillary to other uses), Commercial (Retail and Personal Service), Live/Work Units and Residential Uses and a detailed phasing plan as described in Section 23B.36.030.A.

#### **23B.36.080 Vesting**

- A. An MUP shall be deemed to have been exercised in its entirety upon the substantial completion of the first phase thereof. Thereafter, it shall be considered to be vested in its entirety.
- B. Failure to substantially comply with the detailed phasing plan contained in the MUP shall be a violation of the MUP and subject to revocation or modification per Chapter 23B.60.

#### **23B.36.090 Findings**

- A. In order to approve a MUP, the Board must make both the finding required by Section 23B.32.040.A and the following additional findings:
  1. The proposed project will be consistent with the purposes of this Chapter;
  2. The proposed project includes the applicable requirements of the Mitigation Monitoring Program adopted concurrently with this Chapter; and
  3. All new building within the proposed project must comply with the Bird-Safe Building Design Guidelines, as specified in SEIR Mitigation Measure BIO-1, to reduce the frequency of bird collisions in the area.

- B. For alterations of development standards and permitted uses under Section 23B.36.050.A the Board must find that the proposed project would confer measurable community benefits that affirmatively advance the purposes of this Chapter or the West Berkeley Plan in accordance with the requirements adopted by the Council per Section 23B.36.040, and that the applicant has agreed to enter into a binding commitment to do so.
- C. For alterations of Permitted Uses under Section 23B.36.050.A.7, the Board must find that the proposed project will maintain the overall industrial nature of the West Berkeley Area and the MUP site.
- D. For variations in the gross floor area allocated for specific uses under subdivision C of Section 23B.36.050, the Zoning Officer or Board must find that any proposed variation is consistent with the purposes of this Chapter.
- E. In order to approve a Master Use Permit that allows uses permissible in the M, MM, or MU-LI districts that are specifically prohibited in C-W or MUR districts to be located in the C-W or MU-R portions of the site, the Board must find that the proposed locations of those uses would not increase the incompatibility of uses, either within the site itself or between the site and surrounding area.
- F. In order to approve a Master Use Permit that contains buildings within the MU-LI or within 100 feet of either MU-LI or MU-R districts, the Board must find that the project
  1. would not substantially degrade the existing visual character or quality of adjacent properties, especially on the scale and character of adjacent homes;
  2. would provide appropriate transition to minimize changes in scale from existing development to higher scale and more intense development; and
  3. would not cause an unreasonable shadow on any sensitive area.
- G. In order to approve a Master Use Permit adjacent to the boundary of Aquatic Park, the Board must find that the project will not unreasonably create shadows upon degrade the existing visual quality or character of, or pedestrian access to Aquatic Park.

#### **Section 4. Amendment of Measure**

The amendments adopted by the voters in this measure may be repealed or amended by the City Council without a vote of the people as long as any such amendments do not increase the aggregate amount of development allowed by this measure.

#### **Section 5. Effectiveness**

- A. Sections 2 and 3 of this measure shall not take effect until the Council adopts an ordinance that requires any development under Section 3 to provide at least one of the following community benefits:
  1. Retain and provide affordable work space for artists or funds for that purpose.
  2. Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report or funds for that purpose.
  3. Provide access to and participation in jobs training programs designed to advance employment prospects for Berkeley residents, especially those living near or below the poverty line.

4. Provide affordable work force housing in West Berkeley or funds for that purpose.
5. Contribute to environmental improvements at Aquatic Park or other measures to improve environmental quality in West Berkeley.
6. Payment of prevailing wages for all construction work under the MUP.
7. Provision of privately owned but publicly accessible open space as part of the MUP.
8. Provision of space and or support to childcare providers so that affordable childcare can be provided to those who need and qualify for it.
9. Require local sourcing of building materials to the extent feasible.
10. Provide benefits or raise funds for programs and initiatives that further goals of the West Berkeley Plan.

B. Sections 2 and 3 of this measure shall not take effect until the Council adopts an ordinance that adopts:

1. a formula for determining the value of community benefits that will be required;
2. a process under which applicants for master use permits under Section 3 are required to demonstrate meaningful attempts to meet and consult with the affected community prior to filing an application; and
3. mechanisms for ensuring that the affected community is involved in evaluation of the adequacy of any proposed community benefits, that community benefits inure primarily to the benefit of West Berkeley, and that there is community involvement in overseeing provision of promised community benefits.

C. No MUP may be approved for any site abutting, confronting or adjacent to Aquatic Park until the Council adopts an ordinance adopting measures to protect and where possible improves the environmental, recreational and aesthetic qualities of Aquatic Park. Such measures shall include, but are not limited to the following elements:

1. Height limitations;
2. Floor area ration (FAR) limitations;
3. Setbacks;
4. Controls on runoff and site drainage;
5. Mitigation measures to avoid or lessen shadowing of Aquatic Park; and
6. Protection of significant views of and from Aquatic Park.

#### **Section 6. Severability.**

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The people of the City of Berkeley hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences,

clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.