




Office of the City Manager

ACTION CALENDAR
December 18, 2007

To:  Honorable Mayor and Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Zoning Ordinance, General Plan, and West Berkeley Plan Amendments and Revised Mitigated Negative Declaration to allow Automobile Sales in the Manufacturing District.

RECOMMENDATION

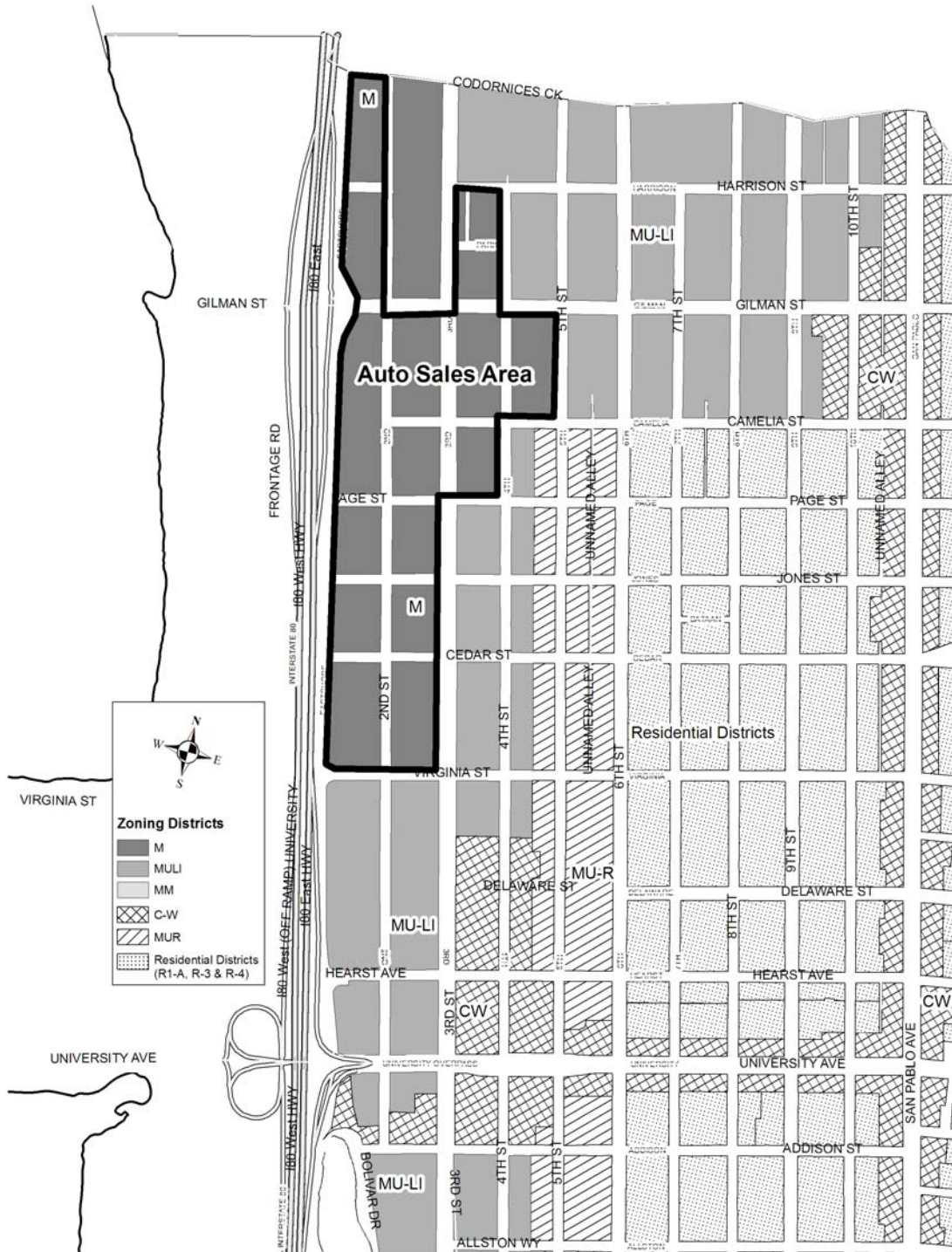
1. Adopt a Resolution adopting the Mitigated Negative Declaration to allow automobile sales in the Manufacturing District of the City (excluding the City's solid waste center site);
2. Adopt a Resolution amending the General Plan and West Berkeley Plan to allow automobile sales in the Manufacturing District of the City (excluding the City's solid waste center site); and
3. Adopt a first reading of an Ordinance amending Chapters 23E.72 (Manufacturing District) and 23F.10 (Definitions) to allow automobile sales in the Manufacturing District of the City (excluding the City's solid waste center site).

SUMMARY

The City Council conducted a public hearing and considered the proposed General Plan, West Berkeley Plan, and Zoning Ordinance amendments at their December 11, 2007 meeting. The Council directed staff to return with amendments that excluded the City's solid waste center from the area where automobiles dealerships would be allowed. The Ordinance and Resolution allowing automobile sales in the Manufacturing District were revised to reflect the Council's direction and are attached to this report. The revisions state that automobile sales are not allowed on City-owned land used for a Material Recovery Enterprise or solid waste transfer station as of January 1, 2008. Also attached is the December 11, 2007 staff report with the background information and rationale for this land use in the Manufacturing District (the December 11 report attachments are not included).

The maps below include the entire West Berkeley Plan area and illustrate the area where automobile sales would be allowed with the proposed changes.

Map 1: West Berkeley North of Allston Way (Includes Auto Sales Area)



Map 2: West Berkeley South of Allston Way (No Auto Sales)



CONTACT PERSON

Debra Sanderson, Acting Land Use Planning Manager, Planning, 981-7411

Attachments:

1: Resolution

Exhibit A: Mitigated Negative Declaration

Exhibit B: Mitigation Monitoring Program

2: Resolution

Exhibit A: General Plan Amendments

Exhibit B: West Berkeley Plan Amendments

3: Ordinance

4: December 11, 2007 Staff report (attachments omitted)

RESOLUTION NO. ##,###-N.S.

CONFIRMING ADOPTION OF A MITIGATED NEGATIVE DECLARATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT CONCERNING THE ADOPTION OF AN ORDINANCE AMENDING THE BERKELEY MUNICIPAL CODE (BMC) TITLE 23 (ZONING ORDINANCE) AND AMENDMENTS TO THE WEST BERKELEY PLAN AND GENERAL PLAN

WHEREAS, the City of Berkeley Planning Commission endorsed amendments to the General Plan, West Berkeley Plan and Zoning Ordinance to allow automobile sales in the West Berkeley; and

WHEREAS, a draft Initial Study and Mitigated Negative Declaration was made available to the public from July 11 to August 10, 2007 and the Notice of Intent to Adopt a Mitigated Negative Declaration was posted and distributed to State and local agencies; and

WHEREAS, the City of Berkeley prepared responses to comments on the draft Initial Study and Mitigated Negative Declaration and prepared a revised Mitigated Negative Declaration; and

WHEREAS, the City Manager submitted said environmental documents to the City Council on December 11, 2007 for a public hearing concerning the possible adoption of the proposed General Plan and West Berkeley Plan amendments; and

WHEREAS, the Council considered the Revised Mitigated Negative Declaration together with any comments received during the public review process on December 11, 2007, and found, on the basis of the whole record before it, that there is no substantial evidence that the project with the proposed mitigation measures will have a significant effect on the environment; and

WHEREAS, the record of the proceedings relating to the Mitigated Negative Declaration is on file at the Permit Services Center, 2120 Milvia Street, Berkeley, CA 94709.

NOW THEREFORE, BE IT RESOLVED, that the Council of the City of Berkeley adopts the Mitigated Negative Declaration (Exhibit A) and Mitigation Monitoring Program (Exhibit B).

REVISED MITIGATED NEGATIVE DECLARATION

Zoning and General Plan Amendments to Allow Automobile Sales in West Berkeley

This mitigated negative declaration was prepared pursuant to the California Environmental Quality Act and Guidelines (Public Resources Code, Division 13 and California Code of Regulations, Title 14, Chapter 3) for the project that is described in the July 9, 2007 proposed Mitigated Negative Declaration and Initial Study and briefly described as follows:

PROJECT DESCRIPTION

The proposed project includes amendments to the City of Berkeley Municipal Code, Title 23 (the Zoning Ordinance), the Berkeley General Plan, and the West Berkeley Plan to allow a new land use, automobile sales, to take place within the Manufacturing District. The allowable use is defined as follows:

“Automobile Sales: An establishment which sells, or leases long-term, new automobiles or trucks; restored vintage, specialty, or antique automobiles or trucks; or automobiles or trucks refurbished for alternative fuels (alternative to conventional gasoline). Ancillary uses and services that are incidental to and supporting of an automobile sales use include the sale and installation of automobile parts, accessories and equipment; sale of used or pre-owned automobiles or trucks; repair, maintenance, bodywork and other service of automobiles; loaning of vehicles to service patrons; storage of vehicles outdoors; and automobile washes.”

PROJECT LOCATION

The new use would be allowed in all of the Manufacturing zoning district.

PROJECT SPONSOR

City of Berkeley

MANDATORY FINDING OF SIGNIFICANCE

The mitigation measures identified below would address all potentially significant impacts resulting in no significant impacts. Therefore, there is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

MITIGATION MEASURES

Mitigation measures, listed below, were identified to address impacts related to air quality, cultural resources, seismic-related hazards, and traffic.

Mitigation Measure AIR III.1: Consistent with guidance from the BAAQMD, the following measures will be implemented on all automobile dealership project sites within West Berkeley during the construction period:

- Water all active construction areas at least twice daily.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, or apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Enclose, cover, water twice daily or apply (no-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)
- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

Mitigation Measure AIR III.2: As a condition of approval for any construction or demolition permit affecting a structure known to be constructed prior to 1985, a lead-based paint and asbestos-containing material survey shall be performed at the structure by a qualified environmental professional. Based on the findings of the survey, all loose and peeling lead-based paint and identified asbestos hazards shall be abated by a certified contractor in accordance with federal and State requirements. Federal and State construction worker health and safety regulations shall apply to demolition activities, and any required worker health and safety procedures shall be incorporated into the demolition specifications for the project.

Mitigation Measure CULTURAL V.1: Prior to excavation and construction of a proposed automobile dealership, the prime contractor and any subcontractor(s) shall be cautioned on the legal and/or regulatory implications of knowingly destroying cultural resources or paleontological resources or removing artifacts, human remains, bottles, other cultural or paleontological materials from the project site.

Mitigation Measure CULTURAL V.2: If during any phase of project construction, any fossil remains are encountered, construction activities within a 50-meter radius shall be halted immediately, and the project applicant shall notify the City. A qualified paleontologist (as approved by the City) shall be retained by the project applicant

and shall be allowed to conduct a more detailed inspection and examination of the exposed fossil remains. During this time, excavation and construction would not be allowed in the immediate vicinity of the find. However, those activities could continue in other areas of the project site.

Mitigation Measure CULTURAL V.3: In the event that buried archaeological resources are exposed during project construction, work within 30 ft of the find shall stop until a Professional Archaeologist, meeting the standards of the Secretary of the Interior, can identify and evaluate the significance of the discovery and develop recommendations for treatment. Recommendations could include preparation of a Treatment Plan, which could require recordation, collection and analysis of the discovery; preparation of a technical report; and duration of the collection and supporting documentation in an appropriate depository. Any Native American remains shall be treated in accordance with State Law.

Mitigation Measure GEOLOGY VI.1: Prior to approval of an automobile dealership that proposes new construction, a geotechnical investigation prepared by a qualified geotechnical engineer shall be required. Plans submitted for a building permit shall incorporate the recommendations of the geotechnical investigation prepared for the automobile sales project site, and shall be accompanied by a signed statement from the author of the report or other licensed geologist or engineer with relevant experience, certifying that the plans comply with the report's recommendations. A qualified geotechnical engineer shall inspect and test all geotechnical aspects of the project's construction.

Mitigation Measure TRAFFIC XV.1: Prior to approval of a proposed automobile sales use in the Manufacturing District (Project Area 1), an appropriate traffic impact analysis shall be required. This analysis shall determine if the number of trips generated by the proposed project warrant further analysis to identify the impact to intersection operations within the project area for the purpose of determining appropriate signal timing adjustments, turning lanes, and the need for signalization of Gilman/4th Street to be required as mitigation for the future projects. Recommendations of the traffic impact analysis shall be implemented.

Mitigation Measure TRAFFIC XV.2: All dealership projects within the Manufacturing District shall be required to contribute a fair-share to the cost of signalization of Gilman/4th Street.

Mitigation Measure TRAFFIC XV.3: No dealership shall be occupied within the Manufacturing District (Project Area 1) with a frontage on Eastshore Highway prior to completion of the Gilman/I-80 Interchange roundabouts.

Mitigation Measure TRAFFIC XV.4: Prior to completion of the Gilman/I-80 Interchange roundabouts, approval of all automobile sales uses shall be limited to up

December 18, 2007

to 4.5 acres within the Manufacturing District (Project Area 1), unless project-specific impact analysis determines there would be no significant impact to the intersections in the Gilman/I-80 Interchange or any other affected intersection.

EXHIBIT B: Mitigation Monitoring Program

MITIGATION MONITORING PROGRAM

Zoning and General Plan Amendments to Allow Automobile Sales in West Berkeley

Section 21081.6 of the Public Resources Code requires a Lead Agency to adopt a “reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment” (Mitigation Monitoring Program [MMP], §15097 of the *CEQA Guidelines* provides additional direction on mitigation monitoring or reporting). The City of Berkeley is the Lead Agency for the project to allow automobile sales in West Berkeley.

The Draft MND and Revised MND were prepared to address the potential environmental impacts of the proposed project. These documents recommend mitigation measures to avoid or to mitigate identified potential impacts to a level where no significant impact on the environment would occur. This MMP is designed to monitor implementation of the mitigation measures identified for the project. The required mitigation measures are listed and grouped by impact area, with an accompanying identification of the following:

- **Monitoring/Implementing Phase**, the phase(s) of the project during which the mitigation measure shall be implemented and monitored:
 - Pre-Construction, including the design and approval process
 - Construction
 - Occupancy (post-construction)
- **Implementing Party**, the party responsible for implementing the mitigation measure.
- **Enforcement Agency**, the agency with the power to enforce the mitigation measure.
- **Monitoring Agency**, the agency to which reports involving feasibility, compliance, implementation and development are made.

Mitigation Measure AIR III.1: Consistent with guidance from the BAAQMD, the following measures will be implemented on all automobile dealership project sites within West Berkeley during the construction period:

- Water all active construction areas at least twice daily.
- Cover all trucks hauling soil, sand, and other loose materials *or* require all trucks to maintain at least two feet of freeboard.
- Pave, or apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.

- Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Enclose, cover, water twice daily or apply (no-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)
- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

Monitoring/Implementing Phase	Construction Phase
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure AIR III.2: As a condition of approval for any construction or demolition permit affecting a structure known to be constructed prior to 1985, a lead-based paint and asbestos-containing material survey shall be performed at the structure by a qualified environmental professional. Based on the findings of the survey, all loose and peeling lead-based paint and identified asbestos hazards shall be abated by a certified contractor in accordance with federal and State requirements. Federal and State construction worker health and safety regulations shall apply to demolition activities, and any required worker health and safety procedures shall be incorporated into the demolition specifications for the project.

Monitoring/Implementing Phase	Construction
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure CULTURAL V.1: Prior to excavation and construction of a proposed automobile dealership, the prime contractor and any subcontractor(s) shall be cautioned on the legal and/or regulatory implications of knowingly destroying cultural resources or paleontological resources or removing artifacts, human remains, bottles, other cultural or paleontological materials from the project site.

Monitoring/Implementing Phase	Construction Phase
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure CULTURAL V.2: If during any phase of project construction, any fossil remains are encountered, construction activities within a 50-meter radius shall be halted immediately, and the project applicant shall notify the City. A qualified paleontologist (as approved by the City) shall be retained by the project applicant and shall be allowed to conduct a more detailed inspection and examination of the exposed fossil remains. During this time, excavation and construction would not be allowed in the immediate vicinity of the find. However, those activities could continue in other areas of the project site.

Monitoring/Implementing Phase	Construction Phase
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure CULTURAL V.3: In the event that buried archaeological resources are exposed during project construction, work within 30 ft of the find shall stop until a Professional Archaeologist, meeting the standards of the Secretary of the Interior, can identify and evaluate the significance of the discovery and develop recommendations for treatment. Recommendations could include preparation of a Treatment Plan, which could require recordation, collection and analysis of the discovery; preparation of a technical report; and duration of the collection and supporting documentation in an appropriate depository. Any Native American remains shall be treated in accordance with State Law.

Monitoring/Implementing Phase	Construction Phase
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure GEOLOGY VI.1: Prior to approval of an automobile dealership that proposes new construction, a geotechnical investigation prepared by a qualified geotechnical engineer shall be required. Plans submitted for a building permit shall incorporate the recommendations of the geotechnical investigation prepared for the automobile sales project site, and shall be accompanied by a signed statement from the author of the report or other licensed geologist or engineer with relevant experience, certifying that the plans comply with the report's recommendations. A qualified geotechnical engineer shall inspect and test all geotechnical aspects of the project's construction.

Monitoring/Implementing Phase	Pre-Construction and Construction
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure TRAFFIC XV.1: Prior to approval of a proposed automobile sales use in the Manufacturing District (Project Area 1), an appropriate traffic impact

analysis shall be required. This analysis shall determine if the number of trips generated by the proposed project warrant further analysis to identify the impact to intersection operations within the project area for the purpose of determining appropriate signal timing adjustments, turning lanes, and the need for signalization of Gilman/4th Street to be required as mitigation for the future projects. Recommendations of the traffic impact analysis shall be implemented.

Monitoring/Implementing Phase	Pre-Construction Phase (project review)
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure TRAFFIC XV.2: All dealership projects within the Manufacturing District shall be required to contribute a fair-share to the cost of signalization of Gilman/4th Street.

Monitoring/Implementing Phase	Pre-Construction Phase (project review)
Implementing Party	Future Dealership Developer
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure TRAFFIC XV.3: No dealership shall be occupied within the Manufacturing District (Project Area 1) with a frontage on Eastshore Highway prior to completion of the Gilman/I-80 Interchange roundabouts.

Monitoring/Implementing Phase	Pre-Construction Phase (project review) Occupancy Phase
Implementing Party	Berkeley Planning Department
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

Mitigation Measure TRAFFIC XV.4: Prior to completion of the Gilman/I-80 Interchange roundabouts, approval of all automobile sales uses shall be limited to up to 4.5 acres within the Manufacturing District (Project Area 1), unless project-specific impact analysis determines there would be no significant impact to the intersections in the Gilman/I-80 Interchange or any other affected intersection.

Monitoring/Implementing Phase	Pre-Construction Phase (project review)
Implementing Party	Berkeley Planning Department
Enforcement Agency	Berkeley Planning Department
Monitoring Agency	Berkeley Planning Department

RESOLUTION NO. ##,###-N.S.

ADOPTING AMENDMENTS TO THE GENERAL PLAN AND WEST BERKELEY PLAN
ALLOWING AUTOMOBILE SALES USES IN THE MANUFACTURING DISTRICT

WHEREAS, the City Council included "Rezoning West Berkeley for Auto Uses" in the Land Use Planning Division FY 2006 workplan because of the important role automobile dealerships play in providing sales tax revenue and jobs and because the City's existing dealerships have requested options to relocate to West Berkeley; and

WHEREAS, the Planning Commission considered the proposed land use change, and has recommended allowing automobile sales in the Manufacturing zoning district through amendments to Chapters 23E.80 and 23F.10 of the Zoning Ordinance, General Plan Policy LU-34, and West Berkeley Plan Goals 1 and 2 of the Land Use Element, the recommended "District Permitted and Prohibited Uses" in the Land Use Element, and Goal 2 of the Economic Development Element; and

WHEREAS, the City Council considered the proposed land use and determined it should not be permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008; and

WHEREAS, the proposed General Plan and West Berkeley Plan amendments are in the public interest because they provide the opportunity for revenue- and employment-generating land uses while retaining protections for manufacturing and industrial uses in West Berkeley; and

WHEREAS, the proposed General Plan amendment is consistent and compatible with the rest of the General Plan; and

WHEREAS, the potential effects of the proposed amendments have been evaluated and have been determined not to be detrimental to public health, safety, or welfare; and

WHEREAS, the proposed amendments have been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts amendments to the General Plan (Exhibit A) and the West Berkeley Plan (Exhibit B) as recommended by the Planning Commission, except as limited below.

BE IT FURTHER RESOLVED, that the amendments adopted by this Resolution shall not apply to the area bounded by the Albany City border to the north, the Third Street Railroad ROW to the east, Gilman Street to the south, and Second Street to the west.

EXHIBIT A, Section 1: Planning Commission recommended amendments to page LU-20 of the Land Use Element of the General Plan

Land Use Element, General Plan

Page LU-20, Policy LU-34

Policy LU-34 Industrial Protections and Automobile Sales Uses

Protect industrial uses in West Berkeley.

Actions:

- A. Inform non-industrial uses that are considering moving into industrial areas that truck traffic, 24-hour operations, and noise up to legal limits are common and accepted in industrial areas. Non-industrial uses are expected to adjust to the practices of industrial operations.
- B. Prohibit further expansion of the Fourth Street commercial area beyond the existing commercially zoned areas. Maintain boundaries of the Mixed Use-Light Industrial District. Enforce prohibitions of retail uses in the Mixed Use-Light Industrial District.
- C. Allow automobile sales uses in the Manufacturing District in order to provide for this economically beneficial land use in an area of the City with large sites and proximity to Interstate 80. However, automobile sales are not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008.

EXHIBIT B: West Berkeley Plan Amendments

EXHIBIT B, Section 1: Planning Commission recommended amendments to page 34, Goal 1 of the Land Use Element of the West Berkeley Plan

Land Use Element, West Berkeley Plan

Page 34, Goal 1

Over the economically active area of West Berkeley, provide for a continued economic and land use mix, incorporating manufacturing, other industrial, retail and office/laboratory uses, to benefit Berkeley residents and businesses economically, benefit the City government fiscally, and promote the varied and interest character of the area.

Policies:

- A. Retaining, through planning, zoning and land use policies which shield manufacturers from economic and physical incompatibilities with other uses, sufficient land and buildings to maintain the current level of manufacturing employment at a minimum.
- B. Providing, through zoning districts, development standards, and other tools, space and incentives for expansion of manufacturing firms, particularly in the growing light manufacturing sector.
- C. Providing space for, and designating appropriate locations for – in planning and zoning policies – both neighborhood and regional service retail businesses, including vehicle sales uses in the Manufacturing District. However, automobile sales are not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008.
- D. Providing space for, and designating appropriate locations for, office, service, and laboratory businesses, particularly growing Berkeley based businesses which are particularly suited to West Berkeley's physical environment.

EXHIBIT B, Section 2: Planning Commission recommended amendments to page 35, Goal 2 of the Land Use Element of the West Berkeley Plan

Page 35, Goal 2

Channel development—both new businesses and residence and the expansion of existing businesses—to districts various which are appropriate for the various existing elements of the West Berkeley land use mix.

Policies:

- A. Create a Manufacturing district as a general industrial district, where the full range of existing manufacturers – both “heavy” and “light” – can function without interference from other types of uses. However, allow for vehicle sales retail uses to be located in the Manufacturing District because of the opportunity for large sites suitable for this use, the proximity to Interstate 80, and the importance of this retail use to benefit the City fiscally. Automobile sales are not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008.
- B. Create a Mixed Manufacturing district as a general industrial district, where both heavy and light manufacturers can function, along with “biotech” industries and office users which can recycle the upper stores of buildings.

C. Create a Light Manufacturing district which allows a wide range of light manufactures to continue to operate and expand and limits loss of their space to other uses, while providing an opportunity for office development where it will not unduly interfere with light manufacturing uses, and for laboratory development in appropriate locations.
D. Create a Mixed Residential district as a special mixed use district which will recognize and support the continued evolution of a unique mix of residential, light industrial, and arts and crafts uses, with a particular effort to strengthen residential concentrations existing there.
E. Create a Commercial district which will foster the continued vitality of West Berkeley's neighborhood and regional serving retail trade, in as pedestrian-friendly a manner as possible.
F. Maintain Residential districts which will provide decent, safe, and sanitary living environments for a wide range of household types.

EXHIBIT B, Section 3: Planning Commission recommended amendments to page 44, "District Permitted and Prohibited Uses" of the Land Use Element of the West Berkeley Plan

Page 44

District Permitted and Prohibited Uses

Manufacturing District ("Pink")

See also Development Standards, Manufacturing/Residential Buffers for regulations affecting certain sites

Prohibited Uses

...

- Retail establishments, except permitted factory outlets and automobile sales

EXHIBIT B, Section 4: Planning Commission recommended amendments to page 83, Goal 2 of the Economic Development Element of the West Berkeley Plan

Economic Development Element, West Berkeley Plan

Page 83, Goal 2:

Support the growth of regionally oriented retail trade in West Berkeley in locations which are consistent with other goals and standards, particularly the traffic goals of the Transportation Element.

Policies:

A. Assist appropriate types of retailers to locate in West Berkeley retail areas, and to meet planning standards for those areas.

B. Allow for vehicle sales uses to be located in the Manufacturing District because of the importance of this retail use for generating sales tax revenue for the City and the suitability of this area due to large sites and proximity to Interstate 80. However, automobile sales are not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23E.72.020, 23E.72.030, 23E.72.070, 23E.72.080, 23E.72.090, AND 23F.04.010 TO ALLOW AUTOMOBILE SALES IN THE MANUFACTURING DISTRICT, ESTABLISH PURPOSES, DEVELOPMENT STANDARDS, AND FINDINGS FOR AUTOMOBILE SALES, AND REVISE THE DEFINITION OF AUTOMOBILE SALES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23E.72.020 is amended to read as follows:

Section 23E.72.020 Purposes

The purposes of the Manufacturing (M) District are to:

- A. Implement the West Berkeley Plan's designation of a Manufacturing District;
- B. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
- C. Consistent with other goals expressed in these purposes, Encourage development of a manufacturing district dedicated unequivocally to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
- D. Encourage the creation and continuation of well paid (often unionized) industrial jobs for men and women without advanced degrees;
- E. To the greatest degree possible and consistent with other goals expressed in these purposes, retain the stock of manufacturing and industrial buildings and/or sites, especially large buildings and sites, for manufacturing and industrial uses;
- F. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment;
- G. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers. (~~Ord. 6478-NS § 4 (part), 1999~~)
- H. Support the development of retail automobile sales uses because they contribute to the economic viability of the area and provide sales tax revenues for the City;

I. Provide opportunities for vehicle sales uses when it will not unduly interfere with manufacturing uses.

Section 2. That Berkeley Municipal Code Section 23E.72.030.A is amended to read as follows:

Section 23E.72.030 Uses Permitted

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP(PH)) or is Prohibited.

Automobile and Other Vehicle Oriented Uses				
<u>Automobile Parts Stores</u>	<u>Prohibited</u>			<u>Permit for automobile parts sales not required when ancillary to permitted vehicle sales use.</u>
<u>Automobile Rentals</u>	<u>Prohibited</u>			
<u>Automobile dismantling/wrecking Establishments</u>	AUP	UP(PH)	UP(PH)	
Automobile washes, mechanical or self-service	Prohibited			
<u>Automobile, Boat, Motorcycle or other new or used vehicle or vehicle parts sales</u>	<u>Prohibited AUP</u>		<u>UP(PH)</u>	<u>Permit level determined by size of lot, not floor area. Not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008.</u>
<u>Automobile Repair and Service, including Automobile Restoration</u>	UP(PH)			<u>Permit for repair use not required when ancillary to permitted vehicle sales use.</u>
Compressed Natural Gas Fueling Stations	AUP	UP(PH)	UP(PH)	
Gasoline fueling stations	Prohibited			

Section 3. That Berkeley Municipal Code Section 23E.72.060.C is added to read as follows:

C. Automobile sales are not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008.

Section 4. That Berkeley Municipal Code Section 23E.72.070.F is added to read as follows:

F. Sites used for automobile sales are subject to the following development standards:

1. When a project results in construction of a new building with more than 10,000 square feet of new floor area, the following standards shall apply to the new building:
 - a. A minimum building frontage of 40 percent of the project's primary street frontage is required within 25 feet of the public right of way. The primary street frontage is the frontage towards which the primary building entrance is oriented;
 - b. Along Gilman Street a minimum building frontage of 50 percent of the Gilman Street frontage is required within 25 feet of the public right of way;
 - c. The minimum building height shall be 20 feet within 25 feet of the public right of way along the primary street frontage.
2. Adequate landscaping and/or fencing shall be used to screen views from street level of dealership operations that are not located within a building. Outdoor vehicle storage and display does not need screening. Such screening shall not be required to obscure all visibility of interior activities but shall provide some filtering of outdoor dealership operations.
3. For the purposes of this Title and design review, areas used for outdoor vehicle storage and display are not considered parking areas.
4. Appropriate site design measures shall be installed to the maximum extent practicable to ensure clean water standards are met. Permanent stormwater best management practices and on-site storm water treatment shall be used for all runoff generated by new impermeable surfaces. Runoff from automobile washing and maintenance activities shall be properly collected and treated, consistent with the requirements of the Public Works Department and the Toxics Management Division of the Planning Department. When new paving is proposed, pervious paving shall be used where feasible and shall be reviewed and approved by the Public Works Department and Office of Transportation.
5. All noise-generating activities and equipment, such as vehicle repair, shall be shielded by noise-attenuating construction or equipment. Outdoor amplification is prohibited.
6. Exterior light standards and fixtures shall not be taller than 20 feet, light cutoffs shall be utilized to control light spillover onto adjacent properties, and low energy light fixtures consistent with Berkeley's goals for energy efficiency shall be utilized.
7. Vehicle test drives shall not be conducted in adjacent residential Zoning Districts.

Section 5. That Berkeley Municipal Code Section 23E.72.080.A is amended to read as follows:

Section 23E.72.080 Off-Street Parking and Loading Requirements

A. For each of the following uses, the minimum number of off-street parking spaces shall be provided and in accordance with Chapter 23E.28 except as set forth in Section 23E.72.080.G. Construction of new floor area and changes of use of existing floor area shall satisfy the parking requirements of this section:

<i>Table 23E.72.080</i>	
Off-Street Parking Requirements*	
<u>Use</u>	<u>Parking Requirement --Number of Spaces</u>
Manufacturing uses (assembly, production, storage and testing space only), Storage, Warehousing and Wholesale Trade	One space per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq. ft.; one per 1,500 for spaces of 10,000 sq. ft. or more
All non-residential uses other than those listed above and in Subsection C	Two spaces per 1,000 sq. ft. of floor area
<u>Automobile Sales and ancillary uses</u>	<u>One space for every: 1,000 s.f. of display floor area; 500 s.f. of other floor area. Two per service bay.</u>
*See Subsection G for substitutions of up to 10% with bicycle/motorcycle parking	

Section 6. That Berkeley Municipal Code Section 23E.72.080.C is amended to read as follows:

C. Unless otherwise specified in Subsection A above, uses designated in this chapter as Other Industrial Uses, Automobile and Other Vehicle Oriented Uses, Outdoor Uses, Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based on the amount of parking demand generated by the particular use and comparable with specified standards for other uses.

Section 7. That Berkeley Municipal Code Section 23E.72.080.L is amended to read as follows:

L. All automobile sales uses shall provide for on-site loading and unloading of deliveries and may not occupy street parking or block public or private streets. On-street unloading may be permitted by an Administrative Use Permit subject to the findings of 23E.72.090.F.

Section 8. That Berkeley Municipal Code Section 23E.72.090 is amended to read as follows:

Section 23E.72.090 Findings

A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable.

B. A proposed use or structure must:

1. Be consistent with the purposes of the District;
2. Be consistent with the surrounding uses and buildings;
3. Be consistent with the adopted West Berkeley Plan;
4. Be not likely, under reasonably foreseeable circumstances, either to induce or contribute to a cumulative change of use in buildings from manufacturing, wholesale trade or warehousing uses;
5. Be designed to support the industrial character of the District. Such physical compatibility shall include materials used, façade treatments, landscaping, lighting, type, size and placement of awnings, windows and signs and all other externally visible aspects of the design of the building and site;
6. Be able to meet any applicable performance standards for off-site impacts.

C. In order to approve a Use Permit for a reduction in the otherwise applicable parking requirement for a manufacturing, wholesale trade, or warehouse use under Section 23E.72.080.B, the Zoning Officer or Board must find that under the circumstances of the particular use and building, the demand for parking can be expected to be below the otherwise required level for a sustained period of time.

D. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.72.080.G, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking space and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces being provided.

E. In order to approve a Use Permit under Section 23E.72.030 to allow an automobile sales use, the Zoning Officer or Board must find that the following conditions are met:

1. The project will not result in unreasonable impacts on circulation and parking on adjacent streets or in the immediate neighborhood;
2. The project will not result in a substantial adverse impact on existing uses in the immediate vicinity;

3. The project will not generate objectionable odors or excessive levels of noise;
4. Site design reflects the urban form of the surrounding area and new construction, materials and/or building forms reflect the area's industrial character;
5. New construction along Gilman Street reflects the importance of a defined street wall along this main entry corridor to the City;
6. The project will not materially interfere with the activities of the City-owned solid waste center.

F. In order to approve an Permit under Section 23E.72.080.L to allow on-street unloading of automobiles, parts or other auto accessories the Zoning Officer or Board must find that

1. It will not be unreasonably disruptive or detrimental to activities in the vicinity; and
2. On-site deliveries are not feasible due to specific site or roadway constraints.

Section 9. That Berkeley Municipal Code Section 23F.04.010 is amended to read as follows:

Section 23F.04.010 Definitions

Automobile Parts Store: An establishment ~~which~~ that sells automobile, truck or other vehicle parts or equipment.

Automobile Repair and Service: An establishment ~~which~~ that repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor driven vehicles ~~(excepting motorcycles) which are~~ on its premises.

Automobile Rentals: An establishment which rents automobiles, trucks, motorcycles, boats or other motor driven vehicles that are stored either indoors or outdoors on its premises.

Automobile Sales and Rentals: An establishment which sells, ~~rents~~ or leases long-term, new automobiles, or trucks; restored vintage, specialty, or antique automobiles or trucks; or automobiles or trucks refurbished for alternative fuels (alternative to conventional gasoline) or other motor driven vehicles (excepting motorcycles) which are on its premises. Ancillary uses and services that are incidental to and supporting of an automobile sales use include the sale and installation of automobile parts, accessories and equipment; sale of used or pre-owned automobiles or trucks; repair, maintenance, bodywork and other service of automobiles; loaning of vehicles to service patrons; storage of vehicles outdoors; and automobile washes.

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Section 10. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the City Manager

ACTION CALENDAR
December 11, 2007

To: PK Honorable Mayor and Members of the City Council

From: PK Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Zoning Ordinance, General Plan, and West Berkeley Plan Amendments and Revised Mitigated Negative Declaration to allow Automobile Sales in the Manufacturing District.

RECOMMENDATION

Conduct a public hearing and upon conclusion:

1. Adopt a Resolution adopting the Mitigated Negative Declaration to allow automobile sales in the Manufacturing District of the City;
2. Adopt a Resolution amending the General Plan and West Berkeley Plan as recommended by the Planning Commission; and
3. Adopt first reading of an Ordinance amending Chapters 23E.72 (Manufacturing District) and 23F.10 (Definitions).

SUMMARY

The recommended zoning amendments include a revised definition of the Automobile Sales land use, discretionary permit requirements based on lot size, and development standards, parking requirements, and findings that are specific to automobile sales. The recommended amendments to the General Plan and West Berkeley Plan limit the area of the new use and explain that automobile sales in West Berkeley will make large sites in proximity to the freeway available to dealerships and provide the City important sales tax revenue. The Planning Commission has considered the proposed changes at ten meetings, including a public hearing over two consecutive meetings, a workshop, and a public tour of the West Berkeley area.

FISCAL IMPACTS OF RECOMMENDATION

Potential increased revenues from Use Permit and Administrative Use Permit fees, which would partially offset costs associated with preparation of those permits, and potential increased sales tax revenues from new dealerships or expanded existing Berkeley dealerships located in the Manufacturing District.

CURRENT SITUATION AND ITS EFFECTS

Berkeley's four existing auto dealerships provide an important revenue and employment source. They provide sales tax revenues totaling roughly \$1.2 million, just under 10 percent of the City's total sales tax revenue. The current dealer operators are interested

in relocating to larger sites with freeway access; areas where they are currently prohibited. If they are unable to relocate in Berkeley, it is possible they could eventually close or locate in another City.

BACKGROUND

Auto dealerships are currently allowed in only three zoning districts in Berkeley: the C-2 (downtown area), C-1 (downtown, University Avenue, and south Telegraph Avenue), and the C-W (San Pablo Avenue). Within those districts, the land use is prohibited along both University Avenue and San Pablo Avenue. Three of the City's remaining four auto dealerships are located on Shattuck Avenue south of Channing Way in the C-SA district. They are legal non-conforming uses because dealerships would not be allowed to locate there today. As legal non-conforming uses, they have difficulty expanding or changing their operations. These dealership operators have indicated to the City they would like the opportunity to relocate to the West Berkeley area to be closer to the freeway. The City's fourth dealership, Weatherford BMW, is located on Ashby Avenue, close to Interstate 80.

The dealership operators indicate that relocation closer to the freeway would provide greater visibility and access to regional customers and access to larger sites that can accommodate the full range of their operations. This would address pressure from auto manufacturers for the dealerships to be on sites that better conform with the manufacturers' criteria for size and location. Industry limitations on dealerships of a car brand locating closer than 10 miles to another dealership of that same brand limit the area where some of the Berkeley dealerships could relocate.

I. Zoning Amendments.

The proposed amendments include:

- A revised definition of automobile sales;
- New development standards that address site design, landscaping and fences, storm water treatment, noise, lighting, parking, test drives, unloading of deliveries, building frontage, and building height;
- Findings that address circulation, parking, site design, noise, odors, and impacts on existing uses in the vicinity, including the City's solid waste center; and
- Modifications to the General Plan and West Berkeley plan that limit the scope and define the purpose of automobile sales in West Berkeley.

I.A Definition. The proposed definition of automobile sales establishes those ancillary uses that are an integral component of an auto dealership. These activities are allowed as ancillary uses to an auto sales use and do not require a separate permit. Amendments to other auto-related definitions are proposed for clarity and consistency. The Commission discussed the role of used car sales in the definition, and indicated that sale of used vehicles should be ancillary to new car sales, except in the case of restored "classic" cars or cars refurbished for alternative fuels. The Commission also

limited auto sales uses to the sale of cars and trucks, and not including “motorcycles, boats, or other motor driven vehicles.”

I.B Permit Levels. The amendments allow automobile sales with an Administrative Use Permit when the lot is 40,000 square feet or smaller. For lots over 40,000 square feet, a Use Permit is required. This is the existing threshold in the Manufacturing District’s use permit table and is used for many other land uses in the district. Both permits require review by planning staff for conformance with the district purposes, development standards, and findings.

I.C Development Standards. The proposed development standards address site design, screening, storm water treatment, noise, lighting, parking, test drives, and unloading of deliveries. A minimum building frontage and minimum height are required for construction of a new building of more than 10,000 square feet of floor area in order to encourage buildings with a strong street presence. Much of the existing Manufacturing District is developed with buildings that occupy all or most of the lot or are built close to the public right-of-way. By requiring a minimum frontage and height of new dealership buildings over 10,000 square feet, the existing form of the District will be maintained. The development standards require internal dealership operations and noise generating activities to be shielded. However, the display and storage of the vehicle inventory does not require screening. On-site treatment of storm water is required. The height of light fixtures is limited to 20 feet and light shielding is required to control light spill over. Test drives are not allowed in adjacent residential districts and unloading of deliveries must take place on-site.

I.D Findings. The Zoning Officer and Board must be able to support the findings in order to approve an automobile sales use. The proposed findings specify that the project not create unreasonable circulation and parking impacts. They also address site design and the role of Gilman as a main entry corridor to the City. The findings require that that the new use not impact existing uses in the vicinity or interfere with the City’s solid waste center. A use permit for a dealership must also make the existing findings of Sections 23E.72.090.A (the non-detriment finding) and 23E.72.090.B (see Attachment 3 for text).

II. Plan Amendments. The amendments clarify the intent and define the scope of the proposed new land use. They identify the importance of the Manufacturing District’s larger sites with proximity to the freeway and the need to maintain auto sales as a revenue source for the City. The General Plan and West Berkeley Plan amendments will make the proposed Zoning Ordinance amendments consistent with those plans. There are amendments to the Land Use Elements of both plans, and the Economic Development Element of the West Berkeley Plan. The proposed zoning amendments are generally consistent with the other objectives and goals of the plans, which are more specific to other areas of the City and other types of land use and development.

Allowing automobile sales in the Manufacturing District achieves several plan objectives. Auto dealerships will provide job opportunities with valuable training in the West Berkeley area to persons without advanced degrees, similar to employment in

manufacturing uses. The use will benefit the City government fiscally by promoting regional retail, consistent with policies in the General Plan and West Berkeley Plan. Auto dealerships are not at the same pedestrian scale as other regional and local retail, and thus would be a more appropriate retail use distributed in an industrial context. Additionally, dealerships need the large underutilized sites that are more prevalent in manufacturing districts compared to commercial districts. Existing regulations in the Zoning Ordinance provide adequate protections for existing and new manufacturing, industrial, and other protected uses in West Berkeley. Auto sales industry limitations on dealership proximity assure that there will not be an over concentration of dealership uses. By allowing relocation to the Manufacturing District, the sites in the C-SA district where current Berkeley dealerships are located could be redeveloped with uses more consistent with the General Plan and Zoning Ordinance objectives for that area.

III. Planning Commission Consideration. In 2005, the City Council identified retention of automobile sales businesses in Berkeley as a high priority due the important contribution to the City's budget provided by sales tax revenues from automobile sales.¹ In 1999, the three Shattuck Avenue dealers expressed their concern with the effect the 1999 zoning amendments would have on their ability to relocate to preferable locations in West Berkeley.² The existing dealerships have limited areas within the City to which they can relocate, and those areas do not suit the needs of a modern dealership operation.

On October 26, 2005, the Commission considered broad implementation options and analysis of the conformance of auto sales with the Zoning Ordinance, West Berkeley Plan and General Plan. In January 2006 the Commission conducted a Saturday tour of the West Berkeley area to gain an understanding of the existing conditions. At two January 2006 meetings the Commission conducted a public workshop on the proposal, and on February 8, 2006 recommended considering the Manufacturing District (M) and the Mixed Use-Light Industrial (MULI) district south of Ashby for auto sales.

Based on the Commission's February 8, 2006 direction, planning staff developed draft Zoning Ordinance amendments. On April 25 and May 9, 2007 the Commission considered the draft language and provided feedback. Staff then prepared General Plan and West Berkeley Plan amendment language and a Mitigated Negative Declaration (MND) and Environmental Initial Study on the proposed changes. On July 25, 2007, a public hearing on the proposed changes and the MND was held and continued to September 5.

Public comment on the proposed amendments focused mainly on concerns that the dealerships would displace existing recycling facilities, namely Urban Ore, in the MULI District south of Ashby Avenue, and the solid waste center in the Manufacturing District located at Second Street and Gilman Avenue. On September 5, 2007 the Commission

¹ "Rezoning West Berkeley for Auto Uses" was included in the fiscal year 2005-2006 Land Use Planning Division Work Plan and was also identified as a priority in the Office of Economic Development Workplan.

² Letter to the Berkeley Planning Commission and Senior Planner Andrew Thomas from Tim Southwick, Toyota of Berkeley, Jim Doten, Jim Doten Honda, and Jory Hite, McKeivitt Volvo/Nissan, July 29, 1999.

voted to remove the MULI area south of Ashby Avenue from the area proposed for auto sales and recommend auto sales be allowed in the Manufacturing District. A motion to make the area within the Manufacturing District smaller by removing the City's solid waste center failed. On September 5, 2007 representatives of three of the City's auto dealership addressed Commissioner questions. They indicated their desire to relocate to areas that are closer to the freeway for visibility and access to regional customers. They also indicated that proximity to other dealers is beneficial and that they need larger sites to accommodate the full range of their operations.

On September 26, 2007 the Commission modified the implementing zoning language and recommended the City Council adopt amendments to the Zoning Ordinance, General Plan, and West Berkeley Plan to allow automobile sales in the Manufacturing District. A motion to remove the solid waste center from the area where auto sales would be allowed failed. To address the potential for impacts to the City's recycling facility, the Commission added the required finding: "The project will not materially interfere with the activities of the City-owned solid waste center."

IV. Revised Mitigated Negative Declaration.

The proposed Mitigated Negative Declaration (MND) and Environmental Initial Study were available for public review and comment from July 11 to August 10, 2007. A public hearing on the MND was held on July 25, 2007. Staff prepared responses to the comments and revised the MND accordingly. The MND requires mitigation measures to address potential impacts from construction of new dealerships in the Manufacturing District on circulation, geology, archeological or cultural resources, and air quality. The mitigations limit new dealerships in the area to a total of 4.5 acres and prohibit dealerships from locating on Eastshore Highway prior to completion of the proposed Gilman/I-80 roundabouts due to existing constraints at the Gilman/I-80 interchange. The proposed Gilman/I-80 roundabouts are currently under review by the City's Transportation Department and the California Department of Transportation. Some of the existing stop-sign controlled intersections in the existing interchange operate at unacceptable levels of service, and thus could not accommodate considerable additional traffic generated by a dealership project.

RATIONALE FOR RECOMMENDATION

Automobile dealerships provide the City with an important revenue source and are important longstanding business in our community. Allowing automobile sales in the Manufacturing District will provide existing dealerships with the opportunity for relocation to sites that better suit their operations. The zoning changes could potentially allow new dealerships to locate in Berkeley, thus providing fiscal and employment benefits to the City.

ALTERNATIVE ACTIONS CONSIDERED

The Commission considered several different options for allowing automobile sales in parts of West Berkeley. One option included all of the Manufacturing (M) district and all of Mixed Use-Light Industrial (MULI) district. This was considered too large an area. Another option broke down the areas within the M district and MULI south of Ashby to further limit the area where the use would be allowed. Another possibility included

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allowing dealerships within a set distance from the I-80 interchanges and would apply to all parcels that fell within that geographic range, regardless of zoning district. They also considered reducing the area within the Manufacturing district to exclude the solid waste center. The proposed approach (all of the Manufacturing District) was favored because of its simplicity and clarity. The majority of the Commission did not consider the proposed zoning likely to cause a change of use at the City's solid waste center.

CONTACT PERSON

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