



Comment for items on the Agenda: Rules Comittee Meeting 11/06/24

From Rosie the Closer [REDACTED]
Date Tue 11/5/2024 12:26 PM
To City Clerk <city.clerk@sanjoseca.gov>

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Item 2: Review November 19, 2024 Draft Agenda

Hello Chair Cohen and Honorable City Councilmembers,

My name is Rosie Zepeda and I am a resident of District 9 with the 'Rescue our Medical Care' campaign. I am speaking in support today to defer the zoning change for Good Samaritan Hospital. Deferring this item will allow city staff to further evaluate the violations of the general plan and the community can be engaged to determine a solution that keeps Hospital Corporation of America, Good Samaritan's parent company, accountable.

HCA has a history of taking away vital services from low-income neighborhoods and communities of color. Downgrading the Trauma, Stroke, and Heart attack services Regional Medical Center in August of 2024.

On Saturday, October 26, my 95-year-old Mexican-American, illiterate, grandmother, suffered a massive stroke and was taken to Regional Medical Center's Emergency. She suffered further trauma due to the breathing tube administered by staff. When I went to visit her in the ICU, I was taken aback by the third-world conditions - ONE person posted at a makeshift computer station to deal with checking in, nametags, and questions, even though the emergency room was full. The area was dirty and grimy. When I finally received my nametag I walked to the ICU in hallways completely devoid of hospital staff.

Not healed yet and not yet fully conscious, she was taken out of ICU to the downgraded Trauma ward where there was no assigned nurse to her. Again, with a full ward, it was nearly empty of staff. My grandmother's left hand had been restrained and the material they used looked old and like it had been used on someone else. I brought this up, and I was assured it was fine. I questioned why her entire lower arm was severely bruised red, when it was fine in the ICU. She also did not have an assigned nurse.

Last week, in the middle of the night, she pulled all of her tubes off her nose and soon we were having a conversation about whether she would need to go into surgery in order to implant a feeding contraption. None of this would have happened if Regional's Trauma center had not been gutted, and HCA actually focused on providing patient care.

Please support deferring this item to enable proper conversations with community members and in-depth staff analysis.

Regards,

Rosie Zepeda, MS Ed.



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FW: Item 2: Review November 19, 2024 deferral request Draft Agenda Good Samaritan

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 11/5/2024 12:03 PM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: K. Deloumi [REDACTED]
Sent: Tuesday, November 5, 2024 11:19 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Item 2: Review November 19, 2024 deferral request Draft Agenda Good Samaritan

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Item 2: Review November 19, 2024 Draft Agenda

Hello Chair Cohen and Honorable City Council members:

Please defer vote on HCA so -all- can properly prepare.

This is a complex issue and you are in a unique position to make headway.

The San Jose general plan as it pertains to healthcare and hospitals is of high importance to San Jose and surrounding communities. Many services offered by Good Samaritan cross city boundaries. Cutting services creates a chain reaction.

HCA is watching closely as one would expect. Will San Jose help fix a series of lost services due to for-profit goals after Good Sam was made a for-profit? Each time, when profit centers increase and break-even services are all that is left, our taxes spent on healthcare increases.

-aiding HCA's huge stripping off of dollars -

We need San Jose to work at getting essential services back to levels needed for our entire valley's demographics.

I am an owner in district 9. I am active in NAMI and I am on the NAMI board focused on improving / fixing a broken mental health system.

Please be part of the solution - !

I am writing this today representing myself. I have a high level of mental health services knowledge and understand weakness in the current system.

The loss of beds from Good Samaritan was a huge hit within a system that needed more not less acute level beds at the time and NOW.

In mental health there are various levels and types of beds. Think of this as people place purpose. The loss of those acute hospital beds was a big hit. I cannot describe clear enough in a short time how big a deal this was. Keep in mind there are some new laws coming into action in San Jose and our County that will increase the need for beds.

My name is Karen Deloumi.

Again - I am a property owner of District 9. I am an active NAMI board member sending you this as an individual. (National Alliance for Mental Illness)

Providing mental health services are as complex as the different illnesses, and so is the necessary service structure.

A gap at any level of services is a weak link. It inhibits building a system that can make change happen.

Loss of the Acute behavioral health beds closed by HCA was a large hit suffered by all in Santa Clara county. This took place early on, during a formally declared mental health crisis in our county approximately; approximately 10 months prior to HCA announcing the closure.

Yes, California laws need to fix and update essential services and much else. That will take time. Other changes also need to be made.

- Today on this issue, -you- can do something regarding stripped services.

You have the leverage to help rectify a long history of a bad actor in our Valley as they close important services and strip profits. They are not good players in the community. Now they need something.

Please do not be fooled when you see their slide that shows charity to the community. That is basically the write-offs that are common to the industry. It is not true charity. It is required by law related to emergency care. It is also riding off of bad debts, unpaid bills that sometimes are bills that were never sent out and can no longer be collected due to the length of time.

You have an opportunity.

HCA are going to tell you this is simple and just a land use issue. They're going to try to make it appear that retribution by a specific community is behind this.

Well I'm here as someone in D9. I was not part of San Jose Regional protests.

I'm also here as someone with a loved one with a serious mental illness. I won't even start with some of the horror stories of what happens.

HCA for example in the last year, a for-profit, doesn't want to deal with someone with mental health issues. In this real example, they had a doctor check them out using telemedicine in an ER. They were in bad shape. They deemed my loved one releasable. You can't imagine what it's like to hear the doctor say well you can come pick them up and take them to another hospital. They also said, we don't have a place to call to hold him and and wait for an ambulance. A week later my loved one went to another emergency room and was held for quite a while. A lot could have happened to this person being some of the things that take place. It was a clear dumping situation.

I could tell the resident I was talking to on the phone completely understood but there was nothing he could do once the virtual psychiatrist decided to basically dump my loved one hoping they would be picked up and brought someplace else. No words can describe how disgusting this is. My loved one was escorted there to top it off.

- the mental health services they discontinued affect the entire valley already in crisis - and they will continue to do so as they see fit.

I am not looking to stop the project. I am looking for full consideration of facts for this complex issue.

We have a shortage of acute level in hospital beds! HCA made the problem worse.

Loved ones get sent as far as Concord at times before beds were cut. They also sit in emergency services waiting for beds today, due to the unmet need.

I can't emphasize this more! HCA set closing of behavioral health in motion before declaring closure. I have witnessed this first hand working with my loved one.

HCA closed the beds after slowly killing the services by offering less than going rate for salaries. HCA will lead you to believe they couldn't get quality people. The truth is they slowly killed it on purpose. When Good Samaritan was a not-for-profit many people raved about the services they provided.

There are plenty of examples of Good Samaritan services not at the standard one would expect. Their own nurses just protest. HCA will tell you differently. Don't believe them.

Profitable services are well taken care of. Stripped off services that were once services provided to our entire community now put additional pressure on health services that are in short supply.

HCA is not a community player. Now they want something from you. We need to protect our community services.

Remember, HCA is focused on profit not on people. This would be a non-issue if they indeed integrated into our community. They do not unless there's profit involved.

Regarding mental health, stigma and fear of discussion slows knowledge building even further. Many are uncomfortable with the topic. For many it's a health area you get thrown into.

It can take years to understand it in depth. Medical, while also complex, people are more comfortable discussing and diving in to the details.

I am asking for a small amount of time so everyone can come up to speed.

Please do not brush off this topic. All need time including the City Council.

Do support deferring this item to enable proper conversations with community members and in-depth staff analysis.

Sincerely,

Karen



[Yahoo Mail: Search, Organize, Conquer](#)

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RULES COMMITTEE: Item 2: Review November 19, 2024 Draft Agenda. NAMI Formal Support

From K. Deloumi [REDACTED]
Date Tue 11/5/2024 7:24 PM
To City Clerk <city.clerk@sanjoseca.gov>

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NAMI Santa Clara County
Official Letter of Support for Deferral

Hello Chair Cohen and Honorable City Council members,

Please accept this letter as formal support from the National Alliance for Mental Illness in Santa Clara County, (NAMI Santa Clara County,) to defer the Good Samaritan agenda item coming before the San Jose City Council, currently scheduled for Tuesday November 19, 2024.

This is to allow all involved enough time to prepare for this highly complex and important topic.

This is a life and death issue. It is not a simple land use issue. This is about the quality of medical care in the city of San Jose and in Santa Clara county.

Again, your understanding of this issue will effect the quality of medical care and the quality of life for years to come.

To say it clearly, your vote carries significant consequences.

Please cast your vote as a wise and well informed elected official and public servant.

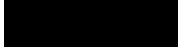
I ask you to please defer this agenda item.

Sincerely,

NAMI Santa Clara County Board

11/6/24, 9:02 AM

Mail - City Clerk - Outlook

For questions and clarification call Frank Aliotto at 

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Letter RE: Good Samaritan Hospital project

From Eddie Truong [REDACTED]

Date Wed 11/6/2024 12:28 PM

To Eddie Truong [REDACTED]

 1 attachments (74 KB)

Letter for Rules Comm - Good Samaritan Hospital(18139832.1).pdf;

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Honorable Members of the Rules Committee:

Please find the attached letter regarding concerns about deferring the Good Samaritan Hospital project from consideration at the November 19, 2024 City Council meeting. This letter is organized in five sections. Section 1 provides background on the Project. Section 2 summarizes the public outreach. Section 3 explains why the Project is consistent with the General Plan. Section 4 explains why the decision on the Project cannot be based on the Unrelated Facilities, and Section 5 is the conclusion.

If you have any questions about this letter and our position, please contact me at [REDACTED]. Our position is that there should be no deferral of the Good Samaritan Hospital Planned Development Rezoning PDC22-132 & ER23041.

Regards,

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EDDIE TRUONG

Partner

Unite Strategies LLC

[REDACTED]



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Linda C. Klein


November 5, 2024

Honorable Members of the Rules and Open Government Committee
City of San José
200 East Santa Clara Street
San Jose, CA 95113
city.clerk@sanjoseca.gov

Re: Good Samaritan Hospital Project - 2425 Samaritan Drive and 2333 Samaritan Place (PDC22-132 & ER23-041)

Dear Chair Cohen and Honorable Committee Members:

We write on behalf of our client, Good Samaritan Hospital L.P. (“Good Samaritan”), which applied for a rezoning (“Project”) of its existing hospital campus located at 2425 Samaritan Drive and 2333 Samaritan Place (“Property”) in the City of San José (“City”) to allow for state-required seismic upgrades and modernization, including complying with the Americans with Disability Act. On October 23, 2024, the Planning Commission voted to recommend that the City Council deny the Project, and on October 31, 2024, Councilmember Ortiz recommended deferring Project consideration to allow time for “more engagement with relevant stakeholders, including patients and local residents.”

As discussed below, the Planning Commission’s and Councilmember Ortiz’s recommendations are not based on the merits of the Project or Good Samaritan’s community outreach. Instead, these recommendations are based on animosity towards Good Samaritan’s owner, HCA Healthcare, over actions at Regional Medical Center and the Mission Oaks Campus (“Unrelated Facilities”). We urge the Committee to recommend that the City Council consider the Project in November, as planned, to allow Good Samaritan time to accomplish the state required upgrades so it can continue providing acute care in the area.

This letter is organized in five sections. Section 1 provides background on the Project. Section 2 summarizes the public outreach. Section 3 explains why the Project is consistent with the General Plan. Section 4 explains why the decision on the Project cannot be based on the Unrelated Facilities, and Section 5 is a conclusion.

1. The Project Allows Good Samaritan To Continue Providing Needed Acute Care Services

Good Samaritan has a long history as a community partner, having served the City and surrounding areas since 1965. To continue its existing operations, Good Samaritan must seismically upgrade its hospital by January 1, 2030, to meet the requirements of Senate Bill

(“SB”) 1953 (codified as California Health and Safety Code §§ 130000 *et seq.*). Failure to meet this deadline will result in Good Samaritan closing.

The Project will not only bring Good Samaritan into conformance with SB 1953, but also will modernize the hospital to allow patient rooms to fit modern medical equipment, comply with the Americans with Disabilities Act, and upgrade the central utility plan to meet current medical demands. The Project will be constructed in three phases to ensure no disruption in providing critical services. The most critical of the phases is Phase 1, which is necessary to meet SB 1953 and includes demolishing the existing bed tower to construct a new Structural Performance Category (SPC) 5-rated hospital wing. Because Phase 1 of the Project is expected to take approximately 5.8 years, there is no time to delay. (Good Samaritan Project Draft Environmental Impact Report (“Draft EIR”), pp. ES-1–ES-2.)

2. Good Samaritan And The City Conducted Community Outreach

Councilmember Ortiz suggested that the Project required more community outreach. The City has offered multiple opportunities for the public to comment on the Project, including two meetings in 2022 and a public scoping meeting. In addition, the public had an opportunity to comment on the Notice of Preparation and the Draft EIR, which the City circulated for 46 days specifically to solicit public feedback. Tellingly, the City received only seven comments on the Draft EIR, with none from Good Samaritan’s immediate neighbors.

Other than delaying the Project, which is an effective denial due to the deadline imposed by SB 1953, it is unclear why Councilmember Ortiz wants more community outreach. Almost no commenter at the Planning Commission hearing expressed concerns about the Project and the Planning Commission itself expressed none. Thus, it is unlikely that additional community outreach would materially alter the Project, particularly when Good Samaritan’s design already reflects community feedback as seen in the proposed transportation improvements and thoughtful landscaping.

3. The Planning Commission’s General Plan Inconsistency Findings Are Not Based On Substantial Evidence

At its hearing on October 23, 2024, the Planning Commission recommended that the City Council deny the Project based on alleged inconsistencies with General Plan policies. As discussed below, the Planning Commission’s inconsistency findings are not based on substantial evidence or any attributes of the Project, and instead improperly rely on the identity of the Project’s owner.

General Plan consistency is not judged on a policy-by-policy basis. (See General Plan, p. 1-4 [policies “must be considered together when making planning decisions”].) Instead, a project is consistent with the General Plan, if, considering all its aspects, the project will further the objectives and policies of the General Plan and not obstruct their attainment. (*Pfeiffer v. City*

of *Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563.) Perfect conformity with the General Plan is not required. (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 514.) Courts have recognized that “it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan.” (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1510–1511.)

Conformity determinations must be based on the actually proposed project and not conjecture or speculation about how the project may unfold. (Cf. *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1119 [emphasizing that a project is not evaluated based on “unapproved activities that opponents assert will be necessary”].) It is an abuse of discretion for the decision-making body to rely on findings not supported by substantial evidence for its inconsistency determination. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717.)

a. The Project is Consistent with the General Plan

Here the Planning Commission fixated on the Project’s alleged noncompliance with Policies ES-6.1 and ES-6.3 and failed to consider the General Plan as a whole. (As discussed in Section 3.b, below, the Project is consistent with these two policies.) When the General Plan is considered as a whole, the Project is consistent with it, including the applicable land use designation and numerous objectives and policies.

The Property has a General Plan land use designation of Neighborhood/Community Commercial (“NCC”). The NCC land use designation allows for commercial uses serving communities in neighboring areas, including general offices and hospitals. (General Plan, p. 5-10.) The Project, which proposes to maintain and expand the existing hospital uses, would continue to serve the neighboring communities and City at large by providing critical medical care for the City’s residents. The Project’s hospital uses are also expressly called out as permitted under the General Plan’s land use description.

Further, as described in the Draft EIR, the Project is consistent with numerous General Plan policies. (E.g., Draft EIR, pp. 4.10-9–4.11-10.) Exhibit 1, attached hereto, provides a more robust analysis of the Project’s consistency with the General Plan.

b. The Project is Consistent with General Plan Goal ES-6 and Its Supporting Policies

General Plan Goal ES-6 encourages facilities that “[p]rovide for the health care needs of all members of the San José community.” (General Plan, p. 4-42.) The Project, which will allow Good Samaritan to continue providing for the health care needs of all members of the San Jose community after 2030 supports this goal.

Goal ES-6 is supported by 14 policies, six of which were raised during the Planning Commission hearing. Although the Planning Commission mainly relied on General Plan policies ES-6.1 and ES-6.3 to justify its recommendation, in written comments submitted just prior to the Planning Commission hearing and during oral comments at that meeting, representatives from certain organizations also suggested that the Project did not comply with Policies ES-6.6, ES-6.7, ES-6.10, and ES-6.12. For completeness, we address each policy below.

i. *Policy ES-6.1*

Policy ES-6.1 states: “Facilitate the development of new and promote the preservation and enhancement of existing health care facilities that meet all the needs of the entire San Jose community.”

Consistent with Policy ES-6.1, the Project both facilitates the development of new and promotes the preservation and enhancement of an existing health care facility—the Good Samaritan Hospital. The Project provides necessary seismic upgrades, modernizes the hospital to better serve the community, and increases healthcare services with new and medical office buildings. Without the Project, Good Samaritan will shutter in 2030, which is inconsistent with Policy ES-6.1.

The Planning Commissioners and commenters focused on the last few words of Policy ES-6.1 regarding “all the needs of the entire San Jose community.” They claimed that because Good Samaritan’s parent, HCA Healthcare, choose to transition an inpatient psychiatric facility in Los Gatos to an outpatient facility that could serve more patients and sell Regional Medical Center to the County of Santa Clara, HCA Healthcare (not the Project) was not meeting all the needs of the entire San José community.

First, for a jurisdiction as large as the City, no one healthcare facility can meet the needs of the entire community. But if the Project is denied and Good Samaritan closes, then the community members around Good Samaritan would lack easy access to acute care facilities.

Second, and more importantly, HCA Healthcare’s decisions regarding the Unrelated Facilities have nothing to do with whether the Project will help to meet the needs of the San José community and therefore is not substantial evidence about the Project that could support an inconsistency determination. (Cf. *Hilltop Group, Inc. v. County of San Diego* (2024) 99 Cal.App.5th 890, 925 [substantial evidence does not include “lay observations unrelated to similar projects in the past”].) As discussed above, the Project would serve the needs of the community by allowing Good Samaritan to offer critical acute care after January 1, 2030, as well as by enabling Good Samaritan to modernize its care.

ii. *Policy ES-6.3*

Policy ES-6.3 states: “Recognizing that health care is a regional issue that crosses jurisdictional boundaries, work with the County, non-profits, and other governmental and non-governmental organizations to ensure that adequate, affordable health care facilities are available for all San José residents.”

Consistent with Policy ES-6.3, the Project helps the City ensure that adequate, affordable health care facilities are available for all City residents. The Project allows Good Samaritan to continue to operate an acute care hospital in the City that provides free or discounted care to uninsured patients who earn up to 400 percent of the federal poverty level (often called “Charity Care”), consistent with California law. In 2023 alone, Good Samaritan provided \$127 million in Charity Care. Project denial would result in closure of Good Samaritan, leaving not only City residents, but also residents of neighboring cities, such as Los Gatos, without adequate health care facilities, which would have detrimental effects on the well-being of the region.

The Planning Commission and commenters did not provide any reason to find the Project inconsistent with Policy ES-6.3. Specifically, the Planning Commission rested its inconsistency finding on the Unrelated Facilities, which have nothing to do with the Project. The Project is a massive investment in the community to ensure that Good Samaritan remains available for all and nothing in the record suggests Good Samaritan would undermine that investment.

iii. *Policy ES-6.6*

Policy ES-6.6 states: “Encourage the location of health care facilities and hospitals in areas that are underserved and lack adequate health care facilities.”

Consistent with Policy ES-6.6, the Project ensures that the area around Good Samaritan remains served by a good health care facility and does not become an area that is underserved and lacks adequate facilities. Without the Project, Good Samaritan will be forced to close, leaving a large swath of City residents without adequate health care facilities.

Commenters urged the Planning Commission to find the Project inconsistent with this policy because “HCA has a pattern of divesting in these specific underserved areas in San José,” citing to the Unrelated Facilities that have nothing to do with the merits of the Project. With the Project, Good Samaritan is proposing to invest heavily to allow Good Samaritan to not just continue but to improve its operations. Further, as noted above, although the area where Good Samaritan exists is not currently underserved, without the Project, it would become underserved.

iv. *Policy ES-6.7*

Policy ES-6.7 states: “Discourage health care facilities or hospitals in areas where their operations can have adverse impacts on surrounding uses or where surrounding uses can have adverse impacts on health care facility patients, workers, or visitors.”

Consistent with Policy ES-6.7, the Project is located on a site that has had a hospital for decades. To better serve patients, workers, and visitors, the Project is located adjacent to a freeway, which reduces cut-through traffic compared to facilities located in the center of residential neighborhoods. The Good Samaritan campus also provides a buffer between the freeway and residential uses. The Project would improve Good Samaritan’s circulation, aesthetics, and landscaping to further reduce impacts on the immediately surrounding community. The uses surrounding Good Samaritan mainly consist of other medical services, offices, and residential uses, none of which emit toxics or would otherwise cause adverse impacts on the hospital, patients, workers, or visitors.

Commenters claimed HCA Healthcare is inconsistent with Policy ES-6.7 because its actions at the Unrelated Facilities “have clearly impacted patients, workers, and the surrounding communities,” and suggested that HCA Healthcare may cut services at Good Samaritan. This argument highlights why the Project is consistent with Policy ES-6.7—the Project allows Good Samaritan to continue offering acute care services for its patients, and the community would be adversely affected if the Project is denied, and Good Samaritan must close. Moreover, nothing in the record suggests that after investing heavily in Good Samaritan, HCA Healthcare would then cut services there.

v. *Policy ES-6.10*

Policy ES-6.10 states: “Encourage potential hospital facilities to consider the impacts of a new facility on existing hospitals’ service areas, demands, and capacities.”

Consistent with Policy ES-6.10, Good Samaritan considered the impacts of its proposed Project on the existing hospitals’ service areas, demands, and capacities. The Project is carefully phased to ensure no loss of services during construction. In addition, the Project will give Good Samaritan the space it requires for the machines now used to treat people and an upgraded facility plant that can support modern medical technology.

Commenters claimed that the Project is inconsistent with Policy ES-6.10 because of HCA Healthcare’s decisions related to Regional Medical Center, which according to the commenters, harmed residents on the east side of the City. Even if true that HCA Healthcare’s sale of Regional Medical Center to Santa Clara County had an adverse impact on that hospital, that sale has nothing to do with the Project. For the reasons discussed above, the Project is consistent with Policy ES-6.10.

vi. *Policy ES-6.12*

Policy ES-6.12 states: “Consider strategies and incentives to attract hospitals and other health care and medical service facilities to areas of San José where a demand for those services is demonstrated in analyses prepared by county, state, or professional consultants.”

Consistent with Policy ES-6.12, the Project allows Good Samaritan to continue to serve City residents and prevents a currently served area of the City from becoming underserved. The City’s approval of the Project could help attract hospitals and other health care and medical facilities to the City by showing that the City supports its health care providers.

Commenters claim that HCA Healthcare’s actions at the Unrelated Facilities were inconsistent with Policy ES-6.12. The Unrelated Facilities, however, are not the project at issue and no one claimed that the Project itself is inconsistent with Policy ES-6.12.

c. The Planning Commission’s Inconsistency Determination is Unsupported by Substantial Evidence

In sum, the Project is consistent with Goal ES-6 and its supporting policies. Had the Planning Commission considered the Project rather than the Unrelated Facilities, it would have reached the same conclusion. Because the Planning Commission’s recommendation is based on factors unrelated to the Project, including unsubstantiated conjecture about HCA Healthcare’s motives and business practices, it is unsupported by substantial evidence. (Cf. *Hilltop Group, Inc., supra*, 99 Cal.App.5th at p. 921 (substantial evidence “is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous”).)

4. The Planning Commission Acted Unlawfully When it Based its Project Recommendation On Unrelated HCA Healthcare Actions And Not The Project’s Merits

The Planning Commission’s decision to recommend that the City Council to deny the Project was not based on the merits of the Project, which were barely discussed at the hearing. Instead, the Planning Commission’s recommendation was improperly based on animus towards the owner of the Project, HCA Healthcare, making its decision arbitrary and discriminatory.

A Planning Commission is prohibited from acting in an arbitrary and unreasonable manner, including out of animus towards a particular applicant. (*Maintain Our Desert Env’t v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 447; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 673; see *Arnel Dev. Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 336 [“[the] principle limiting judicial inquiry into the legislative body’s police power objectives does not bar scrutiny . . . of

discrimination against a particular parcel of property”].) “A public agency may not engage in conduct based upon personal, group or political animus without implicating constitutional concerns.” (*Maintain Our Desert Env’t, supra*, 124 Cal.App.4th at p. 447, citing the following: *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1034–1036; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1013 [“a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like”]; *Roman Cath. etc. Corp. v. City of Piedmont* (1955) 45 Cal.2d 325, 330–334 [zoning scheme that discriminates between otherwise identical public and private schools is arbitrary and unconstitutional].) Moreover, neighborhood opposition is not “itself a ‘rational basis’ for a local government body to forbid” a project because “[i]f public opinion *by itself* could justify the denial of constitutional rights, then those rights would be meaningless.” (*Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 964.)

At the hearing, one Planning Commissioner noted that the Project was very similar to another hospital project proposed by Kaiser and recently recommended for approval. Other Planning Commissioners agreed that the Project and Kaiser’s project were similar, except for the fact that Kaiser had community support while the some in the community and the majority of Planning Commissioners disliked HCA Healthcare’s actions at the Unrelated Facilities. This comparison shows that the Planning Commission acted out of unlawful animus towards the Project’s owner, improperly treating Kaiser and Good Samaritan differently solely based on the identity of a corporate parent.

The Planning Commission acted arbitrarily and unlawfully when it based its decision to recommend Project denial solely on the identity of HCA Healthcare and its purported actions with respect to the Unrelated Facilities. Just as a “a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like” (*Friends of Davis, supra*, 83 Cal.App.4th at p. 1013), the City also does not have carte blanche to exclude a hospital provider that it, or some of its residents, do not like. But that is exactly what the Planning Commission did when it decided to recommend Project denial because it disliked some of HCA Healthcare’s past business decisions.

In short, the Planning Commission’s decision, which will result in the closure of a regional hospital, “is not rationally related to the general regional public welfare.” (See *Arnel Dev. Co., supra*, 126 Cal.App.3d at p. 337 [rezoning to prohibit affordable multifamily housing not in the region’s interest].) Like the housing crisis at issue in *Arnel*, California is having a hospital crisis, with “one out of every five” in “risk [of] closure amid mounting financial challenges.” (Cathie Anderson, *Dozens of California hospitals at risk of closure, industry leaders warn amid call for state aid*, *The Sacramento Bee* (Apr. 14, 2023).¹) In such a situation, “[w]hen considering how best to protect consumers . . . a big part of the equation should be the health consequences of leaving residents without emergency or acute-care services.” (*Id.*) Yet not one Planning Commissioner discussed this very real possibility should the Project be unduly delayed or denied.

¹ Available at <https://www.sacbee.com/news/local/health-and-medicine/article274242050.html>

5. Conclusion

Good Samaritan asks the Committee to schedule the Project for a hearing before the City Council without delay. Delay could result in Good Samaritan being unable to timely replace its non-compliant bed tower, resulting in the loss of a regional acute care facility. Such a result is not in the public interest, and we urge you not to let it happen.

Sincerely,

Cox, Castle & Nicholson LLP


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EJS

Attachment: Exhibit 1, General Plan Consistency Chart

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Exhibit 1

General Plan Consistency Chart

General Plan Policy	Project's Consistency
<p>Policy IE-2.4: "Support the development of the health care industry and related businesses, including those providing services to San José's aging population, in part by promoting the Health Care Goals, Policies, and Actions."</p>	<p>The Project supports the health care industry by allowing Good Samaritan to continue to offer acute care to serve the City's aging population, as well as modernize and add medical office facilities to better serve the community.</p>
<p>Policy LU-1.6: "With new development or expansion and improvement of existing development or uses, incorporate measures to comply with current federal, State, and local standards."</p>	<p>The Project incorporates measures to comply with current federal, state, and local standards. The Project is driven by Good Samaritan's need to comply with state seismic standards and federal requirements from the Americans with Disabilities Act (ADA). The demolition of the bed tower is required to create a seismically compliant facility and the increased size of rooms, bathrooms, lobbies, cafeterias, and meeting rooms are required to meet the ADA. In addition, the Project would comply with state and local building codes, stormwater treatment requirements, and energy efficiency requirements.</p>
<p>Policy LU-4.1: "Retain existing commercial lands to provide jobs, goods, services, entertainment, and other amenities for San José's workers, residents, and visitors."</p>	<p>The approval of this Project is necessary to retain the existing commercial hospital, which provides jobs and critical services to City workers, residents, and visitors. Denial of the Project would leave the City without critical care services its workers, residents, and visitors need.</p>
<p>Policy CD-1.1: "Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses."</p>	<p>The Project proposes quality architectural and site design, including use of durable materials, energy-efficient building assemblies and lighting, better circulation that alleviates conflicts between pedestrians and cars, the addition of hundreds of trees, and addition of water-efficient landscaping.</p>
<p>Policy MS-1.2: "Continually increase the number and proportion of buildings within San José that make use of green building practices by incorporating those practices into both new construction and retrofit of existing structures."</p>	<p>The Project would upgrade outdated hospital buildings and incorporate green building practices, including energy efficient lighting, water efficient fixtures, low-water landscaping, and the addition of EV ready and EV parking spaces.</p>

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<p>Policy EC-3.1: "Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces."</p>	<p>The Project would upgrade the hospital to include buildings that meet with California Building Code and California Fire Code. Most importantly, the Project would make the hospital seismically compliant with state law, allowing it to stay open to serve the community.</p>
<p>Policy ER-8.1: "Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies."</p>	<p>The Project would improve the Project site's stormwater management, updating it to meet current standards, including adding low-impact development features that improve water quality.</p>
<p>Policy TR-1.6: "Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards."</p>	<p>The Project offers several traffic calming features and improved circulation for vehicles, pedestrians, and cyclists.</p>