



Memorandum

TO: City Council

FROM: Mayor Chuck Reed and
Councilmember
Sam Liccardo

SUBJECT: APPEAL OF THE SAN JOSE
MEDICAL CENTER FEIR
CERTIFICATION

DATE: January 9, 2009

APPROVED:

DATE: 1-9-09

RECOMMENDATION

Adopt the staff recommendation for the certification for the final Environmental Impact Report (EIR) for the demolition of San Jose Medical Center (SJMC), with the following condition: that prior to the time of the issuance of the demolition permit, the City Manager, through the Director of Planning, will submit an application to the relevant State of California regulatory agencies to determine the appropriateness of state oversight of additional soil or groundwater testing.

ANALYSIS

A. Certification of the EIR

The demolition of buildings routinely occurs in a city the size of San José without the requirement of an EIR. This Council faces a highly unusual situation in this case, however, as this site has attracted substantial community interest since the closure of the San Jose Medical Center in 2004.

Although drafting errors appear to have raised questions about a consultant's toxics testing at the site, it appears clear that the EIR suffices and fulfills its essential purpose: to notify the public and its elected officials of the environmental consequences of the demolition of these structures. The Council's certification of this EIR does not in any way depend on the results of the groundwater testing conducted by PSI in September. Rather, the testing constitutes a first step in the mitigation of the contamination that typically occurs after the EIR has been certified. Additional testing will occur and remediation will be mandated, but under state law, those decisions remain within the realm of environmental professionals. The focus of the elected body lies on the adequacy

of the EIR's disclosure. As our Planning staff has unequivocally concluded, this EIR sufficiently discloses the demolition's environmental risks.

A condition has been included in the recommendation to address a criticism about the lack of state regulatory oversight of groundwater or soil testing. Hospital Corporation of America (HCA) representatives contend that state agencies and the Regional Water Quality Control Board have traditionally delegated responsibility for oversight to the County Department of Environmental Health. We don't need to resolve those questions now; submitting a simple application to the relevant state authorities can leave those decisions to the regulators who routinely perform those responsibilities.

B. Broader Issues of Health Care and Redevelopment of the SJMC Site

Larger issues surrounding the site and the provision of health care are not on the Council agenda. As a legal matter, the Council cannot consider them concurrent with this item.

Nonetheless, it remains the case that on March 18, 2008, this Council considered and adopted the recommendations of the Stakeholder Advisory Committee (SAC) for the re-use of the former SJMC site. The SAC's work focused on the fallout from two decisions of HCA: to close SJMC, and to decline serving many patients relying on Medi-Cal at Regional Medical Center for elective procedures. Since leaving the surrounding community—particularly those with modest or low incomes—without adequate health care opportunities, the City and Redevelopment Agency have endeavored to find a solution, and we are grateful for the voters' willingness last November to pass Measure A, which will provide financing for such a solution.

Many members of the community have understandable concerns that if the Council and Planning staff allow the demolition of the SJMC buildings, HCA will lose any incentive to participate in a health care solution downtown. The General Plan designation and zoning on the land have not changed, however. On March 18, 2008, the Council overwhelmingly voted to direct the "City Manager to forward to City Council a General Plan amendment or rezoning" of the site "only after the completion of an implementation plan" that included an expansion of primary care to residents of all incomes, and an expansion of urgent (or extended-hours) care."

This week, we have submitted an additional memorandum to the Rules Committee that proposes a resolution to express Council's commitment to continue the use of the SJMC site for the provision of medical services, until a satisfactory and adequately-funded health care solution emerges. The contemplated action would further direct the City Clerk to record that resolution with the County, so that it will remain a part of the property's chain of title. We will urge our colleagues to support that resolution when it comes to Council in the coming weeks.

This memorandum has been coordinated with the City Attorney's Office and the Department of Planning, Building, and Code Enforcement.

Attachment: Memorandum for January 21 RULES Committee Meeting



Memorandum

TO: RULES COMMITTEE

FROM: Mayor Chuck Reed and
Councilmember Sam
Liccardo

**SUBJECT: RESOLUTION REGARDING
THE RE-USE OF THE FORMER
SAN JOSE MEDICAL CENTER
SITE**

DATE: January 9, 2009

APPROVED:

DATE:

1-9-09

RECOMMENDATION

Direct the City Attorney to draft a resolution for adoption by the San José City Council, reflecting and incorporating the intention of the Council that:

- a) The San José City Council and Mayor have determined that the former San José Medical Center (“SJMC”) site on East Santa Clara Street remains a critical component of the city’s strategy for the provision of health care to residents in central San José. Accordingly, the Council directs that the Planning staff discourage, in writing, prospective applicants from submitting applications for general plan amendments, rezonings, or other development permits or approvals on this site, or on any part of this site. The Council further directs Planning staff to inform prospective applicants that the City Council has publicly expressed its strong support for the current General Plan and zoning designation for the site, until such time as the Council has determined that it has found adequate means for the provision of health care—including after-hours primary care, and care that addresses the needs of residents of all incomes—at or near that site; and
- b) Direct the City Clerk to record a copy of this resolution with the County Recorder’s Office of Santa Clara County, to impart constructive notice to any prospective buyers of the site.

ANALYSIS

On March 18, 2008, this Council considered and adopted the recommendations of the Stakeholder Advisory Committee (SAC) for the re-use of the former SJMC site. SAC

members sought to address the consequences of two decisions of Hospital Corporation of America (HCA): to close SJMC, and to decline serving many patients relying on Medi-Cal at Regional Medical Center for elective procedures. Leaving the surrounding community—particularly those with modest or low incomes—without adequate health care opportunities, the City and Redevelopment Agency have endeavored to find a solution. We are grateful for the voters' willingness last November to pass Measure A, which will provide financing for such a solution.

The Council's imminent decision to certify the EIR for the demolition of the buildings on the former SJMC site has left many in the community raising understandable concerns that HCA will lack any incentive to participate in a health care solution for central San José. The zoning on the land has not changed, however. This resolution seeks to clarify—for the public, for potential buyers and developers, and for HCA—the Council's position in this matter.

This memorandum has been coordinated with the City Attorney's Office and the Planning Department.