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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MEMORIAL HEALTH SERVICES, et al.,

CASE NO. SA CV 16-0852-DOC (JCGx)

Petitioners and Plaintiffs,

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

vs.

CITY OF SAN CLEMENTE, et al.,

Respondents and Defendants.

**I. INTRODUCTION**

This case arises out of the City of San Clemente’s adoption of an ordinance in 2015 that down-zoned a 6.63 acre parcel owned by Petitioners and Plaintiffs Saddleback Memorial Medical Center and its parent company, Memorial Health Services (collectively, “MemorialCare” or “Petitioners”). The new zoning limited the parcel’s use solely to operation of a general acute care hospital and provision of accessory medical services.

As a result, on April 8, 2016, MemorialCare filed a Petition and Complaint (“Complaint”) (Dkt. 29) against the City of San Clemente and the five members of its City Council (the “City” or “Respondents”) in the Superior Court of California, County of

1 Orange. On May 6, 2016, the City removed the action to this Court. Notice of Removal  
2 (Dkt. 1). On May 13, 2016, Petitioners filed a First Amended Complaint (“FAC”) (Dkt.  
3 12), bringing claims for a writ of mandate, inverse condemnation, and civil rights  
4 violations under state and federal law. Pursuant to Stipulation (Dkt. 23), the parties agreed  
5 to bifurcate trial of Petitioners’ first claim for relief, which seeks the issuance of a writ of  
6 mandate under California Code of Civil Procedure §§ 1085 and/or 1094.5 to invalidate  
7 certain actions of the City described below.<sup>1</sup> Petitioners filed their opening trial brief (Dkt.  
8 29) on June 30, 2017, and Respondents filed their opposition brief (Dkt. 32) on August 15,  
9 2017. A joint Administrative Record (“AR,” for citations below) was also submitted on  
10 August 15, 2017 (Dkts. 31, 34).<sup>2</sup> Petitioners filed their reply brief (Dkt. 35) on August 29,  
11 2017.

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15 <sup>1</sup> The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over this bifurcated claim,  
16 which is governed by California law. Because this action was filed within ninety days after the  
17 City adopted its Resolution approving General Plan Amendment No. 15-427, Zoning Amendment  
18 15-428, and Specific Plan Amendments 15-449 through 15-452 (collectively, the “Zoning  
19 Changes”), this action was timely under California law pursuant to California Government Code §  
20 65009.

21 <sup>2</sup> Defendants filed an Objection to evidence relied upon in Petitioners’ opening brief, and  
22 asked the Court to strike or disregard such evidence (Dkt. 33). Specifically, Defendants argue that  
23 certain declaration and deposition testimony, as well as certain documents in the Joint  
24 Administrative Record, should be excluded because they were not part of the record before the  
25 City Council when the challenged decision was made. Plaintiffs respond that federal courts have  
26 allowed admission of extra-record evidence for limited purposes such as for providing background  
27 information and for ascertaining whether the decision-maker considered all the relevant factors  
28 (Dkt. 37). To the extent that the Court cites or relies on evidence to which the parties have  
objected, the Court has considered and overruled those objections. In particular, the Court agrees  
with Petitioners that some evidence at issue provides useful background information, although  
such information is in any case not central to the Court’s decision in this case. *See Asarco, Inc. v.*  
*U.S. Environmental Protection Agency*, 616 F.2d 1153, 1160 (9th Cir. 1980); *see also Western*  
*States Petroleum Ass’n v. Super. Ct.*, 9 Cal. 4th 559, 578–79 (1995) (“[W]e do not foreclose the  
possibility that extra-record evidence may be admissible in traditional mandamus actions  
challenging quasi-legislative administrative decisions under unusual circumstances or for very  
limited purposes not presented in the case now before us. Indeed, as we noted earlier, the federal  
courts have allowed admission of extra-record evidence under certain circumstances.”). As to any  
remaining objections, the Court finds it unnecessary to rule on them because the Court does not  
rely on the disputed evidence.

1 On September 21, 2017, and February 15, 2018, the Court conducted hearings that  
2 constituted trial of Petitioners’ first claim for relief. Having considered all the evidence  
3 presented by the parties and the written submissions from both sides, the Court makes the  
4 following findings of fact and reaches the following conclusions of law pursuant to Rule  
5 52 of the Federal Rules of Civil Procedure. To the extent that any findings of fact are  
6 included in the Conclusions of Law section, they shall be deemed findings of fact, and to  
7 the extent that any conclusions of law are included in the Findings of Fact section, they  
8 shall be deemed conclusions of law.

9 **II. FINDINGS OF FACT**

10 1. Petitioner Memorial Health Services (“MHS”) is a California nonprofit public benefit  
11 corporation; Petitioner Saddleback Memorial Medical Center (“SMMC”) is also a  
12 California nonprofit public benefit corporation.

13 2. Respondent City of San Clemente is a municipal corporation, and the individual  
14 Respondents were members of San Clemente’s City Council at the time of filing.

15 **A. The Hospital and the Property**

16 3. Within the City of San Clemente lies a 6.63-acre parcel of property with a street  
17 address of 654 Camino de Los Mares (the “Property”). *See* AR 1243, 1796, 2709. A  
18 hospital with a functioning emergency room (the “Hospital”) was constructed on the  
19 Property in 1971. *See* AR 389, 2710–13. The Property is located is within the  
20 northernmost portion of the City and adjacent to Interstate 5, near the Camino de  
21 Estrella exit. *See* AR 1519, 1713–14.

22 4. Since opening, the Hospital has had seven owners and many more operators,  
23 including some of the largest healthcare companies in the nation: American  
24 Healthcare Management, Samaritan Health Systems, Columbia/HCA Corp., and even  
25 two different physician-owned groups. *See generally* AR 2710–3385. The Hospital  
26 has been sold six times, twice out of bankruptcy.

27 5. To induce MemorialCare to acquire the Hospital, City staff or representatives may  
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- 1 have assured MemorialCare that if MemorialCare ultimately found that the Hospital  
2 was not viable, the City would work with MemorialCare to enhance the zoning of the  
3 Property. The City’s Planning Department suggested to MemorialCare’s  
4 representatives that if it appeared that the Hospital would have to close—an  
5 undesired outcome—the City would consider the site for a zone change that would  
6 allow for full commercial uses, and advised MemorialCare of the likely costs of such  
7 a zone change. AR 1239 (“Our interview with the San Clemente Planning  
8 Department indicates that the City desires the property to continue its use as a  
9 hospital facility, as there are no other hospitals in San Clemente. Planning  
10 Department officials indicated that, in the event of the possibility of the closure of the  
11 hospital, the site would be considered for a General Plan amendment, which would  
12 allow a change of zoning to Community Commercial (CC 2).”); *see also* AR 1259.
- 13 6. In February of 2005, SMMC acquired the Property and Hospital. *See* AR 1713. The  
14 Hospital was an acute-care hospital with 73 beds (66 acute care medical-surgical  
15 beds and 7 intensive care beds), and had an attached emergency department with 10  
16 treatment beds. *See, e.g.*, AR 1595, 1604.
- 17 7. At the time SMMC acquired the Property, and continuing until the zoning  
18 enactments at issue, the Property was zoned “Regional Commercial (RC2).” AR  
19 1239, 1258.
- 20 8. The RC2 zoning classification allowed SMMC to operate a hospital on the Property.  
21 AR 357 (“The RC 2 zone provides for the continued use and development of the  
22 existing hospital facilities at 654 Camino de Los Mares.”). However, the RC2 zone  
23 did not *require* that a hospital or emergency department be maintained on the  
24 Property, and the zone also allowed a range of other related uses, including medical  
25 offices, a congregate care facility, a convalescent home, accessory buildings,  
26 laboratories, and incidental uses. AR 358–65, 1258.
- 27 9. With the exception of a small adjacent parcel that had been severed from the Property  
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- 1 for a convalescent care home, all surrounding properties along Camino de Los Mares  
2 were zoned Community Commercial 2 (“CC2”) at all relevant times, which allowed  
3 for a variety of retail, office and medical-related uses. *See* AR 118, 357–65, 1258.  
4 Pursuant to the Zoning Changes referenced below, the CC2 category was slightly  
5 altered, and after January 2016 was technically classified as CC4. *See* AR 974–75.
- 6 10. SMMC operated the Hospital on the Property from the time of its acquisition in  
7 February 2005 until May 31, 2016, when Petitioners closed the Hospital. *See* AR  
8 1594, 1713; Declaration of Stephen Geidt (Dkt. 29-4) (“Geidt Decl.”) ¶ 3. While  
9 operated by MemorialCare, the Hospital was known as “Saddleback Memorial  
10 Medical Center – San Clemente.”
- 11 11. At all times until May 31, 2016, the Hospital was a fully licensed acute care hospital  
12 with a functioning emergency room. *See* AR 1604. Until Petitioners closed the  
13 Hospital, it provided treatment and emergency services for the residents of the City  
14 and the south Orange County region. *See* AR 1050, 1603. According to a 2013  
15 Community Health Needs Assessment, approximately 18% of Orange County  
16 residents seek treatment at an emergency room each year, with seniors visiting the  
17 emergency room at a rate of 22% per year. AR 1054, 1080. In 2015, the Hospital’s  
18 emergency department was visited by 14,215 patients. AR 1604.
- 19 12. Until its closure, the Hospital was the only acute care hospital with an emergency  
20 room between Mission Viejo and Oceanside, a distance of approximately forty miles  
21 over roads that are often congested. AR 1603, 1628, 4099, 4280.
- 22 13. However, due to strict rules of the California Department of Public Health and  
23 Orange County Emergency Medical Services that regulate the type of patients that  
24 may be transported by ambulance to the various emergency departments in Orange  
25 County, the Hospital was not designated to receive patients needing care for certain  
26 serious injuries or conditions. AR 1595. For example, the Hospital was not licensed  
27 for obstetric services, so ambulances could not transport women in labor to the  
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1 Hospital. AR 1595, 1597. In addition, the Hospital was not designated as a stroke-  
2 neurology center, and thus a patient suffering a stroke or severe neurological  
3 problem, or needing neurological surgery, could not be transported to the Hospital.  
4 AR 1595, 1597. The Hospital also was not designated as a cardiac receiving center,  
5 so patients suffering a heart attack or cardiological trauma could not be transported to  
6 the Hospital by ambulance. AR 1595, 1597. And because the Hospital was not a  
7 designated trauma center, paramedics could not transport a patient or victim suffering  
8 major traumas, such as gunshot wounds or severe burns, to the Hospital. AR 1595,  
9 1597. As a result, as many as 65% of medical 9-1-1 calls would bypass the Hospital  
10 and route patients to other hospitals with cardiac receiving centers, stroke receiving  
11 centers, and trauma centers. *See* AR 1603, 1722.

12 14. Petitioners remain the owners of the Property. *See* AR 1713.

13 **B. The City’s Centennial General Plan Developed from 2009 to 2014**

14 15. In December 2009, the City began the process of completely revising the city-wide  
15 general land use plan. AR 111. Having last revised the general plan in 1993, the City  
16 studied land use patterns within its jurisdiction and gave the program the name  
17 “Centennial General Plan.” AR 111.

18 16. The City’s process in developing the Centennial General Plan was exhaustive: it  
19 appointed a General Plan Advisory Committee (the “Committee”) made up of  
20 twenty-five community members representing various interests. AR 111. The  
21 members of the Committee were drawn from residents, business owners, and other  
22 stakeholders and discussed at length density, traffic, and other factors relevant to land  
23 use. AR 111. The Committee guided City staff and consultants in developing the  
24 plan, including by identifying the community’s “core values” and the City’s “key  
25 policy issue priorities,” upon which the plan would be based. AR 111.

26 17. Even beyond the Committee’s own work, the City conducted eighty-six public  
27 workshops and meetings, and the Planning Commission held forty public meetings to  
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- 1 consider the Committee’s recommendations. AR 111.
- 2 18. After much public review and comment, the City Council adopted the Centennial  
3 General Plan on February 4, 2014. AR 100, 382.
- 4 19. The Centennial General Plan identified eight “focus areas” within the City, one of  
5 which was the area along Camino de Los Mares where the Property is situated (the  
6 “CDLM Focus Area”). AR 134, 164. The Centennial General Plan describes the  
7 CDLM Focus Area as a “primary community commercial” area that is “also a  
8 medical office hub.” AR 135. It explains that, “[w]hile the area will continue to  
9 provide retail and commercial services for residents, the area is also envisioned to  
10 provide expanded opportunities for medical offices and services that respond to  
11 changing patient needs and demands, and to a rapidly changing health care industry.”  
12 AR 135. The Centennial General Plan’s stated goal for the CDLM Focus Area is:  
13 “Maintain and improve the Area as a community hub that provides diverse retail  
14 opportunities and commercial services for local residents and high quality medical  
15 services and related employment opportunities for San Clemente and surrounding  
16 communities.” AR 135.
- 17 20. The Centennial General Plan’s Land Use Policy - 7.02 (“LU-7.02”) states that the  
18 City’s land regulation policies should aim to “support the expansion of health care  
19 facilities and related offices . . . .” AR 135. In LU-7.03, the City pledged to  
20 “collaborate with local health care providers and facilities to understand their  
21 changing requirements and help meet the needs of our residents.” AR 135–36.
- 22 21. The City planned to implement these Land Use Policies for the Camino de Los Mares  
23 areas by “[m]eet[ing] with medical office professionals and hospital administration to  
24 better understand their needs and use of City resources and to help them better  
25 accomplish their goals and objectives.” AR 152.
- 26 22. The Centennial General Plan made no land use, topographical, or other distinction  
27 between the Property and the surrounding medical office properties located along  
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- 1 Camino de Los Mares; all of the properties along Camino de Los Mares—including  
2 the Property—were designated CC2 under the Centennial General Plan. AR 135–36,  
3 155.
- 4 23. The Centennial General Plan’s CC2 land use designation allowed the widest range of  
5 commercial, retail, and medical uses, including, in addition to hospital uses, medical  
6 and professional offices, senior housing, drugstores, and virtually every sort of retail  
7 operation, from sales of bicycles and clothing to office equipment, and beyond. AR  
8 358–65.
- 9 24. Within the CC2 zone, a “hospital use” was afforded certain rights not available to  
10 other property uses within the zone. For example, while properties in the CC2 zone  
11 were limited to a 0.75 Floor Area Ratio (“FAR”) (ratio of building’s total floor area  
12 to the area of the parcel on which the buildings sits), the Centennial General Plan  
13 allowed hospital uses a FAR of 2.0, more than twice as intense a use as surrounding  
14 properties. AR 118. The CC2 zone also allowed hospitals to build to a maximum  
15 height and maximum number of floors greater than any other use. AR 118. The CC2  
16 zone identified in the Centennial General Plan also allowed significantly greater lot  
17 coverage for the hospital use than for any other use. AR 368.
- 18 25. Throughout the Centennial Plan, the City referenced the hospital and sought to  
19 ensure that the City’s land use policies were compatible with, and supported, the  
20 hospital’s operations. *See* AR 98–370. For example, portions of the Centennial  
21 General Plan contemplated measures to reduce noise and freight traffic near sensitive  
22 areas such as the Hospital, in order to protect human health and ensure the Hospital’s  
23 quality of care. AR 218, 282. The transportation component of the Centennial Plan  
24 was designed with a goal of managing the public transportation system to ensure  
25 adequate emergency response times. AR 216. The Centennial General Plan also  
26 discussed the importance of protecting the Hospital, noting that the City would take  
27 steps to ensure that “critical public facilities, such as schools, hospitals, and  
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1 emergency services, are seismically strengthened . . . .” AR 290.

2 26. The Centennial General Plan specifically calls out “hospitals” as a Public and  
3 Institutional Land Use, which is a category of land use that “serve[s] the public” and  
4 “help[s] meet the broader community’s needs.” AR 133. In the “Implementation  
5 Measures” portion of the plan, the City committed itself to collaboration “with local  
6 hospitals and health service providers” to “support measures that improve the  
7 availability of and access to primary care and other physicians’ services and  
8 emergency care facilities in San Clemente . . . .” AR 240.

9 27. The Centennial General Plan includes a “Critical Facilities” map, and the Hospital is  
10 the only health care facility identified on the map. AR 296.

11 **C. The Centennial General Plan’s Implementing Amendments in 2015**

12 28. On August 19, 2014, the City hired an outside expert, Mr. James Hare, to “prepare  
13 amendments to the City’s Zoning Ordinance to bring the ordinance into conformity  
14 with the new [Centennial General Plan].” AR 463.

15 29. On April 22, 2015, a series of zoning amendments were considered and approved for  
16 inclusion as part of Zoning Amendment 14-456. Those amendments included the  
17 formality of changing the zoning designation of the Property from “Regional  
18 Commercial (RC2) to Community Commercial 2 (CC2)” in conformity with the  
19 Centennial General Plan. AR 463, 1427.

20 30. As a result of the Centennial General Plan planning process, which took place from  
21 2009 to 2015, the City concluded that the Property should be zoned identically to all  
22 of the surrounding properties, allowing it to also be used for virtually any medical,  
23 commercial, or retail use. *See* AR 463, 662–71.

24 **D. Healthcare Developments Lead Hospital to Announce Potential Closure**

25 31. Over the last decade or so, healthcare throughout the nation has undergone dramatic  
26 changes. *See* AR 18–20, 38–44, 1721–23. The number of patients admitted to  
27 hospitals has dramatically declined, due to such factors as (a) increasing costs; (b)  
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1 advances in medical technology that allow many procedures such as x-rays and other  
2 imaging, dialysis treatments, and, increasingly, surgeries, to be performed in less-  
3 expensive outpatient facilities; (c) health insurance company and Medicare policies  
4 discouraging hospital admissions and limiting hospital stays; (d) the Value Based  
5 Purchasing elements of the Affordable Care Act that reduced hospital admissions;  
6 and (e) growing competition from healthcare maintenance organizations such as  
7 Kaiser Permanente. For example, from 2011 to 2015, inpatient admissions at Mission  
8 Hospital, Hoag Hospital, and Saddleback Memorial Medical Center declined on  
9 average by 15%, amounting to 10,000 fewer patients in those three hospitals alone.  
10 *See* AR 18–20, 38–44, 1721.

11 32. These trends had an impact on many hospitals, particularly smaller facilities such as  
12 the Hospital. *See* AR 10, 20–21. Beginning in 2010, the inpatient census at the  
13 Hospital began to decline. *See* AR 1719, 1728. By 2012, the daily average number of  
14 inpatients at the Hospital fell to 23. AR 1719. By 2014, the daily average number was  
15 16.6. AR 1719. By the end of 2016, the daily average fell further to 10. AR 1719; *see*  
16 *also* AR 10. In one month in 2015, there were 3 days with only 5 inpatients at the  
17 Hospital. AR 1729; *see also* AR 44.

18 33. The Hospital also suffered economically. From 2007 through 2012, it essentially  
19 broke even; its net income averaged \$100,000 per year during that time. *See* AR  
20 1720. By 2013, the Hospital suffered a loss of \$1,127,000 and lost still more money  
21 every year until, in 2016, it lost in excess of \$3,300,000. AR 1720.

22 34. When facilities such as the Hospital have an extremely low patient count, their ability  
23 to deliver safe, skilled healthcare is at risk. *See* AR 36–37. Doctors can be reluctant  
24 to admit patients due to a lack of resources; staff, such as qualified nurses, may seek  
25 other employment opportunities. *See* AR 1721 (explaining to the City Council that,  
26 “[A]s hospital volumes shrink, we have a harder and harder time keeping specialists  
27 available at the hospital, in areas like urology, neurology, gynecology, and infectious  
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1 disease, because we don't have enough patients for it [to] be efficient for them to be  
2 on staff.”).

3 35. In early 2016, MemorialCare was concerned that the low inpatient count would begin  
4 to threaten patient safety. *See* AR 1587 (“[T]he forces that have driven the volumes  
5 at San Clemente to their current levels are relentless and have, over the last few  
6 years, become somewhat self-fulfilling; i.e. the smaller and less relevant the campus  
7 becomes, the less physicians and consumers want to be associated with it, driving  
8 volumes down further, faster. It has reached levels that are not only functionally  
9 unsustainable, but arguably unsafe . . . and by unsafe, I am suggesting that it is  
10 incapable of meeting the community standard of acute care as a result of having  
11 fewer available resources, specialization and capabilities as those found in adjacent  
12 community hospitals.”). This concern was stated by several speakers at the City  
13 Council’s hearing on the Zoning Changes. *See* AR 10, 36–38.

14 36. Likely in recognition of these downward trends and the changes in the healthcare  
15 industry, in 2014 MemorialCare began formulating a plan for closing the Hospital  
16 and constructing in its place a new state-of-the-art outpatient medical facility with an  
17 advanced 24-hour-a-day urgent care center, a women’s health center, a surgery  
18 center, rehabilitation facilities, physicians’ offices, an ultrasound, CAT scan, MRI,  
19 and imaging center, a lab, and other cutting-edge healthcare services (the “Outpatient  
20 and Advanced Urgent Care Complex”). *See* AR 12, 14, 1744–45.

21 37. In mid-2014, MemorialCare advised the City of its plans to close the Hospital and  
22 construct the new facility. *See* AR 393– 97. MemorialCare engaged a national firm,  
23 NexCore Group, to undertake a detailed study of the community needs and the  
24 receptivity of the area’s medical community to the proposed Outpatient and  
25 Advanced Urgent Care Complex. AR 1281–1419.

26 38. NexCore conducted over 100 meetings in the community and worked with  
27 MemorialCare to survey medical groups representing 108 physicians. AR 1285,  
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- 1 1288, 1314. NexCore found that the local physicians almost unanimously supported  
2 the Outpatient and Advanced Urgent Care Complex. AR 1318–35.
- 3 39. When the City learned of the potential Hospital closure, it took immediate steps to  
4 understand the impacts, seek community input, involve stakeholders, and consider  
5 plans to mitigate the potential impact to the City. *See* AR 1, 855.
- 6 40. More than 11,000 City residents signed a petition urging the retention of the Hospital  
7 with emergency room services. AR 48.
- 8 41. After the announcement of the potential closure, the City proactively sought to  
9 involve other healthcare providers who may wish to purchase the Property from  
10 Petitioners and continue to operate the Hospital. *See* AR 1–2.
- 11 42. On December 2, 2014, the City Council held a duly noticed public meeting at which  
12 the potential closure of the Hospital was discussed. The City Council heard testimony  
13 from doctors and community members, including testimony that there was in fact  
14 demand for the Hospital, and that if the Hospital closed, hospital transportation times  
15 would increase. AR 1971–72.
- 16 43. At the conclusion of the meeting, the City Council adopted a resolution opposing the  
17 closure, making the following finding, among others: “[C]ommunity members have  
18 voiced their concerns about the potential loss of the acute care hospital and  
19 emergency services and fear for the health and welfare of the residents and visitors  
20 who are in critical need to be transported at minimum an additional 9 miles from the  
21 current emergency room to the nearest hospital.” *See* AR 1972.
- 22 44. A small group of doctors, two of whom had belonged to the physician/owner group  
23 that sold the facility to MemorialCare (Drs. Gus Gialamas and Steven Cullen),  
24 opposed the closure of the Hospital and the establishment of the Outpatient and  
25 Advanced Urgent Care Complex. By the latter half of 2014, the two doctors assisted  
26 in mounting a public relations campaign opposing closure. *See* AR 1129. Dr. Cullen  
27 wrote by email to Councilman Baker (who forwarded the email to Councilman  
28

1 Hamm) in December 2014 that “I still think public sentiment remains our biggest  
2 weapon. With that in mind our PR campaign continues . . . .” AR 1129.

3 45. In that same December 2014 email, Dr. Cullen urged Councilman Hamm to have the  
4 City resort to its zoning powers in the hope of intimidating MemorialCare into  
5 changing its plan to close. AR 01129.

6 46. The Orange County Fire Authority (“OCFA”) studied the issue of the Hospital  
7 closure, and created a report analyzing the effects of a potential closure. AR 4087–  
8 4105. In a February 10, 2015 memorandum, OCFA concluded that closure of the  
9 hospital would negatively impact their ability to provide emergency services to south  
10 Orange County residents, and that the closure would have a negative impact on other  
11 hospitals because of increased patient intake. AR 4088 (“Current and projected  
12 experience data indicate that the hospital closure would pose impacts to OCFA’s  
13 delivery of emergency services and increase impacts to other hospitals within Orange  
14 County.”); AR 4093 (“The loss of San Clemente Hospital and emergency room  
15 would likely impact OCFA, increasing unit response and transport times, decreasing  
16 unit availability, increasing turnaround times, and would require additional resources  
17 to maintain existing levels of response capability.”).

18 47. On February 12, 2015, OCFA issued an Incident Response/Bypass/Diversions  
19 Report, wherein it determined that seventy-two percent of patients transported by  
20 OCFA from the City in 2014 were transported to the Hospital, and that the average  
21 transport times to the next closest hospital in Mission Viejo were nearly double the  
22 transport times to the Hospital in the City (16.15 minutes compared to 8.5 minutes).  
23 AR 4107. Also, Mission Viejo is occasionally on diversion (i.e. it will not accept  
24 additional emergency drop-offs), which necessitates transport to even more distant  
25 hospitals. *See* AR 48, 1972, 4280. The transport times to Mission Hospital Laguna  
26 Beach and Saddleback Memorial Care Laguna Hills were even longer (20.1 minutes  
27 and 22.9 minutes on average, respectively). AR 4107.

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1 48. Based on this data and other information presented to the City Council, the City  
2 reasonably determined that the closure of the Hospital would have a significant  
3 adverse effect on the health, safety, and welfare of the residents of San Clemente and  
4 the broader South Orange County region.

5 **E. The City and MemorialCare Together Seek a Legislative Solution**

6 49. The City's major concern was the closing of the Hospital's Emergency Department.  
7 California law requires that emergency departments operate as a component of a  
8 fully-licensed acute care hospital, and prohibits the operation of a free-standing  
9 emergency department. *See* AR 2, 4280. Accordingly, the City and MemorialCare  
10 agreed, in early February 2015, that MemorialCare would defer closure of the  
11 Hospital for eighteen months to work diligently with the City to seek a legislative  
12 exception that would allow MemorialCare to operate a free-standing emergency  
13 department as part of the Outpatient and Advanced Urgent Care Complex (in  
14 essence, allowing the Hospital to close while its Emergency Department remained  
15 open). *See* AR 2, 1132. The Saddleback Memorial San Clemente Hospital Advisory  
16 Committee worked to draft California Assembly Bill 911 (Brough) and Senate Bill  
17 787 (Bates), which would authorize a freestanding "satellite" emergency department.  
18 AR 2. The City and MemorialCare both engaged lobbyists and tried to secure  
19 passage of the exemption. AR 2, 1131.

20 50. By late summer 2015, the two bills introduced for the exception died in the Health  
21 Committees of the California Assembly and Senate, and thus both failed to become  
22 law. *See* AR 1583.

23 **F. The City Rezones the Hospital Property**

24 51. On October 21, 2015, and again at the City Council meeting of November 3, 2015,  
25 the City Council issued a directive to the City's staff to re-zone the Property so that  
26 the Property could only be used for an acute-care hospital and emergency  
27 department. AR 1, 972-73, 2236.  
28

- 1 52. In response to the directive, City staff prepared a Staff Report for the San Clemente  
2 Planning Commission that explained proposed zoning amendments, analyzed  
3 whether the amendments were consistent with the Centennial General Plan, and  
4 recommended that the amendments be approved. AR 972–79.
- 5 53. The proposed amendments created an entirely new zoning designation named  
6 “Regional Medical Facilities 1” (“RMF1”), and applied it to the Property, and only  
7 the Property. AR 979. It also slightly altered the zoning of surrounding properties  
8 from CC2 to CC4, which still allowed for a wide range of uses while also adding  
9 “group counseling” uses as conditionally permitted. *See* AR 974 (“The new CC 4  
10 zone permits the same uses allowed in the CC 2 zone, with the exception of  
11 additional hospital-supporting and medical office-related uses.”).
- 12 54. The RMF1 category precluded any use of the Property unless the owner operates a  
13 fully-licensed hospital and emergency room on the Property. *See* AR 973–74.  
14 However, the RMF1 zoning designation also allowed a range of ancillary uses such  
15 as medical offices and group counseling facilities.
- 16 55. The proposed amendments also precluded hospital uses in other parts of the City, to  
17 ensure that the Hospital would not face a competitor in the City that could threaten  
18 the Hospital’s viability. AR 974, 1839.
- 19 56. Mr. Atamian, an Associate Planner for the City, designed the proposed zoning  
20 amendments, prepared the Staff Report, and composed the various findings contained  
21 in that Report. AR 972; Deposition of Adam Atamian (“Atamian Depo”) (Dkt. 38-1)  
22 at 161:13–24, 184:2–190:18.
- 23 57. Neither Mr. Atamian nor any City staff member conducted any studies,  
24 investigations, or research regarding the proposed Outpatient and Advanced Urgent  
25 Care Complex or its potential benefits. *See generally* AR. Neither Mr. Atamian nor  
26 any City staff member conducted any comparative research, study, or evaluation to  
27 assess whether the Outpatient and Advanced Urgent Care Complex proposed by  
28

- 1 MemorialCare would be more—or less—beneficial to the community than the  
2 Hospital. Atamian Depo at 129:25–132:5, 136:4–18, 159:4–160:22.
- 3 58. Neither Mr. Atamian nor any other City staff member specifically studied the  
4 ongoing feasibility of a hospital; Mr. Atamian simply proposed zoning amendments  
5 aimed at “encouraging” a hospital use on the Property, but he did not know or study  
6 whether the proposed amendments could or would achieve the goal of maintaining  
7 hospital operations on the Property. *See* AR 972–79; Atamian Depo at 131:9–135:2,  
8 136:4–18, 159:4–160:22, 174:3–177:7, 188:9–189:9.
- 9 59. Mr. Atamian did not balance the competing interests of affected parties, or assess the  
10 burden on MemorialCare or the community; he simply followed the directive he had  
11 been given: to create a zoning amendment designed to maintain a hospital use on the  
12 Property. *See* AR 1 (“At the November 3, 2015 City Council meeting, the Council  
13 directed staff to prepare a rezone and General Plan amendment to ensure that the  
14 current hospital property is zoned only for the essential hospital purpose it was  
15 designated for when purchased by Saddleback Memorial Care in 2007.”); Atamian  
16 Depo at 159:23–160:9.
- 17 60. At their December 16, 2015 meeting, the San Clemente Planning Commission  
18 considered the Staff Report and the proposed zoning amendments. *See* AR 972,  
19 1797, 2280–82. At that Planning Commission meeting, Mr. Atamian explained that  
20 the purpose of the downzoning was to “encourage the maintenance of the current  
21 hospital site.” AR 81, 973.
- 22 61. MemorialCare had advised the City that it intended to close the Hospital and pursue  
23 the construction of the Outpatient and Advanced Urgent Care Complex. *See* AR 76,  
24 95, 394, 398; Atamian Depo at 107:2-111:5, 167:22–168:1.
- 25 62. The City recognized that the proposed zoning amendments gave MemorialCare, as  
26 the Property’s owner, one of two choices—continuing to operate the Hospital or  
27 having no use of the Property at all. AR 84; *see also* Atamian Depo at 167:16–168:6.  
28



- 1 63. The Planning Commission was also informed that another purpose of the proposed  
2 zoning amendments was to create a monopoly on hospital use for whoever owned the  
3 Property. AR 97; *see also* Atamian Depo at 190:24–191:22. Mr. Atamian told the  
4 Planning Commission, “You know, right now hospitals are allowed in a couple  
5 different zones and as property owners it’s nice to know that now the only place  
6 that’s [an] allowed [use] is the zone that you’re in. There’s no competition.  
7 Somebody would have to go through a very large entitlement process unless the city  
8 identified another RMF zone. You know this is, this basically cuts out a lot of  
9 competition for future hospitals and that’s an incentive you know to make this site as  
10 the hospital.” AR 87.
- 11 64. After considering and discussing the proposed zoning amendments, the Planning  
12 Commission passed and adopted a resolution recommending that the City Council  
13 approve the proposed zoning amendments. AR 1796–1803.
- 14 65. On January 19, 2016, the City Council held a noticed public hearing to address the  
15 proposed zoning amendments. *See* AR 2290–94. Leading up to the meeting, the City  
16 Council received many written comments from the San Clemente community  
17 regarding the proposed zoning amendments, including both letters favoring and  
18 letters opposing the amendments for various reasons. *See* AR 4302–4782.
- 19 66. At the meeting, the City Council heard and considered a significant amount of  
20 testimony and data. *See* AR 4–80, 2290–93.
- 21 67. The City Council considered public comments that the proposed amendments would  
22 deny MemorialCare the flexibility needed to respond to healthcare trends and provide  
23 the best care to the City’s residents. *See, e.g.*, AR 16–17.
- 24 68. The City Council considered testimony about the benefits of the proposed Outpatient  
25 and Advanced Urgent Care Complex. *See, e.g.*, AR 36–37.
- 26 69. The City Council considered the fact that the Hospital received approximately 15,000  
27 annual emergency room visits. AR 71.
- 28

- 1 70. The City Council considered that even after adoption of the proposed zoning  
2 amendments, Petitioners would be permitted to construct and operate their proposed  
3 Outpatient Complex provided they also operated a functioning hospital serving the  
4 emergency medical needs of the residents of the City and the broader south Orange  
5 County region. AR 72.
- 6 71. The City Council considered the long history of the Property being used for a  
7 hospital, and the importance of a functioning emergency department to the health,  
8 safety, and welfare of the residents of San Clemente and the broader south Orange  
9 County region. AR 72–76.
- 10 72. The City Council considered testimony, both oral and previously mailed letters and  
11 emails, from residents of San Clemente on the importance of keeping a functioning  
12 emergency department in San Clemente. *See* AR 72–76.
- 13 73. The City Council also considered previously provided data, such as the reports  
14 prepared by OCFA that described the potential adverse effects the hospital closure  
15 could have on the health, safety, and welfare of residents of the City and the broader  
16 south Orange County region, including the adverse effect on neighboring hospitals  
17 that would face increased patient intake. *See* AR 4087–4105.
- 18 74. The City Council also considered evidence before it that the closure of the Hospital  
19 would have an adverse effect upon the public health, safety, and welfare of South  
20 Orange County as a whole. This evidence included a study entitled “California  
21 Emergency Department Closures are Associated with Increased Inpatient Mortality at  
22 Nearby Hospitals” that concluded that Emergency Department closures increase  
23 mortality in surrounding hospitals and communities. *See* AR 3947–54.
- 24 75. The City Council considered that the Hospital Property is an ideally situated location  
25 for a hospital because it is already in a medical focus area with established medical  
26 facilities, and it is a large site allowing for growth. The site is also adjacent to a  
27 freeway off-ramp, is near a fire station, serves as an anchor for the local medical  
28

- 1 focus area, and has been successfully used as a hospital for decades. *See* AR 85, 974.
- 2 76. At the January 19, 2016 meeting, the City Council engaged in a discussion with  
3 Petitioners’ legal and administrative representatives, during which Petitioners’  
4 representatives commented that adopting the proposed zoning amendments would  
5 “leave the San Clemente [Hospital] campus with almost no choice but to close,  
6 robbing the San Clemente residents of local options for healthcare.” AR 10; *see also*  
7 AR 11. In contrast, rejecting the proposed amendments would give MemorialCare  
8 “options for providing viable care.” AR 10, 12; *see also* AR 54 (“[T]his zoning  
9 change will not in any way stop the potential closure of this hospital. The only thing  
10 it will accomplish is to tie our hands and limit the number of options available to  
11 provide medical services to the residents of South County. . . . It’s an acute-care  
12 hospital or basically it’s nothing.”). However, a MemorialCare representative  
13 acknowledged that no concrete decision to close the Hospital had yet officially been  
14 made, and that “incentives” existed that “can change the market forces that are out  
15 there.” AR 53–54. None of the MemorialCare representatives that spoke indicated  
16 that MemorialCare was unwilling to sell the Property to another entity willing to  
17 operate a hospital at the Property. *See* AR 9–67. On the other hand, there is no  
18 evidence in the record indicating that there was any entity that was prepared to buy  
19 the Property and operate the Hospital.
- 20 77. Based on these representations, the City Council may have believed that it could take  
21 action to prevent the closure of the Hospital or at least ensure that some entity would  
22 continue to operate a hospital at the Property, even if Petitioners would not continue  
23 to operate the Hospital.
- 24 78. Based on the data that demonstrated the importance of a functioning hospital with an  
25 emergency room to the health, safety, and well-being of residents of the City and the  
26 broader south Orange County region, and based on their belief that the closure of the  
27 Hospital could potentially be avoided, the City Council of San Clemente approved  
28

1 the adoption of the proposed zoning amendments at the January 19, 2016 meeting.  
2 AR 1824–28, 2294.

3 79. The zoning amendments became effective as Ordinance 1616 as of the February 2,  
4 2016 City Council meeting, upon the second reading of the Ordinance. AR 1821–35,  
5 2321.

6 **G. The Hospital Closes**

7 80. After passage of Ordinance 1616, and despite the City’s efforts, Petitioners made the  
8 decision to close the Hospital, and on May 31, 2016, Petitioners closed the San  
9 Clemente Memorial Hospital.

10 81. On May 2, 2016, MemorialCare received a letter from the California Department of  
11 Public Health indicating that it had complied with the law applicable to the closing.  
12 *See* Administrative Record Augmentation Request, Exhibit 1 (Dkt. 36-1) at 4906.

13 82. Since May 31, 2016, the more than 135,000 residents of San Clemente and the  
14 surrounding area have been without immediate access to critical emergency medical  
15 care. The entire Hospital Property is now surrounded by a security fence, unused for  
16 any purpose. The citizens of San Clemente are not being served.

17  
18

19 **III. CONCLUSIONS OF LAW**

20 83. MemorialCare challenges the Zoning Changes enacted by Ordinance 1616 and seeks  
21 the issuance of a writ of mandate from this Court ordering that the Zoning Changes  
22 be invalidated and set aside on three separate and independent grounds under  
23 California law. Specifically, MemorialCare argues that the Zoning Changes  
24 constitute an illegal and improper use of the City’s zoning powers because: (1) they  
25 effect impermissible spot zoning, (2) they eliminate virtually all feasible use of the  
26 Property, and (3) they create an impermissible monopoly. The Court will address  
27 each of these three issues in turn after discussing the legal standards that apply to this  
28

1 request for a writ of mandate.

2 84. Because this petition for a writ of mandate arises under state law, California  
3 substantive law governs the adjudication of this claim. *See* FAC ¶¶ 55–59 (seeking a  
4 writ of mandate under California Code of Civil Procedure §§ 1085 or 1094.5).

5 85. Under California law, quasi-judicial administrative decisions are subject to  
6 administrative mandamus pursuant to California Code of Civil Procedure § 1094.5,  
7 while legislative acts are subject to review under ordinary mandamus pursuant to  
8 California Code of Civil Procedure § 1085. *See* Cal. Code Civ. Proc. §§ 1084,  
9 1094.5; *Consaul v. City of San Diego*, 6 Cal. App. 4th 1781, 1792 (1992) (“[Q]uasi-  
10 judicial administrative decisions are reviewed at the trial level by proceedings in  
11 administrative mandamus under section 1094.5.”); *Arnel Dev. Co. v. City of Costa*  
12 *Mesa* (“*Arnel P*”), 28 Cal. 3d 511, 521 (1980) (explaining that legislative acts are  
13 reviewable by ordinary mandamus).

14 86. “California precedent has settled the principle that zoning ordinances, whatever the  
15 size of parcel affected, are legislative acts.” *Arnel I*, 28 Cal. 3d at 514. As a result,  
16 “[a] zoning ordinance is reviewable by ordinary mandamus (Code Civ. Proc., §  
17 1084).” *Id.* at 521; *see also* *Ensign Bickford Realty Corp. v. City Council*, 68 Cal.  
18 App. 3d 467, 473 (1977) (“The zoning of real property by a city . . . is a legislative  
19 function, not a quasi-judicial activity, and is therefore reviewable by ordinary, or so-  
20 called traditional, mandamus pursuant to Code of Civil Procedure section 1085.”).

21 87. Because the City’s enactment of Ordinance 1616 was a legislative zoning decision  
22 rather than a quasi-adjudicatory act, that decision is subject to review only under the  
23 ordinary writ of mandamus standard; the standard of review for administrative  
24 mandamus actions is inapplicable in the present action. *See* *Foothill Cmty. Coal. v.*  
25 *Cty. of Orange*, 222 Cal. App. 4th 1302, 1309 (2014); *Arnel I*, 28 Cal. 3d at 521.

26 88. In an ordinary mandamus proceeding, “[t]he standard for review of a quasi-  
27 legislative act is whether the action was arbitrary or capricious or totally lacking in  
28

1 evidentiary support, or whether the agency has failed to follow the procedure and  
2 give the notices required by law.” *City of Carmel-By-The-Sea v. Bd. of Supervisors*,  
3 183 Cal. App. 3d 229, 238–39 (1986) (citation omitted). Under this deferential  
4 standard, courts determine whether the legislative action taken was “reasonably  
5 related to the public welfare.” *Consaul*, 6 Cal. App. 4th at 1791–92; *see Arcadia Dev.*  
6 *Co. v. City of Morgan Hill*, 197 Cal. App. 4th 1526, 1536 (2011) (“City’s exercise of  
7 its constitutionally derived police power is subject to substantial deference from the  
8 judicial branch. A land use ordinance is a valid exercise of the police power if it  
9 bears a substantial and reasonable relationship to the public welfare.” (citations  
10 omitted)). Thus, a challenged zoning ordinance can be invalidated by a court “only if  
11 it is arbitrary, discriminatory, and bears no reasonable relationship to a legitimate  
12 public interest.” *Arcadia Dev. Co.*, 197 Cal. App. 4th at 1536 (citation omitted); *see*  
13 *also Carrancho v. California Air Res. Bd.*, 111 Cal. App. 4th 1255, 1265 (2003)  
14 (“Mandamus may issue to correct the exercise of discretionary legislative power, but  
15 only if the action taken is so palpably unreasonable and arbitrary as to show an abuse  
16 of discretion as a matter of law. This is a highly deferential test.”).

17 89. Finally, “[u]nless otherwise provided by law, ‘the petitioner always bears the burden  
18 of proof in a mandate proceeding brought under Code of Civil Procedure section  
19 1085.’ Thus, it is [MemorialCare’s] burden to establish that [the City’s] decision was  
20 arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or  
21 procedurally unfair.” *Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal.  
22 4th 446, 460 (2012) (citations omitted); *see also Foothill Cmty. Coal.*, 222 Cal. App.  
23 4th at 1309 (“The party challenging a zoning ordinance as arbitrary or capricious  
24 bears the burden of producing sufficient evidence from which the trier of fact may  
25 conclude that the ordinance is unreasonable and invalid.” (citations omitted)); *Cty. of*  
26 *Del Norte v. City of Crescent City*, 71 Cal. App. 4th 965, 973 (1999) (“Legislative  
27 enactments are presumed to be valid; to overcome this presumption the petitioner  
28

1 must bring forth evidence compelling the conclusion that the ordinance is  
2 unreasonable and invalid.” (citation omitted)).

3 **A. Spot Zoning**

4 90. MemorialCare first argues that enactment of the Zoning Changes was an invalid  
5 exercise of the City’s police power because it amounted to illegal spot zoning;  
6 according to MemorialCare, the City acted in an impermissibly arbitrary and  
7 discriminatory fashion by singling out the Property as the only parcel in the City to  
8 be burdened by a hospital use requirement, thereby denying the public the benefits of  
9 the proposed Outpatient and Advanced Urgent Care Complex.

10 91. Under California law, a city “spot zones” when it enacts a zoning ordinance that  
11 targets for disparate treatment one property in the midst of similar properties. *See,*  
12 *e.g., Foothill Cmty. Coal.*, 222 Cal. App. 4th at 1311 (“Spot zoning occurs where a  
13 small parcel is restricted and given lesser rights than the surrounding property, as  
14 where a lot in the center of a business or commercial district is limited to uses for  
15 residential purposes thereby creating an ‘island’ in the middle of a larger area  
16 devoted to other uses.” (citation omitted)).

17 92. However, spot zoning is not per se illegal—“[e]ven where a small island is created in  
18 the midst of less restrictive zoning, the zoning may be upheld where rational reason  
19 in the public benefit exists for such a classification.” *Avenida San Juan P’ship v. City*  
20 *of San Clemente*, 201 Cal. App. 4th 1256, 1269 (2011) (citation omitted); *see also*  
21 *Foothill Cmty. Coal.*, 222 Cal. App. 4th at 1314 (“[T]he term ‘spot zoning’ is  
22 merely shorthand for a certain arrangement of physical facts. When those facts exist,  
23 the zoning may or may not be warranted. . . . Spot zoning may well be in the public  
24 interest; it may even be in accordance with the requirements of a master plan.”  
25 (citations omitted)).

26 93. Thus, “to determine whether *impermissible* spot zoning has occurred, a court . . .  
27 conduct[s] a two-part analysis.” *Foothill Cmty. Coal.*, 222 Cal. App. 4th at 1307. A  
28

1 court first decides whether the challenged action constitutes spot zoning, and if the  
2 court finds that spot zoning has occurred, “the court must determine whether the  
3 record shows the spot zoning is in the public interest.” *Id.*

4 94. Because spot zoning implicates discriminatory treatment, in determining under the  
5 second step of this analysis whether the spot zoning at issue is permissible, the Court  
6 is not required simply to accept at face value the assertions of a municipality  
7 declaring that it has acted in the public benefit. *See, e.g., Arcadia Dev. Co.*, 197 Cal.  
8 App. 4th at 1538 (analyzing whether ordinance was in fact substantially related to the  
9 public welfare in the manner that the city claimed it was); *see also Ehrlich v. City of*  
10 *Culver City*, 12 Cal. 4th 854, 900 (1996) (Mosk, J., concurring) (“When the zoning  
11 ordinance appears to subject a property owner to a special restriction not applicable  
12 to similarly situated adjacent property, courts will conduct a more searching inquiry  
13 into the reasons and motives of the legislative body to determine if the zoning is  
14 arbitrary and discriminatory.”); *Kissinger v. City of Los Angeles*, 161 Cal. App. 2d  
15 454, 462 (1958) (“[W]here . . . the facts are such as to show an attempt to exercise  
16 the police power in such a manner as to oppress or discriminate against an individual  
17 or individuals we are entitled to give weight to the evidence disclosing a purpose  
18 other than that declared by the ordinance in determining its validity.” (citations  
19 omitted)).

20 95. “There must be a reasonable basis in fact, not in fancy, to support the legislative  
21 determination. Although in many cases it will be ‘fairly debatable’ that the ordinance  
22 reasonably relates to the regional welfare, it cannot be assumed that a land use  
23 ordinance can never be invalidated as an enactment in excess of the police power.”  
24 *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal. 3d 582, 609 n.26  
25 (1976) (citation omitted). While a court may “defer to the judgment of the  
26 municipality’s legislative body,” it must keep in mind that “judicial deference is not  
27 judicial abdication.” *Arnel Development Co. v. City of Costa Mesa* (“*Arnel II*”), 126  
28



1 Cal. App. 3d 330, 339 (1981).

2 96. Nevertheless, “[i]n deciding whether a challenged ordinance reasonably relates to the  
3 public welfare, the courts recognize that such ordinances are presumed to be  
4 constitutional, and come before the court with every intendment in their favor.”  
5 *Associated Home Builders*, 18 Cal. 3d at 604–05 (citation omitted). “The wisdom of  
6 the prohibitions and restrictions is a matter for legislative determination, and even  
7 though a court may not agree with that determination, it will not substitute its  
8 judgment for that of the zoning authorities if there is any reasonable justification for  
9 their action.” *Lockard v. City of Los Angeles*, 33 Cal. 2d 453, 461 (1949). In short,  
10 “[i]f the validity . . . be fairly debatable, the legislative judgment must be allowed to  
11 control.” *Associated Home Builders*, 18 Cal. 3d at 605 (quoting *Vill. of Euclid, Ohio*  
12 *v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926)).

13 ***1. The City Spot Zoned the Hospital Property***

14 97. The Property at issue is a 6.63-acre parcel that is small enough under California law  
15 to be subject to spot zoning. *See Foothill Cmty. Coal.*, 222 Cal. App. 4th at 1314  
16 (finding that a parcel of 7.25 acres had been spot zoned).

17 98. Ordinance 1616 spot zoned the Property because it targeted just one parcel in the  
18 City—the Property owned by MemorialCare—for different zoning restrictions,  
19 creating an “island” in a sea of parcels zoned under a community commercial  
20 designation. Specifically, the Centennial General Plan established that all parcels  
21 along the Camino de Las Mares corridor were to be zoned CC2 (Community  
22 Commercial 2), which allows a wide range of commercial, medical, and healthcare  
23 uses. The Zoning Changes, implemented approximately 18 months after the adoption  
24 of the Centennial General Plan, changed the zoning category to be applied to the  
25 Property to RMF1; it applied this zoning change to the Hospital Property, and to no  
26 other parcel. The RMF1 category contains use limitations that are far more restrictive  
27 than those applied to all surrounding properties: pursuant to the RMF1 category, the  
28

1 owner of the Property must use the Property for a hospital and emergency  
 2 department, or it may not use the Property at all. No other property in the City is  
 3 subject to such a hospital use requirement.

4 99. In fact, the City conceded at oral argument that the Zoning Changes spot zoned the  
 5 Property. *See* September 21, 2017 Trial Transcript (Dkt. 45) at 35:18–22 (“THE  
 6 COURT: So was there spot zoning here? MR. DUNN [for the CITY]: Yes. Spot  
 7 zoning occurs. In fact . . . spot zoning happens all the time. They—the issue really  
 8 becomes: Is it illegal spot zoning[?]”).

9 ***2. The Spot Zoning Was Not Arbitrary, Capricious, Devoid of Evidentiary***  
 10 ***Support, or Unrelated to the Public Interest***

11 100. Having found that the Zoning Changes constitute spot zoning, the Court must  
 12 determine whether that spot zoning is illegal by analyzing whether the Zoning  
 13 Changes were supported by a “rational reason in the public benefit” and were not  
 14 “arbitrary or capricious or totally lacking in evidentiary support.” *Avenida San Juan*,  
 15 201 Cal. App. 4th at 1268–69; *see also Foothill Cmty. Coal.*, 222 Cal. App. 4th at  
 16 1314 (“[T]he court must determine whether the record shows the spot zoning is in the  
 17 public interest.”); *Aracadia Dev. Co.*, 197 Cal. App. 4th at 1536–37 (explaining that  
 18 the core issue in determining whether a zoning ordinance is a valid exercise of the  
 19 police power is whether the ordinance bears a “reasonable relationship” to a  
 20 legitimate public interest).

21 101. Here, the record contained evidence to support the City’s determination that  
 22 maintaining a hospital at the Property would be in the public interest. For example,  
 23 the City considered: (1) the fact that the Hospital received about 15,000 annual  
 24 emergency room visits, (2) a study demonstrating that emergency department  
 25 closures increase patient mortality at nearby hospitals, and (3) the OCFA report  
 26 indicating that the Hospital’s closure would increase impacts to other hospitals within  
 27 Orange County and would adversely impact OCFA’s provision of emergency  
 28

1 services. In addition, the City considered written and oral testimony from residents of  
2 San Clemente about why maintaining a functioning emergency department was  
3 important to them and beneficial to the region's public welfare. Accordingly, the  
4 decision to enact Ordinance 1616 was not "totally lacking in evidentiary support."  
5 *See Avenida San Juan*, 201 Cal. App. 4th at 126. Rather, the Zoning Changes enacted  
6 to reserve the Property for a hospital use were supported by "rational reason[s]  
7 related to the public welfare," including minimizing transport times and mortality and  
8 avoiding impacts to other hospitals and to OCFA's ability to maintain its existing  
9 level of emergency services. *See Arcadia Dev. Co.*, 197 Cal. App. 4th at 1537; *see*  
10 *also Arnel I*, 28 Cal. 3d at 522 (explaining that a zoning ordinance "does not require  
11 explicit findings" and is "valid if it is reasonably related to the public welfare";  
12 unlike administrative decisions, zoning ordinances are not required to "implement  
13 established standards and rest upon findings supported by substantial evidence"  
14 (citations omitted)).

15 102. Further supporting the conclusion that the Zoning Changes were reasonably related  
16 to the public welfare is the fact that the Zoning Changes were found to be consistent  
17 with the Centennial General Plan. *See AR 972*. "[A] city's general plan may be  
18 viewed in many ways as the city's articulated perceptions of what constitutes the  
19 locale's 'general welfare,'" and thus a zoning ordinance's consistency with a city's  
20 general plan may suggest that the ordinance is reasonably related to the public  
21 welfare. *See City of Del Mar v. City of San Diego*, 133 Cal. App. 3d 401, 414–15  
22 (1982). Here, the Centennial General Plan specifically identified the Hospital as a  
23 "critical facility," and called out "hospitals" as a Public and Institutional Land Use,  
24 which is a category of land use that "serve[s] the public" and "help[s] meet the  
25 broader community's needs." AR 133, 296. Moreover, throughout the Centennial  
26 Plan, the City referenced the Hospital and sought to ensure that the City's land use  
27 policies were compatible with, and supported, the Hospital's operations. *See AR 98–*  
28

1 370. Thus, the City’s general plan reflects the notion that maintaining a hospital in  
2 the City advances the public welfare.

3 103. MemorialCare nevertheless argues that the Zoning Changes were not in the public  
4 interest because, had the changes not been enacted, MemorialCare would have been  
5 able to construct a state-of-the-art urgent care and medical office facility that would  
6 provide important health services to the public. In other words, MemorialCare claims  
7 that the Zoning Changes are against the public interest because they deny the benefits  
8 that the public would have enjoyed through operation of the proposed Outpatient and  
9 Advanced Urgent Care Complex. MemorialCare asserts that the City’s determination  
10 that a hospital and emergency room are superior to an urgent care facility is false and  
11 invalid.

12 104. However, for the reasons discussed below, the fact that the Zoning Changes denied  
13 the public the potential benefits of the proposed Outpatient and Advanced Urgent  
14 Care Complex does not change the conclusion that the Zoning Changes, overall, were  
15 reasonably related to advancing a legitimate public interest.

16 105. First, as to the City’s determination that a functioning hospital and emergency  
17 department were more important to public welfare than the proposed Outpatient and  
18 Advanced Urgent Care Complex (or, for that matter, more important than any other  
19 potential use of the Property that does not include a hospital and emergency  
20 department<sup>3</sup>), the Court cannot say on this record that the City’s conclusion was

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21  
22 <sup>3</sup> On November 16, 2017, MemorialCare submitted a Supplemental Status Report (Dkt. 49)  
23 notifying the Court that MemorialCare has abandoned its plans for the Outpatient and Advanced  
24 Urgent Care Complex, and is instead proposing an academic and clinical facility to address  
25 Alzheimer’s disease, dementia, and other cognitive care needs of seniors (the “Senior Cognitive  
26 Care Institute”). Because the City’s decision to enact the Zoning Changes was made when  
27 MemorialCare was proposing to build the Outpatient and Advanced Urgent CareComplex—which  
28 means that the administrative record only contains documents and City Council hearing transcripts  
regarding the proposed outpatient Complex—the Court will conduct its analysis based on  
evidence about the proposed Complex rather than the newly proposed Senior Cognitive Care  
Institute. However, the Court notes that based on the information currently before the Court  
(footnote continued)

1 incorrect, unsupported by evidence, or against the public interest. Balancing  
2 competing considerations to determine which of two seemingly beneficial uses is in  
3 the public's best interest is usually the province of legislative bodies like the City  
4 Council, given that such determinations entail subjective value determinations about  
5 what benefits should be prioritized. Here, as detailed above, the City had rational  
6 reasons to believe that maintaining a hospital and ER was in the public interest, and  
7 after considering arguments on both sides and following the legislative process, the  
8 City used its zoning powers to enforce its value determination that maintaining a  
9 hospital was a top priority and in the best interest of the residents of San Clemente  
10 and the south Orange County region.<sup>4</sup> *See, e.g.*, AR 74 (City Council member

11  
12 regarding the Senior Cognitive Care Institute, the analysis and conclusions set forth below would  
13 not be fundamentally different if the Court used the proposed Senior Cognitive Care Institute in its  
14 analysis instead. Of course, if the City determines that the Senior Cognitive Care Institute would  
15 also be in the public interest and is a higher priority than a hospital and emergency department, it  
16 could take action to permit the Institute at the Property.

17 <sup>4</sup> It may be worth noting that just because a hospital appears economically unprofitable to its  
18 operator does not mean that keeping the hospital open is against the public interest. First, the  
19 economics for the hospital operator might not match the cost-benefit calculation for the City and  
20 thus for the broader public interest. For example, the City might believe that subsidizing the  
21 operation of the hospital and ER is worth the cost because it saves the City having to pay  
22 additional costs in emergency service coverage, *see* AR 4094–95, not to mention the value of the  
23 lives that might be saved by reduced transport times and the value of other public welfare and  
24 economic benefits that a functioning hospital might have for the City. In other words, the hospital  
25 may have positive externalities for the public good that are not reflected in the balance sheet of the  
26 hospital's operator but are recognized by the City, and thus might cause the City to make a  
27 different determination about whether continuing to operate a hospital would be beneficial. Put  
28 differently, the City might consider in its analysis benefits to the public good, the value of which  
may be difficult to quantify monetarily, that are not necessarily included in the market analysis  
done by the hospital operator about whether running the hospital makes economic sense.  
Ultimately, MemorialCare's balance sheet does not capture all the public benefits provided by an  
operating hospital, and thus does not necessarily dictate whether maintaining the Hospital is in the  
public interest.

More broadly, the public interest does not always align with economic realities, and market  
pressures should not always dictate governmental decisions in the public interest. For example,  
many would agree that it is in the public interest to provide basic services to all citizens, regardless  
of their ability to pay market rate for those services. Thus, governments often take action to  
subsidize or publically provide widespread access to services important to the public welfare, from  
schooling to municipal water delivery to cultural programs. This is their prerogative, if not a core

(footnote continued)

1 explaining that his “biggest concern” is not whether someone would be able to obtain  
2 outpatient services like knee surgery in San Clemente as a result of the proposed  
3 Outpatient and Advanced Urgent Care Complex, because those medical services are  
4 available “all over Orange County,” but rather whether emergency services are  
5 available locally because “literally, seconds could mean the difference between life  
6 and death”). Whether that decision was wise or sufficiently accounted for trends in  
7 the healthcare industry the Court cannot say, but the Court also cannot conclude that  
8 the City’s decision was totally unrelated to the public interest or so patently  
9 unreasonable as to warrant invalidating the Zoning Changes. *See Carrancho*, 111  
10 Cal. App. 4th at 1265 (“The court does not ‘weigh the evidence adduced . . . or  
11 substitute its judgment for that of the [City], for to do so would frustrate [the]  
12 legislative mandate.’” (citation omitted)); *Associated Home Builders*, 18 Cal. 3d at  
13 605 (“The courts may differ with the zoning authorities as to the ‘necessity or  
14 propriety of an enactment,’ but so long as it remains a ‘question upon which  
15 reasonable minds might differ,’ there will be no judicial interference with the  
16 municipality’s determination of policy.” (citation omitted)).

17 106. Second, while MemorialCare repeatedly asserts that the Zoning Changes were  
18 against the public interest because they denied South Orange County residents the  
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20 part of their mission. Of course, in seeking to achieve such public interest goals, a government  
21 cannot force a private entity to provide the desired service against its will, nor can the government  
22 take property for its desired public use without just compensation. *See Agins v. City of Tiburon*,  
23 447 U.S. 255, 260 (1980) (“The determination that governmental action constitutes a taking is, in  
24 essence, a determination that the public at large, rather than a single owner, must bear the burden  
25 of an exercise of state power in the public interest.”), *abrogated by Lingle v. Chevron U.S.A. Inc.*,  
26 544 U.S. 528 (2005). Whether the City took MemorialCare’s property in whole or in part when it  
27 placed additional zoning restrictions on the Property is an important issue that remains to be  
28 litigated, but for the reasons described above the City may believe that having to compensate for  
any such taking is a worthwhile investment if it ensures provision of emergency services to the  
residents of San Clemente. *See AR 30* (“I don’t know what the cost of a lawsuit is. I don’t. Maybe  
it’s \$1.2 million. You might remember that is the same number this City is going to have to spend  
every year for a new ambulance and the personnel required to run it. What about the first child  
who drowns at the pier? What price do we put on that child?”).

1 benefits of the proposed Outpatient and Advanced Urgent Care complex,  
2 MemorialCare did not provide evidence that suggested or established an urgent  
3 regional need for such a Complex. *See, e.g.*, AR 1524–25 (ranking mental health and  
4 substance abuse as highest priorities for community health needs). Thus,  
5 MemorialCare has not carried its burden to show that preventing the construction of  
6 the Outpatient and Advanced Urgent Care Complex necessarily harmed the regional  
7 public welfare. *See Associated Home Builders*, 18 Cal. 3d at 610 (concluding that the  
8 plaintiff had not carried its burden to rebut the presumptive constitutionality of an  
9 exclusionary ordinance that prohibited issuance of further residential building  
10 permits until certain standards were met where “plaintiff assert[ed] the existence of  
11 an acute housing shortage in the San Francisco Bay Area, but present[ed] no  
12 evidence to document that shortage or to relate it to the probable effect of the  
13 Livermore ordinance”); *see also Foothill Cmty. Coal.*, 222 Cal. App. 4th at 1313  
14 (“[I]t is incumbent on plaintiff to produce sufficient evidence from which the court  
15 can make such findings as to the physical facts involved as will justify it in  
16 concluding, as a matter of law, that the ordinance is unreasonable and invalid.”).

17 107. And even if MemorialCare had established a general regional need for its Outpatient  
18 and Advanced Urgent Care Complex, that still would not per se mean that the Zoning  
19 Changes were contrary to the public interest. *See Foothill Cmty. Coal.*, 222 Cal.  
20 App. 4th at 1313–14 (“It is not sufficient for [a plaintiff] to show that it will be more  
21 profitable to him to make other use of his property, or that such other use will not  
22 cause injury to the public . . . .” (citation omitted)). Ordinance 1616 does not entail a  
23 blanket prohibition on outpatient and urgent care complexes in the City, but rather,  
24 according to MemorialCare, denies San Clemente residents the ability to obtain  
25 urgent care and other outpatient services *at the Property*. As a result, Ordinance 1616  
26 does not entail the same type of potential “significant spillover effects” on the  
27 broader region that were of concern in *Associated Home Builders*. *See City of Del*  
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1 *Mar*, 133 Cal. App. 3d at 408 (discussing *Associated Home Builders*, 18 Cal. 3d. 582,  
2 and explaining that because the ordinance in that case “precluded new residential  
3 construction within the city, it had the effect of shifting the burden of providing new  
4 housing to other communities in the San Francisco Bay area—a substantial  
5 spillover”).

6 108. Thus, MemorialCare’s allegation that the Zoning Changes harm the public by  
7 denying the benefits of the proposed Complex is insufficient to overcome the  
8 presumption that Ordinance 1616 is valid. That alleged harm is not supported by  
9 sufficient record evidence, nor is it the broad type of harm that shifts burdens to other  
10 cities in the region. *See id.* at 410 (commenting that where city is “not able to shift  
11 the entire burden of its zoning decision to other municipalities in the region,” the  
12 city’s “action is considerably less suspect”).

13 109. Beyond emphasizing the denial of the Complex’s potential public benefits,  
14 MemorialCare does not provide any evidence that using the Property for a hospital  
15 and emergency department will have any negative impacts on the regional welfare.  
16 MemorialCare’s challenge to Ordinance 1616’s relationship to the regional welfare is  
17 therefore even weaker than the challenge in *City of Del Mar v. City of San Diego*,  
18 where the challenged ordinance was deemed valid despite its “substantial adverse  
19 environmental impacts on the San Diego region.” *City of Del Mar*, 133 Cal. App. 3d  
20 at 404, 407 (“[A]lthough it is undisputed the project will have numerous adverse  
21 environmental impacts on the region, we nevertheless conclude that San Diego did  
22 not abuse its discretion in approving the steps at issue here as a rational  
23 accommodation of the social, economic and environmental interests with which the  
24 city must concern itself.”).

25 110. In contrast to MemorialCare’s failure to produce evidence that maintaining a hospital  
26 would have negative impacts, the City pointed to evidence that closure of the  
27 Hospital would adversely impact the region by increasing transport times and  
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1 impacts to other South Orange County hospitals, at least one of which was already on  
2 diversion some days of the year due to high patient volumes. Thus, the City  
3 considered the regional impacts of its decision to enact the Zoning Changes, and  
4 reasonably determined that maintaining a hospital at the Property supported the  
5 region's public welfare.

6 111. Nevertheless, MemorialCare claims that there is no evidence showing that the City  
7 considered any competing interests or attempted to make a reasonable  
8 accommodation of any interests, especially those of MemorialCare. MemorialCare  
9 thereby appears to suggest that the City did not sufficiently protect MemorialCare's  
10 property interests. But "the mere fact that some hardship is experienced [by a  
11 property owner] is not material, since 'Every exercise of the police power is apt to  
12 affect adversely the property interest of somebody.'" *Wilkins v. City of San*  
13 *Bernardino*, 29 Cal. 2d 332, 338 (1946) (citation omitted).

14 112. Moreover, the City here acted for the benefit of the public at the cost of private  
15 property interests (MemorialCare's interests), which makes it more likely that the  
16 Zoning Changes are valid than if the City had done the opposite. For example, in  
17 *Arnel II* the court determined that an ordinance, which suddenly disallowed a planned  
18 moderate income housing development, advanced only private interests, commenting  
19 that "the initiative ordinance is not rationally related to the general regional public  
20 welfare, but, at best, to conserving the interests of the adjoining property owners and  
21 residents of the immediate area." *Arnel II*, 126 Cal. App. 3d at 337; *see also Arcadia*  
22 *Dev. Co.*, 197 Cal. App. 4th at 1539 (noting that the ordinance in *Arnel II*  
23 "completely ignor[ed] the public interest and favor[ed] only the private interests of  
24 adjoining landowners"). In contrast, here the Zoning Changes were intended to  
25 benefit the public at large; MemorialCare has not alleged that the City was seeking to  
26 favor any particular private interests or property owners. This case is therefore more  
27 in line with *Arcadia*, where a court upheld an ordinance prohibiting development of  
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1 the Arcadia property after finding that the ordinance was “plausibly and rationally  
2 related to the public interests of halting urban sprawl and maintaining City’s rural  
3 character,” and that “[t]he only competing interest is [the property owner’s].”

4 *Arcadia Dev. Co.*, 197 Cal. App. 4th at 1539.

5 113. In addition, the City did attempt to accommodate MemorialCare’s competing  
6 interests at least to some extent by allowing accessory uses alongside the Hospital.  
7 Specifically, the City did not outlaw the Outpatient and Advanced Urgent Care  
8 Complex facilities altogether—those facilities are allowed at the Property as long as a  
9 hospital is also maintained. Thus, the City Council believed that they were not  
10 precluding outpatient services and their potential benefits, but rather that they were  
11 accommodating the two interests of providing emergency care and providing  
12 advanced outpatient care. *See* AR 72 (City Council member confirming that Zoning  
13 Changes still permitted an urgent care center, outpatient facility, surgery center, and  
14 medical office building at the Property if the hospital and emergency department  
15 were kept open). *Compare Arnel II*, 126 Cal. App. 3d at 340 (“[T]here was not even  
16 an attempt to accommodate competing interests on a regional basis, and we have no  
17 hesitancy in concluding that the initiative ordinance, which completely precludes  
18 development of multiple family residences in the area, does not effect a reasonable  
19 accommodation of the competing interests on a regional basis and is therefore not a  
20 valid exercise of the police power.”).

21 114. For the foregoing reasons, the record shows that the City sufficiently considered and  
22 attempted to accommodate the various interests at stake while acting on its  
23 determination that a hospital use should be prioritized over outpatient services in  
24 order to safeguard the public welfare.

25 115. Nevertheless, MemorialCare also contends that the Zoning Changes were  
26 impermissible because there is no factual support in the record to show that the City  
27 considered whether the Zoning Changes were likely to bring about the result that the  
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1 City desired—either forcing MemorialCare to keep the Hospital open or compelling  
2 its sale to another healthcare concern. According to MemorialCare, the Zoning  
3 Changes will in fact not cause the hospital to reopen, because MemorialCare has no  
4 intention of selling the Property to another operator and asserts that it is economically  
5 infeasible for MemorialCare itself to continue operating the Hospital. MemorialCare  
6 argues that the Zoning Changes are therefore not in the public interest, because they  
7 will cause the Property to be used for nothing at all, thereby depriving the public of  
8 the benefits of MemorialCare’s proposed medical facilities. MemorialCare claims  
9 that the Zoning Changes simply prevent any feasible use of the Property because they  
10 do not lighten the financial burdens of operating a hospital on the Property, they  
11 cannot reverse the sharp declines in the number of patients sustained by  
12 MemorialCare during the prior five years, and they cannot address the serious issue  
13 that small, low-volume hospitals too often cannot provide safe, high-quality health  
14 care to the very patients they are meant to serve. For these reasons, MemorialCare  
15 argues that the City failed to establish that the Zoning Changes were reasonably  
16 related to the goal of keeping the Hospital open.

17 116. However, MemorialCare’s argument that the City provided no evidence that the  
18 Zoning Changes would make it more likely that a hospital would remain open on the  
19 Property flips the burden of proof. Under the applicable standards, MemorialCare has  
20 the burden to provide evidence establishing that the Zoning Changes have no relation  
21 to the public welfare or are arbitrary and capricious. *See Foothill Cmty. Coal.*, 222  
22 Cal. App. 4th at 1309 (“The party challenging a zoning ordinance . . . bears the  
23 burden of producing sufficient evidence from which the trier of fact may conclude  
24 that the ordinance is unreasonable and invalid.” (citations omitted)).

25 117. At this stage, MemorialCare has not provided sufficient evidence to prove that no  
26 hospital of any size can be maintained on the Property. Although there is evidence  
27 that the Hospital was economically unsustainable under the conditions under which it  
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1 was operating shortly before its closure, MemorialCare has not shown that no  
2 hospital of any size or with any operational plan could successfully be maintained at  
3 the Property, even in conjunction with any of the many other accessory uses that are  
4 permitted on the Property under the RMF1 zoning designation. *See* AR 28–29  
5 (resident commenting that MemorialCare itself caused the decline in patient count at  
6 the Hospital by pulling certain services, suggesting that a different operational plan  
7 might make the Hospital feasible). Nor is it clear that the City would be unwilling to  
8 provide additional incentives or financial support that could help make a hospital  
9 feasible. *See* AR 73–74 (City Council member stating, “we would like to be  
10 [MemorialCare’s] partners in reinvigorating this hospital, investing in this hospital,  
11 and making it an anchor point for our citizens”).

12 118. Accordingly, it would be speculative to conclude on this record that operating a  
13 hospital at the Property is not possible under current zoning, and the Court will not  
14 engage in such speculation to invalidate the Zoning Changes. *See City of Del Mar*,  
15 133 Cal. App. 3d at 414 (finding that it would be “premature to evaluate” certain  
16 argument about ordinance’s relationship to the regional welfare, and declining to  
17 invalidate ordinance on that basis).

18 119. And the Court cannot say that the Zoning Changes fail to increase the probability—  
19 even only slightly—that a hospital will be maintained on that Property. If the Zoning  
20 Changes had not been enacted, it seemed almost certain that MemorialCare would  
21 demolish the Hospital and replace it with the proposed Outpatient and Advanced  
22 Urgent Care Complex. The Zoning Changes at least keep open the possibility that the  
23 Hospital will be reopened in some form in the future.

24 120. For all the foregoing reasons, MemorialCare has failed to carry its burden to provide  
25 sufficient evidence to establish that the Zoning Changes are not in the public interest.  
26 *See Associated Home Builders*, 18 Cal. 3d at 589 (“[P]laintiff presented no evidence  
27 to show that the ordinance’s standards were unreasonable or unrelated to their  
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1       apparent objectives of protecting the public health and welfare.”).

2 121. The City adequately considered regional impacts and the competing interests at stake,  
3 and the City’s conclusion that the Zoning Changes are reasonably related to the  
4 public welfare is supported by record evidence.

5 122. Next, MemorialCare argues that the Zoning Changes must be invalidated because the  
6 City acted in a manner that was arbitrary and capricious when it singled out only the  
7 Property for a hospital use requirement and reversed in early 2016 the land use  
8 designations that had been methodically devised during the Centennial General Plan  
9 planning process that took place from 2009 to 2014.

10 123. As discussed above, however, the Zoning Changes were in many ways consistent  
11 with the General Plan. The Centennial General Plan sought to implement policies to  
12 support the Hospital, and nowhere did the Plan explicitly contemplate or mention the  
13 scenario of the Hospital closing. It is possible that during the general planning  
14 process nobody thought to create a distinct zoning designation for the Property  
15 because they simply assumed that the Hospital would be maintained at the Property,  
16 which was zoned to permit the ongoing hospital use. MemorialCare’s announcement  
17 that it was considering closing and replacing the Hospital constituted a change in  
18 circumstances that spurred the City to act. Because the City followed the required  
19 land use and legislative processes, its enactment of Ordinance 1616 was not  
20 capricious. *Compare Arnel II*, 126 Cal. App. 3d at 337 (commenting that suddenly  
21 rezoning a property in a way contrary to the general plan “without any significant  
22 change in circumstances and without considering appropriate planning criteria” was  
23 “arbitrary and discriminatory,” and concluding that the zoning classification at issue  
24 in that case “was selected purely capriciously without consideration of appropriate  
25 planning or land use criteria”).

26 124. Second, given that the City determined that maintaining a functioning hospital and  
27 emergency department in the City was in the public interest, their selection of the  
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1 Property as the parcel that should be spot zoned to house a hospital was anything but  
2 arbitrary. The City noted that the Property is ideally situated to serve this public  
3 purpose because it is optimally located on a major arterial freeway, adjacent to an I-5  
4 freeway offramp; it is a relatively large parcel (6.6 acres); and it has successfully  
5 served this public purpose for decades. In addition, the Hospital is located next to a  
6 fire station and nearby medical facilities. *See* AR 296 (Critical facilities map  
7 illustrating proximity of fire station), 1284 (noting nearby medical facilities). The  
8 large lot size allows for flexibility in growth and the ability to respond to future  
9 growth needs. *See* AR 974. MemorialCare has not shown that any other property in  
10 the City shares these important attributes. *See Arcadia Dev. Co.*, 197 Cal. App. 4th at  
11 1538–39 (finding that the municipality had a rational reason for prohibiting  
12 development of the particular property at issue where “the size and location of the  
13 Arcadia property are attributes shared by no other parcel” (citation omitted)).

14 125. In addition, the Property is already in a medical focus area with established medical  
15 facilities. In fact, the Hospital is intended to serve as the anchor for the Camino de  
16 Los Mares medical focus area. Thus, the land uses surrounding the Hospital have  
17 supported the Hospital and emergency medical facility use for decades, and are  
18 compatible with the re-zoning of the Property to RMF1. *Compare Skalko v. City of*  
19 *Sunnyvale*, 14 Cal. 2d 213, 216 (1939) (finding the application of a land use  
20 restriction to plaintiff’s property was void where the property was “entirely unsuited”  
21 for the designated residential use due to the adjoining cannery, which made  
22 continuous noise and was thus incompatible with a residential use).

23 126. In sum, the City did not select a random parcel in a random part of the City to be  
24 zoned as RMF1 without any reason. The City’s decision to spot zone the Property—  
25 as opposed to some other parcel of land—had a rational basis and was therefore not  
26 arbitrary.

27 127. Ultimately, the City had a rational basis, supported by evidence, for determining that  
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1 the Zoning Changes were in the public interest. “The settled rule of this court is that  
2 it will not substitute its judgment for that of the legislative body charged with the  
3 primary duty and responsibility of determining the question.” *Wilkins*, 29 Cal. 2d at  
4 339 (quoting *Zahn v. Board of Public Works*, 274 U.S. 325, 328 (1927)).

5 MemorialCare has not carried its burden to establish that the Zoning Changes were  
6 patently unreasonable, and thus has not adequately rebutted the presumptive validity  
7 of the City’s legislative action. Because the Zoning Changes were neither arbitrary  
8 nor capricious, the City’s enactment of Ordinance 1616 was permissible spot zoning  
9 that sought to advance the regional welfare. *See Foothill Cmty. Coal.*, 222 Cal. App.  
10 4th at 1311–19; *Cty. of Del Norte*, 71 Cal. App. 4th at 972–73 ( “Mandate will . . . lie  
11 to correct the exercise of discretionary legislative power, but only if the action taken  
12 is fraudulent or so palpably unreasonable and arbitrary as to reveal an abuse of  
13 discretion as a matter of law. This test is highly deferential, as it should be when the  
14 court is called upon to interfere with the exercise of legislative discretion by an  
15 elected governmental body.” (citations omitted)).

#### 16 **B. Deprivation of All Feasible Use**

17 128. MemorialCare also argues that the Court should issue a writ of mandate invalidating  
18 the Zoning Changes on the basis that the Zoning Changes deprived MemorialCare of  
19 all feasible use of the Property. Specifically, MemorialCare claims that requiring a  
20 hospital use on the Property in order for the Property to be used at all deprives the  
21 Property of all feasible use because maintaining a hospital is infeasible due to  
22 economic realities and safety concerns.

23 129. However, MemorialCare fails to proffer sufficient legal support to establish that  
24 deprivation of all feasible use is a ground for issuing a writ of mandate under  
25 California law. MemorialCare cites just one sentence from one case, in which the  
26 California Supreme Court noted that plaintiffs have the “right to seek judicial  
27 invalidation of zoning which is arbitrary and unreasonable, which bears no  
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1 reasonable relationship to the regional welfare, or which deprives them of  
2 substantially all use of their land.” *Arnel I*, 28 Cal. 3d at 521 (citations omitted).  
3 However, the case cited by the California Supreme Court in *Arnel I* as support for the  
4 notion that plaintiffs can seek judicial invalidation of zoning which deprives them of  
5 substantially all use of their land is a case that does not involve a petition for writ of  
6 mandate, but rather a cause of action for inverse condemnation and a cause of action  
7 for declaratory relief based on the assertion that the zoning ordinance at issue took  
8 the plaintiffs’ property without just compensation. *See Agins v. City of Tiburon*, 598  
9 P.2d 25, 27 (Cal. 1979), *aff’d*, 447 U.S. 255 (1980), *abrogated by First English*  
10 *Evangelical Lutheran Church of Glendale v. Los Angeles Cty., Cal.*, 482 U.S. 304  
11 (1987). Thus, while the California Supreme Court commented that “judicial  
12 invalidation” of zoning provisions could be sought for deprivation of a property’s  
13 feasible use, the Court did not state that such judicial invalidation should be  
14 accomplished through a writ of mandate, rather than by adjudicating takings claims,  
15 nor did it cite to any cases in which a writ of mandate was issued on takings grounds.  
16 *See id.*

17 130. Moreover, even if the Court were to find that the Zoning Changes deprived  
18 MemorialCare of all feasible use of the Property, it is not clear that issuing a writ of  
19 mandate requiring the City to rescind the Zoning Changes—as opposed to paying  
20 MemorialCare just compensation for taking their property—would be the appropriate  
21 remedy. The Fifth Amendment does not bar completely the taking of property for a  
22 public purpose—it simply requires that a government fairly compensate a property  
23 owner when it effects such a taking. *See U.S. Const. amend. V* (“[N]or shall private  
24 property be taken for public use, without just compensation.”); *Lingle v. Chevron*  
25 *U.S.A. Inc.*, 544 U.S. 528, 543 (2005) (“The [Takings] Clause expressly requires  
26 compensation where government takes private property ‘for public use.’ It does not  
27 bar government from interfering with property rights, but rather requires  
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1 compensation ‘in the event of otherwise proper interference amounting to a taking.’  
2 (quoting *First English Evangelical Lutheran Church*, 482 U.S. at 315)). Thus, as  
3 long as the City’s Ordinance 1616 is not otherwise impermissible—“for instance  
4 because it fails to meet the ‘public use’ requirement or is so arbitrary as to violate due  
5 process”—the ordinance can stand even if it effects a taking, as long as the City fairly  
6 compensates MemorialCare. *See Lingle*, 544 U.S. at 543. Put another way, it is the  
7 City’s prerogative to take the Property for the public purpose of maintaining a  
8 hospital use if the City so chooses, but to comply with the Fifth Amendment the City  
9 must fairly compensate the Property owner—MemorialCare—for any such taking.  
10 As a result, the Court is not convinced that it has the authority to issue a writ of  
11 mandate to rescind the Zoning Changes purely on a takings basis.

12 131. In any case, even if the Court has the authority to issue a writ of mandate on the basis  
13 that the Zoning Changes deprived MemorialCare of all feasible use of the Property,  
14 the Court declines to reach that issue at this stage of the proceedings. The parties  
15 explicitly agreed to bifurcate trial of the petition for writ of mandate from  
16 adjudication of the remaining claims, which include claims for inverse  
17 condemnation and violation of civil rights under the Fifth Amendment (i.e., a takings  
18 claim). *See* FAC ¶¶ 60–80. Determining whether the Zoning Changes deprived  
19 MemorialCare of all feasible use of the Property would effectively require the Court  
20 to determine whether the Zoning Changes effected a taking and thus to reach claims  
21 that were explicitly bifurcated and reserved. Moreover, the deprivation of all feasible  
22 use issue should not be adjudicated based solely on a closed administrative record  
23 that contains evidence of the City’s process and decision to enact Ordinance 1616 but  
24 not evidence of the actual effect of that Ordinance on the Property and its feasible  
25 uses. *See Avenida San Juan*, 201 Cal. App. 4th at 1264–65 (in similar case against  
26 City of San Clemente where trial of mandamus petition had been bifurcated from  
27 trial of inverse condemnation claim, trial judge visited the property at issue, heard  
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1 testimony from thirteen witnesses, and considered various exhibits during the second  
2 trial phase before deciding that “the City had deprived the owners of all economically  
3 viable use of the parcel” and had effected a regulatory taking of the parcel).

4 132. For the foregoing reasons, at this stage the Court declines to reach the merits of  
5 MemorialCare’s claim that the Zoning Changes deprived MemorialCare of all  
6 feasible use of the Property. While it is certainly plausible that the City effected at  
7 least a partial, if not a complete, taking of the Property by enacting Ordinance 1616,  
8 pursuant to the parties’ stipulation such claims are to be decided at a later stage, when  
9 the parties can also present the Court with additional evidence regarding the effect of  
10 the Ordinance. *See Skalko*, 14 Cal. 2d at 216 (“[T]he police power must be applied to  
11 existing conditions. . . . The question, therefore, is whether under the facts shown by  
12 the appellant his rights are now being invaded by the existence and maintenance of  
13 the ordinance.”).

#### 14 **C. Creation of A Monopoly**

15 133. Finally, Memorial Care argues that the Court should issue a writ of mandate  
16 invalidating the Zoning Changes on the basis that the Zoning Changes create an  
17 illegal monopoly. Specifically, MemorialCare points to the fact that, with the express  
18 intention of creating a favorable monopoly, the City disallowed a hospital use  
19 everywhere in the City except for at the Property, and claims that doing so violated  
20 California law that prohibits a municipality from exercising its zoning powers to  
21 create a monopoly in favor of a private person.

22 134. As an initial matter, it is not clear that Petitioners have standing to challenge a  
23 purported monopoly created in their favor. *See Spokeo, Inc. v. Robins*, 136 S. Ct.  
24 1540, 1547 (2016), *as revised* (May 24, 2016) (“The plaintiff must have (1) suffered  
25 an injury in fact, (2) that is fairly traceable to the challenged conduct of the  
26 defendant, and (3) that is likely to be redressed by a favorable judicial decision.”  
27 (citations omitted)).  
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1 135. In any case, California law permits zoning that has a direct and intended effect of  
2 regulating economic competition, so long as the primary purpose of the zoning action  
3 is to achieve a valid public purpose. The only constraint is that a city may not  
4 legislate solely to serve impermissible anti-competitive private purposes, such as  
5 providing a favored private business with monopoly power or excluding an  
6 unpopular company from the community. *See Hernandez v. City of Hanford*, 41 Cal.  
7 4th 279, 296–97 (2007) (“[E]ven when the regulation of economic competition  
8 reasonably can be viewed as a direct and intended effect of a zoning ordinance or  
9 action, so long as the primary purpose of the ordinance or action—that is, its  
10 principal and ultimate objective—is not the impermissible *private* anticompetitive  
11 goal of protecting or disadvantaging a particular favored or disfavored business or  
12 individual, but instead is the advancement of a legitimate *public* purpose—such as  
13 the preservation of a municipality’s downtown business district for the benefit of the  
14 municipality as a whole—the ordinance reasonably relates to the general welfare of  
15 the municipality and constitutes a legitimate exercise of the municipality’s police  
16 power.” (citations omitted)).

17 136. Here, although there is no doubt that the City intended to create a hospital-use  
18 monopoly by enacting the Zoning Changes, it did so with the primary public purpose  
19 of incentivizing the continued operation of a hospital at the well-located Property.  
20 Petitioners have offered no evidence that Ordinance No. 1616 was passed with an  
21 impermissible private purpose of providing a particular favored private business with  
22 monopoly power or excluding an unpopular company from the community.

23 137. Accordingly, Petitioners have not established that the City unlawfully exceeded its  
24 zoning powers by creating a hospital-use monopoly when it enacted the Zoning  
25 Changes. *See Wal-Mart Stores, Inc. v. City of Turlock*, 138 Cal. App. 4th 273, 302  
26 (2006) (“[W]hile the Ordinance likely will have an anticompetitive effect . . . , that  
27 incidental effect does not render arbitrary an Ordinance that was enacted for a valid  
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purpose.”).

**IV. CONCLUSION**

For the reasons explained above, the Court DENIES MemorialCare’s petition for a writ of mandate. After considering various reports and stakeholder comments, the City determined that maintaining a hospital and ER for local residents was in the public interest, and the City adopted the Zoning Changes with the legitimate public purpose of ensuring the maintenance of a hospital and emergency department at the Property. On the current record, MemorialCare has not established a basis on which the Court may issue a writ of mandate invalidating the Zoning Changes as arbitrary, capricious, totally unsupported by evidence, or creating an impermissible monopoly for anti-competitive private purposes.

Whether Ordinance 1616 will ultimately have its intended effect of causing a hospital to reopen on the Property remains unclear. At a minimum, the Zoning Changes keep that possibility open and the Court cannot say that the Zoning Changes will have absolutely no impact on, or are completely unrelated to, the goal of maintaining a running hospital and ER in the City. However, the impact of the Zoning Changes and the feasibility of maintaining a hospital will likely be litigated in the next phase of trial, when the Court considers, among other things, whether the Zoning Changes deprived MemorialCare of all feasible use of the Property and effected a taking for which just compensation must be paid.

DATED: February 6, 2019



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DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE