

1 **I. INTRODUCTION**

2 This action challenges the failure of the City of Los Angeles (“City”) to comply with the
3 clear requirement of its General Plan Framework Element and the City Charter to *annually*
4 prepare Growth and Infrastructure Reports (Reports). These reports are critical for tracking
5 burgeoning growth throughout the City and ensuring the infrastructure necessary to support such
6 growth is in place before the growth overwhelms existing infrastructure, including streets,
7 sewers, storm drains, libraries, parks and other City services. The City prepared three of the
8 required reports shortly after the requirement of the Framework Element was imposed. After
9 that, without any public notice or hearings, the City discontinued preparing the Reports. Despite
10 requests from the public that the Reports be prepared as required, the City has refused to prepare
11 them. Therefore, the City must be ordered to comply with its legal obligations and promptly
12 prepare the required report.

13 **II. STATEMENT OF FACTS**

14 **A. Approval of the Framework Element**

15 The Framework Element is a critical component of the City’s General Plan. It is meant
16 to establish a strategy for long-term growth, with a citywide context to guide the update of
17 community plans and other citywide elements contained in the General Plan. (Petitioner’s
18 Appendix page 0007 (“PA:0007”).) The Framework Element “states policies, objectives, and
19 goals for the long-term growth of the city. The General Plan Framework influences but is
20 separate from other general plan elements, which together comprise the general plan.”
21 (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2005) 126 Cal.App.4th
22 1180, 1188-1189 (“*Federation of Hillside & Canyon I*”).)

23 The Framework Element was originally adopted in 1996 based upon a final
24 environmental impact report (EIR) and statement of overriding considerations for the
25 cumulative land use and growth policies that would remain significant even with mitigation
26 measures. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83
27 Cal.App.4th 1252, 1257 (“*Federation of Hillside & Canyon I*”).) The EIR for the Framework
28 Element found that transportation impacts would be mitigated to a less than significant level

1 due to the inclusion of a proposed “Transportation Improvement Mitigation Plan” (TIMP).
2 (*Ibid.*)

3 A community association filed litigation in response to the adoption of the final EIR and
4 statement of overriding considerations, claiming that the City failed to circulate the TIMP and
5 the City would not have adequate funding to meet its share of TIMP costs. The Court of
6 Appeal agreed with the association and found “that there was no substantial evidence to support
7 the city's finding that transportation impacts would be mitigated because the city had
8 acknowledged that funding for the TIMP was highly uncertain and made no provision to ensure
9 that the TIMP would actually be implemented.” (*Federation of Hillside and Canyon II, supra*
10 126 Cal.App.4th at 1191.) In response to litigation overturning the adoption of the Framework
11 Element, the City amended the Framework Element in August 2001. (*Federation of Hillside &*
12 *Canyon II, supra* 126 Cal.App.4th at 1192.)

13 **B. Contents of the Framework Element**

14 The Framework Element “establish[es] policies to best accommodate [the City’s] growth
15 when and if it should occur” and “provides a means for accommodating new population and
16 employment in a manner which enhances rather than degrades the environment.” (PA:0007,
17 0008.) To this end, the Framework Element includes proposed operational and physical
18 improvements to traffic systems and infrastructure, policies to encourage the use of public
19 transit and reduce vehicle trips, and other measures to reduce traffic congestion and improve
20 accessibility. (PA:0011-0013.) The Framework Element addresses the infrastructure and
21 public services necessary to support that growth in the City's population and economy as it
22 moves into the 21st century. (PA:0013-0014.) Chapter 9 (Infrastructure and Public Services) of
23 the Framework Element names thirteen infrastructure systems: Wastewater, Stormwater, Water,
24 Solid Waste, Police, Fire, Libraries, Parks, Power, Schools, Telecommunications, Street
25 Lighting, Urban Forest. (PA:0124.) Chapter 8 deals with all transportation infrastructure.
26 (PA:0120.) Chapter 4 addresses Housing. (PA:0072.) Chapter 6 addresses Open Space and
27 Conservation. (PA:0099.)

1 In order to determine whether City infrastructure and services (such as wastewater
2 treatment, water supply and transportation infrastructure) are meeting the City's current and
3 near-future population growth's needs (and thus whether and how development should be
4 approved), the Framework Element requires the City to analyze: (1) population projections
5 provided by Southern California Association of Governments ("SCAG"); and (2) the City's
6 own actual monitoring of the City's population growth, infrastructure and services to gauge the
7 appropriateness of the estimates. (PA:0008.) The City is then to provide for their modification
8 over time, so that actual growth can be accommodated when and if it should occur. (PA:0008-
9 0009.) The Framework Element anticipated the linkage between future growth and services
10 will occur through the implementation of a monitoring program that provides information
11 regarding "real" demands and service levels in order to guide public decisions regarding
12 infrastructure and service investments. (PA:0013.) It stated that successful application of this
13 system would mitigate the need to restrict development to ensure adequate level of service.
14 Conversely, in the absence of this system as development is unrestricted, there is no way to
15 ensure adequate levels of infrastructure services in the areas of wastewater, stormwater, water,
16 solid waste, police, fire, libraries, parks, power, schools, telecommunications, street lighting,
17 urban forests, transportation, housing, open space and conservation.

18 **C. Requirement to Prepare Annual Report on Growth and Infrastructure**

19 The Framework Element also provides for the City to continue to monitor population
20 and employment growth and the effects on transportation and infrastructure. The Framework
21 Element Executive Summary states: "A system for the annual monitoring of growth,
22 infrastructure, and services, used as the basis to guide future capital investments and
23 development decisions, will also be used as a mechanism to gauge the appropriateness of the
24 estimates and provide for their modification over time." (PA:0008.) As such, the Framework
25 Element requires the City to systematically monitor its actual population growth (as opposed to
26 merely "projected" population growth as reported by SCAG); the sufficiency of City
27 infrastructure and services; and to periodically report the data collected as a result of the
28 monitoring. (PA:0008-0009, 0013, 0163.) The data is then to be reported to the City's

1 decisionmakers, including the City Council, for the express purpose of informing all
2 development decisions within the City. (*Ibid.*) The information is intended to be available to
3 the general public, the City’s commissions, and the City’s Neighborhood Councils. This
4 monitoring and data collection tells the City whether population growth is outpacing
5 infrastructure and services, and whether development approvals should be focused, limited or
6 delayed based on the City’s ability or inability to timely accommodate its population growth
7 with the necessary infrastructure and services required to support residents, workers, and
8 business owners. (*Ibid.*)

9 The Framework Element is to be implemented, in part, by a program to monitor growth
10 and public service and infrastructure demands and capacities, and the preparation of an Annual
11 Report on Growth and Infrastructure, based on information compiled by the monitoring
12 program. The Framework Element states: “The General Plan Framework Element is
13 implemented by a comprehensive program of strategies that encompass amendments of existing
14 and preparation of new plans, ordinances, development standards, and design guidelines;
15 *conduct of studies and analyses*; capital investments; coordination of economic development
16 activities; modifications of City procedures and development review and approval processes;
17 and interagency coordination.” (PA:0146.) The Growth and Capacity Chapter of the
18 Framework Element describes the importance of the monitoring and annual reporting for
19 guiding land use and development decisions within the City of Los Angeles: “After the
20 Framework Element is adopted, the City will establish a growth monitoring program that will
21 provide important information regarding the accuracy of future growth estimates and the
22 distribution of that new development by community plan area. This monitoring program will
23 annually document what has actually happened to the City’s population levels, housing
24 construction, employment levels, and the availability of public infrastructure and public
25 services....*The information from such a monitoring system will be presented to the City Council*
26 *in the form of an Annual Report on Growth and Infrastructure.*” (PA:0028.)

27 Chapter 10 of the Framework Element includes programs for implementing the goals of
28 the Framework Element. (PA:0146.) It identifies thirteen of the sixty programs as “principal

1 programs that are essential in carrying out the policy direction of the Framework Element.”
2 Program 43, requiring an annual report on growth and infrastructure, is identified as one of the
3 essential programs. (PA:0146-0147.) It requires the City to:

4 Prepare an Annual Report on Growth and Infrastructure based on the results
5 of the Monitoring Program, which will be published at the end of *each*
6 *fiscal year* and shall include information such as population estimates and
7 an inventory of new development. This report is intended to provide City
8 staff, the City Council, and service providers with information that can
9 facilitate the programming and funding of capital improvements and
10 services. Additionally, this report will inform the general plan amendment
11 process. Information shall be documented by relevant geographic
12 boundaries, such as service areas, Community Plan Areas, or City Council
13 Districts.

14 (PA:0163.)

15 **D. Annual Growth and Infrastructure Reporting Ended in 2000**

16 For a few years after its 1996 adoption of the Framework Element, the City prepared the
17 Annual Growth & Infrastructure Reports as required by the Framework Element. (PA:0334-
18 0444, 0445-0606, 0607-0766.) On or about April 20, 2000, the City prepared its third, and its
19 last, “Annual Report on Growth and Infrastructure.” This 2000 Annual Report stated:

20 It is our [the City Department of Planning’s] hope that this and future reports become
21 useful tools in understanding change in the city, analyzing need, developing plans,
22 monitoring progress and informing public debate. The Department of City Planning is
23 commit[t]ed to providing this information to you and the public, and to assisting you in
24 making public policy and decisions based on this information.

25 (PA:0608).

26 The executive summary of the 2000 Report states “The preparation of this report fulfills
27 a requirement of the General Plan Framework Element to monitor growth and to report on the
28 adequacy of supporting public services and infrastructure.” (PA:0610.) Without providing
notice to public, the City decided internally to not prepare reports in each subsequent year.

On November 2, 2007, the Miracle Mile Residents Association objected to the lack of
preparation of Annual Reports. In a letter to Director of City Planning Gail Goldberg, Miracle
Mile Residents Association wrote:

1 Only by measuring consumption of City services can the public and their
2 representatives get the information required to know how (or if) this City
3 can support more growth and what kind of growth that should be. Simply
4 put, we need the charter-mandated accurate assessment of the viability of
5 our infrastructure. The City must complete the annual and 5 year reviews
6 from 1998 to the present.

7 (PA:0170-0172.) On November 19, 2007, Tract No. 7260 Association, Inc., representing an
8 area containing over 1000 homes, asked the City to “complete this critical analysis of the state
9 of our infrastructure.” (PA:0173.) The City did not respond to either of these letters. The City
10 has not prepared the mandatory comprehensive Annual Report since the 2000 Annual Report.
11 (PA:0818-0819.)

11 **III. STANDARD OF REVIEW**

12 Traditional mandamus pursuant to Code of Civil Procedure section 1085 is the proper
13 remedy to compel a city to perform its mandatory duties. (*Los Angeles County Professional*
14 *Peace Officers' Ass'n v. County of Los Angeles* (2004) 115 Cal.App.4th 866, 869 *see if there is*
15 *better cite*) A city abuses its discretion if it “did not proceed legally, or if the determination is
16 not supported by findings, or if the findings are not supported by substantial evidence.”
17 (*Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs*
18 (1998) 62 Cal.App.4th 1332, 1338.) To obtain a writ of traditional mandamus, petitioner must
19 establish (1) a clear, present, and ministerial duty where (2) the petitioner has a beneficial right
20 to performance of that duty. (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d
21 480, 491.)

21 **IV. ARGUMENT**

22 **A. The City Has a Mandatory Duty to Prepare Annual Infrastructure Reports**

23 A city may be compelled to perform a mandatory duty, which arises out of the
24 requirement to perform a ministerial act. “A ministerial act is an act that a public officer is
25 required to perform in a prescribed manner in obedience to the mandate of legal authority and
26 without regard to his own judgment or opinion concerning such act's propriety or impropriety,
27 when a given state of facts exists.” (*Transdyn/Cresci v. City and County of San Francisco*
28 (1999) 72 Cal.App.4th 746, 752.) A ministerial action does not involve discretion on the part

1 of the person or entity required to act. “Where a statute or ordinance clearly defines the specific
2 duties or course of conduct that a governing body must take, that course of conduct becomes
3 mandatory and eliminates any element of discretion.” (*Lazan v. County of Riverside* (2006) 140
4 Cal.App.4th 453, 460 [citations omitted].) “The word ‘shall’ indicates a mandatory or
5 ministerial duty. In other words, the [City] has no authority to do otherwise.” (*Id.* at 399.) In
6 determining whether a duty is intended to be mandatory or discretionary, court’s look to the
7 legislative intent. (*People v. Karriker* (2007) 149 Cal.App.4th 763, 774.)

8 The City’s Framework Element places a clearly defined mandatory duty upon the City to
9 prepare Annual Growth and Infrastructure Reports. The General Plan states that the City *shall*
10 prepare these reports; thus the City does not have discretion with regard to whether the Reports
11 are prepared, though it does have discretion as to the contents, as long as the Framework
12 requirements are met.

13 The Department of City Planning *shall* annually review the need to
14 comprehensively update the citywide elements, including the Framework
15 Element and the community plans. The results of this annual review *shall*
16 be reported to the City Planning Commission, the City Council, and the
17 Mayor through the Annual Report on Growth and Infrastructure. This
18 report *shall* recommend which citywide element or community plan should
19 be updated and why. These recommendations *shall* be based on an
20 evaluation of changing circumstances, trends, and other information
21 provided by the Monitoring System.

22 (PA:0024.)

23 The preparation of an Annual Growth and Infrastructure Report (P43) is identified by the
24 Framework Element as a principal program that is “essential in carrying out the policy direction
25 of the Framework Element.” (PA:0163.) P43 specifically directs that the Annual Report “*will*
26 be published at the end of each fiscal year.” The Framework Element’s use of the words
27 “shall” and “will” demonstrate that the duty to prepare the Annual Report is mandatory and the
28 City does not have discretion to decide whether or not to prepare the Report. The Framework
Element recognizes the City has some discretion in budgeting to perform the essential programs

1 (PA:0146), but it does not allow complete nonperformance of the mandatory duty to prepare the
2 Annual Reports.

3 Clear, directory language such as set forth in the Framework Element has been found to
4 place a mandatory duty on a county to perform a ministerial action. In *Rancho Murieta Airport,*
5 *Inc. v. County of Sacramento* (2006) 142 Cal.App.4th 323, the Court found that a county had a
6 mandatory duty to trim or remove trees that were located in an airports clear zone under a
7 section of the Public Utilities Code which stated that “no person shall ... permit any natural
8 growth to grow at a height which exceeds the obstruction standards” set out by the FAA. The
9 county also was found to have a mandatory duty to remove or trim the trees that obstructed
10 flights pursuant to its own county ordinance that stated “no tree or other object of natural
11 growth shall be allowed to grow ... to exceed the height limits developed for aircraft approach
12 and take-off areas...” (*Id.* at 325.) The Court found this to be a very simple case; the county
13 was required to do something specific that did not require discretion. The county did not do
14 what it was required to do. Thus, it was necessary to issue a writ of mandate to compel the
15 county’s compliance with its ministerial duty. That the county claimed it should not be
16 required to pay for the tree trimming or removal was not a legitimate defense.

17 **B. The City Violated Its Mandatory Duty under the Framework Element**

18 By ceasing preparation of Annual Infrastructure Reports in 2000, the City violated its
19 mandatory duty to prepare such reports. The City admitted that the 2000 Annual Infrastructure
20 Report “fulfilled the requirement” of the Framework Element for preparation of such reports.
21 Thus, its failure to prepare any reports after 2000 is a clear violation of the Framework
22 Element’s mandate.

23 The City has claimed it could rely upon the availability of some information on various
24 City department websites to obviate the need for Growth and Infrastructure reports. (PA:0818-
25 0819.) However, the Court in *Endangered Habitat League, Inc. v. County of Orange* (2005)
26 131 Cal.App.4th 777 rejected the County of Orange’s claims that it should be able to substitute a
27 different means for measure traffic levels from the method specifically required in its general
28 plan. (*Id.* at 783.) The County’s general plan required it to analyze new project’s traffic

1 impacts according to the methods described in the Highway Capacity Manual (HCM).
2 Because the County instead measured the traffic impacts under the volume/capacity (V/C) ratio,
3 the Court required the approval of the project to be set aside, stating:

4 The general plan requires LOS C as determined under the HCM method,
5 and the project does not comply. That it does so under the V/C method is
6 of no import, since the general plan is unambiguous in demanding the
7 evaluation be made by the HCM method.

8 (*Id.* at 783.) In the same way the County’s effort to comply by using an alternative traffic
9 analysis method was of “no import”, in the present case, it does not matter that the City posts
10 bits and pieces of information in various places among its various departments’ websites.
11 Rather, the Framework Element mandates that an Annual Growth and Infrastructure Report be
12 prepared and the City has failed to do so since 2000.

13 **C. The City Violated The Mandatory Duty Under The City Charter to Prepare**
14 **Annual Reports**

15 The City Charter also places a mandatory duty upon the City to prepare the Annual
16 Growth and Infrastructure Reports. (*Leftridge v. City of Sacramento* (1943) 59 Cal.App.2d
17 516, 525 [“Mandamus is a proper remedy to compel a city council or a city civil service board
18 to perform its mandatory duties prescribed by the charter.”].) Section 216 of the City Charter
19 requires that “Every officer or board of the City government *shall* make and present to the
20 Mayor and Council an annual report relating to their work, and any other reports as may be
21 required by the Charter or by the Council, by ordinance.” (Emphasis added.) The Framework
22 Element was adopted by ordinance, and thus the mandatory duty to prepare an Annual Report
23 found in the Framework Element is also mandatory pursuant to the City Charter because it is a
24 report required by ordinance. By failing to prepare the Annual Reports required by the
25 Framework Element, the City has violated City Charter section 216 in addition to violating the
26 requirements of the Framework Element.

1 **V. PETITIONER HAS A CLEAR, PRESENT, AND BENEFICIAL RIGHT TO**
2 **PERFORMANCE OF THE DUTY.**

3 Petitioner, a coalition of groups and individuals who live in the City of Los Angeles, has
4 a “beneficial interest” in compelling the City to perform its duty. (See *People ex rel. Younger v.*
5 *County of El Dorado, supra*, 5 Cal.3d 480, 491 [citations omitted].) A beneficial interest
6 generally means the petitioner has a special interest over and above the interest of the public at
7 large. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 829, 39
8 Cal.Rptr.3d 189.) However, in this case, where Petitioner seek the enforcement of a public duty
9 on behalf of the public as private attorneys general, “it is sufficient that the plaintiff[s] be
10 interested as ...citizen[s] in having the laws executed and the public duty enforced.” (*Waste*
11 *Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1236.)

12 **VI. CONCLUSION**

13 The City is obligated by the Framework Element and its City Charter to prepare Annual
14 Growth and Infrastructure reports. The City has failed to prepare such a report since 2000,
15 despite requests from the public that it do so. Therefore, the City must be ordered to prepare an
16 annual Growth and Infrastructure report, and prepare the 2009 report as expeditiously as
17 possible, in compliance with its Framework Element and Charter requirements.

18 DATED: July 24, 2009

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

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