



1 **I. INTRODUCTION**

2 The City’s opposition relies on two basic assertions: that the Annual Report on Growth and  
3 Infrastructure is discretionary and, that if the report is required the City has fulfilled the requirement  
4 through various online databases. Both assertions fail.

5 The purpose of the Annual Report on Growth and Infrastructure is to consolidate and evaluate  
6 monitoring data on actual versus expected grown and infrastructure availability. The report is then to be  
7 used to modify plan and EIR assumptions and serve as the basis for evaluating the effectiveness of the  
8 Framework Element’s objectives, policies, and mitigation measures. The City has acknowledged its  
9 essential nature by relying on the Annual Report in most of its Community Plans, which are components  
10 of the Land Use Element of its General Plan.

11 The City’s discretion in allocating resources does not extend so far as to completely fail to  
12 prepare Annual Growth and Infrastructure Reports that are plainly required by the City General Plan’s  
13 Framework Element and underpin the entire General Plan. The Declaration of Con Howe submitted  
14 with the City’s opposition establishes that the City’s Planning Department simply decided to stop  
15 preparing Annual Reports, without obtaining approval of that decision from elected officials on the City  
16 Council. The City’s argument that it essentially has done Annual Reports in other forms by posting raw  
17 monitoring data and other databases on its website and allegedly internally monitoring growth in the  
18 Planning Department is insufficient. Not only is that information unavailable to the public for review  
19 and comment through Annual Reports, it fails to provide a historical perspective that allows for analysis  
20 of trends and evaluation over time. Additionally, the plain language of the General Plan and supporting  
21 documentation indicates that monitoring data and citywide databases are supposed to feed the Annual  
22 Report which is supposed to compare actual to expected grown and actual to expected consumption of  
23 the infrastructure.

24 The purpose of the Framework Element’s requirement that Growth and Infrastructure reports be  
25 prepared annually and presented to the City Council is not merely to generate paper. Rather, it is to  
26 involve the public and elected decision makers in a way that is essential to the City’s planning  
27 process. It must be accessible to the public in the review and planning functions of the City of Los  
28

1 Angeles. The City Planning Department’s decision to discontinue preparing mandatory Annual Reports  
2 is arbitrary and an abuse of discretion.

3 **II. THE CITY MUST PREPARE ANNUAL REPORTS ON GROWTH AND**  
4 **INFRASTRUCTURE.**

5 The City General Plan’s Framework Element states that the City will prepare an Annual Report on  
6 Growth and Infrastructure and that this report “shall include information such as population estimates  
7 and an inventory of new development” that “shall be documented by relevant geographic boundaries.”  
8 (Respondents’ Appendix, p. 1016.) Nevertheless, the City argues that compliance with the Framework  
9 Element is optional and that the Annual Reports may be dispensed with. The City is wrong. The  
10 requirement for an Annual Report is fundamental, specific, and mandatory. (Petitioners’ Appendix  
11 (PA), p. 24; Respondents’ Appendix, p. 997 [“Planning shall annually review . . . [A]nnual review  
12 shall be reported to the City Planning Commission, the City Council, and the Mayor through the  
13 Annual Report on Growth and Infrastructure”; “ This report shall recommend which citywide element  
14 or community plan should be updated and why”]) Compliance with such a requirement is mandatory.  
15 (*Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal.App.4<sup>th</sup> 777, 782-783.) The  
16 City’s Opposition Brief fails to cite or distinguish *Endangered Habitat League*.

17 **A. The General Plan Has the Force of Law.**

18 The City argues that the Framework Element is an “optional element.” (City, p. 2.) Even  
19 though the City was not required to adopt a Framework Element, once it was adopted as part of the  
20 City’s General Plan, it attained the force of law. A general plan is the “constitution for future  
21 development.” (*DeVita v. Napa* (1995) 9 Cal.4th 763, 773.) All elements, mandatory and optional,  
22 have equal legal status and no element may be made subordinate to another. (*Sierra Club v. Board of*  
23 *Sup.* (1981) 126 Cal.App.3d 698, 708.)

24 As the Court of Appeal summarized the Framework Element:

25 [It] was designed to provide a long-term strategy to accommodate the anticipated future growth  
26 in population and employment and to serve as a guide to amend in the future the more detailed  
27 land use plans in the city's 35 (now 37) separate community plans. It stated that the anticipated  
28 growth would severely impair transportation and accessibility unless dramatic new measures  
were undertaken.

(*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252,  
1255.)

1 The Framework Element thus is not simply a superfluous guidance document that may be  
2 dispensed with as the City implies. Instead, it is fundamental to the City’s general plan process,  
3 including its development of “dramatic new measures” to avoid the severe impairment of transportation  
4 and accessibility. Most of the City’s Community Plans rely on the Framework Element, with its  
5 requirement for Annual Reports among other requirements, to ensure growth and infrastructure are  
6 appropriately planned. For example, the Central City Community Plan states as one of its three  
7 “fundamental premises” that “monitoring of population growth and infrastructure improvements  
8 through the City’s Annual Report on Growth and Infrastructure with a report to the City Planning  
9 Commission every five years.” (Petitioners’ Appendix, p. 325.). The City has 37 community plans that  
10 together comprise the Land Use Element of its General Plan. Most of these 37 community plans have  
11 similar language stating that one of its three “fundamental premises” is that Annual Growth and  
12 Infrastructure Reports would be prepared and used. (e.g, PA p. 312 [West Adams-Baldwin Hills-  
13 Leimert Community Plan]; 315 [San Pedro].) Many of the community plans rely on a program to  
14 “Utilize the City’s ‘Annual Growth Report’ to monitor locations for growth and potential new school  
15 sites.” (318 [San Pedro]; 320 [South Central]; 323 [Southeast Los Angeles]; 330 [West Los Angeles].)

15 **B. The Meaning of “Shall” is Clearly Mandatory.**

16 The Framework Element directs that the City “shall” prepare Annual Reports, and that they “shall”  
17 include various types of information. (City Appendix, p. 1016 and 997.) The City argues that “‘shall’  
18 does not always mean the statute is mandatory.” (City, p. 7, citing *Thompson v. Board of Trustees*  
19 (1904) 144 Cal. 281, 283.) The City’s citation to a case decided in 1904 that has nothing to do with  
20 general plan and zoning law shows how unusual it is for a case to find the word “shall” means anything  
21 other than a mandatory requirement. The Government Code since 1943 has stated “‘Shall’ means  
22 mandatory. ‘May’ is permissive.” (Gov. Code. s. 14.) Specifically in the context of interpreting the  
23 required elements of a general plan, a court in modern times has stated “The word ‘shall’ is to be  
24 construed as mandatory in this context.” (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334,  
25 348.) In view of Government Code section 14 and cases such as *Camp*, the City’s argument that the  
26 term “shall” in general plan policy P43 of the Framework Element is permissive is not persuasive.  
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2 **C. The City Argues That It Had the Discretion to Dispense with Reports.**

3 **1. Annual Reports are Necessary For Numerous Purposes.**

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5 The City claims that the main purpose of the Annual Reports was to ascertain if growth was  
6 occurring faster than predicted. (City, p. 9.) That is too narrow a view of the purpose of the Annual  
7 Reports. Instead, as stated within the Framework Element itself, the purposes of the Annual Reports  
8 include recommending “which citywide element or community plan should be updated and why” (Resp.  
9 Appendix, p. 997), being “used as the basis for revision of policies as needed to meet the goals of the  
10 Framework Element” (Respondents’ Appendix, p. 998), determining the “status of environmental  
11 mitigation requirements” so “policies can be changed if desired results are not being obtained”  
12 (Respondents’ Appendix, p. 998) and evaluating “whether the incentives that are linked to targeted  
13 growth areas are working effectively with market forces to attract new development”  
14 (Respondents’ Appendix, p. 998). The court evaluating a challenge to the City’s approval of the EIR for  
15 the general plan stated “The GPF [General Plan Framework] stated that the city would . . . monitor  
16 growth and its effects on infrastructure and service capacities annually in order to ‘consider regulating’  
17 development if the infrastructure remains inadequate (Policy 3.3.2(d)).” (*Federation of Hillside and  
18 Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1255.) These many purposes  
19 of Annual Reports extend far beyond merely ascertaining if growth is outstripping infrastructure, since  
20 they also address analyzing *how and where* growth is occurring for long range planning purposes some  
21 of which are unrelated to infrastructure, such as affordable housing policies. As the West L.A.  
22 Community Plan (and many others) indicate, the City is to rely on the Annual Report to decide if  
23 building controls should be put into effect. The Annual Report is essential to the system of checks and  
24 balances intended to prevent growth from outstripping infrastructure in the City of Los Angeles.

25 **2. Annual Reports Are Necessary to Consolidate Scattered Information in a Readable and**  
26 **Analytical Format.**

27 The City states that information in the three Annual Reports that were published was “already  
28 publically available, but appeared in the published documents in a graphically clear and readable  
format.” (City, p. 9, citing Howe Declaration<sup>1</sup>, para. 4.) Therefore, by the City’s own admission,

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<sup>1</sup> Petitioner objects to the declarations of Con Howe, Jane Blumenfeld, and S. Gail Goldberg as irrelevant and inadmissible evidence. (*Western States Petroleum Association v. South Coast Air Quality*

1 without the Annual Reports, the information made available to the public is not presented in a “clear  
2 and readable format.” Additionally, even if information such as raw data about housing is available,  
3 Annual Reports are required to provide an analysis of that raw information as it relates to the City’s  
4 policies regarding growth and infrastructure.

5 The City argues that the three Reports that were done previously “required the services of two  
6 designated, full-time employees, and took approximately one year to complete.” (City, p. 9, citing  
7 Howe Dec. para. 15.) This is an insufficient reason to discontinue Annual Reports required by the  
8 Framework Element. Indeed, this argument reinforces the need for the City to prepare Annual Reports.  
9 If it took two professional planning staff members an entire year to pull together the required  
10 information, it is unreasonable to expect decision makers and members of the public to ferret out the  
11 information from various City Departments or use the City’s website to obtain the information. A  
12 public agency may not fail to perform a mandatory duty based upon budgetary shortfalls. (*Scott v.*  
13 *Common Council of San Bernardino* (1996) 44 Cal.App.4th 684, 697.) A fundamental purpose of the  
14 Annual Report requirement is so that the information is collected and presented in a single document,  
15 with analysis and trendlines, that decisionmakers and the public can use.

16 **3. The Annual Report Requirement is One of Only Thirteen “Principal Programs”**

17 The City argues that higher priorities existed which allowed it to dispense with the Annual  
18 Growth and Infrastructure Reports. (City, p. 9.) However, the requirement for an annual Growth and  
19 Infrastructure Report is one of only 13 programs identified as “the *principal* programs that are essential  
20 in carrying out the policy direction of the Framework Element.” (Respondents’ Appendix, p. 999,  
21 emphasis added.) There are “in excess of 60 programs” described in the City’s Implementation  
22 Programs. (Respondents’ Appendix, p. 999.) Many of them are being carried out, even if they are not  
23 among the top thirteen programs. The City’s attempt to excuse its failure to carry out P43, the Annual  
24 Growth and Infrastructure requirement, as insufficiently important must fail.

25 **4. The City Council Did Not Rescind the Annual Report Requirement.**

26 The City argues that the City Council, Mayor, and City Planning Commission were notified of  
27 the changes intended to make information available to the public on the City’s website only and gave  
28 silent consent by failing to provide any feedback. (City, p. 10.) However, the City may not silently

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29 *Management District* (2006) 136 Cal.App.4<sup>th</sup> 1012, 1025.) However, because the City has introduced  
30 these declarations, Petitioner cites them in order to respond to the erroneous legal arguments that are  
31 made through them.

1 consent to allow the non-performance of a mandatory Framework Element requirement such as P43's  
2 Growth and Infrastructure Report requirement. If the City Council and Mayor intended to eliminate the  
3 Annual Report requirement, they would avail themselves of the General Plan amendment procedures.  
4 "[T]he process for amending the general plan is principally that of holding noticed public hearings  
5 before the planning commission and legislative body. (Gov.Code, §§ 65353-65355.)" (*DeVita v.*  
6 *County of Napa* (1995) 9 Cal.4th 763, 786.) The City Council did not amend the General Plan's  
7 Framework Element. Instead, Con Howe's declaration establishes that he unilaterally decided to  
8 discontinue preparing the Annual Reports, without public review or comment, or affirmative City  
9 Council approval, by reassigning the two City planners that had previously worked on preparing the  
10 Annual Reports. (Howe Decl., para. 5.) Furthermore, Howe's transmittal letter of April 20, 2000  
11 stating reports will be made available on the Internet also stated "Appropriate sections of the report will  
12 be placed in a published, hard copy report in the near future." (PA, p. 608.) Therefore, any  
13 councilmember or member of the public reading Mr. Howe's transmittal letter would expect a  
14 "published, hard copy" *in addition to* the material on the Internet, *not instead of* that material.

#### 14 **5. Miscellaneous Documents Cited by the City Do Not Constitute an Annual Report.**

15 The City asserts that it "has prepared annual growth reports covering the years 1999 to the  
16 present" and that its CEQA Administrative Record "contains a sample of this information for  
17 representative years 2002 and 2008 at pp. SAU2178-2941." (City, p. 10.) As support for its assertion,  
18 the City attached a table of contents. (Appendix, Tab 3.) However, the City's table of contents shows  
19 only a partial reporting of information about Housing Stock, Occupancy, Local Population, and  
20 Housing Profiles. (City Appendix, Tab 3.) Comparison of the City's proffered table of contents with an  
21 table of contents from a previously prepared (though not necessarily fully adequate) Annual Report  
22 shows that "Population" and "Housing" are merely two chapters among 16 other chapters. (PA, p. 336;  
23 p. 447; p. 609.) The City's so-called annual report presented in Tab 3 does not cover Demographic  
24 areas such as Ethnicity, Employment, and Income, nor Land Development Activities in Retail, Office,  
25 and Industrial, nor Public Facilities and Infrastructure including Police, Fire, Public Libraries, City  
26 Parks, Public Schools, Water Supply, Wastewater, and Transportation. (see PA, p. 336, 447, 609.)

27 With regard to infrastructure information, the City admits it is "no longer included in the Annual  
28 Reports due to its static nature." (City, p. 10.) Infrastructure may be static in certain limited cases.  
However, water supply, power supply, degradation of infrastructure (such as streets, sidewalks and  
water pipes) are hardly static. Schools, parks, libraries, police stations and fire stations deteriorate, or

1 require attention over time as demand on them increases. (PA, p. 963 [reporting overcrowding in  
2 schools].) Budget cuts also impact the availability of infrastructure elements. As the recently well-  
3 documented failures in infrastructure such as sinkholes and broken wastewater or water mains attest,  
4 infrastructure is not as “static” as the City claims. (PA, p. 892 “LA Admits Sewer Spills”; 940].)

5 The City claims that all of the information on infrastructure and public services is “compiled  
6 annually into a single document entitled ‘Detail of Department Programs Supplement’ and adopted by  
7 the City Council.” (City, p. 10, citing PA: 797-800, 809-812, and 839-844.) No sample of such a  
8 document is proffered as support for the City’s assertions, nor any table of contents from such a  
9 document. Website information is given but the documents at those locations are not a complete  
10 Annual Report. Also, the website link set forth (<http://www.lacity.org/cao/budgets.htm>) in the City’s  
11 discovery response (PA, p. 840) is a void link as of August 17, 2010. Furthermore, a budget document  
12 does not provide the same analysis and recommendation function that an Annual Report is intended to  
13 fill. Absent infrastructure information, the required comparison of growth to infrastructure cannot  
14 occur. The “Detail of Department Programs Supplement” is apparently a supplement to the City’s  
15 Budget each year. It is described as follows:

16 **Detail of Department Programs:** Supplement to the budget book that identifies by department and  
17 program the incremental changes from one fiscal year to another fiscal year (also referred to as the  
18 Blue Book). The Blue Book also contains related departmental schedules including the Detail of  
19 Positions and Salaries, Personnel Changes within Existing Authorities, Contractual Services and  
20 Travel Authority.  
21 (<http://cao.lacity.org/bud2010-11/10-11SuppInfo.pdf>)

22 The City thus tries to cast a budget book supplement as an Annual Report on Growth and  
23 Infrastructure. It is not. Only information about expenditures on various budget line items is provided.  
24 It does not provide an analysis of the status of infrastructure or projection of the repairs or upgrades that  
25 may be necessary. For example, with regard to the City’s aging infrastructure to deliver water or  
26 convey away wastewater, there is no information apparent in the Detail of Department Programs.  
27 Furthermore, the budget supplement does not provide information organized by Community Plan or  
28 other geographic boundaries, as is contemplated by the Framework Element. (Respondents’ Appendix,  
p. 1016 [“Information shall be documented by relevant geographic boundaries”].)

## 26 **6. The City Does Not “Publish” Annual Reports.**

27 The City admits that it does not prepare documents entitled “Annual Growth and Infrastructure  
28 Reports” because of a concern about their “format and utility” (City, p. 9), nor does the City provide

1 “infrastructure information” in any form (City, p. 10, ln. 24). Instead, the City claims that the annual  
2 reporting requirement is fulfilled by various other activities it undertakes. The City argues that its  
3 Planning Department “regularly monitors” population estimates and projections. (City, p. 11.)  
4 However, the infrastructure and public services information is apparently not “published” by  
5 promulgating it to the public and decisionmakers as an Annual Report would be. Framework Element  
6 program P43 specifically directs that the Annual Report “will be *published* at the end of each fiscal  
7 year.” (PA, p. 163, *emph. added.*) Relying upon documents placed in obscure locations on the City’s  
8 website does not meet the requirement that they be “published” at the end of each fiscal year. Such  
9 documents are not accessible to members of the public without access to computers. An Internet search  
10 of the City’s website using the key words “Annual Report on Growth and Infrastructure” does not  
11 produce any useful information.

12 The City argues that it “monitors” development and provides that information “to all applicable  
13 City departments.” (Opp., pp. 12-13.) However, providing the information to various City departments  
14 does not accomplish the purpose of the Annual Reports, which includes presenting that information to  
15 the public and to the City Council for their evaluation and usage contemporaneously and in the future.  
16 The Monitoring Program is distinct from the Annual Report program, since the City must do both, not  
17 one or the other. Howe states that Annual Reports take a year to prepare and are soon out-of-date so  
18 should be viewed as unnecessary. (Opp., p. 9, citing Howe, para. 5.) Such an argument lacks merit.  
19 The Annual Reports provide usable information regarding trends over time. It is intended to “annually  
20 document what has *actually happened* to the City's population levels, housing construction,  
21 employment levels, and the availability of public infrastructure and public services.” (RA, p. 998,  
22 *emphasis added.*) As with any type of report, they may be used far in the future depending upon the  
23 information they contain. However, such reports cannot be used if they are not prepared. An analysis  
24 of historical trends over time is only possible with comparison of Annual Reports from different years,  
25 so some of the most useful analysis occurs by comparing one report to another, not necessarily merely  
26 examining the information contained within a single report.

27 **7. The Community Plan Process Relies on Annual Reports But Does Not Supplant Them.**

28 The City argues that its Planning Department “determined that the Community Plan process is  
the most meaningful way to analyze growth and infrastructure impacts at the community-wide level . . .  
and is in the process of updating these plans.” (City, p. 11.) The City has been in the “process” of  
updating some of its community plans for many years, but has not done so. It certainly does not

1 reevaluate community plans annually, as Annual Reports would. For example, the Hollywood  
2 Community Plan was last updated in 1988, *over twenty years ago*. (PA, p. 887.) The Community Plan  
3 process may be a supplemental method of analyzing growth and infrastructure, but it cannot be a  
4 substitute for the Framework Element’s requirement for Annual Reports. The Framework Element  
5 specifically contemplated that Annual Reports collectively are supposed to “inform the general plan  
6 amendment process” and that it “shall be documented by relevant geographic boundaries, such as  
7 service areas, Community Plan Areas, or City Council Districts.” (PA: 0163.) As stated above, most  
8 Community Plans specifically rely on the Annual Reports. Thus, the Community Plan process is  
intended to rely upon, not to displace, the Annual Report requirement.

9 **8. Project Level Growth Analysis Does Not Supplant Annual Reports.**

10 The City asserts that it analyzes growth and infrastructure impacts “at the project level” through  
11 the process provided by CEQA. (City, p. 12.) However, the Framework Element itself states  
12 “Information on environmental conditions will also be monitored on a yearly basis to maintain and  
13 update an environmental database, which will be used to facilitate *but not replace*, environmental  
14 review for subsequent programs and projects in accordance with CEQA.” (Respondents’ Appendix, p.  
15 998, emphasis added.) The Annual Reports are intended to facilitate project analysis, not be supplanted  
16 by them. Analyzing impacts at the project level is not likely to yield meaningful cumulative impact and  
17 mitigation information since the focus is on project induced impacts and only incidentally on  
18 cumulative impacts. In *San Franciscans for Reasonable Growth v. City and County of San Francisco*  
19 (1984) 151 Cal.App.3d 61, the court stated that “without a mechanism for addressing the cumulative  
20 effects of individual projects, there could never be any awareness of or control over the speed and  
21 manner of downtown development.” (*Id.* at p. 77.) Without such control, “piecemeal development  
22 would inevitably cause havoc in virtually every aspect of the urban environment.” (*Ibid.*) Instead,  
23 Annual Reports would identify where cumulative problems have arisen or will arise in the near future,  
24 and the problems would be addressed. Furthermore, relying on project level analysis to address growth  
and infrastructure needs unfairly deprives areas with fewer project proposals from having their  
infrastructure needs analyzed and provided for as intended by the citywide Framework Element.

25 **III. Petitioners Seek a Declaration That the City Must Prepare Annual Reports and an**  
26 **Injunction to Ensure Such Preparation Actually Occurs.**

27 The City spends a great deal of its brief arguing that Petitioners are not entitled to injunctive relief  
28 that includes stopping all development in the City. (City, p. 13 et seq.) However, Petitioners are

1 clearly entitled to declaratory relief that the City must prepare Annual Reports and that for the past  
2 decade it has failed to do so. An injunction would be necessary to ensure that the City properly  
3 prepares the necessary annual reports. Such an injunction may be crafted to require that the City  
4 prepare Annual Reports as directed by its Framework Element, without running afoul of the “parade of  
5 horrors” that the City asserts could occur if the Court were to enjoin all development altogether.  
6 (City, pp. 15-19.) Additionally, since a finding of consistency with the General Plan is often required  
7 for approval of certain projects, where the General Plan calls for reliance on an Annual Growth and  
8 Infrastructure report, but no such reports exist covering the years after 1998, the necessary consistency  
9 finding cannot be made.

9 **IV. The City Charter Requires Annual Reports**

10 The City clarifies that the Framework Element was passed by resolution rather than ordinance.  
11 (City, p. 21.) Thus, it argues, the City Charter requirement for preparation of an Annual Report does  
12 not apply since it only applies to reports required by ordinance. However, the Framework Element is  
13 superior to City ordinances. As a portion of the General Plan, it is part of the City’s “constitution” for  
14 future growth and development. (*DeVita v. Napa* (1995) 9 Cal.4th 763, 773.) As such, it holds a  
15 position superior to all the City’s ordinances. Therefore, the City Charter requirement that annual  
16 reports must be prepared if required by ordinance applies with equal force to the Annual Reports that  
17 are required by the General Plan.

17 **V. CONCLUSION**

18 The City is obligated by the Framework Element and its City Charter to prepare Annual Growth  
19 and Infrastructure reports. The City has failed to prepare such a report since at least 2000, despite  
20 requests from the public that it do so. Therefore, the City must be ordered to prepare an annual Growth  
21 and Infrastructure report, and prepare the 2010 report as expeditiously as possible, in compliance with  
22 its Framework Element and Charter requirements.

23 DATED: September 2, 2010

Respectfully Submitted,  
CHATTEN-BROWN & CARSTENS

By: \_\_\_\_\_  
Douglas P. Carstens  
Attorneys for Petitioner