

June 18, 2012

James O'Sullivan  
Mike Eveloff  
Fix The City

Sharon Gin  
Legislative Assistant  
Office of the City Clerk  
200 N. Spring Street, 3rd Floor  
or via email to:  
[sharon.gin@lacity.org](mailto:sharon.gin@lacity.org)  
phone: 213-978-1074

Re. "Hollywood Community Plan, Council File 12-0303"

Dear Ms. Gin

Sorry I wasn't able to personally deliver the CD I dropped off at the Clerk's office today. It is a further communication on the Hollywood Community Plan Update. We felt we needed to provide further documentation after the City released their 6/14/2012 second addition the FEIR which among things contained a Revised Mitigation Monitoring program (MMP). This Revised MMP suggested that there could be a different strategy at play to deal with Mitigations for Serious Environmental Impacts, possibly based on recent published opinions. As such we believed we needed to include materials that would be beneficial to all concerned should a legal challenge prove necessary. I was also able to drop off copies of the CD to Council Members Garcetti, LaBonge and the Mayor's office. The CD contained the following files:

LADWP_Presentation_June 4_Final	(4.24 MB)
1947 Town Hall	(1.16 MB)
All Choked Up	(8.66 MB)
Appellant Fix The City Opening Brief	(2.82 MB)
DSDATAEVAL	(1.62 MB)
INFRASUIT Explained FTC	(2.19 MB)
LaBongeInfra	(355 kb)
LAFDFULL V. MCP V. DEPPLN2	(248 MB)
NFSRPetitionforReview	(4.79 MB)

Nrdc-letter

(912 kb)

Paramedic Response

(94 kb)

Eric Garcetti CD 5 HOA Coalition meeting.

(2.80 BB)

Please include the files from the CD to the Council File record.

Sincerely:

James O'Sullivan

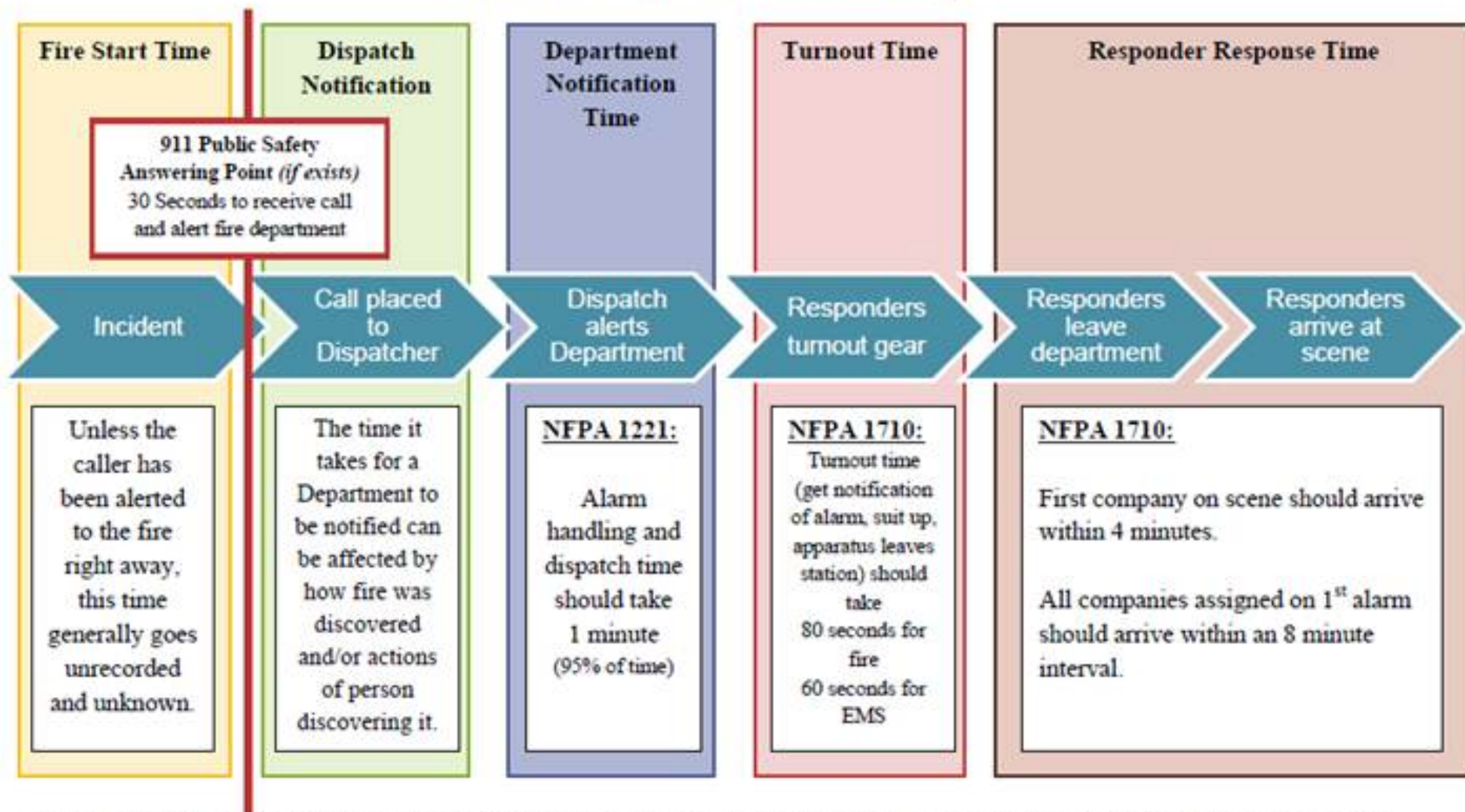
Mike Eveloff

Fix The City

PS. I am including several files contained on the disk dropped off today, along with this communication to help you get a quicker start on posting our materials.

Action/Time Point	Data provided by LAFD	Standard	Description/Misc.
Incident occurs			No way to know how much time has transpired between the actual emergency and the call to 911. This is out of the control of the City.
Person places 911 call			Call is routed to either LAPD or CHP as the Primary Public Safety Point.
Wait time until PRIMARY public safety point answers (LAPD, CHP, LACO)		Not tracked by LAFD	LAPD is supposed to have 900 call takers but apparently only has 450 now due to cuts.
Interaction with Primary PPSP		Not tracked by LAFD	Determination of police v. fire or other response needed.
PPSP sends to LAFD		Not tracked by LAFD	
LAFD delay until pick-up		Not tracked by LAFD	If all dispatchers are busy on ANY TYPE of call, the PPSP must wait with the caller.
LAFD answers	INITIAL_911_TIME	60 seconds for fire 90 seconds for EMS 90% of the time (NFPA 1221)  (Current records show this is at 113 seconds. % success not calculated yet)	
Call type determination (EMS/Fire)			
Create Incident	CREATION_TIME		
Get Incident (from the system)	GET_TIME		
Determine incident details			
Time required for dispatch	PEND_TIME		Immediate via DVS2, delayed via DVS1
Dispatch (via DVS2)	DISPATCH_TIME		DVS2: Units are automatically dispatched via automated voice systems immediately after dispatch.  DVS1: The dispatch does not happen until it is manually reviewed, often due to resource depletion in an area of the City.
Turnout Time		1 minute turnout, 4 minutes response (5 minute response time) (NFPA1717)	
Response Time			
Arrival On Scene (first resource)	ONSCENE_TIME		
Time To Patient		Tracked but not provided via CPRAs	Not reported to us (apparently often 1-2 minutes) Available to them via EPCR (handheld devices) TTP is the time it takes to get to the patient once the FFs stop the rig.
Arrival On Scene (all resources)			The 1 <sup>st</sup> resource on scene may not be the unit type that is needed (engine v. rescue).
Patient transported	TSP_TIME		Includes treatment time on scene, plus wait for transport if first responder was not a transport.
Arrival at the hospital	HSP_TIME		Includes traffic time, distance to nearest ER.
Incident complete/unit available	END_TIME		Includes time waiting at the hospital to clear the patient, resupply.

**Figure 2. Incident Development and Response Timeline and NFPA 1221 and 1710 Recommendations for Career Firefighters**

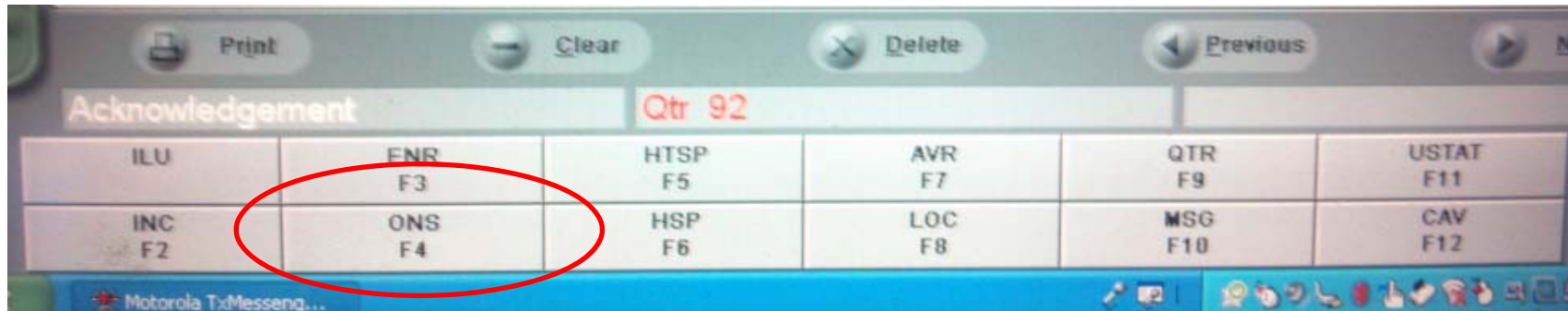


Source: NFPA 1221: Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems and NFPA: 1710 Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.

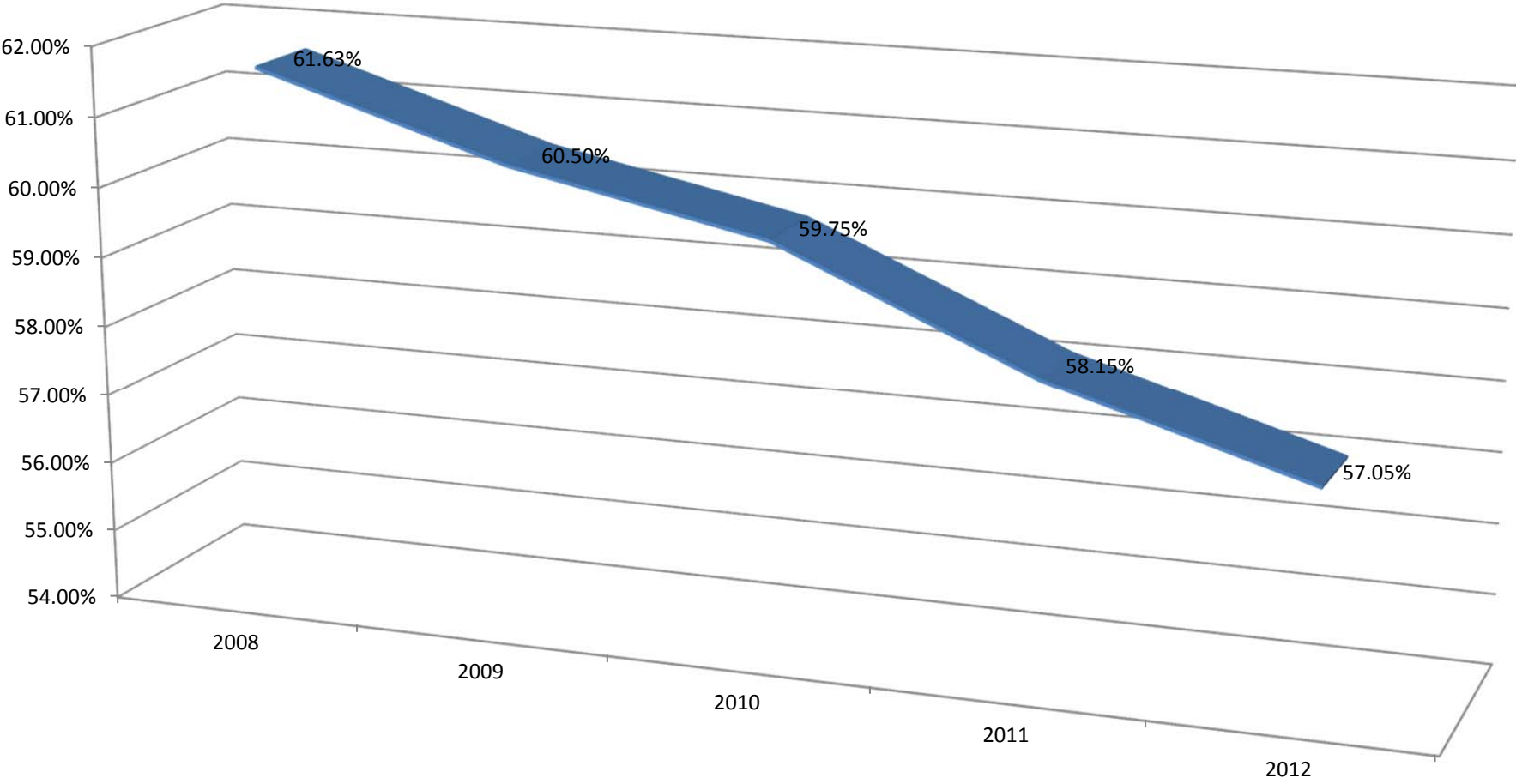
## Response Percentages Over Time

	On-Scene%	10 Sec Early	30 Sec Early	60 Sec Early
2007	64.94%	57.96%	54.34%	42.32%
2008	61.64%	54.45%	50.65%	38.49%
2009	60.52%	53.64%	49.85%	37.81%
2010	59.75%	51.91%	49.00%	37.11%
2011	58.13%	49.98%	47.02%	34.97%
2012	57.05%	49.46%	45.61%	33.73%

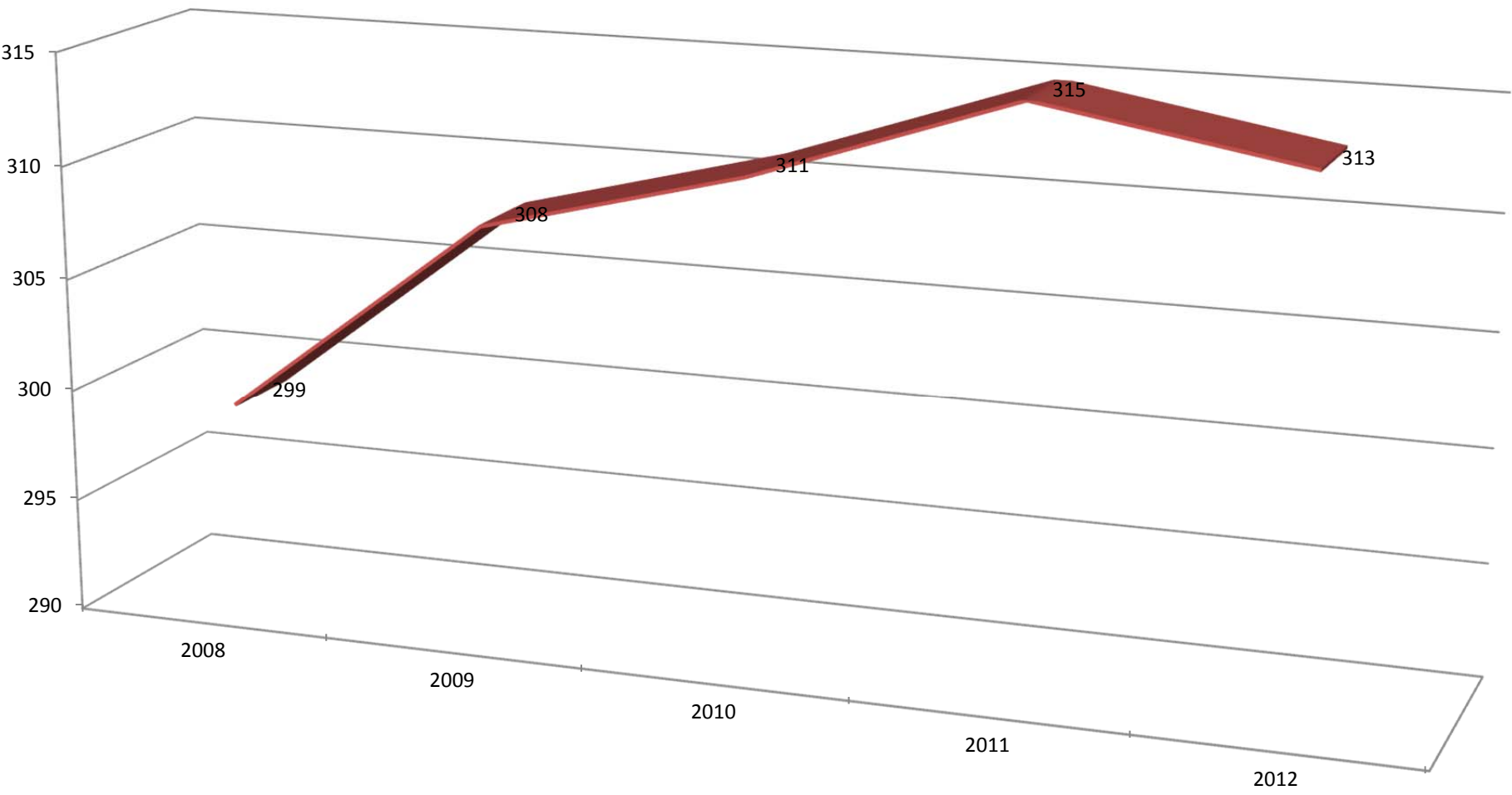
Firefighters press the “On Scene” button between 10 and 60 seconds before the truck stops as they get ready to deploy. This early press ends the “5-minute” response time period. This results in the appearance of better response times. The chart above shows response time percentages as reported, and with 10, 30 and 60 second “early presses” calculated.



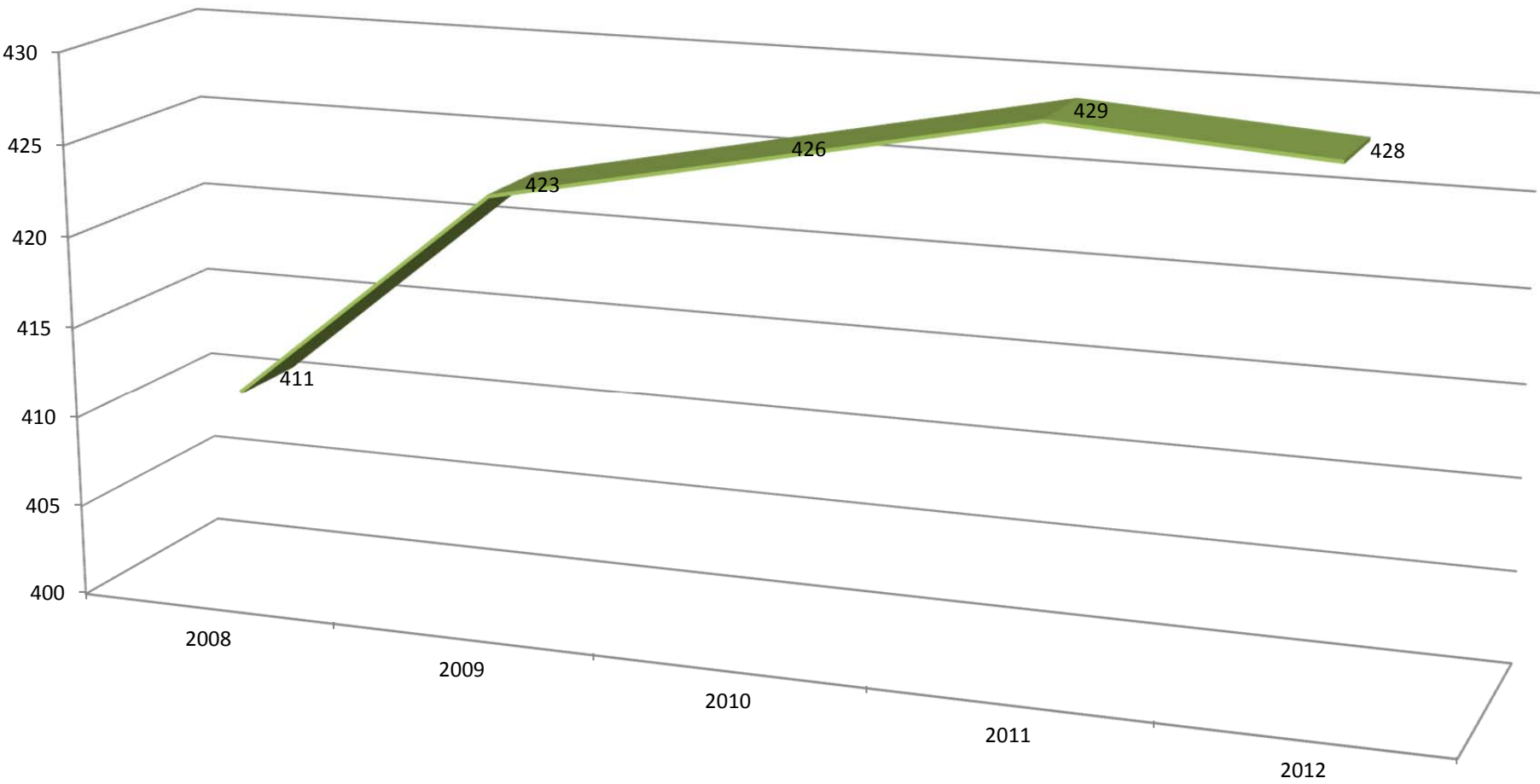
# Response% (Under 5 minutes) - Assuming No Early On-Scene Press



# OnScene Measured From Dispatch

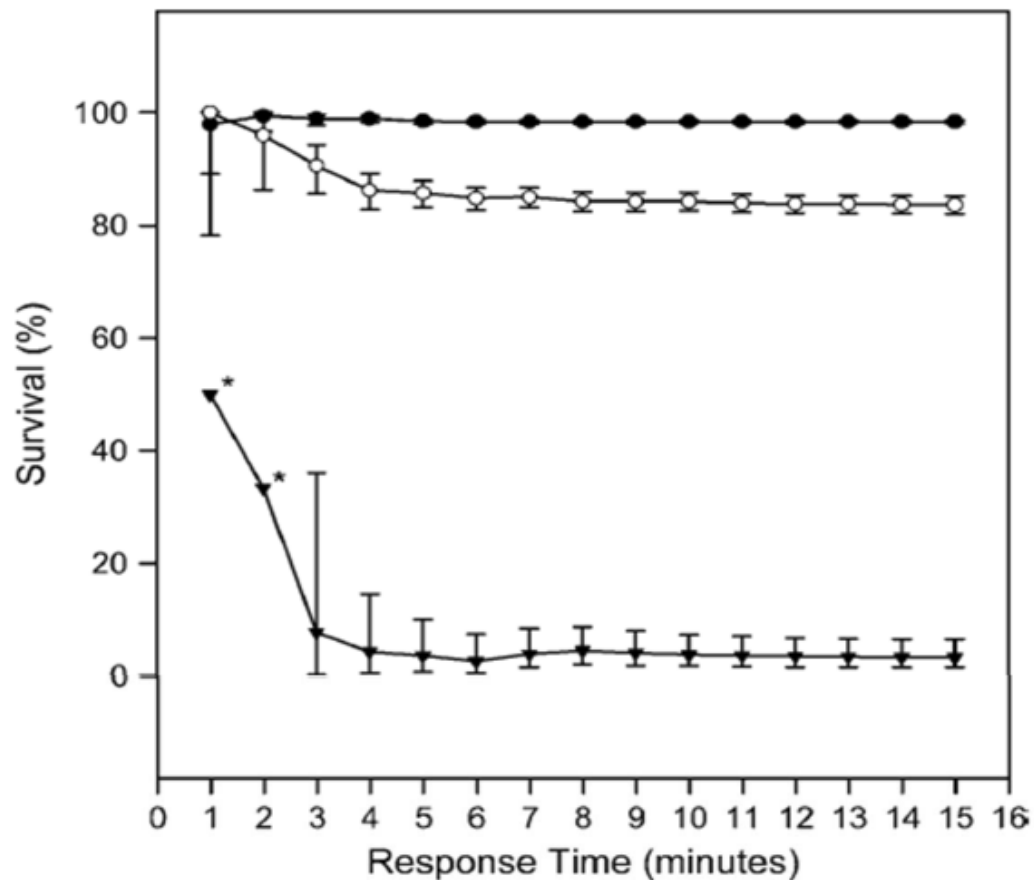


# OnScene Measured From 911 Call to LAFD (not original 911 call)



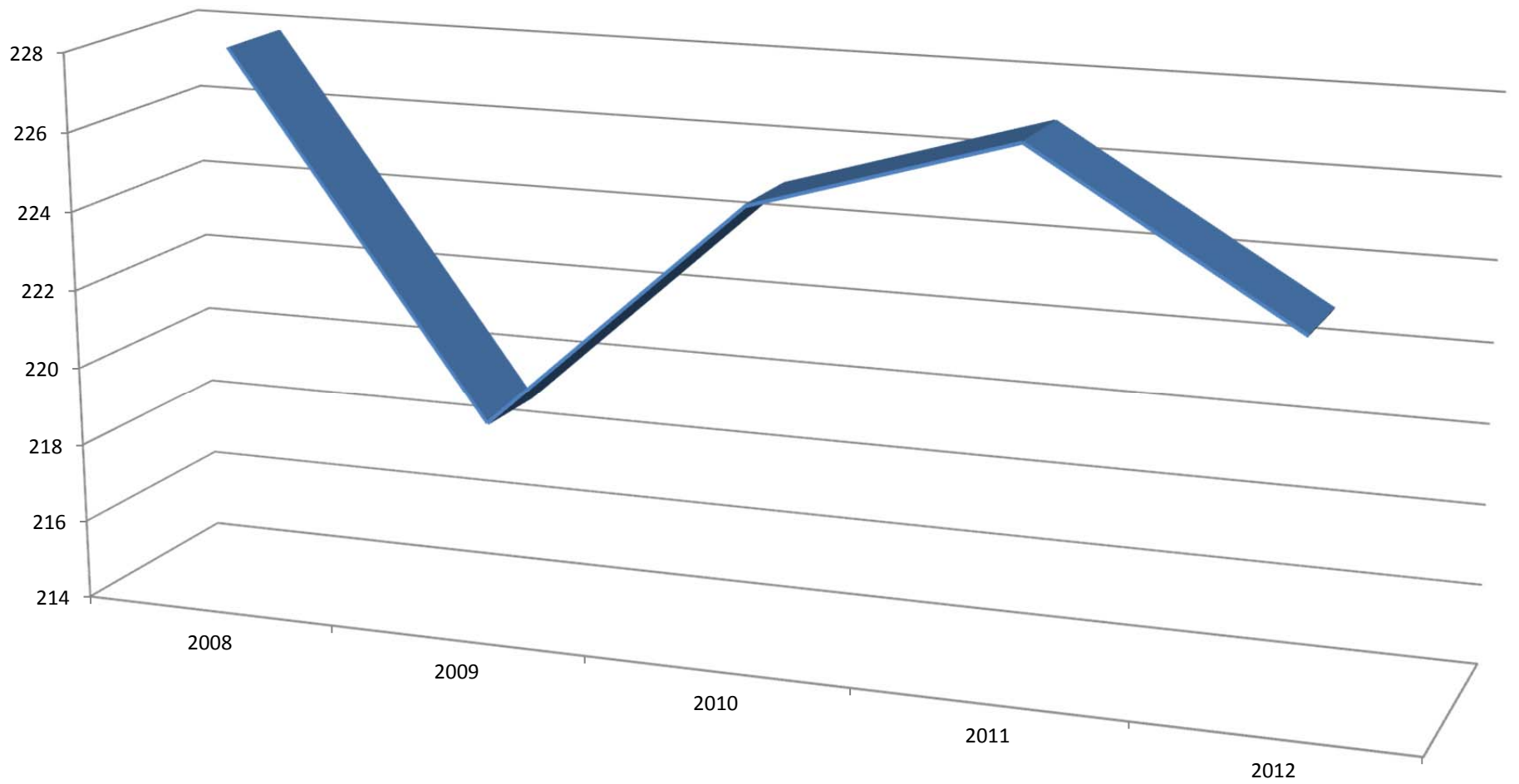


Year	Enroute		Arrive at Hospital		Arrive OnScene		Transport Patient	
	Count	Avg	Count	Avg	Count	Avg	Count	Avg
2008	282892	228	158208	2022	282681	405	246652	581
2009	304409	219	167677	2021	303976	415	267535	571
2010	301994	225	164534	1997	301595	419	267690	575
2011	311245	227	168071	2052	312005	421	277776	577
2012	76932	223	41493	2075	77404	421	69135	573

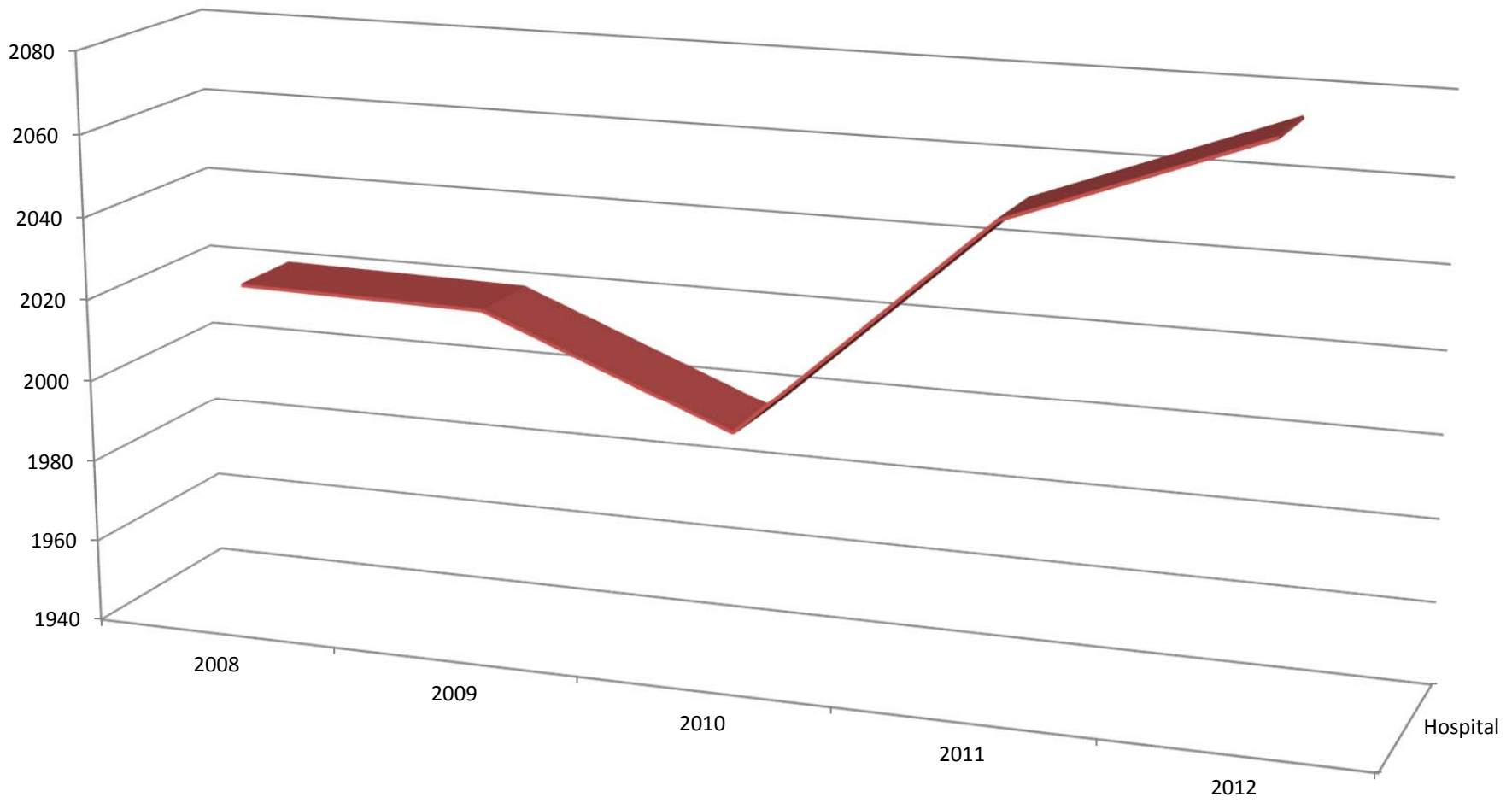


**Figure 1.** Percentages of survival to hospital discharge by paramedic response time and stratified by risk groups (bars represent 95% CIs). All patients were categorized into low-risk (●), intermediate-risk (○), or high-risk (▼) groups. The high-risk group included all traumatic and nontraumatic cardiac arrest patients. The intermediate-risk group included all suicide attempts, accidental exposures, unconscious patients, those with penetrating trauma, those with respiratory complaints, and those who were hypotensive in the out-of-hospital setting. All other patients were grouped into the low-risk category. \*CIs were not calculated for these response times due to sparse data.

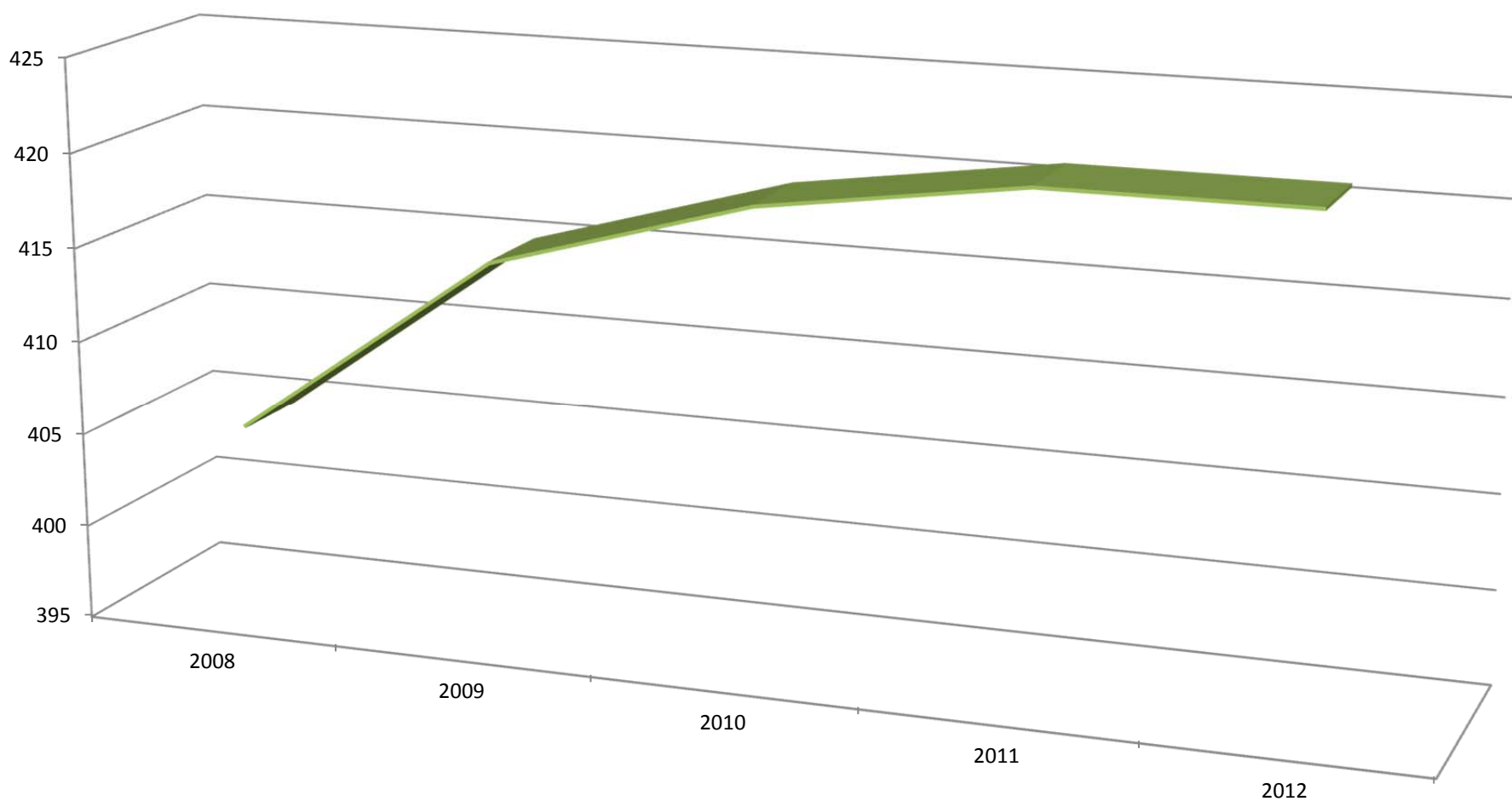
# En Route Measured From 911 Call Received By LAFD



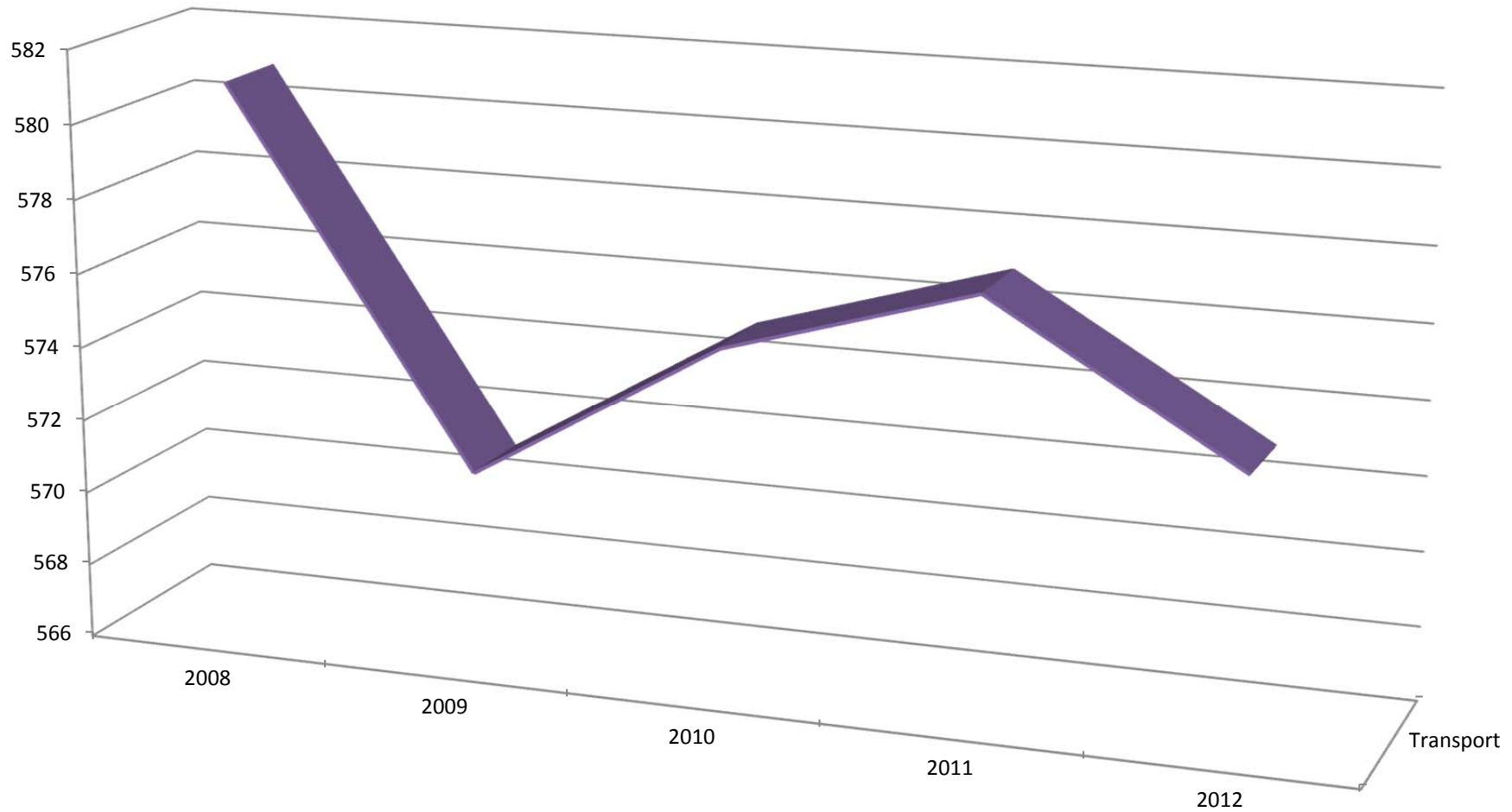
# Arrive At Hospital Measured From 911 Call Received By LAFD



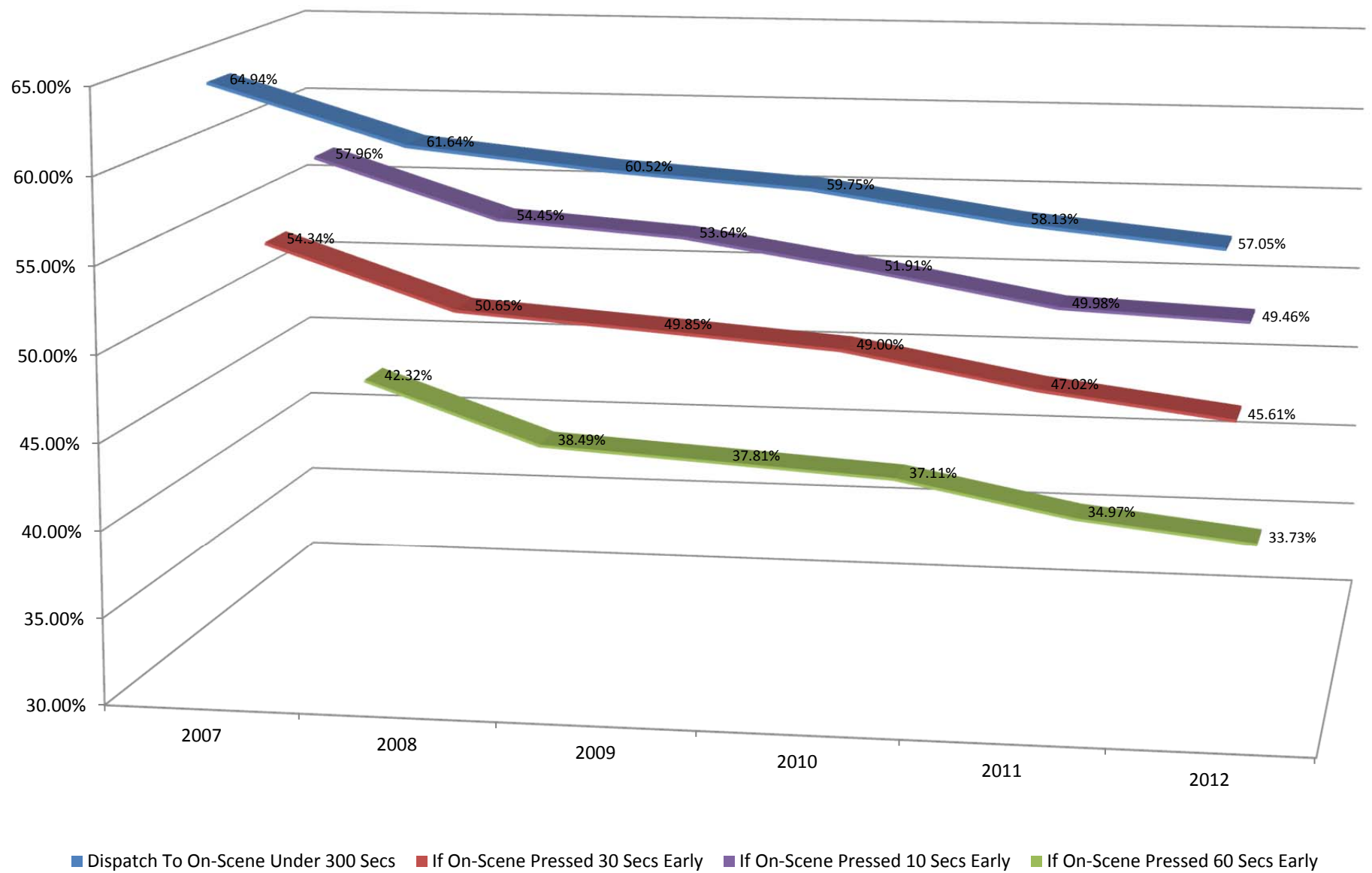
# Arrive On Scene From Time Of Dispatch



# Transport Patient Measured From Arrival On Scene



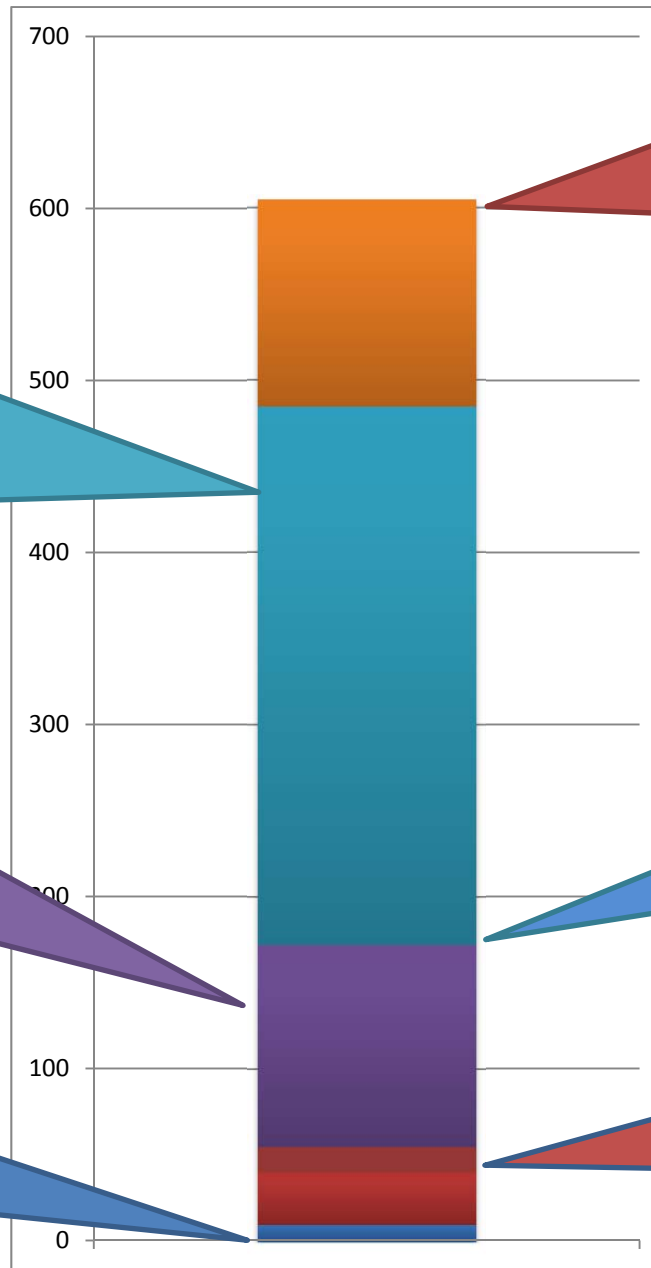
## Dispatch To On-Scene Pct Under 300 Secs







# Anatomy of a 911 Call



Only this time period has been reported as “response time”  
Standard: 90% under 5 min.  
Now between 33.7% and 57.1%.

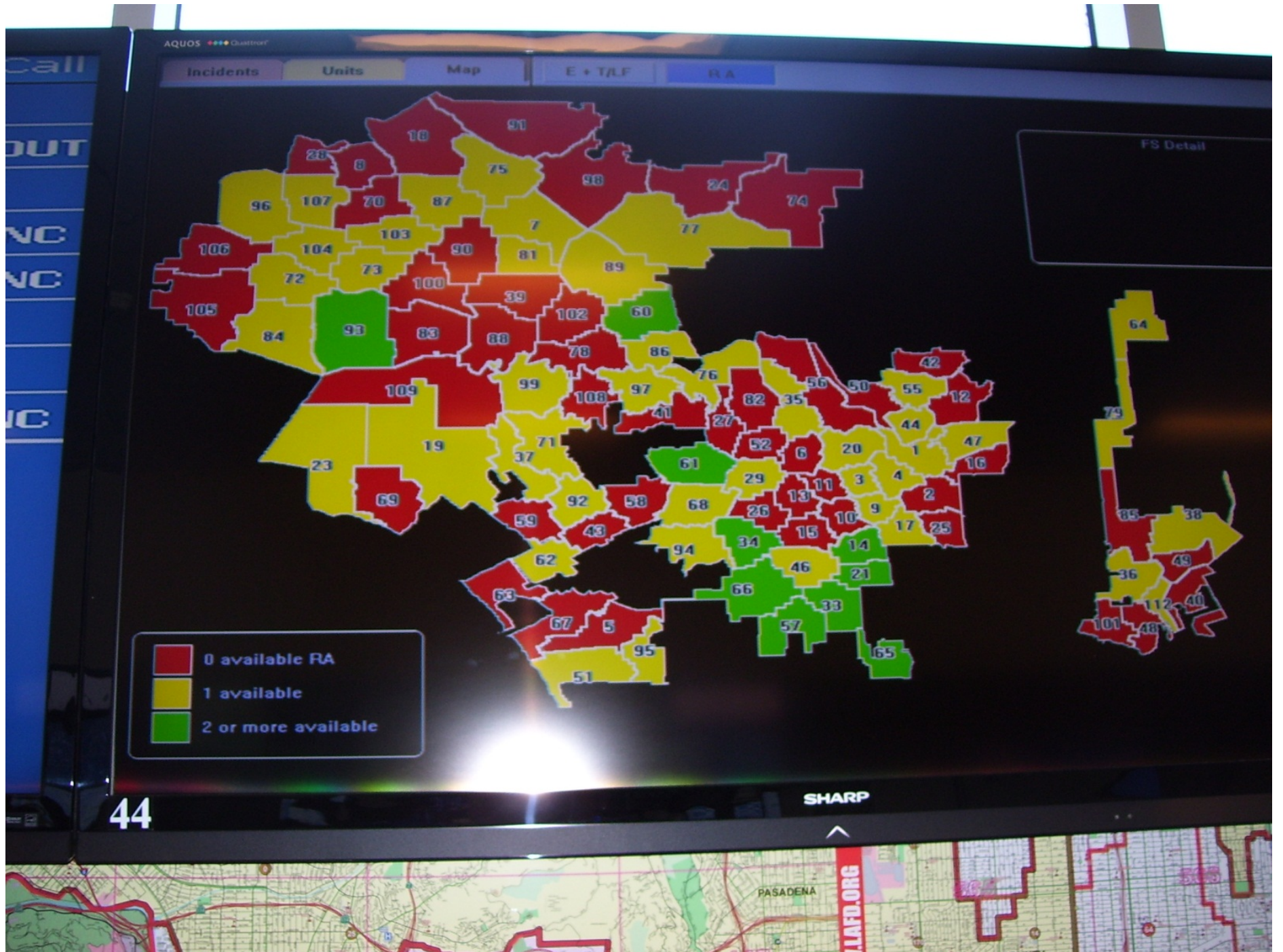
The time it takes the LAFD to gather data and dispatch units  
Standard: 90% under 90 secs  
Now: 46.3%

This is when the call is first placed, answered – Standard: 90% under 10 secs.

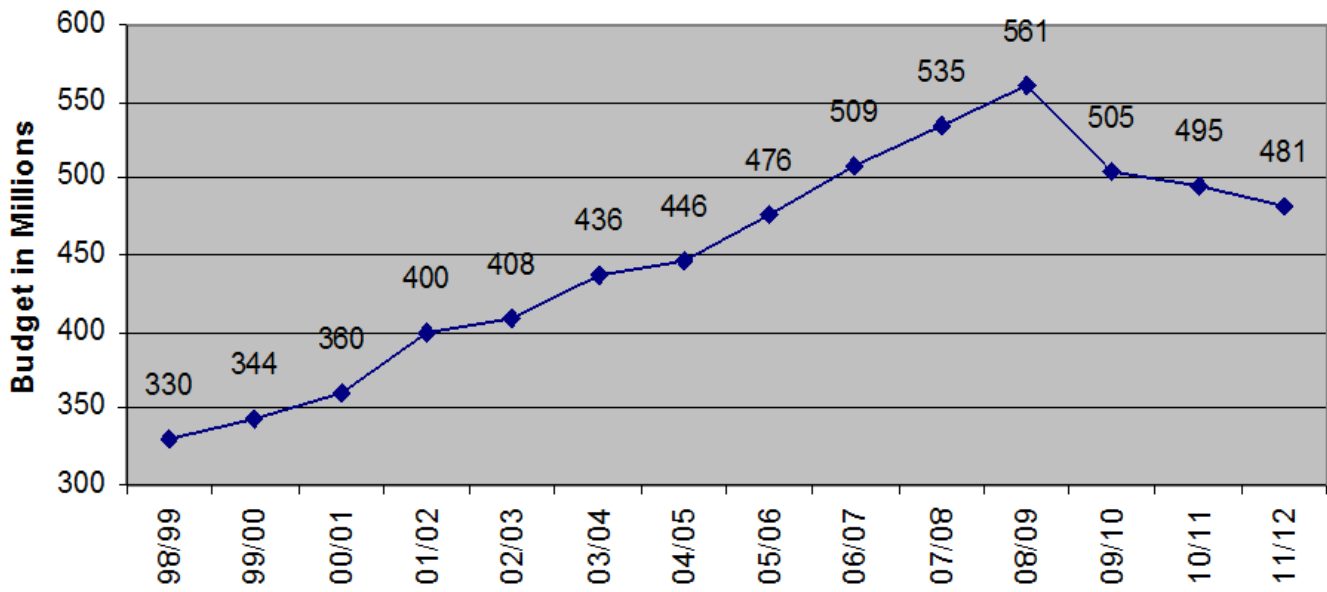
This is when the paramedics actually get to you – over ten minutes from the time of the 911

This is when the trucks start rolling

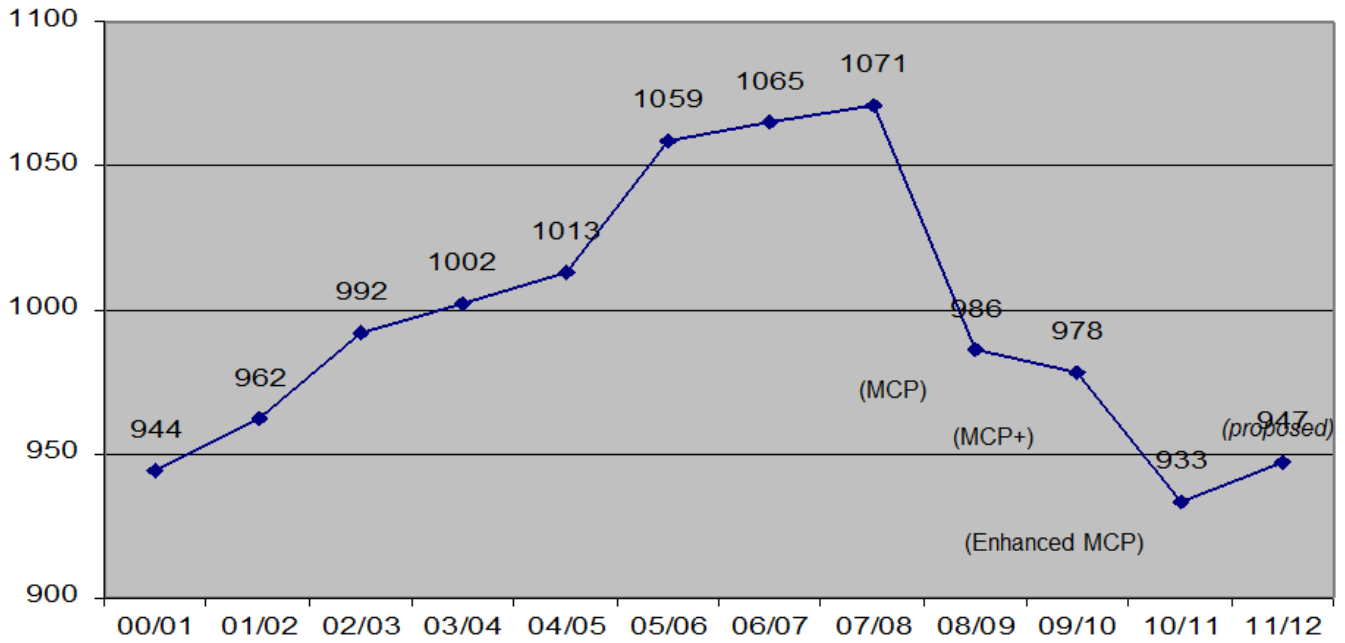
The time it takes LAPD/CHP/Sherriff (PPSAP) to process the call to LAFD.



### LAFD Budget History



### FIELD MEMBERS / SHIFT



## LAFD At A Glance

### Key LAFD Apparatus

Truck	Engine	Rescue (ALS)	Rescue (BLS)	Light Force
 Staffed by 5 FFs	 Staffed by 4 FFs	 Paramedic/FF Staffed	 EMT/FF Staffed	 Truck+Engine

**Why five in a truck:** The Engineer is responsible for pumping water. One firefighter is responsible for cutting utilities (gas/electrical) then joins the ventilation team. One firefighter ladders the roof and heads up as the ace man on the ventilation team. One firefighter is responsible for forcible entry (doors/windows) and pulling down the ceiling so that ventilation works. A Apparatus Operator drives then operates the ladder and leads the ventilation team with a chain saw. A Captain acts as incident commander until a Chief arrives – The captain then heads to the roof as the Safety Man. (Light force has 6 total firefighters – 5 truck, 1 engine)

**EMT(BLS) v. Paramedic(ALS):** EMT training: 120-150hrs. Paramedic training: 1,200-1,800 hrs. EMT skills: CPR, giving oxygen. EMTs are not allowed to provide treatments that requiring breaking the skin: that means no needles. **Paramedics** are advanced providers of emergency medical care and are highly educated in topics such as anatomy and physiology, cardiology, medications, administering medications, starting intravenous lines. providing advanced airway management for patients. and learning to resuscitate and support patients with significant

#### Key Terms

- **PPSAP – Primary Public Safety Access Point.** This is where 911 calls are first answered. In L.A., this is the LAPD, CHP or Sheriff. Calls must be answered in 10 seconds, 90% of the time.
- **SPSAP – Secondary Public Safety Access Point**  
The LAFD is a SPSAP as it receives 911 calls from law enforcement (as the primary). Calls must be answered in 10 seconds, 90% of the time.
- **ALS – Advanced Life Support** (paramedic ambulance)
- **BLS – Basic Life Support** (EMT-staffed ambulance)

#### Deployment Milestones

- **Constant Staffing:** Mandatory overtime program to save the City money because one firefighter working overtime is less expensive than two firefighters with pensions.
- **Modified Coverage Plan:** A rotating system of “brown-outs” which resulted in increasingly poor response metrics.
- **Deployment Plan:** Supposed to improve response times using “new software.” Actual response times worsened due to company closures.

#### How to Measure LAFD Performance

Category	Standard	2011
Time from 911 Call to LAFD Call Ctr		
Time from 911 Call to Dispatch	90% < 90Sec	43.1%
Time from Dispatch to On Scene	90% < 300Sec	57.1%
Time from On Scene to Patient		120s
Time from Patient to Transport		TBD
Time from Transport to Hospital		TBD
Injuries On Duty		TBD
Structures Saved		TBD
Survival% for Patients		TBD

#### Steps In A 911 Call

Event	Standard	Actual
Person Calls 911		
LAPD/CHP Answers	90% < 10 sec	10 secs*
Call Handling	TBD	30 secs*
Call Handoff to LAFD	90% < 10 sec	15 secs*
LAFD Dispatch	60s(Fire) 90s(Ems)	117 secs
Turnout+Response	90% < 300 sec	313 secs
Time to Patient	---	120 secs
<b>Total 911 to Patient</b>		<b>605 secs</b>

#### What To Watch

- Are “Injuries on Duty” increasing?
- Is attrition increasing?
- Is hiring/training keeping up with attrition?
- Are there changes in performance metrics over time? Rapid increases/decreases?
- Is data being gathered in a reliable fashion?
- Can key times be changed after the fact or improperly reported?
- How often units are moved out of an area to cover another area/city.

#### Key Questions

- What are the performance metrics for my area?
- How does the LAFD rely on redundancy?
- How many times have companies from outside my area had to respond into my area?
- How many times have units from my area had to respond outside my area?
- How many dispatchers are there at any given time? On Duty? In the building on stand-by?
- Do we have sufficient forces to handle a major disaster?

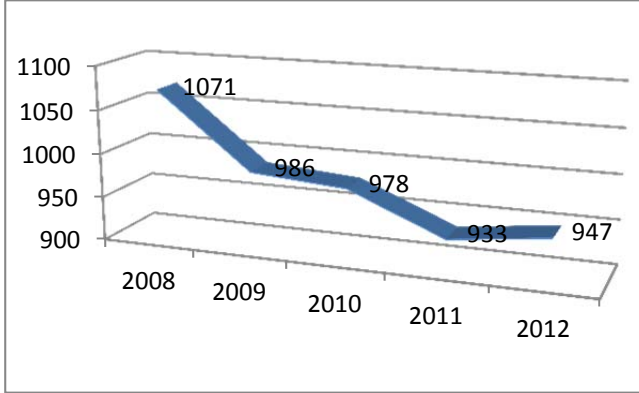
Key Call Types
<b>EMS:</b> Alpha, Bravo, Charlie, Delta, Echo with Alpha the least severe
<b>Fire:</b> Structure, Rubbish, Brush
<b>Others:</b> Auto and HazMat

LAFD Staffing	
Firefighters (Sworn)	3459
Admin/Non-Sworn	296
Per Shift	940

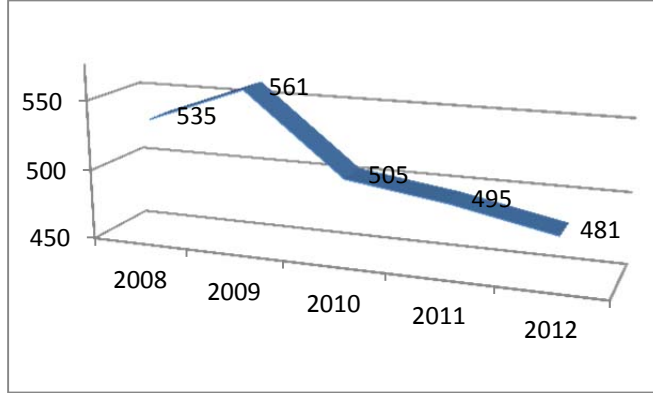
**LAFD receives 3000 calls per day which result in 1300 incidents.**  
 80% are EMS and 20% Fire. Fires require far more manhours per incident. Time assigned to EMS and Fire are about equal.

How Does Budget Impact Response Time?

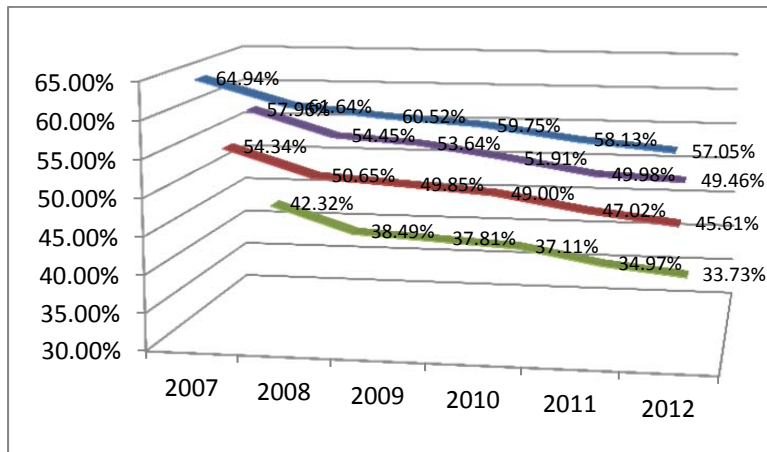
Firefighters Per Shift



Budget (millions)

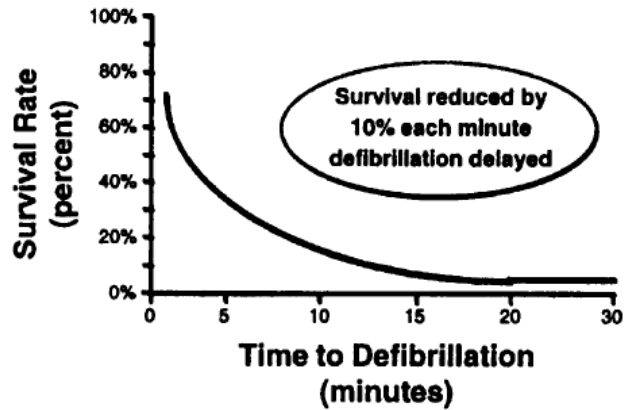


"5-Minute Response Times"



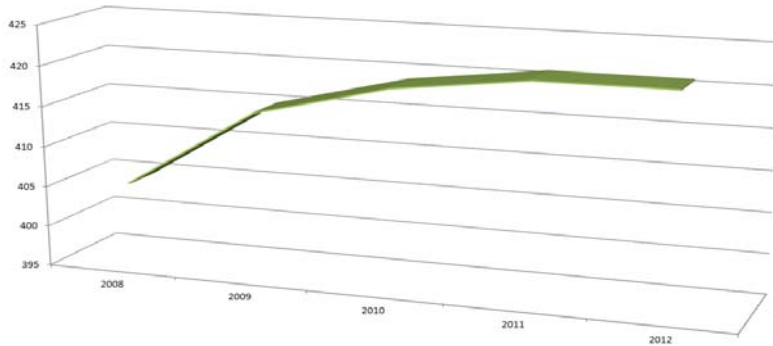
The "5-minute" clock ends when the "On Scene" button is pressed. Firefighters press that button between 10 and 60 seconds before they actually arrive. This chart shows response times no early press, 10, 30, and 60 second early presses. Actual response% is between 33.7% and 49.46%.

How Important Is Response Time To Survival?

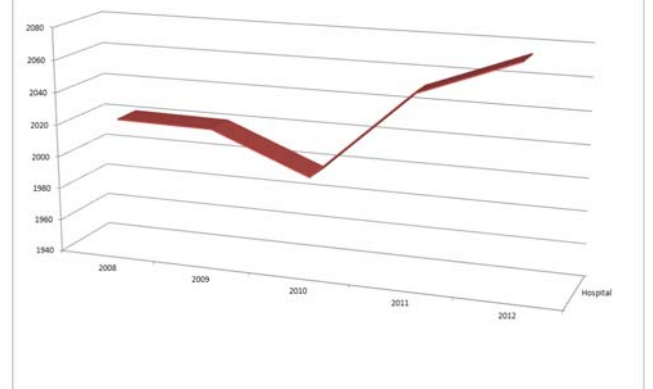


<http://www.ncbi.nlm.nih.gov/pubmed/8323592>

Arrive On Scene From Time Of Dispatch



Arrive At Hospital Measured From 911 Call Received By LAFD





11-1635

TO CITY CLERK FOR PLACEMENT ON NEXT  
REGULAR COUNCIL AGENDA TO BE POSTED  
#55  
SEP 27 2011

MOTION

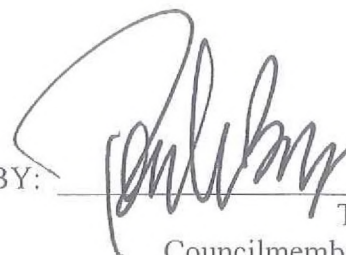
Over the past several years, the City Council has focused special attention on the City's financial position without looking at the City's aging infrastructure. The purpose is to look at the City's Infrastructure to assess the overall conditions, identify the level at which it should be maintained, determine funding shortfalls, identify how to pay for maintenance, and prepare an infrastructure investment plan that addresses needs.

I THEREFORE MOVE that the City Council instruct the City Clerk to schedule a Infrastructure Day during the month of January 2012 to consider the following infrastructure components:

- Airports
- Bridges
- Buildings, Public
- Parks
- Port of Los Angeles
- Power System
- Stormwater System
- Street Lighting
- Streets and Highways
- Telecommunications
- Wastewater Collection
- Wastewater Treatment
- Water System


I FURTHER MOVE THAT THE Council instruct the CAO and CLA to present to the City Council an update on the status of infrastructure throughout the City.

PRESENTED BY: \_\_\_\_\_



Tom LaBonge  
Councilmember, 4<sup>th</sup> District

ORIGINAL



SECONDED BY: \_\_\_\_\_



SEP 27 2011

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION FIVE

---

No. B232415

---

SAUNDERS ET AL. v. CITY OF LOS ANGELES

Consolidated with

FIX THE CITY, Appellant/Petitioner v. CITY OF LOS ANGELES,  
Respondent/Defendant.

---

Appeal from the Superior Court,  
State of California, County of Los Angeles  
Case No. BS115435  
The Honorable Judge John. A. Torribio

---

**APPELLANT FIX THE CITY'S OPENING BRIEF**

---

CHATTEN-BROWN & CARSTENS  
Jan Chatten-Brown (Bar No. 50275)  
Douglas P. Carstens (Bar No. 193439)  
Michelle N. Black (Bar No. 261962)  
2601 Ocean Park Blvd, Suite 205  
Santa Monica, CA 90405-3219  
Ph: 310-314-8040, Fax: 310-314-8050

Attorneys for Appellant/Petitioner  
Fix the City



**TO BE FILED IN THE COURT OF APPEAL**

**APP-008**

<p><b>COURT OF APPEAL,    Second    APPELLATE DISTRICT, DIVISION    Five</b></p>	<p>Court of Appeal Case Number: <b>No. B23415</b></p>
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Douglas Carstens (SBN 193439)</b>                  Chatten-Brown &amp; Carstens                  2601 Ocean Park Blvd. Suite 205                  Santa Monica, CA 90405                  TELEPHONE NO.: (310) 314-8040    FAX NO. (Optional): (310) 314-8050                  E-MAIL ADDRESS (Optional): <b>dpc@cbcearthlaw.com</b>                  ATTORNEY FOR (Name): <b>Fix the City</b></p>	<p>Superior Court Case Number: <b>No. BS115435</b></p>
<p>APPELLANT/PETITIONER: <b>Fix the City</b></p> <p>RESPONDENT/REAL PARTY IN INTEREST: <b>City of Log Angeles</b></p>	<p><i>FOR COURT USE ONLY</i></p>
<p align="center"><b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b></p> <p>(Check one):    <input checked="" type="checkbox"/> INITIAL CERTIFICATE    <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE</p>	
<p><b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b></p>	

1. This form is being submitted on behalf of the following party (name): Fix the City

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

<p><b>Full name of interested entity or person</b></p>
--

<p><b>Nature of interest (Explain):</b></p>
---

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

**The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).**

Date: October 13, 2011

Douglas Carstens  
(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY)

## TABLE OF CONTENTS

	<b>Page No.</b>
I. INTRODUCTION.....	1
II. STATEMENT OF APPEALABILITY.....	3
III. STATEMENT OF FACTS.....	3
A. Administrative History of the Framework Element and Annual Growth and Infrastructure Reports.....	3
1. Approval of the Framework Element and Challenges to It.....	3
2. Contents of the Framework Element.....	6
3. The Requirement to Prepare An Annual Report on Growth and Infrastructure Was Part of the Mechanism to Mitigate the Cumulative Effects of Growth in the City.....	9
4. Partial Annual Growth and Infrastructure Reporting Began in 1996 But Ended in 2000.....	11
B. Trial Court Proceedings.....	13
IV. STANDARD OF REVIEW.....	14
V. THE CITY MUST PREPARE AND IMPLEMENT ANNUAL GROWTH AND INFRASTRUCTURE REPORTING TO PROVIDE ORDERLY GROWTH AND SUFFICIENT INFRASTRUCTURE.....	16
A. The General Plan Framework Mandates Preparation and Review of Annual Reports.....	16
B. The General Plan Framework Element Has the Force of Law.....	18
C. Mitigation Measures for Significant Impacts Must Be Implemented.....	19
D. The Annual Report is An Essential Part of the System Imposed to Mitigate the Impacts of Growth.....	21
1. The Annual Report Requirement Was Adopted as Part of a Mandatory Mitigation Measure for Growth Impacts.....	21

a.	The Annual Report is Mandatory Because it is One of Two Components of the City’s Mitigation Monitoring and Reporting Program for the Framework Element.....	22
b.	The FEIR for the Framework Element Shows the Annual Growth and Infrastructure Report is Part of a System Adopted as a Mitigation Measure.....	22
c.	The Statement of Overriding Considerations and Findings Show Preparation of the Annual Reports Is Mandatory.....	23
d.	Litigation Over the Framework Element Confirms the City Viewed Preparation of the Annual Reports as a Critical and Enforceable Mitigation Measure.....	23
2.	The Annual Growth and Infrastructure Reports are Relied Upon By Various Sections of the City’s General Plan.....	24
3.	Annual Growth and Infrastructure Reports are Necessary For Numerous Purposes Including Policy Revision and Incentive Analysis.....	26
4.	Annual Growth Reports Are Necessary to Consolidate Scattered Information in a Readable and Analytical Format.....	27
E.	The City Does Not Have Discretion to Dispense with Annual Growth and Infrastructure Reports.....	28
F.	The City Interpreted its Duty to Prepare Annual Growth and Infrastructure Reports as Mandatory When Prior Growth Reports Were Prepared Contemporaneously With the Framework Element’s Adoption.....	31
G.	The City Council Did Not Rescind the Annual Report Requirement.....	32
VI.	THE CITY FAILED TO PERFORM ITS MANDATORY DUTY TO PUBLISH AND USE ANNUAL GROWTH REPORTS.....	34
A.	The City’s Various Monitoring Activities Do Not Meet the Mitigation Requirement of the Annual Growth and Infrastructure Report System.....	34

1.	Mere Monitoring Without Analysis or Action Based on the Analysis Does Not Result in Mitigation.....	34
2.	Trigger Levels for Taking Action Are Not Identified Through Website Based Monitoring.....	38
3.	Website Based Monitoring, Without Analysis or Action Using Annual Growth and Infrastructure Reports, Does Not Comply with the Framework Element Mitigation System.....	39
4.	The City’s Declarations From Planners About Various Websites Do Not Show Compliance with the Annual Report Requirement.....	41
VII.	FIX THE CITY SEEKS A DECLARATION THAT THE CITY MUST PREPARE AND USE ANNUAL GROWTH REPORTS AND THAT IT HAS NOT DONE SO.....	42
VIII.	CONCLUSION.....	43

**TABLE OF AUTHORITIES**

	<b>Page No.</b>
<b>STATE CASES</b>	
<i>Big Creek Lumber Co. v. County of Santa Cruz</i> (2006) 38 Cal. 4th 1139.....	16, 29
<i>Camp v. Board of Supervisors</i> (1981) 123 Cal.App.3d 334.....	16
<i>Copley Press, Inc. v. Superior Court</i> (2006) 39 Cal. 4 <sup>th</sup> 1272, 1291.....	15
<i>County of San Diego v. State of California</i> (2008) 164 Cal.App.4th 580, 606.....	42
<i>Culligan Water Conditioning v. State Bd. of Equalization</i> (1976) 17 Cal.3d 86.....	32
<i>DaFonte v. Up-Right, Inc.</i> (1992) 2 Cal. 4th 593.....	15
<i>deBottari v. City Council of the City of Norco</i> (1985) 171 Cal.App.3d 1204 .....	15
<i>DeVita v. County of Napa</i> (1995) 9 Cal.4th 763.....	15
<i>Endangered Habitats League, Inc. v. County of Orange</i> (2005) 131 Cal.App.4th 777.....	28
<i>Environmental Defense Project of Sierra County v. County of Sierra</i> (2008) 158 Cal.App.4th 877 .....	42
<i>Federation of Hillside and Canyon Associations v. City of Los Angeles</i> (2000) 83 Cal.App.4th 1252.....	4, 5, 19, 26
<i>Federation of Hillside and Canyon Associations v. City of Los Angeles</i> (2005) 126 Cal.App.4th 1180 .....	4, 5, 19, 23
<i>Ham v. County of Los Angeles</i> (1920) 46 Cal.App.148 .....	30

<i>In Re Conservatorship of Whitley</i> (2010) 50 Cal.4th 1206 .....	15
<i>Lincoln Place Tenants Assn. v. City of Los Angeles</i> (2005) 130 Cal.App.4th 1491 .....	19, 20
<i>Lincoln Place Tenants Assn. v. City of Los Angeles</i> (2007) 155 Cal.App.4th 425 .....	16, 24
<i>Los Angeles County Professional Peace Officers' Association v. County of Los Angeles</i> (2004) 115 Cal.App.4th 866 .....	14
<i>North Beverly Park Homeowners Association v. Bisno</i> (2007) 147 Cal.App.4th 762.....	40
<i>People v. Woodhead</i> (1987) 43 Cal. 3d 1002 .....	21
<i>Rancho Murieta Airport, Inc. v. County of Sacramento</i> (2006) 142 Cal.App.4th 323.....	17
<i>Redwood Coast Watersheds Alliance v. State Board of Forestry and Fire Protection</i> (1999) 70 Cal.App.4th 962.....	29, 30
<i>San Franciscans for Reasonable Growth v. City and County of San Francisco</i> (1984) 151 Cal.App.3d 61.....	21
<i>Scott v. Common Council of San Bernardino</i> (1996) 44 Cal.App.4th 684 .....	29
<i>Searles Valley Minerals Operations, Inc. v. State Bd. of Equalization</i> (2008) 160 Cal.App.4th 514 .....	40
<i>Sierra Club v. Board of Supervisors</i> (1981) 126 Cal.App.3d 698 .....	18
<i>Walters v. Weed</i> (1988) 45 Cal.3d 1.....	18

*Yamaha Corp. of America v. State Board of Equalization*  
(1998) 19 Cal.4th 1.....20, 31, 32, 33

**CODE OF CIVIL PROCEDURE**

Section 904.1.....3  
Section 1085.....14  
Section 1060.....42

**GOVERNMENT CODE**

Section 14.....16

**PUBLIC RESOURCES CODE**

Section 21081.6.....19, 37, 43

## **I. INTRODUCTION**

This action challenges the failure of the City of Los Angeles (“City”) to fulfill its legal obligation to implement and monitor a critical measure required to mitigate growth impacts associated with its 1996 approval of the General Plan Framework Element (“General Plan Framework” or “Framework Element”). The City’s General Plan Framework Environmental Impact Report (“EIR”) contained a well-defined system that was found to be feasible in reducing growth impacts that were predicted to be significant even with mitigation. That mitigation system required annual monitoring of the infrastructure, reporting about it, and, if any aspect of the infrastructure was threatened, that threat would be addressed through adding infrastructure capacity or limiting development. The City has failed to implement this system for controlling the adverse impacts of growth. Fix the City asks this Court to require the City to implement the reporting and mitigation measure monitoring as required by state law and as promised by the City when it adopted policies in its General Plan Framework to ensure mitigation would occur.

The General Plan Framework mandated the preparation and use of a report entitled the Annual Report on Growth and Infrastructure (Annual Report). These Annual Reports would be the enabling documents that provide the current state of the infrastructure in the City and analysis of growth trends to identify any threats to the infrastructure and then to direct the measures that are required to address them. If updated and implemented annually as directed by the General Plan, these Annual Reports would provide a single-source baseline for development in the City. As described by the City in the Framework Element of the General Plan, these mandatory Annual Reports provide a critical feedback loop to evaluate and, if necessary, modify policies that encourage growth in various areas of the City. Through this feedback loop, the effectiveness of



measures to prevent overloading firefighter and police services, transportation infrastructure, water, power and wastewater capacity could be measured and adjusted to ensure their effectiveness. The City also described these Annual Reports as being essential in determining which General Plan elements and community plans need updating and how. The Annual Reports were intended to inform the City when City infrastructure was threatened with overload, and what steps would be necessary to ensure it did not reach or exceed capacity.

Despite its clear commitment to prepare and use Annual Reports, the City has not implemented the required mitigation or monitoring, and has failed for the past decade to produce any form of an Annual Report. The result of this failure is a dangerous lack of information available to the City Council and public as to the status of the City's infrastructure relating to such things as whether or not the City has adequate police and firefighter capability, has adequate water and power supplies, or has the transportation infrastructure to support its population and how to address shortfalls.

The infrastructure impact mitigation measures, including the Annual Reports required by the Framework Element, are the foundation upon which other General Plan elements would rest. Overwhelming facts in the historical record demonstrate the City's intention, and legal obligation, to make the Annual Reports a mandatory requirement. These facts include the City's reliance on the Annual Reports in other General Plan elements, in the EIR and the statement of overriding consideration adopted in support of the City's approval of the General Plan Framework, and in City briefs filed with the Court of Appeal arguing for the sufficiency of the General Plan Framework review. The historical facts also include the City's contemporaneous interpretation shortly after the General Plan Framework's

adoption that Annual Reports were a mandatory requirement. All these factors point to the conclusion that the City has a legal obligation to implement and monitor infrastructure mitigation as informed by the Annual Reports.

Despite the clear requirements of the Framework Element, the City has failed to prepare these vital reports for the past decade. The City's failure to prepare and use the required Annual Reports has far-reaching consequences. As the City continues to approve projects, including community plan amendments and other long-range initiatives, without current information that would be provided in Annual Reports, planning mistakes are carried forward and become woven into the fabric of the City. Inadequate infrastructure becomes more difficult to update as additional growth adds ever increasing burdens. To preserve the integrity of the General Plan, to provide a measure of consistency in evaluating the impacts of proposed projects, and to preserve the public safety, the City must be compelled to prepare and use Annual Reports to implement and monitor mitigation measures found feasible in its General Plan Framework EIR and adopted as policies in its General Plan Framework.

## **II. STATEMENT OF APPEALABILITY**

The trial court's final judgment denying Appellant's petition for writ of mandate was entered on March 2, 2011. (Joint Appellant's Appendix (hereinafter "AA"), volume 15, tab 51, page 2167 (hereinafter "volume: tab: page").) It is appealable pursuant to Code of Civil Procedure section 904.1 subd. (a) (1).

### III. STATEMENT OF FACTS

#### A. Administrative History of the Framework Element and Annual Growth and Infrastructure Reports.

##### 1. Approval of the Framework Element and Challenges to It.

To provide specific policies on how to deal with ever-growing demands on the City's infrastructure, the City developed and adopted a General Plan Framework Element in 1996. The City's General Plan is composed of various elements including the Framework Element, the Land Use Element, and other elements mandated by the Government Code. The Land Use Element is composed of 37 community plans that establish land use policies within various community plan areas. (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1255 (“*Federation of Hillside and Canyon I*”).)

The Framework Element is a critical component of the City's General Plan. It is meant to establish a strategy for long-term growth, with a citywide context to inform the environmental review process, including updating of community plans and citywide elements contained in the General Plan. (AA 2:10:119.) The Framework Element “states policies, objectives, and goals for the long-term growth of the city. The General Plan Framework influences but is separate from other general plan elements, which together comprise the general plan.” (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2005) 126 Cal.App.4th 1180, 1188-1189 (“*Federation of Hillside & Canyon II*”).)

The Framework Element was originally adopted in 1996 based upon a final EIR and statement of overriding considerations for the land use and growth policies that would have significant impacts even with mitigation measures. (*Federation of Hillside & Canyon I, supra*, 83 Cal.App.4th at

1257.) The EIR for the Framework Element found that transportation impacts would be reduced due to the inclusion of a proposed “Transportation Improvement Mitigation Plan” (TIMP). (*Ibid.*)

A community association called the Federation of Hillside and Canyon Associations challenged the adoption of the final EIR and approval of the General Plan Framework Element. The Court of Appeal found “that there was no substantial evidence to support the city's finding that transportation impacts would be mitigated because the city had acknowledged that funding for the TIMP was highly uncertain and made no provision to ensure that the TIMP would actually be implemented.” (*Federation of Hillside and Canyon II, supra* 126 Cal.App.4<sup>th</sup> at 1191.) In response to the Court of Appeal’s decision, the City amended the Framework Element in August 2001. (*Id.*, at 1192.) It adopted a statement of overriding considerations and made a finding that all feasible mitigation measures had been adopted. (AA 3:10:381 et seq.) Among those mitigation measures was the requirement to prepare Annual Reports which would consolidate current and historical data, forecast future trends, and determine if any infrastructure element was threatened with overload. The City would then increase infrastructure capacity or put building controls in place to prevent that overload. (AA 4:10:437 [stating fundamental premise of community plan is monitoring population through “the City’s Annual Report on Growth and Infrastructure”]; see also at AA 4:10:424 and 4:10:427.)

The City adopted as General Plan Framework Policy 3.3.2 the following measure:

Monitor population, development, and infrastructure and service capacities within the City and each community plan area. . . . The results of this monitoring effort will be annually reported to the City Council and *shall be used* in part as a basis

to . . . . Consider regulating the type, location, and /or timing of development.

(AA 2:10:158, emphasis added.) The Court of Appeal in *Federation of Hillside and Canyon Associations I, supra*, 83 Cal.App.4<sup>th</sup> 1252 quoted a portion this policy. (*Id.* at p. 1255.)

The infrastructure mitigation measure embodied in Policy 3.3.2 of the Framework Element correlated allowable growth with available or planned infrastructure through Annual Reports. This correlation was described by the City in its General Plan Framework EIR and was relied upon throughout as a mitigation measure. For example, the Framework Element mitigation measure relating to fire and emergency medical services states:

*Mitigation through Framework Policy 3.3.2 directs monitoring of infrastructure and public service capacities to determine need within each CPA [Community Plan Area] for improvements based upon planning standards. This policy also directs determinations of the level of growth that should correlate with the level of capital, facility, or service improvement that are necessary to accommodate that level of growth. In addition, the policy directs the establishment of programs for infrastructure and public service improvements to accommodate development in areas the General Plan Framework targets for growth. Lastly, the policy requires that type, amount, and location of development be correlated with the provision of adequate supporting infrastructure and services.*

(Respondents' Certified CEQA Administrative Record (hereinafter "SAU"), page 866, emphasis added.) Other types of City services relied on similar explanations of how sufficient capacity would be ensured. (SAU 873[Police]; SAU 883[Schools].) The General Plan Framework Element's reporting and mitigation requirement, contained in Policy 3.3.2, is thus relied upon throughout the General Plan Framework Element EIR.

## **2. Contents of the Framework Element.**

The Framework Element “establish[es] policies to best accommodate [the City’s] growth when and if it should occur” and “provides a means for accommodating new population and employment in a manner which enhances rather than degrades the environment.” (AA 2:10:120 and 119.) To this end, the Framework Element includes proposed operational and physical improvements to traffic systems and infrastructure; policies to encourage the use of public transit and reduce vehicle trips; and other measures to reduce traffic congestion and improve accessibility. (AA 2:10:123-125.)

In order to determine whether City infrastructure and services (such as fire and paramedic services, police, wastewater treatment, water supply and transportation infrastructure) meet the City’s current and future population growth’s needs (and thus whether and how development should be approved), the Framework Element requires the City to analyze: (1) population projections provided by Southern California Association of Governments (“SCAG”); and (2) the City’s own actual monitoring of the City’s population growth, infrastructure and services to gauge the appropriateness of the estimates. (AA 2:10:120.) The City is then to provide for modification of infrastructure resources over time, so actual growth can be accommodated when and if shortfalls should occur. (AA 2:10:120-121.) The Framework Element required the linkage between future growth and infrastructure capacity through the implementation of a monitoring program that provides information regarding actual demand and service levels in order to guide public decisions regarding infrastructure and service investments. (AA 2:10:236.)

The General Plan Framework EIR stated:

Given the limited surplus of funds, it is unlikely that fire services could be expanded to the levels identified in this analysis. Furthermore, if economic conditions do not result in full utilization of commercial and industrial designated areas, there may be insufficient revenue to maintain, let alone expand, fire services to serve the buildout population.

*However, because the Framework Plan contains Policy 3.3.2 which considers monitoring the type and location of development and population the negative fiscal effects of the Framework Plan could be minimized.*

(SAU 866, emphasis added.) The infrastructure mitigation embodied by Policy 3.3.2 and informed by the Annual Report is thus woven into the fabric of the General Plan.

The infrastructure impact mitigation mechanism is described in one of the City's community plans as follows:

...if this monitoring finds that population in the Plan area is occurring faster than projected; and, that infrastructure resource capacities are threatened, particularly critical ones such as water and sewerage; and, that there is not a clear commitment to at least begin the necessary improvements within twelve months; then building controls should be put into effect, for all or portions of the West Los Angeles Community, until land use designations for the Community Plan and corresponding zoning are revised to limit development.

(AA 4:10:440; see also AA 4:10:427 [San Pedro].)

The Annual Report is the essential document that allows for infrastructure impacts to be monitored and mitigated. The Annual Report is to be based on infrastructure and growth monitoring, combined with trigger levels and budget forecasts for determining when infrastructure and the City's ability to fund needed improvements to the infrastructure are threatened. The City described Annual Reports as containing:

the information that is essential in shaping growth in a manner that can mitigate its [the General Plan growth] impacts, minimize development costs, conserve natural resources, and enhance the quality of life in the City.

(AA 2:10:133.)

The implementation of infrastructure mitigation through the information provided in the Annual Report is critical to the preservation of the environment and the assurance that public services, including emergency firefighting and police services, are available to the residents of the City. The City relied on the infrastructure mitigation to specifically mitigate possible impacts on police and firefighting services. (SAU 866 and 873.)

The City underscored the mandatory nature of its obligation to prepare and use Annual Reports when it responded to a comment made during the DEIR process which questioned the commitment of the City in implementing mitigation measures for growth. In response to the question, the City revised the EIR to state:

*The Mitigation Measures defined by this EIR in many instances encompass the policies contained in the proposed General Plan Framework. This fulfills the legislative intent for general plans and the CEQA process stipulating that ‘mitigation measures developed through the environmental review process can and should serve as the basis for policies and implementation measures.’ The inclusion of policies as environmental mitigation measures acknowledge the role that has been defined by the State specifying that a general plan's policies represent a ‘clear commitment of the local legislative body for implementation.’ For these reasons, the policies defined as mitigation measures are assumed by the DEIR to be fully implemented.*

(SAU 154, emphasis added.)

The use of the mandatory language throughout the Framework Element to require preparation and use of Annual Reports is consistent with the City’s “clear commitment” to implementing policies to mitigate growth impacts identified in its response above.



**3. The Requirement to Prepare An Annual Report on Growth and Infrastructure Was Part of the Mechanism to Mitigate the Cumulative Effects of Growth in the City.**

The Framework Element provides a system whereby the City is supposed to monitor population and employment growth and the effects on transportation and infrastructure, prepare Annual Reports of the results of that monitoring and the analysis of it, and then respond appropriately to the reported information. The Framework Element requires the City to systematically monitor its actual population growth; the sufficiency of City infrastructure and services; and to periodically report the data collected as a result of the monitoring. (AA 2:10:120-121; 125; 3:10:275.) The data and analysis is to be reported to the City’s decisionmakers, including the City Council, for the express purpose of informing all development decisions within the City specifically whether infrastructure capacity must be increased or development controls must be implemented. (*Ibid.*) The consolidated reporting, analysis, mitigation monitoring, and determination of required actions to prevent infrastructure overload is intended to be available to the general public, the City’s commissions, and the City’s Neighborhood Councils, among others. The Framework Element directed that “*The information from such a monitoring system will be presented to the City Council in the form of an Annual Report on Growth and Infrastructure.*” (AA 2:10:140, emphasis added.)

Chapter 10 of the Framework Element includes programs for implementing the goals of the Framework Element. (AA 2:10:258.) It identifies thirteen of the sixty programs as “principal programs that are essential in carrying out the policy direction of the Framework Element.” Program 43, requiring an Annual Report, is identified as one of the essential

programs. (AA2:10: 258-259.) The Framework Element's Program 43 requires the City to:

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

(AA 3:10:275, emphasis added.) The Annual Report in the Framework Element is described in the statement of overriding considerations for the City's adoption of the General Plan Framework as follows:

The Framework Element includes an on-going monitoring program to update the demographic forecasts that underpin the plan and its Environmental Impact Report [EIR]. The monitoring system will result in the issuance of an Annual Report on Growth and Infrastructure which will be used to modify plan and EIR assumptions and serve as the basis for evaluating the effectiveness of the Framework Element's objectives, policies, programs and mitigation measures.

(SAU 90.)

**4. Partial Annual Growth and Infrastructure Reporting Began in 1996 But Ended in 2000.**

Three times after its 1996 adoption of the Framework Element, the City prepared a document titled the "Annual Growth and Infrastructure Report" in an attempt to fulfill the requirements of the Framework Element. The record contains copies of the Annual Reports that were done in the years 1996, 1998, and 2000. (AA 4:10:446- 556, 4:10:557-5:10:718, 5:10:719-6:10:878.) Each of these Annual Reports contained a similar

table of contents, and various data and projections for the years covered. These Annual Reports had some consolidated data but entirely failed to make assessments on whether any infrastructure element was threatened with overload or even to establish criteria for determining if a threat existed. As such, they might be used to see existing conditions, but they did not contain the analysis necessary to use the reports to identify trends or to implement their stated purpose of linking development with the provision of adequate infrastructure.

On or about April 20, 2000, the City prepared its third and last, “Annual Report on Growth and Infrastructure.” (AA5:10:719.) The 2000 Report stated:

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

(AA 5:10:720, emphasis added.)

The executive summary of the 2000 Report states, “The preparation of this report *fulfills a requirement* of the General Plan Framework Element to monitor growth and to report on the adequacy of supporting public services and infrastructure.” (AA 5:10:722, emphasis added.) Despite the stated commitment to provide necessary reports to the City Council and to the public, and notwithstanding acknowledgement of this legal requirement, City planning staff decided in April 2000 to not prepare Annual Reports in subsequent years. (AA 14:26: 1946 [Howe Decl., ¶ 8].) Not coincidentally the two City planners that had previously worked on preparing the Annual Reports were reassigned. (*Id.* at ¶ 5.)

On November 2, 2007, in connection with the review of a proposed development project, the Miracle Mile Residents Association attempted to gain a better understanding of the project's potential impacts by reviewing the Annual Reports that would address the area around the development. However, upon discovering the Reports were not done, the Association asked that the City complete the required reports. (AA 3:10:282-284.) Tract No. 7260 Association, Inc., representing an area containing over 1000 homes, also asked the City to "complete this critical analysis of the state of our infrastructure." (AA 3:10:285.) There is no record evidence the City ever responded to either of these letters.

**B. Trial Court Proceedings.**

When the City did not respond to repeated requests to prepare an Annual Report, community members were left with no choice but to seek judicial relief. Petitioners Lucille Saunders, the La Brea-Willoughby Coalition, and others ("Saunders Petitioners") filed a petition for writ of mandate on June 20, 2008. Fix the City filed a petition for writ of mandate on November 12, 2008. Both petitions sought an order compelling the City to prepare and use the Annual Reports, as mandated by the Framework Element of the General Plan. Notices of related cases were filed, and the cases were consolidated on February 19, 2009. On October 9, 2009, the Saunders Petitioners (but not Fix The City) amended their petition to include a cause of action alleging that the City's failure to prepare the Annual Reports violated the California Environmental Quality Act (CEQA).

During briefing, the City submitted declarations from its Planning Department staff or former staff members that sought to show the City complied with the Annual Report requirement through posting information on a website. (AA 14:26:1946 [Howe Decl., ¶ 6].) Briefing was completed in September 2010. A month after completion of briefing and less than two weeks before the trial court hearing, the City on October 19, 2010 filed the

Declaration of Naomi Guth with a Request for Judicial Notice of 59 city websites purporting to provide information that would otherwise be included in an Annual Report. (AA 15:37:2132-2143.) The summary attached to Ms. Guth's declaration states that she compiled the summary based on her research related to the City's compliance with the Framework Element. (AA 15:37:2132-2133.) Her research included interviewing City personnel and reviewing documents, as well as reviewing websites listed in her summary. (*Ibid.*) There is no evidence that any websites named in the Guth declaration contained a document entitled "Annual Report on Growth and Infrastructure." Many of the websites cited in the Guth Declaration belonged to non-City entities. Fix the City and the Saunders Petitioners objected to the Guth declaration as inadmissible. (AA 15:39:2154-2155.)

A hearing was held on November 3, 2010 in Los Angeles Superior Court. The trial court denied the petition for writ of mandate, declaratory relief, and injunctive relief, holding the Framework Element did "not impose any mandatory duties," and even if it did, that the "City substantially complied" with the Framework Element's requirements through its website. (AA 15:40:2161.)

Fix the City made it clear that Fix The City was not seeking an injunction on development in the City, but merely sought implementation of a required reporting, monitoring and mitigation system as specified by the City's Framework Element. (15:34:2103.) In fact, it is Fix The City's position that no one can fully know what needs to be done as no monitoring, consolidation, analysis and reporting has been completed. Regardless, the trial court deemed injunctive relief unwieldy because "the court cannot simply stop all development in the City and it certainly does not have the time nor the expertise to review each proposed amendment to land use regulations..." (AA 15:40:2162.) The Judgment was filed on March 2, 2011 and was timely appealed.

#### IV. STANDARD OF REVIEW

Traditional mandamus pursuant to Code of Civil Procedure section 1085 is the proper remedy to compel a city to perform its mandatory duties. (*Los Angeles County Professional Peace Officers' Ass'n v. County of Los Angeles* (2004) 115 Cal.App.4th 866, 869.)

Because the instant case involves the Framework Element of the General Plan, the following principles of general plan law are relevant. A general plan is the “constitution for future development.” (*DeVita v. Napa* (1995) 9 Cal.4th 763, 773.) Since all land use approvals must be consistent with the general plan, it has “the force of law.” (*deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1213.) Therefore, Fix the City agrees with the City’s statement of the standard of review at trial:

The resolution of this case revolves around the interpretation of the language of the Framework Element. The interpretation of a general plan is a question of law. In construing the Framework Element, the court’s primary task is to ascertain the intent of the City Council so as to effectuate the purpose of the law.

(AA 14:25:1909, ll. 8-10.)

The first step in determining the intent of the legislative body is an examination of the words of the statute itself, giving those words their ordinary meaning. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal. 4<sup>th</sup> 593, 601.) If words of the ordinance are clear and unambiguous, no further judicial construction is required to determine legislative intent and the plain meaning of the ordinance governs. (*In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214.)

Only if the legislative requirement is ambiguous does a reviewing court look to the canons of statutory interpretation for guidance. (*Copley*

*Press, Inc. v. Superior Court* (2006) 39 Cal. 4<sup>th</sup> 1272, 1291.) As explained recently:

We do not construe statutes in isolation, but rather read each statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain its effectiveness.... [W]e will choose the construction that comports most closely with the Legislature's apparent intent, and endeavor to promote rather than defeat the statute's general purpose, and avoid a construction that would lead to absurd consequences.

(*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4<sup>th</sup> 425, 440.) Courts thus must interpret a statutory provision so as to harmonize with the statutory scheme of which it forms a part. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4<sup>th</sup> 1139, 1153.)

## ARGUMENT

### V. THE CITY MUST PREPARE AND IMPLEMENT ANNUAL GROWTH AND INFRASTRUCTURE REPORTING TO PROVIDE ORDERLY GROWTH AND SUFFICIENT INFRASTRUCTURE.

#### A. The General Plan Framework Element Mandates Preparation and Review of Annual Reports.

The City has a mandatory duty to prepare Annual Reports because the Framework Element directs that the City “shall” prepare them, and that the Annual Reports “shall” include various types of information. (AA 2:10:136 and 275.) The Government Code states “‘Shall’ means mandatory.” (Gov. Code. § 14.) Specifically in the context of interpreting a general plan, “The word ‘shall’ is to be construed as mandatory in this context.” (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 348.)

The City’s General Plan Framework Element requires the City to prepare an Annual Report that “*shall* include information such as population estimates and an inventory of new development” and that “*shall*

be documented by relevant geographic boundaries.” (AA 2:10:275, emphasis added.) The requirements for preparation and review of an Annual Report are thus mandatory. (AA 2:10:136 [“Planning shall annually review . . . [A]nnual review shall be reported to the City Planning Commission, the City Council, and the Mayor through the Annual Report on Growth and Infrastructure”; “ This report shall recommend which citywide element or community plan should be updated and why.”])

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

As in the *Rancho Murieta* case, the clear mandatory language in the Framework Element for preparation of Annual Reports imposes a duty on the City that must be performed. Furthermore, in the context of the Annual



Reports representing an adopted mitigation measure, the preparation and use of the Annual Report must be mandatory. Even absent the clear use of the mandatory word “shall” throughout the General Plan, as discussed below, inclusion of the Annual Reports as a mitigation measure for growth impacts associated with the Framework Element requires that their preparation is a mandatory duty.

**B. The General Plan Framework Element Has the Force of Law.**

“We have recognized that a wide variety of factors may illuminate the legislative design, such as context, the object in view, the evils to be remedied, the history of the time and of legislation upon the same subject, public policy and contemporaneous construction.” (*Walters v. Weed* (1988) 45 Cal.3d 1, 10, internal citations omitted.)

Although the mandatory language of the Framework Element is clear, the City argued at trial that it has discretion not to prepare Annual Reports because the Framework Element is an optional element of the general plan. Even though the City was not required to adopt a Framework Element, once it was adopted as part of the City’s General Plan, it attained the force of law. “Once an optional element has been adopted, it becomes a full-fledged part of the general plan, with the same legal force and effect as the mandatory elements.” (Curtin’s Land Use, 24<sup>th</sup> Edition, Solano Press, 2004, p. 18.) All elements, mandatory and optional, have equal legal status and no element may be made subordinate to another. (*Sierra Club v. Board of Sup.* (1981) 126 Cal.App.3d 698, 708.)

An examination of the context, purpose, history, and contemporaneous interpretation of the Annual Report requirement reinforces the conclusion that the preparation and use of such reports was intended to be mandatory because they were a crucial part of an

overarching system of mitigation of growth impacts and they are relied on by numerous other elements of the General Plan.

Thus the Framework Element is not simply a superfluous guidance document that may be dispensed with as the City argues. Instead, it is fundamental to the City's General Plan process, including its development of "dramatic new measures" to mitigate anticipated growth that would otherwise "severely impair transportation and accessibility." (*Federation of Hillside and Canyon I, supra*, 83 Cal.App.4th at 1255.)

### **C. Mitigation Measures for Significant Impacts Must Be Implemented.**

The Annual Report mechanism is part of a system for controlling growth impacts associated with the General Plan that the City acknowledged would be significant. As part of a mitigation measure embedded in a General Plan policy, it is mandatory that the Annual Report requirement be implemented. A mitigation measure, once adopted, must be enforceable. (Pub. Resources Code § 21081.6 subd. (b) ["A public agency shall provide the measures to mitigate or avoid significant effects on the environment are fully enforceable. . . ."]; *Federation of Hillside & Canyon II, supra*, 126 Cal.App.4th at 1198.) As stated by the Court of Appeal:

Mitigating conditions are not mere expressions of hope. Section 21002.1, subdivision (b) states: "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so. . . . The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded."

(*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508 (*Lincoln Place* ).) Mitigation measures also must

be monitored after they have been implemented. (Pub. Resources Code § 21081.6 subd. (a)(1).)

In *Lincoln Place, supra*, 130 Cal.App.4th 1491, the owners of an apartment complex built in 1951 sought to demolish the apartments and replace them with new structures. (*Id.* at p. 1495.) However, the Court of Appeal held the City had imposed mitigation measures on the project that had not been completed. Before the owners could proceed with the project, the mitigation measures had to be completed. The Court concluded “Having placed these conditions on the demolition segment of the redevelopment project, the city cannot simply ignore them.” (*Lincoln Place, supra*, 130 Cal.App.4th at 1508.)

The duty to comply with CEQA mitigation measures, particularly the requirement for the City to prepare and use Annual Reports, is a continuing duty because it has been specifically found to be a feasible mitigation measure and adopted in the City’s General Plan by the City Council. There is no evidence that the City Council determined preparation of the Annual Reports is somehow infeasible. The City Council did not determine that annual reporting should be curtailed or that its role in reducing growth impacts was no longer necessary or feasible.

Rather, the determination to discontinue Annual Reports was made by a staff member in the Planning Department. As such, his unilateral interpretation of the Framework Element’s requirement is not entitled to deference. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 24 [staff member determination “without public input” is not entitled to as much deference as formal action “after a notice and comment period”].) When a comment was made expressing concern that certain policies used as mitigation measures might not be enforceable, the City reinforced their status as enforceable mitigation measures. (SAU 154 [“the policies defined as mitigation measures are assumed by the DEIR to be fully implemented.”]) Therefore, the City may not now claim they are optional measures that need not be enforced.

**D. The Annual Report is An Essential Part of the System Imposed to Mitigate the Impacts of Growth.**

**1. The Annual Report Requirement Was Adopted as Part of a Mandatory Mitigation Measure for Growth Impacts.**

The legislative intent must be effectuated in interpreting a statute. (*People v. Woodhead* (1987) 43 Cal. 3d 1002, 1010.) The City Council's intent in adopting the Annual Report component of the General Plan Framework was to make it mandatory and enforceable as a mitigation measure for anticipated future growth. In *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, the court stated that "without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of downtown development." (*Id.* at p. 77.) Without such control, "piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment." (*Ibid.*) To avoid the type of chaotic outcome anticipated in *San Franciscans*, the City included a requirement for preparation and use of Annual Reports in its General Plan Framework Element. The manner in which the City integrated the Annual Report requirement in its mitigation monitoring and reporting program, relied upon it as a mitigation measure, included it in its statement of overriding considerations, and relied upon it during litigation over its General Plan Framework confirm that it was the clear intent of the City to establish the duty to prepare the Annual Report as a mandatory rather than discretionary duty.

**a. The Annual Report is Mandatory Because it is One of Two Components of the City’s Mitigation Monitoring and Reporting Program for the Framework Element.**

The mitigation monitoring plan adopted by the City for its approval of the Framework Element pursuant to Public Resources Code section 21081.6 consisted of two components: the “Annual Report on Growth and Infrastructure” and the “Annual Report on Status of the General Plan Implementation Programs.” (AA 3:10:357.)

The monitoring program would confirm the accuracy of future growth estimates and document what has actually happened with respect to the distribution of that population growth across the City, focusing on the availability of public infrastructure and services. (AA 2:10:140; 3:10:275). This information would be used to determine infrastructure funding needs and provide a basis for the management of growth. (AA 3:10:378.) Because the “Annual Report on Growth and Infrastructure” was adopted as part of the City’s mitigation monitoring and reporting program, its performance is mandatory.

**b. The FEIR for the Framework Element Shows the Annual Growth and Infrastructure Report is Part of a System Adopted as a Mitigation Measure.**

The Framework Element requires the City to annually assess each community plan area’s ability to accommodate growth and to scale-back growth if infrastructure is insufficient. (AA 3:10: 399 [“requires the City to correlate the type, amount, and location of development with the provision of adequate supporting infrastructure and public services”].) The Final EIR for the Framework Element explained the Framework Element’s dual role as a key aspect of the General Plan element and as a CEQA mitigation measure. (SAU 154.) The City affirmed that it made a “strong

commitment to implementation of the reporting and mitigation mechanisms of the General Plan Framework.” (SAU 154.)

**c. The Statement of Overriding Considerations and Findings Show Preparation of the Annual Reports Is Mandatory.**

The findings and statement of overriding considerations adopted for the approval of the Framework Element states that the Annual Report is to “be used to modify plan and EIR assumptions and serve as the basis for evaluating the effectiveness of the Framework Element’s objectives, policies, programs, and mitigation measures.” (AA 3:10:385.) The City later argued in court that the analysis contained in Annual Report is a “triggering mechanism to tie infrastructure to new development.” (AA 3:10:322, ln. 26.) The Framework Element EIR, findings, and statement of overriding consideration describe ways in which the reporting and mitigation mechanism serve as CEQA mitigation for continued growth in the City. Under the heading, “Police,” the Statement of Overriding Consideration states, “the Framework element includes a policy that requires the City to correlate the type, amount, and location of development with the provision of adequate supporting infrastructure and public services.” (AA 3:10:399.) The Final EIR’s response to comments specify this “policy” as Policy 3.3.2. (SAU 866, 873, 883.) With regard to air quality, the EIR notes, “General Plan Framework policies . . . also serve as air quality mitigation” (AA 3:10:390.)

**d. Litigation Over the Framework Element Confirms the City Viewed Preparation of the Annual Reports as a Critical and Enforceable Mitigation Measure.**

Further confirmation of the reporting and mitigation mechanism’s purpose as a CEQA mitigation measure that it had committed to implement

is contained in the court's decision in *Federation of Hillside and Canyon Associations II, supra*, 126 Cal.App.4<sup>th</sup> 1180, in which the court rejected the Federation's CEQA challenge to the General Plan, finding that the adoption of the Framework Element and its specific policies provided adequate mitigation under CEQA for the General Plan's foreseeable environmental impacts. During this litigation, the City touted the Framework Element's inclusion of annual reporting by stating:

What became clear was that a crucial feature of dealing with growth impacts was contained in the GPF [General Plan Framework] – its program for timing allowable development with available infrastructure and frequent updating of its data along with a formal monitoring program. For this reason, the City concluded that the GPF was the environmentally desirable alternative, because it had the best combination of land use policies tied to mitigation measures *tied to annual reporting*.

(AA 3:10:323, emphasis added.) Thus, the City clarified its legislative intent and underscored the importance of its commitment to preparing the mandatory Annual Reports as a “crucial feature” of its system for dealing with growth impacts.

**2. The Annual Growth and Infrastructure Reports are Relied Upon By Various Sections of the City's General Plan.**

The legal framework surrounding an enactment is relevant to interpreting its provisions. (*Lincoln Place Tenants Assn. v. City of Los Angeles v. City of Los Angeles* (2007) 155 Cal.App.4<sup>th</sup> 425, 440.) In this case, the extensive reliance of other portions of the General Plan on the Framework Element's mandate for Annual Growth and Infrastructure reporting shows the provision was intended as a mandatory part of the overall General Plan mitigation scheme.

If Annual Reports were not prepared, then other sections of the General Plan which rely on the Annual Report for mitigation would be impermissibly relying on an illusory, contingent mitigation measure.

The Framework Element's reporting and mitigation mechanism is relied upon in the City's community plans. For example, the San Pedro Community Plan states as one of its three "fundamental premises" that there would be "monitoring of population growth and infrastructure improvements through the City's Annual Report on Growth and Infrastructure." (AA 4:10:427; *see also* 4:10:440 [West Los Angeles Community Plan].)

The Central City Community Plan states, "the Plan has a land use capacity greater than the projected development likely to occur during the Plan period. During the life of the plan, growth will be monitored and reported in the City's Annual Report on Growth and Infrastructure which will be submitted to the City Planning Commission, Mayor, and City Council." (AA 4:10:437.) Other community plans have similar language. (e.g, AA 4:10:424 [West Adams-Baldwin Hills-Leimert Community Plan]; AA 4:10:438 [West Los Angeles Community Plan].)

Various community plans rely on a program to "Utilize the City's 'Annual Growth Report' to monitor locations for growth and potential new school sites." (AA 4:10:430 [San Pedro]; AA 4:10:432 [South Central]; AA 4:10:435 [Southeast Los Angeles]; AA 4:10:442 [West Los Angeles].)

The reliance of numerous elements of the City's General Plan on the Annual Report shows that the inclusion of this requirement in the Framework Element is essential and that its preparation and use is mandatory. Without preparation of an Annual Report, the various provisions of community plans that rely on them are rendered meaningless, thus undercutting their ability to control the impacts of growth and development within the community plan areas.



3. **Annual Reports are Necessary For Numerous Purposes Including Policy Revision and Incentive Analysis.**

Annual Reports are required to fulfill many purposes that are not limited to ascertaining if growth was occurring faster than predicted. As stated within the Framework Element itself, other purposes of these reports include recommending “which citywide element or community plan should be updated and why” (AA 2:10:136); being “used as the basis for revision of policies as needed to meet the goals of the Framework Element” (AA 2:10:140); determining the “status of environmental mitigation requirements” so “policies can be changed if desired results are not being obtained” (AA 2:10:140) and evaluating “whether the incentives that are linked to targeted growth areas are working effectively with market forces to attract new development” (AA 8:12:1152). A court evaluating a challenge to the City’s approval of the EIR for the general plan stated “The GPF [General Plan Framework] stated that the city would . . . monitor growth and its effects on infrastructure and service capacities annually in order to ‘consider regulating’ development if the infrastructure remains inadequate (Policy 3.3.2(d)).” (*Federation of Hillside and Canyon Associations I, supra*, 83 Cal.App.4th at 1255.) These many purposes of these reports extend far beyond merely ascertaining if growth is outstripping infrastructure, since they also address analyzing *how and where* growth is occurring for long range planning purposes some of which are unrelated to infrastructure, such as affordable housing policies. As the West L.A. Community Plan (and many others) indicate, the City is to rely on the Annual Report to decide if building controls should be put into effect. The Annual Report, as is demonstrated by the various community

plans which reference it, is to provide the City with two options for maintaining its infrastructure. They state that if “infrastructure resource capacities are threatened “and “that there is not a clear commitment to at least begin the necessary improvements within twelve months. . . then building controls should be put into effect.” (AA 4:10:440; see also AA 4:10:427.) The Annual Report is essential to the system of checks and balances intended to prevent growth from outstripping infrastructure in the City of Los Angeles and to ensure that growth is occurring in the places and in the ways that the City plans. Absent a report that provides the ability to determine if an infrastructure element is threatened and then to determine if funding exists to increase capacity, the City is unable to reduce growth or increase infrastructure as necessary.

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

Annual Reports present growth and infrastructure information to the public in a clear and readable format that represents consolidated data, analysis, and monitoring of past actions taken to mitigate the impacts of growth. Additionally, even if information such as raw data about housing is available, Annual Reports are required to provide an analysis of that raw information as it relates to the City’s policies regarding growth and its infrastructure capacity. A fundamental purpose of the Annual Report is to collect information and present it in a single document with analysis and trend lines that decisionmakers and the public can use to determine if an infrastructure element is threatened with overload. The report must also provide analysis as to whether the City can make a “clear commitment” to “begin the necessary improvements within twelve months.” (AA 4:10:440.) Only after that analysis is complete can determinations on proposed development be considered.

The City claimed at trial that it could rely upon the availability of some information on various City department websites to obviate the need for Annual Reports. (AA 14:25:1914.) However, this claim is similar to the one rejected by the court in *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4<sup>th</sup> 777. In *Endangered Habitats League*, the court rejected the County of Orange's claims that it should be able to substitute a different means for measuring traffic levels from the method specifically required in its general plan. (*Id.* at p. 783.) The County's general plan required it to analyze new project's traffic impacts according to the methods described in the Highway Capacity Manual (HCM). Because the County instead measured the traffic impacts under the volume/capacity (V/C) ratio, the Court required the approval of the project be set aside, stating:

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

(*Id.* at p. 783.) In the same way the County's effort to comply by using an alternative traffic analysis method was of "no import" in *Endangered Habitats League*, in the present case, it does not matter that the City posts pieces of information in various places among its various departments' websites. Rather, the Framework Element mandates that an Annual Report be prepared and used. The City has failed to do so since 2000.

**E. The City Does Not Have Discretion to Dispense with Annual Reports.**

At trial, the City argued, and the court below agreed, that it had discretion to eliminate preparation of the Annual Reports without changing the General Plan Framework. The City relied on the portion of the

Framework Element which states “Program implementation is contingent on the availability of adequate funding. . . . detailed work scope of programs may be changed without requesting amendments to the General Plan Framework Element.” (AA 3:10:258.) While the City has considerable discretion over *how* to prepare Annual Reports within the constraints of its budget, in view of the mandatory language directing their preparation and the importance of them as part of the City’s growth mitigation system, the City may not dispense with their preparation and implementation altogether. The meaning of a statute must be interpreted with reference to the context of the statutory scheme of which it is a part. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4<sup>th</sup> 1139, 1153.) If based upon budgetary constraints the City could reject performance of any measure in the General Plan Framework Element as non-mandatory, none of its provisions would be binding on the City.

A public agency may not fail to perform a mandatory duty based upon budgetary shortfalls. (*Scott v. Common Council of San Bernardino* (1996) 44 Cal.App.4<sup>th</sup> 684, 697 (“*Scott*”).) In *Scott*, the City of San Bernardino’s charter required the city attorney to prosecute certain legal violations. (*Id.* at p. 686.) After encountering financial difficulty, the city council passed a budget that eliminated the city attorney’s only investigatory positions. (*Ibid.*) In response, a citizens group filed a petition for writ of mandate, alleging the city council breached its legal obligation to ensure that the city attorney can carry out his charter-mandated functions when it eliminated funding for these positions. (*Id.* at p. 687.) The trial court granted the writ and the Court of Appeal affirmed. The Court held that, even in the face of “unprecedented restriction of funds,” the city “cannot act in excess of its authority by first eliminating mandatory government functions” before “eliminating functions not mandated in the City Charter.” (*Id.* at p. 697.)

The court in *Redwood Coast Watersheds Alliance v. State Board of Forestry and Fire Protection* (1999) 70 Cal.App.4<sup>th</sup> 962, affirmed a trial court decision that a state board had a “mandatory or ministerial duty to adopt MSP [maximum sustained production] regulations, while it has a discretionary duty to determine the content of the regulations as long as the content is consistent with the objectives of the FPA.” (*Id.* at p. 970.) The court stated

The board does not have a choice whether to adopt such regulations: the FPA [Forest Practices Act] unqualifiedly requires it to adopt them. ‘To the extent that its performance is unqualifiedly required, it is not discretionary, even though the manner of its performance may be discretionary.’

(*Id.* at p. 970, quoting *Ham v. County of Los Angeles* (1920) 46 Cal.App.148, 162.)

In the same way the public agency had a mandatory duty to adopt regulations in *Redwood Coast Watersheds Alliance*, but discretion with regard to the content of those regulations, the City has a mandatory duty to prepare and use Annual Reports, though it has discretion to determine the content and method of delivery of those Annual Reports, so long as the content is consistent with the objectives of the Framework Element to provide usable information “*to the City Council and pertinent service departments and agencies.*” (AA 2:10:133, emphasis added.)

The commitment to carrying out the mitigation and monitoring programs made in the City’s findings supporting its statement of overriding considerations did not make implementation of those mitigation measures conditional on funding availability. Instead, the final EIR proposed, and the City adopted, findings that the Framework Element contains policies and programs to ensure that sufficient infrastructure, such as Wastewater capacity, would be available to accommodate future growth. (AA 3:10: 395 [“The Framework Element includes policies and programs . . . which

ensure that the demand for wastewater treatment can be met.”]) The findings and overriding considerations stated:

The monitoring system will result in the issuance of an Annual Report on Growth and Infrastructure which will be used to modify plan and EIR assumptions and serve as the basis for evaluating the effectiveness of the Framework Element’s objectives, policies, programs, and mitigation measures.

(AA 3:10: 385.) As these findings did not state that such policies and programs were contingent on the availability of adequate funding, nor did the findings contemplate the cessation of the programs, they were mandatory without regard to availability of funding.

**F. The City Interpreted its Duty to Prepare Annual Growth and Infrastructure Reports as Mandatory When Prior Annual Reports Were Prepared Contemporaneously With the Framework Element’s Adoption.**

Whether a particular interpretation of a legal requirement was contemporaneous with the enactment of the statute being interpreted is a factor used in weighing the interpretation. (*Yamaha, supra*, 19 Cal.4th. at p. 13.) In this case, each of the three times the City prepared an Annual Report shortly after the Framework Element was adopted, it stated either that it “fulfills a requirement” of the General Plan (AA 5:10:722 and 4:10:560) or was “undertaken in compliance” with the General Plan (AA 4:10:562). The executive summary of the 2000 Report, written by Con Howe, states, “The preparation of this report fulfills a requirement of the General Plan Framework Element to monitor growth and to report on the adequacy of supporting public services and infrastructure.” (AA 5:10:722.) The two prior Annual Reports made similar statements. (AA 4:10:560 [“this report fulfills a requirement of the General Plan Framework Element”]; AA 4:10:450 [“This effort is undertaken in compliance with the [CEQA] mitigation monitoring requirements. . . The Framework Element .

. . . commits the Department of City Planning to . . . prepare an annual report on growth and infrastructure for public officials”].) The City’s first three interpretations (AA 5:10:722, 4:10:550 and 4:10:450) of the Annual Report requirement as a mandatory mitigation measure are entitled to great weight, since they are the interpretations the City reached immediately after the Framework Element was passed, and thus are more in tune with the purposes of the City Council in its adoption. Thus, under the principle of attaching weight to contemporaneous implementation set forth in *Yamaha, supra*, 19 Cal.4th at 13, the City’s interpretation of the requirement as mandatory is entitled to great weight.

The later, contrary interpretation apparent in the declaration of Con Howe submitted during the present litigation that the Framework was not intended as a mandatory mitigation measure (AA, 14:26:1947 [Howe Decl., ¶ 9) is not entitled to great weight. Howe’s declaration was submitted with a request for judicial notice and is thus a litigation position of the City that is entitled to less regard than contemporaneous statements included in the Annual Reports that were prepared until 2000. In *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, the Supreme Court found that such litigating positions are not entitled to as great a level of deference as administrative rulings that were “embodied in any formal regulation” or interpretations. (*Id.* at p. 92.)

**G. The City Council Did Not Rescind the Annual Report Mitigation Measure Requirement.**

At trial, the City argued that the City Council, Mayor, and City Planning Commission were notified that the data previously contained in the Annual Reports would now be contained only on City websites. Because there was no feedback, the City argued this constituted silent consent to those changes. (AA 14:25:1914.) However, the City Council

did not revoke the mandatory Framework Element requirement for Annual Reports. Howe's declaration establishes that he unilaterally decided to discontinue preparing any type of Annual Reports, without public review or comment, or affirmative City Council approval, by reassigning the two City planners who had previously worked on preparing the Annual Reports. (AA, 14:26:1946 [Howe Decl., ¶ 5.]

Among the relevant factors to consider in reviewing the reasonableness of an administrative interpretation such as Howe's decision to discontinue Annual Reports is whether it is " 'contained in a regulation adopted after public notice and comment [rather than one] contained in an advice letter prepared by a single staff member' "; whether the interpretation is long-standing and has been consistently maintained; and whether the interpretation was contemporaneous with the legislative enactment of the statute being interpreted. (*Yamaha, supra*, 19 Cal.4th. at 13.) In this case, Howe's interpretation was made by a single staff member without public notice and comment on the discontinuance of Annual Reports. His interpretation of Annual Reports as fulfilling "a requirement" of the Framework Element was relatively contemporaneous with adoption of the Framework Element but his recent declaration disclaiming a binding requirement to prepare Annual Reports is not.

Furthermore, Howe's Annual Report transmittal letter of April 20, 2000 of the third and last Annual Report stated sections of Annual Reports would be made available on the Internet as they were ready. (AA 5:10:720.) It also stated "Appropriate sections of the report will be placed in a published, hard copy report in the near future." (AA 5:10:720.) Therefore, any councilmember or member of the public reading Mr. Howe's transmittal letter would expect a "published, hard copy" *in addition to* the Annual Report on the Internet, *not as an alternative to* that material. Furthermore, the transmittal letter states that sections of the report would be



available on the Internet, not just raw data at different websites. It is immaterial whether the text of an Annual Report exists in physical or virtual form. However, it is critical that the Annual Report is prepared and used.

**VI. THE CITY FAILED TO PERFORM ITS MANDATORY DUTY TO PUBLISH AND USE ANNUAL REPORTS.**

**A. The City’s Various Monitoring Activities Do Not Meet the Mitigation Requirement of the Annual Report System.**

The General Plan Framework Element imposes a mitigation system for General Plan growth that encompasses monitoring growth throughout the City, reporting the growth and infrastructure capacity through preparation of Annual Reports, then responding to those Annual Reports by taking appropriate action. Such actions include expanding infrastructure or adopting building controls until community plans can be revised. However, the system is not possible without preparation and use of the Annual Reports. The various disparate monitoring efforts the City undertakes do not accomplish the mitigation purpose of the system because they never progress to the review and response stage.

**1. Mere Monitoring Without Analysis or Action Based on the Analysis Does Not Result in Mitigation.**

While the preparation of Annual Reports is an essential part of the system imposed as a mitigation measure for growth, it is not the entire system assuring that growth is supported by the necessary infrastructure. After the Annual Reports are prepared, they must be reviewed and used by the City Council so that appropriate action can be taken. The Framework Element specifically directs that the Annual Report “*will* be published at

the end of each fiscal year.” (AA 3:10:275, emphasis added.) It further states that they must be presented to the City Council:

The information from such a monitoring system *will be presented to the City Council in the form of an Annual Report on Growth and Infrastructure*, which can be used as the basis for revision of policies as needed to meet the goals of the Framework Element.

(AA 8:12:1152, emphasis added.)

Thus, availability of the Annual Reports for City Council, and consequently the public, to review is a key component of the program. At the trial court, the City Attorney clarified that “the annual growth and infrastructure report is not to be reported to the public. It’s to be reported to the city planning commission, city council, and mayor.” (Reporter’s Transcript, November 3, 2010, p. 10, lns. 17-20.) This “clarification” is irrelevant since there is no evidence that Annual Reports have been prepared or reported to anyone since 2000. The only information available since then is raw data available from websites known to Planning Department staff. There is no guarantee that the units of measurement, time frames or geographical areas used among the various websites allow for “apples-to-apples” comparison, or that the scattered information and analysis is complete.

The City admitted at trial that it does not prepare documents entitled “Annual Growth and Infrastructure Reports” because of a concern about their “format and utility.” (AA 14:25:1913.) However, the Annual Reports are not mere documents to be prepared and then left on a shelf to gather dust. While their form (whether hardcopy or electronic) does not matter, their function as part of the mitigation system mechanism for regulating growth cannot be fulfilled if they are never prepared in the first place.

The City admitted infrastructure information is “no longer included in the Annual Growth Reports due to its static nature.” (AA, 14:25:1914.)

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, streets, police stations and fire stations deteriorate over time, thus requiring attention as demand on them remains constant or increases. (AA 8:10:1075 [reporting overcrowding in schools].) Budget cuts also impact the availability of infrastructure elements. As the recently well-documented failures in infrastructure such as sinkholes and broken wastewater or water mains attest, infrastructure is not as “static” as the City claims. (AA 7:10:1004 [“LA Admits Sewer Spills”]; AA 8:10:1052].) Without compliance with the Framework Element’s requirement for preparation of Annual Reports, the City’s plan for addressing infrastructure failures becomes reactive, haphazard, inconsistent and expensive, rather than proactive and well-planned as required in the Framework Element.

Instead of providing useful information in an Annual Report, the City claims the annual reporting requirement is fulfilled by various other activities it undertakes. The City argued at trial that its Planning Department regularly monitors population estimates and projections. The requirement that Annual Reports “shall include information *such as* population estimates and an inventory of new development” (AA 3:10:275, emphasis added) shows that population information is only one type of information that is required. It is not the sole type of information. Furthermore, there is no evidence the infrastructure and public services information is “published” by promulgating it to the public and decisionmakers, as in an Annual Report. Relying upon documents placed in obscure locations on the City’s website does not meet the requirement that they be “published” at the end of each fiscal year. Such documents are not readily accessible, and not accessible at all to members of the public

without access to computers or those that are not prepared to spend substantial amounts of time searching the websites of various departments.

Additionally, a population monitoring program is distinct from the Annual Reports, since the City must both monitor *and* report, not just do one or the other. The monitoring is the first step in the mitigation system process; preparation of Annual Reports is the next step; using the Annual Reports to calibrate growth policies and community plans and then reporting the results is the last necessary step. By failing to report the results of monitoring or using the information that should be reported, the City never gets past the first step in the mitigation process that was set up by the Framework Element.

The Annual Reports are supposed to provide usable information regarding trends over time. It is intended to “annually document what has *actually happened* to the City's population levels, housing construction, employment levels, and the availability of public infrastructure and public services.” (AA 2:10:140, emphasis added.) As with any type of report, they may be used far in the future depending upon the information they contain. However, such Annual Reports cannot be used if they are not prepared. An analysis of historical trends over time is only possible by comparing Annual Reports from different years. Some of the most useful analysis would occur by comparing one report to another, not merely examining the information contained within a single report.

Finally, the EIR for the Framework Element distinguished between monitoring and the Annual Report. It lists a “Monitoring Program,” a “Citywide Environmental Database,” a “Capital Improvement Program” and, separately, the “Annual Report on Growth and Infrastructure.” (AA 3:10:378.) The intent for the Annual Report on Growth and Infrastructure is stated as follows:

It is the intent of the Report to provide City staff, the City Council and service providers with information that can facilitate the programming and funding of improvements and/or service as the basis for the management of growth when deficiencies occur.

(AA 3:10:378.) Thus, any argument that monitoring and a database of resources is the same as preparation of the Annual Report is proven false by the City's own EIR for the General Plan Framework.

Finally, the City is required to monitor mitigation measures as they are implemented. (Pub. Resources Code § 21081.6 subd. (a)(1).) There is no evidence that the Annual Report mitigation measure has been monitored because it has not been implemented by the City.

## **2. Trigger Levels for Taking Action Are Not Identified Through Website Based Monitoring.**

The various websites cited by the City's planners contain some information about the condition of various pieces of City infrastructure. However, they do not fulfill the Framework Element's requirement for Annual Reports because there is no comparison to identify if an infrastructure element is threatened with overload. There must be trigger levels that will cause measures such as growth controls to be implemented. The City has not identified trigger levels that when reached suggest various infrastructure resources are threatened. Without any analysis of when infrastructure resources would be threatened by past and anticipated future growth, the City cannot set levels that trigger mitigation requirements to restrict growth or increase infrastructure. It is also important to note that the Framework Element and Land Use Element specify the mitigation trigger is when infrastructure capacity is threatened, not when it is exceeded. The threat analysis requires a knowledge of the past so trend lines can be established, and a knowledge of funding projections so that future infrastructure capacity levels for core services such as fire protection can be included. When current or projected demand exceeds current or projected

capacity, a threat can be identified. Only with the Annual Report and its analysis can core services be protected from unexpected demand or decreased capacity that would lead to failures in services and decreases in public safety.

The only mention in the Framework Element of a potential trigger level for considering “whether additional growth should be accommodated” is stated in Framework Element Policy 3.3.2 (c). (AA 2:10:158.) That Policy states “Initiate a study . . . when 75 percent of the forecast of any one or more category listed in Table 2-2 (see Chapter 2: Growth and Capacity) is attained within a community plan area.” (AA 2:10:158.) If such a study becomes necessary, it would determine the level of growth that should be accommodated and correlate that level with the capital, facility, or service improvements or demand reduction programs that are necessary to accommodate that level. However, without the Annual Reports, there is no way to know if the 75 percent forecast of any category listed has been attained in any community plan area. Therefore, the City’s failure to prepare Annual Reports prevents it from ever taking the next step of preparation of a study to consider whether additional growth should be accommodated.

The record is replete with references to the importance of trigger mechanisms for determining threats of infrastructure overload. For example, the alternatives analysis in the statement of overriding consideration for the “Theoretical Buildout Alternative” states:

Under this alternative, there would be no trigger mechanisms available to generate additional review when infrastructure improvements are not able to keep up with the demands placed on them by new development.

(AA 3:10: 418.) The City thus rejected the Theoretical Buildout Alternative because it had no trigger mechanisms to generate review, as would be provided under the Framework Element’s requirement for Annual Reports. That the triggers in the Framework Element’s Annual Report

requirement were relied upon in the City's adoption of the Framework Element and that those triggers have never been determined is proof positive that the City has failed to implement the required mitigation.

**3. Website Based Monitoring, Without Analysis or Action Using Annual Growth and Infrastructure Reports, Does Not Comply with the Framework Element Mitigation System.**

The City does not comply with the Annual Report requirement through its website monitoring because website monitoring provides no coherent analysis of the data that is monitored, determination of threats to infrastructure capacity, or required actions to reduce the threats to infrastructure that are identified.

Mitigation of growth impacts as contemplated by the Framework Element requires that the City take action in response to infrastructure being threatened. This can only be accomplished by relying on a report that sets triggering criteria for determining when a threat exists, then analyzing monitoring data to determine if the triggering level has been reached now or would likely be reached in the future. The West Los Angeles Community Plan provides that if monitoring shows :

*that infrastructure resource capacities are threatened, particularly critical ones such as water and sewerage; and, that there is not a clear commitment to at least begin the necessary improvements within twelve months; then building controls should be put into effect, for all or portions of the West Los Angeles Community, until land use designations for the Community Plan and corresponding zoning are revised to limit development.*

(AA 4:10:440, emphasis added.) Various City community plans have similar language stating the underlying fundamental premises of the City preparing and using the Annual Reports to ensure infrastructure resource capacities are sufficient. (e.g, 4:10:445 and 4:10:427.) One contemplated action would be to reduce growth if anticipated growth exceeds planned

growth. Another would be to recalibrate growth if it was occurring in the wrong locations or pursuant to the wrong incentives.

The Framework Element calls for using the Annual Reports to make recommendations for changes that should be made to community plans, policy changes that should be implemented, or other measures. There is no way to base recommendations on the scattered collection of websites that the City proffers as its compliance with the Annual Report requirements.

**B. The City's Declarations From Planners About Various Websites Do Not Show Compliance with the Annual Report Requirement.**

The trial court took judicial notice of the existence of the websites proffered for judicial notice by the City. (AA 15:40:2162.) The websites cited by the City contain inadmissible hearsay and as such, should not have been admitted. (*North Beverly Park Homeowners Ass'n v. Bisno* (2007) 147 Cal.App.4th 762, 778.) Although the Court might take judicial notice of the *existence* of the websites, it does not have sufficient information to take notice of their contents. (*Searles Valley Minerals Operations, Inc. v. State Bd. of Equalization* (2008) 160 Cal.App.4th 514, 519 [denial of judicial notice of the factual content of materials contained on the website pages of the U.S. Department of Energy was proper].)

The list of websites provided in Respondents' Request for Judicial Notice does not meet the Framework Element's requirement that the City establish and implement a Monitoring Program and prepare Annual Reports. Neither the websites nor the description of the sites provides the analysis required by the Framework Element. Guth's declaration admits that even the summary of alleged sources for raw data did not exist until this litigation, and in fact was created just before trial. Further, there is no discussion of how the projected and realized growth would impact existing



infrastructure, or if infrastructure is threatened. There is no evidence presented that the data included on these websites is used to comprehensively analyze the funding required for infrastructure in the City. There is also no evidence presented that the information included on these websites is used by the City to manage growth within the City as required by the Framework Element.

Further, the information non-City websites contain one day may not be available to the City or the public the next day. Annual Reports, in contrast with website information, would be available for review and use many years after they are prepared. Thus, it is possible to review the Annual Reports that were prepared in 1996, 1997 and 2000, because they are available in report form in the record. (AA 4:10:446 et seq., 557 et seq., and 5:10:719 et seq.) The City's reliance on the availability of information on its and other agencies' websites does not fulfill the requirement to prepare and publish Annual Reports.

**VII. FIX THE CITY SEEKS A DECLARATION THAT THE CITY MUST PREPARE AND USE ANNUAL REPORTS AND THAT IT HAS NOT DONE SO.**

Declaratory relief pursuant to Code of Civil Procedure section 1060 is appropriate because there is an actual controversy that can only be resolved by a judicial determination of the rights of various parties. In such circumstances, declaratory relief is appropriate. (*County of San Diego v. State* (2008) 164 Cal.App.4th 580, 606; *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 885.)

Appellant Fix the City requests a declaration that the City must prepare and use Annual Reports and that for the past decade it has failed to do so. The City denies both that its duty to prepare Annual Reports is mandatory and that it has failed to produce Annual Reports sufficiently. As discussed above, the City is wrong on both counts.

The City spent a great deal of its briefing at trial arguing that injunctive relief would stop all development in the City. (AA 14:25:1917.) Rejection of this remedy figured largely in the trial court's ruling. (AA 15:40:2162.) Fix the City did not request at trial, nor does it request now, a halt to development in the City. Instead, it is necessary that the City be compelled to implement the mitigation measures it adopted at the time of approval of the Framework Element by preparing Annual Reports. Only then can the actual state of the City's infrastructure be determined and only then can it be determined whether infrastructure capacity should be augmented or building controls implemented. Until then, the City fails to comply with the requirement of its own Framework Element or to implement the mandatory mitigation measures it adopted as support for its statement of overriding considerations for the adoption of the Framework Element. As a direct result, no one, including officials of the City itself, knows the state of key services such as firefighting, police, water and power.

## **IX. CONCLUSION**

The City is obligated by the Framework Element and Public Resources Code section 21081.6 to prepare Annual Reports on Growth and Infrastructure. The City has failed to prepare such a report since at least 2000, despite requests from the public that it do so. Therefore, the City must be ordered to prepare them.

The ramifications of this failure on the part of the City are substantial. The effects predicted by the City of significant cumulative impacts from growth in the absence of the Annual Report's role in controlling those impacts have materialized. Water main breaks, fire and police service cutbacks, park and library cutbacks, roadway deterioration, increasing traffic all represent threats to the infrastructure that have materialized due to incomplete information, poor planning and the resulting need for crisis-based management. As a result of the City's failure to

implement the required mitigation measure of preparing Annual Reports and acting on them, the foundation upon which the General Plan was built for planning future growth is a house of cards, crumbling under the weight of infrastructure demands and inadequate infrastructure capacity.

Fix the City respectfully asks this Court to re-affirm the mandatory duty of the City to prepare and use the Annual Report on Growth and Infrastructure as mandated in the General Plan Framework Element.

DATE: October 13, 2011

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Douglas P. Carstens", is written over a horizontal line.

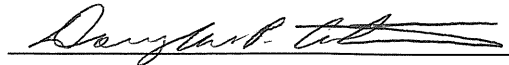
Douglas P. Carstens

CHATTEN-BROWN & CARSTENS

I certify that the total word count of this brief, including footnotes, is 12,732 words, as determined by the word count of the Microsoft Word program on which this brief was prepared.

DATE: October 13, 2011

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Douglas P. Carstens", is written over a horizontal line.

Douglas P. Carstens

CHATTEN-BROWN & CARSTENS



**SERVICE LIST**

**Counsel for Respondent**

Terry Kaufmann Macias  
Mary Decker  
Los Angeles City Attorney's Office  
800 City Hall East  
200 North Main Street  
Los Angeles, CA 90012

**Counsel for Appellant Saunders**

Sabrina Venskus  
Law Offices of Sabrina Venskus  
21 South California Street, Suite 204  
Ventura, CA 93001

**Supreme Court**

(Four Copies)  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

**Superior Court**

Hon. Judge John A. Torribio  
Los Angeles Superior Court  
Southeast District, Norwalk Courthouse  
12720 Norwalk Blvd.  
Norwalk, CA 90650