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CF15-0027
ITEM 12, PLUM 3/17/15
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STATEMENT of J.H. McQUISTON on
21 VOYAGE STREET "PLAN EXCEPTION"

Honorable Chairman and Members of the Committee:

1. Constitution Article I §7(b) prescribes:

"(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked." (Added Nov. 4, 1974. Amended Nov. 6. 1979.)

The above "equal protection" clause **does not mean the General Plan is not the "Constitution",** which until amended may be allowed by ordinance to be unequally-applied on a case-by-case basis. As the Supreme Court said in *Lesher,* **52 Cal.3d 531, 535-36** (In Bank) (1990):

"A general plan must set out a statement of the city's development policies and objectives, and include **specific elements** among which are **land use** and circulation elements. (§ 65302 subds. (a) & (b).) Once the city has adopted a general plan, **all zoning ordinances must be consistent with that plan,** and to be consistent **must be "compatible with the objectives, policies, general land uses, and programs specified** in such a plan." (§ 65860, subd. (a)(ii).)" (*Fn omitted*)

And at **541:**

"The Planning and Zoning Law itself **precludes consideration** of a zoning ordinance which conflicts with a general plan as a *pro tanto* repeal or implied amendment of the general plan. The general plan stands. **A zoning ordinance that is inconsistent with the general plan is invalid when passed** (*deBottari v. City Council* (1985) 171Cal.App.3d 1204 [ ]; *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704 [ ]) and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. (§ 65860.) The Planning and Zoning **Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform."**

2. The **issue of converting a playroom into a unit not in conformance with the Plan** was adjudicated several times, **always against the City's attempt to allow it.** *See, e.g, Chazanov v City of Los Angeles,* BS135382 (2013).

The **issue of "adjusting" zoning on specific parcels within a Plan** was adjudicated several times, **always against the City's attempt to allow it.** *See, e.g, Philip Anaya v City of Los Angeles,* BS 099892 (2006).

Why does this City and this Committee doggedly-violate clear law again and again? Even after Commissions rightly-follow the laws' mandates?

3. In *deVita,* **9 Cal.4th 763, 783 *et seq* (in bank)(1995),** the Supreme Court **reviewed the State's aim:**

"The minimal regulation set forth in the planning law **requires cities and counties to adopt a general plan with certain mandatory elements that will generally govern "the future development, configuration and character of the city or county and require that future land use decisions be made in harmony with that** general plan.... [ ] If the **statute in question addresses an area of "statewide concern," however, then it is deemed applicable to charter cities.** (*California Fed. Savings & Loan Assn.v. City of Los Angeles* (1991) 54

Cal.3d 1, 17 [ ]; *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61-62 [ ].)

"[I]t is also desirable that plans possess some degree of stability so that they can be "comprehensive [and] long-term" guides to local development. (Gov.Code, § 65300; see also Perry, *The Local "General Plan" in California* (1971) 9 San Diego L.Rev. 1, 5-6.) As we stated in *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 120, 109 Cal.Rptr. 799, 514 P.2d 111, [ ] **"The deleterious consequences of haphazard community growth in this state and the need to prevent further random development are evident to even the most casual observer.** The Legislature has attempted to alleviate the problem by authorizing the adoption of long-range plans for orderly progress. Commentators have noted the **tension between the ideal of the general plan as a long-range vision of local land use, and the reality that general plans are often amended in a fragmentary fashion to accommodate new development.**

"As the author of that survey has concluded, the **planning and zoning amendment process has become in many communities one of "piecemeal adjustment" by local planners and local legislators in response to development pressures.** (*Limits of Regulation, supra*, 55 J.Am. Planning Assn. at pp. 151, 159.) [ ]

"It was presumably to curb an excessively ad hoc planning process that the Legislature limited in 1984 the number of amendments to any mandatory element of the general plan to four per year. (Gov.Code, § 65358, subd. (b).) General **plans that change too frequently to make room for new development will obviously not be effective in curbing "haphazard community growth."** (*Selby Realty Co. v. City of San Buenaventura, supra*, 10 Cal.3d 110, 120 [ ].)"

4. **The City's dogged violation of land-use protocol-decisions against it** was mentioned by *deVita* at **790:**

"This conclusion comports with the well-known phenomenon commonly referred to as the "fiscalization of land use," **whereby planning decisions are frequently driven by the desire of local governments to approve development that will compensate for their diminished tax base** in the post-Proposition 13 era. (See Fulton, *Guide to California Planning, supra*, at pp. 15-17, 208-213.)"

But "fiscalization" **stands the** *raison d'etre for Plans* **on its head. The** absolute *need for Plans* **is Public safety and well-being. A City** *must not trade safety* **for mere money. It must honor its Plan, or else amend it for everyone because it does not provide safety for its subjects.**

It is corruption for this City Government to continue disrespecting public safety and well-being. And it is unconstitutional for the City to "gouge" people for excessive and unequal fees for processes.

5. There is no lawful way this Committee may overturn the Commission's decision that the Plan must be upheld.

And, there is no lawful way this Committee may substitute its judgment for the judgment set forth by the Committee.

That is California's law which this City *must begin obeying after 44 years of disrespect.*

6. The City Attorney is employed by the electors, not the City Governors. DR's and EC's require the City Attorney to defend the *electors* **against the above corrupt practices.**

It is high time the City Attorney does so, before the State exercises its power over the City and City governors.

Respectfully submitted,

c: Interested parties

J. H. McQuiston, Inhabitant and owner of property