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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF LOS ANGELES

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UNLIMITED JURISDICTION

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) CASE NO.

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) **APPLICATION FOR LEAVE TO SUE IN
QUO WARRANTO; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

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Proposed Relator,

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vs.

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FRANK QUINTERO, CITY OF
GLENDALE

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Defendants.

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1 **I. INTRODUCTION**

2 Proposed Relator _____ (“Relator”) hereby applies for leave to sue in *quo*
3 *warranto* because proposed Defendant, Glendale City Councilmember Frank Quintero
4 (“Defendant Quintero”), unlawfully holds the public office of Councilmember, and proposed
5 Defendant, the City of Glendale (“Defendant City” or “City”), usurped and intruded into that
6 public office by appointing Defendant Quintero in violation of its City Charter.

7 **II. FACTUAL HISTORY**

8 On April 12, 2013, the City of Glendale held its municipal election to elect among others,
9 a City Treasurer and three City Councilmembers. (Verified Statement of Facts (“VSOF”), ¶),

10 Three councilmembers, including Laura Friedman, Ara Najarian, and DEFENDANT
11 Quintero had terms that expired in April 2013, leaving three councilmember positions for which
12 the voters could cast their ballot. Laura Friedman and Ara Najarian both ran for re-election in
13 April 2013. DEFENDANT Quintero did not declare candidacy for re-election.

14 On or about April 11, 2013, the City of Glendale finalized the election results, and Ara
15 Najarian, Laura Friedman, and Zareh Sinanyan won the election to fill the three available
16 councilmember positions.

17 On April 15, 2013, the new councilmembers took office, and DEFENDANT Quintero’s
18 term as city councilmember effectively terminated.

19 Rafi Manoukian, a sitting Glendale city councilmember at the time of the April 12, 2013
20 election, ran in the election for the position of City Treasurer and won.

21 Because Mr. Manoukian’s council term was not set to expire this year, his assuming the
22 position of Treasurer on or about April 15, 2013, left a vacancy on the City Council that was not
23 filled by the election.

24 Per Article VI, Section 13(b) of the Glendale City Charter, any vacancy on the city council
25 must be filled by appointment by the majority vote of the remaining members of the council. If
26 any appointment to the council is not made within 30 working days of the vacancy, then the
27 council must call for a special election within 120 days to fill the vacant seat.

28 At the city council meeting on April 16, 2013, the councilmembers discussed how to

1 determine who to appoint to fill the vacant seat. DEFENDANT Quintero’s name was raised as a
2 possible candidate. Councilmember Najarian raised his concern before the council and the
3 Glendale City Attorney, Michael J. Garcia, that Article VI, Section 12 of the Glendale City
4 Charter might preclude appointment of DEFENDANT Quintero because two years had not yet
5 lapsed since the ending of DEFENDANT Quintero’s former term on April 15, 2013. Article VI,
6 Section 12 provides in relevant part:

7 No former councilmember shall hold any compensated city office or
8 city employment until two (2) years after leaving the office of
 councilmember. (1982.)

9 In response to Councilmember Najarian’s inquiry, City Attorney Garcia provided his
10 opinion on the application of Article VI, Section 12 to the proposed appointment of
11 DEFENDANT Quintero. He concluded that such provision would not preclude DEFENDANT
12 Quintero’s appointment to the City Council.

13 He reasoned that according to the legislative history, the voters’ main intent in adopting
14 the provision was to clarify an ambiguity in the previous charter provision, which when read
15 literally, prevented councilmembers from having any employment beyond the council whatsoever.

16 City Attorney Garcia continued explaining his position by stating that while the legislative
17 history makes clear that the Charter amendment’s purpose was also to prevent former
18 councilmembers from using “undue influence” to try to obtain a city position within two years of
19 leaving office – what he referred to as “a typical revolving-door policy” – he did not believe that
20 the provision contemplated the appointment of a former councilmember back on the council.

21 City Attorney Garcia reasoned that because DEFENDANT Quintero was a co-equal
22 member of the council with no legal or supervisory authority over the other councilmembers, in
23 his view, the public policy purpose of this particular charter amendment would not be served by
24 reading it in such a way as to prevent the Council from appointing DEFENDANT Quintero, or
25 any recently resigned council member, to serve on the council.

26 He further opined that because the constitutional right to public office was implicated, he
27 felt that the provision and its legislative history had to be more clear that situations like
28 DEFENDANT Quintero’s were intended to be covered by the Charter’s prohibition on former

1 councilmembers obtaining City positions within two years of their leaving office. According to
2 City Attorney Garcia, the provision is ambiguous on that point – although he does not point to a
3 specific ambiguity – and the voter materials from 1982 (when the Charter amendment was voted
4 on) did not clearly enough reflect an intent to block the appointment of former council member
5 within the two year period.

6 On April 23, 2013, the City Council appointed DEFENDANT Quintero to fill the vacancy.

7 **III. DISCUSSION**

8 **A. Standards for Granting Leave to Sue in *Quo Warranto***

9 California Code of Civil Procedure section 803 allows a private party to bring an action on
10 behalf of the public in *quo warranto* “against any person who usurps, intrudes into, or unlawfully
11 holds or exercises any public office.” In determining whether to grant leave to sue in *quo*
12 *warranto* the Attorney General considers (1) whether the application has raised a substantial
13 question of fact or issue of law which should be decided by a court and (2) whether it would be in
14 the public interest to grant leave to sue. (76 Ops. Cal. Atty. Gen. 169, 171).

15 The present case is a *prima facie* situation for which leave to sue Defendants Quintero and
16 the City in *quo warranto* is appropriate. First, a member of a city council holds a public office for
17 purposes of a *quo warranto* action. (See 72 Ops. Cal. Atty. Gen. 63 (1989); 72 Ops. Cal. Atty. Gen. 8
18 (1989); 35 Ops. Cal. Atty. Gen. 198 (1960).) Second, there is an issue of law as to whether the
19 City’s appointing Quintero violated its Charter. Finally, it is in the public interest to resolve that
20 question of law for City of Glendale residents.

21 This showing alone is sufficient for the Attorney General to grant proposed Relator’s
22 application for leave to sue in *quo warranto*. While proposed Relator believes he will ultimately
23 prevail on this question before a court, the Attorney General need not bother herself with
24 determining the strength of the arguments in order to grant his application. (25 Ops. Cal. Atty.
25 Gen. 237, 240 [citing 17 Ops. Cal. Atty. Gen. 46, . Gen. 87’ 17 0. Cal Atty. Gen. 136; 19 Ops. Cal.
26 Atty. Gen. 46) (stating “in passing on applications for leave to sue in *quo warranto*, the Attorney
27 General ordinarily does not decide the issues presented, but determines only whether or not there
28 is substantial question of law or fact which calls for judicial decision”).

1 Thus, the dispute over the legal effect of Glendale’s Charter provision here, being a matter
2 of public interest, meets the requirements for being granted leave to sue in *quo warranto*.

3 **1. Relator Raises an Issue of Law Which Should Be Decided by a Court:
4 Whether Defendant Quintero’s Appointment to the Glendale City
5 Council Violated the City’s Charter**

6 Article VI, Section 12 of the Glendale City Charter provides as follows:

7 A councilmember shall not hold any other city office or city
8 employment except as authorized by State law or ordinarily necessary
9 in the performance of the duties as a councilmember. **No former
10 councilmember shall hold any compensated city office or city
11 employment until two (2) years after leaving the office of
12 councilmember.** (1982.)

13 Relator contends that the second part of this provision clearly and unambiguously bars
14 Defendant Quintero from being eligible to hold compensated office (which a councilmember is)
15 in Glendale within two years of his having left his office as a Glendale councilmember on or
16 about April 14, 2013. [cite VSOE]. And thus, his appointment to the City Council on or about
17 April 23, 2013 (a mere nine days after he left office) violated Article VI, Section 12 of the
18 Glendale City Charter. [cite VSOE].

19 In advising the City Council to the contrary, City Attorney Garcia opined that the Charter
20 provision’s language is not necessarily controlling, and that its legislative history must be
21 considered to determine its true intent. He concluded, in sum, that reading Article VI, Section 12
22 literally as to prevent a former councilmember, such as DEFENDANT Quintero, from being
23 appointed to fill the current councilmember vacancy would be improper because the legislative
24 history did not clearly show such was the voter’s intent.

25 He further opined that because the legislative history was not sufficiently clear that it
26 intended such an effect, reading the Charter to preclude Mr. Quintero’s appointment would also
27 be contrary to public policy as an unwarranted restriction on Mr. Quintero’s constitutional right to
28 be appointed to office.

**a. A Court Should Decide the Plain Meaning of Article VI,
Section 12 of the Glendale City Charter to Determine its
Effect**

Because the language of Article VI, Section 12 of the City’s Charter clearly and

1 unambiguously prohibits Defendant Quintero from holding compensated office in the City of
2 Glendale within two years of April 14, 2013, City Attorney Garcia’s argument to the contrary
3 necessarily looks beyond the plain language of the Charter provision. The rules of statutory
4 interpretation preclude that approach.

5 When addressing the rules of charter construction, the California Supreme Court has held
6 that “we construe the charter in the same manner as we would a statute.” *Domar Elec.*, 9 Cal. 4th
7 at 171 (citing *C.J. Kubach Co. v. McGuire*, 199 Cal. 215, 217 (1926)). Accordingly, the court first
8 looks to the language of the charter and gives effect to “its plain meaning.” *Id.* (citing *Burden v.*
9 *Snowden*, 2 Cal.4th 556, 562 (1992)).

10 **“If the language is clear and unambiguous there is no need for construction,
11 nor is it necessary to resort to indicia of the intent of the Legislature (in the
12 case of a statute) or of the voters (in the case of a provision adopted by the
13 voters).”**

13 *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988); *see also Pope v. Superior Court*, 136
14 Cal.App.4th 871, 875-76 (2006) (Where the language in a law is clear and unambiguous, the court
15 will “presume the city council and the voters intended the meaning apparent on its face and our
16 inquiry ends there.”).

17 In sum, a court should decide whether, Article VI, Section 12’s plain language controls
18 and, if so, whether it forbids or permits Defendant Quintero’s appointment.

19 **b. To the Extent it Is Even Relevant, a Court Should**
20 **Decide the Meaning of Article VI, Section 12’s**
21 **Legislative History**

22 Even assuming that the plain language of the Charter provision is not dispositive, it is
23 unclear how the legislative history supports City Attorney Garcia’s position that Defendant
24 Quintero’s appointment is allowed under Article VI, Section 12. City Attorney Garcia refers to the
25 Charter provision as a “typical revolving door policy” the general intent of which was to prevent
26 former councilmembers from exerting “undue influence” in obtaining paid positions within the
27 City. Yet, he provides no explanation why Defendant Quintero’s situation should be excluded
28 from that description when it seems it could conceivably be the epitome of what voters intended

1 to prevent, i.e., councilmembers bypassing expensive and difficult elections to be appointed.¹

2 Moreover, City Attorney Garcia fails to cite any concrete example of language in the
3 legislative history that shows voters did not intend to preclude appointments of a former city
4 councilmember. Nor does he even cite to anything that would expressly allow such appointments
5 either. He seems to merely assert that the omission of a statement in the legislative history

6 As such, Proposed Relator believes the legislative history’s meaning does not support City
7 Attorney Garcia’s position here, because “[w]here the words of the charter are clear, we may
8 not add to or alter them to accomplish a purpose that does not appear on the face of the
9 charter or from its legislative history.” *Domar Elec.*, 9 Cal. 4th at 171. In any event, the effect
10 of Article VI, Section 12’s legislative history on whether Defendant Quintero is holding office in
11 violation of Glendale’s City Charter is a question appropriate for a court to determine.

12
13 **c. A Court Should Decide Whether Relator’s View of Article VI,
Section 12 Is Constitutionally Precluded**

14 City Attorney Garcia asserts that interpreting Article VI, Section 12 of the City’s Charter
15 as Proposed Relator does would be a violation of Defendant Quintero’s constitutional right to
16 hold public office. Proposed Relator, on the other hand, contends that while there is a
17 fundamental right to hold public office either by election or appointment, this right may be
18 restricted by a clear declaration of law, *See Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988),
19 and that Article VI, Section 12 of the City’s Charter is such a clear declaration of law that
20 squarely falls within the parameters of a lawful limit on the right to hold office and does not
21 unduly infringe upon Mr. Quintero’s constitutional right.

22 A court should decide this question of law, since its resolution impacts both the residents
23 of Glendale seeking to vindicate their Charter, as well as potentially Defendant Quintero’s
24 constitutional rights.

25
26 _____
27 ¹ While Relator is not accusing Defendant Quintero, or any councilmember, of having engaged
28 in such a conspiracy, it is reasonable to assume that the voters intended to preclude the
appointment of former councilmembers back on the council within two years of leaving office
for this exact reason.

1 Therefore, it is clear that the Proposed Relator’s application contains substantial questions
2 of law deserving of review by a court.

3 **2. Relator’s Proposed Action in *Quo Warranto* Is in the Public Interest**
4 **of the Residents of the City of Glendale, as it Seeks to Vindicate the**
5 **Charter for Which They Voted**

6 The existence of substantial issues of law alone has generally been viewed as presenting a
7 sufficient public purpose to warrant the granting of leave to sue in quo warranto, absent other
8 overriding considerations. See also, 85 Ops.Cal.Atty.Gen. 90, 93-94 (2002); 82
9 Ops.Cal.Atty.Gen. 78, 81-82 (1999); 81 Ops.Cal.Atty.Gen. 94, 98 (1998.) This case is no
10 exception.

11 To the contrary, there could be no more important consideration in this context than the
12 public’s interest in how it is governed. And that is the question here: i.e., whether the Charter
13 amendment adopted by the people of Glendale precludes Defendant Quintero from remaining on
14 the City Council or not. As City Attorney Garcia concedes, Glendale residents’ purpose in voting
15 to amend the City’s Charter in 1982 was to prevent a “rotating door” policy whereby former city
16 council members would try and use influence to obtain a position in the City. [cite VSOF].
17 While City Attorney Garcia contends the appointment of Mayor Quintero is not the type of
18 situation contemplated by the Charter, a court should decide whether the Glendale voters’ intent
19 was something other than what the plain language of the Charter says; especially considering the
20 complete lack of ambiguities in the Charter provision at issue.

21 Based on the foregoing, Relator has presented a prima facie case for leave to sue
22 Defendants Quintero and the City in *quo warranto*.

23 **B. Both Councilmember Quintero and the City of Glendale Are Each Proper**
24 **Defendants**

25 Mr. Quintero is a proper defendant since he is the one actually holding the public office
26 that he was unlawfully appointed to. [cite?] Relator believes that the City of Glendale is also a
27 proper Defendant in this action. The Attorney General has routinely granted leave to sue a city in
28 *quo warranto* where the petitioners were challenging the legitimacy of a city council action
affecting the franchise under the Meyers-Milias-Brown Act. See *Int’l Assn. of Fire Fighters v.*

1 *City of Oakland*, 174 Cal. App. 3d 687, 698 (Ct. App. 1985) (holding that “an action in the nature
2 of quo warranto constitutes the exclusive method for appellants to mount their attack on the
3 charter amendments based upon the city's failure to comply with the Meyers-Milias-Brown Act”);
4 *accord People ex rel. Seal Beach Police Officers' Association v. City of Seal Beach*, 36 Cal. 3d
5 591, 595 (1984); *see also* 95 Ops.Cal.Atty.Gen. 31 (June 11, 2012).

6 It would make little sense if cities were subject to in *quo warranto* actions for failing to
7 comply with general law concerning elections and ballot measures, but not their own charters.
8 Moreover, it was the City, via the City Attorney and the City Council, that put Defendant
9 Quintero in this position, perhaps due to no fault of his own. Accordingly, Proposed Relator
10 believes that the City of Glendale is a proper defendant in this action in addition to Defendant
11 Quintero.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Quintero’s appointment to the Glendale City Council violated
14 the City’s Charter. *Quo warranto* is the proper and exclusive method for remedying this harm.
15 Therefore, proposed Relator respectfully requests that his application for leave to sue in *quo*
16 *warranto* be granted.

17 Dated:

MICHEL & ASSOCIATES, P.C.

18
19
20 _____
C. D. Michel
Attorneys for Plaintiff

1 PROOF OF SERVICE

2
3 STATE OF CALIFORNIA

4 COUNTY OF LOS ANGELES

5 I, _____, am employed in the City of Long Beach, Los Angeles County,
6 California. I am over the age eighteen (18) years and am not a party to the within action. My
business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

7 On _____, I served the following

8 **APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO; MEMORANDUM OF**
9 **POINTS AND AUTHORITIES IN SUPPORT THEREOF**

10 on the interested parties by placing

[] the original

[X] a true and correct copy thereof

11 enclosed in sealed envelope(s) addressed as follows:

12
13 X (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and
14 processing correspondence for mailing. Under the practice it would be deposited with the
15 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
California, in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date is more than one day after
date of deposit for mailing an affidavit.

16 Executed on _____, at Long Beach, California

17
18 (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of
the addressee.

19 Executed on _____, at Long Beach, California.

20 (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used
21 complies with California Rules of Court, Rule 2003, and no error was reported by the
machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a
transmission record of the transmission, copies of which is attached to this declaration.

22 Executed on _____, California.

23 X (STATE) I declare under penalty of perjury under the laws of the State of California that
24 the foregoing is true and correct.

25 _____
26 C:\Users\sbrady\Documents\Quo Warranto Memo of Ps&As Glendale.wpd