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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 CENTRAL DISTRICT

BS145904

11 JOHN RANDO and MARIANO A.
12 RODAS,

13 Plaintiffs and Petitioners,

14 vs.

15 KAMALA HARRIS, individually and in her
official capacity as Attorney General;

16 Defendant and Respondent,

17 FRANK QUINTERO, individually and in
18 his official capacity as Glendale City
Councilmember; CITY OF GLENDALE,

19 Real Parties in Interest.
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CASE NO.

MEMORANDUM IN SUPPORT OF
PLAINTIFF AND PETITIONERS' EX
PARTE APPLICATION FOR
ALTERNATIVE WRIT OF MANDATE
AND ORDER TO SHOW CAUSE WHY
PEREMPTORY WRIT SHOULD NOT
ISSUE

Date: November 13, 2013

Time: 8:30 a.m.

Dept. 82, 85, or 86

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1 INTRODUCTION

2 Article VI, Section 12 of the City of Glendale's charter (hereinafter "Section 12") provides
3 that "No former councilmember shall hold any compensated city office or city employment until
4 two (2) years after leaving the office of councilmember." Petitioners, John Rando and Mariano A.
5 Rodas, are Glendale residents who sought to enforce this provision against former
6 Councilmember Frank Quintero when his former colleagues *appointed* him to the City Council a
7 mere eight days *after* his term as an elected councilmember expired. The basis for the challenge is
8 both simple and obvious: (1) A city councilmember is a "compensated city office," and (2) eight
9 days is less than two years.

10 In compliance with state law, however, Petitioners first filed an application with the
11 California Attorney General requesting permission for leave to sue in *quo warranto*. Attorney
12 General Kamala Harris denied Petitioners' application for leave to sue, citing two reasons. First,
13 the Attorney General claimed that "*any* compensated City office" is ambiguous. To resolve the
14 alleged ambiguity, she turned to legislative history and manufactured an implied exception to
15 Section 12 for "*elective* offices." She reasoned that, because the office of councilmember is
16 *generally* an elective office, the two- year ban on former councilmembers holding any
17 compensated office did not apply – even to someone who was *appointed*, not elected, to that
18 office. Second, the Attorney General ruled that the public interest would not be served by
19 Petitioners' lawsuit because a court would likely not be able resolve the dispute before Mr.
20 Quintero's appointed term ends in June.

21 In short, the Attorney General found ambiguity where there was none and then, based on a
22 creative interpretation of legislative history, resolved that ambiguity by deleting the word "any"
23 from Section 12 and finding an implied exception for "elective offices" in order to reach her
24 contrived conclusion. Moreover, she delayed ruling on the petition for five months and then ruled
25 that no public interest is served, in part, because of time constraints, noting that Quintero's term
26 might expire by the time the issue is decided by a court. These actions constitute a clear and
27 indefensible abuse of discretion.

Petitioners require immediate court action to prevent their ongoing irreparable injury resulting from the Attorney General's abuse of discretion in refusing to grant Petitioners' *quo warranto* application to sue Glendale City Councilmember Frank Quintero ("Quintero") and the City of Glendale ("City"), because Quintero unlawfully holds the public office of Councilmember, and the City unlawfully appointed Quintero to that office in violation of its charter.

STATEMENT OF FACTS

On April 2, 2013, the City of Glendale held its municipal election to elect, among others, a City Treasurer and three City Councilmembers.

Three councilmembers, including Quintero had terms that expired in April 2013, leaving three councilmember positions for which the voters could cast their ballot. Quintero did not run for re-election.

On or about April 11, 2013, the City of Glendale finalized the election results.

On April 15, 2013, the new councilmembers took office, and Quintero's term as city councilmember officially terminated.

Rafi Manoukian, a sitting Glendale City Councilmember at the time of the April 2, 2013 election, ran in the election for the position of City Treasurer and won. Because Mr. Manoukian's council term was not set to expire this year, his seat was not filled by the election and his assuming the position of City Treasurer on or about April 15, 2013, left a vacancy on the Council.

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

At the city council meeting on April 16, 2013, the councilmembers discussed how to determine who to appoint to fill the vacant seat. Quintero's name was raised as a possible candidate. Councilmember Ara Najarian raised a concern before the Council and the Glendale City Attorney, Michael J. Garcia, that Article VI, Section 12 of the Glendale City Charter might preclude appointment of Quintero because two years had not yet lapsed since the ending of

1 Quintero's former term on April 15, 2013.

2 Article VI, Section 12 of the Glendale City Charter was amended by Glendale voters in the
3 City's 1982 election via Charter Amendment JJ (attached as exhibit "A"), and currently provides:

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

10 Prior to Charter Amendment JJ's passage, Section 12 provided:

11 "No members of the council shall be eligible to any office of employment,
12 except an elected office, during a term for which he was elected."

13 The reasons for and against the amendment, as well as the effects thereof were presented
14 to voters in the 1982 voting pamphlet (attached as exhibit "B").

15 Article IV, Section 1 of the Glendale City Charter refers to city councilmembers as
16 "officers" and Article IV, Section 3 provides that city councilmembers receive compensation from
17 the City.

18 In response to Councilmember Najarian's inquiry, City Attorney Garcia provided his
19 opinion that Article VI, Section 12 would not preclude Quintero's appointment to the City
20 Council.

21 On April 23, 2013, approximately eight (8) days after he had left office, the City Council
22 appointed Quintero to fill the vacancy. His appointed term lasts until the next election in June of
23 2014.

24 California Code of Civil Procedure section 803 requires private citizens like Petitioners to
25 apply for leave to sue in *quo warranto* before they challenge the legality of someone's holding a
26 public office.¹ On May 23, 2013, Petitioners filed an application with the Attorney General for
27

28 ¹ "An action may be brought by the attorney-general, in the name of the people of this state, upon his own
information, or upon a complaint of a private party, against any person who usurps, intrudes into, or
unlawfully holds or exercises any public office, civil or military, or any franchise, or against any
corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any
franchise, within this state. And the attorney-general must bring the action, whenever he has reason to

1 leave to sue in *quo warranto* (attached as Exhibit "C"), seeking to remove Quintero from office
2 because they believe his appointment violated Section 12. On June 7, 2013, the City and Quintero
3 filed an opposition to Petitioners' application, reiterating City Attorney Garcia's previous position
4 that Quintero's appointment was lawful (attached as Exhibit "D"). And, on June 17, 2013,
5 Petitioners filed a Reply to the City's opposition. (attached as Exhibit "E").

6 The Attorney General did not rule on Petitioners' application for leave to sue in *quo*
7 *warranto* until October 25, 2013, more than five months after it was filed. She issued an opinion
8 ("the Opinion") denying Petitioners' application (attached as Exhibit "F") because, in the Attorney
9 General's view, it is not in the public interest to "burden" the courts with the question of whether
10 Quintero's appointment violates Section 12. The Attorney General cited two reasons for reaching
11 this conclusion: 1) That extrinsic evidence strongly suggests Section 12 does not apply to "*elective*
12 *offices*" and Petitioners' proposed lawsuit would likely fail; and 2) that Petitioners' lawsuit would
13 likely could not be resolved by a court before Quintero's appointed term ends in June.

14
15 **PETITIONERS MEET THE REQUIREMENTS FOR ISSUANCE OF AN
16 ALTERNATIVE WRIT OF MANDATE**

17 A court may issue a writ of mandate "to compel the performance of an act which the law
18 specially enjoins, as a duty resulting from an office, trust, or station." (Code Civ. Proc., § 1085.)
19 Mandate lies when: (1) the respondent has a clear, present duty to act, and (2) the petitioner has a
20 beneficial right to performance of that duty. (*People ex rel. Younger v. Cnty. of El Dorado* (1971)
21 5 Cal.3d 480, 491.) Code of Civil Procedure section 1086 provides that when a verified petition is
22 submitted by a party "beneficially interested," a writ "must issue where there is not a plain,
23 adequate speedy remedy in the ordinary course of law."

24 Here, Petitioners meet all the criteria for a writ of mandate. Respondent has a clear legal
25 believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised
26 by any person, or when he is directed to do so by the governor." Cal. Civ. Proc. § 803.
27 In a *quo warranto* application, the party requesting leave to sue is called a "Proposed Relator," and the
28 party who the Proposed Relator alleges holds office illegally is called a "Proposed Defendant." (See 11
CCR § 2.)

1 ministerial duty to approve quo warranto applications that bring a cause of action that is in the
2 public interest. (Code Civ. Proc., § 803; *see* 30 Op. Atty. Gen. 28.) Petitioners, as Residents of
3 Glendale who are forced to be governed by a councilmember who is holding office in violation of
4 Glendale's charter, are beneficially interested parties because the writ they seek from this Court
5 would provide them with their only remaining legal avenue to remove that councilmember from
6 office.²

7 For those same reasons, and because they have no other recourse³ to vindicate their own
8 city charter and remove an illegal office holder, Petitioners will also be irreparably harmed if a
9 writ does not issue ordering the Attorney General to grant Petitioners' application for leave to sue.

10 Finally, the Attorney General has a duty not to abuse her discretion in deciding whether to
11 grant or deny applications for leave to sue in *quo warranto*, and Petitioners have a right to be free
12 from the Attorney General abusing her discretion in ruling on their application. (*See Nicolopoulos*
13 *v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1229, *citing International Assn. of Fire Fighters*
14 *v. City of Oakland* 174 Cal.App.3d 687, 698 (explaining that "if the Attorney General abused [her]
15 discretion by denying leave [to sue in *quo warranto*], appellant would have a remedy by
16 mandamus against the Attorney General".) There is scant case law explaining what constitutes an
17 abuse of discretion in this context, but at least one court has explained that a petitioner "must
18 demonstrate that the Attorney General's refusal to sue was an extreme and clearly indefensible
19 abuse of [her] discretion." *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 645.

20 Regardless of the standard, as explained in detail below, Petitioners can meet their burden
21 under any reasonable standard, because the Attorney General's denial of Petitioners' application
22 for leave to sue Councilmember Quintero and the City of Glendale is patently contrary to law and
23

24 ² For purposes of writ of mandate, a "beneficially interested party" is one who has some special interest
25 to be served or some particular right to be preserved or protected over and above the interest held in
26 common with the public at large. *Mission Hosp. Regional Medical Center v. Shewry*, 85 Cal.Rptr.3d 639
(2008).

27 ³ Section 803 provides the sole means to challenge unlawful holding of public office by private
28 citizens such as Petitioners.

1 public policy. Accordingly, a writ from this Court ordering the Attorney General to grant
2 Petitioners' application is proper.

3 ARGUMENT

4 California Code of Civil Procedure section 803 allows a private party to bring an action on
5 behalf of the public in *quo warranto* "against any person who usurps, intrudes into, or unlawfully
6 holds or exercises any public office." In deciding whether to grant leave to sue in *quo warranto*
7 the Attorney General considers: (1) Whether *quo warranto* is the appropriate legal remedy in the
8 given circumstances; (2) whether the application has raised a substantial question of fact or issue
9 of law which should be decided by a court; and (3) whether it would be in the public interest to
10 grant leave to sue. (95 Ops.Cal.Atty.Gen. 50, 54 (2012); 76 Ops. Cal. Atty. Gen. 169, 171.)

11 The Opinion does not dispute that a *quo warranto* action is appropriate here. Nor does it
12 deny that Petitioners raise a question of law. The Opinion does, however, deviate from the
13 standard practice that, "in passing on applications for leave to sue in *quo warranto*, the Attorney
14 General ordinarily does not decide the issues presented, but determines only whether or not there
15 is a substantial question of law or fact which calls for judicial decision." (19 Ops. Cal. Atty. Gen.
16 46.) The Attorney General took the unusual step of proceeding to decide the merits of Petitioners'
17 question, even going so far as to sift and analyze legislative history in reaching her conclusion.

18 The Attorney General's purported justification for going to such lengths is that she
19 believes Glendale's charter taken as a whole, along with the legislative history of the specific
20 provision at issue, leave little, if any doubt that "elective offices" like councilmember are not
21 contemplated by "any city office," and thus Quintero's appointment to the Glendale City Council
22 likely did not violate the City's charter.

23 But, even assuming the Attorney General's decision to rule on the merits of the legal issue
24 presented rather than granting the application and permitting judicial review was not itself an
25 abuse of discretion, her ruling was. To support her decision, the Attorney General was forced to
26 violate several basic rules of statutory construction, deleting plain language from the provision
27 ("any" city office) that the legislature included, and adding an exception for "elective offices" that

1 the legislature chose not to include. Her failure to follow judicially-established rules of statutory
2 construction was a clear abuse of discretion. Her taking five months to issue an erroneous ruling
3 and then contending that the shortage of time remaining in Quintero's term makes it not in the
4 interest to grant Petitioners leave to sue, was likewise an indefensible abuse of discretion. Setting
5 aside the Due Process issues, it is simply bad public policy to say people have no avenue to
6 enforce their laws against public officials if the law is only being violated for a "short time."

7 **I. Basing Her Decision to Deny Petitioners' Application for Leave to Sue in *Quo***
8 ***Warranto* on Errors of Law, the Attorney General Abused Her Discretion**

9 The incorrect interpretation of the application of a law is an abuse of discretion. (*Bruns v.*
10 *E-Commerce Exchange, Inc.* (Cal. App. 2d Dist. 2009) 2009 WL 737663; *In re Lugo* (2008) 164
11 Cal.App.4th 1522, 1536, fn. 8.) The Attorney General's conclusion that Section 12's "any [] city
12 office" most likely does not contemplate a city councilmember contravenes several basic rules of
13 statutory construction and is patently erroneous. Denying Petitioners' application based on such an
14 interpretation was, therefore, an abuse of discretion.

15 **A. There Is No Indication that Voters Intended to Exclude the Position of**
16 **Councilmember from Section 12's Two-Year Restriction; Indeed, All Relevant**
Evidence Suggests They Did Not

17 "The voters' intent in approving a measure is our paramount concern." (*Woo v. Superior*
18 *Court* (2000) 83 Cal.App.4th 967, 975.) Courts have explained that to determine voters' intent
19 "we first look to the words of the provision adopted," and "[i]f the language is clear and
20 unambiguous, there ordinarily is no need for construction." (*People v. Jones* (1993) 5 Cal.4th
21 1142, 1146.) "[W]e presume that the voters intended the meaning apparent on the face of the
22 initiative measure, and the court may not add to the statute or rewrite it to conform to an assumed
23 intent that is not apparent in the language." (*Leshner Commcns., Inc. v. City of Walnut Creek*,
24 (1990) 52 Cal.3d 531, 543.)

25 As explained below, Section 12 unambiguously includes councilmembers among the "City
26 offices" subject to its two-year restriction. Therefore, it is presumed that the voters intended such.
27 The Attorney General falls far short from rebutting that presumption; and the clear meaning of

1 “any [] city office” thus controls.

2
3 **1. The Plain Meaning of the Words “Any [] City Office” Undeniably
Contemplates a Councilmember**

4 When addressing the rules of charter construction, the California Supreme Court has held
5 that “we construe the charter in the same manner as we would a statute.” (*Domar Elec., Inc. v.*
6 *City of Los Angeles* (1994) 9 Cal. 4th 161, 171, (*citing C.J. Kubach Co. v. McGuire* (1926) 199
7 Cal. 215, 217). “Words used in a statute or constitutional provision should be given the meaning
8 they bear in ordinary use.” *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, (*citing In re Rojas*
9 (1979) 23 Cal.3d 152, 155.) “To determine the common meaning, a court typically looks to
10 dictionaries.” (*Consumer Advocacy Grp., Inc. v. Exxon Mobil Corp.* (2002) 104 Cal.App.4th 438,
11 444, (*citing People ex rel. Lungren v. Super. Court* (1996) 14 Cal. 4th 294, 302).

12 “Any” is ordinarily defined as “every – used to indicate one selected without restriction.”⁴
13 So the phrase here contemplates *every* “city office” without restriction. “Office” is defined as “a
14 special duty, charge, or position conferred by an exercise of governmental authority and for a
15 public purpose: a position of authority to exercise a public function and to receive whatever
16 emoluments may belong to it.”⁵ To suggest that the plain meaning of “city office” does not include
17 a *city* councilmember, the quintessential example of a “city office” (possibly second only to the
18 city office of mayor), is to ignore common English.⁶

19 The Attorney General’s Opinion simply ignores the plain and clear meaning of the phrase
20 and instead declares that one could read “any [] city office” as applying to only “non-elective”
21 offices because there is no reference “to elections or terms of elective office.” Opinion No. 13-504
22 at 4-5. It is not proper “to insert provisions or rewrite a statute to conform to an assumed intention

23
24 ⁴ *Merriam-Webster Online Dictionary* (2013), available at [http://www.merriam-](http://www.merriam-webster.com/dictionary/any)
25 [webster.com/dictionary/any](http://www.merriam-webster.com/dictionary/any).

26 ⁵ *Merriam-Webster Online Dictionary* (2013), available at [http://www.merriam-](http://www.merriam-webster.com/dictionary/office)
27 [webster.com/dictionary/office](http://www.merriam-webster.com/dictionary/office).

28 ⁶ Whether the office of city councilmember is a “compensated” one is not disputed.

1 which does not appear from its language.” (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998)
2 17 Cal.4th 553, 573.) That is, however, exactly what the Opinion does. It inserts a de facto
3 exception for “elective offices” (and assumes Quintero’s *appointment* qualifies for one). And the
4 Opinion does so without ever specifying why the term “any” – which is by definition an absolute
5 term that is utilized to encompass *all* of a particular subject matter – is not sufficient to eliminate
6 the ambiguity of the term “city office” that the Attorney General perceives. Courts “do not lightly
7 imply terms or requirements that have not been expressly included in a statute.” (*People v.*
8 *Gardeley* (1996) 14 Cal.4th 605, 622, 59 Cal.Rptr.2d 356, 927 P.2d 713.

9 The Attorney General’s incoherent rejection of city councilmember as falling within the
10 plain meaning of “any [] city office” was an extreme abuse of discretion.

11 **2. Extrinsic Evidence Overwhelmingly Supports Petitioners’ View of**
12 **Section 12**

13 “Although legislative history often can help interpret an ambiguous statute, it cannot
14 change the plain meaning of clear language.” *City of Long Beach v. Workers’ Comp. Appeals Bd.*
15 (2005) 126 Cal.App.4th 298.) With that in mind, even if it was proper to consider extrinsic
16 evidence here, the Attorney General’s interpretation of such in reaching her conclusion is
17 contrived and demonstrably untenable.

18 **a. Construing Section 12 as Omitting City Councilmembers from**
19 **its Two-year Restriction Would Conflict with the Charter**
20 **Generally**

21 “Every statute should be construed with reference to the whole system of law of which it is
22 a part so that all may be harmonized and have effect.” (*Stafford v. L.A. Cnty Emps.’ Retirement*
23 *Bd.* (1954) 42 Cal.2d 795, 799.) While the Opinion gives lip service to the importance of
24 construing “city office” in “the context of the charter as a whole,” the Opinion never explains how
25 the Attorney General’s interpretation of Section 12 as omitting city councilmembers makes sense
26 in that context; likely because it does not.

27 Article IV, Sections 1 and 3 of the Charter, clearly identify councilmembers as “officers”

1 who receive “compensation.” The Attorney General’s interpretation would therefore require
2 Section 12 to have a different definition of “city office” from the rest of Glendale’s charter,
3 *including the sentence immediately preceding it*. That sentence provides, in relevant part: “A
4 councilmember shall not hold any *other* City office . . .” Glendale, Cal., City Charter art. VI, sec.
5 12 (1982), emphasis added.) The modifier “other” necessarily means that “City office” includes
6 the subject of the sentence, which is “councilmember.” The Opinion is silent on this point.

7 The Attorney General’s interpretation also fails to account for the fact that various
8 provisions in the Glendale charter expressly distinguish between “elective” and “non-elective”
9 offices, while Section 12 does not (but, as explained below, used to).⁷ This demonstrates that the
10 Charter contemplates distinctions between types of offices when it does not want a provision to
11 apply to a particular office, but the drafters of Section 12 chose not to make such a distinction,
12 instead opting to make it apply to *any* office.

13 **b. The 1982 Voter Pamphlet for Section 12’s Amendment Clearly**
14 **Shows Section 12’s Two Year Restriction Contemplates City**
Councilmembers

15 As explained above, Section 12 is the product of Proposition JJ adopted by Glendale
16 residents in 1982. Proposition JJ amended the previous version of Section 12. The Attorney
17 General relies almost exclusively on the voting pamphlet from the 1982 election in reaching her
18 conclusion as to Section 12’s meaning. The Opinion states that “nothing in the ballot pamphlet
19 suggested that Proposition JJ would prohibit a former Council member from seeking *elective*
20 office for two years after leaving the Council.” This assessment is simply not accurate.

21 Curiously, the Opinion avoids addressing every point Petitioners made in their application
22 and reply brief about how the pamphlet supports their position. For example, the pamphlet’s
23 official description of the effect of the amendment to Section 12 provides:

24 Shall Article VI, Section 12 of the Charter for the government of the City of
25 Glendale be amended to provide **council members shall not hold any city office**

26
27 ⁷ See, e.g., Article IV, Section 1; Article V, Section 6; and Article VI, Section 13 of the Glendale
28 City Charter.

1 or employment except as authorized by State Law or hold any compensated
2 city office or employment until two years after leaving office as council
member?

3 (Exhibit B, emphasis added).

4 This clearly shows that the proposed amendment would have two effects: (1) To clarify the
5 existing language as allowing current councilmembers to have employment *outside* of the City;
6 and (2) to create an entirely new two-year restriction on former councilmembers working for the
7 City, including holding *any* city office. The Opinion suggests that the latter somehow only applies
8 to preventing councilmembers from using “undue influence to obtain employment” and flatly
9 ignores the reference to “office.”

10 The Opinion also ignores that immediately after that statement, the pamphlet provides the
11 voters a redlined version of Section 12’s predecessor, showing exactly how it will be amended. It
12 shows that the predecessor expressly exempted “an elective office” from its two-year restriction
13 and that *such exemption would be deleted and replaced with “any office”* in the proposed
14 (current) version. To read Section 12 as the Attorney General does would be unreasonable. It
15 would give effect to a provision that Glendale voters expressly chose to delete, which is an abuse
16 of discretion. (*See Wells v. One2One Learning Found.* (2006) 39 Cal.4th 1164, 1191-92
17 [acknowledging courts’ consideration of “deletions from bills prior to their passage as significant
18 indicia of legislative intent”]; *San Francisco Internat. Yachting etc. Grp. v. City & Cnty. of San*
19 *Francisco*, 9 Cal. App. 4th 672, 682 (1992) [“It is assumed that a city has existing laws and
20 charter provisions in mind when it enacts or amends a charter.”].)

21 The only extrinsic evidence potentially supporting the Attorney General’s position is that
22 the 1982 voter pamphlet’s arguments against amending Section 12 only referenced non-elective
23 offices in its brief description of why the amendment would be a bad idea. But that fact is of little
24 weight and is overshadowed by all the other relevant materials listed above. And, in any event:

25 a possible inference based on the ballot argument is an insufficient basis on which to
26 ignore the unrestricted and unambiguous language of the measure itself. It would be a
27 strained approach to constitutional analysis if we were to give more weight to a possible
inference in an extrinsic source (a ballot argument) than to a clear statement in the
Constitution itself.

1 (*Delaney v. Superior Court* (1990) 50 Cal. 3d 785, 803.)

2 In sum, the overwhelming amount of extrinsic evidence supports Petitioners' view of
3 Section 12, and the Attorney General clearly and indefensibly abused her discretion in holding
4 otherwise in the face of such evidence.

5 **B. There Is No Constitutional Impediment to Interpreting Section 12 as**
6 **Petitioners Do**

7 While there is a fundamental right to hold public office either by election or appointment,
8 this right may be restricted by a clear declaration of law. (*See Lungren v. Deukmejian* (1988) 45
9 Cal.3d 727, 735.) The Attorney General asserts that Section 12 is not sufficiently clear to
10 constitutionally restrict an elective office. But, as explained above, Section 12 clearly prohibits
11 former councilmembers like Defendant Quintero from holding "any City office," including the
12 city office of councilmember, within two years of leaving office, and, as such, is a lawful
13 limitation on the right to hold office.

14 To the extent there is any ambiguity in Section 12 (which as explained above there is not),
15 the *Lungren* court resolved an ambiguity in favor of restricting the plaintiff from taking office,
16 because, as here, the interpretation in favor of the would-be office holder did not make sense in
17 light of the language of the provision at issue and its related materials. *Lungren, supra.*, 45 Cal.3d
18 at p. 743.

19 Regardless, whether Section 12 is sufficiently clear to pass constitutional muster as a
20 restriction on the right to office is by definition a question of law appropriate for a *court* to decide,
21 not the Attorney General. "[A] challenge to the constitutionality of an act is inherently a judicial
22 rather than political question and neither the Legislature, the executive, nor both acting in concert
23 can validate an unconstitutional act or deprive the courts of jurisdiction to decide questions of
24 constitutionality." *Schabarum v. California Legislature* (1998) 60 Cal. App. 4th 1205, 1215.

25 **II. The Attorney General Abused Her Discretion in Holding the Public Interest Would**
26 **Not Be Served by Petitioners' *Quo Warranto* Lawsuit**

27 "As a general rule, we view the need for judicial resolution of a substantial question of fact
28

1 or law as a sufficient “public purpose” to warrant the granting of leave to sue in quo warranto,
2 absent countervailing circumstances such as pending litigation of the issues or shortness of the
3 time remaining in the term of office.” (95 Ops.Cal.Atty.Gen. 102.) As explained above,
4 Petitioners have presented a substantial question of law that seeks to vindicate the intent of
5 Glendale voters in adopting the laws they wish to be governed by. Resolution of very few
6 questions could be more in the public interest. Moreover, this proceeding is Petitioner’s only
7 recourse for vindicating those laws, which makes their question being considered by a court even
8 more in the public interest. (75 Ops.Cal.Atty.Gen. at 74 [“In addition, we have considered the
9 existence of alternative remedies in determining whether the issuance of leave to sue would serve
10 the public interest.”].)

11 While the Attorney General has denied *quo warranto* applications due to a short amount of
12 time remaining in the subject official’s term of office, this particular case is distinguishable. Those
13 other cases generally involve an official nearing the last few months of a *four year elective* term.
14 (See, e.g., 87 Ops.Cal.Atty.Gen. 176 (2004).) Quintero still has approximately half of his
15 *appointed* term remaining.

16 In any event, the Attorney General’s contention that this issue may become moot should
17 not be considered. First, as the City admits, there are no factual disputes here. Accordingly, an
18 expedited motion for summary judgment on the purely legal question presented could be filed
19 immediately without any delay for discovery. It cannot be assumed that the action would take
20 long. Regardless, the Attorney General’s position is akin to saying that the City should not have to
21 adhere to the law if it only violates it for a period of time so short that a court *might* have to act
22 quickly to remedy the violation. How is allowing such a scheme in the public interest?

23 Moreover, it was the five month delay by Attorney General’s office in ruling on
24 Petitioner’s application that caused Petitioners to be in a position where a court might be rushed to
25 grant Petitioners the relief they seek. Petitioners should not be punished because of an
26 unreasonable delay by the Attorney General, which is out of their hands. To do so would raise
27 serious Due Process issues.

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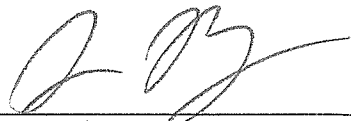
CONCLUSION

The substantial question of Glendale's law posed by Petitioners is precisely the type of question that is in the public interest to be answered in a *quo warranto* lawsuit. The Attorney General's denial of Petitioners' application for leave to sue was an extreme and indefensible abuse of discretion. It was based on errors in law and a factual circumstance the Attorney General created by failing to timely rule on Petitioners' *quo warranto* application. The Attorney General's role in deciding *quo warranto* applications is supposed to be that of a gatekeeper for frivolous lawsuits, not judge and jury for legitimate and important questions of law like the one presented by Petitioners.

As such, this Court should grant Petitioners' writ and order the Attorney General to immediately grant their application for leave to sue Councilmember Quintero and the City of Glendale in *quo warranto*.

Dated: November 8, 2013

MICHEL & ASSOCIATES, P.C.



Sean A. Brady
Attorneys for Proposed Relators

EXHIBIT A

THE CHARTER

Editor's Note: The Charter of the City of Glendale consists of Stats. 1921, p. 2204, as amended by Stats. 1923, p. 1646; Stats. 1931, p. 2693; Stats. 1933, p. 2728; Stats. 1937, p. 2865; Stats. 1941, p. 3365; Stats. 1943, p. 3284; Stats. 1945, p. 3026; Stats. 1947, pp. 344, 3372; Stats. 1949, pp. 2859, 3119; Stats. 1950, p. 98; Stats. 1953, p. 4024; Stats. 1955, p. 3763; Concurrent and Joint Resolutions, ch. 177, 1957; ch. 137, 1959; the amendments approved at a municipal election held on April 9, 1963; amendments adopted by Assembly Concurrent Resolution No. 95, adopted May 5, 1965; an amendment approved at a municipal election held on April 4, 1967; amendments approved at a municipal election held on April 1, 1969; a resolution adopted by the council on February 22, 1972; a resolution adopted February 29, 1972; and amendments approved at a municipal election held on April 5, 2005.

The Charter was adopted pursuant to section 8 of article XI of the state constitution, ratified by the qualified electors of the city at a special election held on March 29, 1921, and approved by the state legislature and filed in the office of the secretary of state on May 11, 1921.

Catchlines have been supplied by the editor where particular sections of the original had no catchline, as indicated by editor's notes. Where a catchline appearing in the original has been revised, the original catchline has been set out in an editor's note. In some instances, as indicated by editor's notes, subcatchlines have been added. In two instances, article headings have been supplied and in several instances they have been revised. This has been indicated by editor's notes.

Except where otherwise indicated by editor's notes, a uniform system of capitalization has been employed throughout the Charter.

Article I. Territory of City.

- § 1. Generally.
- § 2. Rules of construction.

Article II. City as Successor Corporation.

- § 1. Generally.

Article III. Powers of City.

- § 1. Powers as municipal corporation generally.
- § 2. Enumeration of particular powers.

Article IV. Officers and Employees Generally.

- § 1. Generally.
- § 2. Elective officers to be subject to recall.
- § 3. Compensation.
- § 4. Appointment and removal of department heads, subordinate officers, etc., generally.
- § 5. Delegation of ministerial duties.

Article V. Elections.

- § 1. General municipal elections.
- § 2. Procedures for conducting elections.
- § 3. Canvass of elections.
- § 4. Notifying the successful candidates.
- § 5. (Repealed).
- § 6. Terms of elective officers.

Article VI. The Council Generally.

- § 1. Vesting of legislative power; qualifications of candidates.
- § 2. Council meetings.
- § 3. Quorum: Action franchises, etc.
- § 4. General powers of the council.
- § 5. Certain powers and duties enumerated.
- § 6. Ordinances generally.
- § 7. When ordinances go into effect.
- § 8. Amending ordinances.
- § 9. Contracts requiring competitive bids.
- § 10. Authority of the council to provide procedure by which city may bid on certain public works.
- § 11. Official advertising.
- § 12. Councilmembers holding other city offices.
- § 13. Vacancies in elective offices.
- § 14. Committees of council.
- § 15. Required vote on sale of real estate; limitation on term of lease.
- § 16. Certified public accountant to be employed annually.
- § 17. Official bonds.
- § 18. Official oaths.
- § 19. Duties of city clerk.

Article VII. Police Court (Repealed).

Article VIII. City Attorney.

- § 1. Qualifications; appointment and removal of deputies and assistants.
- § 2. Duties.
- § 3. Compensation.
- § 4. Authority of council to control prosecution and defense and to employ additional counsel.

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Article IX. City Manager.

- § 1. City manager selection, compensation and qualifications.
- § 2. Procedure in case of disability of city manager.
- § 3. Purchases.
- § 4. Assistant city manager.

Article X. Departments of Government Generally.

- § 1. Creation.
- § 2. Police department.
- § 3. Fire department.
- § 4. Public works department.
- § 5. Department of Glendale Water and Power.
- § 6. City manager as executive head of certain departments, etc.
- § 7. Care of parks.

Article XI. Fiscal Administration.

- § 1. Powers and duties of director of administrative services generally.
- § 2. Duties of city treasurer generally.
- § 3. Presentation of demands; petty cash funds.
- § 4. Procedure as to warrants on treasurer; authority of council as to presentation, approval and payment of demands against city.
- § 5. Payments from treasury generally; demand as prerequisite to action against city.
- § 6. Fiscal year; proposed budgets and estimates of revenues and expenditures generally.
- § 7. Hearing on proposed budgets; modification and adoption of budgets.
- § 8. Transfer of unused balances; appropriation of available revenues not included in annual budget.
- § 9. Authority of council to provide for system of taxation; tax liens; authority of council to designate assessor and tax collector.

- § 10. Assessment, collection, etc., of taxes by officers of County of Los Angeles.
- § 11. Tax rate; special taxes generally; additional annual taxes.
- § 12. Special taxes and bonds.
- § 13. Limit on bonded indebtedness.
- § 14. General budget fund.
- § 15. General reserve fund.
- § 16. Appropriations and expenditures for entertaining, advertising, etc.
- § 17. Waterworks depreciation fund; electric works depreciation fund.
- § 18. Special deposit fund.
- § 19. General service fund.
- § 20. Waterworks revenue fund; electric works revenue fund.
- § 21. Glendale Water and Power sinking fund.
- § 22. Glendale Water and Power surplus fund—Generally.

Article XII. Department of Education.

- § 1. Board of education generally.
- § 2. Powers and duties of board of education.

Article XIII. Libraries.

- § 1. To be free to inhabitants, etc.; rules and regulations.
- § 2. Payment of library bills; library fund.

Article XIV. Boards and Commissions.

- § 1. Creation of commission.
- § 2. Ordinance to include specifics.
- § 3. Appointment and removal of members.
- § 4. Meetings.

Article XV. City Planning.

- § 1. (Repealed).
- § 2. Amendment, etc., of regulations adopted pursuant to Charter, Article III, Section 2, subdivisions 19 and 20.

Article XVI. Social Service Commission
(Repealed).

Article XVII. Franchises.

- § 1. General provisions as to granting.
- § 2. Payment of cost of advertising, etc.
- § 3. Limitation on period for which grant may be made.
- § 4. Special election may be called.

Article XVIII. Initiative, Referendum and Recall.

- § 1. Adoption of state law.
- § 2. When certain initiative ordinances to take effect.

Article XIX. Public Welfare Department
(Repealed).

Article XX. Police and Fire Departments.

- § 1. Powers and duties of chief of police.
- § 2. Powers and duties of fire chief.

Article XXI. Public Works Department.

- § 1. Generally.
- § 2. City engineer generally.
- § 3. Duties of maintenance services administrator.
- § 4. Building official.

Article XXII. Department of Glendale Water and Power.

- § 1. Generally.
- § 2. (Repealed).

Article XXIII. Miscellaneous Provisions.

- § 1. Authority of city manager to assign clerks, etc., to work in any department, etc.
- § 2. Application to city of general laws of state.
- § 3. Definition of "city," etc.
- § 4. (Repealed).
- § 5. Vacancy in city offices.

- § 6. Opening, etc., of streets; planting of trees; public improvement not elsewhere provided for in Charter; removal of dirt, rubbish, weeds, etc.
- § 7. Delivery of papers, etc., to successors in office.
- § 8. Prohibitions applicable to specified officers; Government Code sections adopted.
- § 9. Officers, etc., to be United States citizens.
- § 10. Payment for nomination, etc., to office.
- § 11. Acceptance by officers, etc., of donation or gratuity from applicant, subordinate, etc., for position with city.
- § 12. Conduct prohibited to city officers and employees with reference to contracts; connivance with contractors.
- § 13. Approval, etc., by officer of unauthorized demand on treasury.
- § 14. Payment into city treasury of moneys received from taxes, licenses, fees, etc.
- § 15. Inspection of books and records.
- § 16. Copies or extracts from books and records.
- § 17. Office hours for city officers.
- § 18. Continuation of ordinances and resolutions in force at effective date of Charter.
- § 19. Officers, etc., in office at effective date of Charter.
- § 20. First election under Charter.
- § 21. Effect of adoption of Charter on vested rights, etc. of city.
- § 22. Officers to report fees, etc., monthly.
- § 23. Severability clause applicable to Charter.
- § 24. Purchases from local merchants.
- § 25. Political activity or contributions on part of city manager, etc.
- § 26. Vesting of city's powers generally.
- § 27. Penalties, violation of ordinances.
- § 28. When Charter to take effect.
- § 29. Authority of city to establish a municipal court.

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§ 30. Administering oaths.

Article XXIV. Civil Service.

§ 1. Creation and composition of civil service commission; appointment, term and compensation of members; vacancies; chairman, chief examiner, etc.

§ 2. Duties of civil service commission generally; rules.

§ 3. Power of civil service commission to subpoena witnesses, etc.

§ 4. Examinations generally.

§ 5. Suspension of competition.

§ 6. Preferences.

§ 7. Application of article; exception as to unclassified service.

§ 8. Tenure of officers and employees in present employment.

§ 8.1. (Repealed).

§ 9. Procedure as to removal, suspension and reduction in rank.

§ 9a. Leave of absence.

§ 9b. Abolishment of positions.

§ 10. Procedure as to appointments.

§ 11. Severability clause applicable to article; remedying defects caused by unconstitutionality.

§ 12. (Repealed).

§ 13. War or emergency appointments.

Article XXV. Employees' Retirement.

§ 1. City to participate in state system; contract with retirement system; tax.

Article XXVI. Revenue Bonds for Waterworks and Electric Works.

§ 1. Issuance generally; how payable; application of restrictions in Charter outside this article.

§ 2. Bond ordinance generally.

§ 3. Terms and conditions of bond ordinance, etc.; bond ordinance, etc., as contract.

§ 4. Limitations on issuance.

§ 5. Construction of bond ordinances, etc.; control of Charter provisions by ordinance.

Article I. Territory of City.

Editor's Note: The title of this article is unofficial.

Sec. 1. Generally.

The territory of the City of Glendale shall be that contained within its present boundaries as now established with the power and authority to change the same in the manner provided by law.

Sec. 2. Rules of construction.

For the purposes of this Charter, the masculine gender shall include the feminine and the neuter. The singular number includes the plural and the plural includes the singular. "Shall" is mandatory and "may" is permissive.

Article II. City as Successor Corporation.

Editor's Note: The title of this article is unofficial.

Sec. 1. Generally.

The City of Glendale, as successor in interest of the municipal corporation of the same name, heretofore created and existing shall own, hold, possess, use, lease, control, and in every way succeed to and become the power of all rights and all property of every kind and nature by said existing municipal corporation owned, controlled, possessed, or claimed, and shall be subject to all the debts, obligations, liabilities, dues and duties of said existing corporation.

Article III. Powers of City.

Sec. 1. Powers as municipal corporation generally.

The City of Glendale, a municipal corporation, shall after the adoption of this Charter, continue its existence as such municipal corporation, and under

the corporate name, CITY OF GLENDALE, shall have, possess and exercise all powers and rights vested in said City of Glendale, under this Charter and the Constitution of California and the laws of the state, and all powers which a municipal corporation may lawfully possess or exercise under the Constitution of this State. The City of Glendale shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this* Charter; provided, that nothing herein shall be construed to prevent or restrict the city from exercising or consenting to, and the city is hereby authorized to exercise any and all rights, powers and privileges heretofore or hereafter granted or prescribed by the general laws of the state; provided, also, that where the general laws of the state provide a procedure for the carrying out and enforcement of any rights or powers belonging to the city, said procedure shall control and be followed unless a different procedure shall have been provided in this Charter or by ordinance.

* In the case of *Smith v. City of Glendale et al.*, 1 Cal. App. (2d) 463, 36 P. (2d) 1083, which cited the first thirty-four words of the second sentence of this section together with subdivisions 5, 6 and 8 of section 2 of article III and section 4 of article VI of this Charter, it was held that the charter of a city giving it the right to control its municipal affairs is the supreme law of the city and that the powers are derived from the state constitution and not from the legislature. It was also held that the city has the power to purchase stock in a private water company to furnish a water supply to its citizens.

Sec. 2. Enumeration of particular powers.

Without in any way or to any extent limiting or curtailing the powers hereinbefore conferred or mentioned, and for the purpose of removing all doubt concerning the exercise of powers hereinafter expressly mentioned, the City of Glendale shall have power:

1. Corporate Seal. To have and use a corporate seal;
2. Actions and Proceedings in Court. To sue or be sued in all courts in all actions and proceedings;

3. Taxes and License Taxes. To levy and collect taxes, and to levy and collect license taxes for both regulation and revenue;

4. Borrowing Money, Issuing Bonds, etc. To borrow money, incur municipal indebtedness, and issue bonds or other evidence of such indebtedness;

5. Acquisition of Property Generally.* To acquire by purchase, bequest, devise, gift, condemnation or other manner sanctioned by law, within and without the limits of said city, property of every kind and nature for all purposes;

6. Telephone or Telegraph Systems, Street Railways, etc., Warehouses, Markets, Waterworks, etc.* To acquire by said means, and to establish, maintain, equip, own and operate, either within or outside of the city, telephone and telegraph systems, street railways, or other means of transportation, warehouses, free markets, waterworks, filtration plants, gas works, electric light, heat and power works, underground or overhead conduit systems or any other works necessary to a public utility; and to join with any other city or cities or county in the acquisition, construction and maintenance of same;

7. Streams and Channels. To improve the streams and channels flowing through the city or adjoining the same, to widen, straighten and deepen the channels thereof, and remove obstructions therefrom, to construct and maintain embankments and other works to protect the city from overflow and storm waters;

8. Furnishing Public Utility Service, etc.* To furnish the city or its inhabitants or persons without the city, any public utility service or commodity whatsoever;

9. Lease, Sale, etc., of Certain Property. To lease, sell, convey and dispose of any and all property herein mentioned for the common benefit;

10. Parks, Playgrounds, Auditoriums, Museums, Gymnasiums, etc. To acquire, construct, operate and maintain parks, playgrounds, markets, baths, public halls, auditoriums, libraries, museums, art galleries, gymnasiums and any and all buildings, establishments, institutions and places whether situated inside or outside of the city limits, which are necessary or convenient for the transaction of public

business or for promoting the health, morals, education, care of the indigent or welfare of the inhabitants of the city or for their amusement, recreation, entertainment, or benefit;

11. Plants for Disposition of Sewage, Garbage and Waste. To acquire, construct and maintain all works necessary for the disposition of sewage, garbage and waste, to construct, own, maintain and operate incinerating or garbage reduction plants, and to join with any other city or cities or county in the acquisition, construction and maintenance of any such works or plant;

12. Nuisances. To define and abate nuisances;

13. Care of Indigent. To provide for the care of the indigent;

14. Boulevards. To establish boulevards and regulate traffic thereon;

15. Fire Department; Fire Prevention. To equip and maintain a fire department and to make all necessary regulations for the prevention of fires;

16. Permits for Use of Streets, etc. To grant permits to use the streets or public property revocable at any time without notice;

17. Rates for Services Rendered Under Franchises, etc. To regulate and establish rates and charges to be imposed and collected by any person or corporation for commodities or services rendered under or in connection with any franchise, permit, or license heretofore or hereafter granted by the city, or other authority; provided, that the same is not inconsistent with the Constitution of the State of California;

18. Devises, Bequests, Gifts and Donations. To receive devises, bequests, gifts and donations of all kinds of property, in fee simple, or in trust, for charitable or other purposes and to do all acts necessary to carry out the purposes of such devises, bequests, gifts and donations with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the devise, bequest, gift or donation or absolutely in case such devise, bequest or trust be unconditional;

19. Regulation of Buildings and Lot Area.** To regulate and limit the height and bulk of buildings hereafter erected, and to regulate and deter-

mine the area of yards, courts and other open spaces and for said purposes to divide the city into districts. Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one (1) or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire and other dangers, and to promote the public health and welfare, including, so far as conditions may permit, provisions for adequate light, air and convenience of access, and shall be made with reasonable regard to the character of the buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote the public health, safety and welfare;

20. Regulation of Location of Trades, Industries, etc.** To regulate and restrict the location of trades and industries and the location of buildings designed for specified uses, and for said purposes to divide the city into districts and to specify for each such district the trades and industries which shall be excluded or subjected to special regulations and the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and welfare and shall be made with reasonable consideration; among other things, to the character of the district and to its peculiar suitability for particular uses.

* Attention is called to the footnote on page C-5.

** For Charter provision as to amendment, etc., of regulations adopted pursuant to this subdivision, see Charter, Art. XV, § 2.

Editor's Note: The subcatchlines given to the numbered subdivisions of this section are unofficial.

Article IV. Officers and Employees Generally.

Editor's Note: This article head originally read as follows: "Officers, Deputies and Employees and Their Compensation."

Sec. 1. Generally.

The officers of the City of Glendale shall be five (5) members of the council, a city assessor, a city tax collector, a city manager, a director of administrative services, a city clerk, a city treasurer, a city attorney, a director of public works, a city engineer,

a maintenance services administrator, a building official, a chief of police and a fire chief. The council may also provide by ordinance for additional offices and for the duties thereof, and for additional duties of offices herein provided for, but in no such manner as to encroach upon the duties of any officer as provided for by this Charter. The council may also provide by ordinance for such subordinate officers, assistants, deputies, clerks, and employees in the several offices and departments as they deem necessary. The members of the council, the members of the board of education, the city treasurer and the city clerk shall be elected from the city at large, as provided in this Charter; provided, however, that all qualified electors of the Glendale City School District shall also have the right to vote for members of the board of education. All other officers, assistants, deputies, clerks and employees shall be appointed as provided in this Charter, or as the council may provide by ordinance in case no provision for their appointment is herein made, and shall hold their respective offices or positions at the pleasure of the appointing power. Where the appointment of any of said officers, assistants, deputies, clerks or employees is vested in the council or any commission, such appointment and any removal must be made by a three-fifths (3/5) vote of the members of the appointing power. (1921; 1947; 1953; 1957.)

Sec. 2. Elective officers to be subject to recall.*

All elective officers of the city shall be subject to recall as provided in this Charter.

* For Charter provision as to adoption of state law relative to recall, see Charter, Art. XVIII, § 1.

Sec. 3. Compensation.

(a) Compensation and increase in compensation of council members. Compensation for council members is hereby set, and from time to time shall be changed, in accordance with the schedule and procedure for adjustment applicable to the City of Glendale set forth in the provisions of the Govern-

ment Code relating to salaries of council members in general law cities. The compensation of council members may also be increased during the terms of their respective offices by vote of the electors.

(b) Compensation and increase in compensation of city clerk and city treasurer. When percentage increases are granted to other officers and employees generally, the council may grant comparable percentage increases to the city clerk and the city treasurer. The compensation of the city clerk and city treasurer may also be increased during the terms of their respective offices by vote of the electors. (1921; 1947; 1957; 1982.)

Sec. 4. Appointment and removal of department heads, subordinate officers, etc., generally.

The city manager shall appoint and remove, subject to the civil service provisions of this Charter, all department heads of the city, except as otherwise provided by this Charter, such appointments and removals to be subject to the approval of the council. Department heads shall appoint and remove, subject to the civil service provisions of this Charter, all of their subordinate officers, assistants, deputies, clerks, and employees, except as otherwise provided by this Charter, such appointments and removals to be subject to the approval of the city manager. (1953.)

Sec. 5. Delegation of ministerial duties.

Whenever a ministerial power is granted or a ministerial duty is imposed upon a city officer by this Charter, such power may be exercised or such duty performed by an assistant, deputy or other authorized person unless this Charter expressly provides otherwise.

Delegation of a power or duty may be by expressed grant, written or oral; it may be implied by custom, practice, or when it is ordinary or necessary in the performance of another duty or responsibility so delegated. An officer may ratify any act which he has the power to delegate.

The council shall have the power to limit by ordinance the delegation of any power or responsibility.

CHARTER

ity under this section. (Charter Amendment No. 3, 1977.)

Article V. Elections.

Sec. 1. General municipal elections.

General municipal elections of officers and for such other purposes as the council may prescribe shall be held in the city on the first Tuesday in April in each odd-numbered year. (1963; 1982.)

Editor's Note: The catchline of this section originally read as follows: "When general municipal elections held; special municipal elections."

Sec. 2. Procedures for conducting elections.

Elections shall be called by the council by ordinance or resolution. Unless otherwise provided by ordinance, all elections shall be held in accordance with the provisions of the Election Code of the State of California, as it exists or is amended, for the holding of municipal elections, so far as the same are not in conflict with this Charter. No primary elections shall be held. (1982.)

Editor's Note: The catchline of this section originally read as follows: "Ordinance ordering holding of elections; election officers at precincts; publication of ordinance."

Sec. 3. Canvass of elections.

The council shall canvass the returns of an election at its second regular meeting following the election, unless otherwise provided in the ordinance or resolution calling the election. (1982.)

Editor's Note: The catchline of this section originally read as follows: "Filing the returns."

Sec. 4. Notifying the successful candidates.

After the result of an election is declared, the clerk, under his hand and official seal, shall issue a certificate thereof and deliver the same personally or by mail to the person elected.

Sec. 5. (Repealed).

Editor's Note: This section was repealed in 1982. It formerly dealt with election regulations and prohibited primary elections.

Sec. 6. Terms of elective officers.

From and after the general municipal election to be held on the first Tuesday in April of 1965, the clerk and treasurer elected and the three (3) members of the council and the three (3) members of the board of education receiving the highest number of votes for said offices respectively shall hold office for terms of four (4) years commencing at eight p.m. (8:00 P.M.) of the second Monday following the day of election and until their successors are elected and qualified. From and after the general municipal election of 1967 the two (2) members of the council and the two (2) members of the board of education then elected shall hold office for terms of ~~four (4) years commencing at eight p.m. (8:00 P.M.)~~ of the second Monday following the day of said general municipal election of 1967 and until their successors are elected and qualified. Any person elected to fill a vacancy shall serve for the remainder of the unexpired term. In the election of councilmen and members of the board of education, where full terms and one (1) or more unexpired terms are to be filled, no distinction shall be made in nominating or voting between the full terms and the unexpired terms, but the person or persons elected by the highest number of votes shall be elected for the full term or terms and the person or persons receiving the next highest vote shall be elected for the unexpired term or terms, as the case may be. (1963.)

Article VI. The Council Generally.

Editor's Note: This article head originally read as follows: "Legislative. The Council: Powers and Duties."

Sec. 1. Vesting of legislative power; qualifications of candidates.

The legislative power of the City of Glendale shall be vested in the people through the initiative and referendum, and in a body to be designated "The Council." Each candidate for member of the council shall be a qualified elector pursuant to state law.

Editor's Note: The words "The Council" were not set off in quotation marks in the original.

Sec. 2. Council meetings.

The council shall hold regular meetings at such times as it shall fix by ordinance or resolution. If a regular meeting falls on a holiday such meeting shall be held on the next business day.

Special council meetings may be called at any time by the mayor, or by three (3) members of the council, acting in accordance with State law.

Any regular, adjourned regular, special, or adjourned special meeting may be adjourned to a time and place specified in the order of adjournment. Any adjourned regular meeting is a regular meeting for all purposes.

All council meetings shall be held in the council chamber of the City Hall, or in a place to which any meeting may be adjourned for the purpose of taking evidence or holding hearings. Final deliberation and actual voting by the council shall take place in the City Hall council chamber. Provided, however, if by reason of fire, flood, reconstruction, or other emergency it shall be unsafe to meet in the council chamber, the meetings shall be held for the duration of the reconstruction or emergency at a place designated by the mayor or by three (3) members of the council. (1982.)

Editor's Note: The catchline of this section originally read as follows: "Meetings."

Sec. 3. Quorum: Action franchises, etc.

Three (3) members of the council shall constitute a quorum, but a less number may adjourn from time to time. No franchise shall be granted, ordinance passed, budget adopted, supplemented or amended, appropriation made, or payment of money ordered unless three (3) members of the council concur in such action. Any tie vote constitutes no action, and the matter shall be carried from agenda to agenda until the tie is broken, or the council determines to remove item from agenda. (1982.)

Editor's Note: The catchline of this section originally read as follows: "Quorum."

Sec. 4. General powers of the council.*

Subject to the provisions and restrictions in this Charter contained, and the valid delegation by this Charter of any powers to any person, officer, board or committee, which delegation of power, if any, shall control, the council shall have the power, in the name of the city, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants and which are not specifically forbidden by the Constitution of the state or which now or hereafter it would be competent for this Charter specifically to enumerate. No enumeration or specific statement herein of any particular powers shall be held to be exclusive of, or a limitation of, the foregoing general grant of powers.

* Attention is called to the footnote on page C-5.

Sec. 5. Certain powers and duties enumerated.

The council shall:

1. Qualifications of Members and Election Returns. Judge the qualifications of its members and all election returns;
2. Rules of Proceedings. Establish rules for its proceedings;
3. Record of Proceedings. Cause a correct record of its proceedings to be kept. The ayes and noes shall on demand of any member, be taken and entered therein, and they shall be recorded on all votes passing any ordinance or appointing or dismissing or confirming the appointment or dismissal of any officer, or authorizing the execution of contracts, or the appropriation or payment of money;
4. Mayor Generally. Choose one (1) of its members as presiding officer, to be called mayor. The mayor shall preside over the sessions of the council, shall sign official documents when the signature of the council or mayor is required by law, and he shall act as the official head of the city on public and ceremonial occasions. He shall have power to administer oaths and affirmations. When the mayor is absent from any meeting of the council, the mayor pro tem shall be selected monthly by

alphabetical rotation. The mayor pro tem shall act as mayor if the mayor is absent or unavailable;

5. Appointment of Certain Officers. Appoint a city assessor, which office may be combined with that of the city clerk, a city tax collector, a city attorney, and city manager;

6. Supervision of Public Utilities. Exercise general supervision and direction over all persons, firms, companies and corporations owning, controlling or operating public utilities, in so far as any of them are subject to municipal control. This provision is subject to other Charter provisions relative to such public utilities as now are or may hereafter be owned by the city. (1921, 1947; 1953.)

Editor's Note: The subcatchlines given to the numbered subdivisions of this section are unofficial.

Sec. 6. Ordinances generally.

The enacting clause of every ordinance passed by the council shall be: "Be it ordained by the council of the City of Glendale." The enacting clause of every ordinance initiated by the people shall be: "Be it ordained by the people of the City of Glendale." At least five (5) days must elapse between the introduction and the final passage of any ordinance; provided, that amendment germane to the subject of any proposed ordinance may be made when it is brought up for final passage; and provided further, that in case of an extraordinary epidemic or any disaster, such as flood, fire or earthquake, requiring immediate action on the part of any public authorities, an emergency ordinance may be introduced and passed at either a regular or special meeting without any intervention of time between introduction and final passage. A final vote on any ordinance or any vote on any appropriation must be taken only at a regular or adjourned regular meeting. Every ordinance must be signed by the mayor and attested by the clerk. Notice thereof shall be published once in a newspaper of general circulation. Any ordinance granting any franchise or privilege shall be published at the expense of the applicant therefor.

In the publication of every ordinance the advertisement shall contain a statement of the title, number and date of the ordinance, a brief statement of the nature of the ordinance, and a reference to a copy of the ordinance which shall be on file and available for public inspection at all reasonable times in the office of the city clerk. (1969.)

Editor's Note: The catchline of this section originally read as follows: "Ordinances."

Sec. 7. When ordinances go into effect.

Except as herein provided, no penal ordinance, or measure passed by the council granting any franchise or privilege, shall go into effect in less than thirty (30) days after its final passage. But ordinances declared by the council to be necessary as emergency measures for the immediate preservation of the public peace, health or safety, containing a statement of the reasons for their urgency and passed by a four-fifths (4/5) vote of the whole council, ordinances ordering or otherwise relating to elections, and ordinances relating to public improvements, the cost of which is to be borne wholly or in part by special assessments, may go into effect at the will of the council.

Sec. 8. Amending ordinances.

No ordinance shall be amended by reference to its title, but the sections thereof to be amended shall be re-enacted at length as amended; and any amendment passed contrary to the provisions of this section shall be void.

Sec. 9. Contracts requiring competitive bids.

The council shall provide by ordinance a complete procedure to ensure the integrity of awarding all contracts. Except as otherwise required in this Charter, no contract for supplies, material, labor, or other valuable consideration, or for the construction, improvement, repair, or maintenance of public works shall be authorized by the council except to the lowest responsible bidder after competitive bidding. The council may reject any and all bids. Competitive bidding shall not be required for:

(a) Labor or services rendered by any city officer or employee;

(b) Labor, material, supplies, or services furnished by one (1) city department to another city department;

(c) Contracts for labor, material, supplies or services which are available from only one vendor;

(d) Contracts for labor, material, supplies or services or for the construction, improvement, repair, or maintenance of public works involving the expenditure of an amount not exceeding the limit established by ordinance of the city council;

(e) Contracts relating to the acquisition of real property;

(f) Contracts for professional or unique services;

(g) Contracts for labor, material, supplies and services for actual emergency work;

(h) Contracts with other governmental entities, or their contractors, for labor, materials, supplies or services.

The council, after rejecting bids, or if no bids are received, may readvertise for bids, or may have the work done by city forces if it determines that city forces can economically do the work, or it may have the contract negotiated without further bidding.

Upon recommendation of the city manager, the council may dispense with competitive bidding for any contract when it determines that it is in the best interests of the city so to do and acts by resolution setting forth the reason for such action. (1921; 1941; 1957; 1965; 1982.)

Editor's Note: The catchline of this section originally read as follows: "Contracts."

Sec. 10. Authority of the council to provide procedure by which city may bid on certain public works.

The council shall have power to provide by ordinance a complete procedure whereby the city may bid on all public work done under the provisions of any local improvement ordinance or resolution. Said ordinance shall provide the procedure whereby

the city shall perform such public work for which the city may be the lowest bidder. A revolving fund may be created by bond issue for the purpose of financing the cost of such public work.

Editor's Note: The catchline of this section originally read as follows: "Power to do public work direct."

Sec. 11. Official advertising.

All official advertising of the city shall be done in one (1) or more newspapers of general circulation, as defined by the laws of the State of California, which shall be published in the City of Glendale. The council shall annually call for bids for such advertising pursuant to specifications which shall first be approved by the council, and shall award any and all such contracts to the lowest responsible bidder; provided, that the council may reject all bids and may again call for bids; and provided further, that no defect or irregularity in proceedings taken under this section shall invalidate any publication when the same is otherwise in conformity to law or this Charter. (1969.)

Editor's Note: The catchline of this section originally read as follows: "Advertising."

Sec. 12. Councilmembers holding other city offices.

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

Editor's Note: The catchline of this section originally read as follows: "Councilmen ineligible to other city positions."

Sec. 13. Vacancies in elective offices.

(a) Vacancy—Unexcused Absence. Any member of the council who is absent from all meetings thereof for two (2) consecutive months, unless excused by the council shall forfeit his seat.

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(b) Filling Vacancies: Generally. Any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council. Any vacancy occurring in the board of education shall be filled by a majority vote of the remaining members of the board of education. Any vacancy occurring in any other elective office shall be filled by a majority vote of the whole council. If any appointment to the council, city clerk or city treasurer is not made within thirty (30) working days of the vacancy, then council shall immediately call for a special election to be held within one hundred twenty (120) days for the purpose of filling such vacancy, unless the earliest next general municipal election or next county or statewide election with which a city election may be consolidated is no more than one hundred eighty (180) days from the call for special election. A person appointed to fill a vacancy shall serve until such time as a successor may be elected at the earliest of the next general municipal election, or the next county or statewide election, with which a city election may be consolidated. The elected successor shall hold office for the remainder of the unexpired term. (1921; 1923.)

Sec. 14. Committees of council.

The council shall appoint such standing and other committees as it deems necessary.

Sec. 15. Required vote on sale of real estate; limitation on term of lease.

With the exception of city owned SR zoned property or property dedicated as park land of five (5) or more acres, no sale of real estate shall be authorized by the council except by ordinance passed by the affirmative vote of four-fifths (4/5) of all the members and no lease shall be made for a period of longer than five (5) years, except by ordinance adopted by the council. City owned SR zoned property or property dedicated as park land which property is either an individual parcel of five (5) acres or more, or parcels which are adjoining and collectively equal or exceed five (5) or more acres shall not be sold or transferred except upon approval of a majority of the voters at an election held for such

purpose. For purposes of this Charter, "dedicated park land" means property now owned or hereafter acquired by the city which has been either dedicated by ordinance, zoned SR, or where the documents executed for the acquisition thereof provide that the acquisition is in whole or in part for preservation or use as open space or recreational purposes of any type. For purposes of this Charter "sold or transferred" does not mean or include an easement, or an acquisition of property either jointly with another public agency or with grant funds provided by another public agency where the property is required to be conveyed to the other public agency for the purpose of preserving the property as open space or recreational purposes.

Editor's Note: The catchline of this section originally read as follows:
"Sale or lease of city property."

Sec. 16. Certified public accountant to be employed annually.

At least once a year the council shall employ a certified public accountant who shall investigate the transactions and accounts of all officers having the collections, custody or disbursement of public money, or having the power to approve, allow or audit demands on the treasury, and render a report of his investigation to the council. (1982.)

Editor's Note: The catchline of this section originally read as follows:
"Expert accountant."

Sec. 17. Official bonds.

The council shall, by ordinance, determine what officers and other persons in the service of the city shall give bonds for the faithful performance of their duties, and shall fix the amounts of such bonds and each of such officers and other persons shall, before entering upon the duties of his office or employment, execute a bond to the city in the penal sum provided by such ordinance, including in the same bond the duties of all offices of which he is made by this Charter, or otherwise, ex officio incumbent. Such bonds must be examined and approved by the council. All bonds when approved shall be filed with the city clerk, except the city

clerk's bond, if any, which shall be filed with the treasurer. All the provisions of any law of this state relating to the official bonds of officers as then existing shall apply to such bond, except as herein otherwise provided. In all cases where surety company bonds are approved by the council, the premium therefor shall be paid by the city.

Sec. 18. Official oaths.

Every officer of the city, before entering upon duties of his office, shall take and file with the city clerk the constitutional oath of office, except that the oath of the city clerk shall be filed with the city treasurer.

Sec. 19. Duties of city clerk.

The city clerk shall:

- (a) Attend all meetings of the council.
- (b) Be responsible for recording and maintaining a full and true record of all the proceedings of the council.
- (c) Maintain a permanent record of all ordinances and resolutions adopted by the council, including the certificate of the clerk stating that such document was duly adopted by the council with the date of adoption and, with respect to an ordinance, that it has been published in accordance with this Charter; all said records shall be properly indexed and open to public inspection when not in actual use.
- (d) Maintain a permanent record of all written contracts and official bonds.
- (e) Be custodian of the seal of the city.
- (f) Administer oaths or affirmations, take affidavits and depositions pertaining to the affairs and business of the city, and certify copies of official records.
- (g) Conduct all city elections.
- (h) Perform such other duties connected with the office as may be prescribed by the council. (1982.)

Editor's Note: The catchline of this section originally read as follows: "City clerk."

Article VII. Police Court (Repealed).

Editor's Note: The sections comprising this article were repealed in 1953. They formerly dealt with the police court and the police judge.

Article VIII. City Attorney.

Sec. 1. Qualifications; appointment and removal of deputies and assistants.

The city attorney shall, at the time of his appointment, be an attorney duly admitted to practice law in the State of California, and shall have been actually engaged in the practice of law in this state for a period of at least four (4) years next before his appointment. He shall appoint and remove all such deputies and assistants as the council may authorize, subject to the approval of the council. (1921; 1923; Charter Amendment No. 2, 1977.)

Sec. 2. Duties.

It shall be his duty when directed by the council to prosecute on behalf of the people, all criminal cases for violations of this Charter and of city ordinances, and to attend to all suits and other matters to which the city is a party or in which the city may be legally interested. He shall be in attendance at every meeting of the council, unless excused therefrom, by the mayor or the council. He shall give his advice or opinion in writing whenever required by the council or other officers. He shall be under the administrative direction of the city manager and shall be the legal advisor of all city officers; he shall approve the forms of all bonds given to and all contracts made with the city; he shall, when required by the council, or any member thereof, draft all proposed ordinances for the city, and amendments thereto; and shall do and perform all such things touching his office as the council may require of him, and at the expiration of his term shall surrender to his successor all books, papers and documents pertaining to the city's business. (Charter Amendment No. 2, 1977.)

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Sec. 3. Compensation.

He [the city attorney] shall receive as compensation a salary to be taxed by ordinance and unless the council shall require him to devote all his time to the duties of his office, he shall receive in addition thereto, such reasonable fees as the council may allow for suits or proceedings before any court or commission in which he has been directed by the council to act or appear.

Editor's Note: The words enclosed in brackets in this section were added by the editor for the purpose of clarification.

Sec. 4. Authority of council to control prosecution and defense and to employ additional counsel.*

The council shall have power to direct and control the prosecution and defense of all suits and proceedings to which the city is a party or in which it is interested, and may employ counsel to assist the city attorney therein.

* It was held in the case of *Marr v. Southern California Gas Co. et al.*, 198 Cal. 278, 245 P. 179, that the council has the power to engage and pay an attorney to assist the city attorney in connection with proceedings in which the city is interested.

Article IX. City Manager.

Sec. 1. City manager selection, compensation and qualifications.

The council shall appoint a city manager who:

- (a) Shall serve at the pleasure of the council;
- (b) Shall be the chief administrative officer of the city;
- (c) Shall be chosen on the basis of administrative qualifications;
- (d) Shall be compensated as directed by the council commensurate with the responsibilities of the office;
- (e) Shall not have served on the council within a period of two (2) years immediately preceding the date of appointment;
- (f) Shall establish, within ninety (90) days of the effective date of appointment, and maintain a residence within the city;

(g) Shall engage in no other business or occupation, except as may be permitted by the council;

(h) Appoint and remove at his pleasure, a secretary.

The appointment of the city manager requires the affirmative vote of three (3) members of the council. An action to remove, suspend, or request the resignation of the city manager, requires the affirmative votes of three (3) members of the council, provided, however, that during a period of one hundred thirty-five (135) days after a councilmanic election the council shall take no action to remove, suspend or request the resignation of the city manager, except by a unanimous vote of the entire council. (1921, 1947, 1953; 1982.)

Editor's Note: The catchline of this section originally read as follows: "Need not be resident of state when appointed; powers and duties generally."

Sec. 2. Procedure in case of disability of city manager.

In the event the city manager is incapacitated from performing the essential functions of his duties for a period of up to thirty (30) days, the assistant city manager shall perform the duties of the city manager during such time. On or after the thirtieth (30th) day of incapacity, the city council may appoint an interim city manager.

Editor's Note: The catchline of this section was supplied by the editor.

Sec. 3. Purchases.

All purchases of material and supplies made by any department or officer of the City of Glendale shall be by requisition signed by the city manager. (1921; 1947.)

Sec. 4. Assistant city manager.

The city manager, with the approval of the council, may appoint and remove an assistant city manager and may delegate to him any of the city manager's powers and duties. (1947.)

Article X. Departments of Government Generally.

Editor's Note: This article head originally read as follows: "Departments of Government."

Sec. 1. Creation.

For the purpose of organization and administration of the business of the City of Glendale, there are hereby created the following departments, administrative services, city clerk, city treasurer, fire, Glendale Water and Power, legal, library, management services, parks, police, and public works.

Sec. 2. Police department.*

The police department shall have charge of police protection.

* For similar Charter provision, see Charter, Art. XX, § 1.

Sec. 3. Fire department.*

The fire department shall have charge of fire protection and emergency medical services.

* For similar Charter provision, see Charter, Art. XX, § 2.

Sec. 4. Public works department.*

The public works department shall have charge of: general engineering, traffic engineering, flood control, street and sewer construction and maintenance, assessments, building inspection, care of public buildings, collection and disposal of refuse, and installation, maintenance and removal of parkway trees and parkways. (1957.)

* For similar Charter provision, see Charter, Art. XXI, § 1.

Sec. 5. Department of Glendale Water and Power.*

The department of Glendale Water and Power shall have charge of the construction, maintenance and operation of all public utilities owned or operated by the city.

* For similar Charter provisions, see Charter, Art. XXII, § 1.

Sec. 6. City manager as executive head of certain departments, etc.

Except as otherwise provided in this Charter, or by authority thereof, the city manager shall be executive head of the department of management services and of the various departments of the city.

Sec. 7. Care of parks.

The council shall provide for the general care and supervision of parks.

Article XI. Fiscal Administration*

* It was held in the case of Logan et ux., v. City of Glendale et al., 132 Cal. App. 169, 22 P. (2d) 552, that providing an ornamental street lighting system of the city is a governmental function falling within police power and that it is not part of a public utility and may be financed by assessment.
See also, Logan v. City of Glendale et al., 102 Cal. App. (2d) 864, 229 P. (2d) 128.
As to control of Charter provisions by bond ordinance, see Charter, Art. XXVI, § 5.

Sec. 1. Powers and duties of director of administrative services generally.

The director of administrative services shall be the general accountant of the city. He shall receive and preserve in his office all accounts, books, vouchers, documents and papers relating to accounts and contracts of the city, its disbursements, revenues and other financial affairs. He shall keep an account of all moneys paid into and out of the treasury, and shall draw and sign all warrants on the treasurer for payment of money out of the treasury, except as otherwise provided in this Charter or by general law. The city clerk shall furnish the director of administrative services with copies of all ordinances, resolutions and orders of the council making appropriations or authorizing expenditures of money for any purpose. All orders for the purchase of goods, materials or supplies, and all orders or contracts proposed to be entered into by the city by virtue of which any money shall or may become payable by the city, except contracts, the expense of which is to be paid by assessments upon properties benefited or affected thereby, shall before becoming effective, on behalf of the city, be presented to the

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director of administrative services and have indorsed thereon his certificate that there remains unexpended and unapplied in the city treasury as provided by this Charter, a balance of the appropriation or fund applicable thereto sufficient to pay the estimated expense to be incurred during the then current fiscal year under said order or contract as estimated by the board or officer making the same, or that adequate provision therefor has been made in the tax levy, or by other revenues to be received by the city as estimated in the budgets. It shall be the duty of the director of administrative services to make such endorsement upon every such contract or order so presented to him if there remains unexpended and unapplied the said estimated amount in any appropriation fund or tax levy, or other estimated revenue applicable thereto, and thereafter he shall hold and retain the said amount to pay the expense to be incurred under said order or contract until the same is fully performed and expense paid.

Editor's Note: The catchline of this section originally read as follows: "Controller."

Sec. 2. Duties of city treasurer generally.

The city treasurer shall receive and safely keep and pay out as directed in this Charter all moneys belonging to the city and all moneys received by or coming into the hands of any officer, board, department or employee of the city and shall keep an exact account of receipts and disbursements.

Editor's Note: The catchline of this section originally read as follows: "Treasurer."

Sec. 3. Presentation of demands; petty cash funds.

All demands against the city shall, before being paid, be presented to and approved by the proper commission or officer, as herein provided. Demands for which no appropriation has been made shall be presented to the council; and all other demands shall be presented to the city manager; provided that any person dissatisfied with the refusal of the city manager to approve any demand, in whole or in part, may present the same to the council, and

the approval of such demand by the council shall have the same effect as its approval by the city manager; and provided further, that if the council shall provide for a park, playground and recreation center commission, a social service commission, or a city planning commission, it may make provision for the presentation to and approval by any such commission of demands for liabilities incurred by it. The council by ordinance may provide for petty cash funds for payment in cash, of expenditures provided for in the budgets that cannot conveniently and economically be paid otherwise. When making demands for the replenishment of the same, the persons entrusted with the funds shall account for all disbursements, and the amounts so expended shall thereupon be charged against the proper appropriations. (1921; 1953; 1959.)

Editor's Note: The catchline of this section originally read as follows: "Presentation of demands."

Sec. 4. Procedure as to warrants on treasurer; authority of council as to presentation, approval and payment of demands against city.

All demands approved by the proper board, commission or officer shall be presented to the director of administrative services, who shall examine the same; and if the amount thereof is legally due and there remains on his books an unexhausted balance or an appropriation against which the same may be charged, he shall approve such demand and draw and sign his warrant on the treasurer therefor, payable out of the proper fund. Objections of the director of administrative services to any demand may be overruled by the council, and the director of administrative services shall thereupon draw his warrant as directed by the council. Such warrants when presented to the treasurer, shall be paid by him out of the fund therein designated, if there be sufficient money in such fund for that purpose. A warrant not paid for lack of funds shall be registered, and all registered warrants shall be paid in the order of registration when funds are available therefor. The director of administrative services shall draw his war-

rants for payment of municipal or other bonds payable out of funds in the treasury upon presentation and surrender of the proper bonds or coupons, without approval of any body or officer. The council may make further regulations by ordinance regarding the presentation, approval and payment of demands against the city.

Editor's Note: The catchline of this section originally read as follows: "Warrants on treasury."

Sec. 5. Payments from treasury generally; demand as prerequisite to action against city.*

No payment shall be made from the treasury of the city, except as otherwise provided by law or this Charter, except on demands presented and approved and warrants drawn as herein or by ordinance provided. No action shall be brought on any claim or demand for money or damages against the city or any board, commission or officer thereof, until a demand for the same has been presented as provided in this Charter or by ordinance and rejected in whole or in part. If rejected in part, action may be brought to recover the whole. Nor shall any action be brought upon any such demand that has been approved in whole, as herein or by ordinance provided, but nothing herein contained shall prevent the holder of any demand for resorting to proceedings to compel any officer, board, or commission to act upon a demand or to pay a demand that has been properly allowed.

* It was held in the case of *Kelso v. Board of Education of City of Glendale et al.*, 42 Cal. App. (2d) 418, 109 P. (2d) 30, that the provisions of this section are not applicable to claims against the school district.
In the case of *Slavin v. City of Glendale et al.*, 97 Cal. App. (2d) 408, 217 P. (2d) 984, which was an action against the City of Glendale and others for assault and battery committed by police officers of the city, it was held that such action was barred by plaintiff's failure to file a claim at any time and that the city was not estopped from raising this defense.
In the case of *Klimper v. City of Glendale et al.*, 99 Cal App. (2d) 451, 222 P. (2d) 49, it was held that presentation of a written verified claim, as required by Charter and ordinance, was a condition precedent to maintaining an action against the defendant city or an officer thereof upon a claim for damages founded in tort, and that the defendant city and its officers were not estopped from relying on plaintiff's failure to present any claim.

As to state claims law, see Gov. C., § 710 et seq.

Editor's Note: The catchline of this section originally read as follows: "Actions against city."

Sec. 6. Fiscal year; proposed budgets and estimates of revenues and expenditures generally.

The fiscal year of the city shall begin on the first day of July. On or before the first day of June of each year, the city manager shall submit to the council a proposed budget for the department of Glendale Water and Power and a proposed budget for all other departments to be known as the general budget. Said budgets shall include estimates of the revenues and expenditures of the city departments for the ensuing year. These estimates shall be compiled from detailed information obtained from the several departments on blanks to be furnished by the city manager. The classification of the estimates of expenditures shall be as nearly uniform as possible for all departments, and shall give the following information:

1. A detailed estimate of the expenses of each department;
2. Expenditures for corresponding items for the last and for the current fiscal years, including adjustments due to transfers between appropriations plus an estimate of expenditures necessary to complete the current fiscal year;
3. Such information as may be required by the council or as the manager may deem advisable to submit;
4. The recommendation of the manager as to the amounts to be appropriated, with reasons therefor, in such detail as the council may direct. Sufficient copies of such proposed budgets shall be prepared and submitted, that there may be copies on file in the office of the clerk for the inspection by the public and one (1) copy of each budget furnished each member of the council. The council shall have power to revise, correct or modify proposed budgets in any particular.

Editor's Note: The catchline of this section originally read as follows: "Estimate and budgets."

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Sec. 7. Hearing on proposed budgets; modification and adoption of budgets.

After considering said proposed budgets, the council shall fix a time for holding a public hearing upon the same and shall publish a notice of the time fixed for said hearing once in a newspaper of general circulation at least ten (10) days before the time for the hearing. After said hearing the council may further correct or modify said proposed budget and shall by resolution, adopt a Glendale Water and Power budget and a general budget. Such resolution shall operate as an appropriation of funds to the amounts and for the purposes set forth in the budgets so adopted.

Editor's Note: The catchline of this section originally read as follows: "Appropriations."

Sec. 8. Transfer of unused balances; appropriation of available revenues not included in annual budget.

At any meeting after the adoption of the budget or budgets, the council, by a vote of three (3) members may amend or supplement such budget or budgets, so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenues not included in the annual budget.

Editor's Note: The catchline of this section originally read as follows: "Transfer of appropriations."

Sec. 9. Authority of council to provide for system of taxation; tax liens; authority of council to designate assessor and tax collector.

The council shall have power by ordinance, to provide a system for the assessment, levy, and collection of all city taxes, which system shall conform as nearly as may be to the general laws of this state, provided for the assessment, levy and collection of county taxes. All taxes levied, together with any penalties imposed for delinquency and the cost of collection, shall constitute liens on the property assessed and every tax upon personal property shall

be a lien upon the real property of the owner thereof. The said liens shall attach as of the first Monday of March of each year. The council may provide that the city clerk shall be ex officio assessor and that the city treasurer or other officer selected by them, shall be ex officio tax collector.

Editor's Note: The catchline of this section originally read as follows: "Taxation."

Sec. 10. Assessment, collection, etc., of taxes by officers of County of Los Angeles.

The council shall have power by ordinance to authorize the transfer to and the assumption and discharge by officers of the County of Los Angeles, of any function of the city relating to the assessment of property for taxation, the equalization of such assessment, the collection of taxes levied for municipal purposes, the collection of assessments levied for local improvements, the sale of property for nonpayment of assessments levied for local improvements, and the redemption of property from sales for either of said purposes, and may repeal any such ordinances.

Until the council shall otherwise provide, the ordinance of said City of Glendale now in effect providing that the duties of assessing property and collecting taxes provided by law to be performed by the assessor and the tax collector of the City of Glendale, shall be performed by the county assessor and the county tax collector of the County of Los Angeles, shall remain in full force and effect. During the time that said present ordinance, or any other ordinance passed by the council in pursuance of this section for the same purpose, shall be in effect, the mode and manner of assessing property for purposes of municipal taxation, the equalization of such assessments, the levying and collecting of taxes for municipal purposes, the nature of the lien therefor and the manner and method of enforcing the same and of the redemption of property sold for nonpayment of taxes, and all proceedings relating to said matters, shall be substantially the same as may be provided by law for such matters in relation to county taxes of the County of Los Angeles, so far as

applicable, unless the council shall provide otherwise by ordinance.

During the time that the functions of the city, relating to the assessment and collection of city taxes, are being discharged by the officers of the County of Los Angeles, the offices of city assessor and city tax collector shall be deemed suspended and no person shall fill the same, nor shall any salary attach thereto, and all duties of said offices other than the assessment and collection of taxes shall be transferred to and performed by such officers as the council shall by ordinance determine.

Sec. 11. Tax rate; special taxes generally; additional annual taxes.*

The total tax rate for any one (1) year shall not exceed one (1) percent of the assessed valuation, unless a special tax be authorized, as provided in this Charter; and the proceeds of any such special tax shall be used for no other purpose than that specified for which it was voted; provided, however, that in addition to said one (1) percent, there shall be included in every annual levy, a sufficient amount to cover all liabilities of the city for principal and interest of all bonds or judgments due and unpaid or to become due during the ensuing fiscal year and not otherwise provided for; provided, further, that in addition to the taxes above mentioned there shall be levied a tax not exceeding fifteen cents (\$0.15) on each one hundred dollars (\$100.00) of the assessed valuation for the library fund; provided, further, that in addition to the taxes above mentioned, the council may levy a tax not exceeding fifteen cents (\$0.15) on each one hundred dollars (\$100.00) of assessed valuation for parks, playgrounds and recreation centers; provided, further, that in addition to the taxes above mentioned, there shall be levied a tax not exceeding fifteen cents (\$0.15) on each one hundred dollars (\$100.00) of the assessed valuation for the fire and police retirement system. If the council shall fail to fix the tax rate at the proper time, the rate for the preceding fiscal year shall be adopted and used. (1921; 1931; 1937.)

* This section of the Charter was construed in the case of *City of Glendale v. Haak*, City Controller, 62 Cal. App. (2d) 426, 144 P. (2d) 866, in which case it was held that appropriations from the general reserve fund may be made for parks and libraries in excess of the amount of the special tax that may be levied for such parks and libraries.

Editor's Note: The catchline of this section originally read as follows: "Tax rate."

The provision relative to the fire and police retirement system has been superseded by the city's participation in the state employees' retirement system. See Charter, Art. XXV, § 1.

Sec. 12. Special taxes and bonds.*

Whenever the council shall determine that the public interest demands an expenditure for municipal purposes, which cannot be provided for out of the ordinary revenue of the city, it may submit to the qualified voters at a regular or special election, a proposition to provide for such expenditure, either by levying a special tax, or by issuing bonds, but no such special tax shall be levied nor any such bonds issued, unless authorized by the affirmative votes of two-thirds (2/3) of the electors voting on the proposition at such election. No bonds shall be issued to meet current expenses.

The proceedings for the voting and issuing of bonds of the city shall be had in such a manner and form and under such conditions as shall be provided from time to time by general law. (1959.)

* It was held in the cases of *City of Glendale v. Crescenta Mutual Water Co.*, 135 Cal. App. (2d) 784, 288 P. (2d) 105, and *City of Glendale v. Trondsen, et al.*, 48 A. C. 91, 308 P. (2d) 1, that the term "special tax" refers only to property taxes.

Sec. 13. Limit on bonded indebtedness.

The total bonded debt of the city shall at no time exceed a total of fifteen (15) percent of the assessed valuation of all property taxable for city purposes.

Sec. 14. General budget fund.*

A fund to be known as the general budget fund is hereby created. All receipts from the general tax levy, licenses, fines, permits, and interest on bank deposits, and all other receipts except those from the department of Glendale Water and Power, and those which are collected for a specific purpose, or are herein ordered to be credited to some other

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fund, shall be credited to said fund, and all disbursements, on account of general budget appropriations, excepting such appropriations as are payable out of special funds, shall be charged to said general budget fund. The credit balance, if any, in said general budget fund, at the end of any fiscal year, the amount of which is in excess of the amount of all outstanding demands and liabilities unpaid on account of general budget appropriations for said fiscal year, shall be transferred to the general reserve fund.

* It was held in the case of *Marr v. Southern California Gas Co.*, et al., 198 Cal. 278, 245 P. 179, that interest received on money from the sale of assessment bonds pending action to test validity of assessment may be paid into the general fund of the city. In the case of *City of Glendale v. Crescenta Mutual Water Co.*, 135 Cal. App. (2d) 784, 288 P. (2d) 105, it was held that receipts from an excise tax on use of water need not be credited to the general budget fund, since the collection was for a specific purpose, i.e., payments to the Metropolitan Water District in lieu of the ad valorem taxation.

Sec. 15. General reserve fund.

The council shall maintain the permanent revolving fund now established and known as the general reserve fund, for the purpose of keeping the payment of the running expenses of the city on a cash basis. Said fund shall be maintained in an amount sufficient to meet all legal demands against the treasury for the period of each fiscal year prior to the collection of ad valorem taxes. The council shall have power to transfer from the general reserve fund to any fund or funds, such sum or sums as may be required for the purpose of placing such fund or funds, as nearly as possible, on a cash basis. It shall be the duty of the council to provide that all money so transferred from the general reserve fund be returned thereto on or before the end of the fiscal year in which said transfers are made; provided, that in any fiscal year in which the total balance in said general reserve fund exceeds fifty (50) percent of the total amount of the anticipated ad valorem tax receipts for that year, the council may appropriate such excess for any city purpose without returning the same. (1921; 1949.)

Sec. 16. Appropriations and expenditures for entertaining, advertising, etc.

The council may appropriate and spend money from the funds of the city for any or all of the following purposes: Reception and entertainment of public guests, assistance of public celebrations, fairs and exhibitions, to aid or carry on the work of inducing immigration to the city, to exhibit manufactured and other products of the city; and generally, for the purpose of advertising the city; provided, however, that the aggregate expenditures for all of said purposes shall not exceed in one (1) fiscal year the sum of two cents (\$0.02) on each one hundred dollars (\$100.00) of the assessed value of property within the city.

Editor's Note: The catchline of this section originally read as follows: "Entertainments."

Sec. 17. Waterworks depreciation fund; electric works depreciation fund.*

The council shall annually set aside from the income of the department of Glendale Water and Power derived from the waterworks of the city and paid into the waterworks revenue fund, a fund which, according to the estimates of the city manager, shall be sufficient to meet the normal depreciation of such waterworks. It shall also annually set aside from the income of the department of Glendale Water and Power derived from the electric works of the city and paid into the electric works revenue fund, a fund which, according to the estimates of the city manager, shall be sufficient to meet the normal depreciation of such electric works. Each of such funds shall be used only for the repair, replacement, betterment and extensions of the plants and equipment of the waterworks or electric works, as the case may be, from which said revenue is derived. Nothing herein contained shall limit the right to vote and issue bonds of the city for said purposes or any thereof or to issue revenue bonds of said city for said purposes or any thereof. (1921; 1931; 1941; 1949.)

* In connection with this section, see Charter, Art. XXVI, § 5.

Editor's Note: The catchline of this section originally read as follows: "Depreciation funds."

Sec. 18. Special deposit fund.

There is hereby created a fund to be known as the special deposit fund, wherein shall be deposited all moneys received by the city, or any department, officer or board thereof, for the purpose of guaranteeing the payment of any costs, charges, or damages accruing or liable to accrue, to the city from the depositor and all moneys deposited as bail to secure the liberation of a person accused of a public offense, and all moneys required to be deposited for the purpose of indemnifying persons whose property is in danger of being damaged or destroyed by the operation of the depositor. The money so deposited may be returned to the depositor, should he become entitled to the return thereof, in such manner as the council may, by ordinance, prescribe, or upon default being made in the payment of such costs, charges, or damages, or in the performance of any of such conditions, acts or things, may be declared forfeited in whole or in part and be disposed of as the council may direct.

Sec. 19. General service fund.

The council shall maintain the permanent revolving fund now established and known as the general service fund. All expenditures for lot cleaning, for engineering, and other incidental expenses in connection with street opening and improvement proceedings and all other expenditures which are in the nature of advancements by the city and are to be repaid to the city, shall be charged to said fund. All receipts on account of the matters above mentioned shall be credited to said general service fund from the special fund created for such proceedings, if any, when available therein. All amounts expended for purchase of general supplies, which for any reason cannot be charged directly to the account or accounts for which such supplies are purchased, shall be charged against said general service fund, and when said supplies are used by the various departments, the cost thereof shall be charged against

the proper fund and credited to said general service fund.

Sec. 20. Waterworks revenue fund; electric works revenue fund.

All receipts by the department of Glendale Water and Power from the sale of water or otherwise derived from the waterworks of the city shall be credited to a fund hereby created to be known as the waterworks revenue fund. All receipts by the department of Glendale Water and Power from the sale of electric energy or otherwise derived from the electric works of the city shall be credited to a fund hereby created to be known as the electric works revenue fund. All disbursements (except those payable from the waterworks depreciation fund) provided in the Glendale Water and Power budget on account of said waterworks shall be charged to said waterworks revenue fund and all disbursements (except those payable from the electric works depreciation fund) provided in said budget on account of the electric works shall be charged to said electric works revenue fund. The credit balance, if any, or any part thereof, in each of said funds at the end of any fiscal year, the amount of which is in excess of the amount of all outstanding demands and liabilities unpaid from said fund on account of budget appropriations therefrom, shall be transferred to the Glendale Water and Power surplus fund.

Editor's Note: The catchline of this section originally read as follows: "Revenue funds."

Sec. 21. Glendale Water and Power sinking fund.*

For the payment of principal and interest of all Glendale city or municipal improvement district bonds heretofore issued for the acquisition, improvement or extension of waterworks or electric works operated by the city, the council shall transfer from time to time from the waterworks revenue fund or the electric works revenue fund, or both thereof, to the Glendale Water and Power sinking fund a sufficient amount each year to cover the total amount of payments falling due that year for princi-

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pal and interest of said bonds. Nothing in this section shall impair the power of the council to levy such taxes as may be necessary to provide for the payment of interest and principal of such bonds, or the power of the council to pay from the waterworks revenue fund the principal and interest of any general obligation bonds of the city hereafter issued for waterworks purposes or to pay from the electric works revenue fund the principal and interest of any general obligation bonds of the city hereafter issued for electric works purposes.

* In connection with this section, see Charter, Art. XXVI, § 5.

Sec. 22. Glendale Water and Power surplus fund—Generally.*

A fund to be known as the Glendale Water and Power surplus fund is hereby created, to which fund shall be credited from the receipts of the department of Glendale Water and Power in the waterworks revenue fund and the electric works revenue fund, any amounts in excess of the requirements of the several funds as hereinbefore set forth. Except as otherwise provided in this section, disbursements from said Glendale Water and Power surplus fund may be made by the council by special appropriation for waterworks or electric works purposes only, which shall include payment of all or any portion of the tax of the Metropolitan Water District of Southern California, or its successors in interest, which the council may elect to pay out of the funds of the City of Glendale.

At the end of each fiscal year an amount equal to twenty-five (25) percentum of the operating revenues of the department of Glendale Water and Power for such year, excluding receipts from water or power supplied to other cities or utilities at wholesale rates, shall be transferred from said Glendale Water and Power surplus fund to the general reserve fund; provided, that the council may annually, at or before the time for adopting the general budget for the ensuing fiscal year, reduce said amount or wholly waive such transfer if, in its opinion, such reduction or waiver is necessary to insure the sound financial position of said department of

Glendale Water and Power and it shall so declare by resolution. (1921; 1931; 1941; 1946; 1949.)

* In connection with this section, see Charter, Art. XXVI, § 5. It was held in the case of *City of Glendale v. Crescenta Mutual Water Co.*, 135 Cal App. (2d) 784, 288 P. (2d) 105, that the council has discretion to pay all or a portion of the payments to the Metropolitan Water District from the public service surplus fund in lieu of the ad valorem tax of the district.

Article XII. Department of Education.

Sec. 1. Board of education generally.

The control of the public school department of the City of Glendale, including the whole of the Glendale City School District, shall be vested in a board of education, which shall consist of five (5) members elected from the district at large.

Editor's Note: The catchline of this section originally read as follows: "Board of education."

Sec. 2. Powers and duties of board of education.

The powers and duties of the board of education shall be such as are prescribed by the Constitution and laws of the State of California.

Article XIII. Libraries.

Editor's Note: This article head originally read as follows: "Library."

Sec. 1. To be free to inhabitants, etc.; rules and regulations.

All libraries shall be forever free to the inhabitants and nonresident taxpayers of the City of Glendale, subject to such rules and regulations as may be deemed necessary for the administration, government, and protection of the library; provided, however, that for violation of any of said rules and regulations, the city manager may impose fines or may exclude the violator from the privileges of the library. All such fines shall be paid into the general fund. (1921; 1947.)

Sec. 2. Payment of library bills; library fund.

All library bills shall be paid out of the library fund, which fund is hereby established. (1921; 1931; 1947.)

Article XIV. Boards and Commissions.

Sec. 1. Creation of commission.

The city council, by ordinance, may create such permanent or temporary boards or commissions as it finds, in its judgment, are required to assist in the performance of any municipal function.

Sec. 2. Ordinance to include specifics.

In accordance with those powers granted by this Charter to the members of council to establish boards or commissions, an ordinance establishing such boards or commissions shall specify the following:

- (a) The number of members comprising such board or commission;
- (b) Their term of office;
- (c) The powers and duties assigned to the board or commission;
- (d) The conditions under which vacancies in membership shall occur automatically;
- (e) The qualifications for appointment to such board or commission; and
- (f) Such other matters as may be necessary, in the judgment of the council, to enable the board or commission to perform its assigned functions.

Sec. 3. Appointment and removal of members.

The selection, appointment, removal, and terms of office of board or commission members shall be as prescribed by ordinance or resolution of the city council.

Sec. 4. Meetings.

The meetings and acts of all boards and commissions shall be called, noticed, held and conducted in accordance with State law. Each board or commission shall adopt rules for the conduct of its meet-

ings, a copy of which shall be filed with the city clerk.

Article XV. City Planning.

Sec. 1. (Repealed).

Editor's Note: This section was repealed by amendments approved at a municipal election held on April 5, 2005. It formerly dealt with authority of council to appoint, etc., commission.

Sec. 2. Amendment, etc., of regulations adopted pursuant to Charter, Article III, Section 2, subdivisions 19 and 20.

The council may, from time to time, on its own motion, or on petition after hearing and public notice of such hearing given by one (1) publication in a newspaper of general circulation at least ten (10) days before the time of hearing, amend, supplement or change the regulations and districts established by any ordinance adopted pursuant to subdivisions 19 and 20 of Section 2, Article III, of this Charter. Whenever the owners of fifty (50) percent or more of the frontage of any district or part thereof, shall present to the council a petition duly signed and acknowledged by them, requesting any such amendment, supplement, change or repeal of the regulations prescribed for such district, or part thereof, the council shall act upon such petition within ninety (90) days after the filing thereof. No amendment, change, supplement or repeal of the regulations or of the boundaries of districts established by any ordinance passed under the above-mentioned provisions of the Charter shall be made except by a four-fifths (4/5) vote of the council, and if at the time of the hearing thereon a protest against such amendment, supplement, change or repeal is presented, duly signed and acknowledged by the owners of twenty (20) percent or more of the frontage of property which will be directly affected by the proposed amendment, supplement, change or repeal, or by the owners of twenty (20) percent of the frontage of property which is immediately adjacent thereto, either in the rear, or the sides, or across the street, no such amendment, change, supplement or repeal

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shall be adopted except by unanimous vote of the council. When a petition has been denied in whole or in part, no petition for the amendment, change, supplement or repeal so denied may be filed within six (6) months after such denial.

Article XVI. Social Service Commission (Repealed).

Editor's Note: This article was repealed by amendments approved at a municipal election held on April 5, 2005.

Article XVII. Franchises.

Editor's Note: The catchlines of all the sections contained in this article were supplied by the editor.

Sec. 1. General provisions as to granting.

In granting franchises the council shall be governed by the general laws of the state in force at the time, and franchises shall be granted only upon further conditions hereinafter provided.

Sec. 2. Payment of cost of advertising, etc.

Every application for a franchise shall be accompanied by a cash deposit or certified check in amount to pay in full all costs of advertising and other preliminary expenses connected with the offering for sale of such franchises and the granting of same, which deposit shall not be less than one hundred dollars (\$100.00). Said deposit shall be returned in case the council shall determine that neither the public necessity nor the public interest required the granting of the franchise, or in case the franchise be granted to a person other than said applicant. The cost of advertising and other costs hereinabove referred to connected with the offering for sale and granting of said franchise shall be paid by the successful bidder for said franchise, and such payment shall be a condition precedent to the vesting of the franchise.

Sec. 3. Limitation on period for which grant may be made.

Franchises shall not be granted for a longer period than twenty-five (25) years.

Sec. 4. Special election may be called.

Whenever an applicant for a franchise or other person shall pay in advance to the city the expenses of a special election, the council may, in its discretion, call such election, at which the proposed ordinance shall be submitted to a vote of the electors of the city.

Article XVIII. Initiative, Referendum and Recall.

Editor's Note: The catchlines of all the sections contained in this article were supplied by the editor.

Sec. 1. Adoption of state law.

The laws of the State of California providing for the initiative, referendum and recall* in cities as they now exist or hereafter may be amended, are hereby made a part of this Charter and all action under the initiative, referendum and recall in the City of Glendale shall be taken in accordance with said laws.

* For Charter provision as to recall of elective officers, see Charter, Art. IV, § 2.

Sec. 2. When certain initiative ordinances to take effect.

No initiative ordinance providing for the expenditure of public money or for an increase in salaries of any city officer or employee shall take effect until the beginning of the fiscal year next following the date of its adoption.

Article XIX. Public Welfare Department (Repealed).

Editor's Note: This article was repealed by amendments approved at a municipal election held on April 5, 2005.

Article XX. Police and Fire Departments.

Sec. 1. Powers and duties of chief of police.

The chief of police shall have command and control over the police department. He shall enforce all laws and ordinances for the peace and safety of the

city, and shall see that all orders and provisions of the council for these purposes are properly executed. He shall have power to appoint such police officers as are authorized by ordinance, subject to the approval of the city manager. He shall devote his entire time to the discharge of his official duties and shall not be absent from the city except under urgent need or in the performance of his official duties, unless granted permission by the city manager. His office shall be kept open at all hours of the day and night, and either he or a subordinate shall be in constant attendance.

Editor's Note: The catchline of this section originally read as follows: "Chief of police."

Sec. 2. Powers and duties of fire chief.

The fire chief shall have control of the fire department, and it shall be his duty to superintend the extinguishing of fires and to take measures for the protection of property imperiled thereby. He shall appoint, subject to the approval of the city manager, such firemen and other subordinates as may be authorized by ordinance.

Editor's Note: The catchline to this section originally read as follows: "Fire chief."

Article XXI. Public Works Department.

Sec. 1. Generally.*

The public works department shall have charge of general engineering, traffic engineering, flood control, street and sewer construction and maintenance, assessments, building inspection, care of public buildings, collection and disposal of refuse, and installation, maintenance and removal of parkway trees and parkways. (1957.)

* For similar Charter provision, see Charter, Art. X, § 5.

Sec. 2. City engineer generally.

The city engineer must be a civil engineer, who has practiced his profession not less than five (5) years next before his appointment. He shall possess the same power in making surveys, plats and cer-

tificates, as is given by law to city engineers and to county surveyors. He shall be the custodian of and shall be responsible for all maps, plans, profiles, field notes and other records and memoranda belonging to the city, and pertaining to his office and to the work thereof, all of which he shall keep in proper order and condition, with full indexes thereof, and shall turn over the same to his successor, taking from him duplicate receipts therefor, one (1) of which he shall file with the clerk. All maps, plans, profiles, field notes, estimates and other memoranda of surveys and other professional work made or done by him or under his direction or control, during his term of office, or that he may have received from his predecessor, shall remain the property of the city.

Editor's Note: The catchline of this section originally read as follows: "City engineer."

Sec. 3. Duties of maintenance services administrator.

The maintenance services administrator shall have the general care and supervision of streets and of the maintenance and repair thereof and the care of and custody of tools and implements belonging to the City of Glendale and used for street construction and repair. (1953; 1957.)

Sec. 4. Building official.

The building official shall have charge of the issuing of building permits and shall see that no permit is issued unless the building plans show conformity to all state laws and all ordinances of the city applicable thereto. He shall see that the laws and ordinances regulating the construction of buildings are enforced. He shall perform all duties that are imposed by existing ordinances of the city on the building inspector, the plumbing inspector and the inspector of electric wiring.

Article XXII. Department of Glendale Water and Power.

Editor's Note: The catchlines of all the sections contained in this article were supplied by the editor.

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Sec. 1. Generally.*

The department of Glendale Water and Power shall have charge of the construction, maintenance and operation of all public utilities owned or operated by the city.

* For similar Charter provisions, see Charter, Art. X, § 5.

Sec. 2. (Repealed).

Editor's Note: This section was repealed by amendments approved at a municipal election held on April 5, 2005. It formerly dealt with subordinate officers, clerks, etc.

Article XXXIII. Miscellaneous Provisions.

Editor's Note: The catchlines of all the sections contained in this article were supplied by the editor.

Sec. 1. Authority of city manager to assign clerks, etc., to work in any department, etc.

Notwithstanding anything in this Charter contained, the city manager may from time to time, in order to facilitate the prompt, economical and efficient dispatch of city business, assign assistants, deputies, clerks or employees from any office or department of the city government to perform work or service in connection with any other office or department of the city government, or may assign any assistant, deputy, clerk, or employee of the city to work in more than one (1) of said offices or departments.

Sec. 2. Application to city of general laws of state.*

All general laws of the state applicable to municipal corporations, now or hereafter enacted, and which are not in conflict with the provisions of this Charter or with ordinances or resolutions adopted in pursuance of this Charter, shall be applicable to the city.

* It was held, under this section and section 6 of this article, in the case of *Logan et ux. v. City of Glendale et al.*, 132 Cal. App. 169, 22 P. (2d) 552, that the city has power to avail itself of the provisions of the Vrooman Act relating to street assessments.

See also, *Logan v. City of Glendale et al.*, 102 Cal. App. (2d) 864, 229 P. (2d) 128.

Sec. 3. Definition of "city," etc.

Whenever in this Charter the word "city" occurs, it means the City of Glendale, and every department, board or officer, whenever either is mentioned, means a department, board or officer, as the case may be, of the City of Glendale.

Sec. 4. (Repealed).

Editor's Note: This section was repealed by amendments approved at a municipal election held on April 5, 2005. It formerly dealt with increase of compensation of elective officers.

Sec. 5. Vacancy in city offices.

If any officer of the city shall die or remove from the city, or absent himself therefrom for more than thirty days consecutively, without the permission of the council, or if he shall fail to qualify by taking the oath of office and filing his official bonds, whenever such bond is required, within fifteen days from the time his certificate of election or appointment is mailed or delivered to him, or if he shall resign or be removed from office, or if his election shall be finally declared void by any competent tribunal, or if he shall be convicted of a felony, or if he shall be adjudged insane, or if he shall cease to discharge the duties of his office (other than that of member of the council) for two (2) consecutive months, unless prevented by sickness, his office shall become vacant.

Sec. 6. Opening, etc., of streets; planting of trees; public improvement not elsewhere provided for in Charter; removal of dirt, rubbish, weeds, etc.*

The improvement, widening and opening of streets, the planting of trees, and all public improvements not specified in this Charter may be done, and assessments therefor may be levied in conformity with and under the authority conferred by general laws; provided, however, that the council may by ordinance adopt a procedure for the improvements of streets, alleys or other public places,

or for the removal of dirt, rubbish, weeds and other rank growths and materials which may injure or endanger neighboring property or the health or the welfare of inhabitants of the vicinity, from buildings, lots and grounds and the sidewalks opposite thereto, and for making and enforcing assessments against property benefited or affected thereby or from which such removal is made, for the cost of such improvement or removal, and may make such assessments a lien on such property superior to all other claims or liens thereon, except state, county and municipal taxes, but no such ordinance shall prevent the council from proceeding under general laws for said purposes.

* It was held, under this section and section 2 of this article, in the case of *Logan et ux. v. City of Glendale et al.*, 132 Cal. App. 169, 22 P. (2d) 552, that the city has power to avail itself of the provisions of the Vrooman Act relating to street assessments. See also, *Logan v. City of Glendale*, 102 Cal. App. (2d) 864, 229 P. (2d) 128. In the case of *City of Glendale v. Trondsen*, 48 A. C. 91, 308 P. (2d) 1, it was held that the property assessment was nothing more than a permissive method and not a limitation on other methods.

Sec. 7. Delivery of papers, etc., to successors in office.

All officers and boards shall deliver to their successors, all papers, books, documents, records, archives and other properties pertaining to their respective offices or departments, in their possession or under their control.

Sec. 8. Prohibitions applicable to specified officers; Government Code sections adopted.

Wherever applicable to city officers article 4 of chapter 1 of division 4 of title 1 of the Government Code of the State of California entitled "Prohibitions Applicable to Specified Officers," as it now exists or hereafter may be amended, is hereby made a part of this Charter. In addition, no officer or employee of the city shall receive any gratuity or advantage from any contractor or person furnishing labor or material to the city under a contract which is made or administered by such officer or

employee or by any body or board of which he is a member.

Sec. 9. Officers, etc., to be United States citizens.

All officers, and such other persons as specified by local, state or federal law, must be citizens of the United States during their period of employment.

Sec. 10. Payment for nomination, etc., to office.

No officer or employee of the city shall give or promise to give to any person, any portion of his compensation, or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for or elected to any office or employment.

Sec. 11. Acceptance by officers, etc., of donation or gratuity from applicant, subordinate, etc., for position with city.

No officer or employee shall accept any donation or gratuity in money, or other thing of value, either directly or indirectly, from any subordinate or employee, or from anyone under his charge, or from any candidate or applicant for any position as employee or subordinate in any department of the city.

Sec. 12. Conduct prohibited to city officers and employees with reference to contracts; connivance with contractors.

No officer or employee of the city shall aid or assist a bidder in securing a contract to furnish labor, or material or supplies at a higher price or rate than that proposed by any other responsible bidder, or shall favor one (1) bidder over another, giving or withholding information, or shall willfully mislead any bidder in regard to the character of the material or supplies called for, or shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or shall knowingly certify to a greater amount of labor performed than has actually been performed, or to the receipt of a

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greater amount of material or supplies than has actually been received.

Sec. 13. Approval, etc., by officer of unauthorized demand on treasury.

Every officer who shall wilfully approve, allow or pay any demand on the treasury not authorized by law, shall be liable to the city individually and on his official bond for the amount of the demand so approved, allowed or paid, and shall forfeit such office and be forever disbarred and disqualified from holding any position in the service of the city.

Sec. 14. Payment into city treasury of moneys ~~received from taxes, licenses, fees,~~ etc.*

All moneys received from taxes, licenses, fees, fines, penalties and forfeitures, and all moneys which may be collected or received by any officer of the city in his official capacity, or by any department of the city, for the performance of any official duty, and all moneys accruing to the city from any source, and all moneys directed by law, or by this Charter, to be paid or deposited in the treasury, shall be paid into the treasury daily.

The treasurer shall receipt for each such deposit in triplicate, giving the original and duplicate to the depositor, who must file the duplicate with the director of administrative services.

* In connection with this section, see Charter, Art. XXIII, § 22.

Sec. 15. Inspection of books and records.

All books and records of every office and department shall be open to the inspection of any citizens during business hours, subject to the proper rules and regulations for the efficient conduct of the business of such department or office; but the records of the police department shall not be subject to such inspection except by permission of the proper police authorities. The council may, by ordinance, prohibit the inspection of tax returns and tax investigation records which disclose the amount or source of income, profits, losses or expenditures of

any taxpayer or person required to file a return. (1953.)

Sec. 16. Copies or extracts from books and records.

Copies or extracts from said books and records open for inspection shall be given by the officer having the same in custody to any person demanding the same and paying such fees for the copies or extracts and for certifying, if certification is also required, as the council may from time to time establish by ordinance. (1967.)

Sec. 17. Office hours for city officers.

~~Unless otherwise provided for by law,~~ all city officers shall keep such office hours as may be established by ordinance.

Sec. 18. Continuation of ordinances and resolutions in force at effective date of Charter.*

All ordinances and resolutions in force at the time this Charter takes effect, and not inconsistent therewith, shall continue in full force until amended or repealed.

* As to when Charter takes effect, see Charter, Art. XXIII, § 28.

Sec. 19. Officers, etc., in office at effective date of Charter.*

All officers, assistants, and employees in office, when this Charter takes effect, shall continue to hold and exercise their respective offices or employment, under the terms of this Charter, until the election or appointment and qualification of their successors.

* As to when Charter takes effect, see Charter, Art. XXIII, § 28.

Sec. 20. First election under Charter.

The present board of trustees shall provide for the holding of the first election of officers under this Charter and shall canvass the votes and declare the result thereof.

Sec. 21. Effect of adoption of Charter on vested rights, etc., of city.

All vested rights of the city shall continue and shall not in any manner be affected by its adoption of this Charter, nor shall any right, liability, pending suit or prosecution, either in behalf of or against the city, be affected by the adoption of this Charter unless otherwise herein expressly provided. All contracts entered into by the city or for its benefit prior to the taking effect of this Charter shall continue in full force and effect. All public work begun prior to the taking effect of this Charter shall be continued and perfected hereunder. Public improvements for which legislative steps shall have been taken under laws in force at the time this Charter takes effect, may be carried to completion in accordance with the provisions of such laws.

Sec. 22. Officers to report fees, etc., monthly.*

On the first day of each month every officer authorized by law to charge any fee, commission, percentage, allowance or compensation, must make a written report to the director of administrative services of all moneys received by him during the preceding month.

* In connection with this section, see Charter, Art. XXIII, § 14.

Sec. 23. Severability clause applicable to Charter.

If any section or part of a section of this Charter proves to be invalid, it shall not be held to invalidate or impair the validity of any other section or part of a section, unless it clearly appears that such other section, or part of a section, is dependent for its operation upon the section or part of a section so held invalid.

Sec. 24. Purchases from local merchants.

When making purchases for all departments of the city, local merchants shall be given the preference, quality and prices being equal.

Sec. 25. Political activity or contributions on part of city manager, etc.

Neither the city manager, nor any person in the employ of the city shall take any active part in securing, or shall contribute money toward the nomination or election of any candidate for a municipal office.

Sec. 26. Vesting of city's powers generally.

All the powers of the city except as otherwise provided by this Charter, are hereby vested in the council.

Sec. 27. Penalties, violation of ordinances.

The violation of the Charter or ordinance of the city shall be a misdemeanor except that notwithstanding any other provision of this Charter or by ordinance, any such violation constituting a misdemeanor may, in the discretion of the city attorney, be charged and prosecuted as an infraction. Fines and penalties shall be set by the council, but the maximum fine or penalty for any such violation shall be the sum of one thousand dollars (\$1,000.00), or a term of imprisonment for a period not exceeding six (6) months, or both such fine and imprisonment, or such greater fine or imprisonment as established by state law for general law cities. The council by ordinance may provide that a violation of an ordinance shall be classified as an infraction and set the fine for a violation thereof: (1982.)

Editor's Note: The catchline of this section originally read as follows: "Penalty for violation of Charter or ordinances; working prisoners."

Sec. 28. When Charter to take effect.

For the purpose of electing all elective officers, and all purposes connected therewith, this Charter shall take effect from the time of its approval by the Legislature. For all other purposes, it shall take effect on July 5th, 1921.

Sec. 29. Authority of city to establish a municipal court.

The City of Glendale may establish a municipal court when, and in such manner as may be author-

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ized by the Constitution or laws of the State of California. (1931.)

Sec. 30. Administering oaths.

The head of each department and such deputies or assistants as such department head may designate shall have power to administer oaths and affirmations in connection with any official business of the city. (1982.)

Article XXIV. Civil Service.

Sec. 1. ~~Creation and composition of civil service commission; appointment, term and compensation of members; vacancies; chairman, chief examiner, etc.~~

A civil service commission is hereby created, consisting of five (5) qualified electors of the City of Glendale, who shall be appointed by the council and who shall serve without compensation. They shall hold office for a period of four (4) years and until their successors are appointed and qualified; provided that of those first appointed, two (2) shall be appointed to serve until the 1st day of May, 1939, three (3) shall be appointed to serve until the 1st day of May, 1941; and provided further, that any person appointed to fill a vacancy on the commission shall be appointed to serve for the remainder of the unexpired term.

The commission shall organize by electing one (1) of its members chairman. It shall appoint, subject to the approval of the council, a chief examiner, who shall not be a member of the commission and who shall also act as secretary of the commission. The commission may appoint such other subordinates as the council may authorize. The chief examiner and such other subordinates shall receive such compensation as the council shall from time to time determine by ordinance. (1933, 1937.)

Editor's Note: The catchline of this section originally read as follows: "Commission creation and organization."

Sec. 2. Duties of civil service commission generally; rules.

The commission shall prescribe, amend and enforce rules for the classified service, subject to the approval of the council, which shall have the force and effect of law; shall keep minutes of its proceedings and records of its examinations; and shall, as a board or through a single commissioner, make investigations concerning the enforcement and effect of this article and of the rules and efficiency of the service. It shall make an annual report to the council.

The rules shall provide:

(1) Classification of Positions. For the classification of all positions in the classified service.

(2) Competitive Examinations—Generally. For open, competitive examinations to test the relative fitness of applicants for all such positions, except positions for which competition has been suspended, as provided in this article.

(3) Same—Public Advertisement. For public advertisement of all competitive examinations.

(4) Eligible Lists. For the creation of eligible lists upon which shall be entered the names of successful candidates in the order of their standing in examination. Such lists shall remain in force not longer than two (2) years nor less than one (1) year provided that the commission may cancel any list established from an open examination which contains the names of not more than three (3) persons whose names have been submitted for appointment and the persons not appointed.

(5) Grounds for Rejection of Candidates or Eligibles. For the rejection of candidates or eligibles who fail to comply with the requirements of the commission in regard to age, residence, sex, physical condition, or who have been guilty of crimes or infamous or disgraceful conduct, or who have attempted any deception or fraud.

(6) Procedure as to Appointments. For the appointment of one (1) of the three (3) persons standing highest on the appropriate eligible list, except when competition has been suspended as provided in this article; provided that the appointing agency may appoint a person from an eligible list contain-

ing less than three (3) names; and provided further that any person whose name has been certified three (3) times without appointment shall have his name dropped to the end of said list.

(7) Probation Period. For a period of probation not exceeding twelve (12) months before appointments or promotions are made complete.

(8) Temporary or Seasonal Appointments. For temporary appointments to permanent positions and appointments to temporary or seasonal positions, when there is no appropriate eligible list; provided, that no permanent position shall be filled by temporary appointees for a period longer than six (6) months except when due to a leave of absence or in cases of emergency. Appointments to temporary or seasonal positions and temporary appointments due to a leave of absence may be for such period of time as may be fixed by the commission. The commission shall determine whether any position is in character temporary, seasonal or permanent. The acceptance or refusal to accept temporary or seasonal employment on the part of a person on an eligible list shall not be a bar to appointment to a permanent position from said eligible list.

(9) Transfer; Demotion; Reinstatement. For transfer from one (1) position to a similar position, or to a lower position upon request of the employee affected, and for reinstatement within one (1) year of persons who, without fault or delinquency on their part, are separated from the service or reduced.

(10) Promotion. For promotion based upon competitive examination and records of efficiency, character, conduct and seniority; provided, that promotional examination shall be open only to those persons who are employed in positions designated by the commission as appropriate for promotional purposes, who have served in any such position or positions for an aggregate of at least six (6) months, and who satisfy the preliminary requirements of the commission for the position to be filled. Examinations may be exclusively promotional or may be combined with original examinations. Unless the commission finds that it would not be consistent with the best interests of the city, a vacancy, except one (1) for which competition has been suspended,

as provided in this article, shall be filled by promotion.

(11) Suspension Without Pay. For suspension without pay for a period not to exceed ninety (90) days.

(12) Adoption and Amendment of Rules Generally. For the adoption and amendment of rules only after public notice and hearing.

(13) Appointment of Unskilled Laborers. For the appointment of unskilled laborers after such tests as to fitness as the commission may prescribe.

(14) Further Provisions as to Adoption of Rules. For the adoption of such rules not inconsistent with the provisions of this Charter as may be necessary and proper to carry out the provisions of this article. (1933; 1937; 1943; 1949; 1957; 1982.)

Editor's Note: The catchline of this section originally read as follows: "Duties of the commission."

Sec. 3. Power of civil service commission to subpoena witnesses, etc.

In any investigation conducted by the commission, it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation, and each commissioner shall have the power to administer oaths to such witnesses. (1933; 1937.)

Editor's Note: The catchline of this section originally read as follows: "Power to subpoena witnesses."

Sec. 4. Examinations generally.

All applicants for positions in the classified service, except applicants for positions for which competition has been suspended as provided in this article, shall be subject to examination controlled by the commission. Such examinations shall be public, competitive and free, except as is otherwise provided in this article. Such examinations shall be practical in their character and shall relate to those matters which will fairly test the relative capacity of the persons examined to discharge the duties of the position to which they seek to be appointed, and when appropriate, shall include or exclusively con-

sist of tests of physical qualifications, health, and manual skill. No question in any examination shall relate to political or religious opinions or affiliations. A stenographic report or sound recording of all oral examinations shall be made. The commission shall provide by rule when such report or recording may be destroyed, but such rule shall not permit destruction until at least thirty (30) days after approval of the eligible list resulting from the examination. (1933; 1937; 1957.)

Editor's Note: The catchline of this section originally read as follows: "Examinations."

Sec. 5. Suspension of competition.

(1) In case of a vacancy in a position requiring peculiar and exceptional qualifications of a scientific, professional, or expert character, and upon satisfactory evidence that competition is impracticable and that the position can best be filled by the selection of some designated person of recognized attainments, the commission may, after public hearing and by the affirmative vote of all its members, suspend competition, but no such suspension shall be general in its application to such position, and all such cases of suspension shall be reported, together with the reasons therefor, in the annual report of the commission.

(2) In case of a vacancy in the position of director of administrative services, city attorney or his assistants or deputies, director of public works, building official, city engineer, maintenance services administrator, head or chief librarian, or in an office created by ordinance, and upon the filing with the commission of a written statement by the appointing agency that it intends to appoint a designated person of recognized attainments to fill such vacancy, competition shall be suspended. (1933; 1937; 1957.)

Sec. 6. Preferences.

Nothing herein contained shall prevent or modify the giving of preferences in appointments in the classified service to veterans, widows of veterans, and wives of disabled veterans as such persons may

be defined and such preferences now or hereafter may be authorized by the council. (1933; 1937; 1969.)

Sec. 7. Application of article; exception as to unclassified service.

The provisions of this article shall apply to all positions now existing or hereafter created, except those in the unclassified service.

The unclassified service shall consist of the following offices and employments:

All officers elected by the people.

All members of appointive boards and commissions, and persons serving without compensation.

~~The chief examiner of the civil service commission.~~

The city assessor.

The city manager.

The assistant city manager.

The secretary of the city manager.

The city tax collector.

One secretary of any officer elected by the people.

Special officers of the police and fire departments.

Positions in any unskilled labor class created for a special or temporary purpose and which do not exist for a period of longer than thirty days; provided that the commission may, upon application of the appointing agency and after public notice and hearing, by the affirmative vote of four-fifths (4/5) of its members, exempt any position in any unskilled labor class or any part-time, seasonal or temporary position for such period of time as it may determine; and provided further, that any such exemption shall not affect the tenure of any person whose appointment has become complete under this article.

Persons employed to render professional, scientific, technical or expert service of an occasional and exceptional character. (1933; 1937; 1947; 1953; Reso. No. 13, 802, § 1.)

Editor's Note: The catchline of this section originally read as follows: "Unclassified and classified service."

Sec. 8. Tenure of officers and employees in present employment.

All persons in the classified service, whose appointments have become complete, shall be discharged only for cause as herein provided. (1933; 1937.)

Sec. 8.1. (Repealed).

Editor's Note: This section was repealed in 1957. It formerly dealt with tenure of certain county employees stationed within territory proposed to be annexed to city.

Sec. 9. Procedure as to removal, suspension and reduction in rank.

Any person employed in the classified service may be removed, suspended or reduced in rank or grade after appointment or promotion is complete by the appointing agency, for cause, by an order in writing stating specifically the reasons therefor. Said order shall be filed with the commission and a copy thereof served upon the employee so removed, suspended or reduced. Any person so removed, suspended or reduced may, within five (5) days after presentation to him of a copy of the order of removal, suspension or reduction, appeal to the commission from such order. The commission or its authorized representative shall, within two (2) weeks after the filing of said appeal, commence a proceeding to fully hear and determine the matter. If an authorized representative of the commission hears the appeal, any proposed determination shall be presented to the commission with a report of the proceedings and the commission shall review the same and make its determination adopting or modifying or revoking the determination made by the authorized representative. The commission's determination shall be final. (1933; 1937; 1965.)

Sec. 9a. Leave of absence.

Upon the expiration of any leave of absence of a person in the classified service such person shall report for duty and thereupon be returned to the position from which such leave of absence was taken. All temporary employment caused by a leave of

absence shall be made from the appropriate eligible list. A leave of absence shall not constitute separation from the service. (1933; 1937.)

Sec. 9b. Abolishment of positions.

When a position in the classified service is abolished, the reduction and termination of all persons affected thereby shall be in accordance with the rules and regulations of the commission adopted for that purpose which shall follow as closely and practicable the reverse order of the lines of promotion and give credit according to seniority. (1959.)

Sec. 10. Procedure as to appointments.

The person or persons having authority of appointment shall notify the commission of any appointment made, and the commission shall certify such fact to the director of administrative services. The director of administrative services shall not approve any salary or compensation for services to any person holding or performing the duties of a position in the classified service until the appointment shall have been so certified. (1933; 1937.)

Editor's Note: The catchline of this section originally read as follows: "Certification of appointment"

Sec. 11. Severability clause applicable to article; remedying defects caused by unconstitutionality.

If any section, subsection, sentence, clause, or phrase of this article is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this article. The electors hereby declare that they would have passed this article, and each section, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one (1) or more other sections, subsections, sentences, clauses, or phrases are declared unconstitutional. If any portion of this Charter relating to civil service should be held to be unconstitutional, the council shall by ordinance provide for a substitute for such portion in such manner as to remedy the defect. (1933; 1937.)

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Editor's Note: The catchline of this section originally read as follows:
"Constitutionality."

Sec. 12. (Repealed).

Editor's Note: This section was repealed in 1945. It formerly dealt with
old-age retirement.

Sec. 13. War or emergency appointments.

During any war in which the United States is engaged or any national emergency causing induction or conscription for the armed forces, and notwithstanding any other provision of this article, the commission, after public notice and hearing, may authorize temporary appointments with or without examination to any position or positions in the classified service for such period of time as the commission may determine, but not exceeding the duration of said war or emergency and six (6) months thereafter. Such position or positions, while filled by such temporary appointments, shall be in the unclassified service. The date of termination of a war or emergency, for the purposes of this section, shall be as fixed by proclamation of the President of the United States, or by concurrent resolution of the two (2) Houses of Congress of the United States, or by resolution of the council of the City of Glendale, whichever date is earliest. (1943.)

Editor's Note: The catchline of this section originally read as follows:
"War emergency appointments."

Article XXV. Employees' Retirement.

Sec. 1. City to participate in state system; contract with retirement system; tax.

The participation of the city in Public Employees' Retirement System shall continue and shall include all specific benefits and provisions heretofore approved by the council or by the voters. All other existing or future amendments to the public employees' retirement law which by their terms require amendment of the contract between the city and the system, may also apply if the council in its discretion elects by the adoption of an ordinance or resolution to amend the contract with said system to

include such benefits or any of them. A tax sufficient for the city's participation shall be levied, in addition to taxes authorized elsewhere in this Charter. (1937; 1945; 1947; 1955; 1972.)

Article XXVI. Revenue Bonds for Waterworks and Electric Works.*

* In the case of *City of Glendale v. Chapman et al.*, 108 Cal. App. (2d) 75, 238 P. (2d) 162, it was held that an ordinance authorizing the issuance of municipal waterworks bonds payable only out of the net earnings of the waterworks is not invalid as authorizing the incurring of indebtedness contrary to section 18, article 11 of the constitution, requiring the vote of the people.

Sec. 1. Issuance generally; how payable; application of restrictions in Charter outside this article.

Revenue bonds for the purpose of providing moneys for the acquisition or construction of additions to or extensions or improvements of the waterworks or electric works of the city or for the purpose of refunding any revenue bonds previously issued under this article may be issued only as provided in this article. Such revenue bonds shall not constitute any indebtedness of the city but shall be payable, principal and interest, only from the revenue fund derived from the public utility to be added to, extended or improved with the proceeds of said bonds or the proceeds of the bonds to be refunded with said bonds, and no restrictions or limitations upon or procedure for the issuance of bonds in other articles of this Charter shall apply to such revenue bonds. (1949.)

Editor's Note: The catchline of this section originally read as follows:
"Revenue bond purposes."

Sec. 2. Bond ordinance generally.

Whenever the council proposes to issue revenue bonds pursuant to this article it shall adopt an ordinance authorizing the issuance of such bonds which shall recite the objects and purposes for which the bonds are to be issued, the principal amount thereof, the maximum rate of interest thereon, the date of issue of said bonds, the maturity dates thereof, and the revenue fund from which said bonds and the

interest thereon are to be payable, and such provisions authorized by Section 3 of this article as the council deems desirable. Said bonds shall be issued in negotiable form and shall be negotiable. The recitals of regularity of proceedings in any revenue bond issued and sold shall be conclusive evidence of compliance with the provisions of this article and of the validity of such bond. (1949.)

Editor's Note: The catchline of this section originally read as follows: "Revenue bond ordinance."

Sec. 3. Terms and conditions of bond ordinance, etc.; bond ordinance, etc., as contract.

In the ordinance authorizing the issuance of said bonds or in any ordinance, resolution or order in the proceedings for the issuance and sale thereof, or in any indenture authorized by the council in respect of said bonds, the council may, in any article, section, sentence, or clause thereof make such provisions as it may deem necessary or desirable to facilitate the issuance and sale of the bonds or for the protection or security of the holders thereof, including without affecting the generality of the foregoing provisions for any or all of the following:

1. The denominations of the bonds, the rate or rates of interest thereon, the medium of payment thereof, the place or places of payment thereof, within or without the State of California, the form of said bonds (including recitals of regularity) and of interest coupons pertaining thereto, the form, denomination and conditions of any temporary bonds or interim certificates, and the manual or facsimile signatures to be affixed to said bonds, coupons or certificates.

2. The terms and conditions under which said bonds may be issued, sold, paid, called before maturity, refunded, exchanged, registered, transferred and negotiated, and issues for more than one (1) purpose or utility may be sold on all or none basis.

3. Rates to be charged for services furnished by the public utility added to, extended or improved with the proceeds of said bonds, such rates to provide revenue at least sufficient to pay as the same

become due, principal and interest of such bonds and all other obligations payable from the revenue fund of such works or from any fund derived therefrom and the necessary expenses of maintaining and operating such works, and the extent to which such services may be furnished or rendered to the city or to any public corporation free or at lower rates than those otherwise charged.

4. The revenue fund from which said bonds and the interest thereon shall be paid; the collection, deposit and safekeeping of revenues, the permissible uses thereof (including restrictions upon or prohibitions against any uses authorized or required by other articles of this Charter), the special fund or funds to be kept for the payment of principal and interest of the bonds, including reserve, sinking, interest and redemption, and trust funds; the permissible investments for moneys in said funds, the accounts and records to be kept, audits thereof and examination thereof by bondholders and others.

5. The carrying of insurance upon such public utility, or any part thereof, against any and all risks.

6. Prohibitions against or limitations upon the sale, lease or other disposition of such public utility.

7. Prohibitions against or limitations upon the issuance of any additional bonds payable from the revenues of the public utility so acquired, constructed, extended or improved, but no bonds shall be issued pursuant to this article or under any other provision of this Charter having any priority in payment of principal or interest out of such revenues over revenue bonds theretofore or thereafter issued and payable out of said revenues.

8. Provisions whereby the consent or agreement of a stated percentage or number of the holders of the bonds may bind all holders to modifications of the provisions of any ordinance, resolution, order or indenture authorizing or providing for the issuance of such bonds, or to a refunding of said bonds and to calls or exchanges in connection with such refunding.

9. Any other provisions valid under the Constitutions of the State of California and United States of America which the council deems necessary or desirable to facilitate the issuance and sale

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of said bonds or for the protection of holders thereof.

The ordinance authorizing the issuance of said bonds, any indenture authorized by the council, and all other ordinances, resolutions, or orders in the proceeding for the issuance of said bonds shall constitute a contract with the holders of the bonds and may be enforced by them under any applicable legal remedies. (1949.)

Editor's Note: The catchline of this section originally read as follows: "Revenue bonds—Terms and conditions."

Sec. 4. Limitations on issuance.

The following limitations shall apply to the issuance of bonds under this article.

1. Said bonds shall be payable within not more than forty years from the date of issue thereof, and not less than one-fortieth part of the whole of any issue of bonds shall be payable annually beginning not later than ten (10) years from the date of such issue.

2. Said bonds shall be designated "Revenue Bonds" and each bond shall state on its face that it does not constitute an indebtedness of the City of Glendale but is payable, principal and interest, only from the revenue fund of the utility for which the proceeds of the bonds will be used.

3. Said bonds shall be sold only at public sale following such notice as the council by resolution may prescribe; provided, however, that if no satisfactory bid is received pursuant to such notice the council may reject all bids received, if any, and thereafter sell said bonds at public or private sale; provided, further, that the provisions of this subsection shall not apply to the exchange of any refunding bonds.

4. Said bonds shall be sold for not less than par and accrued interest to date of delivery. The proceeds from the sale (except premium and accrued interest which shall be used for the payment of principal and interest of the bonds) shall be applied exclusively to the objects and purposes set forth in the ordinance authorizing the issuance thereof; provided, however, that said proceeds may

be used for the payment of interest on said bonds during the period of acquisition and construction and for the first six (6) months thereafter, and provided, further, that when the objects and purposes for which the bonds were issued have been accomplished any remaining unexpended funds derived from the sale of said bonds shall be used for the payment of the principal and interest of said bonds. (1949.)

Editor's Note: The catchline of this section originally read as follows: "Revenue bonds—Limitations."

Sec. 5. Construction of bond ordinances, etc.; control of Charter provisions by ordinance.

To the extent that any provision of any ordinance authorizing the issuance of bonds pursuant to this article or of any ordinance, resolution, order or indenture pertaining thereto, adopted, made or entered into pursuant to the authority of this article, is inconsistent with any of the provisions of any other article of this Charter, the provisions of such ordinance, resolution, order or indenture shall control so long as any of the bonds and interest coupons to which the same pertain are outstanding and unpaid. (1949.)

Editor's Note: The catchline of this section originally read as follows: "Revenue bond proceedings—Effect of."

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IMPROVEMENTS, PUBLIC
Procedures generally Art. XXIII § 6

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LIBRARIES
Fund, bill payment Art. XIII § 2
Regulations generally Art. XIII § 1

—M—

MAINTENANCE SERVICE ADMINISTRATOR
Duties Art. XXI § 3

MANAGER, CITY
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IX § 1
Assistant Art. IX § 4
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PERSONNEL
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~~PERSONNEL~~

Continuation of terms after Charter adoption Art. XXIII § 19

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prohibitions generally Art. XXIII § 12

state prohibitions applicable Art. XXIII § 8

Delegation of powers, duties Art. IV § 5

Demand, unauthorized, payment penalty Art. XXIII § 13

Election

See ELECTIONS

Elective, recall Art. IV § 2

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Hours Art. XXIII § 17

Moneys received, payment to treasury Art. XXIII § 14

Moneys received, reporting Art. XXIII § 22

Nomination to office, payment prohibited Art. XXIII § 10

Oath of office Art. VI § 18

Payment acceptance prohibited Art. XXIII § 11

Political activity restrictions Art. XXIII § 25

Recall

See ELECTIONS

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Retirement

See RETIREMENT SYSTEM

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declared when Art. XXIII § 5

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PETTY CASH FUNDS Art. XI § 3

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See PARKS, PLAYGROUNDS, RECREATION CENTERS COMMISSION

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PUBLIC SERVICE SURPLUS FUND

Created, use Art. XI § 22

PUBLIC WELFARE DEPARTMENT

Authority Art. X § 3

Created Art. X § 1

PUBLIC WORKS DEPARTMENT

Authority Art. X § 5

Created Art. X § 1

Generally Art. XXI § 1

PURCHASING

See also CONTRACTS

Local merchant preference Art. XXIII § 24

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See ELECTIONS

RESOLUTIONS

See ORDINANCES

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REVENUE BONDS

Debt limit Art. XI § 13

Issuance Art. XI § 12

Waterworks, electric works

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conflicting provisions Art. XXVI § 5
issuance
 limitations Art. XXVI § 4
 ordinance generally Art. XXVI § 2
terms, conditions Art. XXVI § 3

—S—

SPECIAL DEPOSIT FUND

Created, use Art. XI § 19

—T—

TAXATION

Assessment, collection, county action Art. XI
 § 10
Authority Art. XI § 9
Rates Art. XI § 11
Special taxes Art. XI § 12

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See also DEMANDS AGAINST CITY
Powers, duties generally Art. XI § 2

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VIOLATIONS

Classification, penalties Art. XXIII § 27

—W—

WATERWORKS DEPRECIATION FUND

Created, use Art. XI § 17

WATERWORKS REVENUE FUND

Created, use Art. XI § 20

—Z—

ZONING

City council regulatory authority
 See COUNCIL, CITY
Regulations amendment Art. XV § 2

102.00000000

CHARTER AMENDMENT NO. JJ. Shall Article VI, Section 12 of the Charter for the government of the City of Glendale be amended to provide council members shall not hold any city office or employment except as authorized by State Law or hold any compensated city office or employment until two years after leaving office as council member?

YES

NO

(New provisions or language added to the existing charter section are shown in **BLACKFACE type**, words and figures deleted from the existing charter section are shown in ~~Strikethrough type~~.)

PROPOSED CHARTER AMENDMENT JJ

That the Charter of the City of Glendale be amended by amending Section 12 of Article VI thereof to read:

~~Article VI, Section 12, Councilmen ineligible to other city positions.~~

~~No members of the council shall be eligible to any office or employment, except an elective office, during the term for which he was elected.~~

Article VI, Section 12, Councilmembers holding other city offices.

A councilmember shall not hold any other City office or City employment except as authorized by State law or ordinarily necessary in the performance of the duties as a councilmember. No former councilmember shall hold any compensated City office or City employment until two years after leaving the office of councilmember.

ANALYSIS OF CHARTER AMENDMENT JJ

Councilpersons are not eligible for any office or employment except an elective office under present Charter. The legal interpretation has been that section refers to City employment only, although strict construction would be otherwise. Also, it is questionable whether councilpersons may be members of the Housing Authority or GRA, notwithstanding California statute to the contrary.

Proposed amendment will remove the aforesaid ambiguity.

FRANK R. MANZANO
City Attorney

ARGUMENT IN FAVOR OF PROPOSITION JJ

This amendment clarifies the language in the present Charter which leaves in question the right of a councilperson to be employed while on the Council. It clearly states that a council member may not hold another City office nor may a council member use his influence to obtain employment with the City until two years after leaving his council office.

ROBERT W. GARCIN
Mayor

GINGER BREMBERG
Councilwoman

CARROLL W. PARCHER
Councilman

JOHN F. DAY
Councilman

CARL MESECK
Councilman

ARGUMENT AGAINST PROPOSITION JJ

This two-year restriction against a dedicated, experienced ex-councilperson continuing to serve the City of Glendale is without merit.

What truly valid reason could there be for the people of the city to handicap themselves by having to wait two years to receive the services of someone who may be needed "right now?"

Couldn't an attorney who has had four or more years on the council become a most valuable part of the legal department? Perhaps even the manager?

Couldn't a doctor work for the public health as an employee?

Why not even a city manager, if the office was available?

With no logical reason for the City to limit its own freedom by this proposed change, vote "no" and give it every possible advantage to secure the best talent available.

DICK R. LINCH

RECEIVED C

Attorneys for Proposed Relators

JOHN RANDO and MARIANO A. RODAS,
Proposed Relators,
vs.
FRANK QUINTERO, individually and in his official capacity as Glendale City Councilmember; CITY OF GLENDALE,
Defendants.

) CASE NO
)
)
) NOTICE OF APPLICATION FOR LEAVE
) TO SUE IN QUO WARRANTO TO TRY
) TITLE TO PUBLIC OFFICE
)
)
)
)
)

1. a copy of Relator's Application for Leave to Sue in Quo Warranto;
2. a copy of the [Proposed] Verified Complaint;
3. a copy of the Verified Statement of Facts in Support of the Application; and
4. a Memorandum of Points and Authorities in Support of this Application.

1

1 FURTHER NOTICE IS HEREBY GIVEN that if the Attorney General grants Proposed
2 Relators' request to shorten time, you will have five (5) days after service of this Notice to appear
3 before the Attorney General to show cause, if any, why leave to sue should not be granted in
4 accordance with the Relators' application. If the Attorney General does not grant Proposed
5 Relators' request to shorten time, you have fifteen (15) days after service of this Notice to appear
6 before the Attorney General and to show cause, if you have any, why leave to sue should not be
7 granted in accordance with the Relators' Application.

8 Dated: May 23, 2013

MICHEL & ASSOCIATES, P.C.

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11 C. D. Michel
Attorneys for Proposed Relators
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Attorneys for Proposed Relators

BEFORE THE ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA

JOHN RANDO and MARIANO A.
RODAS;

Proposed Relators,

vs.

FRANK QUINTERO, individually and in his official capacity as Glendale City Councilmember; CITY OF GLENDALE,

Defendants.

CASE NO.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR LEAVE TO SUE IN
QUO WARRANTO TO TRY TITLE TO
PUBLIC OFFICE

1 I. INTRODUCTION

2 Proposed Relators, John Rando and Mariano A. Rodas ("Proposed Relators"), hereby
3 apply for leave to sue in *quo warranto* because proposed Defendant, Glendale City
4 Councilmember Frank Quintero ("Defendant Quintero"), unlawfully holds the public office of
5 Councilmember, and proposed Defendant, the City of Glendale ("Defendant City" or "City"),
6 usurped and intruded into that public office by appointing Defendant Quintero in violation of its
7 City Charter

8 II. FACTUAL HISTORY

9 On April 12, 2013, the City of Glendale held its municipal election to elect among others,
10 a City Treasurer and three City Councilmembers. (Verified Statement of Facts ("VSOF"), ¶ 4),

11 Three councilmembers, including Laura Friedman, Ara Najarian, and Defendant Quintero
12 had terms that expired in April 2013, leaving three councilmember positions for which the voters
13 could cast their ballot. (VSOF, ¶ 5.) Laura Friedman and Ara Najarian both ran for re-election in
14 April 2013. (VSOF, ¶ 5.) Defendant Quintero did not run for re-election. (VSOF, ¶ 5.)

15 On or about April 11, 2013, the City of Glendale finalized the election results, and Ara
16 Najarian, Laura Friedman, and Zareh Sinanyan won the election to fill the three available
17 councilmember positions. (VSOF, ¶ 6.)

18 On April 15, 2013, the new councilmembers took office, and Defendant Quintero's term
19 as city councilmember effectively terminated. (VSOF, ¶ 7.)

20 Rafi Manoukian, a sitting Glendale city councilmember at the time of the April 12, 2013
21 election, ran in the election for the position of City Treasurer and won. (VSOF, ¶ 8.)

22 Because Mr. Manoukian's council term was not set to expire this year, his seat was not
23 filled by the election and his assuming the position of Treasurer on or about April 15, 2013, left a
24 vacancy on the City Council. (VSOF, ¶ 9.)

25 Per Article VI, Section 13(b) of the Glendale City Charter, any vacancy on the city council
26 must be filled via appointment by the majority vote of the remaining members of the council.
27 (VSOF, ¶ 10.) If any appointment to the council is not made within 30 working days of the
28 vacancy, then the council must call for a special election within 120 days to fill the vacant seat.

1 (VSOF, ¶ 10.)

2 At the city council meeting on April 16, 2013, the councilmembers discussed how to
3 determine who to appoint to fill the vacant seat. (VSOF, ¶ 11.) Defendant Quintero's name was
4 raised as a possible candidate. (VSOF, ¶ 11.) Councilmember Najarian raised a concern before the
5 Council and the Glendale City Attorney, Michael J. Garcia, that Article VI, Section 12 of the
6 Glendale City Charter might preclude appointment of Defendant Quintero because two years had
7 not yet lapsed since the ending of Defendant Quintero's former term on April 15, 2013 (VSOF, ¶
8 11.)

9 Article VI, Section 12 was amended by Glendale voters in the City's 1982 election to
10 reword its original language and to add the following completely new sentence:

11 No former councilmember shall hold any compensated city office or
12 city employment until two (2) years after leaving the office of
councilmember. (1982.) (VSOF, ¶ 12.)

13 Article IV, Section 1 of the Glendale City Charter refers to city councilmembers as
14 "officers" and Article IV, Section 3 provides that city councilmembers receive compensation from
15 the City. (VSOF, ¶ 13.)

16 In response to Councilmember Najarian's inquiry, City Attorney Garcia provided his
17 opinion on the application of Article VI, Section 12 to the proposed appointment of Defendant
18 Quintero. (VSOF, ¶ 14.) He concluded that such provision would not preclude Defendant
19 Quintero's appointment to the City Council. (VSOF, ¶ 14.)

20 He reasoned that *according to the legislative history*, the voters' main intent in adopting
21 the provision was to clarify an ambiguity in the previous charter provision, which when read
22 literally, prevented councilmembers from having any employment beyond the council whatsoever.
23 (VSOF, ¶ 15.)

24 City Attorney Garcia continued explaining his position by stating that while the legislative
25 history makes clear that the Charter amendment's purpose was also to prevent former
26 councilmembers from using "undue influence" to try to obtain a city position within two years of
27 leaving office – what he referred to as "a typical revolving-door policy" – he did not believe that
28 the provision contemplated the appointment of a former councilmember back on the council after

1 a recent and brief retirement. (VSOF, ¶ 16.)

2 City Attorney Garcia reasoned that because Defendant Quintero was a co-equal member of
3 the council with no legal or supervisory authority over the other councilmembers, in his view the
4 public policy purpose of this particular charter amendment would not be served by reading it in
5 such a way as to prevent the Council from appointing Defendant Quintero, or any recently
6 resigned council member, to serve on the council. (VSOF, ¶ 17)

7 He further opined that because the constitutional right to public office was implicated, he
8 felt that the provision and its legislative history had to be more clear that situations like Defendant
9 Quintero's were intended to be covered by the Charter's prohibition on former councilmembers
10 obtaining City positions within two years of their leaving office. (VSOF, ¶ 18.) According to City
11 Attorney Garcia, the provision is ambiguous on that point – although he does not point to a
12 specific ambiguity – and the voter materials from 1982 (when the Charter amendment was voted
13 on) did not clearly enough reflect an intent to block the appointment of a former council member
14 within the two year period. (VSOF, ¶ 18.)

15 On April 23, 2013, the City Council appointed Defendant Quintero to fill the vacancy.
16 (VSOF, ¶ 19.)

17 III. DISCUSSION

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

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

25 The present case is a *prima facie* situation for which leave to sue Defendants Quintero and
26 the City in *quo warranto* is appropriate. First, a member of a city council holds a public office for
27 purposes of a *quo warranto* action. (See 72 Ops.Cal.Atty.Gen. 63 (1989); 72 Ops.Cal.Atty.Gen. 8
28 (1989); 35 Ops.Cal.Atty.Gen. 198 (1960).) Second, there is an issue of law as to whether the

1 City's appointing Quintero violated its Charter. Finally, it is in the public interest to resolve that
2 question of law for City of Glendale residents.

3 This showing alone is sufficient for the Attorney General to grant proposed Relators'
4 application for leave to sue in *quo warranto*. While proposed Relators believe they will ultimately
5 prevail on this question before a court, the Attorney General need not bother herself with
6 determining the strength of the arguments in order to grant their application. (*See* 25 Ops. Cal.
7 Atty. Gen. 237, 240 [citing 17 Ops. Cal. Atty. Gen. 46, Gen. 87, 17 Ops. Cal. Atty. Gen. 136; 19
8 Ops. Cal. Atty. Gen. 46] (stating "in passing on applications for leave to sue in *quo warranto*, the
9 Attorney General ordinarily does not decide the issues presented, but determines only whether or
10 not there is substantial question of law or fact which calls for judicial decision"))

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

13 1. Relators Raise an Issue of Law Which Should Be Decided by a Court:
14 Whether Defendant Quintero's Appointment to the Glendale City
Council Violated the City's Charter

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

16 A councilmember shall not hold any other city office or city
17 employment except as authorized by State law or ordinarily necessary
18 in the performance of the duties as a councilmember. No former
19 councilmember shall hold any compensated city office or city
employment until two (2) years after leaving the office of
councilmember. (1982.)

20 Relators contend that the second part of this provision clearly and unambiguously bars
21 Defendant Quintero from being eligible to hold compensated office in Glendale within two years
22 of his having left his office as a Glendale councilmember on or about April 15, 2013. (VSOF, ¶7.)
23 And thus, his appointment to the City Council (a compensated City office – (VSOF, ¶ 13) on or
24 about April 23, 2013 (a mere eight days after he left office) violated Article VI, Section 12 of the
25 Glendale City Charter. (VSOF, ¶ 17.)

26 In advising the City Council to the contrary, City Attorney Garcia opined that the Charter
27 provision's language is not necessarily controlling, and that its legislative history must be
28 considered to determine its true intent. (VSOF, ¶ 15.) He concluded, in sum, that reading Article

1 VI, Section 12 literally as to prevent a former councilmember, such as Defendant Quintero, from
2 being appointed to fill the current councilmember vacancy would be improper because the
3 legislative history did not clearly show such was the voter's intent. (VSOF ¶¶ 14-17.)

4 He further opined that because the legislative history was not sufficiently clear that it
5 intended such an effect, reading the Charter to preclude Mr. Quintero's appointment would also
6 be contrary to public policy as an unwarranted restriction on Mr. Quintero's constitutional right to
7 be appointed to office. (VSOF, ¶ 18.)

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

10 Because the language of Article VI, Section 12 of the City's Charter clearly and
11 unambiguously prohibits Defendant Quintero from holding compensated office in the City of
12 Glendale within two years of April 15, 2013, City Attorney Garcia's argument to the contrary
13 necessarily looks beyond the plain language of the Charter provision. The rules of statutory
14 interpretation preclude that approach.

15 When addressing the rules of charter construction, the California Supreme Court has held
16 that "we construe the charter in the same manner as we would a statute." *Domar Elec., Inc. v. City*
17 *of Los Angeles*, 9 Cal. 4th 161, 171, (1994) (citing *C.J. Kubach Co. v. McGuire*, 199 Cal. 215,
18 217 (1926)). Accordingly, the court first looks to the language of the charter and gives effect to
19 "its plain meaning." *Id.* (citing *Burden v. Snowden*, 2 Cal.4th 556, 562 (1992)).

20 "If the language is clear and unambiguous there is no need for construction, nor is
21 it necessary to resort to indicia of the intent of the Legislature (in the case of a
statute) or of the voters (in the case of a provision adopted by the voters)."
22 *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988); *see also Pope v. Superior Court*, 136
23 Cal.App.4th 871, 875-76 (2006) (Where the language in a law is clear and unambiguous, the court
24 will "presume the city council and the voters intended the meaning apparent on its face and our
25 inquiry ends there.").

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

28 ///

b. To the Extent it Is Even Relevant, a Court Should
Decide the Meaning of Article VI, Section 12's
Legislative History

Even assuming that the plain language of the Charter provision is not dispositive, it is unclear how the legislative history supports City Attorney Garcia's position that Defendant Quintero's appointment is allowed under Article VI, Section 12. City Attorney Garcia refers to the Charter provision as a "typical revolving door policy" the general intent of which was to prevent former councilmembers from exerting "undue influence" in obtaining paid positions within the City. Yet, he provides no explanation why Defendant Quintero's situation should be excluded from that description when it seems it could conceivably be the epitome of what voters intended to prevent, i.e., councilmembers bypassing expensive and difficult elections to be appointed.¹

Moreover, City Attorney Garcia fails to cite any concrete example of language in the legislative history that shows voters did not intend to preclude appointments of a former city councilmember. Nor does he even cite to anything that would expressly allow such appointments either. He seems to assert that the legislative history's mere *omission* of an express statement (as opposed to a contrary one) contemplating this exact situation precludes its inclusion.

As such, Proposed Relators believe the legislative history's meaning does not support City Attorney Garcia's position here, because "[w]here the words of the charter are clear, we may not add to or alter them *to accomplish a purpose that does not appear on the face of the charter or from its legislative history.*" *Domar Elec.*, 9 Cal. 4th at 172 (emphasis added). A purpose cannot appear through an omission, which is what City Attorney Garcia's conclusion rests on, and is thus wrong. In any event, the effect of Article VI, Section 12's legislative history on whether Defendant Quintero is holding office in violation of Glendale's City Charter is a question appropriate for a court to determine.

¹ While Relators are not accusing Defendant Quintero, or any councilmember, of having engaged 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.

c. A Court Should Decide Whether Proposed Relators' View of Article VI, Section 12 Is Constitutionally Precluded

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

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

Based on the foregoing, it is clear that the Proposed Relators' application contains substantial questions of law deserving of review by a court.

2. Relators' Proposed Action in *Quo Warranto* Is in the Public Interest of the Residents of the City of Glendale, as it Seeks to Vindicate the Charter for Which They Voted

The existence of substantial issues of law alone has generally been viewed as presenting a sufficient public purpose to warrant the granting of leave to sue in *quo warranto*, absent other overriding considerations. 90 Ops.Cal.Atty.Gen. 82 (2007). See also, 85 Ops.Cal.Atty.Gen. 90, 93-94 (2002); 82 Ops.Cal.Atty.Gen. 78, 81-82 (1999); 81 Ops.Cal.Atty.Gen. 94, 98 (1998).) This case is no exception.

To the contrary, there could be no more important consideration in this context than the public's interest in how it is governed. And that is the question here: i.e., whether the Charter amendment adding Article VI, Section 12 that was adopted by the people of Glendale precludes Defendant Quintero from remaining on the City Council or not. As City Attorney Garcia concedes, Glendale residents' purpose in voting to amend the City's Charter in 1982 was to prevent a "revolving door" policy whereby former city council members would try and use

1 influence to obtain a position in the City. (VSOF, ¶ 16.) While City Attorney Garcia contends the
2 appointment of Mayor Quintero is not the type of situation contemplated by the Charter, a court
3 should decide whether the Glendale voters' intent was something other than what the plain
4 language of the Charter says; especially considering the complete lack of ambiguities in Article
5 VI, Section 12 and dearth of legislative history contradicting its plain meaning.

6 Based on the foregoing, Relators have presented a prima facie case for leave to sue
7 Defendants Quintero and the City in *quo warranto*.

8 B. Both Councilmen, Mr. Quintero and the City of Glendale Are Each Proper
9 Defendants

10 Mr. Quintero is a proper defendant since he is the one actually holding the public office
11 that he was unlawfully appointed to. Cal.Civ.Proc.Code § 803. Relators believe that the City of
12 Glendale is also a proper Defendant in this action. The Attorney General has routinely granted
13 leave to sue a city in *quo warranto* where the petitioners were challenging the legitimacy of a city
14 council action affecting the franchise under the Meyers-Milias-Brown Act. *See Int'l Assn. of Fire*
15 *Fighters v. City of Oakland*, 174 Cal. App. 3d 687, 698 (Ct. App. 1985) (holding that "an action
16 in the nature of *quo warranto* constitutes the exclusive method for appellants to mount their attack
17 on the charter amendments based upon the city's failure to comply with the Meyers-Milias-Brown
18 Act"); accord *People ex rel. Seal Beach Police Officers' Association v. City of Seal Beach*, 36
19 Cal. 3d 591, 595 (1984); *see also* 95 Ops.Cal.Atty.Gen. 31 (June 11, 2012).

20 It would make little sense if cities were subject to in *quo warranto* actions for failing to
21 comply with general law concerning elections and ballot measures, but not their own charters.
22 Moreover, it was the City, via the City Attorney and the City Council, that put Defendant
23 Quintero in this position, perhaps due to no fault of his own. Accordingly, Proposed Relators
24 believe that the City of Glendale is a proper defendant in this action in addition to Defendant
25 Quintero.

26 ///

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1 IV. CONCLUSION

2 For the foregoing reasons, Defendant Quintero's appointment to the Glendale City
3 Council violated the City's Charter *Quo warranto* is the proper and exclusive method for
4 remedying this harm. Therefore, proposed Relators respectfully request that their application for
5 leave to sue in *quo warranto* be granted.

6 Dated: May 23, 2013

MICHEL & ASSOCIATES, P.C.

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9 C. D. Michel
Attorneys for Proposed Relators
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EXHIBIT 10

1 MICHAEL J. GARCIA, CITY ATTORNEY
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8 Attorneys for Proposed Defendants,
9 FRANK QUINTERO and CITY OF GLENDALE

10
11 BEFORE THE ATTORNEY GENERAL
12 OF THE STATE OF CALIFORNIA
13

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA on the RELATION of
16 JOHN RANDO and MARIANO A.
17 RODAS,

18 Plaintiff,

19 vs.

20 FRANK QUINTERO, individually and in
21 his official capacity as Glendale City
22 Councilmember; CITY OF GLENDALE,

23 Defendants.

Opinion No.: 13-504

(Assigned to Deputy Attorney General, Marc
J. Nolan)

PROPOSED DEFENDANTS'
OPPOSITION TO RELATORS JOHN
RANDO'S AND MARIANO A. RODAS'
APPLICATION FOR LEAVE TO SUE IN
QUO WARRANTO

[Filed Concurrently With Verified Statement
Of Facts; Index Of Exhibits]

24 Proposed Defendants, CITY OF GLENDALE and FRANK QUINTERO, hereby submit
25 the following opposition to Relators, JOHN RANDO's and MARIANO A. RODAS', application
26 for leave to sue in quo warranto.

27 DATED: June 7, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

28 By: 

ANDREW C. RAWCLIFFE
Attorneys for Proposed Defendants

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The timeline concerning Councilman Frank Quintero's appointment and the language of the City of Glendale's Charter are not in dispute. However, as demonstrated below, the Relators' interpretation of Article VI, Section 12 is misguided, unconstitutional, and contrary to both the voters' intent and the City's longstanding, well-established interpretation. Moreover, this lawsuit is a baseless attempt by the opponents of a ban on the possession of firearms on municipal property, and their attorneys, to exact retribution against Councilman Quintero and the City of Glendale for voting in favor of an ordinance that restricted the sale of firearms on municipal property and banned the operation of the Glendale Gun Show at the Civic Auditorium. The Attorney General, therefore, should decline the request for leave to sue in quo warranto.

A. Councilman Frank Quintero's Appointment was Made Pursuant To Article VI, Section 13(b) of The City of Glendale's Charter

On April 2, 2013, the City of Glendale held a municipal election. (Verified Statement of Fact No. 2 (hereinafter "VSOF")) Councilman Rafi Manoukian, who had 14 months left on his term, was elected City Treasurer. (VSOF No. 3) This resulted in a vacancy on the City Council. (VSOF No. 4)

Pursuant to Article VI, Section 13(b) of the Charter, the Council was required to either appoint a councilmember within thirty days or hold a special election within 120 days to fill the vacancy for the remainder of the unexpired term. (VSOF No. 5) Article VI, Section 13 did not and does not impose any limitations on who the Council can appoint to fill a vacancy on the Council. (VSOF No. 6) The only limitation to elected office is found in Article VI, Section 1, which provides that “[e]ach candidate for member of council shall be a qualified elector pursuant to State law.” (VSOF No. 7)

Because the cost of holding a special election to fill the vacancy was approximately \$800,000, the Council decided to make an appointment to the vacant Council position. (VSOF No. 8) In making the appointment, the Council reached out to six former mayors, requesting that they apply for the vacant position. (VSOF No. 9) The rationale being that a former mayor was

1 unlikely to run in a future election but would have sufficient institutional knowledge to help
2 with the city's business. (VSOF No. 10) On April 23, 2013, the Council unanimously appointed
3 Councilman Quintero, who had retired as Mayor of the City on April 15, 2013, to the vacant
4 Council position. (VSOF No. 11) His term ends in June 2014 (12 months). (VSOF No. 12)

5 B. The Intent Behind Article VI, Section 12 of the City of Glendale Charter Did
6 Not Contemplate Any Limitation on Holding Elected Office

7 Article VI, Section 12 of the Charter (hereinafter "Section 12") is entitled "City
8 Councilmembers holding other offices." (VSOF No. 14) The electorate amended Section 12 by
9 Charter Amendment JJ on November 2, 1982 to provide:

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

14 (VSOF No. 18)

15 Prior to Charter Amendment JJ's passage, Section 12 provided:

16 "No members of the council shall be eligible to any office of employment,
17 except an elected office, during a term for which he was elected."

18 (VSOF No. 19)

19 The ballot pamphlet that was distributed to the electorate did not contemplate or inform
20 the electorate that Charter Amendment JJ's two year hiatus on City employment applied to
21 elected office. (VSOF No. 20) Instead, the ballot pamphlet explained that the primary emphasis
22 of Charter Amendment JJ was to clarify that Section 12's ban on employment only applied to
23 employment with the City and had no effect on outside employment. (VSOF No. 21) It also
24 explained that the second sentence of Charter Amendment JJ extended Section 12's ban on city
25 employment for an additional two years after the councilmember left elected office. (VSOF No.
26 22)

27 As explained in the City Attorney's Impartial Legal Analysis, this amendment was
28 necessary because prior to Charter Amendment JJ a strict reading of Section 12 would have
prohibited councilmembers from holding any outside employment. (VSOF No. 23) A ban on

1 councilmembers holding employment would result in absurd consequence for a part-time
2 Council. The legal opinion at the time, therefore, was that Section 12 applied only to City
3 employment. (VSOF No. 24) Accordingly, the stated purpose of Charter Amendment JJ was to
4 clarify that Section 12 was intended to prohibit a councilmember from holding City employment
5 at the same time he or she was serving a Council term.

6 The ballot argument in favor of Charter Amendment JJ, which was signed by the five
7 Councilmembers, explained that the purpose of the second sentence of Section 12 was to
8 prohibit councilmembers from using undue influence to obtain *employment* with the City after
9 leaving office. (VSOF No. 25) In other words, the second sentence extended the prohibition on
10 councilmembers' employment with the city for an additional two years after leaving elected
11 office.

12 Specifically, the ballot argument in favor of Charter Amendment JJ stated as follows:

13 "The amendment clarifies the language in the present Charter which leaves
14 in question the right of a council person to be employed while on the
15 Council. It clearly states that a council member may not hold another city
16 office nor may a council member use his influence to obtain *employment*
17 with the City until two years after leaving his council office. (emphasis
18 added)

19 (VSOF No. 26)

20 Nothing in the Impartial Legal Analysis or Arguments pertaining to Charter Amendment
21 JJ contemplated that extending the ban on city employment for two years after a councilmember
22 left office would also impact (or ban) a councilmember's constitutional right to hold elected
23 office for two years after leaving office. (VSOF No. 27) For instance, the Argument against
24 Charter Amendment JJ focused solely on the prohibition that the Charter Amendment JJ
25 imposed on ex-councilmembers obtaining employment with the City. (VSOF No. 28)

26 Specifically, the ballot argument against Charter Amendment JJ stated as follows:

27 "This two-year restriction against a dedicated, experience ex-council-
28 person continuing to serve the City of Glendale is without merit. [¶] What
truly valid reason could there be for the people of the city to handicap
themselves by having to wait two years to receive the services of someone
who may be needed 'right now'? [¶] Couldn't an attorney who has had four
or more years on the council become a most valuable part of the legal
department? Perhaps even the manager? [¶] Couldn't a doctor work for the

1 public health as an employee? [¶] Why not even a city manager, if the
2 office was available? [¶] With no logical reason for the to limit its own
3 freedom by this proposed change, vote 'no' and give it ever possible
4 advantage to secure the best talent available.

5 (VSOF No. 28)

6 C. A Charter Amendment that Would Prohibit Former Councilmembers From
7 Holding Elected Office for Two Years was Contemplated But Rejected in
8 1996

9 In 1995 through 1996, the Council debated placing a term-limit Charter Amendment on
10 the ballot that included a two year hiatus period before serving on Council again. (VSOF No
11 53). The City Attorney was directed to prepare a ballot measure to amend the Charter that
12 provided in pertinent part:

13 No person shall be eligible to serve another full or partial term until at least
14 two (2) years has elapsed without the person having served as an elected or
15 appointed Councilmember (or School Board or College Board member
16 should either or both consent by October 1, 1996), since the time the person
17 has completed serving two consecutive full terms.

18 (VSOF No. 54)

19 During the Council's debate on term-limits, consistent opposition was voiced to
20 amending the Charter to impose term-limits on elected office. (VSOF No. 55) A competing
21 proposal called the Voter's Rights Amendment was even submitted to the Council on February
22 20, 1996. (VSOF No. 56) The Voter's Rights Amendment was an anti-term-limit proposal that
23 would amend the Charter to explicitly state that there are no term-limits on elected office and
24 would abrogate the Council's power to impose such limitations. (VSOF No. 57)

25 In analyzing the legality of the Voter's Rights Act, the City Attorney noted "that this is
26 somewhat an idle or redundant act in that the Charter currently does not limit the number of
27 terms that an elected official may serve." (VSOF No. 58) The City Attorney reiterated these
28 comments to Council when he explained during the meeting that he found it a "redundant or idle
act. [Because] . . . right now [the Charter has] no term limits for elected officials and restating
that in more specific terms is essentially a redundant act." (VSOF No. 59)

1 After six meetings, the Council unanimously withdrew the Charter Amendment that
2 would have imposed a term-limit and a two year hiatus period on elected offices. (VSOF No.
3 60)

4 III. LEGAL STANDARD

5 For leave to sue in quo warranto, (1) there must be a substantial question of fact or law
6 appropriate for judicial resolution, and if so (2) the overall public interest is served by allowing
7 the quo warranto to be prosecuted. 85 Ops.Cal.Atty.Gen 101, 102 (2002); 83 Ops.Cal.Atty.Gen.
8 181, 182 (2000); 81 Ops.Cal.Atty.Gen. 98, 101. As addressed below, the Relators cannot
9 establish the two part test employed to grant leave to sue in quo warranto.

10 IV THE RELATORS' APPLICATION DOES NOT RAISE A SUBSTANTIAL 11 FACTUAL OR LEGAL DISPUTE

12 There is no factual dispute and the well-established rules of statutory construction affirm
13 Councilman Quintero's right to hold public office. See, 87 Ops.Cal.Atty.Gen. 176 (2004), 2004
14 WL 3185424 at p. * 2; 79 Ops.Cal.Atty.Gen. 243 (1996), 1996 WL 676126 at p. *4 . The
15 Attorney General has recognized in published opinions the following rules of statutory
16 construction are dispositive when evaluating similar requests for leave to sue in quo warranto.
17 See, Ibid.

18 A. It Was Not the Voters' Intent To Place A Term-Limit/Waiting Period On 19 Former Councilmembers to Hold Elected Office

20 First and foremost, "[t]he voters' intent in approving a measure is our paramount
21 concern." Woo v. Superior Court (2000) 83 Cal.App.4th 967, 975, citing, People v. Jones (1998)
22 5 Cal.4th 1142, 1146; Davis v. City of Berkeley (1990) 51 Cal.3d 227, 234; see, Lungren v.
23 Deukmejian (1988) 45 Cal.3d 727, 735. "To determine that intent, we look first to the words of
24 the provision adopted." Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975. "If the language
25 is clear and unambiguous, there ordinarily is no need for construction." Ibid. "We presume that
26 the voters intended the meaning apparent on the face of the measure, and our inquiry ends."
27 Ibid.

28 "However, this plain meaning rule does not prohibit a court from determining whether
the literal meaning of a charter provision comports with its purpose, or whether construction of

1 one charter provision is consistent with the charter's other provision." Lungren v. Deukmejian,
2 supra, 45 Cal.3d at p. 735. "Literal construction should not prevail if it is contrary to the voter's
3 intent apparent in the provision." See, California School Employees Assn. v. Governing Board
4 (1994) 8 Cal.4th 333, 340. "Nor will a court presume that the lawmakers (here, the voters)
5 intended the literal construction of a law if the construction would result in absurd
6 consequences." Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975.

7 "In those circumstances, we must consider extrinsic evidence of the voters' intent despite
8 the unambiguous language of the enactment." Ibid. Some of the extrinsic evidence considered,
9 includes: "the ostensible objects to be achieved, the evils to be remedied, the legislative history
10 including ballot pamphlets, public policy, contemporaneous administrative construction and the
11 overall statutory scheme." Int's Fed'n of Prof'l & Technical Engineers, AFL-CIO v. City of San
12 Francisco, (1999) 76 Cal.App.4th 213, 224-225 (citations omitted). In the end, "[t]he intent
13 prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of
14 the act." Ibid.

15 Here, the phrase "compensated city office or city employment" in the second sentence of
16 Section 12 is unquestionably ambiguous. As courts have explained, "[t]he words 'office' and
17 'public office' have been variously defined by the decisions throughout the nation, so that
18 seemingly an exact definition is difficult." Lymel v. Johnson (1930) 105 Cal.App. 694-696.
19 "The words 'public office' are used in so many senses that the courts have affirmed that it is
20 hardly possible to undertake a precise definition which will adequately and effectively cover
21 every situation." Id. at p. 697.

22 Ironically, the Relators make this point clear by relying on extrinsic aids such as Article
23 IV, Sections 1 and 3 in arguing that the plain language of the phrase "compensated city office or
24 city employment" prohibits Councilman Quintero from holding elected office. (Relators' App.,
25 p. 3:13-15) While Article IV, Section 1 defines councilmembers as officers and Section 3 allows
26 for compensation, Section 12 does not incorporate Sections 1 or 3 by reference. Moreover, other
27 sections of the Charter generally make a distinction between officers and elected officers when a
28 provision is intended to apply to elected offices. See, Charter, Art. IV, § 2 (utilizes the term

1 elective officer); see also, Charter, Art. IV, § 6 (is entitled terms of “elective officers”); see also,
2 Charter, Art. VI, § 13 (utilizes the term elective office), attached as Exh. 4.

3 However, even if Section 12 can be read to prohibit ex-councilmembers from elective
4 office, it is a well-established principle that the literal construction of Section 12 cannot prevail
5 over the voters’ intent. See, Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975; see also,
6 California School Employees Assn. v. Governing Board, supra, 8 Cal.4th at p. 340; see also,
7 Int’l Fed’n of Prof’l & Technical Engineers, AFL-CIO v. City of San Francisco, supra, 76
8 Cal.App.4th at pp. 224-225.

9 In that vein, the courts and the Attorney General have consistently found “a recognized
10 aid in ascertaining voter intent is the ballot pamphlet containing the information and arguments
11 relied upon by the electorate in adopting the language in question.” 87 Ops.Cal.Atty Gen. 176
12 (2004), 2004 WL 3185424 at p. *2, citing, Raven v. Deukmejian (1990) 52 Cal.3d 336, 349;
13 Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975;

14 Here, the ballot pamphlet is particularly instructive in deducing the voters’ intent,
15 because the voters could not have contemplated an interpretation of Section 12 that they were
16 never provided. People v. Cruz (1996) 13 Cal.4th 764-775 (“The words of a statute are to be
17 interpreted in the sense in which they would have been understood at the time of the
18 enactment.”) As is set forth in Section II(B), supra, the Impartial Legal Analysis and Arguments
19 stated that the intent of Charter Amendment JJ was to extend the existing ban on
20 councilmembers’ employment with the City beyond their term in elected office by two years.
21 The ballot pamphlet never contemplated or informed the electorate that the second sentence of
22 Charter Amendment JJ (the current Section 12) was or could be interpreted as creating a two
23 year hiatus period on former councilmembers holding elected office. (VSOF Nos. 14-28)

24 Nor could the electorate have deduced that Charter Amendment JJ was intended to
25 impose a two year hiatus period on elected office. The ballot pamphlet did not make reference to
26 Article IV, Sections 1 or 3. (VSOF No. 72) Nor did the ballot pamphlet define the phrase
27 “compensated city office or city employment” as including “elected offices.” (VSOF No. 73)

28 Instead, the Impartial Legal Analysis and Arguments informed the electorate that the
stated purpose of the second sentence of Section 12 was to prohibit councilmembers from

1 obtaining "employment" with the City for two years after leaving office. (VSOF Nos. 14-28) In
2 effect, an extension of the existing ban on councilmembers' employment with the City for two
3 years after they left elected office and nothing more.

4 The examples provided to the electorate solidify this construction of Section 12's second
5 sentence. The examples included positions with the legal department, public health, and the City
6 Manager. Notably absent are any examples of elected offices (such as the City Treasurer, City
7 Clerk, and/or Council) that a former councilmember would be disqualified from under Charter
8 Amendment JJ.

9 In fact, nothing in the ballot pamphlet made reference to Charter Amendment JJ
10 abrogating a former councilmember's Constitutional right to hold elected office. This omission
11 in the City Attorney's Impartial Legal Analysis of Charter Amendment JJ is most notable,
12 because common sense dictates that if there was even a remote possibility that Charter
13 Amendment JJ imposed a limitation on holding elected office (a right afforded by the
14 Constitution) the City Attorney would certainly have addressed such an interpretation in his
15 Impartial Analysis.

16 He did not. The Arguments in favor and against Charter Amendment JJ did not. It,
17 therefore, can reasonably be deduced that the contemporaneous interpretation of the Charter
18 Amendment JJ was that it did not implicate the right to hold elected office. See, Riley v.
19 Thompson (1924) 193 Cal.773, 778. ("A contemporaneous construction by the officers upon
20 whom was imposed a duty of executing those statutes is entitled to great weight . . ."); Civil
21 Code, § 3535; Carter v. Comm'n on Qualifications of Judicial Appointments, (1939) 14 Cal.2d
22 179, 185.

23 More importantly, a fair reading of the ballot pamphlet makes it clear that the electorate
24 believed the second sentence of Charter Amendment JJ was simply an extension of the existing
25 ban on a sitting councilmember's holding employment with the City for an additional two years
26 after they left elected office. The electorate never contemplated (nor were they informed) that
27 the second sentence Charter Amendment JJ would impose a two year hiatus on holding elected
28 office. Moreover, as is explained below, any such reading of Charter Amendment JJ would have

1 bizarre consequence and would constitute an unconstitutional restriction on holding elected
2 office.

3 B. The Relators' Interpretation of Article VI, Section 12 Is Unconstitutional
4 And Would Lead To Bizarre Results

5 An interpretation of Article VI, Section 12 that prohibits former councilmembers from
6 holding elected office for two years is unconstitutional under the Equal Protection's Clause of
7 the Fourteenth Amendment. See, De Bottari v. Melendez (1975) 44 Cal.App.3d 910

8 In De Bottari, the court struck down a local ordinance prohibiting recalled council
9 members from running for city council within a year of recall. Ibid. The court found "there is an
10 inextricable relationship between the right to vote and restrictions on candidacy," and although
11 the statute did not classify according to suspect criterions there was a danger that members of
12 suspect groups may be especially vulnerable to recall. Id. at p. 915, 918. In applying strict
13 scrutiny, "the court reviewed the interests that supported a temporary ban on candidacy by
14 recalled candidates and found them insufficient to sustain the restriction." Legislature v. Eu
15 (1991) 54 Cal.3d 492, 522.

16 Like De Bottari, the City of Glendale's Charter provides that "all elective officers of the
17 city shall be subject to recall as provided by the Charter." Charter, Art. IV, § 2; see, Charter, Art.
18 XVIII, § 1. If, therefore, Article, VI, Section 12 restricted (as the Relators advocate) former
19 councilmembers from holding elected office, Section 12 would disqualify recalled
20 councilmembers from running for office in a subsequent special election. See, Charter, Art. IV,
21 § 13 (special election for a vacant elected position must be held within either 120 or 180 days).
22 This type of restriction on holding elected office is unconstitutional. De Botarri v. Melendez,
23 supra, 44 Cal.App.3d.

24 Beyond being unconstitutional, the Relators' interpretation would also lead to the bizarre
25 result of prohibiting ex-councilmembers from running for elected office. See, Woo v. Superior
26 Court, supra, 83 Cal.App.4th at p. 975 (one cannot presume voters intend absurd and
27 unreasonable consequences).

28 For example, the City will hold a municipal election in June 2014 to elect Councilman
Quintero's successor. (VSOF Nos. 13) This election is within two years of the date that

1 Councilman Quintero originally stepped down as Mayor. (VSOF Nos. 11, 13) Assuming,
2 therefore, Councilman Quintero did not accept his appointment, but, nevertheless, decided to run
3 for the open Council position in June 2014, he would be ineligible to do so under the Relators'
4 construction of Section 12. Nowhere in the record, however, is there any indication that Section
5 12 was intended as a prohibition on ex-councilmembers running for elected office. Needless to
6 say, therefore, interpreting Section 12 in such a manner would lead to the bizarre and
7 unreasonable result of disqualifying potential candidates for elected office.

8 Under established rules of statutory construction, Section 12 is to be construed in a way
9 that avoids a constitutional infirmity (See, McClung v. Employment Dev. Dept't. 34 Cal.4th
10 467,477) and/or bizarre results. See, Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975.
11 The two examples above demonstrate the Relators' interpretation of Section 12 flies in the face
12 of these canons of statutory construction.

13 C. All Ambiguity In Article VI, Section 12 of the Charter Must Be Resolved In
14 Favor Of Councilman Frank Quintero's Constitutional Right To Hold
15 Elected Office

16 Even if, however, the Relators' interpretation is held constitutional and the two examples
17 are not considered bizarre, "the right to hold public office, either by election or appointment, is
18 one of the valuable rights of citizenship." Carter v. Comm'n on Qualifications, etc., supra, 14
19 Cal.2d at p. 182. Accordingly, "[t]he exercise of this right should not be declared prohibited or
20 curtailed except by plain provisions of law." Ibid. "Any ambiguity in a law affecting that right
21 must be resolved in favor of eligibility to hold office." Ibid.; Woo v. Superior Court, supra, 83
22 Cal.App.4th at 977 (citations omitted); 87 Ops.Cal.Atty.Gen 176 (2004), 2004 WL 3185424 at
23 p. * 3 (citations omitted).

24 In this instance, neither the language nor the history of Section 12 shows any intent to
25 prohibit a councilmember from holding elected office by either appointment or election after the
26 completion or termination of his or her Council term. As such, Section 12 must still be
27 construed in favor of Councilman Quintero's right to hold elected office.

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1 D. The City Council Does Not Engage In Idle Acts That Would Create
2 Superfluous Legislation.

3 Because "[t]he Legislature is presumed not to engage in 'idle act[s],' the proposed 1996
4 Charter Amendment on term-limits is particularly instructive in interpreting Section 12. People
5 v. Fowley (2000) 82 Cal.App.4th 784, 788-789.

6 As indicated above in Section II(C), supra, the City Council held six meetings on a
7 measure "that would limit the terms of Councilmembers to two consecutive terms with the
8 ability to later seek office after two years have elapsed without the individual having been in
9 office as a Councilmember." (Exh. 23 p. 1, ¶ 3) If Section 12 truly imposed a two year hiatus
10 period on holding elected office (as the Relators argue), the Council would have never directed
11 the City Attorney to draft such a measure. Id. This is true, not only because it is an idle act,
12 which wasted time (6 City Council Meetings over a year long period) and money, but also
13 because its passage would have made the second sentence of Section 12 superfluous and
14 redundant. People v. Fowley, supra, 82 Cal.App.4th at p. 788-789 ("Courts should avoid
15 constructions which render statutory language superfluous or unnecessary")

16 Based on the public record, the current City Attorney, the '95-'96 City Attorney, and the
17 '82 City Attorney are all in accord. The Charter does not impose any limitations (not term-limits
18 or hiatus periods) on holding elected office. This long standing and consistent opinion on the
19 subject should be afforded great weight. See, Carter v. Comm'n on Qualifications, etc., supra, 14
20 Cal.2d at p. 185 ("the contemporaneous interpretation thus placed on concededly vague and
21 uncertain provisions . . . under familiar rules of construction such practical interpretation,
22 extending over a long period of time, is entitled to great weight.")

23 V. GRANTING LEAVE TO SUE IN QUO WARRANTO WOULD NOT SERVE THE
24 PUBLIC INTEREST

25 Not only does the Relators' application to sue in quo warranto fail to raise a substantial
26 legal or factual dispute, it does not serve the public interest. While the City does not believe the
27 Relators have raised a justiciable issue, even if they had "[i]t is well settled that the mere
28 existence of a justiciable issue does not establish that the public interest requires a judicial
resolution of a dispute or that the Attorney General is required to grant leave to sue in quo

1 warranto.” 75 Ops.Cal.Atty.Gen 287, 289 (1992). “As stated in City of Campbell v. Mosk
2 (1961) 197 Cal.App.2d 640, 650: “The exercise of the discretion of the Attorney General in the
3 grant of such approval to sue calls for care and delicacy. . . .” 79 Ops.Cal.AttyGen. 243 (1996),
4 1996 WL 676126 at p. *4. In this instance, the public interest would not be furthered by this quo
5 warranto action for the following two (2) reasons.

6 First, it is clear that this quo warranto action would discourage citizens from holding
7 elected office and/or, at the very least, discourage elected officials from taking positions
8 unpopular with the National Rifle Association. See, 74 Ops.Cal.Atty.Gen. 26, 29 (1991)
9 (Denying a quo warranto action against a councilmember who sought reelection after serving
10 two consecutive terms contrary to the provisions of the Charter because “it would not be in the
11 public interest to burden the parties, the city, and the courts with this dispute, and that a
12 contradictory disposition would discourage participation by citizens in holding public office.”).
13 It would also violate the First Amendment. See, Schroder v. Irvine City Council (2002) 97
14 Cal.App.4th 174, 183, fn. 3 (voting is conduct qualifying for the protections afforded by the
15 First Amendment.)

16 Here, the circumstances surrounding the initiation of this quo warranto action suggest
17 that it is being brought in retaliation for Councilman Qunintero’s vote in favor of an ordinance
18 that restricted the sale of firearms on municipal property and ended the Glendale Gun Show
19 (hereinafter “Ban”). The Council passed the Ban on March 19, 2013. (VSOF No. 61)
20 Councilman Qunintero was the City’s Mayor at the time and voted in favor of the Ban. (VSOF
21 No. 62) The Relators’ counsel, Sean Brady, was representing the opponents of the Ban and
22 threatened the City with litigation if it passed. (VSOF No. 67) Mr. Brady was explicit when he
23 stated that the opponents would sue the City if the Ban passed and warned that litigation would
24 be costly. (VSOF No.68)

25 Even the Relators, John Rando and Mariano A. Rodas, are affiliated with, and ardent
26 opponents of the Ban. (VSOF No. 69) During the City Council’s debate on the Ban, the Relators
27 were among the most vociferous opponents of the Ban. (VSOF No. 70) Mr. Rando’s
28 commentary was especially inflammatory. (VSOF No. 71) Among the most inflammatory
comments made during his four appearances before the Council were: calling the Ban a racist

1 and xenophobic law; implying that the councilmembers were supporting a new kind of racism;
2 and engaging in numerous ethnic stereotypes to illustrate his opposition to the Ban. (Ibid.)

3 In light of the circumstances surrounding this lawsuit, granting leave to sue quo warranto
4 would not only curtail the fundamental right to hold public office but would also curtail
5 Councilman Quintero's fundamental right to vote. See, Carter v. Com. On Qualifications, etc,
6 supra, 14 Cal.2d at p. 182; see also, Schroder v. Irvine City Council, supra, 97 Cal.App.4th at p.
7 183, fn. 3. Being sensitive to these constitutional principles and the corresponding rules of
8 statutory construction that "holding public office . . . may be curtailed only when the law clearly
9 provides . . . [and] [a]ny ambiguity affecting the right to hold public office is resolved in favor
10 of eligibility to serve," dictates that the public interest is better served by denying this
11 application.

12 Second, the Relators' quo warranto action against Councilman Quintero will be moot
13 prior to its resolution. 87 Ops.Cal.Atty.Gen. 176 (2004), 2004 WL 3185424 at pp. *3-*4. "A
14 quo warranto may be filed 'only to right an existing wrong and not to try moot questions.'" Id. at
15 p. *3. Quo warranto applications have repeatedly been declined where the alleged unlawful term
16 of has expired, or the question of unlawfulness has become or will become moot by subsequent
17 events. Id. at pp. *3-*4.

18 Here, Councilman Quintero's term of office will expire in June 2014 (within 12 months).
19 For all practical purposes, therefore, the judicial proceeding will likely not conclude before the
20 expiration of Councilman Quintero's term. Accordingly, the Relators' application should be
21 denied.

22 VI. CONCLUSION

23 For the foregoing reasons, the City of Glendale and Councilman Quintero respectfully
24 request that the Attorney General deny the Relators' application for leave to sue in quo
25 warranto.

26 DATED: June 7, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

27 By: 
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ANDREW C. RAWCLIFFE
Attorneys for Proposed Defendants

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State California I am over the age of 18 and not a party to
4 this action. My business address is 613 East Broadway, Suite 220, Glendale, California 91206.

5 On June 7, 2013, I served the foregoing document described as PROPOSED DEFENDANTS'
6 OPPOSITION TO RELATORS JOHN RANDO'S AND MARIANO A. RODAS'
APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO on THE INTERESTED
PARTIES named below by enclosing a copy in a sealed envelope addressed as follows:

7 C.D. MICHEL
8 SEAN A. BRADY
9 MICHEL & ASSOCIATES, LLP
10 180 E. OCEAN BLVD., SUITE 200
LONG BEACH, CA 90802

Attorneys for Plaintiff

11 ☐ (BY MAIL) I deposited the envelope with the United States Postal Service with the postage fully
12 prepaid.

13 ☒ (BY MAIL) I placed the envelope for collection and mailing on the date shown above, at this office, in
14 Glendale, California, following our ordinary business practices.

15 I am readily familiar with this office's practice of collecting and processing correspondence for mailing.
16 On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary
course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.

17 ☐ (BY FACSIMILE) By transmitting a copy of the above listed document by a "FAX" machine to the
18 FAX number listed above and/or on the attached mailing list.

19 ☐ (BY E-MAIL) By transmitting a copy of the above listed document via e-mail to the e-mail address
20 listed above and/or on the attached mailing list.

21 ☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the
addressee.

22 ☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true
and correct.

23 ☐ (Federal) I declare under penalty of perjury that I am employed in the office of a member of the bar of
24 this court at whose direction the service was made.

25 Executed on June 7, 2013, at Glendale, California.

26 
27 Sheila Redding
28

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BEFORE THE ATTORNEY GENERAL

OF THE STATE OF CALIFORNIA

JOHN RANDO and MARIANO A.
RODAS,

Proposed Relators,

vs.

FRANK QUINTERO, individually and in
his official capacity as Glendale City
Councilmember; CITY OF GLENDALE,

Defendants.

) OPINION NO : 13-504

)
) (Assigned to Deputy Attorney General, Marc J.
) Nolan)

)
) PROPOSED REPLY TO DEFENDANTS'
) OPPOSITION TO RELATORS JOHN
) RANDO'S AND MARIANO A. RODAS'
) APPLICATION FOR LEAVE TO SUE IN
) QUO WARRANTO

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1 I. INTRODUCTION

2 Proposed Defendants ("Defendants") incorrectly portray Proposed Relators' ("Relators")
3 challenge as requiring an interpretation of Article VI, Section 12 of the Glendale City Charter
4 ("Section 12") that precludes a former councilmember from holding any "elected office" within
5 two years of leaving office. The question presented does not go so far – and cannot because such
6 would be seeking a political opinion. The sole issue here is whether Defendant Quintero's
7 *appointment* to the position of councilmember violates Section 12. On that score, Section 12 is
8 clear: it bars former councilmembers from holding "any city office" within two years of leaving
9 office. The office of city councilmember is a "city office" and Defendants' contention that the
10 term "any city office" excludes the city office of councilmember is ludicrous. It requires one to
11 ignore the plain language of – and to rewrite – Section 12. Nothing in the plain language of that
12 section, or its legislative history, supports that contention.

13 And even if "any city office" includes all "elected offices" (regardless of whether one is
14 elected or appointed), such an interpretation would not be fatal to Relators' challenge. Requiring
15 Mr. Quintero to wait two years to seek re-election or appointment to the council would be no
16 more onerous than various term-limit provisions, which have been held lawful. In any event,
17 Defendants' argument that the position of councilmember must be treated as an "elected office" –
18 that is not a "City office" – and so is exempted from Section 12, even when filled by an
19 *appointment*, simply raises yet another question that a court should decide.

20 Defendants' other argument, that the public interest is not served because Relators'
21 political views on an unrelated matter are allegedly the motive for this action, is both irrelevant
22 and offensive to constitutional values. Taking peoples' positions on unrelated political issues into
23 account in determining whether they deserve leave to sue would create an entirely new criterion
24 for granting leave to sue, and raises serious First Amendment concerns. Under Defendants view,
25 to what extent can a proposed relator disagree with an office holder and still qualify to challenge
26 the legality of his holding that office?

27 Finally, Defendants' assertion that this matter is "moot" is simply incorrect.

28 Relators have raised a substantial question of law concerning the legality of Defendant

Quintero's appointment under Section 12. Simply enforcing the City Charter itself necessarily serves the public interest. Leave to sue in quo warranto should be granted.

II. DEFENDANTS HAVE FAILED TO SHOW THAT NO SUBSTANTIAL QUESTION OF LAW APPROPRIATE FOR JUDICIAL REVIEW EXISTS

Defendants contend that there is no question that Section 12 excludes Defendant Quintero's appointment to councilmember from its two year restriction because, according to them: (1) Section 12's term "any city office" is ambiguous; (2) such was not intended by those who voted for its adoption; (3) reading Section 12 as doing so would be an "absurd result;" and, (4) constitutional principles preclude the office of councilmember from being subject to Section 12. Defendants are wrong on all counts.

A. The Term "City Officer" in Section 12 Is Not Ambiguous

When addressing the rules of charter construction, the California Supreme Court has held that "we construe the charter in the same manner as we would a statute." *Domar Elec., Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 171 (1994) (citing *C.J. Kubach Co. v. McGuire*, 199 Cal. 215, 217 (1926)). "Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use." *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988) (citing *In re Rojas*, 23 Cal.3d 152, 155 (1979)). "To determine the common meaning, a court typically looks to dictionaries." *Consumer Advocacy Grp., Inc. v. Exxon Mobil Corp.*, 104 Cal. App. 4th 438, 444 (2002) (citing *People ex rel. Lungren v. Superior Court*, 14 Cal. 4th 294, 302 (1996)). "Office" is defined as "a special duty, charge, or position conferred by an exercise of governmental authority and for a public purpose: a position of authority to exercise a public function and to receive whatever emoluments may belong to it." *Merriam-Webster Online Dictionary* (2013), available at <http://www.merriam-webster.com/dictionary/office>. To say the position of councilmember is not contemplated by this ordinary definition of "office" (or at least arguably does) is to defy logic.

Moreover, the Charter itself shows the position of councilmember is subject to Section 12's two-year restriction. First, as explained in the opening brief, Article IV, Sections 1 and 3 of the Charter, clearly identify councilmembers as "officers" who receive "compensation." Proposed Relators; Mem. of P. & A. 3. Defendants disingenuously dismiss those contextual references as

1 “extrinsic aids.” Proposed Defs.’ Opp’n 7. But, it is proper to construe Section 12 in light of the
2 Charter as a whole. “It is assumed that a city has existing laws and charter provisions in mind
3 when it enacts or amends a charter.” *San Francisco Internat. Yachting etc. Grp. v. City & Cnty. of*
4 *San Francisco*, 9 Cal. App. 4th 672, 682 (1992); *Lungren v. Deukmejian*, 45 Cal.3d 717, 735
5 (1988) (explaining that “each sentence must be read not in isolation but in the light of the
6 statutory scheme.”)¹

7 More importantly, Section 12 itself necessarily contemplates councilmembers as being
8 subject to its two-year restriction. The first sentence in Section 12, which Defendants themselves
9 describe as the “primary” emphasis of the provision’s 1982 amendment, Proposed Defs.’ Opp’n 3,
10 states, in relevant part: “A councilmember shall not hold any *other* City office . . .” Glendale,
11 Cal., City Charter art. VI, sec. 12 (1982) (emphasis added). Under the rules of statutory
12 construction, the “other” necessarily means that “City office” includes the subject of the sentence,
13 “councilmember.” The second sentence of Section 12 (the one at issue here) likewise necessarily
14 contemplates “councilmember” as being included in “any City office.” To find otherwise would
15 require the term “City office” to have two different meanings in contiguous sentences within the
16 same provision, governing the same activity. Such a construction would not only be absurd, but
17 would run afoul of the rule that words must be construed in context, and provisions relating to the
18 same subject matter must be harmonized to the extent possible. *Dyna-Med, Inc. v. Fair*
19 *Employment & Housing Com.* 43 Cal.3d 1379, 1387 (1987).

20 Defendants point out that other provisions in the Charter make a distinction between
21 elective and non-elective offices, suggesting that this means Section 12’s not doing so shows
22 “elective offices” like councilmember – assuming Defendant Quintero’s *appointment* could even
23 be considered such – are not contemplated by Section 12’s two-year restriction. But, this shows
24 the exact opposite. The Charter contemplates distinctions between types of offices when it does
25 not want a provision to apply to a particular office, but the drafters of Section 12 chose not to

26
27 1

28 Defendants also claim that the lack of a cross-reference to Article IV, Sections 1 and 3 in
Section 12 shows it did not contemplate the same definition, but cross-referencing is
scarcely employed in the entire Charter; Relators count only three instances.

1 make such a distinction, instead opting to make it apply to *any* office. “Any” is defined as “every
2 – used to indicate one selected without restriction.” *Merriam-Webster Online Dictionary* (2013),
3 available at <http://www.merriam-webster.com/dictionary/any>. That the definition of “office” was
4 intended by Section 12’s drafters to include *every* office is further supported by the fact that, the
5 previous version of Section 12 contained the term “elective office” but that term was not carried
6 over into the new amended Section 12. See 1982 Ballot Pamphlet at Opp’n Exhibit No. 3.

7 Defendants’ attempt to inject ambiguity where there is none by citing to *Leymel v.*
8 *Johnson*, 105 Cal.App. 694 (1930) is desperate. Proposed Defs.’ Opp’n 7. *Leymel* merely explains
9 that it may not be entirely clear what the universe of positions contemplated by the term “office”
10 might be, but makes clear that courts consider positions of governmental authority like that of
11 councilmember to be an office. *Leymel*, 105 Cal. App. At 696; 698-99. Even under *Leymel*, it
12 would be odd to interpret “any city office” as excluding the position of city councilmember.

13 In any event, there is at least a legal question as to the meaning of “city office” in Section
14 12. Defendants’ description of that term as “unquestionably ambiguous,” Proposed Defs.’ Opp’n
15 7, is an admission of such. And per the very authority Defendants rely on, *Id.* 5-6, it is a question
16 that a court should decide. “[T]he ‘plain meaning’ rule does not prohibit *a court* from determining
17 whether the literal meaning comports with its purpose.” *Lungren*, 45 Cal.3d at 735 (emphasis
18 added). That is all that is required to meet the first prong of the test to grant Relators leave to sue
19 in quo warranto. See 25 Ops. Cal. Atty. Gen. 237, 240.

20 B. There Is No Indication that Voters Intended to Exclude the Position of
21 Councilmember from Section 12’s Two-Year Restriction; to the Contrary,
All Relevant Evidence Suggests They Did Not

22 Defendants contend that the voters did not intend Section 12’s two-year restriction to
23 apply to the office of councilmember because they “never contemplated (nor were they informed)
24 that” it would. Proposed Defs.’ Opp’n 9. But, neither the rules of statutory construction nor
25 Section 12’s legislative history support Defendants’ view.

26 ///

27 ///

28 ///

1 1. Voters' Intent Is Presumed to Be Reflected in a Provision's Clear
2 Language

3 Courts have explained that to determine voters' intent "we first look to the words of the
4 provision adopted," *People v. Jones*, 5 Cal.4th 1142, 1146 (1993), and "[i]f the language is clear
5 and unambiguous, there ordinarily is no need for construction." *Id.*. "[W]e presume that the voters
6 intended the meaning apparent on the face of the initiative measure, and the court may not add to
7 the statute or rewrite it to conform to an assumed intent that is not apparent in the language."
8 *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 543, (1990).

9 As explained above, Section 12 unambiguously includes councilmembers among the "City
10 offices" subject to its two-year restriction, and therefore it is presumed that the voters intended
11 such. This presumption can be overcome, as Defendants note, where conflicts with the voters'
12 intent are "apparent in the statute [Section 12]" itself, *Lungren*, 45 Cal. 3d at 735, or where
13 adhering to the plain language leads to absurd results, in which case extrinsic evidence like
14 legislative history can be consulted. But, neither is the case here.

15 This is not a situation like those cases where a court would eschew literal language to
16 determine the voters' intent. In such cases, there are usually undeniable indicia of conflicts with
17 the provision's purpose. In *Lungren* – a case heavily relied on by Defendants – for example, the
18 court listed *several* problems with the interpretation put forth by the plaintiff because it would
19 require odd readings or the voiding of other provisions. *Lungren*, 45 Cal. 3d at 733-38. As
20 explained above, the same would result here if one adopted Defendants' interpretation.

21 Thus, the presumption that Section 12's literal meaning was intended remains unrebutted
22 unless it would lead to an "absurd result." It does not. Barring Defendant Quintero's appointment
23 to councilmember makes perfect sense in light of Section 12's clear purpose.

24 2. Barring Defendant Quintero's Appointment to the City Council under
25 Section 12's Plain Language Is Not an Absurd Result Requiring
26 Consideration of Extrinsic Evidence

27 Defendants set forth two reasons why they believe Relators' view of Section 12 would
28 lead to absurd results. First, Defendants claim it would prevent recalled councilmembers from
 running for reelection, which would violate the Equal Protection Clause under *De Bottari v.*

1 *Melendez*, 44 Cal.App.3d 910 (1975). Second, Defendants claim it would necessarily mean that
2 councilmembers would be precluded from running for reelection within two years of having left
3 the council.

4 Setting aside the fact that whether a former councilmember is barred from being *elected* to
5 a "City office" within two years of leaving office is not the issue presented here since Defendant
6 Qunitero was *appointed*, Defendants' arguments are nevertheless without merit.

7 Prohibiting former councilmembers in general from seeking reelection within two years is
8 not the type of absurd result that would cause a court to consider extrinsic evidence. In *Woo v.*
9 *Superior Court*, 83 Cal. App. 4th 967 (2000), a case that Defendants heavily rely on, for example,
10 where the court found a provision led to an "absurd" result and thus required consideration of
11 extrinsic evidence, the court held that were it to accept the literal meaning of the charter
12 amendment at issue – which deleted from the city's term-limit rule that only terms commenced on
13 or after July 1, 1993 would be counted – seven of fifteen council districts, despite having been
14 reelected by the people at the same time the amendment was adopted, would have immediately
15 become unrepresented and required a special election or appointment. 83 Cal.App.4th at 974-77.
16 Upon considering the ballot pamphlet, it was readily apparent that the literal reading of the
17 provision did not correspond to the voters' intent, because it stated that the existing term limits
18 would be "*retain[ed]*," indicating to the voters that there *was no change*. *Id.* at 977.

19 Barring former councilmembers from obtaining "*any City office*" within two years of their
20 departure is not an absurd result requiring consideration of extrinsic evidence. To the contrary, to
21 adopt Defendants' position and find that "City office" should have a different meaning in the
22 provision at issue than that term has in the rest of Glendale's Charter, including in the sentence
23 immediately proceeding it in the same section, would be an absurd result. The voters obviously
24 intended to preclude former council members from some city offices. Thus, interpreting Section
25 12 as barring a recently retired councilmember to be appointed by his former colleagues, would
26 not be absurd.²

27 ²

28 And, to the extent any constitutional issues with Section 12 are raised under *De Bottari* –

1 In any event, whether adhering to Section 12's clear language by barring Defendant
2 Quintero's appointment to the City Council is an "absurd result" is an appropriate legal question
3 for a court, which is all that is needed to satisfy the first prong of the test to be granted leave to
4 sue in quo warranto.

5 There is no need to look beyond Section 12's plain language, and even if it were
6 appropriate to do so, all relevant evidence supports Relators' view.

7
8 3. Section 12's Legislative History Clearly Contemplates
Councilmembers as Being Subject to Its Two-Year Restriction

9 Defendants contend that the legislative history shows voters did not intend to subject
10 councilmembers to Section 12's two-year restriction. But, the very materials on which Defendants
11 rely contradict their position.

12
13 a. The Ballot Pamphlet Strongly Suggests That Councilmembers
Were Intended to Be Subject to Section 12's Two-year
14 Restriction

15 Defendants' main argument is that the ballot pamphlet is silent on whether Section 12's
16 two-year restriction applies to councilmembers, and thus it could not possibly so apply. But the
17 pamphlet is not silent on that point. Rather, as described immediately below, the pamphlet shows
18 the opposite. Nevertheless, the absence of an affirmative statement in the pamphlet that this exact
19 situation is contemplated by the Charter amendment is not sufficient to overcome the clear
20 language of Section 12 itself. "Where the words of the charter are clear, we may not add to or
21 alter them to accomplish a purpose that does not appear on the face of the charter or from its
22 legislative history." *Domar Elec.*, 9 Cal. 4th at 171. In other words, in the absence of a clear intent
23 to exclude councilmembers from the two-year restriction, the plain meaning of Section 12
controls.

24
25 which is doubtful since that case involved a far different provision – a court could simply
26 construe the term "leaving" in Section 12 as being limited to voluntary departures, like
27 that of Defendant Quintero. Such would not preclude recalled councilmembers from
28 running for reelection within two years, avoiding the asserted constitutional problem.
provisions are to be interpreted to avoid constitutional infirmity, *McClung v. Employment*
Dev. Dep't, 34 Cal. 4th 467, 477 (2004).

1 Defendants cite no concrete example, like that in *Woo*, 83 Cal.App.4th 977-79, of
2 language in the legislative history that shows voters intended to *exclude* appointments of a former
3 city councilmember from Section 12's restrictions, nor to any that would *allow* such appointments
4 either. Defendants' view is unsupported by the ballot pamphlet and would improperly alter
5 Section 12's clear and express language.

6 Moreover, the pamphlet itself makes reasonably clear that councilmembers are indeed
7 subject to Section 12's restriction. Defendants' claim that the Arguments appearing in the
8 pamphlet only mention "employment" positions is simply not accurate. Defendants conspicuously
9 avoid explaining the appearance of the word "office" in the Argument, which provides:

10 [This amendment] clearly states that *a council member may not hold another City*
11 *Office* nor may a council member use his influence to obtain employment with the
City until two years after leaving his council office.

12 1982 Ballot Pamphlet at Opp'n Ex. No. 3 (emphasis added).

13 This narrative clearly reiterates that a councilmember is considered a "City office" under
14 Section 12, and that former councilmembers cannot hold a "City office" until two years after
15 leaving office. Defendants' contention that the Argument only applies to "employment" – if that
16 even makes a difference – thus requires ignoring the presence of the word "office" therein.

17 Defendants contend that because the examples of potential ramifications in the Argument
18 Section against the amendment only mentioned "non-elected" positions the voters did not intend
19 for Section 12 to include councilmemebbers in its two-year restriction. But they fail to explain why
20 its drafters used the word "any" instead of "non-elective" or "appointed" offices. Further:

21 a possible inference based on the ballot argument is an insufficient basis on which
22 to ignore the unrestricted and unambiguous language of the measure itself. It
23 would be a strained approach to constitutional analysis if we were to give more
weight to a possible inference in an extrinsic source (a ballot argument) than to a
clear statement in the Constitution itself.

24 *Delaney v. Superior Court*, 50 Cal. 3d 785, 803 (1990).

25 Tellingly, Defendants avoid mentioning that the pamphlet Argument shows voters that the
26 previous version of Section 12 (that was to be amended) expressly exempted "an elective office"
27 from its restrictions, but was deleted and replaced with "*any* office" in the proposed (current)
28 version. See 1982 Ballot Pamphlet at Opp'n Ex. No. 3. The pamphlet itself thus put voters on

1 notice that councilmembers would be subject to Section 12's two-year restriction.

2 b. The City Council's consideration of an ultimately rejected
3 charter amendment creating term-limits for councilmembers is
4 irrelevant

5 Defendants contend that the City Council's consideration of a Charter amendment in 1995
6 "that would have limited councilmembers to two consecutive terms with the ability to later seek
7 office after two years have elapsed," shows that Section 12 does not restrict councilmembers
8 because the amendment's passage would have made Section 12 "superfluous and redundant."
9 Proposed Defs.' Opp'n 12. But all the 1995 proposed Charter amendment sought to do was create
10 a qualified (instead of an absolute) term-limit, by limiting the number of consecutive terms while
11 allowing a former councilmember to return to office later. Section 12 would not provide that
12 desired effect whatsoever. So the 1995 proposed provision is irrelevant here.

13 Like the plaintiff in *Lungren*, Defendants "advance[] a complicated and unpersuasive
14 legislative history argument on [their] own behalf." *Lungren*, 45 Cal. 3d at 741. Permitting
15 Defendant Quintero to be appointed to the City Council after *leaving* office, thereby avoiding the
16 expense and difficulty of running for reelection, contradicts the voters' intent in adopting Charter
17 Section 12 reflected in the ballot pamphlet.

18 In any event, whether the legislative history should even be consulted and what its
19 significance is, are questions that must be resolved by the court, not the City Attorney or members
20 of the Glendale city council.

21 c. There Is No Constitutional Impediment to Barring Defendant Quintero's
22 Appointment to the City Council Under Section 12

23 Defendants do not argue that prohibiting Defendant Quintero's appointment would per se
24 be unconstitutional, but that Section 12 is not sufficiently clear to constitutionally have that effect.
25 As explained above, Section 12 clearly prohibits former councilmembers like Defendant Quintero
26 from holding "any City office," which includes the city office of councilmember, within two years
27 of leaving office, and, as such, is a lawful limitation on the right to hold office.

28 To the extent there is any ambiguity in Section 12 (which as explained above there is not),
the *Lungren* court resolved an ambiguity in favor of restricting the plaintiff from taking office,

1 because, as here, the interpretation in favor of the would-be office holder did not make sense in
2 light of the language of the provision at issue and its related materials. *Lungren*, 45 Cal.3d at 743.

3 Regardless, whether Section 12 is sufficiently clear to pass constitutional muster as a
4 restriction on the right to office is by definition a question of law appropriate for a court to decide,
5 satisfying the first prong of the test for granting leave to sue in quo warranto. “[A] challenge to
6 the constitutionality of an act is inherently a judicial rather than political question and neither the
7 Legislature, the executive, nor both acting in concert can validate an unconstitutional act or
8 deprive the courts of jurisdiction to decide questions of constitutionality ” *Schabarum v.*
9 *California Legislature*, 60 Cal. App. 4th 1205, 1215 (1998).

10 D. There Is No Longstanding Interpretation of Section 12 that Councilmembers
11 Are Exempt from Section 12’s Two-Year Restriction; Defendants’ View Does
Not Deserve Any Special Weight

12 Defendants’ purport to present evidence that councilmembers being excluded from
13 Section 12’s two-year restriction is a “longstanding interpretation” deserving of “great weight.”
14 From what Relators can tell, this contention is based on Defendants’ view that the City Attorney
15 did not make such effect clear in the 1982 ballot pamphlet, and that the 1995 City Attorney, at
16 direction of the City Council at the time, drafted the proposed term-limit Charter amendment
17 discussed above in Section B, 3, b. Proposed Defs.’ Opp’n 12. But these are not evidence of a
18 “longstanding interpretation” at all.

19 The suggestion that the City Attorney in 1982, who presumably drafted the amendment to
20 Section 12 at issue here, did not anticipate that the term “any City office” might possibly be
21 construed to include the position of councilmember, especially in light of the term “office”
22 repeatedly being used as including it throughout the Charter, is simply not a reasonable
23 conclusion.

24 Therefore, Relators have clearly satisfied the first prong of the two-part test to for
25 deserving to be granted leave to sue in quo warranto by raising a question of law appropriate for
26 review by a court. They likewise satisfy the second, since vindication of the voter’s intent in
27 adopting Section 12 serves the public good.

1 III. DEFENDANTS' ARGUMENTS FOR WHY THE PUBLIC GOOD WOULD NOT
2 BE SERVED BY GRANTING RELATORS LEAVE TO SUE HERE ARE
3 WITHOUT SUPPORT, AND, ONE IN PARTICULAR IS OFFENSIVE TO
4 RELATORS AND OUR CONSTITUTIONAL TRADITIONS

5 Defendants contend that Relators' disagreement with Defendant Quintero on his vote
6 supporting an ordinance banning firearms on Glendale City property (the "Ban") should preclude
7 them from having a court answer the substantial question of law they have raised. But the
8 existence of substantial issues of law alone has generally been viewed as presenting a sufficient
9 public purpose to warrant the granting of leave to sue in *quo warranto*, absent other overriding
10 considerations. 90 Ops.Cal.Atty.Gen. 82 (2007).

11 Defendants are advocating a test whereby proposed relators' political views on an
12 *unrelated* matter should trump their raising a legitimate question of law. This "ulterior motive"
13 test is without precedent, and would set a dangerous precedent whereby proposed relators would
14 have to prove they are of the proper political persuasion to qualify for leave to sue in *quo*
15 *warranto*. This is contrary to the First Amendment guarantee that the People shall be free "to
16 petition the government for a redress of grievances." U.S. Const. amend. I.

17 With no sense of irony, Defendants invoke Defendant Quintero's First Amendment right
18 to vote as a basis for why Relators' unrelated, alleged political views should disqualify them from
19 receiving leave to sue, relying on *Schroder v. Irvine City Council*, 97 Cal.App.4th 174, 183, n. 3
20 (2002). But *Schroder* allowed officials to invoke a First Amendment defense to a challenge to
21 their vote for which they were *directly* being sued. *Id.* at 196. This hardly supports Defendants'
22 argument that allegations, based on pure conjecture, of ulterior motives arising from political
23 disagreements on matters unrelated to the legal question presented should be considered in
24 denying leave to sue.

25 That Defendants would even raise such an argument in the current climate of government
26 scandals over targeting citizens for their political views is astonishing. Like it or not, city council
27 is a political position. And citizens who engage in their governance generally hold political
28 opinions. Even if Relators were so politically motivated, as Defendants contend, it is not in the
public interest to quash political actions; doing so would surely open Pandora's Box.

1 Defendants' argue that granting Relators leave to sue would "discourage citizens from
2 holding elected office," relying on 74 Ops.Cal.Atty.Gen. 26 (1991). That case involved a petition
3 for leave to sue a city councilmember because he received a free upgrade to first class on an
4 airplane while traveling with his wife on their honeymoon, which was the airline's policy for
5 everyone. *Id.* The Attorney General denied the petition, reasoning that subjecting officials to such
6 trivial restrictions "would discourage participation by citizens in a public office." *Id.* But the facts
7 of that case simply cannot be compared to this one. In this case, there is a purely legal question of
8 whether Glendale's Charter bars Defendant Quintero's appointment. It is in the public interest to
9 resolve that question.

10 Relators' opposition to the Ban simply shows that they are involved in Glendale politics.
11 Most all proposed relators are likely politically active and find the person sought to be removed
12 from office disagreeable in some regard; otherwise, they would be unlikely to seek their removal.
13 Yet, this issue of proposed relators' alleged "ulterior motives" has never been considered before.
14 And, it would be unjust for Defendants to be allowed to flout Glendale's Charter merely because
15 the people who challenged them for doing so held a particular political view contrary to the
16 Defendants.

17 Finally, Defendants' contention that this issue will become moot should not be considered.
18 First, as Defendants admit, there are no factual disputes here. Proposed Defs.' Opp'n 2.
19 Accordingly, an expedited motion for summary judgment on the purely legal question presented
20 could be filed immediately, without any delay for discovery. It cannot be assumed that the action
21 would take longer than a year. And so what if it did? Defendants' argument is akin to saying that
22 they should not have to adhere to the law if they only violate it for a period of time so short that a
23 court *might* have to act quickly to remedy the violation.

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1 In sum, Defendants' arguments as to why the public interest is not served by granting
2 Relators leave to sue are unsupported by authority and should be rejected.

3 CONCLUSION

4 For the foregoing reasons, Proposed Relators should be granted leave to sue the City and
5 Defendant Quintero in quo warranto.

6 Dated: June 17, 2013

MICHEL & ASSOCIATES, P.C.

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9 C. D. Michel
10 Attorneys for Plaintiff
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

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

7 On June 17, 2013, I served the following:

8 PROPOSED REPLY TO DEFENDANTS' OPPOSITION TO RELATORS
9 JOHN RANDO'S AND MARIANO A. RODAS' APPLICATION FOR
10 LEAVE TO SUE IN QUO WARRANTO

11 on the interested parties by placing

12 ☐ the original

13 ☒ a true and correct copy

14 thereof enclosed in sealed envelope(s) addressed as follows:

15 Michael J. Garcia, City Attorney
16 Ann M. Maurer, General Counsel - Litigation
17 Andrew C. Rawcliffe, Deputy City Attorney
18 613 E. Broadway, Suite 220
19 Glendale, CA 91206
20 Attorneys for Defendants
21 (ELECTRONIC & U. S. MAIL)

22 Marc J. Nolan, Deputy Attorney General
23 Office of the Attorney General
24 300 S. Spring Street
25 Los Angeles, CA 90013
26 Attorney for Attorney General's Office

27 (PERSONAL SERVICE)

28 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
processing correspondence for mailing. Under the practice it would be deposited with the
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.
Executed on June 17, 2013, at Long Beach, California.

X (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of
the addressee.
Executed on June 17, 2013, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
transmission. Said transmission was reported and completed without error.
Executed on June 17, 2013, California.

— (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used
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.
Executed on June 17, 2013, California.

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

27
28

CLAUDIA AYALA

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION

No. 13-504

of

October 25, 2013

KAMALA D. HARRIS
Attorney General

MARC J. NOLAN
Deputy Attorney General

Proposed Relators JOHN RANDO and MARIANO A. RODAS have requested leave to sue Proposed Defendants FRANK QUINTERO and the CITY OF GLENDALE in quo warranto in order to seek Mr. Quintero's removal from the public office of Glendale City Council member based on their contention that, under the terms of the Glendale City Charter, he is ineligible to hold that office.

CONCLUSION

Because it is not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances, leave to sue is DENIED.

ANALYSIS

Proposed Defendant the City of Glendale (City) operates under a charter (Charter) enacted in 1921.¹ Proposed Defendant Frank Quintero is currently serving as a member of the Glendale City Council (City Council or Council). He was appointed to that office on April 23, 2013, shortly after completing his term as City Mayor, and his Council term is set to expire in June 2014. Proposed Relators John Rando and Mariano Rodas are residents of the City. They contend that Mr. Quintero's appointment to the Council violated the terms of the City Charter, and that he is therefore ineligible to serve as a Council member. They now seek to remove Mr. Quintero from that public office via the proposed action in quo warranto, and they request that we grant them leave to do so. For the reasons that follow, we must decline this request.

Code of Civil Procedure section 803 provides in pertinent part:

An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, . . . , within this state.

An action filed under the terms of this statute is known as a "quo warranto" action. In its modern form, "the remedy of quo warranto belongs to the state, in its sovereign capacity, to protect the interests of the people as a whole and guard the public welfare,"² and it is appropriately sought in a number of contexts. As relevant here, quo warranto is the proper remedy to "try title" to public office³; that is, to evaluate whether a person has the right to hold a particular office by virtue of eligibility requirements, valid election procedures, the absence of disqualifying factors, etc.⁴

¹ 1921 Stat. ch. 71 at 2204.

² *Citizens Utils. Co. of Cal. v. Super. Ct.*, 56 Cal. App. 3d 399, 406 (1976); *see also City of Campbell v. Mosk*, 197 Cal. App. 2d 640, 648 (1961).

³ *Nicolopoulos v. City of Lawndale*, 91 Cal. App. 4th 1221, 1225-1226, 1228 (2001) (disputes over title to public office are public questions of governmental legitimacy); *Elliott v. Van Delinder*, 77 Cal. App. 716, 719 (1926); 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 81 Ops.Cal.Atty.Gen. 207, 208 (1998).

⁴ 96 Ops.Cal.Atty.Gen. 36, 39 (2013).

Where, as here, a private party seeks to file an action in quo warranto in superior court, that party must obtain the Attorney General's consent to do so.⁵ In determining whether to grant that consent, often called "leave to sue," we must decide whether the application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest.⁶ That said, we are accorded broad discretion in determining whether to grant or deny a quo warranto application, and the existence of a "debatable" issue or a legal dispute does not necessarily establish that the issue or dispute requires judicial resolution through the quo warranto procedure.⁷ Instead, the overall public interest is the guiding principle and paramount consideration in our exercise of discretion.⁸

With these precepts in mind, we now turn to the facts and circumstances that gave rise to the present application. On April 2, 2013, the City held a municipal election. In this election, Council member Rafi Manoukian, who had 14 months left to serve on his term, was elected to the office of City Treasurer, resulting in a vacancy on the Council. Under Charter article VI, section 13, "any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council."⁹ On April 15, 2013, Proposed Defendant Quintero completed his term as City Mayor. On April 23, 2013, the remaining members of the Council unanimously voted to appoint Mr. Quintero to the vacant Council position. The unexpired term to which he was appointed ends in June 2014.

⁵ See *Intl. Assn. of Fire Fighters v. City of Oakland*, 174 Cal. App. 3d 687, 693-698 (1985).

⁶ 95 Ops.Cal.Atty.Gen. 50, 51 (2012); 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 86 Ops.Cal.Atty.Gen. 205, 208-209 (2003).

⁷ See *Intl. Assn. of Fire Fighters*, 174 Cal. App. 3d at 697 (Attorney General "has discretion to refuse to sue when the issue is debatable"); see also 72 Ops.Cal.Atty.Gen. 15, 24 (1989).

⁸ *City of Campbell*, 197 Cal. App. 2d at 650 ("The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails."); 86 Ops.Cal.Atty.Gen. 76, 79 (2003); 72 Ops.Cal.Atty.Gen. at 20; 67 Ops.Cal.Atty.Gen. 151, 153-154 (1984).

⁹ This same provision states that if a vacant Council seat is not filled within 30 working days of the vacancy, then the Council "shall immediately call for a special election . . . for the purpose of filling such vacancy,"

Proposed Relators contend that Mr. Quintero's appointment violated a provision contained in Charter article VI, section 12 that "[n]o former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember." They argue that, since former Mayor Quintero's term, as both mayor and Council member,¹⁰ ended on April 15, 2013, this provision made him ineligible to hold the elective office of City Council member for a period of two years from that date, thereby rendering his recent appointment invalid. The City counters that the cited language does not cover—and was never intended to cover—the circumstances of Council member Quintero's appointment.

The language relied upon by Proposed Relators is contained in Charter article VI, section 12 (hereafter section 12). That section is entitled "Councilmembers holding other city offices," and provides as follows:

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

The section was amended to its current wording by City voters' passage of an initiative measure known as "Proposition JJ" in an election held on November 2, 1982.

There is more than one way to read Section 12. One could read it, as Proposed Relators do, as imposing a two-year bar on holding *any* compensated position with the City whatsoever, *including an elective office*. Read this way, the provision's effects would appear to include a kind of term-limiting function.¹² On the other hand, because it does not refer at all to elections or terms of elective office, one could read it as applying

¹⁰ Under the Charter, the Council chooses "one (1) of its members as presiding officer, to be called mayor." Charter, art. VI, § 5, ¶ 4.

¹¹ Previously (and from the time the Charter was first enacted), the section had been entitled "Councilmen ineligible to other city positions" and had read: "No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he [sic] was elected." See 1921 Stat. ch. 71 at 2215.

¹² Typically, a hiatus period on holding (or returning to) public office is imposed as part of a term-limits measure. For example, another quo warranto matter brought before us involved a voter-enacted charter provision in the City of Cerritos that imposed a two-year hiatus before a *termed-out* council member would be once again eligible to serve on that city council. See 87 Ops.Cal.Atty.Gen. 176, 177 (2004).

to *non-elective* compensated offices and employments with the City. Read this way, the provision's effects would appear to focus more on limiting a Council member's opportunity to use his or her influence on the Council as a stepping-stone to future City employment.

Where, as here, we must interpret the language of a city charter ballot amendment, we employ the same rules that apply to any other voter-approved measure, such as a proposed constitutional amendment.¹³ Our central goal in construing ballot measures is to effectuate the intent of the electorate.¹⁴ To determine that intent, we look first to the words of the provision adopted; if the language used is clear and unambiguous, there is ordinarily no need for further construction.¹⁵ But where the text itself is not enough to resolve a legal question, we must look deeper to ascertain the voters' intent.¹⁶ When it comes to ballot measures, a recognized indicator of voter intent is the official ballot pamphlet, which contains both the language of the measure as well as information and arguments advanced for and against its passage.¹⁷

To begin with, we note that the City's Charter does not impose any limits on the number of terms that a Council member may serve.¹⁸ In the absence of any such limits, section 12's two-year proviso cannot serve any meaningful term-limiting purpose. At most, a Council member who fails to win re-election would have to wait two years before

¹³ See *Woo v. Super. Ct.*, 83 Cal. App. 4th 967, 974 (2000); *Currier v. City of Roseville*, 4 Cal. App. 3d 997, 1001 (1970). These rules in turn echo the rules for interpreting legislatively-enacted statutes. *People v. Bustamante*, 57 Cal. App. 4th 693, 699 n. 5 (1997).

¹⁴ *Woo*, 83 Cal. App. 4th at 975; see also *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).

¹⁵ *Woo*, 83 Cal. App. 4th at 975.

¹⁶ Even in those instances where a literal meaning is discernible, or even apparent, the so-called "plain meaning" rule does not prohibit us from determining whether the literal meaning of a given provision comports with its purpose. See *Cal. Sch. Employees Assn. v. Governing Bd.*, 8 Cal. 4th 333, 340 (1994); *Lungren*, 45 Cal. 3d at 735. Stated differently, where extrinsic evidence suggests a contrary intent, we may not simply adopt a literal construction and end our inquiry. See *Mosk v. Super. Ct.*, 25 Cal. 3d 474, 495 n.18 (1979); *Coburn v. Sievert*, 133 Cal. App. 4th 1483, 1495 (2005).

¹⁷ 87 Ops.Cal.Atty.Gen. at 178; see *Raven v. Deukmejian*, 52 Cal. 3d 336, 349 (1990).

¹⁸ Indeed, a measure imposing term limits on Council members was considered, but rejected, by the Council in 1996.

running and serving again, but there is nothing in the Charter to stop that person from serving for forty years in a row the first time, and forty years more the second time. This is not how term-limiting provisions generally work.

What, then, did the voters intend when they placed this proviso in section 12? Because the text itself does not provide a clear answer to the question, we must delve more deeply into the circumstances surrounding Section 12's enactment. We find that, before 1982 (and since the Charter was adopted in 1921), section 12 was entitled "Councilmen ineligible to other city positions" and read as follows.

No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he [sic] was elected.¹⁹

Section 12 was amended to its current wording when Proposition JJ was adopted by the voters in the November 1982 municipal election. The official ballot pamphlet from that election shows that the purpose of the amendment was to clarify (1) that sitting Council members could obtain or maintain *outside* employment while serving on the part-time Council, and (2) that the then-existing Charter provision only prohibited Council members from obtaining *City* employment.²⁰ In addition, the proposed measure would extend the ban on obtaining other City employment for a period of two years after a Council member left office.

Thus, the ballot argument in favor of Proposition JJ stated:

This amendment clarifies the language in the present Charter which leaves in question the right of a councilperson to be employed while on the Council. It clearly states that a council member may not hold another City office *nor may a council member use his influence to obtain employment with the City until two years after leaving his council office.*²¹

By contrast, nothing in the ballot pamphlet suggested that Proposition JJ would prohibit a former Council member from seeking *elective* office for two years after leaving

¹⁹ See 1921 Stat. ch. 71 at 2215.

²⁰ As explained in the City Attorney's Impartial Analysis of the measure, "The legal interpretation has been that [the former] section refers to City employment only, although strict construction would be otherwise."

²¹ Emphasis added.

the Council.²² Indeed, a two-year washout or hiatus period on holding elective office would appear misplaced in the absence of term limits. Rather, as the ballot argument urging Proposition JJ's passage explains, the measure was intended to curb a former Council member's "use of his [or her] influence to obtain employment with the City," and the elective office of Council member is not the type of position that one can generally exert prestige or improper influence to obtain.²³ Certainly, section 12, as amended by Proposition JJ, could have been worded more precisely. But reading the provision in the context of the Charter as a whole, and in light of the reasons given in the ballot pamphlet, all indications are that the provision was aimed at prohibiting (or rather, continuing to prohibit) a Council member from improperly using his or her influence to gain *non-elective* City employment.

We must also be cognizant that an individual's eligibility to hold public office is a fundamental right of citizenship in California,²⁴ which may not be "declared prohibited or curtailed except by plain provisions of law."²⁵ To that end, we must resolve any ambiguities "in favor of eligibility to office."²⁶ Under the circumstances, we believe that the hypothesized two-year ban on holding *elective* office would have to be stated much more explicitly for it to have effect.²⁷

²² For example, the argument against Proposition JJ focused exclusively on the negative (from the writer's point of view) impact that the measure would have by barring talented ex-Council members from obtaining non-elective employment with the City—e.g., "Couldn't an attorney who has had four or more years on the council become a most valuable part of the legal department?"; "Couldn't a doctor work for the public health as an employee?"

²³ Of course, sitting Council members already have the position, and former Council members seeking to regain it would in almost all circumstances be required to submit their candidacy to the electorate for approval. And, while we acknowledge that the particular circumstances of this case—involving the filling of a suddenly vacant Council seat by Council appointment, rather than by the holding of a special election—did not call for Proposed Defendant Quintero to actually seek reelection, this does not alter our analysis of what the voters were presented with when they were asked to consider Proposition JJ.

²⁴ *Zeilenga v. Nelson*, 4 Cal. 3d 716, 720 (1971).

²⁵ *Carter v. Commn. on Qualifications on Judicial Appointments*, 14 Cal. 2d 179, 182 (1939); see also *Helena Rubinstein Intl. v. Younger*, 71 Cal. App. 3d 406, 418 (1977).

²⁶ *Carter*, 14 Cal. 2d at 182; see *Younger*, 71 Cal. App. 2d at 418.

²⁷ E.g. 87 Ops.Cal.Atty.Gen. 176 (City of Cerritos term-limits charter provision). In denying the quo warranto application filed in this earlier case, we found that the charter

As is the case with most legal propositions, there is room for some debate here as to the proper interpretation of section 12. Upon examining the language at issue in its full context, however, we do not consider this question to be a close one, and we conclude that the overall public interest would not be furthered by burdening the courts, the parties, and the public with the proposed quo warranto action. As we have said, the mere existence of a “debatable” issue is not enough to establish that the issue requires judicial resolution through the quo warranto procedure.²⁸ Our exercise of discretion “calls for care and delicacy,” and a private party who has merely raised a debatable issue is not entitled to pursue the debate in quo warranto proceedings where we determine that it would not serve the public interest.²⁹ Finally, the fact that Mr. Quintero’s term will end in June 2014—for all practical purposes before judicial proceedings could conclude—only reinforces our conclusion that the public interest is best served here by denying leave to sue.³⁰

Therefore, because it is not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances, leave to sue is DENIED

provision at issue was sufficiently clear to effectively impose a hiatus period on holding office. Invoking the rules of interpretation that favor the right to hold elective office, however, we interpreted the ban more narrowly (i.e., as having a duration of two years, rather than four) than the proposed relators had urged. *Id.*

²⁸ See *Intl. Assn. of Fire Fighters*, 174 Cal. App. 3d at 697 (Attorney General “has discretion to refuse to sue when the issue is debatable”); see also 72 Ops.Cal.Atty.Gen. at 24.

²⁹ *City of Campbell*, 197 Cal. App. 2d at 650 (“The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party’s right to it cannot be absolute; the public interest prevails. The presence of an issue here does not abort the application of such discretion; the issue generates the discretion.”); see 86 Ops.Cal.Atty.Gen. at 79; 72 Ops.Cal.Atty.Gen. at 20; 67 Ops.Cal.Atty.Gen. at 153-154; see also *City of Campbell*, 197 Cal. App. 2d at 649 (challenge to Attorney General’s discretion in denying leave to sue must show that such discretion was abused in an “extreme and clearly indefensible manner”).

³⁰ See 87 Ops.Cal.Atty.Gen. at 179.



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October 25, 2013

Via Facsimile and U.S. Mail
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RE: *The People of the State of California on the relation of John Rando and Mariano A. Rodas v. Frank Quintero* - Opinion No. 13-504

Counsel:

Enclosed is a copy of our opinion denying your clients, John Rando and Mariano A. Rodas, leave to sue in quo warranto in the above matter.

Sincerely,

SUSAN DUNCAN LEE
Supervising Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

SDL:sg

Enclosures

cc: Michael J. Garcia, Ann M. Maurer, Andrew C. Rawcliffe (via facsimile & U.S. Mail)
Marc J. Nolan