DEPARTMENT 82 LAW AND MOTION RULINGS

Hon. Mary H. Strobel

The clerk for Department 82 may be reached at (213) 893-0530.

Case Number: 22STCV27524 **Hearing Date:** October 4, 2022 **Dept:** 82

People of the State of California *ex rel.* HGH Chinese American Equalization Association and Arcadia Voters' Rights Group, v. Michael Danielson Case No. 22STCV27524 Related to Case No. 22STCP01878	Judge Mary Strobel Hearing: October 4, 2022 Tentative Decision on Petition and Complaint in Quo Warranto

Relators HQH Chinese American Equalization Association and Arcadia Voters' Rights Group ("Relators") seek a judicial determination that Defendant Michael Danielson ("Danielson" or "Defendant") is unlawfully holding the office of City of Council Member District 5 for the City of Arcadia and an order removing him from such office. Danielson and Intervenor-Defendants City of Arcadia ("City") and City Council of the City of Arcadia ("City Council" or "Council"; collectively "Defendants") jointly oppose the petition.

Judicial Notice; and Relators' Objection to Judicial Notice

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Relators' Request for Judicial Notice ("RJN") Exhibit A – Granted.

Defendants' RJN Items 1-6 – Granted. Relators' objection to Exhibits 3 and 4 is overruled. These exhibits concerning proposed amendments to the City Charter are relevant to a mootness argument made in opposition. (See Oppo. 12, fn. 5.)

Background

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The essential facts are not disputed.

On November 13, 2021, the City Councilmember seat for District 5 of City became vacant when City Councilmember Roger Chandler passed away. Chandler had been elected to a four-year term in April 2018. His term was subsequently extended to November 2018 by City Council's actions to consolidate municipal elections with the statewide general election in November of even-numbered years. (Pet. RJN Exh. A ¶¶ 1, 3; DF AR 115; Beck Decl. ¶¶ 2-3; see also PL AR 4 [sec. 403(a)].)

Section 403(c) of the Arcadia City Charter provides in full:

> Any vacancy on the Council shall be filled by a majority vote of the remaining Councilmembers within thirty days after the vacancy occurs. If more than one vacancy exists, successive appointments shall be made, and each appointee shall participate in any succeeding appointment. If the Council fails, for any reason, to fill such vacancy within said thirty-day period, it shall forthwith call an election for the earliest possible date to fill such vacancy. A person appointed by the Council to fill a vacancy shall hold office until the next general municipal election and until his successor qualifies; provided upon the occurrence of a second vacancy more than one year prior to the next general municipal election at a time an appointee is holding office, a special election shall be held forthwith to fill any vacancy and any office held by an appointee. At said election, Councilmembers shall be elected to serve for the remainder of the unexpired terms. A Councilmember elected to fill a vacancy shall hold office for the remainder of the unexpired term.

(PL AR 4.)

Thirty days after the vacancy caused by Chandler's passing was December 13, 2021. (Pet. RJN Exh. A ¶ 21.) At its November 30, 2021, special meeting, City Council directed the City staff to prepare a press release calling for nominations to fill the unexpired term of City Councilmember for District 5. City Council reserved time on December 10 to deliberate on

appointing a City Councilmember for District 5. (Id. ¶ 22; PL AR 13.)

In a staff report dated December 9, 2021, the City Manager informed City Council that 11 candidates had met the application and eligibility requirements for City Councilmember for District 5. With respect to section 403(c), City Manager advised City Council as follows: "Per the Arcadia City Charter, the City Council must fill the vacancy within 30 days, which is December 13, 2021. If the City Council does not make an appointment, the Charter requires that the City Council call a special municipal election at the earliest possible date. [¶] Therefore, it is recommended that the City Council interview prospective City Council candidates and make an appointment. If a majority consensus on an appointment cannot be made, it is recommended that the City Council adopt Resolution No. 7397 calling for an all-mail ballot special municipal election for Tuesday, April 12, 2022, to fill the unexpired term in City Council District …." (PL AR 15-16.)

The City Council held Special Meetings on December 9, 10, and 13, 2021, at which the City Council considered: (1) potential candidates for appointment to fill the unexpired term for City Councilmember District 5; and (2) resolutions relating to an all-mail ballot special municipal election for City Councilmember District 5 to be held on April 12, 2022. During these meetings, City Council was unable to reach a consensus and obtain the necessary votes either to approve a candidate for City Councilmember for District 5 or to call a special election. (Pet. RJN Exh. A ¶ 23; DF AR 115-116; Beck Decl. ¶¶ 5-6.)

During this time period, the City Council was also involved in the task of redistricting its Councilmember electoral districts, as required by law, and was unable to reach a majority vote for a map. The statutory deadline for City Council to approve new electoral district maps was April 17, 2022. (DF AR 116; Beck Decl. ¶ 7; see Elec. Code § 21622(a)(3).)

On March 29, 2022, City Council unanimously voted to appoint Danielson to fill the remainder of Chandler's term. Danielson was immediately sworn in and took office. (DF AR 116; Beck Decl. ¶ 8.)

No resident or voter of City, including Relators, took any action to compel City Council to call a special election between December 13, 2021, the end of the 30-day time limit, and Danielson's appointment on March 29, 2022. (DF AR 116; Beck Decl. ¶ 7.)

On April 5, 2022, Danielson was a member of a 3-2 majority voting to approve a new Council district map as required by the FAIR MAPS Act (hereafter "Redistricting Ordinance"). (DF AR 116; Beck Decl. ¶ 10.)

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Procedural History

On May 16, 2022, in related Case No. 22STCP01878, HQH Chinese American Equalization Association and Arcadia Voters' Rights Group as petitioners filed a verified petition for writ of mandate and complaint for injunctive relief. The petitioners challenge the validity of the Redistricting Ordinance on various grounds, including on the basis that Danielson was not properly appointed as Councilmember pursuant to section 403(c). They seek a writ of mandate directing City to, among other things, set aside, annul, rescind, and void the City Council's appointment of Michael Danielson to fill the unexpired term for City Council Member District 5 and set aside, annul, rescind, and void any votes he has made in his capacity as City Council Member District 5, including but not limited to, his vote on the Redistricting Ordinance.

On August 23, 2022, in Case No. 22STCV27524, Chinese American Equalization Association and Arcadia Voters' Rights Group as relators filed the instant verified complaint in quo warranto. Relators attached to the complaint a leave to sue authorization from the Office of the Attorney General, State of California. The Attorney General found a substantial issue of law as to whether Danielson's appointment to City Council was lawful and that the public interest is served by authorizing this quo warranto action.

On September 1, 2022, the court found the two actions related and deemed the complaint in 22STCV27524 to be a petition for writ of mandate in quo warranto. The court set a hearing on the petition in quo warranto for October 4, 2022, and set a briefing schedule.

On September 12, 2022, Relators filed their opening brief and supporting evidence. On September 20, 2022, Defendants filed their opposition brief and opposing evidence. On September 27, 2022, Relators filed their reply and reply evidence.

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Standard of Review

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The defendant in a quo warranto action has the burden of proof. (See *People ex rel. Lacey v. Robles* (2020) 44 Cal. App. 5th 804, 818.) However, allocation of the burden of proof is not determinative in this case. The essential facts are not disputed and the petition primarily raises legal questions concerning the interpretation of a city charter. "Interpretation of a statute or regulation is a question of law subject to independent review." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

"The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate

legislative intent. [Citations.] To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.)

To the extent "purely legal issues involve the interpretation of a statute [a public] agency is responsible for enforcing, [the court] exercise[s] [its] independent judgment, 'taking into account and respecting the agency's interpretation of its meaning.'" (*Housing Partners I, Inc. v. Duncan* (2012) 206 Cal.App.4th 1335, 1343.)

"The same principles that apply to statutory construction also apply to the interpretation of city charter provisions." (*Citizens Planning Assn. v. City of Santa Barbara* (2011) 191 Cal.App.4th 1541, 1545.) "[T]he charter represents the supreme law of the City …. Any act that is violative of or not in compliance with the charter is void." (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171.)

Significantly in this case, any ambiguities in the charter must be resolved in favor of Danielson's eligibility for public office. "The 'right to hold public office, either by election or appointment, is one of the valuable rights of citizenship. ... The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office.'" (*People ex rel. City of Commerce v. Argumedo* (2018) 28 Cal.App.5th 274, 280, quoting *Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 182.)

To the extent the petition raises fact questions, such as laches, the court exercises its independent judgment on the record as the trier of fact and as a court sitting in equity. (See generally 53 Cal. Jur. 3d Quo Warranto §§ 1, 7, 35; see also *City of Oakland v. Key System* (1944) 64 Cal.App.2d 427, 441-442 [quo warranto is similar to equity proceeding by injunction].)

Analysis

Section 403(c) Sets a 30-Day Time Limit for City Council to Appoint a New City Councilmember

Section 403(c) states in pertinent part: "Any vacancy on the Council shall be filled by a majority vote of the remaining Councilmembers within thirty days after the vacancy occurs…. If

the Council fails, for any reason, to fill such vacancy within said thirty-day period, it shall forthwith call an election for the earliest possible date to fill such vacancy." (PL AR 4.)

As Relators argue, this charter provision sets a 30-day time limit for City Council to appoint a new Councilmember after a vacancy occurs. If City Council does not make an appointment within that time limit, section 403(c) states that City Council shall call a special election "forthwith." City Council did not strictly comply with this procedure. If the 30-day time limit is mandatory and jurisdictional, City Council's appointment of Danielson after the time limit would be invalid.

Is the 30-Day Time Limit Directory or Mandatory?

Relators argue that the 30-day time limit for City Council to appoint a new Councilmember was "mandatory" in nature; that Council did not have authority to appoint a new Councilmember after the 30-day time limit had passed; and that any appointment of a Councilmember after that time limit is null and void because it would contravene the language of section 403(c). (Opening Brief ("OB") 8-11; Compl. ¶¶ 24-29; see generally Pet. in Related Case No. 22STCP01878.)

Defendants, in contrast, argue that the 30-day time limit for appointment in section 403(c) is directory and not mandatory; that City Council's failure to appoint within 30 days did not deprive Council of authority to subsequently appoint Danielson; and that any ambiguities in section 403(c) must be resolved in favor of eligibility for public office. (Oppo. 11-18.)

The Attorney General found a substantial issue of law as to whether Danielson's appointment to City Council was lawful. Like the Attorney General, the court finds that both sides have colorable arguments with respect to whether the 30-day time limit in section 403(c) is mandatory or directory in nature. Exercising its independent judgment on the legal issue, the court concludes that Defendants have the stronger position for the reasons explained below.

Summary of Applicable Law – Directory v. Mandatory Duties of a Public Agency

"The word 'mandatory' may be used in a statute to refer to a duty that a governmental entity is required to perform as opposed to a power that it may, but need not exercise. As a general rule, however, a ''directory' or 'mandatory' designation does not refer to whether a particular statutory requirement is 'permissive' or 'obligatory,' but instead simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.' [Citation.] If the action is invalidated, the requirement will be termed 'mandatory.' If not, it is 'directory' only." (*California*

Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1145 [hereafter "*CCPOA*"].)

"Time limits are usually deemed to be directory unless the Legislature clearly expresses a contrary intent. [Citation.] 'In ascertaining probable intent, California courts have expressed a variety of tests. In some cases focus has been directed at the likely consequences of holding a particular time limitation mandatory, in an attempt to ascertain whether those consequences would defeat or promote the purpose of the enactment. [Citations.] Other cases have suggested that a time limitation is deemed merely directory 'unless a consequence or penalty is provided for failure to do the act within the time commanded.' (*Ibid.*) As *Morris v. County of Marin*, *supra*, 18 Cal.3d 901, 908, held, the consequence or penalty must have the effect of invalidating the government action in question if the limit is to be characterized as 'mandatory.'" (*CCPOA, supra* at 1145.)

More than 150 years ago, the California Supreme Court applied this mandatory-directory dichotomy in a quo warranto action involving a board of supervisors' untimely appointment of a cemetery superintendent. (*People ex rel. Jacobs v. Murray* (1860) 15 Cal. 221, 222-223.) The ordinance at issue stated in pertinent part that "[t]he Board of Supervisors ***shall*** appoint a suitable and competent person to superintend said cemetery, under direction of the cemetery committee, annually, in the month of October." (bold italics added.) The Supreme Court held that the board's failure to appoint a new superintendent until December 1859, after the October time limit, did not invalidate the appointment. The Court stated: "The mere failure to elect in October did not exhaust the power of the electoral body. The time mentioned is not of the essence of the power; it is a mere directory provision, which ought to have been followed according to the law; but the omission to pursue which, is not fatal; for the rule is general that, when time is prescribed to a public body in the exercise of a function in which the public is concerned, the period designated is not of the essence of the authority, but is a mere directory provision." (Ibid.)

The California Supreme Court's decision in *CCPOA* is also instructive. In that case, the Court interpreted a statute, Government Code section 18671.1, which specified the time within which the California State Personnel Board must render a decision following a hearing or investigation of a state employee's appeal from a departmental disciplinary action. The statute provided that if the Board did not render a decision within the time limit, the employee will be deemed to have exhausted all administrative remedies. Even though there was a statutory consequence for the Board's failure to act within the time limit, the Supreme Court held that the statute was directory, not mandatory. The Court reasoned as follows:

> Had the Legislature not included the exhaustion provision in section 18671.1, it would be clear that the time limit is only directory and the aggrieved employee's sole remedy for delay is traditional mandamus which lies "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station...." (Code Civ. Proc., § 1085.) Section 18671.1 states, however: "The provisions relating to the six-month or the 90-day periods for a decision may be waived by the employee but if not so

waived, *a failure to render a timely decision is an exhaustion of all available administrative remedies*." (Italics added.)

It does not follow from this that the inclusion of a consequence for failure to comply with the statutory time limit for decision—deeming administrative remedies exhausted —necessarily reflects legislative intent that the time limit in section 18671.1 be mandatory and jurisdictional. '[S]eemingly mandatory language need not be construed as jurisdictional where to do so might well defeat the very purpose of the enactment or destroy the rights of innocent aggrieved parties….' [Citation.] ….[¶¶]

In construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose. Therefore a practical construction is preferred. (*People* ex rel. *Riles v. Windsor University* (1977) 71 Cal.App.3d 326, 332 [139 Cal.Rptr. 378].) A construction of section 18671.1 which permits the Board to retain jurisdiction, and thereby render a decision that might make prosecution of a mandate petition against the appointing power unnecessary, is manifestly more practical than one which cuts off the jurisdiction of the Board regardless of the time and resources the parties have already expended in proceedings before the Board.

Moreover, the "consequence" for failure to comply with the time limits established by section 18671.1 is not a consequence affecting the tribunal as are some in statutes in which a time limit reflects clear legislative intent to terminate a tribunal's jurisdiction. Thus, in Code of Civil Procedure section 660, if the court fails to rule on a motion for new trial within 60 days, "the effect shall be a denial of the motion without further order of the court."

….[¶]

We conclude therefore, that the time limits of section 18671.1 are directory, not mandatory and jurisdictional. They may be enforced by petition for writ of mandate to compel the Board to hear and decide a case.

(*CCPOA, supra,* 10 Cal.4th at 1148.)

Application to this Case – The 30-Day Time Limit in Section 403(c) is Directory Not Mandatory

Relators contend that section 403(c) is “clearly” mandatory in nature because it sets forth a consequence if City Council does not appoint a new Councilmember within 30 days – the City Council must call a special election. (OB 11.) The court disagrees. The presence of a consequence for an agency’s failure to act by a time limit does not, standing alone, prove that the statute is mandatory. In *CCPOA, supra*, the Supreme Court held that: “ [T]he consequence or penalty must have the effect of invalidating the government action in question if the limit is to be characterized as ‘mandatory.’” (*CCPOA, supra,* 10 Cal.4th at 1145.)

Here, section 403(c) does not clearly specify that the consequence of the City Council’s failure to act within 30 days is invalidation of any appointment after the 30-day period. Nor does section 403(c) clearly state that if City Council fails to appoint a Councilmember within the 30-day limit then the Council loses the authority to fill the vacancy by appointment. Rather, should Council fail to make an appointment “within” 30 days, section 403(c) directs City Council to “forthwith call an election for the earliest possible date to fill such vacancy.” Section 403(c) is silent as to whether Council could make an appointment after the 30 days.

“When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted.” (See *People v. National Auto. and Cas. Ins. Co.* (2002) 98 Cal.App.4th 277, 282.) The drafters of the charter could have easily stated in section 403(c) the City Council lacks the authority to appoint a Councilmember after the 30-day time limit. Alternatively, the drafters could have shown intent to preclude an appointment after the 30-day time limit by stating that the Council “shall” appoint a new Councilmember “no later than” 30 days after the vacancy occurs. (See *Ursino v. Sup.Ct.* (1974) 39 Cal.App.3d 611, 619 [“The use of the word ‘shall’ in conjunction with the phrase ‘not later than’ is clearly indicative of a mandatory declaration.”].) The drafters did not include that language and the court cannot imply language that has been omitted.

To infer that the Council lost authority to appoint a replacement after the initial 30 days conflicts with the apparent purpose of section 403(c) to ensure that a vacancy is filled expeditiously or “forthwith.” The court “must select the construction that comports most closely with the apparent intent of the Legislature.” (*People v. Jenkins* (1995) 10 Cal.4th 234, 246.) “In construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose.” (*CCPOA, supra,* 10 Cal.4th at 1147.) “Therefore a practical construction is preferred.” (Ibid.) Under Relators’ construction, an appointment one day after then 30-day period would be invalid, even if such appointment occurred long before any special election could occur, even if such appointment reflected a unanimous vote of the Council, and even if there was insufficient time for a special election prior to the next regular election. That construction appears inconsistent with the legislative intent of the charter.

Section 403(c) shows a preference for City Council to fill vacancies by appointment.

Section 403(c) also shows intent for vacancies to be filled quickly ("forthwith"), either by Council acting within the 30-day time limit or calling a special election "for the earliest possible date to fill such vacancy." Harmonizing these provisions, the apparent legislative purpose is for a City Council vacancy to be filled without delay and to ensure continued representation of all districts in the City Council. That legislative purpose would be hindered by an interpretation of section 403(c) under which the City Council loses jurisdiction to appoint a new Councilmember immediately at the end of the 30-day appointment period. While section 403(c) directs the Council to call a special election if an appointment is not made within 30 days, the apparent purpose of that direction is to fill the vacancy quickly should Council deadlock or otherwise fail to act. That direction is not necessarily inconsistent with Council retaining the authority to appoint after the 30-day period if a consensus can later be reached.

Relators have not cited a case in which a court found a time limit to be mandatory under circumstances similar to those here. *Goehring v. Chapman Univ*. (2004) 121 Cal. App. 4th 353 is inapposite. (OB 11.) In *Goehring*, the Court of Appeal considered a statute, Business and Professions Code section 6061, which required any unaccredited law school to provide students with a disclosure statement about the school's unaccredited status. Section 6061 stated: "If any school does not comply with these requirements, it shall make a full refund of all fees paid by students." (*Goehring, supra* at 377.) There was no dispute in *Goehring* that section 6061 imposed a mandatory, and not directory, duty on the schools to provide the disclosure statement and that the statutory consequence for non-performance was a refund of all fees paid by the student. *Goehring* does not stand for the proposition that a time limit is mandatory simply because some consequence for non-performance is included in the statute.

City of Coronado v. Cal. Coastal Zone Conservation Comm'n (1977) 69 Cal. App. 3d 570, and *Rosenfield v. Vosper* (1945) 70 Cal. App. 2d 217, are also distinguishable. The statute construed in each case included clear language depriving the public officer or agency of jurisdiction after a statutory time limit had passed. (See OB 11.) In *City of Coronado*, the statute stated: "If the commission fails to act within 60 days after notice of appeal has been filed, the regional commission's decision shall become final." (*City of Coronado, supra,* 69 Cal.App.3d at 574.) As found by the Court of Appeal, the statute included a "clear legislative direction of finality of decision," depriving the Commission to act after the 60-day time limit. (Id. at 577.)

In *Rosenfield,* the Court of Appeal interpreted CCP section 170, concerning disqualification of judges. The statute provided, in pertinent part: "Within five days after the presentation and filing of any such statement, the judge alleged therein to be disqualified may file with the clerk his consent in writing that the action or proceeding be tried before another judge, or may file with the clerk his written answer admitting or denying any or all of the allegations contained in such statement …. If such judge … *fails to file his answer within the five days herein allowed,* … the action or proceeding shall be heard and determined by another judge or justice not disqualified, who shall be agreed upon by the parties, or, in the event of their failing to agree, appointed by the chairman of the Judicial Council." (*Rosenfield, supra,* 70 Cal.App.2d at 219-220.) The Court of Appeal held that the statute was mandatory, not directory: "Where no answer is filed within the time allowed the judge to file one and if another judge is not agreed upon, the matter passes to the chairman of the Judicial Council, not for the designation of a judge

to try the question of disqualification, but to try the pending action or proceeding. This definite procedure cannot be set at naught and defeated by the filing of an answer after the expiration of the allotted five days. It is of the very essence of the plan of section 170, *supra,* that the answer be filed within five days in order to pave the way for further proceedings, and this is an additional reason why the limitation is mandatory." (Id. at 223.)

In *CCPOA,* the Supreme Court cited CCP section 660 as an example of a statute "in which a time limit reflects clear legislative intent to terminate a tribunal's jurisdiction." (*CCPOA, supra,* 10 Cal.4th at 1147-48.) Under CCP section 660, "if the court fails to rule on a motion for new trial within 60 days, 'the effect shall be a denial of the motion without further order of the court.'" (Ibid.)

By contrast to the statutes construed above, section 403(c) does not specify that the consequence of the Council's failure to appoint within 30 days is Council losing the power to appoint a replacement. Rather, 403(c) provides that if there is a failure to appoint within 30 days, the Council must "forthwith call an election for the earliest possible date." Notably, Relator's action here is not to compel the Council to hold a special election. Rather it is to invalidate the appointment.

Relators contend that the phrase "for any reason" in the third sentence of section 403(c), coupled with the direction for City Council to call a special election after 30 days, would be surplusage if the 30-day time limit is directory. (OB 11; see also Reply 5-6.) The court does not agree. This language would still be given effect because City Council would have a legal duty, enforceable by mandate, to call a special election if the 30-day time limit passes without an appointment "for any reason."

In reply, Relators contend that "[e]ven though Section 403(c) does not use the words 'no later than,' the use of the words 'for any reason' serves the same purpose, that is, to indicate a mandatory declaration." (Reply 6.) The court disagrees. Relators have presented no persuasive argument that the phrase "for any reason" as used in section 403(c) is equivalent to "no later than." As discussed, the drafters of the charter could have signaled clearly that City Council lacks authority to make an appointment after the 30-day time limit by using language such as "no later than." The drafters did not include such clear language and the court cannot imply language that was omitted.

While there may be some ambiguity in section 403(c) caused by the phrase "for any reason," such ambiguity must be resolved in favor of Danielson's eligibility for public office. "The 'right to hold public office, either by election or appointment, is one of the valuable rights of citizenship. ... The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office.'" (*People ex rel. City of Commerce v. Argumedo* (2018) 28 Cal.App.5th 274, 280, quoting *Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 182.) In reply,

Relators fail to address that case law. (See Reply 4:18-21.) Relators also have not cited any legislative history of section 403(c) to support their construction under which City Council loses jurisdiction to make an appointment after the 30-day time limit.

City Council could have been compelled by ordinary mandate to call a special election after the 30-day time limit had passed. City Council's continued efforts to appoint a new Councilmember after the 30-day time limit did not prevent any interested party from suing to compel Council to perform its legal duty under section 403(c) to call a special election. However, no resident or voter of City, including Relators, took any action to compel City Council to call a special election between December 13, 2021, the end of the 30-day time limit, and Danielson's appointment on March 29, 2022. (DF AR 116; Beck Decl. ¶ 7.) Nor have Relators argued that a special election is a possible remedy at this time, a month before the November general election. Invalidating an appointment in such circumstances would be inconsistent with the intent of section 403(c) for a new Councilmember to be appointed or specially elected "forthwith" and to ensure Council representation of all districts of City.

In reply, Relators cite certain case authorities that were not cited in the opening brief. (See Reply 5-6.) "The salutary rule is that points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before." (*Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010.) Relators do not show good cause to make new arguments in reply. In any event, the court has reviewed the cited case authorities and none change the court's conclusion. None of Relators' cited cases involved a time limit or statutory language similar to section 403(c). Relators also rely on the dissent opinion from *People v. Horner* (1989) 213 Cal. App. 3d 1400, 1418. (Reply 5.) As Relators later concede, a dissenting opinion "is not persuasive authority." (Reply 6, fn. 6.)

Based on the foregoing, the court interprets the 30-day time limit in section 403(c) for City Council to appoint a new Councilmember to be directory, not mandatory. Council's failure to act by December 13, 2021, did not render the subsequent appointment of Danielson invalid. Furthermore, it is undisputed that no interested party ever sought to compel Council to call a special election, and that a special election cannot be called prior to the general election in November 2022. The charter does not show clear intent for an appointment after the 30-day time limit to be invalidated in these circumstances. Any ambiguities in the charter must be resolved in favor of Danielson's eligibility for public office. Accordingly, the petition in quo warranto is DENIED.

<u>Defendants' Remaining Contentions</u>

Defendants' remaining contentions are not dispositive. Nonetheless, for benefit of oral argument, the court provides the following analysis:

Contrary to Defendants' suggestion, the evidence supports that at least some of Relators' members are residents of City and have standing to sue. (Oppo. 9:21-27; see e.g. Verified Compl. ¶¶ 6-7; Ans. ¶¶ 6-7; DF AR 68.)

Defendants contend that the question of whether City Council must call a special election is moot because it is now "too late" to call a special election before the November 8, 2022, general election, at which the seat will be filled for a new four-year term. (Oppo. 12.) Relators do not dispute that a special election could not be called at this time. However, the quo warranto complaint did not seek an order compelling a special election, but rather an order invalidating the appointment of Danielson. That relief could be granted if Relators proved that the appointment was invalid under the charter. Thus, the petition is not moot. (See *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 ["The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief.].)

Defendants contend that the court has discretion whether to issue relief in a quo warranto action and that the public interest would be harmed by removing Danielson from office, thereby depriving District 5 of representation on the City Council. (Oppo. 18-19.) Relatedly, Defendants contend that Relators pursued this case for an improper purpose "in retaliation for Mr. Danielson's vote in favor of a new redistricting map," and that the court can consider such improper purpose in granting relief in quo warranto. (Oppo. 19-20.) Defendants primarily rely on secondary sources to support such arguments. (Oppo. 18, citing 53 Cal.Jur. 3d, *Quo Warranto* § 5 and 65 Am.Jur.2d, *Quo Warranto* § 10.) The one cited appellate decision, *City of Oakland v. Key System* (1944) 64 Cal.App.2d 427, 441-442, states that the court "should be cautious in the use of its jurisdictional power" but does not otherwise expand on the scope of the trial court's discretion to deny relief in quo warranto, including based on the circumstances or for an improper purpose of the relator. Defendants cite no published case authority that suggests the court would have discretion to deny relief in a quo warranto action if the appointment violated the charter and was void. However, the court need not decide that question because the court has not found the appointment invalid under the charter.

A similar analysis applies to Defendants' laches defense. (Oppo. 19-20.) "'The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.'" (*Womack v. San Francisco Community College Dist.* (2007) 147 Cal.App.4th 854, 865.) Even if Defendants could prove the elements of laches (which the court does not decide), Defendants do not explain why laches would be available if Relators had proven that Danielson's appointment was null and void. However, the court need not decide the question because the court has not found the appointment invalid under the charter.

<u>Conclusion</u>

The petition in quo warranto is DENIED.

Counsel for Intervener-Defendants is directed to prepare, lodge, and file a proposed form of judgment.