

SUPERIOR COURT OF THE STATE OF CALIFORNIA

The People of the State of California, On the  
Relation of the CITY OF BELL GARDENS,

Plaintiff/Relator,

vs.

JENNIFER RODRIGUEZ, an individual

Defendant.

) Case No. BC694949

COURT'S (PROPOSED)  
STATEMENT OF DECISION

) Trial Date: September 10, 2019  
) Time: 8:30 A.M.  
) Dept. 36

After a court trial, the court now issues its statement of decision. The issue presented is whether Defendant, JENNIFER RODRIGUEZ ("Rodriguez") vacated her office of Councilmember of the City of Bell Gardens because Rodriguez was absent from regular city council and successor agency meetings without permission during a sixty (60) consecutive day period pursuant to California Government Code Section 36513 (hereinafter "Section 36513"). The City of Bell Gardens is a general law city in southeast Los Angeles County. Rodriguez is one (1) of five (5) councilmembers having been first elected to the city council

STATEMENT OF DECISION OF THE PEOPLE OF THE STATE OF CALIFORNIA  
ON THE RELATION OF THE CITY OF BELL GARDENS

in 2003 and reelected in 2007, 2011, and 2015. Rodriguez's current term as city councilmember expires in November 2020.

The undisputed testimony established that Regular meetings of the Bell Gardens Successor Agency and Bell Gardens City Council occur on the 2<sup>nd</sup> and 4<sup>th</sup> Monday of each month under Bell Gardens Municipal Code ("BGMC") Chapter 2.04. (Ex. 1 – BGMC Chapter 2.04). Customarily, the Successor Agency meeting is called first. Once Successor Agency business is conducted, the meeting is adjourned, and the City Council meeting is called to order. All Minutes of Successor Agency and Council Meetings relied upon by the parties and received into evidence are an accurate representation of all who were present, and the items discussed.

The relevant time is between June 13, 2016 through February 13, 2017 and includes two separate 60 plus day periods during which Rodriguez was absent from all meetings. Testimony from all witnesses including former City Attorney Arnold Alvarez-Glassman (hereafter called "Alvarez-Glassman"), former City Manager Phil Wagner ("Wagner"), current councilmember Pedro Aceituno, former councilmember Priscilla Flores, and defendant herself, shows defendant failed to attend Successor and Agency meetings from mid-2016 through February 2017.

The undisputed evidence, including defendant's testimony, was she missed Successor Agency and Regular Council Meetings during the 62-day period from July 26, 2016 through September 26, 2016 and the 84-day period from November 22, 2016 through February 12, 2017. Below is a chart summarizing Rodriguez's attendance and absences during the relevant time:

<u>Exhibit</u>	<u>Meeting Dates</u>	<u>Successor Agency</u>	<u>City Council</u>	<u>Additional Notes</u>
2	June 13, 2016	Present	Present	
3	June 27, 2016	<i>Absent</i>	<i>Absent</i>	
4	July 25, 2016	N/A	Absent, but excused	Rodriguez was absent at this meeting, but the absence was

STATEMENT OF DECISION OF THE PEOPLE OF THE STATE OF CALIFORNIA  
ON THE RELATION OF THE CITY OF BELL GARDENS

					excused by the City Council by a 3-0 vote.
5	August 8, 2016	<i>Absent</i>	<i>Absent</i>		
6	August 22, 2016	<i>Absent</i>	<i>Absent</i>		
7	Sept. 12, 2016	<i>Absent</i>	<i>Absent</i>		
8	Sept. 26, 2016	Present	<i>Absent</i>		Rodriguez left the meeting following the Successor Agency roll call.
9	Oct. 10, 2016	N/A	Present		Rodriguez left following Agenda Item No. 6 due to illness.
10	Oct. 24, 2016	N/A	<i>Absent</i>		
11	Nov. 14, 2016	Cancelled	Cancelled		Cancelled due to lack of quorum and adjourned to Nov. 21, 2016
12	Nov. 21, 2016	N/A	Present		Adjourned regular meeting. Rodriguez was present for item number 10, voted and left before Item 11 was presented.
13	Nov. 28, 2016	Cancelled	Cancelled		
14	Dec. 12, 2016	N/A	<i>Absent</i>		
15	Dec. 26, 2016	Cancelled	Cancelled		Regular meeting cancelled in observance of Christmas holiday
16	Jan. 09, 2017	N/A	<i>Absent</i>		Rodriguez arrived 2 minutes before the end of the City Council meeting

---

STATEMENT OF DECISION OF THE PEOPLE OF THE STATE OF CALIFORNIA  
ON THE RELATION OF THE CITY OF BELL GARDENS

17	Jan. 18, 2017 ( <i>Special Council Meeting</i> )	N/A	<i>Absent</i>		
18	Jan. 23, 2017	<i>Absent</i>	<i>Absent</i>		
19	Feb. 13, 2017	<i>Absent</i>	Present		Rodriguez arrived at 6:18 pm.

(Exhibits 2-19 – City of Bell Gardens Successor Agency and City Council Minutes)

City Attorney Alvarez-Glassman and City Manager Phil Wagner repeatedly requested written verification from a medical professional or health care provider confirming the need for any leave of absence. In addition, a letter was sent to Rodriguez asking for documentation of a medical condition requiring a leave of absence. Rodriguez testified she called Wagner and asked him to tell the Council to leave her alone. By her own testimony, she failed to respond or provide the requested evidence. (Ex. 20 – City Letter dated Oct. 27, 2016). The City received no written verification verifying the need for a leave or for the absences.

Through the testimony of both Alvarez-Glassman and Wagner, the City had in place a protocol for absent members to request permission to be excused. That protocol is:

1. The absent member would notify either the City Manager, City Attorney, City Clerk or other council member that they would be absent from a meeting.
2. The absent Council member would give a reason for his/her absence. That reason would be relayed to the Council at roll call.
3. It was incumbent on the absent Council member, when notifying of his/her absence to specifically request to be excused.
4. A motion to be excused would then be entertained by the attending Council.

Only the Council, not the City Manager, the City Attorney or the City Clerk had the authority to excuse an absence. Defendant Rodriguez admitted to never asking to be excused for the meetings she missed.

California Code of Civil Procedure sections 803 and 811 allow a city to bring an action in the name of the city in *quo warranto* "against any person who usurps, intrudes into, or unlawfully holds or exercises any public office." The present case is a *prima facie* situation for which leave to sue in *quo warranto* is appropriate to determine Rodriguez has vacated her office.

A member of a city council holds a public office for a *quo warranto* action. (72 Ops.Cal.Atty.Gen. 63 (1989); 72 Ops.Cal.Atty.Gen. 8 (1989); 35 Ops.Cal.Atty.Gen. 198 (1960).) *Quo warranto* is the exclusive remedy where it is available. (*Cooper v. Leslie Salt Co.*, 70 Cal.2d 627, 632-633). There is an issue of law whether Rodriguez vacated her public office per Government Code Section 36513. Having been absent from all regular City Council meetings within a sixty (60) day period following the July 25, 2016 regular City Council meeting and again following the November 22, 2016 Council meeting, Rodriguez ceased to discharge her duties thereby vacating her office by operation of law. The public interest involved is of immense importance. Councilmembers must be held to the oath they took to serve their communities and must do so by attending and participating in the meetings to manage and guide their cities.

Whether Rodriguez has vacated her office as a City Council Member under Government Code Section 36513 is a matter of public interest. Government Code Section 36513 states: "If a city councilmember is absent without permission from all regular city council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy." In determining the interpretation of a statute, courts look "to the words the Legislature used, giving them their usual and ordinary meaning. If there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs." *San Joaquin Helicopters v. Department of Forestry* (2003) 110 Cal.App.4th 1549, 1562.

The law sets forth when a councilmember vacates his or her office by operation of law resulting from a continuous, unexcused absence. Specifically, Section 36513 provides a councilmember vacates his or office if he or she is absent without permission from all regular city council meetings within her a 60-consecutive day period. Defendant counters by alleging "that the

disqualifying statute does not apply to her, because she was ill, did the best she could, and returned to office as soon as she could.” (Defendant’s Proposed Statement of Decision, page 30.)

Here, Rodriguez was absent from all regular council meetings during two separate and distinct 60 plus day periods. The first 62 consecutive day period commenced on July 26, 2016—the day following the July 25, 2016 regular City Council meeting. That 62-consecutive day period ended on Monday, September 26, 2016. Under a plain reading of the statute, Rodriguez vacated her City Council seat on September 26, 2016 and the City must fill the vacancy. The second 84-day period in which Rodriguez failed to attend began on November 22, 2016 and ended on February 13, 2017, in which she arrived late.

Further, Rodriguez’s sworn testimony confirms she never sought permission from the Council to be excused during these two 60-day plus periods nor did she medically document the City when asked by the City Attorney on October 27, 2016. Rodriguez took an oath of office to serve the City. She has failed to do so by her unexcused absences. Her absence was “without permission” as stated in Government Code Section 36513. For the forgoing reasons, Rodriguez vacated her office under Government Code Section 36513.

As a duly elected city councilmember, Rodriguez owes a fiduciary duty to the voters of the City of Bell Gardens to consider and vote on zoning matters, enactment of laws, fiscal matters, the expenditure of public funds and the contracting of goods and services for the public health, safety, and welfare. Due to Rodriguez’s repeated and consecutive absences, she failed to perform the functions and duties for which she was elected.

Further, during her absences, Rodriguez continued to receive monthly pay from the City along with, health benefits (medical, dental, and vision), and vehicle and technology allowances valued at a total cost of over \$50,000 annually. The residents of Bell Gardens continued to pay Rodriguez despite her absences.

The court finds Rodriguez vacated her office under Government Code Section 36513 on Rodriguez’s status as Council member based on the number of unexcused absences accrued

during the prescribed time. Under Code of Civil Procedure section 803, this court finds Rodriguez violated her oath to her office by failing to attend regular, essential, and vitally important meetings in violation of Government Code Section 36513, vacating her office.

The court finds for Plaintiff and against Defendant. Plaintiff is to file a proposed judgment within the next 10 days and serve it upon Defendant.

Dated:

---

Gregory W. Alarcon

Judge of the Los Angeles Superior Court