

ORDINANCE NO. 27925

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO ADD  
CHAPTER 12.18 TO SPECIFY THE GROUND AND THE  
PROCEDURE FOR REMOVAL OF A MEMBER OF THE  
CITY COUNCIL FOR WILLFUL MISCONDUCT IN OFFICE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Title 12 of the San José Municipal Code is hereby amended to add a new chapter, to be numbered, entitled and to read as follows:

**CHAPTER 12.18  
REMOVAL FROM OFFICE**

**Part 1  
Purpose**

**12.18.010 Purpose**

This Chapter implements the ground and process for removal of a member of the City Council pursuant to Charter Section 405. The purpose of the proceeding established in this Chapter is to determine whether the member should be allowed to continue in his or her capacity as an elected official of the City of San José and not to determine whether the member is guilty of a crime. The principal objective of the proceeding is to protect the City of San José and the public which it serves from persons unfit to hold elective office as a member of the City Council. The removal process set forth in this Chapter is the most severe response to misconduct in office and should be exercised only for the most egregious and serious offenses.

## **Part 2**

### **Definitions**

#### **12.18.200 Definitions**

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

#### **12.18.210 Member of Council**

“Member of Council” means any of the members of the City Council including the Mayor as provided in Charter Section 1704.

#### **12.18.220 Misconduct in Office**

“Misconduct in Office” means an egregious and serious wrongful or unlawful act, lawful act performed in a wrongful manner, or a failure to act when a duty to act existed, that is taken in his or her official capacity or in relation to the duties of office. For purposes of this Chapter, Members of Council have a duty to abide by federal and state law, City charter, City ordinances, and City policies, including conflict of interest or governmental ethics laws.

#### **12.18.230 Rules Committee**

“Rules Committee” means the committee of the City Council established as the rules committee by City Council Resolution No. 73321, as such resolution may be amended or superseded.

**12.18.240 Subject Member**

“Subject Member” means the Member of Council who is the subject of the request for removal from office.

**12.18.250 Willful**

“Willful” means a purpose or willingness to commit the act or to not act with knowledge of a duty to act. Willfulness does not require knowledge that the act violates the law, or intent to violate the law, injure another or to acquire any advantage.

**Part 3**

**Grounds for Removal, Initiation of Proceedings**

**12.18.300 Grounds for Removal**

The City Council may remove a Member of Council from office for Willful Misconduct in Office pursuant to the provisions of this Chapter.

**12.18.310 Recall Result in Termination of Removal Proceedings**

All proceedings under this Chapter shall terminate and cannot be reinstated if at any point during the process, a recall of a Member of Council has been initiated, pursuant to Charter Section 1603, and the County Registrar of Voters issues a certificate of sufficiency for the petition pursuant to Elections Code Sections 11224 and 11225, as may be amended.

### **12.18.320 Request for Removal**

- A. A Member of Council may initiate a request for removal hearing by submitting the request in writing to the Rules Committee. Only a Member of Council may make this request.
- B. The request must contain the specific allegations of Willful Misconduct in Office upon which the proposed removal is based.
- C. The City Clerk shall place the request on the agenda of the second regularly scheduled Rules Committee meeting following receipt of a request with specific allegations.

### **12.18.330 Service of Removal Allegations**

A copy of the request for removal and the specific allegations shall be served on the Subject Member by personal service at least five (5) business days prior to the Rules Committee meeting at which it will be considered. The Subject Member shall have the right to appear and address the Rules Committee.

### **12.18.340 Rules Committee Review**

- A. At the Rules Committee meeting at which the removal request is considered, the Rules Committee shall recommend one or more of the following:
  - 1. Investigation of the allegations in the request is warranted for consideration of removal assuming the allegations are true and could be deemed willful misconduct in office under state law;
  - 2. The recommended level of action is admonition, sanction and/or censure pursuant to City Council Conduct Policy (0-28), as may be amended; or

3. No action is warranted.
- B. The Rules Committee shall set forth the reasons for its recommendation in a report to the City Council.
  - C. The determination of the Rules Committee on the removal request shall be subject to confirmation by the City Council as part of the Rules Committee report. The City Clerk shall place the Rules Committee report on the agenda of a regularly scheduled City Council meeting within thirty (30) days of the Rules Committee meeting.
  - D. The City Council may by resolution confirm the recommendation of the Rules Committee or determine that another action enumerated in Subsection A be taken. The City Council shall set forth the reasons for its determination in the resolution. The resolution of the City Council requires the affirmative vote of no less than six (6) members of the City Council.

**12.18.350 Investigation Committee**

- A. The investigation of the removal request shall be undertaken by a committee. The committee members shall be appointed by the Mayor, or the Vice Mayor if the Mayor is the subject of the removal request. If both the Mayor and Vice Mayor are the subject of the removal hearing, then the Members of Council remaining shall by a simple majority of no less than six (6) affirmative votes appoint the committee members. The appointments shall be confirmed by the City Council.
- B. The committee shall be comprised of not less than five (5) and no more than seven (7) members. One member of the committee shall be an attorney in good

standing with the California State Bar, and one member of the committee shall have held elective government office.

C. Each member of the investigation committee shall comply with the following qualifications during his or her tenure on the committee:

1. Each member shall be a qualified elector of the City of San Jose.
2. No member may participate in any campaign supporting or opposing a candidate for City elective office. For the purposes of this Section, participation in a campaign includes but is not limited to making contributions or soliciting contributions, publicly endorsing or urging endorsement of a candidate, or participating in decisions by organizations to participate in a campaign.
3. No member may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyists or campaign consultant.
4. No member may hold employment with the City, Redevelopment Agency, or any member of the City Council outside of City employment.
5. No member may hold any other City office.
6. No member may become a candidate for City elective office during his or her tenure on the Committee, and for twelve (12) months thereafter.

#### **12.18.360 Investigation**

All of the following shall apply to committee investigations:

- A. The committee may be staffed by administrative, investigative, and legal staff. Legal staff shall be outside counsel retained by the City Council to investigate the allegations and serve as the prosecutor in a removal hearing.
- B. If authorized by the City Council, the committee may subpoena witnesses and documents.
- C. If requested by the City Council, the committee may determine whether a member of the City Council is disqualified from participating in the removal proceedings due to actual bias or a high probability of actual bias.
- D. In formulating its recommendation to the City Council at the culmination of the investigation, the committee shall determine if there are reasonable grounds to believe or not believe that the conduct, violation, or offense occurred based on all the facts and evidence obtained by and available to the committee.
- E. The City Clerk shall place on the agenda of regularly scheduled City Council meeting a status report on the progress of the investigation by the committee within thirty (30) days of the committee's appointment by the City Council.
- F. The committee shall issue a final report and recommendation to the City Council. The final report shall include but is not limited to all of the following:
  - 1. A statement of the facts and allegations leading to the investigation;
  - 2. A summary of the evidence reviewed and relied upon for the recommendation;
  - 3. A statement of the applicable laws and policies;
  - 4. An analysis applying the evidence to the applicable laws and policies; and

5. A conclusion setting forth the committee's findings and recommendation.
  
- G. The City Clerk shall post the final report of the committee on the City's website no later than three (3) business days after the committee issues the report.
  
- H. The meetings of the committee shall be subject to the Ralph M. Brown Act, California Government Code Section 54950 et seq., as may be amended.
  
- I. All the documents received by the committee shall be retained by the City in accordance with the City Clerk's records retention schedule and shall be subject to disclosure pursuant to the Public Records Act, California Government Code Section 6250 et seq., as may be amended.

#### **12.18.370 City Council Review of Committee Report**

- A. After consideration of the final report from the committee, the City Council shall determine one or more of the following:
  1. Further investigation of the allegations in the removal request is warranted;
  2. The removal request is to be set for a public hearing;
  3. The recommended level of action is admonition, sanction and/or censure pursuant to City Council Conduct Policy (0-28), as may be amended; or
  4. No further action is warranted.

- B. If the City Council determines that further investigation of the allegations in the removal request is warranted, the Council shall specify the additional information sought and a due date for the additional information to be presented to the Council.
- C. If the City Council sets the matter for a public hearing, it shall direct the City Clerk to serve the Subject Member by personal service with a notice of hearing and all documents received by the committee. The notice of hearing shall include:
1. A statement of the nature of the proceeding;
  2. A statement in ordinary concise language of each act or omission upon which the request for removal is based; and
  3. A statement advising the Subject Member of his or her right to appear and present a defense as set forth in this Chapter.

#### **Part 4**

#### **Removal Hearing**

##### **12.18.400 Removal Hearing**

Prior to a decision by the City Council to remove the Subject Member from office, the Subject Member shall receive a public hearing before the City Council. The hearing shall be set to provide reasonable notice to the Subject Member and to provide him or her a reasonable time to prepare a defense. The hearing shall be set not less than thirty (30) calendar days and within sixty (60) days from the date that the notice of hearing is served on the Subject Member. The date for the removal hearing may be extended beyond sixty (60) days upon a showing of good cause by either party and approval by a simple majority of no less than (6) affirmative votes of the City Council.

### **12.18.410 Removal Hearing Procedures**

The following shall apply to the conduct of the public hearing:

- A. The Subject Member may be represented and may have the representative speak, present evidence, or question witnesses on his or her behalf.
- B. The Subject Member and a designee of the committee shall have an opportunity to present evidence and question witnesses.
- C. The Subject Member and a designee of the committee shall have the ability to subpoena witnesses and documents through the City Council.
- D. Oral evidence shall be taken only on oath or affirmation.
- E. The public hearing is not a formal adversarial proceeding and strict rules of evidence shall not apply. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
- F. The Mayor, or the Vice Mayor if the Mayor is the subject of the allegations, shall preside at the hearing. If both the Mayor and Vice Mayor are the subjects of the removal hearing, then the Members of Council remaining shall by a simple majority of no less than six (6) affirmative votes of the City Council elect a Member of Council to preside at the hearing.
- G. The City Attorney or designee shall provide legal advice to the City Council during the hearing.

**12.18.420 Findings and Decision**

- A. The City Council may determine that the Subject Member has committed Willful Misconduct in Office only if all Members of Council who are eligible to vote find by clear and convincing evidence that such misconduct occurred. A decision to remove the Subject Member from office requires the adoption of a resolution at the conclusion of the hearing, by three-fourths (3/4) vote of the Members of Council who are eligible to vote but no less than six (6) affirmative votes of the City Council setting forth the City Council's findings with regard to the specific allegations.
  
- B. The Subject Member is not eligible to vote.

**12.18.430 Effect of Removal**

Removal of a Member of Council will result in the office becoming vacant under Charter Section 409 (e).

PASSED FOR PUBLICATION of title this 5<sup>th</sup> day of December, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,  
PYLE, REED, WILLIAMS, YEAGER

NOES: NGUYEN; GONZALES

ABSENT: NONE

DISQUALIFIED: NONE

---

RON GONZALES  
Mayor

ATTEST:

---

LEE PRICE, MMC  
City Clerk