

Ordinance No. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS, AMENDING THE CITY OF PFLUGERVILLE, TEXAS CODE OF ORDINANCES, BY ADOPTING A CITY COUNCIL CITY CHARTER REMOVAL HEARING PROCESS AS TITLE I, CHAPTER 12, SECTION 12.01 THROUGH 12.04 TITLED CITY CHARTER REMOVAL HEARING PROCESS; PROVIDING A CUMULATIVE CLAUSE; REPEALING ALL ORDINANCES TO THE EXTENT THEY ARE IN CONFLICT WITH THE AMENDED SECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Pflugerville held a City Charter Amendment proposition election on November 8, 2016; and

WHEREAS, Proposition 8 of said election was approved by the Citizens of Pflugerville, thereby amending Section 3.08(c) of the City's Charter and requiring the City of Pflugerville to adopt an ordinance specifying a hearing process and procedure to be utilized when a City Council member becomes subject to removal for causes identified in Section 3.08(a); and

WHEREAS, City Council finds that amendments to the City of Pflugerville's Code of Ordinances are necessary for these purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes and findings of fact.

Section 2. Amendment to Municipal Code of Ordinances. The City of Pflugerville, Texas Code of Ordinances, Title I (entitled "*General Provisions*"), Chapter 12 (entitled "*Charter Requirements*"), Sections 12.01 through 12.04 (entitled "*City Charter Removal Hearing Process*") are hereby adopted as detailed herein.

§ 12.01 Title and Purpose

This chapter shall be titled and may be cited as the City Charter Removal Hearing Process ordinance. The purpose of this Chapter is to establish rules and procedures as required by Section 3.08(c) of the City's Charter that will be utilized if a member of City Council becomes subject to removal under Section 3.08(a) of the City Charter.

§ 12.02 Applicability

In accordance with the City Charter, this chapter shall only apply to proceedings initiated in accordance with Section 3.08(b) of the City Charter and solely for the reasons established in Section 3.08(a) of the City Charter.

§ 12.03 Definitions

Complainant – the person initiating a proceeding under this chapter by presenting a sworn written complaint to the Mayor or Mayor pro tem, as applicable, charging a member of the City Council with an act or omission that is a reason for removal under Section 3.08(a) of the City Charter.

Respondent – the City Council member about whom a complaint is presented under this chapter by the Complainant.

§ 12.04 Hearing Process and Procedure

(A) Open Meetings

All hearings held under this chapter shall be conducted in open session in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551, except that the City Council may conduct a closed session to get advice from its attorney pursuant to and in accordance with the Texas Open Meetings Act.

(B) Removal Process Initiation

(1) *Initiation.* A proceeding under this chapter is initiated when a sworn written complaint charging a member of the City Council with an act or omission that is a reason for removal under Section 3.08(a) of the City Charter is presented by the Complainant to the Mayor or, if the complaint is against the Mayor, to the Mayor pro tem. The person receiving the complaint shall file it with the city secretary within two (2) business days of receipt, who shall provide a copy to the Respondent and all other City Council members at the next regularly scheduled City Council meeting. The Mayor or the Mayor pro tem, as applicable, shall set a time and date for a hearing on the complaint at the same regularly scheduled meeting that the complaint has been distributed to City Council members.

(2) *Hearing date and meeting form.* The hearing date set shall be held no sooner than twenty (20) days, nor later than forty-five (45) days following the date of distribution of the complaint at the regularly scheduled meeting provided above and shall be called as a special meeting of City Council in accordance with Section 3.08(c)(3) of the City's Charter.

(3) *Written Notice to Respondent Officer.* Distribution of the sworn and written complaint to the Respondent subject to any investigation and/or hearing under this chapter by the City Secretary shall be deemed as compliance with Section 3.08(c)(2) of the City's Charter.

(4) Investigation and Subpoenas.

(a) Following the setting of the date of the hearing, City Council, upon an affirmative majority vote of the voting members of City Council present, which shall exclude any member of City Council who initiated or is the subject of the investigation or hearing who shall not sit at the dais and shall not participate in deliberation or vote, shall

determine whether it is necessary to direct the City Manager, City Attorney and/or the Chief of Police to investigate the matter, as authorized by Section 3.19 of the City Charter.

(b) Upon an affirmative majority vote of the voting members of City Council present, which shall exclude any member of City Council who initiated or is the subject of the investigation or hearing who shall not sit at the dais and shall not participate in deliberation or vote, City Council, through the Mayor or Mayor pro tem, as applicable, may issue any subpoenas for witnesses or documentary evidence deemed necessary by City Council and shall issue subpoenas for witnesses or documentary evidence when requested by the Complainant or the Respondent, provided that such written request is submitted to the City Secretary no less than ten (10) business days prior to hearing date established. A subpoena issued in accordance with this chapter shall have the same authority as a subpoena issued by the City's municipal court.

(C) Hearing Process and Rules of Order

(1) Preliminary Matters.

(a) *Call to Order.* The Mayor or Mayor pro-tem, as applicable, who shall be deemed the "Presiding Officer" for purposes of this chapter, shall call the hearing to order.

(b) *Participation Prohibited.* Neither a member of City Council who initiated an investigation or hearing under this chapter, nor the Respondent shall sit at the dais or participate in deliberation or vote.

(c) *Statement of Hearing.* Following the call to order, the Presiding Officer shall issue a statement regarding the nature of the hearing and the allegations to be considered, as required by Section 3.08(c)(6) of the City Charter.

(d) *Public Comment.* Next the Presiding Officer will determine whether public comment will be allowed as part of the hearing. No public comment shall be allowed unless agreed to by a majority vote of the voting members of City Council present in accordance with City Charter Section 3.08(c)(9). If it is determined that public comment will be allowed, such public comment will be governed by the rules established in Section 12.04(E) of this chapter.

(e) *Rules of Evidence.* The admissibility of evidence is within the discretion of the Presiding Officer, who is not bound by any court rules or rules of evidence. Under the direction of the Presiding Officer, City Council shall not consider or debate questions of law or admissibility, but shall consider all evidence provided by either party that the City Council deems helpful and/or appropriate to admit.

(f) *Oaths.* The Presiding Officer shall swear in the Complainant, the Respondent and witnesses by administering oaths regarding the person's intention to tell the truth, such oath to be stated as "Do you solemnly affirm that the testimony you will give is the truth, the whole truth, and nothing but the truth, under penalty of perjury?," which may be given to all individuals collectively at the beginning of the hearing or individually as testimony is received.

(g) *Burden of Proof.* The Complainant is deemed to have the burden of proof in proving all allegations asserted by a complaint filed under this chapter and City Council shall consider whether such burden was satisfied prior to making a determination under this chapter.

(h) *Representation.* The Respondent is entitled to be represented through legal

counsel during a hearing held under this chapter.

(i) *Exclusion of Witnesses.* In accordance with Texas Government Code § 551.084, the City Council, upon a majority vote of the voting members of City Council present, may exclude a witness or witnesses from a hearing during the examination of another witness.

(2) *Proceedings.*

(a) *Opening Statements.* Following completion of the preliminary matters by the Presiding Officer, each party shall be afforded an opportunity to make an opening statement, which shall be limited to a maximum of five (5) minutes. The Complainant shall make its statement first and the Respondent's statement shall follow.

(b) *Complainant Presentation of Evidence and Witnesses.* Following the completion of the Respondent's opening statement, the Complainant shall present evidence to the Presiding Officer for City Council consideration and may call witnesses to provide testimony. If a witness is called by the Complainant, the Respondent and then the City Council will be afforded an opportunity to cross-examine the witness following Complainant's questioning.

(c) *Respondent Presentation of Evidence and Witness.* Following the completion of the Complainant's presentation of evidence and witnesses, the Respondent shall present evidence to the Presiding Officer for City Council consideration and may call witnesses to provide testimony. If a witness is called by the Respondent, the Complainant and then the City Council will be afforded an opportunity to cross-examine the witness following Respondent's questioning.

(d) *Presentation of Investigation Results/Evidence and Witnesses of City Council.* Following the completion of Respondent's presentation of evidence and witnesses, the Presiding Officer shall, if applicable as directed under section 12.04(B)(4)(a), request a presentation of investigation results from the City Manager, City Attorney, and/or Chief of Police, as applicable. Following this presentation, the Respondent and then the Complainant shall be afforded an opportunity to cross-examine the presenter of the investigative results and any witness called by the presenter. Following this process, the Presiding Officer may present evidence and call witnesses subpoenaed under section 12.04(B)(4)(b) of this chapter. The Respondent and then the Complainant shall be afforded an opportunity to cross-examine any such witness called.

(e) *Public Comment.* If City Council has determined that public comment will be permitted during the hearing in accordance with section 12.04(C)(1)(d) of this chapter, the Presiding Officer will allow public comment in the order of individuals signed up to speak at the hearing in accordance with the rules provided under section 12.04(D) of this chapter. Following each public comment, the Respondent and then the Complainant shall be afforded an opportunity to cross-examine each person commenting.

(f) *Closing Arguments.* Following the conclusion of public comment, if any, the Complainant shall be afforded three (3) minutes to present a closing argument to City Council. The Respondent's closing argument shall follow with the Respondent also being afforded three (3) minutes.

(g) *City Council Deliberations.* Following closing arguments, City Council shall deliberate either publicly or, upon majority vote of the voting members of City Council present, privately in closed session under any applicable Texas Open Meetings

Act provision providing for executive session, such as 551.074 Personnel or 551.071 Legal Advice, as applicable. Upon completion of deliberations, City Council shall make a determination in open session in accordance with section 12.04(E) below and the hearing will be deemed complete.

(D) **Public Comment.** If City Council determines that public comment will be received in accordance with section 12.04(C)(1)(d) of this chapter, the following rules shall apply to all public comments:

(1) *Public Comment Rules Announcement.* Immediately before the opening of the Public Comment section of the hearing proceeding process, at the direction of the Presiding Officer, the City Secretary shall summarize the rules governing public comment and the City Secretary shall take the names of those interested in making a comment pertaining to hearing. The Presiding Officer will recognize those persons desiring to address the City Council on the hearing matter in the order that the City Secretary received the names.

(2) *Advanced Registration.* Persons wishing to comment are encouraged to register in advance. Any person wishing to make a comment at the hearing should register with the City Secretary before the hearing commences. Any person who has not registered in advance may be permitted to speak upon recognition by the Presiding Officer and a majority vote of the voting members of City Council present.

(3) *Time Limits/Conclusion of Public Comment.* Public comments may be limited to a maximum time limit and/or concluded by a majority vote of the voting members of City Council present. In all cases, the Presiding Officer shall announce the time limits and/or conclusion of public comments. Each person will speak only one time during the hearing, unless specifically requested to comment further or while under cross-examination as provided in section 12.04(C)(2)(e) in this chapter.

(4) *Comment Scope Limitation.* Any comments received shall be limited in scope to the matter before the City Council. The Presiding Officer shall have the power to terminate the presentation of any comment that is not limited to the matter before the City Council.

(5) *Preservation of Order.* The Presiding Officer shall preserve order and decorum and, if necessary, shall cause to be silenced or removed from the hearing, any person speaking out of order or disrupting the order of the hearing, being verbally or physically abusive, or using inappropriate language.

(E) **Determination of City Council.** In accordance with Section 3.08(c)(10) and (11) of the City Charter, following the completion of the hearing process provided in this chapter, City Council, upon majority vote of the voting members of City Council present, may:

(1) Determine that the Respondent has not violated Section 3.08(a) of the City's Charter;

(2) Determine that the Respondent has violated Section 3.08(a) of the City's Charter

and that removal of the Respondent is warranted and that a vacancy shall be declared to be filled no sooner than the next regular meeting of City Council, and in accordance with Section 3.07 of the City's Charter;

(3) Determine that further investigation or further information is necessary prior to making a determination regarding removal, in which case City Council shall identify the scope of the additional investigation and further information and direct the City Manager to conduct or secure the same for City Council's subsequent consideration;

(4) Determine that a vote of censure of the Respondent is warranted; or

(5) Take such other action as City Council determines appropriate.

(F) **Penalty.** Any person that fails to obey a subpoena issued by the Mayor or Mayor pro tem, as applicable, under section 12.04(B)(4)(b) of this chapter or who violates an oath taken under section 12.04(C)(1)(f) of this chapter shall be guilty of a misdemeanor, which shall be punishable by a fine of not more than two hundred dollars (\$200.00).

Section 3. Repealer. This ordinance shall be cumulative of all provisions of the City of Pflugerville, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

Section 4. Severability. It is hereby declared to be the intention of the City Council of the City of Pflugerville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, clause, sentence, paragraph or section.

Section 5. Effective Date. This Ordinance will become effective on its adoption and passage by the City Council.

PASSED AND APPROVED this _____ day of _____, 2017.

CITY OF PFLUGERVILLE, TEXAS

by: _____
VICTOR GONZALES, Mayor

ATTEST:

KAREN THOMPSON, City Secretary

APPROVED AS TO FORM:

GEORGE E. HYDE, City Attorney
DENTON, NAVARRO, ROCHA, BERNAL, HYDE & ZECH P.C.