

*** NEWS RELEASE ***

DA INVESTIGATION DETERMINED THAT DISTRICT 6 SALINAS CITY COUNCILMEMEBER JOHN ANTHONY VILLEGAS VIOLATED NO STATE LAW

FOR IMMEDIATE RELEASE

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Monterey County District Attorney Dean D. Flippo announced today that the Monterey County District Attorney's Office completed an investigation concerning the legal domicile of John Anthony Villegas, District 6 Salinas City Councilmember. The investigation determined that Villegas violated no state law. Although Villegas did not live within District 6 in Salinas from mid-September, 2016, until February 18, 2017, under California law, Villegas' legal domicile remained in District 6 during that time.

Facts: From August 2007 until mid-September 2016, Villegas lived with his girlfriend at a residence in District 6. He was lawfully registered to vote in District 6. On July 26, 2016, Villegas lawfully filed his candidate papers with the city and accurately declared under penalty of perjury that he was registered to vote in, and resided within, District 6 for at least 28 days prior to July 18, 2016. Villegas and his girlfriend broke up and Villegas moved to Hollister in mid-September 2016. He rented a room at a townhouse in Hollister from September 26, 2016 until December 31, 2016. The election was held on November 8, 2016, and Villegas was elected to the Salinas City Council. He voted by mail-in ballot for District 6. After January 1, 2017, Villegas stayed at a house in Salinas outside District 6 for two or three nights. On February 18, 2017, Villegas then moved into a house where he currently rents a room at 604 Donner Way in Salinas. These facts were confirmed by DA investigators from interviews with witnesses.

DA investigators interviewed Villegas on March 2, 2017. Villegas was cooperative. Villegas related the following: He said his current address was 604 Donner St. in Salinas, and he had been there since February 19th. When Villegas left his residence in District 6 he found a rental in Hollister. After he won the election in November 2016, he moved out of the Hollister rental on December 31st. Before moving to his current address in February, Villegas said he stayed with his new girlfriend in Hollister and stayed with friends in Salinas. During that time, Villegas said he kept most of his stuff at friends' houses. Villegas said he was in Hollister a lot and in Salinas a lot, staying at about 3 or 4 different places.

When asked why he did not attempt to rent something within his district, Villegas stated he tried to find a condo or an apartment, but everything he found available was in a different district. The only place he could get into right away was in Hollister. One consideration for choosing Hollister was that it was closer to his work in Gilroy than Salinas. Villegas said his residency in Hollister was temporary, unless he did not win the election, in which case he would have stayed.

Law: Under Government Code section 36502, there are two requirements for holding the office of councilmember: (1) the person must be an elector of the city when he or she assumes office and a registered voter of the city when the person files candidate papers; and (2) the person may not, during the term of office, move their domicile outside of the city limits, or cease to be an elector of the city. An elector is a United States citizen, 18 years of age or older, who is domiciled in an election precinct at least 29 days before an election. (The term “residence” in the Government and Elections Codes is synonymous with “domicile.” *Walters v. Weed* (1988) 45 Cal.3d 1, 7; *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1263 fn. 1; *Fenton v. Groveland Community Services District* (1984) 156 Cal.App.3d 1107, 1114). The legislature has chosen not to provide a criminal sanction for a violation of Government Code section 36502. However, an offending official may be removed from office under the Civil Procedure Code (sections 803-811).

The issue in this matter is whether Villegas’ domicile changed when he moved from District 6 in mid-September 2016. If his domicile remained in District 6, even though he did not live there, he did not violate Government Code section 36502. In fact, he could lawfully vote in the November election in District 6 and could assume office as a councilmember and vote on matters at city council meetings. Under California law, the test for determining a person’s domicile is physical presence plus an intention to make that place his or her permanent home. *Fenton v. Groveland Community Services District* (1984) 156 Cal.App.3d 1107, 1116. Further, even if a person leaves his or her domicile with the intention to abandon it, and when that person resides in a place in which he or she does not intend to remain, the person’s domicile does not change. *Walters v. Weed* (1988) 45 Cal.3d 1, 14. A change of domicile requires actual residence in the new locality plus the intent to remain there. *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268. As stated in Elections Code section 2021(b), “a person does not gain a domicile in any precinct into which he or she comes for temporary purposes merely, without intention of making that precinct his or her home.”

If Villegas did not establish a new domicile after he moved from District 6 in mid-September, he could temporarily live elsewhere in the meantime and not lose his domicile in District 6. Our investigation disclosed no evidence to the contrary. If Villegas now lives at 604 Donner Way and intends to make that residence his permanent home, 604 Donner Way is his new domicile.

At this time, no further action by this office is contemplated or warranted.