USE OF MERCED CITY COUNCIL CHAMBERS

SUMMARY

The Merced City Hall has spaces available for rent to the public. These include Conference Rooms, an Exhibition Hall, the Sam Pipes Room, and Council Chambers. The 2018-2019, Merced County Civil Grand Jury (MCCGJ) received a complaint that questioned whether an elected official had been given special privileges in violation of City policies regulating the use of City Hall Facilities. After investigating, the MCCGJ concluded that the use of the Council Chambers by a local non-profit group on a Saturday did not violate City policies and no special privileges were given. However, the MCCGJ did find that City staff were not following official City policies regulating the use of City Hall Facilities and that those policies are poorly managed, not well communicated, and outdated. The MCCGJ recommends the City of Merced update its policies regulating the use of City Hall Facilities and ensure City employees are well-versed on the revised policies.

BACKGROUND

The 2018-2019 MCCGJ received a complaint that questioned whether an elected official was given special privileges in violation of City policies and procedures regulating the use of City Hall facilities. According to the complaint a ceremony had been held by a group in City Council Chambers on a Saturday. This event led the complainant to question whether the ceremony evidenced special privileges to an elected official.

METHODOLOGY

Members of the MCCGJ spoke with City staff and solicited information regarding the public's ability to rent facilities at Merced City Hall. Members of the MCCGJ also solicited an application from City Staff to rent such facilities. Thereafter, the MCCGJ interviewed City officials to obtain additional information on City policies and procedures for the rental of facilities at City Hall. Documents provided for review included a current Application and Agreement for Use of Facilities, the Samuel C. Pipes Meeting Room Information Sheet, and Merced Administrative Policies and Procedures. Additional information was obtained from the Merced City Parks and Facilities website, which provided general information and current fliers.

DISCUSSION

City staff informed members of the MCCGJ that City Hall spaces are not available to rent on weekends. They also told members of the MCCGJ that they were not aware of any related policies or procedures regarding the leasing of facilities. In addition, the "Application and Rental Agreement for Use of Facilities" lists no facility at City Hall as available for rent or reservation by a member of the public. The Samuel C. Pipes Room handout lists only the Samuel Pipes Room (no other facility) and specifically states the room is available "Monday through Friday 8:00 a.m. – 10:00 p.m." with no mention of availability on weekends.

The information provided by City staff and the available forms supported the complainant's contention that City facilities were not available to rent on weekends. During a later interview a City official presented to the MCCGJ a copy of a policy dated October 17, 1994, entitled "Administrative Policies and Procedures: Rules For Use of Civic Center, Conference Room, Meeting Rooms, Exhibition Hall, and Council Chambers" that indicated rooms are available Monday through Sunday 8 a.m. to 11 p.m. The 1994 policy also states that arrangements and approval to use the Chamber are made through a City employee and a fee is to be charged for the use unless an exception applies. The exception that would apply reads as follows: "City of Merced or groups or organizations conducting meetings or events in which an employee or official of the City is participating in their official capacity." Under that exception, "No fee or deposit required." Therefore, the weekend use of the Council Chambers without a fee by a group in which an official or employee was acting in their official capacity did not violate official City policies. No special privileges were provided beyond those adopted by City policies regulating the use of City Hall facilities.

The City official confirmed that public works department and employees are available to unlock and lock the facility after hours and on weekends. The MCCGJ found, and the City official agreed during the interview, that the 1994 policy is outdated. At the time of the interview the policy had not been updated to conform to recent changes in law that limit the amount that Cities may charge for use of City-owned facilities. Fees adopted should comply with Proposition 26, codified a California Article XIIIC, section 1(e). A fee may not exceed the estimated reasonable cost of providing the service for which the fee is charged. During this interview, the City official stated that the policy was outdated and that a new Administrative Policy and Procedures will be drafted after a review of such policies adopted by other Central Valley cities. The official stated that the revised policy will be presented to the Merced City Council in spring 2019.

The revised policy was received by the MCCGJ in spring 2019. The MCCGJ was provided an updated policy entitled "RULES FOR USE OF CIVIC CENTER, CONFERENCE ROOMS, MEETING ROOMS, EXHIBITION HALL, AND COUNCIL CHAMBER effective 5/20/2019 that replaced the policy dated 10/17/94. The MCCGJ reviewed the updated policy and determined that it fails to address some of our concerns with the 1994 policy.

For example, Section 1 of the updated policy states fees "for entities other than city employees or elected officials are governed by the rates set forth in the most current City Council Resolution approving Facility Use Fees." This implies that the fees are not applicable to city employees or elected officials but does not expressly say so and does not clarify when such fees are to be waived for city employees or elected officials. Also, Section 1 states that "use of all City Hall rooms, except the Sam Pipes meeting room and Exhibition Hall, will normally be limited to meetings involving municipal business or interests and be handled by a city employee or city elected official." The policy does not clearly state whether the listed rooms may only be used for "meetings involving municipal business or interests" or whether the meetings in the listed rooms must "be handled by a city employee or city elected official."

Section 2 of the updated policy appears to make certain fees discretionary: "use of facilities on weekends and holidays and for special events by the general public will be subject to additional fees to cover staffing costs, as determined by the City Manager." In addition to adding an

element of discretion to the fees, this statement implies facilities are available on weekends and for special events by the general public, in contrast to Section 1 that stated certain rooms are only for "meetings involving municipal business or interests" and in contrast to other sections of the updated policy that state certain rooms are only available Monday through Friday.

Section 3 of the updated policy makes any City employee or elected official "involved" in a meeting "responsible for the conduct of the individuals using the room." It is unclear how that responsibility would fall on such employees or elected officials that are simply participating in a meeting and not the organizer of such.

Lastly, language in the updated policy states that the use of some rooms is "subject to prior approval" without clarifying whose approval is required or factors to be considered in denying or approving the requested use.

FINDING(S)

F1: That the use of the City Hall facilities by a group on a Saturday did not violate City policies and an elected official was not given special privileges.

F2: That City employees are unaware of the policies regarding the usage of the City Hall. Misinformation has been given to citizens.

F3: That the City's *Application and Agreement for Use of Facilities* does not include the facilities available at Council Chambers.

F4: That the policy dated October 17, 1994, entitled "Administrative Policies and Procedures: Rules for Use of Civic Center, Conference Room, Meeting Rooms, Exhibition Hall, and Council Chambers" was outdated.

F5: That the policy dated May 20, 2019 fails to address some of the concerns put forth in this report as detailed above.

RECOMMENDATION(S)

R1: That the current Administrative Policies and Procedures should be updated and presented to the City Council for approval and implementation within 90 days of this Report. Provide confirmation of the new policy adopted by Council to the Grand Jury within 120 days of this Report. (F2, F3, F4, F5)

R2: That the City staff responsible for disseminating information regarding usage of City Hall facilities must be properly trained with current information within 30 days of the adoption of policies by the City Council. (F2)

R3: That the policies and procedures related to use of City Hall facilities must be reviewed on a regular basis and updated as needed. (F4, F5)

R4: That an update to all materials pertaining to the rental of City facilities including but not limited to rental agreements, website, and fliers to ensure all information is consistent with policy and procedures and provide the public with accurate information. (F3, F4, F5)

REQUEST FOR RESPONSE(S)

Pursuant to Penal Code Section 933.05, the following responses are requested.

- Merced City Council respond to F2, F3, F4, F5, R1, R2, R3, and R4 within 90 days.
- Merced City Manager respond to F2, F3, F4, F5, R1, R2, R3, and R4 within 60 days.

Responses are to be submitted to the Presiding Judge of the Merced County Superior Court in accordance with Penal Code Section 933.05

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

One (1) juror recused from this investigation.