

September __, 2019

Honorable Donald J. Proietti
Presiding Judge
Merced County Superior Court
2260 N Street
Merced, CA 95340

RE: USE OF MERCED CITY COUNCIL CHAMBERS COMPLAINT

Dear Judge Proietti:

On July 1, 2019, the City of Merced received the Civil Grand Jury Report relating to a complaint received regarding the use of the Merced City Council Chambers. Pursuant to Penal Code Section 933.05, the City Council provides the following responses to the Grand Jury's Findings F2, F3, F4, F5 and Recommendations R1, R2, R3, and R4.

GRAND JURY FINDINGS:

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

CITY COUNCIL REPONSE:

Agreed in part. We agree that City employees and the public were generally unaware of any policies regarding nongovernmental usage of City Hall.

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

CITY COUNCIL RESPONSE:

Agreed. However, the Charter of the City of Merced grants the City Manager discretion in these matters.

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Procedures: Rules for Use of Civic Center, Conference Room, Meeting Rooms, Exhibition Hall, and Council Chambers" was outdated.

CITY COUNCIL RESPONSE:

Agreed.

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

CITY COUNCIL RESPONSE:

Agree. However, the City Manager in his response will be updating the administrative policy to address the concerns set forth in this report.

GRAND JURY RECOMMENDATIONS:

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)

CITY COUNCIL RESPONSE:

The City Council agrees in part and disagrees in part. The City Council agrees that the Administrative Policies and Procedures should be updated and that the updated policy will be approved and implemented by the City Manager, pursuant to the City Charter, and his duties as the administrative officer of the City within 90 days of the

date of this report and will be sent to the Grand Jury within 120 days of this report.

The City Council disagrees that the administrative policy should be adopted by the City Council. Unlike other forms of government, in a council-manager form of government like that designed by the Charter of the City of Merced, the City Council operates as the legislative body of the municipality while the Office of the City Manager is tasked with administering the day to day affairs of the City. This is similar to the way most large corporations operate, with a board representing the shareholders' interests while the actual management of the corporation is delegated to the CEO and other executive officers. In this case, the City Manager of Merced acts as both the Chief Executive Officer ("CEO") and Chief Operational Officer ("COO"). The City Manager is accountable to the City Council, but the City Charter endows him with great discretion to manage the City's business.

The maintenance of City property and the management of City employees is directly within the purview of the rights and responsibilities delegated to the City Manager by the Charter of the City of Merced. We believe the authority to create, amend, or repeal administrative policies lies within the purview of the City Manager. Therefore, City Council's approval of the administrative policy would usurp the City Manager's executive decision-making in this matter.

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)

CITY COUNCIL RESPONSE:

The City Council Agrees in part. While we agree that it would be prudent for the City Manager to disseminate his facility use policy, we disagree with our body's adoption of any specific policies on the matter for reasons listed above.

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)

CITY COUNCIL RESPONSE:

The City Council agrees that all internal policies and procedures determined by the City Manager should be reviewed appropriately by the City Manager or his designees.

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)

CITY COUNCIL RESPONSE:

The City Council agrees that updating the website and any currently-distributed fliers and brochures to reflect any real change in policy is prudent.

Sincerely,

Mike Murphy
Mayor

cc: Members of the City Council
Steve Carrigan, City Manager
Phaedra Norton, City Attorney