

### The Staff Complaints

- On April 5<sup>th</sup>, the City Council employment practices ad hoc subcommittee learned from staff members that Mayor Moon had a motion activated camera in his office near the doorway that may have allowed him to see, hear and record conversations in his office and in the hallway outside his office.
- The Mayor's office is located right at the entrance of the City Council offices, frequently used by councilmembers and staff, so there are Brown Act and other related concerns potentially involved.
- We immediately reported the camera to the city attorney, as we had probable cause to believe an ongoing crime was potentially occurring at City Hall in the Mayor's office, and that every person who was present in his office for meetings or in the hallway could potentially have legal claims against the Mayor and possibly the city.
- On that same day, the city attorney and our employment practices ad hoc subcommittee walked by to check the claims of staff and we all saw a small, white, square camera on the top of a bookshelf located near the doorway. The camera pointed toward the inside of the Mayor's office, the doorway, and appeared as though it may be able to capture the hallway too. Given the type of camera, it is possible the camera could still record or overhear conversations outside of his office and in the hallway.
- We researched this type of camera online, a Blink home camera, and it looked to be a motion-activated, cloud-based camera that can be accessed in live feeds, dropped in on at any time, and recorded electronically by a smart-phone or any computer. This camera not only livestreams and records video, it also livestreams and records audio.
- This camera was physically present during private meetings, private ad hoc subcommittee meetings, private conversations between councilmembers, and while staff was present in the office.
- Upon reporting the camera to the city attorney, we learned that multiple staff members had complained about the camera in Mayor Moon's office.
- We also learned that employees in the facilities department had previously expressed that they did not want to work in Mayor Moon's office due to the camera.
- We also learned from city staff that Mayor Moon had the ability to watch what was occurring remotely in a live feed on his cellular phone, remotely at any time, and that the camera was on during the day when Mayor Moon was in his office at meetings. It is possible that anyone with that log in information from any location could also "drop in" in on a live feed of the camera.
- A staff member also reported that she believed Mayor Moon had the ability to listen in to conversations including those in her office and that Mayor Moon had also installed an intercom between his and her offices and she believed it was left on so he could hear her conversations and the conversations of others. She reported an instance in which the Mayor knew what was happening in her office while he was not present at City Hall.

### The Law

- California's wiretapping law is a "two-party consent" law. California makes it a crime to record or eavesdrop on any confidential communication, including a private conversation or telephone call, without the consent of all parties to the conversation. *See* Cal. Penal Code § 632.

- In serving as elected officials for the City of Palm Springs, we swore to uphold the United States Constitution, the California Constitution, and the laws of the city and the state.
- It is our legal and ethical obligation to the people of the city and our residents to report any potential violations of law that occur at City Hall.

### Our Process

- The City Council ad hoc subcommittee on employment practices requested that the city take all immediate and necessary action due to serious potential liability from potentially dozens and dozens of people due to this camera. At the request of the subcommittee, we met with the city manager and city attorney to discuss this matter. Since the city manager and the city attorney are unable to investigate the mayor, since they work for the entire council, at the advice of the city attorney, we decided to obtain the advice about how to proceed from outside counsel. The city attorney selected the outside attorney that he wanted to advise our subcommittee on this matter.
- The outside attorney advised that we needed to report this item to law enforcement immediately and that we should not notify the Mayor or any other council members in order to avoid potential destruction of evidence relevant to an investigation, any retaliation, or further legal claims.
- Upon the advice of outside counsel, we agreed we needed to report what was happening to law enforcement as we were concerned about possible destruction of evidence and potential culpability and City liability if evidence was destroyed. We had concerns about if any recordings would be public records subject to requests, if the evidence would be needed later in litigation, and other concerns.
- On April 12<sup>th</sup>, the matter was reported to the Police Chief who understood the potential laws that could have been violated including the Brown Act if private conversations between councilmembers were overheard or recorded. The Police Chief then shared information with the city attorney, who wrote up a report which he gave to the Police Chief regarding this matter, per outside counsel advice. It was the city attorney's opinion and the outside counsel's opinion that an outside law enforcement agency should investigate this matter.
- We as councilmembers were not involved in writing the complaint to law enforcement or the referral to the District Attorney; that was all done on the advice of outside counsel and by the city attorney.
- In May, the District Attorney issued a response declining to investigate this matter and stating that we should handle this matter administratively or through the civil process.
- The District Attorney has the jurisdiction to prosecute crimes; they are not the only body with the authority to decide if a crime occurred. In fact, they typically only prosecute after an outside investigation and referral from law enforcement which did not occur in this instance.
- At our request, we had another call with an outside attorney who recommended that we immediately interview the employees in question and document those conversations prior to addressing the issue with the Mayor and sharing the information with the rest of the Council.

- We then requested that this item to be added to the closed session agenda on June 20<sup>th</sup>, and we asked staff that all recordings from the camera be turned over to the City as potential evidence in any potential lawsuit for violation of privacy, employment law, or other claims, that the camera be removed immediately and turned in to the Palm Springs Police Department, that the Mayor be asked for his log in and password so it could be ascertained when the camera was activated, and that what has occurred be shared with Council on Wednesday and then publicly.
- As attorneys and as councilmembers elected by the residents of Palm Springs, we strongly believe people have a right to know that they may have had their conversations recorded and overheard and that a potential crime may have occurred at City Hall.
- More importantly, we needed to take all steps necessary to stop ongoing activity that could amount to a violation of California criminal law, to protect the city from legal liability, to protect city staff, and to act in a formal and transparent process that would be accessible to the public.
- Our residents have demanded the highest level of transparency and ethics from this council and our city government.
- Since the public statement by the Mayor at the City Council meeting on June 20<sup>th</sup>, the Mayor has provided other, conflicting facts that do not clarify this issue and raise more questions what happened and when it happened.
  - There are statements in the media that the mayor was investigated by outside council, the police, and the district attorney and that they all found no wrongdoing. There has been no investigation by any of those entities or any other entity. There have been no findings of fact or conclusions of law; there has only been the District Attorney declining to prosecute without an investigation based on the letter sent by the City Attorney.
  - City council members did not make the complaints about the camera; multiple staff members made complaints and our employment practices ad hoc committee referred those complaints to the City Manager and City Attorney
  - Mayor Moon stated that he only turned the camera on at night and turned it off in the morning. However, an employee stated that when they asked the Mayor if the camera was livestreaming them during a meeting in his office, he said yes and then he showed the employee the livestream with the camera on during the day.
  - City Hall has security systems. We have a security system that protects council offices from the general public and anyone without access. The hallway for Council offices can only be accessed by a key card at all hours.
  - All of our offices have doors with locks on them for which we have the key.
  - All councilmembers with the exception of the Mayor close and lock their doors when they leave their office at City Hall.
  - The City also has elaborate phone systems that already allow using an intercom between offices, including the executive assistants for council.
  - Councilmember Middleton, Mayor Pro Tem Roberts, and Mayor Moon were not involved in this process nor informed by this subcommittee about this issue per the advice from our outside attorney and pursuant to the Brown Act.
  - This is not a political issue and it is not a personal attack. This is formal action that we have been forced to take due to a member of this council installing a

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camera at City Hall without notifying or obtaining the permission of the City Council.

- At this point, we have one person accused of a crime and other complaints self-reporting various and contradictory facts, with no formal investigation or reporting of the true facts.
- If a staff member at any workplace put up this type of camera without notice or permission, they would be immediately terminated.
- If this occurred at any corporation, there would be an independent investigation. This is not a corporation; this is a governmental entity with a much higher duty of transparency and ethics.
- We would like to ask Council to approve an independent investigator ascertain the facts and report back to Council and the public. As City Staff is conflicted, and the members of the subcommittee are witnesses, we recommend that Councilmember Middleton serve as the Councilmember who oversees this process.

Councilmember Geoff Kors

Councilmember Christy Gilbert Holstege