

**JOINT PINOLE CITY COUNCIL &
REDEVELOPMENT AGENCY
MINUTES
NOVEMBER 15, 2011**

1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS

The Regular Pinole City Council / Redevelopment Agency Board of Directors meeting was held in the Pinole Council Chambers, 2131 Pear Street, Pinole, California. Mayor Swearingen called the meeting to order at 5:30 PM and Mayor Pro Tem Murray led the Pledge of Allegiance.

2. ROLL CALL, CITY CLERK/SECRETARY'S REPORT & STATEMENT OF CONFLICT

Phil Green, Council Member
Debbie Long, Council Member
Tim Banuelos, Council Member
Peter Murray, Mayor Pro Tem
Roy Swearingen, Mayor

B. STAFF PRESENT

Belinda Espinosa, City Manager / Executive Director
Michelle Fitzer, Assistant City Manager
Benjamin Reyes, City Attorney
Richard Loomis, Finance Director
Dean Allison, Public Works Director
John Hardester, Police Chief
Patricia Athenour, City Clerk

City Clerk Patricia Athenour announced that the Agenda was posted on November 10, 2011 at 5 p.m. All legally required notice was provided. She asked the Council whether there were any conflicts with any items on the agenda. Council Member Green announced that he would be recuse himself from Item 7E, reporting a possible conflict of interest.

She reported updates to the agenda materials.

Revised resolution was provided on item 7F and PowerPoint materials on Item 10B.

City Clerk Athenour reported that the Council was invited to a GO event at Abby's Grill on November 18th from 10-Noon. She also announced that the Council reorganization meeting would be held at the second regular meeting in December – December 20th.

3. CONVENE TO A CLOSED SESSION – CITY COUNCIL AND AGENCY BOARD

At 5:35 p.m., Mayor Swearingen convened the Noticed Closed Session to discuss the following items:

City Council

- A. Conference with Real Property Negotiator
Property: Parcels 401-211-032 & 401-211-034 Located At The
Corner Of Pinole Valley Road & I-80, Commonly Known As The
Gateway East Restaurant Pad
Negotiator: Michelle Fitzer
Parties: None at this time
Under Negotiation: Price and Terms
- B. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Government Code Section 54956.9(b)
Two matters
- C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION: City Clerk
Government Code §54597
- D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION: City Attorney
Government Code §54597

4. RECONVENE IN OPEN SESSION TO ANNOUNCE RESULTS OF CLOSED SESSION

At 7:20 p.m., Mayor Swearingen reconvened the meeting in open session. He announced there were no reportable actions from Closed Session, but noted that both the City Attorney and the City Clerk received favorable performance evaluations.

5. RECOGNITIONS / PRESENTATIONS

- A. Proclamations
- B. Presentations

Mayor Swearingen announced the annual Tree Lighting event and the Senior Center Craft Sale on December 3rd. Council member Banuelos announced a fundraiser benefiting Pinole Youth and Senior Center at Chipotle to be held on December 8, 2011

December 20th will be the Reorganization of the Council.

Council Member Green announced another fundraiser at Antler's benefiting the Pinole Swim Center.

6. CITIZENS TO BE HEARD (Public Comments)

The following citizens addressed Council:

Jeff Rubin, Pinole Historical Society VP, reported on and thanked everyone for showing up for the Flag Retirement Ceremony / Veteran's Day Event. The following sponsors paid to broadcast the event:

1. Crockett's Premier Auto Body
2. Mechanics Bank
3. Neto's Pizza
4. Pinole Chamber of Commerce
5. Pinole Rotary Club
6. Rolling Hills Memorial Park

7. Tina's Place
8. Wilson & Kratzer Mortuaries

He said the next Pinole Historical Society meeting will be held on November 17th at 6:30 p.m. in the Alex Clark Room.

Mayor Swearingen also recognized and thanked the Pinole Valley High Band for playing at the Veterans' Day ceremony.

Jonathan Servin addressed Council regarding the tax refunds received by and the pollution caused by Chevron in Richmond and was in opposition to their receipt of the refunds.

City Attorney Reyes spoke through the Mayor, stating there was current litigation regarding the appraised property valuation and also potential litigation between Contra Costa County and municipalities in the County, as the County will seek damages from the underlying cities. He said he was continuing to monitor the case and would provide updates as the suit progresses.

Ian Richards, Senior Community Manager at Library reported on upcoming Pinole Library events.

Jack Meehan, Pinole citizen, apologized for an error in his presentation at the Veterans' Day ceremony where he stated the US flag was raised over the former capital of the confederacy in Richmond Virginia, also the site where Robert E. Lee surrendered. He said that Richmond actually fell five days before Robert E. Lee surrendered at Appomattox Court House.

7. CONSENT CALENDAR

Council Member Green announced his recusal from Item 7E, as he may have an economic conflict of interest on that item.

ACTION: Motion by Council Members Long /Banuelos, the Council Approved Consent Items with the exception of Item 7E, which was removed for a separate vote.

Vote: Passed 5-0.

Joint Agency Board / City Council

- A. Approve the Minutes of the November 1, 2011 Meeting
- B. Received the October 29 – November 10, 2011 Lists of Warrants and Receive the November 10, 2011 Payroll in the Amount of \$345,763.78.
- C. Received the 1st Quarter Treasurer's Report [**Joint Agency / Council Report No. 2011-125JT; Action: Receive & File (Lee)**]

City Council

Continued from October 18, 2011

- D. Second Reading & **Adoption of Ordinance 2011-04** Authorizing the City to Make Certain Remittances to the County Auditor Controller in Accordance With Health and Safety Code Section 34194 and to Take All Other Actions Required in Order to Continue Redevelopment Activities in the City of Pinole [**Action: Recommendation for Continuance to December 20, 2012 (Downs)**]

- E. Authorize The Placement Of One Delinquent Unpaid Waste Collection Charge Between June and September 2011 [**Council Report No. 2011-126; Action: Adopt Resolution Per Staff Recommendation (Athenour)**]

Council Member Green recused himself from Item 7E and left the Chamber. City Attorney Reyes announced Council Member Green had a financial conflict of interest.

ACTION: Motion by Council Members Banuelos / Long, the Council approved the Resolution No. 2011-81, Authorize The Placement Of One Delinquent Unpaid Waste Collection Charge Between June and September 2011

Vote: Passed 4-0.

Council Member Green rejoined the meeting.

- F. Adopted **Resolution 2011-82**, Approved Creation of a New Level For The Cable Equipment Operator Classification, Assign A Salary Range, And Add Salary Steps To The Current Cable Equipment Operator Classification [**Council Report No. 2011-127; Action: Adopt Resolution Per Staff Recommendation (Fitzer)**]

8. PUBLIC HEARINGS

Redevelopment Agency - Public Hearing Continued From October 18, 2011

- A. Conduct a Public Hearing to Consider Adoption of the Pinole Redevelopment Agency Operational and Debt Service Budgets For Fiscal Year 2011/12, [**Action: Recommendation for Continuance to December 20, 2011 (Loomis)**]

At 7:36 p.m., Mayor Swearingen opened the Public Hearing. No speakers addressed Council and the hearing was closed.

ACTION: Motion by Council Members Murray/Long, The Council Continued the Public Hearing to December 20, 2011.

Vote: Passed 5-0.

9. OLD BUSINESS

Joint Agency Board / City Council Continued From October 18, 2011

- A. Approve the Remittance Agreement Between the Pinole Redevelopment Agency and the City of Pinole Regarding AB 27 and Associated Actions Thereto [**Action: Recommendation for Continuance to December 20, 2011 (Downs)**]

At 7:37 p.m., Mayor Swearingen opened the item to take testimony, before accepting a motion for continuance. No speakers addressed Council.

ACTION: Motion by Council Members Long/Green, The Council Continued Consideration of the Remittance Agreement to December 20, 2011.

Vote: Passed 5-0.

10. NEW BUSINESS

Continued From October 18, 2011

Joint City Council & Redevelopment Agency

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- A. Provide Comments and Direction to WCCIWMA Delegate Murray on the Post Collection Franchise Agreement [**Council Report No. 2011-128; Action: Adopt Resolution Per Staff Recommendation (Allison)**]

Dean Allison, Public Works Director, presented Council Report 2011-128 into the record, addressing the post collection (recycling and separation) contract, which expires in 2013. West Contra Costa Integrated Management Authority (WCCIWMA), a JPA of five cities, manages the post collection services. The issue under discussion at that board is to make a collective decision how to move forward with acquiring post collection services and provide the every delegate with direction to bring to the board.

Recyclemore (WCCIWMA) provided three options outlined in the staff report to acquire post collection services. Staff's recommendation was to support Option 2- Statement of Interest (SOI), because Option 3 was too rigid, and Option 2 would provide a better outcome from the service providers. San Pablo selected Option 2 and, El Cerrito selected Option 3. Richmond and Hercules had not provided their preferred option yet.

Jim Tillman, Pinole citizen, addressed Council with the following statement and questions.

1. Reported raising issue with the 25-year contract years ago and said services have diminished since then and referenced Community Clean as an example.
2. Reported performing a recycling study based on his collectibles, which he deposits for better pricing, averaging about \$14 to \$15 per week. He asked the amount the collector receives from the recyclables and whether the City could receive a portion? If not, perhaps a different company would provide a revenue enhancement.
3. Requested time and date of the WCCIWMA meeting so he could place testimony into the record.

Mayor Swearingen said that Mayor Pro Tem Murray could address his questions and issues off line and said the meeting was scheduled for 7 PM on November 17, 2011 in the San Pablo Council Chambers.

Council comments followed. Council Member Green asked about the number of individual "extra pickups" to which City Manager Espinosa replied that there are two green waste and one extra bulky pickup annually.

Mayor Pro Tem Murray updated the Council regarding discussion before the WCCIWMA. He said City receives a franchise fee from the collection and post collection. He agreed with Council Member Green regarding the community cleanups that were discontinued and morphed into the individual bulky pickups. Regarding the post collection contracts, the WCCIWMA tasked the delegates to have their City staff become involved to use their expertise. He agreed that staff's recommendation for Option 2 afforded the best opportunity to negotiate a contract.

Mr. Allison provided a hypothetical example if a new collection provider came online, they would still have to use Richmond transfer station and the transfer station has the option to disallow or levy a fee for using the station, making their bids he thinks the SOI is the preferred option.

Council Member Long said she had received questions from citizens regarding whether elements in the contract benefit Richmond Sanitary (RSS).

Mayor Pro Tem Murray said RSS benefits from the Golden Bear Transfer facility which Waste Management built in Richmond and Richmond also receive a fee.

Council Member Long raised the following issues:

1. Surprised that City of Richmond has 3 votes and all other cities have one.
2. If so, and Richmond is so large, they should negotiate separately and the smaller cities remain together.

Mayor Pro Tem Murray said that Richmond's number of votes was based on population. Council Member Green said when he was a delegate when AB 939 was approved, it had been one city one vote, but it later progressed to the number of votes being determined by population.

Mayor Pro Tem Murray said the bonds, which were the determining factor for the formation of the JPA, would be repaid in 2014, and concurrently could be the end of the JPA since El Cerrito is building a new facility to handle their recyclables and Richmond is also very aggressive in their own program, and it is questionable if they will remain in the JPA.

Mayor Swearingen expressed concern about Richmond having the power to control the voting process.

Council Member Long raised the following questions and points:

1. Questioned whether it would be best to tie the contract term to a sunset date of the WCCIWA or to the collection contract term (2025)
2. Stated that one of the strengths of Option 2 was that the bids remain confidential, since an RFP was a public record.
3. Asked about adding a "me too" clause

In response to a query by Mayor Swearingen, Mr. Allison said he strongly supported Option 2, but not Option 3. Mr. Allison briefly discussed the contract award process which was at the Board's discretion, but would be based on price, terms, and elements of services provided. He added that it's not a public process and it would be discussed in closed session to keep the confidentiality. Mr. Allison said he would research whether a "me too" clause could be added, if necessary, at the request of Council Member Long.

Council Member Long commented about "side deals" and equality and noted there should be a remedy to provide transparency to all cities. She asked delegate Murray to forward comments regarding the detrimental effects of the vehicles on our infrastructure and noted that other cities should be interested in exploring this topic and the size of trucks used in the future. She also credited staff for providing a recommended option.

ACTION: Motion By Banuelos/Long, The City Council, By Minute Order, Provided Direction To WCCIWMA Delegate Murray To Vote In Favor Of Option 2 (Statement Of Interest And Competitive Negotiations Process) To Acquire Post Collection Solid Waste Services At The November 17, 2011 WCCIWMA Board Meeting.

Vote: Passed 5-0.

Joint Council / Agency Board

- B. Receive the FY 2011-12 1st Quarter Budget Update and Consider increasing Appropriations for Revenues and Expenditures [**Joint Agency / Council Report No. 2011-131JT; Action: Receive Report, Provide Direction and Adopt Resolution (Loomis)**]

Richard Loomis, Finance Director, presented Joint Agency/Council Report 2011-131 into the record. He also entered the slide show exhibits "California Local Governments - Coping with the Economy" and summarized that other local governments are reacting to the economic change as Pinole has done, to control what they can.

Loomis summarized the First quarter Budget update which included:

1. Review local conditions related to Recession Recovery efforts
2. Update on the City's Operating Budget by functional workgroups
3. Discuss possibilities for future Redevelopment activities

He reported the fiscal challenges facing Pinole are balancing the budget; maintaining cash flow in General Fund and maintaining current service levels and programs. The problem persists as the cash flows spike twice per year and expenses spike at differing times of the year.

Mr. Loomis recommended the following revisions and adoption of the resolution:

1. Increase the revenue forecast by 3.7% based on revenues received to date;
2. Increase property tax revenues to General Fund by \$71,480; and
3. Decrease the RDA budget by \$264,377 due to successful assessment appeals on commercial properties
4. The increased revenues and reductions in expenditures and unanticipated expenditures net a change of \$1,702

He said that State government impacts on Redevelopment are still in flux, as they wait for the outcome of State Supreme Court decision, but anticipate it will be significantly less in 2012-13 than it will be in 2011-12 for the \$2.6 M cost to "opt in." Loomis was available for questions.

The following citizens addressed the City Council:

Jeff Rubin, Pinole citizen, discussed recent Fire Department statistics shown on the website through June 2010 and asked why the more recent statistics are not posted. He read the data from the website into the record, stating that of the 191 calls, 98.5% were not fire calls, and asked the Council to consider an end to current minimum staffing and layoff one or more firefighters. He said that he understood over one million dollars was expended in overtime last year, and noted that several cities have eliminated minimum staffing.

Michelle Fitzer, Assistant City Manager responded and said she would contact the Fire Department regarding updating the data. In terms of the numbers and recommendations for reduced staffing, she said any layoff would cause a default on the SAFER grant and discussed the lack of resources to provide a battalion chief which was a funding problem for the City. Currently five persons are scheduled on shift (one out in long term disability) and per Chief Hanley, anticipate meeting budget at the year-end. The department currently runs three-person minimum staffing and cannot send an engine out with less than three persons. She said Council changed the minimum staffing language in July.

Council Member Long referred to page 3 of report to "limit workers compensation and general liability and asked how it would it be accomplished.

Mr. Loomis responded that there was an accumulation of an equity position of \$18 Million within Municipal Pooling Authority (MPA) which is the member agencies, and the dividend distributions should be reviewed to reflect a larger dividend. He said it would be nice to be able to determine a better level or certainty, but Pinole is only one of twenty votes.

Mayor Swearingen asked under limit workers compensation, whether there was an experience modifier.

Ms. Fitzer said it was also through MPA and our experience modifier was compared to the other cities in the JPA for basing the rate.

Council Member Long raised the following issues/questions:

1. Referred to the cost of medical retiree benefits on the Warrant List, and asked if it was perpetual.
2. Was there offsetting revenue for the increased Cable TV costs
3. Regarding the EBRCS radio system, did not favor of using the money upfront from the General Fund and asked for an update on Police overtime expenses
4. Regarding the Fire Department overtime budget, would be optimistic and hope that the Fire department will end up within budget and asked to hear more about that in the 2nd quarter update.
5. Questioned whether a safe park could be constructed with the reduction in the allocation for Louis Francis Park.
6. Asked for a current update on the fundraising efforts for the Pinole Swim Center, and include a full financial reporting on all Recreation programs as part of the 2nd Quarter Budget Update.

Ms. Fitzer responded stating when the City reduced the amount paid for active employees, but retirees were eligible to receive the amount/terms specified in their MOU so checks are sent to the retiree and the cost is perpetual.

Mr. Loomis said \$13,500 additional revenue, not in the budget, is anticipated for Cable TV, but only a small portion had been collected to date.

Chief Hardester responded that there was a significant increase in incidents from late August through September but since then overtime has actually reduced, even with the three incidents that occurred in August and September. Annual projections estimate ending at least \$50,000 under budget on overtime, barring unforeseen incidents.

Mayor Swearingen said any overage should be specifically allocated to the Police Department budget as a reserve fund.

Recreation Director Wooldridge confirmed there were funds to build a safe park.

Council Member Banuelos said he did see any information on Fire maintenance costs. City Manager Espinosa responded that she did not have sufficient information at the time of this report, and would be talking to Chief Hanley to provide more information.

Council Member Banuelos – asked about the balance in the Sewer Enterprise fund. Ms. Espinosa said it was approximately \$800,000, was accumulated annually and would be used to pay Pinole's share of the expenses and reduces the amount we have to bond.

Council Member Green asked if the fees were not raised and the amount was tacked onto the bonds, how much different would it make in the rate. He said he was of the opinion that raising rates may not be necessary.

Ms. Espinosa said, in response to his question, that had not been calculated, but if the City did not approve a rate increase over three years, it would be one very large increase in order to issue the bonds.

Mr. Loomis responded said next spring he and Allison will be able to provide more specifics in spring 2012. The underwriting cost is \$300,000 to \$700,000 per issuance, for an issuance of approximately \$24 Million. The current rate base would not provide for that level of bonding.

City Manager Espinosa said rate increases are necessary, and that we have requested written confirmation from Hercules that their Sewer Fund has equally as much cash also. She explained that the bonds are underwritten based on a rate schedule and payers have advance knowledge of the payment in order to guarantee the rate purchase.

Mayor Pro Tem Murray asked for clarification on the reduction in motor vehicle fees and Mr. Loomis said it was due to the state budgeting process.

Council Member Green said he wanted the \$1,702 overage noted earlier to be placed in a reserve fund. Mr. Loomis responded that the amount was so small; he had not made that recommendation.

Mayor Swearingen raised questions on page 13 regarding the Hercules Municipal Utility (HMU), stating he had heard they were in financial trouble and asked if they would be continuing operations.

Mr. Allison said he could not respond to that question, but told him Pinole uses their electricity to run the treatment plan and that there was a mutual need for that relationship to continue, and as long as they offer rates lower than PG&E, Pinole could continue to use HMU.

Mayor Swearingen then asked how Pinole would be affected, if the HMU closed and asked if we could transfer to PG&E immediately or if solar was an option. Allison said not immediately, but if Hercules wanted to raise the rates, this contract would provide certainty of rates, and Pinole realizes a five percent savings over PG&E rates. Allison said two things work against solar at plant; the size and the unknown ultimate layout of the proposed improvements.

Council Member Long asked how we were proceeding with redevelopment with the current unknown court decision.

Ms. Espinosa said the plan was to stay "status quo" until we have a court action. It is not part of the proposed resolution, but will need to be discussed in the near future.

Council Member Green said without going into detail, he recommended making an adjustment now.

Council Member Long requested a recommendation from City Manager Espinosa. Ms. Espinosa said at this point, she recommended to wait until we receive the Supreme Court action but was open for discussion now if it was the will of the Council, stating that Mr. Loomis was projecting an imbalance of about \$164,000; about 1.5 positions.

Mayor Pro Tem Murray recommended that we should wait until an action was rendered, stating that we did not want to make an incorrect step and provide the community with diminished services.

Mr. Loomis said we did not project such a large property value decline, which also attributes to the \$164,000 imbalance.

Council Member Green said he agreed with Mayor Pro Tem Murray, but requested to review the plan if there was a shortfall.

Council Member Long said she also was not ready to make decisions but wants to prepare for the worst in the event it occurs.

In response to the Council's comments, Ms. Espinosa said she would have to reduce employees across the board.

Council provided direction to maintain the "wait and see" approach, but directed the City Manager to forward several options for staffing and expenditures.

ACTION: Motion By Council Members Murray/ Banuelos, The Council Approved Resolution 2011- 83, Approving The 1st Quarter Budget Adjustments.

Vote: Passed: 5-0

11. REPORTS & COMMUNICATIONS

A. Mayor / Chair Report

1. Announcements

a. Provided a Mayors Conference report; CCC Sheriff Livingston addressed budget cuts and reported that 1,096 prisoners are held at the County, 196 are held for murder charges, and it cost \$87/day cost per prisoner for housing.

b. Reported that the Youth Center Auction raised \$5,000

B. Mayoral / Council Appointments

C. City Council / Agency Board Committee Reports

Council Member Green provided a West Cat Board meeting update, stating budget operations went smoothly and anticipated more bus advertisements to increase revenue.

Council Member Banuelos reported on November Youth Commission meeting, noting that many youth working at the recent Youth Center Auction were brand new members.

Council Member Long reported on the Pinole Hercules JPA meeting, where the members discussed amending Larry Walker & Associates contract to amend the permit application and would save about ten million in plant upgrades. Ron Tobey, a twenty year employee was introduced as the new plant manager. The committee will continue to discuss the governance issues.

D. Council Requests For Future Agenda Items

No items were requested.

E. City Manager / Executive Director Report / Department Staff

1. Provide Direction on Notification Boundaries for the Review of the Pinole Valley High Traffic Signals

Dean Allison, Public Works Director asked Council for direction regarding the notification boundaries for the proposed meeting on the proposed traffic signals in conjunction with the new Pinole Valley high school.

Council provided direction to notify the entire City with a colored post card, with large print including language stating “affects your neighborhood”.

Tom Cutino, Pinole citizen, congratulated the Council on their reports and stamina. He said he understood that the City will put in two signals on Pinole Valley Road and the School District would be responsible for funding. He projects that the traffic will be worse and asked who would set the signal timing. He asked if priority would be given to community or the people leaving the site. Mr. Cutino discussed the methods used by the crossing guards and said that the signals must be timed; the morning commute was the worst time and if asked whether the lights would be timed for the school traffic, on the weekends. .

Mayor Swearingen said the traffic lights would not belong to the District, but said the timing would change. He said it would be pedestrian controlled during school hours and confirmed there would be a procedure for the signal timing and auto timing would address many of the issues presented.

F. City Attorney Report

City Attorney Reyes, referring to his performance evaluation, said he was honored to continue to serve the Council and the community.

12. ADJOURNMENT

At 10:32 p.m., Mayor Swearingen adjourned the meeting to the Regular Redevelopment Agency/City Council Meeting of December 6, 2011 and in memory of the fallen US Armed Service members and Pinole citizens Amber Swartz, Inez Ituarte Leon, Amelia Marie Giacomelli Drake and Steve Hudson.

Submitted by:

Patricia Athenour, MMC
City Clerk

APPROVED BY AGENCY BOARD / CITY COUNCIL: