

**PINOLE CITY COUNCIL  
MINUTES  
MARCH 1, 2016**

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

The Regular Pinole City Council Meeting was held in the Pinole Council Chambers, 2131 Pear Street, Pinole, California. Mayor Swearingen called the meeting to order at 6:00 PM and Council Member Banuelos led the Pledge of Allegiance.

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

A. COUNCIL MEMBERS PRESENT

Mayor Roy Swearingen  
Mayor Pro Tem Debbie Long  
Council Member Tim Banuelos  
Council Member Peter Murray  
Council Member Maureen Toms

B. STAFF PRESENT

Michelle Fitzner, City Manager  
Hector De La Rosa, Assistant City Manager  
Stephanie Downs, Assistant City Attorney  
Neil Gang, Police Chief  
Fire Chief, Rob Piper  
Al Petrie, Interim Development Services Director  
Patricia Athenour, City Clerk

City Clerk Athenour announced the Agenda was posted on February 25, 2016 at 4:00 P.M. All legally required notice was provided. The Council responded to the City's Clerk question, stating there were no conflicts with any items on the agenda.

City Clerk Athenour entered the following items into the record.

Item 9B Information Materials – Plastic Bag Ban  
Item 10A Power Point Exhibit Materials – Fiber Optics Policy

**3. CONVENE TO A CLOSED SESSION**

At 6:08 p.m., Mayor Swearingen convened the noticed Closed Session to discuss the following matter:

A. PUBLIC EMPLOYMENT  
Gov. Code § 54957  
Title: City Clerk

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

At 6:54 p.m., Mayor Swearingen reconvened the meeting in open session. He announced there were no reportable actions from Closed Session.

#### 5. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS

##### A. Proclamations

##### 1. Arbor Day & Bird Month – March 2016

Mayor Swearingen presented a proclamation recognizing Arbor Day and Bird Month to Garden Club President Ann Heinz. Garden Club thanked the Council and discussed the 60<sup>th</sup> anniversary of their club, the annual plant sale on May 21<sup>st</sup> at the Farmers' Market, and their program for planting trees annually in memory of passing Pinole citizens.

##### B. Presentations / Recognitions

There were no further presentations or recognitions or announcement of community events.

#### 6. CITIZENS TO BE HEARD (Public Comments)

The following speakers addressed the Council:

**Joseph Ramos**, Boy Scouts Troop El Sobrante Troop 127, addressed Council regarding his Eagle Scout project to collect food pantry items for needy families in West Contra Costa County. His goal is to collect 20,000 pounds of non-perishable food, soap, shelf stable items and monetary donations. He will be passing out flyers and would be leaving donation barrels in the Public Safety Building, City Hall, and other businesses in Pinole and the unincorporated area.

**Ivette Ricco**, congratulated Council Member Toms for her Council appointment. She also discussed the changes to the WCCUSD Bond Oversight Committee (BOC). She had served on the committee for several years and served a portion of that time as the Chair. Currently she is the Pinole High School Construction Subcommittee Chair and acts as a liaison between the school staff and the District, taking Principal Kleiman's concerns to the Bond Oversight Meeting. The next Pinole Valley High construction milestone will be bid opening on March 15<sup>th</sup>. Ricco would be reappointed to the BOC as the Pinole representative until the committee structure changed in June, and encouraged interested citizens to contact her about serving on this committee. She offered to serve as a mentor.

**Jenny Rodriguez**, event coordinator for Right At Home, addressed Council regarding their Grand Opening planned on March 5<sup>th</sup> at 4 PM. This new business provides in-home care services to the West County area.

**Jeff Rubin**, Pinole Historical Society President announced the Pinole Historical Society Memorial Day and Flag Retirement Ceremony and addressed Council to advocate the City to allocate funds in the FY 2016/17 budget for televising live and/or recording this ceremony for future broadcast.

#### 7. CONSENT CALENDAR

The following items were removed for discussion:

Item 7E was removed at the request of citizen, Irma Ruport, to comment on the matter.

Council Member Long removed Item 7D.

**ACTION: Motion by Council Members Long/Banuelos, the Council Approved the Consent Calendar Items 7A-C and F.**

**Vote:**           **Passed:**       **5-0**  
                  **Ayes:**           **Banuelos, Long, Murray, Swearingen, Toms**  
                  **Noes:**           **None**  
                  **Abstain:**       **None**  
                  **Absent:**        **None**

- A.     Approved the Minutes of the Meeting of February 9, 2016
- B.     Received the February 13 – 26, 2016 List of Warrants and the February 26, 2016 Payroll in the Amount of \$338,351.52.
- C.     Adopted **Resolution 2016-18**, Approve Placement Of Liens For Delinquent Unpaid Waste Collection Charges On Delinquencies Between September & December 2015, Considered At An Administrative Hearing On February 4, 2016 [**Council Report No. 2016-26; Action: Adopt Resolution Per Staff Recommendation (Athenour)**]
- D.     Authorize the City Manager To Execute a Joint Exercise Of Powers Agreement With California Home Finance PACE Programs As An Associate Member And Permitting Property Owners Within The Incorporated Areas Of The City To Participate In The California Home Finance As An Associate Member Under SB 555 And AB 811 [**Council Report No. 2016-27; Action: Adopt Resolution (De La Rosa)**] **REMOVED FOR DISCUSSION**

**Hector De La Rosa**, Assistant City Manager, presented Council Report 2016-27 into the record. Both programs allow individuals and public entities to participate in the PACE program. He referenced the two other PACE providers approved by Council several months earlier. The two resolutions for consideration now would also allow Ygrene to be a PACE participant in our community.

Mayor Pro Tem Long's concern is regarding the resolutions and the language in the resolution which appears that the City is endorsing the program. The City cannot speak to the efficiency or the economics of the program, and it is incumbent for the buyers to investigate and do their due diligence. The City has no voting rights and even the County will not have a voting right unless they are approved by seated members. She said she has Issues with the JPA and asked if the City Attorney office had reviewed and approved the document, and suggested striking some of the language in the resolution.

Mr. De La Rosa agreed with Mayor Pro Tem Long's recommendation to strike the entire "Whereas" clause in the resolution and change "will benefit" to "may benefit."

Mayor Pro Tem Long also took exception with the language "staff will report back periodically," not wanting to place responsibility on City staff, and said the PACE provider could report to the Council regarding the success of such.

Mr. De La Rosa, said the City Attorney reviewed the JPA and the City could withdraw at any time.

Mayor Pro Tem Long said to also strike that section from the JPA.

Mr. De La Rosa said it was their standard agreement and could only be changed by the voting members of the board. Their attorney said as an associate member we can opt out at any time.

**George Apostolopoulos**, Ygrene Energy, said they operate mainly under Senate Bill 555, the Mella Roos model. Ygrene does not issue bonds, but handle under private funding. Withdrawal requires a thirty day notice.

Mayor Pro Tem Long announced she would not support the resolution in the manner submitted as she did not want to tie the City.

Council Member Murray said some of the language was boiler plate and asked why the City could not strike the language that was not supported.

Council Member Banuelos also expressed concern with contractors marketing the program in Pinole.

Mr. De La Rosa said the intent of the language was not to have contractors out knocking on doors. Similar to the other programs, they offer the SB 811, but generally follow the same process for advertising and marketing with television or flyers.

**No action was taken. Council referred the matter back to staff and the applicant to make amendments, based on Council comments.**

**Bob Kopp**, Pinole citizen, addressed Council, stating he does not support the City's name attached to this program. He said people would think the City is authorizing the program.

- E. Adopted Resolution 2016-19, Authorized the City Manager To Execute A Second Amendment To A Contract With Avery & Associates for Professional Recruitment Services For The City Clerk Position [**Council Report No. 2016-28; Action: Adopt Resolution Per Staff Recommendation (Fitzer)**] **REMOVED FOR COMMENT**

**Michelle Fitzer**, City Manager, entered the Staff Report 2016-28 into the record, recommending that Council authorize the execution of an amendment to the Avery contract to include the recruitment for the City Clerk position.

**Irma Rupert**, Pinole citizen, addressed Council. She said Ms. Athenour should be involved in the recruitment with her knowledge and understanding of the position. She spoke to her professional conduct and neutrality in dealing with the community.

City Manager Fitzer recommended adoption of the resolution to authorize execution of the amendment, adding the verbiage "as needed" in the event a candidate is retained without a formal recruitment.

**ACTION: Motion by Council Member Murray/Toms, the Council adopted Resolution 2016-19, as amended to add the following language "as needed" in the title and body of the resolution.**

<b>Vote:</b>	<b>Passed:</b>	<b>5-0</b>
	<b>Ayes:</b>	<b>Banuelos, Long, Murray, Swearingen, Toms</b>
	<b>Noes:</b>	<b>None</b>

**Abstain:       None**  
**Absent:         None**

- F.     Adopted **Resolution 2016-20**, Accepted The Improvements Of The Rehabilitation of San Pablo Avenue – Sunnyview Drive to Pinole Shores Drive Project, Authorize The City To File A Notice Of Completion, And Release The Payment & Performance Bonds And Retention – Contractor: MCK Services [**Council Report No. 2016-29; Action: Adopt Resolution Per Staff Recommendation (Petrie)**]

## **8.     PUBLIC HEARINGS**

There were no Public Hearings.

## **9.     OLD BUSINESS**

- A.     Discuss Uses Of The Heritage Land And The Faria House Located At 2100 San Pablo Avenue, The Bank Of Pinole Located At 2361 San Pablo Avenue And The Community Corner Located At 2301 San Pablo Avenue [**Council Report No. 2016-30; Action: Provide Direction to Staff (De La Rosa)**]

**Hector De La Rosa**, Assistant City Manager entered Council Report 2016-30 into the record. The matter was agendaized at the request of Council to discuss the potential uses for the above referenced properties. Staff requested direction from Council whether there was interest for the City to retain and purchase the Successor Agency properties or market them for sale, and disperse the funds among the taxing agencies, whereby the City would receive nineteen percent.

He presented the Faria House, a housing asset, and provided photo exhibits. The report summarized the condition of the structure, which does not meet ADA requirements, prior discussions where the Pinole Historical Society asked that the building be dedicated for museum use.

The former Bank of Pinole building, a non-housing asset was also discussed with respect to the exterior and interior condition. There are two restrooms; one converted to a work area. One is not ADA compliant and the other is thought to be compliant. The kitchen area is gutted; and the front area is in good condition. There is access to the second floor, which also does not meet ADA requirements. The Council had expressed interest in a plan aggregating the bank with the corner lot, 2101 San Pablo. Mr. De La Rosa, said if the Council directs, staff could issue a request for proposal. Staff referred to earlier development plans proposed in 2010 for the 2101 San Pablo, for a mixed use development. Staff said they have an appraisal for the Faria House, but depending on the direction of the Council this evening, staff will order a new appraisal so the property can be appraised as either a commercial or a residential (housing) use.

Council questions followed:

Council Member Banuelos said there was a later design done for a commercial/office development by developer, Hirahara, which was preferred by the Council. Regarding the Faria House, he said there was a plan for a third building, a caretaker's house, and discussions to

modify the rear yard in order to rent the property for events and use the revenue to fund the museum.

Mayor Pro Tem Long said there are properties that can be sold. She suggested an option to sell the Faria house to the City. It is a residence, purchased with housing money, is a residence now, and not to make any further determination on the final use at this time.

The City Attorney said the City could purchase it as a residence and funds would go to the Housing Fund.

Council Member Murray discussed selling the Bank of Pinole and the corner property and purchase the Faria House and ultimately turn it into a museum, and the housing funds could be used in the future if the corner property, 2101 San Pablo incorporated housing in the development.

Mr. De La Rosa said if the Successor Agency sells the corner property, the City would receive 18.9% of the sale of the corner lot, as it would be divided among the taxing agencies.

Council Member Toms said the Faria House was not included in the Housing Asset Transfer list and the list and asked if the use could be amended to include it in the Long Range Property Management Plan (LRPMP). She questioned the level of flexibility since it is not on the LFPMP or the Housing Asset List and was not clear if the City had a choice to put it on the LFPMP and dispose of it as a governmental asset

De La Rosa responded that housing funds were used to move and rehabilitate the Faria House, thus it is a housing asset. He said the Faria House is the only remaining property he could find that was not included on the Housing Asset List.

Mayor Swearingen asked if there were records filed with the State regarding Redevelopment funds spent on the Faria House relocation.

De La Rosa said there was documentation when the Faria house was purchased – and when relocated we have minutes that show Affordable Housing funds were used to move the house and improve the site and the outside renovation. The reason this property was omitted because it was listed as improvements on our Finance system. By utilization of the housing funds, that triggered the property to be a housing asset and not a non-housing asset.

Hector said bringing Faria House to the Oversight Board to

The following speakers addressed Council:

**Jeff Rubin**, advocate for the Faria House to be a Museum of Pinole History. Many Pinole citizens know very little about the history of Pinole. There is no place for the citizens to learn about the history. Museums add to the fabric of a community and think the Faria House would be an ideal location for a small town museum. Hope to find a way to purchase this building as a site for a museum

**David Rupert**, Pinole citizen, thinks the best option is to sell all three of the properties and invest it in the infrastructure. The worst thing would be to purchase these and opens a money pit. The City needs a lot of deferred maintenance, and does not think funding a museum is site

**Ivette Ricco** said it was time to make the Old Town more vibrant. Suggestions were to market the community corner” (2301 San Pablo) as a potential development that could aggregate with

the Bank of Pinole. Development of the parcels, including the Faria House should be a benefit the whole community, and purchasing the Faria House for a non-profit that needs a home is admirable but the costs are prohibitive and did not think the citizens of Pinole would support spending \$500,000 for a museum.

Council comments followed.

Council Member Murray said when the properties sell, the majority of the money will go to other agencies and it was necessary to first determine the value. Regarding the Faria house, we already invested money in the land and it was done with the idea it would become a museum. We cannot sell the Faria House as a residence, as it goes against the agreement with the family and the use should benefit the community; need to establish a goal and plan how to achieve it.

Council Member Toms said the first priority should be putting out an RFP on 2301 San Pablo and the Bank of Pinole. She also expressed interest in finding a way to retain the Faria House, discussing opportunities for block grant funds to assist with ADA compliance if it were a "public building" such as including the non-profits that have been displaced. She did not wish to put it on the market at this time and recommended further exploration.

Council Member Banuelos said we should sell the bank and the corner, and the Faria House should be used as a museum. He supported issuing an RFP as recommended by Council Member Toms and focus on the Faria House.

Mayor Pro Tem Long said when the Faria House was moved the intended use was clear and said any promises made to the Faria Family should be kept. She said the Faria House could be purchased from the Successor Agency as a residence, and later converted to a Public use. She listed other amenities that were developed for a community benefit in the past. Regarding the Bank of Pinole, the intent was ownership by the City, but understand there may be a better use for the community, and also suggested issuing an RFP; one valuing the property and the land, and a second without the land, in order to look at every option.

Mayor Swearingen shares the position as the other Council members relative to the Faria House. He said the bank building was on the Registry as a Historical site.

Assistant City Attorney Downs said it was on the National Registry but there was no requirement that it be retained in its current condition. Assistant City Manager De La Rosa said the historic nature is limited to the outside, but not the inside. The RFP states that the exterior of the Bank of Pinole building is to be maintained in its current state and a deed restriction would be imposed on the property.

Mayor Swearingen said he would not allow the Bank of Pinole being torn down and also believed that the Faria House should be retained.

Council Member Toms again supported issuing an RFP for development of the Bank of Pinole site and the corner lot. A DDA could require that the character of the building is maintained to the extent that we can, and also explore it for a possible City use. She said to get an appraisal in its current condition.

De La Rosa said the appraiser said whether it is residential or commercial, a property would be valued at its highest use, and deduct all improvements that need to be installed. The Faria House requires improvements and they would deduct those from the appraised value.

There was further discussion whether to get appraisals on all the Old Town properties, such as the Collins House, Blackie's and Pinole Shores.

City Manager Fitzer also referred back to the land behind the Faria house and whether there could be opportunity to cut into the hill for a possible event use, splitting the property into two parcels to designate and zone the rear portion as Open Space.

Council Member Long asked staff to give thoughts to parking, and to get an appraisal on the Faria House as one parcel and also with the potential for the lot split and second use on the rear.

**ACTION: Motion by Council Members Toms / Banuelos, The Council Directed Staff To Issue The RFP For The Bank of Pinole And 2301 San Pablo Avenue. The RFP To Include Language Stating that the Bank of Pinole Building Contains a Deed Restriction To Maintain the Exterior Historical Architectural Design And To Obtain Appraisals Of The Other Properties (Collins House, Blackies And Pinole Shores).**

There was discussion following the motion regarding what use to assign to the Faria House appraisal and it was determined by the maker of the motion that it should be appraised in its current state.

**Vote:            Passed:        5-0**  
**Ayes:            Banuelos, Long, Murray, Swearingen, Toms**  
**Noes:            None**  
**Abstain:        None**  
**Absent:        None**

B.        Discuss Consideration Of An Ordinance For A Plastic Bag And Styrofoam Ban  
          **[Council Report No. 2016-31; Action: Provide Direction to Staff (Casher)]**

**Michelle Fitzer**, City Manager presented Report 2016-31. This item was agendaized at the request of Council Member Murray to determine whether there was support from the entire Council to consider an ordinance banning the use of plastic bags and styrene.

Mayor Swearingen opened the discussion to take comments from the Council.

**Council Member Murray**, Council delegate to the West Contra Costa Integrated Waste Management Authority (WCCIWMA) voiced his support for a local plastic bag and styrene ban. Pinole is one of the only cities in West County without an ordinance and other [DB1]jurisdictions have done it successfully. He hoped to take this opportunity to join our neighbors and become green. Recyclemore would provide background documents and he believed that they also have funds set aside for Pinole. Hercules would send him the information used to formulate their ordinance, which he would forward to staff. He asked the Council to review the reports and consider this for a future agenda discussion.

Council Member Toms stated support for a styrene ban, and assume there are model ordinances available, but has some hesitation on the plastic bag ban as she understands it will be on the State ballot and if it passes, there will be a law. If it does not pass, we can review the results to see how Pinole residents voted, but was open to discussing the matter.

Mayor Pro Tem Long questioned the City sharing in the fee collected for paper bags to use it for the Clean Water Fund. She stated interest in adoption if there is any legal basis to share into



fee, but not for the reasons that Pinole was the last holdout. She mentioned placing it as a ballot measure question to see if there was electorate support for a ban with half the revenue collection going to the City. She agreed with Council Member Toms regarding the styrene.

Mayor Swearingen said to wait six months to see the outcome of the State ballot measure.

Council Member Banuelos supported a styrene ban and shared Mayor Swearingen's position to wait for the State on the plastic bag ban.

Mayor Pro Tem Long asked staff for a cost and the timeline to prepare an ordinance.

No action was taken. Mayor Swearingen referred it back to staff for further information on whether a State ballot was moving forward, to bring back readily available information on other ordinances and Council Member Murray would provide information from Recyclemore and their attorney, Kent Alm.

**Ivette Ricco**, Pinole resident, agreed with the bans proposed by Council Member Murray.

## **10. NEW BUSINESS**

- A. Consider Proposed City Policy On Use of City Underground Fiber Optic Conduits [Council Report No. 2016-32; Action: Adopt Resolution Per Staff Recommendation (Petrie)]

**Al Petrie**, Interim Development Services Director presented Council Report 2016-32 into the record, stating that he was recently approached by two contractors wanting to tie into our fiber system. An exhibit was displayed showing our conduits and the WCCUSD schools in the area. Mr. Petrie discussed the criteria in the Policy and recommended approval of the resolution containing the Policy criteria. Interim Development Services Director Petrie was available for questions.

Council Member Banuelos asked for more information on the request. Mr. Petrie said both requests were from contractors working for the School District and AT&T. He also responded to questions regarding the size of City conduit.

Council discussion followed and questions were raised regarding the amount of space available with a concern that since there was no information on the size, whether it was sufficient and whether the City should retain line for future use. Without opening the line, it was unclear the precise size. There was also concern that there would be disruption during the installation.

Mayor Swearingen said those lines were put in for use for fiber optics at Fitzgerald Drive for the security cameras and figure there are lines already.

Mr. Petrie agreed it was necessary to determine the City's existing and anticipated future use and that the IT Manager was planning to meet with City staff regarding future needs.

Mayor Swearingen said an inspection was necessary, and the discussion regarding the WCCUSD needs was timely now.

Council Member Murray said it was critical to save sufficient space for future City needs, as well as extra. He also asked if the WCCUSD's plan included extending the fiber optic to Fire Station 73, as part of the Conterra (WCCUSD) contract.

Mayor Swearingen said that more information was required for a continued discussion. The Council directed the matter back to staff for further analysis of the existing conduit size and capacity, and a plan which includes a recommended amount of open conduit to retain for future needs.

**Robert Macaluso**, Zayo Area Director, addressed Council and advised that there should be three micro ducts inside the conduit; one for their customer, one extra one for the City and one for a maintenance line. Before moving forward with a proposal, he recommended inspecting the conduit, fishing and photographing the ducts, to provide to City staff in order to make the ultimate decision.

Council Member Murray commented that cable runs from the fire house to the shopping center on Fitzgerald, but was not exactly in pristine condition. .

Council Member Toms said it would be worthwhile when there are road projects to also consider laying conduit as it would provide a huge benefit to potential businesses.

There was discussion from Council to limit availability of outside requests. The contractor and staff explained how to assess the conduit and determine the number of lines and identify our future needs and uses. There was Council consensus to move ahead with inspection of the lines and provide a report back to Council at a future meeting.

## **11. REPORTS & COMMUNICATIONS**

### **A. Mayor Report**

#### **1. Announcements**

- a. Provided a WCCTAC update. A special meeting is scheduled on Marc 5<sup>th</sup> to discuss the split between the transportation entities

### **B. Mayoral & Council Appointments**

There were no Council appointments.

### **C. City Council Committee Reports & Communications**

Council Member Banuelos reported on the status of the Pinole Theatre improvements.

Council Member Toms reported that the ABAG Assembly was scheduled on April 21 and reported on an MTC and ABAG workshop on displacement. The discussion is related to the jobs and housing balance and job creation so our residents do not have to commute such a great distance.

Mayor Swearingen said that the entire Council attended to Rotary Crab Feed recognizing the Public Safety members, and was well attended. He also reported that the Pinole Chamber hosted a meet and greet luncheon with Council Member Toms and City Manager Michelle Fitzer.

### **D. Council Requests For Future Agenda Items**

No items were identified.

E. City Manager Report / Department Staff

There was no report.

F. City Attorney Report

Assistant City Attorney Downs reported that the Attorney's Office would schedule a mandated Ethics (AB 1234) training later this year.

**12. ADJOURNMENT**

At 10:26 pm., Mayor Swearingen adjourned the Regular Meeting of March 15, 2016 to the Regular Meeting of March 15, 2016 In Remembrance of Amber Swartz, Rich Voisey, and Richard Lucas.

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**Submitted by:**

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**Patricia Athenour, MMC**  
**City Clerk**

**APPROVED BY CITY COUNCIL: April 5, 2016**