

**PINOLE CITY COUNCIL  
MINUTES  
MARCH 15, 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 6:03 PM and Mayor Pro Tem Long 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 arrived at 6:34 p.m.  
Council Member Peter Murray  
Council Member Maureen Toms

**B. STAFF PRESENT**

Michelle Fitzer, City Manager  
Benjamin T. Reyes, City Attorney  
Hector De La Rosa, Assistant City Manager  
Tamara Miller, Development Services Director  
Andrea Miller, Finance Director  
Rob Piper, Police Chief  
Patricia Athenour, City Clerk

City Clerk Athenour announced the agenda was posted on Thursday, March 10, 2016 at 4:00 P.M. All legally required notice was provided.

Following an inquiry by the City Clerk, the Council members stated there were no conflicts on any item on the Agenda.

City Clerk Athenour announced the following documents submitted into the record:

- Item 8A- PowerPoint Exhibit
- Item 9A – Letter from the California Grocers Association regarding Carryout Bags and Polystyrene Food Containers

Ms. Athenour reminded the Council of the filing deadline for the Form 700, Statement of Economic Interests Statements and encouraged timely filing.

### 3. CONVENE TO A CLOSED SESSION

At 6:07 p.m., Mayor Swearingen convened the Noticed Closed Session to discuss the following items.

- A. **CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION**  
Gov. Code §54956.9(d)(1)  
United Professional Firefighters Local 1230 v. City of Pinole  
Case No. SF-CE-00864M

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

At 7:17 p.m., Mayor Swearingen reconvened the meeting in open session and announced there were no reportable actions.

### 5. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS

- A. Proclamations
- B. Presentations / Recognitions

Principal Kleiman introduced the 2016/17 Pinole Valley Cheer Squad and Coach “V” Veronica. The squad qualified for the National Tournament in Las Vegas and this year, following their identified focus this year, community involvement, led a cheer for the City Council.

Joana Rae Perea and Amanda Metcalf, Cheer Squad members addressed Council regarding the personal benefits derived from representing Pinole Valley High and thanked Principal Kleiman and Coach “V” for their efforts and support.

- 1. Introduction of Development Services Director Tamara Miller

City Manager Michelle Fitzer introduced Development Services Director Tamara Miller, provided her background information, and welcomed her to Pinole. Each of the Council Members welcomed Ms. Miller and welcomed her to the team.

Mayor Swearingen introduced an event being promoted by Bob Kopp and asked him to present.

Bob Kopp, Pinole citizen, information Council he was hosting a memorial ceremony in honor of Dean Allison. Any remaining proceeds would be donated to Pinole Community Television. The dinner will be held at the Pinole Senior Center on Sunday, April 14, 2016 from 4-7 PM.

Mayor Swearingen discussed Dean’s infectious attitude, his love of Pinole, and how he will be missed in this community due to his recent passing on March 4, 2016. His services were held in Dobbs Ferry, New York on March 14, 2016.

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

The following citizens addressed the City Council:

Ivette Ricco, Pinole citizen, reported as the Citizens Bond Oversight Representative for Pinole and the Chair of the Pinole Valley High Subcommittee:

1. WCCUSD held a meeting at Pinole Middle School on March 10 to discuss allocation of resources on the Master Plan. She encouraged citizens to visit the website for more information to check the standing for Shannon and Collins Schools
2. Attended a meeting with Leadership Associates, the firm handling the recruitment of the new Superintendent. She reported she created a list from community feedback on the important characteristics that were important on this process. T
3. Attended the District's Subcommittee Facilities meeting for an update on the Pinole Valley High Construction Bid results. She read bid results into the record, noting that the bottom line was that there would be a shortfall of \$28 to \$39 million. A Special Facilities Subcommittee meeting will be held on April 4<sup>th</sup> at 1 PM to provide further information.

Council Member Banuelos responded that he had heard different information than Ms. Ricco read into the record.

Council Member Long said the low bid came in lower than anticipated, as several Council members heard today and several members would be attending the Facilities Subcommittee meeting. She also heard there was a small difference between the 24 and 30 month bids.

City Attorney Reyes advised the Council this matter was not agendized, and was not City business and cautioned that the Council could not discuss the matter with the exception to receive the report and make brief comments.

Mayor Swearingen said the City is going to get a high school and this will not stop it from being constructed. Council asked staff to put this information on the scroll

**Jack Meehan**, Pinole citizen, said the Council was taking the right step to expose it and discuss the Pinole Valley High construction bids. He also expressed his annual appreciation to the fire service for saving his life seventeen years prior when he was declared dead and three Vallejo firefighter / paramedics used their defibulator to save his life. He offered three basic rules of life: Everything has to be someplace; Nothing is forever; and No one is indispensable. He welcomed Tamara Miller to Pinole and thanked Al Petrie for his interim services, and also recognized all the people who have left in the past year, those soon leaving and those who remain on the staff soon to be the old-timers.

## 7. CONSENT CALENDAR

Regarding Item 7C, Mayor Pro Tem Long requested clarity that the City was accepting the report. She said she would contact Mr. Rhodes relative to a few questions on the report.

Ms. Fitzer said Mr. Rhodes would be submitting the report to the State following receipt by the Council at the meeting this evening.

**ACTION: Motion by Council Members Banuelos / Toms, the Council Approved the Consent Calendar As Presented.**

|              |                 |   |
|--------------|-----------------|---|
| <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>                                     |
|              | <b>Abstain:</b> | <b>None</b>                                     |
|              | <b>Absent:</b>  | <b>None</b>                                     |

- A. Approved the Minutes of the Meeting of February 16, 2016

- B. Received the February 27, – March 11, 2016 List of Warrants and the March 11, 2016 Payroll in the Amount of \$331,464.51
- C. Received the 2015 Annual General Plan Housing Element Progress Report [**Council Report No. 2016-33; Action: Receive Report (Rhodes)**]
- D. Received The FY 2014-15 CAFR And Accept The Audited Reports [**Council Report No. 2016-34; Action: Review & Accept Report Per Staff Recommendation (A. Miller)**]
- E. Adopted **Resolution 2016-21**, Appropriated Funding In The Amount of \$1862.76 In the FY 2015/16 Budget From the General Fund Reserve For A Contract With Jan-Pro Cleaning Systems To Provide Janitorial Services At the Pinole Youth Center [**Council Report 2016-35; Adopt Resolution Per Staff Recommendation (Johnson)**]
- F. Adopted **Resolution 2016-22**, Rescinded Resolution No. 2015-73 And Approved a Resolution Authorizing The City Manager To Dedicate And Pledge The Net Revenues Of The City's Wastewater Utility Enterprise Fund For The Repayment Of Any And All State Revolving Fund Loan/Financing On The Pinole–Hercules Wastewater Pollution Control Improvements 2013 Project [**Council Report 2016-36; Adopt Resolution Per Staff Recommendation (De La Rosa)**]

## 8. PUBLIC HEARINGS

- A. Conduct Public Hearing and Consider Introduction of a Zoning Text Amendment Ordinance To Modify Chapters 17.20 and Chapter 17.98 To Prohibit Medical Marijuana Cultivation And Delivery Within The City Of Pinole [**Council Report No. 2016-37; Action: Conduct Public Hearing Introduce Ordinance & Waive First Reading (Casher)**]

**Eric Casher**, Assistant City Attorney, presented Council Report 2016-77 into the record, introduced and recommended introduction. He provided background information from the January 19, 2016 whereby Council adopted an urgency ordinance prohibiting medical marijuana cultivation and delivery, as well as introduction of a related ordinance amending Title 5 and 8 of the Municipal Code prohibiting cultivation and delivery as a health and safety concern.

He cited the statutory authority and the proposed findings for the prohibition of cultivation and delivery of medical marijuana. If introduced, it would not preclude the Council from revising this ordinance and while it would be a prohibition on cultivation and delivery, it is not intended to criminalize medical marijuana in any way. Methods of enforcement are the discretion of the Police and Code Enforcement Departments. Mr. Casher was available for questions.

Council Member Banuelos asked how neighboring cities have handled this matter. Casher responded some cities have approved a similar ordinance and/or other forms of prohibition. Several cities represented by Meyers Nave taken this similar action.

Mayor Pro Tem Long said this ordinance would prohibit a person with a card to cultivate a plant as there is no specific language that allows cultivation for personal use.

Assistant City Attorney Casher responded that with adoption of this ordinance, the City can reserve the right to regulate as they determine.

City Attorney Reyes said nothing done now will reconcile the difference between Federal and State law. If this law is not enacted, the City would relinquish control over medical marijuana grows in the City to the State of California. City Attorney Reyes said the Compassionate Use Act does allow cultivation for personal use and this ordinance is not inconsistent with that action. He emphasized that there is now discretion that the Police, Code Enforcement and City Attorney has not to enforce for that type of personal use.

Mayor Pro Tem Long said the language the City Attorney stated should be contained in a resolution to accompany the ordinance.

City Attorney Reyes discussed the intent and use of discretion by the employees.

Council Member Toms said she understands that the intent of this ordinance prohibits cultivation.

At 8:20 p.m., Mayor Swearingen opened the Public Hearing. No speakers addressed Council and the hearing was closed and the matter brought forward to the Council for further discussion.

Mayor Pro Tem Long said the ordinance was too broad without a statement that the intent is not to impose a hardship on anyone using medical marijuana and therefore could not support the proposed ordinance.

Council Member Banuelos said he has concerns about the ordinance also

Council Member Toms commented that the concerns raised this evening should have been addressed with the consideration and adoption of the urgency ordinance in February, not part of the zoning matter before the Council this evening. She said she found that Contra Costa County, like the City of Pinole, had taken a more conservative approach to the issue, as well.

**ACTION: Motion by Council Members Murray / Toms, the Council Introduced Ordinance 2016-03 Zoning Text Amendment Ordinance To Modify Chapters 17.20 and Chapter 17.98 To Prohibit Medical Marijuana Cultivation And Delivery Within The City Of Pinole**

|              |                 |                                 |
|--------------|-----------------|---------------------------------|
| <b>Vote:</b> | <b>Passed:</b>  | <b>3-2</b>                      |
|              | <b>Ayes:</b>    | <b>Murray, Swearingen, Toms</b> |
|              | <b>Noes:</b>    | <b>Banuelos, Long</b>           |
|              | <b>Abstain:</b> | <b>None</b>                     |
|              | <b>Absent:</b>  | <b>None</b>                     |

**9. OLD BUSINESS**

- A. Review Sample Single Use Plastic Bag And Polystyrene Container Ban Ordinances And Consider Similar Ordinances In Pinole [**Council Report No. 2016-38; Action: Provide Direction (Fitzer)**]

**Michelle Fitzer**, City Manager, presented Council Report 2016-38 into the record. Discussed Any ordinance as of 2014 would stay in effect and any after would be preempted by the state, Reyes said it is possible anything you adopt this evening would be repealed. The grocery association letter requests an exemption from polystyrene for meat products, but does support a

ban on single use plastic bag if a charge is implemented for paper bag alternatives. She raised questions for discussion such as whether the Council wanted a fee, and if so how much. Fitzer said legal costs to draft an ordinance would be approximately \$2,000, and sought feedback from Council.

Mayor Pro Tem Long asked again, whether the City could receive a portion of the revenue from the retailers, if a fee were imposed, for implementation of the NPDES program, as there was a direct correlation.

Council Member Murray presented a Power Point photo presentation developed in 2003 showing the damage to the environment from plastic bags and polystyrene. He spoke in support of a ban on single use bags. He stated that many third world countries have imposed bans, and said in the immediate area, Pinole was the only city which had not approved a ban against single-use plastic bags. He noted it was supported by the California Grocers' Association who support continuity throughout the State. Council Member Murray said this ordinance would not be pre-empted by State law.

Ben said that Council Member Murray was correct. He added that other counties handle it differently; Alameda County adopted a county-wide ban and cities have to opt out.

Council Member Toms referenced a minor typo error in Mr. James' letter regarding the cost of bags.

Council Member Banuelos commented that said he was purchasing vegetables and one store's vegetable bags were printed "recycled" bags".

Council Member Murrays said he understood the bags will break down in smaller microscopic pieces and then be ingested by the animals and fish.

Council Member Long referenced the Model Ordinance, and questioned and commented as follows:

1. What is considered bulk food?

Council Member Murray explained it was anything you put into a bag. Discussion regarding the definition of a carry out bag is a bag with handles.

2. Eating establishments would not be charging for bags?
3. Are fast food establishments allowed to charge for bags?
4. Who monitors whether the bags are compostable?
5. The ordinance states that all money will be retained by the retail establishment and a report must be provided to the City Manager, regarding the number of bags provided and total funds collected and the money spent to support use of reuse bags. With that said, the retail establishments would be able to make a donation to the City in support of litter control, and asked that a discussion take place.
6. What does the income status of patrons have to do with the environment?  
Problem with the method to establish exempt customers.
7. Fines must be established with a nexus.
8. Recycled bags must be used 125 times and carried a specific distance, so the assumption is if the handle breaks, it can be returned for replacement.

Council Member Toms asked if this would be a tax and subject to Prop 218.

City Attorney Reyes said he was mindful not to spend resources yet, so he cannot respond, but as in other cities, in order to assess a fee, you must perform a nexus study to justify the fee

assessed. Reyes said he has seen challenges to state it was a Special Tax and must be put on the ballot. He explained a fine was set by statute and the Council's ability to fine is limited by statute starting at \$100 to a ceiling of \$1,000, and a fee is based on cost to provide a service.

The following speakers addressed the Council:

**Bob Kopp**, Pinole citizen, agreed with prohibiting plastic bags, and does not support making the retailers provide a portion of the fee for paper bags to the City.

**Jack Meehan**, Pinole citizen, said this was an attempt to overcomplicate the matter and if the desire is to prohibit dispensing plastic bags, then prohibit them from use in the City of Pinole and also eliminate any charge for paper bags.

Mayor Pro Tem Long said she agreed with both speakers, Kopp and Meehan, but the model ordinance has all the other provisions and she was not sure the stores would support and participate in that manner.

Mayor Murray agreed to review all the model ordinances, and draft some language that gets Pinole into conformity with the other communities and would include the styrene also.

Council Member Toms does not think exempt certain citizens are necessary; the whole population should comply. She was not interested in any fee recovery by the City and believed it would not be financially feasible to attempt to justify with a nexus study and monitor.

Mayor Murray suggested removal of the entire section related to fees.

Council Member Toms said a disincentive was necessary and supported charging for bags.

Council Member Banuelos did not support spending dollars to collect cents.

Mayor Swearingen cited Costco as the ultimate environmentally sensitive; no bags are provided. He also addressed the condition of Pinole Bayfront Park, littered with algae covered plastic bags found at a Coastal Cleanup event. He stated support for the California Grocers Association's recommendation on use of poly styrene for meat products, and recommended referring the matter back to staff for further refinements to develop an ordinance that works for Pinole.

Mayor Pro Tem Long commented that less was more when drafting the ordinance.

Council Member Murray agreed to work on the model ordinance, speak to Recyclemore, and bring the matter back for Council consideration at a future meeting.

## **10. NEW BUSINESS**

- A. Authorize City Manager To Award A Construction Contract For The Pinole-Hercules Water Pollution Control Plant Upgrade Project To Kiewit Infrastructure West In An Amount Not To Exceed \$43,143,000 And Authorizing A 7% Contingency In The Amount Of \$3,020,010 [**Council Report No. 2016-39; Action: Adopt Resolution Per Staff Recommendation (T. Miller)**]

**Tamara Miller**, Development Services Director, presented Council Report 2016-39 to recommend adoption of a resolution providing authority for the City Manager to execute a contract for the water collection control plant upgrade to Kiewit Infrastructure West Co.

**Hector De La Rosa**, Assistant City Manager, added that this was contingent upon approval of the state revolving loan. He reported that he was just advised by the State that they would not meet the April 1 deadline for issuance of the loan, and could not provide a timeframe when the approval would be received. He said he hopes it will be fairly quick after April 1 but we will know more tomorrow. Have requested names of supervisors and director in the event that the Council wishes to reach out to them.

Council Member Toms said given those updates, the bid document require the bids until April 8<sup>th</sup> and asked if they can be modified or extended if necessary or can they be negotiated or have to go back and rebid? Should we build in extending the City manager's execution?

City Attorney Reyes provided a legal position, stating that if the City planned to ask to extend the bid and bid bonds, permission must be obtained from both Kiewit and Overaa. If one disagreed, the City may have to rebid the project. He recommended further discussion of potential liabilities in a Closed Session.

Mayor Swearingen questioned how it would be handled if the Council approved the contract tonight, and the loan approval was extended further.

Staff responded that another discuss adding another contingency to have the bid extended to the approval of the State loan.

Development Services Director Miller said between now and the next Council meeting, staff will have more information and could act accordingly.

**Mike Warrnier**, Carollo Engineers, said this was a two-step process; an award this evening does not authorize the contractor to begin work, which would not occur until a Notice to Proceed is issued. In this manner, none of the funds would be jeopardized.

**ACTION: Motion by Council Members Long / Banuelos, The Council Adopted Resolution 2016-23, Authorized The City Manager To Award A Construction Contract For The Pinole-Hercules Water Pollution Control Plant Upgrade Project To Kiewit Infrastructure West Co. In An Amount Not To Exceed \$43,143,000 And Authorizing A 7% Contingency In The Amount Of \$3,020,010, Subject to the Conditions & Terms 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>                                     |
|              | <b>Abstain:</b> | <b>None</b>                                     |
|              | <b>Absent:</b>  | <b>None</b>                                     |

## 11. REPORTS & COMMUNICATIONS

### A. Mayor Report

1. Announcements
  - a. Sprouts Gateway Center project is moving forward
  - b. Mayor Pro Tem Long will attend the April Mayors Conference in his place
  - c. Dean Allison's Memorial - April 17 at the Senior Center

B. Mayoral & Council Appointments

1. Appointment of a Council Member for the Adhoc Committee For the PG&E Pathways Project Tree Replacement

Ms. Fitzer sought Council direction regarding the appointment of a council member to serve on an Adhoc subcommittee on the PG&E Pathways Tree Replacement. PG&E has been working with the agencies in the County and prior to her arrival there was an option for PGE to install the replacement trees or provide funds for the City to plant the trees. PG&E have agreed to be responsible for the trees for a period of twelve months after planting. She asked the Council to select one or two members to work with PG&E and City staff to determine locations within the public right-of-ways.

Mayor Swearingen asked if the City has the option to decide the tree species. Fitzer said she believed PG&E had replacement trees identified.

Murray and Toms volunteered and thinking doing the replacement with PG&E maintaining the trees for a period of one year or longer, if possible.

Mayor Swearingen wanted to insure the trees do not die and Mayor Pro Tem Long said she shared that position, to make sure they are maintained at watered later.

**ACTION: Motion By Council Members Long/Banuelos, The Council Appointed Council Members Murray And Toms To The PG&E Pathways Tree Replacement Adhoc Subcommittee**

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

C. City Council Committee Reports & Communications

Council Member Banuelos reported attending the WestCAT meeting and reported they are prepping to receive two new coaches.

Council Member Murray provided a brief update on the West Contra Costa Integrated Waste Management Authority meeting.

Mayor Pro Tem Long reported on her recent visit to Disneyland.

D. Council Requests For Future Agenda Items

1. Project status report on the Pinole Valley High award of the construction contract and/or an update from on the Facilities Subcommittee members in April. (Council) Suggestion to get reports at regular intervals (Banuelos)

Council Members Long and Toms planned to attend the Facilities Subcommittee meeting on April 4<sup>th</sup> and report back to Council.

2. Placeholder for a presentation from the CBOC

3. Amend the Tobacco (Smoking Ordinance) to include language regarding e-cigarettes (Long)
4. Policy discussion to establish parameters on contacting the City Attorney (Long).

Mayor Pro Tem Long referenced this Council meeting where two attorneys were present when one could have presented both items, and the meeting the prior evening which involved an interview. She wished to have the City Manager consider a policy to determine when extra ccounsel is needed. (Long)

Council Member Murray supported the City Attorney's attendance as a precautionary measure. He felt the City was well served by the Legal team; however he did support a discussion regarding citizen accessibility to the City Attorney.

Toms agreed that we need to adjust the agenda for paid consultant time at meeting, does support the staff who worked on a matter to make the presentation, and supported staff approval to provide community access to the City Attorney.

Council Member Banuelos supports the appropriate legal staff attending the meetings even if it two attorneys attendance, keep consultants in check, and if this matter needs to be addressed it would be a budget matter.

Mayor Swearingen said all community requests should go through the City Manager. There was no Council support for further discussion on this request.

5. Requested a copy of the Caltrans contract for signal maintenance (Long) Follow Up Only
6. A street light located on the Appian Way access to I-80 & Pinole Valley Road and off I-80 to Appian, appears to be loose and about to drop. Referred to Development Services Director to review and notify Caltrans. (Murray) Follow Up Only.

E. City Manager Report / Department Staff

Ms. Fitzer reported that Fire Chief Harman contacted the City to discuss providing fire services since Chief Piper and Chief Hanley in Rodeo-Hercules were both retiring. She suggested appointing an Adhoc Subcommittee to meet with staff and Chief Harman.

Council Member Toms and Long volunteered for the assignment.

1. Update On Consent Item Removal By Members Of The Public **[Verbal Report; Action: Receive Report (Athenour)]**

On December 1, 2016, language was added to the Council Meeting procedures to require a citizen to contact City staff first to discuss their questions about Consent Calendar staff reports prior to requesting removal of the item at the Council meeting. The intent was to respond to potential questions and eliminate the need to request removal of the item. Nothing would preclude the citizen from then raising a question, making a comment on the matter or requesting a Council member to remove an item. Ms. Athenour reported that Mayor Pro Tem Long had requested a review of the process after three months. To date, there have been three or four occurrences where staff has been contacted with questions, and once a citizen only wished to comment on the record, at which time the matter was removed for citizen comment. No complaints had been received and the procedure was working well.

Council Member Toms said that it is a person's right to speak on any item. Mayor Pro Tem Long said she was not comfortable with the process and had heard from citizens as well.

There was discussion about the difference if a citizen was providing comments vs. a citizen "removing" an item from the agenda, which is typically reserved to Council Members. Ms. Fitzer said there was usually not a need for a staff report and there was nothing to preclude a citizen just making a comment without removing it from the Consent Calendar or requesting a Council Member to remove it on their behalf.

Council accepted the report.

City Manager Fitzer recommended a further change to the Agenda format to eliminate the New Business and Old Business sections, in exchange for one section titled Business Items. This substitution of terms would provide more flexibility in ordering the Agenda.

Following a brief discussion, there was Council concurrence to leave the Agenda in the current format.

F. City Attorney Report

**12. ADJOURNMENT** to the Regular City Council Meeting of April 5, 2016 In Remembrance of Amber Swartz and Dean Allison.

At 10:55 p.m., Mayor Swearingen adjourned the Regular Meeting to the Regular Meeting of April 5, 2016, in remembrance of Amber Swartz and former Development Services Director Dean Allison.

**Submitted by:**

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

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