

**PINOLE CITY COUNCIL  
MINUTES  
October 4, 2016**

**1. CALL TO ORDER & PLEDGE OF ALLEGIANCE**

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 led the Pledge of Allegiance.

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

*An official who has a conflict must, prior to consideration of the decision: (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself /herself from discussing and voting on the matter; and (3) leave the room until after the decision has been made, Cal. Gov't Code § 87105.*

A. COUNCIL MEMBERS PRESENT

Mayor Roy Swearingen  
Mayor Pro Tem Debbie Long  
Council Member Tim Banuelos (**Arrived at 7:22 pm**)  
Council Member Peter Murray  
Council Member Maureen Toms

B. STAFF PRESENT

Michelle Fitzer, City Manager  
Ben Reyes, City Attorney  
Neil Gang, Police Chief  
Steve Akre, Acting Fire Chief  
Tamara Miller, Development Services Director/City Engineer

The Council stating there were no conflicts with any items on the agenda.

**3. CONVENE TO A CLOSED SESSION**

A. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Gov. Code § 54956.9(d)(2)  
Number of Potential Cases: 1

B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - Gov. Code §54956.8

Property Locations: 2850 Estates Ave./360-010-017  
City Negotiator: Michelle Fitzer, City Manager & Hector De La Rosa,  
Assistant City Manager  
Negotiating Parties: PALC Boardmembers  
Under Negotiation: Price & Terms

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

At 7:00 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
  - a. Pinole Community Services Presentation (Coastal Clean Up and Dumpster Day)

Darin Clarke presented the item and provided a PowerPoint of the event including photos of participants and thanked all the participants. Mayor Swearingen also recognized Richmond Sanitation for their services.

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

None

## 7. CONSENT CALENDAR

The following items were removed for discussion:

City Manager Michelle Fitzer provided an overview of the additional information on item #7F and stated that the agreement was provided to the Council and placed at the back of the Chambers for the public.

### **ACTION: Motion by Council Members Toms/Long Approving the Consent Calendar Items 7A-F**

**Vote:**           **Passed:**       **4-0**  
                  **Ayes:**           **Swearingen, Murray, Long, Toms**  
                  **Noes:**           **None**  
                  **Abstain:**       **None**  
                  **Absent:**       **Banuelos**

- A. Approve the Minutes of the Meeting of September 20, 2016 and September 28, 2016
- B. Receive the September 17 - 30, 2016 List of Warrants and the September 23, 2016 Payroll in the Amount of \$ 343,122.91
- C. Acceptance of a Notice of Completion for the Building at 251 Pinole Shores Drive **[Action: Adopt Resolution Per Staff Recommendation (T. Miller)]**
- D. Approve the 2016 City Hall Closure December 27<sup>th</sup> – December 30<sup>th</sup> and the 2017 City Council Meeting Schedule **[Action: Approve by Minute Order (H. De La Rosa)]**
- E. Approve a Side Letter of Agreement to the Memorandum of Understanding (MOU) between the City of Pinole and IAFF Local 1230 to provide Paramedic Pay to the Captain classification **[Action: Adopt Resolution Per Staff Recommendation (Fitzer)]**

- F. Approving a Purchase and Sale Agreement Between the City of Pinole and Agape Assets LLC Relative to the Use and Development of Property [**Action: Adopt Resolution Per Staff Recommendation (H. De La Rosa)**]

**8. PUBLIC HEARINGS**

**9. OLD BUSINESS**

**10. NEW BUSINESS**

- A. Review and Provide Direction on the Zoning Code Appeal [**Action: Review, Discuss and Provide Attorney with Direction (E. Casher)**]

City Attorney Ben Reyes presented the report outlining the Subcommittee's recommended changes to Chapter 17 of the Pinole Municipal Code, Section 17.10.070 Zoning Code Appeal Process.

City Council members discussed concerns/issued related to providing leeway of ten (10) days prior to the appeal process commencing, having the applicant pay the appeal fee, the fee of the appeal, Councilmember appealing on behalf of a public member, and limiting appeals to only new information, withheld information, and/or health and safety concerns.

Council discussed and agreed to the following:

- A Councilmembers shall have the right to appeal a Planning Commission action,
- A written appeal must be submitted within 10 days of Planning Commission action,
- Appellant must prepare all appeal documents without assistance from staff or city attorney,
- Appeal must be of a legal nature and based on a violation of any existing law, any new or withheld information.
- Any Councilmember appealing must excuse themselves and be considered a public member, and

**ACTION: Council direction was to approve the bullet points above**

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

The City Council further discussed any Councilmember filing an appeal paying 50% of the appeal fee.

**ACTION: Council direction to approve an appeal fee of 50% of the adopted appeal fee to be paid by a Councilmember filing an appeal. If Council appellant is successful in the appeal the appeal fee gets refunded.**

**Vote:            Passed:        3-2**  
**Ayes:            Swearingen, Murray, Banuelos**  
**Noes:            Long, Toms**  
**Abstain:        None**  
**Absent:         None**

- The appeal fee for the shall be \$500 plus the applicant shall pay the remainder of the City's appeal fees.

**ACTION: Council direction to approve a \$500 appeal fee with the applicant/developer paying the remainder of the City's appeal costs.**

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

- B. Provide Direction With Respect To Changes To City Council Member and Treasurer Salaries **[Action: Review, Discuss and Provide Attorney with Direction (S. Downs)]**

City Attorney Ben Reyes presented the report.

Council direction was to bring back an Ordinance Amendment to increase the City Council Salary to \$562.50 (4-1 Long) with the City Treasurer Salary remaining at \$250 a month (5-0).

- C. Authorizing One-Time Expenditures from Fiscal Year 2015-16 Measure S 2006 Savings in an Amount not to exceed \$100,000 for Police Equipment and Facility Repairs **[Action: Adopt Resolution Per Staff Recommendation (N. Gang)]**

**ACTION: Motion by Council Members Long/Banuelos approving Resolution No. 2016-XX**

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

## **11. REPORTS & COMMUNICATIONS**

- A. Mayor Report  
 1. Announcements

Mayor Swearingen commented on the success of Coastal Clean-up and Dumpster Days. He also mentioned that Pinole Middle School will be hosting the West Contra Costa Unified School District candidates' debate at 6:30 pm on October 13<sup>th</sup>.

- B. Mayoral & Council Appointments  
 1. Reappoint two members to the TAPS Subcommittee (Doug Taylor, Faith Dunham-Sims) **[Appoint by Minute Order]**

**ACTION: Motion by Council Members Toms/Banuelos, re-appointing Doug Taylor and Faith Dunham-Sims to the TAPS Subcommittee**

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

2. Reappoint two members to a Community Services Commission (Debbie Ojeda, Darin Clarke) [**Appoint by Minute Order**]

**ACTION: Motion by Council Members Banuelos/Toms, re-appointing Debbie Ojeda and Darin Clarke to the Community Services Commission.**

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

C. City Council Committee Reports & Communications

Councilmember Toms commented that Contra Costa Resource Department will be hosting a ribbon cutting ceremony for the Fish Passage on October 24<sup>th</sup> and attended the Tip-a-Cop event.

Councilmember Banuelos attended the Tip-A Cop event and East Bay Cities event.

D. Council Requests for Future Agenda Items

None

E. City Manager Report / Department Staff

City Manager Michelle Fitzer stated that she and the Assistant City Manager will be attending the League of California Cities.

F. City Attorney Report

City Attorney stated that he will be attending the League of California Cities.

**12. ADJOURNMENT** to the regular City Council Meeting of October 18, 2016.

At 10:03 p.m., Mayor Swearingen adjourned the Regular Meeting of October 4, 2016, in Remembrance of Amber Swartz and Ken Zink, San Pablo Police Officer.

**Submitted by:**

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**Hector De La Rosa**  
**Assistant City Manager/Deputy City Clerk**

**Approved by City Council: October 18, 2016**