

**JOINT PINOLE CITY COUNCIL &
REDEVELOPMENT AGENCY
MINUTES
October 18, 2011**

1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY
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 led the Pledge of Allegiance.

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

A. COUNCIL PRESENT

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 October 13, 2011 at 4 p.m. All legally required notice was provided. She asked the Council whether there were any conflicts with any items on the agenda. None were reported. There were no further reports

**3. CONVENE TO CLOSED SESSION – CITY COUNCIL/REDEVELOPMENT AGENCY
(5:30 PM – 7:00 P.M.)**

At 5:35 p.m., Mayor Swearingen recessed the open session and convened to a Noticed Closed Session to discuss the following matters:

City Council

- A. CONFERENCED WITH LEGAL COUNSEL
EXISTING FILED LITIGATION – Gov. Code §54956.9(a)
City of Pinole v. Bruce Carone Grading & Paving, Inc. et.al
Contra Costa County Superior Court Case No. C 10-02168
- B. CONFERENCED WITH LEGAL COUNSEL--EXISTING LITIGATION- GC§54956.9(a)
Donald Sipple v. City of Alameda (Class Action)
Los Angeles Superior Court Case No. BC462270
- C. CONFERENCED WITH LABOR NEGOTIATOR - Pursuant to GC §54597.6
City Labor Negotiator: Belinda Espinosa, City Manager & Michelle Fitzer,
Asst City Manager

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

At 7:10 p.m., Mayor Swearingen reconvened the meeting in open session. City Attorney Reyes announced the following action from Closed Session:

The City Council authorized the Execution of the Pinole Joint Defense Agreement for the Sipple Case (Item 3B), which would split the legal costs between eight cities. Mayor Swearingen briefly described the litigation whereby the City is being sued by AT&T, who has withheld utility tax revenue, and the City would be defending the claim.

Jim Tillman, Pinole citizen, questioned whether the utility user tax money should be refunded to the citizens, and asked that legal counsel check with the PUC.

City Attorney Reyes responded that it was a suit about a specific class. The suit involves every city who imposed utility user tax on the basis that they have collected taxes on internet / data plans. AT&T may have collected taxes from the users and they are trying to collect those amounts from the cities. He responded that it was not regulated by the PUC, but was a legal matter.

5. RECOGNITIONS / PRESENTATIONS

- A. Proclamations
- B. Presentations

- 1. Northern CA Cruisers Car Show Donations Presentation by President John Loudon

John Loudon, Northern CA cruisers Chairman, made the annual presentation to the following organizations:

Bay Area Rescue Mission – Reverend John Anderson	\$2,000
California Autism Foundation – John Visbal	\$2,000
El Sobrante Boys & Girls Club – Billy Zeier	\$2,000
Pinole Youth Foundation. – Laurelle Martin	\$4,000

Laurelle Martin, Community Services Commission Chair, reminded the community of the 10th Anniversary Youth Center Gala, on November 4, 2011 at the Senior Center.

Mr. Loudon announced that the 2012 California Cruisers Car Show will be held on June 24, 2012. The Council wholeheartedly endorsed the event.

6. CITIZENS TO BE HEARD (Public Comments)

The following citizens addressed the City Council / Agency Board:

Jim Tillman, Pinole citizen, questions about TFK and Cole

- 1. How many active contracts exist between the City/Agency and TKG?
- 2. How many active contracts did former Council Member Cole vote on?

Mayor Swearingen said he was unsure of the number of contracts; there were ground leases, development agreements and reciprocal easements, all pertaining to Pinole Vista and Pinole Valley Centers.

Joel Gannotti, Pinole citizen, addressed Council on Measure J, forwarded by Doctors Hospital and Supervisors Gioia and Glover's representation about two strong voices. Gannotti said that this measure, supported by them, raises the tax by ninety percent. Mr. Gannotti asked the City Council to support a resolution for personal responsibility. He mentioned other agencies and quasi-agencies that are not tightening their belts.

Council Member Long noted that she did not vote for that resolution. Mr. Gannotti said it was a political vote, but he appreciated that she looked at the numbers.

Marcia Kalapus, Pinole citizen, directed her statement to Mr. Tillman, noting that the forty seven accusations of Cole's voting record is on the FPPC website. As the Pinole Historical Society member, Ms. Kalapus announced the upcoming Hercules History Expo at the Hercules Library on October 22nd, which includes other West County historical societies.

Noreen Buller, Pinole citizen, updated the Council on the progress of the Save the Pinole Swim Center Committee, whose donations total \$2,250. The goal is to reach \$30,000 by February 2012. She announced upcoming fundraising events: The Pear Street Bistro, Tuesday, October 25th, a booth at the Tree Lighting Event on December 3rd, a softball tournament, and banner sales spots at the Swim Center. Ms. Buller also announced that the TAPS Committee would discuss the Pinole Valley High School project, the following evening.

Ivette Ricco, Pinole Chamber President reported the following:

1. Thanked Al Chavarria and the Police Department for the presentation to the business committee on September 28th
2. The Chamber will host a joint mixer at the Hercules Community Center on November 16th at a new Pinole business, the Kitchen at 812, a food incubator
3. Holiday Mixer will be held on December 1st
4. Update on the Community Corner sign which is currently a work in progress; hopeful to reach consensus to bring it before the Planning Commission before the end of the year.

Irma Rupert, Pinole citizen, referred to the West County Times articles on October 5 and 17 – regarding former Council Member Cole and the matter with the FPPC, and asked that it be agendaized for discussion to allow the taxpayers to weigh in on the matter, and to halt all negotiations with TKG. She said she was troubled to read these articles in the newspaper before they are reported in the weekly Administrative Report.

City Attorney Reyes responded that the matter was under the jurisdiction of the Fair Political Practices Commission and they had deferred any action to December. He said there was nothing that the City could do besides provide them with information as we have done in the past, and have been very cooperative with their investigations.

Ms. Rupert said it was the citizens right to be informed and that the paper said that the FPPC reported they have not had a complaint on the Kivelstadt Group.

Council Member Long said that the votes in question would not have changed the outcome of the decision on the contracts, if his vote had been different or excluded.

City Attorney Reyes there was no concern regarding the validity of any of the contacts with TKG. He reaffirmed that most of the information was on the FPPC website, as mentioned by

Ms. Kalapus. Mr. Reyes said the City had an obligation to cooperate, the obligation was fulfilled, and the information cannot be shared with the community.

Mayor Swearingen said this was not within the purview of the Council. .

Council Member Green asked if that decision was just related to David Cole and had nothing to do with TKG. He understood the citizen's questions and concerns related to whether there were issues with the TKG contracts.

City Attorney Reyes reiterated again there were no problems with the TKG contracts and the hearing in December is related only to David Cole.

Council Member Green said he would like more history on the contracts, and was not sure if it was an open session discussion.

City Manager Espinosa responded. The Pinole Vista contracts were entered into by prior City Councils. The contracts for the Pinole Valley contracts for ground leases date back to 2007. All the documents were reviewed by former City Manager Charlie Long when he did the Redevelopment review and it is a public document.

Reyes said we do not have anything to add except that the FPPC has jurisdiction in this matter.

Sheila Grist, Pinole citizen, addressed Council regarding the proposed traffic signals on Pinole Valley Road. She said the traffic study was not reality. Her concern was that motorists would continually have to deal with the lights, while the school was only in session 160 days per year. She said that the ownership and maintenance would fall onto the City. The signal at Appian and San Pablo Avenue needs replacement, and it would be senseless to add signals that the City cannot afford. She discussed the illegal vehicular maneuvers at the signal by the Kaiser medical office building entrance. She suggested voting No on J.

Mayor Swearingen announced the Traffic Pedestrian Safety (TAPS) meeting the following evening where this item would be the topic matter.

Council Member Banuelos briefed the Council on the signalization at the proposed site and to the traffic issues associated with the school. He said the traffic on Pinole Valley Road is also commuter traffic. The District proposed several circulation plans and the one continual issue is the lack of a final determination on the parking lot orientation and number of spaces. This will be the third time the plan will go before TAPS

Jeff Rubin, Pinole citizen, addressed Council regarding the proposed medical office building on Gateway West which fell through several years back. He said he knew several of the principles and there were inconsistencies in some conditions TKG placed on the sale, causing the buyers to back out, and the reason it stands empty today. He said that the reason TKG is not part of this proceeding against Cole, was because no complaint was filed against them. He urged the Council, most specifically Council Member Green, to file a complaint against TKG, and not conduct any further dealings with them until it is resolved.

Council Member Green said he had spoken with our City Manager about such information that may not be allowed to be brought out in public.

Mr. Rubin said much of the information was in the Council minutes and meeting videos and said to file a complaint.

Marcia Kalapus, Pinole citizen, addressed Council, stating that in 2007 she was very involved with researching the issue, and summarized actions by Mr. Cole relative to Form 700 filings and his voting record. She urged Council Member Green to review the FPPC report on David Cole. She said that many of the contracts were negotiated by the former City Manager prior to Ms. Espinosa, and that is reflected in the minutes.

7. CONSENT CALENDAR

Council Member Green removed Item 7B.

Council Member Long did not remove the item, but cited corrections to the October 4, 2011 minutes on page 9.

ACTION: Motion By Council / Board Members Long/Banuelos, the City Council/ Agency Board Approved the Consent Calendar, with corrections to Item 7A as noted, and with the exception of Item 7B.

Vote: Passed: 5-0

Joint Agency Board / City Council

- A. Approved the Minutes of the October 4, 2011 Meeting
- B. Receive the October 1 -14, 2011 List of Warrants and Received the October 14, 2011 Payroll in the Amount of \$ \$346,543.23 **REMOVED FROM CONSENT**

Council Member Green raised a question about Check # 065834 to West County Wastewater asking how long the sludge removal would continue. Mr. Allison responded that there would be no further charges; the removal was done while the digester was malfunctioning and it was now back on line.

ACTION: Motion By Council / Board Members Banuelos/Long, the City Council/ Agency Board Approved Item 7B – Warrant List

Vote: Passed: 5-0

City Council

Continued From August 16, 2011

- C. 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 November 15, 2011 (Downs)**]
- D. Adopted **Council Resolution 2011-76**, Authorized The Placement Of Liens For Delinquent Unpaid Waste Collection Charges Between June and September 2011 [**Council Report No. 2011-118; Action: Adopt Resolution Per Staff Recommendation (Athenour)**]

- E. Adopted **Council Resolution 2011- 77**, Approved Park Hsieh O.D. as a Proposed Tenant At 2704 Pinole Valley Road In The Pinole Valley Shopping Center [**Council Report No. 2011-119; Action: Adopt Resolution (Drazba)**]

8. PUBLIC HEARINGS

Redevelopment Agency

Continued From August 16, 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 November 15, 2011 (Loomis)**]

At 8:20 P.M., Mayor Swearingen opened the Public Hearing. No speakers addressed Council and the Public Hearing was closed with a recommendation to continue November 15, 2011.

ACTION: Motion By Board Members Murray/Long, the Agency Board Continued the Public Hearing to Consider Adoption of the PRA Operational and Debt Service Budgets for FY 2011/12 to November 15, 2011.

Vote: Passed: 5-0.

9. OLD BUSINESS

Joint Agency Board / City Council - Public Hearing

Continued From August 16, 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 November 15, 2011 (Downs)**]

At 8:22 P.M., Mayor Swearingen opened the Public Hearing. No speakers addressed Council and the Public Hearing was closed with a recommendation to continue November 15, 2011.

ACTION: Motion By Council/Board Members Murray/Banuelos, the City Council/Agency Board Continued the Public Hearing to November 15, 2011.

Vote: Passed: 5-0

10. NEW BUSINESS

City Council

- A. Update on Fire Department Activities [**Verbal Report; Action: Receive Report (Hanley)**]

Charles Hanley, Fire Chief provided an update to Council, reporting on the following:

1. Status of the SAFER grant. The hardship Waiver was accepted and a reimbursement was in progress for approximately \$100,000 for three reporting periods.

2. Issued a professional services contract with former Chief Parrott to serve as the Battalion 7 Chief which would be covered by the SAFER grant.
3. Average staffing level has been at four since July 11, 2011. Year-to-date overtime was at 2,300 at the time of this report, which exceeds the limit for continuing four-person staffing. Staffing will drop to three--person this month which coincides with the end of fire season.
4. Discussed the impacts of operating one fire station and the increased activity on the fire apparatus' and said that a second engine would have allowed better defense of the fires in the early stages, instead of requiring mutual aid.
5. Vehicle maintenance had been high, experiencing three apparatus out of service at the same time, due to an aging fleet.
6. Experienced challenges in keeping current on training and discussed the minimum acceptable standards and unfunded mandates. Keeping current requires backfill to pull out a unit and pay overtime
7. Discussed Fire Service priorities: emergency response, command and control, readiness and fire prevention, in that order. The discussion focused in more detail on the deficits/shortages in Fire Prevention Services due to the limited resources beginning with the loss of a Fire Prevention Officer in 1998, and administrative support staff and an Assistant Chief in 2009, placing fire prevention activities at maintenance levels only. Consultant services have been used for plan check and the former Chief had performed fire inspection services.
8. Rodeo-Hercules Open House. Breast Cancer Awareness and MS fundraising campaigns, and firefighter training classes.

Closing the presentation, Chief Hanley said he understood there was Council interest in using an engine company for a fire inspection program. He said that Pinole had done that only a short time in the 1990's. He referenced the current contract that lists Fire Prevention on an "as needed" basis and was available for more discussion, and he was available for questions.

Council Member Long spoke about fire inspection services, which must be full cost recovery. It has been her experience when a City cannot afford to provide the services internally; the customer should be directed to a plan check / inspection consultant and should be paying the full cost for the service. Her recommendation was to let Rodeo-Hercules handle the Fire Prevention and get full cost recovery from the requestor, keeping as much money as possible in the fire budget for fire services.

Mayor Swearingen asked whether Rodeo-Hercules had a staff person to perform the function and Chief Hanley responded affirmatively.

Council Member Long said the City had been subsidizing the cost.

Chief Hanley said the collection of fees it revolves around collecting fees that are set by the City of Pinole. With the adoption of the new Fire code, Pinole would follow the same fee schedule as other cities in the County and it would be a pass-through. He suggested adding a surcharge to cover the administrative costs.

City Manager Espinosa said that the Fire and Building code update would be agendized in November, but she said that the inspections were handled differently. Former Chief Parrott used to perform inspections upon request, but not proactively.

Council Member Long confirmed that three-person staffing is considered minimum staffing so there is no reduction in the staffing level. During the fire season the Chief made a call to have four-person staffing.

Chief Hanley concurred that was correct, and said that if that were continued, the department would be over budget.

Council Member Green discussed his past experiences regarding annual inspections from Con Fire when he had an office in San Pablo.

Chief Hanley said that Pinole was part of their Hazardous Material Storage Inspection. He noted that Con Fire has a Fire Inspection bureau. Chief Hanley said he recommended both; a fire marshal and our limited ability to have engine company inspections and essentially we are deficient in both due to financial issues.

Chief Hanley responded to questions from Council on fire inspections for buildings and he explained it varied upon the building occupancy; generally it was every five years unless it was high hazard occupancy.

Mayor Swearingen said Chief Hanley should look at whether this was an appropriate time to look at apparatus replacement.

Chief Hanley discussed the CERT Program, and said he was trying to meld Hercules and Pinole communities together. He announced that there was a Drill the Skills program on November 19th, 9 am to Noon, and invited past Pinole CERT graduates to attend.

- B. Provide Comments and Direction to WCCIWMA Delegate Murray on the Post Collection Franchise Agreement [**Council Report No. 2011-120; Action: Adopt Resolution Per Staff Recommendation (Allison)**]

Dean Allison, Public Works Director, recommended continuance of this item to November 1, 2011 to gather more information. He provided a brief presentation and entered Council Report 2011-120 into the record, providing information on the post collection services contract which would expire in two years. He advised the Council he was still receiving new information, as recent as today and asked continue the item to November 1 to allow more time to gather comments to forward to delegate Murray.

Mayor Pro Tem Murray said that all cities are discussing the best methodology to move forward and there was more information coming that needs to be reviewed.

There was consensus to continue Item 10B to November 1,

- C. Authorize the City Manager To Execute A Contract for Brokerage / Leasing Services to Cory Lawrence of Cushman and Wakefield For Property Located At 2361 San Pablo Avenue [**Council Report No. 2011-121; Action: Adopt Resolution (Drazba/Fitzer)**]

Michelle Fitzer, Assistant City Manager presented Council Report 2011-121 and summarized the report into the record. Interviews held on September 21st and a recommendation was forwarded to retain Cory Lawrence from Cushman & Wakefield, as the sole representative. As noted in the staff report, it is a six-month contract, with a five percent commission, there would be cooperation with outside brokers, and agreement to a timed payment of the commission as noted in the analysis section of the report. Ms. Fitzer was available for questions.

Ivette Ricco, Pinole Chamber President, addressed Council stating that she took exception with a portion of the analysis portion of the report, stating that Mr. Lawrence's company does not have professional ties with the community and stated the former difficulties with Mr. Troughton, an associate in the company. She urged the Council to ask for a higher standard when marketing a prominent building in the community and have them demonstrate show what their community involvement really is.

Ms. Fitzer said the Council struggled with that and explained that is why Mr. Lawrence was identified as the sole broker from that firm.

Council Member Long asked Ms. Fitzer if there was any provision to reduce the commission if there are persons that have already been shown the property prior to this listing agreement.

Ms. Fitzer said she would address that point with Mr. Lawrence and could make an argument that we would pay half the commission.

Council Member Banuelos asked if that term was in the contact, and Ms. Fitzer said she would make that change and add language stating "as the sole representative."

ACTION: Motion by Council Members Murray/Banuelos, the City Council Adopted Resolution No. 2011-78, Approving the 6-month contract with Corey Lawrence, Cushman & Wakefield, with the added language "sole representative"

Vote: Passed 5-0.

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11. REPORTS & COMMUNICATIONS

A. Mayor / Chair Report

1. Announcements

- a. Mayors Conference update regarding a presentation on medical costs incurred at hospitals in Contra Costa County. The statistics show that approximately 40% of the users are paying for care and the other 60% do not have medical insurance or are on Medical.

A brief discussion ensued on the cost of health care.

- b. Chamber Board update where the topic was venues to attract people downtown. He reported that the Chamber was working on a project with a downtown historic group who wishes to bring the lighting up to the standard that it was several years ago.

B. Mayoral / Council Appointments

1. Appoint a Member to the Selection Committee for the Design Engineering Firm for the Water Pollution Control Plant Upgrade
[Council Report No. 2011-122; Action: Appoint By Minute Order (Allison)]

Council Member Long presented the Staff Report 2011-122. She reported that the Pinole-Hercules JPA selected Plant Manager Ken Coppo and another agency's plant manager to serve on the Design Engineering Firm Selection Committee. In addition, each of the two cities may select an additional member to serve on the committee. Council Member Long presented her

recommendation to appoint former plant manager Julian Misra as Pinole's selection, as well as noted that she had several other alternatives.

Mayor Pro Tem Murray agreed with her recommendation and also said he had considered Keith Freeman or Shabaz Azari as good choices.

Public Works Director Allison said all were good choices.

ACTIONS: Motion by Council Member Long / Banuelos, The Council Approved the Selection of Either Julian Misra, Keith Freeman, or Shabaz Azari, To Serve on the Engineering Section Committee, Prioritized In That Order.

Vote: Passed 5-0.

C. City Council / Agency Board Committee Reports

Council Member Banuelos reported on the ABAG Fall General Assembly meeting. The topic was Greening Our Communities, and presentations included promoting community vegetable gardens, parks for healthy living, and reports from cities about their Green programs. He said he planned to contact the speaker from Kaiser regarding potential grants.

Council Member Long reported:

1. Update on the Swim Center fundraising group's endeavors. They have already reached out to Kaiser and several Richmond businesses, and received a \$1,500 raffle price donation for the softball event. She presented their logo - Sink or Swim (SOS).
2. Council Member Long also announced an upcoming meeting scheduled with Supervisors Gioia and Glover, Planning Commissioner Toms and Council Member Green and Maureen Toms and on October 20th to discuss other sponsorships and fundraising. Café Soleil will be donating one day's sales receipts, and Pear Street Bistro, fifteen percent of their sales to the SOS.
3. Reported on a solar installation program/course offered at Contra Costa College, suggesting the city may want to research further to see if there would be an opportunity for a cost savings on installation when we move forward with any solar projects.

Mayor Pro Tem Murray reported:

1. WCCIWMA was planning a symposium to discuss their vision and goals, and will include the Governor's mandate to increase the diversion from fifty to seventy-five percent. They are currently seeking a facilitator and when scheduled, staff and council would be invited.
2. The draft Single Use Bag ordinance was approved by the WCCIWMA Board and would be forwarded to all West County cities for comment to review to determine whether they want to adopt nuances for each city. He said that Pinole would review it, once it was completed.

Council Member Green reported:

1. Announced that the Supervisor's Town Hall meeting on October 20th would be televised.
2. Announced he was provided with a report to share with Council titled "What a First Year Attorney Is Worth."
3. Thanked all persons for their hard work raising funds for the Recreation Department

Mayor Swearingen individually thanked Community Service Commission Parsons and Recreation Director Wooldridge for their efforts on the Golf Tournament. He also announced the upcoming Youth Center Gala on November 4th to raise funds for the Youth Center.

D. Council Requests For Future Agenda Items

1. Analysis and report regarding merit/step raise calculations, the cost and a discussion regarding the methodology to do so, either by resolution or an amendment to the Employee Personnel Rules. (Long)

City Manager Espinosa explained the compensation step process. The Personnel Rules were reviewed and updated in 2009. She explained this involved "Wages and Benefits" and must be cautious and asked for time to discuss this with the City Attorney and Human Resources Director, as a change in the Personnel Rules must be negotiated.

Mayor Pro Tem Murray cautioned that reviewing the Personnel Rules was a huge undertaking. The City Manager was to research and discuss further and report back.

2. Develop a written outline of the labor negotiations process (Long)

Council Member Reyes said that the new "Fact Finding" law (AB 646) which becomes effective January 1, 2012.

Mayor Swearingen informed the community that AB 646 was signed into law on September 10, 2011 requiring if an impasse is reached, prior to imposing, the City must participate in "fact finding" before moving to the Council's last step.

E. City Manager / Executive Director Report / Department Staff

City Manager Espinosa reported that Tina's was open and the business seemed to be very successful. The City had not closed out the project yet because the reconciliation is still underway. When complete, a report will be presented to the Council.

F. City Attorney Report

There was no report.

12. ADJOURNMENT

At 9:42 p.m., Mayor Swearingen adjourned the Regular meeting to the to the Regular Redevelopment Agency/City Council Meeting of November 1, 2011 and in memory of the fallen US Armed Service members and Pinole citizens Amber Swartz, Robert Michael Roybal, Isabelle Catrino and Lucille A. Lilly (Heim).

Submitted by:

Patricia Athenour, MMC
City Clerk

APPROVED BY AGENCY BOARD / CITY COUNCIL: