

**PINOLE CITY COUNCIL
MINUTES
JANUARY 20, 2015**

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 Murray called the Regular Meeting of the City Council to order at 6:00 p.m. and led the Pledge of Allegiance.

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

A. COUNCIL MEMBERS PRESENT

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

B. COUNCIL MEMBERS ABSENT

Council Member Tim Banuelos was absent/excused. The voting record reflects his absence.

C. STAFF PRESENT

Belinda Espinosa, City Manager
Hector De La Rosa, Assistant City Manager
Benjamin T. Reyes, City Attorney
Dean Allison, Development Services Director
Neil Gang, Police Chief
Rob Piper, Fire Chief
Winston Rhodes, Planning Manager
Patricia Athenour, City Clerk

City Clerk Athenour announced the agenda was posted on January 15, 2015 at 4:00 P.M. and all legally required notice was provided. Following an inquiry to the Council, the Council reported there were no conflicts with any items on the agenda.

Ms. Athenour also entered the following items into the record, and noted that copies were available for the public at the rear of the Chamber.

1. Item 9A – PPT on Pinole Hercules Water Pollution Control Plant Project Update
2. Item 9B – PPT on the Pinole Hercules Water Pollution Control Plant
3. An email from Anthony Palmero stating opposition to the recently installed stop sign at Pinole Valley Road and Moraga.

3. CONVENE TO A CLOSED SESSION

No speakers addressed Council regarding the Closed Session matter. At 6:05 p.m., Mayor Murray convened into a Closed Session and announced there were no reportable actions from Closed Session.

- A. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION
Pursuant to GC Section 54956.9(d)(4) (One Matter)

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

At 6:55 p.m., Mayor Murray reconvened the meeting in open session. He announced there were no reportable actions from Closed Session.

5. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS

- A. Proclamations
- B. Presentations / Recognitions
- C. Community Announcements

There were no proclamations, recognitions or presentations. Mayor Murray announced the Rotary Crab Feed on February 21, 2015.

6. CITIZENS TO BE HEARD (Public Comments)

The following citizens addressed the City Council:

Joshua Anderson, Pinole citizen, Boy Scout Troop 127, addressed Council to introduce his Eagle Scout project, which will be renovation of the horseshoe pit at Fernandez Park. The project will include reinstallation and landscaping to make the area usable and aesthetic pleasing. The project is slated for January 24th and January 25th. He explained that he selected the project due to proximity of his residence and because he spends a lot of time in Fernandez Park. Joshua requested donations of materials for local hardware and building supply stores.

Scott Lee, representing East Bay Ophthalmology proposed at Pinole Gateway, thanked the Council for their support and reported recently receiving a Cal Competes Grant from the State. Planning Manager Winston Rhodes alerted him to this grant and Ms. Espinosa and Mr. De La Rosa were instrumental with their assistance. He said the grant will allow the financial means to keep his practice in Pinole and enlarge the medical hub in Pinole.

7. CONSENT CALENDAR

ACTION: Motion By Council Members Swearingen / Long, The City Council Approved the Consent Calendar, Following a Brief Discussion On Item 7C.

Vote: Passed 4-0-1
Ayes: Green, Long, Murray, Swearingen
Noes: None
Abstain: None
Absent: Banuelos

- A. Approved the Minutes of the Meeting of December 2 and December 16, 2014

- B. Received the December 6, 2014 – January 16, 2015 Lists of Warrants & Payrolls Dated:
1. December 19, 2014 Payroll in the Amount of \$336,460.67
 2. January 2, 2015 Payroll in the Amount of \$334,989.79
 3. January 16, 2015 Payroll in the Amount of \$358,668.37
- C. Received Report on Financial Update Resulting From the Installation of Solar Panels on the Youth Center and Swim Center [**Council Report No. 2015-01; Action: Receive Report (Allison)] REMOVED FOR DISCUSSION**

Mayor Pro Tem Swearingen removed Item 7C, stating that he thought the solar project would completely zero out electrical expenses.

Dean Allison, Development Services Director responded. He stated that the swim center solar panels over produced; however, the Youth Center produced approximately 40% of the electricity required. The facility was limited on roof space; more panels would have provided more energy consumption but there the design was maximized to the degree possible. The total savings was \$14,600 annually.

8. PUBLIC HEARINGS

There were no Public Hearings.

9. OLD BUSINESS

- A. Status Update on the Pinole - Hercules Water Pollution Control Plant Upgrade [**Oral Report; Action: Receive Report (Allison)]**

Dean Allison, Development Services Director presented an oral report into the record and cited the following project challenges:

- Constructing the plant upgrades while the plant and corporation yard remain operational.
- Lack of available space at the plant
- Amount of upgrades required

A site plan was provided to depict the areas where upgrades and construction would occur. The 2-Year Project Timeline anticipated a completion date in November 2017. Mr. Allison discussed the upcoming benchmarks: the prequalification process, permit from San Francisco Bay Conservation and Development Commission, permits from the County, the loan application from State Water Resources Control Board and negotiation of the project labor agreement - all which must be completed by June 2015. Allison expects “90%” plans in March, final plans in May and advertisement to occur in June 2015. Mr. Allison was available for questions.

Mayor Pro Tem Swearingen confirmed the project cost was generally holding at the same level. Mr. Allison said it was nearly 44 million dollars and had risen somewhat. An updated cost estimate would be available in March 2015.

Council Member Long said staff had never discussed the potential for the unknown occurrences as those could lead to higher costs. She asked when the 90% plans were initially promised to be delivered, and wants to insure they are not trying to put the City in a point of negotiating for something that was contained in the contract.

Mr. Allison said there would be extra costs, not contained in the preliminary estimate. The plans have been delayed three months and delivered in the middle of December 2014. Mr. Allison

said HDR met with City staff and demonstrated how they would commit resources to deliver the 90% plans by the end of March. He is confident that the Project Manager would have priority on the resources needed.

Council Member Long asked that the HDR's president attend the next Pinole Hercules Subcommittee meeting.

Mayor Murray asked how the three month delay affects Carollo's review and what is the City's our "stick" related to the getting the engineering completed.

Mr. Allison said the overall project would not be delayed by the delay in the engineering drawings. He said non-engineering items were also impacting the schedule, and the City had every right to expect the plans to have been completed in December, but stated there were no liquidated damages or identified penalties in our contracts.

Mayor Pro Tem Swearingen – insult to your engineering to throw a set of plans to him that were less than 90%. Mr. Allison said they explained it today as a failure in communication and it was their fault.

Council Member Long added that HDR had not submitted invoices for 90% drawings.

In closing, Mayor Murray asked if Carollo would have the personnel available to complete the review in March. Mr. Allison confirmed Carollo was committed to a 4-week turnaround.

- B. Review and Provide Direction on the Draft Fiscal Agreement With the City of Hercules for the Planned Expenditures on the Pinole-Hercules Water Pollution Control Plant Upgrade Project [**Council Report No. 2015-02; Action: Receive Report and Provide Comments to City Manager (Espinosa)**]

Belinda Espinosa, City Manager entered Council Report No. 2015-02 and the fiscal agreement draft 12A and 12B (containing Hercules' comments) into the record, stating that the Pinole-Hercules Subcommittee had worked on the draft agreement for over a year, and now directed staff to send the draft agreement to their respective Councils for comment. She said the fiscal agreement is unrelated to the 2001 agreement which is the guiding document for running the plant. The upgrade is a \$45 million project and Pinole is in a joint partnership with Hercules. The purpose for the fiscal agreement is to have a written understanding how the financial affairs will be conducted. Espinosa said the State was interested in this document and the issues were being worked out between the cities. The fiscal agreement does the following:

- Establishes Pinole as the Project lead;
- States that the 3rd party administrator is also the Pay Agent;
- Identifies the criteria for project costs and non-construction costs;
- Creates two separate funding accounts,
- Creates a safety net,
- Creates a system for review and change orders; and
- Identifies the City Council as the final approval for change order disputes.

An initial deposit is required in advance, based on the current engineer's estimate of the cash flow and timing of the payments. Project accounts will not fall below \$500,000 from each City, and the Fiscal Administrator may order deposit of additional funds to come from the safety net. Only project account funds will be used to make invoice payments.

Each City shall secure backup funding up to \$3.5 Million as a financing safety net and each City agrees to authorize it by resolution. Upon completion of the reimbursement requests, each City will have five business days to review and comment.

A Notice of Completion (NOC) will be filed with the County and a funds analysis will be done and any remaining funds will be disbursed equally to each city within ninety days after the NOC filing and after all bonds and sureties released. A contingency fund will be established for the Project with a budget of seven percent of the contractor's final bid award, and staff shall be authorized to administratively approve change orders under specific guidelines.

Ms. Espinosa identified and discussed the major outstanding issues contained in Section 8(a), Section 9(d), and Section 9(c) – the Project Labor Agreement language.

Staff was available for questions.

Mayor Pro Tem Swearingen asked if separate checks would be cut when dispersing funds back to the contractor. Ms. Espinosa confirmed that was correct.

Council Member Long presented her concerns, also discussed with the subcommittee. She said she was not a proponent of the highlighted portions of the draft agreement as well as a few other issues. Having not seen any details on the replacement of the corporation yard building, she asked whether there was an area to replace it within the parameters of the wastewater plant. She said Pinole gave up part of our property for the upgrade and there should be language for replacement with the same size/type of building. In addition, some language in the 12B draft was too detailed and should be outside the fiscal agreement; specifically the Project Labor Agreement should not be part of a fiscal agreement.

City Manager Espinosa requested comments, including any changes additions and deletions and asked if the Council shared Council Member Long's position. Espinosa said that Hercules City Council had already approved the fiscal agreement, but she would provide the Council's comments back to Hercules City Manager David Biggs.

Mayor Murray suggested reviewing Attachment B – Version 12B (Hercules comments) taking each section individually and providing appropriate direction and changes, as needed.

Mayor Murray raised questions related to one City's responsibility if the other could not make their loan payment; and whether one could retrieve their funds from other than the Sewer fund, requested clarity with the language on page 7.

City Manager Espinosa said each loan stands individually of the other and each City is responsible for their respective loans. She also said the city does not pledge the General Fund, but if there was no money in Sewer Fund, the state would cause the city to raise the rates to pay the loan.

Mr. De La Rosa said that the State also demands the city maintain a debt cushion and one year's payment in reserve. He addressed the language on Page 7, regarding reimbursement for expenses. He explained that since the City entered into Phase 1 design contract prior to the City Council approving a resolution authorizing reimbursement for construction so none of the costs are reimbursable from the State Revolving Funds. In 2012, the Council approved a resolution authorizing construction and the \$2.7 million dollar contract and costs are reimbursable.

Ms. Espinosa said Pinole holds the responsibility and liability because the contracts are in Pinole's name. She said Pinole pledged the revenue from the rates to pay the loans back, and if short, we could need to raise the rates.

Council Member Swearingen said there was still a slight element of doubt that Hercules could fail to pay and Pinole would be stuck with it. Espinosa said that was the reason for the fiscal agreement.

Council Member Green requested an explanation of issues not adequately covered in the Pinole-Hercules 2001 agreement, referring to page 2 of the staff report.

Ms. Espinosa explained that the City of Hercules pays in arrears; Pinole pays the invoices and then bills Hercules, allowing thirty day for payment. In essence, Pinole has cash flowed on prior projects. The agreement did not address change orders and did not address performing a major capital improvement project.

City Manager Espinosa referred to Page 3, Section 3(c), stated that there could be a timing issue for the 30-day payment schedule, with the current review process and suggested that the authorizing staff or the construction management team. Council Member Swearingen agreed.

In response to a question raised by Council Member Green, Mr. Allison explained that payments are made based on benchmark performance points and Section 9B outlines the 30-day payment requirement and the word "City" means City staff, not City Council.

Council Member Long suggested adding "administrative approval" for clarity. Ms. Espinosa said the agreement states that the Fiscal Agent will be a third Party, like a bank.

Discussion ensued regarding taking a 30 days to review invoices would place the City outside the 30-day requirement for payment to the contractor. City Attorney Reyes said there is a law that requires payment within thirty days.

Council discussion followed with proposed changes to the agreement. City Attorney Reyes asked Council to articulate the issues and allow staff to draft the language to meet their concerns. Changes were made to include:

Page 3, Section 3(c). Add "administrative" approval.

Page 4, Section 6. Clarify that Hercules owns 50 percent of the capital improvements only and not the land.

Page 5, Section 8. Sharing of Project Costs – modify language regarding the review process and Hercules response with comments within 10 days prior to bid advertisement.

Page 6-Section (ii) – (v). Add language in (ii) ..."or plant limitations and requirements" and (iv) add language ..."such as water, sewer lines, subservice utilities" and address mitigation for potential impacts to existing infrastructure from the Project funding.

Page 6(c). Discussed terms "newly constructed" and "like for like" and to draft language to insure if the upgrade of the plant restricts ability for "like for like" and if it becomes necessary to construct outside of the property that the City of Pinole should be reimbursed.

Page 7, Section 9(d) Payment of Invoices. Add language providing authority to the Development Services Director to approve payment (if not administratively approved by Hercules), and reduced the time for payment from 30 to 14 days.

Page 9, Section 16(a) Construction Management. Add “administratively” approved by both parties.

Add language to cover unknown conditions that might arise, and Council Member Long provided an example where weather could cause an unknown condition to the pavement and subgrade. Ms. Espinosa said such language could be included in a new subsection.

Pages 10 & 11. Pinole staff indicated Hercules’ changes were acceptable.

Council Member Green said to add language that Pinole has the final say, since the contract and the permit are in Pinole’s name. Mayor Murray said that Section 3c states Pinole is the Project Lead and enters into contracts on behalf of both cities. City Manager Espinosa agreed the document adequately addressed Pinole’s position, and since the contract is in Pinole’s name, we have to make the decision.

Council Member Green stated that the City needs to begin discussions about a “contract for service” with Hercules after this agreement is fully negotiated.

City Manager Espinosa said staff is of the opinion that the Project Labor Agreement language should not be in the fiscal agreement, and suggested sending a letter under the Mayor’s signature to Hercules with a strong statement and our intention not to put the project out to bid until the Project Labor Agreement issue is resolved, and to keep the project moving forward timely.

Council Direction: Make the changes as discussed above and draft a letter to Hercules Mayor for Mayor Murray’s signature.

The following citizen addressed the Council:

Anthony Gutierrez, Pinole citizen, addressed Council regarding Page 6 Section 9B, regarding need to add a general disclaimer for unknown or unforeseen mitigations. He commented on his observations on the Hercules City Council meeting and their position on this topic and they desire to come to the table.

City Manager Espinosa said language was being added relative to unknown conditions or unforeseen mitigations.

Ms. Espinosa responded that language was being added under Section 4. . City Attorney Reyes said he received direction on the issue and it is also in the City’s Standard Specifications. Mr. Gutierrez also commented about language allowing Hercules to come to the table.

10. NEW BUSINESS

There were no New Business items.

11. REPORTS & COMMUNICATIONS

A. Mayor Report

1. Announcements
 - a. Announced Rotary Crab Feed on February 21 at Senior Center.

B. Mayoral & Council Appointments

1. Reappointment of TAPS Committee Members Doug Taylor and Faith Dunham-Sims [**Council Report No. 2015-03; Action: Council Discretion for Reappointment (Athenour)**]

Patricia Athenour, City Clerk presented Council Report 2015-03 into the record. She reported that the TAPS members Taylor and Dunham-Sims have filed applications for reappointment to the TAPS Committee. They both have served since October 2007 and staff recommends reappointment for a two-year term, expiring November 30, 2016.

ACTION: Motion By Council Members Swearingen/ Green, The City Council Reappointed Doug Taylor and Faith Dunham-Sims for Two-Year Terms on the Traffic and Pedestrian Safety (TAPS) Committee.

Vote:	Passed	4-0-1
	Ayes:	Green, Long, Murray, Swearingen
	Noes:	None
	Abstain:	None
	Absent:	Banuelos

Ms. Athenour also reported that she had received an application for the vacancy on the Planning Commission and one for the opening on the County CCTA Advisory Board. She would contact the Interview Subcommittee (Banuelos, Long and Sekins) to schedule interviews.

C. City Council Committee Reports

Mayor Pro Tem Swearingen reported that the keynote speaker at the Mayors Conference was BART Board Member Joel Keller who discussed the plans and extensions for BART, increasing parking at El Cerrito and Richmond and revamping the circulation at the Richmond station. He also reported that Council Member Long was nominated and elected as the 2015 Chair of the Mayors Conference.

Council Member Long reported that Antioch Mayor Parker is the new Vice Chair. Orinda Mayor Amy Worth was reappointed to the Metropolitan Transportation Commission and Dave Hudson and Newell Arnerich were appointed to Contra Costa Transportation Authority.

Council Member Long said the Executive Committee was continuously looking for meeting topics and speakers. San Pablo Mayor Paul Morris suggested crude oil tanker delivery.

Mayor Murray suggested the following topics: the Delta, tunnels, water and also opportunities for the desalination plant proposed in Pittsburg, and the relationship between water and the high speed rail.

Mayor Pro Tem Swearingen reported meeting with the Chamber this month and reviewed the Winterfest. He said the Chamber was pleased working with Assistant City Manager De La Rosa, and also noted that the State of the City luncheon was tentatively planned for April 2, 2015.

Mayor Pro Tem Swearingen also reported that trees planted in honor of a person were removed at Pinole Valley High after the District said they would be saved. He requested staff to investigate the matter and find out what mitigation would be accomplished after the hill is repaired. He also spoke to the disrepair of the Bank of Pinole and asked if something could be done about painting the galvanized roof capping.

Mayor Murray reported on the West Contra Costa Integrated Management meeting. A firm had been selected to perform the recruitment for an Executive Director. The discussion was focused on salaries and postponed to a special meeting on January 26, 2015. Mayor Murray sought input from staff, with a salary in line with our managerial personnel. He reported that the current organizational structure appears to remain intact.

D. Council Requests For Future Agenda Items

The following requests were presented and approved by the following vote / Council consensus.

1. Summary Update on Lawsuits and Claims
2. Mayor follow-up with staff on the Council Future Agenda List
3. Staff oversight on the cleanliness standards at the Senior Center – continuous odors and water leakage in restrooms

Assistant City Manager De La Rosa said the oversight is conducted by the Recreational Coordinator and custodial staff. He said he has comment sheets and was aware of an odor in the Women's Restroom.

Council Member Long reported receiving positive emails regarding the installation stop signs on Simas.

Mayor Murray said he had received several complaints regarding the sign at Simas and Moraga and asked if there was any member interested in making a motion for reconsideration. There was no motion to reconsider the matter.

E. City Manager Report / Department Staff

1. Review Report on the Condition of the Roof at the Pinole Senior Center
[Oral Report; Action: Receive Report (De La Rosa)]

Hector De La Rosa, Assistant City Manager updated Council on the condition of the Sr. Center. Roof Consulting Services has been retained to analyze the condition of the roof, and are scheduled to inspect the property and review all City facilities, including the Sr. Center in approximately. He said staff should have a report by the end of February and will use the report to develop a work plan.

2. Discuss Process for Measure S 2014 Prioritization & Schedule Future Special Meeting Date
[Oral Report; Action: Receive Report (Espinosa)]

Belinda Espinosa, City Manager opened the dialogue with Council regarding the process of prioritizing Measure S 2014 spending. She referenced earlier suggestions regarding developing a three or five-year plan for the tax monies, of which collection of the \$1.8 Million per year will begin in April. She suggested conducting a study session on Monday, February 26, 2015 at 5:30 PM.

After a brief discussion, the Council consensus was to schedule a Special Workshop on Saturday, February 7, 2015 at 10 a.m. in the Community Room to discuss Measure S 2014 Prioritization.

F. City Attorney Report

City Attorney Reyes reported that he would prepare a Summary Claims / Litigation report and present it at the February 17th Council meeting under Closed Session.

12. ADJOURNMENT

At 9:50 p.m., Mayor Murray adjourned the Regular meeting to the Regular City Council Meeting of February 3, 2015.

Submitted by:

Patricia Athenour, MMC
City Clerk

APPROVED BY COUNCIL: