

**PINOLE CITY COUNCIL
MINUTES
FEBRUARY 17, 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
Council Member Phil Green arrived at 6:07 p.m.
Council Member Debbie Long
Council Member Tim Banuelos

Mayor Pro Tem Roy Swearingen, excused. The voting record reflects his absence.

B. 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
Patricia Athenour, City Clerk

City Clerk Athenour announced the agenda was posted on February 12, 2015 at 4:00 P.M. and all legally required notice was provided. Following an inquiry by the City Clerk, the Council reported there were no conflicts with any items on the agenda.

City Clerk Athenour reported that she had received confirmations from all five Council members of availability on March 10, 2015 to hold a Special Meeting workshop to continue discussion Measure S prioritization.

3. CONVENE TO A CLOSED SESSION

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

Mayor Murray announced there was no Closed Session scheduled this evening.

5. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS

- A. Proclamations
- B. Presentations / Recognitions

There were no proclamations or presentations.

C. Community Announcements and/or Events

Mayor Murray reported that he and Mayor Pro Tem Swearingen interviewed a candidate for the Community Services Commission. Both believed he would be a good addition to the Commission. The matter would be voted on later in the meeting.

He announced the upcoming community events:

February 18 Law Enforcement Dinner
 February 21 Rotary Crab Feed is the Rotary Crab Feed honoring Police and Fire Officers of the Year.

6. CITIZENS TO BE HEARD (Public Comments)

No speakers addressed the City Council under this section of the Agenda.

7. CONSENT CALENDAR

ACTION: Motion By Council Members Long / Banelos, The City Council Approved the Consent Calendar, As Presentd

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

- A. Approved the Minutes of the Regular Meeting of February 3, and the Special Workshop Meeting of February 7, 2015
- B. Received the January 31, 2015 – February 13, 2015 List of Warrants and the February 13, 2015 Payroll in the Amount of \$334,487.85
- C. Adopted **Resolution 2015-05**, Rescinding Resolution No. 2013-73, Approving Addendum Number One To The Environmental Impact Report (“EIR”) For Upgrades At The Pinole-Hercules Water Pollution Control Plant & Adopt A Revised Addendum To The 2010 Pinole-Hercules Water Pollution Control Plant Upgrade Project EIR Adopt A Mitigation Monitoring & Reporting Program, And Reaffirm The Previously Adopted 2010 Environmental Findings And Statement Of Overriding Considerations Under CEQA For The 2013 Water Pollution Control Plant Improvement Project [**Council Report No. 2015-08; Action: Adopt Resolution Per Staff Recommendation (De La Rosa)**]

8. PUBLIC HEARINGS

There were no Public Hearings

9. OLD BUSINESS

- A. Approve Version 14 of the Draft Fiscal Agreement Between the City of Pinole and the City of Hercules For the Pinole-Hercules Water Pollution Control Plant Upgrade Project [**Council Report No. 2015-09; Action: Adopt Resolution Per Staff Recommendation Approving Fiscal Agreement (Espinosa)**]

Belinda Espinosa, City Manager, presented Council Report 2015-09 and exhibit materials into the record. At the direction of the Council, the presentation was limited to discussion of the outstanding issues:

1. Section 8 – dealing with the plans and specifications for the construction documents.

The two Councils directed the staff to get together and work out the details. The reference to the Project Labor Agreement (PLA) is to be removed in the Fiscal Agreement, but the plans and specifications will make reference to the PLA.

Ms. Espinosa said if both Councils approve a PLA, there is no issue, but if Hercules decides not to approve a PLA, then the language must be removed from the Plans and Specifications, or Hercules may not choose to approve them.

2. The letter from Hercules requesting 45 days to consider approving a PLA and the impacts associated with the project schedule.

Ms. Espinosa said forty-five days was too long. The 90% drawings will be completed by the end of March and that schedule would allow approval to advertise the bids at the June 2nd Council meeting. A 45-day review period would allow Hercules until April 14th to decide if they want a PLA or not. She said it also impacts the time to negotiate the PLA. Ms. Espinosa was available for questions.

Council questions followed.

Council Member Green said Pinole holds the permit, and the 2001 agreement gives Pinole the authority to move forward to do what is required to meet the State's requirements. Although, he said he was not in favor of the treatment method because it would not result in "pure water." He asked staff to confirm that absent of any other project agreement specific for this plant upgrade, the 2001 agreement reverts, which states that Hercules pays half the costs. Council Member Green said these continuing discussions and inaction take our staff away from other projects and increase costs. His position was to revert back to the 2001 agreement, conduct the required quarterly meetings and remit an invoice to Hercules every thirty days.

City Manager Espinosa said his reference to "pure water" implied tertiary. She said there is a small section of the plant that will allow for future addition of a tertiary option. She further stated if there is no Fiscal Agreement, we revert back to the 2001 agreement which allows Hercules to pay thirty days in arrears, and would require Pinole to finance the entire upgrade and bill Hercules for their fifty percent. Ms. Espinosa explained that Pinole would have to seek financing for the additional \$24 million and figure out how the cash flow would work. If done through a traditional bond issuance, it would require an additional pledging and increase of the rates. It is possible to seek funding through other means, such as California Communities but it would cause the rates to increase.

Council Member Long asked if costs above the fifty percent would be attributable to them, and City Attorney confirmed that was correct.

Council Member Banuelos asked if the 30-day and the 45-day were two separate time periods, or whether they were overlapping.

Ms. Espinosa said they were separate and that Hercules would not even consider the PLA until Pinole approves the Fiscal Agreement.

Mayor Murray said the issue was whether the PLA language was in the plans and specifications. With it removed, the Fiscal Agreement should move forward, and the PLA discussion is a separate discussion yet to occur and noted in the draft side letters; not an issue any longer in the Fiscal Agreement.

Council Member Long said we already struck language regarding the PLA and Mayor Murray's makes it clearer. She addressed the points raised by Council Member Long regarding the invoicing and said if Hercules is invoiced when Pinole receives the invoices, there might be a 30-45 day delay. That language could be in the contract and the cost would be shared by both cities, if there is additional cost for the 45-day turnaround. To Council Member Green's comment, she said the continuing delays have been attributed to the change in Hercules staffing; several Public Works Directors, Finance Directors, and three City Managers.

Ms. Espinosa explained the timeline and process of the invoice from arrival to payment.

Mayor Murray said if the Council approves the Fiscal Agreement tonight, it would allow for 30-day review of the plans and specifications to occur and the 45-day timeframe.

Ms. Espinosa clarified that Hercules has forty-five days from tonight to determine if they want a Project Labor Agreement. Sixty to ninety days are needed to negotiate the PLA and get sign offs from all the unions, which puts a squeeze on the schedule. Espinosa said some PLA deal points have been developed, but discussed the timeline and the process for joint review by both cities of the deal points, once they decide on a PLA. She estimates negotiations would not begin before mid-May and could last until September, and then be reviewed and approved by both Councils. Based on this schedule, she estimated awarding a contract in mid-January 2016.

Council Member Green said he believed Pinole was subsidizing Hercules in the plant and also in other agreements, believes they should be more willing to work with together and said it may be time to begin thinking about severing the agreement.

Mayor Murray said all the delays at the front end of the schedule affects the delivery date and said it could have other effects such as fines.

Discussion followed regarding the term of the Water Board permit and the life of the plant upgrade. Staff said the current permit expires in 2017, and the proposed plant upgrade should last 35 – 40 years. Ms. Espinosa said a letter has been written requesting changes to some of the milestone dates, and it takes the Water Board approval to change the permit ending date. She said they could be subject to fines for being late, and fines are shared by both agencies.

Mayor Murray said staff must insure no points are missed in the PLA, and mentioned specifically language prohibiting striking. He expressed concern if there was a strike our plant employees would not be able to work.

The following speakers addressed the Council

Jack Meehan, Pinole citizen, discussed the historical perspective related to the cities entering a joint agreement to treat sewer services in Pinole. He urged the Council to approach this in a mutually beneficial manner, and avoid nitpicking. He asked what would happen after 45 days if Hercules disapproves a PLA. He stated preference for language stating Pinole has the professional expertise and after a certain number of days to approve a PLA, or Pinole would move forward. If there are valid concerns Pinole would consider amendments, but did not support giving them veto authority, and absent of that, revert back to the 2001 agreement.

Anthony Gutierrez, Pinole citizen addressed Council and said that they are almost reaching conclusion. In terms of the PLA language, both cities agree that the fiscal agreement should be devoid of PLA language and he suggest that there be two plans and specifications; one with PLA language and one without. He asked if pushing it to January includes time for Carollo to do the 90% review. He also requested an updated letter written by Development Services Director Allison with a new timeline

City Manager Espinosa responded affirmatively to his question regarding sufficient time for Carollo's review and also said when speaking about "plans and specifications," it only pertains to the construction project.

James Tillman, Pinole citizen said his concern is that Hercules will do anything to stop a PLA, and the financial agreement. He said they should work on getting the fiscal agreement approved and then address the PLA issues. Tillman said the project is behind, and the issue was to move the schedule up, get it funded and break ground. He also suggested securing a waste water professional to work on this project.

David E. Kangas, Hercules citizen, reported he attended the last Hercules Council meeting and discussed the treatment displayed to Mayor Murray. He said Hercules was trying to get out of the PLA, speaking to the ABC behind closed doors, and not considering his testimony as a constituent. He encouraged Pinole to stand up to Hercules and that he was in agreement with Pinole City Council. Kangas said he will hold Hercules accountable to their voting record. He also said that he agreed that Pinole was subsidizing Hercules.

Mayor Murray said with the addition of language he spoke about earlier, he believed both cities would be able agree on the Fiscal Agreement, referencing removal of the PLA language from the Plans and Specifications, in the Fiscal Agreement document.

Council Member Long forwarded the following language to be added to the Fiscal Agreement: "A project labor agreement shall not be part of the Fiscal Agreement."

Council Member Green asked what happens if Hercules does not agree to the Fiscal Agreement. He said he heard they indicated they have major issues and are not in favor of the PLA.

City Attorney Reyes said it would behoove both parties to work out language on a PLA agreement. Absent the fiscal agent agreement, there is a different method to calculate costs. He anticipated this was not going to be an issue. He said that the intent with this language was to bifurcate the Fiscal Agreement from the Project Labor Agreement.

Mayor Murray said the Fiscal Agreement is one aspect and the PLA is another. Our Council has addressed the concerns with the forty-five day review period for everyone to understand it compromises the project schedule.

Council Member Banuelos agreed with the need to treat them separately, and was in agreement with the language forwarded by Council Member Long, to which Council Member Long also stated she was supportive to approve the Fiscal Agreement with the added language.

Council Member Green asked if the most recent version still states that Pinole can make the decisions related to change orders.

Ms. Espinosa said that language has not changed in any version and read from the document. The language referencing the 45 days is in the letter, not the Fiscal Agreement.

ACTION: Motion By Council Members Long / Banuelos, The City Council Adopted Resolution 2015-06, Approved Version 14 of the Draft Fiscal Agreement Between the City of Pinole and the City of Hercules For the Pinole-Hercules Water Pollution Control Plant Upgrade Project, As Amended to Add Clarifying Language to Section 8A that the Project Labor Agreement Is Not Part of the Plans and Specifications, as follows: "It is agreed for the purpose of the Fiscal Agreement, A Project Labor Agreement shall not be considered as part of the specifications."

Council Member Green requested assurance that the project will continue to move forward if there is an objection to the final plans, as nothing has been defined. Mayor Murray responded that staff had settled that said the staff has settled those ancillary issues.

City Attorney Reyes said he felt that the additional language tonight would not slow down the project.

Council Member Green said if this motion passes, we should look at our other options, in case down the road there are problems with this particular item.

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

Council Member Long said if Hercules does not approve the Fiscal Agreement with the added sentence next week, she proposed calling an emergency item of this Council.

Mayor Murray opened the discussion related to the 45-day review period requested by Hercules in Attachment C. It appears this letter eliminates a PLA, provides a veto power, and Pinole is in a reverse position from where we were in the beginning. He stated he hoped that the cities can work this out mutually to conclusion.

Council Member Banuelos asked staff how much time should be given to consider the PLA.

City Manager Espinosa said time is of the essence, but three weeks was acceptable.

Council Member Long said, referring to the letter, asked how to modify the language in order to allow us all to work collaboratively without that paragraph? She suggested, and also did so at the Subcommittee meeting, having a joint meeting so we can fully understand one another's position. Prior to proceeding with the PLA, conduct a joint meeting with both Councils. She restated for the record, that there has been a lot of playing the victim role regarding the PLA. Pinole could have approached it differently, but their whole Council was aware after the second meeting, but waited until the afternoon before Pinole was ready to take a vote in November. All

acknowledge Pinole could have started the process differently but they could have responded earlier.

Mayor Murray discussed adding language regarding “working out to an agreeable conclusion” or something to that affect.

City Attorney Reyes suggested drafting a procedure to “meet and confer” if Hercules decides they have an issue with approving the Project Labor agreement and suggested Council Member Long’s approach to hold a special joint meeting to talk through the issues. He said there is an implied covenant in contract law to treat each other with good faith and deal fairly. He said if the Council directed Mayor Murray to sign the letter in the packet (Attachment C), he recommended a motion for such whether it is execution or with desired amendments.

City Manager Espinosa suggested writing our own letter.

Council Member Green asked if the City would be obligated to a letter signed by Mayor Murray. City Attorney Reyes said it would become a binding letter of agreement, and thus the recommendation for a motion.

Council Member Long said a special meeting would be needed to approve the letter. She asked City Attorney Reyes what language he might craft to represent the Council discussion this evening.

Mayor Murray said the letter should include the purpose and the reason Council feels 45 days is too long.

City Attorney Reyes said he would need to confer with Council Member Long to fully understand if her issues are limited to the language regarding proceeding with the project.

The following speakers addressed the Council:

Anthony Gutierrez, Pinole citizen, said he thinks that Hercules is only asking for more time, and take this as an opportunity to take the high road and live with the additional fifteen days of delay. He did not think a joint meeting is right now. He believes Hercules intention is to look at the PLA from a fiscally sound standpoint. He suggested that the City should sign the 45-day letter, as is, and give Hercules the opportunity to review and consider a PLA.

James Tillman, Pinole citizen, said a Hercules council member was present with Pinole discussed the PLA, and that they had sufficient time to weigh in. Tillman said Pinole was subsidizing Hercules again, as was done with the dispatch contract. He urged Council not to give in because Pinole has the legal responsibility and holds the permit for the plant.

David Kangas, Hercules citizen, spoke in favor of a PLA, which he said guarantees good workmanship. He referenced an article in the West County Times regarding a construction situation at the County jail in Pleasanton. Kangas said he attended a meeting where Hercules was plotting how to override Pinole and the PLA, and also said that the City Manager did not give some materials to the City Council.

Mayor Murray asked the Council for their final thoughts on the 45 day letter. He considered asking them to reconsider the 45 days, and thought Gutierrez made some good points regarding not being etched in stone.

City Attorney Reyes understood the Mayor's question regarding the meaning of "by express agreement of both parties," and asked Council Member Long if her concerns were that as well, or also related to joint ownership and funding.

Council Member Long shared the same concern about the "express agreement of both parties" language and also about the forty-five days. She said she could not sign off on Hercules' letter as it is written.

Council Member Green suggested merely sending a letter stating that we approved the PLA and we are moving forward.

Council Member Long wants to send a letter back stating that outside of the third paragraph, Pinole was interested in their input before proceeding with a PLA, and both Councils should meet jointly to collaboratively confer and work in good faith to discuss a PLA.

Council Member Banuelos supports holding a joint meeting. Although he said he did not favor allowing forty-five days; he considered giving them that time if they agreed to a joint meeting.

Council Member Green said he sees the letter as a stumbling block to Pinole moving forward, and said it was a grave mistake to even consider that language.

Mayor Murray said he was more comfortable working toward an agreement. He wants to let Hercules know that thirty days is preferable for all the reasons discussed this evening, and would appreciate if they reconsider that. Mayor Murray said he wished to stand by his letter, work with Hercules, and said he was confused by their language in the third paragraph, and seeks clarification.

Discussion followed between Council Member Green and Mayor Murray regarding the intent of the third paragraph and how to resolve it. Mayor Murray said a joint meeting provides opportunity for greater clarity and face to face discussion of all parties, as Council Member Green asked how it would be resolved.

City Manager Espinosa said if they can't resolve it, it could get to a court action, stating that a joint meeting was important and Pinole should initiate it.

In closing Mayor Murray questioned whether a letter was necessary and perhaps just an invitation to Hercules to meet shortly after their next Council meeting.

Council Direction: Mayor Murray Asked The City Manager To Extend An Invitation For A Joint Meeting Of Both Communities; Stating Appreciation For Their Letter And Require An Interpretation Of Paragraph 3 And Share An Understanding Of The Schedules

10. NEW BUSINESS

There were no New Business items.

11. REPORTS & COMMUNICATIONS

- A. Mayor Report
 - 1. Announcements
 - a. Reported on the February Mayors Conference – Key note speaker was from Kaiser and reported on the condition of medical services and finances and the impact from insurance companies putting

more pressure on hospitals and services to squeeze back services delivery.

Council Member Long commented that his point spoke to the condition that Doctors Medical is in today. They were not able to partner with other organizations, or they might have been in a better position today.

- b. Met with Congressman Thompson about our immediate needs so he can look at venues to assist Pinole with infrastructure improvements.

B. Mayoral & Council Appointments

1. Community Service Commission Appointment (**Murray**)

Mayor Murray reported he and Mayor Pro Tem Swearingen interviewed Pinole resident, Darin Clarke for a position on the Community Services Commission. Mayor Murray recommended his appointment to fill the remainder of a vacated seat, expiring on July 1, 2016. He announced there are still two more vacancies on this commission and encouraged interested citizens to apply.

ACTION: Motion By Council Members Green / Banuelos, The City Council Approved the Appointment of Darin Clarke to The Remainder of a Term, Expiring on July 1, 2016.

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

C. City Council Committee Reports

Council Member Long reported on the February 12, 2015 Water Pollution Control Plant Subcommittee meeting held on. They discussed the temporary storage needed by the Pinole maintenance yard, and said one will be constructed at the plant and one off San Pablo on the site of the former Animal Shelter. After Planning Commission review, the Subcommittee will be brought to the subcommittee.

Mayor Murray reported on the West Contra Costa Integrated Waste Management Authority meeting where the Board discussed and debated the financial package for the new Executive Director. The salary range under discussion is \$116,000 - \$150,000. He also reported that the Household Hazard Waste drop off center on Pittsburg Avenue will be open every Saturday, commencing in March, and in addition Orchard Supply accepts used paint for disposal. There was also discussion regarding future pickups in the partnering cities also.

D. Council Requests For Future Agenda Items

- As budget discussion approach, report on business license revenue collections and cost offsets due to contracting with Help My Community (Long)

E. City Manager Report / Department Staff

There were no reports.

F. City Attorney Report

City Attorney Reyes said his firm was offering, and will be sending invitations to your staff to participate in a free webinar on the new Senate Bill AB 54. Under the bill, the Department of Industrial Relations will require all contractors to register and imposes mandatory requirements for prevailing wage audits for contractors.

12. ADJOURNMENT

At 8:30 p.m., Mayor Murray adjourned the Regular Meeting to the Regular City Council Meeting of March 3, 2015, and wishing a speedy recovery to Council Member Swearingen.

Submitted by:

Patricia Athenour, MMC
City Clerk

APPROVED BY CITY COUNCIL: