

**PINOLE CITY COUNCIL  
MINUTES  
NOVEMBER 3, 2015**

**1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS**

The Pinole City Council meeting was held in the Pinole Council Chambers, 2131 Pear Street, Pinole, California. Mayor Murray called the meeting to order at 6:00 PM 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 Tim Banuelos arrived at 7:02 p.m.  
Council Member Debbie Long

**B. STAFF PRESENT**

Belinda Espinosa, City Manager  
Benjamin Reyes, City Attorney  
Hector De La Rosa, Assistant City Manager  
Neil Gang, Police Chief  
Fire Chief, Rob Piper  
Al Petrie, Interim Development Services Director  
Patricia Athenour, City Clerk

City Clerk Athenour announced the Agenda was posted on October 29, 2015 at 4:00 P.M. and all legally required notice was provided.

The Council responded to the City's Clerk question, stating there were no conflicts with any items on the agenda.

**3. CONVENE TO A CLOSED SESSION**

At 6:04 p.m., Mayor Murray convened the Noticed Closed Session.

**A. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION**

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

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Pursuant to GC §54957  
City Manager**

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

At 7:02 p.m., Mayor Murray reconvened the open session portion of the meeting. He stated there were no reportable actions from Closed Session. The record also reflected the arrival of Council Member Banuelos.

## 5. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS

Mayor Murray honored Council Member Green and said after a long illness, Council Member Green passed away on October 23<sup>rd</sup>. The Council took this opportunity to remember Council Member Green for his accomplishments during his two separate terms on the Pinole City Council; once from 1986-1990, and again since 2010. Council Member Green also served as Mayor in 1987-88. On behalf of the Council and community, he extended their deepest sympathy.

### A. Proclamations

1. 14<sup>th</sup> Annual Shelter In Place Education Day – November 4, 2015

Mayor Murray proclaimed November 4, 2014 as Shelter in Place Education Day. The proclamation was being mailed, upon request.

### B. Presentations / Recognitions

1. Dumpster Day & Coastal Cleanup Video Presentation by Community Service Commissioner Ojeda

**Debbie Ojeda**, Community Services Commissioner, presented a video report of two annual events in Pinole this fall. The Community Services Commission participated in both events.

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

The following speakers addressed City Council:

**Marcia Kalapus**, Pinole Historical Society, reported on the upcoming Historical Society events:

- November 6<sup>th</sup> - quarterly PHS meeting and program
- November 7<sup>th</sup> - author's Vincent and Rubin will autograph at Pinole Library- Noon to 3
- November 11<sup>th</sup> - 8<sup>th</sup> Annual Veteran's Day Memorial Day and flag retirement ceremony in Fernandez Park, Senior Center luncheon to follow at 12 Noon.

Ms. Kalapus also recommended naming the Skate Park in honor of Council Member Green.

**Michelle Fitzer**, City Manager-elect, addressed the Council, and thanked them for appointing her to the City Manager position and also thanked City Manager Espinosa for hiring her six years ago as the Human Resources Manager. She appreciated the support demonstrated to her from the Council and community in the past, and look forward to rejoining Pinole on November 30<sup>th</sup>. She introduced her husband, Jimmie and said they would be seeing them at City functions in the near future.

**Ellissa Thompson**, Pinole citizen and enrolled member of the Chickasaw nation, asked the Council to consider adoption of Indigenous People's Day on the second Monday in October.

**Peter Chau**, WCCUSD Citizens Bond Oversight Committee Secretary addressed Council to provide information on the following two issues:

1. Pinole Valley High School is on the School Board agenda tomorrow evening with ah proposal to extend the construction time line at Pinole Valley High from 30 months to 36 months.

Mr. Chau said the Bond Oversight Committee was never informed of this or provided an opportunity to consider and comment.

2. Reform measures - the WCCUSD Board of Education will consider reforming the Bond Oversight Committee composition and how members are selected, and are proposing to remove the city council s from the selection process

Mr. Chau said he did not agree with this proposal and found that no city councils had been consulted. He urged the Council to attend the meeting tomorrow and speak against this issue. The current model for selecting members is the one to retain. He believed that the impetus for the changes was the Civil Grand Jury report to reform the Citizen's Bond Oversight Committee. The Bond committee came up with its own proposal to reform the composition of the committee which he outlined.

Council Member Long asked Council to recollect the number of promises that were made by the District regarding open communication and transparency, and said it appeared that their staff also cannot be trusted. She encouraged everyone to attend the school board meeting tomorrow evening.

Mayor Pro Tem Swearingen said it appeared the Board was planning to move forward without any opportunity for input; they want to control the CBOC. He said it was not right to increase the construction timeline on Pinole Valley Hlgh, and stated there was a possibility that the project can be phased beginning with classrooms to house the students within 30 months and finish with the admin buildings and the gym in 36 months. He asked Mr. Chau to forward that option to the WCCUSD Board.

**Anthony Gutierrez**, Pinole citizen, reported that eighteen months ago he raised questions and requested an update about the PALC facility and that never occurred. He said the State allocated it to be part of a Housing Program, but referred to a comment made by Council Member Long during the last meeting and again requested a status report and also report on the disposition of the six million dollars.

Council Member Long said the only comment she made was that they must wait receipt of a full report on the Long Range Property Management Plan.

Mr. Reyes responded that Pinole Assisted Living Community (PALC) was a non-profit but the Pinole Assisted Living facility was part of the Housing Successor which is the City Council.

## 7. CONSENT CALENDAR

Mayor Pro Tem Swearingen raised a question on Item 7E, before a motion was made to adopt the Consent Calendar.

- A. Adopted **Resolution 2015-102**, Authorized the City Manager to Execute A Three-Year Contract with D & H Landscaping For Landscape Maintenance Services [**Council Report No. 2015-116; Action: Adopt Resolution Approving Contract Per Staff Recommendation (Petrie)**]

He asked for clarification on the pricing and said that the contract had risen nine percent this year, yet the D & H bid was significantly lower than the other two, and he had a sense there was a problem with the way the process was working.

**Al Petrie** Interim Development Service Director said the City had a five-year contract with a set price of \$87,365. The \$22,000 for extra work increased the contract, but it is similar to a contingency for responding to unforeseen issues given the anticipated rain expected this season. It will not be spent if not necessary. D & H has been a very responsive company. Petrie said he could not respond to Mayor Pro Tem Swearingen's question why the other bids were much higher.

Mayor Pro Tem Swearingen was satisfied with the response and made the motion to approve the Consent Calendar.

**ACTION: Motion by Council Members Swearingen / Banuelos, the Council Approved the Consent Calendar Items.**

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

- B.    Approved the Minutes of the Meeting of October 20, 2015
- C.    Received the October 17 - 30, 2015 List of Warrants and the October 23, 2015 Payroll in the Amount of \$ \$323,929.53
- D.    Adopted **Resolution 2015-101**, Accepted the Improvements, Direct Staff to Record a Notice of Completion, and Release Retention for the Pinole Skate Park Project / Project Contractor: MG Creations Construction [**Council Report No. 2015-114; Action: Adopt Resolution Per Staff Recommendation (Castro)**]
- E.    Received the Fiscal Year 2014/15 4<sup>th</sup> Quarter Investment Report [**Council Report No. 2015-115; Action: Receive Report (Miller)**] **REMOVED FROM THE AGENDA**
- F.    Adopted **Resolution 2015-102**, Authorized the City Manager to Execute A Three-Year Contract with D & H Landscaping For Landscape Maintenance Services [**Council Report No. 2015-116; Action: Adopt Resolution Approving Contract Per Staff Recommendation (Petrie)**]
- G.    Reviewed and Approved Responses to Grand Jury Report No. 1510 – Community Courts [**Council Report No. 2015-117; Action: Receive Report & Approve Response Letter (Reyes/Gang)**]
- H.    Adopted **Resolution 2015-103**, Designated The City Manager As The City's Board Member To The Municipal Pooling Authority (MPA) Of Northern California ("Authority") And The Finance Director As The Alternate Board Member [**Council Report No. 2015-118; Action: Adopt Resolution Approving Contract Per Staff Recommendation (Espinosa)**]

- 8. PUBLIC HEARINGS**
- 9. OLD BUSINESS**

There were no Public Hearings or Old Business matters.

## 10. NEW BUSINESS

- A. Consider Adoption Of Resolutions That Allow Participation In The State Of California Property Assessed Clean Energy (PACE) Programs And Their Respective Joint Powers Authorities **[Council Report No. 2015-119; Action: Adopt 2 Resolutions Per Staff Recommendation (De La Rosa)]**

**Hector De La Rosa**, Assistant City Manager presented Council Report 2015-119 into the record, introducing the State of California Property Assessed Clean Energy (PACE Programs). He explained what was required so Pinole residents could participate in one of these programs. Fifteen cities in Contra Costa County have approved membership in PACE. Staff is recommending two programs for Pinole participation. He explained the terms of the loan, unlike a traditional mortgage based on income; the funding mechanism is based on the value of the property. The loan cannot exceed 90% of the property value, and the debt is attached to the property tax bill. Unlike a traditional bank, where rates are competitive, the rates are higher than the marketplace at 6.75 -8.39%. Concerns were raised by Fannie Mae since the PACE loan becomes senior to all loans on the property. Governor Brown addressed this issue, by establishing a funding mechanism for properties that go into default. The State will repay the loan. De La Rosa said the benefits of the program are the funding mechanism for installing solar improvements. Staff is recommending both resolutions to join the two programs, CA First and HERO to provide this funding mechanism to the community. Representatives from PACE program were present in the audience.

Council Member Long asked staff to explain the difference between CA First and HERO.

Mr. De La Rosa said he selected the two largest programs, and each offered slightly different choices. In response to her question about offering all the programs, he said he felt that would be excessive.

Council Member Long also asked the total number of outstanding loans held by the City and whether they were under water.

Mr. De La Rosa said he could provide the loan inventory but could not tell if the properties were under water.

Council Member Banuelos asked if a person can fund improvements from both programs. Mr. De La Rosa said one may finance through one program and should the home value increase, it could be possible to obtain additional financing through another program.

**Jonathan Kevles**, CA First, addressed Council to provide additional information regarding his program and to respond to questions. Most of the details discussed by staff were regarding the residential program for one to three units. They do have a commercial program, and multi-family units are allowed through the commercial program. Commercial programs require the consent to the first mortgage holder.

Mr. De La Rosa responded to a question regarding subordination and referred to the Fannie Mae letter, and in this instance the financing remains with the property, not the owner, and in some instances can be negotiated.

**Jonathan Kevles** explained if a property goes into default, the only part that is due is the one to two years on the property tax bill and the liability exposure to the banking institution is not the entire amount. He advised the Council that the HERO contract would subordinate an

instrument if a new primary lender requires it, so a sale would close if the property is selling and the new buyer' lender requires it. He said it is a feature of their program.

Council Member Long raised the following issues and concerns:

- Vetting of the businesses that will be bidding on the projects, since you refer to them as approved businesses.

Mr. Kevles said qualification criteria was possession of a license with the California State Licensing Board for one year, have a B rating or better with the Better Business Bureau, and have proper insurance and bonds in place.

- How does one distinguish if a contractor is one on their list when receiving a barrage of phone solicitations
- The City is not endorsing the program and need assurance that statement is not made
- What protections are there is there are problems with the installation and the contractor is no longer in business
- Do not allow loans that would exceed the useful life of the program?
- Does the roof have to have the same life span as the solar equipment?
- Are there industry standards where buyer has to sign off that they received a full explanation of the facts?
- Do you finance items that are not attached to the house?
- Would the City have any design review over the installation?
- Potential legal costs
- Any input in future policies (no member on the board of CSGA)

Mr. Kevles said the payments remain stable; all loans are fixed. Regarding the bonding, the City is only named in the legal documents as to the city where the loan is being placed. The indemnification agreements have been approved by all cities in the past. The loans are for a five year period. No response about a roof being required to have the same life expectancy as the solar. They do not finance items not attached to the house, and all local regulations regarding design review would stand in place. Only members of the CSGA board have input on future policies.

City Attorney Reyes advised Council that he had reviewed the agreement and it is the same as those he had previously reviewed for other Meyers Nave client cities, and he had no problem with attorney's fee clause. To the extent that we have a disagreement with the entity, each party must bear their own attorney fees.

**Eve Perez**, representative of the HERO Program, addressed Council regarding indemnification that is built into the agreement. In addition, this program offers the following:

1. dispute resolution provided for all members who have a problem with a contractor
2. no prepayment penalty; if selling, the bonds can be transferred
3. subordination is an automatic option for their property owners
4. HERO is the largest PACE program in the nation, funded nearly 50,000 projects

The following speakers addressed the Council:

**Albert Rodriguez**, Pinole resident, addressed Council and said this was a fiscal option. There were no voids that would concern him.

**Bill Davis**, Pinole resident and employed by Renew Financial, reported that he had solar installed before he knew of the PACE program that allows you to leverage equity in your home

and eligible useful life of the project. He said it was a completely voluntary program and provides homeowners with more opportunities for choice.

Mayor Pro Tem Swearingen asked how he found out about the program. Mr. Davis responded that he was introduced from a former colleague in the lending industry.

Council Member Long asked why the programs required City approval.

Mr. Kevles explained the legislation required City approval.

City Attorney Reyes said in order to take advantage of the program, Pinole must join the Joint Powers Authority.

Council discussion followed:

Mayor Murray asked if they could prohibit a property with a City financed loan from participating in the PACE program.

City Attorney Reyes said participation is based on the equity level in the home.

**Eve Perez**, HERO representative, addressed the state guarantee should a homeowner default and said the PACE loan would sit as a separate line item. The first lien holder will pay the PACE assessment because they will get reimbursement from the State funds, so the City's position, as a second lien holder would really not change. She said there has never been a default on a PACE loan since inception.

**ACTION: Motion by Council Members Murray/ Banelos, the Council Adopted Resolution 2015-104, Authorizing the City to Participate in CSCDA Open PACE, which will enable property owners to finance permanently fixed renewable energy, energy efficiency, water efficiency and seismic strengthening improvements as well as electric vehicle charging infrastructure; and**

**FURTHER ACTION: Motion by Council Members Murray / Banelos, the Council Adopted Resolution 2015-105, Authorizing the City To Become a Member of the Western Riverside Council of Governments Joint Powers Authority (WRCOG) and Participate in the California HERO Program, Subject to the Execution of An Agreement for the California HERO Program to Indemnify the City**

Mayor Pro Tem Swearingen said he has not seen the program before and do not understand it as well as perhaps he should and it is council members job to question and he does not see a downside to the programs. His only concerns were that a homeowner may be underwater and still received a loan, and that it appears the City is lending its name to this program.

Mayor Murray said fifteen of eighteen cities in this County are participating in these programs and he had not heard negative remarks about the programs and feels it is previously pre-tested in those communities, and that it is worth considering.

Council Member Long said she was not convinced that the financing portion has been tested. She believed there were some benefits, but also some pitfalls. She said she would be abstaining on this matter, as she does not believe she should make the choice for all the homeowners in Pinole.

**Vote:**           **Passed:**    **3-0**  
                  **Ayes:**       **Banuelos, Murray, Swearingen**  
                  **Noes:**       **None**  
                  **Abstain:**   **Long**  
                  **Absent:**   **None**

- B. Consider a Request for Waiver of Facility Use Fees from Pinole Valley High School [Council Report No. 2015-120; Action: Council Discretion to Grant Waiver (Johnson)]

**Rochelle Johnson**, Recreation Manager, presented Council Report 2015-120 into the record, and forwarded a request from Pinole Valley High choir instructor Mark Flanigan to use Memorial Hall for hosting a Holiday Performance Arts Celebration on December 15<sup>th</sup>. Ms. Johnson explained that the revenues received from the park and facility rentals are used to support Recreation Center operations. The school has requested a waiver of the \$190 rental and booking fee, the insurance requirements, and the refundable deposit. Last year, the District paid the rental fee for a similar event. There is no policy in place to consider a fee waiver, therefore staff forwarded this matter to Council for consideration, and would be forwarding a policy for consideration in the near future.

Mayor Pro Tem Swearingen asked whether this would impact the Memorial Hall construction schedule. Ms. Espinosa said Mr. Flanigan had been in contact with Patty Clark about the timing of this request.

Council Member Long commented that she did not think waiving a cleaning deposit was possible.

Further discussion ensued regarding the occupancy capacity and the anticipated number of performers and audience members. Council Member Banuelos said the building has a seated capacity of 85 and 100 people may be above capacity. Council Member Long asked that the Fire Department review the matter and also asked how to insure that the occupancy is not exceeded.

Mr. De La Rosa brought the discussion back the Council, asking if there was interest in waiving the facility use fee, if the City venue was selected. The school was also exploring other options.

**Mark Flanigan**, Pinole Choir Director, said in total, fifty to sixty students would be performing but generally there are 20-26 performing at any one time.

Chief Piper addressed Council and said he would check the occupant load and that the Fire Department relies on the renter to manage the occupant load but if Fire Department receives a complaint they go to the facility and count persons.

Discussion ensued regarding alternative sites. City Manager Espinosa asked Ms. Johnson if the Senior Center was available that evening. Mr. Flanigan said that would provide more seating.

Council Member Long suggested using the Middle School Gym, and Mr. Flanigan said that venue didn't work very out ell the prior year due to lighting and sound issues. He said that he would check into using Collins School as it had a better stage.

Council Member Banelos said there is sufficient room at Memorial Hall for performers to wait before coming on stage, but unsure the facility is large enough to seat the audience. Council Member Banelos said he was unaware that the City charged the school for facility use.

**Grace Stott**, senior at Pinole Valley High and Show Choir member, explained the difficulties the school encountered last year.

**Teresa Stott**, Pinole citizen, thanked the Council for considering this request. She stated her support for establishing policy for fee waivers.

**ACTION: Motion By Council Members Banelos / Swearingen Made A Motion To Waive The Facility Rental Fees Associated with This Request, With Exception Of The Insurance Certificate And The Refundable Deposit Which Will Be Required.**

<b>Vote:</b>	<b>Passed:</b>	<b>4-0</b>
	<b>Ayes:</b>	<b>Banelos, Long, Murray, Swearingen</b>
	<b>Noes:</b>	<b>None</b>
	<b>Abstain:</b>	<b>None</b>
	<b>Absent:</b>	<b>None</b>

Council Member Long commented that there have been miscommunication on this matter, and the City always wants to work with the students. She encouraged citizens to reach out to the Council members if there was a question or issue. If capacity was a problem, perhaps the School District needs to install an effective sound and light system in their Pinole Middle School.

**Teresa Stout**, Pinole resident, said she tried to contact staff to ask what route to take and did not receive a response.

She was encouraged to send an email to the Council if questions arise in the future, but their request had been addressed now.

**C. Discussion Regarding Recreation Programming [Oral Discussion; Action: Provide Direction to Staff (Council Member Long)]**

Council Member Long asked that this matter be placed on the agenda for Council discussion to determine whether the Council's goals for Recreation related to services and programming are being met with the current programs offered. There was previously a Youth Commission. She said she would like to see a plan for growing and developing the Youth programs, and felt their input was necessary to determine their vision, whether they were interested in their Youth Center. She said currently all programs are built around after school care or daycare, which is not what she envisioned as youth programs, and was not sure it was conducive to a Youth Center. She suggested formation of a subcommittee to brainstorm ideas or discuss obstacles within the Recreation Department. She suggested that one or two Community Service Commissioners and a Council member.

Mayor Murray asked staff if that was a prudent approach to validate what is occurring now.

Staff said that the Community Services Commission did not feel that was in their purview and Council suggested as an alternative, a member of the Youth Foundation.

City Manager Espinosa said she would support an adhoc subcommittee comprised of a Council member, Youth Foundation member, Assistant City Manager De La Rosa and Recreation Manager Johnson.

Council Member Long said she could participate

City Attorney Reyes said a subcommittee comprised of a Council member and a member of another body would require compliance with the Brown Act meeting requirements. .

Council discussed and decided to keep it as an adhoc subcommittee comprised of a Council member and staff. They directed staff to bring it back at a future meeting for the Council appointment and the meetings would begin after the New Year.

Recreation Manager Johnson announced the following:

- Senior Center Jewelry sales would continue for two more weeks
- November 21<sup>st</sup> is the Craft Fair at the Senior Center
- Youth Center activities will be ongoing during the holiday season when the schools are closed

## 11. REPORTS & COMMUNICATIONS

### A. Mayor Report

1. Announcements
  - a. November 21 – Senior Center Craft Fair

### B. Mayoral & Council Appointments

1. Appoint a Council Representative To Meet with the WCCUSD and City Staff Regarding the District's Fiberoptic Proposal [**Council Discretion to Appoint (Espinosa)**]

City Manager Espinosa briefed the Council on the WCCUSD application that was presented at the last Council meeting. Staff has done some research and communicated with the vendor and was researching alternatives. She mentioned a possible solution where the District might be able to use a pipe in portions of Pinole Valley Road for undergrounding the fiber. They are currently working on the mapping. The City alternative is to refuse to issue the encroachment permit. The District's attorney is stating that the District has some rights to the poles. She asked the Council to allow staff to do additional research but stated that it was alarming that once again, the District never contacted the City until they asked for an encroachment permit. Staff will continue to explore the matter and report back to Council at a future meeting. No appointments were made at this meeting

### C. City Council Committee Reports

Council Member Long communicated that she agreed with Mr. Tillman that San Pablo Avenue paving was not up to standards and hoped we have not fully paid the contractor. She advised that staff should put them on notice.

Ms. Espinosa said the project had been paid at the 80% level and they were issuing no further payments. She agreed there was some corrective work necessitated by the contractor. City Manager Espinosa noted that the project was divided between two contracts, with different contractors and she would not recommend that again in the future.

Council Member Banuelos asked when former Council Member Green's committee assignments would be addressed.

City Clerk Athenour responded that it could be done with the review of the Council's annual assignments with the December 1 Reorganization meeting matters. She also said they could address the other assignments to adhoc committees (WCCUSD Fiberoptics & Recreation Department review) that were raised recently.

Mayor Pro Tem Swearingen reported that the Mayor and Supervisor's Town Hall on October 31 was well attended and received. He suggested that the Council may want to consider hosting our own. Following the Mayor/Supervisor Town Hall, he attended the Halloween Kid's Fest, and said the Recreation Department did an excellent job.

Mayor Murray updated Council on the West Contra Costa Integrated Waste Management Meeting. The discussion was on the division and disbursement of the reserve funds. San Pablo, Hercules and Pinole were outvoted. Of the \$6.1 Million in reserves, \$4.2 million is to be disbursed to the communities and \$1.1 million was retained for operations and \$1.7 was retained for reserves.

D. Council Requests For Future Agenda Items

1. Indigenous People's Day
2. Appointment to the Recreation Department Adhoc Review Committee

There was Council consensus to schedule these topics on a future agenda.

E. City Manager Report / Department Staff

City Manager Espinosa had no report.

Assistant City Manager De La Rosa reported that the Oversight Board would meeting on November 4<sup>th</sup> and would consider approval of the Amended Long Range Property Management Plan. Staff received confirmation from the State that they will be releasing the plan with the amendment in the near future.

F. City Attorney Report

City Attorney Reyes had no report.

## 12. ADJOURNMENT

At 10:32 p.m., Mayor Murray adjourned the Regular meeting to the Regular City Council Meeting of November 17, 2015 In Remembrance of Amber Swartz and Council Member Phil Green, and Ida Mae Castro.

**Submitted by:**

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

**APPROVED BY CITY COUNCIL:**