

**PINOLE CITY COUNCIL  
MINUTES  
DECEMBER 15, 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 Swearingen called the meeting to order at 6:07 PM and led the Pledge of Allegiance.

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

**A. COUNCIL MEMBERS PRESENT**

Mayor Roy Swearingen  
Mayor Pro Tem Debbie Long  
Council Member Tim Banuelos  
Council Member Peter Murray

**B. STAFF PRESENT**

Michelle Fitzer, City Manager  
Belinda Espinosa, former City Manager  
Benjamin Reyes, City Attorney  
Stephanie Downs, Assistant City Attorney  
Hector De La Rosa, Assistant City Manager  
Neil Gang, Police Chief  
Fire Chief, Rob Piper  
Patricia Athenour, City Clerk

City Clerk Athenour announced the Agenda was posted on December 10, 2015 at 4:00 P.M. 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.

- A. Selection and Appointment of a Council Member To Fill the Vacant Office for An Approximate One-Year Term, Until the Certification of the November 8, 2016 Election.[Council Discretion to Appoint & Adopt Resolution of Appointment]

**ACTION: Motion by Council Members Banuelos / Long, the Council Adopted Resolution 2015-111, Appointing Maureen Toms as Council Member for an Approximate One-Year Term Expiring with the Certification of the November 8, 2016 Municipal Election.**

Discussion followed. Mayor Pro Tem Long encouraged applicant, Warren Clayton to consider involvement in one of the City's boards or commissions as she was impressed with his interview responses. She discussed Ms. Tom's involvement many Pinole organizations, her long tenure and experience as a Planning Commission member, as well as her professional experience in the land use fields which were excellent qualifications for a council member. Council Members Banuelos and Murray concurred and along with Mayor Murray who also recognized Mr. Clayton's attributes.

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

1.     City Clerk to Administer Oath of Office

City Clerk Athenour administered the Oath of Office to Maureen Toms and she was seated at the dais in her official capacity as council member.

### **3.     CONVENE TO A CLOSED SESSION**

At 6:14 p.m., Mayor Swearingen convened the Council to the Notice Closed Session in the Council Community Room.

- A.     **CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**  
GC §54956.9(d)(4) – Initiation of Litigation  
One Matter
  
- B.     **CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION**  
Gov. Code § 54956.9 (d)(1)  
United Professional Firefighters Local 1230 v. City of Pinole  
Case No. SF-CE-00864M

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

At 7:30 p.m., Mayor Swearingen reconvened the meeting in Open Session in the Council Chambers. He announced there were no reportable actions from closed Session. He announced the following:

### **5.     RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS**

- A.     Proclamations
  1.     Honoring Retiring City Manager Belinda B. Espinosa

Mayor Swearingen introduced City Manager Espinosa and presented a proclamation honoring her service to Pinole upon her retirement and presented flowers and a gift from the Council. Each of the Council Members thanked Ms. Espinosa and addressed her many accomplishments during her tenure in Pinole, stating that she was a great leader and always put the community's best interest first. Each of the staff members present at the dais had an opportunity to wish Belinda well, as did former Council Member Horton.

**Robert Wonder**, ICMA Senior Advisor to City Manager's in Alameda and Contra Costa County presented and read into the record, a letter from the International City Manager's Association (ICMA) Executive Director Robert O'Neil, granting life membership in the ICMA organization.

**Abel Pineda**, Field Representative of Assemblymember Thurmond's Office, presented a proclamation behalf of Assemblymember Thurmond.

**Ariel Mercado**, representing Congressman Mike Thompson's Office, presented a reading of State Congressional record recognizing Ms. Espinosa's retirement.

B. Presentations / Recognitions

There were no other presentations, recognitions or community announcements.

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

The following speakers addressed Council:

**Larry Lambert**, Pinole citizen, addressed Council regarding a recent meeting in Hercules regarding an alternative electricity provider, Marin Community Energy (MCE). He referenced and read an email into the record, previously sent to the City Council. Mr. Lambert proposed that the City consider a relationship with MCE to provide electricity to the residents and businesses of Pinole. He described MCE as a non-profit electricity provider managed by a seventeen person board which provides monies to green projects. Nearby communities such as El Cerrito, San Pablo and Richmond have already joined and in his research had not found any downside to this electrical provider.

Mayor Pro Tem Long said she attended this same workshop in Hercules and had planned to request that it be discussed as a Future Agenda Item.

**7. CONSENT CALENDAR**

The following items were removed from the Consent Calendar for discussion: Item 7E

**ACTION: Motion by Council Members Long/Banuelos the Council Approved the Consent Calendar with the Exception of Items 7E.**

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

- A.     Approved the Minutes of the Meeting of December 1, 2015
- B.     Received the November 28, 2015 – December 11, 2015 List of Warrants and the December 4, 2015 Payroll in the Amount of \$423,659.54
- C.     Adopted **Resolution 2015-112**, Rejected the Bids for the Pinole Theatre Interior Improvement Project and Directed Staff to Rebid the Project [**Council Report No. 2015-133; Action: Adopt Resolution Per Staff Recommendation (Petrie)**]
- D.     Adopted **Resolution 2015-114**, Approved the Shared Parking Agreement between the City of Pinole and the Church of Christ for Joint Use of the Church Property Located at 692 Tennent Avenue [**Council Report No. 2015-134; Action: Adopt Resolution Per Staff Recommendation (De La Rosa)**]
- E.     Authorize the City Manager to Execute A Construction Contract with Greentech Industry in An Amount of \$148,195 to Construct the Metal Building at 651 Pinole

Shores Drive (Pinole Corporation Yard) [Council Report No. 2015-135; Action: Adopt Resolution Per Staff Recommendation (Petrie)] **Removed For Discussion**

Mayor Pro Tem Long removed the item and raised a question related to the warranty and whether other bids had different buildings with different qualities and a different warranty package. She also confirmed that all bidders understood that it was a prevailing wage project.

Interim Development Services Director Petrie said it was a five-year warranty, and that the warranties were the same on all bids, per the City specifications.

**ACTION: Motion by Council Members Murray/Banuelos, the Council Adopted Resolution 2015-113, Authorize the City Manager to Execute A Construction Contract with Greentech Industry in An Amount of \$148,195 to Construct the Metal Building at 651 Pinole Shores Drive.**

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

- F.      Adopted **Resolution 2015-115**, Authorized the City Manager to Execute A Purchase Order for L.N. Curtis For The Purchase Of Rescue Equipment In The Amount Of \$33,861.80 [Council Report No. 2015-136; Action: Adopt Resolution Per Staff Recommendation (Piper)]

## **8.      PUBLIC HEARINGS**

No Public Hearings were scheduled.

## **9.      OLD BUSINESS**

- A.      Approve the School Facility Use Agreement between the City and the West Contra Costa Unified School District (WCCUSD) for the Pinole Middle School and Pinole Valley High [Council Report No. 2015-137; Action: Adopt Resolution Per Staff Recommendation (De La Rosa)]

**Hector De La Rosa**, Assistant City Manager entered Council Report 2015-137 into the record and noted a correction on page 2 of the staff report and resolution related to the term but later retracted it, as it was stated correctly in the documents. The report provided background information over the past fifteen years relative to funding provided to the District by the former Redevelopment Agency, and the 2005 joint use agreements for the Pinole Middle and Pinole Valley High agreement where they used the two facilities for recreation purposes at no charge, and are now assessed fee for use. The draft Use Agreement covers a five-year term, specified facilities referenced in the Exhibits and outlined the terms and conditions governing the use of the facilities. Staff recommended approval of the joint use agreement which would allow for additional facilities and expansion of our Recreation activities.

Mr. De La Rosa advised Council that an umbrella agreement would be brought before Council at a future meeting, which would cover City use of all other school facilities.

Council questions and dialogue followed. Council Member Long requested further clarification on the coverage in the umbrella agreement and said the statement about direct costs was open ended.

Staff explained that the umbrella agreement would include all other facilities not included in this agreement, which was specific to the Pinole Valley High field and other schools. There was a fee schedule outlining direct costs and a copy was requested by Mayor Pro Tem Long.

Mayor Pro Tem Long raised the point that several months ago Pinole Valley High requested a fee waiver from the City for use of our facilities and she explained that the City needed to charge also, as we pay for the use of theirs.

Council Member Murray asked questions related to oversight of the agreement.

Council Member Toms said process was preferable to completing individual agreements each time. She suggested getting a recap at the end of the year to see the utilization and also asked that our staff using their facilities does not have to complete forms each time.

Mr. De La Rosa clarified again that the term expiration was 2020 as depicted in the documents.

**ACTION: Motion by Council Members Long/Banuelos, the Council adopted Resolution 2015-116, Approved the School Facility Use Agreement between the City and the West Contra Costa Unified School District (WCCUSD) for the Pinole Middle School and Pinole Valley High and track at Pinole Middle and the Gym.**

<b>Vote:</b>	<b>Passed:</b>	<b>5-0</b>
	<b>Ayes:</b>	<b>Banuelos, Long, Murray, Swearingen, Toms</b>
	<b>Noes:</b>	<b>None</b>
	<b>Abstain:</b>	<b>None</b>
	<b>Absent:</b>	<b>None</b>

## **10. NEW BUSINESS**

- A. Discuss the Pinole Valley High School Frontage Improvement Plans and the Possibility of Including As A Companion Rule 20A Project [**Council Report No. 2015-138; Action: Provide Direction to Staff (Petrie)**]

**Al Petrie**, Interim Development Services Director presented Council Report 2015-138 to discuss the recommendations of the former City Engineer and the TAPS Committee relative to the propose improvements on Pinole Valley Road to be done in conjunction with the Pinole Valley High construction and consider the issuance of an encroachment permit to the WCCUSD on January 19, 2016 and provide direction on further discussion on January 19, 2016 about creation of a Rule 20A Utility Underground District. Mr. Petrie's report briefed the Council on the WCCUSD District improvement schedule and on the need to determine whether the Rule 20A Undergrounding should be considered now. He requested the following:

- Direction on issuance of an encroachment permit at the January 19<sup>th</sup> City Council meeting.
- Direction as to consideration of a Rule 20A project and the boundaries of the project; and whether there was support to pay the expense for the private properties involved, to cover the cost from the electrical box to the property line on private properties, He noted that some cities pay the expense and in others, the property owner pays

- Direction whether there was support to underground the cul-de-sacs to Shea Drive
- Informed the Council in two years the City would have \$1,483,000 in Rule 20A funds, but could not afford at this time the third cul-de-sac.

**Steve Libring**, Willdan, representing WCCUSD, addressed Council regarding the frontage improvements along the Pinole Valley High campus. He summarized the plan which brings a dozen new traffic improvements, which include dedicated bike lines, controlled crossings at signals, dedicated left turn lane, bus loading turn pockets, signalization, narrowing lanes for traffic calming, and signalized driveway access. He spoke to the benefits of the fifth lane for turning into the campus, lane size reduction and removal of on-street parking along Pinole Valley Road, bus turnouts, and the relocation of the drop off area.

Council Member Banuelos announced that his personal residence was on Estrella Court and asked the City Attorney whether he should recuse himself before the Council considered a Rule 20A project on the cul-de-sacs.

City Attorney Reyes advised that Council Member Banuelos would be deemed to have a financial effect if the Council discussion included the cul-de-sacs, and that he should recuse from that discussion.

Council comments and questions followed related to the school frontage improvements.

Council Member Toms raised questions regarding the signalization and protected left turn arrows.

Council Member Banuelos sought further clarification on the signals, stating that the buses can interrupt the sequence.

The Civil Engineer said they would not start with that feature, but if buses get the preemption, it would allow them to move ahead, and not cause back-up.

Mayor Pro Tem Long also sought clarification on the light synchronization and asked if any studies were conducted on the backup created toward I-80 if a pedestrian crosses Pinole Valley Road. The District's engineer said it would not be an issue due to the one hundred second cycle length which allows all directions to get a turn.

Mayor Swearingen confirmed that the signals would revert to "demand activated" during the remainder of the off-peak hours.

The following speakers addressed Council:

**Madeline Kronenberg**, WCCUSD School Board Member, addressed Council to answer any questions and stated that it looked like we have finally reached a point to improve Pinole Valley Road. She thanked the Council for approving the Facility Use agreement and Mayor Swearingen thanked her for seeing that the school will be constructed timely.

**Jack Meehan**, Pinole citizen, addressed Council on the undergrounding matter. He said that the utilities shouldn't be limited to electrical, and the poles also carry phone and cable. He said it was a complex matter which requires separate and very early study to determine the costs involved. He spoke of a major phone conduit coming down Shea Drive and the distribution of those connections needs to be considered. He urged Council to separate undergrounding utilities in the cul-de-sacs with a very careful and thorough study.

Mayor Swearingen asked for a budget report on Rule 20A and have Mr. Meehan's concerns included in the report.

Mr. Petrie confirmed Mr. Meehan's statements were valid. Each utility company will design their own plans. PG&E usually takes the lead and has already contacted the phone company. Comcast was described as a lesser partner and expected not to be an issue. WCCUSD plans to underground everything on their side of the street; there is a benefit to the District if the lines are underground.

This was a very complicated matter and not something they cannot weigh in on without more discussion and information. Mayor Pro Tem Long read excerpts from the documents and expressed that they are being asked to do something at the last minute when the City may not have the revenues or the staff to undertake this project at this time.

Council Member Murray said a Rule 20A project was done before along Pinole Valley Road. HE said if the cul-de-sacs were not part of the undergrounding, it would not yield a very desirable finish and described how the undergrounding might be joined to the above ground poles.

Council Member Toms asked if there was a priority list for undergrounding. Mr. Petrie said that the former Public Works Director said there was not a list, but Pinole Valley Road was the priority area. Toms asked if there was any commitment from PG&E about the time.

Petrie said the School District street improvements must be done by April 2018 and PG&E would need to complete the undergrounding of their facilities by 2018 and their work would take about six months. The design must be worked out in the next two years.

Staff had provided a rough estimate of the installation per property at \$7,000, and Council Member Toms asked if that included the right-to-enter costs, and asked if each property owner negotiates independently with PG&E, and said staff time would be incurred to coordinate those upgrades and that cost would need to be factored in.

Mr. Petrie said PG&E would perform the contract duties or the city had the option to bid the project.

Mayor Swearingen wrapped up the comments and reiterated that it was premature to provide direction this evening without more information, analysis and costs from PG&E.

City Manager Fitzer then requested Council direction this evening only on the school frontage improvements in order to bring back approval of the encroachment permit on January 19<sup>th</sup> and suggested conducting a Study Session on the Rule 20A Undergrounding project in February.

Council Member Toms commented that the timing was right to consider the undergrounding and several council members continued with conceptual questions related to an undergrounding project.

City Manager Fitzer said they had numbers from PG&E and would bring that back at the Study Session.

Mayor Pro Tem Long commented:

- Wished to see numbers from WCCUSD bidding the project both underground or above, be prepared for either option.
- What projects would be delayed if Rule 20A Undergrounding became a priority project?

Council Member Banuelos said he was generally speaking in favor of an undergrounding project on Pinole Valley Road and wanted to insure that the all the utility companies are involved.

**Council Consensus: Add WCCUSD Encroachment Permit Issuance On January 19, 2016 And To Schedule A Special Study Session In February Regarding A Rule 20A Project, & Further Directed to Provide Mailed Meeting Notice To The Property Owners In The Affected Cul-De-Sacs.**

City Attorney Reyes advised Council that a request from Thomas Gateway LLC was brought to staff's attention after the posting of the agenda, requesting the City Manager to execute an amendment to the Lease and Purchase Option to extend the termination date from December 31, 2015 to February 29, 2016.

City Attorney Reyes sought approval to add the following item to the agenda as Item 10C, which required a 4/5's vote of Council.

**ACTION: Motion by Council Member Long/ Banuelos to Add Consideration of the Following to the Agenda As Item 10C:**

**Amendment to June 15, 2015 Lease & Purchase Option Agreement Between The City of Pinole and Thomas Gateway, LLC (Gateway Shopping Center)**

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

10B. Approve An Amendment to the Reciprocal Easement Agreement, Declaration of Covenants, Conditions and Restrictions Running with the Land Know as Gateway East [**Council Report No. 2015-139; Action: Adopt Resolution Per Staff Recommendation (De La Rosa)**]

**Hector De La Rosa**, Assistant City Manager entered Council Report No. 2015-139 into the record and advised Council that representatives from Thomas Gateway LLC and Kaiser were present in the Chamber. Mr. De La Rosa summarized the proposed amendments to the original Reciprocal Easement Agreement (REA).

Staff recommended that the Council approve the Amended REA subject to Kaiser's final approval, as they are still seeking internal approval of the Amendment. Also staff requested to allow the City Manager to make minor changes to the Amendment as may be necessary, following Kaisers review.

Council discussion and questions followed:

Mayor Pro Tem Long asked the following:

1. Number of parking spaces lost due to this amendment
2. To impose a condition in the REA requiring evaluation of the parking lot pavement every five years
3. Define minor changes

Mr. De La Rosa explained that the amendment contemplates relocating parking spaces, to Parcel D. In the interim, temporary parking spaces will be located on parcel D until such time as Parcel C is constructed. The 6 spaces will be permanently located on Parcel D once the construction equipment is removed from that site.

City Attorney Reyes explained minor changes are non-substantive, such as punctuation, format, clarification, and if there was a material change, he would bring the matter back to the Council. Mayor Pro Tem Long said at some point she would want to see that in writing.

Council Member Murray asked if it was viable that Parcel E could be used for parking. Mr. De La Rosa said it was very likely Parcel E would be annexed to the REA.

Council Member Toms requested confirmation that Thomas Properties planned to purchase the property in March. Staff affirmed that was correct.

**Sam Thomas**, Thomas Gateway Properties, LLC, made himself available for questions but no further questions were presented.

**ACTION: Motion By Council Members Banuelos / Murray Approved Resolution 2015-117, Approved An Amendment To The Reciprocal Easement Agreement, Declaration Of Covenants, Conditions And Restrictions Running With The Land Know As Gateway East, With The Condition For Evaluation Of The Parking Lot Pavement Every Five Years.**

<b>Vote:</b>	<b>Passed:</b>	<b>5-0</b>
	<b>Ayes:</b>	<b>Banuelos, Long, Murray, Swearingen, Toms</b>
	<b>Noes:</b>	<b>None</b>
	<b>Abstain:</b>	<b>None</b>
	<b>Absent:</b>	<b>None</b>

- B. Amendment to June 15, 2015 Lease and Purchase Option Agreement Between The City of Pinole and Thomas Gateway, LLC (Gateway Shopping Center) (Lease)

**Hector De La Rosa**, Assistant City Manager presented a verbal report explaining that some of the conditions could not be met until the Long Range Property Management Plan approved, which had just occurred. The City Attorney felt it was warranted to bring the matter back to Council to extend the lease and purchase agreement to February 29, 2016 and authorize the City Manager to execute the amendment letter.

There were no questions or comments.

**ACTION: Motion by Council Members Long/ Murray, Approved and Authorized the City Manager to Execute the Amendment to the Lease and Purchase Agreement with Thomas Gateway Properties LLC.**

<b>Vote:</b>	<b>Passed:</b>	<b>5-0</b>
	<b>Ayes:</b>	<b>Banuelos, Long, Murray, Swearingen, Toms</b>
	<b>Noes:</b>	<b>None</b>
	<b>Abstain:</b>	<b>None</b>
	<b>Absent:</b>	<b>None</b>

## 11. REPORTS & COMMUNICATIONS

### A. Mayor Report

1. Announcements
  1. Senior Center Crab Feed – January 9th
  2. Attended Mayors Conference in Concord
  3. Attended WCCTAC
  4. Chamber Board meeting tomorrow afternoon

### B. Mayoral & Council Appointments

There were no Council appointments

### C. City Council Committee Reports & Communications

Council Member Long reported on the WestCat meeting topics which included the benefits of the Clipper Cards which are available at Whole Foods, WalMart and various transit agencies. The Stuff-A-Bus program will be collecting items on December 17<sup>th</sup> from 9 am-4 pm in Pinole and on December 18<sup>th</sup> in Hercules

Council Member Banuelos reported on the Tree Lighting held on December 5<sup>th</sup>.

Council Member Murray reported on the West Contra Costa Integrated Management Authority meeting where there will be a series of special meetings to discuss the future of the JPA and how it will function.

Council Member Toms reported she is Pinole's CBOC delegate and the School Board approved elimination of elected officials the serve on the CBOC. Her term expires in January 2016 and the District will be seeking volunteers. She said she would send Ms. Fitzer an announcement with a link to the application form and training videos. Council Member Toms said that the District is asking volunteers to contact the District who would be interview and appoint members.

### D. Council Requests For Future Agenda Items

1. Community Choice Energy (CCE) is seeking willingness of cities to participate in a green energy program. She said that Marin Choice Energy appears to be tried and true and there is there is no cost if you join by December 2016 and sign a non-binding Letter of Intent in March of that intent to join. Any entity joining would get a place on the board; it is one vote per City. She requested to discuss it on January 19<sup>th</sup> so the City Manager could respond to the letter from the County requesting obtaining our data. (Long)

**There was Council consensus to agendize the matter for discussion on January 19, 2016.**

2. Council Member Toms asked if there was an issue with three Council members serving on the Oversight Board.

City Attorney Reyes said there was no conflict; they were separate boards with separate meetings and noticed separately. No follow up required.

E. City Manager Report / Department Staff

1. Report on Creek Maintenance & Responsibility [**Council Report No. 2015-140; Action: Provide Direction to Staff (Petrie)**]

City Manager Fitzer said that the packet included a letter to be sent to property owners adjacent to the creek regarding creek maintenance and said if the Council had any comments to advise her.

Council Member Murray asked if the City inspects all the V-ditches and may behoove staff to make sure they are all clear. Ms. Fitzer said she would advise Public Works.

Mayor Swearingen said further research should be given to situations where V-ditches that convey water are within easements that cross property lines.

City Manager Fitzer requested approval to send a letter from the League of CA Cities asking to our legislators urging a vote against the permanent extension of the Internet Tax Freedom Act, which impairs the City's ability to charge a UUT. Council authorized sending the letters.

Mayor Pro Tem Long referenced a vacant lot at the bottom of Galbraith that has mounds of mulch and asked staff to contact the owner about spreading the mulch. Council Member Murray said the owner is also cutting trees and not sure if he is on his own property. City Manager Fitzer was directed to report back in a memo to Council.

F. City Attorney Report

There was no report.

12. **ADJOURNMENT** to the Special City Council Meeting of January 14, 2016 in remembrance of Amber Swartz and military personnel

At 10:34 p.m., Mayor Swearingen adjourned the meeting to a tentative January 14<sup>th</sup> Special meeting and the January 19, 2016 Regular meeting.

**Submitted by:**

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

**APPROVED BY CITY COUNCIL:**