

**CITY COUNCIL MEETING
MINUTES
July 19, 2022**

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

The City Council Meeting was held in a hybrid format (in-person and via Zoom videoconference and broadcast) from the Pinole Council Chambers, 2131 Pear Street, Pinole, California. Mayor Salimi called the Regular Meeting of the City Council to order at 6:00 p.m. and led the Pledge of Allegiance.

2. LAND ACKNOWLEDGEMENT

Before we begin, we would like to acknowledge the Ohlone people, who are the traditional custodians of this land. We pay our respects to the Ohlone elders, past, present and future, who call this place, Ohlone Land, the land that Pinole sits upon, their home. We are proud to continue their tradition of coming together and growing as a community. We thank the Ohlone community for their stewardship and support, and we look forward to strengthening our ties as we continue our relationship of mutual respect and understanding.

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

An official who has a conflict must, prior to consideration of the decision; (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself/herself from discussing and voting on the matter; and (3) leave the room until after the decision has been made, Cal. Gov. Code § 87105.

A. COUNCILMEMBERS PRESENT

Vincent Salimi, Mayor
Devin Murphy, Mayor Pro Tem
Norma Martinez-Rubin, Council Member
Anthony Tave, Council Member
Maureen Toms, Council Member

B. STAFF PRESENT

Andrew Murray, City Manager
Heather Bell, City Clerk
Eric Casher, City Attorney
Sanjay Mishra, Public Works Director
Markisha Guillory, Finance Director
Lilly Whalen, Community Development Director
David Hanham, Planning Manager
Roxane Stone, Deputy City Clerk

City Clerk Heather Bell announced the agenda had been posted on Thursday, July 14, 2022 at 2:00 p.m. with all legally required written notices. Revised staff reports for Items 9C, 9D and 10A had been published after the posting of the agenda. Written comments had been received in advance of the meeting, posted on the website and distributed to staff and the City Council.

Following an inquiry, Mayor Salimi reported he may have a conflict of interest with Item 9G due to the proximity of his residence, and would recuse himself from the discussion.

4. CONVENE TO A CLOSED SESSION

Citizens may address the Council regarding a Closed Session item prior to the Council adjourning into the Closed Session, by first providing a speaker card to the City Clerk.

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Existing Litigation pursuant to paragraph (1) of subdivision (d) of Government Code Section § 54956.9:

City of Long Beach v. Monsanto Company et al., United States District Court, Central District of California, Case 2:16-cv-03493-FMO-AS (class action)

B. CONFERENCE WITH LABOR NEGOTIATORS

Gov. Code § 54957.6

Agency designated representatives: City Manager Murray, City Attorney Casher, Human Resources Director Shell

Employee organization: All groups

Unrepresented employee: All employees

PUBLIC COMMENTS OPENED

Debbie Long, Pinole, asked whether or not a brief explanation could be given for the litigation as described for Item 4A, to which City Attorney Eric Casher reported that Item 4A involved a lawsuit filed by the City of Long Beach v. Monsanto regarding the presence of polychlorinated biphenyls (PCBs) and the impact on the environment, and involved a class action lawsuit involving all cities in the State of California, with the City Council to be provided a brief on that case and its impacts on the City of Pinole.

PUBLIC COMMENTS CLOSED

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

At 7:14 p.m., Mayor Salimi reconvened the meeting into open session and announced there was no reportable action from the Closed Session.

6. CITIZENS TO BE HEARD (Public Comments)

Citizens may speak under any item not listed on the Agenda. The time limit is 3 minutes and is subject to modification by the Mayor. Individuals may not share or offer time to another speaker. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future Council meeting

Rafael Menis, Pinole, spoke to the continued spread and case rates of COVID-19 with Pinole continuing to have one of the highest rates in Contra Costa County. He continued to encourage everyone to mask indoors, particularly in crowded areas. He also recognized the numerous challenges everyone was facing such as the pandemic and potential for a recession, but emphasized the importance of protecting the future.

Ali Shafii-Adl, 1412 Greenfield Circle, Pinole, reported on the poor condition of the street which had never been repaired by the City. He noted that a few years ago, an individual representing the City had spoken to him and confirmed the poor condition of the road and had taken photographs. The current Public Works Director also confirmed the poor and unsafe condition of the street. He submitted photographs to the Mayor to illustrate the condition of the street and asked whether or not the City planned any repairs.

Mayor Salimi asked that the photographs presented be included in the meeting minutes for the record. He had viewed the road this date with the City Engineer and had been informed the road had been categorized as “red” but had not been scheduled for re-pavement until 2025 depending upon conditions.

Public Works Director Sanjay Mishra confirmed he had met with Mr. Shafii and had visited the location. He confirmed the road was in poor condition as were many other streets in Pinole. Unless one street was prioritized over another, the StreetSaver model had scheduled Greenfield Circle for repavement in 2025 dependent upon funding at that time. Due to the current funding situation and since garbage trucks had exacerbated the situation, he planned to conduct some minimal maintenance work in the area but emphasized the lack of significant funds to completely rehabilitate the street.

Debbie Long, Pinole, reported she had visited the City’s website to review prior City Council meeting minutes. She understood that anything older than 2020 required a Public Records Act request, although many other City Commissions had provided full access to meeting minutes and agendas absent a Public Records Act request. She asked why there was a restriction on City Council meeting minutes.

City Clerk Bell explained that she was not involved in the changes to the City’s website but would follow-up with the member of the public.

7. REPORTS & COMMUNICATIONS

A. Mayor Report

1. Announcements

Mayor Salimi reported Council member Toms had an announcement.

Council member Toms requested the meeting adjourn in memory of Mike Franklin, a Pinole resident, husband, father, grandfather, coach, umpire, Pinole-Hercules Little League Boardmember and a Vietnam veteran. Mr. Franklin would be missed by his friends and family and many parents and Little League members along the way.

Mayor Salimi reported he had recently lost his grandmother and also asked that there be a Moment of Silence at this time for Mr. Franklin and his grandmother, Soraya Hosseini.

Mayor Salimi also reported he had met with the General Counsel for Ukraine, and extended an invitation to accept a proclamation recognizing Ukraine with City staff asked to reach out directly. He also extended an invitation to the General Counsel for France, who he hoped would be present to accept a proclamation for Bastille Day. He had also recently met with the General Counsels for Italy, Georgia, France, Germany and Ukraine to discuss economic development in Pinole.

Mayor Salimi further reported a virtual Economic Development Workshop had been scheduled for July 20, 2022 to be hosted by the Economic Development Strategy consultants to solicit input from residents on potential economic development strategies, with more information on the City website.

B. Mayoral & Council Appointments: None

C. City Council Committee Reports & Communications

Council member Toms reported that prior years of City Council meeting agendas and minutes had been posted on the City website, linked through the archives and accessible to the public. She otherwise reported she had attended a special WestCAT Board meeting and briefed the Council on the discussions and appointment of a new General Manager and rotation of Chair and Vice Chair for this fiscal year.

Mayor Pro Tem Murphy reported he had attended a RecycleMore meeting as the City Council Alternate and briefed the Council on the discussions specifically around single-use plastics and Senate Bill (SB) 54, Solid Waste, reporting, packaging and plastic food service ware. He encouraged everyone to visit the RecycleMore.com website for more information. He also invited everyone to participate in the Marin Clean Energy (MCE) Board virtual meeting scheduled for July 21, 2022 at 7:00 p.m., with more information on the MCE website.

Mayor Salimi reported Council member Martinez-Rubin was experiencing technical difficulties and could not provide comment at this time.

Council member Tave reported he had a refreshing vacation, thanked the Mayor for filling in for him and looked forward to getting back to work.

City Clerk Bell reported staff was working to make improvements to the accessibility of the videos for City Council meetings and she would again follow-up with the member of the public who had raised concerns.

Mayor Salimi recommended Item 7D be held over given his understanding that Council member Martinez-Rubin had a request for a future agenda item. He moved on to Item 7E at this time.

E. City Manager Report / Department Staff

City Manager Murray reiterated a virtual Economic Development Workshop had been scheduled for July 20 to be hosted by the Economic Development Strategy consultants to solicit input from residents on potential economic development strategies, with more information on the City website.

F. City Attorney Report

City Attorney Casher reported the next Municipal Code Update Subcommittee meeting would be held on August 1, 2022 at 3:00 p.m. He also reported the Subcommittee had preliminary discussions on placing restrictions on single-use plastic and would bring policy recommendations to the full City Council once vetted by the Subcommittee.

PUBLIC COMMENTS OPENED

Deputy City Clerk Stone reported there were no public comments.

PUBLIC COMMENTS CLOSED

8. RECOGNITIONS / PRESENTATIONS / COMMUNITY ANNOUNCEMENTS

- A. Proclamations: None
- B. Presentations / Recognitions: None

9. CONSENT CALENDAR

All matters under the Consent Calendar are considered to be routine and noncontroversial. These items will be enacted by one motion and without discussion. If, however, any interested party or Council member(s) wishes to comment on an item, they may do so before action is taken on the Consent Calendar. Following comments, if a Council member wishes to discuss an item, it will be removed from the Consent Calendar and taken up in order after adoption of the Consent Calendar.

- A. Approve the Minutes of the July 5, 2022 Regular Meeting
- B. Receive the July 2, 2022 – July 15, 2022 List of Warrants in the Amount of \$1,804,796.81 and the July 8, 2022 Payroll in the Amount of \$498,245.31
- C. Approve a Second Amendment to the Consulting Services Agreement with Quincy Engineering Inc., for Preliminary Engineering Services to Advance the Replacement of the San Pablo Avenue Bridge Over Burlington Northern Santa Fe Railroad (CIP Project #RO1710) **[Action: Adopt Resolution per Staff Recommendation (Kaur)]**
- D. Approve an Amendment to the Consulting Services Agreement with CSW/Stuber-Stroeh Engineering Group, Inc., for Preliminary Engineering Services and Design Services for the Senior Center Auxiliary Parking Lot (CIP Project #FA1901) by \$35,000 **[Action: Adopt Resolution per Staff Recommendation (Kaur)]**
- E. Placement of Liens for Delinquent Unpaid Waste Collection Charges Falling Delinquent Between January and April 2022, Considered at an Administrative Hearing on June 2, 2022 **[Action: Adopt Resolution per Staff Recommendation (Bell)]**
- F. Adopt a Resolution Approving a Memorandum of Understanding Between the City of Pinole and Pinole Police Employees' Association for the Period of July 1, 2022 – June 30, 2023 **[Action: Adopt Resolution per Staff Recommendation (Shell)]**
- G. A Resolution of the City Council and the City of Pinole Approving a Purchase and Sale Agreement by and Between the City of Pinole and LDW Investment Group, LLC for the Sale of Property Located at 612 Tennant Ave. (APN: 401-142-011)

and Authorizing the City Manager to Execute the Purchase and Sale Agreement and an Affordable Housing Regulatory Agreement in Such Form as Approved by the City Attorney and the City Manager **[Action: Adopt Resolution per Staff Recommendation (Mishra)]**

- H. Adopt a Resolution to Accept the San Pablo Avenue Rehabilitation Project as Complete and to Approve the Filing of a Notice of Completion **[Action: Adopt Resolution per Staff Recommendation (Kaur)]**

PUBLIC COMMENTS OPENED

Debbie Long, Pinole, referenced a statement on Page 3 of the staff report for Item 9F, which stated: *The total costs are spread over various City funds, depending on each employee's staffing allocation.* She suggested the cost for each fund should have been specified.

Peter Myers, Pinole, a resident of Tara Hills and a member of the St. Joseph School community, referenced Item 9H and emphasized the urgency and importance of the project to the neighborhood and school, with a near fatal vehicle versus pedestrian accident having occurred this date on Tennent Avenue. He suggested this accident could have been avoided had the City and staff moved more quickly on this project.

Mayor Salimi advised the City took safety seriously and considered pedestrian safety a top priority.

City Manager Murray confirmed a vehicle versus pedestrian accident had occurred this date on Tennent Avenue and Pear Street, in an intersection with clearly visible crosswalks, and which was routinely enforced by the Pinole Police Department. He emphasized that any accident was a cause of great concern, but was not the result of City inaction. Engineering enforcement and education were tools that could be used to provide safety to pedestrians and an engineering solution was in place with the visible crosswalks and enforcement was provided in the corridor, but the City could not control distracted driving. The City extended its sympathy to the person involved in the accident. He otherwise commented on the number of pedestrian safety initiatives either in place or in process of being implemented and emphasized that staff was moving as quickly as possible in a thoughtful way.

The City Council also extended its sympathies to the individual involved in the accident and asked that information on the safety pedestrian initiatives referenced by the City Manager be posted on the City website.

PUBLIC COMMENTS CLOSED

ACTION: Motion by Council member Toms/Mayor Pro Tem Murphy to approve Consent Calendar Items 9A through 9F and Item 9H, as shown.

Vote:	Passed	5-0
	Ayes:	Salimi, Murphy, Martinez-Rubin, Tave, Toms
	Noes:	None
	Abstain:	None
	Absent:	None

- G. A Resolution of the City Council and the City of Pinole Approving a Purchase and Sale Agreement by and Between the City of Pinole and LDW Investment Group, LLC for the Sale of Property Located at 612 Tennant Ave. (APN: 401-142-011) and Authorizing the City Manager to Execute the Purchase and Sale Agreement and an Affordable Housing Regulatory Agreement in Such Form as Approved by the City Attorney and the City Manager **[Action: Adopt Resolution per Staff Recommendation (Mishra)]**

ACTION: Motion by Council member Toms/Mayor Pro Tem Murphy to approve Consent Calendar Item 9G, as shown.

Vote: Passed 4-0-1
Ayes: Murphy, Martinez-Rubin, Tave, Toms
Noes: None
Abstain: Salimi
Absent: None

10. PUBLIC HEARINGS

Citizens wishing to speak regarding a Public Hearing item should fill out a speaker card prior to the completion of the presentation, by first providing a speaker card to the City Clerk. An official who engaged in an ex parte communication that is the subject of a Public Hearing must disclose the communication on the record prior to the start of the Public Hearing.

- A. Pinole Square Permit Extension (aka Appian 80) Shopping Center **[Action: Conduct Public Hearing and Adopt Resolution per Staff Recommendation (Hanham)]**

Planning Manager David Hanham presented the staff report, and asked the City Council to conduct the public hearing and adopt a resolution approving an extension through June 16, 2023, for the entitlements adopted via Resolution Nos. 2020-50 through 2020-57 for the Pinole Square Shopping Center redevelopment project located at 1201-1577 Tara Hills Drive (APNs 402-282-002, 06, 07, 08, 09, 10, 14, and 19).

Responding to the City Council, Mr. Hanham confirmed the applicant was present via Zoom and was able to respond to the City Council if needed.

Todd Green, Hillsboro Properties, Inc., acknowledged the pandemic had had an effect and the developer needed more time, which had been the reason for the extension request.

PUBLIC HEARING OPENED

Debbie Long, Pinole, asked whether Safeway would be eligible for new entitlements if the permit extension were approved by the City Council based on new state laws. She also commented there were many RVs and vehicles parked at the rear of Safeway which appeared to be used as living spaces, and asked the applicant to provide comment.

Planning Manager Hanham acknowledged new state laws would be applied and incorporated into the plans to be submitted.

Community Development Director Lilly Whalen clarified that if the City Council chose to approve the extension, the project as entitled would stand. If there were any changes to code requirements such as building code requirements that had occurred in the meantime, the applicant would be required to comply with those new laws.

In response to the concerns with the parked RVs and vehicles, Planning Manager Hanham reported the City's Code Enforcement Officer had met with the applicant and the property owners who had agreed to implement a camera system and have a towing company respond to any complaints. Code enforcement would continue to monitor the situation in the hope the vehicles would be moved.

Mr. Green concurred with the comments provided by staff.

Tony Vossbrink, Pinole, was disappointed the City Council, City staff, and the property owners allowed the approval of multiple extensions with a disregard for public safety, such as inoperable lights in the Safeway parking lot. He too commented on the number of vehicles parked in the shopping center and the number of shoplifting incidents that had occurred in the shopping center and asked whether or not Safeway could be cited for the multiple extension requests. He was disappointed with the loss of tax dollars to the Safeway located in the City of Hercules. He suggested a traffic study should be prepared with the onset of the new buildout of the former Doctors Hospital property and the increase in traffic in the Tara Hills and Appian Way Corridor. This request had been made previously by a Planning Commissioner but had been ignored by staff, which should be required as part of approval of the extension.

Planning Manager Hanham explained that a traffic study had been prepared as part of the environmental review and land uses for the Doctors Hospital site and had been taken into consideration as part of the City Council's approval of the Mitigation and Monitoring Reporting Program (MMRP) as part of the Initial Study/Mitigated Negative Declaration (IS/MND) approved in 2020. There had also been some discussion around expanding the traffic study, although the traffic engineers at the time had determined a less than significant impact with the building since there was an existing commercial shopping center with incremental square footage increases. A traffic study had been prepared for Appian Village which included expansion of the four-legged traffic study and other mitigation measures. Due to the proximity of the two projects, both intersections had been fully evaluated. Code enforcement was aware of and was working with the applicant on code enforcement issues and there were conditions of approval related to vandalism and keeping the site in good order.

Community Development Director Whalen reiterated that code enforcement had been working with the applicant for a number of months.

Peter Myers, Pinole, was pleased that improvements would eventually come but the delay had opened up the possibility for changes in the plan presented to the City Council in 2017 when the City's needs were different. He pointed out the City did not need another gas station but housing and he asked the City Council and staff to put its own stamp on this project.

As a representative of the Zero Emission Vehicles by 2030 (ZEV2030) organization, Mr. Myers noted the City Council had previously supported a 2030 mandate to end the sale of new internal combustion vehicles. He questioned adding another gas station other than for money and asked that the City Council consider eliminating that component from the project.

Mr. Myers also expressed his hope that bicycle and pedestrian improvements for Tara Hills Drive would be included in this project and paid for by the developer.

Planning Manager Hanham clarified that all of the frontage for the Pinole Square Shopping Center would be redone and improved as part of the project including a bus turnout. The project had been approved in 2020 and the developer had included electric vehicle (EV) concessions along with the potential for the gas station to be an EV charging station in the future. The conditions of approval for the project included conditions for EV parking and conduit and the project was looking towards the future. The project plans could be shared with the public, if desired.

Planning Manager Hanham also clarified in response to the Mayor that the City was doing well meeting its Regional Housing Needs Allocation (RHNA), with approved multi-family projects chipping away at the RHNA. With the Pinole Vista project, the City would be 81 units short of its 6th Cycle Housing Element RHNA and there would be other housing opportunities in the area.

Community Development Director Whalen confirmed as part of the original approval of the project that there had been a discussion of housing on the site. There were other parcels in the area not owned by the subject property owner which had been identified as Housing Opportunity Sites.

Planning Manager Hanham also clarified the ownership of the Pinole Square property.

PUBLIC HEARING CLOSED

Council member Tave clarified with Planning Manager Hanham that the Final Map had not yet been filed and approved given issues with the land surveyor. Comments had been forwarded to the applicant, a new land surveyor was on board and the process was moving forward. The applicant would have to verify when new construction drawings were anticipated to be submitted.

Mr. Green anticipated a period of nine months to a year from the completion of the construction drawings, submittal to the City, and the start of construction. During that time, the applicant must get the construction drawings moving forward which could take four to six months.

Community Development Director Whalen detailed the findings required to be approved for the permit extension as shown in the July 19, 2022 staff report. Staff recommended approval of the permit extension based on the no change in circumstances finding.

Planning Manager Hanham reiterated that the conditions of approval contained a condition regarding EV charging stations. Submittal of a Parking Demand Management Plan had also been a condition of approval and would address pedestrian safety improvements. He also clarified there would be bike racks located throughout the shopping center and the applicant clearly defined pedestrian access on the plans.

Council member Tave had initially supported a housing overlay for the property but that had not moved forward. He found the project to be well thought out and thanked the applicant for sticking with the City to move the project forward. He too had seen people gathering at the back of the lot, understood the applicant was working with staff and code enforcement to address any issues, and asked the public to be patient while those issues were being addressed.

Community Development Director Whalen clarified the pedestrian safety improvements the Planning Manager referenced were on-site and not off-site improvements.

Planning Manager Hanham further clarified the off-site frontage improvements as part of this project involved new sidewalks, a bike lane and bus turnout on Tara Hills Drive and the improvements would extend all the way up to the intersection of Appian Way and Tara Hills Drive.

Council member Toms stated that when the applicant and Safeway had applied for entitlements they would have done an economic study which had included a gas station at that time. If the permit was extended and the gas station not included, there could be a concern that the project could not move forward. She also understood it would be around six months before construction drawings were submitted and nine months of review taking them past a year but it was possible the Final Map could be recorded before that time. She asked whether the recordation of the Final Map would be considered an exercise of the entitlement.

Planning Manager Hanham advised the Final Map was on a faster track than the improvement plans. He hoped to have the Final Map recorded within the next few months but was uncertain that exercised the entitlements.

Community Development Director Whalen explained that absent building permit issuance as the trigger to exercise the permit it was somewhat subjective. Pursuant to Section 17.10.100 (B) of the Pinole Municipal Code (PMC) which stated: *The exercise of a permit occurs when the property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon such permit(s). A permit may be otherwise exercised pursuant to a condition of the permit or corresponding legal agreement that specifies that other substantial efforts or expenditures constitutes exercise of the permit.* She understood the City Council may impose an additional condition that would indicate when the permit was exercised.

City Attorney Casher confirmed the Community Development Director's comments.

Mayor Pro Tem Murphy again clarified with Planning Manager Hanham that the EV concessions as part of the project, with possibly 16 to 20 EV charging stations, would be located throughout the parking lot.

As to whether a condition could be added to reflect a required minimum of EV charging stations, City Attorney Casher cited Condition 43 of the resolution shown as Attachment A, which could be amended to add some level of specificity to that condition; however, the conditions had been significantly discussed and vetted with the financials around them discussed with the developer.

Planning Manager Hanham suggested staff could negotiate with the applicant and report back to the City Council on a specific number and location of EV charging stations. He clarified the dynamics of the project had not changed, the applicant was basing everything on the entitlements already approved, all characteristics identified in the IS/MND in 2020 remained intact and did not necessitate a change in the environmental documents.

City Attorney Casher referenced Page 2 of the resolution contained in Attachment A and the whereas clause which read: *WHEREAS, no further environmental review is necessary for the project since the scope of the project has not changed or been altered since the previous adoption of the IS/MND and MMRP.*

That whereas clause was a direct reference to the California Environmental Quality Act (CEQA), need for environmental review and the environmental impact the project would have on the City. Again there had been no changes in circumstances since the date of the entitlement which would have created a scope change requiring environmental review.

Community Development Director Whalen further added that the permit extension process was part of the PMC but not a process that could continue forever, with a maximum extension of three years.

Mayor Pro Tem Murphy stated he had reviewed the project as a member of the Planning Commission and had raised concerns with the health and safety of residents of Tara Hills given the construction of new infrastructure around fossil fuels. The new gas station remained a concern and he asked what would be entailed in the construction of a fuel pump.

Planning Manager Hanham highlighted the construction process for fuel pumps which included grading, underground storage tanks, building of the tubes into the dispenser to allow for the pumping of the gas. Construction could take six to nine months and would involve an environmental permit process with the County. No fuel would be allowed to be pumped until all required reviews were complete.

Council member Martinez-Rubin asked the applicant how eager he was to complete the project and Mr. Green emphasized they wanted to complete the project as much as if not more than the City of Pinole.

Council member Martinez-Rubin encouraged the applicant to work with staff to facilitate the process as much as possible. She also clarified with the Community Development Director the maximum period of time to extend the permit was through June 16, 2023. The project was not required to seek Planning Commission approval again and that part of the process had been completed. She offered a motion to extend the permit for Pinole Square as recommended by staff.

Given Council members were not yet finished with their comments, Council member Martinez-Rubin withdrew her motion.

Mayor Pro Tem Murphy thanked the applicant for the diligence in helping the City to grow, but at the same time he had grave concerns with the construction of any new fossil fuel infrastructure which would be a detriment to the country, State of California and the City of Pinole. Pinole had previously passed a resolution to support the development of zero emission vehicles which was important given the different types of fuel stations. He understood the applicant would be focused on more gas than oil, but underscored how gas stations had hurt communities in that underground fuel tanks oftentimes leaked, contaminated ground water and impacted a community. He emphasized the need to think about revolutionizing the way development was seen in Pinole, disagreed that everything for Hercules was good for Pinole and vice versa, and suggested this was an opportunity to revitalize a Pinole shopping center via alternative energy.

Mayor Pro Tem Murphy pointed out the Three Corridors Specific Plan had stated the City did not need more gas stations and the City Council and community was focused on more clean energy. He suggested the community was worthy of the consideration of alternative means of energy as opposed to the use of fossil fuels.

Given the desire to prioritize the public health and safety of the community and need to combat the climate crisis, Mayor Pro Tem Murphy urged a new model that did not include the infrastructure of a new gas pump. While he supported the project, he was challenged by another gas station in the community. He did not see the need and suggested there was a way to benefit from the development while also protecting the health and safety of the community. He urged the City Council to consider approving the extension of the permit but not include the gas station.

Mayor Salimi asked how feasible it would be for the applicant to move forward absent the gas station component, to which Mr. Green advised pursuant to conversations with Safeway their financials included the redevelopment of the property with a fuel center.

ACTION: Motion by Council members Martinez-Rubin/Toms to adopt a resolution approving an extension through June 16, 2023, of the entitlements adopted via Resolution Nos. 2020-50 through 2020-57 for the Pinole Square Shopping Center redevelopment project located at 1201-1577 Tara Hills Drive (APNs 402-282-002, 06, 07, 08, 09, 10, 14 & 19).

Vote:	Passed	4-1
	Ayes:	Salimi, Martinez-Rubin, Tave, Toms
	Noes:	Murphy
	Abstain:	None
	Absent:	None

Mayor Salimi declared a recess at 9:07 p.m. The City Council meeting reconvened at 9:15 p.m. with all Council members and staff present either in-person or via Zoom.

11. OLD BUSINESS: None

12. NEW BUSINESS

A. Update on the City's Use of Funds in the Section 115 Trust Fund [Action: Receive Report (Guillory)]

Finance Director Markisha Guillory presented a PowerPoint presentation on the Update on the City's Use of Funds in the Section 115 Trust Fund, which included an overview of the establishment of the Trust to set aside funds to offset the increase in the City's required annual contribution to the employee pension funded by the one-time sale of City property (Pinole Assisted Living Community). At the time the Trust had been established, the City had not created a policy specifying how to calculate the amount to be withdrawn from the Trust each year, with the City's practice to withdraw an amount equal to the increase in the City's net required annual contribution for a given year and that from FY 2018/19, the baseline year.

Finance Director Guillory highlighted a number of tables which identified the annual transfer from the Section 115 Trust, Minimum Required Employer Contribution and Employer and Employee Contributions. She clarified the majority of the year over year increases in the City's contribution had been due to increased Unfunded Accrued Liability (UAL). She also noted the employee paid City contributions had intentionally been reduced in recent years to bring the total compensation in line with that of peer agencies, which had impacted the amount the City needed to contribute.

Finance Director Guillory advised of the next steps including the engagement of an actuarial firm to estimate the remaining lifespan of the Section 115 Trust and create a written financial policy on the use of the Section 115 Trust Fund. She recommended the City Council review the report from staff on the City's use of funds in the Section 115 Trust Fund, including the formula the City had used to determine the amount of funds to be withdrawn from the fund each year.

City Manager Murray clarified the amount of the Section 115 Trust being used to pay the City's pension costs related to Net New Employees (NNEs). He explained when the Section 115 Trust had been established in Fiscal Year 2018/19, the City had 114 employees. In Fiscal Year 2022/23, there were 133 Full-Time Employees (FTEs).

City Manager Murray stated when he and the Finance Director had been oriented about the intent and purpose of the Section 115 Trust, the computation of the amount to be withdrawn was clear as articulated in the staff report, with the pension trust used to pay for the City's increased pension costs over the baseline year, a formula followed by many cities. Until a member of the public had questioned the use of the Section 115 Trust for NNEs, the issue had not come up with prior staff or prior City Council members.

The reason employee pension contributions for cities had increased so dramatically over the years was after the Great Recession when the California Public Employees' Retirement System (CalPERS) had found itself in a low funded status and had made unrealistic optimistic assumptions on the return on assets, it had found around 2013 it would have to pay out more in pension benefits since retirees were living longer with larger salaries and CalPERS was earning less on returns on assets than expected creating a gap. CalPERS had subsequently decided it needed more contribution from the participating agencies.

City Manager Murray highlighted the Public Employees' Pension Reform Act (PEPRA) adopted in 2013, which capped pension formulas and detailed how CalPERS decided to address the unfunded situation by requiring employers to make higher contributions to CalPERS to pay down the unfunded liability. The increased contributions were not related by and large to the normal costs, the amount the City must pay for employees for each additional year of service credit they received. He highlighted the amount Pinole owed CalPERS, around \$4 million in 2022, as identified in the staff report, and clarified that NNEs had no unfunded liability with the City, and most new employees were PEPRA employees with less generous benefits.

City Manager Murray advised he had seen nothing in the oral history or in writing to suggest the Section 115 Trust Fund could not be used as outlined in the staff report. The Section 115 Trust was not being used to pay for any pension obligation bonds, it was not in the budget nor in the long-term forecast but had been used to offset annual contributions.

PUBLIC COMMENTS OPENED

Rafael Menis. Pinole, spoke to Page 297 of the agenda packet and the table which had shown the employer and employee contributions and the gradual escalation of the UAL leading to the increased costs the City had been incurring. He recalled CalPERS provided a presentation to the City Council in 2021, with information on the expected increase in UAL, and with the UAL rate increasing faster than predicted. He asked whether the City had any expectation how the rate of UAL increase would change in the coming years.

As to the employee paid City contribution, Mr. Menis understood that most unions negotiated with the City to remove the increased employee payment for the City portion of the contribution to enable recruitment and retention but there was a moderate portion in the current fiscal year of employee contribution to the city contribution. He asked if that was due to the contract ratified under Consent Item 9F or other non-represented employees or other managerial non-represented employees.

City Manager Murray reiterated that CalPERS had instituted a number of reforms in the early 2010's, instituted requirements that cities that had underfunded programs made larger contributions more quickly and it was always anticipated the payments for the UAL (one-time costs) would ramp up quickly over a five-year period, level off and then decrease with cities to get to an acceptable funded status. He expected that CalPERS would increase for a couple more years and then level off. He added the City Council had requested the actuarial firm who had conducted the initial assessment of the Section 115 Trust provide a presentation for a longer-term focus and identify the remaining life span of the Section 115 Trust. All of this information had been included in the 10-Year Forecast prepared as part of the Long-Term Financial Plan (LTFP) and budget. He further clarified the City had paid employer contributions and as had been discussed on many occasions, the total employee compensation Pinole paid its employees was below market average but there had been an effort to make that compensation package more competitive with the City's peers to attract and retain great employees.

The City Council had over the past few years reduced the contribution by the employee towards what the City would normally pay for pensions, which had been reduced in fiscal year 2022/23 as a result of phasing in some reductions in employee contributions in many labor agreements but which may not have captured PPA. Employees would still be asked to pay a portion of what CalPERS considered to be a standard employer contribution in the amount of about \$400,000.

Debbie Long, Pinole, understood the contributions by public safety were higher because they negotiated for a 3 at 50 in the mid-2000s, and for that ability to retire earlier with more they would contribute more to their CalPERS account. Other cities had also required their employees to pay into Social Security, which at the time of retirement then offset the contribution required by the city. She found there was more analysis to this than the simple, "we are required to pay more than other cities." She also commented that the actuarial who had conducted the analysis of the Section 115 Trust for Pinole in 2018 had calculated the numbers based upon something different than the calculation now being requested.

Ms. Long could not deny the City Council could change the policy but suggested that any time the City hired new employees those hirings were being based on a finite fund that would expire at some point and she hoped the City Council would remain aware of that fact. She disagreed with the City Manager's comments based on correspondence she had from prior staff and based on her understanding the current City Manager had been informed of the purpose of the Section 115 Trust but since he could find nothing in writing had decided to use the Section 115 Trust in any way he found necessary. She had raised the concerns to ensure transparency and wanted to ensure the City Council did not place the City's entire finances in jeopardy in the future.

In response to the Mayor, Ms. Long understood the City had transferred \$2 million from the Section 115 Trust to balance the General Fund and expressed concern for the potential impacts when the funds in the Trust ran out and the City would be several million dollars short to balance the General Fund.

City Manager Murray explained the intent to draw from the Section 115 Trust to relieve the General Fund of the need to fund the escalating pension costs. He reported that he and Ms. Long have not had an in-person conversation about the Section 115 Trust but welcomed Ms. Long to speak with him or the Finance Director personally on this matter. He reiterated the intent of the Section 115 Trust was to pay for the increase in costs to balance the budget and the issue of whether it was used to pay for NNEs was trivial since that represented a small portion of the overall costs. The Section 115 Trust was not intended to last eternally and would be diminished and eventually extinguished and was meant to pay down the UAL, and due to PEPRA and other factors, the City would not have an unfunded status eternally. He otherwise suggested it would be worthwhile to consider a longer term forecast beyond 10-years to see what would happen to the City after the Section 115 Trust had been exhausted.

City Manager Murray added that the statement about Social Security was misleading in that employees in some cities paid into Social Security to get additional benefits in retirement from Social Security. In addition, the history about how the labor negotiations occurred and that City employees had gotten a new formula was entirely clear, had occurred years ago, and employees in many cities had negotiated more favorable pensions. The total compensation of Pinole employees as compared to peer jurisdictions in their retirement formula and other formulas remained below other peer jurisdictions and the suggestion that as part of labor negotiations of the past the City of Pinole was generously compensating all of its employees was unfounded. Based on current data, the City was providing under-market total compensation, which was not sustainable to attract and retain great employees.

City Manager Murray further explained that the money for staff salaries came from the Operating Budget, which created a new cost to the City separate from the Section 115 Trust discussion. The organizational capacity of the City had been evaluated and it had been determined the staffing levels should be reorganized to be more comparable pre-Great Recession. He added that the City had been slowly building that back up which cost more money than the existing revenue sources and the City Council had decided it was worth it to spend limited resources for the additional staff since that additional staff would provide greater levels of service to the community.

Vincent Wells, President, Local 1230, representing Pinole Firefighters and others within the County, reported the firefighters in the City of Pinole currently received 3 percent at 55 benefits and started negotiating ways to reduce the costs of its members since the amount being paid was far above other member agencies with the same benefit.

City Manager Murray commented that the City's required contribution to CalPERS had increased dramatically due to the UAL, had nothing to do with current employees but with pension formulas that had been guaranteed to employees who had long since retired and whose cities had not put aside the appropriate amount of funding in the past. He suggested it would be better and appropriate for the City to consider the UAL as a one-time liability that by and large involved retired, not current employees, and focus on the normal costs associated with new employees.

PUBLIC COMMENTS CLOSED

In response to Council member Tave, City Manager Murray stated as of fiscal year ending June 20, 2021, the Section 115 Trust Fund had a fund amount of about \$19 million with 10 percent being spent for this year although less had been spent in prior years.

The assets grew over time with investment earnings, no money was being contributed to the Section 115 Trust Fund which had been funded by the one-time sale of City property (Pinole Assisted Living Community). The General Fund reserves would help smooth revenues during difficult economic times and over the 10-year period the Section 115 Trust Fund would be exhausted. The hope was the amount in the Section 115 Trust would be large enough to get over the large increase in contributions and allow the City to reach a high enough funded status. It was described as a one-time resource to deal with a one-time problem. The City's total unfunded pension liability was between \$30 and \$40 million and the Section 115 Trust only meant to address General Fund employees who were 80 percent of the City's personnel costs.

Council member Toms commented that she had been around when the City had established the Section 115 Trust and when the City had sold the Pinole Assisted Living Community, which had generated the funds deposited into the Trust. She recalled in June 2016 that the UAL was around \$30.2 million and the City had been advised at the time it would have more control and be able to earn interest if that was paid down little by little, with the actuarial report having identified that could be done by Fiscal Year 2031/32, the peak of those payments. Whether or not that evolved or changed over the past few years, a new actuarial report would identify the current UAL, the current balances and how far that would get them. Given the funds were intended to pay the UAL and not necessarily a calculation of the baseline, the City had to look at the payment of the unfunded piece of the bill and focus on that number rather than on a calculation of the current bill minus the baseline.

City Manager Murray again highlighted Table 6, as shown on Page 4 of the July 19, 2022 staff report, which identified the Minimum Required Employer Contribution for FY 2022/23.

Council member Toms commented that when the City had increased its employees from 114 to 133, the NNEs should have come out of the Operating Budget and not from the Section 115 Trust, which was not what had been intended. Once the Town Council had received the additional report from the actuarial firm, the City Council would have the information to consider a policy which could make the Trust last longer.

City Manager Murray reiterated there had been no communication to him or to the Finance Director as to the nuisances related to the use of the Section 115 Trust. He reiterated his understanding on how the Trust was to be used. He had no objection to not using the Section 115 Trust for NNEs but that cost was around \$150,000 a year, insignificant related to the overall Operating Budget and the amount being withdrawn from the Section 115 Trust. That change could be made but it would not change the Operating Budget or dramatically change the life of the Section 115 Trust.

Council member Toms understood there was no written policy related to the Section 115 Trust and she hoped through this process the City Council could consider such a policy.

In response to Council member Tave, City Manager Murray again explained why most cities had created their own pension trusts as opposed to turning those funds over to CalPERS. The City of Pinole was using the Section 115 Trust in a very conservative way, just paying for that increased cost but technically the Section 115 Trust could be used to pay for all retirement/pension contributions. If the City owed CalPERS \$4 million this year, as an example, and found itself in a crunch, the Section 115 Trust could be used to pay that full amount.

The City also had control over how the pension trust assets were managed within certain parameters. Most cities hung on to such funds since they had the latitude to use the funds in all of the legally permissible ways if there was a financial crisis.

Further responding to Council member Tave and the Mayor, City Manager Murray clarified the City could buy itself out of CalPERS but that was a totally separate issue and he highlighted the details of how such a process may work, which carried all sorts of complications and considerations of leaving CalPERS. As to the idea of borrowing money to fully pay CalPERS, the City had a loan program with CalPERS already in that CalPERS was requiring the City to pay off the unfunded liability with no difference or benefit in taking a loan to fully fund CalPERS. As to what it would cost the City to buy itself out of CalPERS that figure would have to be clarified and staff would have to return with that information.

Council member Martinez-Rubin spoke to the next steps and the recommendation for engagement of an actuarial firm to estimate the remaining lifespan of the Section 115 Trust and create a written financial policy. She asked what the actuarial would provide that CalPERS did not already provide to public agencies.

City Manager Murray explained that every year CalPERS provided an actuarial assessment of the pension program to inform the City of the value of its assets at the end of every fiscal year and the cost of benefits promised to employees, and if underfunded, to identify the UAL. CalPERS also identified the expected required contributions which changed each year based on CalPERS' return on investments. The actuarial firm would provide a longer term forecast on the City's expected pension costs and tell the City how long the Section 115 Trust would last based on its use. He clarified that CalPERS did nothing with the Section 115 Trust.

Mayor Pro Tem Murphy clarified with Finance Director Guillory that an investment policy already existed with the establishment of the Section 115 Trust, which identified the investment strategy for the funds that sat idle in the Section 115 Trust. The new policy would be geared towards computation and taking City Council direction on the components to be included.

Council member Martinez-Rubin found the use of the Section 115 Trust to be consistent with what had been presented as part of the staff report that explained the background of the creation and intent of the Section 115 Trust, and she appreciated the staff perspective on this topic. She also appreciated that CalPERS was being more responsive to smaller cities that bore the burden of funding the CalPERS requirements to contribute towards a pension fund statewide. She recommended staff also consider a presentation from CalPERS to share its perspectives in tandem at the same time as a presentation from the actuarial firm that would provide another source of information.

City Manager Murray confirmed staff would follow the Council direction. A presentation had been made by CalPERS to the City Council a year ago and could be considered as a request for a future agenda item.

Council member Toms looked forward to the report from the actuarial firm and the development of a written policy.

Mayor Pro Tem Murphy thanked staff for the informative presentation and looked forward to the next steps as outlined.

Council member Tave also thanked staff for the report and also looked forward to the report from the actuarial firm but he hoped to see example scenarios as an alternative to the traditional, such as whether or not there were possible viable options that could be considered and how they may or may not work and why.

The City Council discussed potential options, particularly with respect to the use of bonds, which it was noted were routinely for 20 to 30 years and City Manager Murray suggested rather than researching the maximum allowable period of time for a bond, the actuarial could be asked to look at such a scenario as part of possible alternatives.

City Manager Murray summarized the direction from the City Council to: receive the actuarial report, identify the cost of buying out of the CalPERS system, identify the maximum term of a bond and after the presentation from the actuarial firm, do whatever the City Council directed regarding the creation of a new Financial Policy related to the use of the Section 115 Trust.

The City Council returned to agenda Item 7D at this time.

7. REPORTS & COMMUNICATIONS

D. Council Requests for Future Agenda Items

Mayor Pro Tem Murphy requested a future agenda item to have a discussion and action on a 10-Year Forecast Budget as opposed to a Five-Year Budget.

City Manager Murray commented that the longer the time frame for a forecast the more speculative it would become, although there were changes that were known which could be incorporated. He suggested a longer term financial forecast beyond when the Section 115 Trust would be exhausted would be valuable. He suggested a 10-year or possibly 20-year forecast be considered prior to the next LTFP development process which would be feasible and beneficial. Consensus given.

Mayor Pro Tem Murphy requested a future agenda item to discuss a resolution urging Contra Costa County to take immediate measures to phase out existing oil and gas operations on County lands and prohibit any new drilling in the County. Consensus given (Council member Toms abstained since her day job would deal with this issue and Council member Martinez-Rubin was opposed).

Mayor Salimi requested information on the amount of revenue the County was generating from oil and gas and how much of the County's budget represented oil and gas companies.

City Manager Murray explained that the staff report for the item would include the background and the types of revenues the County enjoyed.

Council member Martinez-Rubin asked that staff also research the impacts of doing away with fuel-related industry, how it would impact employment in the County and the impacts of the lack of that industry in neighboring cities, such as the City of Richmond as an example.

Council member Martinez-Rubin requested a future agenda item in tandem with a presentation from the City's actuarial firm, for a representative from CalPERS to be invited to provide a presentation on CalPERS' planned changes that may affect contributions to the pension fund. Consensus given.

Mayor Salimi requested a future agenda item on Capital Improvement Program (CIP) needs in the next 10-years and was informed by the City Manager the natural time to have that conversation would be when the CIP was next discussed in 2023. Staff could not accelerate the completion of assessments currently under way but staff had information on the Pavement Condition Index (PCI).

City Manager Murray suggested if the Mayor wanted a presentation on the condition of the City's roads and the required funding to reach certain conditions that could be done. If the Mayor was seeking some sort of education program, staff would need an agenda item to discuss that further.

Mayor Salimi sought a presentation on the state of the City's roads and that conversation could include how to move forward but while consensus was given, the Mayor withdrew his request at this time to allow staff time to receive a report from consultants hired by the Metropolitan Transportation Commission (MTC).

13. CITIZENS TO BE HEARD (Continued from Item 6) (Public Comments)

Only open to members of the public who did not speak under the first Citizens to be Heard, Agenda Item 6.

Citizens may speak under any item not listed on the Agenda. *The time limit is 3 minutes and is subject to modification by the Mayor. Individuals may not share or offer time to another speaker. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future Council meeting.*

City Clerk Bell reported there were no public comments.

14. ADJOURNMENT to the Regular City Council Meeting of August 2, 2022 in Remembrance of Amber Swartz, Mike Franklin and Soraya Hosseini.

At 10:58 p.m., Mayor Salimi adjourned the meeting to the Regular City Council Meeting of August 2, 2022 in Remembrance of Amber Swartz, Mike Franklin and Soraya Hosseini.

Submitted by:


Heather Bell, CMC
City Clerk

Approved by City Council: