



CITY COUNCIL
Maureen Toms, Mayor
Cameron Sasai, Mayor Pro Tem
Anthony Tave, Council Member
Norma Martinez-Rubin, Council Member
Devin T. Murphy, Council Member

PINOLE CITY COUNCIL MEETING AGENDA

July 2, 2024

5:00 PM

**Attend in Person: PINOLE CITY COUNCIL CHAMBERS - 2131 PEAR STREET
OR**

Attend VIA ZOOM TELECONFERENCE – Details provided below

How to Submit Public Comments:

In Person:

Attend meeting at the Pinole City Council Chambers, fill out a yellow public comment card and submit it to the City Clerk.

Via Zoom:

Members of the public may submit a live remote public comment via Zoom video conferencing. Download the Zoom mobile app from the Apple Appstore or Google Play. If you are using a desktop computer, you can test your connection to Zoom by clicking [here](#). Zoom also allows you to join the meeting by phone.

From a PC, Mac, iPad, iPhone or Android:

<https://us02web.zoom.us/j/89335000272>

Webinar ID: 893 3500 0272

By phone: +1 (669) 900-6833 or +1 (253) 215-8782 or +1 (346) 248-7799

- Speakers will be asked to provide their name and city of residence, although providing this is not required for participation.
- Each speaker will be afforded up to 3 minutes to speak (subject to modification by the Mayor)
- Speakers will be muted until their opportunity to provide public comment.

When the Mayor opens the comment period for the item you wish to speak on, please use the “raise hand” feature (or press *9 if connecting via telephone) which will alert staff that you have a comment to provide and press *6 to unmute. To comment with your video enabled, please let the City Clerk know you would like to turn your camera on once you are called to speak.

Written Comments:

All comments received **before 3:00 pm the day of the meeting** will be posted on the City’s website on the agenda page (Agenda Page Link) and provided to the City Council prior to the meeting. Written comments will not be read aloud during the meeting. Email comments to comment@ci.pinole.ca.us Please indicate which item on

the agenda you are commenting on in the subject line of your email.

Please note: These materials were originally prepared for the 6/18 Regular Meeting that was canceled due to lack of quorum. The date of approvals will be updated to July 2nd on all supporting records included in the packet (Resolutions/ Ordinances/letters/agreements).

OTHER WAYS TO WATCH THE MEETING

LIVE ON CHANNEL 26. They are retelecast the following week. The Community TV Channel 26 schedule is published on the city's website at www.ci.pinoles.ca.us.

VIDEO-STREAMED LIVE ON THE CITY'S WEBSITE, www.ci.pinoles.ca.us and remain archived on the site for five (5) years.

If none of these options are available to you, or you need assistance with public comment, please contact the City Clerk, Heather Bell at (510) 724-8928 or hbelle@ci.pinoles.ca.us.

Americans With Disabilities Act: In compliance with the Americans With Disabilities Act of 1990, if you need special assistance to participate in a City Meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the City Clerk's Office at (510) 724-8928. Notification at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Note: Staff reports are available for inspection on the City Website at www.ci.pinoles.ca.us. You may also contact the City Clerk via e-mail at hbelle@ci.pinoles.ca.us.

Ralph M. Brown Act. Gov. Code § 54950. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies, which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

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

2. LAND ACKNOWLEDGMENT

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't Code § 87105.

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.

None

5. RECONVENE IN OPEN SESSION TO ANNOUNCE RESULTS OF 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. PLEASE SEE THE COVERSHEET OF THE AGENDA FOR INSTRUCTIONS ON HOW TO SUBMIT PUBLIC COMMENTS

7. RECOGNITIONS / PRESENTATIONS / COMMUNITY EVENTS

A. Proclamations

None

B. Presentations

None

8. REPORTS & COMMUNICATIONS

A. Mayor Report

1. Announcements

B. Mayoral & Council Appointments

C. City Council Committee Reports & Communications

- D. Council Requests for Future Agenda Items
- E. City Manager Report / Department Staff
- F. City Attorney Report

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. California Assembly Bill (AB481) Military Equipment Use Policy and Ordinance, Second Read and Adoption **Action: Waive Second Reading and Adopt Ordinance (Jeremy Crone, Eric Casher)**
- B. Chapter 8.38 "Single-use Plastic Foodware and Bag Reduction", Second Read and Adoption **Action: Conduct Second Reading and Adopt Ordinance (Kapil Amin, Lilly Whalen)**
- C. Settlement Agreement With MVP Construction, LLP **Action: Approve Agreement per Staff Recommendation (Eric Casher)**
- D. Appoint Kelcey Young as City Manager and Authorize the Mayor to Execute an Employment Agreement **Action: Adopt Resolution per Staff Recommendation (Stacy Shell)**

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. First Reading of Electric Vehicle Charging Station Ordinance **Action: Conduct First Read and Public Hearing (Eric Casher, Sanjay Mishra)**
- B. FY 2023/24 Utility Users' Tax (UUT) Review **Action: Adopt Resolution per Staff Recommendation (Markisha Guillory)**

11. OLD BUSINESS

None

12. NEW BUSINESS

None

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

Open only 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 for City Council items 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 meeting.

14. ADJOURNMENT to the Regular City Council Meeting of July 16, 2024 in Remembrance of Amber Swartz.

I hereby certify under the laws of the State of California that the foregoing Agenda was posted on the bulletin board at the main entrance of Pinole City Hall, 2131 Pear Street Pinole, CA, and on the City's website, not less than 72 hours prior to the meeting date set forth on this agenda.

Heather Bell, CMC

City Clerk

POSTED: Thursday, June 27, 2024 at 3:30 pm



CITY COUNCIL REPORT

9.A.

DATE: JULY 2, 2024
TO: MAYOR AND COUNCIL MEMBERS
FROM: JEREMY CRONE, COMMANDER
ERIC CASHER, CITY ATTORNEY
SUBJECT: CALIFORNIA ASSEMBLY BILL (AB481) MILITARY EQUIPMENT USE
POLICY AND ORDINANCE, SECOND READ AND ADOPTION

RECOMMENDATION

Staff recommends the City Council waive the second reading and adopt an ordinance approving the renewal of the City's Military Equipment Use Policy as Stated in Chapter 2.60 "Military Equipment Policy" of the Pinole City Municipal Code, based upon approval of the Pinole Police Department's 2023-2024 Annual Military Equipment Report, in compliance with AB 481.

BACKGROUND

California Assembly Bill (AB) 481 (Government Code §7070 *et seq.*) requires the Pinole Police Department ("Department") to obtain City Council approval of a military equipment use policy by ordinance before purchasing, raising funds for, acquiring or using "military equipment" as defined in Government Code §7070 (c). Under AB 481, the City Council may only approve the policy if it makes specific findings regarding the equipment including safeguards, cost effectiveness, reasonableness of use, and fiscal impact.

On May 3, 2022, the City Council approved the Department's Policy (identified as Department Policy 707) finding it meets the requirements under AB 481 and introduced and adopted an ordinance adding Chapter 2.60 "Military Equipment Policy" to the Pinole Municipal Code (Ord. 2022-02).

AB 481 requires the Department submit to the City Council an annual military equipment report for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use. The Department must also make each annual military equipment report publicly available on its internet website for as long as the military equipment is available for use. Additionally, the City Council must review the ordinance that it has adopted, approving the funding, acquisition, or use of military equipment, at least annually, and vote on whether to renew the ordinance at a regular meeting. During the review process, the City Council must determine, based on the military equipment report, whether each type of military equipment in the report has complied with the standards for approval set forth in Government Code sections 7071(d)(1) and 7071(e)(2). The City Council most recently approved and reaffirmed the Department's Policy on June 6, 2023 (Ord. 2023-04).

In compliance with the Government Code, the Department's annual use report and policy was released to the community, via the Department's transparency portal on April 22, 2024, and provided to City Council. On May 21, 2024, the Department held a well-publicized and conveniently located public meeting, at which the general public was able to discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

By this ordinance the Department seeks City Council (1) approval of its 2023-2024 annual military equipment report, (2) authority to acquire two DJI Mavic 3 Thermal (M3T) UAS drones and (3) renewal of Pinole Police Department Policy 707 upon a finding that the report has complied with the standards for approval set forth in Government Code sections 7071(d)(1) and 7071(e)(2). If approved on second read, the ordinance and policy will go into effect in thirty (30) days.

On June 4, 2024, at a regularly scheduled City Council Meeting, a public hearing was held. The Department presented its annual use report and proposed policy to the City Council for approval. The City Council also received a presentation and staff report to introduce and conduct a first reading of the proposed ordinance to approve and renew Chapter 2.60 to the Pinole Municipal Code adopting the Policy in compliance with AB 481. The City Council voted 4-1 in support of the proposed ordinance.

REVIEW AND ANALYSIS

FISCAL IMPACT

There is no direct fiscal impact from the adoption of the ordinance.

ATTACHMENTS

- A. Staff Report 2023/2024 Pinole PD Military Equipment Annual Renewal Staff Report For Ordinance (CAO Revisions)
- B. Pinole_Ordinance Re-Adopting Military Equipment Use Policy (AB 481) 2024 Updated (CAO Revisions)
- C. Unmanned Aerial System UAS Operations Policy 607
- D. 2023_2024 PPD Military Annual Report Document
- E. Military Equipment Pinole Police Department Inventory Final



CITY COUNCIL REPORT

XXX

DATE: JUNE 4, 2024

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: COMMANDER JEREMY CRONE

**SUBJECT: PUBLIC HEARING; CONDUCT FIRST READING OF ORDINANCE
APPROVING RENEWAL OF THE CITY OF PINOLE'S MILITARY
EQUIPMENT POLICY AS STATED IN CHAPTER 2.60 OF THE
PINOLE MUNICIPAL CODE; AND REVIEW OF 2023-2024 ANNUAL
REPORT IN COMPLIANCE WITH AB 481**

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing, review and approve the 2023-2024 Pinole Police Department Annual Military Equipment Report, and waive full reading and introduce by title only an ordinance approving and re-adopting a Military Equipment Use Policy as Stated in Chapter 2.60 "Military Equipment Policy" of the Pinole City Municipal Code in compliance with AB 481.

BACKGROUND

On September 30, 2021, Governor Newsom signed into law Assembly Bill (AB) 481, which went into effect on January 1, 2022, and added California Government Code Sections 7070 through 7075 relating to the funding, acquisition, and use of military equipment by local law enforcement agencies. The bill required law enforcement agencies seeking to fund or acquire new military equipment or continue use of any military equipment acquired prior to January 1, 2022, to draft a military equipment use policy and obtain approval from its governing body via adoption of an ordinance no later than May 1, 2022. On May 3, 2022, the City Council approved the Department's Policy (identified as Department Policy 707) finding it meets the requirements under AB 481 and introduced and adopted an ordinance adding Chapter 2.60 "Military Equipment Policy" to the Pinole Municipal Code (Ord. 2022-02).

AB 481 (Government Code §7072) requires that the Department submit to the City Council an annual military equipment report for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use. The annual report shall include a summary of each type of military equipment, its intended purpose, how each type of equipment was used by the agency during the preceding year, a summary of any complaints received concerning the equipment, the results of any internal audits pertaining to violations of the military equipment use policy, the total cost for each type of equipment, and quantity possessed.

Additionally, the City Council must review the ordinance that it has adopted, approving the funding, acquisition, or use of military equipment, at least annually, and vote on whether to renew the ordinance at a regular meeting. During the review process, the City Council must determine, based on the military equipment report, whether each type of military equipment in the report has complied with the standards for approval set forth in Government Code sections 7071(d)(1) and 7071(e)(2). If it determines a type of equipment identified in the report has not complied with the standards for approval, the City Council must either disapprove of the renewal of the ordinance or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance. The City Council may renew or not renew the authorizing ordinance, disapprove authorization for equipment where standards have not been met, or require modifications to the military equipment use policy based on whether the equipment detailed within the annual report complies with policy and meets specified standards as set forth in California Government Code Section 7071, subdivision (d).

On June 6, 2023, the City Council approved and reaffirmed the Department's Policy (identified as Department Policy 707) finding it met the requirements under AB 481 and introduced and adopted an ordinance adding Chapter 2.60 "Military Equipment Policy" to the Pinole Municipal Code (Ord. 2023-04).

By this ordinance the Department seeks 1) approval of its 2023-2024 annual military equipment report, 2) authority to acquire two (2) DJI Mavic 3 Thermal (M3T) UAS drones defined as "military equipment" under the statute, and 3) renewal of Pinole Police Department Policy 707 upon a finding that the report has complied with the standards for approval set forth in Government Code sections 7071(d)(1) and 7071(e)(2).

Attachment A is the proposed ordinance. Attachment B is the 2023-2024 Annual Report, including the inventory list of military equipment the Department has and intends to use in the future that falls within the definition of "military equipment" under AB 481. Attachment C is the Department's military equipment use policy. Attachment D is the Department's Unmanned Aerial System (UAS) Operations policy.

DISCUSSION

Annual Report

AB 481 requires a law enforcement agency that receives approval for a military equipment use policy to submit to the City Council an annual military equipment report for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use. (Govt. Code §§7071(d)(1) and 7071(e)(2).) The law enforcement agency must also make each annual military equipment report publicly available on its internet website for as long as the military equipment is available for use. Government Code section 7072 (a) states that the annual report must include the following information:

1. A summary of any complaints or concerns received concerning the military equipment.
2. The results of any internal audits or information about violations of the military equipment use policy. This includes any actions taken in response.

3. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
4. The quantity possessed for each type of military equipment.
5. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.
6. A summary of how the military equipment was used and the purpose of its use.

In compliance with the Government Code, the Department's annual use report and policy was released to the community, via the Department's transparency portal on April 22, 2024, and provided to City Council. On May 21, 2024, the Department held a well-publicized and conveniently located public meeting, at which the general public was able to discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment. The Department heard the communities' concerns regarding the use of the ERV and proposed acquisition of a UAS. The Department maintains previous authorized possession and use of the ERV and the proposed acquisition and implementation of a UAS program is essential to the protection and preservation of life. The annual use report contains all the required elements of Government Code section 7072 (a) set forth above.

The 2023-2024 Annual Report (Attachment B) outlines the Department's military equipment inventory and usage, community complaints over use of military equipment, and internal audits from May 1, 2023, through April 30, 2024. An inventory was completed on March 27, 2024, which identified all of the Department's military equipment in preparation to fulfill the obligations set by Assembly Bill 481. Equipment used by the Department during the preceding year is found to be consistent with current Policy 707. No complaints concerning the equipment were made to the Department.

During this period (May 2023 – April 2024), the Department has used military equipment under this policy during community events (ERV and command post) and officer training (ERV, rifles, PepperBall VKS, and FN 303 MK2). The Department utilized the ERV in a mutual aid request from an allied agency to protect officers responding to a shooting that had just occurred. The Department also utilized the Command Post in a mutual aid request to assist with logistics and personnel on an authorized DUI checkpoint for an allied agency. The Department had two incidents in which an outside agency provided their authorized UAS to assist with the search for fleeing suspects who posed a danger to the community. These incidents resulted in the quick and safe apprehension of the suspects with no harm to the community. The Department deployed the FN 303 MK2 Launcher in an incident with a suspect who had crashed his vehicle, fled, threatened to kill officers, assaulted a police K9 and had barricaded himself. The FN 303 MK2 allowed officers to engage the suspect at a safe distance, distracting the suspect so officers could safely apprehend him.

During this period, the Colt AR-15/M4 Carbine rifles underwent routine maintenance. For the 2023/24 Annual City Budget, Council approved \$30,000 for the purchase, training and maintenance of a UAS program.

Proposed Acquisition

In accordance with Government Code section 7072 (a), the Department is requesting approval for the purchase of two (2) DJI Mavic 3 Thermal (M3T) UAS (drones) as set forth in the annual report and inventory. The Mavic 3 is an unmanned Aerial System (UAS) designed for public safety. The UAS is a battery powered, remote operated device with a flight time of approximately 36-45 minutes depending on weather and flight conditions. The UAS has proven to be useful to public safety agencies in crime scene analysis, search and rescue, pre-operation surveillance and other critical incidents where aerial views enhance the safety and efficiency of law enforcement personnel. The UAS would assist officers or incident commanders in situations that would include, but not limited to: major collision investigations, emergency life threatening situations, search for missing persons, natural disaster management, crime scene photography, and critical incidents for preservation of life and public safety missions. The UAS falls under CA Government Code section 7070(c)(1) – Unmanned, remotely piloted, powered aerial or ground vehicles.

The UAS would be operated under FAA Part 107 authorization and regulations and in accordance with Department Policy 607- Unmanned Aerial System (UAS) Operations (Attachment D). This policy ensures compliance with FAA regulations, sets forth training requirements, authorizations for use, privacy, and prohibited uses.

The Department has a significant interest in continuing to have access to equipment that will provide peace officers as many options as possible to safeguard lives, ensure safety, and protect civil liberties of the citizens of the City of Pinole. The use of the military equipment identified on the inventory list is vital to the Department's mission and will continue to be strictly regulated through internal processes and oversight.

Renewal of Military Equipment Use Policy

In addition, the Department is required to re-submit the previously approved policy for re-approval consideration, as an agenda item during open session. The previously approved policy is attached to this report (Attachment C). Council must determine, based on the annual military equipment report, whether each type of military equipment identified in the report has complied with the following:

1. The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. The policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
3. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

The Department does not anticipate any change in the previously approved policy but does seek approval to acquire additional equipment, only the addition of equipment. The

Department intends to acquire two (2) DJI Mavic 3 Thermal (M3T) UAS drones as further provided above. At this time, forecasted purchases for the Department in 2024/25 only include additional ammunition for the previously approved COLT AR15/M4 patrol rifles and projectiles for the previously approved FN 303 MK2 launchers which need to be replenished after being used in either the field or training environments and anticipated deferred maintenance to the MRAP/ERV. All items needing to be replenished are included in the policy and attached inventory which were previously approved by the City Council.

Any future attempts to obtain additional equipment not provided for herein will comply with procedures set forth in the Government Code and the approved military equipment policy; this includes a public hearing and City Council approval prior to acquisition.

Through acceptance of the annual report and renewal of the ordinance, the City Council will authorize the continued use of preexisting equipment considered “military equipment” under AB 481. This includes a Mine Resistant Ambush Protected Vehicle (MRAP) for use as an Emergency Rescue Vehicle (ERV) to safely evacuate residents in the event of a natural disaster or critical incidents, to move personnel and/or resources in support of natural disasters (i.e. flood, fire, earthquake), large scale logistics, active shooter incidents, and incidents where there is reason to expect potential armed resistance requiring protection. The Policy also includes a single unmanned, remotely piloted, powered ground vehicle used to enhance peace officer and community safety when encountering potentially dangerous situations by providing first responders with the ability to capture video and still images, and to transport communication equipment or other resources prior to, or in lieu of, sending in personnel into hazardous incidents or environments.

Other items deemed to be “military equipment” under AB 481 include foundational equipment such as rifles and ammunition. These rifles allow peace officers to address lethal threats from a greater distance and with greater precision. The Department also seeks authorization to use four FN 303 MK2 Launcher and projectiles, to limit the escalation of conflict where employment of lethal force is prohibited or undesirable. The projectiles provide officers with a less-lethal option in incidents of combative or self-destructive individuals, riot/crowd control and civil unrest incidents, circumstances where a tactical advantage can be obtained, potentially vicious animals, and training exercises or approved demonstrations. The equipment allows for more time and opportunity to attempt to deescalate situations and provide for safer tactics to resolve life threatening events in the safest way possible. During the 2023/24 period, the FN 303 MK2 Launcher replaced the legacy technology of the PepperBall VKS launcher that had also reached the end of its serviceable life.

The Policy safeguards the public’s welfare, safety, civil rights and civil liberties by ensuring that there are safeguards, including transparency, oversight, and accountability measures in place. For instance, the Policy authorizes the Chief of Police to designate a member of the Department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include, but are not limited, acting as a liaison to City Council for all matters related to the requirements of AB 481, identifying “military equipment” as defined under the statute, conducting annual inventory and review, collaborating with outside agencies, and scheduling and coordinating an annual community engagement hearing to address the Department's funding, acquisition, and use of military equipment.

In compliance with the Government Code, the Military Equipment Policy has remained on the Department's transparency portal continuously since prior to Council adoption in 2022.

FISCAL IMPACT

There is no direct fiscal impact from the acceptance of the annual report or the approval of continuing the ordinance approving the military equipment use policy. The Policy explicitly references the fiscal impact related to costs to maintain or acquire equipment and is included in the existing department's budget allocation.

ATTACHMENTS

- A. Ordinance of the City Council of the City of Pinole Approving and Re-Adopting a Military Equipment Use Policy as Stated In Chapter 2.60 "Military Equipment Policy" of the Pinole Municipal Code In Compliance With Assembly Bill 481
- B. 2023-2024 Pinole Police Department Annual Military Equipment Report May 2023 – April 2024
- C. Pinole Police Department Military Equipment Funding, Acquisition and Use Policy 707
- D. Pinole Police Department Unmanned Aerial System (UAS) Operations Policy 607

5361507.1

ORDINANCE NO. 2024-XXXX

AN ORDINANCE OF THE CITY OF PINOLE APPROVING AND RE-ADOPTING A MILITARY EQUIPMENT USE POLICY AS STATED IN CHAPTER 2.60 “MILITARY EQUIPMENT POLICY” OF THE PINOLE MUNICIPAL CODE IN COMPLIANCE WITH ASSEMBLY BILL 481 (GOVERNMENT CODE SECTION 7070, et. seq.)

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 relating to the use of military equipment by California law enforcement agencies; and

WHEREAS, Assembly Bill 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used by law enforcement agencies; and

WHEREAS, Assembly Bill 481, codified at California Government Code section 7070, *et. seq.*, requires law enforcement agencies obtain approval of the applicable governing body, by an ordinance adopting a “military equipment” use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The term “military equipment” is defined in California Government Code section 7070(c); and

WHEREAS, the policy must be a document covering the inventory, description, purpose, use, acquisition, maintenance, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the police department’s use of such equipment; and

WHEREAS, Assembly Bill 481 allows the governing body of a city to approve the military equipment use policy for continued or future funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations specified in Government Code section 7071(d); and

WHEREAS, on May 3, 2022, the City Council adopted Ordinance 2022-02 approving and adopting a military equipment use policy identified as Pinole Police Department Policy 707, having received the information required under Assembly Bill 481 regarding the Pinole Police Department’s use of military equipment as defined in said law and upon a finding of the specified determinations required under Government Code Section 7071(d); and

WHEREAS, On June 6, 2023, the City Council approved and reaffirmed the Department’s Policy (identified as Department Policy 707) finding it met the requirements under AB 481 and introduced and adopted an ordinance adding Chapter 2.60 “Military Equipment Policy” to the Pinole Municipal Code (Ord. 2023-04);and

WHEREAS, Government Code section 7072 provides that a law enforcement agency that receives approval for a military equipment use policy pursuant to Section 7071 shall submit to the governing body an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use; and

WHEREAS, the law enforcement agency shall also make each annual military equipment report publicly available on its internet website for as long as the military equipment is available for use; and

WHEREAS, the annual military report shall include the following information for the immediately preceding calendar year for each type of military equipment:

- a. A summary of how the military equipment was used and the purpose of its use;
- b. A summary of any complaints or concerns received concerning the military equipment;
- c. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response;
- d. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report;
- e. The quantity possessed for each type of military equipment;
- f. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment; and

WHEREAS, Government Code section 7071(d) provides the governing body shall determine, based on the annual military equipment report submitted pursuant to Section 7072, whether each type of military equipment identified in that report has complied with the following standards for approval:

- a. The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
- b. The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties;
- c. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety;
- d. Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance; and

WHEREAS, if the governing body determines that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval set forth

above, the governing body shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance; and

WHEREAS, the governing body shall review any ordinance that it has adopted approving the funding, acquisition, or use of military equipment at least annually and vote on whether to renew the ordinance at a regular meeting held pursuant to open meeting laws; and

WHEREAS, the Pinole Police Department's annual military equipment report was posted on the department's internet website on April 22, 2024 and conducted a well-publicized public meeting concerning the renewal of the military equipment at issue in compliance with Government Code Section 7072 (b) on May 21, 2024; and

WHEREAS, the Pinole Police Department seeks renewal of Policy 707; and

WHEREAS, the City Council of the City of Pinole, having received the information required under Assembly Bill 481 regarding the Pinole Police Department's renewed use of military equipment as defined in said law, and makes the specified determinations required under Government Code Section 7070, *et. seq.*, deems it to be in the best interest of the City to approve and renew the Pinole Police Department's Military Equipment Funding, Acquisition and Use Policy as set forth in the policy identified as Pinole Police Department Policy 707.

NOW THEREFORE, BE IT RESOLVED, in accordance with Government Code Section 7070 *et. seq.*, and pursuant to the findings stated herein, that the City Council of the City of Pinole hereby finds as follows:

Section 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

Section 2. Determinations.

Based on the findings above, in addition to information provided to the City Council at the public meeting, the City Council determines as follows:

1. The military equipment identified in the annual military equipment report has complied with the standards for approval as set forth in Government Code section 7071 subdivision (d).
2. The Pinole Police Department's Military Equipment Use Policy is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
3. The Pinole Police Department's Military Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

4. The military equipment identified in the Pinole Police Department's Military Equipment Use Policy is reasonably cost effective compared to available alternatives that can achieve the same objectives of officer and civilian safety.
5. Prior military equipment use by the Pinole Police Department complied with the Military Equipment Use Policy although it was not yet in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.
6. The Pinole Police Department's Military Equipment Use Policy, Policy 707, setting forth the City's military equipment use policy is approved and renewed.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each of every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4. Effective Date and Duration. This ordinance shall take effect thirty (30) days after its final adoption.

Section 5. Publication. The City Clerk is directed to cause this ordinance to be published in a manner required by law.

PASSED AND ADOPTED at a regular meeting of the Pinole City Council held on June 18, 2024, the City Council passed this urgency ordinance by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of Pinole on June 18, 2024.

Heather Bell, CMC
City Clerk

Unmanned Aerial System (UAS) Operations

607.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

It is the policy of the department that trained and authorized personnel may use/deploy a UAS when such use is appropriate in the performance of their duties and authorized by the Chief of Police or designee. The deployment of a UAS will be in accordance with Federal, State, and municipal law and as the needs of the department dictate.

607.1.1 DEFINITIONS

Definitions related to this policy include:

Certificate of Authorization (COA) – A certificate granted to an individual or entity by the Federal Aviation Administration (FAA), which outlines specific conditions for flight for small UAS.

Federal Aviation Administration (FAA) – An entity of the federal government that regulates all aspects of civil aviation.

Part 107 – A certificate granted to an individual by the FAA, which outlines specific conditions of flight for small UAS aircrafts.

Pilot in Command (PIC) – Trained officer who is the sole person responsible for the operation of the UAS.

Unmanned aerial system (UAS) - An unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached systems designed for gathering information through imaging, recording or any other means.

UAS Supervisor – Assigned by the Chief of Police to insure program requirements are met to include maintenance, training, and operations in adherence to policy and FAA regulations.

Visual Observer – Trained officer who may act as a spotter for PIC to assist in navigating the UAS and avoidance of hazards.

607.2 POLICY

Unmanned aerial systems may be utilized to enhance the department's mission of protecting lives and property when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations.

Unmanned Aerial System (UAS) Operations

607.3 USE OF UAS

Only authorized operators who have completed the required training shall be permitted to operate the UAS.

Use of vision enhancement technology (e.g., thermal and other imaging equipment not generally available to the public) is permissible in viewing areas only where there is no protectable privacy interest or when in compliance with a search warrant or court order. In all other instances, legal counsel should be consulted.

UAS operations should only be conducted consistent with FAA regulations.

607.4 FAA COMPLIANCE FOR DEPLOYMENT

Use of the UAS shall be allowed for criminal investigations or public safety purposes consistent with this policy, provided the requirements below are followed:

- (a) Prior to any use of a UAS, the department shall obtain a COA from the Federal Aviation Administration, unless the Police Chief authorizes personnel to use a UAS under the officer's own Part 107 certification.
- (b) Prior to the deployment of the UAS, the UAS PIC and the Visual Observer must be adequately trained in the use and operation and must be knowledgeable of the standards set forth in this policy.
- (c) Any operation of a UAS must fully comply with all FAA requirements guidelines. It is the PIC's responsibility to ensure compliance with FAA requirements and guidelines and this policy. If the PIC believes the requested deployment potentially violates any federal regulation, guideline or this policy, then the PIC must inform his or her immediate supervisor and the UAS Supervisor.
- (d) The PIC may not deploy the UAS for criminal investigative purposes without the knowledge of the on-duty watch commander or senior supervisor should the watch commander not be available.
- (e) Where a search warrant would normally be obtained for a criminal investigation, the PIC shall not deploy the UAS until such warrant is secured. This does not apply to non-investigative public safety deployments or for the purpose of training, testing, or evaluation.
- (f) Each deployment of an UAS shall be properly documented in a flight log by the PIC. Such documentation must include at a minimum:
 - (a) The date, time, and purpose of each deployment.
 - (b) Whether a search warrant was obtained by the agency.
 - (c) Identity of the PIC and Visual Observer (if there is a Visual Observer).
 - (d) Supervisor approving the deployment.
- (g) The PIC that deploys the UAS must have the capability to adequately track and record the flight pattern and location of the UAS.

Unmanned Aerial System (UAS) Operations

- (h) If more than one UAS is deployed in an area or event, then each PIC shall coordinate and define the parameters of the area where each UAS will be operated.

607.5 AUTHORIZED USES FOR PUBLIC SAFETY DEPLOYMENT

Deployments include but are not limited:

- (a) Security Checks - The UAS may be deployed while conducting Security Checks of businesses or public lots in furtherance of the department's mission. Indiscriminate surveillance of private areas, absent a call for service requiring a public safety response or applicable warrant is prohibited.
- (b) Area Searches – The UAS may be deployed when conducting an area search for missing persons, property, etc.
- (c) Crime Scene / Area Documentation – The UAS may be deployed to assist in documenting crime scenes, accident scenes, or other areas where an aerial perspective is needed.
- (d) Search and Rescue – The UAS may be deployed during search and rescue operations to assist in locating lost or missing persons or other search and rescue operations.
- (e) Tactical Situations – The UAS may be deployed during certain tactical situations such as hostage / barricaded gunmen, active shooter, warrant services, or any other situation where an aerial or remote view is advantageous.
- (f) Fleeing Suspects – The UAS may be deployed to search for suspects that flee from police.
- (g) Training – All training flights will be conducted in accordance with the procedure and privacy requirements outlined in this policy.

607.6 PRIVACY

The use of the UAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

607.7 PROGRAM COORDINATOR

The Chief of Police will appoint a program coordinator who will be responsible for the management of the UAS program. The program coordinator will ensure that policies and procedures conform to current laws, regulations, and best practices and will have the following additional responsibilities:

- Coordinating the FAA Certificate of Waiver or Authorization (COA) application process and ensuring that the COA is current, and/or coordinating compliance with FAA Part 107 Remote Pilot Certificate, as appropriate for department operations.

Pinole Police Department

Pinole PD CA Policy Manual

Unmanned Aerial System (UAS) Operations

- Ensuring that all authorized operators and required observers have completed all required FAA and department-approved training in the operation, applicable laws, policies, and procedures regarding use of the UAS.
- Developing uniform protocol for submission and evaluation of requests to deploy a UAS, including urgent requests made during ongoing or emerging incidents. Deployment of a UAS may require written authorization of the Chief of Police or the authorized designee, depending on the type of mission.
- Coordinating the completion of the FAA Emergency Operation Request Form in emergency situations, as applicable (e.g., natural disasters, search and rescue, emergency situations to safeguard human life).
- Developing protocol for conducting criminal investigations involving a UAS, including documentation of time spent monitoring a subject.
- Implementing a system for public notification of UAS deployment.
- Developing an operational protocol governing the deployment and operation of a UAS including but not limited to safety oversight, use of visual observers, establishment of lost link procedures, and secure communication with air traffic control facilities.
- Developing a protocol for fully documenting all missions.
- Developing a UAS inspection, maintenance, and record-keeping protocol to ensure continuing airworthiness of a UAS, up to and including its overhaul or life limits.
- Developing protocols to ensure that all data intended to be used as evidence are accessed, maintained, stored, and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, authenticity certificates, and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.
- Developing protocols that ensure retention and purge periods are maintained in accordance with established records retention schedules.
- Facilitating law enforcement access to images and data captured by the UAS.
- Recommending program enhancements, particularly regarding safety and information security.
- Ensuring that established protocols are followed by monitoring and providing periodic reports on the program to the Chief of Police.
- Maintaining familiarity with FAA regulatory standards, state laws and regulations, and local ordinances regarding the operations of a UAS.

607.8 PROHIBITED USE

The UAS video surveillance equipment shall not be used:

- To conduct random surveillance activities.

Pinole Police Department

Pinole PD CA Policy Manual

Unmanned Aerial System (UAS) Operations

- To target a person based solely on actual or perceived characteristics, such as race, ethnicity, national origin, immigration status, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.
- To harass, intimidate, or discriminate against any individual or group.
- To conduct personal business of any type.
- The UAS will not be weaponized or used to transport any weapons, explosives, or incendiary devices.

607.9 RETENTION OF UAS DATA

Data collected by the UAS shall be retained as provided in the established records retention procedure and schedule.



PINOLE POLICE
DEPARTMENT
ANNUAL MILITARY
EQUIPMENT REPORT
MAY 2023 – APRIL 2024

Table of Contents

Introduction.....	2
Definitions	3
Summary of Military Equipment	4
Military Equipment Inventory	4
Equipment Training Use & Purchase	8
Community Concerns and Complaints	9
Internal Military Equipment Inventory & Audit.....	10
Projected Military Equipment Acquisition (2024/2025)	12

INTRODUCTION

On September 30, 2021, the Governor of the State of California approved Assembly Bill 481 (codified as Chapter 12.8 of the California Government Code) requiring law enforcement agencies such as the Pinole Police Department to have a military use policy approved by the City Council prior to requesting, seeking funding, acquiring or using military equipment. Assembly Bill 481 allows the governing body to approve the policy within its jurisdiction only if it determines that the military equipment meets specified standards.

On May 3, 2022, the City of Pinole Council approved Ordinance 2022-02 approving Pinole Police Department Policy #707: Military Equipment Funding, Acquisition, and Use. As required by Assembly Bill 481 and the Ordinance, annually the Pinole Police Department must prepare a report on the use of each type of military equipment approved in the Policy over the last year. Subsequently, the City Council must then review the Ordinance, Policy and Annual Report, and determine whether the Department's use of military equipment in the past year complied with the Policy, and whether to continue the Ordinance and Policy, take action (by ordinance) to modify the Policy or repeal the Ordinance.

As set forth in the Policy, the Pinole Police Department retains and employs limited military equipment to safeguard its community. Pinole Police Department officers and certified instructional staff, receive training throughout the year on the use of military equipment approved under the Policy.

During this period, 03/05/2024, the Department transitioned from the PepperBall VKS Launcher to the FN 303 MK2 Launcher due to the PepperBall VKS Launcher platform being a legacy technology and at its end of life.

This Annual Report outlines the Pinole Police Department's military equipment inventory and usage, community complaints over use of military equipment, and internal audits from May 1, 2023, through April 30, 2024. The Department will submit its Military Equipment Annual Report to City Council annually in compliance with AB 481.

DEFINITIONS

Definitions of Military Equipment established by California Government Code §7070:

(Pinole Police Department utilizes a limited number of the resources listed below)

Military equipment includes but is not limited to the following types of equipment:

- Unmanned, remotely piloted, powered aerial or ground vehicles
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached
- Tracked armored vehicles that provide ballistic protection to their occupants
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units
- Weaponized aircraft, vessels, or vehicles or any kind
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code §30510 and Penal Code §30515, with the exception of standard-issue firearms
- Any firearm or firearm accessory that is designed to launch explosive projectiles
- Noise-flash diversionary devices and explosive breaching tools
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray
- Taser Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs)
- Kinetic energy weapons and munitions (e.g. 40MM launcher, bean bag shotgun, foam tipped projectiles)
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Pinole Police Department Military Equipment Inventory

1. Equipment Type: Mine Resistant Ambush Protected Vehicle (MRAP) – CA Govt Code §7070(c)(2)	
Quantity Owned or Sought: 1	Lifespan: Unknown
Purpose/Authorized User: Emergency Rescue Vehicle (ERV) to safely evacuate residents in the event of a natural disaster or critical incidents. To move personnel and/or resources in support of natural disasters (i.e. flood, fire, earthquake), large scale logistics, active shooter incidents, and incidents where there is reason to expect potential armed resistance requiring protection. Use may be authorized by Watch Commander or Tactical/Operations Commander, based on the circumstances of the given incident.	
Fiscal Impact: Acquired under the Law Enforcement Support Program Office (LESO): \$0 for equipment. \$9,200 for delivery, paint and upfitting. Annual maintenance cost is approximately \$1,000.00	
Legal and Procedural Rules Governing: It is the policy of the department to utilize armored vehicles only for law enforcement purposes and pursuant to State and Federal law.	
Training Required: Department provided training.	
Other Notes: The MRAP is an armored vehicle manufactured by BAE Systems/Caiman weighing over 34,000 pounds and can carry a payload of over 4,000 pounds. The vehicle has six (6) wheels fitted with tires and is all-wheel drive, powered by a diesel engine. The vehicle measures approximately 22 feet long, 8 feet wide, and 10 feet tall.	
2. Equipment Type: Unmanned, remotely piloted, powered ground vehicles - CA Gov't Code §7070(c)(1)	
Quantity Owned/Sought: 1	Lifespan: Approximately 15 years
Equipment Capabilities: Vehicle is capable of being remotely navigated to provide scene information and intelligence in the form of video and still images transmitted to first responders.	
Manufacturer Product Description: iRobot PackBot 510 Multi Mission Robot (MMR)	
Purpose/Authorized Uses: To enhance officer and community safety when encountering potentially dangerous situations by providing first responders with the ability to capture video and still images, to transport communication equipment or other resources prior to, in lieu of sending in personnel into hazardous incidents or environments.	
Fiscal Impacts: Acquired under the Law Enforcement Support Program Office (LESO): \$0 for equipment. Annual maintenance cost is approximately \$500.	
Legal/Procedural Rules Governing Use: The use of unmanned, remotely piloted, powered ground vehicles potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to all applicable privacy laws and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy.	
Training Required: Department provided training.	
Other Notes: None	

3. Equipment Type: Unmanned, remotely piloted, powered aerial or ground vehicles - CA Gov't Code §7070(c)(1)	
Quantity Owned/Sought: 2	Lifespan: Approximately 5 years
Equipment Capabilities: Vehicle is capable of being remotely navigated to provide scene information and intelligence in the form of video and still images transmitted to first responders.	
Manufacturer Product Description: DJI Mavic 3 Thermal (M3T) UAS	
Purpose/Authorized Uses: Unmanned Aerial System (UAS) designed for public safety. The UAS is a battery powered, remote operated device with a flight time of approximately 36-45 minutes depending on weather and flight conditions. The UAS has proven to be useful to public safety agencies in crime scene analysis, search and rescue, pre-operation surveillance and other critical incidents where aerial views enhance the safety and efficiency of law enforcement personnel. The UAS would assist officers or incident commanders in situations that would include, but not limited to: major collision investigations, emergency life threatening situations, search for missing persons, natural disaster management, crime scene photography, and critical incidents for preservation of life and public safety missions.	
Fiscal Impacts: DJI Mavic 3 Thermal (M3T): \$6,000, quantity 2 (Total: ~\$12,000)	
Legal/Procedural Rules Governing Use: The use of unmanned, remotely piloted, powered ground vehicles potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to all applicable privacy laws and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy.	
Training Required: FAA Part 107, POST UAS Operator, and Department provided training.	
Other Notes: Capabilities include 48 MegaPixel camera, 56x tele zoom, 640x512 thermal sensor, one-way speaker, and spotlight.	
4. Equipment Type: Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units – CA Govt Code §7070(c)(5)	
Quantity Owned or Sought: 1	Lifespan: 20 years
Purpose/Authorized User: Trailer is purpose-built to facilitate the operational control and direction of public safety units conducting DUI enforcement checkpoints, traffic safety operations, and responding to or at an incident. The Command and Control (C&C) trailer serves as a centralized location for command decision making, enhanced communication and other situational awareness capabilities. Use may be authorized by Watch Commander or Tactical/Operations Commander, based on the circumstances of the given incident.	
Fiscal Impact: Acquired by grant issued by the State of California Office of Traffic Safety under a Traffic Safety Grant. \$40,415 for equipment. Annual maintenance cost is approximately \$1000.	
Legal and Procedural Rules Governing: It is the policy of the department to utilize C&C trailer only for law enforcement purposes and pursuant to State and Federal law.	
Training Required: Department provided training.	
Other Notes: The command-and-control trailer is standard tow-behind trailer with dual axels manufactured by Universal Trailer with a GVW of 3,100 pounds. The trailer measures approximately 16 feet long, 8.5 feet wide, and 9 feet tall. The trailer is equipped with a fold-down rear door, lighting, and a generator.	

5. Equipment Type: Semiautomatic Rifles and Ammunition - CA Gov't Code §7070(c)(10)	
Quantity Owned or Sought: 28	Lifespan: 15 years
Purpose/Authorized User: Colt AR-15/M4 Carbine semiautomatic shoulder fired rifle with long spirally grooved barrel that fires .223 Rem/5.56 mm projectile bullet. The rifles are equipped with 10.5" barrel, Surefire muzzle brake, and Surefire SOCOM556-RC2 suppressors. Ammunition is Speer Gold Dot caliber .223 62 grain. A standard officer issue to be used as a precision weapon to address a threat with more precision and/or greater distances than a handgun, if present and feasible.	
Fiscal Impact: - Colt AR-15/M4 Rifle: \$32,400, quantity: 28 - Surefire muzzle brake: \$2,779, quantity: 28 - Surefire SOCOM556-RC2 Suppressors: \$22,408, quantity: 28 .223 62 gr ammunition: \$6,270, quantity: 10,450 - Annual maintenance cost is approximately \$1,500	
Legal and Procedural Rules Governing: All applicable State, Federal and Local laws governing police use of force. Various Pinole Police Department Policies on Use of Force and Firearms.	
Training Required: Department firearms training and qualifications as required by law and policy by POST certified instructors. CA POST certified 24-hour patrol rifle course.	
Other Notes: These rifles are standard issue service weapons for our officers and therefore exempted from this Military Equipment Use Policy per CA Gov't Code §7070 (c)(10). They have been included in this document in an abundance of caution and in the interest of transparency.	

6. Equipment Type: Pepper Ball Launcher and Projectiles - CA Gov't Code §7070(c)(12)	
Quantity Owned or Sought: 4	Lifespan: 20 years
Purpose/Authorized User: FN 303 MK2 Less Lethal Launcher utilizing compressed-air to fire less-lethal fin-stabilized projectiles. The FN303 MK2 features a magazine fed system that offers the ability to quickly switch between projectile types. Projectiles: .5% PAVA containing pepper powder designed for direct impact and area saturation, Clear Impact projectile intended for distraction, Washable Paint for training and marking, Indelible Paint projectile intended for marking with indelible colorant for later identification, and Inert Powder projectile for training. To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Provides officers with a less-lethal option in incidents of combative or self-destructive individuals, riot/crowd control and civil unrest incidents, circumstances where a tactical advantage can be obtained, potentially vicious animals, and training exercises or approved demonstrations. The FN 303 MK2 is a like for like replacement of the PepperBall VKS Launcher legacy system.	
Fiscal Impact: - FN 303 MK2: \$5,080, quantity: 4 - PAVA Projectile: \$900, quantity: 150 - Indelible Paint Projectile: \$750, quantity: 150	

- Washable Paint Projectile: \$1,315, quantity: 270
- Inert Powder Projectile: \$1,245, quantity: 450
- Magazine Assembly, Slings, and Maintenance Items: \$486
- Cases: \$1,587, quantity: 4
- Annual maintenance cost is approximately \$250

Legal and Procedural Rules Governing: All applicable State, Federal and Local laws governing police use of force. Various Pinole Police Department Policies on Use of Force.

Training Required: Department provided training conducted by POST certified instructors.

Other Notes: None

7. Equipment Type: Less-Lethal Shotgun and Bean Bag Projectile - CA Gov't Code §7070(c)(14)

Quantity Owned or Sought: 4

Lifespan: 25 years

Purpose/Authorized User: Remington 870 Less-Lethal 12-gauge Shotgun with orange and black marked stocks is used to deploy the less lethal 12-gauge CTS Super-Sock Beanbag round. The Combined Tactical Systems (CTS) Super-Sock Beanbag round is a less-lethal 2.4-inch 12-gauge shotgun round firing a ballistic fiber bag filled with 40 grams of lead shot.

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Provides officers with a less-lethal option in incidents of combative or self-destructive individuals, riot/crowd control and civil unrest incidents, circumstances where a tactical advantage can be obtained, potentially vicious animals, and training exercises or approved demonstrations.

Fiscal Impact:

- Remington 870 Less-Lethal 12-gauge Shotgun: \$2,200, quantity: 4
- CTS Model 2581 Super-Sock Beanbag Round: \$1,090, quantity: 200
- Glass Breaker Ball: \$480, quantity: 200
- Annual maintenance \$0

Legal and Procedural Rules Governing: All applicable State, Federal and Local laws governing police use of force. Various Pinole Police Department Policies on Use of Force.

Training Required: Department provided training conducted by POST certified instructors.

Other Notes: None

Equipment Purchase and Training Use

2023/2024 Purchases and Maintenance

Military Equipment	Quantity	Cost	Date of Purchase
COLT AR 15/M4 – maintenance	1	\$76.00	01/26/204
COLT AR 15/M4 – ammunition, .223 62 gr	1,000	\$609.00	01/15/2024
FN 303 MK2 Launcher, projectiles, cases, slings, and maintenance equipment	4	\$11,363.00	07/18/2023, 11/06/2023, 12/11/2023, 03/04/24

2023/2024 Training/ Military Equipment Utilized

Training	Military Equipment	Dates
Officer Training - Range	Colt AR-15/M4 Carbine w/ .223/556 ammunition	10/10&13/23, 12/6&8/2023, 01/16&17/24, 01/19&20/24, 02/12/24, 04/16/24, 04/26/24
MRAPPepperBall VKS Training – Range	PepperBall VKS	06/07/23, 08/16/23, 12/07/23
FN 303 MK2 Training - Range	FN 303 MK2	02/27/24, 03/01/24, 03/05/24
ERV Orientation and Driver Training	MRAP/ERV	03/25/24, 03/28/24

Community Concerns and Complaints

In April of 2022, the Pinole Police Department published its Military Equipment Funding, Use and Acquisition policy on its website. Community concerns and complaints can be received via the Department's website, in-person at the police department or in the field during police contacts, telephone, emails and social media.

2023/2024 Community Concerns, Complaints & PD Internal Investigations Related to Military Equipment Use

Community Concerns	Community Complaints	PD Internal Investigations
0	0	0
**No formal complaints or concerns were brought forward by the public. Officers regularly engaged with the community regarding the use of the ERV at community events and its role within the community.		

Internal Inventory & Audit (PPD Military Equipment)

Per Pinole Police Department policy 707.3 (c), the Department's military equipment coordinator, is required to complete an internal inventory of all military equipment within the possession of the Department at least once annually.

An inventory was completed on March 27, 2024, which identified all of the Department's military equipment in preparation to fulfill the obligations set by Assembly Bill 481.

The Department did not add any new military equipment to its inventory since that time. All current military equipment inventory was found to be in good shape and working order.

2023/2024 Event or Incident Military Equipment Utilized

Case# / Incident#	Date	Equipment Used	Classification	Reason
	05/18/2023	Command Post	Event	Project Hope
	06/11/2023	Command Post	Event	Pride Event
2306200155	06/20/2023	ERV	Mutual Aid	Outside assist to Richmond PD for officer protection in shooting incident
	06/25/2023	Command Post ERV	Event	Pinole Car Show
	10/03/2023	Command Post ERV	Event	National Night Out
	10/07/2023	Command Post	Event	Special Olympics Bike the Bridges

	10/31/2023	ERV	Event	Halloween Caravan
23-1714	11/14/2023	Drone (outside agency)	Incident	Outside agency assist with drone for wanted domestic violence subject
	12/01/2023	ERV	Event	Holiday Tree Lighting
	12/14 & 12/18/2023	Command Post	Event	Shop with a Cop / Toy Drive
2312290152	12/29/2023	Command Post	DUI Checkpoint	Mutual Aid for Hercules PD DUI Checkpoint
24-298	03/08/2024	FN 303 MK2 / Drone (outside agency)	Incident	Deployed FN 303 MK2 / Outside agency assist with drone for barricaded subject
24-512	04/20/24	FN 303 MK2	Incident	Deployed FN 303 MK2 for subject barricaded in vehicle with firearm
	04/25/24	Command Post	Event	Project Hope

Projected Military Equipment Acquisition (2024/2025)

For 2024/2025 (May - April), the Pinole Police Department projects the purchase of COLT AR15/M4 ammunition and FN 303 MK2 projectiles to replenish inventory due to training. The Department anticipates the purchase of two (2) Mavic 3T UAS (drones) with funds approved during the 2023/2024 budget. In addition, we anticipate deferred maintenance for the ERV due to use and age. The estimated purchase price of this equipment and maintenance is approximately \$25,400.00. The operating costs of this equipment, which includes acquisition, personnel time, training facilities, transportation/storage of equipment, equipment upgrades, and other ongoing costs is budgeted and allocated within the Department's approved operating budget for FY2023-2024 and FY2024-2025.

Military Equipment	Projected Purchase Amount	Projected Purchase Price
.223 62 gr ammunition	7,000 rounds	\$4,000
FN 303 MK2 Projectiles	300 rounds	\$1,400
Mavic 3T UAS	2 Drones	\$12,000
ERV	Maintenance	\$8,000

AB 481 Qualifying Equipment Inventory: Pinole Police Department

1. Equipment Type: Mine Resistant Ambush Protected Vehicle (MRAP) – CA Govt Code §7070(c)(2)	
Quantity Owned or Sought: 1	Lifespan: Unknown
Purpose/Authorized User: Emergency Rescue Vehicle (ERV) to safely evacuate residents in the event of a natural disaster or critical incidents. To move personnel and/or resources in support of natural disasters (i.e. flood, fire, earthquake), large scale logistics, active shooter incidents, and incidents where there is reason to expect potential armed resistance requiring protection. Use may be authorized by Watch Commander or Tactical/Operations Commander, based on the circumstances of the given incident.	
Fiscal Impact: Acquired under the Law Enforcement Support Program Office (LESO): \$0 for equipment. \$9,200 for delivery, paint and upfitting. Annual maintenance cost is approximately \$1,000.00	
Legal and Procedural Rules Governing: It is the policy of the department to utilize armored vehicles only for law enforcement purposes and pursuant to State and Federal law.	
Training Required: Department provided training.	
Other Notes: The MRAP is an armored vehicle manufactured by BAE Systems/Caiman weighing over 34,000 pounds and can carry a payload of over 4,000 pounds. The vehicle has six (6) wheels fitted with tires and is all-wheel drive, powered by a diesel engine. The vehicle measures approximately 22 feet long, 8 feet wide, and 10 feet tall.	

2. Equipment Type: Unmanned, remotely piloted, powered ground vehicles - CA Gov't Code §7070(c)(1)	
Quantity Owned/Sought: 1	Lifespan: Approximately 15 years
Equipment Capabilities: Vehicle is capable of being remotely navigated to provide scene information and intelligence in the form of video and still images transmitted to first responders.	
Manufacturer Product Description: iRobot PackBot 510 Multi Mission Robot (MMR)	
Purpose/Authorized Uses: To enhance officer and community safety when encountering potentially dangerous situations by providing first responders with the ability to capture video and still images, to transport communication equipment or other resources prior to, in lieu of sending in personnel into hazardous incidents or environments.	
Fiscal Impacts: Acquired under the Law Enforcement Support Program Office (LESO): \$0 for equipment. Annual maintenance cost is approximately \$500.	
Legal/Procedural Rules Governing Use: The use of unmanned, remotely piloted, powered ground vehicles potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to all applicable privacy laws and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy.	

AB 481 Qualifying Equipment Inventory: Pinole Police Department

Training Required: Department provided training.
Other Notes: None

3. Equipment Type: Unmanned, remotely piloted, powered aerial or ground vehicles - CA Gov't Code §7070(c)(1)	
Quantity Owned/Sought: 2	Lifespan: Approximately 5 years
Equipment Capabilities: Vehicle is capable of being remotely navigated to provide scene information and intelligence in the form of video and still images transmitted to first responders.	
Manufacturer Product Description: DJI Mavic 3 Thermal (M3T) UAS	
Purpose/Authorized Uses: Unmanned Aerial System (UAS) designed for public safety. The UAS is a battery powered, remote operated device with a flight time of approximately 36-45 minutes depending on weather and flight conditions. The UAS has proven to be useful to public safety agencies in crime scene analysis, search and rescue, pre-operation surveillance and other critical incidents where aerial views enhance the safety and efficiency of law enforcement personnel. The UAS would assist officers or incident commanders in situations that would include, but not limited to: major collision investigations, emergency life threatening situations, search for missing persons, natural disaster management, crime scene photography, and critical incidents for preservation of life and public safety missions.	
Fiscal Impacts: DJI Mavic 3 Thermal (M3T): \$6,000, quantity 2 (Total: ~\$12,000)	
Legal/Procedural Rules Governing Use: The use of unmanned, remotely piloted, powered ground vehicles potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to all applicable privacy laws and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy.	
Training Required: FAA Part 107, POST UAS Operator, and Department provided training.	
Other Notes: Capabilities include 48 MegaPixel camera, 56x tele zoom, 640x512 thermal sensor, one-way speaker, and spotlight.	

4. Equipment Type: Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units – CA Govt Code §7070(c)(5)	
Quantity Owned or Sought: 1	Lifespan: 20 years
Purpose/Authorized User: Trailer is purpose-built to facilitate the operational control and direction of public safety units conducting DUI enforcement checkpoints, traffic safety operations, and responding to or at an incident. The Command and Control (C&C) trailer serves as a centralized location for command decision making, enhanced communication and other situational awareness capabilities. Use may be authorized by Watch Commander or Tactical/Operations Commander, based on the circumstances of the given incident.	

AB 481 Qualifying Equipment Inventory: Pinole Police Department

Fiscal Impact: Acquired by grant issued by the State of California Office of Traffic Safety under a Traffic Safety Grant. \$40,415 for equipment. Annual maintenance cost is approximately \$1000.
Legal and Procedural Rules Governing: It is the policy of the department to utilize C&C trailer only for law enforcement purposes and pursuant to State and Federal law.
Training Required: Department provided training.
Other Notes: The command-and-control trailer is standard tow-behind trailer with dual axels manufactured by Universal Trailer with a GVW of 3,100 pounds. The trailer measures approximately 16 feet long, 8.5 feet wide, and 9 feet tall. The trailer is equipped with a fold-down rear door, lighting, and a generator.

5. Equipment Type: Semiautomatic Rifles and Ammunition - CA Gov't Code §7070(c)(10)	
Quantity Owned or Sought: 28	Lifespan: 15 years
Purpose/Authorized User: Colt AR-15/M4 Carbine semiautomatic shoulder fired rifle with long spirally grooved barrel that fires .223 Rem/5.56 mm projectile bullet. The rifles are equipped with 10.5" barrel, Surefire muzzle brake, and Surefire SOCOM556-RC2 suppressors. Ammunition is Speer Gold Dot caliber .223 62 grain. A standard officer issue to be used as a precision weapon to address a threat with more precision and/or greater distances than a handgun, if present and feasible.	
Fiscal Impact: • Colt AR-15/M4 Rifle: \$32,400, quantity: 28 • Surefire muzzle brake: \$2,779, quantity: 28 • Surefire SOCOM556-RC2 Suppressors: \$22,408, quantity: 28 • .223 62 gr ammunition: \$6,270, quantity: 10,450 • Annual maintenance cost is approximately \$1,500	
Legal and Procedural Rules Governing: All applicable State, Federal and Local laws governing police use of force. Various Pinole Police Department Policies on Use of Force and Firearms.	
Training Required: Department firearms training and qualifications as required by law and policy by POST certified instructors. CA POST certified 24-hour patrol rifle course.	
Other Notes: These rifles are standard issue service weapons for our officers and therefore exempted from this Military Equipment Use Policy per CA Gov't Code §7070 (c)(10). They have been included in this document in an abundance of caution and in the interest of transparency.	

6. Equipment Type: Pepper Ball Launcher and Projectiles - CA Gov't Code §7070(c)(12)	
Quantity Owned or Sought: 4	Lifespan: 20 years

AB 481 Qualifying Equipment Inventory: Pinole Police Department

Purpose/Authorized User: FN 303 MK2 Less Lethal Launcher utilizing compressed-air to fire less-lethal fin-stabilized projectiles. The FN303 MK2 features a magazine fed system that offers the ability to quickly switch between projectile types. Projectiles: .5% PAVA containing pepper powder designed for direct impact and area saturation, Clear Impact projectile intended for distraction, Washable Paint for training and marking, Indelible Paint projectile intended for marking with indelible colorant for later identification, and Inert Powder projectile for training. To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Provides officers with a less-lethal option in incidents of combative or self-destructive individuals, riot/crowd control and civil unrest incidents, circumstances where a tactical advantage can be obtained, potentially vicious animals, and training exercises or approved demonstrations. The FN 303 MK2 is a like for like replacement of the PepperBall VKS Launcher legacy system.	
Fiscal Impact: • FN 303 MK2: \$5,080, quantity: 4 • PAVA Projectile: \$900, quantity: 150 • Indelible Paint Projectile: \$750, quantity: 150 • Washable Paint Projectile: \$1,315, quantity: 270 • Inert Powder Projectile: \$1,245, quantity: 450 • Magazine Assembly, Slings, and Maintenance Items: \$486 • Cases: \$1,587, quantity: 4 • Annual maintenance cost is approximately \$250	
Legal and Procedural Rules Governing: All applicable State, Federal and Local laws governing police use of force. Various Pinole Police Department Policies on Use of Force.	
Training Required: Department provided training conducted by POST certified instructors.	
Other Notes: None	

7. Equipment Type: Less-Lethal Shotgun and Bean Bag Projectile - CA Gov't Code §7070(c)(14)	
Quantity Owned or Sought: 4	Lifespan: 25 years
Purpose/Authorized User: Remington 870 Less-Lethal 12-gauge Shotgun with orange and black marked stocks is used to deploy the less lethal 12-gauge CTS Super-Sock Beanbag round. The Combined Tactical Systems (CTS) Super-Sock Beanbag round is a less-lethal 2.4-inch 12-gauge shotgun round firing a ballistic fiber bag filled with 40 grams of lead shot. To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Provides officers with a less-lethal option in incidents of combative or self-destructive individuals, riot/crowd control and civil unrest incidents, circumstances where a tactical advantage can be obtained, potentially vicious animals, and training exercises or approved demonstrations.	
Fiscal Impact: • Remington 870 Less-Lethal 12-gauge Shotgun: \$2,200, quantity: 4 • CTS Model 2581 Super-Sock Beanbag Round: \$1,090, quantity: 200 • Glass Breaker Ball: \$480, quantity: 200	

AB 481 Qualifying Equipment Inventory: Pinole Police Department

• Annual maintenance \$0
Legal and Procedural Rules Governing: All applicable State, Federal and Local laws governing police use of force. Various Pinole Police Department Policies on Use of Force.
Training Required: Department provided training conducted by POST certified instructors.
Other Notes: None



CITY COUNCIL REPORT

9.B.

DATE: JULY 2, 2024
TO: MAYOR AND COUNCIL MEMBERS
FROM: KAPIL AMIN, SUSTAINABILITY FELLOW
LILLY WHALEN, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: CHAPTER 8.38 "SINGLE-USE PLASTIC FOODWARE AND BAG
REDUCTION", SECOND READ AND ADOPTION

RECOMMENDATION

Waive the Second Reading and Adopt Ordinance

BACKGROUND

Single-use plastics have detrimental consequences, not limited to, overwhelming street and Pinole Creek litter, human health impacts, increased reliance on fossil fuels, and unsustainable waste practices. In response, the City Council directed staff to draft an ordinance adding Chapter 8.38 to the Municipal Code to regulate the use of single-use plastic foodware and bags at Pinole businesses. At its regularly scheduled meeting on June 4, 2024, the City Council received a presentation and staff report to conduct a public hearing and a first reading of an ordinance to add Chapter 8.38 "Single-use Plastic Foodware and Bag Reduction" to the Pinole Municipal Code to reduce single-use plastics in the City. See **Attachment A**. The City Council unanimously voted in the affirmative to approve the ordinance on first reading. If approved on second reading, the ordinance will go into effect on January 1, 2025, pursuant to Section 8.38.160 in the draft Ordinance. Following the effective date the Ordinance provides a six-month reprieve from Code Enforcement action, from January 1 - June 30, 2025.

REVIEW AND ANALYSIS

The Ordinance (**Attachment A**) has been modified in three instances on pages 9, 10 and 11 to correct three typographical errors:

- Page 9, Section 8.38.120.B and H's intent is to address extensions of time, where "waivers" was inadvertently indicated instead of "extension of time".
- Page 11, Section 8.38.170.A had a "/" instead of a "1" in reference to Section 8.38.120.

These changes have been made in track changes to highlight the modifications for the Council and public. No changes to the draft policy or intent are proposed.

Questions raised by the Council at the first reading of the ordinance are summarized and addressed below.

1. How many opportunities does the Ordinance provide to a business to extend compliance with the Ordinance?

The Ordinance will become enforceable on July 1, 2025. After that time, all businesses in Pinole must either:

- Be in compliance with the Ordinance; or

- Have requested and received a **waiver** for an individual item; or
- Have requested and received a **time extension** to comply with the Ordinance overall.

As discussed in detail, below, businesses will have the ability to request a waiver of any individual disposable bag or foodware item for a specified term of up to two years, with a final additional two-year waiver period under extraordinary circumstances, **for a total waiver period of up to four total years.** Additionally, businesses will have the ability to request an extension of time to comply with the Ordinance (from the July 1, 2025 compliance deadline), for a term of up to 6-months and a final additional 6-month term under extraordinary circumstances, **for a total time extension of up to one-year.**

Also noted below, the Ordinance provides the authority to the City Manager or their designee, in certain limited and unique circumstances existing prior to adoption of this ordinance, and where the Food Provider or Retailer demonstrates diligent efforts to comply but, due to economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, to grant a waiver or time extension **for a longer specified term.**

Waivers

Pursuant to Section 8.38.050.E, an individual business may request a waiver of any individual disposable bag or footwear item that does not conform to the Disposable Bag and/or Disposable Foodware requirements in Sections 8.38.070 and 8.38.080, respectively.

In order to receive the waiver businesses will be required to demonstrate that no substantially similar items meeting the standards in Section 8.38.80 exist, or that using compliant items would cause undue financial hardship, and that the non-conforming items to be used are recyclable in the City's program, with a preference for aluminum over plastic where feasible. To obtain a waiver for item(s), the Food Provider must provide documentation of good-faith efforts to obtain a substantially similar compliant item at a non-prohibitive price, including correspondence with vendors, responses with specifications and pricing, specifications and pricing for the recyclable non-conforming item, and any other verifiable records demonstrating compliance efforts, noting that reasonable added cost alone is not sufficient grounds for a waiver.

Section D of Chapter 8.38.110, "Waivers--process to obtain," allows the City Manager or their designees to grant waivers based on documentation and, if necessary, independent verification, including site visits.

- Waivers may be granted for up to **two years**, during which the Food Provider or Retailer must make diligent efforts to comply with the Ordinance.
- The Ordinance provides a possibility of an additional **two years** under extraordinary circumstances.
- The Ordinance specifies that in unique cases where compliance is deemed permanently infeasible due to economic or other extraordinary circumstances, a longer-term waiver may be granted.
- All waivers will expire if there is a significant remodel exceeding \$60,000 or if the Food Provider or Retailer ceases operations at the location.

Time Extensions

Pursuant to Section 8.38.060.C and 8.38.070.H, an individual business may request to extend the period of time when no administrative citation may be issued for violation of a requirement of the Ordinance. To be eligible for an extension of time the Retailer or Food Provider must:

- Employ 10 full time equivalents or less; and

- Have gross receipts less than \$500,000 annually; and
- Provide documentation of good-faith efforts to obtain comply with provisions of Section 8.38.070 in addition to an explanation of why additional time is needed.

Time extensions may be granted for a specified term of **up to six months**. During the extension term the Food Provider or Retailer shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Food Provider or Retailer demonstrate that, at the close or expiration of a granted time extension term, and with diligent efforts to become compliant, compliance remains infeasible, one **final six month extension** may be granted.

The Ordinance provides some additional flexibility in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Food Provider or Retailer demonstrates diligent efforts to comply but, due to economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.

2. What are the repercussions for a business who violates the Ordinance?

Violations of the ordinance are subject to Chapter 8.25.020 "Administrative Citations" as indicated in the ordinance under Section 8.38.170 "Liability and Enforcement."

- Administrative Citations for the 1st, 2nd, and 3rd violations within the same year are respectively \$100, \$200, and \$500.
- Ultimately, pursuant to PMC Section 5.04.115.A.11, the business license may be revoked for a business in violation of any building, zoning, health, safety, fire, police or other provision of this code or of county, state or federal law which substantially affects the public health, welfare or safety.

3. How will the City verify that a business meets the requirements in Section 8.38.070.H (eligibility requirements to request an extension of time), in particular, that a business has gross receipts less than \$500,000 annually?

The City has consulted with HdL, the consultant firm who provides Business License and Tax services for the City, regarding the City's options to verify gross receipts. They have confirmed that they will be able to provide the City with a confidential list of businesses that meet the eligibility, or provide confidential access to their database to confirm eligibility. Staff therefore recommends to enforce this provision of the Ordinance:

1-Require an affidavit signed by the business owner certifying under penalty of perjury that their gross receipts are less than \$500,000 annually.

2-Staff then verifies with HdL that the business is exempt, in a manner consistent with confidentiality regulations.

4. How does the Ordinance apply to the City of Pinole, its events and facility users?

Section 8.38.150 "City of Pinole - purchases prohibited" prohibits the City or City Facility Users from purchasing any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 8.38.080, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

As defined by the Ordinance:

- "City Facility" is *any building, structure, vehicle, land or park owned and operated by the City.*
- "City Facility User" is *any person, society, association, organization or special events promoter who requires a permit to use a City facility or a permit or contract to use a plaza, sidewalk, or roadway.*
- "City Sponsored Event" is *any activity that is organized by the City, and any private activity whose*

organizers voluntarily request and receive from the City any endorsement, financial assistance, or similar recognition that is unrelated to any requirements for such an event under applicable law.

Following the adoption of the Ordinance, education will be provided to all City staff, especially those involved in purchasing, event organization, and issuing event permits and rental agreements, to ensure compliance with Section 8.38.150. This will help everyone understand the requirements and purpose of the Ordinance. Additionally, the Sponsorship policy and facility rental requirements/agreements will be updated to reflect the provisions of the Ordinance.

FISCAL IMPACT

The adoption of this Ordinance is a crucial step towards our city's sustainability goals. It will require increased staff time on education and enforcement, and potentially, increased costs associated with City procurement of compliant disposable foodware items at all City Facilities.

Staff Time

Code Enforcement staff hours will be required for the proactive and reactive enforcement of this Chapter.

Pursuant to Section 8.38.140 "Duties, responsibilities and authority of the City of Pinole" Sustainability Fellow staff hours will be required to provide simple and limited assistance to businesses and make a good faith effort to seek out and provide financially sound resources in forms such as financial assistance, comprehensive technical assistance, advanced technologies, public-private partnerships etc. to Food Providers and Retailers in order to help mitigate any increased costs and knowledge barriers that may arise from the regulation.

Procurement Costs

The Sustainability Fellow will work with each Department to prepare:

- A list of compliant, affordable compostable and reusable foodware products and local suppliers
- A cost-effective estimate for a full inventory conversion to compostable or reusable foodware

Technical Assistance

Staff recommends that the City Council consider the crucial need for more comprehensive technical assistance, which will foster timely and accurate compliance by businesses as well as alleviate the burden on businesses with limited resources. Staff has circulated a request for proposals to learn the precise cost and scope of work of technical assistance provided to businesses. Staff will return at the July 16, 2024 meeting with a recommendation on a budget to fund this comprehensive technical assistance.

ATTACHMENTS

A. Ordinance

Chapter 8.38
SINGLE-USE PLASTIC FOODWARE AND BAG REDUCTION

Sections:

- 8.38.010 Findings and Purpose.
- 8.38.020 Definitions.
- 8.38.030 Single-use Foodware Accessories.
- 8.38.040 Consumer-owned Reusable Containers.
- 8.38.050 Takeout Food.
- 8.38.060 Reusable Foodware for Dining on the Premises.
- 8.38.070 Disposable bags.
- 8.38.080 Disposable Foodware Standards.
- 8.38.090 Disposable Bag Standards.
- 8.38.100 Separate Disposable Foodware Waste Receptacles.
- 8.38.110 Waivers-process to obtain.
- 8.38.120 Extension of time—process to obtain.
- 8.38.130 Regulations applicable to all Food Providers and Retailers
- 8.38.140 Duties, responsibilities and authority of the City of Pinole.
- 8.38.150 City of Pinole - purchases prohibited.
- 8.38.160 Effective Date.
- 8.38.170 Liability and Enforcement.
- 8.38.180 Severability.
- 8.38.190 Chapter supersedes existing laws and regulations.

8.38.010 The Council of the City of Pinole finds and declares as follows:

- A. Single-use plastics (SUPs) —including bags and foodware (plates, cutlery, cups, lids, straws, “clamshells” and other containers) is a major contributor to street litter, ocean pollution, marine and other wildlife endangerment and loss. A 2022 trash survey of the Pinole Creek found SUPs represented the majority of the debris collected from the creek.
- B. The production, consumption and disposal of SUPs contributes significantly to the consumption of fossil fuels and exacerbation of greenhouse gas (GHG) emissions. Plastics are made from chemicals sourced from petrol, gas, or coal. “Recyclable” plastic on average can be recycled two times before attenuating. Over three-fourths of “recyclable” plastic ends up as litter or in the landfill.
- C. Plastics in waterways and oceans break down into microplastics which are not biodegradable and can now be found in most of the world's oceans. These microplastics have been detected in human blood and can disrupt normal body processes, increasing health risks.
- D. Plastic debris in seawater and freshwater can attract and collect pollutants, which can then accumulate in fish, seafood, and salt that is later consumed by humans. Additionally, some food packaging, such as food contact papers and compostable paperboard containers, may contain harmful fluorinated chemicals that are associated with serious health problems.

- E. 2011 Bay Area litter survey showed that over two-thirds of trash collected was from take-out food and beverage packaging. In the Bay Area, food and beverage packaging comprises the majority of street litter and is a significant contributor to the total amount of waste entering the waste stream.
- F. It is in the utmost interest for the health, safety and welfare of who live, work, visit and do business in the City of Pinole that the consumption of SUPs be reduced.
- G. The Pinole Sustainability Element strives for Pinole to become a “Model City” that demonstrates how sustainable practices can be incorporated in the municipal, commercial and residential functions of a city. Reduction of single-use plastic food packaging and bags furthers this goal by eliminating solid waste at its source and maximize reusing, composting and recycling.
- H. This Chapter is consistent with the City’s Sustainability Element of the General Plan and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

8.38.020 Definitions.

- A. **CITY.** The City of Pinole.
- B. **CITY DEPARTMENT.** Any governmental subdivision of the City.
- C. **CITY FACILITY.** Any building, structure, vehicle, land or park owned and operated by the City.
- D. **CITY FACILITY USER.** Any person, society, association, organization or special events promoter who requires a permit to use a City facility or a permit or contract to use a plaza, sidewalk, or roadway.
- E. **CITY MANAGER.** The City Manager of the City of Pinole or City Manager's designee.
- F. **CITY-SPONSORED EVENT.** Any activity that is organized by the City, and any private activity whose organizers voluntarily request and receive from the City any endorsement, financial assistance, or similar recognition that is unrelated to any requirements for such an event under applicable law.
- G. **CONSUMER-OWNED BAG.** A reusable customer-brought bag that is specifically designed and manufactured for multiple reuse, is in good performing condition, not unsanitary, and washable.
- H. **CONSUMER-OWNED CONTAINER.** A reusable customer-brought food or beverage container that is in good performing condition, not unsanitary, and in accordance with Section 3-304.17(B)(1) of the 2017 Food Code.
- I. **CONDIMENT.** means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food or drink item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.
- J. **DISPOSABLE BAGS.** A bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Retailer or Food Provider. Disposable Bags do not include Pre-checkout Bags.
- K. **DISPOSABLE CUP.** A beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.
- L. **DISPOSABLE FOODWARE.** All containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and

any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Food Provider's premises.

- M. **DISPOSABLE FOODWARE ACCESSORY.** Any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- N. **ESTABLISHMENT.** A place of business of a food provider or other person subject to the requirements of this Chapter.
- O. **FOOD PROVIDER.** Any establishment located within the City, or any establishment that sells or otherwise provides Prepared Food or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria (with the exception of public school cafeterias), caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food market, farmer's market, mobile food preparation truck or vehicle, roadside stand, or any other person or organization who provides Prepared Food. Food provider also includes any organization, group or other person that regularly provides Prepared Food to its members or the general public as a part of its activities or services.
- P. **PRE-CHECKOUT BAG.** A bag provided or sold to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.
- Q. **PREPARED FOOD.** Any food or beverage ready to consume without any further food preparation, alteration or repackaging, other than heating. Prepared food does not include (1) uncooked or raw meat, fish, poultry, or eggs unless provided for consumption without further food preparation; or (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging.
- R. **TAKEOUT FOOD.** Prepared Food which is purchased to be consumed off a Food Provider's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Food Provider or by a Takeout Food Delivery Service.
- S. **RETAILER.** Any establishment that sells perishable and/or non-perishable goods that are packaged for customer takeaway in plastic bags and is not currently regulated by Public Resources Code sec. 42280 et seq.
- T. **REUSABLE FOODWARE.** All foodware, including plates, bowls, cups, trays, containers, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- U. **SURCHARGE FEE.** A mandatory or discretionary fee charged to a customer requiring Disposable Foodware.
- V. **TAKEOUT FOOD DELIVERY SERVICE.** A third-party delivery service which picks up Takeout Food from a Food Provider and delivers it to the customer for consumption off the premises.

8.38.030 Disposable Foodware Accessories.

- A. In compliance with Public Resources Code sec. 42270 et seq. Disposable Foodware Accessory items shall be provided only upon request by the customer or at self-serve stations, except that for safety reasons Disposable Cups for delivery by a Food Provider or a Takeout Food Delivery Service may include lids, spill plugs and sleeves without request.
- B. In compliance with Assembly Bill 1276, Food Provider and Takeout Food Delivery Services must provide options for customers to affirmatively request Disposable Foodware Accessory items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Food Providers offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.
- D. Non-adhering items shall only be provided to customers who require them for medical needs.

8.38.040 Consumer-owned Containers.

- A. Per Health and Safety Code sec. 114121 et seq., Food Providers, except, as provided in Chapter 11, Temporary Food Facilities of the California Health and Safety Code, Section 114353, are encouraged to allow customers to bring Consumer-owned Containers and maintain sanitary procedures to prevent cross-contamination. Food Providers may refuse, at their sole discretion, any Consumer-owned Containers that are cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be soiled or unsanitary.

8.38.050 Takeout Food.

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 8.38.080. Takeout Food may also be served in Reusable Foodware made for takeaway as well as Consumer-owned Containers.
- B. Disposable Foodware Accessories shall conform with the Disposable Foodware Standards in 8.38.080.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Food Provider that is served in Disposable Foodware and with Disposable Foodware Accessories, if any were requested, that conform to the Disposable Foodware Standards in 8.38.080.
- D. A Food Provider may optionally apply a foodware Surcharge Fee at their own discretion. The intent of the foodware Surcharge Fee is to account for extra expense of complying with this Ordinance. A Food Provider is not required to apply a foodware Surcharge Fee. The following applies if a Food Provider chooses to apply a Surcharge Fee:
 - 1. All foodware Surcharge Fee shall be retained as income by the Food Provider.
 - 2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit

transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from any form of foodware Surcharge Fees.

3. Foodware Surcharge Fees shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms and/or menu boards. Customers placing orders by telephone shall be informed verbally of foodware Surcharge Fees.
- E. Notwithstanding the requirements at Section 8.38.050, subsections A-C, a Food Provider may request a waiver or waivers pursuant to Section 8.38.110 for one to all Disposable Foodware item(s).
1. To obtain a waiver for item(s), the Food Provider must demonstrate that:
 - a. No Disposable Foodware item(s) exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 8.38.80 or, if such an item(s) exist, that costs of using such item(s) would cause undue financial hardship; and
 - b. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City recyclable collection program with a good-faith effort to prioritize aluminum foodware containers/packaging where practicable above recyclable plastic.
 2. To obtain a waiver for item(s), the Food Provider must provide documentation of good-faith efforts to obtain a substantially similar compliant item at a non-prohibitive price. Records of attempts to obtain a compliant item may include:
 - a. Emails, letters or other correspondence with vendors that furnish compliant Disposable Foodware, seeking the compliant item(s).
 - b. Responses from such compliant Disposable Foodware vendors including, where applicable, specifications and pricing for such item(s).
 - c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
 - d. Any other verifiable records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item(s).
 3. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.
- F. A Food Provider may request, pursuant to Section 8.38.120, to extend the time period of comply with all provisions of this Section 8.38.050. To be eligible for an extension of time the Food Provider must:
- a. Employ 10 full time employees equivalents or less; and
 - b. Have gross receipts less than \$500,000 annually
 - c. Provide documentation of good-faith efforts to obtain comply with provisions of Section 8.38.050 in addition to an explanation of why additional time is needed.

8.38.060 Reusable Foodware for Dining on the Premises.

- A. Food Providers are encouraged to maximize Reusable Foodware where practicable and to the extent possible and make a good-faith effort to consider serving customers utilizing Reusable

Foodware for consumption on- premise especially if there is dishwashing capacity or potential for on-site dishwashing.

- B. If serving customers with Reusable Foodware is not practicable or possible, all Food Providers shall serve dine-in customers utilizing Disposable Foodware that conforms to the Disposable Foodware Standards in Section 8.38.080 and all Disposable Foodware Accessories shall conform with the Disposable Foodware Standards in 8.38.080.
- C. A Food Provider may request, pursuant to Section 8.38.120, to extend the time period of comply with all provisions of this Section 8.38.060. To be eligible for an extension of time the Food Provider must:
 - a. Employ 10 full time equivalents or less; and
 - b. Have gross receipts less than \$500,000 annually; and
 - c. Provide documentation of good-faith efforts to obtain comply with provisions of Section 8.38.060 in addition to an explanation of why additional time is needed.

8.38.070 Disposable Bags.

- A. Food Providers and Retailers shall only package goods in bags that conform to the Disposable Bag Standards in Section 8.38.090.
- B. Takeout Food Delivery Services shall only deliver Takeout Food from a Food Provider that is bagged in a bag that conforms to the Disposable Bag Standards in 8.38.090.
- C. Surcharge Fees for Disposable Bags shall be applied as follows:
 - 1. Retailers shall charge a minimum 15-cent single-use bag Surcharge Fee per Disposable Bag over 5.25"x3.75"x8". The Surcharge Fee is optional for Disposable Bags of a small size (at or less than 5.25"x3.75"x8").
 - 2. Food Providers may charge the 15 cent single-use bag Surcharge Fee for Disposable Bags at their own discretion and is not mandatory.
 - 3. The following applies to the application of the Surcharge Fee:
 - a. All bag Surcharge Fees shall be retained as income by the Retailer or Food Provider.
 - b. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from any form of bag fees.
 - c. Any bag Surcharge Fees shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms and/or menu boards. Customers placing orders by telephone shall be informed verbally of any bag Surcharge Fees.
- D. Notwithstanding the requirements at Section 8.38.110, subsections A-C, a Retailer or Food Provider may request a waiver or waivers pursuant to Section 8.38.110 for specific Disposable Bags. To obtain a waiver for item(s), the Retailer or Food Provider must demonstrate that:
 - 1. No Disposable Bag exists with substantially similar size, performance and/or utility that conforms with the Disposable Bag Standards in Section 8.38.090 or, if such an item exists,

that costs of using such item would cause undue financial hardship, or Consumer-owned Bags will create health risks from cross-contamination, or regulation will pose health and safety risks and;

2. The Retailer or Food Provider must provide documentation of good-faith efforts to obtain a substantially similar compliant item at a non-prohibitive price.
3. Records of attempts to obtain a compliant item may include:
 - a. Emails, letters or other correspondence with vendors that furnish compliant Disposable Bags, seeking the compliant item.
 - b. Responses from such Disposable Bag vendors including, where applicable, specifications and pricing for such item.
 - c. Specifications and pricing for the non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
 - d. Any other verifiable records which demonstrate a good faith effort to comply with Disposable Bag Standards for such item.
4. Reasonable added cost for a conforming item as compared to a substantially similar non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.
- E. Consumer-owned Bags shall be accepted by all Retailers unless a waiver exemption is granted and at the discretion of Food Providers.
- F. Retailers and Food Providers shall ask consumers if a bag is required and not automatically provide a bag.
- G. Pre-checkout bags, such as produce bags, as outlined in and conforming to Public Resources Code sec. 42281.2 must be provided to consumers.
- H. A Retailer or Food Provider may request, pursuant to Section 8.38.120, to extend the time period of comply with all provisions of this Section 8.38.070. To be eligible for an extension of time the Retailer or Food Provider must:
 - a. Employ 10 full time equivalents or less; and
 - b. Have gross receipts less than \$500,000 annually; and
 - c. Provide documentation of good-faith efforts to obtain comply with provisions of Section 8.38.070 in addition to an explanation of why additional time is needed.

8.38.080 Disposable Foodware Standards.

- A. Disposable Foodware must be accepted by City's municipal compost collection programs, except that non-compostable foil wrappers that are accepted in the City of Pinole recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item. Acceptable material types include natural fiber-based, natural (wood, bamboo, etc.), uncoated paper, etc. Bioplastics, or compostable plastics, are not allowed. Single-sided lamination by plant-derived polylactic acid (PLA) is acceptable. Disposable foodware must be free of added fluorinated chemicals such as perfluoroalkyl and polyfluoroalkyl substances (PFAS). Bleached Disposable Foodware is not allowed. Single-use Foodware from third-party certifying organizations such as the Biodegradable Product Institute is encouraged. Disposable foodware

made from post-consumer recycled content and sustainable, regenerative practices are encouraged.

- B. The City shall maintain on its website and at City Hall a list of suppliers that offer compliant Disposable Foodware.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of the next calendar year, and the City shall provide notice of any such changes to Food Providers at least 90 days prior through the email address listed on the most recent Business License for the Food Provider.

8.38.090 Disposable Bags Standards

- A. Disposable bags must be made of unbleached paper and with 40% postconsumer recycled content. Single-use bags may also be made of plant starches and must be BPI-certified bags. Bags must be 100% recyclable and/or compostable.
- B. The City shall maintain on its website and at City Hall a list of suppliers that offer compliant Single-use Bags.
- C. Changes, if any, to Disposable Bag Standards shall become effective on January 1 of the next calendar year, and the City of Pinole shall provide notice of any such changes to Retailers and Food Providers at least 90 days prior through the email address listed on the most recent Business License for the Retailer or Food Provider.

8.38.100 Separate Disposable Foodware Waste Receptacles.

- A. All Food Providers, except Food Providers that provide full bussing service and do not customarily provide waste receptacles for customer use, must provide at least one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted for self-bussing customers.
- B. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- C. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
 - 1. Blue for recyclables
 - 2. Green for compostables
 - 3. Black or gray for items to be landfilled or otherwise wasted
- D. Food Providers that share premises may share receptacles.

8.38.110 Waivers--process to obtain.

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Food Providers or Retailers to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.

- B. Waivers shall be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a complete waiver application no later than 60 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified term of up to two (2) years. During the waiver term, the Food provider or Retailer shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Food provider or Retailer demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Food Provider's or Retailer's responsibility to apply for any subsequent waivers in a timely manner.
- E. Notwithstanding the two (2) year maximum term for waivers set forth in Section 8.38.110(D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Food Provider or Retailer demonstrates diligent efforts to comply but, due to economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.
- F. All waivers shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Food Provider or Retailer ceases operations at the location for which the waiver has been granted.

8.38.120 Extension of time—process to obtain.

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Food Providers or Retailers to obtain an extension of time to comply with this Chapter.
- B. ~~Waivers~~ Extensions of time shall be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a complete time extension application no later than 60 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Time extensions may be granted for a specified term of up to six (6) months. During the extension term the following requirements apply:
 - 1. No administrative citation may be issued for violation of a requirement of this chapter
 - 2. The Food provider or Retailer shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Food provider or Retailer demonstrate that, at the close or expiration of a granted time extension term, and with diligent efforts to become compliant, compliance remains infeasible, one final six (6) month extension may be granted. It shall be the Food Provider's or Retailer's responsibility to apply for any subsequent extensions in a timely manner.
- F. Notwithstanding the maximum term for extensions set forth in Section 8.38.120(D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Food Provider or Retailer demonstrates diligent efforts to comply but, due to economic constraints

and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a ~~waiver~~ time extension for a longer specified term.

- G. All time extensions shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Food Provider or Retailer ceases operations at the location for which the extension has been granted.

8.38.130 Regulations applicable to all Food Providers and Retailers.

- A. Each Food Provider and Retailer shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or their designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or their designated representative.

8.38.140 Duties, responsibilities and authority of the City of Pinole.

- A. The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Food Provider's or Retailer's premises to verify compliance.
- B. The City shall, at minimum, provide simple technical assistance and a resource packet to educate Food Providers and Retailers on new regulations and how to be in compliance, and make a good-faith effort to seek out and provide financially sound resources in forms such as financial assistance, comprehensive technical assistance, advanced technologies, public-private partnerships etc. to Food Providers and Retailers in order to help mitigate any increased costs and knowledge barriers that may arise from the regulation in this chapter.

8.38.150 City of Pinole - purchases prohibited.

The City or City Facility Users shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 8.38.080, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

8.38.160 Effective Date.

The provisions of this Chapter shall take effect January 1, 2025.

8.38.170 Liability and Enforcement.

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 8.25.020; however, no administrative citation may

be issued for violation of a requirement of this chapter until six months after the Effective Date of such requirement as specified in Section 8.28.150. Pursuant to Section 8.38~~.120~~.120, eligible Food Providers and Retailers may submit a request to extend the period of time where no administrative citation may be issued for violation of a requirement of this chapter.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 8.38.110.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

8.38.160 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

8.38.170 Chapter supersedes existing laws and regulations.

The provisions of this chapter shall supersede any conflicting law or regulations.



CITY COUNCIL REPORT

9.C.

DATE: JULY 2, 2024
TO: MAYOR AND COUNCIL MEMBERS
FROM: ERIC CASHER, CITY ATTORNEY
SUBJECT: SETTLEMENT AGREEMENT WITH MVP CONSTRUCTION, LLP

RECOMMENDATION

Staff recommends the City Council approve a settlement agreement between the City of Pinole and MVP Construction, LLC ("MVP Construction").

BACKGROUND

Fernandez Park is located at Tennent Avenue and Park Street. In 2017, the City decided to replace the deteriorating restroom building in Fernandez Park with a new prefabricated unit for the project. After formal bidding, the project was awarded to MVP Construction for a total project price of \$318,603.

During construction of the project, certain disputes arose regarding alleged extra work and payments. MVP Construction filed a complaint in Contra Costa County Superior Court on September 17, 2020 seeking damages in the amount of \$82,864 alleging that the City should absorb the cost of MVP's change in supplier of the pre-fabricated unit. The City denied all allegations in the complaint.

REVIEW AND ANALYSIS

Since the initially filing of the complaint the parties have engaged in active litigation on the case. The parties participated in a mediation session in 2022 and were unable to settle the case. After a successful dispositive motion by the City the case was set for trial in early June 2024. Prior to trial the Judge directed the parties to engage in one more round of informal settlement negotiations. The City, after engaging in settlement discussions with MVP Construction as directed by the Judge, reached an agreement to settle the case.

Under the proposed settlement agreement, the City will pay nothing to MVP Construction and each party will be responsible for its own costs and fees related to the litigation and settlement. For the settlement agreement to be executed, it must be approved by the City Council. A copy of the proposed settlement agreement is included as Attachment A.

FISCAL IMPACT

The cost of approving the settlement agreement is \$0 as the City will not be paying any amount of MVP Construction's alleged damage claim. There are nominal costs associated with staff time preparing the settlement agreement and report.

ATTACHMENTS

- A. Signed 061124 Settlement Agreement - MVP Construction v Pinole

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (the “**Agreement**”) is made and entered into as of this 10th day of June 2024 by and between the City of Pinole (“**City**”) and MVP Construction, LLC (“**MVP**”). The City And MVP are each occasionally referred to individually herein as a “**Party**” and collectively referred to as the “**Parties**” to this Agreement.

RECITALS

On or around May 21, 2019, following competitive bidding, the City awarded to MVP the contract for construction of the Fernandez Park Restroom Building Replacement (the “**Project**”). During construction of the Project, certain disputes arose between MVP and the City regarding alleged extra work and payments (the “**Dispute**”). On or around September 17, 2020, MVP filed a complaint in the Contra Costa County Superior Court, case number C20-01904, seeking damages from the City arising from the Dispute. The City denies the allegations in MVP’s complaint (the “**Action**”).

The Parties have litigated the Dispute and have determined it is in their respective interests to resolve the Dispute, subject to the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS OF SETTLEMENT

1. **Payments by the City and MVP.** MVP shall pay nothing to the City and the City shall pay nothing to MVP. Each party shall forebear from pursuit of their respective claims and defenses in the Action as consideration for this Agreement. Each Party shall bear its own costs and fees in any way related to the Dispute and/or the Action incurred prior to, during, and after the Action.
2. **Release of Claims.**
 - (a) **Release of Claims by MVP.** After (i) full execution of this Agreement and (ii) approval of this Agreement by the City’s Council, MVP irrevocably and fully waives, releases, and forever discharges the City and the City’s Related Entities (defined below) from any and all claims, demands, causes of action, suits, debts, liens, liabilities, damages, penalties, fines, losses, costs, fees and expenses of any kind or nature whatsoever, whether known or unknown, foreseen or unforeseen, patent or latent, it has had, now has, or may have related to or arising out of the Project, the Dispute and the Action (the “**MVP Released Claims**”).
 - (b) **Release of Claims by City.** After (i) full execution of this Agreement and (ii) approval of this Agreement by the City’s Council, the City irrevocably and fully waives, releases, and forever discharges MVP and MVP’s Related Entities (defined below) from any and all claims, demands, causes of action, suits, debts, liens, liabilities, damages, penalties, fines, losses, costs, fees and expenses of any kind or nature whatsoever, whether known or unknown, foreseen or unforeseen, patent or latent, it has had, now has, or may have related to or arising out of the

Dispute (the “**City Released Claims**”) Notwithstanding the waiver and release described in this paragraph and the general release stated in Paragraph 2(d), nothing in this Agreement shall operate as a waiver, release, estoppel or discharge of MVP from the following:

- (i) Latent defects, as defined under California Code of Civil Procedure section 337.15(b), and claims for latent defects, if any, regarding, relating to, resulting from or in connection with the work performed by MVP for the Project, or materials or equipment supplied by MVP or any of its subcontractors or suppliers in connection with the Project or the Project’s written contract.
 - (ii) MVP’s Warranty or guaranty obligations under the Project’s written contract.
 - (iii) MVP’s liability, if any, for third-party suits or claims for personal injury or death, or property damages because of, relating to, resulting from or in connection with MVP’s or MVP’s subcontractors’ and suppliers’ work or supplies provided under the Project’s written contract.
 - (iv) City’s indemnification obligations to MVP, if any, relating to any third-party suits or claims for personal injury or death, or property damages because of, relating to, resulting from or in connection with MVP’s or MVP’s subcontractors’ and suppliers’ work or supplies provided under the Project’s written contract.
 - (v) MVP’s indemnification obligations to the City, if any, relating to any third-party suits or claims for personal injury or death, or property damages because of, relating to, resulting from or in connection with MVP’s or MVP’s subcontractors’ and suppliers’ work or supplies provided under the Project’s written contract.
- (c) **Related Entities.** As used in this Agreement, the term “Relates Entities” shall refer to and include each Party’s respective past and present parents, members, associates, subsidiaries, affiliated persons and entities, related persons and entities, predecessors, successors, assigns, officers, directors, employees, independent contractors, servants, agents, representatives, insurance carriers, claims administrators, customers, and attorneys.
- (d) **Effect of Release, Section 1542 Waiver.** With respect to the MVP Released Claims and the City Released Claims, the Parties certify they have read Section 1542 of the California Civil Code, set forth below, and indicate this fact by signing this Agreement:

§ 1542. GENERAL RELEASE--CLAIMS EXTINGUISHED. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, having read and understood Civil Code section 1542 for the purpose of implementing the release as described in this Agreement, expressly waive and relinquish all rights and benefits afforded by Civil Code section 1542 with respect to the Action only, and do so understanding and acknowledging the significance of such specific waiver of Section 1542.

- (e) **No Assignment or Transfer of Released Claims.** The Parties, and their Related Entities, and each of them expressly warrant and represent that no portion of any of the claims that are the subject of the release set forth in this section, nor any portion of any recovery or settlement to which the Parties might be entitled to with respect thereof, has been assigned or transferred to any person or corporation in any manner whatsoever, including by way of subrogation, operation of law or otherwise.
- 3. **Dismissal of the Action.** Within thirty (30) days after (i) full execution of this Agreement and (ii) approval of this Agreement by the City's Council, MVP shall file documents with the Court sufficient to dismiss the Action with prejudice.
- 4. **No Other Actions Pending.** The Parties warrant and represent to each other that they have not filed any pending complaint, charge, lien, claim or grievance concerning the Project with any local, state or federal agency, court or commission. The Parties acknowledge and understand that each Party is relying upon these warranties and representations as an inducement for executing this Agreement.
- 5. **No Admission of Liability.** The Parties acknowledge and agree that this Agreement does not constitute an admission of liability or wrongdoing of any nature whatsoever by any of the Parties, and that this Agreement shall not be used as evidence of any liability or wrongdoing for any purpose whatsoever except as may be necessary to enforce the terms and conditions of this Agreement. By negotiating and entering into this Agreement, the Parties each acknowledge that they are simply buying their peace in order to efficiently, effectively, and finally resolve the Dispute.
- 6. **Time of the Essence.** Time is of the essence with respect to all matters contained in this Agreement.
- 7. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless manually signed by the Party asserted to be bound thereby.
- 8. **Entire Agreement.** This Agreement constitutes the final and entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous negotiations, discussions, agreements and understandings of the Parties, whether oral or written, with respect to such subject matter. The Parties acknowledge and agree that there are and have been no representations, warranties, agreements, arrangements, promises, inducements or undertakings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed in writing herein. This Agreement cannot be modified or amended unless done so in writing and signed by all parties to this Agreement.

9. **Severability.** The Parties agree and acknowledge that this Agreement shall be governed by and construed in accordance with the laws of the State of California, and that if any provision of this Agreement is determined to be illegal or unenforceable, such determination shall not affect the balance of this Agreement, which shall remain in full force and effect and such invalid provision shall be deemed severable.
10. **Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon the Parties hereto and their respective legal representatives, including the Parties' successors and assigns, past and present parents, subsidiaries, affiliates, predecessors, successors, assigns, officers, directors, employees, attorneys, agents, representatives, heirs, executors, guardians ad litem and administrators, and each of them.
11. **No Party Deemed Drafter.** All Parties hereto acknowledge that they have been represented by independent counsel of their own choice throughout all of the negotiations that preceded the execution of this Agreement. This Agreement shall be construed fairly as to all Parties and not in favor of or against any of the Parties, regardless of which party actually prepared this Agreement, and the Parties agree that California Civil Code section 1654 will not apply in the event of an uncertainty with respect to this Agreement is asserted or identified.
12. **Representation.** The Parties have been represented in the negotiations for preparation of this Agreement by legal counsel of their own choosing, have been fully advised by such counsel of their rights and duties hereunder, have read this Agreement in its entirety, have had this Agreement and each of its parts fully explained to them by their counsel, and are fully aware of its contents and its legal effect. The Parties have relied only on the representations contained in and expressly set forth in this Agreement in entering this Agreement.
13. **Authority.** Each of the Parties represents and warrants that its respective signatory has full authority to bind each of them to the terms and conditions of this Agreement. Each of the Parties represents and warrants that: (1) the execution, delivery and performance of this Agreement has been duly authorized by all necessary action of its governing body; (2) this Agreement has been duly executed and delivered and constitutes a valid and binding obligation of the Party, enforceable against the Party in accordance with its terms; and (3) the execution, delivery and performance by the Party's signatory of this Agreement does not (i) require any approval which has not been obtained; (ii) violate the Party's rules and regulations; or (iii) breach or constitute a default under any contract to which the Party is a party or by which it is bound. Individuals executing this and other documents on behalf of the respective Parties do hereby certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the individuals and entities so indicated. Each signatory shall also indemnify the other Parties to this Agreement, and hold them harmless, from any and all damages, costs, attorneys' fees, and other expenses, if the signatory is not so authorized. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
14. **Payment of Expenses.** The Parties hereto agree and promise that each party shall, bear its own costs and attorneys' fees relating to the Dispute as they relate to claims against each other, including the costs and fees related to this Agreement. However, in any

action to enforce the terms of this Agreement, the prevailing party is entitled to obtain its reasonable attorneys' fees and costs expended in conjunction with enforcement of this Agreement only, should that become necessary.

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
16. **Recitals.** Each of the Recitals stated above are hereby incorporated into this Agreement as if set forth in full herein. This Agreement constitutes a fully executed settlement, accord, and satisfaction and release by the Parties with respect to the Dispute.
17. **Tax.** Any tax or costs, attorney's fees, penalties or interest incurred or assessed to the Parties are their sole respective responsibility. None of the Parties are making any warranty as to any tax consequences of any payment, and the determination of the tax consequences of such payment are the sole responsibility of each Party respectively.
18. **No Precedent.** This Agreement is entered into as a compromise and with the specific understanding that it is without any admission of fault by any party and is without precedential value. It is not intended to be, nor shall it be construed as an interpretation of any preexisting agreement and shall not be used as evidence, or in any other manner, in any court or dispute resolution proceeding (with the exception of an action or proceeding to enforce the terms of this Agreement) to create, prove or interpret the obligations of any party hereto or any of its individual members, associates, successors or predecessors under any other agreement(s) with a party or any nonparty to this Agreement.
19. **Execution in Counterparts.** This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic and facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose.
20. **Effective Date.** This Agreement shall be deemed fully executed and effective when it has been signed by all of the Parties set forth below ("Effective Date").

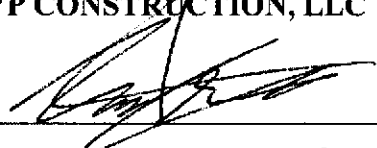
IN WITNESS WHEREOF, the persons named below have signed this Settlement Agreement and Release on the dates shown below and by signing below the undersigned acknowledges that this Settlement Agreement and Release is executed voluntarily and without duress or undue influence on the part of, or on behalf of, the Parties or any other person, firm or entity.

CITY OF PINOLE

By: _____

Name: _____

MVP CONSTRUCTION, LLC

By:  _____

Name: Michael Vila

Its: _____

Its: President

Date: _____, 2024

Date: 6/10/2024, 2024

Approved as to form:

Approved as to form:



CITY COUNCIL REPORT

9.D.

DATE: JULY 2, 2024
TO: MAYOR AND COUNCIL MEMBERS
FROM: STACY SHELL, HUMAN RESOURCES DIRECTOR
SUBJECT: APPOINT KELCEY YOUNG AS CITY MANAGER AND AUTHORIZE THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT

RECOMMENDATION

It is recommended that the City Council adopt a resolution appointing Kelcey Young as City Manager and approving and authorizing the Mayor to execute an employment agreement.

BACKGROUND

On August 30, 2023, former Pinole City Manager Andrew Murray announced that he would be leaving the City of Pinole at the end of September. Murry's final day of employment was September 30, 2023.

At a special meeting on September 11, 2023, the City Council convened in a closed session to discuss the appointment of an Interim City Manager.

Following deliberations in closed session, the City Council directed staff to prepare a resolution appointing Police Chief Neil Gang as Interim City Manager effective October 1, 2023, until the City Council appoints a new permanent City Manager. During the Interim City Manager appointment, Chief Gang also continued to serve as Pinole's Police Chief, fulfilling the full scope of duties of both positions.

On February 12, 2024, the City obtained executive recruitment professional services from Bob Murray & Associates to conduct a nationwide search for the new City Manager which included staff and community engagement opportunities to obtain feedback to guide recruitment and selection strategies.

At a special meeting on June 1, 2024, the City Council convened in a closed session to interview finalists for the City Manager position.

On June 12, 2024, top candidates were referred to City staff and community member interview panels for further assessment and feedback.

At a special meeting on June 12, 2024, the City Council convened in closed session to conduct follow-up interviews with the top candidates. Following interview deliberations, the City Council directed staff to negotiate an employment agreement and prepare a resolution to appoint Kelcey Young to the position of City Manager, with commencement of her duties on August 26, 2024.

The attached employment agreement was negotiated between the parties.

REVIEW AND ANALYSIS

Kelcey Young comes to the City Manager appointment with over ten years of progressively responsible public service experience in education and city government with her most recent appointment as City Manager of Sweet Home, Oregon. Ms. Young holds a bachelor's degree in environmental studies and leadership.

Approval of the agreement and authorization for the Mayor to execute it is now required.

FISCAL IMPACT

The fiscal impact of this employment agreement is approximately \$380,000, including the annual salary and benefits and a one-time relocation expense of \$20,000. There would be no additional costs as the FY 2024/25 adopted budget already includes an appropriation for the City Manager position.

ATTACHMENTS

- A. Resolution
- B. Employment Agreement - Kelcey Young - FINAL

RESOLUTION NO. 2024-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PINOLE APPOINTING
KELCEY YOUNG AS CITY MANAGER AND AUTHORIZING THE MAYOR TO
EXECUTE THE EMPLOYMENT AGREEMENT**

WHEREAS, previous City Manager Andrew Murray announced his separation on August 30, 2023, with an effective date of October 1, 2023; and

WHEREAS, the City Council convened in a closed session on September 11, 2023, to discuss the appointment of an Interim City Manager; and

WHEREAS, following the closed session deliberations, the Council appointed Police Chief Neil Gang as Interim City Manager, effective October 1, 2023, until the City Council appointed a new City Manager; and

WHEREAS, the Council convened in a closed session on June 12, 2024, to interview City Manager finalists, and following deliberations, directed staff to negotiate an employment agreement and prepare a resolution to appoint Kelcey Young to the position of City Manager effective August 26, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PINOLE that the City Council does hereby appoint Kelcey Young as City Manager and authorize the Mayor to execute the employment agreement effective August 26, 2024, attached here to as Exhibit A, and incorporated herein by this reference.

PASSED AND ADOPTED this 2nd day July 2024, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

I hereby certify that the foregoing resolution was introduced, passed and adopted on this 2nd day of July 2024.

Heather Bell, CMC
City Clerk

AGREEMENT FOR EMPLOYMENT OF KELCEY YOUNG

This Agreement is made and entered into by and between the City of Pinole (the "City"), a general law city, and Kelcey Young ("YOUNG" or "Employee"). This Agreement (the "Agreement") will become effective as specified herein.

1. Appointment of YOUNG as City Manager

The City Council of the City of Pinole is authorized to negotiate the terms of an agreement with YOUNG for her services through its duly appointed labor negotiator the City Attorney. The City Council and YOUNG have engaged in such negotiations, and YOUNG and the City now desire to agree in writing to the terms and conditions of YOUNG's employment as City Manager.

2. Term of Agreement

This Agreement will become effective on the date this Agreement is approved by the City Council and executed by the Mayor, or in the Mayor's absence, the Mayor Pro-Tem and YOUNG. This Agreement and YOUNG's employment shall remain in effect for three (3) years from the date of such execution unless terminated in accordance with paragraph 5 herein. If no successor Agreement is entered into to extend YOUNG's employment beyond the three (3) year term, her employment with the City shall end with no payment of severance. The City shall notify YOUNG at least three (3) months in advance of agreement expiration of intent to extend or not extend the Agreement.

3. At-Will Employment

YOUNG is an "at will" employee who shall serve at the pleasure of the City Council. Accordingly, the City Council may terminate YOUNG's employment at any time, with or without cause. This provision may not be altered except by a written instrument executed by YOUNG and the City Council, which specifically references this Agreement and section.

4. Duties and Responsibilities

a. YOUNG shall commence her duties as City Manager on August 26, 2024, and will continue for a term of three (3) years through August 25, 2027.

b. YOUNG shall serve as the City Manager for the City subject to the terms and conditions set forth herein. YOUNG shall also perform the functions and duties specified under the laws of the State of California, the Municipal Code of the City; the Ordinances and Resolutions of the City, the job description for the City Manager position, and such other duties and functions as the City Council may from time-to-time assign.

c. YOUNG agrees to devote her productive time, ability and attention to the City's business. For the duration of this Agreement, YOUNG shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the

City Council. As an exempt employee, YOUNG shall not receive overtime or extra compensation for work performed outside normal business hours.

5. Termination of Employment and Severance

a. YOUNG may terminate this Agreement with or without cause, by giving the City Council sixty (60) days written notice in advance of termination. During the notice period, all the rights and obligations of the parties under this Agreement shall remain in full force and effect.

b. The City Council may terminate this Agreement with or without cause, giving YOUNG thirty (30) days written notice in advance of termination.

c. In the event the City Council terminates YOUNG's employment without cause, the City shall pay YOUNG severance in a lump sum equal to nine (9) months base salary, auto allowance, cell phone allowance, as well as the City's share of all health/benefit premium contributions, minus all applicable deductions. Any severance payment pursuant to this Agreement is contingent upon YOUNG signing and delivering a general release of all claims against the City (including without limitation its former and current elected officials, employees, officers and agents) in a form acceptable to the City Attorney. Any severance amount paid pursuant to this Agreement shall be subject to the restrictions set forth in California Government Code § 53260. YOUNG shall not receive any severance if she resigns, is terminated for cause, if the term of this Agreement lapses, or if a waiver and release agreement is not executed by the parties. If the City elects to terminate this Agreement and YOUNG's employment without good cause as defined in this Agreement, a Notice of Termination Without Cause shall be provided in writing.

d. If YOUNG is terminated for "cause," the City shall not owe any severance under this Agreement. This provision does not confer any property rights on YOUNG, as she remains an at-will employee. The phrase "termination for cause" only pertains to YOUNG's eligibility for severance as described in this Section. A "termination for cause" for purposes of severance may include, but shall not be limited to, the following:

- i. Dishonesty;
- ii. Embezzlement;
- iii. Conviction of a felony or misdemeanor relating to YOUNG's fitness to perform assigned duties;
- iv. Any act involving moral turpitude;
- v. Taking a position adverse to the interests of the City without the City's prior written consent;
- vi. Violation of any fiduciary duty owed to the City;
- vii. Failure to abide by the terms of this Agreement; or

viii. Failure to observe or perform any of her duties and obligations under this Agreement, if that failure continues for a period of thirty (30) days after YOUNG receives written notice from City Council or its designee specifying the acts or omissions that constitute the failure.

If the City elects to terminate this Agreement and YOUNG's employment for cause as defined in this Agreement, a Notice of Termination For Cause shall be provided in writing outlining the reason(s) for termination.

e. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by YOUNG from the City shall be fully reimbursed to City if YOUNG is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.

6. Compensation

a. Effective August 26, 2024, YOUNG shall be paid an annual base salary of TWO HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$265,000), less all applicable federal, state and local withholding. YOUNG shall receive reimbursement for relocation expenses up to TWENTY THOUSAND DOLLARS (\$20,000) in accordance with the City's Recruitment Incentive Program on August 26, 2024.

b. YOUNG shall receive cost of living salary increases equal to that provided to the AFSCME, Local 512 bargaining unit during the term of this Agreement.

c. YOUNG shall receive the benefits identified in Exhibit A to this Agreement.

7. Hours of Work

YOUNG shall work a minimum of forty (40) hours per week on City and Successor Agency business. YOUNG may work a 9/80 or other flexible work schedule, following consultation with the City Council.

8. Indemnification

The City shall provide for the defense of YOUNG in any action or proceeding alleging an act or omission within the scope of YOUNG's employment in accordance with California Government Code sections 825, 995 et seq., and other applicable law. Notwithstanding anything to the contrary in this Agreement, in accordance with California Government Code section 825, subdivision (a), the City reserves the right to not pay any judgment, compromise or settlement subject to that section until it is established that the injury arose out of an act or omission occurring within the scope of YOUNG's employment pursuant to this Agreement. Further, notwithstanding anything to the contrary in this Agreement, the City reserves the right to refuse to provide for the defense of YOUNG for the reasons set forth in California Government Code section 995.2 or other applicable provisions of law. Any City funds provided for the legal criminal defense of YOUNG shall be fully reimbursed in accordance with California Government Code section 53243.1 if YOUNG is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.

9. Notices

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

a. The City:

Mayor of the City of Pinole
2131 Pear Street
Pinole, CA 94564

With a Copy to the City Attorney
2131 Pear Street
Pinole, CA 94564

b. Kelcey Young:

To the address shown as current in the payroll system.

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, with the United States Postal Service.

10. Abuse of Office

Government Code sections 53243, 53243.1, 53243.2, and 53243.3 are incorporated by this reference as if fully set forth herein.

11. Performance Evaluations

The City Council shall review and evaluate the performance of YOUNG at least once every twelve (12) months. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of YOUNG's performance in the future. The City Council may, at its option, adjust YOUNG's compensation as a result of the performance evaluation. The City agrees to evaluate YOUNG's performance after the initial six (6) months of employment, at which time a merit increase shall also be considered.

12. Dues and Subscriptions

The City shall pay for the professional dues and subscriptions of YOUNG necessary for her continuation and full participation in appropriate professional organizations including but not limited to the California City Management Foundation.

13. Professional Development

At the time of the execution of this Agreement, the parties acknowledge that YOUNG is, or will be, a member of various professional and service organizations. In addition, other organizations

sponsor and offer short courses, institutes, seminars, and the like, which would be beneficial to YOUNG'S professional development.

YOUNG is permitted, encouraged, and in some instances, required by the City, to attend such meetings, activities, seminars, courses, institutes, and the like, as deemed appropriate by the City Council. YOUNG's registration, travel, subsistence, and other related expenses shall be paid in advance directly to the vendor or reimbursed to YOUNG consistent with applicable City policy.

14. Miscellaneous

a. The text herein shall constitute the entire agreement between the parties. This Agreement may not be modified, except by written agreement executed by both parties.

b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

c. This Agreement shall be governed by the laws of the State of California.

d. This Agreement may be executed in counterparts containing original signatures.

Kelcey Young

Date

Maureen Toms
Mayor

Date

ATTEST:

APPROVED AS TO FORM

Heather Bell, CMC
City Clerk

Eric Casher
City Attorney

EXHIBIT A

- **Health, Vision, Dental, Life Insurance, STD/LTD Benefits**

YOUNG shall receive health, vision, dental, life insurance and long/short-term disability benefits under the same terms those benefits are provided to the City's unrepresented managers.

- **Retiree Medical**

YOUNG and her spouse at the time of retirement shall be eligible to enroll on the City's retiree medical plan, in accordance with the provisions of the CalPERS Health Plans and the CalPERS Health Vesting Schedule.

The City shall make contributions toward YOUNG's retiree health insurance premium in accordance with the CalPERS Health Vesting Schedule (Government Code 22893).

Upon YOUNG's death, her spouse shall continue to be eligible for enrollment on the City's plan and premium contribution, or reimbursement of her health insurance premium for alternate coverage, in accordance with the provisions of the CalPERS Health Plans and the CalPERS Health Vesting Schedule.

- **Retirement Plan**

The City currently participates in a retirement system through a contract with the California Public Employees Retirement System (CALPERS). For the Miscellaneous Employees, including YOUNG, the CALPERS contract offers the following options:

- 2%@ 62 Retirement Plan
- Military Buy Back
- Third Level Survivors Benefit
- Three-Year Highest Compensation Formula
- Service for Unused Sick Leave

The City and YOUNG shall make the Employer and Employee contributions to CalPERS benefits under the same terms provided to unrepresented managers.

- **Auto and Cell Phone Allowances**

YOUNG shall receive the amount of \$450 monthly as a car allowance and \$65 monthly as a cell phone allowance, less all applicable federal, state and local withholdings.

- **Deferred Compensation - 457 Plan**

The City makes a 457 plan available for YOUNG to contribute to through payroll deduction. The City shall make no contributions to this plan on behalf of YOUNG.

- **Vacation**

YOUNG shall accrue vacation leave at a rate of 120 hours per year, accrued incrementally each pay period. Upon separation from the City, YOUNG shall be paid for all unused accrued vacation

leave based upon her base salary on the date of separation. At the beginning of YOUNG's fifth (5th) year of employment as City Manager, her accrual rate will increase to 144 hours per year.

YOUNG may cash out accrued vacation in a manner consistent with unrepresented managers. YOUNG cannot take any paid vacation during the first six (6) months of this Agreement. Any vacation time off during those six (6) month will be unpaid.

- **Administrative Leave**

The City shall grant YOUNG ninety-six (96) hours of administrative leave at the beginning of each calendar year. YOUNG may cash out administrative leave in a manner consistent with unrepresented managers.

- **Sick Leave**

YOUNG shall accrue eight (8) hours per month, ninety-six (96) hours of sick leave per year, accrued incrementally each pay period.

- **Other Leaves**

YOUNG shall receive all other leaves (Bereavement, Family and Medical, Jury Duty, Military, etc.) that are provided to unrepresented managers.

- **Holidays**

YOUNG shall receive the same holidays and floating holidays as the City's unrepresented managers.



CITY COUNCIL REPORT

10.A.

DATE: JULY 2, 2024
TO: MAYOR AND COUNCIL MEMBERS
FROM: ERIC CASHER, CITY ATTORNEY
SANJAY MISHRA, PUBLIC WORKS DIRECTOR
SUBJECT: FIRST READING OF ELECTRIC VEHICLE CHARGING STATION
ORDINANCE

RECOMMENDATION

Staff recommends the City Council conduct a public hearing and waive the first reading of an Ordinance adding Chapter 10.80, EV charging stations, to the Pinole Municipal Code to establish restrictions for city-owned EV parking spaces and to establish a schedule of rates for EV charging stations

BACKGROUND

The City of Pinole provides a dual port EV charging station in the Public Safety Building parking lot at 808 Tennent Ave. The charging station has been offered free of charge to users as part of our commitment to promoting sustainable transportation options and reducing greenhouse gas emissions in the City of Pinole. As the adoption of electric vehicles continues to grow, it is imperative that we establish a sustainable framework to support the infrastructure necessary for their operation to ensure the chargers are available to residents in a fair and equitable manner.

On June 4, 2024, the City Council held a public hearing to conduct a first reading of an electric vehicle charging station ordinance. After discussion and feedback from the community, the City Council directed staff to consider amendments to address public feedback and City Council concerns. The City Attorney subsequently reviewed and revised the ordinance, submitting it to the Municipal Code subcommittee on June 10, 2024 for review and consideration. The revised ordinance, with proposed changes highlighted, reflects changes from the original draft. Because the proposed changes were material, this presentation will serve as the first reading of the proposed ordinance. If approved, staff will present this ordinance for a second reading and adoption as a consent item at the regularly scheduled meeting on July 16, 2024.

REVIEW AND ANALYSIS

The adoption of electric vehicles represents a significant opportunity to reduce our dependence on fossil fuels and mitigate the impacts of climate change. By implementing fees for EV chargers, we can ensure the sustainability and effectiveness of our charging infrastructure while continuing to support the transition towards cleaner transportation alternatives.

At its regularly scheduled meeting on May 21, 2024, the City Council received a presentation and staff report to introduce and conduct a first reading of an ordinance adding chapter 10.80, EV charging stations, to the Pinole Municipal Code to establish restrictions for city-owned EV parking spaces and to establish a schedule of rates for EV charging stations. The City Council voted unanimously in favor of conducting the first reading of the proposed ordinance attached as Attachment A with direction on a few proposed edits. The proposed changes are reflected as track changes in the attached ordinance and include eliminating the window of time for imposition of an overstay fee, and clarification the charging fees can be adjusted to account for changes in PG&E rates.

Adopting an ordinance for EV charging fees will enable the City of Pinole to manage and optimize the use of EV charging infrastructure, support the transition to sustainable transportation, and achieve various economic, environmental, and social objectives.

The proposed fee structure will be communicated to the public through various channels, including the City's website, social media platforms, and signage at charging stations. Users will be able to pay for charging sessions either through a mobile app, or by credit/debit card, providing convenience and accessibility. If approved on second reading, the ordinance will go into effect in thirty (30) days.

FISCAL IMPACT

Adoption of this ordinance will help the City generate revenue to offset the costs of maintaining the EV charging infrastructure, thus making this infrastructure expansion financially sustainable.

ATTACHMENTS

- A. Revised Electric Vehicle Charging Station Ordinance

AN ORDINANCE OF THE CITY OF PINOLE ADDING CHAPTER 10.80, EV CHARGING STATIONS, TO THE PINOLE MUNICIPAL CODE TO ESTABLISH RESTRICTIONS FOR CITY-OWNED ELECTRIC VEHICLE PARKING SPACES, TO ESTABLISH A SCHEDULE OF RATES FOR ELECTRIC VEHICLE CHARGING STATIONS, AND TO AUTHORIZE THE CITY MANAGER TO ADJUST THE RATES TO RECOVER CITY'S COST

WHEREAS, the City of Pinole has installed an electric vehicle (EV) charging station at a City-owned parking lot, and will be installing more charging stations in the future; and

WHEREAS, as more residents switch from internal combustion engine vehicles to electric vehicles, the demand for these EV charging stations will only grow; and

WHEREAS, to ensure that EV charging stations are used in a fair and equitable manner, the City Council desires adding language to the Pinole Municipal Code to establish regulations and limitations on the occupancy of an EV charging station; and

WHEREAS, the proposed ordinance would also establish rates for vehicles using the City's EV charging stations, and authorize the City Manager to increase those rates in a specified manner; and

WHEREAS, the proposed ordinance will facilitate the use of the City's EV charging stations by a larger number of residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PINOLE, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings The City Council of the City of Pinole finds that all of the above Recitals are true and correct and incorporated herein by this reference.

SECTION 2. Municipal Code Amendment. Chapter 10.80, EV Charging Stations, is hereby added to the Pinole Municipal Code to read as follows:

10.80 EV Charging Stations.

10.80.010 City-Owned Electric Vehicle (EV) Charging Stations.

A. *Designation of Parking Spaces.* The Public Works Director, or their designee, is authorized in accordance with the purposes of this chapter to designate spaces in off-street public parking facilities for the exclusive parking of electric vehicles that are connected to electric vehicle charging stations for the purpose of transfer of electricity to the battery or other energy storage device of an electric vehicle.

B. *Signs or Markings.* Upon designation of a parking space or spaces for the exclusive use of electric vehicles pursuant to Subsection A of this section, the Public Works Director shall place signs or markings giving adequate notice that the parking space or spaces are restricted and to be

used only for such electric vehicles. The signs or markings shall be in compliance with California Vehicle Code § 22511 indicating that vehicles left standing in violation of the restriction may be removed. The parking restriction shall not apply to the designated parking spaces until the sign or markings have been placed.

C. In parking stalls designated by the use of markings and/or posting as electric vehicle charging stations, only electric vehicles are allowed to park for charging events during designated hours.

D. It is unlawful for the operator of any vehicle to allow a vehicle to park or stand in a designated electric vehicle charging station longer than the posted time limit.

E. It is unlawful for the operator of an electric vehicle to allow that vehicle to park or stand in a designated electric vehicle charging station unless the vehicle is actively conducting a charging event.

F. The police department is authorized to cite and/or remove or cause the removal of vehicles parked in violation of this section in accordance with California Vehicle Code § 22511.

G. Fees for use of electric vehicle charging stations at electric vehicle parking spaces owned by the City of Pinole shall be as follows:

1. Baseline energy fee of \$0.35 per kilowatt-hour, effective from 12:00 a.m. to 3:00 p.m. and from 9:00 p.m. to 12:00 a.m. everyday.
2. Time-of-Use energy fee of \$0.40 per kilowatt-hour, effective from 3:00 p.m. to 9:00 p.m. everyday.
3. Ancillary fee of \$1.50 per charging session.
4. Overstay fee of \$1.00 per minute up to 30 minutes, charged after 4 hours and 15 minutes of charging ~~from 5:00 a.m. to 10:00 p.m. every day, or as set forth in the City's Master Fee Schedule.~~
5. The City Manager may adjust the energy fees by increments no smaller than one cent (\$0.01) no more than once per fiscal year or in accordance with any PG&E rate increases.
6. The maximum allowable annual percentage increase in energy fees shall not exceed the annual percentage increase in PG&E's average electric rate, published in Table 1.8 of the California Public Utility Commission's most current Assembly Bill 67 Annual Report on electric and gas utility costs.
7. Adjustments to the energy fees associated with the use of electric vehicle charging stations shall be posted to the City's website no later than 30 days prior to the adjustment.
- ~~8. Energy fees may be adjusted no more than once per fiscal year.~~

SECTION 3. CEQA. This ordinance is exempt from further environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), the commonsense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and Section 15273(a), the exception for the establishment of rates, tolls, fares, and charged.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable. The City Council of the City of Pinole hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Effective Date. Following adoption by at least a four-fifths vote of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to Government Code section 65858. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

PASSED AND ADOPTED at a regular meeting of the Pinole City Council held on the 4th day of June, 2024 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

Maureen Toms, Mayor

ATTEST:

Heather Bell, City Clerk

APPROVED AS TO FORM:

Eric S. Casher, City Attorney



CITY COUNCIL REPORT

10.B.

DATE: JULY 2, 2024
TO: MAYOR AND COUNCIL MEMBERS
FROM: MARKISHA GUILLORY, FINANCE DIRECTOR
SUBJECT: FY 2023/24 UTILITY USERS' TAX (UUT) REVIEW

RECOMMENDATION

It is recommended that the City Council:

1. Conduct the FY 2023/24 Annual Review of the Utility Users' Tax (UUT); and
2. Adopt a Resolution modifying the Household Income eligibility thresholds for exemptions from the Utility Users' Tax for FY 2024/25.

BACKGROUND

In November 1998, voters approved the City of Pinole's Utility Users' Tax (UUT) at a rate of 8% on electricity, gas, and telecommunication services. Voters approved ballot measures to extend the UUT in 2004, 2012, and 2018. The UUT does not have a sunset date. Renewal of the UUT was essential to secure the City's fourth largest General Fund revenue source. Revenue generated by the UUT amounts to approximately 9% of the City's General Fund (excluding transfers in) and remains necessary to fund critical City services.

Currently, Section 3.26.150(A) of the Pinole Municipal Code authorizes the City Council to exempt the following classes of persons from paying UUT: (1) Persons who receive Aid to Families with Dependent Children (AFDC), (2) Persons who receive Veterans' benefits and Veterans' survivor pension benefits, (3) Persons on Supplemental Security Income or State Supplemental Payments (SSI/SSP); and (4) Persons who receive benefits from the Supplemental Nutrition Assistance Program (SNAP).

Additionally, Section B of the Code states: In addition, customers may also qualify for an exemption if their total household income does not exceed household incomes set by resolution of the City Council. Each year, the City Council adopts a resolution setting the household income thresholds. The City has used as the threshold the limits set annually by the California Alternative Rates for Energy (CARE) program, administered by Pacific Gas & Electricity (PG&E).

Pursuant to Section 3.26.170 of the Pinole Municipal Code, in June of every year, as part of the budget process, UUT is required to be reviewed through a report to the City Council. The report shall contain a summary of amounts of UUT realized, which is provided in the subsequent section of this report.

REVIEW AND ANALYSIS

Staff anticipates that the City will close FY 2023/24 with a projected \$2,389,000 in actual UUT collected, which is 3% above the \$2,312,830 collected for FY 2022/23. Although the City continues to see a decline in the taxes collected on telecommunication services, gas and electricity collections continue to increase year-over-year. Table 1 below is a ten-year history of UUT collections.

Table 1 – Ten-Year History of UUT Collections

	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19
Gas and Electricity	\$1,290,533	\$1,347,738	\$1,564,702	\$1,452,015	\$1,416,001
% Total UUT	70%	72%	76%	75%	78%
Telecommunications	\$553,085	\$528,580	\$501,921	\$474,780	\$396,843
% Total UUT	30%	28%	24%	25%	22%
Total UUT	\$1,843,618	\$1,876,318	\$2,066,623	\$1,926,796	\$1,812,844
% Change	-1.9%	1.8%	10.1%	-6.8%	-5.9%

					<i>Estimate</i>
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Gas and Electricity	\$1,484,969	\$1,651,216	\$1,797,374	\$2,053,930	\$2,150,000
% Total UUT	82%	85%	87%	89%	90%
Telecommunications	\$324,863	\$288,510	\$266,399	\$258,900	\$239,000
% Total UUT	18%	15%	13%	11%	10%
Total UUT	\$1,809,832	\$1,939,726	\$2,063,773	\$2,312,830	\$2,389,000
% Change	-0.2%	7.2%	6.4%	12%	3%

Utility Users Tax Exemption

Pursuant to Pinole Municipal Code Section 3.26.150(B), the City establishes by resolution the household income limits. The City uses those set by the California Alternative Rates for Energy (CARE) program for exemption from the UUT. PG&E administers the CARE program and confirms customers' eligibility based on IRS income tax returns and certifies continued eligibility every two years.

This is consistent with the process other California cities use as a basis for exemption from the UUT levy. In some cases, agencies rely on PG&E to administer the exemption in which case they automatically do not charge the UUT to customers who are eligible for the CARE program. In other cases, customers apply for the exemption with the agency who verifies eligibility for the CARE program. The City of Pinole relies on PG&E to administer the exemption program for gas and electricity services. PG&E provides a listing of customers who

have received an exemption from UUT on a monthly basis. Eligible customers who meet the same income guidelines as those for UUT exemption from gas and electricity services may receive exemption from UUT on telecommunication services by applying to the City.

Household Income Exemption Thresholds

Staff has obtained the current household income guidelines for the California Alternative Rates for Energy (CARE) program in the PG&E service area and recommends continuing to set the City's household income exemption at the CARE amounts. The current thresholds effective June 1, 2024 through May 31, 2025 are displayed in Table 2 below.

Table 2 – Household Income Exemption Thresholds

Household Size	Current CARE Threshold	Previous CARE Threshold
1-2 Persons	\$40,880	\$39,440
3 Persons	\$51,640	\$49,720
4 Persons	\$62,400	\$60,000
5 Persons	\$73,160	\$70,280
6 Persons	\$83,920	\$80,560
7 Persons	\$94,680	\$90,840
8 Persons	\$105,440	\$101,120
9 Persons	\$116,200	\$111,400
10 Persons	\$126,960	\$121,680
Each additional person, add	\$10,760	\$10,280

FISCAL IMPACT

There is no fiscal impact as a result of this report itself.

ATTACHMENTS

- A. Resolution
- B. PG&E CARE Program Guidelines

RESOLUTION 2024-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PINOLE
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA SETTING HOUSEHOLD
INCOME LEVELS FOR UTILITY USERS TAX EXEMPTIONS FOR FISCAL YEAR
(FY) 2024/25**

WHEREAS, Section 3.26.170 (Review) of the Pinole Municipal Code provides for the establishment and modification of classes of exemptions of persons or service from utility users taxes; and

WHEREAS, the City Council held a Public Hearing, on June 18, 2024, to discuss and receive public comment on the tax and whether or not changes to household income levels for utility users tax exemptions should be made; and

WHEREAS, the City Council desires to continue to allow exemptions for telephone users tax, electricity users tax and gas users tax based upon the Household Income Thresholds adopted by the State Public Utilities Commission's California Alternative Rate for Energy (CARE) Program for the 2024/25 budget year.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of Pinole that, as provided in Section 3.26.150 of the Pinole Municipal Code, utility customers may qualify for exemption from the telephone users tax (P.M.C. Section 3.26.040), electricity users tax (P.M.C. Section 3.26.050) and gas users tax (P.M.C. Section 3.26.060) if their total household income does not exceed the following thresholds:

Household Size	Current CARE Threshold	Previous CARE Threshold
1-2 Persons	\$40,880	\$39,440
3 Persons	\$51,640	\$49,720
4 Persons	\$62,400	\$60,000
5 Persons	\$73,160	\$70,280
6 Persons	\$83,920	\$80,560
7 Persons	\$94,680	\$90,840
8 Persons	\$105,440	\$101,120
9 Persons	\$116,200	\$111,400
10 Persons	\$126,960	\$121,680
Each additional person, add	\$10,760	\$10,280

AND BE IT FURTHER RESOLVED THAT the City Manager or his designee, and the City Attorney are hereby authorized and directed, to make all approvals and take all actions necessary or appropriate to carry out the intent of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pinole this 18th day of June, 2024, by the following vote to-wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

I hereby certify that the foregoing resolution was introduced, passed and adopted on this 18th day of **June, 2024**.

Heather Bell, CMC
City Clerk

Reduce your energy bill through the CARE Program

Eligibility requirements

To qualify for CARE, customers must meet the following eligibility and income requirements:

- The PG&E bill must be in your name.
 - If you're a sub-metered tenant, you must have the landlord's energy bill in your name.
- You must live at the address to which the discount applies.
- Another person (besides your spouse) can't claim you as a dependent on an income tax return.
- You must not share an energy meter with another home.
- You must account for all sources of qualifying household income.
- You must meet the program income guidelines.
- You must notify PG&E if your household no longer qualifies for the CARE discount.
- After you enroll, you may need to provide proof of qualifying household income.
 - You may also be required to participate in the Energy Savings Assistance program.
- Your monthly electric usage must not exceed six times the Tier 1 allowance.
 - Tier 1 is the lowest-priced rate tier within PG&E's standard Tiered Base Plan.
- You must renew your eligibility every two years.
 - If you're on a fixed income, you must renew your eligibility every four years.
- Your household income must meet the program income guidelines.
- Qualification is based on the total income of everyone living in the home or participation in qualifying public assistance programs.

CARE Program Guidelines

Qualify through other public assistance programs

You may qualify for the CARE program if you or someone in your household takes part in any of the following public assistance programs:

- Low Income Home Energy Assistance Program (LIHEAP)
- Women, Infants, and Children (WIC)
- CalFresh/SNAP (Food Stamps)
- CalWORKs (TANF) or Tribal TANF
- Head Start Income Eligible (Tribal Only)
- Supplemental Security Income (SSI)
- Medi-Cal for Families (Healthy Families A & B)
- National School Lunch Program (NSLP)
- Bureau of Indian Affairs General Assistance
- Medicaid/Medi-Cal (under age 65)
- Medicaid/Medi-Cal (age 65 and over)

Income guidelines

Your eligibility is based on your household income.

1. Add all household members' incomes from all eligible sources for your total gross annual household income.
2. Compare your total combined gross annual household income against the income guidelines table.
 - **Your household must be at or below the amounts shown in the [income guidelines table](#) below.**

Household income includes all taxable and nontaxable revenues from all people living in the home. It includes, but is not limited to the following sources:

- Wages
- Salaries
- Interest and dividends
- Spousal and child support payments
- Public assistance payments

CARE Program Guidelines

- Social Security and pensions
- Housing and military subsidies
- Rental income
- Self-employment income
- All employment-related, non-cash income

For more income guidelines, [explore the required income documents](#).

Number of Persons in Household	Total Gross Annual Household Income*
1-2	\$40,880 or less
3	\$51,640 or less
4	\$62,400 or less
5	\$73,160 or less
6	\$83,920 or less
7	\$94,680 or less
8	\$105,440 or less
9	\$116,200 or less
10	\$126,960 or less
Each additional person, add	\$10,760

*Before taxes based on current income sources. Valid through May 31, 2025.

<https://www.pge.com/en/account/billing-and-assistance/financial-assistance/california-alternate-rates-for-energy-program.html#accordion-featured-67a0691982-item-d536661c59>.