

**TOWN OF APPLE VALLEY
TOWN COUNCIL/SUCCESSOR AGENCY**

**REGULAR MEETING
MINUTES – August 13, 2013**

CALL TO ORDER:

Mayor Emick called to order the meeting of the Apple Valley Town Council/Successor Agency at 5:05 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Member Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

PUBLIC COMMENTS

None.

CLOSED SESSION

MOTION

Motion by Council Member Nassif, seconded by Council Member Cusack, and unanimously carried, to adjourn to Closed Session at 5:08 p.m. to discuss the following:

1. Closed Session

- A. Negotiations with Real Property Negotiator – Parcel Number(s) 3087-382-19, 3087-382-20 and 3087-382-21; Negotiating Parties: Mr. Ron Barbieri and Mr. Nick Di Cosola or Designee. Town Negotiator(s): Town Manager, Finance Director, Community Development Director or Designee. Negotiations involve both price and terms of payment.
- B. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one or more potential cases).

Upon returning from Closed Session at 6:15 p.m., Mayor Emick announced that there was no reportable action taken.

Mayor Emick recessed the meeting of the Apple Valley Town Council until 6:30 p.m.

TOWN COUNCIL REGULAR SESSION

CALL TO ORDER:

Mayor Emick called to order the regular session of the Apple Valley Town Council at 6:35 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Members Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

OPENING CEREMONIES

INVOCATION:

Bishop Ebmeyer, Church of Jesus Christ Latter Day Saints, Apple Valley

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was led by Mayor Emick.

PRESENTATIONS:

Water for the Future - Victor Valley Wastewater Reclamation Authority (VWRA) –
Mr. Logan Olds, General Manager.

PUBLIC COMMENTS

David Mueller, Liberty Tribune, expressed concern regarding negative comments made in opinion papers regarding others right to speak. He believed that these individuals were expressing their right to speak and should not condemn others.

Paul Smith, Apple Valley, commented on surrounding dumping, graffiti and vandalism at a property located in Apple Valley. He stated that he has contacted the Apple Valley Sheriff's Station and Code Enforcement for assistance.

Kitty Smith, Apple Valley, continued the presentation commenting on the need for the homeowner to clean up his property. She stated that the current state of the property affects the quality of life in the neighborhood. She believed there are potential environmental issues as well as illegal activity occurring at the property.

Ann Heimbach, Apple Valley, commented on her attendance at previous Council Meetings and her belief that the Town Council cares about its citizens. She believed that the Code Enforcement department has been a great asset in the community.

Kerry Canon, Apple Valley, expressed concern regarding the closure of the medical marijuana dispensaries in the Town of Apple Valley. She spoke of doctors who have endorsed the use of medical cannabis for treatment.

Tom Piper, Apple Valley, commented on water and electricity in the Town of Apple Valley. He believes that all fees should be dropped that are associated with water and power.

Joshua Gregg, Apple Valley, expressed concern regarding a citation that he received from Code Enforcement. He stated that he has been cleaning up the property; however, he feels that he has been harassed by the department.

Jerry Vincent, Apple Valley, introduced a humanitarian funding "H Martin Foundation". He commented on the purpose of this organization which includes jobs and free child care. He also stated that in addition to funding Town projects, the foundation is interested in building the H Martin Foundation Global Community Center, a model project that would provide numerous services to the community. He distributed additional material to the Council with information regarding the Foundation.

E.T. Snell, Apple Valley, believed that it is up to the Town of Apple Valley to regulate the use of medical marijuana dispensaries in the Town since the government does not have any set guidelines. He also expressed concern regarding the Code Enforcement Department. He believes that at times they are too aggressive with residents within the community.

APPLE VALLEY BUSINESS ACTIVITY REPORT

Orlando Acevedo, Economic Development Manager, presented a Business Activity Report for the Town of Apple Valley which included updates on business licenses issued, home sale activity, new business activity and unemployment rates.

COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

Council Member Cusack commented on committee meetings and events that he attended.

Council Member Nassif commented on committee meetings and events that he attended.

Council Member Stanton commented on committee meetings and events that she attended. She also commented on the Phoenix Foundation and its Man About Town event which generated \$7500 for the foundation. In addition, she spoke of Solar Farms and the need for a collaborative effort between the high desert communities to address this issue. She respectfully requested the Town Council's support to direct staff to move forward with the process of a regional policy discussion where perhaps the County would act as the lead agency.

Discussion ensued regarding the need to agendaize this issue at a future meeting.

Mayor Pro Tem Bishop commented on committee meetings and events that he attended.

Mayor Emick commented on committee meetings and events that he attended.

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for future agenda:

Council Member Stanton, with the consensus of the Town Council, recommended that an item be prepared on the next agenda to discuss a collaborative effort for a solar renewable energy policy.

Time, Date & Place for Next Town Council Regular or Special Meeting:

- A. Special Meeting – Thursday, August 15, 2013**
- B. Regular Meeting – Tuesday, August 27, 2013**
 - Closed Session at 5:00 p.m.**
 - Regular Session at 6:30 p.m.**

TOWN COUNCIL CONSENT AGENDA

Mayor Emick announced that it has come to the attention of the Town that there is an immediate need to take action on an item that arose after the agenda was posted. That item is Discussion Regarding the Annual League of California Cities Conference and Possible Cancellation of the Town Council Meeting on September 24, 2013. He stated that a motion was needed to add this item to the agenda as an item that arose after the agenda was posted – Agenda Number 18 - Discussion Regarding the Annual League of California Cities Conference and Possible Cancellation of the Town Council Meeting on September 24, 2013.

MOTION

Motion by Council Member Stanton, seconded by Council Member Nassif, and unanimously carried, that there was a need to add an item to the agenda as an item that arose after the agenda was posted – Agenda Number 18 - Discussion Regarding The Annual League of California Cities Conference And Possible Cancellation Of The Town Council Meeting On September 24, 2013.

Mayor Emick also announced that Council Member Nassif has a remote interest in specific warrants on tonight's commercial warrants dealing with NAPA Auto Parts for the Town of Apple Valley as the owner of NAPA Auto Parts. Therefore, he will be abstaining from voting on the Warrants for NAPA Auto Parts listed under Agenda Item Number 3. Also, Council Member Cusack has a remote interest in specific warrants on tonight's commercial warrants dealing with Apple Valley Communication for the Town of Apple Valley as owner of Apple Valley Communications; therefore, he too will be abstaining from voting on warrants for Apple Valley Communications listed under Agenda Item Number 3.

David Mueller, Liberty Tribune, commented on Agenda Item Number 3. He expressed concern regarding the minutes, stating that they did not accurately reflect his comments made at the last regularly scheduled meeting. He commented on items listed within the Treasurer's Report that he did not believe were accurate.

David Mueller, Liberty Tribune, commented on Agenda Item Number 9. He stated that both Solutions Strategies and Dokken Engineering appear to be paid for the same project. He questioned what was done by Solution Strategies in order to meet the environmental impacts.

David Mueller, Liberty Tribune, commented on Agenda Item Number 10. He questioned the need to purchase land for another park in the Town of Apple Valley. He stated that he did not believe the Town needed or could afford the purchase of this land. He stated that we did not need to be in the real estate business.

Brad Miller, Town Engineer, commented on Agenda Item Number 9. He stated that this item is the official authorization from Council to proceed with the project. He stated that upon approval by Council, a Notice to Bidders will be issued on August 21, 2013, a bid opening on October 3, 2013 and finally a Notice to Proceed to a Contractor on December 9, 2013.

Mayor Pro Tem Bishop commented on the benefits of moving forward with this project. He thanked Mr. Miller and staff for their hard work.

Ralph Wright, Parks and Recreation Manager, commented on the neighborhoods in Apple Valley where they do not have parks. He noted that Agenda Item Number 10 addresses the issue called out in the Parks and Recreation Master Plan for the purposes of finding available land and creating more parks.

Mayor Pro Tem Bishop commented thanked Mr. Wright for his hard work and dedication toward adhering to the Master Plan.

MOTION

Motion by Mayor Pro Tem Bishop, seconded by Council Member Nassif, to approve the Consent Calendar items numbered 2-12 as amended.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

Council Members Cusack and Nassif abstained from voting on Agenda Item Number 3.

2. Approval of Minutes of the Town Council

A. Regular Meeting – July 9, 2013

Recommendation:

Approve the subject minutes as part of the consent agenda.

3. June 2013 - Commercial Warrants Schedule

Recommendation:

That the Town Council receive, ratify, and file the Commercial Warrants Schedule as presented.

4. June 2013 – Payroll/Benefits Warrants Schedule

Recommendation:

That the Town Council receive, ratify, and file the payroll/benefits warrants as presented.

5. Fee Waiver Request for the Autism Society of the Inland Empire

Recommendation:

For good cause shown, and finding a waiver will serve a public purpose, approve the waiver of the Facility Rental Fee of \$70.40.

6. Adopt Resolution Number 2013-30, a Resolution Amending the Records Retention Schedule for the Town Of Apple Valley, Authorizing Appropriate Document Destruction and Rescinding Resolution Number 2010-53

Recommendation:

That the Town Council approve and adopt resolution Number 2013-30, amending the Records Retention Schedule for the Town of Apple Valley, authorizing appropriate destruction of records if consistent with the Records Retention Schedule and Rescinding Resolution Number 2010-53.

7. Approval of FY 2013-2014 Grant Management Services Agreement with Blais & Associates, Inc.

Recommendation:

That the Town Council approve the professional services agreement with Blais & Associates, Inc., for FY 2013-2014 grant management services for an amount not-to-exceed \$56,700.

8. Kiowa Road Chip Seal Project Town/County Agreement

Recommendation:

Approve and sign the attached Cooperative Agreement with the County of San Bernardino for the Kiowa Road Chip Seal Project.

9. Review Plans and Bid Documents for the Yucca Loma Bridge/Yates Road Project

Recommendation:

1. Review and approve plans and bid documents for the Yucca Loma Bridge/Yates Road combined project;
2. Authorize staff to proceed with project, and solicit bids for construction.

10. Authorize the Purchase of Tax Defaulted Property for a Future Neighborhood Park

Recommendation:

That the Town Council;

1. Execute the agreement with San Bernardino County and authorize the purchase of the parcel designated in Exhibit A for the purchase price of the not to exceed amount of \$13,050.00, and
2. Approve Budget Amendment Number 14-3 to appropriate \$13,050 for purchase of the designated parcel.

11. Agreement Between the Town of Apple Valley and the Apple Valley Unified School District for Use of the Swimming Pool

Recommendation:

Approve the updated Swimming Pool Use Agreement between the Town and the Apple Valley Unified School District (AVUSD).

12. Declare Surplus Vehicles and Authorize Disposal of Vehicles

Recommendation:

That the Town Council approve a list of vehicles as surplus and authorize the Finance Department to dispose of these vehicles in the manner that best suits the Town financially.

PUBLIC HEARINGS

13. A Request to Consider an Amendment to the Development Code as it Pertains to Internet-Cafe's, and Hookah Bar and Lounges as Regulated Uses Subject to Approval of a Special Use Permit

Mayor Emick opened the public hearing at 8:16 p.m.

Doug Fenn, Senior Planner, presented the staff report as filed with the Town Clerk. He requested a revision to the staff report, adding an additional sentence to page 13-13, Internet-Café, Section B, to read "a special use permit for Internet-Cafés should not be subject to the following findings set forth in Section 9.16.09 of the Municipal Code, findings 2, 5, 9 and 10".

Discussion ensued regarding what is permitted in Hookah Bars and also the age limit for the bars.

E. T. Snell, Apple Valley, commented on the Attorney General opinion on Hookah Bars. He read portions of the opinions listed on the California Attorney General's website.

There being no additional requests to speak, Mayor Emick closed the public hearing at 8:35 p.m.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, and unanimously carried, to:

1. **Determine** that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), an Exemption Declaration has been prepared in compliance with the California Environmental Quality Act (CEQA) and State Guidelines for the Implementation of CEQA for a request to consider an amendment to Title 9 of the Development Code pertaining to Internet-Cafes, and Hookah Bars/Lounges as regulated uses, subject to approval of a Special Use Permit within the Town of Apple Valley; and
2. **Determine** that pursuant to Section 15061(b)(3) of the State Guidelines to implement the California Environmental Quality Act (CEQA), which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.
3. **Find** the facts presented within the staff report, including the attached Planning Commission staff report for May 15, 2013, support the required Findings for approval to amend Title 9 of the Development Code pertaining to Internet-Cafes, and Hookah Bars/Lounges as regulated uses, subject to approval of a Special Use Permit and adopt the required findings;
4. **Approve** Town Council Ordinance No. 450, amendment to Title 9 of the Development Code as it pertains to Internet-Cafes, and Hookah Bars/Lounges as regulated uses subject to approval of a Special Use Permit;
5. **Move** to waive the reading of Ordinance No. 450, in its entirety and read by title only.

La Vonda M-Pearson, Town Clerk, read the title to Ordinance No. 450.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to:

6. **Introduce** Ordinance No. 450, approving Development Code Amendment No. 2013-01; and
7. **Direct** staff to file a Notice of Determination and Exemption with the San Bernardino County Clerk of the Board of Supervisors.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

14. **Adopt Resolution 2013-32, A Resolution To Record Delinquent Animal Control Fees, Utility Fees And Costs And Code Enforcement Fees Against Real Property Located In The Town Of Apple Valley And Directing That Said Assessments Constitute A Lien Upon Said Properties**

Mayor Emick opened the public hearing at 8:38 p.m.

Marc Puckett, Assistant Town Manager, Finance and Administration, presented the staff report as filed with the Town Clerk.

There being no requests to speak, Mayor Emick closed the public hearing at 8:42 p.m.

Council Member Stanton, for the benefit of the public, commented that homeowners are responsible for their rental property.

Mr. Puckett commented on the collection process that is used prior to a lien being placed on the property.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to adopt Resolution No. 2013-32, confirming delinquent utility fees and costs against real property located in the Town, and directing that said assessments constitute a lien upon said properties.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

15. Lighting and Landscape Assessment District #1 – Engineer's Annual Report and Levy of Assessment for FY 2013-2014

Mayor Emick opened the public hearing at 8:44 p.m.

Brad Miller, Town Engineer, presented the staff report as filed with the Town Clerk.

There being no requests to speak, Mayor Emick closed the public hearing at 8:45 p.m.

MOTION

Motion by Council Member Cusack, seconded by Mayor Pro Tem Bishop, to adopt Resolution No. 2013-31, a "Resolution" of the Town Council of the Town of Apple Valley confirming diagram and assessment and levying assessment for fiscal year 2013-2014"

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

LEGISLATIVE MATTERS

None.

REPORTS, REQUESTS AND COMMUNICATIONS

BUSINESS OF THE COUNCIL

16. Wal-Mart Initiative Measure

La Vonda M-Pearson, Town Clerk, Apple Valley, presented the staff report as filed with the Town Clerk.

Frank Robinson, Town Manager, stated, for the Town Council's consideration, that there is an option to include in the motion to accept an offer from Wal-Mart which would be a gift sufficient enough to cover the expense of the election. He recommended, should the Council move forward and call an election, to include in the motion an acceptance of written offer and authorize the Town Manager to execute the Memorandum of Understanding as an acceptance.

Pierro Dallarda, Town Attorney, noted that on August 9, 2013, the Town received an offer from the Attorneys representing Wal-Mart, to pay for the election should the Town choose to move forward with a special election.

David Mueller, Liberty Tribune, stated that Pat Orr is the proponent for this project. He commented on the amount of funding spent on the general plan that was approved by the Town Council. He believed that once the general plan is challenged, it will continue to be challenged.

Jeff Ricker, Apple Valley, stated that he signed the petition not knowing that he was approving the project, just that he was going to be allowed to vote on the project. He expressed concern regarding empty buildings in Apple Valley should a new Wal-Mart is built.

Richard Turnbull, Apple Valley, believed the Civic Center Wal-Mart should be voted on by the people.

Larry Bleasman, Apple Valley, expressed concern regarding the number of empty buildings in the Town of Apple Valley. He believed that the increase of vacant buildings will decrease home values.

The following individuals submitted cards but requested not to speak in opposition of this item.

Jennifer Perez, Apple Valley
Esther Ojeda, Apple Valley
Alvaro Jimenez, Apple Valley
Elva Rosas, Apple Valley
Ray Retzlaff, Apple Valley
Kenny Rodriguez, Apple Valley
Maria Gloria Rios, Apple Valley
Jarner Young, Apple Valley
Patricia Day, Apple Valley
Ruth Santizo, Apple Valley

Council Member Stanton commented on the history of this project. She believed that it is best to allow the citizens of Apple Valley to vote on this project.

Council Member Cusack concurred with the statements made by Council Member Stanton. He recommended an election be held to decide if a Super Wal-Mart should be built.

Council Member Nassif also believed that it was in the best interest of the community to allow the citizens to vote on this item.

Mayor Pro Tem Bishop thanked Wal-Mart for their support. He stated he was happy to see the vote go to the people.

Mayor Emick spoke in favor of having an election and thanked Wal-Mart for their support.

MOTION

Motion by Mayor Pro Tem Bishop, seconded by Council Member Nassif, to:

1. Adopt Resolution No. 2013-33, Calling Special Election on Measure (with Measure attached)

2. Adopt Resolution No. 2013-34, Setting Rules and Priorities for Primary Arguments for and against the Measure
3. Adopt Resolution No. 2013-35, Providing for Filing of Rebuttal Arguments for and against the Measure

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to approve the Memorandum of Understanding (MOU) submitted by Wal-Mart representatives.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

17. Commercial Vehicle Parking Discussion

Jim Andersen, Code Enforcement Manager, presented the staff report as filed with the Town Clerk.

Council Member Cusack believed that staff should move forward with an amendment and clean up of this code.

Brad Miller, Town Engineer, commented on pavement distress that heavy vehicles can cause. He stated that the Town of Apple Valley does not generally have an issue with pavement distress. He stated that infrequent applications are not generally a problem.

Don and Joe Fitzgerald, expressed concern regarding regarding a utility truck that is parked and stored in their neighborhood. They recommended that changes be made to the Town Ordinance to prevent abuse from the code.

Jay Lisgovsy, Apple Valley, recommended that staff develop a better classification for residents to be able to identify what is allowable in the Town limits.

Nancy Jackson, Edison, stated that Edison allows some of its "troubleman" employees to take their trucks home in an effort to get to customers quickly in the event of an outage. She would recommend an exemption if possible.

Mayor Pro Tem Bishop agreed that amendments should be made to the code.

Council Member Nassif suggested that we move forward with this issue. He believed that we should be in compliance with our practice.

Council Member Stanton believed that we should be consistent with how the code is enforced.

It was the consensus of the Town Council to direct staff to come back with recommendations for Council's further consideration.

18. Discussion Regarding the Annual League of California Cities Conference and Possible Cancellation of the Town Council Meeting on September 24, 2013

Frank Robinson, Town Manager, presented the staff report as filed with the Town Clerk.

Motion by Council Member Nassif, seconded by Council Member Cusack and unanimously carried, to cancel the Town Council Meeting of September 24, 2013.

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

Frank Robinson, Town Manager, stated that the various high desert City/Town Managers met with Supervisors Lovingood and Ramos to discuss with them the success of the International Council Shopping Centers (ICSC) as attended by the High Desert Collobaration. The group expressed the benefits received at the conference as well as thanked the supervisors for their support and grant. He stated that additional grant opportunities will be sought in the futures.

Mr. Robinson also discussed the League of California Cities, Desert Mountain Division meeting that was held where discussions focused on AB109 which deals with early release of prisoners and parolees. He commented on the problems experienced by communities because of this bill. He also informed the Town Council that Senator Feinstein will be re-introducing the Desert Protection Act in the near future.

Lori Lamson, Director of Community Development, commented on the near completion of the Habitat Conservation plan. She estimated that the plan should be complete by October 2015. She stated that the plan will identify endangered species and also take on the role of administering mitigations.

Kathie Martin, Marketing and Public Affairs Officer, announced the Top 25 Sale Tax Producers event to be held on August 22, 2013 at the Apple Valley Chamber. She also commented on the success of the Sunset Concerts in the Park.

Gina Whiteside, Animal Shelter Services Manager, commented on partnering with Cesar Milan in an effort to rehabilitate animals and his acceptance of an animal from the Shelter, "Sonic".. She spoke of an upcoming fundraiser to help pay for Sonic's care. She stated that the winner of the contest will be selected on September 21, 2013 at the Apple Valley Pet fair.

DEPARTMENTAL REPORTS AND BUSINESS:

STAFF REPORTS

CORRESPONDENCE

ADJOURNMENT

Motion by Council Member Nassif, seconded by Mayor Pro Tem Bishop, and unanimously carried to adjourn the meeting of the Apple Valley Town Council at 9:54 p.m.

Curt Emick, Mayor

La Vonda M-Pearson, Town Clerk