

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

**REGULAR MEETING  
MINUTES – October 8, 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.

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**PUBLIC COMMENTS**

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None.

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**CLOSED SESSION**

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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. The item to be added is Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one or more potential cases).

**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 Item Number 1C - Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one or more potential cases).

**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. Conference with Legal Counsel – Existing Litigation – Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one or more potential cases). Case Names: Trojan Wellness, Inc., et al. v. The Town of Apple Valley, CIVVS 1204476 and Town of Apple Valley v. House of Zen Medical Community Patients Association, CIVDS 1310022.

- B. Negotiations with Real Property Negotiator – Property located at 15200 Rancherias Road, Apple Valley; Negotiating Parties: Golden Round Eye Management Company, Mr. Steve Mortimore and Sierra Golf Management Company, Mr. Jeff Christensen; Negotiator(s): Town Manager or Finance Director or Designee. Negotiations involve both price and terms of payment.
  
- C. Conference with Legal Council – 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:**

The invocation was given by Pastor Danotra Johnson, Victory in Jesus Bible Faith Center, Apple Valley

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Fire Chief Sid Hultquist.

#### **PRESENTATIONS:**

Employee of the Quarter – Roberta McComas – Human Resources Payroll Coordinator

Employee of the Quarter – Lee Weast – Code Enforcement Officer II

Presentation – Event Sponsor Recognition – Kathie Martin

Presentation – Town of Apple Valley - 25<sup>th</sup> Anniversary – Kathie Martin

### **PUBLIC COMMENTS**

Chuck and Pat Hanson, Apple Valley, commented on the upcoming Tour de Apple Valley Bike Ride on Saturday, October 19, 2013 beginning at 7:00 a.m. for registration.

Wally Linn, Apple Valley, commented on the God and Country Celebration Breakfast on Thursday, November 7, 2013 at 7:00 a.m. He stated that the event will be held at the former Heilig Meyers Building in Hesperia, CA.

Kelly Tyner, Apple Valley, commented on illnesses that he suffers from that are relieved through the use of medical cannabis. He stated that he needs this form of medication for pain relief.

Johnny Salazar, Apple Valley, stated that he is a medical marijuana advocate. He stated that he has distributed to the Town Council information that will help educate them in an effort to provide this medication to its customers.

Jill Linson, Apple Valley, expressed to the Town Council the need to be able to have a medical marijuana dispensary in the Town of Apple Valley for its residents.

Richard Rorex, Apple Valley, commented on individuals who wish to change the laws of the state without going through the proper channels so that the good of the majority is done.

#### COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

Council Member Nassif commented on committee meetings and events that he attended. Council Member Nassif also announced that the Town of Apple Valley won the Golf Tournament against the City of Victorville and has returned the trophy back to the Town.

Council Member Stanton commented on committee meetings and events that she attended.

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

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:**

Mayor Emick questioned the need for a capital fund raising program in order to make the amphitheater environmentally friendly. He would like to agendize, with the consensus of the Town Council, a future item to discuss whether or not this is feasible.

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

- A. Regular Meeting – Tuesday, October 22, 2013**
  - Closed Session at 5:00 p.m.**
  - Regular Session at 6:30 p.m.**

#### TOWN COUNCIL CONSENT AGENDA

Mayor Emick 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 15. 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 15.

Lawrence McCarthy, Apple Valley, commented on Agenda Item Number 5, regarding the Fee Waiver Request For Conditional Use Permit Application Fees – Poot Trucking (13643 Tonikan Road). He questioned the need for a fee waiver for this business.

Tom Piper, Apple Valley, commented on Agenda Item Number 15, regarding the August 2013 - Commercial Warrants Schedule. He commented on the amount of funding being paid for the dumpster at Brewster Park.

Lori Lamson, Director of Community Development, presented the staff report as filed with the Town Clerk for Agenda Item Number 5. She explained the request for the fee waiver for Poot Trucking.

### **MOTION**

Motion by Mayor Pro Tem Bishop, seconded by Council Member Nassif, to approve the Consent Calendar items numbered 2-15, respectfully.

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 specific warrants listed under Agenda Item Number 15.**

#### **2. Approval of Minutes of the Town Council**

##### **A. Regular Meeting – September 10, 2013**

##### **Recommendation:**

Approve the subject minutes as part of the consent agenda.

#### **3. Resolution No. 2013-38 – A Resolution of the Town Council of the Town of Apple Valley, California, Approving of the Disposition of Surplus Property located at 13643 Tonikan Road (APNs 3087-382-19, 3087-382-20, 3087-382-21) and 22411 Highway 18 (APNs 3087-382-15, 3087-382-16, 3087-382-17) in the Town of Apple Valley, California and Authorizing the Town Manager to Execute the Disposition Agreements for the Properties and Take any Further Actions Necessary to Carry Out Such Dispositions.**

##### **Recommendation:**

That the Town Council adopt Resolution No. 2013-38, A Resolution of the Town Council of the Town of Apple Valley, California, approving the disposition of surplus property located at 13643 Tonikan Road (APNs 3087-382-19, 3087-382-20, 3087-382-21) and 22411 Highway 18 (APNs 3087-382-15, 3087-382-16, 3087-382-17) and authorizing the Town Manager to execute the purchase agreements for the properties and take any further actions necessary to carry out such dispositions.

#### **4. Public Hearing No. 1 (Consolidated Plan – 2014-2015 Third Year Action Plan) – Establishing Date and Time Certain**

##### **Recommendation:**

That the Town Council establish October 22, 2013 at 6:30 p.m., as the date and time certain for the purpose of conducting the first of two (2) Community Development Block Grant (CDBG) and

HOME Investment Partnerships Programs (HOME) public hearings necessary to develop the Town's Consolidated Plan/ Third Year Action Plan for FY 2014-2015.

5. **Fee Waiver Request For Conditional Use Permit Application Fees – Poot Trucking (13643 Tonikan Road)**
6. **Acceptance of Work, Notice of Completion and Release of Retention for the Summer 2013 Micro Surface Project, Project Number 2013-14**  
**Recommendation:**  
That the Town Council:
  1. Accept the Summer 2013 Micro Surface Project work as completed for a total cost of \$970,000.
  2. Direct the Town Clerk to file the Notice of Completion for the contract work.
  3. Direct the Finance Director to release retained funds 30 days after the filing of the Notice of Completion, provided no claims are filed against the contractor.
7. **Acceptance of Work, Notice of Completion and Release of Retention for the Spring 2013 Micro Surface Project, Project Number 2012-13**  
**Recommendation:**  
That the Town Council:
  1. Accept the Spring 2013 Micro Surface Project work as completed for a total cost of \$969,998.
  2. Direct the Town Clerk to file the Notice of Completion for the contract work.
  3. Direct the Finance Director to release retained funds 30 days after the filing of the Notice of Completion, provided no claims are filed against the contractor.
8. **Acceptance of Work, Notice of Completion and Release of Retention for the Highway 18 Median Improvement Project 2012-12 Pawnee Road to Central Road**  
**Recommendation:**  
That the Town Council:
  1. Accept the Highway 18 Median Project as completed for a total cost of \$970,963.
  2. Direct the Town Clerk to file the Notice of Completion for the contract work.
  3. Direct the Finance Director to release retained funds 30 days after the filing of the Notice of Completion, provided no claims are filed against the contractor.
9. **Acceptance of Work, Notice of Completion and Release of Retention for the Apple Valley Road and Town Center Drive Improvements – Project No. 2013-03**  
**Recommendation:**  
That the Town Council:
  1. **Accept** the work completed as part of the Apple Valley Road and Town Center Drive Improvements – Project No. 2013-03, for a total cost of \$94,949.43.
  2. **Direct** the Town Clerk to file the Notice of Completion for the contract work.
  3. **Direct** the Finance Director to release the retained funds 30 days after the Notice of Completion has been filed, provided no claims are filed against the contractor.
10. **Claimant – Destiny Lovato**  
**Recommendation:**  
Reject the claim from Destiny Lovato.

**11. Appropriation of Asset Seizure Funds**

**Recommendation:**

That the Town Council approve the attached Budget Amendment No. 14-06 appropriating available Asset Seizure Fund resources for the purchase of office equipment and other expenditures as discussed herein.

**12. Adopt Ordinance 452 – An Ordinance of the Town Council of the Town of Apple Valley Amending Chapter 12.38 Commercial Vehicle Parking of the Apple Valley Municipal Code**

**Recommendation:**

Adopt Ordinance No. 452.

**13. Apple Valley Chamber of Commerce Agreement for Business Retention Services**

**Recommendation:**

Approve an Agreement for Business Retention Services between the Town of Apple Valley Chamber of Commerce in an amount not to exceed \$21,600.

**14. August 2013 - Payroll / Benefits Warrants Schedule**

**Recommendation:**

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

**15. August 2013 - Commercial Warrants**

**Recommendation:**

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

**PUBLIC HEARINGS**

**16. Housing Element Update and Compliance with SB 244 (General Plan Amendment No. 2013-001)**

Mayor Emick opened the public hearing at 7:46 p.m.

Lori Lamson, Director of Community Development, presented the staff report as filed with the Town Clerk.

The Town Council thanked staff for their hard work on this project.

Discussion ensued regarding the homeless situation in Apple Valley.

Tom Piper, Apple Valley, stated that he was at the Planning Commission meeting where they noted that there was only one homeless person in Apple Valley. He believed that was incorrect.

Ms. Lamson explained that the counting of the homeless occurred on a very cold day in which the homeless in the area were seeking shelter; therefore they were not available to be counted. She commented on upcoming surveys that will take place.

There being no additional requests to speak, Mayor Emick closed the public hearing at 7:54 p.m.

**MOTION**

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

1. **Determine** that, in accordance with the California Environmental Quality Act (CEQA) an initial study has been prepared and it has been determined that the proposed General Plan Amendment will not have a significant effect on the environment and that a Negative Declaration has been prepared, reviewed and recommended for adoption by the Planning Commission;
2. **Find** the facts presented within the staff report, including the attached Planning Commission staff report for August 21, 2013, support the required findings for approval of the proposed General Plan Amendment and adopt the Findings;
3. **Adopt** Resolution No. 2013-37 approving General Plan Amendment No. 2013-001, amending the General Plan Housing Element for the 2014-2021 planning cycle and the Land Use Element for compliance with SB 244; and
4. **Direct** staff to file a Notice of Determination.

Vote: Motion carried 5-0-0-0

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

Absent: None.

17. **An Ordinance of the Town Council of the Town Of Apple Valley, California, Amending Title 8 of the Town of Apple Valley Municipal Code by Amending Chapters 8.10, 8.12, 8.16, 8.18, 8.21, 8.22, And 8.26, Adopting as Modified the 2013 Edition of the California Building Code Volumes 1, 2 Including the Appendix and Standards, the 2013 Edition of the California Electrical Code, the 2013 Edition of the California Plumbing Code, the 2013 Edition of the California Mechanical Code, the 2012 Edition of the Uniform Solar Energy Code, the 2013 Edition of the California Residential Code, 2013 Edition of the California Green Building Code and Adopting other Regulations Relating to Building Requirements.**

Mayor Emick opened the public hearing at 7:57 p.m.

Patrick Carroll, Building Official, presented the staff report as filed with the Town Clerk.

Dino DeFazio, Apple Valley, questioned when this code amendment would be implemented.

Mr. Carroll informed the Town Council and the public that the code would be implemented beginning January 1, 2014.

There being no additional requests to speak, Mayor Emick closed the public hearing at 8:10 p.m.

**MOTION**

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

1. **Determine** that, pursuant to section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review, stating 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.
2. **Find** the facts presented within the staff report support the required findings for approval of an amendment to the Municipal Code, and adopt the Findings.
3. **Find** that the proposed Town Ordinance is consistent with the goals and Objectives of the adopted Town of Apple valley General Plan and that it is necessary to preserve the health, safety and general welfare of the citizens of Apple Valley.
4. **Move** to waive the reading of Ordinance No.453 in its entirety and read by title only.

La Vonda M-Pearson, Town Clerk, read the title to Ordinance No. 453.

### **MOTION**

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

5. **Introduce** Ordinance No. 453, amending Chapter 9.21 of the Development Code as it relates to the adoption of the Building Code
6. **Direct** staff to file a Notice of Exemption

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**

#### **18. Countywide Cost Allocation Plan (COWCAP)**

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

Council Member Nassif questioned and Mr. Puckett confirmed that the Town has been paying the allocated administrative fee to the County for previous years. He commented on the County's effort to obtain full cost recovery for all its services.

Mr. Puckett commented that the cost allocation rate is the same for all county departments and is not just limited to the Sheriff's Department. He also commented on other rates that the County receives from the contract cities.



Mayor Pro Tem Bishop believes that this should be discussed with the First District Supervisor.

Council Member Nassif suggested and the Town Council concurred, that an informational letter be drafted for the Mayor's signature and presented to the First District Supervisor for his information.

John Brown, Town Attorney, stated that based upon information he received in a previous assignment, there is no uniformity in the matter of state-wide by which County Auditor Controllers are redistributing tax increment that would have formally come to our Town. He believed there are some counties that are not redistributing any tax increment to the affecting taxing entities, but are instead redistributing to the county itself.

It was the consensus of the Town Council to receive and file this report and to draft a letter for the Mayor's signature to be submitted to the First District Supervisor on this issue.

### **TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE**

Frank Robinson, Town Manager, commented on the government shutdown as indicated in a statement by the Conference of Mayors. He also announced that the bid opening for the Yucca Loma Bridge Project would take place Thursday, October 10, 2013 at 2:00 p.m. Mr. Robinson also commented on AB327 which deals with energy costs.

Lastly, Mr. Robinson announced that thanks to the great leadership in the Finance Department, the Town of Apple Valley had received the Certificate of Achievement Award for excellence in financial reporting.

Kathie Martin, Marketing and Public Affairs Officer, recognized Event Sponsor Groove Labs for providing the Town excellent service with lights and sound at the concerts held in the Town of Apple Valley.

### **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 in memory of Mrs. Joyce Rorex of the Apple Valley Town Council at 8:43 p.m.

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Curt Emick, Mayor

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La Vonda M-Pearson, Town Clerk