

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

**REGULAR MEETING**

**MINUTES – August 11, 2015**

**CALL TO ORDER:**

Mayor Cusack called to order the regular session of the Apple Valley Town Council and the Successor Agency at 6:30 p.m.

Roll call was taken with the following members present:

Roll Call

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

Absent: None.

<b>OPENING CEREMONIES</b>
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**INVOCATION:** Bishop Marc Lacey, Church of Jesus Christ Latter Day Saints

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Council Member Emick

**PRESENTATION:** Certificates of Appreciation - Equestrian Advisory Committee - Lovella Sullivan and Barbara Betterley

Presentation - Employee of the Quarter - Orlando Acevedo, Economic Development Manager

Presentation – Barstow Veterans Home – Theresa Rochester, Public Information Officer

Presentation - Animal Services Coalition of Apple Valley - Gina Schwin-Whiteside, Animal Services Manager

Presentation – Transparency Report: AV Ranchos Acquisition Process Expenditures to Date - Marc Puckett, Assistant Town Manager

Mayor Cusack announced that he had a potential conflict of interest with the transparency report presentation. Therefore he excused himself from the discussion.

**MAYOR CUSACK WAS EXCUSED FROM THE DAIS AT 7:19 P.M.**

Marc Puckett, Assistant Town Manager, answered questions regarding the acquisition expenditures.

Mayor Pro Tem Stanton thanked Mr. Puckett for his presentation and spoke of the excessive number of records requested by the public.

Council Member Bishop commented on the work that the Town has done to protect the rights of its citizens through pursuing water reduction rates for the community.

Council Member Nassif commented on the Town's efforts to work with the PUC on the community's behalf with no success.

Council Member Emick thanked Mr. Puckett for his hard work on the presentation and providing the information for the benefit of the public.

**MAYOR CUSACK RETURNED TO THE DAIS AT 7:25 P.M.**

**PUBLIC COMMENTS**

David Manning, Apple Valley, explained to the Town Council that he was advised by a member of Town staff that a parcel of land he recently purchased is zoned for industrial when in fact it is zoned for general commercial. He asked for the Town Council's assistance to rectify the situation.

Katie Manning, Apple Valley, expressed concern regarding the size of the font used for the handouts. She also expressed concern regarding what she believed to be lack of information provided in the report.

Donna Rutledge-Goulden, Apple Valley, expressed concern regarding the lack of accessible taxi service in the high desert. She believes that the lack of taxi service in the area is in direct violation of federal law and violates her civil rights.

John Loney, Apple Valley, stated that the Fourth District Court of Appeals found tier level charges unconstitutional and would like the Town Attorney to file an injunction against Apple Valley Ranchos Water District. He believed they should be required to refund all tier level charges to the community.

Discussion ensued on the rules and regulations imposed on municipal water agencies and the requirements they are obligated to follow due to several legislative actions. John Brown, Town Attorney explained that private water agencies are exempt from those same rules and regulations because they are privately owned.

Scott Markovich, Apple Valley, encouraged the Town Council to move forward with pursuit of the Apple Valley Ranchos Water Company.

Chuck Hanson, Apple Valley, expressed concern regarding the Town's continued pursuit of the Apple Valley Ranchos Water Company.

Pat Hanson, Apple Valley, read a story that illustrated the negative effects of pursuing something that was too costly.

Tamara Alaniz, Apple Valley, expressed concern regarding the actions of the Town Attorney responding to citizen concerns.

David Mueller, Apple Valley, commented on the presentation that was given on the Apple Valley Ranchos Acquisition Process Expenditures and the records requests that he has submitted in an effort to obtain information. He stated that he has not received his records from the Town.

### COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

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

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

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

Mayor Pro Tem Stanton commented on committee meetings and events that she attended.

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

### TOWN COUNCIL ANNOUNCEMENTS

#### **Suggested items for future agenda:**

Council Member Nassif commented on his attendance at the Government Relations Committee meeting at the Apple Valley Chamber of Commerce. He stated that Mr. Penna spoke on the rate adjustments and that James Woody would no longer be receiving the discounted water rate. He stated that he recalls the Town originally planning to drill a well in that area. He requested, with the consensus of the Town Council, that a report be prepared to include the cost of the existing rate, the new rate, the cost of a well and whether or not there would be any savings or if it would be feasible to construct the well.

Mayor Pro Tem Stanton recommended a discussion be held on the impact of rave concerts in the community.

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

**A. Regular Meeting – Tuesday, August 25, 2015 – Council Chambers at 6:30 p.m.**

### TOWN COUNCIL CONSENT AGENDA

Mayor Cusack 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 2. Mayor Cusack stated that he, too, has a remote interest in specific warrants on tonight's commercial warrants dealing with Apple Valley Communication for the Town of Apple Valley as the owner of Apple Valley Communication; therefore, he, too, will be abstaining from voting on the warrants for Apple Valley Communications listed under Agenda Item Number 2. He also announced that he and Council Member Nassif would be abstaining from voting on Agenda Item Number 6 as Board Members of the PBID.

Mayor Cusack, with the consensus of the Town Council, removed the following items from the Consent Calendar for discussion: 4, 7 and 9.

Motion by Council Member Emick, seconded by Mayor Pro Tem Stanton, to approve the Consent Calendar items numbered 1, 2, 3, 5, 6 and 8, respectfully.

Vote: Motion carried 5-0-0-0

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

Absent: None.

**Council Member Nassif and Mayor Cusack abstained from voting on specific warrants listed under Agenda Item #2 and abstained from voting on Agenda Item #6.**

1. **Approval of Minutes of the Town Council**
  - A. **Regular Meeting – July 28, 2015**

**Recommendation:**  
Approve the subject minutes as part of the consent agenda.
2. **June 2015 - Commercial Warrants Schedule**

**Recommendation:**  
That the Town Council receive, ratify, and file the Commercial Warrants Schedule as presented.
3. **June 2015 Payroll/Benefits Warrants Schedule**

**Recommendation:**  
That the Town Council receive, ratify, and file the Payroll/Benefits Warrants as presented.
5. **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).
6. **Adopt Resolution No. 2015-28, a Resolution of the Town Council of the Town of Apple Valley, California, Approving the Levy and Collection of Assessments for Fiscal Year 2015-16 within the Apple Valley Village Property and Business Improvement District (PBID)**

**Recommendation:**  
That the Town Council adopt Resolution No. 2015-28, approving the Levy and Collection of Assessments for Fiscal year 2015-16 within the Apple Valley Village Property and Business Improvement District (PBID).
8. **Yucca Loma Road Widening, Design, (Apple Valley Road to Rincon Road) – Project No. 2015-06**

**Recommendation:**  
Award a Professional Services Agreement to Kimley-Horn and Associates, Inc. for the Yucca Loma Road Widening, Design, (Apple Valley Road to Rincon Road) — Project No. 2015-06 subject to “Approval as to Form” by the Town Attorney and “Approval as to Content” by the Town Manager.

**PULLED FROM CONSENT CALENDAR**

4. **Initiation of a Development Code Amendment regarding Small Caged Animals and the Keeping of Alpacas**

John Laraway, Apple Valley, asked for clarification on this agenda item.

Lori Lamson, Assistant Town Manager, presented the staff report as filed with the Town Clerk addressing the concerns of Mr. Laraway.

Gina Schwin-Whiteside, Animal Services Manager, provided clarification regarding the types of restrictions that will be visited in residential areas.

### **MOTION**

Motion by Council Member Emick, seconded by Council Member Bishop, to initiate a Development Code Amendment and forward this issue to the Planning Commission for discussion and a recommendation.

Vote: Motion carried 5-0-0-0

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

Absent: None.

### **PULLED FROM CONSENT CALENDAR**

#### **7. Adopt Resolution 2015-29, a Resolution Urging the State of California to Provide New Sustainable Funding for State and Local Transportation Infrastructure and Join the "Fix Our Roads" Coalition**

John Laraway, Apple Valley, questioned whether this item would cause an increase in taxes. He recommended a series of changes that could be made to reduce taxes.

Frank Robinson, Town Manager, presented the staff report as filed with the Town Clerk, addressing the concerns of Mr. Laraway.

Council Member Nassif and Mayor Pro Tem Stanton provided input on their views of this resolution as members of the League of California Cities Board.

### **MOTION**

Motion by Council Member Nassif, seconded by Council Member Bishop, to adopt a Resolution urging the State to provide new sustainable funding for State and Local transportation infrastructure and join the "Fix Our Roads" Coalition as requested by the League of California Cities.

Vote: Motion carried 4-1-0-0

Yes: Council Members Bishop; Emick; Nassif; Mayor Cusack.

No: Mayor Pro Tem Stanton

Absent: None.

### **PULLED FROM CONSENT CALENDAR**

#### **9. Adopt Resolution No. 2015-30, a Resolution of the Town Council of the Town of Apple Valley, California, Opposing Assembly Bill 113 (AB 113)**

David Mueller, Apple Valley, commented on the dissolution of the redevelopment agencies and correspondence received from the Department of Finance to the Town of Apple Valley.

Marc Puckett, Assistant Town Manager, presented the staff report as filed with the Town Clerk addressing the concerns expressed by Mr. Mueller.

## **MOTION**

Motion by Mayor Pro Tem Stanton, seconded by Council Member Emick, to adopt Resolution No. 2015-30 Opposing AB 113.

Vote: Motion carried 5-0-0-0

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

Absent: None.

## **PUBLIC HEARINGS**

10. **A Request to Consider an Amendment to Title 9 "Development Code" of the Town of the Apple Valley Municipal Code amending Chapter 9.25 "Deviation Permits" and Chapter 9.35 "Commercial Districts" as it Pertains to Allowing a Reduction in Landscaping and Setback Requirements for the Development of Substandard Commercial Lots**

Mayor Cusack opened the public hearing at 8:52 p.m.

Lori Lamson, Assistant Town Manager, presented the staff report as filed with the Town Clerk. She made minor corrections to Page 10-7 "E" and "E - 1" to read:

- "E. For substandard ***vacant and developed*** commercial lots in all Commercial Districts, deviations to one or all of the following standards may be ***allowed***:
1. Reduction of landscape planter width in areas adjacent to parking areas or drive aisles ***no less than a*** minimum of two (2) feet in width. (Section 9.72.060.B.8.a and b)."

There being no requests to speak, Mayor Cusack closed the public hearing at 8:57 p.m.

## **MOTION**

Motion by Mayor Pro Tem Stanton, seconded by Council Member Bishop, 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 because 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 Development Code, and adopt the Findings.
3. **Find** that the proposed Town Council 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. 473 in its entirety and read by title only.

Vote: Motion carried 5-0-0-0  
Yes: Council Members Bishop; Emick; Nassif; Mayor Pro Tem Stanton; Mayor Cusack.  
Absent: None.

La Vonda M-Pearson, Town Clerk, read the title to Ordinance No. 473.

### **MOTION**

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

5. **Introduce** Ordinance No. 473, revising Title 9 "Development Code" of the Town of Apple Valley Municipal Code by amending Chapter 9.25 "Deviation Permits" and Chapter 9.35 "Commercial Districts" as it pertains to allowing a reduction in landscaping and setback requirements for the development of substandard commercial lots
6. **Direct** staff to file a Notice of Exemption.

Vote: Motion carried 5-0-0-0  
Yes: Council Members Bishop; Emick; Nassif; Mayor Pro Tem Stanton; Mayor Cusack.  
Absent: None.

## **REPORTS, REQUESTS AND COMMUNICATIONS**

### **BUSINESS OF THE COUNCIL**

#### **11. Veteran Housing Programs**

Heather Wylie, Housing Specialist, presented a PowerPoint presentation on Veteran Housing Programs available for the community and the state.

This was a receive and file item only. There was no action taken.

#### **12. Discussion on the Placement of Public Records Requests and Responses on the Town of Apple Valley Webpage**

David Mueller, Apple Valley, believed that placement of records on the webpage is an attempt to chastise the public for requesting documents that they have the legal right to ask.

Mayor Pro Tem Stanton commented on this item and stated that based on the information received, she respectfully withdrew this item.

It was the consensus of the Town Council to withdraw this item.

#### **13. Discussion on the Timeframe for Publishing the Town Council Agenda**

David Mueller, Apple Valley, recommended that the Town Council publish a future agenda items list for the benefit of the members of the public.

Mayor Pro Tem Stanton commented on the need to have the agenda published earlier than currently provided and requested an additional one (1) to two (2) days in advance of the current date.

La Vonda M-Pearson, Town Clerk, recommended that this item be brought back at the next Town Council meeting, to present the feasibility of an earlier publication date for the agenda.

It was the consensus of the Town Council to continue this item to the next regularly scheduled meeting.

**14. Vacancies on the Equestrian Advisory Committee**

**MOTION**

Motion by Council Member Bishop, seconded by Council Member Emick, to nominate John Ryan to the Town of Apple Valley Equestrian Advisory Committee.

Vote: Motion carried 5-0-0-0

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

Absent: None.

Motion by Mayor Cusack, seconded by Council Mayor Pro Tem Stanton to nominate Maria Savala-Mahany to the Town of Apple Valley Equestrian Advisory Committee.

Vote: Motion carried 5-0-0-0

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

Absent: None.

**15. Discussion of Cancellation of Town Council Meetings of September 8, 2015 and October 13, 2015**

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

**MOTION**

Motion by Council Member Bishop, seconded by Council Member Emick, to cancel the Town Council Meetings of September 8 and October 13.

Vote: Motion carried 5-0-0-0

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

Absent: None.

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

**DEPARTMENTAL REPORTS AND BUSINESS**

- A. Crime Statistic Report – Captain Lana Tomlin, Apple Valley Police Department



**CLOSED SESSION**

**16. Closed Session.**

Mayor Cusack announced that he would be abstaining from one or more of the closed session items as it pertained to Apple Valley Ranchos Water Company if needed, due to a potential conflict of interest. He stated that his company does business with the above company.

Mayor Cusack adjourned the meeting of the Apple Valley Town Council to Closed Session at 9:56 p.m. to discuss the following:

- A. Conference with Legal Counsel – Anticipated Litigation – Significant exposure to litigation pursuant to Paragraph (2) of subdivision (d) of Section 54956.9: one or more potential cases.
- B. Conference with Legal Counsel – Anticipated Litigation – Initiation of litigation pursuant to Paragraph (4) of subdivision (d) of Section 54956.9: one or more potential cases.
- C. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case Name: Application No. 14-01-002, In the Matter of the Application of Park Water Company-Apple Valley Ranchos Water Company Water System (U346W) for Authority to Increase Rate Charges for Water Service by \$3,127,463.00 or 14.88% in 2015, \$2,056,455.00 or 8.48% in 2016, and \$2,160,731.00 or 8.19% in 2017.
- D. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case Name: Application No. 14-11-013 Joint Application of Liberty Utilities Co., Liberty WWH, Inc., Western Water Holdings, LLC, Park Water Company (U314W), and Apple Valley Ranchos Water Company (U346W) for Authority for Liberty Utilities Co. to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.
- E. Conference with Real Property Negotiators – Pursuant to Government Code Section 54956.8. Property: Apple Valley Ranchos Water Company; Authority Negotiator: Town Manager; Negotiating Parties: Chris Schilling, Chief Executive Officer, Park Water Company, The Carlyle Group, Carlyle Infrastructure Partners, Western Water Holdings LLC, Tony Penna, General Manager, Apple Valley Ranchos Water Company; Under Negotiation: Price and Terms of Payment.

**MAYOR CUSACK WAS EXCUSED FROM CLOSED SESSION AND THE MEETING OF THE TOWN COUNCIL AT 10:15 P.M.**

Upon returning from Closed Session at 10:56 p.m., Mayor Pro Tem Stanton reported that the Town Council had no reportable action.

**ADJOURNMENT**

Motion by Council Member Emick, seconded by Council Member Nassif, and unanimously carried, to adjourn the meeting of the Apple Valley Town Council at 10:57 p.m.

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Larry Cusack, Mayor

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La Vonda M-Pearson, Town Clerk