

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

**REGULAR MEETING**

**MINUTES – November 15, 2016**

**CALL TO ORDER:**

Mayor Stanton 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; Cusack; Emick; Mayor Pro Tem Nassif; Mayor Stanton

Absent: None

**OPENING CEREMONIES**

**INVOCATION:** Pastor Josh Gerbracht, First Assembly of God

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

**PRESENTATIONS:** None.

**PUBLIC COMMENTS**

Jim Blackburn, Apple Valley, commented on how the Town will implement changes in its Ordinances as a result of the passage of Proposition 64.

Manuel Canales, Apple Valley, expressed concern regarding the deterioration of the roads near Siskiyou and Highway 18, especially Tao Road. He noted that the blacktop is being piled up on the sides of the road and during inclement weather, is very hazardous for travel.

Lawrence McCarthy, Apple Valley, commented on the decision that was made against the City of Claremont regarding its eminent domain proceedings with Golden State Water.

Richard Rorex, Apple Valley, commented on the new restrictions placed on single use bags in California. He encouraged the community to utilize reusable bags. He also congratulated the newly elected Council Members.

Tom Piper, Apple Valley, congratulated Art Bishop and Larry Cusack on their successful re-election to the Apple Valley Town Council.

Patricia Perry, Apple Valley, requested assistance from the Town Council regarding problems that she is experiencing at her home.

### COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

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

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

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

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

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

### TOWN COUNCIL ANNOUNCEMENTS

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

Mayor Stanton asked staff to look into a Safe Haven program that would allow community members to help others.

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

- A. Regular Meeting – Tuesday, December 13, 2016 – Council Chamber  
Regular Session at 6:30 p.m.**

### TOWN COUNCIL CONSENT AGENDA

Mayor Stanton announced that Mayor Pro Tem 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. Council Member Cusack also has a remote interest in specific warrants on tonight's Commercial Warrants dealing with Apple Valley Communications 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 2.

Mayor Stanton, with the consensus of the Town Council, pulled Agenda Item Number 5 for discussion. Mayor Stanton, with the consensus of the Town Council, pulled Agenda Item Number 10 for discussion.

Motion by Council Member Emick, seconded by Council Member Bishop, to approve the Consent Calendar items numbered 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13 and 14, respectfully.

Vote: Motion carried 5-0-0-0

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

Absent: None.

**Council Member Cusack abstained from voting on specific warrants listed under Agenda Item Number 2. Mayor Pro Tem Nassif abstained from voting on specific warrants listed under Agenda Item Number 2.**

1. **Approval of Minutes of the Town Council**
  - A. **Regular Meeting – October 25, 2016**  
**Recommendation:**  
Approve the subject minutes as part of the consent agenda.
  
2. **September 2016 - Commercial Warrants Schedule**  
**Recommendation:**  
That the Town Council receive, ratify and file the Commercial Warrants Schedule as presented.
  
3. **September 2016 - Payroll / Benefits Warrants Schedule**  
**Recommendation:**  
That the Town Council receive, ratify and file the Payroll / Benefits Warrants as presented.
  
4. **Treasurer’s Report – September 2016 and Schedules of Revenues, Expenditures and Changes in Fund Balance for the Parks and Recreation Fund and the Apple Valley Golf Course Fund**  
**Recommendation:**  
That the Town Council receive and file the September 2016 Treasurer’s Report.
  
6. **Authorize Entering into an Agreement for the James Woody Lighting Project #368-16-05000866900 through Southern California Edison’s Customized Solution Program**  
**Recommendation:**  
Authorize the Town Manager or his Designee to proceed with the On Bill Financing (OBF) Project # 368-16-05000866900 through Southern California Edison and authorize entering into the OBF Agreement for the not to exceed amount of \$58,275.60.
  
7. **Set First Public Hearing for 2017-21 Consolidated Plan and 2017-18 First Year Action Plan**  
**Recommendation:**  
That the Town Council establish December 13, 2016, at 6:30 p.m., as the date and time certain for the purpose of conducting the first of two (2) public hearings related to the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Programs necessary to develop the Town’s 2017-21 Consolidated Plan and 2017-18 First Year Action Plan.
  
8. **Fee Waiver Request for American Cancer Society Relay for Life for Use of the Civic Center Park/Amphitheatre**  
**Recommendation:**  
For good cause shown and finding a waiver will serve a public purpose, approve the waiver of the Facility Rental Fee of \$2,750.02.
  
9. **Approval for Data Management and Customer Call Center Services for the Apple Valley Choice Energy (AVCE) CCA**  
**Recommendation:**
  1. That the Town Council approve Noble Americas Energy Solutions to provide Data Management and Customer Call Center Services for the Apple Valley Choice Energy (AVCE) CCA.
  
  2. That the Town Council authorize the Town Manager to execute the contract.

**11. Yucca Loma Road Street and Striping Improvements (Safe Routes to School) – Project No. 2016-01**

**Recommendation:**

That the Town Council award a contract to Sully-Miller Contracting Company for the Yucca Loma Road Street and Striping Improvements – Project No. 2016-01 in an amount not to exceed \$389,000.00 (Three hundred eighty-nine thousand dollars).

**12. Amendment 2 for Time Extension of the Construction Funding Agreement for the Yucca Loma Bridge – Project No. 2013-04**

**Recommendation:**

That the Town Council approve Amendment No. 2 of Construction Funding Agreement C12227, between San Bernardino Associated Governments and the Town of Apple Valley, for the Yucca Loma Bridge over the Mojave River, subject to approval as to form by the Town Attorney.

**13. Mojave Riverwalk South Project – Project No. 2015-08**

**Recommendation:**

That the Town Council approve the Common Use Agreement, Contract No. 16-\_\_\_\_, with the San Bernardino County Flood Control District, subject to approval as to form by the Town Attorney and as to content by the Town Manager.

**14. A Resolution of the Town Council of the Town of Apple Valley, California, Amending the Classification Plan for the Town of Apple Valley**

**Recommendation:**

That the Town Council adopt the attached Resolution No. 2016-36, a Resolution of the Town Council of The Town of Apple Valley, California, Amending the Current Classification Plan.

**PULLED FROM THE CONSENT AGENDA**

**10. Approval of Legal Services Engagement Letter for the Apple Valley Choice Energy (AVCE) CCA**

Marc Puckett, Assistant Town Manager, presented the staff report as filed with the Town Clerk. He explained that the law firm recommended for approval by the Town Council has expertise and experience with Community Choice Energy Aggregation programs and will provide consistency in its formation.

Lawrence McCarthy, Apple Valley, questioned the need to hire an outside attorney for the Apple Valley Choice Energy (AVCE) CCA.

**MOTION**

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

1. That the Town Council Accept the Troutman Sanders LLP Legal Services Engagement Letter for Apple Valley Choice Energy (AVCE).
2. That the Town Council authorize the Town Manager to execute the Engagement Letter.

Vote: Motion carried 5-0-0-0

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

Absent: None.

5. **A Memorandum of Understanding between the Town of Apple Valley and the County of San Bernardino Regarding the Preparation and Implementation of the Multi-Species Habitat Conservation Plan/Natural Communities Conservation Plan**

Lori Lamson, Assistant Town Manager, presented the staff report as filed with the Town Clerk.

**MOTION**

Motion by Council Member Bishop, seconded by Mayor Pro Tem Nassif, to approve and direct the Mayor to sign the Memorandum of Understanding (MOU) between the Town and the County of San Bernardino (County) for the continued preparation and implementation of the Multi-Species Habitat Conservation Plan/Natural Communities Conservation Plan (MSHCP/NCCP).

Vote: Motion carried 5-0-0-0

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

Absent: None.

**PUBLIC HEARING**

15. **An Amendment to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by Amending Code Sections 9.35 and 9.36 to Allow and Establish Standards for Cargo Containers in the Village Commercial (C-V) Zoning District**

Mayor Stanton opened the public hearing at 7:25 p.m.

Carol Miller, Principal Planner, presented the staff report as filed with the Town Clerk. She reiterated that this Ordinance would be limited to the Village Commercial District.

There being no requests to speak, Mayor Stanton closed the public hearing at 7:32 p.m.

**MOTION**

Motion by Mayor Pro Tem Nassif, seconded by Council Member Cusack, 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. 490 in its entirety and read by title only.

Vote: Motion carried 5-0-0-0

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

Absent: None.

La Vonda M-Pearson, Town Clerk, read the title to Ordinance No. 490.

### **MOTION**

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

5. **Introduce** Ordinance No.490, revising Title 9 "Development Code" of the Town of Apple Valley Municipal Code by modifying Chapters 9.35 and 9.36 as it relates to the use of cargo containers in the Village Commercial (C-V) zoning districts.
6. Direct staff to file a Notice of Exemption.

Vote: Motion carried 5-0-0-0

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

Absent: None.

## **REPORTS, REQUESTS AND COMMUNICATIONS**

### **BUSINESS OF THE COUNCIL**

None.

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

Frank Robinson, Town Manager, shared with the Town Council that 430 cities had some type of initiative for a form of tax increase. Over 80% of those cities were successful passing their measures and of those, 87.9% were actually sales tax related. An invitation is extended to the Town Council and general public to attend the dedication ceremony at the Apple Valley Golf Course of the memorial bench in honor of Mr. Louis and Mrs. Rose Giuntini which is scheduled for November 22, 2016 at 3:00 p.m.

## **CLOSED SESSION**

### **16. Closed Session**

Mayor Stanton announced that Council Member Cusack will be abstaining from one (1) or more of the closed session items as it pertains to Liberty Utilities Company, due to a potential conflict of interest, as his company does business with the above company.

Mayor Stanton adjourned the meeting of the Apple Valley Town Council at 7:36 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. 14-11-013 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.
- D. Conference with Real Property Negotiators – Pursuant to Government Code Section 54956.8. Property: Apple Valley Ranchos Water Company; Authority Negotiator: Town Manager; Negotiating Parties: Liberty Utilities Co., Liberty WWH, Inc., Algonquin Power & Utilities Corp., Park Water Company, Western Water Holdings LLC, Tony Penna, General Manager, Apple Valley Ranchos Water Company; Under Negotiation: Price and Terms of Payment.
- E. Negotiations with Real Property Negotiator – Parcel Number: 3112-181-01 located at Highway 18, between Dale Evans Parkway & Rancherias Road, Apple Valley; Negotiating Parties: 360 Apple West, LLC; Town Negotiator(s) - Town Manager. Negotiations involve both price and terms.
- F. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case No.: CIVDS1517935 - Apple Valley Ranchos Water Company vs. Town of Apple Valley Et Al.
- G. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case No.: CIVDS1600180 – Town of Apple Valley vs. Apple Valley Ranchos Water Company Et Al.
- H. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case No.: CIVDS160498 – Christina Lopez – Burton vs. Town of Apple Valley.
- I. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case No.: CIVDS1507221 – Leane Lee vs. Town of Apple Valley.
- J. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case No.: CIVDS1517800 – Krause, Kalfayan, Benink & Slavens, LLP vs. Town of Apple Valley.

Upon returning from Closed Session at 8:48 p.m., Mayor Stanton announced that there was no reportable action taken.

**ADJOURNMENT**

Motion by Council Member Bishop, seconded by Council Member Emick, and unanimously carried, to adjourn the meeting of the Apple Valley Town Council at 8:49 p.m.

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Barb Stanton, Mayor

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LaVonda M-Pearson, Town Clerk