

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

REGULAR MEETING

MINUTES – May 8, 2018

CALL TO ORDER:

Mayor Bishop called to order the regular session of the Apple Valley Town Council and the Successor Agency at 6:32 p.m.

Roll call was taken with the following members present:

Roll Call

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

Absent: None.

OPENING CEREMONIES

INVOCATION: The invocation was given by Pastor Kit Johnson, Life Point Baptist Church.

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was led by Mayor Pro Tem Cusack

PRESENTATIONS: Presentation – 2018 Greener Way of Life, Joseph Moon, Assistant Director of Energy and Environmental Services and Kathy Schmachtenberger, Administrative Secretary

PUBLIC COMMENTS

Beverly Williams, Kiwanis Club, invited the public to attend its annual fundraiser at Scandia on May 12. She stated that the cost is \$40.00 per family of four and includes a continental breakfast. She spoke of the services that the organization provides the community.

Lon Jacobs, Apple Valley, spoke in opposition of California Senate Bill 54. He provided a copy of a letter he previously submitted regarding the need to oppose this bill.

Bill Inger, Apple Valley, respectfully requested that the issue of SB54 be placed on a future agenda for discussion.

Al Rice, Apple Valley, believed the Town was participating in secret meetings prior to the regular meeting. He commented on what he felt was a lack of transparency by the Town.

Harlan Archer, Apple Valley, suggested that the County of San Bernardino as a whole entity should address the concerns of Senate Bill 54. He believed that something should be done to address the problem.

Thurston Smitty Smith, Apple Valley, commended the Town Council on its efforts to enhance the community with the addition of new bike lanes. He announced that the Victor Valley Bicycle Tour would be held on Saturday, October 27, 2018. He also invited the public to attend the First District Caucus Mixer, on Thursday, May 24, 6:30 p.m. at the Holiday Inn in Victorville.

Kari Leon, Agio Realty, asked the Town to oppose an upcoming bill that would require solar on all new properties.

Cesar Ramirez, Apple Valley, read the Town's Mission Statement and then commented on the homeless population and those individuals who have been incarcerated and released. He asked the Town to support those members in the community who need assistance through outreach.

COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

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

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

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

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

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

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for future agenda:

Council Member Stanton requested, with the consensus of the Town Council, that a future agenda item be prepared for discussion on Senate Bill 54.

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

- A. Regular Meeting – Tuesday, May 22, 2018 – Council Chamber
Regular Session at 6:30 p.m.**

TOWN COUNCIL CONSENT AGENDA

La Vonda M-Pearson, Town Clerk, read the following disclosure statement:

Council Member Nassif has a remote interest in specific warrants on tonight's Commercial Warrants dealing with NAPA Auto Parts or High Desert Auto Supply for the Town of Apple Valley as the owner of NAPA Auto Parts and High Desert Auto Supply. Therefore, he will be abstaining from voting on the warrants for NAPA Auto Parts and High Desert Auto Supply listed under Agenda Item Number 2. In addition, due to his interest in NAPA Auto Parts and High Desert Auto Supply, he will be abstaining from voting on the warrants listed as 000204, 003273, 000062, 000171, 000888, 000914, 003649, 000154, 000576 and 000854 under Agenda Item Number 2 because these entities are considered sources of income to his businesses NAPA Auto Parts and High Desert Auto Supply.

Council Member Nassif stated that he was in agreement with the recusal as read.

Mayor Pro Tem Cusack also has a remote interest in specific warrants on tonight's Commercial Warrants dealing with Apple Valley Communications, AV Tech Services or AVCOM Services for the Town of Apple Valley as the owner of Apple Valley Communications, AV Tech Services and AVCOM Services. Therefore, he too will be abstaining from voting on the warrants for Apple Valley Communications, AV Tech Services and AVCOM Services listed under Agenda Item Number 2. In addition, due to his interest in Apple Valley Communications, AV Tech Services and AVCOM Services, he will be abstaining from voting on the warrants listed as 127 – 813, 816, 818, 819, 826, 828, 833, 835, 836, 838, 850, 858, 865, 871, 875, 877, 878, 898, 900, 902, 910, 913, 921, 922, 926, 937, 940, 944, 946, 964, 966, 969, 973, 998, 999, 128000, 001, 002, 005, 011, 016, 022, 045, 059, 078, 082, 085, 091, 092, 111, 118, 120, 122, 123, 143, 159, 166, 167, 179, 180, 185 under Agenda Item Number 2 because these entities are considered sources of income to his businesses Apple Valley Communications, AV Tech Services and AVCOM Services.

Mayor Pro Tem Cusack stated that he was in agreement with the recusal as read.

Thomas Rice, Town Attorney, stated that he had a financial interest in Agenda Item Number 10 and therefore would not participate in the discussion of that item.

MOTION

Motion by Council Member Emick, seconded by Council Member Stanton, to approve the Consent Calendar items numbered 1, 2, 3, 5, 7, 9 and 10 respectfully, and that items numbered 4, 6 and 8, be pulled or discussion.

Vote: Motion carried 5-0-0-0

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

Absent: None.

Council Member Nassif and Mayor Pro Tem Cusack abstained from voting on specific warrants listed under Agenda Item Number 2 as read by the Town Clerk.

1. Approval of Minutes of the Town Council

A. Special Meeting – April 16, 2018

B. Regular Meeting – April 24, 2018

Recommendation:

Approve the subject minutes as part of the consent agenda.

2. April 2018 Commercial Warrants and Wire Transfer Schedules

Recommendation:

That the Town Council receive, ratify, and file the Commercial Warrants and Wire Transfer Schedules as presented.

3. April 2018 Payroll / Benefits Warrants Schedule

Recommendation:

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

5. **Adopt Ordinance No. 501, An Ordinance of the Town Council of the Town of Apple Valley, California, Amending the Official Zoning Map by Changing the Zoning Designation from Specific Plan (SP) to Multi-Family Residential (R-M), Single Family Residential (R-SF) and General Commercial (C-G)**

Recommendation:

Adopt Ordinance No. 501.

7. **Signal Modification at Westmont Drive – Project No. 2017-02**

Recommendation:

That the Town Council:

1. Accept the work completed for the Signal Modification at Westmont Drive Project No. 2017-02 for a total contract cost of \$51,951.00.
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.

9. **Fee Waiver Request for Church for Whosoever Annual Community Outreach on May 28, 2018 and September 3, 2018**

For good cause shown, and finding a waiver will serve a public purpose, approve the waiver of the Facility Rental Fee of \$290.82 for both events.

10. **Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley with Best, Best & Krieger, LLP**

Recommendation:

Approve and authorize Town Manager to execute Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley.

PULLED FROM CONSENT CALENDAR

4. **Treasurer's Report – March 2018 and Schedules of Revenues, Expenditures and Changes in Fund Balance for the Parks and Recreation Fund and the Apple Valley Golf Course Fund**

Al Rice, Apple Valley, commented on the lack of information that he believed was included in the Treasurer's Report. He also believed that the Town was not properly managing its funds resulting in a loss of revenue.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to receive and file the March 2018 Treasurer's Report.

Vote: Motion carried 5-0-0-0

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

Absent: None

6. Adopt Ordinance No. 502, An Ordinance of the Town Council of the Town of Apple Valley, California, Amending Title 9 “Development Code” of the Town of Apple Valley Municipal Code, by Modifying Chapter 9.08 “Definitions”, Chapter 9.28 “Residential Districts” and Chapter 9.29 “Specific Use Regulations for Residential Districts” as it Pertains to Accessory Dwelling Units and Other Residential Habitable Accessory Structures

Carol Miller, Assistant Director of Community Development, presented the staff report as filed with the Town Clerk.

Council Member Stanton asked questions regarding the sewer connection requirement for residents that build an accessory structure.

Ms. Miller described the requirements, stating that the requirement to connect to sewer would be based on lot size.

MOTION

Motion by Council Member Stanton, seconded by Mayor Pro Tem Cusack, to adopt Ordinance No. 502.

Vote: Motion carried 5-0-0-0

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

Absent: None

8. Townwide Class II Bikeway Upgrade – Project No. 2016-03

Lawrence McCarthy, Apple Valley, expressed concern regarding the completed work on this project. He did not believe the work was done.

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

MOTION

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

- A. Accept the work completed as part of the Townwide Class II Bikeway Upgrade Project No. 2016-03 for a total contract cost of \$681,524.99.
- B. Direct the Town Clerk to file the Notice of Completion for the contract work.
- C. 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.

Vote: Motion carried 5-0-0-0

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

Absent: None

PUBLIC HEARINGS

11. Adopt Resolution No. 2018-15, A Resolution of the Town Council of the Town of Apple Valley, California, Establishing Sewer User Charges and Establishing an Operative Date for Application of the Proposed Increase

Mayor Bishop opened the public hearing at 8:03 p.m.

Kofi Antobam, Director of Finance, presented the staff report as filed with the Town Clerk.

Robert Hall, Apple Valley, commented on his ability to lower his sewer rates in other communities. He believed the system applied in Apple Valley is antiquated and does not adequately reflect a homeowner's usage. He also commented on problems that he believed is facing the Victor Valley Wastewater Reclamation Authority.

There being no additional requests to speak, Mayor Bishop closed the public hearing at 8:15 p.m.

MOTION

Motion by Council Member Stanton, seconded by Council Member Nassif, to adopt Resolution No. 2018-15, revising the sewer user fees for the use of Town sewers.

Vote: Motion carried 5-0-0-0

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

Absent: None.

12. Public Hearing for Annexation 2018-001, A Request to Consider the Annexation of 1,304± Acres that Lie West of Dale Evans Parkway and Stoddard Wells Road, North of Johnson Road, East of Interstate 15, and South of Morro Road

Mayor Bishop opened the public hearing at 8:20 p.m.

Orlando Acevedo, Assistant Director of Economic Development, presented the staff report as filed with the Town Clerk. He stated that per the request of LAFCO, an indemnification clause has been added to the resolution.

There being no requests to speak, Mayor Bishop closed the public hearing at 8:33 p.m.

MOTION

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

- A. Adopt Resolution No. 2018-16, approving an Addendum to the EIR for the 2009 General Plan Update and Annexation 2008-001;
- B. Adopt Resolution No. 2018-17, requesting initiation of annexation proceedings for Annexation 2018-001;
- C. Direct staff to file all necessary application materials relating to Annexation 2018-001 with the Local Agency Formation Commission (LAFCO).

Vote: Motion carried 5-0-0-0

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

Absent: None.

MOTION

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

- D. Adopt Resolution No. 2018-17, as amended, requesting initiation of annexation proceedings for Annexation 2018-001;
- E. Direct staff to file all necessary application materials relating to Annexation 2018-001 with the Local Agency Formation Commission (LAFCO);
- F. Direct Town Manager to sign Plan of Services.

Vote: Motion carried 5-0-0-0

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

Absent: None.

REPORTS, REQUESTS AND COMMUNICATIONS

BUSINESS OF THE COUNCIL

13. PACE Program Update

Doug Robertson, Town Manager, presented the staff report as filed with the Town Clerk.

Dustin Reilich, Renovate America (HERO), commented on the PACE Program and the need to make this program available to members of the community.

Jeremy Hutman, Renew Financial, spoke of the benefit and financial success of the PACE Program. He believed the demand for this program in the community was high. He also spoke of the various laws that have been put in place to assist with regulations.

Jeff Simonetti, Capitol Core Group, also commented on legislation that has been put in place to assist with the regulations of this program. He stated that the PACE community has worked hard to try and resolve the concerns of the Realtors Association.

Kari Leon, President, High Desert Association of Realtors, stated that the organization serves as an advocate for consumers who don't understand the PACE Program. She spoke of the number of lawsuits filed against this program and believed that additional assurance to protect consumers should be put in place before this item is approved.

Cecil Volsch, Broker, expressed concern regarding the PACE Program and the inability for homeowners to get financing if they have a FHA or Fannie Mae loan due to the PACE loan assuming first position on a mortgage.

Monica Garcie, Ygrene, stated that Ygrene was a PACE provider and that recent legislation enforces disclosures that will benefit the homeowner. She recommended the program be offered to the community and allow them a choice.

Al Rice, Apple Valley, spoke in opposition of the PACE Program and the number of robocalls that he receives from individuals advocating this program.

Council Member Stanton questioned whether or not residents would be allowed to apply for this type of program if the program was offered from another area for Apple Valley property.

Mr. Robertson explained that the PACE Program as well as many others, offer property tax based loans. He stated that if the Town does not support the program, the ability to put a loan on the tax bill would not be allowed for Apple Valley residents.

Mr. Reilich commented on the legislation approved to assist homeowners. He indicated that all the new legislation provided went into effect in January 2018. He spoke of the restrictions to the program and the ramifications to providers should they not concur with the rules to the program.

Discussion ensued regarding the various programs that offer tax based loans and whether or not the new legislation provided a safety mechanism for homeowners.

Ms. Leon explained the negative impact that these programs have on the community.

Mr. Robertson noted that this is a buyer beware program, but explained that there have been predatory practices in the past.

Discussion ensued amongst the Council Members regarding offering choices to the community.

It was the consensus of the Town Council to agendaize this item for consideration by the Town Council with resolutions that would allow the program to be offered in Apple Valley to include information on how the program has changed, how it works and information on the required licensing by individuals before their funding program can be accepted by the Town.

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

DEPARTMENTAL REPORTS AND BUSINESS

Doug Robertson, Town Manager, informed the Town Council that the Concerts in the Courtyard began last week and that the recent Swim Fair registrations resulted in 200 registrants. He also stated that the Neighborhood Clean-up and the Rockin Flea Market would be held this Saturday, May 12, 2018.

Mr. Robertson informed the Town Council the Town is currently completing lighting upgrades to Town Hall and the Parking Lot which will result in reduced energy costs.

CLOSED SESSION

14. Closed Session

Mayor Bishop stated that if needed, Mayor Pro Tem 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 Bishop recessed the meeting of the Apple Valley Town Council at 9:25 p.m. to Closed Session 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 Real Property Negotiators – Pursuant to Government Code Section 54956.8. Property: Apple Valley Ranchos Water Company (now Liberty Utilities (Apple Valley Ranchos Water) Corp.); 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.
- D. 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.
- E. 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.
- F. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, CPUC Application No. 17-04-024 - In the Matter of the Application of Mesa-Crest Water Company (U333W) and Liberty Utilities (Park Water) Corp. (U314W) for an Order Authorizing Mesa-Crest Water Company to Sell and Liberty Utilities (Park Water) Corp. to Purchase the Utility Assets of Mesa-Crest Water Company.
- G. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case No.: CIVDS1725027 – Christina Lopez-Burton v. Town of Apple Valley.
- H. Negotiations with Real Property Negotiator – Parcel Number: 3112-251-13, Apple Valley; Negotiating Parties: Interested parties; Town Negotiator(s) - Town Manager. Negotiations involve both price and terms.

Upon returning from Closed Session at 10:43 p.m., Mayor Bishop announced that there was no reportable action taken.

ADJOURNMENT

Motion by Council Member Emick, seconded by Council Member Stanton, and unanimously carried, to adjourn the meeting of the Apple Valley Town Council at 10:44 p.m. in memory of Mary Pat Jenkins.

Art Bishop, Mayor

La Vonda M-Pearson, Town Clerk