

**APPLE VALLEY TOWN COUNCIL/
SUCCESSOR AGENCY/
PUBLIC FINANCING AUTHORITY**

REGULAR MEETING

MINUTES - September 10, 2019

Call to Order:

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

Roll call was taken with the following members present:

Roll Call

Present: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack

Absent: None.

OPENING CEREMONIES

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

INVOCATION: The invocation was given by Father Limo – St Timothy’s Church

PRESENTATIONS: Employee of the Quarter – Charlene Engeron – Public Relations Specialist

Apple Valley Police Department Employee of the Quarter – Deputy Melony Whitecloud

Census 2020 Presentation – Mr. Ralph Guermo

PUBLIC COMMENTS

Al Rice, Apple Valley, expressed his concern regarding certain warrants on the agenda as well as the Successor Agency budget not yet approved.

Patricia Perry, Apple Valley, detailed issues related to her home, and commented that construction in the area causes power losses.

Sandy, Apple Valley, raised concern about the tumble weeds that build up in her neighborhood causing nuisances and fire danger.

COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

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

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

Council Member Emick commented on events that he attended.

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

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

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for future agenda:

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

- A. Regular Meeting – September 24, 2019 – Council Chamber
Regular Session at 6:30 p.m.

TOWN COUNCIL CONSENT AGENDA

Kiel E Mangerino, Deputy Town Clerk, read the following disclosure statement:

Mayor Pro Tem 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 these businesses. 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 both businesses, Mayor Pro Tem Nassif will also be abstaining from voting on specific warrants listed under Agenda Item Number 2 because these entities are considered sources of income to his businesses. A list of business entities for Mayor Pro Tem Nassif is maintained on file in the Town Clerk's Office and available for review at the dais.

Mayor Pro Tem Nassif confirmed that he would be abstaining from voting on these warrants.

Mayor 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 these businesses. 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 these businesses, Mayor Cusack will be abstaining from voting on specific warrants listed under Agenda Item Number 2 because these entities are considered sources of income to his businesses. A list of business entities for Mayor Cusack is maintained on file in the Town Clerk's Office and available for review at the dais.

Mayor Cusack confirmed that he would be abstaining from voting on these warrants.

MOTION

Motion by Council Member Emick, seconded by Council Member Bishop, to approve the Consent Calendar items numbered 1 and 3-7 respectfully and that item number 2 be pulled for discussion.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

1. Approval of Minutes

Recommendation:

A. Approve the subject minutes of the August 27, 2019 Town Council Meeting

3. August 2019 Payroll/Benefits Warrants Schedule.

Recommendation:

That the Town Council receive, ratify and file the Payroll/Benefits Warrants Schedule.

4. Second Reading of Ordinance No. 514 An Ordinance of the Town Council of the Town of Apple Valley, California Removing Chapter 2.28 of Title 2 of the Apple Valley Municipal Code in its Entirety as it Pertains to the Equestrian Advisory Committee

Recommendation:

Adopt Ordinance No. 514

5. Updated Schedule of future Development Code Amendment Discussions

Recommendation:

Receive and file

6. Fee Waiver for Don Ferrarese Charitable Foundation to Use the Dining Room at the Golf Course

Recommendation:

For good cause shown, and finding a waiver will serve a public purpose, approve the waiver of the Facility Rental Fee of \$1,000.00.

7. Adopt Resolution No. 2019-25, A Resolution of the Town Council of the Town of Apple Valley, California, Approving the Sewer System Management Plan Update

Recommendation:

Adopt Resolution No. 2019-25, a Resolution of the Town Council of the Town of Apple Valley, California, approving the Sewer System Management Plan (SSMP) update for the Town of Apple Valley as required by the State Water Resources Control Board Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

PULLED FROM CONSENT CALENDAR,

2. August 2019 Commercial Warrants and Wire Transfer Schedule.

Al Rice, Apple Valley, expressed concern that the commercial warrants contained a double payment and void for \$1.6 million as well as payments to Best Best and Krieger and Charles Abbott and Associates.

Motion by Council Member Bishop and seconded by Council Member Emick to receive, ratify, and file the Commercial Warrants and Wire Transfer Schedules as presented.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

Mayor Cusack and Mayor Pro Tem Nassif abstained from voting on certain warrants.

PUBLIC HEARINGS

8. **Zone Change No. 2019-001. A Request to Consider a Change of Zone from Residential Equestrian (R-Eq) to Single Family Residential (R-Sf)**

Mayor Cusack opened the public hearing at 7:26 p.m.

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

Mayor Cusack enquired about zoning around the proposed site.

Council Member Leon asked about the differences between the two zoning designations

Myra Alvarez, Apple Valley, voiced her concern about the increase in traffic that a zone change could potentially bring.

Discussion ensued about the density of the site not changing and the need for any future projects to obtain a conditional use permit.

There being no additional requests to speak, Mayor Cusack closed the public hearing at 7:37 p.m.

MOTION

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

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.

Find the facts presented within the staff report, including the attached Planning Commission staff report for August 7, 2019, support the required Findings for approval of the proposed Specific Plan Amendment.

Move to waive the reading of Ordinance No.515 in its entirety and read by title only.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

Kiel Mangerino, Deputy Town Clerk, read the title to Ordinance No. 515.

MOTION

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

Introduce Ordinance No.515 approving Zone Change No. 2019-001; and

Direct staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

9. **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 2019 Edition of the California Building Code Volumes 1, 2 Including the Appendix and Standards, the 2019 Edition of the California Electrical Code, the 2019 Edition of the California Plumbing Code, the 2019 Edition of the California Mechanical Code, the 2019 Edition of the California Energy Code, the 2019 Edition of the California Residential Code, 2019 Edition of the California Green Building Code and Adopting Other Regulations Relating to Building Requirements.**

Mayor Cusack opened the public hearing at 7:39 p.m.

Patrick Carroll presented the staff report as filed with the Town Clerks Office.

Discussion ensued surrounding the fact that these codes are mandated by the State of California

Mayor Cusack closed the public hearing at 7:41 p.m.

MOTION

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

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.

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.

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.

Move to waive the reading of Ordinance No. 516 in its entirety and read by title only.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

Kiel Mangerino, Deputy Town Clerk, read the title to Ordinance No. 516.

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

Introduce Ordinance No. 516, amending Chapters 8.10, 8. 12 & 8.22 of the Municipal Code as it relates to the adoption of the California Code of Regulations, Title 24, Parts 1-12.

Direct staff to file a Notice of Exemption

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

BUSINESS OF THE COUNCIL

10. Discussion of Fencing of Outside Storage and use of Cargo containers in commercial and industrial zones.

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

Mayor Cusack enquired about temporary fencing and allowing temporary storage in the village area.

Discussion ensued about allowing similar fencing as in the village, and what constitutes adequate screening.

R and B Tool Supply, Apple Valley, commented on their need to place a container on their property in the village.

Geri Inger, Apple Valley, raised her concern about the amount of containers on private property on Bear Valley Road.

Ms. Lamson clarified that Cargo containers, with the exception of the Village, are not allowed in Commercial or Industrial zones unless they are completely screened from view with appropriate screening materials or altered with a cover over the exposed metal with materials that are consistent or compatible with the main structure.

It was the consensus of the Town Council to direct staff to:

- 1) Continue to allow for the exception in the C-S and C-V zone where storage can be screened with open fencing with pilasters and metal rails or pickets;
- 2) Continue to not allow storage on vacant lots;
- 3) Maintain the description of "Visible Storage";
- 4) Continue to not allow chain link fencing, with or without slats, to screen storage on developed lots;
- 5) Continue to not allow razor wire and barbed wire, with the exception of law enforcement tow yards;
- 6) Continue to allow the use of chain link on interior side yards and rear yards, not adjacent to public rights of way in the NAVISP. But still require solid block or decorative walls to screen storage adjacent to the rights of way on frontages and street side yards. Decorative screening material may include vinyl opaque fencing, and,
- 7) Limit the use of cargo containers to only the Village districts of C-V and C-S districts, allowing a maximum of 2 and require them to be in the rear yard and painted to match the main structure.

11. Approve Entering into a Long-Term Renewable Energy Contract with Direct Energy Business Marketing, LLC

Sydney Harris, Director of Finance, presented the staff report as filed with the Town Clerks Office.

MOTION

Motion by Council Member Bishop, seconded by Council Member Emick to approve entering into a long-term renewable energy contract with Direct Energy Business Marketing, LLC for Apple Valley Choice Energy.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

12. Approve Entering into a Long-Term Renewable Energy Contract with 3 Phases Renewables Inc.

Sydney Harris, Director of Finance, presented the staff report as filed with the Town Clerks Office.

MOTION

Motion by Council Member Emick, seconded by Mayor Pro Tem Nassif to approve entering into a long-term renewable energy contract with 3 Phases Renewables Inc. for Apple Valley Choice Energy.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

13. Apple Valley Choice Energy – 2018 Power Content Label and Attestation.

Sydney Harris, Director of Finance, presented the staff report as filed with the Town Clerks Office.

MOTION

Motion by Mayor Pro Tem Nassif, seconded by Council Member Emick to endorse the accuracy of information presented in Apple Valley Choice Energy's 2018 Power Content Label based on staff's review and independent auditor report.

Vote: Motion carried 5-0-0-0

Yes: Council Members Bishop, Emick, Leon, Mayor Pro Tem Nassif, Mayor Cusack.

Absent: None

REPORTS, REQUESTS AND COMMUNICATIONS

NONE

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

DEPARTMENTAL REPORTS AND BUSINESS

Doug Robertson, Town Manager, commented on the Lewis Center's 9/11 presentation tomorrow, September 11. He stated that this Thursday is the Concert in the Courtyard featuring the band Caliente, with the follow weeks performance given by Greasewood Brothers. He announced that the Community Cleanup and Tire Amnesty Day will be held on Saturday, September 21. He also informed the Council that staff is working on scheduling the joint workshop of the Planning Commission and Town Council with the date being released soon.

CLOSED SESSION

14. Closed Session

Mayor Cusack adjourned the meeting of the Apple Valley Town Council at 8:15p.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.: CIVDS1600180 – Town of Apple Valley vs. Apple Valley Ranchos Water Company Et Al.
- E. Conference with Legal Counsel – Existing Litigation – Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9, Case No.: CIVDS1925188 – Town of Apple Valley vs. Hai Do et al.
- F. Negotiations with Real Property Negotiator – Parcel Numbers: 0440-096-17 and 18, Apple Valley; Negotiating Parties: Interested parties; Town Negotiator(s) -Town Manager. Negotiations involve both price and terms.

Upon returning from Closed Session at 8:49 p.m., Mayor Cusack announced that there was no reportable action taken.

ADJOURNMENT

Motion by Council Member Emick, seconded by Mayor Pro Tem Nassif and unanimously carried, to adjourn the meeting of the Apple Valley Town Council at 8:50 p.m.

Larry Cusack, Mayor

Kiel Mangerino, Deputy Town Clerk