

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

**REGULAR MEETING**

**MINUTES – November 12, 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 Brother Cary Packer, Church of Jesus Christ of Latter-Day Saints.

**PRESENTATIONS:** None

**PUBLIC COMMENTS**

George Dawly, Apple Valley, expressed concern regarding the growing homeless population near his residence. He stated that the homeless community includes mobilehomes, trash and other items. He also commented on the need to repave the streets in his area.

Bud Giboney, Apple Valley, commented on the need for a four-way sign at Jess Ranch Parkway. He stated that he has been discussing this matter with the Town Engineer and Council.

Al Rice, Apple Valley, commented on the Towns Financial statements and the Town's line of credit usage. He questioned the need to have to repay these funds and expressed concern over future generations obligation to pay this debt.

Bill Inger, Apple Valley, briefed the Town Council on his perspective of the trial with the Town of Apple Valley and Liberty Utilities.

## 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. Special Meeting – November 20, 2019 – Conference Center**

**Session begins at 6:00 p.m.**

##### **B. Regular Meeting – December 10, 2019 – Council Chamber**

**Regular Session at 6:30 p.m.**

## TOWN COUNCIL CONSENT AGENDA

La Vonda M-Pearson, 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 recusing 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 recusing 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 recusing 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 recusing 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 recusing 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 recusing from voting on these warrants.

Council Member Leon has a remote interest in specific warrants on tonight's Commercial Warrants dealing with Solution Strategies as a landlord to this entity. Therefore, she will be recusing herself from voting on the warrants for this business.

Council Member Leon confirmed that he would be recusing from voting on these warrants.

## **MOTION**

Motion by Council Member Emick, seconded by Council Member Bishop, to approve the Consent Calendar items numbered 1, 3, 5, 6, 7, 8 and 10; and that items numbered 2, 4 and 9 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 of the Town Council.**  
**A. Regular Meeting – October 22, 2019**  
**Recommendation:**  
Approve the subject minutes as part of the consent agenda.
3. **October 2019 Payroll/Benefits Warrants Schedule.**  
**Recommendation:**  
That the Town Council receive, ratify and file the Payroll/Benefits Schedule.
5. **Second Reading Of Ordinance 520 of the Town of Apple Valley, California, Amending Title 9 "Development Code" of the Town of Apple Valley Municipal Code Modifying Table 9.35.030-A "Permitted Uses" of Chapter 9.35 "Commercial and Office Districts" and Table 9.45.030-A "Permitted Uses" of Chapter 9.45 "Industrial Districts" as Needed to Address Current Trends and Remove Outdated Language and Replacing the Conditional Use Permit Process with a Special Use Permit Process for uses that have Limited Impacts Upon the Surrounding Property Owners.**  
**Recommendation:**  
Adopt Ordinance 520
6. **Second Reading of Ordinance 521 of the Town of Apple Valley, California, Amending Title 9 "Development Code" of the Town of Apple Valley Municipal Code to Allow, Through the Deviation Permit Process, a Minor Reduction to Setbacks and Landscaping and an Increase in Building Height and Number of Compact Parking Spaces and a Reduction of Parking Spaces Required for Accessory Uses from the Standards Found in Chapter 9.35 "Commercial and Office Districts".**  
**Recommendation:**  
Adopt Ordinance 521
7. **SB 2 Planning Grants Program**  
**Recommendation:**  
Adopt Resolution No. 2019–32 approving and authorizing (1) the submittal of grant application for SB 2 Planning Grants Program Funds; (2) authorize the Town Manager to submit grant application; and (3) authorize the Town Manager to execute all matters pertaining to assurances and agreements as required by California Department of Housing and Community Development.
8. **Acceptance of Work for Resurfacing 2019-02 – Project No. 2019-02**  
**Recommendation:**
  - A. Accept the work completed as part of the Resurfacing 2019-02 Project No. 2019-02 for a total contract cost of \$1,922,773.34.
  - 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.

**10. Updated Schedule of future Development Code Amendment Discussions**

**Recommendation:**

Receive and file

**PULLED FROM CONSENT**

**2. October 2019 Commercial Warrants and Wire Transfer Schedule.**

Bill Inger, Apple Valley, noted that he would be speaking on Items numbered 2 and 4 consecutively.

Mr. Inger asked Mayor Cusack to have the Town Manager explain how the process works to pull funds from the line of credit. He also questioned line items on the commercial warrants that he believed pertained to the line of credit. He stated that a total of \$6 million has been withdrawn and he felt that Town Hall and the parking lot have been encumbered in the line of credit debt.

Doug Robertson, Town Manager, explained the process to withdraw funds from the line of credit. He also noted that Town Hall would not be encumbered until the withdrawal amount exceeds \$5 million.

**MOTION**

Motion by Council Member Emick, seconded by Council Member Leon, 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

**Council Member Leon, Mayor Pro Tem Nassif and Mayor Cusack recused themselves from voting on specific warrants as noted in the disclosure statement.**

**4. Quarterly Treasurer's Report July-Sept 2019**

**MOTION**

Motion by Council Member Emick, seconded by Council Member Leon to receive and file the July-September 2019 Quarterly Treasurer's Report.

Vote: Motion carried 5-0-0-0

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

Absent: None

**9. A Resolution of the Town Council of the Town of Apple Valley, California, Approving the Final Findings and Recommendations from the Classification and Compensation Study, Amending the Classification and Salary Plan and Salary Schedule**

Al Rice, Apple Valley, questioned the proposed changes in the Classification and Compensation Study. He did not believe that the consultants hired to complete this study were qualified to handle the San Bernardino County labor market. He also commented on the 100 percent competitive market listed in the report.

**MOTION**

Motion by Council Member Cusack, seconded by Mayor Pro Tem Nassif, to adopt the attached Resolution No. 2019-32, a Resolution of the Town Council of the Town of Apple Valley, California, approving the final findings and recommendations from the 2019-2020 Classification and Compensation Study and amending the current Classification and Salary plan to adjust for the study findings.

Vote: Motion carried 5-0-0-0

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

Absent: None

**PUBLIC HEARINGS**

**11. Development Code Amendment No. 2019-011, an Amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code to Provide the Community Development Director the Authority to Approve Requests for Intensity Bonuses or Concessions Based Upon Enhanced Site Amenities and/or Sustainable, Environmentally Supportive Commercial or Industrial Projects.**

Mayor Cusack opened the public hearing at 7:19 p.m.

Lori Lamson, Assistant Town Manager, presented the staff report as filed with the Town Clerk. She noted that approval of this item would assist in expediting and streamlining the process.

There being no requests to speak, Mayor Cusack closed the public hearing at 7:24 p.m.

**MOTION**

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

- A. 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.

B. Find the facts presented within the staff report, including the attached Planning Commission Resolution No. 2019-014 adopted September 18, 2019, support the required Findings for approval of the proposed Development Code Amendment and adopt the Findings.

C. Move to waive the reading of Ordinance No. 522 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

La Vonda M-Pearson, Town Clerk, read the title to Ordinance No. 522.

**MOTION**

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

D. Introduce Ordinance No. 522 approving Development Code Amendment No. 2019-011; and

E. 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

**BUSINESS OF THE COUNCIL**

**12. Request to Allow Overhead Power Lines, High Desert Underground**

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

Discussion ensued regarding the need for establishing a set of standards/guidelines for undergrounding projects.

Council Member Leon questioned whether or not this is a project that could be developed through the PBID.

Mr. Miller explained that undergrounding utilities could be considered a beautification in the area. He also noted that the owners are willing to sign a statement stating that they will not oppose an assessment in the future. He said the signed statement would follow the land.

Discussion ensued regarding the high cost to underground utilities.

**MOTION**

Motion by Council Member Emick, seconded by Council Member Bishop, to approve overhead utility poles and lines to remain in vicinity of the High Desert Underground

Facility at Ottawa Road and Manhasset Road subject to the signing of an agreement allowing for future assessments on the property; and to direct staff to work with the applicant on the installation of a street light on Ottawa Road and Manhasset Road.

Vote: Motion carried 4-0-0-1

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

Abstain: Mayor Cusack

### **13. Discussion of Accessory Tank Setbacks and Landscape Buffer Regulations**

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

Ms. Lamson requested the Town Council review the items listed and provide direction and/or comments to staff. A lengthy open discussion ensued with direction given regarding whether or not to:

- Continue to require a 10-foot landscape setback on the street frontage and street side of a project and allow a portion of that landscape setback to be within the right of way - Discussion
- Add a provision that the 10-foot landscape strip can be in the right of way provided that the ultimate dedication of right of way has been dedicated - Discussion
- Include a definition of Enhanced Landscaping;
- Maintain the provision for projects with amenities, which allows the reduction in setbacks of the structure or canopy by 10% and reduce the amount of overall landscaping;
- Enhanced/Additional landscaping can be an incentive to reduce the setbacks of a structure or canopy by 10%, but not the setbacks of a tank;
- A provision could be included that this landscape reduction for said amenity, could include a reduction in the landscape strip along the right of way, up to 2 feet in width or the overall percentages currently allowed, whichever is greater;
- Parking stalls shall continue to be setback 10 feet from a street frontage or street side property line and 5 feet from an interior side or rear setback - Discussion
- Parking stalls adjacent to residential shall continue to be setback 25 feet from the side or rear property line; proposed 5 feet
- Tanks shall not be located in landscape setbacks or clear sight triangles;
- Tanks shall be accessible to large vehicles or RV's; - Yes for propane

- Tanks shall be required to have a low wall surrounding three sides when adjacent to a right of way, shielding the tank from view from the right-of-way. Bollards should be installed on the open side of the wall, and
- Only allow encroachment of an above ground tank into the landscape planter with a Deviation Permit, if it maintains a 10-foot setback from the right-of-way. This is consistent with the Fire Code.

This was a receive and file item only. Development Code Amendments will be prepared and brought back for review and approval if needed.

## REPORTS, REQUESTS AND COMMUNICATIONS

**None.**

## TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

Doug Robertson, Town Manager, announced in addition to "No Shave November" the following upcoming events:

- November 23, 2019 – Turkey Run at the Apple Valley Recreation Center beginning at 8:00 a.m.
- December 3, 2019 – Santa Fun Run at Civic Center Park beginning at 4:00 p.m.
- December 3, 2019 – Tree Lighting with Santa at Town Hall beginning at 5:00 p.m.
- December 7, 2019 - Polar Express Movie Night at the Conference Center beginning at 6:30 p.m.
- December 7, 2019 – Visit with Santa – Apple Valley Dog Park beginning at 3:00 p.m.

### **14. Closed Session**

Mayor Cusack adjourned the meeting to closed session at 8:12 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 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 Nos.: CIVDS1619242, CIVDS 1620483 – De La Cruz vs. Town of Apple Valley.
- F. 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

**ADDENDUM**

- G. Conference with Real Property Negotiators – Pursuant to Government Code. Section 54956.8. Property: Parcel Numbers 04730941014; Agency Negotiator: Town Manager and Town Engineer; Negotiating Parties: Interested Parties; Brayan Martines and Amanda Martinez; Under Negotiation: Price and Terms of Payment.

Upon returning from Closed Session at 9:58 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 9:59 p.m.

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Larry Cusack, Mayor

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La Vonda M-Pearson, Town Clerk

