

**AGENDA**

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

**July 14, 2020**

**REGULAR SESSION BEGINS AT 6:30 P.M.**

**Call to Order:**

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

Roll call was taken with the following members present:

Roll Call

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

Absent: None.

**OPENING CEREMONIES**

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

**PRESENTATIONS:** None.

**ANNOUNCEMENTS**

Thomas Rice, Town Attorney, presented the Town Council with an urgent item that arose after the posting of the agenda concerning Town Executive Order 2020-04, Outdoor Operations and Guidelines for Business’.

**MOTION**

Motion by Mayor Pro-Tem Emick, seconded by Council Member Leon, that an immediate need to add an item to the agenda arose after the posting of the agenda. Motion to add Agenda Item Number 11A “Confirm the Town Manager’s Emergency Executive Order No. 2020-04, Relating to Outdoor Operations and Guidelines, Pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(A)”

Vote: Motion carried 5-0-0-0

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

Absent: None

**PUBLIC COMMENTS**

Due to technical difficulties, public comments were moved to later in the agenda.

**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 Cusack commented on committee meetings and events that he attended.  
Mayor Pro-Tem Emick commented on committee meetings and events that he attended.  
Mayor Nassif commented on committee meetings and events that he attended.

### **Recessed Meeting**

Mayor Nassif adjourned the meeting of the Town Council at 7:10 p.m. due to the need to make repairs to audio system.

### **Meeting Reconvened**

Mayor Nassif reconvened the meeting of the Town Council at 7:15 p.m.

## **PUBLIC COMMENTS**

A phone call was placed to Melissa Wetzel, Apple Valley, who commented on the current state of Covid-19 in the state of California and San Bernardino County.

Mayor Nassif read the public comment submitted by Gary Childress.

## **TOWN COUNCIL ANNOUNCEMENTS**

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

**None.**

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

**A. Regular Meeting – July 28, 2020 – Council Chamber  
Regular Session at 6:30 p.m.**

## **TOWN COUNCIL CONSENT AGENDA**

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

Council Member Leon has a remote interest in specific warrants on tonight's Commercial Warrants dealing with Solution Strategies and Christian Brothers as a landlord to these entities. Therefore, she will be recusing herself from voting on the warrants for these businesses.

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

Council Member Cusack 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,

Council Member 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 Council Member Cusack is maintained on file in the Town Clerk's Office and available for review at the dais.

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

Mayor 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 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 Nassif is maintained on file in the Town Clerk's Office and available for review at the dais.

Mayor Nassif confirmed that he would be recusing from voting on these warrants.

Council Member Cusack and Mayor Nassif also stated that they would be recusing from voting on Agenda Item Number 6 dealing with the Highway 18 Shoulder Median Improvement Project as property owners in the immediate area.

## **MOTION**

Motion by Mayor Pro Tem Emick, seconded by Council Member Bishop, to approve the Consent Calendar items numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, and 11 as recommended and that Agenda Item Number 4 be pulled for discussion., with Mayor Nassif, Council Member Cusack recusing from item 6.

Vote: Motion carried 5-0-0

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

Absent: None

Council Members Cusack, Leon and Mayor Nassif recused from voting on specific items as noted.

**1. Approval of Minutes of the Town Council.**

**A. Regular Meeting – June 23, 2020.**

**Recommendation:**

Approve the subject minutes as part of the consent agenda.

**2. June 2020 Commercial Warrants and Wire Transfer Schedule.**

**Recommendation:**

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

**3. June 2020 Payroll/Benefits Warrants Schedule.**

**Recommendation:**

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

**5. Award of Contract, Rio Vista Safe Routes to School Project.**

**Recommendation:**

A. Award a contract to Horizons Construction Co. Int'l, Inc. for the Rio Vista Safe Routes to School Project subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager;

B. Approve Budget Amendment

**6. Acceptance of Work for Highway 18 Shoulder Median Improvement Project No. 2020-02.**

**Recommendation:**

- A. Accept the work completed as part of the Highway 18 Shoulder Median Improvement Project for a total contract cost of \$1,031,043.26.00.
- 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.

**7. Award of Professional Services Agreement for the Kissel Lift Station Sewer Line Project.**

**Recommendation:**

Award a Professional Services Agreement to Merrell-Johnson for the Kissel Lift Station Sewer Line project subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager.

**8. Purchase Of Sedaru Sewer Utility Management Software Solution.**

**Recommendation:**

Approve the purchase of the Sedaru Utility Management Software Solution, implementation services, and managed services agreement, in the amount of \$70,330.00.

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

**Recommendation:**

Receive and file

**10. Confirm the Town Manager's Emergency Executive Order No. 2020-03, Relating to Outdoor Dining, Pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(A)**

**Recommendation:**

Staff recommends that the Town Council confirm the Town Manager's Emergency Executive Order No. 2020-03, relating to outdoor dining, pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(a).

**11. A Resolution of the Town Council of the Town of Apple Valley Authorizing the Town Manager to Apply for, Receive and Approve Grant Funds for the Permanent Local Housing Allocation.**

**Recommendation:**

That the Town Council adopt Resolution No. 2020-38, a Resolution of the Town Council of the Town of Apple Valley authorizing the Town Manager to apply for, receive and approve grant funds for the Permanent Local Housing Allocation (PLHA).

**PULLED FROM CONSENT**

**4. Request to Vacate a Portion of Outer Highway 18 South Adjacent to Lots 18 and 19 of Tract Map No. 4492.**

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

Discussion ensued regarding landscaping requirements for the vacated portion of Outer Highway 18, and if Nico Plaza is required to landscape the lots.

## **MOTION**

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

- A. Find that a 16-foot wide portion of the street easement of Outer Highway 18 South, located adjacent to Lots 18 and 19 as shown on Tract Map 4492, has been superseded by relocation, and is in excess of right-of-way not required for street purposes; and the proposed vacation is exempt from CEQA;
- B. Adopt Resolution No. 2020-37 “A Resolution of the Town Council of the Town of Apple Valley, California, vacating a portion of street easement at Lots 18 and 19 of Tract Map 4492, pursuant to the Streets and Highway Code Section 8333-8334.5”;
- C. Instruct the Town Clerk to cause the Resolution vacating a portion of the street easement to be recorded in the office of the County Recorder of the County of San Bernardino pursuant to Section 8336 of the Streets and Highways Code.

Vote: Motion carried 5-0-0-0

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

Absent: None

### **11A. Confirm the Town Manager’s Emergency Executive Order No. 2020-04, Relating to Outdoor Operations and Guidelines, Pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(A)**

Doug Robertson, Town Manager, explained the executive order and its implication for business’ in the Town.

Discussion ensued concerning business’ that will be closed through Statewide Public Health Order July 13, 2020 and the benefit of outdoor operations for business owners.

## **MOTION**

Motion by Council Member Bishop and Mayor Pro-Tem Emick to confirm the Town Staff recommends that the Town Council confirm the Town Manager’s Emergency Executive Order No. 2020-04, implementing outdoor operation guidelines, pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(a).

Vote: Motion carried 5-0-0-0

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

Absent: None

## **PUBLIC HEARINGS**

### **12. Appeal (No. 2020-001) of the Planning Commission’s Denial Of Conditional Use Permit No. 2019-005 and Deviation Permit No. 2019-005, A Request to Construct a Construct a Seventy-Five (75)-Foot Tall Wireless Telecommunications Tower Designed as a Mono-Eucalyptus and Deviation to Allow the Wireless Communication Tower to be Located Less Than 500 Feet to Residentially Zoned Property and Located Less Than 750 Feet to an Existing Tower.**

Mayor Nassif opened the public hearing at 7:45 p.m.

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

Mayor Nassif asked questions about the existing and potential cellular towers for this lot.

Discussion ensued regarding the existing parking requirements and if the loss of the community room would impact the parking for the site.

Council Member Cusack asked about the distance from the residential to the commercial zone areas.

Racheal Davidson, speaking for the applicant, explained that this is an important cell site for first responders and requested help from the Town to move the project forward.

Council Member Leon asked if the applicant had the full support of the fire department especially in regard to the parking.

Tim Brown, applicant, explained that this application was brought to the Town Council to facilitate discussion of what Crown Castle can do to move this project forward and improve communication with all parties to determine how to proceed with construction.

Council Member Bishop questioned how this Tower would affect the 911 coverage in this area.

Discussion ensued regarding buffer areas to residential zones.

Mayor Nassif recognized the following individuals who requested to speak by phone on this item.

Jeanne Lyles, Apple Valley, strongly opposed the building of the cell phone tower near their homes, as there are other cell towers on the property that are already close to neighborhoods. She also expressed concern regarding the removal of parking.

Timiko Fermin, Apple Valley, noted that he understood the need for change and wants what is best for the Town. However, he believes that Crown Castle is asking for too many deviations from the Town's guidelines. He respectfully requested that the Town Council deny the project.

Jim Tallo, Apple Valley, believed that the residents of the Town should be the top priority of the Town Council, and felt that this project would bring a derogatory impact on the citizens of Apple Valley.

Lisa Fox, Apple Valley, stated that she lives directly next to the fire station and believed that the tower will severely depreciate their home values.

David Hernandez, Apple Valley, is concerned of the blight that the tower could create as well as concerns about the 5G technology.

Kiel Mangerino, Deputy Town Clerk, read the public comment from Marcia Clift into the record.

There being no additional requests to speak, Mayor Nassif closed the public hearing at 8:45 p.m.

Discussion ensued surrounding setbacks from single family residences. It was noted that as a preferred location the cell can be within 137 feet and 190 feet from a residential residence.

The Town Council questioned how preferred locations are chosen and if the list of locations could be changed as need for this technology grows.

### **MOTION**

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

- A. Find that pursuant to the state guidelines to implement the California Environmental Quality Act (CEQA), section 15270 (a), that a project which is denied is exempt from CEQA.
- B. Direct staff to work with planning commission and the applicant to find sites that would work for this project and bring back a development code amendment.
- B. Find the facts presented within the staff report for the Council hearing of July 14, 2020, including the comments of the public and the planning commissioners as reflected in the minutes of the Planning Commission meeting of May 6, 2020, and the record as a whole as discussed and considered by the Council, including the negative findings that, due to the small size of the parcel and existing on-site improvements, the proposed wireless facility negatively impacts the function of the site and visually impacts the surrounding neighborhood.
- C. Deny Conditional Use Permit no. 2019-005 and Deviation no. 2019-005.

Vote: Motion carried 5-0-0-0

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

Absent: None

### **13. Resolution 2020-39, to Record Delinquent Animal Control Fees, Utility Fees and Costs and Code Enforcement Fees Against Real Property Located in the Town of Apple Valley and Directing that Said Assessments Constitute a Lien Upon Said Properties.**

Mayor Nassif opened the public hearing at 9:15 p.m.

Sydney Harris, Finance Director, presented the staff report as filed with the Town Clerk

There being no requests to speak, Mayor Nassif closed the public hearing at 9:17 p.m.

### **MOTION**

Motion by Council Member Bishop, seconded by Mayor Pro-Tem Emick, to adopt Resolution No. 2020-39, confirming delinquent animal control, utility and code enforcement fees and costs against real property located in the Town, and directing that said assessments constitute a lien upon said properties.

Vote: Motion carried 5-0-0-0

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

Absent: None

**BUSINESS OF THE COUNCIL**

**14. Adopt Resolution 2020-40, a Resolution of the Town Council of the Town of Apple Valley, California, Designating July as “Parks Make Life Better” Month.**

David Coleman, Parks and Recreation Manager, presented the staff report as filed with the Town Clerk

**MOTION**

Motion by Mayor Pro-Tem Emick, Seconded by Council Member Leon, to adopt Resolution 2020-39, designating July as “Parks Make Life Better” Month.

Vote: Motion carried 5-0-0-0

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

Absent: None

**15. Discussion of modifying the Development Code regulations regarding the placement of metal cargo containers for storage purposes.**

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

Discussion ensued surrounding the placement of cargo containers, and how they could be screened.

It was the consensus of the Town Council to direct staff to enforce the code as adopted.

**16. Consider the Adoption of Resolution Extending the Temporary Moratoria on Evictions Due to Non-Payment of Rent by Residential and Commercial Tenants Impacted by the Novel Coronavirus (Covid-19) During a Period of Local Emergency to September 30, 2020**

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

**MOTION**

Motion by Mayor Pro-Tem Emick, Seconded by Council Member Bishop to adopt a resolution extending the temporary moratoria on evictions due to non-payment of rent by residential and commercial tenants impacted by the novel coronavirus (COVID-19) during a period of local emergency to September 30, 2020.

Vote: Motion carried 5-0-0-0

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

Absent: None

**REPORTS, REQUESTS AND COMMUNICATIONS**

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



## **DEPARTMENTAL REPORTS AND BUSINESS**

Doug Robertson, Town Manager, commented on the Towns firework show held that mirrored the governors mandate and county health orders. He thanked staff for their work ensuring a show for our residents. He also apologized to the Council and citizens about the technology issues earlier in the meeting.

### **CLOSED SESSION**

#### **17. Closed Session**

Mayor Nassif recessed the meeting of the Apple Valley Town Council at 9:35 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.

Upon returning from Closed Session at 10:14 p.m. Mayor Nassif announced that there was no reportable action taken.

**ADJOURNMENT**

**MOTION**

Motion by Mayor Pro Emick, seconded by Council Member Leon and unanimously carried, to adjourn the meeting of the Apple Valley Town Council at 10:15 p.m.

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Scott Nassif, Mayor

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Kiel Mangerino, Deputy Town Clerk