

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

**REGULAR MEETING
MINUTES – May 28, 2013**

CALL TO ORDER:

Mayor Emick called to order the meeting of the Apple Valley Town Council/Successor Agency at 5:02 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Members Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick. Absent: None.

PUBLIC COMMENTS

CLOSED SESSION

MOTION

Motion by Mayor Pro Tem Bishop, seconded by Council Member Stanton and unanimously carried, to adjourn to Closed Session at 5:03 p.m. to discuss the following:

1. Closed Session

- A. Negotiations with Real Property Negotiator – Property located at 15200 Rancherias Road, Apple Valley; Negotiating Parties: Golden Round Eye Management Company, Mr. Chet Hitt and Mr. Kan Loi; Negotiator(s): Town Manager or Finance Director or Designee. Negotiations involve both price and terms of payment.
- B. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one or more potential cases).

Upon returning from Closed Session at 6:47 p.m., Mayor Emick announced that there was no reportable action taken.

TOWN COUNCIL REGULAR SESSION

Mayor Emick called to order the regular session of the Apple Valley Town Council at 6:48 p.m.

OPENING CEREMONIES

INVOCATION:

The Invocation was given by Pastor Royce Beserra, Church for Whosoever

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance will be led by Council Member Cusack.

PRESENTATIONS:

Apple Valley Greener Way of Life – Joseph Moon, Special Projects Manager announced the winners with the assistance of Ms. Sharon Mitchell, Burrtec, for the Town of Apple Valley Greener Way of Life.

Competition Winners:

- Shayla Davis, Third Place
- Alysa Marquez, Second Place
- Haley Ortiz, Grand Prize Winner

School Winners:

- Mariana Academy - \$500.00 Winner
- Desert Knolls Elementary School - \$1000.00 Winner

Victor Valley Transportation Authority (VVTa) – Kevin Kane

Executive Director, Kevin Kane, provided the Council with a basic overview of the Comprehensive Operations Analysis for VVTa.

PUBLIC COMMENTS

Peter Allan, Acting Superintendent, Victor Valley College, briefed the Town Council on Victor Valley College and the benefit that its education system provides the community. He stated that the college has full accreditation.

Pat Hanson, Apple Valley, commented on the Veteran's Day Remembrance celebration.

Lawrence McCarthy, Apple Valley, expressed concern regarding the Request for Proposal that was issued for the food service for the Apple Valley Golf Course.

Tom Piper, Apple Valley, stated that the Town has seen an increase in government aid. He believes job skills are needed for Apple Valley residents and provided suggestions to accomplish this goal.

Della Lancraft, Apple Valley, expressed concern regarding the condition of Lyons Park. She believed some upkeep needs to be done.

Linda Lucas, Apple Valley, stated that she believed the Town of Apple Valley was doing a great job with its events and commended the Town on its success. She stated that she was participating in an event at Lyons Park when she fell and injured herself. She respectfully requested that something be done to improve the condition of the park.

APPLE VALLEY CHAMBER OF COMMERCE – BUSINESS RETENTION UPDATE

Janice Moore, CEO, Apple Valley Chamber of Commerce, commented on local conferences and shows that she attended and upcoming events that will be hosted by the Chamber of Commerce. She also presented a PowerPoint highlighting Small Business Start Up Guide; a new tool that is available to assist small businesses in Apple Valley.

COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

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

Council Member Stanton commented on committee meetings and events that she attended. She also commented on the Animal Services on-call phone service that is provided during periods when the shelter is closed. She recommended that this service be improved.

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

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

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for future agenda:

Mayor Pro Tem Bishop questioned the status of an update to be provided to the Town Council on synthetic drugs. Mr. Robinson stated that staff is working with the Sheriff's department on this issue and that staff will be providing the update in the near future.

Council Member Stanton commented on the request for a vicious dog ordinance and reminded the public that we are looking at something to help the community.

Council Member Nassif commented on the North Apple Valley Specific Plan and the water issue and infrastructure. He believed the Council should regroup in order to work out a solution. He requested that an update on this issue be provided and possibly request the Ad Hoc committee discuss this matter.

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

A. Special Meeting – Thursday, May 30, 2013 – Council Chambers

B. Regular Meeting – Tuesday, June 11, 2013 – Council Chambers

Closed Session at 5:00 p.m.

Regular Session at 6:30 p.m.

TOWN COUNCIL CONSENT AGENDA

MOTION

Motion by Council Member Nassif, seconded by Council Member Cusack, to approve the Consent Calendar items numbered 2-6.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

2. Approval of Minutes of the Town Council

A. Regular Meeting – May 14, 2013

Recommendation:

Approve the subject minutes as part of the consent agenda.

3. Claimant – Susan Nethers

Recommendation:

Reject the claim from Susan Nethers

4. Adopt Resolution No. 2013-20, A Resolution in Support of H.R. 1676, The Johnson Valley National Off Highway Vehicle Recreation Area Establishment Act

Recommendation:

Adopt Resolution No. 2013-20, A Resolution in Support of H.R. 1676, the Johnson Valley National Off Highway Vehicle Recreation Area Establishment Act.

5. Review and Approval to Advertise the Apple Valley Road and Town Center Drive Improvements – Project 2013-03

Recommendation:

1. That the Town Council review and approve the project plans, specifications, and bid documents for the construction of the Apple Valley Road and Town Center Drive Improvements project.

2. That the Town Council authorize staff to solicit bids for construction of said project.

6. Award Contract for the Micro Surface 2011 Project, Project Number 2012-13 Spring 2013

Recommendation:

1. Award Contract to American Asphalt South for The Micro Surface 2012-13 Spring 2013 Project.

2. The scope of the project is to be increased (add additional streets) to utilize the entire budgeted amount of the funds.

PUBLIC HEARINGS

7. Park and Recreation Master Plan

Mayor Emick opened the public hearing at 7:55 p.m.

Ralph Wright, Parks and Recreation Manager, presented the staff report as filed with the Town Clerk.

Cindy Mendoza, Consultant, presented the proposed Master Plan and highlighted the recommended changes that have been approved by the Parks and Recreation Commission.

The Town Council thanked staff and Ms. Mendoza for the excellent presentation and final draft master plan. It was requested that a copy of the presentation be provided to the Town Council.

There being no requests to speak, Mayor Emick closed the public hearing at 8:13 p.m.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to adopt the completed Master Plan of Parks and Recreation Services.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

8. Public Hearing Repealing Resolution No. 2013-14, Specified User Fees at the Apple Valley Golf Course and Authorize the Golf Course Manager to Establish Market-Based Fees at the Apple Valley Golf Course

Mayor Emick opened the public hearing at 8:14 p.m.

Dennis Cron, Assistant Town Manager, Municipal Operations and Contract Services, presented the staff report as filed with the Town Clerk.

Mayor Emick closed the public hearing at 8:19 p.m.

MOTION

Motion by Council Member Cusack, seconded by Mayor Pro Tem Bishop, to repeal Resolution No. 2013-14 and authorize the Golf Course Manager to establish market-based fees at the Apple Valley Golf Course.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

9. Adoption of Urgency Ordinance Regarding Regulation of Medical Marijuana Dispensaries to Clarify Compliance with Federal and State Law and California Case Law

Mayor Emick opened the public hearing at 8:23 p.m.

John Brown, Town Attorney, presented the staff report as filed with the Town Clerk. He explained the reasons for the Town Attorney's office recommendation to adopt an Urgency Ordinance at this time. He clarified that the emergency ordinance is intended to address the anticipated response of marijuana advocates to use offices to collect paperwork and money and give vouchers to individuals and then use mobile or offsite methods to deliver marijuana. He also stated that the Urgency Ordinance is to prevent a re-initiation of store front concepts in another form. Mr. Brown noted that this is an Ordinance that is being considered by a number of cities and counties in California at the present time.

Council Member Stanton commented on the Compassionate Use Act of 1996. She noted that the act makes mention of how marijuana can offer relief to those with certain illnesses. She questioned what other modes may be created if dispensaries are shut down.

John Brown, Town Attorney, responded to the questions by Council Member Stanton. He stated that the ordinance is intended to piggy-back on the California Supreme Court's decision as it relates to City land use. He noted that the Urgency Ordinance can be appropriately modified in the future as the Town sees appropriate.

Leon Ruddock, Apple Valley, believes the Mayor should recuse himself from discussion of this item as a Pharmacist. He commented on the benefit of medical marijuana and those communities that have approved dispensaries in their communities.

Todd Anderson, Apple Valley, chose not to speak.

Elizabeth McClain, Apple Valley, chose not to speak.

Kerry Cannon, High Desert Moms for Marijuana, stated that she was a patient and believed the Town of Apple Valley should take a proactive approach in approving and regulating dispensaries in the Town of Apple Valley. She stated that she was opposed to the urgency ordinance as presented. She also commented that both Mayor Emick and Council Member Cusack had a conflict of interest with this item.

Noni (no last name given), expressed concern regarding HMO healthcare.

Spencer Sitnik, Medical Cannabis City Ordinance, commented on various individuals that he is working with regarding a proposed ordinance that he believes will benefit not only the patients but also provide tax revenue for communities. He respectfully requested the opportunity to present his PowerPoint to the Town Council.

Anthony Grajeda submitted a card to speak, but chose not to speak.

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

Mr. Brown commented on the concerns expressed by the public that Mayor Emick had a conflict of interest. He clarified that according to the Political Reform Act of 1974 adopted by the voters of State of California, it would be necessary for Mr. Emick to determine whether or not his income, source of income or any investment would be materially affected by the adoption of this Urgency Ordinance. Mr. Brown stated that it is his opinion that Mr. Emick does not have a disqualifying interest and can vote on this item.

Mr. Brown also noted that there is an existing provision in Town of Apple Valley's Municipal Code that was affectively following the California Supreme Court's decision that led to the closure of operating medical marijuana dispensaries in the Town of Apple Valley.

Mayor Emick announced that he does not have a conflict of interest in this item.

Mr. Brown commented on the concerns expressed by the public that Council Member Cusack had a conflict of interest.

Council Member Cusack stated that he did not believe he had a conflict of interest with this item; however, if the Attorney recommended, he would recuse himself from voting on this item.

Mr. Brown again commented that he did not believe that Mr. Cusack had a conflict of interest with this item on the bases that his income, source of income or investment would not be

materially affected by the adoption of this item. He stated that he is of the same opinion that Mr. Cusack does not have a disqualifying interest and is free to vote on this item.

Council Member Stanton recommended that this item be brought before the Planning Commission for a workshop discussion.

MOTION

Motion by Council Member Stanton, seconded by Council Member Cusack, to table this item.

Council Member Nassif commented on an article regarding medical marijuana dispensaries and the various regulations that cities and towns individually are trying to enact in California. He believed that leadership at all levels needs to be taken

Council Member Stanton stated that she wanted to ensure that all patients in need are able to obtain their medication. She reminded the Council that all dispensaries in the Town of Apple Valley have closed and therefore requests that the Planning Commission discuss this item as quickly as possible.

Lori Lamson, Director of Community Development, provided additional clarification to this item which includes taking this item to the Planning Commission after the forty-five day time period. She explained that this item would be brought back to the Town Council in July and during that time it will be reviewed by the Planning Commission.

Council Member Stanton and Council Member Cusack withdrew their motion to table.

MOTION

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

1. Read title and, by motion, adopt by four-fifths vote, introduce and pass Urgency Ordinance No. 447, to clarify the scope of the Town's Development Code regarding the regulation of medical marijuana dispensaries in compliance with federal and state law and California case law, entitled:

“AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING ITS DEVELOPMENT CODE TO CLARIFY THE SCOPE OF THE TOWN'S REGULATION OF MEDICAL MARIJUANA DISPENSARIES IN COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW”

2. Direct Staff to review the Town's existing Municipal and Development Code regulations of medical marijuana dispensaries for further compliance with, and enforcement of, federal and state law and California case law; and direct staff to immediately recommend that this item be presented to the Planning Commission for immediate review and study.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

LEGISLATIVE MATTERS

None

REPORTS, REQUESTS AND COMMUNICATIONS

BUSINESS OF THE COUNCIL

10. Defraying Code Enforcement Costs

Jim Andersen, Code Enforcement Manager, presented the staff report as filed with the Town Clerk.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, and unanimously carried, to direct staff to implement Apple Valley Municipal Code Section 1.01.260.

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

Frank Robinson, Town Manager, reminded the Town Council that the budget workshop will be held on Thursday, May 30, 2013 at 5:00 p.m. He also thanked the Town Council and staff, specifically Mr. Orlando Acevedo and Steve Lansburger from the City of Hesperia, for their hard work during the ICSC Conference. He also acknowledged Doug Fenn and Jennifer Heim for their work during the ICSC Conference.

DEPARTMENTAL REPORTS AND BUSINESS:

STAFF REPORTS

CORRESPONDENCE

ADJOURNMENT

Mayor Emick spoke of the loss of Mr. Roland Thomas, the uncle of our Animal Services Manager, Ms. Gina Schwin-Whiteside. He stated that Mr. Thomas' services were held today and respectfully requested that the meeting be adjourned in his honor.

Motion by Council Member Nassif, seconded by Mayor Pro Tem Bishop, and unanimously carried to adjourn the meeting of the Apple Valley Town Council at 9:14 p.m. in honor Mr. Roland Thomas.

Curt Emick, Mayor

La Vonda M-Pearson, Town Clerk