

CITY OF APPLEVALLEY
Dakota County, Minnesota
December 21, 2010

Minutes of the regular meeting of the City Council of Apple Valley, Dakota County, Minnesota, held December 21, 2010, at 8:00 o'clock p.m., at Apple Valley Municipal Center.

PRESENT: Mayor Hamann-Roland; Councilmembers Bergman, Goodwin, and LaComb.

ABSENT: Councilmember Grendahl.

City staff members present were: City Administrator Lawell, City Clerk Gackstetter, City Attorney Hills, Public Works Director Blomstrom, Building Official Brady, Assistant City Administrator Grawe, Human Resources Representative Haas, Finance Director Hedberg, Parks and Recreation Director Johnson, Police Chief Johnson, City Engineer Manson, Police Captain Marben, Community Development Director Nordquist, Human Resources Manager Pearson, and Fire Chief Thompson.

Mayor Hamann-Roland called the meeting to order at 8:03 p.m. Everyone took part in the Pledge of Allegiance to the flag.

APPROVAL OF AGENDA

MOTION: of LaComb, seconded by Bergman, approving the agenda for tonight's meeting, as presented. Ayes - 4 - Nays - 0.

AUDIENCE

Mayor Hamann-Roland asked if anyone was present to address the Council, at this time, on any item not on this meeting's agenda. No one requested to speak.

CONSENT AGENDA

Mayor Hamann-Roland asked if the Council or anyone in the audience wished to pull any item from the consent agenda. There were no requests.

MOTION: of Goodwin, seconded by LaComb, approving all items on the consent agenda with no exceptions. Ayes - 4 - Nays - 0.

CONSENT AGENDA ITEMS

MOTION: of Goodwin, seconded by LaComb, approving the minutes of the regular meeting of December 9, 2010, as written. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, approving issuance of a lawful gambling exempt permit, by the State Gambling Control Board, to Dakota County Voiture 1457, for use on March 17, 2011, at the Apple Valley American Legion, 14521 Granada Drive, and waiving any waiting period for State approval. Ayes - 4 - Nays - 0.

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MOTION: of Goodwin, seconded by LaComb, approving issuance of a lawful gambling exempt permit, by the State Gambling Control Board, to Apple Valley Sons of the American Legion, Squadron 1776, for use on February 12, 2011, April 9, 2011, and July 4, 2011, at the Apple Valley American Legion, 14521 Granada Drive, and waiving any waiting period for State approval. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, approving issuance of a lawful gambling exempt permit, by the State Gambling Control Board, to Post 1776 American Legion Riders, for use on January 15, 2011, February 6, 2011, September 24, 2011, October 15, 2011, and November 23, 2011, at the Apple Valley American Legion, 14521 Granada Drive, and waiving any waiting period for State approval. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-223** amending 2010 and 2011 budgets for uncompleted projects. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, approving revised City Attorney fees for 2011 legal services, as attached to the Assistant City Administrator's memo dated December 21, 2010. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-224** approving the reapportioning of Special Assessment Roll Nos. 579 and 586 in Cobblestone Commercial 3rd Addition. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-225** approving the reapportioning of Special Assessment Roll Nos. 564, 569, 579, and 580 in Cobblestone Commercial 3rd Addition. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-226** ordering the installation of stop sign on Hyland Avenue at Hyland Pointe Court. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-227** approving Metropolitan Livable Communities Act (LCA) Housing Action Plan and authorizing submittal to the Metropolitan Council. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-228** approving and ratifying the Apple Valley Villa Apartments Master Subordination Agreement and Estoppel Certificate. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, approving the Joint Powers Agreement with Dakota County for AV Project 2011-110, Diamond Path Road (CSAH 33) Trail Improvements. Ayes - 4 - Nays - 0.

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- MOTION: of Goodwin, seconded by LaComb, authorizing preparation of Phase I Environmental Site Assessment for AV Project 2011-105, Flagstaff Avenue Extension. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Agreement with Apple Valley Chamber of Commerce to administer the Apple Valley Convention and Visitors Bureau (CVB) through December 31, 2011, as attached to the Assistant City Administrator's memo dated December 21, 2010, and authorizing the Mayor and City Clerk to sign the same. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Agreement for AV Project 2010-139, 2010 Cured-In-Place Pipe Repairs, with Midwest Trenchless Technologies, in the amount of \$25,070.00, and authorizing the Mayor and City Clerk to sign the same. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, accepting Senior Center Project # 0790 – Caulking Sealants as complete and authorizing final payment on the agreement with A. J. Spanjers Company, Inc., in the amount of \$492.25. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, accepting 2009 Fire Engine, Triple Combination Pumper as complete and authorizing final payment on the agreement with Crimson Fire, in the amount of \$223,530.83. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, accepting AV Project 2010-101, 2010 Street Maintenance Project, as complete and authorizing final payment on the agreement with McNamara Contracting, Inc., in the amount of \$171,498.70. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, accepting Playground Equipment – Quarry Point Park as complete and authorizing final payment on the agreement with PlayPower LT, Inc., in the amount of \$70,000.00. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, accepting Playground Equipment – Wallace Park as complete and authorizing final payment on the agreement with PlayPower LT, Inc., in the amount of \$25,000.00. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, accepting Quarry Point Park Sun Shade Structure as complete and authorizing final payment on the agreement with PlayPower LT, Inc., in the amount of \$39,843.91. Ayes - 4 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, accepting Senior Center Project # 3100 – Earthwork/Site Utilities as complete and authorizing final payment on the agreement with Speck-Tacular Companies, Inc., in the amount of \$9,982.00. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, approving ordinance summary for publication of Ordinance No. 906, as described in the City Attorney's memo dated December 17, 2010. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, approving hiring the part-time employees listed in the Personnel Report dated December 21, 2010. Ayes - 4 - Nays - 0.

END OF CONSENT AGENDA

ORDINANCE AMENDING SECTION 35.27 REGARDING LICENSES/PERMITS

Ms. Gackstetter gave the second reading of the proposed ordinance amending Title III of the City Code entitled "Administration" by amending Section 35.27 regarding license and permit fees. The proposed change clarifies that all application and investigation fees for any license or permit, in addition to any annual license fee of \$100.00 or less when no application or investigation fee is paid, shall be non-refundable. The ordinance was prepared by the City Attorney's office. No comments from the public have been received. Staff recommends passing the ordinance.

MOTION: of LaComb, seconded by Bergman, passing **Ordinance No. 907** amending Section 35.27 of the City Code, regarding License/Permit Fees. Ayes - 4 - Nays - 0.

ORDINANCE AMENDING FEES CONTAINED IN CITY CODE

Ms. Gackstetter gave the second reading of the proposed ordinance amending the Fee Schedule Appendix of Title III of the City Code. Fee adjustments are proposed for the cemetery, City fees and materials, consultant services, building inspections and permits, licenses and permits, and utility fees. The fees would be effective January 1, 2011. She noted the proposed rates more accurately reflect the City's costs. Some changes were also recommended as a result of increased fees being charged the City and some were increased according to the Engineering News Record Construction Cost Index.

Ms. Gackstetter stated she received five calls and one visitor interested in learning more about the massage therapy ordinance and associated fees. Four callers commented about the fees being too high while two individuals stated the fees were reasonable. Ms. Gackstetter said the fees for a massage therapy business and a massage therapist are new and were determined jointly by the Police Department and City Clerk. She noted staff considered the results of the fee study completed in December 2008 by PFM Group. She added that the proposed fees are lower than the City's actual costs.

Mayor Hamann-Roland asked if staff compared the fees for licensure with other cities.

Ms. Gackstetter said staff solicited data from 13 communities. She then presented the license and investigation fees for a new license and a renewal license for massage therapy businesses

and massage therapists. She noted Apple Valley's ordinance requires applicants provide in-depth information and that background checks are not only required for therapists but also for the on-site manager and all persons having a 5 percent or greater interest in the business.

Mayor Hamann-Roland stated she is opposed to prostitution within the community. However, she wants to ensure Apple Valley is business friendly and that law-abiding citizens are not being penalized for the inappropriate actions of a few others.

Councilmember Bergman asked why Apple Valley and most of the other communities have a one-year renewal versus a three-year renewal like the City of Hastings.

Police Chief Johnson stated Apple Valley intentionally chose a one-year renewal for its massage therapy licenses because the Police Department wants to review the therapist, managers, and owners annually.

Mr. Joe Jensen, of Massage Envy, stated Massage Envy franchises operate in cities with the highest household income demographics in the twin cities. The majority of those cities are not listed in the comparison presented and the fees are much lower in those cities. He said there is a shortage of massage therapists and many therapists work part time. He believes the proposed fees will prevent therapists from working in Apple Valley, which means they may not be able to staff their business. He was excited to come to Apple Valley but is now considering trying to get out of his lease. He is for licensing but does not like the fee structure. He asked if the Council would consider tabling the massage therapy fees until he is able to meet with staff, a member of the City Council, or the City Attorney. He wants to do business in Apple Valley, but he also wants to be successful and provide a good service for the community.

Councilmember Bergman asked where Mr. Jensen currently operates his businesses.

Mr. Jensen stated he and his wife currently operate businesses in the Cities of Burnsville and Eagan.

Councilmember Bergman noted Apple Valley's fee structure is the same as the City of Eagan's.

Mr. Jensen said he is not as concerned about the business fees as he is about the massage therapist fees. He said the higher cost for the renewal of the massage therapist license makes a difference when therapists are deciding where to work.

Councilmember Goodwin asked if the concern is that there may be opportunities for massage therapists to work in other communities where the fees are lower.

Mr. Jensen affirmed.

Councilmember Goodwin said it may be a good idea to table the fees for massage therapy until Mr. Jensen meets with staff.

MOTION: of Goodwin, seconded by Bergman, tabling the massage therapy business and massage therapist fees and passing **Ordinance No. 908** amending the Fee Schedule Appendix of Title III, Chapter 35, of the City Code by adjusting certain fees and charges effective January 1, 2011. Ayes - 4 - Nays - 0.

Mr. Jensen said he was surprised at how quickly the ordinance was passed and he has concerns regarding other aspects of the ordinance as well. One thing he thinks may have been overlooked and creates an unfair competitive advantage is the licensing exclusion for massage therapists associated with a medical professional or business licensed by the State. Those massage therapists do not need background investigations or need to have their credentials checked.

Ms. Hills said that exclusion is mandated by State Statute. In 2009 the Legislature passed a statute prohibiting municipalities from licensing or permitting massage therapists who work for or are employed by medical professionals. She noted the City of Eagan also has this exclusion in its ordinance.

Mr. Jensen said he is going to work try to change the State Statute.

Councilmember Goodwin suggested Mr. Jensen voice any other concerns he may have regarding the massage therapy ordinance when he meets with staff.

Councilmember LaComb questioned whether the City should have fees which are subsidized and recommended staff look at the fees in a business-like manner. It may or may not be more expensive to do business in Apple Valley but there is a reason why the fees are structured as they are.

Mr. Jensen said he is looking for an even playing field with communities with the same affluence and level of household income as Apple Valley. He does not think Apple Valley is run inefficiently, but questions why the fees are more expensive here.

Mayor Hamann-Roland recommended Ms. Hills also meet with Mr. Jensen and staff. She added that this may be a good time to make any other necessary corrections to the ordinance.

Councilmember Bergman agreed that the ordinance should be looked at.

Mayor Hamann-Roland said it is important the ordinance is balanced and include the necessary elements for public safety as well as enabling businesses to exist and be successful.

Councilmember Goodwin said the other communities' fees do not allow them to cover their costs. He added that most fees are politically set and do not cover the actual cost of doing the work.

Mr. Jensen thanked the Council for their time. He added that he is in favor of licensing and believes it is better for the community.

ORDINANCE AMENDING ELECTRIC PERMITS AND INSPECTIONS

Mr. Blomstom introduced the ordinance amending Chapter 150 of the City Code regulating Electric Permits and Inspections. He stated the City Council discussed this item at the informal meeting on December 9, 2010. He then reviewed the benefits of the ordinance, including improved customer service, reduced delays, and the authority to set the fees. Staff recently learned the Department of Labor and Industry is considering a 15 percent increase to their electrical fees for 2011. If the City takes over this authority, staff proposes keeping the fees flat for 2011. He said staff is recommending waiving the second reading.

Mr. Brady gave the first reading of the proposed ordinance. The goal is to increase customer service while holding or reducing costs. He reviewed the current application process. Electrical permits are currently issued from the Department of Labor and Industry under the supervision of the State Board of Electricity. He noted the State is currently backlogged eight weeks. State law allows cities to create their own electrical inspection program. He then reviewed the proposed permitting process under the City's authority. All work would be done by a contracted inspector on a percentage fee basis.

MOTION: of Goodwin, seconded by LaComb, waiving the procedure for a second reading and passing **Ordinance No. 909** amending Chapter 150 of the City Code regulating Electric Permits and Inspections. Ayes - 4 - Nays - 0.

2011 EMPLOYEE PAY AND BENEFIT PLAN

Ms. Pearson said every year staff reviews the employee Pay and Benefit Plan and recommends changes and modifications if needed. Typically amendments are presented prior to the end of the year so changes can be implemented in the new payroll year. She stated the changes identified in the resolution are consistent with the budget approved by the Council on December 9, 2010.

MOTION: of LaComb, seconded by Goodwin, adopting **Resolution No. 2010-229** approving and implementing the 2011 Employee Pay and Benefit Plan. Ayes - 4 - Nays - 0.

APPOINT TRAFFIC SAFETY ADVISORY COMMITTEE MEMBER

Ms. Gackstetter reviewed her memo dated December 17, 2010, listing applicants for the Traffic Safety Advisory Committee vacancy.

The Mayor called for nominations for the vacancy. Councilmember Goodwin nominated Marian Brown, Thomas Coles, Mark Linde, Daniel Monahan, and Joe Shaw. There being no further nominations, the Mayor declared the nominations closed.

MOTION: of Goodwin, seconded by Bergman, accepting the five nominations for Traffic Safety Advisory Committee. Ayes - 4 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, amending the previously adopted appointment process to reduce the number of candidates by selecting two candidates whose names appear on the ballot. Ayes - 4 - Nays - 0.

The City Clerk prepared ballots and distributed them to the Council who were asked to each select two names from the five nominees. After selections were made, they were tallied and the City Clerk announced that two names remained.

MOTION: of Goodwin, seconded by LaComb, amending the previous appointment process to reduce the number of candidates by selecting one less than the total number of names appearing on the ballot. Ayes - 4 - Nays - 0.

The City Clerk prepared ballots and the City Attorney distributed them to the Council who were asked to each select one name. After selections were made, they were tallied and the City Clerk announced that Joe Shaw received the majority of votes.

MOTION: of Bergman, seconded by Goodwin, adopting **Resolution No. 2010-230** appointing Joe Shaw to the Traffic Safety Advisory Committee for a term expiring March 1, 2013. Ayes - 4 - Nays - 0.

Mayor Hamann-Roland thanked all the applicants who applied and expressed interest in the position.

COUNCIL COMMUNICATIONS

Mayor Hamann-Roland stated the reason the Council moved into the Council Chambers a little late this evening was because they were having a reception for Councilmember LaComb. She then presented a plaque to Councilmember LaComb in appreciation of her service to the community and thanking her for serving on the City Council.

Councilmember LaComb thanked the City Council for appointing her to fill Bob Erickson's term and she thanked the residents for allowing her to serve. She said it has been a true honor. She further thanked her family and friends who supported her in this venture. She commented about the competency and professionalism of staff under the excellent management of City Administrator Tom Lawell. She said Apple Valley is in a good position to face the financial uncertainty projected for the State. She spoke about the history of leadership in the community and the efforts of the current City Council to represent all of the residents in Apple Valley. Leadership requires civility and professionalism as minimum standards. She said there is and should be differences of opinion, but respectful discussion is essential and builds the community. She said it has been a very enjoyable experience to serve the City.

The Council thanked Councilmember LaComb for her service on the City Council.

Councilmember Bergman said he toured the City following last Sunday's snowfall to check the condition of the streets. He commented on the good job the employees do plowing the streets.

He stated it takes approximately 10 hours to plow all the streets when a small amount of snow has fallen. He encouraged citizens to be patient with the plow operators because it takes longer to plow the roads when the snow is thick and/or heavy. He also reminded residents not to blow the snow back into the street when clearing their driveways and sidewalks.

The Council commented on the positive comments they have received and noted Apple Valley's streets are in much better condition than many other communities.

CALENDAR OF UPCOMING EVENTS

MOTION: of Goodwin, seconded by Bergman, approving the calendar of upcoming events as included in the City Clerk's memo dated December 21, 2010, and noting that each event listed is hereby deemed a Special Meeting of the City Council. Ayes - 4 - Nays - 0.

CLAIMS AND BILLS

MOTION: of Goodwin, seconded by Bergman, to pay the claims and bills, on the check register dated December 15, 2010, in the amount of \$1,942,457.80. Ayes - 4 - Nays - 0.

MOTION: of LaComb, seconded by Goodwin, to adjourn. Ayes - 4 - Nays - 0.

The meeting was adjourned at 9:17 o'clock a.m.

Respectfully Submitted,

/s/ Pamela J. Gackstetter
Pamela J. Gackstetter, City Clerk

Approved by the Apple Valley City Council on 01-13-11.