

CITY OF APPLEVALLEY
Dakota County, Minnesota
December 9, 2010

Minutes of the regular meeting of the City Council of Apple Valley, Dakota County, Minnesota, held December 9, 2010, at 8:00 o'clock p.m., at Apple ValleyMunicipalCenter.

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

ABSENT: None.

City staff members present were: City Administrator Lawell, City Clerk Gackstetter, City Attorney Dougherty, Public Works Director Blomstrom, Assistant Finance Director Broughten, Assistant City Administrator Grawe, 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, Liquor Operations Director Swanson, and Fire Chief Thompson.

Mayor Hamann-Roland called the meeting to order at 8:00 p.m. Everyone took part in the Pledge of Allegiance led by Boy Scouts Sam Belden, Jeremy Carnicelli, Will Casey, Travis Diver, and Tyler Steen from Troop 292.

APPROVAL OF AGENDA

MOTION: of Bergman, seconded by LaComb, approving the agenda for tonight's meeting, as presented. Ayes - 5 - 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 - 5 - Nays - 0.

CONSENT AGENDA ITEMS

MOTION: of Goodwin, seconded by LaComb, approving the minutes of the regular meeting of November 23, 2010, as written. Ayes - 5 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, setting the 2011 City Council meeting schedule, in accordance with the adopted policy on the second and fourth Thursdays of each month unless the following Friday is a holiday, as listed in the City Clerk's memo dated December 6, 2010. Ayes - 5 - Nays - 0.

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- MOTION: of Goodwin, seconded by LaComb, approving renewal and issuance of On-Sale and Off-Sale 3.2 Percent Malt Liquor Licenses for 2011, as attached to the City Clerk's memo dated December 6, 2010. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-214** approving submitting the application for Fiscal Year 2011 Dakota County Community Development Block Grant (CDBG) funding of \$137,900.00 for the Housing Rehabilitation Revolving Loan Program as attached to the City Planner's memo dated December 6, 2010, and authorizing the Mayor and City Clerk to sign the same. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Apple Valley Convention and Visitors Bureau (CVB) 2011 budget and marketing plan as attached to the Assistant City Administrator's memo dated December 9, 2010. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-215** approving plans and specifications for 2011-2012 Mowing and Trimming Services Project; and authorizing advertising for receipt of bids, at 2:00 p.m., on January 13, 2011. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Joint Powers Agreement with Dakota County and the City of Lakeville for Transportation Enhancements for Cedar Avenue Transitway, as attached to the Public Works Director's memo dated December 9, 2010, and authorizing the Mayor and City Clerk to sign the same. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Agreement for Sentence to Service (STS) Program Work Crews for 2011 with Dakota County, in the amount of \$24,245.52, and authorizing the Mayor and City Clerk to sign the same. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Agreement for Preventative Maintenance Service for Building Automation System at Hayes Community and Senior Center, with Direct Digital Controls, in the amount of \$2,580.00, and authorizing the Mayor and City Clerk to sign the same. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Agreement for 2011 Water Treatment Chemicals – Chlorine and Hydrofluorosilicic Acid, with Hawkins, Inc., in an amount not to exceed \$55,000.00, and authorizing the Mayor and City Clerk to sign the same. Ayes - 5 - Nays - 0.
- MOTION: of Goodwin, seconded by LaComb, approving the Agreement for 2011 Water Treatment Chemicals – Potassium Permanganate, with DPC Industries, Inc., in an amount not to exceed \$12,500.00, and authorizing the Mayor and City Clerk to sign the same. Ayes - 5 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, accepting AV Project 2010-118, Reconditioning of Hydrants as complete and authorizing final payment on the agreement with Schoenfelder Painting, in the amount of \$813.15. Ayes - 5 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-216** amending the City's Health Care and Dependent Day Care Expense Reimbursement Plan, and authorizing the Mayor and City Clerk to execute the necessary documents. Ayes - 5 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-217** amending the City's Health Reimbursement Arrangement, and authorizing the Mayor and City Clerk to execute the necessary documents. Ayes - 5 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-218** amending the City's Post Employment Health Reimbursement Arrangement, and authorizing the Mayor and City Clerk to execute the necessary documents. Ayes - 5 - Nays - 0.

MOTION: of Goodwin, seconded by LaComb, approving hiring the seasonal employees listed in the Personnel Report dated December 9, 2010. Ayes - 4 - Nays - 0 - Abstain - 1 (Hamann-Roland).

END OF CONSENT AGENDA

PROPERTY TAX LEVY & 2011 CITY BUDGET

Mr. Lawell reviewed the budget development process and the previous dates the Council met regarding the 2011 budget. He noted that during the goal setting session in April, the Council gave clear direction to staff to hold the line on the City's share of the property tax bill for the typical Apple Valley home. All properties in the City received mailed notice of the Truth-in-Taxation meeting. The notice included proposed property taxes for 2011 based on preliminary budgets and tax levies approved in September. Staff is recommending the budget be adopted this evening. However, if the Council needs additional time to consider it, adoption can be postponed to December 21, 2010. Mr. Lawell then reviewed the budget assumptions and budget highlights. The highlights included staffing, the infrastructure preservation program, energy, the addition of in-house engineering, and website upgrades. He noted Apple Valley's foundation is strong and the City's Aaa bond rating is confirmed. He then reviewed some of the challenges. He added there is nothing the City can do at this meeting relative to property valuation.

Mr. Hedberg presented a graphic depicting State Aid funds the City has historically received. The City does not anticipate receiving any funds from the State in 2011. He reviewed the trends over the past ten years and the impacts of Local Government Aid and Market Value Homestead Credit on the budget. He received seven calls following the Truth-in-Taxation notice, most of which had to do with property valuation. He then reviewed the timeline for setting property valuations and noted it is a two-year process. He showed how the tax rate is determined and how the property tax capacity for

individual properties is calculated. He then showed how the taxes would be calculated on a median-valued home. Of the total tax bill residents pay, approximately 35% of it goes to the City. The remainder goes to the school district, Dakota County, or other taxing jurisdictions. He also explained how a median-valued home's tax dollars are divided between those various taxing jurisdictions.

There are three fund types included in the budget: the General Fund, other Governmental Funds, and Enterprise Funds. Mr. Hedberg reviewed the budget organization and described changes to the budget format. He stated the proposed property tax levy for 2011 is \$22,700,000, which is a decrease of 0.6% or \$139,554 from 2010. The 2011 estimated levy limit is \$25,502,762. He noted this is the second year in a row the City's portion of taxes will decline for the median-valued home. He presented various comparisons to neighboring communities and other services. The 2011 proposed General Fund Budget is \$25,726,876 compared to \$25,741,243 in 2010. He noted 77% of the revenue comes from property taxes. General Fund Expenditures are divided into four categories: Personnel Services, Commodities/Other, Street Maintenance Program, and Capital Outlay. Mr. Hedberg explained how the levy is divided amongst the categories and compared the expenses for 2010 and 2011. The General Fund expenditures are \$14,367 less than in 2010. The 2011 proposed Budget Revenues are \$48,650,580 and Budget Expenditures are \$51,657,262, including \$3,727,075 in capital outlay.

Mr. Hedberg said property values are determined by the Dakota County Assessor's Office and property values in Dakota County have declined. He presented a comparison of taxable market values by property classification, noting the majority of properties in Apple Valley are classified as residential. For 2011, the median-valued residential home will experience a 6.7% decline in market value. With a Tax Capacity Rate of 42.39%, those same properties should receive a decrease of approximately \$8.00 in the City's portion of their property taxes. He also presented tax calculations on a home valued at \$204,732 with a 6% decrease in property value. He pointed out that 94.7% of the residential properties will experience a 6% or greater decrease in their market value, resulting in a zero percent increase or a decrease in the City portion of their property taxes. He then described various property tax refund programs available to residents. The ongoing challenges include maintaining a "structurally balanced budget", the impacts of the slowing housing market and economy, and State fiscal issues.

Mayor Hamann-Roland opened the public comment portion of the Truth-in-Taxation meeting at 8:43 p.m. She asked for questions or comments from the public. There were none and the hearing was declared closed at 8:44 p.m.

Councilmember Grendahl commented about the increase in the City's contribution to pensions and Public Employee Retirement Association (PERA) over the last three years.

Mr. Hedberg explained the budget reflects the amounts set by the State. He presented graphs depicting the employer PERA rate history. He stated there are no scheduled increases beyond 2011 at this point.

Councilmember Grendahl asked if the City is getting back some of the money it contributes.

Mr. Hedberg said the City does get a reduction for the Police and Fire Plan and the Coordinated Plan Fund. He confirmed the costs have gone up the last several years, while the State offset has not increased.

Councilmember Grendahl said she knows the State is mandating this contribution, but pointed out it is the homeowners who are paying for it. The increases are not sustainable. She wants the City to become more involved.

Mayor Hamann-Roland said the City and the League of Minnesota Cities (LMC) have been actively involved and are paying attention to this. She asked if the market impacts the rates.

Mr. Hedberg said absolutely. He said the rates are determined by an actuarial study and explained how the market values impact that study.

Mayor Hamann-Roland agreed the rates cannot continue to rise or it will cause total instability.

Councilmember Goodwin interjected that last year the Legislature finally realized the very difficult situation with public employee pensions. As a result, it created a committee to study it. He believes this will result in some of the most historic changes ever seen. He noted the City does not make the rules governing the employee pensions; it simply must conform to them. He then spoke about the complexities of the State's property tax system.

Councilmember Grendahl said medical insurance rose from \$1.4 million in 2008 to \$1.9 million in 2011. She said everyone will need to be actively involved because the increases are not sustainable.

Mr. Hedberg stated over the last several years the City has been moving towards various products to try to get the experience and the rates under control.

Mayor Hamann-Roland recognized the City Administrator, the Finance Director, and all staff for working together with the City Council during these difficult times. She acknowledged that staff is being asked to do more with less. She stated the 2011 budget is approximately \$140,000 less than last year and almost 95% of the residents will experience a zero percent increase or a decrease in the City portion of their property taxes for 2011. She added that the City Council froze its salary for 2010, 2011, and 2012. The Council understands it is a serious time. There is between a \$6 and \$7 billion deficit at the State. Cities have come to the aid of the State in the past. There is also a question whether the City will lose some of its other aids.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-219** approving setting the City tax levy collectible in 2011 at \$22,700,000 and approving 2011 budgets with total revenue of \$48,650,580 and expenditures of \$51,657,262.

Councilmember Grendahl said she appreciates the decreased budget but believes the City is still over collecting for the Contingency Fund. She complimented the Public Works Department for the work it did on the budget by looking at service delivery differently.

Councilmember Bergman said everyone has sacrificed. He noted there are ten open positions and he wants Council to look at them early next year. He asked Councilmember Grendahl what dollar amount she recommends for the Contingency Fund. He recommended Council discuss this at an informal meeting in January, February, or March.

Councilmember Goodwin referenced the slide that shows the funding the City is supposed to receive from the State. He does not think the cutting is done. Currently the State owes Apple Valley over \$1 million in Market Value Homestead Credit (MVHC). Considering the current State deficit, the Council knows it is not going to receive those funds. He is also concerned the State will cut the Police State Aid and the Fire State Aid. As a result, he does not want to cut the Contingency Fund.

Councilmember Grendahl asked about the Contingency Fund balance which was \$2.5 million in 2009.

Mr. Hedberg stated there is a line item budgeted each year for contingency. He explained when and how fund balances are transferred to the future Capital Improvements Fund. He said they are related but they are not one in the same.

Mayor Hamann-Roland stated there are far more capital improvements necessary than available funds.

Mr. Lawell said the future Capital Improvements Fund is intended to fund the infrastructure that needs replacement. Given the huge investment the City has, the dollars currently available in that fund are not sufficient to cover the future needs. A list of the future needs can be provided to the Council as part of the Capital Improvements Program discussion in January.

Mayor Hamann-Roland said it is the Council's fiduciary responsibility to make sure the infrastructure is also taken care of.

Councilmember LaComb noted there were no residents present to speak about the taxes. Some might say that is because people are not comfortable speaking in a public forum. She recently went to many households in Apple Valley door knocking for a candidate. She said what she heard was similar to the past. Residents indicated they want their streets plowed, their street fixed, someone to answer the phone when they call City offices, police officers to response quickly, the Fire Department to respond and help in case of a fire, and a park. She also heard them say they don't want to pay too much in taxes. She did not hear residents say they are unwilling to pay their fair share. She is comfortable with the balanced budget. The biggest part of the budget is personnel. It is important to keep the staffing necessary to meet the needs. It may not be perfect, but it is a very good job and the City of Apple Valley has a sound basis for going into the future.

Vote was taken on the motion. Ayes - 4 - Nays - 1 (Grendahl).

Mayor Hamann-Roland called a recess at 9:15 p.m.

Mayor Hamann-Roland resumed the meeting at 9:24 p.m.

2011 WATER, SANITARY SEWER, AND STORM WATER RATES

Mr. Hedberg presented the proposed water, sanitary sewer, and storm water rates for 2011 and explained the reasoning behind the proposed changes. There are no amendments to the rate structure presented last year. He presented graphs depicting balances with and without the adjustments for each of the funds. He then reviewed the major capital improvements identified for each of the funds. There are no proposed changes to the street light utility rate. The overall combined rates for water, sanitary sewer, storm water, and street lights represent approximately a 3.8 percent increase from 2010 for the average residential utility customer.

MOTION: of Goodwin, seconded by Bergman, adopting **Resolution No. 2010-220** setting the sewer and water rates and related procedures, effective January 15, 2011. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Goodwin, adopting **Resolution No. 2010-221** setting the storm water drainage rates, effective January 15, 2011. Ayes - 5 - Nays - 0.

2010 LIQUOR FUND TRANSFER

Mr. Hedberg reviewed his memo dated December 3, 2010, regarding the transfer from the Liquor Fund to the General Fund. In 2010 the proposed budgeted transfer amount is \$485,000 and the operations of the Liquor Fund are sufficient to support that transfer.

MOTION: of Bergman, seconded by LaComb, adopting **Resolution No. 2010-222** approving the transfer of \$485,000.00 from the Liquor Fund to the General Fund for 2010.

Councilmember Grendahl asked if the difference from last year, or \$45,000, is the amount coming from the new liquor store.

Mr. Hedberg stated the transfer comes from the overall liquor operations. He added that it takes time to develop the business of a new store. He pointed out the Cobblestone Lake development also is moving a bit slower than originally projected.

Councilmember Grendahl asked if the transfer must go to Parks and Recreation.

Mr. Hedberg said it was his understanding the Council adopted a policy several years ago indicating where the funds were to go. The policy can be modified if the Council desires. He suggested it may be a topic the Council would like to discuss during its next goal setting session.

Councilmember Grendahl said she does not think the money should go to one department.

Mayor Hamann-Roland said there were discussions about possibly even funding a fire truck with the money. She added that the budgeted transfer amount proposed for 2011 is \$525,000.

Vote was taken on the motion. Ayes - 5 - Nays - 0.

ORDINANCE ADDING CHAPTER 123REGULATING MASSAGE THERAPY

Police Chief Johnson gave the first reading of the proposed ordinance amending Title XI of the City Code entitled "Business Regulations" by adding Chapter 123entitled "Massage Therapy Business and Massage Therapist Licenses". He stated the Police Department believes requiring licenses and restrictions on therapeutic massage businesses and therapists can minimize the risk that such businesses and persons will facilitate prostitution and criminal activity in the community. He noted the ordinance excludes health care clinics and medical professionals from the license requirements, as well as massage therapists that work in medical health care facilities. The ordinance was prepared by the City Attorney's office. Staff recommends accepting the first reading.

Councilmember Bergman asked if this ordinance is similar to those in neighboring communities.

Police Chief Johnson said most cities in the southern metro area already have ordinances. Apple Valley's ordinance is patterned after the City of Bloomington's ordinance.

Councilmember Grendahl said she normally does not suggest waiving the second reading, but inquired if there was an interest in doing that this evening.

Ms. Barbara York, President of the State organization for massage therapists, somatic educators, and touch therapists, was present. She stated their organization passed two bills: Minn. Stat.§§ 146A and 609. She said Minn. Stat. § 146A, which regulates complementary and alternative health care practitioners, gives cities the tools necessary to regulate who works in their community. She noted someone was recently convicted under Minn. Stat. § 609. She said therapists are not opposed to a prostitution ordinance. They believe prostitutes should be prosecuted to the full extent of the law. Their concern is that the ordinance is trying to regulate massage therapists. They do not want an onus placed on massage therapists which presumes they are guilty. She said there is a document from the State which indicates they cannot describe the education requirements for this field because they are so vast. She believes the education requirements in the proposed ordinance are very limited in scope. She stated Florida has very strict education requirements for massage therapists, yet it has not stopped the trafficking of women. She believes therapists become criminalized with this ordinance. She would like their attorney to speak with the City's attorney to review how the current laws work.

Mr. Dougherty said the statute was forwarded to the City Attorney's office earlier today. They have not had time to look at it from all aspects.

Ms. York said her organization is working with the League of Minnesota Cities as well.

Councilmember Goodwin thinks it is a good idea for the attorneys to discuss the matter, as suggested.

Councilmember Grendahl asked what other cities have ordinances regulating massage therapy.

Police Chief Johnson responded most other cities have a massage therapy ordinance.

Councilmember Bergman asked for a synopsis of § 146A since this is the first the Council has heard of this law.

Mr. Dougherty explained the purpose of the proposed ordinance. He stated § 146A is a self-reporting statute to regulate the industry. If there is a complaint resulting from an activity, there is a means and mechanism to take the complaint to the State for review so it can be determined as to whether or not someone should be allowed to continue the activity.

Mayor Hamann-Roland said there should be absolutely no prostitution in the City of Apple Valley now or in the future. She was curious as to why this ordinance was presented as a first reading and staff did not recommend waiving the second reading.

Police Chief Johnson believes the City should act swiftly. He said if the Council so desires, the Police Department would recommend waiving the second reading.

Councilmember Bergman asked if the ordinance can be amended if additional information results from the conversation between the attorneys.

Mr. Dougherty stated every ordinance can be amended.

MOTION: of Bergman, seconded by Grendahl, waiving the procedure for a second reading and passing **Ordinance No. 906** amending Title XI of the City Code entitled “Business Regulations” by adding Chapter 123, regulating Massage Therapy Business and Massage Therapist Licenses.

Councilmember Goodwin said he believes the City has a pretty good handle on the situation. He would like a little more information. Ms. York stated if the ordinance is enacted the way it is right now there may be residents who are criminalized. Based on what he knows tonight, he does not know if that is true. He thinks it is a reasonable request to have the attorneys talk about it. He does not think it would hurt anything to wait two more weeks.

Mayor Hamann-Roland said this is a tough time and the Council wants people to have jobs. If people are legitimate therapists, the Council does not want to take away their livelihood. At the same time, the Council does not in any way condone prostitution.

Mr. Dougherty stated if the ordinance is passed, someone who is required to have a license and does not have one could be guilty of a crime. However, there is an educational piece.

Initially the goal would not be to prosecute them for the crime, but to get the individual and/or business licensed.

Councilmember Goodwin asked if the matter could wait for two more weeks. He asked Mr. Dougherty if he would talk with this organization's attorney.

Mr. Dougherty said he would be happy to talk with their counsel.

Mr. Lawell said according to the ordinance, massage therapy businesses and massage therapists currently practicing in the City must file an application by March 15, 2011. In other words, there is still time before this ordinance would become effective.

Vote was taken on the motion. Ayes - 3 - Nays - 2 (Goodwin and Hamann-Roland).

ORDINANCE AMENDING SECTION 35.27 REGARDING LICENSES/PERMITS

Ms. Gackstetter gave the first 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. Staff recommends accepting the first reading. The second reading is scheduled for December 21, 2010.

ORDINANCE AMENDING FEES CONTAINED IN CITY CODE

Ms. Gackstetter reviewed proposed amendments to 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. Staff recommends accepting the first reading. The second reading is scheduled for December 21, 2010.

PLANNING COMMISSIONER RESIGNATION

Ms. Gackstetter reviewed her memo dated December 9, 2010, regarding the resignation of Planning Commissioner Jeannine Churchill, creating a vacancy on the Planning Commission with a term expiring March 1, 2011. She recommended the Council extend an invitation to individuals interested in serving on the Planning Commission to submit an application to her by January 21, 2011. An appointment could then be made in February.

The Council thanked Ms. Churchill for all her work on the Planning Commission and commented on the excellent job she did serving as Chair of the committee and the legacy she created in the community.

MOTION: of Grendahl, seconded by Bergman, accepting the resignation of Planning Commissioner Jeannine Churchill and thanking her for her dedicated service to the City of Apple Valley; and directing staff to post the Planning Commission vacancy and inviting individuals interested in serving on the Commission to submit an application to the City Clerk by January 21, 2010. Ayes - 5 - Nays - 0.

COUNCIL COMMUNICATIONS

Councilmember Grendahl said last night the Metropolitan Council accepted the Livable Communities Advisory Committee's recommendation, which means the City will receive both of the Livable Communities Demonstration Account (LCDA) pre-development grant awards for which it applied.

CALENDAR OF UPCOMING EVENTS

MOTION: of Grendahl, seconded by Bergman, approving the calendar of upcoming events as included in the City Clerk's memo dated December 6, 2010, and noting that each event listed is hereby deemed a Special Meeting of the City Council. Ayes - 5 - Nays - 0.

CLAIMS AND BILLS

MOTION: of Bergman, seconded by Goodwin, to pay the claims and bills, check registers dated, November 24, 2010, in the amount of \$1,016,306.50, December 1, 2010, in the amount of \$5,362,197.55, and December 9, 2010, in the amount of \$696,793.63. Ayes - 5 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, to adjourn. Ayes - 5 - Nays - 0.

The meeting was adjourned at 10:09 o'clock p.m.

Respectfully Submitted,

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

Approved by the Apple Valley City Council on 12-21-10.