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CITY COUNCIL
Special Meeting
January 29, 2015
9:00 a.m.
AGENDA

Call to Order/Pledge of Allegiance

1. Presentation of Employee Service Awards
2. Acceptance of the June 30, 2014 Financial Audit
3. Resolution to Approve Mid-Year Budget Adjustments for FY15
4. Public Hearing to Consider and Ordinance to Adopt a Municipal Hold Harmless Gross Receipts Tax
5. Closed Session to Discuss Limited Personnel Matters and the Purchase, Acquisition, or Disposal of Real Property Pursuant to NMSA 1978, Sections 10-15-1(H)(2) and (8) of the Open Meetings Act
6. Adjourn Meeting

The next regularly scheduled meeting is Monday, February 9, 2015 commencing at 6:00 p.m.

SPECIAL CITY COUNCIL MEETING MINUTES January 29, 2015

Council Present: Benny L. Jasso, Mayor
Joe “Butter” Milo, Councilor
David L. Sanchez, Councilor
Linda Franklin, Mayor Pro Tem
Dr. Victor Cruz, Councilor

Council Absent: Jim Massengill, Public Works Director
Wesley Hooper, Community Svcs. Dir

Staff Present: Aaron Sera, City Administrator
Laura Holguin, Treasurer
Delbert Rivera, Firefighter
Raul Mercado, Fire Chief
Heather Sosa, Battalion Fire Chief
Brandon Gigante, Police Chief
Lt. Conrad Jacquez, Police Dept.

Recording Secretary: Lila Jasso, Administrative Secretary/Asst. Deputy Clerk

Mayor Jasso called the meeting to order at 9:00 a.m. and led the Pledge of Allegiance.

1. Presentation of Employee Service Awards

Mayor Jasso presented Aaron Sera, Conrad Jacquez, and Delbert Rivera with their employee service awards.

2. Acceptance of the June 30, 2014 Financial Audit

Ms. Holguin, Treasurer, presented this item to Mayor Jasso and Council. She referred everyone to page 10 of the Annual Financial Report, which is the Independent Auditor’s Report. She stated that this where the auditors give their opinion of what they found when auditing the City’s financial statements. She explained that there are three (3) levels of opinion. The first level one is an unmodified opinion, which is a clean report. The second level is a qualified opinion, which means that there was an area in which the financial statements did not comply and could not be audited. The third level is an adverse opinion which means that the financial statements were not presented fairly and they could not audit the financials. She stated that this year the City of Deming received an unmodified opinion from the auditor, meaning that the City’s financial statements were clean.

Ms. Holguin asked everyone to turn to page 110-Independent Auditor’s Report on Internal Control. She stated that the 2 reports she has referenced are the only reports the auditors are responsible for, and the rest of the information is the City’s responsibility. Ms. Holguin stated that the auditors do not give an opinion regarding internal control; they just review the internal controls and make sure that the City is in compliance. She noted that the City was in compliance, with the exception of one small area which fell under the Federal awards.

Ms. Holguin then referred to page 114-Report on Compliance for Each Major Federal Program; Report on Internal Control over Compliance. She stated that since the City has received over \$500,000.00 in Federal Funding, the auditors have to conduct a special audit on the Federal awards. She stated that the City also received an unmodified opinion in this area.

Ms. Holguin referred them to turn to page 119-Schedule of Findings and Questioned Costs. She explained the different levels of findings and noted that there was a repeat finding listed in this area of the audit. She noted that the first finding –Cash Appropriations in Excess of Available Cash Balances –Other Matter (Repeated/Modified); based on beginning cash and what was budgeted, the City wound up with a negative balance. All in all, the budget did not go into a negative balance, and this was an oversight and corrective action has been done to make sure this does not happen again. The next finding was Miscounts during inventory observation-Significant Deficiency. Ms. Holguin stated that what happened in this case was that 7 out of 15 items tested were miscounted. She stated that the error was due to the City employee who counted the inventory not being adequately trained. She stated that the City has taken corrective measures to adequately train the employees, and to conduct random inventory audits to make sure this does not happen in the future.

Ms. Holguin stated that the next finding was Stale Dated Checks-Other Matter. She stated that this was an oversight in which two checks, which were over 1 year old had not been voided. She stated that a procedure is in place where staff will review outstanding checks on a monthly basis to make sure those that are stale dated are voided in a timely manner.

Ms. Holguin stated that the final finding was an Inaccurate Financial Reporting for Statewide Transportation Improvement Package-Significant Deficiency. She stated that this was related to the schedule of federal awards in which, based on the grant agreement, the percentage of request for reimbursement did not comply. The City has taken corrective measures to review the grant agreements to make sure the City is in compliance to not repeat this kind of finding.

Council Cruz asked for clarification regarding the Inventory Count finding. Ms. Holguin explained the finding. She explained that one of the main deficiencies in this was that the employee who conducted the count was not adequately trained in recognizing the different types and sizes of utility parts. She stated that this has been corrected by providing proper training to personnel and by conducting random inventory audits.

Councilor Sanchez commented that he was pleased with the audit and that the deficiencies have improved throughout the years he has been on the Council. Ms. Holguin pointed out that the findings have not been serious enough to cause any derogatory action from DFA (Department of Finance Administration).

Mayor Pro Tem Franklin moved to accept the June 30, 2014 Financial Audit, as presented. Councilor Sanchez seconded the motion; motion carried unanimously.

3. Resolution to Approve Mid-Year Budget Adjustments for FY15

Ms. Holguin presented this resolution to Mayor Jasso and Council. She stated she and Mr. Sera decided that no drastic changes would be made to the budget, and that only adjustments to make sure certain items would have enough funds budgeted through the end of the year were made.

Ms. Holguin referred to the General Fund Police and stated a budget adjustment was made to this fund to allow for the purchase of the cameras. At the time the initial budget was presented to DFA, the Police Department was not sure how much funds they would receive from the Stonegarden Grant, therefore the adjustment of \$47,520.00 was made to offset that expense.

Ms. Holguin then referred to the General Fund-Fire Fund and stated that an additional grant in the amount of \$79,996.00 was received to purchase the apparatus they requested. She stated that the match to offset this would be made from the State Fire Fund.

Ms. Holguin went on to say that in the Lodgers Tax-Non Promotional account, there was an increase to Equipment and Machinery of \$24,000.00 (from \$16,000.00 to \$40,000.00). The City will have to use additional revenue of \$12,000.00 and will have to use beginning cash balance to make the match.

Ms. Holguin then mentioned that in the Street Fund, there was an oversight from the Pine and Spruce Street Project, where the projected ended June 30, 2014, but the expense carried over to this fiscal year. She stated that the revenue to match this was received and adjusted to offset the expenses.

She went on to reference the Community Building fund and stated that none of the expenses related to the loan proceeds for the remodel of the Fire Department and Municipal Court, was budgeted, so the adjustment of \$49,700.00 was made to reflect those loan proceeds.

Ms. Holguin referenced the Airport Fund and stated that the additional revenue from a state grant that was not known at the time of the final budget review. Therefore, it is being adjusted to reflect this.

Mr. Sera clarified that the items in Council's packets reflect only those accounts in which adjustments made. He read the proposed resolution into record.

Councilor Cruz moved to approve the 2014-2015 fiscal year Mid-Year Budget Adjustments. Councilor Milo seconded the motion; motion carried unanimously.

4. Public Hearing to Consider and Ordinance to Adopt a Municipal Hold Harmless Gross Receipts Tax

Mr. Sera stated that there were two analysis contained within the meeting packet for this item. He stated that one was prepared by George K. Baum & Company and that Mark

Valenzuela, First Vice President of that company, would present the analysis they prepared and would answer any question, afterward.

Mr. Valenzuela introduced himself and stated that George K. Baum & Company is an Investment Bank and serves as financial advisors to cities, counties and school districts. He stated that what he has prepared a presentation on the impact of the State action taken about 3 years ago and how it is going to impact municipalities across New Mexico. He noted that he has worked with several municipalities and counties on addressing this issue. Mr. Valenzuela stated that there are 12 cities in New Mexico who, even if they approach increasing their taxes by the full 3/8th percent as the legislature has authorized cities to do, will still not cover the negative hit from losing the Hold Harmless, over time. He stated that the mid-tier cities in New Mexico, including Deming, are in this boat. He went on to say that any city with a population of 10,000 or below is not impacted by this. He emphasized that Deming is at a disadvantage because of its population.

Mr. Valenzuela went on to discuss page 3 of his presentation which shows 1 year's collection of Gross Receipts Tax for the City of Deming. He stated that when the legislature passed this law, it takes away a portion of a municipality's revenue. He stated that Deming, and other mid-tier cities, are at a disadvantage from losing the Hold Harmless. He explained that based on the 2013-14 data, the City of Deming would lose \$1,039,235.79 in revenue from gross receipts tax collections and its growth. He went on to explain the impact of the 15 year perspective on the City. He explained the data used to make his analysis. Overall, he stated that if the City of Deming enacts the full 3/8th percent tax increase, the City would not fix the gap in loss from hold harmless payments. Mr. Valenzuela added that by 2030, the Hold Harmless will be phased out. He noted that overall the City will only collect \$10.1 million, as opposed to the \$19.2 million in revenue that would have been collected.

Mr. Sera interjected and stated that this is a forecast estimating a 1 percent growth rate. He noted that in the other analysis, prepared by the City, it estimates a 1.9 percent growth rate. Mr. Valenzuela stated that the City is relatively stable and the 1 percent growth rate is conservative.

Councilor Cruz stated that this analysis does not take into account any national economic cycles.

Mr. Valenzuela referred to page 7, and stated that the City would still need to provide services to the community, and this is a projection to figure out a way to do that with lower revenues. He noted that one strategy would be to impose a 3/8th percent rate increase and this page illustrates the potential revenues. He also emphasized that from 2028 forward, the City would lose net revenues and by 2030 the City would feel the full impact of that loss.

Councilor Cruz asked Mr. Valenzuela to clarify the different effect between the Cities and Counties in regards to the Hold Harmless Gross Receipts Tax. Mr. Valenzuela stated that in New Mexico, municipalities tend to use gross receipts tax more than counties do, and counties have the opportunity to use property tax as the majority source of their operating budget. He stated that counties haven't been impacted as significantly from a gross receipts

tax standpoint as it relates to this issue. He went on to say that also, in the writing of HB 641, the legislature treated counties the same way as it treated municipalities; giving them the authority to issue up to 3/8ths increase in their gross receipts tax. They also allowed counties the authority to impose it countywide. Mr. Valenzuela stated that typically when counties have the option of imposing a gross receipts tax increase, they can choose to do it on unincorporated areas only which would not have included the incorporated limits of the City of Deming; or they can do it on a countywide basis. In this case the legislature did not give them the option, it just allows them to do it on a countywide application basis and therefore there losses relative to what they increase are less. He stated that in the case of the City, we can't fill the gap we need to fill, but in the County's case, they may be able to generate more revenue than what they may have lost. Mr. Valenzuela stated that the negative for the Counties is that if they do increase the 3/8th percent, at any level, they lose the entire amount of their Hold Harmless, immediately. In the City's case, because it is over the 10,000 population threshold, the City would lose the Hold Harmless at a 6%-7% range every year over the next 15 years. He reiterated that if the County's impose it, they lose it immediately.

Councilor Cruz asked Mr. Valenzuela that in general, the counties are affected less. Mr. Valenzuela answered, yes. Councilor Cruz reemphasized that the counties could theoretically profit from imposing the tax increase; where the City would still lose revenues. Mr. Valenzuela answered, yes.

Councilor Milo asked which of the other 12 cities which are in the same scenario as the City of Deming, have imposed the tax increase. Mr. Valenzuela stated that the City of Las Cruces was the first to impose the tax increase, and then followed the Village of Corrales and several other cities are considering the option. He stated that several counties have increased their tax rate.

Mayor Pro Tem Franklin stated that the New Mexico Municipal League has made a very concentrated effort in lobbying for the municipalities over the past 2 years. She stated that their efforts, however, have not produced any changes. It looks like the response from the legislature is not going to change.

Mr. Valenzuela commented that at the end of the day, Deming needs to have Police, Fire services, and basic services for the community; and unfortunately this law did not take that into consideration.

Councilor Cruz asked Mr. Sera if this has been discussed with the Luna County. Mr. Sera stated that he had a conversation with Mr. Jackson (County Manager) about this and he has invited him to work on it. Due to busy schedules, Mr. Sera stated that they have not been able to get together on this. Councilor Cruz asked if Mr. Sera has heard anything optimistic regarding this issue. Mr. Sera stated that he has not heard anything and he doesn't believe that the state would impose a statewide tax on food. He stated that if we do not act on this increase now, we will not be able to collect the tax on July 1, 2015. He then stated that the City is in a position where they can weather the storm if they begin collecting January 2016. Mr. Sera stated that if this does not get done now, but is done in March 2015, the City will not start collecting on that until January 2016. A lengthy conversation was entertained

between Councilor Cruz and Mr. Sera regarding the outlook of fixing the Hold Harmless from legislative standpoint.

Mayor Pro Tem Franklin asked when the last time gross receipts tax was increased. Mr. Sera stated that it was in 1995 and the increase 1/8th percent.

Mayor Jasso opened the hearing to public comment.

Edward Khanbabian, 1721 E. Pine Street, asked for clarification on the population threshold. Mr. Valenzuela stated that the Hold Harmless would affect municipalities over the 10,000 population threshold. He referred to page 3 of his presentation to explain that in the Hold Harmless column (red), cities with a population under 10,000 people would not lose this amount and will continue to be paid their Hold Harmless payment. He stated that they would not be impacted by this change. Mr. Khanbabian asked that if the Council approves this 3/8th percent increase, the City would generate \$846,060.63. Mr. Valenzuela answered that yes, it would. Mr. Khanbabian asked what would happen to this money. Mr. Valenzuela stated that it would go into the City's operating fund general budget. Mr. Khanbabian asked what the loss would be. Mr. Valenzuela stated that if the City does not pass the Hold Harmless Municipal Tax, the City would lose approximately \$1 million, over time. So in order to hedge this, the legislature is allowing municipalities to pass a tax on their community of up to 3/8th percent. Mr. Valenzuela explained that this is the City's only option, relative to this issue. Mr. Khanbabian asked why the City is proposing the full 3/8th percent, and not 1/8th percent. Mr. Valenzuela stated that because at the maximum allowed increase, the City would still not recuperate all that they are losing. He stated, however, it is up to the Council's discretion. A discussion was entertained on the forecasted figures between Mr. Khanbabian and Council.

Ted Burr, Associate Superintendent-Deming Public Schools, 1001 S. Diamond Ave., congratulated the City on their audit. He went on to say that he appreciates how conservative the City is by looking forward to seeing the cliff they are coming up against and how they are, fiscally, going to cover it. Mr. Burr reminded the City and all present that the school district will be building two new schools in which the school district plans to have a majority of the money spent by July 2017. He spoke about how the tax increase will affect the cost of the construction by approximately \$278,000 of which approximately \$173,000 comes from the State and \$105,000 comes from the local bond. He noted that basically this means they school district will have less purchasing power than before.

Lloyd Valentine, 1301 Alamogordo St., wanted to clarify that he is representing himself, as a resident of the City of Deming, and not the State. He expressed that he feels the law is very poorly written. He stated that he understands the law to be able to allow the municipalities and counties to recover monies that were lost due to the Hold Harmless. He reemphasized that County of Luna falls under the population threshold, so if the County of Luna did not impose any tax increase they would not lose any of their Hold Harmless monies. He mentioned an option of doing the tax rate increase in 1/8th percent increments. He also mentioned a finance term, inter-period equity. Mr. Valentine stated that if the 3/8th percent tax increase is implemented right now, tax payers now would pay for expenses in the future.

He stated that he prefers that the Council would take a second look at this issue and make the increase more equitable.

Larry Caldwell, 711 N. Zinc St., stated that the City would still receive Hold Harmless fund, just less funds. He asked why the City doesn't study efficiencies in the bloated government we have in Deming. He asked Council to do more research, then decide. Stated that the City of Deming is bloated, always wanting more. Look at all alternatives, and then decide. He feels that this government can run more efficiently with fewer funds.

Mr. Sera pointed out that this analysis is just a projection, and that the City is prepared to weather the storm. This item, if passed today, can be rescinded if the Legislature does something different.

Councilor Cruz addressed the comment about the City being bloated. He stated that the comment makes it sound like the employees are not working hard. He stated that he believes the employees to be hard working and underpaid. Councilor Cruz commented that when he became elected to his position, he went to visit crews. He noted that most needed more workers, but the City can't afford to hire more. He stated that the City could easily hire more employees from a work point of view, but can't responsibly afford to do so.

Mayor Jasso closed the public comment session of this hearing.

Councilor Cruz asked what the County is doing about this problem. He would like to see the entities work together to come to a solution.

Mayor Pro Tem Franklin expressed her stand on incrementally increasing the tax rate.

A discussion was entertained between Mr. Sera and Council regarding the timeline to take action on this issue.

Mr. Sera recommended that after studying this issue, he thinks that there are several rate increases that need to take place. He stated that he is not optimistic that the Legislature is going to fix this issue. He stated that Senator Smith asked that the City not raise the tax rate, and he respects his recommendation.

Council discussed that there still needs to be some evaluating to do regarding this issue.

Mayor Pro Tem Franklin moved to postpone this item to allow staff and Council to obtain more information to make a decision. Councilor Cruz seconded the motion, with the recommendation to work with the County. Motion carried by a 3-1 vote as follows:

Mayor Pro Tem Franklin	Aye
Councilor Milo	Aye
Councilor Cruz	Aye
Councilor Sanchez	Nay

5. Closed Session to Discuss Limited Personnel Matters and the Purchase, Acquisition, or Disposal of Real Property Pursuant to NMSA 1978, Sections 10-15-1(H)(2) and (8) of the Open Meetings Act

Mayor Jasso entertained a motion to go into closed session.

Councilor Sanchez moved to go into closed session. Councilor Milo seconded the motion; motion carried unanimously by the following roll call vote:

ROLL CALL VOTE

Councilor Cruz	Aye
Councilor Milo	Aye
Mayor Pro Tem Franklin	Aye
Councilor Sanchez	Aye

Mayor Jasso entertained a motion to go back into open session.

Councilor Milo moved to go back into open session. Councilor Sanchez seconded the motion; motion carried unanimously by the following roll call vote:

ROLL CALL VOTE

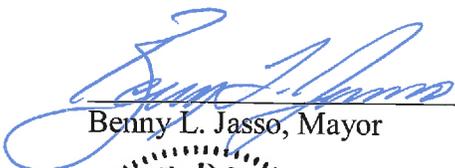
Councilor Cruz	Aye
Mayor Pro Tem Franklin	Aye
Councilor Sanchez	Aye
Councilor Milo	Aye

Mayor Jasso stated for the record that no decisions or motions were made during the closed session, and that only the items mentioned in the motion to go into closed session were discussed.

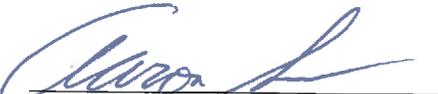
6. Adjourn Meeting

With no further business to discuss, Councilor Milo moved to adjourn the meeting. Mayor Pro Tem Franklin seconded the motion; motion carried unanimously. Meeting adjourned at 11:21 a.m.

CITY OF DEMING, NEW MEXICO


Benny L. Jasso, Mayor

ATTEST:


Aaron Sera, Clerk



**STATE OF NEW MEXICO
MUNICIPALITY OF CITY OF DEMING
RESOLUTION NO. 15-11**

**2014-2015 Fiscal Year
Mid-Year Budget Adjustments**

WHEREAS, the City of Deming, New Mexico proposes to make certain budget increases and decreases; and,

WHEREAS, due to cash reserves being sufficient to cover the proposed increases and decreases; and

WHEREAS, said monies and expenditures were not included in the 2014-2015 budget; and

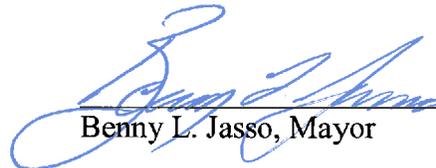
WHEREAS, the City Council does request that authorization for the following budget increases and decreases be granted.

THEREFORE, IT IS respectfully requested that authorization to make the listed increases and transfers be granted by the Local Government Division of the Department of Finance and Administration.

PASSED, ADOPTED, AND APPROVED this 29th day of January, 2015.

CITY OF DEMING, NEW MEXICO




Benny L. Jasso, Mayor

ATTEST:


Aaron Sera, Clerk/Administrator