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P.O. BOX 706 • DEMING, NEW MEXICO 88031
POPULATION 14,000

CITY COUNCIL MEETING

May 9th, 2011

4:00 P.M. CITY COUNCIL WORKSHOP

6:00 P.M. CITY COUNCIL MEETING

AGENDA

Call to Order / Pledge of Allegiance

1. Consent Agenda
 - A. Minutes - City Council Workshop and Regular Meeting 04/11/11
 - B. Minutes – Special Council Meeting 04/19/11
 - C. Minutes – Special Council Meeting 04/22/11
 - D. Minutes – Historical Landmark Commission 04/07/11
 - a. Recommendation to submit application to the State to place Morgan Hall on the Historical Registry
 - E. Minutes – P&Z 04/18/11
 - F. Minutes – Airport Commission 04/19/11
 - G. Minutes - Parks Commission 04/19/11
 - a. Recommendation to approve the request to form a Men’s Softball League by Mr. Saucedo
 - b. Recommendation to approve the move to the NW Corner of Centennial Park for RC Flying Club
 - c. Recommendation to approve the creation of a new dog park adjacent to the Soccer Field
 - H. Minutes – Tourism Development Committee 04/20/11
 - a. Recommendation to approve the use of \$8,000 – \$10,000 for development, production and a print of a visitor’s guide
 - b. Recommendation to approve the following funding requests:
 - i. \$5000 for the Aviation Museum in Columbus, NM
 - ii. \$1,500 for Smoking Oldies
 - iii. \$1,000 to mail Old Timer’s notices
 - I. Minutes – Marshall Memorial Library 04/26/11 – Meeting Cancelled
 - J. Proclamations
 - a. Proclamation Declaring May 11th as “Wipe Out Malaria Day”
2. Public Forum
3. Ratification of Administrative Regulation # DM08-07, DM09-18, and DM11-30
4. Ratification of Sick Leave Sell Back
5. Approval to Execute Letter of Intent (LOI) with Element Power
6. Public Hearing: To Consider an Ordinance Amending Title 2, Chapter 4 of the Municipal Code Pertaining to the Airport Commission
7. Public Hearing: To Consider an Ordinance Amending Title 2, Chapter 3 of the Municipal Code Pertaining to the Parks Commission

8. Public Hearing: To Consider an Ordinance Amending Title 12, Chapter 4J, Section 2E of the Municipal Code Pertaining to Special Uses
9. Quasi-Judicial Public Hearing: To Consider an Alternate Subdivision for the Property Located in Block 40, of Orchard Park #2, Extended Addition
10. Quasi-Judicial Public Hearing: To Consider a Special Use Permit to Erect a Cell Tower at 265 Tapia Rd., SE
11. Bids
 - a. Bid #11-19 Animal Dairy Feed
12. Adjourn Meeting

A Council Workshop will be held in Ruidoso, NM on May 19th through 20th, 2011.

The next regular City Council Workshop and Meeting are scheduled for 4:00 & 6:00 p.m., May 9th, 2011. There will be a Special Council Meeting held on May 27th to consider the 2011-2012 Budget.

CITY COUNCIL WORKSHOP MINUTES May 9, 2011

Council Present: Linda Enis, Councilor Joe "Butter" Milo, Councilor

Absent: Andres Z. Silva, Mayor David Sanchez, Councilor
William Shattuck, Mayor Pro Tem

Staff Present: Richard McInturff, City Administrator Aaron Sera, Community Svcs. Director
Mary Jo Valdez, City Clerk Edgar Davalos, Fire Chief
Richard Kocab, Assistant Treasurer Michael Carillo, Chief of Police

Councilor Enis and the City Council of Deming, New Mexico held a workshop on May 9th, 2011 at 4:00 p.m. to discuss items on the agenda of the City Council Regular Meeting scheduled for 6:00 p.m. the same day. By consent, Councilor Enis chaired the workshop.

Mr. McInturff explained that items a. and b. under the TDC minutes were recommended prematurely; adding that City Council has not yet approved their preliminary budget. Mr. McInturff stated that he thought management had relayed to the TDC that they could do budget requests in June as Council is not prepared to recommend any budget allocations at this time.

Mr. McInturff explained that DM08-07 is a divergence from the past process which will entail a review by an independent hearing officer rather than by a committee. Mr. McInturff stated that a committee hearing usually takes an entire workday; adding that Judge VanGundy has agreed to investigate reports and incident documentation and will meet with the employee and/or officials involved in an accident or injury. Mr. McInturff then stated that Judge VanGundy would then present his findings to administration for final disciplinary action, if appropriate. Mr. McInturff stated that DM09-18 is interrelated to DM08-07 in that section seven has been amended to reflect the designation of the hearing officer.

Mr. McInturff stated that DM-11-30 was created to set out the process for hiring employees. Mr. McInturff stated that the regulation was created due to a misunderstanding in that an interviewee was informed by a director that they would be hired. Due to background information that was obtained by HR, the prospective employee was not hired. Mr. McInturff stated that the HR department will be the only department to formally offer a position to a candidate.

Mr. McInturff stated that management is requesting the ratification for the approval of sick leave sell back amounting to \$27,915.18 plus employer contributions to be paid in June of 2011. Mr. McInturff stated that sick leave sell back is addressed in Administrative Regulation DM08. Mr. McInturff stated that the sell back of sick leave is done on a two for one basis which reduces the retirement liability by half.

Mr. McInturff stated that Element Power, a company who is working on the Macho Springs Project north of town, is proposing a purchase power agreement. Mr. McInturff stated that they are interested in land that is adjacent to the Sunshine Fire Station, which the City owns, because it is adjacent to the Hondale substation. Mr. McInturff stated that the property is approximately 155 acres; adding that the investment would be approximately \$45 million. Mr. McInturff stated that he had

discussed the LOI terms with Mr. Foy after the workshop. Mr. McInturff stated that Mr. Foy informed him that the City would only be granting them the exclusivity to deal with only them through October 31, 2011. Mr. McInturff stated that the letter is currently not in its final format and asked for Council's approval to negotiate and execute a letter of intent with Element Power after Mr. Foy's approval. Councilor Milo asked if they would be using water. Mr. McInturff stated that they would not be consuming water. Councilor Milo asked how far the site was to Highway 11. Mr. McInturff state it was half a mile.

Mr. McInturff informed Council that a section defining a one dwelling unit was found to be out of place by Planning and Zoning; adding that it has been corrected in the proposed ordinance.

Mr. McInturff stated that there are also two quasi-judicial public hearings.

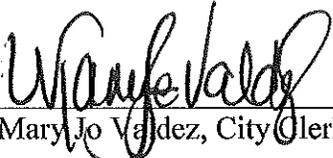
With no further business to conduct the workshop was adjourned at 4:26 p.m.

CITY OF DEMING, NEW MEXICO

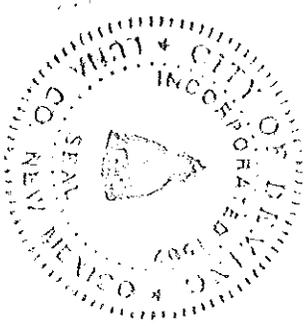


Andres Z. Silva, Mayor

ATTEST:



Mary Jo Valdez, City Clerk



CITY COUNCIL MEETING MINUTES May 9th, 2011

Council Present: Linda Enis, Councilor Joe "Butter" Milo, Councilor David Sanchez, Councilor

Absent: Andres Z. Silva, Mayor William C. Shattuck, Mayor Pro Tem

Staff Present: Richard F. McInturff, Administrator Aaron Sera, Community Services Director
Mary Jo Valdez, City Clerk Edgar Davalos, Fire Chief
Premal Patel, Planner Michael Carillo, Chief of Police
Richard Kocab, Assistant Treasurer

By consent, Councilor Enis, acted as presiding officer due to the absence of Mayor Silva and Mayor Pro Tem. She led the pledge of allegiance and called the meeting to order at 6:00 p.m.

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- I. Minutes – Marshall Memorial Library 04/26/11 – Meeting Cancelled
- J. Proclamations
 - a. Proclamation Declaring May 11th as "Wipe Out Malaria Day"

Councilor Milo motioned to approve the consent agenda with the exception of the TDC Minutes and asked to pull the TDC Minutes for discussion, second by Councilor Sanchez; carried unanimously.

PROCLAMATION YOUTH WEEK

WHEREAS, The Benevolent and Protective Order of Elks has designated the first week in May, as Youth Week to honor America's Junior Citizens for their accomplishments, and to give fitting recognition of their services to Community, State and Nation; and,

WHEREAS, Deming Lodge #2799 will sponsor an observance during that week in tribute to the Junior Citizens of this Community; and,

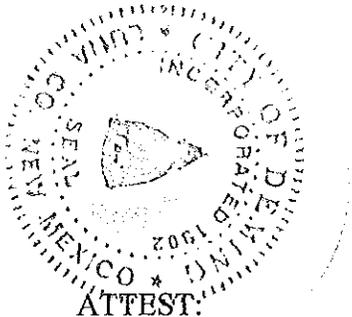
WHEREAS, no event could be more deserving of our support and participation than one dedicated to these young people who represent the nation's greatest resource, and who in the years ahead will assume the responsibility for the advancement of our free society; and,

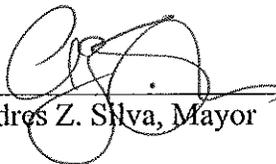
WHEREAS, our Youth need the guidance, inspiration and encouragement which we alone can give in order to help develop those qualities of character essential for future leadership; and go forth to serve America; and,

WHEREAS, to achieve this worthy objective we should demonstrate our partnership with Youth, our understanding of their hopes and aspirations and a sincere willingness to help prepare them in every way for the responsibilities and opportunities of citizenship:

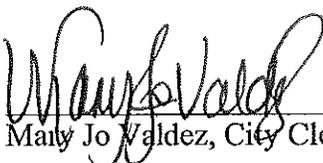
NOW THEREFORE, I Andres Silva, Mayor of the City of Deming, do hereby proclaim the first week in May as Youth Week, and urge all departments of government, civic, fraternal and patriotic groups, and our citizens generally, to participate wholeheartedly in its observance.

Done this 2nd day of May of 2011 in the City of Deming, New Mexico.





Andres Z. Silva, Mayor



Mary Jo Valdez, City Clerk

Proclamation

WHEREAS: *The National Day of Prayer is a tradition first proclaimed by the Continental Congress in 1775; and*

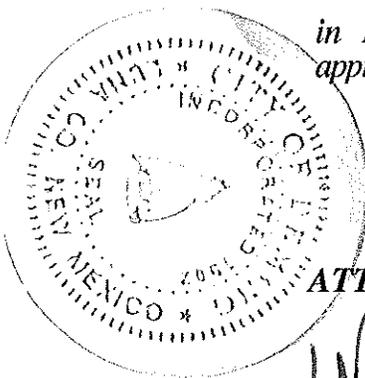
WHEREAS: *In 1988, legislation was unanimously ratified by both Houses of Congress and signed by President Ronald Reagan stating that the National Day of Prayer was to be observed on the first Thursday of every May; and*

WHEREAS: *It is fitting and proper to give thanks to the Lord by observing this day in Deming when all may acknowledge our blessings and express gratitude for them, while recognizing the need for strengthening religious and moral values in our state and nation;*

NOW, THEREFORE, *we, the Mayor and City Council of the City of Deming do hereby proclaim Thursday, May 5, 2011 as:*

"A DAY OF PRAYER"

in Deming and urge all citizens to observe this day in ways appropriate to its importance and significance.



ATTEST:

Wendy S. Valdez

CITY CLERK

[Signature]

MAYOR

**PROCLAMATION
Declaring May 11th as "Wipe Out Malaria Day"**

WHEREAS, fifty percent of the world's population live in areas where malaria is transmitted;
and

WHEREAS, malaria infects more than 200 million people a year and it is estimated that
approximately a million persons die of malaria annually; and

WHEREAS, the disease is a leading killer of children in Africa, where one child dies every 30
seconds from malaria; and

WHEREAS, malaria infections have increased in Africa during the last three decades, although
malaria has been brought under control and even eliminated in many parts of Asia, Europe, and
the Americas; and

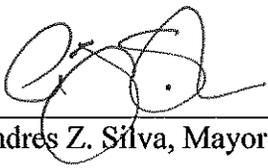
WHEREAS, insecticide-treated bed nets offer a simple and cost-effective solution to prevent
malaria deaths by creating a protective barrier against mosquitoes at night when most
transmissions occur, reducing the transmission of malaria by 50 percent; and

WHEREAS, partnerships such as *Roll Back Malaria* are making a difference in the fight against
malaria by getting people and communities involved; and

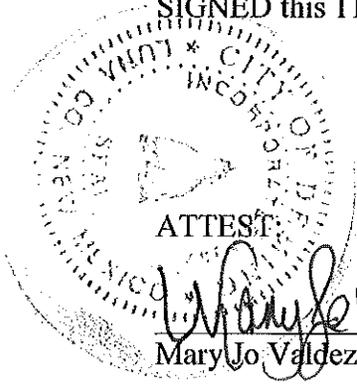
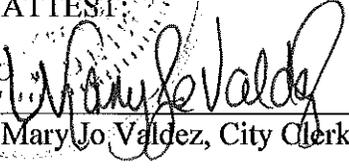
WHEREAS, achieving success in the fight against malaria requires global commitment and
cooperation;

NOW, THEREFORE, I, ANDRES Z. SILVA, as Mayor of the City of Deming, New Mexico, do
hereby proclaim May 11th, as "Wipe Out Malaria Day" and commend this observance to all our
citizens and encourage them to get involved in efforts and activities in support of malaria
prevention.

SIGNED this 11th day of May 2011 in the City of Deming, New Mexico.



Andres Z. Silva, Mayor


ATTEST


Mary Jo Valdez, City Clerk

Councilor Enis read the proclamation into the record. (Attached)

Mr. McInturff explained that items a. and b. under the TDC minutes are recommended prematurely; adding that City Council has not yet approved their preliminary budget. Mr. McInturff stated that he thought management had relayed to the TDC that they could do budget requests in June as Council is not prepared to recommend any budget allocations earlier.

Councilor Milo motioned to table the TDC budget requests and approve the remaining TDC Minutes, second by Councilor Sanchez; carried unanimously.

2. Public Forum

3. Ratification of Administrative Regulation # DM08-07, DM09-18, and DM11-30

Mr. McInturff explained that DM08-07 is a divergence from the past process which will entail a review by an independent hearing officer rather than by a committee. Mr. McInturff stated that a committee hearing usually takes an entire workday; adding that Judge VanGundy has agreed to be a hearing officer and review investigation reports and incident documentation and will meet with the employee and/or officials involved in an accident or injury. Mr. McInturff then stated that Judge VanGundy would then present his findings to administration for final disciplinary action, if appropriate. Mr. McInturff stated that DM09-18 is interrelated to DM08-07 in that section seven has been amended to reflect the designation of the hearing officer.

Mr. McInturff stated that DM-11-30 was created to set out the process for hiring employees. Mr. McInturff stated that the regulation was created due to a misunderstanding in that an interviewee was informed by a director that they would be hired. The applicant was not hired when background information was obtained by HR. Mr. McInturff stated that the HR department will be the only department to formally offer a position to a candidate.

Councilor Sanchez motioned to ratify the administrative regulations DM08-07, DM09-18, and 11-30 as presented, second by Councilor Milo; carried unanimously.

4. Ratification of Sick Leave Sell Back

Mr. McInturff stated that management is requesting the ratification for the approval of sick leave sell back amounting to \$27,915.18 plus employer contributions to be paid in June of 2011. Mr. McInturff stated that sick leave sell back is addressed in Administrative Regulation DM08. Mr. McInturff stated that the sell back of sick leave is done on a two hours sold for one hour paid basis which reduces the retirement liability by half.

Councilor Milo motioned to ratify the approval of sick leave sell back as presented, second by Councilor Sanchez; carried unanimously.

5. Approval to Negotiate and Execute Letter of Intent (LOI) with Element Power

Mr. McInturff stated that Element Power, a company who is working on the Macho Springs Project north of town, is proposing a purchase power agreement. Mr. McInturff stated that they are interested in land that is adjacent to the Sunshine Fire Station, which the City owns, because it is adjacent to the Hondale substation. Mr. McInturff stated that the property is approximately 155 acres; adding that the investment would be approximately \$45 million. Mr. McInturff stated that he discussed the LOI terms with Mr. Foy after the workshop. Mr. McInturff stated that Mr. Foy informed him that the City would only be granting them the exclusivity to deal with only them through October 31, 2011. Mr. McInturff stated that the letter of intent is currently not in its final format and asked for Council's approval to negotiate and execute a letter of intent with Element Power after Mr. Foy's approval. Councilor Milo asked if they would be using water. Mr. McInturff stated that they would not be consuming water.

Councilor Milo asked how far the site was to Highway 11. Mr. McInturff stated it was one half a mile from Hwy. 11.

Councilor Sanchez motioned to authorize management to negotiate and execute a letter of intent with Element Power subject to review by the City Attorney, second by Councilor Milo; carried

unanimously.

6. Public Hearing: To Consider an Ordinance Amending Title 2, Chapter 3 of the Municipal Code Pertaining to the Parks Commission

Councilor Enis conducted a public hearing to consider an ordinance amending Title 2, Chapter 3, of the Municipal Code.

Mr. Sera read the ordinance and stated that the ordinance has been cleaned up reflected in the portion pertaining to the officers of the commission. Mr. Sera stated that instead of having a president and so forth, that they would elect a chairperson. Mr. Sera stated that the Parks Commission would often meet without any agenda items.

Councilor Milo asked if there wouldn't be a set meeting. Mr. Sera stated that the goal is to meet every other month; adding that if staff or Commission sees the need to meet then a meeting would be scheduled.

Councilor Enis opened the public hearing for public comments.

Mr. Caldwell asked if the meetings were held every month. Councilor Enis stated that they did meet every month. Mr. Caldwell addressed his concerns of changing the meeting requirements stating that it may limit public comments; adding that he is opposed to staff or the commission setting a meeting only when they wish to hold a meeting. Councilor Sanchez asked if the meetings would be advertised. Mr. McInturff stated that the meeting notices are posted at City Hall. Mr. Caldwell stated that it would not be sufficient for the public.

Mr. Khanbaban addressed Council stating that he agrees with Mr. Caldwell's comments and added that what's happening is the lack of public interest. Mr. Khanbaban stated that if the commission isn't interested, they shouldn't serve on the board; adding that the commission should be obligated to meet each month.

Ms. Burr, addressed Council stating that she often attends meetings and would be frustrated herself in attending a meeting if nothing is on the agenda. Ms. Burr suggested meeting every other month as a compromise. Ms. Burr stated that holding a meeting without anything on the agenda for the purpose of just holding a meeting isn't a good practice.

Mr. Sera stated that the Parks Commission was initially used to recommend what the 1¢ cigarette tax would be used for. Mr. Sera explained that this tax is no longer received and the process has diminished because of this. Mr. Sera stated that his intention was to continue to meet every other month instead of each month.

Councilor Enis stated that Ms. Burr had a valuable suggestion; adding that the public likes to be informed and know a set time for the meetings. Mr. McInturff stated that the proposed ordinance may be changed if Council wishes to do so at the time of approval.

Councilor Enis closed the public comments and asked if Council was prepared to make a motion.

Councilor Sanchez motioned to amend the proposal of the amendment to Title 2, Chapter 3, of the Municipal Code with the addition to 2-3-3D to read "shall meet every other odd numbered month on the second Tuesday of the month or as needed...", second by Councilor Milo; carried unanimously.

Councilor Sanchez motioned to approve the ordinance with the amendment to section 2-3-3 D as approved earlier, second by Councilor Milo; carried unanimously.

7. Public Hearing: To Consider an Ordinance Amending Title 2, Chapter 4 of the Municipal Code Pertaining to the Airport Commission

Councilor Enis conducted a public hearing to consider an ordinance amending Title 2, Chapter 4, of the Municipal Code.

Mr. Sera read the ordinance and stated that this ordinance is similar in content to the Parks Ordinance but pertaining to the Airport Commission and read the ordinance.

Councilor Enis opened the public hearing for public comments.

Mr. Caldwell reiterated his comments from the previous public comments stating that he opposes to

the amendment.

Councilor Enis closed the public comments.

Councilor Milo motioned to approve the ordinance with the amendment under section 2-4-4 to read "shall meet every even numbered month on the second Tuesday of the month or as needed..." , second by Councilor Sanchez; carried unanimously.

8. Public Hearing: To Consider an Ordinance Amending Title 12, Chapter 4J, Section 2E of the Municipal Code Pertaining to Special Uses

Councilor Enis conducted a public hearing to consider an ordinance amending Title 12, Chapter 4J, Section 2E, of the Municipal Code.

Mr. Patel stated that the proposed ordinance was initiated because of the distribution and growth of medical cannabis which the state allows. Mr. Patel explained that the state allows placement through zoning laws with certain consideration for locations in close proximity to churches and schools. Mr. Patel stated that the proposed ordinance would classify it necessary to obtain a special use permit, therefore the applicant would have to go through the process of a public hearing and allow for public comment of their surrounding neighbors and the community. Mr. Patel stated that Recycling Centers and Salvage Yards were also added to the list.

Mr. McInturff noted that Planning and Zoning found a section defining "Special Uses" out of place which has been amended to be placed after E. Special Uses at the beginning of Section 2E; adding that another portion which was originally under Wrecker service was also found out of place and would be moved to Section 6B-8 under Title 12, Chapter 4J was also found and amended as presented in the amended ordinance. Mr. McInturff also brought attention to the addition of "Telecommunication" and "Radio" which was placed before transmission and power towers for clarification purposes.

Councilor Sanchez asked what the restrictions were for schools and churches. Mr. Patel stated that he believes the state has a distance requirement.

Councilor Enis opened the public hearing for public comments.

As there were no public comments, Councilor Enis closed public comments and asked Council if they were prepared to make a motion.

Councilor Sanchez motioned to approve the proposed ordinance changing Title 12, Chapter 4J, Section 2E, Section 6B, and suggested clarifications of the Municipal Code, second by Councilor Milo; carried unanimously.

9. Quasi-Judicial Public Hearing: To Consider an Alternate Subdivision for the Property Located in Block 40, of Orchard Park #2, Extended Addition

Councilor Enis conducted a quasi-judicial public hearing to consider the approval of an alternate subdivision for the property located in Block 40, of Orchard Park #2, Extended Addition; confirmed that Council had no conflict of interest; that the public notices were legally posted; and swore in all parties who would be giving testimony. Councilor Enis asked staff to present the case.

Mr. Patel stated that the applicant, Mr. Lawrence Rigg, is seeking an alternate subdivision for a portion of Block 40 of the Orchard Park #2 Extended Addition, within City limits. The property is located within the "C" Commercial District and fronting Florida Street. The agent for Mr. Rigg has met with the Public Works Director and has sufficient access to City utilities. Further research revealed that water and gas are available along Florida Street and that sewer is available running north and south within the block.

Mr. Patel stated that the parcel is approximately 5.66 acres before the alternate subdivision. The estimated size of the subdivided parcel is 75' x 240'. The cross access and utilities have been discussed with the Public Works Director; however, staff recommends that a contingency be placed on the approval because of the required permits to access utilities from the State of New Mexico Right-of-Way. The applicant is also in the preliminary stages of a plan to assist all parties in the future development of said property.

11

ORDINANCE NO. 1212

**AN ORDINANCE AMENDING TITLE 2, CHAPTER 3 OF THE MUNICIPAL
CODE OF THE CITY OF DEMING, NEW MEXICO**

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
DEMING, NEW MEXICO:

Title 2, Chapter 3, Sections 2 and 3 of the City of Deming Municipal Code is hereby
deleted in its entirety and replaced with the following:

2-3-2: DUTIES:

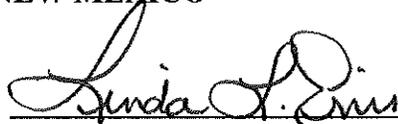
It shall be the duty of the park commission as a recommending body to make
recommendations regarding the acquisition of new parks and other activities or
expenditures directly related to parks within the City of Deming to City Council.

2-3-3: ORGANIZATION; MEETINGS:

- A. Elect Officers: The park commission shall meet within ten (10) days of its
appointment and organize by election of one of its members as the chairperson.
Election of a chairperson will be conducted annually.
- B. Preside At Meetings: The chairperson shall preside at all meetings; in his or her
absence, the commission shall elect one of its members to act as the chair, who, while
so acting shall have all the authority of the chairperson.
- C. Record Of Actions: City staff shall keep a complete record of all acts and doings of the
commission.
- D. Meetings: The commission shall meet on every odd numbered month on the second
Tuesday of the month or as needed as determined by staff or by the commission. The
time and place of the meeting will be set by staff
- E. Provide Minutes To City Council: City Staff shall furnish the City Clerk with a copy
of the Commission minutes for approval of the City Council.

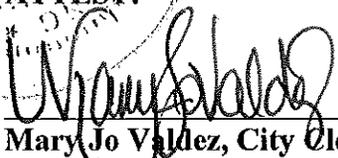
PASSED, ADOPTED, AND APPROVED, this 9th Day of May, 2011.

CITY COUNCIL, CITY OF DEMING, NEW MEXICO



Linda L. Enis, Councilor


ATTEST:



Mary Jo Valdez, City Clerk

ORDINANCE NO. 1213

**AN ORDINANCE AMENDING TITLE 2, CHAPTER 4 OF THE MUNICIPAL
CODE OF THE CITY OF DEMING, NEW MEXICO**

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
DEMING, NEW MEXICO:

Title 2, Chapter 4, Section 4 of the City of Deming Municipal Code is hereby deleted and
replaced with the following:

2-4-4: MEETINGS:

The Deming airport commission shall meet on every even numbered month on the
second Tuesday of the month or as needed basis as determined by staff or by the
commission. The time and place of the meeting will be set by staff.

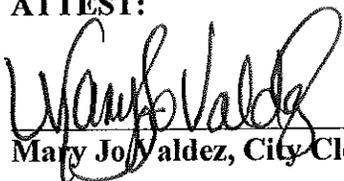
PASSED, ADOPTED, AND APPROVED, this 9th Day of May, 2011.

CITY COUNCIL, CITY OF DEMING, NEW MEXICO




Linda L. Enis, Councilor

ATTEST:


Mary Jo Valdez, City Clerk

2024

ORDINANCE NO. 1214

**AN ORDINANCE AMENDING TITLE 12, CHAPTER 4J OF THE MUNICIPAL
CODE OF THE CITY OF DEMING, NEW MEXICO**

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
DEMING, NEW MEXICO:

Title 12, Chapter 4J, Section 2E of the City of Deming Municipal Code is hereby deleted
and replaced with the following:

12-4J-2

E. Special Uses:

A use that would require higher or stricter level of review because of inherent special
characteristics, possible impact on adjacent properties, or possible impact on the
integrity of the particular zone which includes but is not limited to:

Adult amusement establishment;
Adult book or video store;
Agricultural implements sales and service;
Auction houses and flea markets;
Automobile and small and large truck sales and service;
Distribution of Medical Cannabis;
Heavy equipment sales and service;
Kennels;
Mobile, modular and manufactured home and office sales and service;
Motorcycle sales and service;
Recycling Centers;
Salvage Yards;
Open storage for landscape materials, sand, gravel or fertilizer;
Recreational vehicle sales, service and repairs, including, but not limited to, campers,
fifth wheel trailers, boats, and all terrain vehicles;
Telecommunications, Radio, Transmission and power towers, utility substations, and
plants;
Vehicle body shops;
Vehicle paint shops;
Vehicles for recreational use, sales and service, including, but not limited to, campers,
fifth wheel trailers, boats, all-terrain vehicles;
Welding shops;
Wrecker service.

Title 12, Chapter 4J, Section 6 B of the City of Deming Municipal Code is hereby
amended with the addition of Section 6 B 8 as follows:

- 8. One dwelling unit is permitted in any commercial use building either on the first or main floor, or on any upper floor, except that in any commercial use building located in a designated historic district more than one dwelling unit may be established on the upper floor(s), subject to the following conditions:
 - a. The dwelling unit, if located on the main or first floor, be located at the rear of the building and not the front of the building.
 - b. The floor area of any dwelling unit shall not be less than three hundred (300) square feet, and the total floor area of all dwelling units shall not be greater than thirty three percent (33%) of the total gross floor area of the commercial use building at the time of application for the conditional use permit.
 - c. No dwelling unit shall be established anywhere else on the commercial site other than in the principal commercial building. No accessory buildings, travel trailers, mobile home, manufactured homes, recreational vehicle or any other structure may be used as a dwelling unit.

PASSED, ADOPTED, AND APPROVED, this 9th Day of May, 2011.

CITY COUNCIL, CITY OF DEMING, NEW MEXICO



ATTEST:

Linda L. Enis

 Linda L. Enis, Councilor

Mary Jo Valdez

 Mary Jo Valdez, City Clerk

Mr. Patel stated that staff has no objections to the request; however, approval should be contingent on the applicant working with the Public Works Director to ensure proper permits and (public or private) easements if applicable and private cross access agreements. Mr. Patel stated that this access will keep traffic off of Florida Street. Mr. Patel stated that the applicant currently has access agreements executed by Mr. Jackson and Mr. Rigg, both whom are owners.

Councilor Enis asked if Council had any questions for staff.

Councilor Enis asked if the applicant or agent for the applicant would like to make a statement.

Councilor Enis asked if there were any affected parties that would like to make a statement.

Councilor Enis asked if there were any other parties that would like to make a statement.

Councilor Enis closed public comments and asked for a motion from Council and stated that Council has the option to go into closed session pursuant to NMSA 1978 10-15-1-H(3).

Councilor Sanchez motioned to approve the alternate subdivision for the property located at Block 40, of the Orchard Park #2 Extended Addition with the contingencies of having the agreements for public and private easements allowing shared access, second by Councilor Milo;

ROLL CALL VOTE:

Councilor Milo Aye

Councilor Sanchez Aye

Councilor Enis Aye

motion passed and carried unanimously

10. Quasi-Judicial Public Hearing: To Consider a Special Use Permit to Erect a Cell Tower at 265 Tapia Rd., SE

Councilor Enis conducted a quasi-judicial public hearing to consider a special use permit to erect a cell tower at 265 Tapia Rd., SE; confirmed that Council had no conflict of interest; that the public notices were legally posted; and swore in all parties who would be giving testimony. Councilor Enis asked staff to present the case.

Mr. Patel stated that subject property is located at 265 Tapia Rd., SE. The subject property is zoned 'C' Commercial and is currently the "cattle auction facility". Verizon is requesting a Special Use Permit to erect a telecommunications tower on a 40' x 40' portion of the above stated land for better coverage. The tower is a monopole design at 103'-6" in height; therefore, a variance on the height would be required. In 12-4 of the City Code, there are no specific statements regarding transmission towers; therefore, staff considers the project not allowed by zoning right, but as a Special Use. The height limitation for 'C' Commercial is 35 feet in height. In addition, 12-7-1C, details that radio towers may be erected to a height in accordance with existing or thereafter adopted provisions of this code. Within Chapter 7 of Title 12, there are no other height requirements for towers; therefore, the applicant is seeking a height variance on 'C' Commercial of 104 feet.

Mr. Patel stated that the consultant for Verizon has received preliminary approval of the site from the FAA. Staff consulted with the City of Deming's Air Traffic Engineer regarding this project. According to the Air Traffic Engineer, the FAA's preliminary analysis appears to be technically correct and any City approval should be contingent on FAA issuing a "No Hazard" airspace determination. The FAA analysis should identify the impact to the approaches and pattern altitude. Recently, the City of Deming with the partnership of the FAA, extended the main runway. The project came with the FAA requirement to relocate Tapia Road around the "Runway Protection Zone". The City purchased land to begin compliance with this mandate. With changing FAA requirements and our endeavor to accommodate larger classifications of airplanes, staff is concerned that the use at this location could have a negative impact in future planning for Deming Municipal Airport.

Mr. Patel stated that staff does not recommend the approval of the special use permit due to the possible future impacts to the airport. Staff encourages technology to better serve our community, and it

is staff's hope to assist Verizon in finding a more suitable location. Since towers are not allowed by right but as Special Use, staff recommends a new location to be determined. If approved, staff asks that the approval be contingent on a "No Hazard" airspace determination and that the Airspace Number (ASN) be provided immediately for tracking purposes.

Mr. Patel stated that in addition to the contingencies, staff is requesting that the portion of the land be widened with an engineering certification that the fenced area fenced off will be sufficient to allow for the tower to fall within its perimeter in the event that it should fall. Mr. Patel stated that there has been a recent extension of the main runway and a land purchase for the route change of Tapia Road. Mr. Patel stated that the realignment of Tapia Road falls within the proposed area. Mr. Patel stated that staff is concerned in protecting the City's transportation hubs. Mr. Patel read into the record an e-mail received by Linda Smrkovsky in opposition to the erection of the tower at the proposed location. (Attached) Mr. Patel read into the record a memorandum from Mr. McInturff, City Administrator, in opposition to the erection of the tower at the proposed location. (Attached)

Councilor Enis asked if Council had any questions for staff.

Councilor Enis asked if the applicant or agent for the applicant would like to make a statement.

Ms. Cardinal, on behalf of Verizon, addressed Council stating that there was a great amount of research performed prior to selecting the proposed location. Ms. Cardinal stated that she contacted the FAA for their approval of the proposed location. Ms. Cardinal stated that she spoke to Mr. Patel and received no indication that there would be an issue. Ms. Cardinal stated that the locations the tower could be erected at is limited and that they do anticipate coverage on I-10 which would assist in the transmission of 9-1-1 calls which are critical. Ms. Cardinal addressed the issue about the towers potential collapsing, stating that there is sufficient room which would contain the tower should it collapse. Ms. Cardinal stated that she will provide staff with the ASN prior to the permitting process.

Councilor Milo asked if the tower would not work if it was located elsewhere. Ms. Cardinal stated that the proposed location was designed to offload capacity from other towers. Ms. Cardinal stated that there is certain criteria that needs to be met in relation to the percentage of coverage with still keeping in mind FAA issues.

Councilor Enis asked if there were any affected parties that would like to make a statement.

Mr. Sera, Community Services Director/Airport Manager, addressed Council stating that there are have been recent studies completed resulting in concerns that the tower's placement would affect the expansion of the airport.

Mr. McInturff, City Administrator, addressed Council stating that the proposed location may be approved by FAA; however, the placement at the proposed location would affect future plans for the expansion of the airport. Mr. McInturff stated that the City is trying to preserve the few options available for the growth of the airport and stated that extra precautions should be taken into consideration.

Councilor Enis asked if there were any other parties that would like to make a statement.

Mr. Khanbajian addressed Council stating that he is in support of increasing coverage of our area. Mr. Khanbajian asked how many towers are located in Luna County. Ms. Cardinal stated that she is unsure on the number of towers are located in Luna County. Mr. Khanbajian asked what the radius of coverage is for each tower. Ms. Cardinal stated that each tower covers approximately three to four miles depending on the number of the users in the area. Mr. Khanbajian asked what the purpose of adding a tower at this location was if it only covered three miles. Ms. Cardinal stated that as the number of users rise, the towers get closer in proximity. Mr. Khanbajian asked if the tower would be shared with other companies. Ms. Cardinal stated that they do share the tower with other companies. Mr. Khanbajian asked if Verizon anticipated adding more towers in the near future. Ms. Cardinal stated that it depends on the timeframe being considered; however, she did not anticipate any towers being erected within the next year. Mr. Khanbajian asked if 4G service would be installed in Deming. Ms. Cardinal stated that 4G service would be in the future.

Mr. Caldwell addressed Council asking why the tower on Hwy. 549 couldn't be used instead of having to construct another tower. Ms. Cardinal stated that it is not close enough to offload other towers.

Mr. Caldwell stated that there are areas in Luna County which are without service; adding that the erection of this tower would not improve service in Luna County.

Ms. Burr addressed Council asking if the consultant seeks land that's for sale when looking for sites to erect towers. Ms. Cardinal stated that they look for land that is owned and they contact the owners and begin their research. Ms. Burr stated that there is land east of town, on the north side of I-10 which may be better suited to erect a tower. Ms. Cardinal stated that that particular location would not allow for offloading the towers as planned. Ms. Burr asked if FAA is worried about Tapia Road. Mr. McInturff stated that FAA is not funding Tapia Road; adding that Tapia Road will be moved east when there is funding. Ms. Burr stated that the community would love to have better coverage south of Deming where reception is a real problem up to Santa Teresa, NM. Ms. Cardinal stated that the relocation of Tapia Road would have no effect to the tower at the proposed location. Ms. Cardinal added that Verizon has had to relocate several towers and they are aware it may have to come down at some point.

Councilor Sanchez asked if the Special Use Permit were approved and the situation arose that the tower had to come down, who would be responsible for the cost of removing the tower. Ms. Cardinal stated that if Verizon lost state, federal, or local approvals then the tower would have to be relocated. Mr. McInturff asked if Verizon would contest the direction to remove the tower if there were a conflict in the airport extension due to the tower's placement. Ms. Cardinal stated that if the FAA required to have the tower removed, would do so. Mr. Patel stated that a Special Use Permit is revocable. Mr. Patel asked for Council to clarify in their motion, the height, and the space consideration if approved.

Councilor Enis closed public comments and asked for a motion from Council and stated that Council has the option to go into closed session pursuant to NMSA 1978 10-15-1-H(3).

Councilor Sanchez motioned to go into closed session for deliberation pursuant to NMSA 1978 10-15-1-H(3), second by Councilor Milo;

ROLL CALL VOTE:

Councilor Milo	Aye
Councilor Sanchez	Aye
Councilor Enis	Aye

motion passed and carried unanimously

Councilor Milo motioned to go into open session, second by Councilor Sanchez;

ROLL CALL VOTE:

Councilor Enis	Aye
Councilor Sanchez	Aye
Councilor Milo	Aye

motion passed and carried unanimously

Councilor Milo stated that the City has been planning to complete an airport expansion project for some time; adding that land had been purchased in the area anticipating the project. Councilor Milo added that staff would be willing to assist Verizon in locating a more suitable piece of property to erect a tower.

Councilor Milo motioned to deny the special use permit and height restriction variance, second by Councilor Sanchez;

ROLL CALL VOTE:

Councilor Milo	Aye
Councilor Enis	Aye
Councilor Sanchez	Aye

motion passed and carried unanimously

11. Bids

a. Bid #11-19 Animal Dairy Feed

Mr. Sera stated that three bids were received; adding that the highest bid is being sought. Mr. Sera stated that Mark Boggs submitted the highest bid and recommended approval of the bid.

Councilor Enis asked if the crop would be harvested all year. Mr. Sera stated that it would only be harvested this crop season.

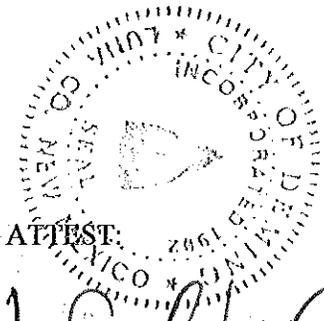
Councilor Sanchez motioned to accept bid #11-19 Animal Dairy Feed from Mark Boggs in the amount of \$4,500, second by Councilor Milo; carried unanimously.

12. Adjourn Meeting

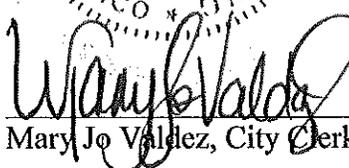
With no further business to conduct, Councilor Sanchez motioned to adjourn the meeting, second by Councilor Milo; carried unanimously.

A Council Workshop will be held in Ruidoso, NM on May 19th through 20th, 2011.
There will be a Special Council Meeting held on May 27th to consider the 2011-2012 Budget.
The next regular City Council Workshop and Meeting are scheduled for 4:00 & 6:00 p.m., June 13th, 2011.

CITY OF DEMING



ATTEST:


Mary Jo Valdez, City Clerk



Andres Z. Silva, Mayor