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

CITY COUNCIL MEETING

December 13th, 2010

4:00 P.M. CITY COUNCIL WORKSHOP

6:00 P.M. CITY COUNCIL MEETING

AGENDA

Call to Order / Pledge of Allegiance

1. Public Hearing to Close Out for CDBG
 - a. Report
 - b. Input
 - c. Close Hearing
2. Consent Agenda
 - A. Minutes - City Council Workshop and Regular Meeting 11/08/10
 - B. Minutes – Special City Council Meeting 11/12/10
 - C. Minutes – Special City Council Meeting 11/19/10
 - D. Minutes – Tourism Development Committee 11/10/10
 - a. Recommendation to reallocate \$700 to RMCC for advertising
 - E. Minutes – P&Z Commission 11/15/10 - Cancelled
 - F. Minutes – Airport Commission 11/16/10
 - G. Minutes - Parks Commission 11/16/10
 - H. Minutes – Library Board 11/30/10
3. Public Forum
4. Proclamation Declaring the Month of December as “Support Deming’s Local Businesses Month”
5. Proclamation Declaring November 15, 2010 as America Recycles Day
6. Presentation of Commendation Awards to Officer Gallosa and Lt. Schindler
7. Presentation of Certificate of Appreciation to Louis Jenkins
8. Request by Deming Helping Hand to Waive Demolition Landfill Fees
9. Mayor’s Appointment of Thomas W. Awbrey to the Airport Commission
10. Approval of Amended Job Descriptions and Mayor’s Appointment of City Clerk and Designation of Deputy Clerk
11. Administrative Regulations Pertaining to FMLA and DOT Pipeline Drug and Alcohol Testing
12. Approval of an Agreement for Governmental Services between the Energy, Minerals and Natural Resources Department and the City of Deming
13. Resolution: To Enter Into a Grant Agreement with the NM Finance Authority Water Trust Board
14. Public Hearing: To Consider an Ordinance Amending Title 9, Chapter 7, 10B of the Municipal Code Pertaining to Utility Connection Fees along Solana Road
15. Public Hearing: To Consider an Ordinance Amending Title 9, Chapter 1, 6, C4 of the Municipal Code Pertaining to Residential Tire Disposal Fees at the Transfer Station
16. Public Hearing: To Consider an Ordinance Regarding Aggressive Panhandling

17. Quasi Judicial Public Hearing: To Consider an Alternate Subdivision by Manuela B. Van

18. Bids:

a. #11-10 Wood Poles

19. Closed Session: To Discuss personnel matters, litigation matters, and real estate, pursuant to NMSA 1978 Sections 10-15-1 (H) (2) (7) and (8) of the Open Meetings Act

20. Open Session: Motions if any

21. Adjourn Meeting

The next regular City Council Workshop and Meeting are scheduled for 4:00 & 6:00 p.m., January 10th, 2011.

CITY COUNCIL WORKSHOP MINUTES December 13, 2010

Council Present: **Andres Z. Silva, Mayor** **William Shattuck, Mayor Pro Tem**

Absent: **Linda Enis, Councilor** **Joe "Butter" Milo, Councilor**
 David Sanchez, Councilor

Staff Present: **Richard McInturff, City Administrator** **Aaron Sera, Community Svcs. Director**
 Mary Jo Valdez, Deputy Clerk **Edgar Davalos, Fire Chief**
 Richard Kocab, Assistant Treasurer **Louis Jenkins, Public Works Director**
 Premal Patel, Planner **Lawrence Brookey, Asst. Public Works Director**

The Mayor and the City Council of Deming, New Mexico held a workshop on December 13th, 2010 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.

Mayor Silva stated that there will be a public hearing to close out the 2010 CDBG Grant for Project #10-C-NR-I-01-G-13 which was a drainage project in the vicinity of 8th and Pear Streets.

Mr. McInturff stated that the minutes from TDC reflects an 8% increase in lodgers tax from the previous year; adding that the lodgers tax is down 26% from the highest amount.

Mayor Silva addressed the issue of the attendance of Committee members. Mr. Kocab stated that the Committee wanted to make the recommendation for future members. Mr. McInturff stated that the minutes reflect the Committee's interest in usurping the Mayor's authority on the appointment of a committee member. Mayor Silva stated that he suggested having members who could not be present the opportunity to attend telephonically.

Mr. McInturff stated that management recommends approving the consent agenda.

Mr. McInturff stated that Mr. Jenkins would be receiving his retirement certificate and commented on his monthly report which would be his last; adding that the history he included within the report was appreciated.

Mr. McInturff stated that Deming Helping Hands is requesting to have landfill fees waived for their disposal of construction debris associated with their installation of a parking lot south of their building. Mr. McInturff stated that the City has an old lagoon south of the sewer plant that is in need of being filled. Mr. McInturff stated that it would be beneficial for them to haul their clean fill to that site and recommended that Council approve their request and allow them to haul the clean fill to the site.

Mr. McInturff stated that this is the first time the City of Deming has ever separated the position of City Clerk from the position of City Administrator. Mr. McInturff explained that the current positions of City Clerk and Deputy Clerk would essentially be swapped between himself and Ms. Valdez if the Mayor's appointment is approved.

Mr. McInturff stated that the FMLA requires a policy be put in place for employee's information; adding that the regulation has forms attached for their use in the course of a FMLA leave of absence. Mr. McInturff stated that the regulation pertaining to PHMSA is to establish a local policy in accordance with applicable federal regulations. Mr. McInturff stated that the City already has a drug

policy in place for general employees. Staff is also working on an additional drug policy for CDL drivers. Mr. McInturff stated that it is possible that a few employees could be covered under all three of the City's separate drug policies.

Mr. McInturff stated that the Southwest Regional Housing and Community Development Corporation will be meeting with representatives from the Department of Energy to review the grant and requirements; adding that they may have some amendments to the agreement. Mr. McInturff recommended authorizing the Mayor the ability to amend the agreement from its present form if necessary.

Mr. Brookey stated that the resolution is necessary to enter into a grant agreement with the Water Trust Board for funding in the amount of \$380,000 to supply treated effluent to the Multi-Use Sports Complex. Mr. Brookey also stated that the City has been awarded funding in the amount of \$380,000 to connect the Clary Farm Well off of Lucca Rd. to the City's domestic water system.

Mr. Brookey stated that the ordinance is a proposal to reduce connection fees along Solana Road. Mr. Brookey stated that the fees would align the fees with the amount to connect to utilities inside City limits.

Mr. Brookey stated that the ordinance is a proposal to do away with the fees associated with the disposal of residential tires in efforts to reduce litter in the area.

Mr. Brookey stated that staff initiated a bid for poles to replace the lighting system used at Hooten Park Baseball Field. Mr. Brookey stated that there are some poles that are in bad shape and in need of replacing; adding that most of the poles were put in place in the 1970s.

With no further business to conduct the workshop was adjourned at 4:12 p.m.

The next Regular City Council Workshop and Meeting are scheduled for 4:00 & 6:00 p.m., January 10th, 2011.

CITY OF DEMING, NEW MEXICO



ATTEST:

Mary Jo Valdez, Clerk


Andres Z. Silva, Mayor

CITY COUNCIL MEETING MINUTES December 13th, 2010

Council Andres Z. Silva, Mayor William C. Shattuck, Mayor Pro Tem
Present: Joe "Butter" Milo, Councilor

Absent: David Sanchez, Councilor Linda Enis, Councilor

Staff Richard F. McInturff, Administrator Aaron Sera, Community Services Director
Present: Mary Jo Valdez, Deputy Clerk Premal Patel, Planner
Louis Jenkins, Public Works Director Edgar Davalos, Fire Chief
Richard Kocab, Assistant Treasurer Wesley Hooper, Project Coordinator
Lawrence Brookey, Assist. Public Works Director Jim Foy, City Attorney

Mayor Silva led the pledge of allegiance and called the meeting to order at 6:00 p.m.

1. Public Hearing to Close Out 2010 CDBG

a. CDBG Progress Report

Mayor Silva conducted a public hearing to close out the 2010 CDBG Grant for Project #10-C-NR-I-01-G-13.

Mr. Sera reported on the completion of the retention pond on Pear and 8th Street, Project #10-C-NR-I-01-G-13, which will alleviate flooding that occurs in the area. (Report Attached)

Councilor Milo thanked City staff for completing the project in his district adding that he had received many calls from constituents in his district asking for a project to alleviate the flooding.

Mayor Silva stated that CDBG staff commented on how well the administration of the grant process was performed as well as the efficiency of the construction phase.

b. Input – General Community

Mayor Silva opened the public hearing for public comments. There were no public comments made during the hearing.

c. Close CDBG Hearing

With no further comments, Mayor Silva closed the public hearing at 6:15 p.m.

Councilor Milo motioned to close the public hearing to accept and close out the 2010 CDBG Project, second by Mayor Pro Tem Shattuck;

Mayor Silva asked for a friendly amendment to include the project number.

Councilor Milo made a friendly amendment and motioned to close the public hearing to accept and close out the 2010 CDBG Project #10-C-NR-I-01-G-13, second by Mayor Pro Tem Shattuck; carried unanimously.

2. Consent Agenda

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- H. Minutes – Library Board 11/30/10

Mr. McInturff stated that management recommends approving all items on the consent agenda.

Mayor Pro Tem Shattuck motioned to accept the consent agenda as presented, second by Councilor Milo; carried unanimously.

3. Public Forum

4. Proclamation Declaring the Month of December as “Support Deming’s Local Businesses Month”

Mayor Silva read the proclamation into record and stated that the proclamation was signed on December 6th; adding that the proclamation was first created last year to bring attention to local shopping in Deming. (Attached)

5. Proclamation Declaring November 15, 2010 as America Recycles Day

Mayor Silva stated that a recycling program was discussed during the Mayor’s Round Table meeting; adding that a grant in the amount of \$350,000 was awarded to the City of Deming for a recycling center which will be constructed at the Transfer Station. Mayor Silva read the proclamation into the record. (Attached)

6. Presentation of Commendation Awards to Officer Gallosa and Lt. Schindler

Chief Carillo addressed Council stating that Officer Gallosa and Lt. Schindler were unable to attend as they were on duty and out on calls.

Chief Carillo read the certificates and explained that their acts assisted in saving the life of a citizen who was unresponsive. Chief Carillo stated that the actions of the two officers attributed to their dedication of serving the community. Mayor Silva also extended the councils gratitude to the EMT responders.

7. Presentation of Certificate of Appreciation to Louis Jenkins

Mayor Silva read a final report submitted by Mr. Louis Jenkins, Public Works Director. (Report Attached)

Mayor Silva thanked him for his service to the community. Councilor Milo and other Council Members thanked Mr. Jenkins for his service.

8. Request by Deming Helping Hand to Waive Demolition Landfill Fees

Mr. McInturff stated that Deming Helping Hands has served the community in assisting 50-60 families on a monthly basis with food and clothing at no charge. Mr. McInturff stated that they are requesting to have landfill fees waived for their disposal of construction debris associated with their installation of a parking lot south of their building. Mr. McInturff stated that the parking lot will ensure adequate and safe parking. Mr. McInturff stated that the City has an old lagoon south of the sewer plant

Proclamation

WHEREAS, during the month of December 2010, the City of Deming would like to encourage the community to shop locally for the holidays;

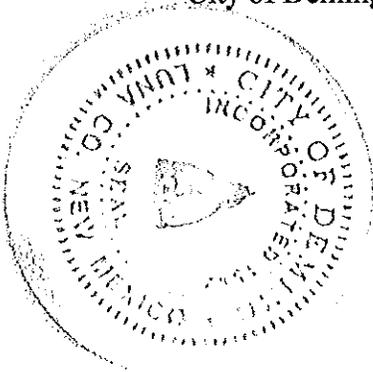
WHEREAS, the City of Deming would like to express its support of local businesses in their attempt to build a strong local economy for our community by investing their savings in the attempt to do so;

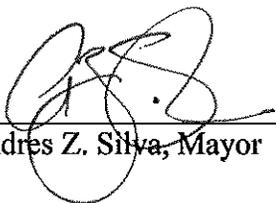
WHEREAS, the City of Deming would like to maintain its community's character through embracing local businesses within the community which keep our citizens employed;

NOW THEREFORE, I, Andres Z. Silva, Mayor of the City of Deming, do hereby proclaim the month of December 2010 as "Support Deming's Local Businesses Month" and encourage the community to participate.

Signed this 6th day of December, 2010.

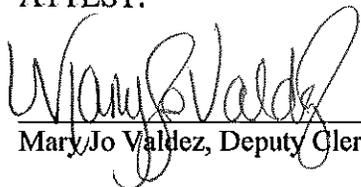
City of Deming, New Mexico





Andres Z. Silva, Mayor

ATTEST:



Mary Jo Valdez, Deputy Clerk

that is in need of being filled. Mr. McInturff stated that it would be beneficial for them to haul their clean fill to that site and recommended Council's approval of the request.

Mayor Silva thanked the group for their assistance provided to the community.

Mayor Pro Tem Shattuck motioned to approve the grant to Deming Helping Hand allowing them to haul their clean fill without weeds or mesquites to the site by the sewer plant, second by Councilor Milo; carried unanimously.

Mr. Gilmore asked for clarification that the clean fill would be hauled to the pit by the sewer plant. Mr. McInturff confirmed.

9. Mayor's Appointment of Thomas W. Awbrey to the Airport Commission

Mayor Silva asked Council for their approval of his recommendation to appoint Thomas W. Awbrey to the Airport Commission; adding that Mr. Awbrey has extensive knowledge on airport operations having previously been an operation supervisor in San Diego, CA.

Councilor Milo motioned to approve the recommendation of Mr. Thomas W. Awbrey to the Airport Commission, second by Mayor Pro Tem Shattuck; carried unanimously.

10. Approval of Amended Job Descriptions and Mayor's Appointment of City Clerk and Designation of Deputy Clerk

Mr. McInturff stated that to his knowledge, this is the first time the City of Deming has ever separated the position of City Clerk from the position of City Administrator. Mr. McInturff stated that Ms. Valdez has completed her clerk certification; adding that the Mayor has a recommendation to appoint her as the City Clerk. Mr. McInturff stated that the job descriptions are before Council as a result of the recommended separation of the two positions. Mr. McInturff stated that the job description of the City Administrator/Deputy Clerk; adding that if the appointment is approved he and Ms. Valdez would essentially be trading job duties pertaining to the duties of the Clerk and Deputy Clerk.

Mayor Silva noted a change to be made on gender language within the job descriptions as on page one, under the fifth bullet to read his/her.

Mayor Pro Tem Shattuck motioned to approve the job descriptions of Municipal Clerk, an appointed position and the Administrator-Manager with the duties of the Deputy Clerk, also an appointed position directing staff to make the appropriate changes within both job descriptions to indicate he/she, or his/hers, or appropriate language, second by Councilor Milo; carried unanimously.

Mayor Silva recommended the appointment of Ms. Mary Jo Valdez as the City Clerk and the designation of Mr. McInturff as the Deputy Clerk.

Mayor Pro Tem Shattuck motioned to approve the Mayor's recommendation of Ms. Mary Jo Valdez as City Clerk and Mr. McInturff to be designated Deputy Clerk, second by Councilor Milo; carried unanimously.

11. Administrative Regulations Pertaining to FMLA and DOT Pipeline Drug and Alcohol Testing

Mr. McInturff stated that DM10-28 is an administrative regulation pertaining to the Family Medical Leave Act and DM10-29 is an administrative regulation pertaining to Pipeline and Hazardous Materials Safety Administration for the gas department.

Mr. McInturff stated that the FMLA requires a policy be put in place for employee's information; adding that the regulation has forms attached for their use in the course of a FMLA leave of absence. Mr. McInturff stated that the regulation pertaining to PHMSA is to establish a local policy in accordance with applicable federal regulations. Mr. McInturff stated that the City already has a policy in place for general employees; and recommended the approval of the two administrative regulations.

Mayor Pro Tem Shattuck motioned to ratify DM10-28 a Regulation Governing Family Medical Leave Act, and DM10-29 a Regulation Governing Pipeline and Hazardous Materials Safety Administration, second by Councilor Milo; carried unanimously.

12. Approval of an Agreement for Governmental Services between the Energy, Minerals and Natural Resources Department and the City of Deming

Mr. Sera explained that the funding is ARRA stimulus funding from the U.S. Department of Energy.

Mr. Sera stated that the City would like to accept the grant in the amount of \$56,690 and subcontract with Luna County Housing Corporation; adding that they would administer the grant. Mr. Sera stated that the funding will be used for 60 homes.

Mr. McInturff stated that the Southwest Regional Housing and Community Development Corporation will be meeting with representatives from the Department of Energy to review the grant and requirements; adding that they may have some amendments to the agreement. Mr. McInturff recommended authorizing the Mayor the ability to amend the agreement from its present form if necessary.

Mayor Pro Tem Shattuck motioned to authorize the grant with the Energy Minerals and Natural Resources Department and authorize the Mayor to make any necessary amendments, second by Councilor Milo; carried unanimously.

13. Resolution: To Enter Into a Grant Agreement with the NM Finance Authority Water Trust Board

Mr. Brookey stated that the resolution is necessary to enter into a grant agreement with the Water Trust Board for funding in the amount of \$380,000 to supply treated effluent to the Multi-Use Sports Complex for irrigation use which was approved by the Board in June 2010.

Councilor Milo motioned to approve the resolution entering into a grant agreement with the Water Trust Board, second by Mayor Pro Tem Shattuck; carried unanimously.

Mr. McInturff asked Mr. Brookey to inform the Council of a notification he received.

Mr. Brookey informed Council that the City has also been awarded other funding in the amount of \$380,000 to connect the Clay Farm Well off of Lucca Rd. to the City's domestic water system.

14. Public Hearing: To Consider an Ordinance Amending Title 9, Chapter 7, 10B of the Municipal Code Pertaining to Utility Connection Fees along Solana Road

Mayor Silva conducted a public hearing to consider an ordinance amending Title 9, Chapter 7, 10B of the Municipal Code Pertaining to Utility Connection Fees along Solana Road.

Mr. Brookey stated that the ordinance is a proposal to reduce connection fees along Solana Road.

Councilor Milo stated that if approved, the fees would be consistent to the connection fees within the City. Mr. Brookey confirmed.

Mayor Silva opened the public hearing for public comments.

Mr. Caldwell stated that it would be interesting to review the previous analysis resulting in the current rates but did not want his questions answered.

Mayor Silva closed the public hearing and asked Council if they were prepared to make a decision.

Mayor Silva stated that staff proposed the fees to match connection fees within the City to be more affordable.

Mayor Pro Tem Shattuck motioned to approve the ordinance amending Title 9, Chapter 7, 10B of the municipal code, second by Councilor Milo; carried unanimously.

15. Public Hearing: To Consider an Ordinance Amending Title 9, Chapter 1, 6, C4 of the Municipal Code Pertaining to Residential Tire Disposal Fees at the Transfer Station

Mayor Silva conducted a public hearing to consider an ordinance amending Title 9, Chapter 1, 6, C4 of the Municipal Code Pertaining to residential tire disposal fees at the transfer station.

Mr. Brookey stated that the ordinance is a proposal to do away with the fees associated with the disposal of residential tires in efforts to reduce litter in the area.

**CITY OF DEMING, NEW MEXICO
RESOLUTION NO 10-32**

A RESOLUTUION TO ENTER INTO A GRANT AGREEMENT WITH THE NEW MEXICO FINANCE AUTHORITY WATER TRUST BOARD FOR SUPPLYING TREATED EFFLUENT FROM THE WASTEWATER TREATMENT PLANT TO THE MULTI-USE SPORTS COMPLEX FOR IRRIGATION USE.

WHEREAS the City of Deming submitted a Water Trust Board grant application to Supply Treated Effluent from the Wastewater Treatment Plant to the Multi-Use Sports Complex for Irrigation Use which was approved for funding by the Board in June 2010

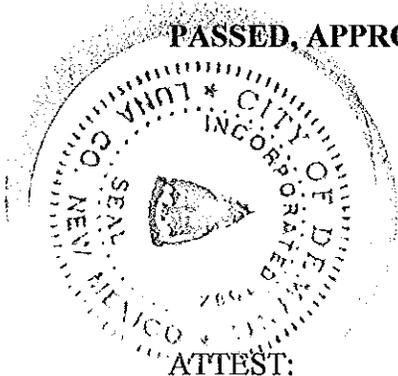
WHEREAS the City of Deming received the Terms and Conditions of the Grant from the Water Trust Board which identified the City's 10% match requirement for the \$300,000.00 award

WHEREAS the City's match requirement can be satisfied by \$15,000.00 in expenditures paid towards completion of the project and \$15,000.00 from City force account labor

WHEREAS the Verification of the match requirement can be submitted to the Water Trust Board in RESOLUTION format

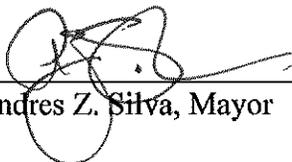
NOW THEREFORE BE IT RESOLVED that the City of Deming City Council affirms that this resolution be passed and presented as document authorization of the match requirement towards the Supply Treated Effluent from the Wastewater Treatment Plant to the Multi-Use Sports Complex for the Irrigation Use project grant.

PASSED, APPROVED AND ADOPTED THIS 13th day of December 2010.



ATTEST:

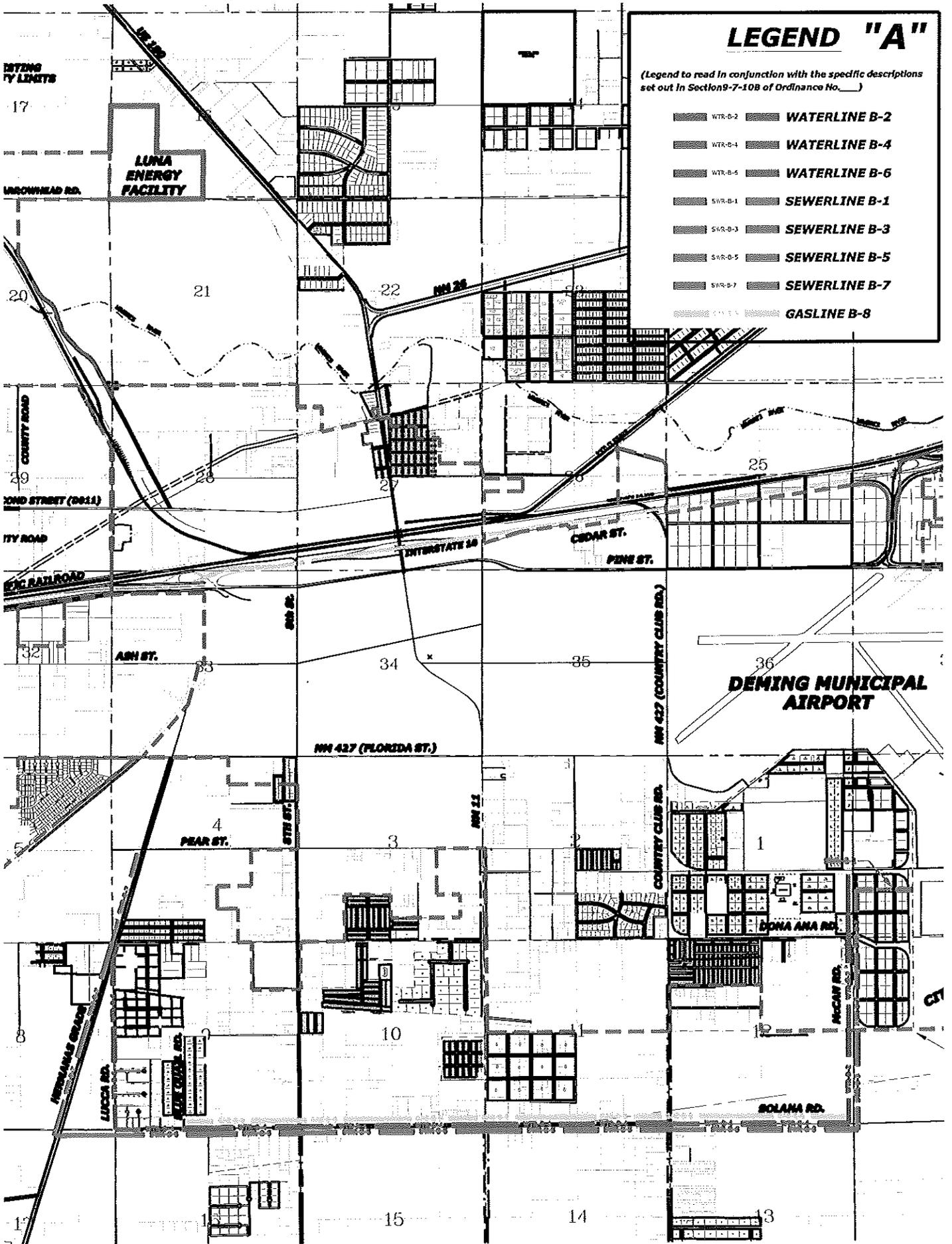
Mary Jo Valdez, Clerk


Andres Z. Silva, Mayor

LEGEND "A"

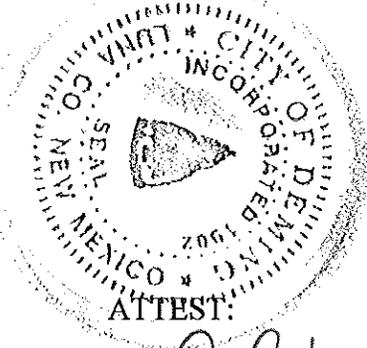
(Legend to read in conjunction with the specific descriptions set out in Sections 7-10B of Ordinance No. _____)

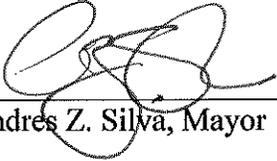
-  WTR-B-2  WATERLINE B-2
-  WTR-B-4  WATERLINE B-4
-  WTR-B-6  WATERLINE B-6
-  SWR-B-1  SEWERLINE B-1
-  SWR-B-3  SEWERLINE B-3
-  SWR-B-5  SEWERLINE B-5
-  SWR-B-7  SEWERLINE B-7
-  GASLINE B-8



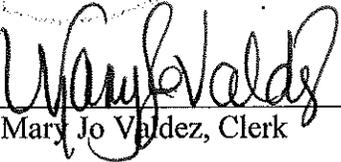
PASSED, ADOPTED, AND APPROVED, this 13th Day of December, 2010

CITY COUNCIL, CITY OF DEMING, NEW MEXICO





Andres Z. Silva, Mayor



Mary Jo Valdez, Clerk

ORDINANCE NO. 1206

**AN ORDINANCE AMENDING TITLE 9, CHAPTER 1-6-C4 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

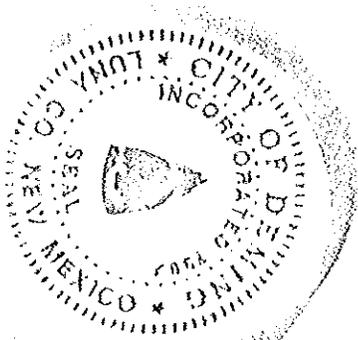
1. Title 9, Chapter 1-6C4 heading "Fees Established" of the Deming City Code is hereby amended by adding Section, 4a. as follows and all other portions of Title 9, Chapter 1-6C4 are to remain the same:

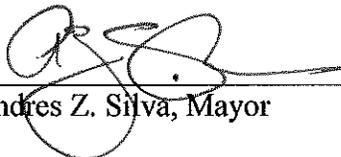
9-1-6C4: "Fees Established":

- a. No fee will be assessed for used tires generated by non-commercial activities.

PASSED, ADOPTED, AND APPROVED, this 13th Day of December, 2010

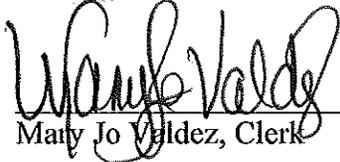
CITY COUNCIL, CITY OF DEMING, NEW MEXICO





Andres Z. Silva, Mayor

ATTEST:



Mary Jo Valdez, Clerk

Mayor Silva opened the public hearing for public comments.

Mr. Caldwell stated that the proposed ordinance is more than likely connected with the grant for the recycling center.

Mayor Silva closed the public hearing and asked Council if they were prepared to make a decision.

Councilor Milo motioned to approve the ordinance amending Title 9, Chapter 1, 6, C4 of the municipal code, second by Mayor Pro Tem Shattuck; carried unanimously.

16. Public Hearing: To Consider an Ordinance Regarding Aggressive Panhandling

Mayor Silva conducted a public hearing to consider an ordinance regarding aggressive panhandling.

Mr. Sera addressed Council stating that the proposed amendment was previously presented before City Council resulting in a request to include an enforcement section. Mr. Sera noted that item 6 on page 4 has been added to the proposed ordinance pertaining to enforcement.

Mayor Silva opened the hearing for public comments.

Mr. Caldwell addressed Council stating that he preferred the old enforcement section for the public's information as to what the protocols are for enforcement. Mr. Caldwell also asked for a definition of banks which had been deleted.

Mayor Silva closed public comments.

Councilor Milo noted that the definition of bank was on page 3 under financial institution. Councilor Milo asked Chief Carillo if his department would be careful on handling each situation. Chief Carillo stated that his department would use their discretion depending on the situation. Chief Carillo stated that responding officers would speak to property owners, operators, or callers and would use their discretion in handling each situation. Chief Carillo asked for Councilor's approval to use their discretion as all situations are not alike. Chief Carillo stated that there have been some complaints of persons knocking on doors asking for money.

Mr. McInturff stated that item 6 on enforcement states that the protocol shall be submitted to Mr. Foy for concurrence; adding that there is also a penalty section.

Mayor Pro Tem Shattuck motioned to approve the ordinance pertaining to aggressive panhandling amending Title 6, Chapter 1 of the municipal code, second by Councilor Milo; carried unanimously.

17. Quasi Judicial Public Hearing: To Consider an Alternate Subdivision by Manuela B. Van

Mayor Silva conducted a quasi judicial public hearing to consider an alternate subdivision by Manuela B. Van; 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. Mayor Silva asked staff to present the case.

Mr. Patel, Planner, explained that the applicant, Manuela B. Van who was not present, is seeking an alternate subdivision for a tract of land in lot 13 of the Knowles Subdivision, within City limits. The property is located within the "B-1" Multi-Family Dwelling District. Mr. Patel stated that both properties will have sufficient street access from Walnut and Santa Barbara Streets. Mr. Patel stated that both properties will have access to City utilities. Mr. Patel stated that the property consists of three parcels of land, which were purchased successively. Mr. Patel stated that staff recommends summary subdivision to merge the three parcels into one tract of land and then an alternate subdivision subdividing the single tract. This subdivision would be in compliance with the minimum land requirement of 7,000 sq. ft.

Mayor Silva asked if Council had any questions for staff.

Councilor Milo asked if the request is for only a subdivision. Mayor Silva stated that the request is to combine the 3 parcels into 1 parcel. Then divided that parcel into 2 lots.

Mayor Pro Tem Shattuck asked if there were any utilities that would cause problems in the future. Mr. Patel stated that both properties have access to utilities and that the utility tap is on Walnut Street; adding that the split would be done in a manner to mimic the old structures which had existed on the property.

ORDINANCE NO. 1207

AN ORDINANCE AMENDING TITLE 6, CHAPTER 1 OF THE
DEMING CITY CODE, NEW MEXICO

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

1. Title 6, Chapter 1 of the Deming City Code is hereby amended by adding thereto a new article, 1F as follows:

ARTICLE F. AGGRESSIVE PANHANDLING

1. **SHORT TITLE:** This section shall be known and may be cited as the "Public Safety Ordinance Prohibiting Aggressive Panhandling."
2. **INTENT:** The City of Deming (hereafter "the City") Council finds and states its intent as follows:

It is the intent of the Council in enacting this Ordinance to improve the quality of life and to protect the safety of the general public against certain abusive conduct of persons or organizations engaged in panhandling by imposing reasonable manner, time and place restrictions on panhandling while respecting the constitutional rights for all citizens and entities.

3. **DEFINITIONS:** The following words, terms and phrases when used in this section shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

Panhandling

Any solicitation, begging and any other form of asking for donations made in person, in which a person requests an immediate donation of money or other gratuity from another person. Panhandling shall not include passive panhandling, to the extent that they do not interfere with the reasonable expectation of the public to the enjoyment of peace and quiet or pose a safety risk to the public.

Panhandler

Any person or organization that engages in an act of panhandling.

Aggressive Panhandling

Aggressive panhandling occurs if any of the following occurs:

- A. Touches or makes physical contact with the solicited person without the consent of the solicited person;

- B. Blocks the path of a person being solicited as that person attempts to walk away from the panhandler;
- C. Blocks the entrance to any building or vehicle while panhandling;
- D. Immediately continues to solicit while walking behind, ahead or alongside of a person who walks away from the panhandler after being solicited and verbally declining;
- E. Threatens the person solicited with physical harm by word or gesture;
- F. Uses language or gestures directed at the person being solicited which are inherently likely to provoke an immediate violent reaction in a reasonable person.

Passive Panhandling

Sitting or standing with a sign or other non-auditory indication that a donation is being sought.

Solicit or Solicitation

Any request in person while in a public place, for an immediate grant of money, goods or any other form of gratuity from another person(s) when the person making the request is not known to the person(s) who are the subject of the request, or engaging in such activity on private property without permission of owner or occupant. This does not include the acts of passive panhandling, as defined in this Ordinance.

Public Place

As used in this Ordinance, public place shall mean a place to which the public or a substantial group of persons has access, and includes, but not limited to any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment.

Automated Teller Machine

A device, linked to a financial institution's account records, which is able to carry out cash transactions.

Financial Institution

Any banking corporation, credit union, or foreign exchange office.

Public Transportation Vehicle

Any vehicle, including a trailer bus, designed, used or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.

4. LIMITATIONS ON PANHANDLING

- A. Time.** It shall be unlawful to engage in an act of panhandling in any place within the City at any time after sunset and before sunrise.
- B. Manner.** It shall be unlawful to engage in an act of aggressive panhandling, as defined within Section C, at any time of any day in any place within the City.
- C. Specific places or circumstances.** It shall be unlawful to engage in an act of panhandling at any time when either the panhandler or the person being solicited is located at any of the following locations or under any of the following circumstances:
 - 1. In any public transportation vehicle or public transportation facility;
 - 2. From people waiting at any public transportation stop that is identified by signage;
 - 3. From customers at any sidewalk café;
 - 4. Within 50 feet in any direction from an automated teller machine, provided that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
 - 5. Inside of or within 50 feet in any direction of an entrance or exit of a financial institution during normal business hours;
 - 6. On private property or residential property, without permission from the owner or occupant;
 - 7. In circumstances involving any operator or occupant of a motor vehicle that is in traffic on or entering any street, street intersection, alley, median or other public passageway, while the panhandler is situated on the vehicle-traveled portion of the street, street intersection, alley, median or other public passageway.

5. CONSTRUCTION AND SEVERABILITY.

Severability is intended throughout and within the provisions of this article. If any section, sentence, clause, or phrase of this article is held invalid or unconstitutional by a court of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the remaining portions of this article.

6. ENFORCEMENT.

The Deming Police Department training protocol shall be submitted to the legal department for its review within 90 days of the effective date of this Ordinance. The police administrative officer shall monitor the training protocol and enforcement for this Ordinance.

7. PENALTY.

Each act of panhandling declared unlawful by this section shall constitute a separate violation of this section. Each violation shall be punishable as follows: The first violation of this section shall result in a written warning by a law enforcement officer. The Second violation of this section may result in a fine as specified in 1-4-1A of the City of Deming, City Code.

PASSED, ADOPTED, AND APPROVED, this 13th Day of December, 2010

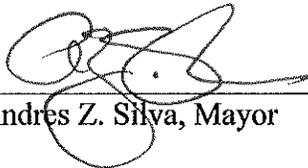
CITY COUNCIL, CITY OF DEMING, NEW MEXICO



ATTEST:



Mary Jo Valdez, Clerk



Andres Z. Silva, Mayor

Mayor Pro Tem Shattuck asked if the utility lines are only coming from one street. Mr. McInturff stated that all three utilities are available from both Walnut and Santa Barbara Streets.

Mayor Silva noted that the applicant is not present for the hearing.

Mayor Silva asked if there were any affected parties that would like to make a statement.

Mayor Silva asked if there were any other parties that would like to make a statement.

Mayor Silva closed public comments and asked for a motion from Council and stated that Council has the option to go into closed session.

Mayor Pro Tem Shattuck motioned to approve the alternate subdivision for Manuela B. Van for lot 13 of the Knowles Subdivision.

Mayor Pro Tem Shattuck amended his motion to approve both a summary and alternate subdivision for Lot 13 of the Knowles Subdivision and to reiterate that the legal description of the survey must be updated to reflect Knowles rather than Orchard Park, motion second by Councilor Milo;

ROLL CALL VOTE:

Councilor Milo Aye

Mayor Pro Tem Shattuck Aye

motion passed and carried unanimously

18. Bids

a. Bid #11-10 Wood Poles

Mr. Brookey stated that staff initiated a bid for poles to replace the lighting system used at Hooten Park Baseball Field. Mr. Brookey stated that there are some poles that are in bad shape and in need of replacing; adding that most of the poles were put in place in the 1970s.

Councilor Milo asked if the existing poles are salvageable. Mr. McInturff stated that they've been in use since 1970 and that the sections which are salvageable would be used.

Councilor Milo motioned to approve bid #11-10 to McFarland Cascade in the amount of \$21,312.00, second by Mayor Pro Tem Shattuck; carried unanimously.

19. Closed Session: To Discuss personnel matters, litigation matters, and real estate, pursuant to NMSA 1978 Sections 10-15-1 (H) (2) (7) and (8) of the Open Meetings Act

Councilor Milo motioned to go into closed session to discuss personnel matters, litigation matters, and real estate, pursuant to NMSA 1978 Sections 10-15-1 (H) (2) (7) and (8) of the Open Meetings Act, second by Mayor Pro Tem Shattuck;

ROLL CALL/VOTE

Councilor Milo Aye

Mayor Pro Tem Shattuck Aye

Motion carried.

20. Open Session: Motions if any

Councilor Milo motioned to go into open session, second by Mayor Pro Tem Shattuck;

ROLL CALL/VOTE

Mayor Pro Tem Shattuck Aye

Councilor Milo Aye

Motion carried.

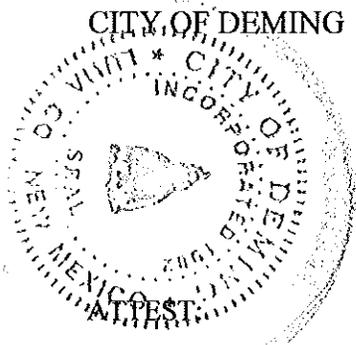
Mayor Silva noted for the record that items discussed were related to personnel matters, litigation matters, and real estate, pursuant to NMSA 1978 Sections 10-15-1 (H) (2) (7) and (8) of the Open Meetings Act and that no motions were made during closed session.

Mayor Pro Tem Shattuck motioned to authorize the Mayor to negotiate and execute a lease option agreement with Sundrop Fuels for the Peru Mill property, second by Councilor Milo; carried unanimously.

21. Adjourn Meeting

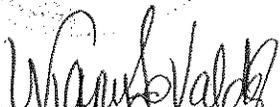
With no further business to conduct, Councilor Milo motioned to adjourn the meeting at 7:47 p.m., second by Mayor Pro Tem Shattuck; carried unanimously.

The next Regular City Council Workshop and Meeting are scheduled for 4:00 & 6:00 p.m., January 10th, 2011.





Andres Z. Silva, Mayor



Mary Jo Valdez, Clerk