

# **CITY COUNCIL MEETING MINUTES December 12, 2011**

**Council** Andres Z. Silva, Mayor  
**Present:** David Sanchez, Councilor

Joe “Butter” Milo, Councilor  
William C. Shattuck, Mayor Pro Tem

**Absent:** Linda Enis, Councilor

**Staff** Richard F. McInturff, Administrator  
**Present:** Aaron Sera, Assistant City Administrator  
Lawrence Brookey, Public Works Director  
Delbert Rivera, Fire Captain

Edgar Davalos, Fire Chief  
Richard Kocab, Assistant Treasurer  
Michael Carrillo, Police Chief  
Lila Jasso, Public Works Admin. Secretary

**Jim Foy, City Attorney**

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

## **1. Consent Agenda**

- A. Minutes – City Council Workshop and Regular Meeting 11/14/11
- B. Minutes – Tourism Development Committee 11/09/11
- C. Minutes – P&Z 11/21/11
- D. Minutes – Marshall Memorial Library 11/19/11
- E. Minutes – Parks Commission 11/08/11
- F. Minutes – Historical Landmark 11/17/11
- G. Request to Approve Expense for 2011 Service Recognition Award Ceremony
- H. Out of State Travel Request: Management requests approval for Vicki Engle/HR to travel to Lake Buena Vista, Florida, April 14-20, 2012 to complete Academy III of her Certified Labor Relations Professional (CLRP) training and attend the Nation Public Employers Labor Relations Annual Training Conference.

Mayor Pro Tem Shattuck motioned to approve the consent agenda as presented, second by Councilor Sanchez; motion carried unanimously.

## **3. Public Forum**

### **4. Resolution: Approving the 2012 Regular Municipal Election**

Mr. McInturff stated that this is a very important piece of legislation for the council as it will authorize the municipal election in March 2012. There will be a municipal judge contest, as well as a district two and district three council member contests, each at a four year term. Mr. McInturff went on to explain the poll locations and other details regarding absentee voting, early voting, deadline to register as a voter, date to present Declaration of Candidacy to be filed is January 10, 2012.

Mayor Pro Tem Shattuck motioned to approve the 2012 Regular Municipal Election Resolution, seconded by Councilor Milo, motion carried unanimously.

**5. Public Hearing: To Consider an Application to Transfer of Ownership of a Liquor License for FHS, LLC/Fredrick H. Sherman**

Mr. Kocab conducted a public hearing to consider the transfer of ownership of a liquor license for FHS, LLC/Fredrick H. Sherman. Mr. Kocab cited from the correspondence from the State of New Mexico, Alcohol and Gaming Division which the application submitted had been reviewed and preliminary approval of the referenced application had been granted. Mr. Kocab stated that the transfer of ownership was being conducted simultaneously in conjunction with the transfer to a new owner, which is an agenda item #6.

Mr. Foy asked Mr. Kocab that if based upon the investigation, was the proposed location within the city limits in where alcohol could be sold and would the issuance of transfer be in violation of zoning or any other ordinance known. Mr. Kocab replied that, yes, the proposed location was within in the city limits where alcohol could be sold and that no, the issuance of the transfer would not be in violation of any zoning ordinance. Mr. Foy then asked if Mr. Kocab had received any public input stating that the issuance would be detrimental to public health safety and morals of this district. Mr. Kocab responded, "none at all."

Mayor Silva opened the hearing for public comments.

Mr. Caldwell addressed Council stating that he felt the application does not identify the criteria required for approval and feels the application is incomplete. For instance the distance from schools or churches was not stated on the application. Mr. Caldwell also was concerned about the business address listed on the application, being 801 N. Gold Ave. Mr. Caldwell was also concerned about the ownership of the liquor license and that there was a previous issue regarding this same license. He recommended that Council should clarify the ownership before they make a decision.

Mr. Kocab addressed Mr. Caldwell's concerns and referenced the documentation he received from the State of New Mexico, Alcohol and Gaming Division, in which the application was investigated and all criteria were satisfied.

Distance from the nearest school is .3 of a mile, 586 ft. from the nearest church, and more than 2 miles from the nearest military base.

Mr. Foy confirmed that evidence can be taken orally in a public hearing. Mr. McInturff asked Mr. Foy to clarify the Council's scope on which to act upon. Mr. Caldwell stated that all the information was not presented in the packet and that council could not make a determination without it. Mr. Foy reiterated that, again, this is a public hearing and that evidence can be taken orally. That is why he asked Mr. Kocab those initial questions at the beginning of the hearing.

Mr. Kocab reassured that all procedures were followed and that the application is public record in Santa Fe, and that the application meets the distance criteria required for approval. Mr. Caldwell expressed that the location address was of great concern to him and others in the neighborhood.

Mayor Silva addressed the question to Mr. Sherman. Mr. Sherman stated that there were two applications which were going to be processed simultaneously the first being from Baldo's, LLC to FHS, LLC then from FHS, LLC to Yoya's Market. Mr. Foy asked if this was the same license that was tabled last year. Mr. Sherman stated that the license was a different license. Mr. Sherman stated that the license was legally owned by FHS, LLC according to a deed signed by Judge Gary Jeffreys. Mr. Foy asked for clarification of the transferring of the license which would be under FHS, LLC then to Yoya's Market. Mr. Sherman also that the license was not going to be operated at 801 N. Gold Ave. but only used the address as a pass-through for transferring to Yoya's Market.

Mr. Khanbajian asked for clarification to determine if the license in question was the same license previously owned by Baldo's. Mr. Sherman confirmed that it was the license previously owned by Baldo's and that FHS, LLC is the new owner through court records. The license has been legally transferred to FHS, LLC and that there are no liens on the license. Mr. Foy explained to Mr. Khanbajian that the approval from the Alcohol and Gaming Division was preliminary based upon the determination of Council.

Mayor Silva closed public comments.

Mayor Pro Tem Shattuck wanted to comment on record that the responsibility of Council was not to determine ownership of the license but solely to determine if the three criteria for approval had been met.

Mayor Pro Tem Shattuck motioned to approve the transferring of ownership of the liquor license to FHS, LLC. Councilor Milo seconded the motion, motion carried.

**6. Public Hearing: To Consider an Application for the Transfer of Ownership of a Liquor License to Yoya's Market, LLC/Salvador Gutierrez**

Mr. Kocab conducted a public hearing to consider the transfer of ownership of a liquor license for Yoya's Market, LLC/Salvador Gutierrez to be used at 1620 Columbus Rd.-Hwy 11, Deming, NM. Mr. Kocab stated that the documentation from the State of New Mexico, Alcohol and Gaming Division has granted preliminary approval of the transfer of ownership. Mr. Kocab cited from this documentation the distance criteria required for approval being .5 miles from the nearest school (Chaparral Elementary), .5 miles from the nearest church (Church of Christ), and over 100 miles from the nearest military base (White Sands Missile Range).

Mayor Silva opened the hearing for public comments.

Mr. Caldwell referred to his comments regarding the previous application (item 5).

Mr. Khanbajian asked for verification of business location being 1620 Columbus Rd.-Hwy.11, and also asked if there were any restrictions as to the type of alcohol to be sold at the location. Mr. Gutierrez answered by clarifying that the type of license he is applying for is a dispenser license and would allow for the sale of all types of packaged liquor.

Mayor Silva closed public comments.

Councilor Milo motioned to approve the transferring of ownership of the liquor license to Yoya's Market, LLC/Salvador Gutierrez. Mayor Pro Tem Shattuck seconded the motion, motion carried.

**7. Public Hearing: To Consider the Issuance of a Liquor License for Las Cazuelas Restaurant/Ramon & Martha Sanchez**

Mr. Kocab conducted a public hearing to consider the issuance of a beer and wine liquor license for Las Cazuelas Restaurant/Marta L. & Ramon Sanchez. Mr. Kocab cited from the correspondence from the State of New Mexico, Alcohol and Gaming Division which the application submitted had been reviewed and preliminary approval of the liquor license had been granted. Mr. Kocab was asked by Mayor Pro Tem Shattuck to cite for the record the distance for the criteria required for approval. Mr. Kocab state that the distances are .70 miles from the nearest school (Red Mountain Middle School), .10 mile from the nearest church (Living Word Family Church), and over 100 miles from the nearest military base (White Sands Missile Range).

Mayor Silva opened the hearing for public comments.

Mr. Khanbajian asked if the restaurant was an existing business or new to the community. Mayor Silva clarified that Las Cazuelas was an existing business located on 108 N. Platinum Street in the same building as El Rey's Meat Market. Mr. Khanbajian acknowledged the Mayor's response and stated he was in favor of the approval of this liquor license.

Mayor Silva closed public comments.

Councilor Sanchez stated for the record that although the applicants have the same last name as him, there were of no relation to him.

Mayor Pro Tem Shattuck motioned to approve the issuance of the beer and wine liquor license to Las Cazuelas Restaurant/Marta L. & Ramon Sanchez. Councilor Sanchez seconded the motion, motion carried.

**10. Closed Session: To discuss the sale and purchase of industrial real estate, and the sale and purchase of farm property pursuant to NMSA 1978, Sections 10-15-1 (H) (7) potential litigation and, 10-15-1 (H)(8) sale of industrial park parcels, of the Open Meetings Act.**

Mayor Pro Tem Shattuck motioned to go into closed session To discuss the sale and purchase of industrial real estate, and the sale and purchase of farm property pursuant to NMSA 1978, Sections 10-15-1 (H)(2) (7) potential litigation and, 10-15-1(H)(8) sale of industrial park parcels, of the Open Meetings Act, second by Councilor Milo.

**ROLL CALL/VOTE**

Councilor Milo	Aye
Councilor Sanchez	Aye
Mayor Pro Tem Shattuck	Aye

Motion carried.

**11. Open Session: Motions if any**

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

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

**ROLL CALL/VOTE**

Mayor Pro Tem Shattuck	Aye
Councilor Sanchez	Aye
Councilor Milo	Aye

Motion carried.

Mayor Pro Tem Shattuck motioned to reauthorize for the sale of a track of land, in Deming Industrial Park, being 2.23 acres, to Mr. Mosier at appraised value which was originally appraised on April 17, 2008, and updated on July 27, 2011 (There was no change in value). This sale is contingent upon FAA Land release and the closing is to be executed by the Mayor. Motion seconded by Councilor Sanchez, motion carried.

Mayor pro Tem Shattuck motioned to grant the City officials authority for the sale of a track of land in Deming Industrial Park, being 1.941 acres, to be sold to Mr. Schultz at the appraised value of \$5,300 determined from the appraisal in July 2011. The sale would be contingent upon FAA Land release and the closing is to be executed by the Mayor. Mayor Pro Tem Shattuck amended his motion to include that the property described be sold to Mr. Schultz as the owner of Deming Coca Cola. Councilor Milo seconded the motion, motion carried.

**12. Adjourn Meeting**

With no further business to conduct, Mayor Pro Tem Shattuck motioned to adjourn the meeting at 7:46 p.m., second by Councilor Milo; motion carried unanimously.

A Special City Council Meeting will be held on Wednesday, December 28, 2011 at 9:00 a.m. in the Council Chambers.

The next Regular City Council Workshop and Meeting are scheduled for 4:00 & 6:00 p.m., January 9, 2012.

CITY OF DEMING

---

Andres Z. Silva, Mayor

ATTEST:

---

Richard F. McInturff, Deputy Clerk