



BENNY L. JASSO, MAYOR

AARON SERA, ADMINISTRATOR

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POPULATION 14,000

## **CITY COUNCIL MEETING AGENDA December 19, 2023 5:30 P.M.**

Please join the meeting from your computer, tablet or smartphone.

<https://meet.goto.com/CityofDeming>

Or Using your Phone: [1 866 899 4679](tel:18668994679)

Access Code: 595-334-189

Password: 595334189

### **CALL TO ORDER/PLEDGE OF ALLEGIANCE/ATTENDANCE ROLL CALL**

1. Consent Agenda
  - A. Minutes
    - a. Regular City Council November 21, 2023
      - i. Adoption of Findings of Fact in the Denial of a Special Use Permit for SPIN
    - b. Parks Commission November 8, 2023
    - c. Labor Management Relations Board December 5, 2023
  - B. Approval for the Continuation of the Deming Local Labor Management Relations Board
  - C. Request for Approval of a Job Description for the Executive Department Assistant
2. Proclamation: Honoring Mayor Benny L. Jasso
3. Presentation of Appreciation Plaque to Jim Massengill, Public Works Director
4. Appointment of Board Members to the City Labor Management Relations Board
5. Mayoral Appointments of Public Works Director, Deputy City Clerk, and Interim Chief of Police
6. Resolution: Declaring that the City of Deming Cannot Support the Establishment of the Mimbres Peak National Monument
7. Resolution: To Consider the Approval to Authorize the Sale of the City of Deming General Obligation Bonds and Bond Purchase Agreement
8. Procurement: Bid No. 24-02 Well #3 Reconstruction
9. Public Hearing: To Consider an Ordinance Amending Title 9, Chapter 6, Article 5.C. Regarding Utility Account Late Fee Assessments, of the Municipal Code
10. Public Hearing: To Consider an Ordinance Amending Title 1, Chapter 7, Reorganizing Article F. to Article G. and Replacing Article F. City Manager, of the Municipal Code
11. Public Hearing: To Consider an Ordinance Amending Title 1, Chapter 8, Correcting all Articles Containing Language "Administrator" to "Manager", of the Municipal Code
12. Administrators Report
13. Adjourn Meeting

*The next regular City Council Meeting is scheduled for January 16, 2024, at 5:30 p.m.*

# CITY COUNCIL MEETING MINUTES

December 19, 2023

Remote meeting in compliance with the  
New Mexico Open Meetings Act

## **Council Present:**

Benny L. Jasso, Mayor	Monica Topham, Mayor Pro Tem
Joe "Butter Milo, Councilor	Irmaisela A. Rodriguez, Councilor
Alex Valdespino, Councilor	

## **Council Present (Telephonically/Virtually):**

## **Council Absent:**

## **Staff Present:**

Aaron Sera, City Administrator	Jim Massengill, Public Works Director
Azucena Vargas, Community Services Director	Laura Holguin, Finance Director
Cint Hogan, Chief of Police	Jeremy Gervais, Special Projects Coordinator
Joe Owen, Fire Chief	Adrian Coloma, IT
Amanda Sanders, Public Information Officer	Yeimi Bustos, Receptionist
Julian Hernandez, Battalion Chief Fire Department	Tristen Evans, Asset Analyst
Lane Camfield, Planner I	David McSherry, Project Manager

## **Staff Present (Telephonically/Virtually):**

**Recording Secretary:** Mary Jo Valdez, CMC – Municipal City Clerk

Mayor Jasso called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance.  
A quorum was verified with all present.

## **1. Consent Agenda**

Mr. Sera stated he had nothing to discuss on the consent agenda. Mayor Jasso asked Council if they had any questions or if they were prepared to make a motion.

Councilor Milo motioned to approve the consent agenda, as submitted; Councilor Rodriguez second the motion; motion carried by the following roll call vote:

### **ROLL CALL VOTE**

Councilor Valdespino	Aye
Councilor Rodriguez	Aye
Mayor Pro Tem Topham	Aye
Councilor Milo	Aye

**2. Proclamation: Honoring Mayor Benny L. Jasso**

Mayor Pro Tem Topham read the proclamation into the record, honoring the service of Mayor Jasso. Councilor Rodriguez motioned to approve the resolution, as submitted; Councilor Valdespino second the motion; motion carried by the following roll call vote:

**ROLL CALL VOTE**

Councilor Rodriguez	Aye
Mayor Pro Tem Topham	Aye
Councilor Valdespino	Aye
Councilor Milo	Aye

Mayor Jasso addressed Council, staff, and the public stating "It's been a great ride." Mayor Jasso identified some of the situations which were present during his terms such as an increase in gas; a walk-out in the Fire Department; thanked Council, and thanked Staff for their dedicated service and assistance in accomplishing a lot. Mayor Jasso provided words of encouragement for all to keep going to serve the community.

**3. Presentation of Appreciation Plaque to Jim Massengill, Public Works Director**

Mayor Jasso presented Mr. Massengill with an appreciation plaque for his service, recognized his service to the community and wished him well on his retirement.

**4. Appointment of Board Members to the City Labor Management Relations Board**

Mr. Sera stated that Mr. Benting resigned from the board and requested Council's ratification to appoint K Natasha Jasso as City Management's Representative; adding that should Ms. Jasso decline the appointment, Mr. Victor Cabrera would then fulfill the position. Mr. Sera also requested the ratification for Ms. Taylor-Apodaca remain as the third neutral member.

Councilor Valdespino motioned to ratify the appointment, as submitted; motion second by Councilor Milo; motion carried by following roll call vote:

Councilor Rodriguez	Aye
Councilor Valdespino	Aye
Councilor Milo	Aye
Mayor Pro Tem Topham	Aye

**5. Mayoral Appointments of Public Works Director, Deputy City Clerk, and Interim Chief of Police**

Mayor Jasso asked for Council's approval of his appointments of David McSherry as Public Works Director, to be effective January 1, 2024; Martha Salas as Deputy City Clerk; and Jose Montoya as Interim Chief of Police. Mr. Sera stated that the reason for the appointment of interim chief of police is because Chief Hogan is retiring and will be out of the office most of his time remaining.

Councilor Rodriguez motioned to approve the Mayor's appointments, as submitted; motion second by Councilor Milo; motion carried by following roll call vote:

Councilor Milo	Aye
Councilor Rodriguez	Aye
Councilor Valdespino	Aye
Mayor Pro Tem Topham	Aye

**6. Resolution: Declaring that the City of Deming Cannot Support the Establishment of the Mimbres Peak National Monument**

Mayor Jasso brought to Council's attention that he had several conversations with State Senators over the last week whom have stated that there's not enough information to make a decision. Mayor Jasso stated that he has been informed that a designation as such would require the request to pass through the local Senator's desk which has not been done. Senator Heinrich's office is planning to hold a town hall type of meeting next month to provide an update on what is happening. Senators have asked that the City not approve the resolution at this time. Mayor Jasso stated that the resolution can be postponed or passed depending on Council's decision but that discussion would not continue for a long period of time as it did during the last town hall meeting.

Mr. Sera stated that it would be beneficial to have public meetings before voting on this item at the next council meeting.

Councilor Valdespino motioned to postpone the resolution as there is not enough information at this time; motion second by Councilor Milo; motion carried by following roll call vote:

**ROLL CALL VOTE**

Councilor Rodriguez	Aye
Mayor Pro Tem Topham	Aye
Councilor Valdespino	Aye
Councilor Milo	Aye

**7. Resolution: To Consider the Approval to Authorize the Sale of the City of Deming General Obligation Bonds and Bond Purchase Agreement**

Ms. Melendrez, participating telephonically, addressed Council requesting that the resolution be postponed until January so that there is sufficient time to provide the Bank of Albuquerque documents they are requesting before the consideration to approve.

Councilor Milo motioned to postpone the resolution; motion second by Councilor Rodriguez; motion carried by following roll call vote:

**ROLL CALL VOTE**

Councilor Valdespino	Aye
Councilor Milo	Aye
Mayor Pro Tem Topham	Aye
Councilor Rodriguez	Aye

**8. Procurement: Bid No. 24-02 Well #3 Reconstruction**

Mr. Massengill presented to Council informing that there were 4 bids received. Mr. Massengill requested the approval to award the bid to Westen Pump and Supply in the amount of \$92,291.24 which includes NMGRS and asked for the authorization for the Public Works Director and/or City Administrator to enter into an agreement with Western Pump and Supply and execute any documents related to this project.

Councilor Valdespino motioned to approve the award of Bid 24-02, as presented; motion second by Mayor Pro Tem Topham; motion carried by following roll call vote:

**ROLL CALL VOTE**

Councilor Milo	Aye
Mayor Pro Tem Topham	Aye
Councilor Rodriguez	Aye
Councilor Valdespino	Aye

**9. Public Hearing: To Consider an Ordinance Amending Title 9, Chapter 6, Article 5.C. Regarding Utility Account Late Fee Assessments, of the Municipal Code**

Mayor Jasso conducted a public hearing to consider the amendment of Title 9, Chapter 6, Article 5.C. regarding utility account late fee assessments.

Ms. Holguin explained that the amendment would allow late fees to be posted at the end of business on the 15<sup>th</sup> day after payments had been applied for that day. Ms. Holguin explained that assessing the late fees on the 16<sup>th</sup> day results in the fees not being included in billing amount totals at start of business day provided to customers coming in to pay on that morning. Applying the penalty after close of business on the 15<sup>th</sup> day will allow the fees to be reflected at the start of business on the 16<sup>th</sup> day for accurate billing totals.

Mayor Jasso opened the public hearing for public input. Mr. Dominguez, addressed Council asking the percentage of fees applied. Ms. Holguin stated that late fees are 10%. Councilor Rodriguez stated that the amendment would allow the 10% late fee to be applied the following morning after the 15<sup>th</sup> day.

Mr. Fox addressed Council asking if they were going to remove the sand in the well. Mayor Jasso stated that this public hearing is regarding late fees on utility accounts; informing him that there was not a public comment portion on the prior item.

Ms. Kennedy addressed Council asking to comment on another item; Mayor Jasso stated that the public hearing being conducted is regarding late fees on utility accounts.

Mayor Jasso closed public input with no further comments, and asked Council if they were prepared to make a motion.

Councilor Rodriguez motioned to approve the amendment to Title 9, Chapter 6, Article 5.C., as presented; motion second by Councilor Milo; motion carried by following roll call vote:

**ROLL CALL VOTE**

Councilor Valdespino	Aye
Councilor Milo	Aye
Mayor Pro Tem Topham	Aye
Councilor Rodriguez	Aye

**10. Public Hearing: To Consider an Ordinance Amending Title 1, Chapter 7, Reorganizing Article F. to Article G. and Replacing Article F. City Manager, of the Municipal Code**

Mayor Jasso conducted a public hearing to Consider an ordinance amending Title 1, Chapter 7, Reorganizing Article F. to Article G. and Replacing Article F. City Manager, of the Municipal Code.

Mr. Sera addressed Council stating that there were some concerns about the proposed ordinance and recommended that Council postpone the item until next month.

Mr. VanVleck, Legal Counsel for the City of Deming, addressed Council explaining that the proposed ordinance will bring the City into compliance with NM State Statutes; further explaining that the City has operated in such manner but that there was always a disconnect with the books using the title of City Administrator. Mr. VanVleck stated that the City of Deming has always operated in the manner of a Mayor/Council/Manager form. The proposed ordinance speaks to the same as this practice.

Mayor Jasso asked if Council had any questions. Councilor Rodriguez asked if the City was currently a Mayor/Council/Manager form of government. Mr. VanVleck confirmed that it has always operated as such.

Councilor Milo asked if the City Administrator/Manager would have the authority to fire or hire appointed officials. Mr. VanVleck stated that the Manager does not have the authority to fire or hire

appointed officials.

Mayor Jasso opened for public comments.

Mr. Fox addressed Council stating that he's curious why it took so long to make this change. Mayor Jasso stated that it's been since 1945. Mr. Fox stated that one of the roles gives the City Manager more authority. Mayor Jasso confirmed that the City Administrator has always been given the same authority. Mr. Fox suggested that the ordinance be tabled.

Mr. Dominguez addressed Council stating that the system works the way it is set up as right now because the Mayor has control of what's going on.

Ms. Shillito addressed Council asking that the ordinance be postponed and ask that it be heard when the new councilors are in office.

Mayor Jasso, with no further comments, closed public comments.

Mayor Jasso stated that the City has been operating under this system that's been in place for years; adding that he didn't feel that every hiring and firing should come before City Council and asked if there were any issues not passing it now. Mr. VanVleck stated that as it remains, now, the City would be operating without proper authority.

Mayor Jasso asked Council if they were prepared to make a motion.

Councilor Valdespino motioned to approve the amendment to the ordinance, as presented; motion second by Councilor Rodriguez; motion carried with the following ROLL CALL VOTE:

ROLL CALL VOTE:

Mayor Pro Tem Topham	Nay
Councilor Valdespino	Aye
Councilor Milo	Nay
Councilor Rodriguez	Aye

Ms. Valdez asked Mayor Jasso for his vote to break the tie: Mayor Jasso Aye.

**11. Public Hearing: To Consider an Ordinance Amending Title 1, Chapter 8, Correcting all Articles Containing Language "Administrator" to "Manager", of the Municipal Code**

Mayor Jasso conducted a public hearing to Consider an ordinance amending Title 1, Chapter 8, Correcting all Articles Containing Language "Administrator" to "Manager", of the Municipal Code. Mayor Jasso stated that this amendment was to correct the language titles.

Mayor Jasso opened for public comments.

Mr. Dominguez addressed Council stating that the Mayor and City Council works for the people who vote them in; adding that the people should make these decisions. Mr. Dominguez stated that instead of having a City Manager making all the decisions for the City of Deming, the people should make them.

Ms. Valdez called point of order to remain on the consideration of the proposed ordinance.

Mr. Sera stated that the City Manager does not make decisions; the position presents to the Mayor and Council for their vote.

Mr. Fox addressed Council stating he had Mr. Jeffreys review the proposed ordinances and stated there was a difference. Mr. Fox stated that he felt Mr. Dominguez felt that the Mayor should have more authority and thinks that's the direction it should stay.

Mayor Jasso, with no further comments, closed public comments and asked Council if they were prepared to make a motion.

Councilor Valdespino motioned to approve the amendment to the proposed ordinance, as presented; motion second by Councilor Rodriguez; motion carried with the following ROLL CALL VOTE:

<u>ROLL CALL VOTE:</u>	Councilor Milo	Aye	Mayor Pro Tem Topham	Aye
	Councilor Rodriguez	Aye	Councilor Valdespino	Aye



## 12. Administrator's Report

- Mr. Sera stated that the City is working with a finance consultant to sell general obligation bonds which was postponed.
- Sale of Golf Course is being looked at. The City has to own the whole thing if it will be purchased by the City. An appraisal for the 8 holes and water rights will be conducted.
- Information on the plastic bag ordinance has been provided by other individuals and feels that there's no reason to bring it back.
- Staff has been meeting to discuss events, and conflicts with overlapping events.
- and County attended an outdoor economic recreation conference. Mr. Sera stated that projects are still in progress such as kayak rentals and staff is still exploring more outdoor activities for the community.
- Mr. Sera stated that Harbor Freight is 99.9% ready to sign the contract and negotiations are still underway.
- Audit on water, by Ms. Holguin, the independent audit should be provided by mid-January and there are no other updates.


## 13. Adjourn Meeting

With no further business to discuss, Mayor Jasso entertained a motion to adjourn the meeting.

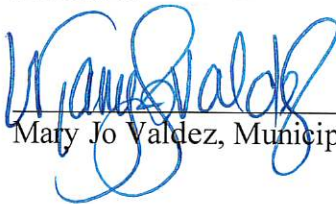
Councilor Milo motioned to adjourn the meeting; Councilor Rodriguez second the motion; motion carried unanimously. The meeting adjourned at 6:37 p.m.



CITY OF DEMING, NEW MEXICO

  
Michele Shillito, Mayor

ATTEST:

  
Mary Jo Valdez, Municipal Clerk

**CITY OF DEMING**  
**ORDINANCE NO. 1325**

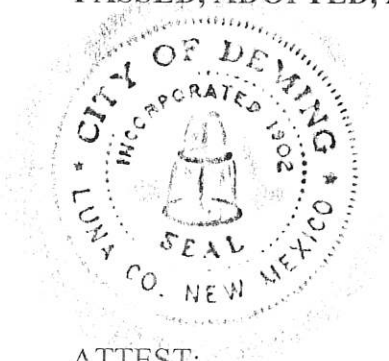
**AN ORDINANCE AMENDING TITLE 9, CHAPTER 6, ARTICLE 5.C. OF THE  
MUNICIPAL CODE OF THE CITY OF DEMING, NEW MEXICO**

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

1. Title 9, Chapter 6, Article 5.C. of the City of Deming Municipal Code is hereby amended by deleting it in its entirety and replacing it as follows:

9-6-5.C. Late Fees: Should an account not be paid by the close of business fifteen (15) days after coming due, a late fee of ten percent (10%) shall be added to the bill after close of business on day fifteen (15).

**PASSED, ADOPTED, AND APPROVED**, this 19<sup>th</sup> day of December 2023.



**CITY OF DEMING, NEW MEXICO**

  
\_\_\_\_\_  
Benny L. Jasso, Mayor

ATTEST:

  
\_\_\_\_\_  
Mary Jo Valdez, Municipal Clerk



**CITY OF DEMING**  
**ORDINANCE NO. 1326**

**AN ORDINANCE AMENDING TITLE 1, CHAPTER 7, WITH THE REORGANIZATION OF  
ARTICLE F. TO ARTICLE G. AND WITH THE ADDITION OF SUBSECTION F. CITY  
MANAGER 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 THAT TITLE 1, CHAPTER 7 BE AMENDMED AS FOLLOWS:**

Title 1, Chapter 7, Article F. is hereby amended with the deletion in its entirety and replaced with the following:

**F. City Manager**

**1-7-F-1:APPOINTMENT:**

The mayor shall appoint a qualified person to be the city manager of the city, with the approval of the city council. The city manager is therefore accountable to the mayor and city council and responsible for carrying out the council's policy decisions consistent with the council's expectations. The city manager shall hold office at the pleasure of the mayor and city council and shall continue in office until a vacancy is created by death, resignation or removal by the mayor with the approval of city council. The city manager may also be removed from office by the concurring vote of a majority of the city council. The manager shall be appointed solely on the basis of administrative qualifications and his selection shall not be limited by reason of former residence. The manager shall receive a salary to be fixed by the mayor and city council.

**1-7-F-2:GENERAL DUTIES:**

**A. The manager shall:**

1. Be responsible for the effective management of the administrative affairs of the city.
2. Enforce and carry out all ordinances, rules and regulations enacted by the council.
3. Employ, supervise, discipline, and discharge all persons engaged in the administrative service, of the municipality
4. Prepare and submit an annual budget
5. Make recommendations to the commission on all matters concerning the welfare of the municipality.
6. Perform such other duties appropriate to the office or as may be assigned by the mayor and city council.

**B. The manager shall have a seat, but no vote, at every meeting of the city council. Except when clearly undesirable or unnecessary, the council shall request the opinion of the manager on any proposed measure.**

**1-7-F-3 ADMINISTRATIVE DUTIES**

The city manager shall be responsible to the mayor and council for the administration of all departments of city government. The manager shall give general direction to the programs and activities of all city departments and shall be responsible for the proper execution of policies set by the mayor and council, and the enforcement of all laws and ordinances. The manager shall keep the mayor and council informed of the conditions and needs of the city and shall make such reports and recommendations as the manager may deemed desirable or as may be requested by the mayor or council.

#### 1-7-F-4 AUTHORITY OVER EMPLOYEES

The city manager shall full authority to hire and dismiss all city employees in the administrative service of the city, pursuant to the authority of and subject to the requirements outlined in any personnel ordinance or policy. The city manager may make recommendations to the mayor and council concerning the employment, discharge, promotion or transfer of city officers in the executive service, those appointed by the mayor and confirmed by the City Council, and such recommendations shall be given due weight by the city council.

#### 1-7-F-5: RELATIONSHIP WITH MAYOR AND COUNCIL

The city manager shall be responsible, to the mayor and governing body, for the efficient administration of all branches and departments of city government. The mayor and members of the city council shall deal with department heads and employees of the city solely through the city manager. Neither the mayor nor any member of the city council shall give any order directly to any department head or employee either publicly or privately.

Title 1, Chapter 7, of the City of Deming Municipal Code is hereby amended with the addition, as follows:

G. Appointed Officials

#### **APPOINTMENTS BY CITY COUNCIL:**

The city council may provide for the appointment of various appointed officials such as the chief administrative officer, directors, deputies and assistants. The positions set out in subsections 1-8-6C1 through C14 inclusive of this title are examples of positions that may be appointed by city council. (Ord. 1182, 12-8-2008)

**PASSED, ADOPTED AND APPROVED** by vote of the Council of the City of Deming, New Mexico, this 19<sup>th</sup> day of December 2023.



ATTEST:

  
Mary Jo Valdez, Municipal Clerk

**CITY OF DEMING, NEW MEXICO**

  
Benny L. Jasso, Mayor



**CITY OF DEMING**  
**ORDINANCE NO. 1328**

**AN ORDINANCE AMENDING TITLE 1, CHAPTER 8, CORRECTING ALL  
ARTICLES CONTAINING LANGUAGE WHICH STATES THE  
POSITION OF "ADMINISTRATOR" TO "MANAGER",  
AND ARTICLE 6.C. WITH THE ADDITION OF NONCOMPETITIVE POSITIONS,  
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 THAT ALL ARTICLES WHICH STATE THE POSITION OF  
"ADMINISTRATOR" IN TITLE 1, CHAPTER 8, BE DELETED IN THEIR ENTIRETY AND  
REPLACED TO CORRECT THE POSITION TO "MANAGER", AS FOLLOWS:**

1-8-2.

A. The "City Of Deming Personnel Policies And Procedures Manual" adopted by city council, as amended from time to time, and the "Administrative Regulations" promulgated by the city manager, as amended from time to time, are hereby incorporated by reference as part of this chapter. The "City Of Deming Personnel Policies And Procedures Manual" and the "Administrative Regulations" are held to be supportive and supplemental to the policies and provisions of this chapter.

1-8-2.

D. Positions having similar duties and responsibilities, as determined by the city manager, shall be classified and compensated on a uniform basis.

1-8-5.

A. City Manager, General: The city manager is responsible for the actual operation of the city's business, carrying out the wishes of city council and supervising city employees directly or through the management and supervisory staff.

B. Powers And Duties: The city manager or his designee shall perform the duties and have the powers concerning personnel matters as follows:

1. Be responsible for administering the personnel system as promulgated in this chapter, the "City Of Deming Personnel Policies And Procedures Manual" adopted by city council from time to time, and the "Administrative Regulations", promulgated by the said city manager from time to time.

1-8-7.

B. The city manager shall recommend such new or revised personnel rules and regulations as deemed desirable; and any other person or organization proposing such rules or revisions shall first submit them to the city manager for review and comment. The city manager shall submit to the city council the rules and regulations or revisions developed on his initiative; and in the case of those submitted by others, shall submit them to the city council with his comments and recommendations.

C. The rules and regulations shall include: the classification of all city positions, based on the duties, authority and responsibility of each position, with adequate provisions for reclassification of any position whenever warranted by changed circumstances as determined by the city manager; a pay plan for all city positions; methods for determining the merit and fitness of candidates for appointment or promotion; policies and procedures regulating reduction in force and removal of employees; the hours of work,

attendance regulations and provisions for sick and vacation leave; policies and procedures governing persons holding provisional appointments; the policies and procedures governing relationships with employee organizations; policies regarding in service training programs; and other practices and procedures necessary to the administration of the city personnel system.

D. "Administrative Regulations", as promulgated by the city manager, as amended from time to time, is hereby incorporated by reference as part of this chapter. (Ord. 1182, 12-8-2008)

1-8-9.

D. When an employee is promoted or transferred, the employee shall serve a trial period of six (6) months. If during the six (6) month trial period it is determined the employee is suitable, he shall become a regular employee. If during the six (6) month trial period it is determined the employee's performance or conduct is unsatisfactory in the new position, he may be removed from that position and returned to his former or similar position, if such position is available. If no such position is available, the employee will be laid off in accordance with the policy set out in the "City Of Deming Personnel Policies And Procedures Manual". If, however, at the end of the trial period it is apparent that the promoted or transferred employee could qualify with more training time, the trial period may be extended by the city manager.

E. Whenever a vacancy exists for which there is not an appropriate list of eligible candidates available, a provisional/probationary appointment may be made by the city manager pending the examination or other test of fitness required by the "City Of Deming Personnel Policies And Procedures Manual". A provisional appointment may not be continued more than thirty (30) days beyond the availability of a list of qualified eligible candidates and in any event may not be continued for more than six (6) months; nor may any person serve under one or more provisional appointments for more than six (6) months in any consecutive twelve (12) months. Provided that the provisions of this section may be waived by the city council in the event that it is determined that a qualified person is not available to fill such vacancy.

H. In lieu of any other form or manner of employment, a vacancy may be filled by the reinstatement of any former probationary or regular nonprobationary employee who resigned in good standing as determined by the hiring management staff; provided the city manager certifies that such former employee is qualified to fill the position.

I. In lieu of any other form or manner of employment, a vacancy may be filled by the transfer of an employee, either voluntarily or by reassignment by management, with the approval of the city manager, from another position of the same or closely related class.

1-8-10.

D. In the event of a termination during the probationary period, the terminated employee may be restored to the eligible list for consideration for employment with another department if the city manager finds that the circumstances so warrant.

F. An employee may be demoted to an unfilled position, where such position exists, in a lower class for which he is qualified, with the concurrence of the city manager:

1-8-11.

C. Department Standard Operating Procedures: Any personnel may be subject to any departmental standard operating procedures for actions involving discipline including, but not limited to, written reprimands, suspensions, demotions, or dismissals. Said standard operating procedures are subject to the recommendation of the department head and the approval of the city manager.

E. Predetermination Conference: The initiating department head or supervisor and human resources will meet with the employee and discuss any proposed disciplinary action. The purpose of the meeting is not to provide an evidentiary hearing, but to provide an opportunity for the employee to present his side of the issue. After the meeting, the department head or supervisor will notify the employee of his decision and, if disciplinary action is to be imposed, what the discipline is to be. Prior to initiating any disciplinary action, the initiating supervisor must obtain the concurrence of his department head. Approval of the city manager must be obtained in all cases of suspension, demotion or dismissal.

If the department head's or supervisor's decision is to discipline the employee, that decision is effective immediately, unless otherwise stated.

H. Grievance Filing: Upon receipt of the notice of dismissal, demotion or suspension, a regular nonprobationary employee may, within ten (10) days of such action, file a written grievance with the city manager. Failure to file a timely grievance shall render the grievance null and void and shall not be heard. In the event the last day for filing a grievance falls on Saturday, Sunday or on a legal holiday, the appeal may be filed on the next working day. Such appeal shall be instituted by the filing by such employee of a notice with the city manager, which notice shall state the grounds for such appeal. Upon receipt of a timely grievance, the city manager will appoint a hearing officer to hear the appeal. No less than five (5) days nor more than thirty (30) calendar days from the filing of such notice, the hearing officer shall conduct an open and public hearing thereon and thereafter shall file an advisory decision within five (5) calendar days with the city manager proposing that he affirm, reverse or modify the action or decision of the city manager and stating the reasons therefor. A copy of such advisory decision, and the reasons therefor, will be furnished to the grievant. The city manager or his designee shall, within ten (10) calendar days after the filing of an advisory decision by the hearing officer, make his final decision in the matter; a copy of which shall, forthwith, be furnished to the employee.

J. Appeal To City Council: A further appeal may be taken from the decision of the city manager to the city council. Such written appeal to the city council shall be taken within thirty (30) calendar days of the final action of the city manager and shall be governed by the same rules and procedures as appeals to the hearing officer. The decision of the city council thereon shall be final.

1-8-12.

B. Understanding The Review Process: Nothing contained in this section, or the "City Of Deming Personnel Policies And Procedures Manual" or any "Administrative Regulations" promulgated by the city manager from time to time, that relate to the grievance/complaint procedure shall in any way interfere with the city's right to manage and administer all city affairs.

C. Means Of Resolution: The procedures set out in this section or related procedures set out in the "City Of Deming Personnel Policies And Procedures Manual" or any "Administrative Regulations" promulgated by the city manager from time to time, shall be the sole and exclusive means of resolving all grievances and complaints, except for the process set out in section 1-8-11 of this chapter.



D. Definitions: For the purposes of this section the following definitions shall apply:

COMPLAINTS: Differences of opinion, disagreements or disputes arising out of the interpretation or application of the city's personnel policies as set out in this chapter or the "City Of Deming Personnel Policies And Procedures Manual" or any "Administrative Regulations" promulgated by the city manager from time to time. Complaints shall first be discussed informally between the complainant and his immediate supervisor.

E. First Step: When an employee has a complaint as defined in subsection D of this section, he shall discuss the complaint with his immediate supervisor on an informal basis and attempt to resolve it.

1. The employee shall initiate the discussion with his immediate supervisor within seventy two (72) hours following the date of the incident giving rise to the complaint or from the date the employee knew or should have known of the issue that generated the complaint.

2. Complaints affecting more than one department, suspension without pay, dismissal, demotion, sexual harassment or discrimination charges, must be filed, in writing, directly to the city manager within seventy-two (72) hours of the occurrence of the incident or from the date the employee knew or should have known of the incident.

F. Second Step: If a complaint is not resolved at the first step stage as set out in subsection E of this section, and the complainant so desires, he may file a formal written grievance with the city manager within ten (10) calendar days of the date of the incident that generated the initial complaint/grievance. The written grievance shall include the identification of the language in question, a brief and concise statement of the grievance, the date of the incident that generated the grievance, the name of the employee's department head, the relief requested (a general statement such as "make the employee whole" is not acceptable), and the grievance must be dated. The following procedure shall apply:

1. Second step grievances shall be considered for resolution by an official designated by the city manager.

2. The grievant shall submit the grievance to the office of the city manager for review by a city representative appointed by the city manager.

4. If the grievance is not resolved at this level and the grievant desires to pursue the grievance, the grievant shall, within fifteen (15) days following the date of filing at the second step, file a written request for hearing of the final resolution before a hearing officer appointed by the city manager. The cost of the hearing officer shall be paid by the city. The grievant shall pay a filing fee of two hundred dollars (\$200.00) and such fee must be paid at the time of filing for the grievance to be considered timely and properly filed.

1-8-13.

C. Activities Restricted: Each officer and employee shall, during his hours of active duty, devote his whole time, attention and efforts to his office or employment, and he may not perform any service except for the benefit of the City. No officer or employee of the City may engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with his duties or with the duties, functions and responsibilities of the department or other agency in which he is employed. Each department head, with the approval of the City Manager, shall determine the activities which will be considered inconsistent, incompatible or in conflict. In making determination, consideration shall be given, among other things, to employment, activity or enterprise which: 1) involves the use for private gain or advantage of City time, or the badge, uniform, prestige or influence of one's City office or employment; or 2) involves receipt by the officer or employee of any money or other consideration for the performance of any act required by him as a City officer or employee; or 3) involves the performance of

an act in other than his capacity as City officer or employee which act may later be subject, directly or indirectly, to control, inspection, review, audit or enforcement by him or by the agency in which he is employed. Regular full time City employees shall submit a written request annually and receive approval from the department head and the City Manager prior to participating in other employment in addition to City employment. (Ord. 1046, 8-13-2001)

1-8-13.D.

7. No regular full-time City employee shall hold an elective office of the State of New Mexico or any of its political subdivisions without formal written approval granted by a majority vote of the City Council, in consideration and determination that a conflict of interest does not exist; provided, however, that nothing contained in this section shall be construed to prevent any City employee from seeking election to an elective position. If it is determined that a conflict of interest exists, the same rule as if elected to a Municipal office will apply. Such employee may request a leave of absence without pay from his position beginning nine (9) calendar days prior to and including the day of any primary, Municipal, County or general election in which such employee shall be a candidate. A leave of absence may be granted by the City Manager if the vacancy does not negatively affect the daily operations of the City. Paid time off may be substituted with approval from the City Manager. If not elected, upon completion of his leave of absence, the employee shall be reinstated to his former position. If elected to a Municipal office, employee must submit a letter of resignation from current employment with the City of Deming within three (3) calendar days. (Ord. 1267, 12-11-2017)

1-8-14.

D. Disability: Employees who have suffered an on-the-job disability or who cannot perform their duties, as determined by the City Manager, shall be placed in light duty positions that they are qualified and able to perform within the City service whenever practicable and when such work is available. (Ord. 1046, 8-13-2001)

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEMING, NEW MEXICO THAT ARTICLE 6.C. BE AMENDED WITH THE ADDITIONS OF NONCOMPETITIVE POSITIONS, BY DELETING IT IN ITS ENTIRETY AND REPLACING IT, AS FOLLOWS:**

1-8-6.

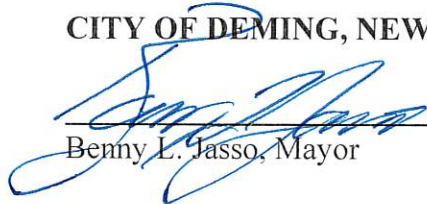
C. Employees in noncompetitive positions are not covered by the fair labor standards act and do not qualify for overtime. Employees in these noncompetitive positions may include:

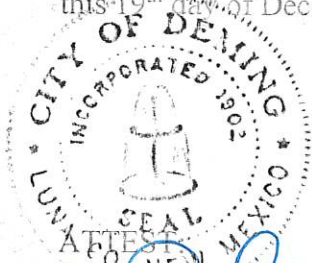
1. The City Manager.
2. The Assistant City Manager.
3. Finance Director
4. Assistant Finance Director
5. Treasurer.
6. Assistant treasurer.
7. Chief of Police.
8. Assistant chief of police.

9. Fire chief.
10. Assistant fire chief.
11. Public works director.
12. Assistant public works director.
13. Community services director.
14. Assistant community services director.
15. City attorney.
16. Assistant city attorney.
17. Municipal City Clerk
18. Human Resource Director
19. Temporary, seasonal or emergency employees as defined in the "City of Deming Personnel Policies and Procedures Manual".

**PASSED, ADOPTED AND APPROVED** by vote of the Council of the City of Deming, New Mexico,  
this 19<sup>th</sup> day of December 2023.

**CITY OF DEMING, NEW MEXICO**

  
Benny L. Jasso, Mayor



  
Mary Jo Valdez, Municipal Clerk