

**CITY OF DEMING**  
**ORDINANCE NO. 1327**

**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:**

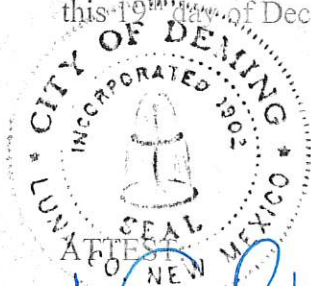
1-8-6.

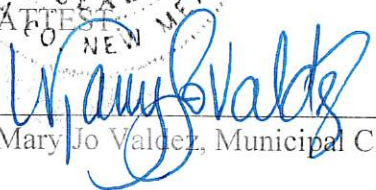
C. Employees in noncompetitive positions are not covered by the fair labor standards act and do not qualify for overtime. Employees in these noncompetitive positions may include:

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.

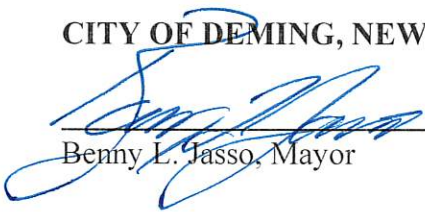
9. Fire chief.
10. Assistant fire chief.
11. Public works director.
12. Assistant public works director.
13. Community services director.
14. Assistant community services director.
15. City attorney.
16. Assistant city attorney.
17. Municipal City Clerk
18. Human Resource Director
19. Temporary, seasonal 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.



  
Mary Jo Valdez, Municipal Clerk

**CITY OF DEMING, NEW MEXICO**

  
Benny L. Jasso, Mayor