City of Las Cruces
Fugitive Dust Ordinance
April 6th, 2020
Jacob Kidd
Fugitive Dust Ordinance

• Design Standards, Article V, Chapter 32, Section 302

• First adopted to CLC Municipal Code in 2002

• Amended in 2012
Purpose

• Protect and maintain the natural environment

• Limit property damage from fugitive dust

• Limit adverse health effects from fugitive dust
• Minimize the amount of fugitive dust (PM10 or greater) from anthropogenic (man-made) activities. This includes any activity, equipment, operations or practices that potentially can create fugitive dust.

• Activities under these sections must have best available control measures installed and maintained prior, during and after such activities have been completed.
The need for dust control

During high wind event 4/10/19

Post wind event 4/11/19
Exemptions

- Agricultural operations
- Governmental operations during an emergency
- Operations conducted by essential services – Utilities, electricity, oil and gas transmission, etc.
- Undisturbed land
General Standards

• No person shall cause, allow, or permit diffusion of visible emissions of fugitive dust or windblown dirt/sand beyond the property boundary line within which the emissions become airborne, without taking necessary and feasible precautions to control the generation of airborne or windblown particulate matter.
  • Ground cover removal is prohibited
  • Earth work activities shall cease when sustained wind speeds are 25mph or greater
  • Vacant properties – Invasive weed management shall be done by mowing or hand pulling/digging
    • Clearing of entire vacant property is prohibited
    • All mature trees and shrubs should be protected to prevent soil loss due to water and/or wind
Construction Activity Standards

- Include but not limited to areas of construction for the development of subdivisions, large lot residential, commercial and industrial.
  - Wind blown material due to grubbing, clearing, grading, excavations, import or exportation of materials shall have reasonable control measures in place.
  - Sediment trackout control is required for sites where material is being imported or exported from a site. Also for sites that are greater than or equal to one acre. Trackout control measures shall be maintained routinely.
    - Gravel pads
    - Rumble strips
    - Wheel washers

- Bulk sediment trackout onto paved roadways (public or private) shall be cleaned as soon as practical but in no instance longer than 24 hours to prevent discharges into the storm sewer system.
Trackout Examples

Poorly Maintained Trackout Control

Well Maintained Trackout control
Wind Erosion Control Plans - WECP

• Required for any demolition or construction projects – residential, commercial or industrial

• Flexible and dynamic document meant to be amended throughout the life of a project

• Wind Erosion Control Plan is required to be submitted with overall plan set during permitting process and must be approved prior to any earth work activities
• Plan must contain:
  • General information regarding responsible party – owner, design engineer, general contractor
  • General site information – estimated import/export materials, disturbed areas, USEPA Notice of Intent (NOI) Tracking numbers if required
  • Site Plan – includes undisturbed areas and disturbed areas, control measure locations, topography, etc.
  • Dust generating activities to be conducted during project
  • All control measures both temporary and permanent
  • Signature and date of responsible party
Additional Environmental Documents

• For sites that disturb 1 acre or more or is a part of a larger common plan of development that ultimately disturbs one acre or more, the following environmental documents are also required during permit review and issuance:
  • Stormwater Erosion Control Plan
  • Stormwater Pollution Prevention Plan (SWPPP)
  • Notice of Intent (NOI) Tracking numbers
Temporary Controls for fugitive dust include:

- Temporary wind barriers
- Watering site/storage piles
- Minimizing disturbed area and/or phasing
- Applying palliative's or soil stabilizers to disturbed areas – Limit traffic and apply/maintain per manufacturers recommendations
- Re-vegetation with annual grass seed mixes
- Limiting vehicular traffic to no more than 15mph
- Shutting down earth disturbing activities during wind events at sustained wind speeds of 25mph or more
Wind Barrier Examples

Poor Maintenance of Fencing

Properly installed/maintained fencing
Permanent Control Measures

- Building permanent barriers – i.e rock walls
- Re-vegetating disturbed areas with natural, perennial vegetation
- Landscaping
- Impervious areas – i.e building pads, driveways, parking lots, etc.
Re-vegetation Example

Post Earthwork Activities/pre-seeding

Post Seeding - Approximately 8 months later
Cessation of Operations

- Once construction operations have commenced, control measures must be implemented immediately to control fugitive dust during active phase until permanent stabilization has been achieved. This also includes:
  - Weekends
  - Holidays
  - After Hours
- Permanent stabilization via revegetation, landscaping, impervious surfaces and the use of suppressants must be utilized once the inactive period reaches 60 days
Corrections and Enforcement Action

• **Correction of condition** - If the community development department, code enforcement section of the police department, or other city personnel document that a person is in noncompliance with any of the provisions contained within the article above, he or she will notify the person, in writing, by phone or in person and specify a period of time in which the person must achieve compliance. Failure to comply within the timeframe determined by the city constitutes grounds for a notice of violation per the city's enforcement ordinances. Correction of condition may include the amendment of plans to reflect additional or new control measures to be taken if original measures prove to be insufficient or ineffective.
• **Remedial action** - The city community development department, its designated agent and any other authorized city representative, after proper notice, may enter upon any real property where dust or windblown particulate matter is being generated and take such remedial and corrective action as he or she deems necessary when the owner, occupant, operator, or any tenant, lessee, or holder of any possessory interest or right in the involved land fails to do so.
Corrections and Enforcement Action - Continued

• **Costs** - Any costs incurred in connection with any remedial or corrective action taken by the city, pursuant to this section, shall be assessed against the owner of the property involved. Failure to pay the full amount of such incurred costs shall result in a lien against the property. The lien shall remain in full force and effect until all costs have been fully paid, which may include costs of collection and reasonable attorney fees.
• **Offenses** - Any person who violates any provision of this article, including, but not limited to, any application requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, or any requirements by the city is guilty of a petty misdemeanor and shall pay a fine of not more than $500.00 as levied by the municipal court. Each day of violation may constitute a separate offense.
Questions?

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