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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 10      Ordinance/Resolution# 2657

For Meeting of July 2, 2012  
 (Ordinance First Reading Date)

For Meeting of July 16, 2012  
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** AN ORDINANCE REPEALING ARTICLE V. STANDARDS FOR EROSION CONTROL FROM CHAPTER 32 OF THE LAS CRUCES MUNICIPAL CODE, AS AMENDED AND REPLACING IT WITH A REVISED ARTICLE V. STANDARDS FOR EROSION CONTROL FOR CHAPTER 32 OF THE LAS CRUCES MUNICIPAL CODE, AS AMENDED.

**PURPOSE(S) OF ACTION:**

To amend the City's Design Standards for Erosion Control.

<b>COUNCIL DISTRICT: ALL</b>		
<b><u>Drafter/Staff Contact:</u></b> Robert Kyle	<b><u>Department/Section:</u></b> Community Development	<b><u>Phone:</u></b> 528-3106
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The proposed ordinance will replace the existing language within the City's Design Standards related to dust control. Staff was directed to revise the existing ordinance, which was adopted in 2000 due to issues raised by individuals and City Councilors related to the perceived lack of, or limited, dust control efforts within the City and the negative impacts on citizens and their property. This was exacerbated by the rampant growth and development that occurred in the mid-2000s.

There has been significant discussion on the topic of dust control over a number of years. Staff was directed by the City Manager's Office to initiate revisions to the City's ordinance in early 2010. Ordinances were reviewed from other jurisdictions; Pima and Maricopa counties in Arizona as well as Bernalillo County/Albuquerque in New Mexico as models for the proposed revisions. Those jurisdictions, especially in Arizona have very strict ordinances to address dust control and air quality due to the fact that they are considered Non-Attainment by the Environmental Protection Agency (EPA) and must regulate their air quality. Bernalillo County/Albuquerque are granted specific authority to establish Air Quality Regulations by the New Mexico Legislature. Las Cruces is preempted by state law to regulate air quality but is required to establish dust control, specifically related to PM<sub>10</sub>, as part of the New Mexico Environment Department's Natural Event Action Plan which is a requirement of the EPA.

Given Las Cruces' preemption under state law to regulate air quality, the proposed revision is an attempt to further the City's efforts at limiting the creation and impacts of fugitive dust and windblown soil through man-made activities. The proposed ordinance, based upon the framework of the existing ordinance seeks to accomplish this through better defined regulations, specific mandatory control measures and more thorough Wind Erosion Control Plan (WECP) requirements. The current ordinance requires submittal of Reasonably Available Control Measures (RACMs) with construction permits. The RACMs outlines what primary and secondary control measures will be implemented on a site but does not provide specificity as to actual implementation, timing, maintenance and duration. The WECP which will be required with plan submittal will provide a significantly more comprehensive approach to how dust control will be implemented on a given site/project.

As previously stated, this ordinance is an attempt to *further* the efforts to control dust created through man-made activities. The topic is incredibly difficult to address and regulate given the existing environment, i.e. desert, and the volatile wind patterns we have in the region. As such, the issue and ordinance will need to be revisited fairly regularly to address changes in conditions and new technologies that may become available as well as state and federal regulations.

**SUPPORT INFORMATION:**

1. Ordinance.
2. Exhibit "A", Proposed regulations.
3. Attachment "A", Proposed regulations in legislative format.

**SOURCE OF FUNDING:**

Is this action already budgeted?    N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?   N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A

**FUND EXPENDITURE SUMMARY**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will repeal the existing regulations in the City's Design Standards, Chapter 32 of the Las Cruces Municipal Code, as amended and replace it with the proposed language contained in Exhibit "A".
2. Vote "No"; this will keep the existing language/regulations.
3. Vote to "Amend"; this would allow the City Council to modify the Ordinance as it deems appropriate.
4. Vote to "Table"; this would allow the City Council to table/postpone the Ordinance and direct staff accordingly.

**REFERENCE INFORMATION:**

1. N/A

COUNCIL BILL NO. 13-002  
ORDINANCE NO. 2657

**AN ORDINANCE REPEALING ARTICLE V. STANDARDS FOR EROSION CONTROL FROM CHAPTER 32 OF THE LAS CRUCES MUNICIPAL CODE, AS AMENDED AND REPLACING IT WITH A REVISED ARTICLE V. STANDARDS FOR EROSION CONTROL FOR CHAPTER 32 OF THE LAS CRUCES MUNICIPAL CODE, AS AMENDED.**

The City Council is informed that:

**WHEREAS**, Staff was directed by administration to revise the existing Standards For Erosion Control (Dust Ordinance) in 2010; and

**WHEREAS**, numerous City Council work sessions and public input meetings have been held on the subject; and

**WHEREAS**, a Wind Erosion Ad-Hoc Committee was formed in January 2011 to review revision of the ordinance and its report was presented to the City Council in May 2011; and

**WHEREAS**, a revision has been prepared based on the existing ordinance, to attempt to address issues associated with wind blown dust and sand.

**NOW, THEREFORE**, Be it ordained by the governing body of the City of Las Cruces:

(I)

**THAT** the existing Article V. Standards For Erosion Control, Chapter 32, Las Cruces Municipal Code, as amended is hereby repealed and replaced with a revised Article V. Standards For Erosion Control as contained in Exhibit "A" attached hereto and made part of this Ordinance.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE:

- Mayor Miyagishima: \_\_\_\_\_
- Councillor Silva: \_\_\_\_\_
- Councillor Smith: \_\_\_\_\_
- Councillor Pedroza: \_\_\_\_\_
- Councillor Small: \_\_\_\_\_
- Councillor Sorg: \_\_\_\_\_
- Councillor Thomas: \_\_\_\_\_

## **ARTICLE V. – STANDARDS FOR EROSION CONTROL**

### **Sec. 32-301. – Soil erosion control.**

- (a) Introduction. Intense and sporadic rainfall or wind are typically the culprits of soil erosion in this region. When rain impacts the earth, water runoff transports loose soil through hydrologic actions, while soil and dust are moved by their inclusion in adjacent wind. These items compose the primary forces that cause sediment erosion of our soils. To prevent this erosion, there are different sediment control measures available to minimize and control these erosions.
- (b) Purpose and intent of this section. The purpose of this section is to comply with all federal, state, and local codes and regulations in order to protect upstream and downstream properties, the City's MS4 system, and all natural waterways from erosion.
- (c) Erosion control. Erosion control is necessary on any location where contaminated flowing water or blowing soil/dust may threaten the health and safety of the adjacent areas and its occupants. Control measures shall be implemented and maintained to minimize and/or prevent entrainment of soil into water runoff or wind from both disturbed and undisturbed areas. Control measures for any development within the City limits shall conform to the provisions set forth in Chapter 32 and Chapter 34 of the Las Cruces Development Code.

### **Sec. 32-302. - Wind erosion control.**

- (a) ***Purpose and intent of this article.*** The purpose of this section is to protect and maintain the natural environment and to reduce the health effects caused by the creation of fugitive dust, equal or greater than PM10, consistent with the policies of the city's comprehensive plan and the natural events action plan for Dona Ana County. In addition, the ordinance attempts to limit property damage due to blowing sand and particulate matter caused by anthropogenic (man-made) activities. This article shall accomplish the requirements of these planning documents by requiring mitigation measures for activities that create fugitive dust.

The intent of this section is to minimize the contribution of man-made dust production on a regular basis. This chapter is also intended to realize that fugitive dust creation does occur due to the natural environment and natural events however when careful and effective dust control measures are implemented on those sources which by their nature are prone to dust creation, the overall impact from these natural events can be minimized.

- (b) ***Applicability.*** The provisions of this ordinance shall apply to any activity, equipment, operation and/or practice, man-made or man-caused, capable

of generating fugitive dust or windblown particulate matter.

- (1) Exemptions: The following activities are automatically exempted from the provisions of this article:
- a. Regular agricultural operations; including home gardening, including cultivating, tilling, harvesting, growing, the raising of farm animals or fowl, excluding unpaved roads associated with such operations.
  - b. Governmental activities during emergencies, life threatening situations or in conjunction with any officially declared disaster or state of emergency.
  - c. Operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water and sewage during service outages and emergency disruptions.
  - d. This article shall not apply to the generation of airborne particulate matter from undisturbed lands.

(c) **Application for exclusions.** Waiver from specific requirements of this ordinance shall be made to the building official or designee for approval. Requests shall include a documented justification statement including full description of reasons for the waiver and the concurrence of the waiver by adjacent downwind (historic wind directions) development(s) and occupants within a reasonable affected distance. The distance shall be determined on a case by case basis dependent on the scope and scale of the project/activity seeking the waiver.

(d) **Definitions.** Terms and words used in this article shall have the following meanings except where any narrative portion specifically indicates otherwise:

“Activity” or “activities” means any land stripping, earthmoving, trenching, road construction and demolition or renovation of manmade facilities.

“Air contaminant” means smoke, vapor, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, windborne matter, or any other material in the outdoor atmosphere.

“Anthropogenic” means created or caused by human activity.

“Chemical/Organic stabilizer” means any non-toxic chemical or organic dust suppressant other than water which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not

prohibited for use by the U.S. Environmental Protection Agency or any applicable law, rule or regulation.

“Construction and demolition activities” means any on-site activities preparatory to or related to building alteration, rehabilitation, removal or razing, or improvement on real property, including the placement and upkeep of mobile or manufactured homes or buildings. “Construction” also means construction of roadway systems including, arterials, expressways, interstates, tunnels, overpasses, bridges, interchanges, residential and commercial streets within a subdivision, and airport runway improvements.

“Control measures” “CM’s” means techniques or methods specifically identified within the construction documents or Wind Erosion Control Plan used to prevent or reduce the emission and/or airborne transport of fugitive dust and dirt.

“Disturbed area” means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or construction activities will occur.

“Dust” or “dust emissions” means the finest particulates within the soil that may be transported and deposited by a blowing wind initiated by a surface disturbance that could present a health or safety hazard to the adjacent area or its occupants.

“Dust generating operation” means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

“Dust suppressant” means a chemical compound or mixture of chemical compounds added with or without water to a dust source for purposes of preventing air entrainment.

“Emission” means an air contaminant, or the act of discharging an air contaminant, visible or invisible that could cause a health and safety hazard to the adjacent area and its occupants.

“Erosion” means the inclusion and transportation of the soil surface particles by wind or water.

“Fugitive dust” means particles lifted into the ambient air by man-made and natural disturbance activities such as the movement of soil, vehicles, equipment, blasting, and wind.

“Grading” means the construction process consisting of stripping, excavating, filling, stockpiling or combination thereof, including the land in its excavated or filled condition.

“Haul road” means a road constructed for, or used for, the purpose of hauling construction materials, or to provide access to one or more construction sites or industrial operations.

“High wind event” means a climatological occurrence in which the average wind speed exceeds a threshold in which fugitive dust will be generated from undisturbed areas, naturally covered areas, disturbed areas, and construction sites, regardless of reasonably available control measures implementation. The average wind speed for high wind events is a sustained wind speed of 25 miles per hour or greater.

“Inactive disturbed area” means any disturbed surface area on which active operations have been suspended.

“Land stripping” or “land stripping activity” means removal of all or any portion of existing vegetation, or natural soil surfacing, from parcels of land by various means.

“Maintenance” means the checking, repairing, and replacement of various dust CM’s to insure their continued workability.

“MS4 Utility” Municipal Separate Storm Sewer System: is a storm water conveyance or system or conveyances that are owned by a state, city, town, village, or other public entity that discharges into waters of the U.S.

“Natural cover” means any vegetation, or natural ground surface, which exists on the property, prior to any construction activity. This includes areas which have been previously restored to undisturbed conditions.

“Owner or operator” means any person or entity who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

“Palliative” means any agent used to lessen or reduce dust emissions.

“Particulate matter” (PM), are tiny particles of solid matter suspended in the air.

“PM<sub>2.5</sub>” means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

“PM<sub>10</sub>” means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (smaller than the diameter of a human hair).

“PM<sub>10</sub> emissions” means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

“Sand” means small loose grains of disintegrated rock. Sand is finer than a granule and coarser than silt, with grains between 0.06 and 2.0 millimeters in diameter.

“Silt” means small loose grains of disintegrated rock, finer than sand with grains between 0.004 and 0.06 millimeters in diameter. These particles are typically easily transported by surface breezes.

“Silt fence” means a temporary sediment control device consisting of a synthetic filter fabric stretched across and attached to supporting posts and entrenched along its bottom. Typically these fences are primarily designed for water erosion control.

“SWPPP” Storm Water Pollution Prevention Plan: means a document that defines the construction activities and best practices/control measures are to be installed to retain the stormwater pollution and prevents it from leaving a construction site.

“Track-out control” means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road and prevent contamination into an adjacent MS4 City utility(s).

“Undisturbed” means land or property which is in its natural condition and has not been stripped or graded. Exception is if the property has been revegetated and the soil and vegetative ground cover is now mature.

“Unpaved road” means a road which is not paved with a formal hardened surfacing but instead has a running surface of either crushed gravel or native soil. Such roads are typically for low use and slow traffic. Their ability to produce dust from traffic is well known.

“Vacant lot” means a subdivided or unsubdivided parcel of land which contains no buildings or structures of a temporary or permanent nature, excluding perimeter walls or fences.

“Visible emissions” means any emission which contains particulate matter which are visually detectable without the aid of instruments.

“Wind Erosion Control Plan” “WECP” means a document used to list control measures to be used for the activities being undertaken to prevent fugitive dust or windblown particulate matter and mitigate the escape of these materials beyond the property lines(s) of the originating site(s).

“Wind Fence” means a fence made of small, evenly spaced wooden slats (similar to a snow fence) or fabric. They are erected to reduce wind velocity and to trap blowing sand. They may be used as perimeter controls around open construction sites to keep sediments from being blown offsite. The spaces between the fence slats allow wind and sediment to pass through but reduce the wind's speed, allowing transported soil particles to deposit along the fence.

“Wind speed” means the average wind velocity, or gusts regardless of direction, felt on the surface of a soil surface. A hand held anemometer or an established station may be used to measure the ground surface wind speed at a specific point within a specific site.

“Wind Speed Test” means an on-site test of the wind speed measured at 0 to 2 feet above the ground surface. This test is taken and certified by a City of Las Cruces construction inspector or Codes Enforcement Officer using a portable held-held anemometer standing at a specific approved point within the development (+/- 2').

- (e) ***Wind Erosion Control Plan (WECP) requirements.*** In addition to standards established in subsequent sections of this article, any construction or demolition operation that is subject to this Article, a WECP shall be required, excluding general property maintenance, e.g., weed management. The WECP shall be designed by the project design engineer for subdivisions, larger scale commercial and industrial projects or infrastructure projects to specifically counter the potential of the sites' soil wind erosion. The contractor or property owner may prepare WECP in other situations. The WECP outlines the potential activities that may create dust and the mitigation steps to be taken for an existing or proposed activity. This WECP is a flexible and dynamic document which may be amended throughout the project to reflect the correct control measures used on the site or project. The initial WECP shall be submitted as a separate document along with the required construction plans for the proposed activity. The following shall constitute the minimum information required within the WECP and description for control measures as part of any activity:

- (1) Name(s), addresses and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the control plan and responsible for the dust generating operations.

- a. Copies of the general liability insurance policy for the property owner and contractor(s) responsible for dust generating operations.
- (2) A plot plan or plat of survey of the site which describes:
- a. The total area of land surface to be disturbed and the total area of the entire project site, in acres or square feet, depending on scale;
  - b. The operation(s) and activities to be carried out on the site;
  - c. All actual and potential sources of fugitive dust emissions on the site;
  - d. Delivery, transport and storage areas for the site, including types of materials stored and size of piles.
- (3) A description of control measures (CM's) or combination thereof to be applied during all periods of dust generating operations and periods of inactivity to each of the fugitive dust sources described on the plot plan or plat. For each source identified a primary and contingency control measure must be identified and *at least one control measure must be implemented*. The same control measure(s) may be used for more than one dust generating activity. Specific details must include:
- a. Listing by the design engineer, or preparer of the wind erosion containment alternatives that could be used on the specific project.
  - b. Locate projected application areas on the construction site for specific erosion control treatments.
  - c. If dust suppressants are to be applied, then the type of suppressant, method, frequency, and intensity of application, the number and capacity of application equipment to be used, and any pertinent information on environmental impacts and/or certifications related to appropriate and safe use for ground applications;
  - d. The specific surface treatment(s) and/or other CM's utilized to control material track-out and sedimentation where unpaved and/or access points join paved surfaces; and
  - e. For each fugitive dust source at least one CM shall be designated as a contingency measure in the original control plan. Should the original CM prove ineffective, immediate and effective implementation of the contingency measure(s) shall be required. Any change in the application of a CM

must be immediately, or as soon as practicable, forwarded to the building official or designee for review and approval.

- (f) **Wind Erosion Control Plan review and approval.** Review and approval of the WECP and proposed CM's shall be the responsibility of the building official or designee. Approval may be conditioned to require additional measures, actions, or other activities, in addition to those actions proposed within the control plan documentation.
- (g) **Implementation.** Approval and issuance of the building and/or subdivision construction permit(s) and the approval of all outlined CM's contained within the WECP or description shall mandate the implementation of listed CM's by the developer, contractor, builder, owner, and/or agents as part of construction activities.
- (h) **Other violation prohibited.** Implementation of CM's shall not allow the creation of other violations of these standards or other provisions of the Municipal Code.
- (i) **General Activity 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. The operation(s) which is causing or contributing to the emissions may be required to temporarily cease the activity or operation until necessary and feasible precautions are taken.
  - (1) **Ground cover removal is prohibited.** No person shall disturb the topsoil or remove ground cover on any property within the city limits and thereafter allow the property to remain vacant or undeveloped unless listed readily available CM's have been placed to prevent generation of windblown dust or soil in accordance with this section.
  - (2) **Soil moving activities** shall cease when wind speeds exceed 25 mph. Soil moving activities may recommence when either the wind speeds decrease or as soon as effective control measures are implemented during the high wind event which contain the emissions.
  - (3) **Vacant land – Weed management.**
    - a. For all vacant or undeveloped lots or parcels, weed eradication is limited to removal of noxious weeds only through mowing or hand digging and not the removal of adjacent natural vegetation.

- b. Clearing of the entire property is prohibited.
  - c. All mature trees and major shrubs shall be protected from damage to continue their role in the prevention of soil erosion.
- (4) **Storage of materials and material transport.** No person shall cause, allow, or permit dust producing material to be stacked, piled, or otherwise stored for a period exceeding 24 hours or permit transportation of materials likely to give rise to airborne dust without taking precautions to prevent the creation of fugitive dust. Actions shall be taken to ensure that such areas or uses shall be covered, moistened, compacted, or applied with a chemical dust suppressant, or other applicable CM's to prevent fugitive dust creation.
- a. Earth or other material deposited from trucks or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.
  - b. Stockpiling materials in paved streets, public or private, is prohibited.
- (5) **Parking time delay agreements.** For businesses that have an approved parking time delay agreement and corresponding business license with the city, the agreement shall include submittal of a WECP and implementation of CM's during the approved delay period prior to pavement installation. All parking areas with an approved parking time delay must be surfaced in accordance with the provisions of Chapter 38 of the Las Cruces Municipal Code.
- (6) **Continuous activity operations.** For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations which may continuously generate fugitive dust or windblown particulate matter, individual WECP's with corresponding CM's shall be submitted to the community development department for approval. Approval shall be made by the building official/community development director or designee and shall be communicated in writing to the property/business owner. Letters of approval and approved control plans shall be kept at the property subject to this provision. A new WECP shall be submitted every three (3) years and reviewed for effectiveness. The provisions of the approved WECP shall be implemented as needed to eliminate the creation of airborne fugitive dust or particulate matter.

- (j) **Construction Activity Standards.** These standards shall apply for all design and construction activities on property within the city limits including, but not limited to, subdivisions, large lot residential, office, commercial and industrial construction.

No person shall cause, allow, or permit a building or its appurtenances, or a building or subdivision site to be constructed, used, altered, repaired, demolished, cleared, leveled, or the earth to be moved or excavated, without taking precautions to limit excessive amounts of particulate matter from becoming airborne. Dust or wind blown soil and sand shall be kept to a minimum by the application of good practices such as approved dust suppressant or soil stabilizer, paving, compaction, covering, landscaping, continuous wetting, controlling access and vehicle speeds, or other approved CM's.

Track-out control is required to be placed at the exits onto a paved road for any development or construction site that is two (2) acres or greater, or in which any material is being hauled on or off site. Track-out controls may be provided using the following:

- a. Gravel pad, consisting of a layer or layers of washed gravel, rock or crushed rock at least one inch in diameter; 20 feet wide, 50 feet long (or as long as the longest haul truck).
- b. Grizzly, at least 20 feet long with bars being at least 3 inches tall and spaced 6 inches apart.
- c. Wheel washers or pressure sprayers.
- d. Other approved method.

Track-out devices shall be routinely cleaned or replaced as necessary to maintain effectiveness. Any bulk material or dirt tracked onto a paved right-of-way, public or private, shall be cleaned up as soon as practical but in no instance longer than 24-hours to prevent it from entering a MS4 utility.

**(1) Subdivision requirements.**

- a. For all subdivisions, a WECP shall be prepared, submitted and reviewed for approval as part of the overall construction permit application of the subdivision construction drawings through the community development department.
- b. Developers of the subdivision shall be allowed to grade for the subdivision only after complete subdivision construction

drawing approval and permit issuance. No separate grading permit shall be allowed nor shall any grading be allowed beyond the phase of the development that is under construction.

- c. The developer shall construct and maintain a perimeter wind fence or dust barrier with a minimum height of three (3) feet along the perimeter of the area of disturbance where the activity or construction could impact downwind developed areas. In addition, all interior yard walls that run predominantly north-south should be constructed, or replaced by maintained wind fences, during the initial project construction phase to create additional wind breaks and buffers.

(2) ***Grading Requirements.***

- a. A SWPPP, Erosion Control Plan and WECP must be submitted, reviewed and approved by the city prior to any site disturbance or construction activities that equal one acre or more of land. All site erosion control measure must correspond with the erosion control and/or the SWPPP document, and be properly maintained for the duration of construction or until final site stabilization has been established.
- b. Clearing, except that necessary to establish CM's, shall not begin until all required CM's have been installed and the site has been inspected.
- c. Phasing shall be required on all sites disturbing greater than thirty (30) acres, with the size of each phase to be established at plan review and as approved by the City of Las Cruces. A detailed sequence of construction of the project site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping must be submitted. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation. All areas that have been cleared of significant portions of its vegetative cover and will remain so for thirty (30) days or longer without appreciable construction activity shall be seeded and mulched within fourteen (14) days of being disturbed. If seeding or another

vegetative erosion control method is used, germination shall be evident within two weeks or the city may require the site to be reseeded or a non-vegetative option employed. Irrigation may be required to establish vegetative cover.

(3) ***Large lot residential, office, commercial, and industrial requirements.***

For all large lot residential properties, in which the total area is one-half acre or greater, and for all office, commercial, industrial, institutional or governmental construction activities, a WECP shall be prepared, submitted and reviewed as part of the building permit submittal by the community development department.

- a. Grading activities shall only be allowed to commence after building plan approval and permit issuance. Site improvement only development permits may be considered based on all of the following:
    - i. The site is three (3) acres or less, and
    - ii. Dust emissions on the affected lot must be permanently suppressed by providing the required landscaping and paving all required parking areas and driving aisles. All disturbed building pads must be suppressed as to prevent the creation of fugitive dust until such time as building placement occurs, and
    - iii. The anticipated amount of time between site development and building construction is thirty (30) days or less. If more than thirty days passes the building pad shall be re-vegetated or fenced off with a minimum 3' high wind fence capable of controlling fugitive emissions.
- (4) ***Cessation of operations.*** Once construction has commenced, stabilization measures must be immediately installed to ensure that fugitive dust and windblown particulate matter creation is suppressed during the approved construction phase; including weekends, after-hours and holidays. A permanent stabilization via revegetation, landscaping, paving or the application of dust suppressants or wetting shall be required for projects once the inactive period exceeds sixty (60) days.

- (5) **City construction projects.** Construction activities by the city shall require the provision of a WECP with the construction drawings. This applies to those projects not part of a subdivision, i.e., road construction or utility replacements, or buildings not issued building permits by the city, i.e., new city buildings or utility substations. Compliance with both the WECP and outlined CM's shall be the responsibility of the contractor and subject to verification by the public works department, utilities department or community development department's building/project inspectors or the city project management staff.
- (k) **Control Measures.** Control measures are methods which can be utilized to limit the creation of fugitive dust or windblown particulate matter. CM's are to be identified within the WECP and once approved need to be implemented in accordance with this article for all dust or windblown particulate matter generating activities within the city limits. CM's shall include, but not be limited to:
- (1) Designing subdivisions or building sites to utilize existing, pre-development grades;
  - (2) Watering disturbed areas on a regular basis throughout the daily construction activities, including periods of inactivity;
  - (3) Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;
  - (4) Constructing and maintaining wind barrier fences. Such fencing should be a minimum of three (3) feet in height with 50% or less porosity and be placed adjacent to roadways or property boundaries to reduce the amount of windblown material leaving a site. The barriers may also be placed within a site to create wind buffers.
  - (5) Re-seeding or re-vegetation of graded or disturbed areas along with associated watering until mature vegetation is established;
  - (6) Grading for street and utility placement only as part of subdivision construction;
  - (7) Building all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of subdivisions and not part of the individual building permit for each lot. Walls shall serve as wind breaks and help to reduce the entrainment of dust and the spread of windblown particulate matter;

- (8) Grading the building pad site only plus five feet in all directions of the pad site;
- (9) Retaining natural vegetation during the construction phase of building excluding the building pad site;
- (10) Utilizing existing or natural vegetation as part of the required landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;
- (11) Installing non-natural landscaping or vegetation in the latter part of construction to reduce the amount of disturbed area and the potential for dust generation;
- (12) Implementing any other proposed dust suppressing agent or activity approved by the building official or designee, especially those that have been developed to be effective in our particular area.;
- (13) Combining any two or more of the above items.
- (14) Inspections: The City of Las Cruces through its designated agent(s) shall make inspections as required and either shall approve that portion of the work completed or shall notify the permittee that the work fails to comply with the WECP as approved. A copy of the City of Las Cruces approved WECP shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the applicable City of Las Cruces department.

(l) ***Corrections, effective date, and enforcement.***

- (1) *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 non-compliance with any of the provisions contained within the article above, he or she will notify the person; in writing, by phone or in person, of that fact 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 in the event that original measures prove to be insufficient or ineffective. Nothing herein shall prevent separate

enforcement being taken in accordance with Chapter 18 (Nuisances), LCMC

- (2) *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.
- (3) *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.
- (4) *Effective date.* For all existing emission sources governed by this article, the activity must be completed within six (6) months of the effective date or be brought into full compliance. For existing, ongoing, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations, the wind erosion control provisions of this article shall be submitted in writing, approved, and implemented within six (6) months of the effective date of this article.
- (5) *Liability.* All persons owning, operating, or in control of any equipment or property who shall cause, permit, or participate in any violation of this article shall be individually and collectively liable to any penalty or punishment imposed by and under the municipal code for the city.
- (6) *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.

**(Ord. No. 1789, § I, 4-3-00; Ord. No. 1929, §§ I, II, 8-5-02)**

Secs. 32-303—32-399. – Reserved.

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**ARTICLE V. – STANDARDS FOR EROSION CONTROL**

**Sec. 32-301. – Soil erosion control.**

- (a) Introduction. Intense and sporadic rainfall or wind are typically the culprits of soil erosion in this region. When rain impacts the earth, water runoff transports loose soil through hydrologic actions, while soil and dust are moved by their inclusion in adjacent wind. These items compose the primary forces that cause sediment erosion of our soils. To prevent this erosion, there are different sediment control measures available to minimize and control these erosions.
- (b) Purpose and intent of this section. The purpose of this section is to comply with all federal, state, and local codes and regulations in order to protect upstream and downstream properties, the City's MS4 system, and all natural waterways from erosion.
- (c) Erosion control. Erosion control is necessary on any location where contaminated flowing water or blowing soil/dust may threaten the health and safety of the adjacent areas and its occupants. Control measures shall be implemented and maintained to minimize and/or prevent entrainment of soil into water runoff or wind from both disturbed and undisturbed areas. Control measures for any development within the City limits shall conform to the provisions set forth in Chapter 32 and Chapter 34 of the Las Cruces Development Code.

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**Sec. 32-302. - Wind erosion control.**

- (a) **Purpose and intent of this article.** The purpose of this section is to protect and maintain the natural environment and to reduce the health effects caused by the creation of fugitive dust, equal or greater than PM10, consistent with the policies of the city's comprehensive plan and the natural events action plan for Dona Ana County. In addition, the ordinance attempts to limit property damage due to blowing sand and particulate matter caused by anthropogenic (man-made) activities. This article shall accomplish the requirements of these planning documents by requiring mitigation measures for activities that create fugitive dust.

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The intent of this section is to minimize the contribution of man-made dust production on a regular basis. This chapter is also intended to realize that fugitive dust creation does occur due to the natural environment and natural events however when careful and effective dust control measures are implemented on those sources which by their nature are prone to dust creation, the overall impact from these natural events can be minimized.

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- (b) **Applicability.** The provisions of this ordinance shall apply to any activity, equipment, operation and/or practice, man-made or man-caused, capable

of generating fugitive dust or windblown particulate matter.

(1) Exemptions: The following activities are automatically exempted from the provisions of this article:

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- a. Regular agricultural operations; including home gardening, including cultivating, tilling, harvesting, growing, the raising of farm animals or fowl, excluding unpaved roads associated with such operations.
- b. Governmental activities during emergencies, life threatening situations or in conjunction with any officially declared disaster or state of emergency.
- c. Operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water and sewage during service outages and emergency disruptions.

d. This article shall not apply to the generation of airborne particulate matter from undisturbed lands.

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Deleted: This article shall not apply when wind speeds exceed twenty-five (25) miles per hour as recorded by the National Weather Service. NOTE: this exception does not apply if control measures have not been taken and maintained or were not commensurate with the size or scope of the emission source. ¶

(c) **Application for exclusions.** Waiver from specific requirements of this ordinance shall be made to the building official or designee for approval. Requests shall include a documented justification statement including full description of reasons for the waiver and the concurrence of the waiver by adjacent downwind (historic wind directions) development(s) and occupants within a reasonable affected distance. The distance shall be determined on a case by case basis dependent on the scope and scale of the project/activity seeking the waiver.

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(d) **Definitions.** Terms and words used in this article shall have the following meanings except where any narrative portion specifically indicates otherwise:

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“Activity” or “activities” means any land stripping, earthmoving, trenching, road construction and demolition or renovation of manmade facilities.

“Air contaminant” means smoke, vapor, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, windborne matter, or any other material in the outdoor atmosphere.

“Anthropogenic” means created or caused by human activity.

"Chemical/Organic stabilizer" means any non-toxic chemical or organic dust suppressant other than water which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not prohibited for use by the U.S. Environmental Protection Agency or any applicable law, rule or regulation.

"Construction and demolition activities" means any on-site activities preparatory to or related to building alteration, rehabilitation, removal or razing, or improvement on real property, including the placement and upkeep of mobile or manufactured homes or buildings. "Construction" also means construction of roadway systems including, arterials, expressways, interstates, tunnels, overpasses, bridges, interchanges, residential and commercial streets within a subdivision, and airport runway improvements.

"Control measures" "CM's" means techniques or methods specifically identified within the construction documents or Wind Erosion Control Plan used to prevent or reduce the emission and/or airborne transport of fugitive dust and dirt.

"Disturbed area" means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or construction activities will occur.

"Dust" or "dust emissions" means the finest particulates within the soil that may be transported and deposited by a blowing wind initiated by a surface disturbance, that could present a health or safety hazard to the adjacent area or its occupants,

"Dust generating operation" means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

"Dust suppressant" means a chemical compound or mixture of chemical compounds added with or without water to a dust source for purposes of preventing air entrainment.

"Emission" means an air contaminant, or the act of discharging an air contaminant, visible or invisible that could cause a health and safety hazard to the adjacent area and its occupants.

"Erosion" means the inclusion and transportation of the soil surface particles by wind or water.

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"Dust control plan" "DCP" means a document used to outline the activities being undertaken which have the ability to create fugitive dust or windblown particulate matter and the steps that will be taken to mitigate the escape of these materials beyond the property lines(s) of the originating land(s).¶

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"Fugitive dust" means particles lifted into the ambient air by man-made and natural disturbance activities such as the movement of soil, vehicles, equipment, blasting, and wind.

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"Grading" means the construction process consisting of stripping, excavating, filling, stockpiling or combination thereof, including the land in its excavated or filled condition.

Deleted: This excludes particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, and from pile drivers.

"Haul road" means a road constructed for, or used for, the purpose of hauling construction materials, or to provide access to one or more construction sites or industrial operations.

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"High wind event" means a climatological occurrence in which the average wind speed exceeds a threshold in which fugitive dust will be generated from undisturbed areas, naturally covered areas, disturbed areas, and construction sites, regardless of reasonably available control measures implementation. The average wind speed for high wind events is a sustained wind speed of 25 miles per hour or greater.

"Inactive disturbed area" means any disturbed surface area on which active operations have been suspended.

"Land stripping" or "land stripping activity" means removal of all or any portion of existing vegetation, or natural soil surfacing, from parcels of land by various means.

Deleted: with equipment, which plows or scrapes the surface.

"Maintenance" means the checking, repairing, and replacement of various dust CM's to insure their continued workability.

"MS4 Utility" Municipal Separate Storm Sewer System: is a storm water conveyance or system or conveyances that is owned by a state, city, town, village, or other public entity that discharges into waters of the U.S.

"Natural cover" means any vegetation, or natural ground surface, which exists on the property, prior to any construction activity. This includes areas which have been previously restored to undisturbed conditions.

"Owner or operator" means any person or entity who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

"Palliative" means any agent used to lessen or reduce dust emissions.

"Particulate matter" (PM), are tiny particles of solid matter suspended in the air.

Deleted: means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

"PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

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"PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (smaller than the diameter of a human hair).

Deleted: as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53.

"PM<sub>10</sub> emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

Deleted: as measured by applicable test methods.

"Sand" means small loose grains of disintegrated rock. Sand is finer than a granule and coarser than silt, with grains between 0.06 and 2.0 millimeters in diameter.

"Silt" means small loose grains of disintegrated rock, finer than sand with grains between 0.004 and 0.06 millimeters in diameter. These particles are typically easily transported by surface breezes.

"Silt fence" means a temporary sediment control device consisting of a synthetic filter fabric stretched across and attached to supporting posts and entrenched along its bottom. Typically these fences are primarily designed for water erosion control.

"SWPPP" Storm Water Pollution Prevention Plan: means a document that defines the construction activities and best practices/control measures are to be installed to retain the stormwater pollution and prevents it from leaving a construction site.

"Track-out control" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road and prevent contamination into an adjacent MS4 City utility(s).

"Undisturbed" means land or property which is in its natural condition and has not been stripped or graded. Exception is if the property has been revegetated and the soil and vegetative ground cover is now mature.

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"Unpaved road" means a road which is not paved with a formal hardened surfacing but instead has a running surface of either crushed gravel or native soil. Such roads are typically for low use and slow traffic. Their ability to produce dust from traffic is well known.

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"Vacant lot" means a subdivided or unsubdivided parcel of land which contains no buildings or structures of a temporary or permanent nature, excluding perimeter walls or fences.

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"Visible emissions" means any emission which contains particulate matter which are visually detectable without the aid of instruments.

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"Wind Erosion Control Plan" "WECP" means a document used to list control measures to be used for the activities being undertaken to prevent fugitive dust or windblown particulate matter and mitigate the escape of these materials beyond the property lines(s) of the originating site(s).

"Wind Fence" means a fence made of small, evenly spaced wooden slats (similar to a snow fence) or fabric. They are erected to reduce wind velocity and to trap blowing sand. They may be used as perimeter controls around open construction sites to keep sediments from being blown offsite. The spaces between the fence slats allow wind and sediment to pass through but reduce the wind's speed, allowing transported soil particles to deposit along the fence.

"Wind speed" means the average wind velocity, or gusts regardless of direction, felt on the surface of a soil surface. A hand held anemometer or an established station may be used to measure the ground surface wind speed at a specific point within a specific site.

"Wind Speed Test" means an on-site test of the wind speed measured at 0 to 2 feet above the ground surface. This test is taken and certified by a City of Las Cruces construction inspector or Codes Enforcement Officer using a portable held-held anemometer standing at a specific approved point within the development (+/- 2').

(e) **Wind Erosion Control Plan (WECP) requirements.** In addition to standards established in subsequent sections of this article, any construction or demolition operation that is subject to this Article, a WECP shall be required, excluding general property maintenance, e.g., weed management. The WECP shall be designed by the project design engineer for subdivisions, larger scale commercial and industrial projects or infrastructure projects to specifically counter the potential of the sites' soil wind erosion. The contractor or property owner may prepare WECP in other situations. The WECP outlines the potential activities that may create dust and the mitigation steps to be taken for an existing or proposed activity. This WECP is a flexible and dynamic document which may be amended throughout the project to reflect the correct control measures used on the site or project. The initial WECP shall be submitted as a separate document along with the required construction plans for the proposed activity. The following shall constitute the minimum information required within the WECP and description for control measures as part of any activity:

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- (1) Name(s), addresses and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the control plan

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and responsible for the dust generating operations.

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a. Copies of the general liability insurance policy for the property owner and contractor(s) responsible for dust generating operations.

(2) A plot plan or plat of survey of the site which describes:

- a. The total area of land surface to be disturbed and the total area of the entire project site, in acres or square feet, depending on scale;
- b. The operation(s) and activities to be carried out on the site;
- c. All actual and potential sources of fugitive dust emissions on the site;
- d. Delivery, transport and storage areas for the site, including types of materials stored and size of piles.

(3) A description of control measures (CM's) or combination thereof to be applied during all periods of dust generating operations and periods of inactivity to each of the fugitive dust sources described on the plot plan or plat. For each source identified a primary and contingency control measure must be identified and *at least one control measure must be implemented*. The same control measure(s) may be used for more than one dust generating activity. Specific details must include:

- a. Listing by the design engineer, or preparer of the wind erosion containment alternatives that could be used on the specific project.
- b. Locate projected application areas on the construction site for specific erosion control treatments.
- c. If dust suppressants are to be applied, then the type of suppressant, method, frequency, and intensity of application, the number and capacity of application equipment to be used, and any pertinent information on environmental impacts and/or certifications related to appropriate and safe use for ground applications;
- d. The specific surface treatment(s) and/or other CM's utilized to control material track-out and sedimentation where unpaved and/or access points join paved surfaces; and
- e. For each fugitive dust source at least one CM shall be designated as a contingency measure in the original control plan. Should the original CM prove ineffective, immediate

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and effective implementation of the contingency measure(s) shall be required. Any change in the application of a CM must be immediately, or as soon as practicable, forwarded to the building official or designee for review and approval.

(f) **Wind Erosion Control Plan review and approval.** Review and approval of the WECP and proposed CM's shall be the responsibility of the building official or designee. Approval may be conditioned to require additional measures, actions, or other activities, in addition to those actions proposed within the control plan documentation.

(g) **Implementation.** Approval and issuance of the building and/or subdivision construction permit(s) and the approval of all outlined CM's contained within the WECP or description shall mandate the implementation of listed CM's by the developer, contractor, builder, owner, and/or agents as part of construction activities.

(h) **Other violation prohibited.** Implementation of CM's shall not allow the creation of other violations of these standards or other provisions of the Municipal Code.

(i) **General Activity 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. The operation(s) which is causing or contributing to the emissions may be required to temporarily cease the activity or operation until necessary and feasible precautions are taken.

(1) **Ground cover removal is prohibited.** No person shall disturb the topsoil or remove ground cover on any property within the city limits and thereafter allow the property to remain vacant or undeveloped unless listed readily available CM's have been placed to prevent generation of windblown dust or soil in accordance with this section.

(2) **Soil moving activities** shall cease when wind speeds exceed 25 mph. Soil moving activities may recommence when either the wind speeds decrease or as soon as effective control measures are implemented during the high wind event which contain the emissions.

(3) **Vacant land – Weed management.**

a. For all vacant or undeveloped lots or parcels, weed eradication is limited to removal of noxious weeds only

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through mowing or hand digging and not the removal of adjacent natural vegetation.

b. Clearing of the entire property is prohibited.

c. All mature trees and major shrubs shall be protected from damage to continue their role in the prevention of soil erosion.

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(4) **Storage of materials and material transport.** No person shall cause, allow, or permit dust producing material to be stacked, piled, or otherwise stored for a period exceeding 24 hours or permit transportation of materials likely to give rise to airborne dust without taking precautions to prevent the creation of fugitive dust. Actions shall be taken to ensure that such areas or uses shall be covered, moistened, compacted, or applied with a chemical dust suppressant, or other applicable CM's to prevent fugitive dust creation.

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b. Once weeds are removed or mowed, dust and dirt suppression shall be achieved through water, chemical suppressant application, or the expansion of natural, non-weed vegetation areas on the site. Expansion of natural vegetation areas is encouraged. ¶

c. Natural vegetation shall consist of those plant varieties that are indigenous to New Mexico or that are determined to be native or natural plant varieties by the city's community development department. ¶

a. Earth or other material deposited from trucks or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.

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b. Stockpiling materials in paved streets, public or private, is prohibited.

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(5) **Parking time delay agreements.** For businesses that have an approved parking time delay agreement and corresponding business license with the city, the agreement shall include submittal of a WECP and implementation of CM's during the approved delay period prior to pavement installation. All parking areas with an approved parking time delay must be surfaced in accordance with the provisions of Chapter 38 of the Las Cruces Municipal Code.

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(6) **Continuous activity operations.** For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations which may continuously generate fugitive dust or windblown particulate matter, individual WECPs with corresponding CM's shall be submitted to the community development department for approval. Approval shall be made by the building official/community development director or designee and shall be communicated in writing to the property/business owner. Letters of approval and approved control plans shall be kept at the property subject to this provision. A new WECP shall be submitted every three (3) years and reviewed for effectiveness. The provisions of the approved WECP shall be implemented as

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needed to eliminate the creation of airborne fugitive dust or particulate matter.

- (i) **Construction Activity Standards.** These standards shall apply for all design and construction activities on property within the city limits including, but not limited to, subdivisions, large lot residential, office, commercial and industrial construction.

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No person shall cause, allow, or permit a building or its appurtenances, or a building or subdivision site to be constructed, used, altered, repaired, demolished, cleared, leveled, or the earth to be moved or excavated, without taking precautions to limit excessive amounts of particulate matter from becoming airborne. Dust or wind blown soil and sand shall be kept to a minimum by the application of good practices such as approved dust suppressant or soil stabilizer, paving, compaction, covering, landscaping, continuous wetting, controlling access and vehicle speeds, or other approved CM's.

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Track-out control is required to be placed at the exits onto a paved road for any development or construction site that is two (2) acres or greater, or in which any material is being hauled on or off site. Track-out controls may be provided using the following:

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- a. Gravel pad, consisting of a layer or layers of washed gravel, rock or crushed rock at least one inch in diameter; 20 feet wide, 50 feet long (or as long as the longest haul truck).
- b. Grizzly, at least 20 feet long with bars being at least 3 inches tall and spaced 6 inches apart.
- c. Wheel washers or pressure sprayers.
- d. Other approved method.

Track-out devices shall be routinely cleaned or replaced as necessary to maintain effectiveness. Any bulk material or dirt tracked onto a paved right-of-way, public or private, shall be cleaned up as soon as practical but in no instance longer than 24-hours to prevent it from entering a MS4 utility.

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**(1) Subdivision requirements.**

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- a. For all subdivisions, a WECP shall be prepared, submitted and reviewed for approval as part of the overall construction permit application of the subdivision construction drawings through the community development department.

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b. Developers of the subdivision shall be allowed to grade for the subdivision only after complete subdivision construction drawing approval and permit issuance. No separate grading permit shall be allowed nor shall any grading be allowed beyond the phase of the development that is under construction.

c. The developer shall construct and maintain a perimeter wind fence or dust barrier with a minimum height of three (3) feet along the perimeter of the area of disturbance where the activity or construction could impact downwind developed areas. In addition, all interior yard walls that run predominantly north-south should be constructed, or replaced by maintained wind fences, during the initial project construction phase to create additional wind breaks and buffers.

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Exception: An expanded scope of grading may be considered provided the developer submits a DCP for the area of grading outside of the phase of development which outlines effective dust and windblown particulate matter control methods and provides a Letter of Credit, bond or other similar guarantee to cover the expense of implementation and maintenance of the DCP and CM's.¶

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(2) Grading Requirements.

a. A SWPPP, Erosion Control Plan and WECP must be submitted, reviewed and approved by the city prior to any site disturbance or construction activities that equal one acre or more of land. All site erosion control measure must correspond with the erosion control and/or the SWPPP document, and be properly maintained for the duration of construction or until final site stabilization has been established.

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b. Clearing, except that necessary to establish CM's, shall not begin until all required CM's have been installed and the site has been inspected.

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c. Phasing shall be required on all sites disturbing greater than thirty (30) acres, with the size of each phase to be established at plan review and as approved by the City of Las Cruces. A detailed sequence of construction of the project site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping must be submitted. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation. All areas that have been cleared of significant portions of its vegetative cover and will remain

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so for thirty (30) days or longer without appreciable construction activity shall be seeded and mulched within fourteen (14) days of being disturbed. If seeding or another vegetative erosion control method is used, germination shall be evident within two weeks or the city may require the site to be reseeded or a non-vegetative option employed. Irrigation may be required to establish vegetative cover.

(3) **Large lot residential, office, commercial, and industrial requirements.**

For all large lot residential properties, in which the total area is one-half acre or greater, and for all office, commercial, industrial, institutional or governmental construction activities, a WECP shall be prepared, submitted and reviewed as part of the building permit submittal by the community development department.

- a. Grading activities shall only be allowed to commence after building plan approval and permit issuance. Site improvement only development permits may be considered based on all of the following:
  - i. The site is three (3) acres or less, and
  - ii. Dust emissions on the affected lot must be permanently suppressed by providing the required landscaping and paving all required parking areas and driving aisles. All disturbed building pads must be suppressed as to prevent the creation of fugitive dust until such time as building placement occurs, and
  - iii. The anticipated amount of time between site development and building construction is thirty (30) days or less. If more than thirty days passes the building pad shall be re-vegetated or fenced off with a minimum 3' high wind fence capable of controlling fugitive emissions.

(4) **Cessation of operations.** Once construction has commenced, stabilization measures must be immediately installed to ensure that fugitive dust and windblown particulate matter creation is suppressed during the approved construction phase; including weekends, after-hours and holidays. A permanent stabilization via revegetation, landscaping, paving or the application of dust

Deleted: d. The developer shall be responsible for ensuring that CM's in accordance with the approved DCP are maintained until such time as the development is 90% built out. A Letter of Credit, bond or other similar guarantee shall be provided at the time the development has reached substantial completion sufficient to cover the cost of maintaining the control measures. ¶

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suppressants or wetting shall be required for projects, once the inactive period exceeds sixty (60) days.

(5) **City construction projects.** Construction activities by the city shall require the provision of a WECP with the construction drawings. This applies to those projects not part of a subdivision, i.e., road construction or utility replacements, or buildings not issued building permits by the city, i.e., new city buildings or utility substations. Compliance with both the WECP and outlined CM's shall be the responsibility of the contractor and subject to verification by the public works department, utilities department or community development department's building/project inspectors or the city project management staff.

(k) **Control Measures.** Control measures are methods which can be utilized to limit the creation of fugitive dust or windblown particulate matter. CM's are to be identified within the WECP and once approved need to be implemented in accordance with this article for all dust or windblown particulate matter generating activities within the city limits. CM's shall include, but not be limited to:

- (1) Designing subdivisions or building sites to utilize existing, pre-development grades;
- (2) Watering disturbed areas on a regular basis throughout the daily construction activities, including periods of inactivity;
- (3) Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;
- (4) Constructing and maintaining wind barrier fences. Such fencing should be a minimum of three (3) feet in height with 50% or less porosity and be placed adjacent to roadways or property boundaries to reduce the amount of windblown material leaving a site. The barriers may also be placed within a site to create wind buffers.
- (5) Re-seeding or re-vegetation of graded or disturbed areas along with associated watering until mature vegetation is established;
- (6) Grading for street and utility placement only as part of subdivision construction;
- (7) Building all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of subdivisions and not part of the individual building permit for each lot. Walls

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shall serve as wind breaks and help to reduce the entrainment of dust and the spread of windblown particulate matter;

- (8) Grading the building pad site only plus five feet in all directions of the pad site;
- (9) Retaining natural vegetation during the construction phase of building excluding the building pad site;
- (10) Utilizing existing or natural vegetation as part of the required landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;
- (11) Installing non-natural landscaping or vegetation in the latter part of construction to reduce the amount of disturbed area and the potential for dust generation;
- (12) Implementing any other proposed dust suppressing agent or activity approved by the building official or designee, especially those that have been developed to be effective in our particular area.;
- (13) Combining any two or more of the above items.
- (14) Inspections: The City of Las Cruces through its designated agent(s) shall make inspections as required and either shall approve that portion of the work completed or shall notify the permittee that the work fails to comply with the WECP as approved. A copy of the City of Las Cruces approved WECP shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the applicable City of Las Cruces department.

(L) **Corrections, effective date, and enforcement.**

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- (1) *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 non-compliance with any of the provisions contained within the article above, he or she will notify the person, in writing, by phone or in person, of that fact 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

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to be taken in the event that original measures prove to be insufficient or ineffective. Nothing herein shall prevent separate enforcement being taken in accordance with Chapter 18 (Nuisances), LCMC

(2) *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.

(3) *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.

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(4) *Effective date.* For all existing emission sources governed by this article, the activity must be completed within ~~six~~ (6) months of the effective date or be brought into full compliance. For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations, the wind erosion control provisions of this article shall be submitted in writing, approved, and implemented within six (6) months of the effective date of this article.

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(5) *Liability.* All persons owning, operating, or in control of any equipment or property who shall cause, permit, or participate in any violation of this article shall be individually and collectively liable to any penalty or punishment imposed by and under the municipal code for the city.

(6) *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.

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(Ord. No. 1789, § 1, 4-3-00; Ord. No. 1929, §§ 1, II, 8-5-02)

Secs. 32-303—32-399. – Reserved.