ORDINANCE NO. 526

An ordinance of the City of Lovington, New Mexico, amending Title 15 by creating Chapter 15.24 – Wind Erosion Control that provides regulations to protect and maintain the natural environment and to reduce the health effects and safety issues caused by the creation of fugitive dust.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 15, CHAPTER 15.24, IN THE FOLLOWING FORM, IS HEREBY ENACTED:

Chapter 15.24 Wind Erosion Control

15.24.010 Purpose and Intent

The purpose of this section is to protect and maintain the natural environment and to reduce the health effects and safety issues caused by the creation of fugitive dust. In addition, this section attempts to limit property damage due to blowing sand and particulate matter caused by anthropogenic (man-made) activities 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.

15.24.020 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.

A. Exemptions: Any person seeking an exemption from any of the provisions of this article shall submit a petition to the City Manager for approval.

B. The following activities are automatically exempted from the provisions of this Chapter:

    1. Governmental activities during emergencies, life threatening situations or in conjunction with any officially declared disaster or state of emergency.

2. 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.

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

15.24.030 Definitions

Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"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" or "CM" means techniques or methods 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 movement will or has occurred.

"Dust" or "dust emissions" means finely divided solid particulate matter occurring naturally or created by mechanical processing, handling or storage of materials in the solid state.

"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.

"Erosion" means the transportation of soil particles, or mass movement of soil (mass wasting), by water, wind front leaving, or mechanical means.

"Fugitive dust" means particles lifted into the ambient air caused by man- made and natural activities such as the movement of soil, vehicles, equipment, blasting, and wind. 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 the principle 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 from parcels of land with equipment, which plows or scrapes the surface.

"Maintenance" means the cleaning, shaping, grading, repair and minor replacement of drainage, flood control and erosion control facilities, but not including the cost of power consumed in the normal operation of pump stations.

"Natural cover" means any vegetation which exists on the property, prior to any construction activity or achieved through vegetation restoration back to a natural state, including the placement of sod.

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

"Sand" means a naturally occurring granular material composed of finely divided rock and mineral particles with average diameters of greater than 100 micrometers.

"Silt fence" means a temporary sediment control device consisting of a synthetic filter fabric stretched across and attached to supporting posts and entrenched.

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

"Unpaved road" means a road which is not covered with dust-suppressing materials and maintained in such a manner that visible emissions of dust from the road surface are permanently prevented other than during times of normal cleaning and/or after flooding.

"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 are visually detectable without the aid of instruments and which contain particulate matter.

"Wind Erosion Control Plan" or "WECP" 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).

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

"Wind speed" means the average wind velocity, or gusts regardless of direction, of the wind from the nearest weather monitoring station, or by a portable wind instrument located at the site.

15.24.040 Wind Erosion Control Plan (WECP) Requirements

In addition to standards established in subsequent sections of this chapter, if the construction, demolition operation or activity is subject to this chapter, a WECP shall be required, excluding general property maintenance, e.g., weed management. The WECP outlines the potential activities that may create dust and the mitigation steps to be taken or that are in place for an existing or proposed activity. The WECP is a flexible and dynamic document which may be amended as necessary to reflect the appropriate control measures for a site or project. The WECP shall be submitted as a separate document along with any required construction plans for the proposed activity that are submitted in the planning and zoning application. The following shall constitute the minimum information required within the WECP and description for control measures as part of any covered activity:

A. Names(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.

B. A plot plan or plat of survey of the site which describes:

   1. 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;

2. The operation(s) and activities to be carried out on the site;

3. All actual and potential sources of fugitive dust emissions on the site;

4. Delivery, transport and storage areas for the site, including types of materials stored and size of piles

C. A description of control measures (CMs) 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:

1. 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;

2. For each fugitive dust source at least one auxiliary CM designated as a contingency measure shall be described in the original control plan. Should the original CM in the WECP prove ineffective, immediate and effective implementation of the contingency measure shall obviate the requirement of submitting a revised control plan.

15.24.050 Dust Control Plan Review and Approval

Review and approval of the WECP and proposed CMs shall be the responsibility of the City Manager 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.

15.24.060 Implementation

Approval and issuance of the building permit(s) and the approval of all outlined CMs contained within the WECP or description shall mandate the implementation of said CMs by the developer, contractor, builder, owner, and/or agents as part of construction activities.

15.24.070 Other Violation Prohibited

Implementation of CMs shall not allow the creation of other violations of these standards or other provisions of the Municipal Code.

15.24.080 General Activity Standards

No person shall cause, allow, or permit diffusion of visible emissions of fugitive dust or windblown dirt/sand to exceed horizontally or vertically one hundred (100) feet 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. Sources may be required to temporarily cease the activity or operation which is causing or contributing to the emissions until necessary and feasible precautions are taken.

A. Ground cover removal prohibited. No person shall disturb the topsoil or remove ground cover on any real property within the city limits and thereafter allow the property to remain unoccupied, unused, vacant or undeveloped unless necessary and feasible precautions are taken to prevent generation of windblown dust or dirt in accordance with this section.

B. Dirt moving activities shall cease when wind speeds exceed 25 mph. Dirt moving activities may recommence when either the wind speeds decrease or if effective control measures are implemented during the high wind event which contain the emissions.

C. Storage of materials and material transport. No person shall cause, allow, or permit organic or inorganic 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 with the potential of becoming or generating fugitive dust and particulate matter, shall be covered, moistened, compacted, or applied with a chemical dust suppressant, or other applicable CMs to prevent fugitive dust creation.

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

   2. Stockpiling materials in paved streets, public or private, shall be prohibited.

D. 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 CMs shall be submitted to the City Manager for approval. Approval shall be made by the City Manager 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.

15.24.090 Construction Activity Standards

These standards shall apply for all design and construction activities on real 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, or leveled, or the earth to be moved or excavated, without taking precautions to limit excessive amounts of particulate matter from becoming airborne. Dust and blowing dirt and

sand shall be kept to a minimum by good practices such as using an approved dust suppressant or soil stabilizer, paving, covering, landscaping, continuous wetting, controlling access and speeds, or other acceptable means.

A. Subdivision Requirements

1. For all subdivisions, a WECP shall be prepared, submitted, and reviewed for approval as part of the overall review of the subdivision construction drawings through the planning and zoning process.

2. 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.

3. An expanded scope of grading may be considered provided the developer submits a WECP for the area of grading outside of the phase of development which outlines effective dust and windblown particulate matter control methods and upon permit issuance immediately implements and routinely maintains the WECP and CM's.

4. 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 development where the construction or development is adjacent to existing developed or built areas.

B. Large lot residential, office, commercial, and industrial requirements.

1. 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.

2. Grading activities shall only be allowed to commence after building plan approval and permit issuance. Site improvement only development permits may be considered pursuant to the following:

    a. The site is three (3) acres or less.

    b. Dust emissions on the affected lot must be permanently suppressed by providing paved parking areas and driving isles and landscaping.

    c. All disturbed building pads must be suppressed as to prevent the creation of fugitive dust until such time as building placement occurs.

    d. The anticipated amount of time between site development and building construction is sixty (60) days or less. If more than sixty days passes the building pad shall be re-vegetated or fenced off with a minimum 3' high wind fence capable of controlling fugitive emissions.

15.24.100 Cessation of Operations

Once construction has commenced, stabilization measures must be taken to ensure that fugitive dust and windblown particulate matter creation is suppressed during any period of inactivity; to include weekends, after-hours and holidays. Permanent stabilization via revegetation, landscaping, paving or the provision of chemical dust suppressants or wetting shall be required for properties once the inactive period exceeds sixty (60) days

15.24.110 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 to the WECP and outlined CMs 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.

15.24.120 Control Measures

Control measures are methods which can be utilized to limit the creation of fugitive dust or windblown particulate matter. CMs 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 or adjacent to the City limits. CMs shall include, but not be limited to:

A. Designing subdivisions or building sites to utilize existing, pre-development grades;

B. Watering disturbed areas on a regular and minimum basis throughout the daily construction activities, including periods of inactivity;

C. Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;

D. 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.

E. Re-seeding or re-vegetation of graded or disturbed areas;

F. Grading for street and utility placement only as part of subdivision construction;

G. Building all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of all 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;

H. Grading the building pad site only plus five feet in all directions of the pad site;

I. Retaining natural vegetation during the construction phase of building excluding the building pad site;

J. Utilizing existing or natural vegetation as part of the landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;

K. 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;

L. Implementing any other proposed dust suppressing agent or activity approved by the City Manager or designee, especially those that have been developed to be effective in our particular area;

M. Combining any two or more of the above items.

15.24.130 Corrections, effective date, and enforcement

A. Correction of condition. If 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 City Manager or designee and the person will be notified 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 8.28 (Nuisances).

B. Remedial action. The City Code Enforcement Officer, its designated agent, or 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.

C. Costs. The actual 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. The owner of record will have fifteen days to submit payment in full. Failure to remit payment shall cause a lien to be placed upon the property from which remedial or corrective action was taken.

D. Effective Date. For all 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 fifteen (15) days of the effective date of this article.

E. 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.

F. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars or by imprisonment not to exceed ninety days or by both such time and imprisonment. Each day such violation is committed, or permitted to continue, shall constitute a separate offense and shall be punishable as such.

APPROVED, PASSED, AND ADOPTED this 14th day of April, 2014.

CITY OF LOVINGTON SEAL LEA COUNTY, N.M.

CITY OF LOVINGTON

SCOTTY GANDY, MAYOR

ATTEST:

CAROL ANN HOGUE, CITY CLERK