

ORDINANCE NO. 044, 2016  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF FORT COLLINS  
RELATED TO PARTICULATE MATTER EMISSIONS

WHEREAS, on February 15, 2011, City Council approved Resolution 2011-015 adopting the City Plan, including the Environmental Health Vision that sets forth an aspirational goal of continuous improvements in air quality; and

WHEREAS, City Plan also contains numerous policies supporting air quality, including Policy ENV 8.6 which directs staff to promote prevention of air pollution at its source as the highest priority approach in reducing air pollution emissions; and

WHEREAS, in furtherance of the Air Quality Advisory Board's 2015 Work Program, which calls for addressing fugitive dust as a priority air quality initiative, City staff has proposed amendment of Chapter 12 of the Fort Collins City Code to protect air quality by adopting dust control and prevention standards by adopting a "Dust Prevention and Control Manual"; and

WHEREAS, in addition to preventing, mitigating, and minimizing dust, the City desires to create minimal impact to the Fort Collins housing market; and

WHEREAS, City staff has vetted these proposed changes through a Fugitive Dust Working Group composed of contractors, interested stakeholders, and City staff, as well as through numerous public events and a project website; and

WHEREAS, City staff presented the proposed changes set forth in the Dust Prevention and Control Manual to the Parks and Recreation Board (December 2, 2015), Natural Resources Advisory Board (December 16, 2015), the Air Quality Advisory Board (December 21, 2015) and the Planning and Zoning Board (December 17, 2015) and all four Boards have recommended to the City Council that the standards set forth in the Dust Prevention and Control Manual be adopted; and

WHEREAS, City Council has determined that the adoption of the best management practices and standards set forth in the Dust Prevention and Control Manual attached hereto as Exhibit "A" and incorporated herein by reference, is in the best interest of the City and its citizens and is necessary to protect the health, safety, and welfare of the public, including prevention of adverse impacts of fugitive dust to human health, property, natural areas and waters of the state, and other adverse environmental impacts.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That Chapter 12 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article X which reads in its entirety as follows:

**ARTICLE X.  
PARTICULATE MATTER EMISSIONS**

**Sec. 12-150. Purpose and Applicability.**

(a) The purpose of this Article is to protect the health, safety, and welfare of the public, including prevention of adverse impacts to human health, property, sensitive areas, waters of the state, and other adverse environmental impacts and to prevent visibility impairment and safety hazards caused by emissions of particulate matter into the air from human activities.

(b) The provisions of this Article shall:

(1) Apply to any person who conducts or is an owner or operator of, a dust generating activity or source within the City limits.

(2) Apply to City activities that constitute a dust generating activity or source, except as set forth in subsection (b)(3) below.

(3) Not apply to operations conducted by: (i) any state or federal agency; or (ii) the City, or any county, state, or federal agency in response to a local emergency as defined in ~~Code~~ §2-666.

**Sec. 12-151. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section. Words, terms and phrases defined in the Dust Prevention and Control Manual shall have the meaning set forth therein.

*Dust Prevention and Control Manual* or *dust control manual* shall mean the Dust Prevention and Control Manual that describes applicable dust control measures as adopted by City Council in Ordinance No. 044, 2016, and any subsequent revisions.

*Dust control measures* shall mean any action or process that is used to prevent or mitigate the emission of fugitive dust into the air, including but not limited to, the best management practices as identified in the Dust Prevention and Control Manual.

*Dust generating activity or source* shall mean a process, operation, action, or land use that creates emissions of fugitive dust or causes off-property or off-vehicle transport, all as more fully set forth in the Dust Prevention and Control Manual.

*Fugitive dust* shall mean solid particulate matter emitted into the air by mechanical processes or natural forces but is not emitted through a stack, chimney, or vent.

*Off-property transport* shall mean the visible emission of fugitive dust beyond the property line of the property on which the emission originates or the project boundary when the emission originates in the public right-of-way or on public property.

*Off-vehicle transport* shall mean the visible emission of fugitive dust from a vehicle that is transporting dust generating materials on a public road or right-of-way.

*Owner or operator* shall mean any person who owns or has control over a dust generating activity source either by operating, supervising, controlling, or maintaining ownership of the activity or source including, but not limited to, a contractor, lessee, or other responsible party of an activity, operation, or land use that is a dust generating activity or source.

*Particulate matter* shall mean any material which is emitted into the air as finely divided solid or liquid particles, other than uncombined water, and includes dust, smoke, soot, fumes, aerosols, and mists.

*Small scale source* shall mean a dust generating activity or source occurring on real property within the City that consists of a single lot or parcel with a total ~~disturbed~~-area of not more than five (5) acres.

#### **Sec. 12-152. Adoption of Dust Prevention and Control Manual.**

(a) There is hereby adopted the Dust Prevention and Control Manual on file in the office of the City Clerk, which shall have the same force and effect as though set forth herein and shall be referred to as the dust control manual, for the purposes of protecting the health, safety, and general welfare of the public as set forth in §12-150(a) above.

(b) A copy of the dust control manual adopted under this §12-152 shall be kept on file in the City Clerk's office.

(c) The City Manager may adopt such minor conditions, revisions, and corrections to the dust control manual as may, in his or her judgment, be necessary to better conform to and maintain consistency with nationally recognized practices for controlling fugitive dust emissions (referred to herein as "technical revisions"). The City Manager shall approve only those technical revisions that:

- (1) are consistent with all existing policies relevant to the revisions;
- (2) do not result in significant additional cost to the persons affected by the revisions; and
- (3) do not materially alter the standards with which persons must comply.

Upon adoption of any such technical revisions pursuant to the authority of this subsection, the City Manager shall provide to the City Clerk documentation of such technical revisions specifying the date upon which they shall become effective, and shall maintain said documentation on file in the permanent records of the City Clerk and available for public inspection.

**Sec. 12-153. Prevention of fugitive dust emissions.**

(a) Bulk Materials Transport: Any person who is an owner or lessee of property within the City on which a dust generating activity or source is located and for which vehicles are used to transport bulk materials to or from the property on a public or private road or on a public right-of-way shall comply with and expressly require all contractors and subcontractors to comply with the required best management practices and, to the extent set forth therein, the additional best management practices in section 3.6 of the dust control manual.

(b) Saw Cutting or Grinding: Any person, owner or operator that cuts or grinds asphalt, concrete, brick, tile, stone, or other masonry materials and whose operations are a dust generating activity or source shall comply with and expressly require all contractors and subcontractors to comply with the required best management practices and, to the extent set forth therein, the additional best management practices in section 3.10 of the dust control manual.

(c) Other Dust Generating Activities or Sources: Any person who conducts, or is an owner or operator of, a dust generating activity or source shall comply with the provisions of the dust control manual.

(d) Violation: It shall not be considered a violation of this section if off-property transport of fugitive dust emissions occurs while dust control measures are being implemented consistent with the dust control manual.

(e) Best Management Practices: Educational materials regarding best management practices for dust control shall be made available by the City to owners and operators of dust generating activities, including but not limited to, a checklist or other descriptive material.

**Sec. 12-154. Access to Private Property.**

Employees of the City authorized to enforce the provisions of this Article are hereby authorized to enter upon any premises, excluding a dwelling unit or any structure, in the City for the purpose of inspection of any dust generating activity or source or for any purpose authorized by this Article or the dust control manual. If such premises are occupied at the time entry is required, the City employee entering the premises pursuant to this section shall first present credentials and request entry. If such entry is refused, the City employee shall have recourse to every remedy provided by law to secure entry. When a City employee has obtained an inspection warrant or other remedy provided by

law to secure entry, any failure to permit such entry upon request pursuant to a valid inspection warrant or other court order shall be a misdemeanor punishable by the provisions of §1-15 of this Code.

**Secs. 12-155 – 12-158. Reserved**

**Sec. 12-159. Violations and penalties.**

Any person who violates §12-153 of this Article, commits a civil infraction and is subject to the penalty provisions of subsection 1-15(f) of the Code.

**Sec. 12-160 Limitations on violations and penalties-small scale source.**

No owner or operator of a small scale source is required to comply with the provisions of §12-153(c) or is subject to prosecution under that provision, unless, within one year immediately preceding the date of the alleged violation:

- (1) such owner or operator has been issued and served by personal service, served to the registered agent, or by certified mail, a written warning and notice stating that the subject property has yielded off-property transport of fugitive dust and that he or she must prevent, mitigate, and minimize fugitive dust; and
- (2) such owner or operator, after having been issued and served with the written warning in §12-160(1), is issued and has been served by personal service, served to the registered agent, or by certified mail, an additional written warning and notice that the subject property has after the service of such prior warning and notice yielded off-property transport of fugitive dust and that he or she must immediately comply with the provisions of §12-153(c).

Section 3. The foregoing provisions enacted by this Ordinance shall be effective on and shall and apply to all dust generating activities or sources on and after November 1, 2016. Notwithstanding the foregoing, the requirements set forth herein and in the dust control manual shall not be applied so as to impair any contracts in existence as of the date on which this Ordinance becomes effective.

Section 4. The City Manager shall provide for monitoring of the impacts of this Ordinance during the first year after full implementation of its requirements, and shall review and report in writing to the City Council the effectiveness of the requirements including any recommendations related to the thresholds for application of the various requirements to properties and projects.

Introduced, considered favorably on first reading, and ordered published this 5th day of April, A.D. 2016, and to be presented for final passage on the 3rd day of May, A.D. 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 3rd day of May, A.D. 2016.

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Mayor

ATTEST:

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City Clerk