



ASARCO

December 15, 2025

Pima County Board of Supervisors
130 W. Congress Street
Tucson, AZ 85701

VIA EMAIL: COB_mail@pima.gov

Dear Chairman Scott and Members of the Board:

ASARCO LLC ("ASARCO") respectfully makes the following comments regarding proposed ordinance No. 2025-xx, "Relating to Traffic and Highways (Title 10); Creating a New Section 10.37 Unpaved County Roads, to Regulate Certain Unpaved Roads to Maintain Health Standards for Air Quality."

ASARCO has reviewed the latest draft of the proposed ordinance, together with all related documents in the legislative record of the proposed ordinance that are available at:

<https://pima.legistar.com/LegislationDetail.aspx?ID=7763836&GUID=C3A4F7F6-0EF2-4070-9435-613DA449756F&Options=&Search=>.

There is nothing in the legislative record of the proposed ordinance that indicates the proposed ordinance complies with A.R.S. §§ 49-479 and 49-112, or that the County has considered those statutes as part of the County's determination whether to enact the proposed ordinance and in drafting the text of the proposed ordinance.

A.R.S. §§ 49-479 and 49-112 are relevant because the proposed ordinance—including the conditional 15 miles-per-hour speed limit in proposed 10.37.20 and the requirement to obtain a permit in proposed 10.37.50—would be more stringent than, and in addition to, the Arizona statutes, Arizona Department of Environmental Quality (ADEQ) rules, and duly promulgated Implementation Plans that govern the same subject matter, which is attainment, within Arizona, of the National Ambient Air Quality Standards (NAAQS) for particulate matter with a diameter of 10 microns or less (PM10). A.R.S. §§ 49-404, 49-405, 49-406 and 49-411; A.A.C. R18-201, R18-2-210, R18-2-301 through R18-2-334, R18-2-801 through R18-2-805, R18-2-1001 through R18-2-1030.

A.R.S. § 49-479(C) provides "[a] county may adopt or amend a rule, emission standard, or standard of performance that is as stringent or more stringent than a rule, emission standard or standard of performance for similar sources adopted by

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the director [of the ADEQ] only if the county complies with the applicable provisions of section 49-112.”

A.R.S. § 49-112(A), in turn, provides that, “[w]hen authorized by law, a county may adopt a rule, ordinance or regulation that is more stringent than or in addition to a provision of this title or rule adopted by the director [of the ADEQ] or any board or commission authorized to adopt rules pursuant to this title if all of the following requirements are met:

1. The rule, ordinance or regulation is necessary to address a peculiar local condition.
2. There is credible evidence that the rule, ordinance or regulation is either:
 - (a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible.
 - (b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule, ordinance or regulation is equivalent to federal statutes or regulations.

Based on ASARCO’s review of the available legislative record, there is nothing in the legislative record of the proposed ordinance that indicates the County has considered, let alone made a determination, that the proposed ordinance, including 10.37.20 and 10.37.50, is “necessary to address a peculiar local condition”; or is based on “credible evidence” that it is “[n]ecessary to prevent a significant threat to public health or the environment that results from a peculiar local condition” and is “technically and economically feasible”; or is “[r]equired under a federal statute or regulation . . .”

To the contrary, the legislative record of the proposed ordinance:

- Rests on speculative and unfounded statements that a failure to enact and enforce the proposed ordinance “may result in exceedances of health standards for particulate matter that could lead to a [PM10 NAAQS] non-attainment area designation by the Environmental Protection Agency (EPA)” and “will avoid exceedances of the [PM10 NAAQS]” (emphasis added); and
- Does not include or refer to “credible evidence” that the provisions of the proposed ordinance are necessary to ensure attainment of the PM10 NAAQS,

due to a peculiar local condition or otherwise, as well as economically feasible, within the meaning of A.R.S. § 49-112(A)(1)-(2).

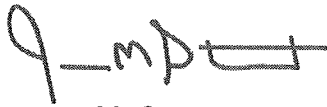
See November 12, 2025 Memorandum from County Administrator to Board of Supervisors; November 7, 2025 Board of Supervisors Agenda Item Report; November 24, 2025 Memorandum from County Administrator to Board of Supervisors.

Therefore, the proposed ordinance, if enacted, would be unlawful relative to A.R.S. §§ 49-479(C) and 49-112(A)(1)-(2).

Separately, ASARCO notes that it is not clear that enactment of the proposed ordinance would be consistent with the procedural process requirements of A.R.S. §§ 49-471.04 (notice of proposed ordinance making), 49-471.05 (contents of preamble), 49-471.06 (public participation, written statements, oral proceedings), 49-471.07 (time and manner of ordinance making), 49-471.09 (ordinance making record), 49-471.10 (prohibited actions), and 49-471.13 (permitting timeframes).

ASARCO appreciates the County's commitment to safeguarding the environment; however, for the reasons outlined above, ASARCO believes the County should reconsider the proposed ordinance to the extent necessary to ensure compliance with the above-referenced statutes and rules.

Sincerely,



James M. Stewart
Director of Sustainability
ASARCO LLC

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