

**Staff Report
For Proposed Ordinance
P-28 - Off-Road Vehicle Use In Unincorporated Areas Of Maricopa County**

Executive Summary:

The Phoenix nonattainment area did not meet the PM₁₀ standard by December 31, 2006, so this region must submit to the Environmental Protection Agency (EPA) a Five Percent Plan for PM₁₀ by December 31, 2007. The Five Percent Plan for PM₁₀ must demonstrate a 5% reduction per year in emissions from the date of submission to the EPA. In response to this commitment, the Arizona Legislature recently enacted Senate Bill 1552 which authorizes measures committed to reduce PM₁₀ emissions. One of the measures is to prohibit the operation any vehicles on unpaved public or private property. Responding to this commitment, proposed P-28 restricts the operation of any vehicle on unpaved property and imposes a penalty to the vehicle operator for violations. A violation of this ordinance is classified as a Class 3 misdemeanor and mandates the vehicle operator to attend at least eight but not more than 24-hours of a community restitution course related to the off-highway operation of motor vehicles.

To inform stakeholders of the pending ordinance and to allow for comments, the Maricopa County Air Quality Department (MCAQD) held three public workshops (August 27, 2007, September 26, 2007, and October 18, 2007). The compromises reached from these workshops are incorporated into this proposed ordinance, which is pending and awaiting Board approval. The following sections describe the critical aspects and details of the proposed ordinance.

Legal Authority And Structure Of Ordinance:

The proposed P-28 ordinance is authorized by A.R.S. § 9-500.27(A), A.R.S. § 11-251(43), and A.R.S. § 49-457. The purpose of proposed P-28 is not to supersede or overlap the existing Maricopa County fugitive dust rules (Rules 310 and 310.01); rather it closes the compliance loopholes in these rules. Both the proposed P-28 ordinance and the Maricopa County fugitive dust rules (Rules 310 and 310.01) fulfill the mandatory emissions curtailment elements as required by the passage of Senate Bill 1552 and commitments made in the Five Percent Plan for PM₁₀ as required for EPA. As mandated by the statutes listed above, the proposed P-28 ordinance applies to all unincorporated areas within Maricopa County. The proposed ordinance

applies to any person operating a vehicle at any time on both public and private unpaved property. In the past, Maricopa County rules applied only to the property owners who had sole responsibility to keep vehicles off unpaved open areas and vacant lots. The proposed ordinance requires that vehicle operators, in addition to the land owners, take responsibility for operation and use of vehicles on unpaved property.

The proposed P-28 ordinance imposes a penalty directly to the vehicle operator for violations. The proposed ordinance is divided into five sections: (1) purpose and applicability; (2) definitions; (3) restrictions; (4) violations, notices, and penalties; and (5) exemptions.

Public And Private Impact Of Ordinance:

The proposed ordinance is broad in scope as it applies to any person operating a vehicle within the unincorporated areas of Maricopa County. The proposed ordinance will limit the emission of particulate matter (PM₁₀) into the ambient air from vehicle use and operations on unpaved public property or unpaved private property. There are two major impacts of this ordinance. First, the individual vehicle operator is responsible in addition to the land owner for vehicle use on unpaved property. Secondly, this proposed ordinance redefines how the vehicle operator determines if a property is open for vehicle use. Frequently, posting signs on property resulted in destruction or vandalism of the signs and then vehicles were accessing the properties. To thwart sign destruction and provide a disincentive to the vehicle operators from operating on unpaved property, a vehicle owner must determine if a property is open. For public lands, vehicle operators may find the status of land use in an order from a government land management agency, a current map approved by such agency, or from a government land management virtual posting. For private property, the vehicle operator must be able to demonstrate that the property owner has granted permission to access the property.

This proposed ordinance is anticipated to have limited adverse economic impacts but will provide benefits for property owners, because they will be less likely to have to spend money to repair damage to their property from vehicle activity. The landowners will see a savings because of the decrease in the destruction, vandalism, and the necessary replacement of property signs as well as less disturbance/damage to the property. The additional government inspection and judicial costs will be offset by a reduction in burdens on community health care due to the decrease in particulate matter emissions into the air. This decreased burden of community health

care costs helps offset increased agency costs and are expressed as avoided cases of PM₁₀-related health effects.

The only economic impact will be from revenue generated from violators of the proposed ordinance who will receive a monetary fine through the civil penalty structure. The civil penalty structure included in the proposed ordinance is designed to be similar to other existing MCAQD ordinances, which could be either or both a fine or a judge ordering the person to perform at least eight but not more than 24-hours of a community restitution course related to the off-road operation of motor vehicles.

PM₁₀ Reductions And Health Impacts Of The Ordinance:

Maricopa County estimates that off-road recreational vehicles traveling on unpaved surfaces produce 2,159 tons of PM₁₀ annually in the PM₁₀ nonattainment area (MCAQD, 2007). This represents approximately 2.6% of all PM₁₀ emissions in the nonattainment area. Proposed P-28 will reduce emissions in two ways: (1) by prohibiting or limiting trespass trips on unstable surfaces, this results in less material that can become “re-entrained” by vehicles driving over the debris, causing the debris to become airborne PM₁₀ emissions; and (2) by prohibiting or limiting vehicle use on unpaved property, there is less PM₁₀ disturbed areas on the lots to produce emissions. Reductions of PM₁₀ emissions will help to improve public health, as recent literature shows that exposure to elevated PM₁₀ levels can cause increased occurrences of asthma and limit circulation functions (Lin et. al., 2002; Gent et. al., 2003).

Public Comment And Participation:

As mentioned earlier, the MCAQD held three public workshops (August 27, 2007, September 26, 2007, and October 18, 2007) to solicit stakeholder comments on the proposed ordinance. The main categories in which public comment and discussion were focused included: (1) definition of a road or highway; (2) how the vehicle user obtains permission for vehicle access on property; and (3) exemptions from the ordinance.

Regarding category (1), Stakeholders expressed the following concerns: clarify where designated and open trails fall, address service roads, and address private roads. In response to those concerns, the MCAQD reviewed state statutes, the Code of Federal Regulations, and the Maricopa County Zoning Ordinance and consulted with a group of public and trust Land

Managers and developed the following language to supplement the definition of road or highway that the MCAQD initially proposed: “For the purposes of this definition the term “road or highway” also includes designated or opened trail systems, service roads regardless of surface composition, and any other property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document, or having thereon a public easement for such use.”

Regarding category (2), proposed P-28 provides the vehicle operator several options to become informed of land use. The vehicle operator can look for a sign on the property posting the land open. The vehicle operator can look for an order, map, or virtual posting from a government land management agency or can obtain written permission from a private land owner. The vehicle operator will also have access to a forthcoming website about land availability for vehicle use. The responsibility for this website, data sharing, access and maintenance requirements still need to be defined.

Regarding category (3), the MCAQD has included an exemption from the proposed ordinance (restricting the operation of any vehicle on unpaved property) for operations directed by utilities for operations, distribution, and transmission systems. Utilities use vehicles on unpaved property to perform maintenance and inspections of utility lines/systems. Oftentimes, permission or proof of authority to access such unpaved property is granted via an implied or expressed easement; written permission from the property owner is not always available. Consequently, utilities are exempt from proposed P-28.

After addressing these comments and after following the rulemaking process, the MCAQD believes that proposed P-28 is ready for approval and adoption by the Board Of Supervisors.

References:

Lin, M., Chen, Y., Burnett, R. T., Villeneuve, P. J., & Krewski, D. (2002). The influence of ambient coarse particulate matter on asthma hospitalization in children: Case-crossover and time-series analyses. *Environmental health perspectives, 110*(6), 575-581.

Maricopa County Air Quality Department (MCAQD). (2007). 2005 Periodic Emissions Inventory for PM₁₀ for the Maricopa County, Arizona, Nonattainment Area

MARICOPA COUNTY
P- 28 OFF ROAD VEHICLE USE IN UNINCORPORATED
AREAS OF MARICOPA COUNTY

SECTION 1 – GENERAL

- A. PURPOSE
- B. APPLICABILITY

SECTION 2 – DEFINITIONS

- A. DESIGNATED OR OPENED TRAIL SYSTEM
- B. ROAD OR HIGHWAY
- C. VEHICLE

SECTION 3 - RESTRICTIONS

SECTION 4 – VIOLATIONS, NOTICES, AND PENALTIES

SECTION 5 - EXEMPTION

**MARICOPA COUNTY
P- 28 OFF ROAD VEHICLE USE IN UNINCORPORATED
AREAS OF MARICOPA COUNTY**

SECTION 1 - GENERAL

- A. PURPOSE:** This Ordinance restricts the operation of any vehicle on unpaved property.
- B. APPLICABILITY:** This Ordinance applies to the operation of any vehicle in unincorporated sections within Maricopa County.

SECTION 2 - DEFINITIONS: For the purpose of this Ordinance, the following definitions shall apply:

- A. DESIGNATED OR OPENED TRAIL SYSTEM -** Roads or routes that are part of a system of trails and that are designated or opened by a government land management agency by order, sign, and/or map approved by such agency.
- B. ROAD OR HIGHWAY -** The entire width between the boundary lines of every way publicly maintained by the federal government, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of vehicular travel. For purposes of this ordinance, the term “road or highway” also includes designated or opened trail systems, service roads regardless of surface composition, and any other property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document, or having thereon a public easement for such use.
- C. VEHICLE -** A self propelled device and its appurtenances, excluding devices moved by human power or used exclusively on stationary rails or tracks.

SECTION 3 – RESTRICTIONS:

- A.** A person shall not access unpaved public property with any vehicle within the unincorporated areas of Maricopa County without lawful authority. Lawful authority shall consist of rules, regulations, or orders of a federal agency, this state, a county or municipality which shall be made available to the public by any one of the following:
 - 1. A sign to designate the property is/as open. Such sign shall be in compliance with the standard travel management signing protocol used by Southwest Land Management Agencies and shall at a minimum be conspicuously placed at all points of vehicular access and contain the following information: “Travel Must Remain On Designated Routes”. Copies of the standard travel management signing protocol are available for review at the Maricopa County Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004
 - 2. Through orders of a government land management agency.
 - 3. Through most current maps approved by such government land management agency.
 - 4. Virtual posting from a government land management agency.
- B.** A person shall not operate any vehicle on unpaved private property within the unincorporated areas of Maricopa County without the consent of the lawful owner. Consent of the lawful owner consists of either or both of the following:
 - 1. A sign to designate the property is/as open. Such sign shall be in compliance with the standard travel management signing protocol used by Southwest Land Management Agencies and shall at a minimum be conspicuously placed at all points of vehicular

access and contain the following information: "Travel Must Remain On Designated Routes". Copies of the standard travel management signing protocol are available for review at the Maricopa County Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004

2. Prior written permission which contains the following:
 - (a) The name, address, and telephone number of the person granting permission for the use of the property;
 - (b) A description of the interest the person granting permission has in the property (i.e., property owner, lessee, or agent);
 - (c) If the person granting permission is not the owner of the property, the written permission shall also contain the name, address, and telephone number of the property owner;
 - (d) Specify the period of time for which permission for the use of the property is being granted; and
 - (e) The signature of the person granting permission for the use of the property.
- C. Whenever any person is stopped by an Enforcement Officer for a violation of Section (3) of this Ordinance, he/she shall, upon the request of the Enforcement Officer identify or present the lawful authority required in this section.

SECTION 4 - VIOLATIONS, NOTICES, AND PENALTIES:

- A. A person who violates this Ordinance is guilty of a class 3 misdemeanor.
- B. In addition to or in lieu of a fine pursuant to this section, a judge may order the person to perform at least eight but not more than twenty-four hours of a community restitution course related to the off-highway operation of motor vehicles.
- C. For violations of this Ordinance, the Enforcement Officer shall use a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the Supreme Court. The Enforcement Officer may issue a citation to persons in violation of this Ordinance.

SECTION 5 - EXEMPTION:

- A. This Ordinance shall not apply during a period of emergency or if the operation is directed by a peace officer or other public authority.
- B. The property owner, person entitled to immediate possession of the property, or invitee who has lawful authority may operate such vehicles on the property if such use does not violate any other applicable laws.
- C. For the purposes of this ordinance, unpaved public or unpaved private property does not include roads or highways.
- D. This Ordinance shall not apply to operations directed by utilities for operation, distribution, and transmission systems provided that both of the following conditions are met:
 1. Operations are performed in a / using a marked company vehicle; and

2. If operations are performed in a / using a personal vehicle, then identification of the company shall be visible and readable by the public without having to be asked by the public (e.g., included/posted in a sign that is visible on the vehicle or included/posted in a sign that is visible in the window of the vehicle).