

ORDINANCE NO. 06-789

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF LAKE HAVASU CITY, MOHAVE COUNTY, ARIZONA, AMENDING LAKE HAVASU CITY MUNICIPAL CODE, TITLE 5, BUSINESS LICENSES AND REGULATIONS, BY ADDING NEW CHAPTER 5.20, ENTITLED “NON-PRESCRIPTION PSEUDOEPHEDRINE PRODUCT SALES”, REGULATING THE SALE OF PSEUDOEPHEDRINE PRODUCTS IN RETAIL ESTABLISHMENTS BY RESTRICTING THEIR SALE THROUGH LICENSED PHARMACISTS OR PHARMACY TECHNICIANS, PROVIDING FOR A DEFINITION FOR PSEUDOEPHEDRINE PRODUCTS SUBJECT TO REGULATION, REQUIRING PSEUDOEPHEDRINE PRODUCTS TO BE RESTRICTED FROM PUBLIC ACCESS, PRESCRIBING AN IDENTIFICATION PROCEDURE FOR PROSPECTIVE PURCHASERS OF PSEUDOEPHEDRINE PRODUCTS, PROSCRIBING SALES TO MINORS, PROVIDING FOR THE SEIZURE OF NON-SECURED PRODUCTS AS WELL AS PROCEDURES FOR THE CONDUCT OF POST SEIZURE HEARINGS, AND PRESCRIBING A PENALTY FOR THE VIOLATION OF THE ORDINANCE.

BE IT ORDAINED by the Mayor and City Council of Lake Havasu City that Title 5 of the Lake Havasu City Code is hereby amended by the addition of new chapter 5.20 entitled “Non Prescription Pseudoephedrine Product Sales” to read as follows:

CHAPTER 5.20

Section 1: *Section 5.20.010 is added to read as set forth below.*

5.20.010 PURPOSE AND LEGISLATIVE FINDINGS.

A. THE PURPOSE OF THIS CHAPTER IS TO DECREASE THE AVAILABILITY

OF EPHEDRINE DERIVED FROM NON-PRESCRIPTION DRUG PRODUCTS AND OTHER COLD AND ALLERGY DRUG MEDICATIONS COMMONLY USED AS A PRECURSOR IN THE PRODUCTION OF METHAMPHETAMINE. THE ARIZONA STATE LEGISLATURE HAS YET TO REGULATE EPHEDRINE PRODUCTS WHICH ARE COMBINED WITH OTHER ACTIVE INGREDIENTS. THESE PROVISIONS ARE INTENDED TO SUPPLEMENT, NOT AS A SUBSTITUTE FOR ARIZONA REVISED STATUTES §13-3401.01, ET SEQ.

B. THE ILLICIT MANUFACTURE OF METHAMPHETAMINE (“METH”) AND THE PROLIFERATION OF “METH” LABS ARE SERIOUS AND CONTINUING PROBLEMS IN THIS CITY AS WELL AS THROUGHOUT THE COUNTY, STATE AND NATION; AND

C. DUE TO THE FLAMMABLE AND TOXIC NATURE OF THE CHEMICALS USED IN “METH” PRODUCTION; FIRES, EXPLOSIONS AND HAZARDOUS MATERIALS CONTAMINATION ARE COMMON OCCURRENCES ASSOCIATED

WITH “METH” LABS; AND

D. “METH” LABS ARE FOUND IN HOUSES, APARTMENTS, MOBILE HOMES, HOTEL AND MOTEL ROOMS IN BOTH RESIDENTIAL AND COMMERCIAL AREAS, EXPOSING LAW ENFORCEMENT PERSONNEL, OTHER FIRST RESPONDERS, CHILDREN OF PERSONS OPERATING “METH” LABS AND OTHER CITIZENS IN PHYSICAL PROXIMITY TO EXTREMELY DANGEROUS CONDITIONS; AND

E. PSEUDOEPHEDRINE, EPHEDRINE, NORPSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE ARE KEY INGREDIENTS IN “METH” PRODUCTION AND ARE FOUND IN MANY NON-PRESCRIPTION OVER-THE-COUNTER COLD AND ALLERGY MEDICATIONS; THESE OVER-THE-COUNTER MEDICATIONS, BY PURCHASE OR THEFT, BEING A PRIME SOURCE USED IN ILLEGAL METHAMPHETAMINE PRODUCTION; AND

F. WHILE RECENTLY ENACTED STATE LEGISLATION (SENATE BILL 1473), LIMITS SALES OF PSEUDOEPHEDRINE, NORPSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE TO NINE (9) GRAMS PER TRANSACTION, AND REQUIRES RESTRICTED ACCESS TO PRODUCTS CONTAINING PSEUDOEPHEDRINE AS THE ONLY ACTIVE INGREDIENT, THE LEGISLATION DOES NOT REQUIRE RESTRICTED ACCESS TO PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE IN COMBINATION WITH OTHER ACTIVE INGREDIENTS; AND

G. THESE UNRESTRICTED OVER-THE-COUNTER PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE, EPHEDRINE, NORPSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE IN COMBINATION WITH OTHER ACTIVE INGREDIENTS ARE USED IN THE MAKING OF “METH”; AND

H. THE UNRESTRICTED ACCESS TO PRODUCTS CONTAINING PSEUDOEPHEDRINE, EPHEDRINE, NORPSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE IN RETAIL ESTABLISHMENTS ENDANGERS THE PUBLIC HEALTH, SAFETY AND WELFARE AND CONSTITUTES A NUISANCE; AND

I. OTHER JURISDICTIONS IN THE STATE AND NATION HAVE FOUND THAT THE RESTRICTION OF OPEN ACCESS TO THESE PRODUCTS HAS SUBSTANTIALLY REDUCED THE NUMBER OF “METH” LABS DISCOVERED IN THEIR JURISDICTIONS.

Section 2: *Section 5.20.020 is added to read as set forth below.*

5.20.020 DEFINITIONS.

IN THIS CHAPTER, UNLESS THE CONTEXT PLAINLY AND OTHERWISE REQUIRES:

A. "IDENTIFICATION DOCUMENT" MEANS:

1. ANY UNITED STATES MILITARY IDENTIFICATION CARD WITH PHOTO;
2. ANY UNITED STATES OR ANY OF THE FIFTY (50) STATES OR U.S. TERRITORIES DRIVER'S LICENSE OR IDENTIFICATION CARD WITH PHOTO;
3. ANY UNITED STATES PASSPORT OR PASSPORT WITH PHOTO FROM A NATION RECOGNIZED BY THE UNITED STATES;
4. ANY U.S. ISSUED IMMIGRATION DOCUMENT WITH PHOTO;
5. ANY OTHER PHOTO IDENTIFICATION DOCUMENT APPROVED BY THE POLICE CHIEF;
6. NO OTHER DOCUMENTS FOR IDENTIFICATION ARE ACCEPTABLE.
7. ALL ACCEPTABLE IDENTIFICATION DOCUMENTS SHALL BE VALID AND UNEXPIRED.

B. "LICENSED PHARMACIST" OR "PHARMACY TECHNICIAN" MEANS ANY PERSONS WHO HOLDS OR IS REQUIRED TO HOLD A LICENSE OR PERMIT TO SELL DRUGS AT RETAIL PURSUANT TO TITLE 32, CHAPTER 18 OF THE ARIZONA REVISED STATUTES.

C. "PSEUDOEPHEDRINE PRODUCT" MEANS ANY PRODUCT CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE AND INCLUDES ANY COMPOUND, MIXTURE OR PREPARATION THAT CONTAINS ANY DETECTABLE QUANTITY OF EPHEDRINE, PSEUDOEPHEDRINE, NORPSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE OR THEIR SALTS, OPTICAL ISOMERS OR SALTS OF OPTICAL ISOMERS. PRODUCT PACKAGING THAT LISTS EPHEDRINE, PSEUDOEPHEDRINE, NORPSEUDOEPHEDRINE, OR PHENYLPROPANOLAMINE, AS AN ACTIVE INGREDIENT SHALL CONSTITUTE PRIMA FACIE EVIDENCE THAT THE PRODUCT IS A PSEUDOEPHEDRINE PRODUCT.

D. "RETAIL ESTABLISHMENT" MEANS ANY PLACE OF BUSINESS THAT OFFERS ANY PSEUDOEPHEDRINE PRODUCT AS DEFINED FOR RETAIL SALE IN LAKE HAVASU CITY, ARIZONA.

Section 3: Section 5.20.030 is added to read as set forth below.

**5.20.030 NON-PRESCRIPTION PSEUDOEPHEDRINE PRODUCT(S)
TO BE SOLD THROUGH LICENSED PHARMACIES
PHARMACISTS/PHARMACY TECHNICIANS AND SECURED FROM
PUBLIC; SEIZURE, POST SEIZURE HEARING.**

- A. NON-PRESCRIPTION PSEUDOEPHEDRINE PRODUCT(S), AS DEFINED, SHALL ONLY BE AVAILABLE FOR RETAIL SALE AT A RETAIL ESTABLISHMENT THAT IS A STATE LICENSED PHARMACY, WITH THE ASSISTANCE OF A STATE LICENSED PHARMACIST OR PERMITTED PHARMACY TECHNICIAN IN LAKE HAVASU CITY.
- B. THE PHARMACIST OR PERMITTED PHARMACY TECHNICIAN AND/OR THE MANAGING AGENT OF A RETAIL PHARMACY ESTABLISHMENT SHALL KEEP ALL PSEUDOEPHEDRINE PRODUCT(S), AS DEFINED, BEHIND A STORE COUNTER OR OTHERWISE IN A MANNER THAT IS INACCESSIBLE TO CUSTOMERS WITHOUT THE ASSISTANCE OF A PHARMACIST OR PHARMACY TECHNICIAN LICENSED IN THIS STATE PER ARIZONA REVISED STATUTES TITLE 32, CHAPTER 18.
- C. ANY PSEUDOEPHEDRINE PRODUCT(S), AS DEFINED, FOUND TO BE DISPLAYED AND ACCESSIBLE TO THE PUBLIC IN ANY PHARMACY OR NON-PHARMACY RETAIL ESTABLISHMENT IN VIOLATION OF SUBSECTION (B) CONSTITUTES A VIOLATION OF THIS CHAPTER AND IS/ARE SUBJECT TO SEIZURE AND DISPOSAL BY THE LAKE HAVASU CITY POLICE DEPARTMENT IN THE MANNER PROVIDED IN SUBSECTION (D).
- D. PRODUCTS SUBJECT TO SEIZURE UNDER THIS SECTION MAY BE SEIZED BY A PEACE OFFICER UNDER THE AUTHORITY OF A SEARCH WARRANT OR UPON PROBABLE CAUSE TO BELIEVE THAT THE PRODUCTS ARE SUBJECT TO SEIZURE PURSUANT TO SUBSECTION (C). BEFORE REMOVING ANY PRODUCT(S) SUBJECT TO SEIZURE FROM ANY RETAIL ESTABLISHMENT, THE PEACE OFFICER SHALL GIVE THE MANAGING AGENT OR LICENSED PHARMACIST OF THE ESTABLISHMENT A REASONABLE OPPORTUNITY TO REMOVE THE PRODUCTS FROM THE AREA OF THE ESTABLISHMENT ACCESSIBLE TO THE PUBLIC, UNLESS THE MANAGING AGENT OR LICENSED PHARMACIST OR PHARMACY TECHNICIAN HAS BEEN AFFORDED THIS OPPORTUNITY ON A PREVIOUS OCCASION WITHIN THE PRECEDING TWELVE (12) MONTHS.
- E. AT THE TIME OF SEIZING ANY PRODUCTS UNDER THIS SECTION, THE PEACE OFFICER SHALL DELIVER A NOTICE OF INTENT TO DISPOSE OF THE SEIZED PRODUCTS. THIS NOTICE SHALL INCLUDE THE DATE AND LOCATION OF THE SEIZURE, AN INVENTORY

OF THE ITEMS SEIZED, A DESCRIPTION OF HOW A POST-SEIZURE HEARING MAY BE REQUESTED, THE TIME LIMIT FOR REQUESTING THAT HEARING, AND A WARNING THAT FAILURE TO REQUEST THE HEARING IN A TIMELY MANNER WILL RESULT IN THE DISPOSAL AND DESTRUCTION OF THE SEIZED PROPERTY. THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL BE SERVED ON THE MANAGING AGENT OR LICENSED PHARMACIST OR PHARMACY TECHNICIAN OF THE PHARMACY OR NON-PHARMACY RETAIL ESTABLISHMENT PRESENT AT THE TIME OF THE SEIZURE, OR IF THAT PERSON CANNOT BE IDENTIFIED AT THE TIME OF THE SEIZURE, ON ANY EMPLOYEE OF THE ESTABLISHMENT.

F. A PERSON OR ENTITY, THROUGH THEIR AGENT, RECEIVING A NOTICE OF INTENT TO DISPOSE, UNDER THIS SECTION, MAY REQUEST A POST-SEIZURE HEARING TO DETERMINE THE VALIDITY OF THE SEIZURE WITHIN FIFTEEN (15) DAYS OF RECEIVING THE NOTICE. THE LAKE HAVASU CITY MUNICIPAL COURT SHALL HAVE JURISDICTION TO DECIDE THE ISSUE AND SHALL CONDUCT THE HEARING WITHIN TEN (10) DAYS OF THE COURT'S RECEIPT OF THE REQUEST, EXCLUDING WEEKENDS AND HOLIDAYS. FAILURE TO REQUEST THE HEARING IN A TIMELY MANNER, OR FAILURE TO ATTEND A SCHEDULED HEARING, CONSTITUTES A WAIVER OF THE RIGHT TO CHALLENGE THE VALIDITY OF THE SEIZURE. AT THE HEARING, THE CITY SHALL HAVE THE BURDEN OF ESTABLISHING BY PREPONDERANCE OF THE EVIDENCE THAT THE PROPERTY WAS SUBJECT TO SEIZURE PURSUANT TO SUBSECTIONS (B) AND (C) OF THIS SECTION. AT THE HEARING, THE CITY MAGISTRATE MAY ADMIT ANY RELIABLE AND RELEVANT EVIDENCE. THE RULES OF EVIDENCE SHALL NOT STRICTLY APPLY. IF THE CITY MAGISTRATE FINDS THAT THE PRODUCTS WERE NOT SUBJECT TO SEIZURE, HE/SHE SHALL ORDER THE IMMEDIATE RETURN OF ALL SEIZED ITEMS. IF THE CITY MAGISTRATE FINDS THAT THE PRODUCTS WERE PROPERLY SEIZED PURSUANT TO THIS SECTION, THE COURT SHALL ORDER THAT THE PRODUCTS ARE FORFEITED TO THE CITY, AND SHALL DIRECT THE CITY TO DESTROY AND DISPOSE OF THE PRODUCTS IN A SAFE MANNER. THE MAGISTRATE'S DECISION MAY BE APPEALED TO THE SUPERIOR COURT WITHIN TEN (10) DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF THE DECISION BY THE MAGISTRATE.

G. THE REQUIREMENTS OF THIS SECTION ARE IN ADDITION TO ANY REQUIREMENTS UNDER STATE AND FEDERAL LAW.

Section 4: *Section 5.20.040 is added to read as set forth below.*

5.20.040 KEEPING OF LOG BY MANUAL OR ELECTRONIC MEANS OF PURCHASES.

A. THE LICENSED PHARMACIST OR PHARMACY TECHNICIAN THAT SELLS PSEUDOEPHEDRINE PRODUCTS, AS DEFINED, SHALL RECORD THE NAME OF THE PURCHASER, THEIR ADDRESS INCLUDING CITY AND STATE, THE DATE OF THE TRANSACTION, TYPE OF IDENTIFICATION USED, AND THE DATE OF BIRTH IN A MANUAL OR ELECTRONIC LOG AFTER VERIFYING IDENTITY BY DEFINED IDENTIFICATION DOCUMENT.

B. A COPY OF THE LOG SHALL BE SUBMITTED TO THE LAKE HAVASU CITY POLICE CHIEF ON THE FIRST BUSINESS DAY OF EACH CALENDAR MONTH BY MANUAL OR ELECTRONIC MEANS, OR BY ANY OTHER MEANS THE POLICE CHIEF APPROVES. THE LOG IS CONFIDENTIAL AND NOT SUBJECT TO DISCLOSURE TO ANY NON-PHARMACY EMPLOYEE, EXCEPT LAW ENFORCEMENT PERSONNEL OR BY COURT ORDER.

Section 5: *Section 5.20.050 is added to read as set forth below.*

5.20.050 NO SALES TO PERSONS UNDER 18 YEARS OF AGE.

A. IT IS UNLAWFUL FOR ANY PERSON AT A PHARMACY OR NON-PHARMACY RETAIL ESTABLISHMENT TO SELL NON-PRESCRIPTION PSEUDOEPHEDRINE PRODUCTS, AS DEFINED, TO PERSON(S) UNDER EIGHTEEN (18) YEARS OF AGE.

B. THE AGE OF EACH PURCHASER OF THE PSEUDOEPHEDRINE PRODUCT SPECIFIED IN PARAGRAPH A, SHALL BE VERIFIED BY THE LICENSED PHARMACIST OR PHARMACY TECHNICIAN BY INSPECTING AN ACCEPTABLE IDENTIFICATION DOCUMENT WITH PHOTO.

Section 6: *Section 5.20.060 is added to read as set forth below.*

5.20.060 RETAIL ESTABLISHMENT'S RIGHT TO REFUSE SALE.

ANY LICENSED PHARMACIST OR PHARMACY TECHNICIAN AT A STATE LICENSED PHARMACY RETAIL ESTABLISHMENT, MAY REFUSE TO SELL ANY PSEUDOEPHEDRINE PRODUCT, AS DEFINED, TO ANY PERSON, IF THE LICENSED PHARMACIST OR PHARMACY TECHNICIAN HAS REASON TO BELIEVE, THAT THE PRODUCT WILL BE USED IN THE UNLAWFUL MANUFACTURE OF METHAMPHETAMINE OR OTHER CONTROLLED SUBSTANCE. FACTS THAT GIVE RISE TO THE REASON TO BELIEVE THAT THE PRODUCT WILL BE USED UNLAWFULLY, INCLUDE, BUT ARE NOT LIMITED TO, A "SUSPICIOUS TRANSACTION" AS DEFINED IN SECTION 13-3401 OF THE ARIZONA REVISED STATUTES (A.R.S.); THE ATTEMPTED PURCHASE OF

PSEUDOEPHEDRINE PRODUCTS IN EXCESS OF THE AMOUNTS PERMITTED BY ARIZONA LAW, A.R.S. § 13-3401.01, I.E., (NO MORE THAN THREE (3) PACKAGES, NOT TO EXCEED NINE GRAMS OF PSEUDOEPHEDRINE, WITHOUT A VALID PRESCRIPTION, UNLESS LICENSED OR PERMITTED BY STATE LAW; THE ATTEMPT TO PURCHASE PSEUDOEPHEDRINE PRODUCTS, AS DEFINED, IN A SERIES OF TRANSACTIONS IN AN EFFORT TO CIRCUMVENT THE LIMITATIONS ON SALES; OR THE ATTEMPT TO PURCHASE PSEUDOEPHEDRINE PRODUCTS IN CONJUNCTION WITH OTHER PRODUCTS, SUCH AS RED PHOSPHOROUS OR IODINE, THAT ARE KNOWN TO BE USED IN MANUFACTURING METHAMPHETAMINE. ANY PERSON WHO REFUSES TO MAKE A RETAIL SALE IN ACCORDANCE WITH THIS SECTION IS NOT LIABLE TO ITS CUSTOMER OR ANY OTHER PERSON FOR ANY LOSS OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE REFUSAL TO SELL.

Section 7: *Section 5.20.070 is added to read as set forth below.*

5.20.070 DELAYED EFFECTIVE DATE.

THE PROVISIONS OF THIS ORDINANCE SHALL BECOME EFFECTIVE SIXTY (60) DAYS AFTER PASSAGE BY THE MAYOR AND CITY COUNCIL, TO ALLOW FOR PUBLIC EDUCATION.

Section 8: *Section 5.20.080 is added to read as set forth below.*

5.20.080 PUBLIC EDUCATION.

FROM THE TIME THIS ORDINANCE IS PASSED AND ADOPTED UNTIL SIXTY (60) DAYS AFTER PASSAGE BY THE MAYOR AND CITY COUNCIL, THE CITY MANAGER OR HIS DESIGNEE SHALL EDUCATE BUSINESSES, MENTAL HEALTH PROFESSIONALS AND THE PUBLIC ON THE REGULATIONS THROUGH COMMUNITY OUTREACH, INCLUDING BUT NOT LIMITED TO, PUBLIC MEETINGS, INFORMATION BROCHURES, INTERNET SITES AND CABLE TV MESSAGES.

Section 9: *Section 5.20.090 is added to read as set forth below.*

5.20.090 PENALTIES.

A VIOLATION OF ANY PROVISION IN THIS CHAPTER IS A CLASS 2 MISDEMEANOR OFFENSE AND THE SECOND VIOLATION IS PUNISHABLE AS A CLASS 1 MISDEMEANOR.

Section 10: *Section 5.20.100 is added to read as set forth below.*

5.20.100 ENTERPRISE LIABILITY.

ENTERPRISE LIABILITY IS NOT APPLICABLE TO THIS ORDINANCE.

Section 11: *Section 5.20.110 is added to read as set forth below.*

5.20.110 SEVERABILITY.

IF ANY SECTION, SUBSECTION, SENTENCE, PHRASE, CLAUSE OR PORTION OF THIS ORDINANCE IS FOR ANY REASON HELD TO BE INVALID, PREEMPTED OR UNCONSTITUTIONAL BY THE DECISION OF ANY COURT OF COMPETENT JURISDICTION, OR BY OPERATION OF LAW, SUCH DECISION OR ACTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS THEREOF.

Section 12: *Section 5.20.120 is added to read as set forth below.*

5.20.120 EFFECTIVE DATE.

THE SUBSTANTIVE PROVISIONS OF THIS ORDINANCE SHALL BECOME EFFECTIVE MAY 14, 2006.

PASSED AND ADOPTED by the Mayor and City Council of Lake Havasu City, Arizona, this 14TH day of March, 2006.

ATTEST:

CARLA SIMENDICH
CITY CLERK

HARVEY JACKSON
MAYOR

APPROVED AS TO FORM:

PAUL LENKOWSKY
INTERIM CITY ATTORNEY