

SAHUARITA ORDINANCE NO. 2005-17

AN ORDINANCE OF THE TOWN OF SAHUARITA, ARIZONA, ADOPTING AMENDMENTS TO CHAPTER 13, OTHER OFFENSES, OF THE SAHUARITA TOWN CODE, BY ADDING SECTION 13-2, TITLED "SALE OF PRODUCTS CONTAINING PSEUDOEPHEDRINE," REGULATING THE MANNER OF SALE OF PRODUCTS CONTAINING PSEUDOEPHEDRINE, PROVIDING FOR THE SEIZURE AND DISPOSAL OF IMPROPERLY DISPLAYED PRODUCTS, AND PROVIDING FOR THE REFUSAL TO SELL PSEUDOEPHEDRINE PRODUCTS UNDER SUSPICIOUS CIRCUMSTANCES.

WHEREAS, the illicit manufacture of methamphetamine (meth) and the proliferation of meth labs are serious and continuing problems in the Town and this region; and

WHEREAS, 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

WHEREAS, meth labs are found in houses, apartments, hotel and motel rooms, mobile structures in both residential and commercial areas, exposing law enforcement personnel, other first responders, the children of the persons operating the meth labs and any other persons in physical proximity to extremely dangerous conditions; and

WHEREAS, pseudoephedrine, ephedrine, norpseudoephedrine and phenylpropanolamine are key ingredients in meth production and are found in many over-the-counter cold and allergy medications; these over-the-counter medications, by purchase or theft, being a prime source in methamphetamine production; and

WHEREAS, while recently enacted state legislation (Senate Bill 1473) limits sales of pseudoephedrine, norpseudoephedrine and phenylpropanolamine to 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

WHEREAS, the extraction of pseudoephedrine, ephedrine, norpseudoephedrine and phenylpropanolamine from these over-the-counter products is not materially different or more difficult in products containing pseudoephedrine, ephedrine, norpseudoephedrine and phenylpropanolamine with other active ingredients as from products containing pseudoephedrine, ephedrine, norpseudoephedrine and phenylpropanolamine as the only active ingredients; and

WHEREAS, 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

WHEREAS, other jurisdictions in the country have found that the restriction of open access to these products has substantially reduced the number of meth labs discovered in those jurisdictions.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Sahuarita, Arizona, as follows:

Section 1. Chapter 13 of the Town Code is hereby amended to add a new Article 13-2 **Methamphetamine**, and by adding Sections 13-2-1 and 13-2-2 to read as follows (added language shown in CAPITAL LETTERS):

ARTICLE 13-2 METHAMPHETAMINE

SECTION 13-2-1 SALE OF PRODUCTS CONTAINING PSEUDOEPHEDRINE

A. In this section, unless the context otherwise requires:

1. “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.
2. “RETAIL ESTABLISHMENT” MEANS ANY PLACE OF BUSINESS THAT OFFERS ANY PSEUDOEPHEDRINE PRODUCT FOR SALE AT RETAIL.
3. “PERMITTEE” MEANS ANY PERSON 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.

B. THE OPERATOR AND THE PERMITTEE OF A RETAIL ESTABLISHMENT SHALL KEEP ALL PSEUDOEPHEDRINE PRODUCTS BEHIND A STORE COUNTER OR OTHERWISE IN A MANNER THAT IS INACCESSIBLE TO CUSTOMERS WITHOUT THE ASSISTANCE OF THE OPERATOR OR AN EMPLOYEE OF THE ESTABLISHMENT.

- C. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.
- D. ANY PSEUDOEPHEDRINE PRODUCTS FOUND TO BE DISPLAYED IN A RETAIL ESTABLISHMENT IN VIOLATION OF SUBSECTION (B) CONSTITUTE A NUISANCE AND ARE SUBJECT TO SEIZURE AND DISPOSAL BY THE TOWN IN THE MANNER PROVIDED IN SUBSECTION (E) OF THIS SECTION.
- E. 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 (D). BEFORE REMOVING ANY PRODUCTS SUBJECT TO SEIZURE FROM THE RETAIL ESTABLISHMENT, THE PEACE OFFICER SHALL GIVE THE OPERATOR OR PERMITTEE OF THE ESTABLISHMENT A REASONABLE OPPORTUNITY TO REMOVE THE PRODUCTS FROM THE AREA OF THE ESTABLISHMENT ACCESSIBLE TO THE PUBLIC, UNLESS THE OPERATOR OR PERMITTEE HAS BEEN AFFORDED THIS OPPORTUNITY ON A PREVIOUS OCCASION WITHIN THE PRECEDING TWELVE (12) MONTHS.
- F. 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 OPERATOR OR PERMITTEE OF THE 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.
- G. A PERSON 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 COURT 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 TOWN SHALL HAVE THE BURDEN OF ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE THAT THE PROPERTY WAS SUBJECT TO SEIZURE PURSUANT TO SUBSECTIONS (B) AND (D) OF THIS SECTION. AT THE HEARING, THE

COURT MAY ADMIT ANY RELIABLE AND RELEVANT EVIDENCE. IF THE COURT FINDS THAT THE PRODUCTS WERE NOT SUBJECT TO SEIZURE, IT SHALL ORDER THE IMMEDIATE RETURN OF ALL SEIZED ITEMS. IF THE COURT FINDS THAT THE PRODUCTS WERE PROPERLY SEIZED PURSUANT TO THIS SECTION, THE COURT SHALL ORDER THAT THE PRODUCTS ARE FORFEITED TO THE TOWN, AND SHALL DIRECT THE TOWN TO DESTROY AND DISPOSE OF THE PRODUCTS.

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

SECTION 13-2-1 RETAIL ESTABLISHMENT'S RIGHT TO REFUSE SALE.

- A. ANY OPERATOR, PERMITTEE, OR EMPLOYEE OF A RETAIL ESTABLISHMENT MAY REFUSE TO SELL ANY PSEUDOEPHEDRINE PRODUCT TO ANY PERSON IF THE OPERATOR, PERMITTEE OR EMPLOYEE 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; THE ATTEMPTED PURCHASE OF PSEUDOEPHEDRINE PRODUCTS IN EXCESS OF THE AMOUNTS PERMITTED BY ARIZONA LAW; THE ATTEMPT TO PURCHASE PSEUDOEPHEDRINE PRODUCTS 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 IN PART BY THE REFUSAL TO SELL.

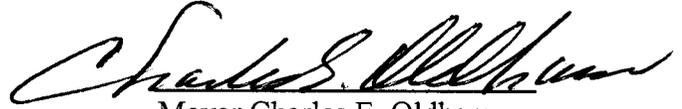
Section 2. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance and sections of the Town Code.

Section 3. All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the council in conflict with the provisions of this Ordinance are hereby repealed, effective as of the effective date of this Ordinance. All internal references within the Town Code to any affected provision are hereby updated.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of

competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Sahuarita, Arizona, this 12th day of December, 2005.


Mayor Charles E. Oldham

ATTEST:



Sandra R. Olivas, CMC
Town Clerk

APPROVED AS TO FORM:



Daniel J. Hochuli
Town Attorney