

ORDINANCE NO. 1253

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AMENDING VOLUME I OF THE APACHE JUNCTION CITY CODE CHAPTER 8 BUSINESS BY ADDING NEW ARTICLE 8-13 NONPRESCRIPTION PSEUDOEPHEDRINE PRODUCT SALES, RELATING TO NONPRESCRIPTION PSEUDOEPHEDRINE PRODUCT SALES; ACCESS AND SEIZURE OF UNSECURED PRODUCTS AND HEARING PROCEDURES; KEEPING OF SALES LOGS AND SUBMITTAL TO LAW ENFORCEMENT UPON REQUEST; PROHIBITED SALES TO PERSONS UNDER 18 YEARS OF AGE; RIGHT TO REFUSE TO SELL; PROVIDING FOR PENALTIES; PROVIDING FOR PUBLIC EDUCATION; EMPOWERMENT OF AUTHORITY; REPEALING CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the illicit manufacture of methamphetamine ("meth") is a serious and continuing problem in this City; and

WHEREAS, due to the flammable and toxic nature of 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, trailers, 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, ephedrine, pseudoephedrine, norpseudoephedrine and phenylpropanolamine are key ingredients in meth production, and are found in many nonprescription over-the-counter cold and allergy medications, and these over-the-counter medications, by purchase or theft, are prime sources in meth production; and

WHEREAS, recently enacted state legislation only restricts access to products containing ephedrine or pseudoephedrine as the only active ingredient; and

WHEREAS, the state legislature has yet to regulate products that contain pseudoephedrine in combination with other active ingredients; and

WHEREAS, these unrestricted over-the-counter products that contain pseudoephedrine, norpseudoephedrine, phenylpropanolamine in combination with other active ingredients are used in the making of meth; and

WHEREAS, the unrestricted access to products containing ephedrine or pseudoephedrine in retail commercial establishments is a nuisance that endangers the public health, safety, and welfare; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AS FOLLOWS:

SECTION I. GENERAL PROVISIONS: That new Article 8-13, NONPRESCRIPTION PSEUDOEPHEDRINE PRODUCT SALES, is added to Chapter 8 BUSINESS of Volume I of the Apache Junction City Code, as follows:

ARTICLE 8-13 NONPRESCRIPTION PSEUDOEPHEDRINE PRODUCT SALES

- 8-13-1 Purpose
- 8-13-2 Definitions
- 8-13-3 Access and Seizure of Unsecured Products; Hearing Procedure
- 8-13-4 Keeping of Sales Logs and Submittal to Law Enforcement Upon Request
- 8-13-5 Prohibited Sales to Persons Under 18 Years of Age
- 8-13-6 Right to Refuse to Sell
- 8-13-7 Penalty

Section 8-13-1 Purpose

The purpose of this article is to decrease the availability of ephedrine derived from nonprescription drug products and other cold and allergy 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 to supplement, not to substitute Arizona Revised Statutes Section 13-3401.01, et seq.

Section 8-13-2 Definitions

In this article unless the context otherwise requires:

- A. "Pharmacist" means a person licensed by the state in the art, practice, or profession of preparing, preserving, compounding, and dispensing medical drugs.
- B. "Licensed Pharmacy Technician" means a person licensed by the state to assist a pharmacist.
- C. "Pseudoephedrine product" means a drug product commonly used in decongestants and can be illegally processed to make methamphetamine; ephedrine, norpseudoephedrine, and phenylpropanolamine shall be included in this definition; in addition, a product containing ephedrine or pseudoephedrine that contains any detectable quantity of ephedrine or pseudoephedrine or its salts, optical isomers or salts of optical isomers; and product packaging that lists ephedrine or pseudoephedrine as an active ingredient shall constitute prima facie evidence that it is a product containing ephedrine or pseudoephedrine.
- D. "Proper Identification" means a recognized government-issued photo identification of a purchaser including, but not limited to, a driver's license, identification card or passport.
- E. "Retail Commercial Establishment" means any place of business that offers any pseudoephedrine product for sale or retail.

Section 8-13-3 Access and Seizure of Unsecured Products;
Hearing Procedure

- A. Nonprescription pseudoephedrine products, shall only be available for retail sale at retail establishments with the assistance of a state licensed pharmacist, or permitted pharmacy technician. The pharmacist, or pharmacy technician, or other employee of a retail establishment shall keep all pseudoephedrine products, 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 A.R.S. Title 32, Chapter 18.

- B. Any pseudoephedrine product found to be displayed in a retail establishment in violation of this article constitutes a public nuisance and is subject to seizure and disposal by the City.
- C. Products subject to seizure under this article may be seized by a peace officer pursuant to a search or seizure warrant or upon probable cause to believe that the products are subject to seizure. Before removing any products from the establishment, the peace officer shall give the operator of the establishment a reasonable opportunity to secure the products pursuant to this article, unless the operator has already been afforded an opportunity within the preceding consecutive 12-month period to secure such products.
- D. 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, licensed pharmacist or pharmacy technician 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.
- E. A person receiving a notice of intent to dispose under this section may request a post-seizure hearing with the Apache Junction Municipal Court to determine the validity of the seizure within fifteen (15) days of receiving the notice, excluding weekends and holidays. 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 City shall have the burden of establishing by a preponderance of the evidence that the property was subject to seizure pursuant to this article. 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 be forfeited to the City, and shall direct the City to destroy and dispose of the products.

- F. The requirements of this section are in addition to any requirements under state and federal law.

Section 8-13-4. Keeping of Sales Logs and Submittal to Law Enforcement Upon Request

- A. The licensed pharmacist or pharmacy technician that sells pseudoephedrine products, shall record the name of the purchaser, their address, date of birth, the date of the transaction, and type of identification used in a manual or electronic log after verifying the purchaser's identification as defined herein.
- B. The log shall be available to law enforcement upon request for review and shall be submitted to the City of Apache Junction Police Chief when requested by the Apache Junction Police Department. The submission can be made 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, except law enforcement or by court order.

Section 8-13-5. Prohibited Sales to Persons Under 18 Years of Age

Sales of nonprescription pseudoephedrine products to persons under eighteen (18) years of age are prohibited. Age of each purchaser of pseudoephedrine products shall be verified by the licensed pharmacist or pharmacy technician by inspecting

proper identification as defined herein.

Section 8-13-6. Right to Refuse to Sell

- A. Any licensed pharmacist or pharmacy technician at a retail establishment may refuse to sell any pseudoephedrine product, 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. Facts that give rise to the belief that the product will be used unlawfully, include, but are not limited to: a) a "suspicious transaction" as defined in A.R.S. § 13-3401; b) the attempted purchase of pseudoephedrine products in excess of the amounts permitted by A.R.S. § 13-3401.01, (no more than three (3) packages, not to exceed nine grams of pseudoephedrine, without a valid prescription, unless licensed or permitted by state law); c) the attempt to purchase pseudoephedrine products in a series of transactions in an effort to circumvent the limitations on sales; or d) the attempt to purchase pseudoephedrine products in conjunction with other methamphetamine precursor products, such as red phosphorous or iodine. 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 8-13-7. Penalty

- A. A violation of any provisions in this article is a Class 2 Misdemeanor.
- B. Enterprise liability is not applicable to this ordinance.

SECTION II. PUBLIC EDUCATION

From the time this Ordinance is passed and adopted until March 1, 2006, the City Manager or his or her 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 III. EMPOWERMENT OF AUTHORITY

The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION IV. REPEALING ANY CONFLICTING ORDINANCES

All ordinances and parts of ordinances and/or provisions of the Apache Junction City Code which are in conflict with the provisions of this ordinance are hereby repealed.

SECTION V. PROVIDING FOR SEVERABILITY

If any section, sub-section, sentence, phrase, clause or portion of this ordinance or any part of the Code adopted herein by reference 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 VI. EFFECTIVE DATE

The substantive provisions of this Ordinance shall become effective March 1, 2006.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS ____ DAY OF _____, 2006.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 2006.

DOUGLAS COLEMAN
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney