

ORDINANCE NO. 1170-206

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 13, LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS, BY ADDING A NEW ARTICLE VII RELATING TO THE SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE; IMPOSING REQUIREMENTS FOR THE DISPLAY OF SUCH PRODUCTS; REQUIRING IDENTIFICATION FROM PURCHASERS; REQUIRING A LOG OF ALL SALES OF SUCH PRODUCTS TO BE MAINTAINED AND MADE AVAILABLE TO LAW ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the illicit manufacture of methamphetamine (meth labs) is a serious problem in the City of Avondale and the State of Arizona; and

WHEREAS, fires, explosions, and hazardous materials contamination are common occurrences associated with meth labs because of the flammable and toxic nature of the chemicals used in methamphetamine production; 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, children of persons operating meth labs, and other persons in physical proximity of meth labs to extremely dangerous conditions; and

WHEREAS, ephedrine, pseudoephedrine, norpseudoephedrine and/ or phenylpropanolamine are key ingredients in methamphetamine production, and are found in several over-the-counter cold and allergy medications; and

WHEREAS, by purchase or theft, these over-the-counter cold and allergy products are a prime source in the production of methamphetamine; and

WHEREAS, the unrestricted access to products containing ephedrine, pseudoephedrine, norpseudoephedrine and/or phenylpropanolamine is a nuisance that endangers the public, health safety and welfare; and

WHEREAS, other jurisdictions have found that the restricted use of open access to these products and requiring identification of buyers has substantially reduced the number of meth labs in those jurisdictions; and

WHEREAS, the Council finds that it is in the best interest of the City to amend Chapter 13, Licenses, Taxation and Miscellaneous Business Regulations, of the Avondale City Code by adding a new Article VII to regulate the sale of products containing ephedrine or pseudoephedrine.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the Avondale City Code, Chapter 13, Licenses, Taxation and Miscellaneous Business Regulations, is hereby amended by adding a new Article VII, Sale of Products Containing Ephedrine or Pseudoephedrine, to provide as follows:

Article VII SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE

Sections:

- 13-150 Definitions.
- 13-151 Restricted Access to Products Containing Ephedrine or Pseudoephedrine.
- 13-152 Identification of Purchasers; Recordkeeping.
- 13-153 Violation; Penalty.
- 13-154 Civil Enforcement Action.

13-150 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context indicates a different meaning:

“Ephedrine or Pseudoephedrine” means any product containing ephedrine or pseudoephedrine including any compound, mixture or preparation that contains any detectable quantity of ephedrine, pseudoephedrine, norpseudoephedrine and/or phenylpropanolamine or their salts, optical isomers or salts of optical isomers. Product packaging that lists ephedrine, pseudoephedrine, norpseudoephedrine and/or phenylpropanolamine as an active ingredient shall constitute prima facie evidence that it is a product containing ephedrine or pseudoephedrine.

“Retailer” means any corporation, company, partnership, firm, association or other commercial entity, including a natural person, and its employees, agents or members that have responsibility for the operations of a retail establishment.

13-151 Restricted Access to Products Containing Ephedrine or Pseudoephedrine.

Retailers selling products containing ephedrine, pseudoephedrine, norpseudoephedrine and/or phenylpropanolamine shall secure such products behind a counter or otherwise in a manner by which customers do not have direct access to such products without the assistance of the retailer. Such products shall be monitored by the retailer to prevent theft, or unauthorized or uncontrolled purchases.

13-152 Identification of Purchasers; Recordkeeping.

(a) Retailers making a sale of a product containing ephedrine, pseudoephedrine, norpseudoephedrine and/or phenylpropanolamine shall require acceptable photo identification from the purchaser and shall record in a Purchaser Log, the purchaser's name, address, date of

birth, date of transaction and quantity of ephedrine, pseudoephedrine, norpseudoephedrine and/or phenylpropanolamine product purchased.

(b) For purposes of this section, acceptable photo identification means any of the following:

- (1) current drivers license or picture identification card issued by this or any other state.
- (2) a current passport.
- (3) a current tribal identification card.
- (4) a current military identification card.

(c) The Purchaser Log shall be kept confidential and secure from unauthorized public access and shall be made available, upon written request, only to law enforcement personnel (local, state, or federal) and others authorized by law or court order to receive such information. The Purchaser Log shall be maintained for a period of six months unless otherwise directed by law enforcement personnel, law, or court order.

13-153 Violation; Penalty.

Any person found guilty of violating any provisions of this article shall be guilty of a civil violation and shall be subject to a base civil penalty of not more than two thousand five hundred dollars (\$2,500). Each day that a violation continues shall be a separate offense subject to the civil penalty as hereinabove described. The court shall not suspend any portion of the civil penalty provided by this section.

13-154 Civil Enforcement Action.

(a) Civil citation. The civil citation shall direct the defendant to appear in municipal court within ten days of the issuance of the citation or pay the fine imposed pursuant to section 13-153 of this Code. The citation shall also include the date and location of the violation, a reference to the City Code provision or ordinance violated and a notice that if the defendant fails to appear as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation charged, in addition to a fine for failure to appear as set forth in subsection 13-154(c) of this Code.

(b) Citation service. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

- (1) Hand delivering a copy of the citation to the defendant.
- (2) Mailing a copy of the citation to the defendant by certified or registered mail, return receipt requested, to the defendant's last known address.

(3) In the event service cannot be accomplished as set forth above, the defendant may be served by any means allowed by the Arizona Rules of Civil Procedure for the Superior Court.

(c) Appearance; penalty for failure to appear. Within ten (10) days of the issuance of the citation, the defendant shall appear in person or through his attorney in municipal court and shall either admit or deny the allegations contained in the complaint or the defendant may proceed as provided in subsection 13-154(d) of this Code. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a hearing date for trial of the matter. If the defendant fails to appear as directed on the citation, the court, upon request by the code official or authorized designee, shall enter a default judgment for the amount of the fine indicated for the violation charged. Additionally, the defendant may be fined up to one hundred dollars (\$100.00) for failure to appear at the time and place set for any trial of a matter arising under this Code.

(d) Payment by mail. The defendant may admit the allegations in the citation and pay the fine indicated by mailing the citation, together with a check for the amount of the fine to and made payable to the Avondale City Court.

(e) Rules of procedure. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Avondale City Court for civil violations of this article, except as modified or where inconsistent with the provisions of this Code, local rules of the municipal court or rules of the Arizona Supreme Court.

SECTION 2. That, if any provision or any portion of any provision of this Ordinance is for any reason held to be unconstitutional or otherwise unenforceable by a court of competent jurisdiction, such provision or portion thereof shall be deemed separate, distinct and independent of the remaining provisions of this Ordinance and shall be severed therefrom without affecting the validity of the remaining portions of this Ordinance.

SECTION 3. The provisions of this Ordinance shall take effect ninety (90) days after the date of passage and adoption.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, February 21, 2006.

Marie Lopez-Rogers, Mayor

ATTEST:

Linda M. Farris, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney