

ORDINANCE NO. 2005- 65

AN ORDINANCE OF THE CITY OF BULLHEAD CITY, ARIZONA, AMENDING THE BULLHEAD CITY MUNICIPAL CODE, TITLE 8 HEALTH AND SAFETY, CHAPTER .08 NUISANCES, NEW SECTION .200 THRU .210 REGULATING THE MANNER OF SALE IN RETAIL ESTABLISHMENTS THROUGH ONLY A LICENSED PHARMACIST OR PERMITTED PHARMACY TECHNICIAN, ALL NON-PRESCRIPTION PRODUCTS CONTAINING EPHEDRINE, PSEUDOEPHEDRINE, NORPSEUDOEPHEDRINE, PHENYLPROPANOLAMINE AND INCLUDES ANY COMPOUND, MIXTURE OR PREPARATION THAT CONTAINS ANY DETECTABLE QUANTITY OF THE ABOVE STATED CHEMICALS OR THEIR SALTS, OPTICAL ISOMERS OR SALTS OF OPTICAL ISOMERS; PRODUCTS TO BE RESTRICTED FROM PUBLIC ACCESS, PURCHASERS TO PRESENT PICTURE IDENTIFICATION AND SIGN LOG BOOK; PROSCRIBES SALES TO MINORS; PROVISIONS FOR SEIZURE OF NON-SECURED PRODUCT AND PROVISION FOR POST SEIZURE HEARING; SEVERABILITY AND CRIMINAL PENALTIES.

BE IT ORDAINED by the Mayor and City Council of the City of Bullhead City, Arizona, that Title 8, Health and Safety, Chapter .08 Nuisances is amended to read as set forth below:

Section 1: *New Section 8.08.200 amended to read as set forth below.*

THE MAYOR AND CITY COUNCIL MAKE THE FOLLOWING LEGISLATIVE FINDINGS ON NON-PRESCRIPTION PSEUDOEPHEDRINE PRODUCTS AS DEFINED AND USED TO MAKE ILLEGAL "METH" PRODUCTS.

8.08.200 LEGISLATIVE FINDINGS.

- A. 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
- B. DUE TO THE FLAMABLE AND TOXIC NATURE OF THE CHEMICALS USED IN "METH" PRODUCTION, FIRES, EXPLOSIONS AND HAZARDOUS MATERIALS CONTAMINATION ARE COMMON OCCURRENCES ASSOCIATED WITH "METH" LABS; AND

- C. "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
- D. 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
- E. 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; AND THE LEGISLATION DOES NOT REQUIRE RESTRICTED ACCESS TO PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE IN COMBINATION WITH OTHER ACTIVE INGREDIENTS; AND
- F. 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
- G. 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
- H. 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 8.08.201 is added to read as set forth below.*

8.08.201 DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING DEFINITIONS APPLY:

A. "IDENTIFICATIONDOCUMENT" 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 PHARMASIST" 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 BULLHEAD CITY, ARIZONA.

Section 3: *Section 8.08.202 is amended to read as set forth below.*

8.08.202 NON-PRESCRIPTION PSEUDOPHEDRINE PRODUCT(S) TO BE SOLD THROUGH LICENSED PHARMACIES PHAMACISTS/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 BULLHEAD 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 NUISANCE AND IS/ARE SUBJECT TO SEIZURE AND DISPOSAL BY THE BULLHEAD 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 BULLHEAD 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 8.08.203 is amended to read as set forth below.

8.08.203 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 BULLHEAD 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 8.08.204 is amended to read as set forth below.

8.08.204 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 8.08.205 is amended to read as set forth below.

8.08.205 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 8.08.206 is amended to read as set forth below.

8.08.206 DELAYED EFFECTIVE DATE.

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

Section 8: Section 8.08.207 is amended to read as set forth below.

8.08.207 EMPOWERMENT.

THE VARIOUS CITY OFFICERS AND EMPLOYEES ARE AUTHORIZED AND DIRECTED TO PERFORM ALL ACTS NECESSARY OR DESIRABLE TO GIVE EFFECT TO THIS ORDINANCE. THE BULLHEAD CITY POLICE CHIEF OR HIS/HER DESIGNEE SHALL ENFORCE THIS ORDINANCE.

Section 9: Section 8.08.208 is amended to read as set forth below.

8.08.208 PENALTIES.

A VIOLATION OF THE FOLLOWING PROVISIONS IS A CLASS 2 MISDEMEANOR; 8.08.202A, 8.08.203A&B, 8.08.204A&B AND THE SECOND VIOLATION IS A CLASS 1 MISDEMEANOR.

Section 10: Section 8.08.209 is amended to read as set forth below.

8.08.209 ENTERPRISE LIABILITY.

ENTERPRISE LIABILITY IS NOT APPLICABLE TO THIS ORDINANCE.

Section 11: Section 8.08.210 is amended to read as set forth below.

8.08.210 SEVERABILITY.


THE SEVERABILITY PROVISIONS IN BCMC 1.04.180 ARE APPLICABLE TO THIS ORDINANCE.

PASSED AND ADOPTED by the City Council of the City of Bullhead City, Arizona, this _____ day of -----, 2005.

Diane Rae Vick, Mayor


ATTEST:

Date: _____



Diane Heilmann, City Clerk

APPROVED AS TO FORM:



W. Kent Foree, City Attorney