

ORDINANCE NO. 3753

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING CHAPTER 11 OF THE CHANDLER CITY CODE BY ADDING NEW SECTIONS 11-14 AND 11-15, RELATING TO THE SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE; REGULATING THE MANNER OF SALE; REQUIRING IDENTIFICATION OF PURCHASERS; REQUIRING THAT RECORDS BE KEPT OF PURCHASES; PROVIDING FOR THE SEIZURE AND FORFEITURE OF IMPROPERLY DISPLAYED PRODUCTS; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, due to the flammable and toxic nature of the chemicals used in methamphetamine 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 or pseudoephedrine is a key ingredient in methamphetamine production, and is found in several over-the-counter cold and allergy medications, these over-the-counter medications, by purchase or theft, being the prime source of ephedrine or pseudoephedrine in methamphetamine production, and

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

WHEREAS, the extraction of ephedrine or pseudoephedrine from these over-the-counter products is not materially different or more difficult in products containing ephedrine or pseudoephedrine with other active ingredients as from products containing ephedrine or pseudoephedrine as the only active ingredient; 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 City Council of the City of Chandler, Arizona, as follows:

Section 1: That Chapter 11 of the Chandler City Code is amended by adding a new Section 11-14 to read as follows:

11-14. Records of sales of ephedrine or pseudoephedrine products.

A. A person making a retail sale of a product containing ephedrine or pseudoephedrine shall require acceptable photo identification from the purchaser and shall record the purchaser's name, date of birth, address, quantity of ephedrine or pseudoephedrine product purchased, transaction date and the initials of the seller. For purpose of this subsection, acceptable photo identification means a current drivers license, picture identification card or document issued by a governmental entity.

B. The records required to be kept pursuant to subsection A of this section shall be disclosed only to the operator and employees of the retail commercial establishment and to law enforcement agencies and shall be open for immediate inspection during regular business hours by representatives of the Chandler Police Department. The retail seller shall retain the purchaser log for a period of one hundred eighty days, unless otherwise directed by a representative of the Chandler Police Department.

C. A violation of this Section is a Class I Misdemeanor.

Section 2: That Chapter 11 of the Chandler City Code is amended by adding a new Section 11-15 to read as follows:

11-15. Sale of products containing ephedrine or pseudoephedrine.

A. The operator of a retail commercial establishment shall keep all products containing ephedrine or pseudoephedrine 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.

B. For purposes of this article, a product containing ephedrine or pseudoephedrine includes any compound, mixture or preparation that contains any detectable quantity of ephedrine or pseudoephedrine or its salts, optical isomers or salts of optical isomers. 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.

C. A violation of this Section is a Class 1 Misdemeanor.

D. Any product containing ephedrine or pseudoephedrine found to be displayed in a retail commercial establishment in violation of Subsection A

constitutes a nuisance and is subject to forfeiture to the City. Any products forfeited under this Section shall be destroyed.

E. Products subject to forfeiture under this section may be seized by a peace officer on process issued pursuant to Title 13, Arizona Revised Statutes, including a search warrant, or upon probable cause to believe that the property is subject to forfeiture. Before removing any products subject to seizure from the retail commercial establishment, the peace officer shall give the operator of the establishment a reasonable opportunity to immediately remove the products from the area of the establishment accessible to the public, unless the establishment has been afforded this opportunity to avoid a seizure on a previous occasion.

F. At the time of seizing any products under this section, the peace officer shall deliver a notice of intent to forfeit the seized products. The 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 a hearing, and a warning that failure to timely request a hearing will result in the forfeiture and destruction of the seized property. The notice required under this subsection shall be served on the operator or manager of the retail commercial establishment present at the time of the seizure, or if the peace officer cannot identify an operator or manager after reasonable efforts, to any employee or worker present.

G. A party receiving a notice of intent to forfeit under this section may request a post seizure hearing to determine the validity of the forfeiture within fifteen days of receiving the notice. The court shall conduct the hearing within forty-eight hours of the court's receipt of the request, excluding weekends and city holidays. Failure to timely request or to attend a scheduled hearing constitute a waiver of the right to challenge the validity of the forfeiture. At the hearing, the city shall have the burden of establishing by a preponderance of the evidence that the seized products are subject to forfeiture. The hearing shall be informal and open to the public. The court may admit any reliable relevant evidence to determine if the seized products are subject to forfeiture. If after the hearing, the court finds the seized products are not subject to forfeiture, it shall order the immediate return of all seized items, except that, upon request of the prosecutor, a reasonably representative sample of the seized products may be retained as evidence for a criminal prosecution under this section, if the court finds the seized products are subject to forfeiture, it shall order them forfeited to the city.

H. 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 transaction 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 3: The provisions of this ordinance shall take effect ninety days after passage.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2005.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this ____ day of _____, 2005.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 3753 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2005, and that a quorum was present thereat.

CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

CITY ATTORNEY