

ORDINANCE NO. 06-18

AN ORDINANCE OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 8, BUSINESS REGULATIONS, BY ADDING A NEW ARTICLE 8-4, 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 Town of Fountain Hills 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 Town Council finds that it is in the best interest of the Town to amend Chapter 8, Business Regulations, of the Fountain Hills Town Code by adding a new Article 8-4 to regulate the sale of products containing ephedrine or pseudoephedrine.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. That the Fountain Hills Town Code, Chapter 8, Business Regulations, is hereby amended by adding a new Article 8-4, Sale of Products Containing Ephedrine or Pseudoephedrine, to provide as follows:

Article 8-4 SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE

Sections:

- 8-4-1 Definitions.
- 8-4-2 Restricted Access to Products Containing Ephedrine or Pseudoephedrine.
- 8-4-3 Identification of Purchasers; Recordkeeping.
- 8-4-4 Violation; Penalty.

8-4-1 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.

8-4-2 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.

8-4-3 Identification of Purchasers; Recordkeeping.

(a) Retailers making a sale of a product containing ephedrine, pseudoephedrine, norpseudoephedrine and/or phenylpropanolamine shall (1) require a government issued photo identification from the purchaser, (2) record in a Purchaser Log, the purchaser’s name, the document type and document number of the photo identification submitted by the purchaser, the date of transaction and quantity of ephedrine, pseudoephedrine, norpseudoephedrine and/or

phenylpropanolamine product purchased and (3) require that the purchaser sign the Purchaser Log with a signature consistent with the identification provided. The retailer shall take all steps reasonably necessary to ensure that the purchaser is unable to view the information provided by any other purchaser, either by keeping a separate log for signatures or by otherwise entirely obscuring the area of the Purchaser Log containing the identification information of other purchasers.

(b) 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 one year unless otherwise directed by law enforcement personnel, applicable law or court order.

8-4-4 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.

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.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, June 15, 2006.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

W. J. Nichols, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Timothy G. Pickering, Town Manager

Andrew J. McGuire, Town Attorney