

**ORDINANCE NO. 954-A**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, COUNTY OF MARICOPA, STATE OF ARIZONA AMENDING THE TOWN CODE OF WICKENBURG, ARIZONA BY AMENDING CHAPTER 10 OFFENSES BY ADDING ARTICLE 10-5 PURCHASE AND SALE OF EPHEDRINE AND PSEUDO-EPHEDRINE PRODUCTS, ALL RELATED TO THE SALE OF PRODUCTS CONTAINING EPHEDRINE AND PSEUDO-EPHEDRINE; REGULATING THE MANNER OF SALE; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND DESIGNATING AN EFFECTIVE DATE**

WHEREAS, the illicit manufacture of methamphetamine (“meth labs”) is a serious and continuing problem in the Town of Wickenburg and surrounding area;

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, pseudo-ephedrine, norpseudo-ephedrine and phenylpropanolamine are key ingredients in methamphetamine production, and are found in many over-the-counter cold and allergy medications, these over-the-counter medications, by purchase or theft, being the prime source of pseudo-ephedrine in methamphetamine production; and

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

WHEREAS, the extraction of ephedrine, pseudo-ephedrine, norpseudo-ephedrine and phenylpropanolamine from these over-the-counter products is not materially different or more difficult in products containing ephedrine, pseudo-ephedrine, norpseudo-ephedrine and phenylpropanolamine with other active ingredients as from products containing ephedrine, pseudo-ephedrine, norpseudo-ephedrine and phenylpropanolamine as the only active ingredients; 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; and

WHEREAS, the manufacture of illicit drugs within the Town of Wickenburg and surrounding area poses a direct and serious threat to the safety and health of the community;

NOW, THEREFORE, BE IT ORDAINED by Common Council of the Town of Wickenburg, Arizona as follows:

**SECTION I. CODE AMENDMENT**

Amending Chapter 10 OFFENSES by adding new Subsection Article 10-5 as follows:

**ARTICLE 10-5 PURCHASE AND SALE OF EPHEDRINE AND PSEUDO-EPHEDRINE PRODUCTS**

- 10-5-1 Definitions
- 10-5-2 Security Of Pseudo-Ephedrine Products
- 10-5-3 Quantity Of Sale
- 10-5-4 Age and Identification Requirements/Log Record Requirements
- 10-5-5 Confidentiality Of Identification Information
- 10-5-6 Requirement To Report Suspicious Sale
- 10-5-7 Forfeiture/Seizure/Powers and Duties Of Law Enforcement Agent(s)

**Section 10-5-1 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. "Authorized Agent" is a person legally employed by a retail commercial establishment to perform transactions between the customer and the establishment.
- C. "Licensed Pharmacy Technician" is a person, licensed by the state to assist a pharmacist.
- D. "Counter Employee" is a person that is a paid employee of a retailer authorized to conduct transactions with customers on behalf of the retailer.
- E. "Pseudo-ephedrine" is a drug commonly used in decongestants and can be illegally processed to make methamphetamine. "Pseudo-ephedrine" or "Pseudo-ephedrine products" are defined as any medication containing pseudo-ephedrine, ephedrine, norpseudo-ephedrine and phenylpropanolamine. This definition includes any compound, mixture or preparation that contains any detectable quantity of ephedrine or pseudo-ephedrine or its salts, optical isomers or salts of optical isomers. Excluded from this definition are products in the gel, gel capsule, liquid or liquid capsule forms of these products.
- F. "Retail Commercial Establishment" or "Retailer" is defined as any business that sells over-the-counter cold and allergy medications containing pseudo-ephedrine as defined herein.
- G. "Forfeiture and Seizure" refers to the legal right of law enforcement to confiscate and destroy any product that is not in compliance with the terms of this ordinance.
- H. "Proper Photo Identification" shall mean:
  - 1. Current Drivers License or State Identification Card issued by this or any other state.
  - 2. Current Passport from this country or international.
  - 3. Current Tribal Identification Card.
  - 4. Current Military Identification Card.

**Section 10-5-2 Security Of Pseudo-Ephedrine Products**

The operator of a retail commercial establishment shall keep all products containing pseudo-ephedrine behind a store counter, in a locked facility or otherwise in a manner that is inaccessible to customers without the assistance of the operator, counter employee, pharmacist or pharmacy technician of the establishment. Product packaging that lists ephedrine or pseudo-ephedrine as an active ingredient shall constitute *prima facie* evidence that it is a product containing ephedrine or pseudo-ephedrine. Products shall be continually monitored to prevent theft or unauthorized or uncontrolled purchases. Notwithstanding any Town of Wickenburg Code provisions to the contrary, any violation of this Article is a Class 2 Misdemeanor.

**Section 10-5-3 Quantity Of Sale**

Retailers, their authorized agents, or employees are prohibited from selling or distributing more than a total of three (3) packages, not to exceed 9 grams, of pseudo-ephedrine to any person in a single transaction unless that person has a valid prescription as defined in A.R.S. §32-1901, as amended.

**Section 10-5-4 Age And Identification Requirements/Log Record Requirements**

1. Any person purchasing pseudo-ephedrine products must be over eighteen (18) years of age.
2. Any person purchasing pseudo-ephedrine products must present proper photo identification. The purchaser's personal information shall be recorded in a monthly written log by the retailer or its employees and signed by the purchaser.

The written log shall contain at a minimum:

1. Date of Transaction;
2. Name of the Purchaser;
3. Date of Birth of the Purchaser;
4. Form of ID shown;
5. Type of product purchased; and
6. Amount of the product purchased;

The purchaser's refusal to submit this information shall be grounds for terminating the transaction.

On or before the tenth (10<sup>th</sup>) day of each month, each retail commercial establishment located in the Town of Wickenburg that sells pseudo-ephedrine products shall report the required information obtained from the written log to the Chief of Police. The report shall be in writing or sent electronically in a manner acceptable to the Chief of Police. Notwithstanding any Town Code provisions to the contrary, any violation of this Section is a Class 2 Misdemeanor.

**Section 10-5-5 Confidentiality Of Identification Information**

Unless otherwise directed by law enforcement, the purchaser log maintained by the retail establishment will be retained in a secure location for a period of six (6) months and will be considered a confidential document available only to the retailer and law enforcement personnel of the Town of Wickenburg. Information recorded on the log shall never be disclosed to any person(s) other than to law enforcement of the Town of Wickenburg or specific individuals within the judicial system for prosecution purposes.

Records kept in accordance with this Article may be destroyed not less than six (6) months after the last entry in the monthly log unless required by law enforcement for the prosecution of charges arising pursuant to this Article.

**Section 10-5-6 Requirement To Report Suspicious Transactions**

The retailer or its employees will be required to report to the police department by telephone or in person any attempt by any person to purchase larger quantities of pseudo-ephedrine products than permitted in this Article, the refusal to provide identification, or the refusal to submit any or all information required to be contained in the retailer's written log.

**Section 10-5-7 Forfeiture / Seizure / Powers And Duties Of Law Enforcement Agent(s)**

Any product containing pseudo-ephedrine found displayed in a retail commercial establishment in violation of provisions of this Article constitutes a nuisance and is subject to forfeiture of the product to law enforcement officers of the Town of Wickenburg. Law enforcement officers of the Town of Wickenburg shall destroy any products forfeited or seized under this Section, in accordance with the procedures established in this Article.

Products subject to forfeiture under this Article may be seized by a law enforcement officer authorized under the Town of Wickenburg on probable cause when the products are sold or made accessible to customers in violation of this Article. The law enforcement officer shall give the operator of the establishment a reasonable opportunity to immediately move the products to an appropriate area of the retail commercial establishment in order to

comply with this Article, *unless* the establishment has been afforded this opportunity to avoid a seizure on a previous occasion within a twelve (12) month period of time.

At the time of seizing any products under this Article, the law enforcement officer shall deliver a Notice of Intent To Forfeit to the retail commercial establishment within a reasonable amount of time, not to exceed three (3) business days. The notice shall include the date, location of seizure, inventory of the items seized, a description of how a post-seizure hearing may be requested, the time limit for requesting such hearing and a warning that failure to timely request a hearing will result in the forfeiture and destruction of the seized property. The notice to the establishment required by law enforcement under this Article shall be served to the operator or manager of the retail commercial establishment present at the time of the seizure, or if the law enforcement officer cannot identify an operator or manager after reasonable efforts, to any responsible employee or worker present, within the specified three (3) days.

A retail commercial establishment receiving a Notice of Intent To Forfeit under this Article may request a post-seizure hearing to determine the validity of the forfeiture within fifteen (15) days of receipt of the notice. The court shall conduct the hearing within seven (7) days of the court's receipt of the request, excluding weekends and Town holidays. Failure to timely request or to attend a scheduled hearing constitutes a waiver of the right to challenge the validity of the forfeiture. Destruction of the forfeited or seized pseudo-ephedrine product will not occur until the post-seizure hearing has been held and has been adjudged valid or until the retail commercial establishment has waived its right, either affirmatively or by default, to challenge the validity of such a forfeiture or seizure.

**SECTION II. Providing For Penalties.**

Notwithstanding any Town Code provisions to the contrary, any violation of this Section is a **Class 2 Misdemeanor.**

**SECTION III. Providing for Repeal Of Conflicting Ordinances.**

All ordinances and parts of ordinances in conflict with the provisions of the Ordinance or any part of the Code adopted herein by reference are hereby repealed.

**SECTION IV. Providing for Severability.**

If any article, sub-article, sentence, clause, phrase, or portion of this Ordinance or any part of the Code adopted therein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions thereof.

**SECTION V. Effective Date.**

The effective date of this Ordinance is January 20, 2006.

APPROVED, PASSED AND ADOPTED BY THE Mayor and Common Council of the Town of Wickenburg, Arizona, this 19 day of December, 2005.

R.R. Badowski  
R.R. BADOWSKI, MAYOR

Date: 12/19/05

ATTEST:

Donna Riffel

Donna Riffel, Town Clerk

APPROVED AS TO FORM:

K. Russell Romney

K. Russell Romney, Town Attorney

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC

Date Signed: 12/19/05

Number of Councilmembers Present: 7

Number of Votes For: 7

Number of Votes Against: 0

Number of Abstentions: 0

**CERTIFICATION**

I, Donna Riffel, the duly appointed and qualified Town Clerk of the Town of Wickenburg, an Arizona Corporation, do hereby Certify that the foregoing Ordinance Number 954 was duly passed, approved and adopted by the Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 19 day of December 2005, and that a quorum was present at the meeting.

Donna Riffel

Donna Riffel, Town Clerk