

ORDINANCE NO. 4558

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING TITLE 6 CHAPTER 1 OF THE MESA CITY CODE BY ADDING A NEW SECTION 6-1-21 ENTITLED SALE AND DISPLAY OF PSEUDOEPHEDRINE PRODUCTS, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, as follows:

Section 1. PURPOSE. The illicit manufacture of methamphetamine is a serious and continuing problem in this City. The purpose of this ordinance shall be to protect the health, safety and welfare of the residents of the City by means of regulating the display and sale of products containing pseudoephedrine.

Section 2. Title 6 Chapter 1 of the Mesa City Code is amended by adding a new Section 6-1-21 Sale And Display Of Pseudoephedrine Products.

6-1-21 Definitions.

In this article, unless the context otherwise requires:

- (1) "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.
 - (2) "Retail establishment" means any place of business that offers any pseudoephedrine product for sale at retail.
 - (3) "Pharmacist" means a person registered pursuant to Title 32, chapter 18, of the Arizona revised statutes to dispense medicinal substances.
- (A) No retail establishment shall sell any pseudoephedrine product unless staffed with a pharmacist on the premises at the time of the sale except as exempted by order of the Attorney General of the United States or his designee, pursuant to federal law.

- (B) A person making a retail sale of a product containing pseudoephedrine shall only complete such a transaction upon display by the purchaser of a government-issued photo identification, and shall record the purchaser's name, quantity of pseudoephedrine product purchased, transaction date and the identity of the seller. At the discretion of the retail establishment, the information may be recorded in written tabulation or by electronic means.
- (C) The information required to be obtained by paragraph B will be retained by the retail establishment for a period of two (2) years, and will be considered a confidential document that will only be available to the operator of the retail establishment and certified Arizona peace officers.
- (D). Display of pseudoephedrine products.
1. The operator of a retail establishment shall keep all pseudoephedrine products in a manner that is inaccessible to customers without the assistance of a pharmacist or employee acting under the direct supervision of a pharmacist;
 2. Any pseudoephedrine product displayed in violation of this ordinance shall constitute a nuisance which, if not abated, shall subject the pseudoephedrine products to forfeiture;
 3. Upon an initial discovery of any pseudoephedrine product displayed in violation of this ordinance, the operator of the retail establishment, upon written notification by any law enforcement officer of the nuisance, shall immediately remove the pseudoephedrine products and thereby avoid their forfeiture;
 4. Any pseudoephedrine products displayed in violation of this ordinance within one year of written notice of the nuisance shall be immediately seized by any law enforcement officer discovering them;
 5. Upon the seizure of any pseudoephedrine products for violation of this ordinance, the law enforcement officer shall give written notice of the intent to forfeit the seized products. The notice shall include the date and time of the seizure, an inventory of the items seized, and directions on how a post-seizure hearing may be demanded to challenge the forfeiture of the items.
 6. Within fifteen days of the seizure, the operator of a retail establishment may request the appointment of a hearing officer to preside over the post-seizure hearing in accordance with Mesa City Code Title 1 Chapter 27 section 8. If no written demand for a post-seizure hearing is filed, the items seized shall be forfeited and destroyed. If a demand for a post-seizure hearing is timely filed, a hearing shall be held pursuant to the

procedures set forth in Mesa City Code 8-6-8(E) to determine if the seized pseudoephedrine products were displayed in violation of this ordinance. If it is determined that the pseudoephedrine products were displayed in violation of this ordinance, the items shall be ordered forfeited and destroyed.

Section 3. SERVERABILITY. If any provision of this ordinance is held to be unenforceable or unconstitutional by a court of competent jurisdiction, the remaining provisions shall remain in effect.

Section 4. PENALTY. A violation of any provision of this ordinance, other than subsection (D), is a class 1 misdemeanor.

Section 5. EFFECTIVE DATE. The effective date of this ordinance shall be 30 days following adoption by the Mesa City Council.

PASSED AND ADOPTED by the City Council of the City Of Mesa, Maricopa County, Arizona, this 26th day of June, 2006.