

ORDINANCE G-4737

AN ORDINANCE RELATING TO THE SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE; REGULATING THE MANNER OF SALE; REQUIRING IDENTIFICATION OF PURCHASERS; REQUIRING THAT PURCHASES BE REPORTED TO THE CHIEF OF POLICE, AMENDING CHAPTER 23, ARTICLE III, PHOENIX CITY CODE, BY ADDING SECTION 23-51.3.

BE IT ORDAINED by the Council of the City of Phoenix as follows:

SECTION 1. Chapter 23, Article III, Phoenix City Code, is amended by adding section 23-51.3 to read:

SEC. 23-51.3 REPORTING 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, AND QUANTITY OF EPHEDRINE OR PSEUDOEPHEDRINE PRODUCT PURCHASED. FOR PURPOSE OF THIS SUBSECTION, ACCEPTABLE PHOTO IDENTIFICATION MEANS ANY OF THE FOLLOWING:

1. CURRENT DRIVERS LICENSE OR PICTURE IDENTIFICATION CARD ISSUED BY THIS OR ANY OTHER STATE;
2. A CURRENT PASSPORT;
3. A CURRENT TRIBAL IDENTIFICATION CARD; OR
4. A CURRENT MILITARY IDENTIFICATION CARD.

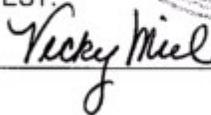
B. BY THE TENTH DAY OF EACH MONTH, THE SELLER OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE SHALL REPORT TO THE CHIEF OF POLICE THE INFORMATION REQUIRED TO BE OBTAINED BY SUBSECTION A FOR THE SALES OCCURRING THE PREVIOUS MONTH. THE REPORT SHALL BE IN WRITING OR ELECTRONICALLY SENT IN A MANNER SPECIFIED BY THE CHIEF OF POLICE.

C. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR. SECTION 2. Delayed Effective Date. The provisions of this ordinance shall take effect ninety days after passage.

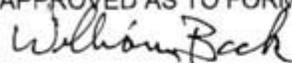
PASSED by the Council of the City of Phoenix this 7th day of September,  
2005.



  
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MAYOR

ATTEST:  
  
\_\_\_\_\_  
City Clerk

CITY CLERK DEPT.  
2005 SEP -7 PM 1:35

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Acting City Attorney

REVIEWED BY:  
  
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**ACTING**  
City Manager

ORDINANCE G-4738

AN ORDINANCE RELATING TO THE SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE; REGULATING THE MANNER OF SALE; PROVIDING FOR THE SEIZURE AND FORFEITURE OF IMPROPERLY DISPLAYED PRODUCTS; AMENDING CHAPTER 23, ARTICLE III, PHOENIX CITY CODE, BY ADDING SECTION 23-51.2.

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 COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. Chapter 23, Article III, Phoenix City Code, is amended by adding section 23-51.2 to read:

SEC. 23-51.2 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 CONSTITUTES 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.

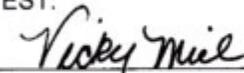
SECTION 2. Delayed effective date.

The provisions of this ordinance shall take effect ninety days after passage.

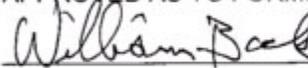
PASSED by the Council of the City of Phoenix this 7th day of  
September, 2005.

  
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MAYOR

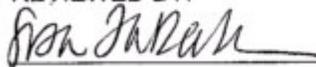
ATTEST:

  
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City Clerk

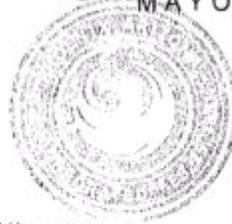
APPROVED AS TO FORM:

  
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Acting City Attorney

REVIEWED BY:

  
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*Acting*  
City Manager

PWB:tkk/185628  
Item 48.2; 9/7/05 Agenda



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