

ORDINANCE NO. 05-17

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF YOUNGTOWN, ARIZONA, AMENDING THE CODE OF YOUNGTOWN, ARIZONA, AMENDING TITLE 9, PUBLIC PEACE, MORALS, AND WELFARE BY ADDING CHAPTER 9.13 PURCHASE AND SALE OF PSEUDO-EPHEDRINE PRODUCTS RELATING TO THE SALE OF PRODUCTS CONTAINING PSEUDO-EPHEDRINE AND REGULATING THE MANNER OF SALE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING PENALTIES.

WHEREAS, the illicit manufacture of methamphetamine ("meth labs") is a serious and continuing problem in this Town; 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, pseudo-ephedrine, ephedrine, norpseudoephedrine 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 primary 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 pseudo-ephedrine, ephedrine, norpseudoephedrine and phenylpropanolamine from these over-the-counter products is not materially different or more difficult in products containing pseudo-ephedrine, ephedrine, norpseudoephedrine and phenylpropanolamine with other active ingredients as from products containing pseudo-ephedrine, ephedrine, norpseudoephedrine 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;

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

Section I. In General.

The City Code of the City of Youngtown, Arizona is hereby amended by amending Title 9 Public Peace, Morals and Welfare by adding Chapter 9.13 Purchase and Sale of Pseudo-ephedrine Products to read as follows [new text in ALL CAPS]:

Chapter 9.13 Purchase and Sale of Pseudo-ephedrine Products

A. DEFINITIONS.

IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "LICENSED PHARMACY TECHNICIAN" MEANS A PERSON LICENSED BY THE STATE OF ARIZONA TO ASSIST A PHARMACIST.
2. "PHARMACIST" MEANS A PERSON LICENSED BY THE STATE OF ARIZONA IN THE ART, PRACTICE OR PROFESSION OF PREPARING, PRESERVING, COMPOUNDING AND DISPENSING OF MEDICAL DRUGS.
3. "PROPER IDENTIFICATION" MEANS A RECOGNIZED GOVERNMENT-ISSUED PHOTO IDENTIFICATION OF A PURCHASER, INCLUDING, BUT NOT LIMITED TO, A DRIVER'S LICENSE, IDENTIFICATION CARD OR PASSPORT.
4. "PSEUDO-EPHEDRINE PRODUCT" MEANS ANY PRODUCT CONTAINING EPHEDRINE OR PSEUDO-EPHEDRINE AND INCLUDES ANY COMPOUND, MIXTURE OR PREPARATION THAT CONTAINS ANY DETECTABLE QUANTITY OF EPHEDRINE, PSEUDO-EPHEDRINE, NORPSEUDO-EPHEDRINE, OR PHENYLPROPANOLAMINE OR THEIR SALTS, OPTICAL ISOMERS OR SALTS OF OPTICAL ISOMERS. PRODUCT PACKAGING THAT LISTS EPHEDRINE, PSEUDO-EPHEDRINE, NORPSEUDO-EPHEDRINE, OR PHENYLPROPANOLAMINE AS AN ACTIVE INGREDIENT SHALL CONSTITUTE *PRIMA FACIE* EVIDENCE THAT THE PRODUCT IS A PSEUDO-EPHEDRINE PRODUCT.

5. "RETAIL ESTABLISHMENT" MEANS ANY PLACE OF BUSINESS THAT OFFERS ANY PSEUDO-EPHEDRINE PRODUCT FOR SALE AT RETAIL.
- B. THE OPERATOR OF A RETAIL ESTABLISHMENT SHALL KEEP ALL PSEUDO-EPHEDRINE PRODUCTS BEHIND A STORE COUNTER OR OTHERWISE IN A MANNER THAT IS INACCESSIBLE TO CUSTOMERS WITHOUT THE ASSISTANCE OF THE AN EMPLOYEE OF THE ESTABLISHMENT AND WHERE SUCH PRODUCTS ARE CONTINUOUSLY MONITORED TO PREVENT THEFT OR UNAUTHORIZED OR UNCONTROLLED PURCHASES.
- C. PSEUDO-EPHEDRINE PRODUCTS SHALL ONLY BE SOLD BY A PHARMACIST OR LICENSED PHARMACY TECHNICIAN.
- D. A PHARMACIST OR LICENSED PHARMACY TECHNICIAN MAKING A RETAIL SALE OF A PSEUDO-EPHEDRINE PRODUCT SHALL REQUIRE PROPER IDENTIFICATION FROM THE PURCHASER AND SHALL RECORD THE PURCHASER'S NAME, DATE OF BIRTH, QUANTITY OF PSEUDO-EPHEDRINE PRODUCT PURCHASED, TRANSACTION DATE AND THE INITIALS OF THE PHARMACIST.
- E. NO PHARMACIST OR LICENSED PHARMACY TECHNICIAN SHALL SELL MORE THAN A TOTAL OF NINE GRAMS IN TABLET FORM OF A PSEUDO-EPHEDRINE PRODUCT TO A PERSON WITHIN A THIRTY DAY PERIOD. THIS LIMIT SHALL NOT APPLY TO ANY QUANTITY OF SUCH TABLET FORM OF PSEUDO-EPHEDRINE PRODUCT DISPENSED PURSUANT TO A VALID PRESCRIPTION.
- F. THE INFORMATION REQUIRED TO BE OBTAINED BY SUBSECTION D SHALL BE RETAINED BY THE RETAIL ESTABLISHMENT FOR A PERIOD OF SIX MONTHS, AND WILL BE CONSIDERED A CONFIDENTIAL DOCUMENT THAT WILL ONLY BE AVAILABLE TO THE PHARMACIST OF THE RETAIL ESTABLISHMENT, AND SHALL BE AVAILABLE TO THE CITY OF YOUNGTOWN POLICE DEPARTMENT OFFICERS, ARIZONA DEPARTMENT OF PUBLIC SAFETY OFFICERS, MARICOPA COUNTY SHERIFF'S DEPARTMENT OFFICERS, AND OTHER LAW ENFORCEMENT OFFICERS.

G. THE RETAIL ESTABLISHMENT, PHARMACIST OR LICENSED PHARMACY TECHNICIAN SHALL REPORT TO THE POLICE DEPARTMENT BY TELEPHONE ANY ATTEMPT BY A PURCHASER TO PURCHASE LARGER QUANTITIES THAN PERMITTED BY THIS CHAPTER.

Section II Providing for Repeal of Conflicting Ordinances

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

Section III. Providing for Severability.

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

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500) or by imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described.

PASSED AND ADOPTED by the Common Council of the Town of Youngtown, Arizona, this 16 day of December, 2005, by the following vote:

AYES: 7

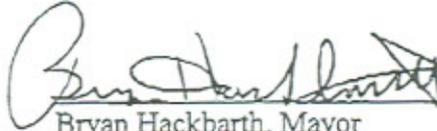
NAYES: 0 ABSENT: 0

EXCUSED: 0 ABSTAINED: 0

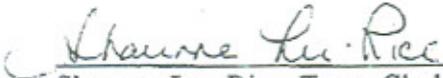
APPROVED this 16 day of December, 2005.

Ordinance No. _____

Page ___ of ___


Bryan Hackbarth, Mayor

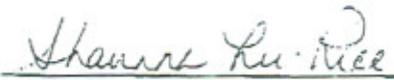
ATTEST:


Shaunna Lee-Rice, Town Clerk

APPROVED AS TO FORM:


Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
Town Attorneys
By: Susan D. Goodwin

I, SHAUNNA LEE-RICE, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 05-17 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF YOUNGTOWN ON THE 15 DAY OF December, 2005, WAS POSTED IN THREE PLACES ON THE 15 DAY OF December, 2005.


Shaunna Lee-Rice, Town Clerk

\\Srv01\Company\1753\Ordinances\Ephedrine Ordinance 12-9-05.doc