ORDINANCE NO. 3647

AN ORDINANCE OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, 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; REQUIRING IDENTIFICATION OF PURCHASERS; AND REQUIRING THAT PURCHASES BE LOGGED; ADDING SECTIONS 19-22 AND 19-23 TO THE SCOTTSDALE REVISED CODE

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

Section 1. Section 19-22 Scottsdale Revised Code is added as follows:

SECTION 19-22. 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 SECTION, 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. FOR PURPOSES OF SUBSECTION A ABOVE, OPERATOR MEANS AN OWNER, MANAGER, PHARMACIST, CORPORATION OR OTHER FICTITIOUS PERSON OR OTHER RESPONSIBLE PARTY.

D. A VIOLATION OF THIS SECTION IS A CLASS ONE MISDEMEANOR.

E. 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.

F. 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.

G. 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 AND UNDER THIS CIRCUMSTANCE THE PEACE OFFICER SHALL ALSO POST THE NOTICE IN A CONSPICUOUS LOCATION WITHIN THE RETAIL ESTABLISHMENT.

H. A PARTY RECEIVING A NOTICE OF INTENT TO FORFEIT UNDER THIS SECTION MAY REQUEST A POST SEIZURE HEARING WITH THE CITY COURT 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. Section 19-23 Scottsdale Revised Code is added as follows:

SECTION 19-23. REPORTING THE SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE.

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 PURPOSES OF THIS SUBSECTION, ACCEPTABLE PHOTO IDENTIFICATION MEANS ANY OF THE FOLLOWING:

1. CURRENT DRIVERS LICENSE OR PICTURE IDENTIFICATION ISSUED BY THIS OR ANY OTHER STATE OR TERRITORY OF THE UNITED STATES OF AMERICA OR THE UNITED STATES GOVERNMENT:
2. A CURRENT VALID PASSPORT ISSUED BY THE UNITED STATES OF AMERICA OR A FOREIGN GOVERNMENT:
3. A CURRENT TRIBAL IDENTIFICATION CARD ISSUED BY A FEDERALLY RECOGNIZED TRIBE;
4. A CURRENT MILITARY IDENTIFICATION CARD ISSUED BY THE UNITED STATES ARMED FORCES OR DEPARTMENT OF DEFENSE; OR
5. A CONSULAR IDENTIFICATION CARD THAT PROVIDES A PHOTOGRAPH AND OTHER DESCRIPTIVE INFO REQUIRED IN SUBSECTION A ABOVE ISSUED BY A FOREIGN GOVERNMENT

B. THE SELLER OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE SHALL MAINTAIN ON THE PREMISES THE INFORMATION REQUIRED TO BE RECORDED BY SUBSECTION A FOR A PERIOD OF NINETY DAYS FROM THE DATE OF SALE. THIS INFORMATION SHALL BE AVAILABLE FOR INSPECTION AND/OR COPYING BY THE CHIEF OF POLICE OR DESIGNEE DURING NORMAL BUSINESS HOURS.

C. A VIOLATION OF THIS SECTION IS A CLASS ONE MISDEMEANOR.

Section 3. Delayed Effective Date. The provisions of this ordinance shall take effect ninety days after passage.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this 15th day of November, 2005.

ATTEST:

Carolyn Jagger
City Clerk

CITY OF SCOTTSDALE, an
Arizona municipal corporation

Mary Manross
Mayor

APPROVED AS TO FORM:

for

Deborah Robberson
Acting City Attorney