

ORDINANCE NUMBER O- 18533 (NEW SERIES)

ADOPTED ON JUN 29 1998

AN ORDINANCE AMENDING CHAPTER V, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 31, TITLED LIMITS ON SALES OF PRODUCTS CONTAINING EPHEDRINE, AND BY ADDING SECTIONS 52.3101, 52.3102, 52.3103, 52.3104, 52.3105, 52.3106 AND 52.3107, ALL RELATING TO REGULATION ON THE SALE OF OVER-THE-COUNTER PRODUCTS CONTAINING EPHEDRINE.

WHEREAS, the Council of The City of San Diego finds that ephedrine, a white, odorless, powdered or crystalline alkaloid, isolated from shrubs of the genus *Ephedra* or made synthetically, has legitimate uses including the treatment of allergies and asthma; and

WHEREAS, the Council of the City of San Diego finds that in addition to its legitimate uses, ephedrine has many illegal uses, including the manufacture of methamphetamine, and that in order to circumvent the legal restrictions on the purchase of ephedrine, criminals involved in the illegal manufacture of methamphetamine extract the ephedrine base from over-the-counter products, such as decongestants, antihistamines, dietary supplements and "energy enhancers," containing as an ingredient ephedrine or pseudoephedrine; and

WHEREAS, the Council of the City of San Diego finds that Southern California generally, and San Diego County specifically, has become known to narcotics officers and drug enforcement agents for its high incidence of illicit manufacture, sale and use of methamphetamine; and

WHEREAS, the Council of the City of San Diego finds that there is a current and immediate threat to the public health, safety and welfare in that the manufacture, processing, transportation, possession and sales of illicit narcotics and drugs are inherently dangerous and that chemicals, compounds, substances, byproducts and wastes that are associated with the manufacture of illicit narcotics and drugs are both dangerous and injurious to the health, welfare and safety of the citizens of the City of San Diego; and

WHEREAS, the Council of the City of San Diego finds that there has been an increase in the sales, thefts and possession of over-the-counter products that contain as an ingredient ephedrine, pseudoephedrine, ephedrine hydrochloride, pseudoephedrine hydrochloride, or pseudoephedrine sulfate, as well as other substances and products associated with the manufacture of methamphetamine, and that retailers are regularly victimized by persons who steal these products and substances; and

WHEREAS, the Council of the City of San Diego finds that members of the general public do not normally purchase the described products in multiple quantities, and that to place reasonable limitations on the quantity of such products that may be sold to or purchased by a person on a single day will not unduly restrict legitimate businesses or customers from selling or purchasing the described products; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter V, Article 2, of the San Diego Municipal Code is amended by adding a new Division 31, and new Sections 52.3101, 52.3102, 52.3103, 52.3104, 52.3105, 52.3106 and 52.3107, to read as follows:

Division 31

Limits on Sales of Products Containing Ephedrine

SEC. 52.3101 Declaration of Purpose

The Council for the City of San Diego finds and declares that:

(a) In addition to its legal uses, Ephedrine is used in the illegal manufacture of methamphetamine, and illicit drug manufacturers extract Ephedrine from various over-the-counter products containing as an ingredient Ephedrine or pseudoephedrine.

(b) Southern California generally and San Diego County specifically has become known to narcotics officers and drug enforcement agents for its high incidence of illicit manufacture, sale and use of methamphetamine.

(c) There is a current and immediate threat to the public health, safety and welfare in that the manufacture, processing, transportation, possession and sales of illicit narcotics and drugs are inherently dangerous, and that the chemicals, compounds, substances, byproducts and wastes associated with the manufacture of illicit narcotics and drugs are both dangerous and injurious to the health, welfare and safety of the citizens of the City of San Diego.

(d) There has been an increase in the sales, thefts and possession of over-the-counter products that contain as an ingredient Ephedrine, pseudoephedrine, ephedrine hydrochloride, pseudoephedrine

hydrochloride, or pseudoephedrine sulfate, as well as other products associated with the manufacture of methamphetamine.

(e) The reasonable limitations found in this Division on the quantity of products containing Ephedrine that may be sold to or purchased by a customer on a single day will assist the City in its efforts to combat the insidious criminal methods of illegal methamphetamine manufacturers in the City, and will not unduly restrict legitimate businesses or customers from Selling or buying these products.

SEC. 52.3102 Definitions

Except as otherwise provided, for purposes of this division:

“Count” means the number of pills, tablets, capsules or individual units of a substance contained within an individual Package.

“Customer” means any Person who purchases or acquires products from any Retail Store.

“Ephedrine” means any drug, substance or compound, whether legal or illegal, that contains ephedrine, pseudoephedrine, ephedrine hydrochloride, pseudoephedrine hydrochloride, or pseudoephedrine sulfate.

“Package” means any bottle, box, blister pack or other container in which products containing Ephedrine are sold.

“Person” has the same meaning as in Municipal Code section

11.0210.

“Retail Store” means any single geographic location of any business, company, corporation, Person, employee or associate, that Sells products to any Customer. It does not include any Wholesaler engaged in a wholesale transaction.

“Sell” means to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, whether or not for monetary gain or other consideration.

“Wholesaler” means one whose business is the selling of goods in gross to Retail Stores for purposes of resale.

SEC. 52.3103 Limitations on the Sale or Purchase of Ephedrine Products

(a) It is unlawful for any Person during a single transaction to Sell to a Customer more than three Packages of products containing Ephedrine.

(b) It is unlawful for any Person during a single transaction to Sell to a Customer products containing Ephedrine where the total Count exceeds 100.

(c) It is unlawful for any Customer on any single day to purchase or acquire more than three Packages of products containing Ephedrine.

(d) It is unlawful for any Customer on any single day to purchase or acquire products containing Ephedrine where the total Count exceeds 100.

SEC. 52.3104 Separate Violation for Each Incident

Each incident in violation of Section 52.3103 shall constitute a separate offense.

SEC. 52.3105 Enforcement Authority

The City Attorney and the Chief of Police, or any other Director authorized by the City Manager, is authorized to administer and enforce the provisions of this Division. The City Attorney and the Chief of Police may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter I of this Code.

SEC. 52.3106 Enforcement Remedies

Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. The City Attorney and the Chief of Police may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy provided in Chapter I of this Code.

SEC. 52.3107 Strict Liability Offenses

Violations of this Division shall be treated as strict liability offenses regardless of intent.

Section 2. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Michael T. Smyth
Michael T. Smyth
Deputy City Attorney

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NEW LANGUAGE - REDLINED
OLD LANGUAGE - STRUCKOUT

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(c) There is a current and immediate threat to the public health, safety and welfare in that the manufacture, processing, transportation, possession and sales of illicit narcotics and drugs are inherently dangerous, and that the chemicals, compounds, substances, byproducts and wastes associated with the manufacture of illicit narcotics and drugs are both dangerous and injurious to the health, welfare and safety of the citizens of the City of San Diego.

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