

ORDINANCE NO. 1832

AN ORDINANCE AMENDING CHAPTER 42, "HEALTH AND SANITATION," BY ADDING ARTICLE V, "AIR POLLUTION," TO THE EULESS CODE OF ORDINANCES; DEFINING TERMS; RESTRICTING IDLING MOTOR VEHICLES WITH A GROSS VEHICLE WEIGHT RATING OF OVER 14,000 POUNDS, WITH CERTAIN DEFENSES; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and the Texas Commission on Environmental Quality ("TCEQ") jointly have considered emission reductions to control air pollution from motor vehicles, and the Texas Legislature has created the Texas Clean Air Act ("Act"), which addresses that purpose; and

WHEREAS, Section 382.113 of the Act provides authority for municipalities to enact and enforce local laws and ordinances for the control and abatement of air pollution; and

WHEREAS, by means of regulations set forth in Sections 114.50 through 144.512 and Section 114.517 of Title 30 of the Texas Administration Code, the TCEQ has set forth regulations intended to assist in the prevention of air pollution caused by unnecessary idling of certain motor vehicles; and

WHEREAS, the City of Euless has engaged in discussions with the North Central Texas Council of Governments ("NCTGOG") for the purpose of entering into a memorandum of agreement with NCTCOG and, possibly, other local governmental entities in the area to implement the rules aimed at the control of air pollution from such motor vehicles; and

WHEREAS, the City Council of the City of Euless finds that the adoption of this ordinance serves a public purpose, and protects the health, safety, and welfare of the citizens of the City of Euless, by limiting the pollution created by large motor vehicles unnecessarily idling within the City's corporate limits.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS:

SECTION 1

THAT Chapter 42, "Health and Sanitation," of the Euless Code of Ordinances be amended by adding Article V, "Air Pollution," to hereafter be and read as follows:

ARTICLE V. AIR POLLUTION

SECTION 42-91 DEFINITIONS

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section.

COMMERCIAL PASSENGER TRANSPORTATION means a mode of transportation provided by a bus or motor coach designed to accommodate more than 10 passengers (including the operator) for compensation, and that is powered by a primary propulsion engine, but specifically excluding the modes of railroad, light rail, or taxicabs.

IDLE means the operation of an engine in the operating mode where:

- (a) The engine is not engaged in gear;
- (b) The engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released; and
- (c) There is no load on the engine.

MECHANICAL OPERATIONS means the use of electrical tools or equipment in construction, maintenance, or repair of facilities.

PASSENGER TRANSIT OPERATIONS means a regional mode of public transportation that is funded through a portion of sales tax for the region being served.

PRIMARY PROPULSION ENGINE means a gasoline or diesel-fueled internal combustion engine that:

- (a) Is attached to a motor vehicle; and
- (b) Provides the power to propel the motor vehicle into motion and maintain motion.

SECTION 42-92 IDLING PROHIBITED

A person commits an offense if, at any time from April 1 through October 31 of any calendar year, he causes, suffers, allows, or permits the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle is not in motion.

SECTION 42-93 DEFENSES

It shall be a defense to prosecution under this article that:

- (a) The motor vehicle has a gross vehicle weight rating of 14,000 pounds or less;

- (b) The motor vehicle was forced to remain motionless because of traffic conditions over which the operator had no control;
- (c) The motor vehicle was being used:
 - (1) By the United States military, national guard, or reserve forces; or
 - (2) As an emergency or law enforcement motor vehicle.
- (d) The primary propulsion engine of the motor vehicle was providing a power source necessary for a mechanical operation of the vehicle, other than:
 - (1) Propulsion; or
 - (2) Passenger compartment heating or air conditioning.
- (e) The primary propulsion engine of the motor vehicle was being operated for maintenance or diagnostic purposes;
- (f) The primary propulsion engine of the motor vehicle was being operated solely to defrost a windshield;
- (g) The primary propulsion engine of the motor vehicle was being used to supply heat or air conditioning necessary for passenger comfort or safety, if the vehicle:
 - (1) Was a school bus or was intended for commercial passenger transportation or passenger transit operations; and
 - (2) Did not idle more than 30 consecutive minutes;
- (h) The primary propulsion engine of the motor vehicle was being used to provide air conditioning or heating necessary for employee health or safety while the employee was using the vehicle to perform an essential job function related to roadway construction or maintenance;
- (i) The primary propulsion engine of the motor vehicle was being used as airport ground support equipment; or
- (j) The person charged with the offense was the owner of a motor vehicle that had been rented or leased to the person operating the vehicle at the time of the offense, if the vehicle operator was not employed by the vehicle owner.

SECTION 42-94 PENALTY

- (a) An offense under this section is punishable by a fine as set forth in accordance with Chapter 1, "General Provisions," Section 1-12, "General Penalty," Eules Code of Ordinances. Each instance of a violation of this section is a separate offense.

- (b) Prosecution for an offense under this section does not preclude the use of other enforcement remedies or procedures that may be available to the city.

SECTION 2

SEVERABILITY CLAUSE. That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 3

SAVING CLAUSE. That applicable chapters of the Code of Ordinances, City of Euless, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 4

EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage and publication as provided by the Euless City Charter and the laws of the State of Texas.

PRESENTED AND APPROVED ON FIRST AND FINAL READING at a regular meeting of the Euless City Council on the 23rd day of September, 2008, by a vote of _____ ayes, _____ nays, and _____ abstentions.

APPROVED:

APPROVED AS TO FORM:

Mary Lib Saleh, Mayor

Bob McFarland, City Attorney

ATTEST:

Susan Crim, TRMC, City Secretary