

## ORDINANCE NO. 1976

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF EULESS, CHAPTER 84, "UNIFIED DEVELOPMENT CODE", BY REGULATING TOBACCO PRODUCTS STORES; AMENDING ARTICLE I, "GENERAL PROVISIONS", SECTION 84-7, "DEFINITIONS AND WORD USAGE"; AMENDING ARTICLE IV, "ZONING DISTRICT REGULATIONS", SECTION 84-84, "PERMITTED USES TABLE" AND SECTION 84-85 "SPECIAL CONDITIONS BY USE TYPE"; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Euless ("City") is a home rule city acting under its charter adopted by the electorate pursuant to article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, the City Council is empowered under the Texas Local Government Code to adopt ordinances and rules for the orderly and beneficial operation of City government and the welfare of the citizens of Euless; and

**WHEREAS**, the City Council has adopted Chapter 84 of the Euless Code of Ordinances, the Unified Development Code, which regulates and restricts the location and use of buildings, structures and land for trade, industry, residence, and other purposes, and provide for the establishment of zoning districts of such number, shape and area as may be best suited to carry out these regulations; and

**WHEREAS**, the City Council has reviewed source materials related to the effects of tobacco product stores and has determined that a proliferation and clustering of retail tobacco products stores in the City of Euless can have an unreasonable adverse effect on the citizens of Euless; and

**WHEREAS**, the City Council desires to amend Chapter 84 to provide more specific regulations concerning tobacco products stores, to better address the general health, safety and welfare of the residents of Euless; and

**WHEREAS**, the Planning and Zoning Commission has conducted a public hearing on November 20, 2012, in conjunction with Case No. 12-11-CC, and has rendered a recommendation to the City Council with respect to this case; and

**WHEREAS**, the City Council has conducted a public hearing on November 27, 2012, has considered the recommendation of the Planning and Zoning Commission, and has determined that the proposed change is in the best interest of the City of Euless; and

**WHEREAS**, the City has complied with all requirements of Chapter 211 of the Local Government Code and all other laws dealing with notice, publication and procedural requirements for the amendments described herein.

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

**SECTION 1.**

Section 84-7 Definitions and word usage paragraph (b) is amended through the addition of the following:

*Tobacco products store.* A retail establishment that is dedicated, in whole or in part, to the smoking of tobacco or other substances and includes any establishment that allows either the payment of consideration by a customer to the establishment for on-site delivery of tobacco, tobacco accessories or similar substances and products to the customer; and, the onsite smoking of tobacco or other substances. This definition shall be construed to include establishments known variously as retail tobacco stores, tobacco products shops, hookah cafes, tobacco clubs, tobacco bars, cigar stores and similar establishments, but shall not include an establishment which derives more than fifty (50) percent of its gross revenue from food, beverage, or gasoline fuel sales.

**SECTION 2.**

Section 84-84 Permitted uses table (Table 4A) is amended through the addition/revision of the following:

SIC Code	Primary Use	Residential									Commercial			Industrial			Parking Group Table 5-A	Special Condition Section 84-85	
		R-1C	R-1	R-1L	R-1A	R-2	R-3	R-4	R-5	MH	C-1	C-2	TX 10	LI	I-1	I-2			
5993	Tobacco Products Store as defined in Sec 84-7.														S	S	S	8	x, am
5993	Cigar Stores														S	S	S	8	x, am

### SECTION 3.

Section 84-85 Special conditions by use type is amended through the addition of the following:

(am) *Tobacco Products Store*. No tobacco products stores may be located within 1,000 feet of another tobacco products store; or within 500 feet of the right-of-way of Airport Freeway/SH 183 or SH 121, or Eules Boulevard/SH 10; or FM 157/Industrial Boulevard or within 500 feet of any zoning which allows residential uses by right.

- (a) Measurement. For purposes of this section, measurement shall be made in a straight line, without regard to intervening structures or objects:
1. From the nearest portion of the property line of the premises where the existing business is located to the nearest portion of the property line of the premises where the new business is proposed;
  2. From the nearest portion of the right-of-way line of Airport Freeway/SH 183 or SH 121, or Eules Boulevard/SH 10 or FM 157/Industrial Boulevard to the property line of the premises where the new business is proposed ; or
  3. From the nearest portion of any zoning classification which permits residential uses by right to the property line of the premises where the new business is proposed.
- (b) Non-conformity. A tobacco products store that existed and was lawfully constructed, located and operating on the effective date of this Section 84-85(am), and that does not conform to zoning district and/or separation distance standards adopted herein shall be deemed a non-conforming use and may continue in operation subject to the provisions in Article III of Chapter 84 and the provisions set forth below:
1. If a tobacco products store ceases operations at a particular location, a new certificate of occupancy shall not be issued for a new tobacco products store at that location without first complying with all the requirements of this Section 84-85(am).
  2. The ability to continue a non-conforming tobacco products store shall cease and such use shall terminate whenever either of the following occur:
    - i. A certificate of occupancy for a change of owner, occupant, tenant, or business is required.
    - ii. The certificate of occupancy for the use is relinquished, canceled, or terminated in accordance with other applicable ordinances.

#### **SECTION 4.**

**CUMULATIVE CLAUSE.** This Ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Euless, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

#### **SECTION 5.**

**SEVERABILITY CLAUSE.** It is hereby declared to be the intention of the City Council of the City of Euless 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 unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase.

#### **SECTION 6.**

**SAVING CLAUSE.** That 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. All rights and remedies of the City of Euless are expressly saved as to any and all violations of the provisions of any ordinances affecting the regulation of tobacco products stores within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

#### **SECTION 7.**

**PENALTY FOR VIOLATION.** Any person, firm, or corporation violating any of the terms and provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1, "General Provisions," Section 1-12, "General Penalty," Euless Code of Ordinances. Each such violation shall be deemed a separate offense and shall be punishable as such hereunder.

#### **SECTION 8.**

**PUBLICATION.** The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Euless, in compliance with the provisions of Article II, Section 12, of the City Charter.

**SECTION 9.**

**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 PASSED ON FIRST AND FINAL READING** at a regular meeting of the Euless City Council on November 27, 2012, by a vote of \_\_\_\_ayes, \_\_\_\_nays, and \_\_\_\_abstentions.

APPROVED:

\_\_\_\_\_  
Mary Lib Saleh, Mayor

ATTEST:

\_\_\_\_\_  
Kim Sutter, TRMC, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Wayne Olson, City Attorney