

**ORDINANCE NO. 2050**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF EULESS, CHAPTER 42, "HEALTH AND SANITATION," ARTICLE IV, "REGULATION OF SMOKING," SECTION 42-81, "DEFINITIONS," BY PROVIDING DEFINITIONS FOR ELECTRONIC VAPING DEVICE AND SMOKING; 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 42 of the Euless Code of Ordinances, Health and Sanitation, to safeguard the public health, safety and welfare of residents, occupants, and patrons of facilities and within public spaces; and

**WHEREAS**, the City Council has reviewed source materials related to the effects of smoking tobacco and related substances and has determined that such products can have an unreasonable adverse effect on the citizens of Euless; and

**WHEREAS**, recently electronic vaping devices have become a popular alternative to simulate the smoking of tobacco in which users inhale nicotine and other unknown chemical substances; and

**WHEREAS**, the various health risks that may be associated with inhaling nicotine and/or other vapors that are emitted from electronic vapor devices has not been adequately studied, therefore there is no basis for claims that such nicotine or other substances contained in the vapor are safe; and,

**WHEREAS**, the City Council the City Council desires to amend Chapter 42 to provide more specific definitions related to smoking, to better address the general health, safety and welfare of the residents 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, THAT:**

**SECTION 1.**

Chapter 42, "Health and Sanitation," Article IV, "Regulation of Smoking," Section 42-81, "Definitions," is hereby amended by adding the following:

*Electronic vaping device* means any product that uses a mechanical heating element, battery, or electronic circuit to heat a liquid solution, with or without nicotine, in a vapor cartridge, to simulate the smoking of tobacco product, weeds, or other plant product. An electronic vaping device includes personal vaporizers, electronic cigarettes (e-cigarettes), electronic pipes (e-pipes), electronic cigars (e-cigars), and any other type of electronic nicotine or vapor delivery system, or any part thereof.

*Smoking or to smoke* means the possession of a burning tobacco, weed or other plant product or the use of an electronic vaping device.

**SECTION 2.**

**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 3.**

**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 4.**

**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 5.**

**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 6.**

**PUBLICATION.** The caption, penalty clause, and effective date 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 7.**

**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 25, 2014, by a vote of \_\_\_\_ayes, \_\_\_\_nays, and \_\_\_\_abstentions.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Linda Martin, Mayor

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Wayne K. Olson, City Attorney