

**ORDINANCE NO. 1889**

**AN ORDINANCE AMENDING ARTICLE II “CRIMINAL CODE” OF CHAPTER 50 “OFFENSES” OF THE CODE OF ORDINANCES OF THE CITY OF EULESS, TEXAS BY THE ADDITION OF DIVISION 3 “ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES” TO PROHIBIT THE USE, PURCHASE, POSSESSION AND SALE OF ILLEGAL SMOKING PRODUCTS CONTAINING CERTAIN PLANT, PLANT PRODUCTS AND THEIR DERIVATIVES OR OTHER SUBSTANCES, AND INGESTION DEVICES USED IN CONNECTION WITH THE ILLEGAL SMOKING PRODUCTS; DISPENSING WITH A CULPABLE MENTAL STATE; AND PROVIDING A PENALTY; PROVIDING AN AFFIRMATIVE DEFENSE FOR AUTHORIZED MEDICAL USE OR USE IN LANDSCAPING; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Euless, Texas (the “City Council”) has been informed by the City of Euless Police and Fire Departments that the American Association of Poison Control Centers and the U.S. Department of Justice have published articles and opinions on the dangers and physiological effects of K2 and similar substances, which are believed to pose a significant health concern to the citizens of the City of Euless; and

**WHEREAS**, the City of Euless Police and Fire Departments have already seen a dramatic increase in the number of young members of our community they encounter who have admitted to ingesting products marked as “K2”, which has led to numerous arrests for intoxication; and

**WHEREAS**, based upon further information from the City of Euless Police Department, certain substances are sold under various names including, but not limited to: “Salvia Divinorum”, “Salvinorin A”, “Spice”, “Genie”, “Dascents”, “Zohai”, “Sage”, “K-2”, and “KO Knock-Out 2”, and are likely to contain chemical compounds or otherwise cause effects similar to marijuana or hallucinogens and may cause harmful effects by their use and further, the long term effects of which are not yet known; and

**WHEREAS**, to the best of the City Council’s knowledge, the substances are not yet categorized as illegal controlled substances under state or federal law; and

**WHEREAS**, the City Council finds that the effect of these substances can be a health concern and risk to the citizens of the City of Euless; and

**WHEREAS**, the City Council has determined that it is in the best interest of the public health, safety and welfare to prohibit the use, possession and sale of these substances and the devices used to ingest these substances.

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

**SECTION I.**

The statements above are found to be true and correct and are hereby incorporated.

**SECTION II.**

Chapter 50 "Offenses" Article II "Criminal Code", Division 3 "Illegal Smoking Products and Ingestion Devices", is adopted to prohibit the use, purchase, possession, sale and offering for sale of illegal smoking products and ingestion devices to read in its entirety as follows:

**ARTICLE II "CRIMINAL CODE", DIVISION 3 ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES**

**Section 50-69. Purpose.**

The purpose of this article is to prohibit the use, possession, sale, ingestion or smoking of illegal smoking products and ingestion devices hereinafter defined within the city limits of the City of Euless.

**Section 50-70. Definitions.** The following words and phrases as used in this section shall have the meanings as set forth in this subsection.

*"Person"* shall mean an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

*"Illegal Smoking Product"* shall mean any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, regardless of whether the substance is marked for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

- (1) Salvinorin A: Contained within the Salvia Divinorum plant, whether growing or not; or possessed as an extract, compound, manufacture, derivative, mixture, or preparation of such plant; or
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methylcatan-2-yl) phenol (also known as CP 47, 497) and homologues; or
- (3) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018); or
- (4) Butyl-3(1-naphthoyl) indole (also known as JWH-073); or

- (5) Any products sold, distributed or possessed in the form of incense or herbal smoking blends under the names such as “K-2,” “K-2 Summit,” “K-2 Sex,” “Genie,” “Spice,” “Dascents,” “Zohai,” “Sage,” “Pep Spice,” “Solar Flare,” “K-O Knockout 2,” “Spice Gold,” “Spice Diamond,” “Spice Cannabinoid,” “Yucatan Fire,” “Fire N Ice,” “Salvia Divinorum,” or related products or chemicals when ingested produce intoxicating effects similar to marijuana.

*“Ingestion Device”* shall mean equipment, a product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

- (1) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) a water pipe;
- (3) a carburetion tube or device;
- (4) a smoking or carburetion mask;
- (5) a chamber pipe;
- (6) a carburetor pipe;
- (7) an electric pipe;
- (8) an air-driven pipe;
- (9) a chillum;
- (10) a bong; or
- (11) an ice pipe or chiller.

**Section 50-71. Violation.**

(a) It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell or offer for sale any illegal smoking product.

(b) It shall be unlawful for any Person to use or possess an ingestion device with the intent to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.

(c) The culpable mental state required by Chapter 6.02 of the Texas Penal Code, as amended, is specifically negated and dispensed with, and a violation is a strict liability offense.

(d) Any person, firm or corporation found to be violating any term or provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in accordance with Chapter 1, Section 1-12, Euless Code of Ordinances. Each such violation shall be deemed a separate offense and shall be punishable as such hereunder.

### **Section 50-72. Affirmative Defense.**

(a) It shall be an affirmative defense for a person charged with an offense for possession or use of an illegal smoking product that the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

(b) It shall be a primary affirmative defense that the sale or possession by a person of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.

### **SECTION III.**

All provisions of the Code of Ordinances of the City of Euless, codified or uncodified, in conflict with the provisions of this ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Euless codified or uncodified, not in conflict with the provisions of this ordinance shall remain in full force and effect.

### **SECTION IV.**

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, or section of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this ordinance.

### **SECTION V.**

The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this Ordinance.

**SECTION VI.**

**EFFECTIVE DATE.** This ordinance shall be in full force and effect from and after its passage, 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 October 26, 2010, by a vote of \_\_\_ ayes, \_\_\_ nays and \_\_\_ abstentions.

ATTEST:

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

\_\_\_\_\_  
Susan Crim, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
William M. McKamie, Interim City Attorney