

ORDER NO. 12
STAY AT HOME/STAY SAFE ORDER
BY THE COUNTY JUDGE OF EL PASO COUNTY, TEXAS

DATE ORDER ISSUED: October 25, 2020

WHEREAS, in December 2019, a novel coronavirus now designated SARS-CoV-2 which causes the disease COVID-19 was identified; and

WHEREAS, symptoms of COVID-19 include fever, cough, and shortness of breath, and can range from very mild (including some with no reported symptoms) to severe, including illness resulting in death; and

WHEREAS, on March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic; and

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster, the President of the United States of America declared a national emergency and the El Paso County Judge issued a Declaration of Local Disaster for Public Health Emergency pursuant to Texas Government Code Section 418.108; and

WHEREAS, the City of El Paso Department of Public Health Authority has issued various COVID-19 Prevention Orders in an effort to mitigate and slow down the spread of disease in El Paso County; and

WHEREAS, on March 16, 2020, President Donald Trump acknowledged the gravity of the COVID-19 pandemic, releasing strict new guidelines to limit people's interactions, including that Americans should avoid groups of more than 10 people, and;

WHEREAS, on March 19, 2020, the El Paso County Commissioners Court issued an Emergency Order extending the County's state of disaster and instituting emergency measures due to a public health emergency until terminated by order of the El Paso County Commissioners Court; and

WHEREAS, the County's Emergency Order authorizes the Emergency Management Director or designee to update, restrict, and promulgate regulations necessary to comply with Federal, State and Local authorities' guidance in relation to COVID-19; and

WHEREAS, pursuant to Texas Government Code §418.1015(a), the County Judge serves as the office of emergency management director for the County of El Paso (the "County"); and

WHEREAS, Texas Government Code, Chapter 418 authorizes the emergency management director to issue Orders, which are necessary for the protection of life and property in the County; and

WHEREAS, in response to the COVID-19 public health emergency, on March 13, 2020 the County Judge issued Local Emergency Orders No.1, No. 2, No. 3, and No. 4; on March 17, 2020 Order No. 5; on March 21, 2020 Order No. 6; on March 24, 2020 Order No. 7; on March 30, 2020 the First Amendment to Order No. 7; on April 29, 2020 Order No. 8; on April 30, 2020 the First Amendment to Order No. 8; on May 7, 2020 the Second Amendment to Order No. 8; on May 21, 2020 the Third Amendment to Order No. 8; on May 28, 2020 the Fourth Amendment to Order No. 8; on June 12 Order No. 9; on June 18 the First Amendment to Order No. 9; on June 29, the Second Amendment to Order No. 9; on June 29 Order No. 10; and on July 2 the Third Amendment to Order No. 9 and; on September 21, 2020 Order No. 11; on October 13 the First Amendment to Order No. 11, on October 16, 2020 the Second Amendment to Order No.11; on October 22, 2020 the Third Amendment to Order No. 11; and

WHEREAS, both the State of Texas and County of El Paso remain under a state of disaster, but in recent days, El Paso County is experiencing a crisis that requires additional consideration and response to stop the catastrophic effects COVID-19 has in the community; and

WHEREAS, Section 418.1015(b) of the Texas Government Code authorizes the emergency management director to serve as the Governor's designated agent in the administration and supervision of duties under Chapter 418 of the Texas Government Code and exercise the powers granted to the Governor on an appropriate local scale; and

WHEREAS, a County Judge, serving as the Governor's designated agent in the administration and supervision of duties during a state of emergency declared by the Governor, may use state or federal resources without prior authorization from the division or the state or federal agency having responsibility for those resources in accordance with Section 418.1015(d) of the Texas Government Code; and

WHEREAS, a County Judge, serving as the Governor's designated agent in the administration and supervision of duties during a state of emergency declared by the Governor, is authorized to control ingress to and egress from a disaster area and control the movement of persons and the occupancy of premises on an appropriate local scale in accordance with Sections 418.1015 and 418.018 of the Texas Government Code; and

WHEREAS, the positivity rate on October 1, 2020 was at 9.43% and on October 14th was 11.81%, and has now increased as of October 21, 2020 to 15.02%, showing an upward trend and nearly a 160% increase in the positivity rate over the past 3 weeks; and

WHEREAS, there are currently 11,321 active COVID-19 cases in El Paso County; and

WHEREAS, from October 10, 2020 to October 24, 2020 over 10,000 confirmed positive COVID-19 cases were reported; and

WHEREAS, as of October 24, 2020, El Paso County had 104.3 cases per 100,000 population, which is the metropolitan area in the State of Texas with the highest number of new cases per capita and the highest in the country for a metropolitan area of comparable size; and

WHEREAS, as of October 24, 2020, 34% of El Paso's hospital region patients had COVID-19 and El Paso County has spiked from 259 to 786 COVID related hospitalizations – a 387 percent increase over the last three weeks, which will have a detrimental effect on El Paso's health care system; and

WHEREAS, as of October 24, 2020, the capacity of all El Paso County area hospitals has reached its limits; and

WHEREAS, as October 24, 2020, all El Paso County area hospitals Intensive Care Units are at 100% capacity and hospitals have asked the Governor, through the Texas Department of Emergency Management, for alternate care sites to be able to care for El Paso County residents requiring hospitalizations; and

WHEREAS, despite previous orders and directives, the spread of COVID-19 in El Paso County continues at a very high rate; and

WHEREAS, as of October 24, 2020, the County of El Paso had a 7 day rolling average positivity rate of 14.88%, an increase of 40% in just the course of 15 days; and

WHEREAS, the El Paso's Public Health Director, Angela Mora, issued a stark warning that, "with the surge of hospitalizations, we need the public to understand the strain our local health services and hospitals are going through" and "Moreover, with fewer hospital beds available due to the spike in COVID-19 patients seeking medical attention, this could adversely affect healthcare

services for person with everyday non-COVID medical conditions and medical emergencies such as heart attacks, strokes and vehicular accidents”; and

WHEREAS, voluntary compliance with previous Orders has not deterred or slowed the rate of infection of COVID-19 cases; and

WHEREAS, as County Judge I will direct County resources to enforce compliance with this Order.

NOW THEREFORE, TO REDUCE THE SPREAD OF COVID-19 THROUGHOUT EL PASO COUNTY AND TO REDUCE THE INFECTION RATE OF THE PEOPLE CONSIDERED AT RISK THAT WILL REQUIRE HOSPITALIZATION AND TO LIMIT DEATH FROM COMPLICATIONS OF COVID-19, I, COUNTY JUDGE FOR EL PASO COUNTY, TEXAS PURSUANT TO THE AUTHORITY VESTED BY TEXAS GOVERNMENT CODE CHAPTER 418, HEREBY FIND AND ORDER:

SECTION 1. SHELTER-AT-HOME

All individuals currently living within El Paso County, Texas **ARE ORDERED TO SHELTER AT HOME IN THEIR RESIDENCE**. For the purposes of this Order, residences include hotels, motels, shared rentals, and similar facilities. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably as possible maintain Physical Distancing of at least six feet from any other person when they are outside their residence.

It is HIGHLY ENCOURAGED and RECOMMENDED that all commercial businesses operating with El Paso County, except essential covered businesses cease all activities at facilities that may not be provided by curbside, drive-through, or take-out services. Individuals that choose to leave their homes for essential services SHALL limit their visit to one member of the household, unless serving as a caregiver.

SECTION 2. ELECTION ACTIVITIES IS AN ESSENTIAL SERVICES AND NOT AFFECTED BY THIS ORDER

Election activities shall be considered an essential function and under no circumstances does this Order affect the voting or campaigning for candidates on the November 3, 2020 ballot. Election activities shall continue to follow Public Health Authority Orders and Guidelines relating to election activities. The public should be assured that election activities are safe and follow all appropriate social distancing and face covering measures.

SECTION 3. SHELTER-AT-HOME CURFEW

In addition to the MANDATE to Shelter-At-Home, a curfew for all persons **shall** be imposed from 10:00 PM to 5:00 AM, unless that person is out for an emergency, or for providing Covered Services.

For purposes of this Order, individuals may leave their residence, in compliance with the **SHELTER-AT-HOME** and **CURFEW**, only to obtain or provide the following essential activities shall herein be defined as (“Essential Covered Services”):

1. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (for example, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies needed to work from home).
2. To obtain necessary services or supplies for themselves and their family or household members, and products necessary to maintain the safety, sanitation, and essential operation of households, or to deliver those services or supplies to others (for example, obtaining groceries and supplies needed for the home).
3. To engage in outdoor activity, such as visiting open parks, fishing, engaging in physical activity like walking, running, or bicycling, provided the individuals, follow CDC Guidance, comply with Physical Distancing including maintaining six-foot (6) physical distancing from each other; washing hands with soap and water at least twenty seconds or using hand sanitizer; covering coughs or sneezes; cleaning high-touch surfaces; not shaking hands; and covering mouth and nose when conducting activity within six feet (6) of another person.
4. To perform work providing essential products and services at an essential covered business or to otherwise carry out activities specifically permitted in this Order.
5. To care for a family member, a child or pet in another household.
6. Election activities as described in Section 2 of this Order.
7. Religious activities as described in Section 5.j of this Order.

SECTION 4. TRAVEL

To the greatest extent possible, all travel during the **SHELTER-AT-HOME** and **CURFEW** within the jurisdiction of El Paso County should be limited to obtaining or performing Essential Covered Services, travel as permitted by law, or as follows:

1. “Essential Travel” includes travel for any of the following purposes:
 - a. Any travel related to the provision of or access to essential covered services.
 - b. Any travel for employment purposes, to include for those non-essential services and employment
 - c. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
 - d. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and business operations.
 - e. Travel to return to a place of residence, including from outside the jurisdiction.
 - f. Travel required by First Responders, Law Enforcement or court order.

- g. Travel required for non-residents to return to their place of residence outside the County.
- h. Travel for voters, election workers, poll watchers, and electioneering.

Travel should be limited to person of the same household per vehicle for obtaining Essential Covered Services, essential Healthcare Operations, Government Functions, Essential Commercial services, and for individuals traveling to non-essential jobs and employment, and U.S. Department of Homeland Security’s Cyber Security and Infrastructure Security Agency (CISA) in its *Guidance on the Essential Critical Infrastructure Workforce*.

- 2. Public Transportation may only be used for purposes of obtaining or performing:
 - a) Essential Covered Services; and
 - b) to travel to and from work for the purposes of providing Covered Services.
 - c) Travel for persons obtaining or going to work in the non-essential service sector

All Public Transportation activities must be performed in compliance with physical distancing including, to the extent possible, maintaining six-foot social distancing for both employees and the general public; washing hands with soap and water at least twenty seconds often or using hand sanitizer covering coughs and sneezes; cleaning high-touch surfaces; not shaking hands; and requiring the wearing of facial covering mouth and nose.

SECTION 5. FACE COVERING REQUIREMENT. Because an infected person can transmit the COVID-19 virus to others before showing any symptoms, the covering of a person’s nose and mouth is necessary to help slow the spread of the virus. Therefore, every person in El Paso **shall** wear some form of face covering over their nose and mouth, such as a homemade mask, scarf, bandana, or handkerchief, when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, whenever it is not feasible to maintain six feet of social distancing from another person not in the same household; *provided, however, that this face covering requirement does not apply to the following:*

- a. Any person younger than 2 years of age (Note, parents and guardians of children over the age of 2 and under the age of 10 are responsible for appropriately making their children wear a face covering as required herein);
- b. Any person with a medical condition or disability that prevents wearing a face covering;
- c. Any person while the person is consuming food or drink, or is seated at a restaurant to eat or drink;
- d. Any person while the person is (a) exercising or engaging in physical activity outdoors, indoors, in a gym or exercise facility, individually or in a group and (b) maintaining a safe distance from other people not in the same household;
- e. Any person while the person is driving alone or with passengers who are part of the same household as the driver;
- f. Any person obtaining a service that requires temporary removal of the face covering for security surveillance, screening, or a need for specific access to the face, such as while visiting a bank or while obtaining a personal care service involving the face, but only to the extent necessary for the temporary removal;
- g. Any person while the person is in a swimming pool, lake, or similar body of water;

- h. Any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election, but wearing a face covering is strongly encouraged;
- i. Any person who is actively providing or obtaining access to religious worship, but wearing a face covering is strongly encouraged;
- j. Any person while the person is giving a speech for a broadcast or to an audience.

Not excepted from this face-covering requirement is any person attending a protest or demonstration involving more than 10 people and who is not practicing safe social distancing of six feet from other people not in the same household.

Wearing a face covering is not a substitute for maintaining 6-foot social distancing and hand-washing, as these remain important steps to slowing the spread of the virus.

It is strongly recommended that you not obtain or wear medical grade masks or N-95 respirators as they are a needed resource for healthcare providers and first responders.

Violation of Face Covering Requirement. Following a verbal or written warning for a first-time violator of this face-covering requirement, a person’s second violation shall be punishable by a fine not to exceed \$250. Each subsequent violation shall be punishable by a fine not to exceed \$250 per violation.

SECTION 6. LABORATORY CONFIRMED COVID-19 TEST RESULTS

An individual that receives a positive COVID-19 test result but that has not yet been contacted by the City’s Department of Public Health within 24 hours of receiving the laboratory results, **must** isolate, and those from within their household **must** quarantine, and report to (915) 212-6520 within 24 hours of receiving the positive test result. Healthcare workers and first responders should follow the current Department of Public Health’s Guidelines for Healthcare Workers and First Responders, as published on epstrong.org.

FAILURE TO REPORT. Individuals who fail to report or participate in contact tracing efforts shall be subject to the Enforcement provision of this Order.

SECTION 7. HEALTH AND SAFETY POLICY BUSINESSES. All businesses in El Paso County **shall** develop and implement a health and safety policy (“**Health and Safety Policy**”). The Health and Safety Policy **shall require**, at a minimum, the following:

- a. All businesses (this shall include all offices and departments for the County of El Paso) must require employees, including volunteers, to have a face covering when either in an area or performing an activity which will necessarily involve close contact or proximity to co-workers or the public, where six (6) feet of separation from other individuals not in the same household is not feasible, and to the extent allowed by law;
- b. All businesses must require that all visitors, to include contractors and vendors, wear face coverings while on the business’s premises. Visitors subject to an exception listed in Section 4 are not subject to this provision;

- c. All businesses must maintain and provide face coverings for visitors;
- d. All businesses must post the Health and Safety Policy required by this Order in a conspicuous location sufficient to provide notice to employees, volunteers and visitors; and
- e. The Health and Safety Policy required to be developed and implemented by this Order may also include other mitigating measures designed to control and reduce the transmission of COVID-19 such as temperature checks and health screenings.

For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

County Essential Government Functions. For purposes of this Order, County employees that perform essential government functions may continue to work onsite. County employees who can work from home shall do so. County elected officials are strongly encouraged to allow their employees to work from home when possible.

Violation For Failure to Implement Health and Safety Policy. Failure to develop and implement the Health and Safety Policy required by this Order by the Effective Date may result in a fine not to exceed \$500 for each violation.

SECTION 8. ACTIVITIES SUBJECT TO RESTRICTION

- a. Individuals that are not employees, vendors, or medical personnel **shall not** visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
- b. County Facilities. All County owned facilities, parks, and recreational areas shall close for a two-week period. Hiking, biking, walking and fishing shall be allowed, but all social distancing measures to include the use of face coverings shall be followed and will be enforced. This shall include the closure of County owned golf courses, handball courts, basketball courts, tennis courts, and pools. All tournaments and special events shall be cancelled and prohibited during this period.
- c. Parades. No parades shall be permitted.
- d. IT IS STRONGLY ENCOURAGED AND RECOMMENDED THAT FOR THE SAFETY OF OUR COMMUNITY THAT SCHOOL DISTRICTS SUSPEND ALL EXTRACURRICULAR ACTIVITIES, TO INCLUDE SPORT ACTIVITIES, THROUGHOUT THE DURATION OF THIS ORDER.

SECTION 9. BUSINESS RESTRICTIONS

El Paso County business establishments may choose to operate at no more than 50 percent of the total listed occupancy of the establishment; provided, however, that:

1. There is no occupancy limit for the following:

a. Any services listed by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 4.0. or any subsequent version;

b. Religious services, including those conducted in churches, congregations, and houses of worship;

c. Local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;

d. Child-care services;

e. Youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths;

f. Outdoor recreational sports programs for youths and adults without spectators. Professional outdoor recreational sports may allow spectators, in accordance with Order, the State Minimum Standard Health Protocols, and as determined by the owner;

g. Any public or private schools, and any public or private institutions of higher education, not already covered above; and

h. Drive-in concerts, movies, or similar events, under guidelines that facilitate appropriate social distancing, that generally require spectators to remain in their vehicles, and that minimize in-person contact between people who are not in the same household or vehicle; and

i. The following establishments that operate with at least six feet of social distancing between work stations: cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade; massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and other personal care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services.

2. Except as provided below by paragraph number 3 in this section, there is no occupancy limit for outdoor areas, events, or establishments, with the exception of the following outdoor areas, events, or establishments that may operate at no more than 50 percent of the normal operating limits as determined by the owner:

- a. Amusement parks;
- b. Water parks;
- c. Swimming pools;
- d. Museums and libraries; and
- e. Zoos, and similar facilities.

3. All outdoor professional and similar sporting events, including rodeos and equestrian events, shall remain limited to 50 percent of the normal operating limits as determined by the owner. No spectators may attend the sporting events contained herein, with the exception of professional sporting events that may allow spectators, in accordance with this Order, State Minimum Standard Health Protocols, and as determined by the owner.

4. Except for indoor professional, and similar sporting events, **all indoor sporting events are suspended.**

5. **Any outdoor gathering in excess of 10 people is prohibited.** This prohibition shall not apply to the activities or gatherings set forth in paragraphs 1, 2 or 3 of this Section in this Order.

6. All restaurant dine-in services, to include outdoor service, such as on a patio or similar seating area, **shall end** at 9PM, but restaurants may continue to operate after 9PM via take out and drive thru only. Restaurants may resume dine-in services, to include outdoor service, beginning at 6AM. All individuals should abide by the curfew provisions outlined in this Order

7. For purposes of this Order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed; and

8. Staff members are not included in determined operating levels, except for manufacturing services and office workers.

9. Nothing in this Order precludes requiring a customer to follow additional hygiene measures when obtaining services.

SECTION 10. BARS OR SIMILAR ESTABLISHMENTS. Under no circumstances shall bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC) and are not restaurants operate. Provided however that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC.

SECTION 11. Incorporation of Local Public Health Authority Orders and Opening the State of Texas Minimum Recommended Health Protocols

Local Public Health Authority Orders as found at <http://epstrong.org/health-orders.php> and State of Texas Minimum Recommended Health Protocols as found at <https://www.dshs.state.tx.us/coronavirus/opentexas.aspx> are mandated for all reopened and/or allowed businesses, activities and services as provided by the Texas Governor.

SECTION 12. Enforcement

Pursuant to Texas Government Code Section 418.173(b), it is an offense for an individual to violate a condition or restriction of any Order issued by the El Paso County Judge during the public health crisis/disaster. Unless an alternate penalty is described within a specific Section of this Order No. 12, said offense shall be a Class C Misdemeanor punishable by a fine not to exceed \$500.

Any peace officer, including, but not limited to, officers of the El Paso County Sheriff's Office, the El Paso Police Department, and the Fire Marshal's Office, is hereby authorized to enforce the provisions of this Order in accordance with the authority granted under Chapter 418 of the Texas Government Code. To the extent allowed by law, this order may be enforced by any code enforcement officers, code compliance officers, or other similar designation, in the same manner that municipal codes and ordinances are enforced.

SECTION 13. This Order of the County Judge applies to all incorporated and unincorporated areas of El Paso County. This includes the Village of Vinton, City of San Elizario, City of Socorro, Town of Horizon City, Town of Clint, Town of Anthony, and City of El Paso. To the extent of conflict between the El Paso County Judge and mayor of any city within the geographic boundaries of El Paso County, the decisions set forth in this Order prevail to fullest extent allowed by law pursuant to Texas Government Code Section 418.108(n).

SECTION 14. Posting of this Order

The County will post this Order and links to Public Health Authority Orders and Opening the State of Texas Minimum Recommended Health Protocols. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this **shall** post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.

SECTION 15. Prior Orders

This Order is issued in accordance with and incorporates by reference declarations, ordinances, findings, and recitals set out in the preamble to this Order. Unless specifically referenced in this Order No. 12, all prior County Judge Orders and relevant amendments shall stand superseded. To the greatest extent possible, this Executive Order shall be interpreted as consistent with and supplemental to any executive order issued by the Texas Governor. All provisions of the executive orders of Governor Greg Abbott either existing or as, if and when issued, shall be automatically incorporated into and constitute terms of this Executive Order enforceable as if set forth herein without necessity for the issuance of any further orders. To the extent that there is a conflict between this Order and any executive order of the Governor, the strictest order shall prevail.

SECTION 16. Savings Clause. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Order.

SECTION 17. DURATION OF ORDER. This Order shall remain in full force and effect until **11:59 P.M. November 8, 2020**, unless it is modified, rescinded, superseded or amended pursuant to applicable law, the status of COVID-19 in El Paso County, Texas.

ORDERED this the 25th day of October, 2020.

COUNTY OF EL PASO, TEXAS

Ricardo A. Samaniego

Ricardo A .Samaniego,
El Paso County Judge