

019115

AN EMERGENCY ORDINANCE
RE-ENACTING, RESTATING AND AMENDING EMERGENCY ORDINANCE
NO. 019036, AS AMENDED;
PENALTY AS PROVIDED IN SECTION 8

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to COVID-19; and

WHEREAS, by proclamation issued on March 13, 2020, the Mayor declared a local state of disaster for the City of El Paso resulting from a public health emergency; and

WHEREAS, on March 17, 2020, the City Council, pursuant to City Charter Section 3.10, adopted Emergency Ordinance No. 019036 to meet a public emergency affecting, life, health, property or the public peace; and

WHEREAS, since March 2020, El Paso City Council has re-enacted Emergency Ordinance No. 019036 monthly, with the most recent extension taking place on October 27, 2020; and

WHEREAS, Section 122.006 of the Texas Health & Safety Code provides home-rule municipalities express authority to adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease; and

WHEREAS, Section 121.003 of the Texas Health & Safety Code states that a municipality may enforce any law that is reasonably necessary to protect public health; and

WHEREAS, between October 6th through October 24th, 2020, over 10,000 confirmed positive COVID-19 cases were reported; and

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

WHEREAS, as October 24, 2020, El Paso area hospitals Intensive Care Units were at 100% capacity; and

WHEREAS, while the exact location where an individual may have contracted COVID-19 remains unknown, current epidemiological data shows that of the people who became infected during the spike period from October 6th through October 24th individuals reported doing the following before becoming infected: 38.92% reported visiting stores, 22.04 % visited restaurants, 18.89% traveled to Mexico, 9.01% attended parties/reunions; 7.54% went to the gym, and 3.61% attended large gatherings; and

019115

WHEREAS, the number of positive COVID-19 cases doubled in one month from 24,979 on October 1st to 48,885 on October 30th, 2020; and

WHEREAS, the 7-day average of new cases per capita grew 490% from 26.7/100,000 on October 1st to 157.3/100,000 on October 30th; and;

WHEREAS, the positivity rate increased 126% from 9.43% on October 1st to 21.3% on October 30th; and

WHEREAS, El Paso increased COVID-19 testing by 180% from 17,211 during CDC week 40 to 48,325 during CDC week 43; and

WHEREAS, the number of daily tests (7-day rolling average) per capita increased almost 3-fold from 283/100,000 to 775/100,000; and

WHEREAS, COVID-19 related hospitalizations increased 450% in one month from a 7-day average of 162 on October 1st to 891 on October 30th; and

WHEREAS, the number of deaths is increasing; and

WHEREAS, on average, one death per day is confirmed as COVID-19, and 220 deaths remain under investigation; if all cases under investigation are confirmed to be due to COVID-19, El Paso will have an average of 7 deaths per day for the next month; and

WHEREAS, as of November 5, 2020, El Paso has 22,954 active cases and a 7-day rolling average positivity rate of 23.92%; and

WHEREAS, public health measures including isolation, quarantine, social and physical distancing play an important role in controlling the spread of SARS Cov-2/COVID-19; and

WHEREAS, a disaster continues to exist and requires that certain emergency measures be taken to meet a public emergency affecting life, health, property or the public peace; and

WHEREAS, the City Council desires to amend Emergency Ordinance No. 019036, as restated and amended on October 27, 2020, to incorporate additional restrictions to address the growing number of COVID-19 cases in El Paso; and

WHEREAS, this Order shall remain in effect through December 9, 2020, or until otherwise terminated, re-enacted, or superseded by a conflicting El Paso Local Health Authority order, or state or federal law or order.

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

That Emergency Ordinance No. 019036 is re-enacted, restated and amended to read as follows:

1. STATE AND FEDERAL GUIDANCE

019115

ORDINANCE NO. _____

20-1052-1069/PL#1036454.10/AS/Emergency Ordinance – Emergency Measures-with Permit Provisions

The City 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.

2. CITY BOARDS AND COMMISSIONS

[Reserved].

3. PRICE CONTROLS

A person shall not sell any of the following goods or services for more than the fair market value:

- a) groceries, beverages, toiletry articles, ice;
- b) construction and building materials and supplies, and earthmoving equipment and machinery;
- c) electrical and gas generating and transmission equipment, parts and accessories;
- d) charcoal briquettes, matches, candles, lamp illumination and heat unit carbides, dry batteries, light bulbs, flashlights, and hand lanterns;
- e) hand tools (manual and power), hardware and household supplies, and equipment rental;
- f) automotive parts, supplies, and accessories;
- g) plumbing and electrical tools and supplies;
- h) apartment, duplex, multi-family dwelling, rooming house, hotel and motel rental;
- i) motor oil, kerosene, grease, and automotive lubricants;
- j) restaurant, cafeteria, and boarding-house meals;
- k) services of roofing and building contractors, plumbers, electricians, mechanics, tree surgeons, and automobile wrecker companies;
- l) medicine, pharmaceutical, and medical equipment and supplies;
- m) blankets, quilts, bedspreads, bed linens, mattresses, bedsprings, bedsteads, towels, toilet paper; and
- n) furniture and clothing.

4. SUSPENSION AND MODIFICATION OF ORDINANCES AND RULES

- a) The following ordinances are hereby suspended or modified as indicated:
 - i. Any ordinance or regulation that imposes an obligation upon the City to deliver in less than five (5) business days any non-essential good, or service, as determined by the Mayor, is hereby suspended.
 - ii. Ordinance number 016736 is hereby modified to read as follows:

Ordinance granting the authority to the City Manager or designee to enter into and sign certain contracts on behalf of the City is hereby amended to authorize the City Manager to negotiate and enter into contracts, including the issuance of purchase

019115

orders, on behalf of the City and sign and bind the City for contracts for the acquisition of goods and services in an amount that exceeds \$50,000 per annum, in order to take immediate action to relieve the emergency necessity of the municipality's residents, to preserve the property of the municipality, and to protect the health, safety, and welfare of the municipality's residents.

- iii. El Paso City Code, Title 12(Vehicles and Traffic), Chapter 12.56 (Parking Meters), Sub-chapter 12.56.020 (Installation), Sub-section 12.56.020(F), second sentence of the first paragraph, as stated below is hereby suspended and temporarily replaced with the following:

Parking meter fees shall apply in all areas between the hours of 8:00 a.m. and 6:00 p.m. of every day except on officially designated city holidays and Sundays. The International Bridges Director shall make recommendations to city council for exceptions to the days and times when parking meter fees shall apply, except that, for the duration of the local disaster declaration, the Director of International Bridges or designee may, without recommending to City Council, select as exempt from the parking meter fees those parking meters that enable curbside pick up and take out at restaurants in increments not to exceed 15 minutes.

The Exceptions within 12.56.020(F) are not suspended or amended, and remain in full force and effect.

- iv. The following sections of the Resolution Amending the Rules of Order for the El Paso City Council (the "Rules of Order"), Revised, as Effective March 3, 2020, including but not limited to exhibits, is hereby temporarily suspended and amended as follows:

- a) All references to 9:00 a.m. are changed to 3:30 P.M.
- b) All references to 12:00 noon are changed to 6:00 P.M.

Except as amended herein, the remainder of the Rules of Order are not suspended or amended, and remain in full force and effect. This Rule shall not be in effect the week of Thanksgiving through the end of the 2020 calendar year; the City shall revert to its Original Rules of Order during this period.

- v. El Paso City Code Title 5 (Business License and Permit Regulations), Chapter 5.01 (General), Sub-chapter 5.01.090 (License/Permit-Appeal of denial, suspension or revocation), is hereby modified to add the following:

D. The City official or designee or the permit official or designee, as defined in El Paso City Code Chapter 5.01, may without warning, notice or hearing, suspend the permit and or license to operate an establishment granted under Title 5 of the El Paso City Code for a period not to exceed thirty days if:

019115

1. Conditions exist in an establishment that constitute an imminent health hazard, which by way of example may include failure to comply with any provision of a Local Emergency Directive, Local Health Authority Order, Emergency Ordinance, or other local, state or federal law relating to the COVID-19 pandemic;
2. The establishment operation has serious or repeated violations of any of the requirements noted in paragraph 1 above, which are a violation of this chapter. For purposes of this provision a serious violation includes but is not limited to, failure to comply with any provision of an active Local Emergency Directive, Local Health Authority Order, Emergency Ordinance or other local, state or federal law related to the spread of a communicable disease.

A City official or permit official may reinstate a permit if in the discretion of the official and following an inspection, the establishment has taken sufficient corrective actions. Any suspension subject to this paragraph D may be appealed pursuant to paragraphs A through C of this El Paso City Code Section 5.01.090, unless a specific chapter of the El Paso City Code sets out a different appeal process.

E. Whenever a permit or license is suspended the holder of the permit or license shall immediately cease operation of the establishment. It shall be a violation of this chapter to operate an establishment with a suspended permit or license.

- vi. Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.040 (Permit-Approval Process), is modified to add paragraph D which shall read as follows:

D. Permit Process Moratoria. If the Director finds that there is good cause to halt the issuance and or renewal of permits granted pursuant to Chapter 9.12 of the El Paso City Code, the Director may pause the processing and issuance of such permits for up to 30 days. Such good cause may be based upon lack of sufficient resources to conduct reviews, inspections, process payments, or based on a state of emergency, protection of life from imminent health hazards, or for other similar reasons.

If the Director makes such a determination he shall issue a written moratorium stating the date that the City will halt processing permits pursuant to Chapter 9.12 of the El Paso City Code, what the moratorium will halt the processing of, the basis for his determination, and the date which such permitting will resume. Upon issuing this Moratorium by filing it with the City Clerk, the City will cease processing new permits and/or renewals pursuant to Chapter 9.12 of the El Paso City Code. The City will continue to accept applications after the effective date of the moratorium, but they will be placed in a first in first out queue which will not be processed, acted upon or issued until the end date of the moratorium.

If an applicant for a permit or renewal has special circumstances which they believe warrants a permit or renewal be issued during the moratorium period, they may appeal to the City Manager or designee for a determination on that permit or renewal by filing a letter explaining their circumstances with the City Manager, who will within 10 days issue a final

019115

determination on whether the permit or renewal will be processed or must wait until the moratorium has ended.

vii. Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.080 (Suspension-Notification), Subsection (A) of the El Paso City Code is modified to read as follows:

A. The director or desi license to operate the establishment if:

1. Conditions exist in an establishment that constitute an imminent health hazard which by way of example may include failure to comply with any provision of a Local Emergency Directive, Local Health Authority Order, Emergency Ordinance, or other local, state or federal law relating to the COVID-19 pandemic;
2. The establishment operation has serious or repeated violations of any of the requirements of this chapter. For purposes of this provision a serious violation includes but is not limited to, failure to comply with any provision of an active Local Emergency Directive, Local Health Authority Order, Emergency Ordinance or other local, state or federal law related to the spread of a communicable disease

viii. El Paso City Code Title 9 (Health & Safety), Chapter 9.48 (Public Swimming Pools and Spas), f (Suspension of licenses and closure by director), sub-section A, is hereby modified to read as follows:

3. A violation not appearing on this list but appearing elsewhere in this chapter regarding public pool or spa health and safety which has not been corrected within the number of days indicated on a written notice of violation; or
4. The public swimming pool or public spa fails to comply with any provision of a Local Emergency Directive, Local Health Authority Order, Emergency Ordinance, or other local, state or federal law relating to the COVID-19 pandemic, which constitutes an imminent health hazard.

ix. Title 9 (Health & Safety), Chapter 9.84 (Miscellaneous Health Regulations), Section 9.84.030 (Spitting) is hereby modified to read as follows:

9.84.030- Spitting, Sneezing and Coughing.

It is unlawful for any person to:

1. With criminal negligence spit, sneeze or cough upon:
 - a. Another individual,
 - b. Any sidewalk,

019115

ORDINANCE NO. _____

20-1052-1069/PL#1036454.10/AS/Emergency Ordinance – Emergency Measures-with Permit Provisions

- c. Upon the floor of any bus, taxi, trolley-car, or other similar public conveyance,
- d. Upon the stairway, floor, passages or walls of any public building in the city,
- e. Upon the walks, grass, grounds, seats or stands in any of the public parks in the city which people regularly use for recreation, rest or amusement,
- f. Upon any frequently touched object with which members of the general public commonly interact, such as gas pumps, credit card readers, doorknobs, etc.

This section shall not apply to children ten years of age and less.

- b) The suspension or modifications of the ordinances and regulations listed in Subsection (a) shall remain in effect for 30 days, unless re-enacted in accordance with City Charter 3.10 or until the state of disaster is terminated, whichever is sooner.

5. MOVEMENT OF PEOPLE AND OCCUPANCY OF PREMISES

- a) Except as allowed or further restricted by federal, state or local law, individuals are prohibited from socially gathering in a group larger than ten (10) individuals (including those within the individual's household) in a single space.

For purposes of clarity, this does not prohibit people from visiting a variety of places, including but not limited to grocery stores, gas stations, churches, curbside retail, dry cleaning and banks, so long as the necessary precautions are maintained to reduce the transmission of COVID-19. Individuals that choose to leave their homes to obtain the aforementioned types of good or services should limit their visit to one member of the household, unless a caregiver; this limitation does not apply to visiting churches.

- b) [Reserved].

- c) Restaurants may remain open as allowed by the Texas Governor or local law, and pursuant to current Local Emergency Directives and El Paso Health Authority Orders for Restaurants, as amended.

6. TEMPORARY ASSISTANCE

The City urges all businesses to provide two weeks of paid sick leave to employees that succumb to COVID-19, are caring for someone with COVID-19, or are subject to quarantine. The City further urges businesses to apply for any available federal funding for the provision of paid sick leave.

7. UTILITIES & RESIDENCE

Residents and commercial tenants are responsible for paying their respective utility, mortgage and rent bills.

Landlords and tenants are encouraged to in good faith work out deferred payment plans or long term payment plans; however,

- a) To the extent allowed by law, no local utility shall discontinue the provision of cable, internet, water, gas, waste removal and electric utility services to a residential or commercial customer for lack of payment while this ordinance is in effect.
- b) To the extent allowed by law, no landlord shall evict a tenant for lack of payment while this ordinance is in effect.

8. PENALTIES

- a) These regulations shall have the effect of ordinances when duly filed with the City Clerk.
- b) A person who violates any provision of these regulations, upon conviction, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00).

9. NOTICE OF INDEPENDENT CRIMINAL PENALTIES

- A. State and local officials have with limited exceptions, mandated all individuals to wear a face covering 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. When an individual fails to wear a face covering, a COVID-19 infected person's cough or sneeze may result in droplets carrying COVID-19 to spread through the air and land in the mouths or noses of other individuals nearby.

The public is hereby on notice that coughing or sneezing on another person may subject them to criminal penalties for simple assault pursuant to the Texas Penal Code.

- B. Individuals who fail to follow Isolation and Quarantine Orders issued by the El Paso Department of Public Health knowingly expose others to COVID-19. Similarly, individuals whose names were not reported to the El Paso Department of Public Health and fail to self-quarantine despite knowing they are a high risk contact due to their exposure to an individual with COVID-19, knowingly expose others to COVID-19.

The public is hereby on notice that a violation of any Order issued by the El Paso Local Health Authority is a criminal offense and may result in criminal penalties. A violation of the El Paso Local Health Authority's Order may also result in ordered management, which may include involuntary incarceration in a treatment facility or other location as determined by the Court.

019.115

10. EMERGENCY

This ordinance is adopted as an emergency measure with the unanimous vote of the City Council Representatives present and the consent of the Mayor and pursuant to City Charter Section 3.10.

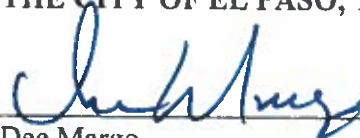
Except as specified in a preceding section, this emergency ordinance shall take effect immediately upon its adoption and publication and it is accordingly so ordained. This ordinance shall remain in effect for 30 days, unless re-enacted in accordance with City Charter section 3.10 or until the state of disaster is terminated, whichever is sooner.

11. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, sentences, paragraphs and sections of this ordinance are severable. If any part of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect the remaining phrases, sentences, paragraphs and sections.

PASSED AND ADOPTED, this 9th day of November, 2020.

THE CITY OF EL PASO, TEXAS


Dee Margo
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Karla M. Nieman
City Attorney

APPROVED AS TO CONTENT:


Mario M. D'Agostino, Fire Chief
El Paso Fire Department