

PIZZA PROPERTIES, INC., M&S)
 GROUP, INC. d/b/a WING DADDY’S,)
 RUN BULL RUN, LLC d/b/a)
 TORO BURGER BAR,)
 CHARCOALER, LLC, TRIPLE A)
 RESTAURANTS, INC., CC)
 RESTAURANT LP, FD MONTANA, LLC,)
 WT CHOPHOUSE, LLC, VERLANDER)
 ENTERPRISES, LLC and)
 BAKERY VENTURES I, LTD.,)
)
 Plaintiffs,)
)
 v.)
)
 EL PASO COUNTY, TEXAS and)
 RICARDO SAMANIEGO, IN HIS)
 OFFICIAL CAPACITY AS COUNTY)
 JUDGE, EL PASO)
 COUNTY, TEXAS,)
)
 Defendants.)

PLAINTIFFS’ ORIGINAL PETITION

Plaintiffs Pizza Properties, Inc., M&S Group, Inc. d/b/a Wing Daddy’s, Run Bull Run, LLC d/b/a Toro Burger Bar, Charcoaler, LLC, Triple A Restaurants, Inc., CC Restaurant LP, FD Montana, LLC, WT Chop House, LLC, Verlander Enterprises, LLC and Bakery Ventures I, Ltd. complain of Defendants, El Paso County, Texas, and Ricardo Samaniego, the County Judge for El Paso County, Texas, and for cause of action would show the Court as follows:

I.

DISCOVERY

1. Discovery will be conducted under Level Two.

II.

PARTIES

2. Plaintiff Pizza Properties, Inc is a company incorporated under the laws of the State of Texas having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

3. Plaintiff M&S Group, Inc. d/b/a Wing Daddy's is a company incorporated under the laws of the State of Texas having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

4. Plaintiff Run Bull Run, LLC d/b/a Toro Burger Bar is a Texas company having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

5. Plaintiff Charcoaler, LLC is a Texas company having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

6. Plaintiff Triple A Restaurants, Inc. is a company incorporated under the laws of the State of Texas having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

7. Plaintiff CC Restaurant LP is a Texas limited partnership having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

8. Plaintiff FD Montana, LLC is a Texas company having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

9. Plaintiff WT Chop House, LLC is a Texas company having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

10. Verlander Enterprises, LLC is a Texas company having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

11. Bakery Ventures I, Ltd. is a Texas limited partnership having its principal place of business in El Paso County, Texas. Plaintiff is authorized to transact business in the State of Texas.

12. Defendant El Paso County, Texas is a political subdivision of the state of Texas located in El Paso County, Texas, that is organized and operating under the laws of the State of Texas and is, therefore, a political subdivision of the State of Texas. Defendant El Paso County, Texas may be served with process by serving the County Judge of El Paso County, Texas, Ricardo Samaniego, at 500 E. San Antonio, Suite 301, El Paso, Texas 79901.

13. Defendant Ricardo Samaniego is the County Judge of El Paso County, Texas, and is being sued in his official capacity as County Judge of El Paso County, Texas. Defendant Ricardo Samaniego may be served with process at 500 E. San Antonio, Suite 301, El Paso, Texas 79901.

III.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action as it seeks a declaratory judgment that certain actions and orders of Ricardo Samaniego, County Judge of El Paso County, Texas, are invalid and were taken without legal authority – that is those actions and orders were and are *ultra vires* – and the Court has inherent jurisdiction and jurisdiction under the Texas Uniform Declaratory Judgments Act, §§ 37.001-.011, Texas Civil Practice and Remedies Code, to declare those actions *ultra vires* and to enjoin Defendants from future enforcement.

15. Venue is proper in El Paso County, Texas, under Section 15.002 of the Texas Civil Practice & Remedies Code, because all or a substantial part of the acts giving rise to the claim occurred in El Paso County, Texas.

16. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek relief that is within the jurisdiction of the Court. Plaintiffs seek a declaratory judgment and an injunction; Plaintiffs are not seeking monetary relief.

IV.

FACTS

17. On October 7, 2020, the Governor of the State of Texas, Greg Abbott, issued Executive Order No. GA-32 (see attached Exhibit A) relating to the continued response to the Covid-19 pandemic in Texas. As it applied to El Paso County, Texas, Order No. GA-32 required that most business establishments, including restaurants, may operate at up to 50% capacity. The order also provides that it supersedes any conflicting orders issued by local officials to the extent such orders restrict services allowed by the order.

18. On October 29, 2020, the County Judge issued his local Order No. 13 (see attached Exhibit B), which requires that as of October 30, 2020, most businesses must shut down, including the requirement that restaurants must cease to provide in-person dining. The County Judge was without legal authority to issue, and Defendants are without legal authority to enforce, Order No. 13. Order No. 13 is expressly superseded by the Governor's Order No. GA-32 because it is a conflicting order issued by a local official that restricts services allowed by the Governor's Order No. GA-32.

20. After the issuance of Order No. 13, the Texas Attorney General issued his opinion in a letter dated October 29, 2020 (see attached Exhibit C) in he concluded Order No. 13 contradicts Order No. GA-32 and therefore exceeds the Defendants' authority and is unenforceable. Indeed, the County Judge has acknowledged that he does not have the authority to issue or enforce Order No. 13. The County Judge was quoted by KFOX news saying, "I respect the Governor's orders,

but the people dying are not in Austin. They are in El Paso.” This is an implicit admission that Order No. 13 conflicts with and is superseded by the Governor’s Order No. GA-32. As quoted by KFOX news, the County Judge went on to say that: “he knows Governor Abbott has the authority to step in and stop this shutdown.” This is an implicit admission that in this area, the Governor’s authority is superior to Defendants’.

V.

CAUSES OF ACTION

Count I: Declaration that Order No. 13 is invalid and illegal and that the County Judge acted *ultra vires*, that is without legal authority, in issuing Order No. 13

21. Plaintiffs request that the Court declare that Order No. 13 is void, invalid, illegal, and unenforceable and that the County Judge acted *ultra vires*, that is, without legal authority, when he issued Order No. 13.

Count II: Injunctive Relief

22. Plaintiffs request that the Court enter a temporary restraining order, a temporary injunction, and a permanent injunction prohibiting Defendants from enforcing Order No. 13.

23. Ours is a nation, a state, and a county of laws. One of our society’s foundations is the rule of law. Even in times of emergency, the government at all levels is constrained in its actions by our laws. In the past, the government has on rare occasion sought to ignore its own laws out of a sense of necessity, in an effort to respond to a present emergency. Each time, history has shown the error of that course, such as with the internment of Japanese Americans during World War II and the suspension of *habeas corpus* during the Civil War. We may have different opinions about the best course of action to be taken during the Covid-19 pandemic, and we may not agree with the actions or lack of actions taken by those in authority over us. That, however, does not give any of us, including the County Judge, the right to take the law into his own hands. We have a process

for changing laws – by elections which can change those in authority over us. Indeed, we are less than a week away from important federal and state elections. But what purpose do elections serve if those in authority are allowed to ignore our federal and state laws? When we vote and choose our elected officials, we must abide by their decisions until the next election, and this is just as true for the County Judge as it is for all those eating in, employed at, and operating restaurants in El Paso County, Texas.

Wherefore, Plaintiffs pray that Defendants be cited to appear and answer, that judgment be rendered granting Plaintiffs the judicial declarations and injunctive relief requested above.

Respectfully submitted,

KEMP SMITH LLP
P.O. Box 2800
El Paso, Texas 79999-2800
915.533.4424
915.546.5360 (FAX)

By: /s/ Mark N. Osborn
Mark N. Osborn
State Bar No. 15326700
Mark.Osborn@kempsmith.com
Shelly W. Rivas
State Bar No. 24003145
Shelly.Rivas@kempsmith.com

CERTIFICATE OF SERVICE

I certify that on this 30th of October, 2020, a copy of the foregoing was sent via email to:

Jo Anne Bernal
County Attorney for
El Paso County, Texas
joanne.bernal@epcounty.com

/s/ Mark N. Osborn
Mark N. Osborn

Exhibit A



GOVERNOR GREG ABBOTT

October 7, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3pm O'CLOCK

OCT 7 2020

A handwritten signature in black ink, appearing to be "Ruth R. Hughs", written over the printed name "Secretary of State".

Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-32 relating to the continued response to the COVID-19 disaster as Texas reopens.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

A large, handwritten signature in black ink, appearing to be "GSD", written over the printed name "Gregory S. Davidson".

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
October 7, 2020

EXECUTIVE ORDER GA 32

Relating to the continued response to the COVID-19 disaster as Texas reopens.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to reopen Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from the Texas Department of

July 2020, respectively, and amended Executive Order GA-28 by proclamation on July 2, 2020; and

WHEREAS, due to improved medical treatments for COVID-19 patients, substantial increases in testing, abundant supplies of personal protective equipment, and Texans' adherence to safe practices like social distancing, hand sanitizing, and use of face coverings, the spread of COVID-19 and the number of new COVID-19 cases and hospitalizations have steadily and significantly declined since late July; and

WHEREAS, I therefore issued Executive Orders GA-30 and GA-31 on September 17, 2020, allowing additional reopening and non-essential medical surgeries and procedures in Texas, except in some areas with high hospitalizations as defined in those orders; and

WHEREAS, as Texas continues to reopen, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, other medical advisors, the White House, and the CDC, do hereby order the following on a statewide basis effective at 12:01 a.m. on October 14, 2020:

Every business establishment in Texas shall operate at no more than 75 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

- 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. recreational sports programs for youths and adults;
 - g. any public or private schools, and any public or private institutions of higher education, not already covered above;
 - 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. In areas with high hospitalizations as defined below, any business establishment that otherwise would have a 75 percent occupancy or operating limit may operate at up to only 50 percent. This paragraph does not apply, however, to business establishments located in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19.
- “Areas with high hospitalizations” means any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity is 15 percent or less. A current list of areas with high hospitalizations will be maintained at www.dshs.texas.gov/ga3031.
3. Except as provided below by paragraph No. 5, there is no occupancy limit for outdoor areas, events, and establishments, with the exception of the following outdoor areas, events, or establishments that may operate at no more than 75 or 50 percent, as applicable, 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, aquariums, natural caverns, and similar facilities.

6. Restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, and whose customers eat or drink only while seated, may offer dine-in services.
7. Bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC), and are not restaurants as defined above in paragraph No. 6, may offer on-premises services only as described by this paragraph. A bar or similar establishment may offer on-premises services at up to 50 percent of the total listed occupancy of the establishment *if*:
 - a. the bar or similar establishment is not in an area with high hospitalizations as defined above, and the county judge of the county in which the bar or similar establishment is located files the requisite form with TABC; or
 - b. the bar or similar establishment is in an area with high hospitalizations as defined above, but is located in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, and the county judge of the county in which the bar or similar establishment is located also files the requisite form with TABC.

Patrons at bars or similar establishments operating under this paragraph may eat or drink only while seated, except that in an establishment that holds a permit from TABC as a brewer, distiller/rectifier, or winery, customers may sample beverages while standing so long as they are in a group of six people or fewer and there is at least six feet of social distancing or engineering controls, such as partitions, between groups.

Where applicable, this 50 percent occupancy limit applies only indoors; the limit does not apply to outdoor areas, events, or establishments, although social distancing and other protocols must be followed.

People shall not visit bars or similar establishments that are located in counties not included in parts (a) or (b) above. A current list of all counties reopening under this paragraph will be maintained on TABC's website.

The use by bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks remains allowed to the extent authorized by TABC.

8. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed.
9. Staff members are not included in determining operating levels, except for manufacturing services and office workers.
10. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people shall not be in groups larger than 10 and shall maintain six feet of social distancing from those not in their group.
11. People over the age of 65 are strongly encouraged to stay at home as much as

services.

14. People may visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities as determined through guidance from the Texas Health and Human Services Commission (HHSC). 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.
15. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.


All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-30, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-24, GA-25, GA-29, or GA-31. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 7th
day of October, 2020.

ATTESTED BY:

A handwritten signature in black ink, appearing to read 'Ruth R. Hughs', written over a horizontal line.

RUTH R. HUGHS
Secretary of State

Exhibit B

2020 OCT 29 PM 7:34

ORDER NO. 13
BY THE COUNTY JUDGE OF EL PASO COUNTY, TEXAS
STAY AT HOME/STAY SAFE ORDER
DATE ORDER ISSUED: OCTOBER 29, 2020

DELIA BRIONES
COUNTY CLERK
EL PASO COUNTY, TEXAS

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 16, 2020, Governor Greg Abbott and El Paso County Judge Ricardo A. Samaniego each issued declarations of disaster pursuant to Chapter 418, Texas Government Code, in order to respond to the COVID-19 pandemic; and

WHEREAS, on March 19, 2020, the El Paso County Commissioners Court issued an Emergency Order extending the County Judge'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 Judge'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 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; on October 25, 2020 Order No. 12; and

WHEREAS, both the State of Texas and County of El Paso remain under a state of disaster, but in the recent week, El Paso County is experiencing a dramatic increase in COVID-19 cases, causing 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 of the Texas Government Code; and

WHEREAS, a County Judge, 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 418.015 and 418.018 of the Texas Government Code; and

WHEREAS, El Paso County's COVID-19 the positivity rate 7-day rolling average on October 1, 2020 was at 9.43% and on October 14th was at 11.92%, on October 25, 2020 was at 16.37% and has now increased as of October 29, 2020 to 17.24%, showing an upward trend and nearly a 183% increase in the positivity rate over the past 4 weeks; and

WHEREAS, as of today there are 14,359 active COVID-19 cases in El Paso County; and

WHEREAS, from October 10, 2020 to October 29, 2020 over 14,399 confirmed positive COVID-19 cases were reported; and

WHEREAS, on October 15, 2020 Governor Abbott, while in El Paso County when COVID-19 positive cases were far lower than today, stated "local officials do have levels of flexibility to make sure they are able to contain the spread of COVID-19"; and

WHEREAS, as of October 29, 2020, El Paso County had 7-day average of 133.9 cases per 100,000 population; and

WHEREAS, as of October 29, 2020, El Paso County's COVID-19 hospitalization rate is 44% and El Paso County's hospitalization rate has spiked from 8.3% to 44% COVID-19 related hospitalizations; a 365.2% increase over the last four weeks, which will have a detrimental effect on El Paso's health system; and

WHEREAS, as of October 29, 2020, El Paso's hospitalization rate of COVID-19 patients is almost triple the 15% capacity that the Governor of Texas has identified as a critical metric which requires consideration of further shutdowns and emergency action; and

WHEREAS, as of October 29, 2020, the capacity of all El Paso County area hospitals has reached its limits; and

WHEREAS, as October 29, 2020, all El Paso County area hospitals Intensive Care Units have exceed capacity and hospitals are now forced to establish temporary alternate care sites and airlift patients to other cities and have asked the Governor, through the Texas Department of

Emergency Management, for additional alternate care sites to be able to care for El Paso County residents requiring hospitalizations; and

WHEREAS, on October 25, 2020 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, on October 7, 2020, I requested from Governor Abbott an exemption from further business openings, specifically to highlight that as a community comprised of 82.9% Hispanic or Latino, El Paso is experiencing a disproportionate and devastating impact in COVID-19 cases, hospitalizations and deaths; and

WHEREAS, as of October 28, 2020 according to the Texas Department of Health Services data, Hispanics represent 39.7% of all COVID-19 positive cases in Texas and represent 55.7% of all COVID-19 fatalities in Texas; and

WHEREAS, the State of Texas has provided much needed emergency relief including personnel, testing and equipment, yet despite the assistance El Paso will continue to experience unprecedented hardship; and

WHEREAS, on October 22, 2020, I again notified Governor Abbott of the surge of COVID-19 cases and the strain on our hospital resources which I foreshadowed would necessitate further action to stop the crisis in our community; and

WHEREAS, County law enforcement, at my urging have dramatically increased efforts at enforcing the existing Stay Home, Work Safe Order; and

WHEREAS, despite efforts to encourage voluntary compliance, warnings, and enforcement, El Paso County continues to experience a surge of cases; and

WHEREAS, the El Paso United COVID-19 Transition Taskforce, a taskforce made up of healthcare community leadership has issued a plea that additional measures be taken to address

the state of hospitalizations that are far exceeding surge capacity despite the deployment of resources from the State which will be exhausted and overwhelmed within days; and

WHEREAS, the El Paso United COVID- Transition Taskforce created a scorecard based on five areas with over fifteen measures to monitor the status of the disease in our community and El Paso County is at Stage 1 which is the worse stage that indicates that maximum protections should be in place for the community; and

WHEREAS, despite the efforts by our community and its leadership and previous efforts by the State, El Paso County is experiencing higher infectivity and expected increased deaths; and

WHEREAS, as El Paso County's positive COVID-19 cases are worse today than when the first Stay at Home Order was issued; 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. STAY AT HOME OR PLACE OF RESIDENCE

All individuals living within the County of El Paso are ordered to temporarily stay at home or at their place of residence. **Effective Thursday, October 29, 2020 at 11:59 PM MDT**, unless terminated or modified by a subsequent Order, the County Judge of El Paso County, Texas, deems it in the public interest to issue this Order, and orders that all individuals currently living in El Paso County, Texas to stay at home or at their place of residence except as allowed by this Order. Unless terminated or modified by a subsequent Order, this Order **shall expire on Wednesday, November 11, 2020 at 11:59 PM MST**. 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 shall, to the greatest extent feasible, maintain social distancing of at least six feet from any other person, consistent with the social distancing and face covering requirements.

All persons may leave their residences to participate in Election Activities, which is deemed an essential service, perform certain Essential Activities, to perform work or operate in an

Essential Business, Essential Governmental Functions, or in Critical Infrastructure, engage in Essential Travel or Minimum Basic Operations all defined below.

SECTION 2. ELECTION ACTIVITIES ARE AN ESSENTIAL SERVICE AND NOT AFFECTED BY THIS ORDER

- i. 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.
- ii. Election activities shall continue to follow Public Health Authority Orders and Guidelines relating to election activities.
- iii. The public should be assured that election activities are safe and significant steps have been taken to provide a sanitary environment as well as follow all appropriate social distancing and face covering measures.
- iv. ALL POLLING SITES SHALL REMAIN OPEN to continue election activities.

SECTION 3. STAY AT HOME OR PLACE OF RESIDENCE CURFEW

In addition to the MANDATE to **STAY AT HOME OR PLACE OF RESIDENCE**, a curfew for all persons **shall** be imposed from 10:00 PM to 5:00 AM, unless that person is out on Essential Travel, performing Essential Activities or going to work in an Essential Business, Government Service or Critical Infrastructure, as defined in this Order.

SECTION 4. NON-ESSENTIAL BUSINESS AND OPERATIONS MUST CEASE

All businesses or operations with a facility in the County of El Paso, except Essential Businesses as defined in this Order, are required to cease all activities at facilities located within the County except Minimum Basic Operations as defined in this Order. For clarity, businesses may continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e. working from home), or providing Retail to Go.

SECTION 5. PROHIBITED ACTIVITIES

All public or private gatherings **of any number of people** occurring outside a single household or living unit are prohibited, except as otherwise provided in this Order. Nothing in this Order prohibits the gathering of members of a household or living unit. Nursing homes, retirement and long-term care facilities shall prohibit non-essential visitors from accessing their facilities unless to provide critical assistance.

SECTION 6. TRAVEL

All travel, including but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, is prohibited, except for purposes of Essential Travel, performing Essential Activities or going to work in an Essential Business, Government Service, or Critical Infrastructure, as defined in this Order. To the greatest extent feasible, people riding on public transit shall comply with social distancing and face covering requirements as defined in this Order and provided in CDC Guidelines. Notwithstanding anything to the contrary, if someone in a household has tested positive for COVID-19, the household is ordered to isolate at home. Members

of the household cannot go to work, school, or any other community function until cleared by a medical professional, but may seek medical services as needed from medical personnel and facilities.

SECTION 7. DEFINITIONS AND EXEMPTIONS

a. **Individuals experiencing homelessness.** A person that is homeless is exempt from this Order, however, such a person is strongly urged to obtain shelter.

b. **Essential Activities.** For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” People at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.

i. **For Health and Safety.** 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 need to work from home).

ii. **To Obtain Necessary Supplies and Services.** To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others (for example, food, pet supply, and any other household consumer products), and products necessary to maintain the safety, sanitation, and essential operation of residences.

iii. **For Outdoor Activity.** To engage in outdoor activity such as visiting open parks provided the individuals comply with Social Distancing Requirements (for example, walking, biking, hiking, fishing or running). Individuals may go to public parks and open outdoor recreation areas.

a. **County Facilities.** All County owned facilities, parks, and recreational areas shall close for the duration of this Order. 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.

iv. **For Certain Types of Work.** To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order.

v. **To Take Care of Others.** To care for a family member or pet in another household or to care for a friend, child, the elderly, sick or dying.

vi. **To Seek Safe Residence.** Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their homes and stay at a safe alternative home or residence.

vii. **Religious services** including those conducted in churches, congregations, and houses of worship; however, given the critical condition of the community battling COVID-19 it is STRONGLY ENCOURAGED THAT SERVICES BE PROVIDED REMOTELY.

c. **Essential Critical Infrastructure.** Work necessary to the operations and maintenance of the critical infrastructure sectors as identified by the National Cybersecurity and Infrastructure Agency (CISA) including public works construction, residential and commercial construction, airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), financial institutions, defense and national security-related operations, essential manufacturing operations provided that they carry out those services or that work in compliance with Social Distancing Requirements of six feet, to the extent possible. Essential Businesses providing essential critical infrastructure shall implement screening precautions to protect employees and all activity shall be performed in compliance with Social Distancing Requirements.

d. **Essential Government Functions.** All services provided by local governments needed to ensure the continuing operation of the government agencies to provide for the health, safety and welfare of the public. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Government Functions.” Each government body shall determine its Essential Government Functions and identify employees and/or contractors necessary to the performance of those functions. All Essential Government Functions shall be performed in compliance with Social Distancing Requirements of six feet, to the extent possible.

i. **County Essential Government Functions.** All County elected officials are strongly encouraged to allow their employees to work from home when possible.

e. **Businesses Covered by this Order.** 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.

f. **Essential Business.** For purposes of this Order, Essential Business shall be defined as the following:

i. **Healthcare Operations.** Healthcare operations, including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, mental health providers, substance abuse service providers, blood banks, medical research, laboratory services, or any related and/or ancillary healthcare services. Home-based and residential-based care for seniors, adults, or children are also considered healthcare operations. Healthcare operations also includes veterinary care and all health and welfare services provided to animals. This exemption shall be viewed broadly to avoid any impacts to the delivery of healthcare. This includes all

ancillary workers necessary for the delivery of healthcare services. Healthcare operations **DO NOT** include fitness and exercise gyms and similar facilities.

ii. **Essential Retail.**

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.

1. Food service providers, including grocery stores, warehouse stores, big-box stores, bodegas, liquor stores, gas stations and convenience stores. Food cultivation, including farming, fishing, and livestock.
2. Businesses that ship or deliver groceries, food, goods or services directly to residences.
3. Restaurants and other facilities that prepare and serve food, **but only for delivery or curbside service, in-person dining is prohibited** under this Order.
4. Schools and other entities that typically provide free services to students or members of the public on a pick-up and take-away basis only.
5. The restriction of delivery or carry out does not apply to cafes and restaurants located within hospital and medical facilities.
6. Laundromats, dry cleaners, and laundry service providers.
7. Automobile dealerships, auto manufacturing and assembly, auto-supply, auto and bicycle repair, hardware stores, and related facilities.
8. Businesses that supply products needed for people to work from home.
9. This exemption **DOES NOT** apply to outdoor food stalls or other goods sold in an outdoor market, including but not limited to farmers' markets and swap meets.
10. **Retail to Go.** Retail services that may be provided through pick-up, delivery by mail, or delivery to the customer's doorstep. All Social Distancing and Face Covering Requirements shall be followed.

iii. **Providers of Basic Necessities to Economically Disadvantaged Populations.** Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals.

iv. **Essential Services Necessary to Maintain Essential Operations of Residences or Other Essential Businesses.** Trash and recycling collection,

processing and disposal, building cleaning, maintenance and security, warehouse/distribution and fulfillment, and storage for essential businesses. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operations of residences and Essential Businesses.

v. **Professional Services**, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities.

vi. Businesses that supply other essential businesses with support or supplies needed to operate.

vi. **Petroleum Refineries**

vii. **Media**. Newspapers, television, radio, and other media services. Members of the media shall follow all Social Distancing and Face Covering Requirements.

viii. **Financial Institutions**. Banks and related financial institutions, consumer lenders, sales and finance lenders, credit unions, appraisers, and title companies.

ix. **Mail and Delivery Services**. Businesses providing mailing and shipping services, including post office boxes.

x. **Educational Institutions**. Educational institutions- including public and private K-12 schools, colleges, and universities-for purposes of facilitating both distance and onsite learning or performing essential functions, provided that Social Distancing and Face Covering Requirements are followed; however, given the critical condition of the community battling COVID-19 it is **STRONGLY ENCOURAGED THAT EDUCATIONAL SERVICES BE PROVIDED REMOTELY OR SUSPENDED UNTIL SUCH TIME IT IS SAFE TO RESUME IN PERSON INSTRUCTION AS PERMITTED BY LAW. FURTHERMORE, IT IS STRONGLY RECOMMENDED AND ENCOURAGED THAT FOR THE SAFETY OF OUR COMMUNITY THAT SCHOOL DISTRICTS SUSPEND ALL EXTRACURRICULAR ACTIVITIES, TO INCLUDE SPORT ACTIVITIES, THROUGHOUT THE DURATION OF THIS ORDER.**

xi. **Supplies for Essential Businesses, Critical Infrastructure and Essential Government Functions**. Businesses that supply other Essential Businesses, Critical Infrastructure, and Essential Government Functions with the support or supplies necessary to operate; including but not limited to computers, audio and video electronics, hardware, paint, electrical and plumbing material. Sanitary equipment, medical equipment and supplies, and food and beverages. This includes businesses and manufacturers that retool so that a substantial part of their business is for the purpose of manufacturing and producing ventilators.

xii. **Food Delivery Services.** Businesses that ship or deliver groceries, food, goods or services directly to residences or stores that sell groceries or other essential supplies.

xiii. **Transportation.** Taxis, trains, and other private transportation providers (such as Uber and Lyft) that provide transportation services necessary for the performance of Essential Activities, Essential Businesses, Critical Infrastructure, Essential Government Functions, and Essential Travel. This includes transportation maintenance services such as mechanics necessary to keep transportation services operational.

xiv. **Home-Based Care and Services.** Home-based care for the sick or dying, seniors, adults, or children, including caregivers who may travel to provide support and/or care.

xvi. **Residential Facilities and Shelters.** Residential facilities and shelters for seniors, adults, children, including but not limited to homeless shelters, centers against family violence, and transitional housing.

xvii. **Information Technology Services.** IT and IT services and their essential services vendors, including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, web-based services, and critical manufacturing. This includes stores primarily engaged in repairing computers, electronics and cell phones.

xviii. **Childcare Facilities.** Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:

1. Childcare must be carried out in stable groups of 10 or fewer (“stable” means that the same 10 or fewer children are in the same group each day).
2. Children shall not change from one group to another, unless there is a closure of a childcare facility that requires a child to be placed in a new childcare facility. Children coming from facilities that may have closed shall be grouped together in one group, when possible.
3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
4. Childcare providers shall remain solely with one group of children.

xix. **Animal Shelters and other Business that Maintain Live Animals.** Business that maintain and care for live animals are not permitted to allow any visitors or patrons, but may continue to operate to the extent necessary to provide for the animals. Nothing in this Section shall prohibit a non-employee from entering the premises to perform an Essential Health Care Services or another Essential Business Service.

xx. **Vector and Pest Control.** Establishments primarily engaged in exterminating and controlling birds, mosquitos, rodents, termites, wasps, and other insects and pests.

xxi. **Funeral and Post-Mortem Services:** Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers. Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to behavioral health services to family members, responders, and survivors of an incident. Given the state of an overwhelming surge on fatalities funeral homes may operate at 50% capacity.

g. **Minimum Basic Operations.** As noted above, all businesses or operations with a facility in the County of El Paso, except Essential Businesses as defined in this Order, are required to cease all activities at facilities located within the County, except for Minimum Basic Operations and Retail to Go, as defined in this Order. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with all Social Distancing and Face Covering Requirements:

- i. The minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of business’s physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions; or
- ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

h. **Essential Travel.** For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing and Face Covering Requirements as defined in this Order.

- i. Any travel related to the provision of or access to Election Activities, Essential Activities, Essential Governmental Functions, Essential Businesses, Critical Infrastructure, or Minimum Basic Operations;
- ii. Travel to care for or transport the elderly, minors, dependents, persons with disabilities, or other vulnerable persons, pets, or livestock;
- iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services;
- iv. Travel to return to a place of residence from outside the jurisdiction;
- v. Travel required by law enforcement or court order, including an administrative court order;
- vi. Travel by church staff/clergy for the purpose of providing religious services and other ministries requiring travel;
- vii. Travel required for non-residents to return to their place of residence outside the County.
- viii. Travel engaged in interstate commerce and otherwise subject to the provisions of the Commerce Clause of the United States Constitution.

- i. **Social Distancing Requirements.** For purposes of this Order Social Distancing Requirements include maintain at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer with at least 60% alcohol, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.
- j. **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:*
 - i. 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);
 - ii. Any person with a medical condition or disability that prevents wearing a face covering;
 - iii. Any person while the person is consuming food or drink;
 - iv. Any person while the person is (a) exercising or engaging in physical activity outdoors, indoors, individually or in a group and (b) maintaining a safe distance from other people not in the same household;
 - v. Any person while the person is driving alone or with passengers who are part of the same household as the driver;
 - vi. 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;
 - vii. Any person while the person is in a swimming pool, lake, or similar body of water;
 - viii. 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;
 - ix. Any person who is actively providing or obtaining access to religious worship, but wearing a face covering is strongly encouraged;
 - x. 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 8. 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 9. 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.

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 10. ESSENTIAL SERVICES EXEMPTED. Notwithstanding the above restriction, this Order is not intended to apply to any business operations delivering essential services. Essential Services means services, by whomsoever rendered, and whether rendered to the government or to any other person, the interruption of which would endanger life, health or personal safety of the whole or part of the population.

SECTION 11. TERM. This Order shall be effective on Thursday, October 29, 2020 at 11:59 PM MDT, and continue until Wednesday, November 11, 2020 at 11:59 PM MST unless otherwise terminated, rescinded, superseded, or amended by the County Judge pursuant to applicable law.

SECTION 12. ORDER POSTING. The County of El Paso must promptly provide copies of this Order by posting on the El Paso County website. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.

SECTION 13. 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. 13, 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, County of El Paso Constables, 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 14. APPLICATION. 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.

SECTION 15. POSTING OF THIS ORDER

The County will post this Order. 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 16. 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. 13, all prior County Judge Orders and relevant amendments shall stand superseded. To the extent that there is a conflict between this Order and any executive order of the Governor, the strictest order shall prevail.

SECTION 17. 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 18. This order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms, and this order shall remain in effect until the state of local disaster is terminated, subject to being extended, modified, amended, rescinded, or superseded by me.

ORDERED this the 29th day of October, 2020, in El Paso County, Texas.



Ricardo A. Samaniego
El Paso County Judge

Exhibit C



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2020

The Honorable Dee Margo
Mayor
City of El Paso
800 N. Campbell, 2nd Floor
El Paso, Texas 79901

Dear Mayor:

This letter concerns your question about whether the El Paso County Judge's Stay Home/Stay Safe Order ("Order") exceeds the county's lawful authority and creates potentially dangerous situations for enforcement. We conclude that it does both and is therefore unlawful.

The Order announced tonight mandates an immediate two-week shutdown of all businesses and activities deemed non-essential.¹ Additionally, the Order requires citizens to shelter in place, bans all public or private gatherings of any number of people occurring outside a single household, and prohibits all non-essential travel.

As you know, Governor Abbott has issued executive orders pursuant to his authority under the Texas Disaster Act concerning the statewide response to the coronavirus epidemic.² Governor Abbott's most recent order governing reopening of Texas, Executive Order GA-32 (GA-32), explicitly preempts all contradictory local orders.³ Insofar as the local Order conflicts with GA-32 by restricting essential or reopened services, it is invalid and unenforceable.

GA-32 further recommends, but does not mandate, that all essential and reopened businesses follow the Guidelines from the President, CDC, and minimum standards health protocols recommended by the Department of State Health Services. In contrast, some of the requirements in the local Order far exceed what is permitted under GA-32.

¹ El Paso County Order No. 13 (October 29, 2020), available at:
<https://www.epcounty.com/documents/Order-No-13.pdf>.

² See Tex. Gov't Code § 418.012.

³ Exec. Order GA-32 at 6 (October 7, 2020).

Additionally, GA-32 establishes a ceiling on capacity for businesses, but it allows businesses—not local governments—to decide whether to operate at a capacity that does not exceed this limitation. Nothing in GA-32 allows local governments to shut down businesses as the county here attempts to do. Because the county's restriction conflicts with the Governor's order and exceeds its lawful authority, it is invalid.⁴

Moreover, the local Order bans all "travel on foot, bicycle, scooter, motorcycle, automobile, or public transit" except for essential travel or travel relating to working at an approved essential business.⁵ Such a ban of the movement of people creates confusion for the constituents of El Paso and a potentially dangerous situation for law enforcement. A local order that limits the movement of people conflicts with GA-32. Accordingly, GA-32 preempts the local Order, rendering it unenforceable.

Finally, the plain language of Executive Order GA-32 only requires Texans to minimize social gatherings and in-person contact with people who do not live in the same household.⁶ The Governor's order does not include a mandatory "shelter-in-place" order.⁷ But the county's order does. The Order requires all residents to shelter in place, closes all businesses that are non-essential or not reopened services, and prohibits all gatherings except those permitted by the Order. As we have explained, Executive Order GA-32 supersedes conflicting local orders that restrict essential or reopened services. Insofar as El Paso County's order conflicts with the Governor's order, it is unenforceable.

In sum, County Order No. 13 is unlawful and unenforceable because it conflicts with Executive Order GA-32. For these reasons, we have advised El Paso County Judge Samaniego to immediately rescind or revise his order to make it consistent with GA-32 or face likely further legal action.

Sincerely,



Lesley French
General Counsel