

2016 MAY -4 PM 3: 15

**COUNTY JUVENILE CURFEW
Order**

Pursuant to Texas Local Government Code §351.903, on this the 2nd day of May, 2016, the El Paso County Commissioners Court, after holding a public hearing in accordance with the Texas Local Government Code §370.002 does hereby approve and adopt a County Juvenile Curfew Order which reads as follows:

WHEREAS, the El Paso County Commissioners Court has found and determined that in the County of El Paso, Texas there has been:

1. a decrease in crimes against property and against persons since the first curfew order; and
2. an increase in referrals of persons under the age of seventeen;

WHEREAS, persons under the age of seventeen are particularly susceptible, by their lack of maturity and experience, to participation in unlawful or gang-related activities and to victimization by crime perpetrators, particularly during nocturnal hours; and

WHEREAS, a need has been shown for the County of El Paso to provide for the protection of minors from each other and from other persons in the unincorporated areas of the county during certain nighttime hours, for aiding parents in carrying out their responsibility to exercise reasonable supervision of their children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activity; and

WHEREAS, Commissioners Court has seen a need to adopt a County Juvenile Curfew for the public good and the safety and welfare of the community.

NOW, THEREFORE, BE IT ADOPTED BY THE EL PASO COUNTY COMMISSIONERS COURT OF EL PASO, TEXAS:

**SECTION I
Definitions**

1. "Public Place" means any street, alley, highway, sidewalk, playground, park, plaza, building or other place used by or open to the public. The term "street" includes the legal right-of-way, including but not limited to the traffic lanes, curb, sidewalk, whether paved or unpaved, parkway and any grass plots or other grounds found within the legal right-of-way of a street.
2. "Minor" means a person who is under the age of seventeen years.
3. "Parent" means a person who is:

- (a) the natural or adoptive parent of a minor;
 - (b) the court-appointed guardian of a minor or the public or private agency with whom a minor has been placed by a court; or
 - (c) at least 21 years of age and authorized by the parent or court-appointed guardian of a minor to have the care and custody of said minor.
4. "Custodian" means the adult with whom the minor resides.
5. "Remain" means to:
- (a) linger, stay behind, tarry, loiter, idle, to continue to stay unnecessarily upon a public place, including the congregating of groups where a public place is not being used for its ordinary or designated purposes such a passage or going home; or
 - (b) fail to leave a public place when requested to do so by a law enforcement officer or the owner, operator, or other person in control of the public place.
 - (c) The term "remain" will be construed to proscribe loitering or remaining and not proscribing mere presence or being.
6. "Sheriff" means the elected Sheriff of El Paso County, Texas or his designated representative.
7. "Curfew hours" means the period beginning at eleven (11) p.m. and ending at five (5) a.m. the following day. El Paso County uses Mountain Standard Time as seasonally modified by Daylight Savings Time. Law enforcement officers shall use the official time given by the El Paso County Sheriff's Office, Communications Division to determine the time of the offense.

SECTION II.
Curfew – Offenses

- 1. A minor commits an offense if he remains in any public place within the unincorporated area of El Paso County, Texas during curfew hours.
- 2. A parent of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place within the unincorporated area of El Paso County, Texas during curfew hours.

3. A parent of a minor commits an offense if he knowingly fails to respond within two hours of receipt of any notification by a law enforcement officer to take control of the minor taken into custody for violation of this Order, unless reasonably hindered from doing so.

SECTION III.

Curfew – Exemptions – Defenses.

1. It is a defense to and exemption from prosecution for a violation of this Order that the minor was:
 - (a) accompanied by the minor's parent;
 - (b) on an errand at the direction of the minor's parent, was using a direct route, and was carrying a signed correspondence by the parent stating a brief description of the errand and that the named minor has consent to perform such errand;
 - (c) in a motor vehicle engaged in interstate travel, beginning, ending or passing through El Paso;
 - (d) engaged in an employment activity, or traveling to or from an employment activity, including but not limited to newspaper delivery, and was using a direct route;
 - (e) involved in an emergency;
 - (f) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the law enforcement officer about the minor's presence;
 - (g) attending an official school, civic or religious activity or returning home by a direct route from an official school, civic or religious activity;
 - (h) attending or traveling directly to or from an activity involving the exercise of First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and the right of assembly; or
 - (i) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.
2. Each of the foregoing defenses, and their several limitations, are severable, as hereinafter provided but re-emphasized here.

SECTION IV.
Curfew – Enforcement

1. A law enforcement officer, upon suspecting a minor to be in violation of this Order, shall take necessary steps to determine whether the minor is remaining in a public place within the unincorporated area of El Paso County in violation of this Order and whether any exemptions or defenses under Section III apply to the actions or activities of the minor. If the officer has probable cause to believe that the minor is in violation of this Order, the officer shall take appropriate enforcement action against the minor in accordance with Article 45.059 of the Texas Code of Criminal Procedure.
2. If a minor is taken into custody for a violation of this Order, the law enforcement officer shall take the minor to a place designated by the Sheriff as a juvenile curfew processing office.
3. If a minor is taken into custody for a violation of this Order, the law enforcement officer shall take the necessary steps to release the minor to a parent, guardian, or custodian.
4. When a minor is issued a citation or taken into custody for a violation of this Order, the law enforcement officer may, by certified mail return receipt requested, notify a parent of the minor that the minor has violated this Order and include a warning that any subsequent violation may result in prosecution of the minor and the parent under this Order.
5. The El Paso County Sheriff's Office will serve as the primary agency in the effective implementation of this Order. This Order, as all other laws and orders, shall be enforced in a fair, equitable and nondiscriminatory manner throughout the County.

SECTION V.
Curfew – Violation – Penalty.

1. Any minor who violates this Order shall be guilty of a class C misdemeanor and shall be punished for the first offense by a fine not to exceed \$50.00 and thereafter on any subsequent offense punished by a fine not to exceed \$200.00 and may be subject to appropriate action by a juvenile court in accordance with Sections 51.03 and 51.08 of the Texas Family Code and Section 8.07 of the Texas Penal Code.
2. A parent of a minor who violates any provision of this Order shall be guilty of a Class C misdemeanor and shall be punished by a fine for the first offense not to exceed \$50.00 and thereafter on any subsequent offense not to exceed \$200.00.

SECTION VI.
Construction

1. Severability is intended throughout and within the provisions of the Juvenile Curfew Order. If any provision including inter alia any exemption, defense, subsection, part, phrase, term, or word, or the application thereof to any person or circumstance is held invalid or unconstitutional by valid judgment or decree of a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions, and they shall remain in full force and effect.
2. It is intended that the Juvenile Curfew Order be held inapplicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. The El Paso County Commissioners Court does not intend to violate the Constitution of the State of Texas or the Constitution of the United States of America, and does not intend an interpretation of this Order or an application thereof which is absurd, impossible or unreasonable.

SECTION VII
Review - Public Hearing

In accordance with Texas Local Government Code §370.002, before the third anniversary of the date of the adoption of this Order, and every third year thereafter, the El Paso County Commissioners Court shall: (1) review the Order's effects on the community and on problems the Order was intended to remedy; (2) conduct public hearings on the need to continue this Order; and (3) abolish, continue, or modify this Order.

SECTION VIII.
Effective Date

This Order will be in effect on 3rd day of May, 2016 at 12:01 a.m. Any offense occurring prior to this date and time will be governed by the prior order in effect at the time of the violation.

SECTION IX.
Signatures

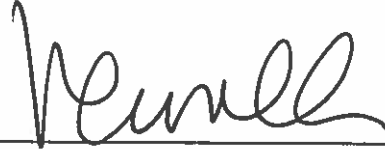
That this Order was duly enacted with all requisites and formalities incident thereto the enactment of orders, and such is evidenced by the below signatures.

APPROVED AND ADOPTED this the 2nd day of May, 2016.

ATTEST:



Delia Briones
El Paso County Clerk



Veronica Escobar
El Paso County Judge