

Updates

March 27, 2020

California's "Safer-at-Home" Order Permits Many Construction Projects to Continue

On March 18, 2020, we [authored an update](#) regarding housing construction under the shelter-in-place orders jointly issued by six Bay Area counties—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara—requiring residents to shelter-in-place and mandating closure of many businesses. We also discussed the orders' effect on construction and real estate development. Since then, Governor of California Gavin Newsom and numerous other local municipalities—including, but not limited to, the counties of **Humboldt, Lake, Los Angeles, Marin, Mendocino, Monterey, Napa, Sonoma, Sutter, Yolo, and Yuba**, and the cities of **Berkeley** and **Fresno**—have issued similar orders.

California Order's Effect on Housing and Other Construction

Under Governor Newsom's March 19, 2020, safer-at-home order (Executive Order N-33-20), activities related to travel and work at a variety of construction sites are exempt. The governor issued [additional clarification](#) on March 20, 2020, regarding the scope of activities exempted under the order. With these clarifications, the governor permitted housing construction to continue. This likely includes new construction projects as well as those that are currently underway. Please see <https://covid19.ca.gov/stay-home-except-for-essential-needs/>.

In addition to housing construction, the California order also exempts travel and work activities related to the construction of the "Essential Critical Infrastructure" sectors, as defined by the United States Cyber and Infrastructure Security Agency. The 16 Essential Critical Infrastructure sectors are those sectors whose assets, systems, and networks, are considered so vital that their incapacitation or destruction would have a debilitating effect on security, national economic security, or national public health or safety. Please see <https://covid19.ca.gov/stay-home-except-for-essential-needs/>. The sectors are quite broad, including "commercial facilities," such that it appears most construction projects are effectively exempt. Builders are encouraged to review the governor's order and subsequent clarifications to determine if construction may continue at a particular project site. However, construction may be limited by a local county or city order, as discussed below.

Bay Area and Other Local Orders' Effect on Housing and Other Construction

The Bay Area and other government orders cited above generally permit construction to support Healthcare Operations, Essential Infrastructure (including Housing), Essential Government Functions, and Essential Businesses, provided social distancing is observed to the extent possible. Most local governments have added FAQs to their websites to provide additional guidance regarding the orders. To determine whether your construction project may be affected we recommend you refer to the particular order and applicable FAQs.

As discussed in our prior update, the California Building Industry Association has taken the position, which we support, that the intent of the orders supports the conclusion that ancillary services necessary to accomplish permissible construction are exempt as well.

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