



News & Publications

Update: Impact of Changes to State and Bay Area Shelter-In-Place Orders on Construction

4.30.20 | Client Alert

[Update: Impact Of Changes To State And Bay Area Shelter-In-Place Orders On Construction](#)

California and local shelter-in-place orders have been changing since they were first enacted, having significant impacts on the real estate and construction industries.

As discussed in our first client alert on this subject, effective as of March 17, 2020, several Bay Area counties, including San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara, as well as the City of Berkeley, enacted the first shelter-in-place orders in California, which required individuals to remain in their residences unless they were performing certain “Essential Activities” or “Government Functions,” or they were operating “Essential Businesses.” These first orders limited private construction to the construction of housing (in particular affordable housing or housing for individuals experiencing homelessness).

Two days later, Governor Newsom issued an Executive Order mandating that individuals throughout the State stay at home to preserve public health and safety. As discussed in a subsequent client alert, the statewide order permitted “Essential Critical Infrastructure Workers During COVID-19” identified by the Cybersecurity & Infrastructure Security Agency (CISA) as supplemented by a list published by the State Public Health Officer on March 22. CISA issued updated lists on March 28 and April 17. The State order has always deemed essential all construction workers who support the construction, operation, inspection and maintenance of all construction sites and projects.

Related Professionals

Daniel M. Engler

Alicia N. Vaz



Although questions remained, the net effect of State and local orders in the Bay Area and Berkeley on construction was that sites involving any type of housing kept operating but most industrial and commercial projects were shut down. However, approximately two weeks later, the Bay Area counties and Berkeley issued revised orders that both extended the shelter-in-place requirement for those jurisdictions and curtailed the businesses that were deemed essential, which we discussed in another client alert. Most notably, these orders expressly prohibited most residential and commercial construction with extremely narrow enumerated exceptions such as for health care facilities and affordable housing. Those orders were set to expire on May 3, 2020.

To balance the health and safety of individuals with mitigation of the economic harm caused by the shelter-in-place orders, Governor Newsom and leaders of local jurisdictions throughout the State are now taking steps to “reopen the economy” by incrementally easing the restrictions imposed by the shelter-in-place orders.

As part of this effort, on April 29, the Bay Area counties and Berkeley issued new shelter-in-place orders that supersede and extend the prior orders. Each of the April 29 orders are largely the same as each other. They go into effect on May 4 and expire on May 31, unless otherwise modified. Importantly, Section 16.f.v of these revised orders allow construction within those jurisdictions to proceed to the extent permitted by the State shelter-in-place order provided that certain mandated protocols are followed.

Although construction had already been identified as essential under the State order, on April 28 the California State Public Health Officer updated its list of Essential Critical Infrastructure Workers, adding a new sector called “Industrial, Commercial, Residential, and Sheltering Facilities and Services.” This section discusses the workers who support categories of construction permitted by the statewide order, thereby indicating the construction that is now permitted under the Bay Area and Berkeley orders. It expressly includes:

Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing, commercial, and mixed-use construction); and workers who support the supply chain of building materials from production through application/installation, including cabinetry, fixtures, doors, cement, hardware, plumbing, electrical, heating/cooling, refrigeration, appliances, paint/coatings, and employees who provide services that enable repair materials and equipment for essential functions. (Paragraph 1)

Appendices B1 and B2 of the Bay Area and Berkeley orders set forth Small and Large Construction Project Safety Protocols, respectively, that mandate that all construction job sites implement certain restrictions and requirements, including:

Complying with all applicable and current laws and regulations, including but not limited to OSHA and Cal-OSHA. For example, on April 24, Cal-OSHA published Safety and Health Guidance COVID-19 Infection Prevention In Construction. However, since the laws and regulations as well as guidance from OSHA and Cal-OSHA change regularly it is important to have procedures in place to regularly determine the most current information.

Designating a site-specific COVID-19 supervisor or supervisors to enforce this guidance that is present at all times.



Establishing a daily screening protocol and a cleaning and decontamination protocol prior to entry and exit of the jobsite.

Practicing social distancing by maintaining a minimum six-foot distance between workers including staggering trades as necessary.

Prohibiting gatherings of any size on the jobsite, including gatherings for breaks or eating, except for meetings regarding compliance with this protocol or as strictly necessary to carry out a task associated with the construction project.

Providing PPE specifically for use in construction, including gloves, goggles, face shields, and face coverings as appropriate for the activity being performed.

If hand washing facilities are not available at the jobsite, place portable wash stations or hand sanitizers that are effective against COVID-19 at entrances to the jobsite and in multiple locations dispersed throughout the jobsite as warranted.

Maintaining a daily attendance log of all workers and visitors that includes contact information, including name, phone number, address, and email.

Posting notices that are visible to workers and visitors.

Large construction sites are also required to, among other things, implement a Site-Specific Health and Safety Plan that includes a COVID-19 community spread reduction plan and assigns a COVID-19 Safety Compliance Officer and a Third-Party Jobsite Safety Accountability Supervisor.

Additional requirements and other safety protocols for both small and large construction sites are set forth in Appendix B to each of the orders and should be followed carefully. Failure to do so may result in closure of the construction site.

It is anticipated that the State of California and other local jurisdictions will modify their shelter-in-place orders over the next several weeks to ease some of the restrictions on businesses. Cox, Castle & Nicholson is tracking these orders here.