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April 30, 2020

Bay Area Counties Relax Restriction on Construction and Other Low-Risk Activities

The six Bay Area counties that led the way in requiring their citizens to shelter in place on March 16 and again on March 31—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara—issued new orders on April 29 extending many of the shelter-in-place requirements to May 31. The new orders also ease restrictions on certain activities determined to be low risk, including construction and outdoor businesses. This update describes how the orders enable construction and outdoor businesses to resume operations, subject to safety protocols.

Bay Area Counties Permit Construction, Subject to Construction Safety Protocols

Effective May 4, the six Bay Area counties will permit all construction activities to resume by adopting the construction worker exemption set forth in Governor Gavin Newsom's March 19 safer-at-home order, as implemented by the state public health officer. The state public health officer's April 28 memorandum explains that "Essential Critical Infrastructure Workers" who are exempt from the state's stay-at-home requirements include:

"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 [are exempt from the state order]..."

Accordingly, given the broad category of construction workers exempt from the shelter-in-place orders, essentially all construction work may resume in the Bay Area counties on May 4, subject to a detailed set of Construction Safety Protocols set forth in Appendix B to the orders.

The Construction Safety Protocols include one set of protocols for small construction projects (residential projects with 10 or fewer units and commercial projects with less than 20,000 square feet of floor area) and another set for larger construction projects. Both sets are designed to promote physical distancing and create procedures for precautionary measures in response to the pandemic.

Service Providers and Businesses That Support or Supply Construction Are Permitted

All service providers that enable real estate transactions (and not just residential real estate transactions), including, but not limited to, real estate agents, escrow agents, notaries, and title companies are exempt under the new orders.

All businesses that supply or support other "Essential Businesses" (including construction) with the supplies or support necessary to operate also are exempt.

Outdoor Businesses Are Permitted

Outdoor Businesses also are permitted to resume operations, subject to the social distancing protocols described in Appendix A to the orders. Outdoor Businesses are those that operate primarily outdoors and can maintain social distancing of at least six feet between all persons. Specific examples described in the orders include the following:

- Businesses primarily operated outdoors, such as wholesale and retail plant nurseries, agricultural operations, and garden centers
- Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services

In addition to these specified activities, a broad array of development-related outdoor business activities should be permitted to resume on May 4, including outdoor services provided by arborists, botanists, biologists, hydrologists, land surveyors, site inspectors, soils and geotechnical engineers, and the like, provided the social distancing requirements can be maintained.

Bay Area County Orders

View all of the orders discussed in this update at the following links:

Alameda County

[Contra Costa County](#)

[Marin County](#)

[San Francisco County](#)

San Mateo County

[Santa Clara County](#)

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