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**UPDATE ON SHELTER IN PLACE ORDERS: CONSTRUCTION ON PUBLIC
WORKS AND HOUSING MAY CONTINUE; UNCERTAINTY RETURNS WITH
REGARD TO COMMERCIAL PROJECTS**

There currently is significant uncertainty as to whether state and local Shelter-in-Place orders permit commercial construction. Because of this uncertainty, if you are working on a commercial project, we strongly recommend that you contact local authorities where your project is located to determine if construction on your project will be allowed to proceed.

On Friday night, March 20, 2020, the Governor issued a directive amending Executive Order N-33-20, which ordered individuals to remain in their residences except when working on critical infrastructure. The directive identified “Essential Critical Infrastructure Workers” as including:¹

- Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction).
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste).
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance

¹Late on March 22, 2020, the Governor added workers for construction suppliers to the list of critical infrastructure workers.

personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues.

- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences.
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities and critical sector services.

<https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

At the same time, the State of California COVID 19 website clarified that “depending on the conditions in their area, local officials may enforce stricter public health orders.” However, on Sunday morning, March 22, 2020, the State of California reversed that position and posted the following statement:

How does this order interact with local orders to shelter in place? Does it supersede them?

This is a statewide order.

It is therefore unclear whether counties and cities can ban work on commercial construction projects. A number of local authorities, such as Santa Clara, are refusing to allow commercial construction. For example, Santa Clara County has asserted that “general construction” is allowed only under the following circumstances:

Unless your construction project is a health care facility, it is only allowed if it is necessary to the operation or maintenance of “essential infrastructure,” as that term is defined in the Order.

Because of the current uncertainty created by the Governor’s Executive Order and conflicting directives from state and local government, we recommend that you check with local authorities as to whether construction on your project will be allowed.

We will continue to update you regarding any clarifications or other changes that are issued regarding Shelter-in-Place orders.

We hope that you and your families stay safe and well in this unprecedented time. Please email or call us if we can help you in any way. We are working remotely and can continue to assist you. We are also monitoring changes the law and will provide you with updates as matters develop. We look forward to seeing you – in person – once the COVID 19 emergency passes!

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