

Shelter-in-Place Implications for Bay Area Development Projects

On March 16, 2020, seven Bay Area counties, including San Francisco, Alameda, Contra Costa, San Mateo, Marin, Santa Clara, and Santa Cruz, issued nearly identical orders to Shelter-in-Place (the "Order"), to be effective as of 12:01 a.m. March 17, 2020. The issuance of the Order intended to ensure the maximum number of people self-isolate to slow the spread of COVID-19. While the Order mandates a wide variety of actions to protect the health and safety of Bay Area residents, the Order has several practical implications for development projects in the Bay Area.

Per Section 10(c) of the Order, individuals may only leave their residence to provide any services necessary to the operations of maintenance of Essential Infrastructure. Essential Infrastructure includes, but is not limited to, public works construction, construction of housing (in particular, affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electric, oil refinery, road, public transit, and waste removal. All of these services must comply with social distancing policies.

Developers can likely expect delays in the processing of land use entitlements, including zoning applications, building permit applications, and inspections unless the project involves public works construction, the construction of affordable housing, and the other activities listed above. The City and County of San Francisco, for instance, has confirmed that, for housing production projects, it will continue to conduct local building inspections and facilitate the recordation of written instruments necessary for transferring ownership and occupancy. However, developers should check with their local jurisdiction for details. Applicants also might find that planning desks, to the extent they are open, are not accepting new planning applications for non-residential development, so as to avoid conflicts with deadlines set forth under the Permit Streamlining Act. Presumably agency staff will continue processing existing applications to meet applicable deadlines, though the Order could be interpreted to disallow this activity, thereby creating tension with state law.

While individuals may leave their residence only to perform Essential Activities, such as activities related to health, grocery shopping, or to care for family members, there is no prohibition



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from performing Essential Government Functions, per Section 10(d). The San Francisco order defines Essential Government Functions as services needed to ensure the continuing operation of the government and provide for the health, safety, and welfare of the public. Other counties such as Santa Clara, Alameda, and Contra Costa Counties, define Essential Governmental Functions more broadly, and defer to the judgment of the governmental entity performing those functions. In all counties, Essential Governmental Functions shall comply with social distancing restrictions.

Section 10(d) gives great deference to local governments to define Essential Government Functions. As such, it is possible, if not very likely, that the processing of development applications will cease or greatly slow down. It is advisable to check with the local jurisdiction on processing times and related closures.

Links to the seven-county orders are located on the Hanson Bridgett COVID-19 Resource Center.

Separately, on March 12, 2020, Governor Newsom issued [Executive Order N-25-20](#) (the "Executive Order") which suspends provision of the Brown Act and Bagley-Keene Act to allow for greater flexibility to hold public meetings via telephone conference. Please refer to the [March 13 Hanson Bridgett alert](#) for more information.

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