



## CONSTRUCTION IS SPECIFICALLY EXEMPTED FROM CALIFORNIA “STAY HOME” EXECUTIVE ORDER.

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**MARCH 23, 2020 UPDATE:** Since the March 19 Executive Order, Governor Newsom has clarified construction in California is exempt from the State of California’s shelter-in-place order. The Governor identified construction workers as exempt on [page 11](#) of the linked Essential Critical Infrastructure Workers update: “Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction).”

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a copy of which can be found [here](#). The Executive Order allows Californians working in the 16 sectors outlined at <https://www.cisa.gov/critical-infrastructure-sectors> to continue working during the COVID-19 pandemic. These sectors are:

- Chemical Sector
- Commercial Facilities Sector
- Communications Sector
- Critical Manufacturing Sector
- Dams Sector
- Defense Industrial Base Sector
- Emergency Services Sector
- Energy Sector
- Financial Services Sector
- Food and Agriculture Sector
- Government Facilities Sector
- Healthcare and Public Health Sector
- Information Technology Sector
- Nuclear Reactors, Materials, and Waste Sector
- Transportation Systems Sector
- Water and Wastewater Systems Sector

sectors. In addition to the 16 identified sectors, the Executive Order allowed the Governor to designate other sectors as critical to California, and therefore, permitted to continue work. Since the issuance of the Executive Order, the Governor has explicitly stated, “The California State Public Health Officer and Director of the California Department of Public Health is ordering all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors.” (<https://covid19.ca.gov/stay-home-except-for-essential-needs/>) The Governor has now published a list of essential critical infrastructure workers which specifically allows construction to continue. Accordingly, the State of California is allowing construction to proceed.

We will continue to track developments and we recommend all contractors stay informed. →

Many ongoing construction projects and operations in California fall within these

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## IMPACT OF CALIFORNIA “STAY HOME” EXECUTIVE ORDER ON LOCAL HEALTH ORDERS

The Executive Order also states, “[t]his Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19.” However, construction projects may be located in jurisdictions with differing or overlapping health orders from counties and cities. With regard to conflicts with local orders, the State of California’s website identifies the Executive Order as “a statewide order.”

Under the California Constitution, counties and cities “may make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Const. Art. XI, (7).) However, local legislation in conflict with the state general laws is void. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290-291.)

“Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject [was] otherwise one properly characterized as a ‘municipal affair.’” (*Ibid*, internal citations omitted.) Further, if an ordinance is in substance a criminal statute which attempts to prohibit conduct proscribed or permitted by state law either explicitly or implicitly, it would be preempted. (*Id.* at p. 293.)

## READ CAREFULLY: LOCAL ORDINANCES MAY CONFLICT WITH THE EXECUTIVE ORDER

The determination of whether a local ordinance conflicts with state law will depend on the specific text of the local ordinance. Similarly, the scope of a local ordinance to a particular construction project will depend on the specifics of the project. However, generally, due to the statewide importance of work in critical sectors, including construction, ordinances prohibiting all construction activities may be in conflict with the Executive Order and may be void to the extent of the conflict. Based on the State of California’s website, it appears the state is taking the position that the Governor’s Executive Order controls.

## PROTECTING YOURSELF AND YOUR EMPLOYEES

As construction operations continue, it is important to follow the guidance of the CDC, Cal/OSHA, and public officials/public health agencies. The current Cal/OSHA interim guidelines for addressing COVID-19 can be found [here](#). These guidelines should be reviewed with all supervisory personnel to ensure safe practices on all jobsites are being followed.

## STILL HAVE QUESTIONS? WE’RE HERE TO HELP.

Please contact us if you have specific questions regarding your projects or need further information to respond to owners or local jurisdictions. ■

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**For more information, please contact  
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