

# Alert

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## D.C. Closes Non-Essential Businesses, Restricts Sick Employees of Essential Businesses

On March 24, 2020, the District of Columbia joined the growing number of jurisdictions in the United States closing “non-essential” businesses in response to the novel coronavirus (COVID-19) pandemic. Following similar orders from Maryland and Virginia, the mayor for the District of Columbia issued *Mayor’s Order 2020-053*. Failure to comply with this order could result in fines, suspensions, and/or loss of licensure. The district’s new business restrictions went into place at 10:00 p.m. on March 25, 2020 and were scheduled to last for one month through April 24, 2020.

UPDATE: On March 30, 2020, the mayor for the District of Columbia followed up her prior order, issuing *Mayor’s Order 2020-054*, a stay-at-home order for all district residents. The stay-at-home order requires residents to remain in their homes except for “Essential Activities” like obtaining food and medical care, accessing “Essential Governmental Functions,” working at “Essential Businesses,” or engaging in “Essential Travel” or “Allowable Recreational Activities,” as defined in the order. Failure to comply with this order can result in fines, imprisonment for up to 90 days, and/or loss of business licensure. The stay-at-home restrictions for district residents go into place beginning at 12:01 a.m. on April 1, 2020, and will remain in effect until at April 24, 2020.

The March 30 order adopted the provisions included in the March 24 order regarding which businesses are essential. That order provides a specific list of businesses it considers non-essential and the list does not include any aspect of the construction industry. However, the order also defines essential business operations in a way that only captures a portion of the construction industry. Specifically, it identifies among the list of essential businesses:

Construction and Building Trades, including plumbers; pipefitters; steamfitters; electricians; boilermakers; exterminators; roofers; carpenters; bricklayers; welders; elevator mechanics; businesses that sell supplies and materials for maintenance of commercial and residential buildings and homes, including ‘big box’ supply stores, plumbing distributors, electrical distributors, and HVAC distributors; and other businesses that provide services that are necessary to maintaining the safety, sanitation, and operation of residences and Essential Businesses.

(*Mayor’s Order 2020-053* § IV(1)(j)).

Most likely, the district intends this definition to include all construction activities as essential business. It is clear that businesses that support maintenance of residential properties are considered essential — even big-box stores. What is less clear, by the references of suppliers to commercial and residential buildings and homes and then to essential businesses as opposed to construction and building trades, is whether ancillary businesses such as suppliers and fabricators for new residential, commercial, or industrial construction are essential. Although we believe that such suppliers are included in the spirit of the order, and consistent with other guidance issued by federal agencies and state governments, by limiting the definition in key areas to those services involved in supporting, maintaining, and servicing residential and commercial properties, it is possible the mayor’s order could be read to not include new construction in essential business. Contractors should consult with their upstream contracting partners to determine whether these projects in the district will be directly impacted from this new order. For ongoing district projects,



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contractors should confirm with their downstream suppliers that labor, material, and equipment will continue to be timely delivered and must consider whether projects in the district will be impacted from restrictions in other jurisdictions, depending on locations of suppliers and manufacturers.

An important aspect of this order is that construction projects will not be allowed to employ any workers who are sick, even on essential business. Specifically, “an individual who is suspected or confirmed to be infected with COVID-19 or any other transmissible infectious disease or who has symptoms of a cold or influenza (the flu) may not be engaged in conducting Essential Business.” As a result, contractors must now closely monitor the health of their employees to ensure compliance with the mayor’s order. Contractors are strongly advised to enforce strict “stay home if you are sick” policies for their employees to avoid potential consequences for noncompliance.

Notably, the March 30 order provides a new definition for essential travel, which includes travel within the Washington region, not just the district, to engage in allowable activities under that jurisdiction’s laws. This would cover construction employees in the region, so long as their work remains essential.

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**For additional strategies on responding to and documenting impacts from these government actions and COVID-19 in general, please refer to our previous client alert, [COVID-19 Strategies for the Construction Industry](#). Additionally, visit the [Cozen O’Connor’s COVID-19 website](#) for new updates. For advice on preparing for and responding to pandemic-related cost and schedule impacts, please contact any one of [Cozen O’Connor’s Construction Group attorneys](#) who can help guide you through the legal challenges. For information on pandemic-related real estate, development, and zoning issues, follow [Cozen O’Connor’s Get the Dirt blog](#).**