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Governor Phil Murphy Issues Executive Order 122 Restraining All “Non-Essential Construction” During COVID-19 Public Health Emergency

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Adding to a litany of executive orders issued to diminish the spread of COVID-19, on April 8, 2020, Governor Phil Murphy issued [New Jersey Executive Order No. 122](#) (the Order) which, among other things, orders and directs all “non-essential construction projects” to cease by no later than 8:00 pm on Friday, April 10, 2020. As set forth below, businesses are permitted to continue performing “essential construction projects” provided they immediately implement a number of policies to protect all workers at, and visitors to, the construction site.

Essential Construction Projects

Pursuant to the Order, Governor Murphy has identified a number of different projects as “essential construction projects” that businesses are permitted to continue performing. They are summarized below. Residential developers should particularly be mindful of sections (d), (m) and (n), and should carefully review sections (f) and (g):

- a. Projects necessary for the delivery of health care services;
- b. Transportation projects;
- c. Utility projects;
- d. Residential projects that are exclusively affordable housing;
- e. Projects involving schools and higher education facilities;
- f. Projects already underway involving individual single-family homes, or an individual apartment unit where an individual already resides, with a construction crew of 5 or fewer individuals;
- g. Projects already underway involving a residential unit for which a tenant or buyer has already entered into a legally binding agreement to occupy the unit by a certain date, and construction is necessary to ensure the unit’s availability by that date;
- h. Projects involving the manufacture, distribution, storage, or servicing of products sold by online retail businesses or essential retail businesses;
- i. Projects involving data centers or facilities critical to a business’s ability to function;
- j. Projects necessary for the delivery of essential social services;
- k. Projects necessary to support law enforcement agencies or first responder units;
- l. Projects ordered or contracted for by any level of government;
- m. Any work to secure and protect a non-essential construction project for its suspension; and
- n. Any emergency repairs necessary to ensure the health and safety of residents.

Which Construction Projects are Considered “Essential?”

Many residential developers may currently be working on construction projects involving, for example, multiple, individual single family homes or townhomes, or condominium complexes with buildings containing multiple units that they believe may qualify as “essential construction projects” under sections (f) and (g).

On April 9, 2020, the State government issued an updated Guidance attempting to answer the question of what construction is deemed essential under sections (f) and (g). The Guidance states that sections (f) and (g) encompass “projects already underway at a single-family home—or an individual apartment unit where an individual already resides—with a construction crew of 5 or fewer”; and “projects already underway involving a

residential unit which a tenant or buyer has legally agreed to occupy by a certain date, if construction is necessary for the unit's availability." We highly recommend consulting with counsel and the State of New Jersey to confirm that such projects can continue after the Order goes into effect and to avoid any penalties for violations of the Order.

Policies for Ongoing Operations during COVID-19

Businesses performing essential construction projects are required under Order 122 to adopt new policies and procedures to protect workers and visitors. These include:

- a. No non-essential visitors;
- b. Worksite meetings cannot involve more than 9 people;
- c. Everyone must be at least 6 feet apart "wherever possible;"
- d. Stagger start and stop times "where practicable;"
- e. Stagger lunch breaks and work times "where practicable;"
- f. Restrict the number of people who can access common areas at once (such as restrooms and breakrooms);
- g. Require workers and visitors to wear masks and workers to wear gloves. The business must provide, at its own expense, masks and gloves for the workers;
- h. Require infection control practices such as handwashing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- i. Limit sharing of tools, equipment and machinery;
- j. Provide hand sanitizer or wipes (or other sanitization materials); and
- k. Frequently sanitize high-touch areas such as restrooms, breakrooms, equipment and machinery.

Policies Governing Exposure to COVID-19 and Maintaining In-Person Operations

These businesses must also adopt policies that address what occurs at the workplace if there is an exposure to COVID-19. These policies must be implemented regardless of whether a workplace has already experienced an exposure. These policies require:

- Immediately separate and send home workers who have symptoms consistent with COVID-19;
- Promptly notify workers as to any known exposure to COVID-19 at the worksite;
- Sanitize the worksite in accordance to CDC guidelines.

Additionally, businesses authorized to maintain in-person operations pursuant to Executive Order No. 107 (and subsequent orders) as well as owners of commercial and industrial buildings are required to adopt policies that require them to:

- Clean and disinfect high-touch common areas;
- Maintain cleaning procedures in all other areas of the worksite/facility;
- Ensure the facility has sufficient staff to perform the cleaning protocols and in a manner that is consistent with the safety of occupants, visitors and workers.

If you have any questions about your operations and whether a construction project in which you are involved qualifies as an "essential construction project" with respect to Executive Order No. 122, please contact [Don Taylor](mailto:Don.Taylor@wilentz.com) at 732.855.6434 or dtaylor@wilentz.com, or [Dan Kluska](mailto:Dan.Kluska@wilentz.com) at 732.855.6033 or dkluska@wilentz.com.

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