



March 25, 2020

Please see the information below distributed by the Puget Sound Chapter, NECA, below regarding further clarification from Governor Inslee as to whether or not construction is considered an essential business under the "Stay Home, Stay Safe" Order.

[View this email in your browser](#)



Governor Inslee's Memorandum Clarifying His "Stay Home - Stay Safe" Order

DATE: MAR 26, 2020 / AUTHOR: SCOTT SLEIGHT

As noted in our posts on March 24 (see [original](#) and [update](#) posts) and notwithstanding advisories by certain trade groups and law firms promoting broad interpretation of Governor Inslee's "Stay Safe-Stay Home" Order to allow most construction projects to proceed, we recommended a more conservative interpretation of that Order pending clarification from the Governor. At approximately 5:30pm on March 25, 2020, Governor Inslee issued the attached [Memorandum](#) providing that clarification. Governor Inslee's Memorandum states, in part:

SUBJECT: Construction Guidance – Stay Home, Stay Healthy Proclamation (20-25)

In general, commercial and residential construction is not authorized under the Proclamation because construction is not considered to be an essential activity.

However, an exception to the order allows for construction in the following limited circumstances:

- a) Construction related to essential activities as described in the order;
- b) To further a public purpose related to a public entity or governmental function or facility, including but not limited to publicly financed low-income housing; or
- c) To prevent spoliation and avoid damage or unsafe conditions, and address emergency repairs at both non-essential businesses and residential structures.

This clarification supports a more restrictive interpretation of the Order, particularly in light of the language stating that "In general, commercial and residential construction is not authorized under the Proclamation because construction is not considered to be an essential activity." The Order (and its clarification) authorize expressly exempted activities, including projects supporting healthcare, emergency services sectors, food and agriculture, energy, water and wastewater, transportation and logistics, communications and information technology, and other essential functions described in the Order. In addition, per the Clarification, activities that fall under category (c) above, to prevent spoliation, avoid damage or unsafe conditions and to address emergency repairs are exempted on all construction projects.

Both AGC and ABC have issued advisories regarding the Governor's Clarification at the following advisories as well:

MARCH 25, 2020

Much of construction is shut down in recent Governor's order

[Click here](#) to see new guidance released this evening by the Governor.

Based on this new guidance regarding construction, what we know is this:

WSDOT will suspend most of its operations, effective end of day tomorrow, based on a telecon we just held with WSDOT officials. The few exceptions are fish passages, per the

Supreme Court's injunction, and projects needed for safety matters (determined on project by project basis). WSDOT will be sending or has sent a memorandum to its contractors with additional information. ***This is contrary to information AGC sent out yesterday;*** WSDOT was planning to proceed with all projects, but apparently this was subsequently overruled by the Governor.

Local governments (and this appears to include school districts) will have the authority to make determinations about the public infrastructure construction within their jurisdictions. Before this new guidance from the Governor, we had contacted many local governments, and most indicated they are proceeding with construction work. This new guidance does not seem to give them any reasons to change their minds, but at this point we can't be definitive with regard to what individual jurisdictions will do – please be in contact with your local government clients.

Commercial construction is largely shut down, except to support essential services such as IT infrastructure. As best we understand it, for example, data centers would be allowed to proceed, but not necessarily an office building being constructed by a tech company. There may still be some gray area here, but the main point is that construction can proceed if it supports an essential *function* of an essential industry, not simply *any* function. Please be in contact with your clients.

Residential construction (except for publicly funded low-income housing) will not be allowed except as it relates to emergency repairs and projects that ensure structural integrity, and any residential construction that may be related to the provision of other essential services.

This guidance will be in effect for the duration of the Governor's ***Stay Home, Stay Healthy proclamation***, currently slated to end Apr. 6, although the Governor has stated he may extend it if circumstances warrant.

AGC has worked hard with many partners over the last few days to urge the Governor to keep construction going as long as it can be done safely, and we worked hard to provide safety guidance and information to help ensure that it can be. We are disappointed in the Governor's decision, but we also realize that the health of citizens and our workforce is paramount.

In the meantime, we will continue to work with the Governor's office to help get construction going as soon as possible.

We will continue to refine COVID-19 safety guidance.

We will continue to provide members with as much information as we can regarding important programs such as unemployment insurance and business loans.

We will answer your questions as best as we can, and we urge you to visit our [COVID-19 Contractors' Resource page](#).

Stay safe!

David D'Hondt

Executive Vice President

AGC of Washington

Important Clarification Regarding Stay Home, Stay Safe Order 25-20

On March 23, 2020, Governor Inslee issued [Stay Home, Stay Safe Order 25-20](#) clarifying that construction is NOT considered essential, other than exceptions for limited circumstances.

We are advising construction companies to:

- Read the attached [Construction Guidance](#) dated March 25, 2020.
- Know your contracts: be sure you understand contract provisions related to failure to comply with safety standards.
- Work with Owners and construction team partners to determine how the "Stay Home, Stay Safe" Order 25-20, the subsequent [list of Essential activities](#), and the new guidance impacts your job.

We urge our members to ensure that they are **FULLY** compliant with standard health and safety regulations along with the COVID-19 specific notices provided by WA DOH, CDC, and local jurisdictions. There will be efforts from various sources to identify non-compliance, which could involve financial consequences and having your projects shut down if job sites are anything less than 100% compliant.

If you do not feel that you can operate under these guidelines and achieve full compliance, it may be advisable to shut your operations down until you're able to comply or the Governor issues new directives

Questions? Concerns? Please email us at info@abcwestwa.org. We are here for you. Visit our [COVID-19 Employer and Employee Resources](#) page for continuous updates.

We anticipate that there will still be many questions regarding what all of this means. We are here to help. If a project owner or contractor desires clarification as to whether a project or scope of work is exempted, it can seek an exemption or clarification at the following state

portal: <https://app.smartsheet.com/b/form/d4c155fa930f4b848f95774d610c9708>. This will take you to the following page for Essential Business Inquiries.

Washington State
Coronavirus Response (COVID-19)

Essential Business Inquiries

Governor Inslee designated certain worker categories as "Essential Critical Infrastructure Workers," excluding them from the March 23 Executive Order directing all residents to stay home.

If you're a worker or a business representative wanting to know if your business category can be included in this list or you need clarification whether your business is on the list, fill out the form.

Please visit the Essential business page at <https://coronavirus.wa.gov/whats-open-and-closed/essential-business> to see if your business category is already addressed before filling out the form.

Tell us about your business

Sector *
Select

Business Name *

Business Address *

Business Description *
Please provide a 2-4 word generally accepted description of your business.

Additional Information *
For consideration to be included as an essential business; let us know why your business should be added to the essential business list.
For essential business clarifications: Let us know what we can help you understand about essential businesses.

Send me a copy of my responses

We have already assisted clients with clarification requests and our lawyers can assist anyone seeking further clarification of the Governor's Order or submitting exemption and/or clarification requests from the State. Please contact our lawyers with questions regarding the Governor's Order or to provide assistance with submitting exemption or clarification requests.

Author's Note: *Special thanks to many of the lawyers at ACS for providing updates over the past few days, and Brett Hill in particular for being on top of the latest information and distributing the Governor's Clarification immediately after it was issued.*

Thank you