

Contact

Houston

1200 Smith Street, Suite 1400
Houston, Texas 77002-4310
Tel: 713.658.1818
Fax: 713.658.2553

Atlanta

191 Peachtree Street, N.E.,
Forty-Sixth Floor
Atlanta, Georgia 30303
Tel: 404.659.1410
Fax: 404.659.1852

Philadelphia

50 South 16th Street, Suite
1700
Philadelphia, PA 19102
Tel: 610.772.2300
Fax: 610.772.2305

San Antonio

112 East Pecan Street, Suite
1450
San Antonio, Texas 78205
Tel: 210.253.8383
Fax: 210.253.8384

Construction Allowed to Continue in Georgia under Governor Kemp's Recent Shelter-in-Place Order

Chamberlain Construction Update - Construction Allowed to Continue in Georgia under Governor Kemp's Recent Shelter-in-Place Order

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Facing a growing number of COVID-19 cases in Georgia, Governor Brian Kemp issued an Executive Order on April 2, 2020 directing residents and visitors of Georgia—with some exceptions—to “shelter in place” until at least April 13, 2020 (unless extended further). The Shelter-in-Place Order supersedes all prior city and county executive orders, thus creating state-wide uniformity.

Businesses and persons performing work related to “Critical Infrastructure” are not required to “shelter in place,” although they still must comply with other health- and safety-related requirements (discussed below) during their ongoing operations.

Importantly for the construction industry, the Order adopts the same definition of “Critical Infrastructure” advised by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA). While CISA's current advisory does not expressly state that all construction may continue, the advisory opinion broadly defines Critical Infrastructure to include construction-related activities in virtually every business and government sector mentioned in the advisory, including residential and commercial facilities. Activities that are deemed Critical Infrastructure include, but are not limited to, the following:

- 1 Construction related to “renewable energy infrastructure (including, but not limited to wind, solar, biomass, hydrogen, geothermal, and/or hydroelectric).”
- 2 Construction “related to energy sector fuels (including, but not limited to, petroleum (crude oil), natural gas, propane, natural gas liquids, other liquid fuels, nuclear, and coal).”
- 3 “Construction of critical or strategic infrastructure”
- 4 Construction related to communications and information technology, “including contractors for construction and engineering of fiber optic cables, buried conduit, small cells, other wireless facilities, and other communications sector-related infrastructure.”
- 5 “[C]onstruction of essential global, national, and local infrastructure for computing services (including cloud computing services and telework capabilities), business infrastructure, financial transactions/services, web-based services, and critical manufacturing.”
- 6 “[A]ny temporary construction required to support COVID-19 response.”
- 7 “Workers performing housing construction related activities to ensure additional units can be made available to combat the nation's existing housing supply shortage.”

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- 8 Maintenance work "to ensure continuity of building functions, including but not limited to security and environmental controls (g., HVAC)." Similarly, CISA clarified that the following workers are part of "Critical Infrastructure: "Workers such as plumbers, electricians, exterminators, builders, contractors, HVAC Technicians, landscapers, and other service providers who provide services that are necessary to maintain the safety, sanitation, and essential operation of residences, business, and buildings such as hospitals, [and] senior living facilities[.]"
- 9 Work that "support[s] the supply chain of building materials from production through application/installation, including cabinetry, fixtures, doors, cement, hardware, plumbing, electrical, heating/cooling, refrigeration, appliances, paint/coatings[.]"
- 10 Permitting and inspecting of ongoing construction.

The use of the federal "Critical Infrastructure" definition and the reference to the CISA advisory suggests that Georgia's Governor intended for all or nearly all public and private construction to continue, which is consistent with Governor Kemp's earlier Executive Orders (issued on March 20th and March 30th) making it faster and easier for contractors to use private providers for permit plan reviews and code inspections on residential and commercial construction projects. To the extent there is any ambiguity about whether a specific type of construction or project is allowed to continue to move forward right now, the Stay-in-Place Order authorizes "the Georgia Department of Economic Development . . . to issue guidance to any business, corporation, organization, or industry trade group regarding its status as Critical Infrastructure."

Contractors who continue to perform work while the Order is in effect must comply with "measures which mitigate the exposure and spread of COVID-19." This means that contractors are required, at a minimum, to take the following measures to protect workers:

- 1 Screening and evaluating workers who exhibit signs of illness, such as a fever over 100.4 degrees Fahrenheit, cough, or shortness of breath;
- 2 Requiring workers who exhibit signs of illness to not report to work or to seek medical attention;
- 3 Enhancing sanitation of the workplace as appropriate;
- 4 Requiring hand washing or sanitation by workers at appropriate places within the business location;
- 5 Providing personal protective equipment as available and appropriate to the function and locations of the worker within the business location;
- 6 Prohibiting gatherings of workers during working hours;
- 7 Permitting workers to take breaks and lunch outside, in their office or personal workspace, or in such other areas where proper social distancing is attainable;
- 8 Implementing teleworking for all possible workers;
- 9 Implementing staggered shifts for all possible workers;
- 10 Holding all meetings and conferences virtually, wherever possible;
- 11 Delivering intangible services remotely wherever possible;
- 12 Discouraging workers from using other worker's phones, desks, offices, or other work tools and equipment;
- 13 Providing disinfectant and sanitation products for workers to clean their workspace, equipment, and tools;
- 14 Prohibiting handshaking and other unnecessary person-to-person contact in the workplace; and
- 15 Placing notices that encourage hand hygiene at the entrance to the workplace and in other workplace areas where they are likely to be seen; and
- 16 Suspending the use of Personal Identification Number ("PIN") pads, PIN entry devices, electronic signature capture, and any other

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credit card receipt signature requirements to the extent such suspension is permitted by agreements with credit card companies and credit agencies.

If you have questions about whether your company and/or projects are exempt from the Georgia Shelter-in-Place Order, please call us or email us. The full text of Georgia's Shelter-in-Place Order can be found here:

<https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders>

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