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focused on Redevelopment and Land Use Issues



COVID-19 Legal Resources

April 9, 2020

Governor Murphy Announces Shutdown of Non-Essential Construction

Breaking News

Governor Murphy issued Executive Order 122 requiring all “non-essential” construction projects in New Jersey to cease by Friday, April 10, 2020, at 8 pm. This shutdown continues indefinitely, with limited exemptions for construction projects that are deemed essential. On-going construction for projects that are not deemed essential will be required to stop, and future construction for projects that are not deemed essential will not be permitted to begin.

The shutdown will potentially delay many real estate projects, impact deadlines in contracts, and/or impact construction financing. Readers are encouraged to review with counsel their loan commitments and covenants, land use approval expiration dates, delivery obligations to buyers and tenants, and other potential impacts of Executive Order 122.

The exemptions for construction projects that are deemed essential include the following:

- a. Projects necessary for the delivery of health care services, including but not limited to hospitals, other health care facilities, and pharmaceutical manufacturing facilities;
- b. Transportation projects, including roads, bridges, and mass transit facilities or physical infrastructure, including work done at airports or seaports;

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Useful information for businesses. We are updating and adding information on various issues and solutions as they unfold.

c. Utility projects, including those necessary for energy and electricity production and transmission, and any decommissioning of facilities used for electricity generation;

d. Residential projects that are exclusively designated as affordable housing;

e. Projects involving pre-K-12 schools, including but not limited to projects in Schools Development Authority districts, and projects involving 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, which includes additions to single-family homes such as solar panels;

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 facilities at which any one or more of the following takes place: the manufacture, distribution, storage, or servicing of goods or products that are sold by online retail businesses or essential retail businesses, as defined by New Jersey Executive Order No. 107 and subsequent Administrative Orders;

i. Projects involving data centers or facilities that are critical to a business' ability to function;

j. Projects necessary for the delivery of essential social services, including homeless shelters;

k. Any project necessary to support law enforcement agencies or first responder units in their response to the COVID-19 emergency;

l. Any project that is ordered or contracted for by Federal, State, county, or municipal government, or any project that must be completed to meet a deadline established by the Federal government;

m. Any work on a non-essential construction project that is required to physically secure the site of the project, ensure the structural integrity of any buildings on the site, abate any hazards that would exist on the site if the construction were to remain in its current condition, remediate a site, or otherwise ensure that the site and any buildings therein are appropriately protected and safe during the suspension of the project; and

n. Any emergency repairs necessary to ensure the health and safety of residents.

The Executive Order contains various terms and phrases that will require further definition or clarification. Examples include:

- The term “construction project” is not defined, but appears to cover all construction work and any work involving construction workers that were previously exempt from the Executive Order directing residents to stay at home. This may include site clearing, demolition, foundation work, and earth work.
- While the exemption for residential projects that are “exclusively designated as affordable housing” is not further defined, we received feedback from the Governor’s Office that this exemption is only for residential projects where 100 percent of the units are affordable units. This would mean that the exemption does not include inclusionary projects, residential developments with an affordable housing component, even if the project meets the definition of “affordable development” in the Uniform Housing Affordability Controls, is necessary for a municipality to meet its constitutional obligation to provide affordable housing, or is included in a municipality’s settlement of its Mount Laurel declaratory judgment action.
- In the case of the exemption for on-going projects involving single-family homes, it is unclear whether the five-person crew limitation applies separately to interior and exterior construction crews.
- Various exemptions include discretion as to whether the project is “necessary” for the underlying business.

Executive Order 122 imposes additional restrictions on essential construction projects, including prohibiting non-essential visitors, limiting meetings and workgroups to fewer than ten individuals, requiring distancing of six feet or more wherever possible, staggering work start and stop times and lunch breaks where practicable, requiring workers to wear gloves and cloth face coverings on the premises while on the premises, providing sanitization materials to workers and visitors, and limiting sharing of tools, equipment, and machinery.

A copy of Executive Order 122 can be found here: <https://nj.gov/infobank/eo/056murphy/pdf/EO-122.pdf>

Sills Cummis will monitor the implementation of Executive Order 122 and future interpretations of its undefined terms. Please check back to www.redevelonj.com for updates.

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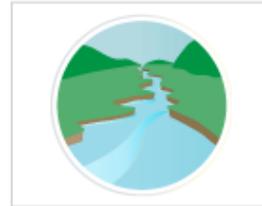
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