

BAY AREA COUNTIES REQUIRE ESSENTIAL BUSINESSES TO ESTABLISH AND POST SOCIAL DISTANCING PROTOCOLS

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Seven Bay Area counties renewed and modified their shelter-at-home orders yesterday, extending the shutdown period through May 3, and in all cases but one, requiring that all essential businesses that remain open establish and post social distancing protocols by April 2 at 11:59 p.m.: San Francisco, Marin, Contra Costa, Santa Clara, San Mateo, Alameda, and Santa Cruz.

Santa Cruz County also extended its order through May 3, but does not include the same provision requiring establishment and posting of social distancing protocols.

The orders specify that social distancing protocols must be substantially, and be posted at or near the entrance of the business where it is easily viewable by the public and employees. A copy of the social distancing protocol must also be provided to each employee performing work at the business.

The social distancing protocol must explain how the business is achieving the following, as applicable:

- Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete the Essential Business activity;
- Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
- Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees, and in locations where there is high-frequency employee interaction with members of the public (e.g. cashiers);
- Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;

- Regularly disinfecting other high-touch surfaces;
- Posting a sign at the entrance of the facility informing all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into one's elbow; not shake hands or engage in any unnecessary physical contact; and
- Any additional social distancing measures being implemented.

Essential businesses shall implement their social distancing protocol, and provide evidence upon demand of its implementation to any authority enforcing the order.

While the orders allow and strongly encourage Essential Businesses to remain open, they state that such businesses should “maximize the number of employees who work from home,” and “only assign those employees who cannot perform their job duties from home to work outside the home.”

The orders define essential businesses to include, among other businesses, the following retail establishments:

- Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.
- Gas stations and auto-supply, auto-repair . . . and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services (and not, by way of example, car sales or car washes).
- Bicycle repair and supply shops.
- Hardware stores.
- Businesses providing mailing and shipping services, including post office boxes.
- Laundromats, drycleaners, and laundry service providers.
- Restaurants and other facilities that prepare and serve food, but only for delivery or carry out.

- Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses.

Businesses that supply essential businesses with the support or supplies necessary to operate are also allowed to remain open, to the extent necessary to support or supply the essential businesses. The order states that this exemption is not to be used to allow for manufacturing or assembly of non-essential products, or for sales of such products to the general public from retail store fronts.

RELATED PRACTICE AREAS

- Retail & Consumer Products

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