

CLIENT UPDATE

GOVERNOR ABBOTT ISSUES EXECUTIVE ORDER GA-14; OVERRIDES INCONSISTENT LOCAL COVID-19 POLICIES

By [Allensworth & Porter](#)

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On Tuesday, March 31, Governor Greg Abbott issued [Executive Order GA-14](#) in response to the continued pandemic. The Order aims to introduce “statewide continuity of essential services and activities during the COVID-19 disaster”. The Governor’s action should introduce some welcome consistency that had been lacking from the local authorities’ prior efforts.

Simply stated, Order GA-14 allows defined “Essential services” to continue. The defined “Essential services” include everything listed by the U.S. Department of Homeland Security in its [March 28, 2020 Guidance on the Essential Critical Infrastructure Workforce, Version 2.0](#). That document identifies workers who conduct a range of operations that are essential, including “working construction.” The Executive Order also says the Texas Division of Emergency Management (TDEM) shall maintain an online [list of essential services](#). Right now, the list includes the following CISA-identified “Essential Critical Infrastructure Sectors”:

CISA IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE SECTORS:

1. HEALTHCARE / PUBLIC HEALTH
2. LAW ENFORCEMENT, PUBLIC SAFETY, AND OTHER FIRST RESPONDERS
3. FOOD AND AGRICULTURE
4. ENERGY
5. WATER AND WASTEWATER
6. TRANSPORTATION AND LOGISTICS
7. PUBLIC WORKS AND INFRASTRUCTURE SUPPORT SERVICES
8. COMMUNICATIONS AND INFORMATION TECHNOLOGY
9. OTHER COMMUNITY- OR GOVERNMENT-BASED OPERATIONS AND ESSENTIAL FUNCTIONS
10. CRITICAL MANUFACTURING
11. HAZARDOUS MATERIALS
12. FINANCIAL SERVICES
13. CHEMICAL
14. DEFENSE INDUSTRIAL BASE
15. COMMERCIAL FACILITIES
16. RESIDENTIAL/SHELTER FACILITIES AND SERVICES
17. HYGIENE PRODUCTS AND SERVICES

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[CISA's website](#) discusses several of these Sectors in more detail. The Commercial Facilities sector includes a broad array of facilities, including apartments, condominiums, hotels, and office space. The City of Austin Order incorporated an earlier CISA memorandum. CISA's March 28, 2020 Memorandum expanded the list of identified critical infrastructure sectors and also provided additional information defining specific sectors important to the construction industry. Importantly, the March 28th Memorandum added the "Residential/Shelter Facilities and Services" sector, which includes the following:

- Workers performing housing construction related activities to ensure additional units can be made available to combat the nation's existing housing supply shortage.
- Workers supporting the construction of housing, including those supporting government functions related to the building and development process, such as inspections, permitting, and plan review services that can be modified to protect the public health, but fundamentally should continue and serve the construction of housing (e.g., allow qualified private third-party inspections in case of government shutdown).

The Executive Order *prohibits* local government regulations that interfere with the critical infrastructure sectors identified by CISA, by superseding any conflicting local orders to the extent they "restrict[] essential services allowed by this executive order".

The City of Austin's exemption determination process, initiated on March 30, 2020, does not include all of the critical infrastructure sectors identified by CISA as bases for exemption. This renders the City's process more restrictive than Executive Order GA-14. The procedure is therefore arguably superseded unless and until the City includes the CISA sectors as exempt sectors.

We are grateful to those in the construction industry who have raised their concerns—both as to recent developments in the Austin/Travis County area, and more generally across the state. The conversation about this Executive Order and its effects, however, is far from over. In his announcement this afternoon, Governor Abbott himself stated that "all critical infrastructure will remain operational", and that, "To the extent that any county or jurisdiction has any rule that's inconsistent with this Executive Order, it is overridden in this Executive Order". The intention to introduce statewide consistency on this front is clear, but he also noted, "To the extent that there are things that are not mentioned in this Order, it still gives local jurisdictions the latitude to establish their own rules". It remains to be seen whether cities and counties may try to tighten jobsite safety protocols or otherwise work within the guardrails created by GA-14. As with everything in careful business stewardship—and especially in the face of a pandemic—specific details matter.

On balance, today strikes us as having been a good day for the construction industry. Stakeholders should remain watchful for further developments—both at the local level, and from federal authorities. COVID-19 remains a serious crisis, and the entire community should continue to obey existing safety and health protocols—but today's announcement should eliminate a great deal of the unnecessary conflict and risk that arose from the array of conflicting and ambiguous policies.

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ABOUT

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Allensworth & Porter focuses exclusively on the practice of construction law. For 25 years, the firm has handled complex construction matters from preconstruction to closeout, from the first claim to the last appeal, and all manners of disputes in between for clients in virtually every sector of the commercial construction industry. For more information, visit aapl原因.com.

*Note: This article was written on Monday, March 31, 2020, based on the most up-to-date information available at the time. During this unprecedented situation, policies and circumstances evolve rapidly. For our most recent analysis of COVID-19 and the construction industry, please visit aapl原因.com/news. **This is not legal advice**; all decisions should be based on an analysis that is specific to the contracts and facts of any given project.*