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LEGAL UPDATE

April 1, 2020

To: SONOMA COUNTY Superintendents, Member School Districts (K-12)

**From: Damara L. Moore, Senior Associate General Counsel *DM*
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**Subject: Sonoma County Strengthens and Extends Shelter in Place and Orders Mandatory Social Distancing Protocols
Memo No. 25-2020**

Sonoma County’s Public Health Officer revised the Shelter in Place Order, effective today, April 1, 2020, through May 3, 2020, or until it is rescinded or revised (“Order”).¹ The Order was issued in light of the existence of 73 active cases of COVID-19 in Sonoma County, as well as 1 fatality, as of March 31, 2020.² The County has confirmed through testing that every section of the County suffers from infection. Overall, the intent of the order is to maximize self-isolation in residences to the maximum extent feasible. The Order incorporates all State and Federal mandates. While much remains unchanged from the previous order, there are some new aspects to this Order which affect local education agencies (“LEAs”), including guidance on construction projects and notice requirements. Violation of the Order is enforceable by law enforcement, and “constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.”

Generally

Under the Order, County residents may only leave their homes to perform: Essential Activities, Essential Governmental Functions, to work for Essential Businesses, or to perform Minimum Basic Operations for non-essential businesses.

¹ The Order can be found online at <https://socoemergency.org/order-of-the-health-officer-of-the-county-of-sonoma/>.

² See <https://socoemergency.org/emergency/novel-coronavirus/coronavirus-cases/> for up to date Sonoma County coronavirus statistics.



“Essential Activities” means activities necessary for a person’s own health and safety (such as urgent medical appointments and groceries), and does not include construction.

“Essential Governmental Functions” is defined as a function that is “determined [essential] by the governmental entity performing those functions in the County.”

“Essential Businesses” includes educational institutions, defined as public and private K-12 schools, colleges, and universities, for purposes of facilitating distance learning or performing Essential Functions, provided that social distancing of six-feet per person is maintained.

Essential Businesses are directed to maximize the number of employees who work from home. Essential Businesses may only assign those employees who cannot perform their job duties from home to work outside the home.

Residents are to employ the following social distancing and hygiene requirements, which have not changed from the previous order:

- Maintain at least six-foot social distancing from individuals who are not part of the same household or living unit;
- Frequently wash hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19;
- Cover coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands); and
- Avoid all social interaction outside the household when sick with a fever or cough.

Notice of Social Distancing Protocol

Under the Order, all Essential Businesses, including educational institutions, shall prepare, post, and implement a Social Distancing Protocol at each of their facilities at which they are maintaining operations by **no later than 11:59 p.m. on April 2, 2020.**

The Social Distancing Protocol must be substantially in the form provided by the County (see attached) and must be provided to each employee performing work at the facility. In addition, the Protocol must be posted at or near the entrance of any relevant facility and must be easily viewable to the public and employees. Finally, Essential Businesses must post a sign at the entrance of the facility informing all employees to not enter if sick, maintain a six foot distance, cough and sneeze into one’s elbow, and refrain from any unnecessary physical contact. We have attached a model sign to this Legal Update for your use.

Child Care Facilities

The Order requires, “to the extent possible,” that childcare facilities operate under the following conditions:



- Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).
- Children shall not change from one group to another.
- If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
- Childcare providers shall remain solely with one group of children.

Essential Government Functions

Each governmental entity must identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new employees or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to and recover from the COVID-19 pandemic, and all Essential Governmental Functions must be performed in compliance with social distancing and hygiene requirements, described above, to the greatest extent feasible.

Travel

People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. The Order permits travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services. People riding on public transit must comply with social distancing and hygiene requirements. The Order allows travel into or out of the County to perform Essential Activities, to operate Essential Businesses, or maintain Essential Governmental Functions. Hotels and short-term lodgings are permitted to rent to those involved in an Essential Business or an Essential Governmental Function to the degree the guest is engaged in such activities while lodging.

Construction

An Essential Business includes construction, but only:

- 1) Public works projects if specifically designated as an Essential Governmental Function by the lead governmental agency;
- 2) Construction necessary to ensure that existing construction sites that must be shut down under this Order are left in a safe and secure manner, but only to the extent necessary to do so;
- 3) Construction or repair necessary to ensure that residences and buildings containing Essential Businesses are safe, sanitary, or habitable to the extent such construction or repair cannot reasonably be delayed; and



- 4) Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, and operation of residences and Essential Businesses, but not for cosmetic or other purposes.

Essential Business also includes: Projects immediately necessary to the maintenance, operation or repair of Essential Infrastructure. Essential Infrastructure is not defined but includes airports, utilities, roads, public transportation, mortuary services, and telecommunication services. It is important to note that in the County’s March 17, 2020 Order, “public works construction” was listed as an Essential Infrastructure project. In this Order, which supersedes the prior Order, Public Works Construction is now considered an “Essential Business” only if it is designated as an Essential Government Function by the lead government agency.

Reading the various provisions of the Order together, public works construction projects may only continue if the LEA makes written determination that the project is an Essential Governmental Function, or is necessary to ensure that a building is safe, sanitary, or habitable so that a district can continue to provide the Essential Functions of distance learning and/or providing food to students. Such a project may also only continue if the posting and compliance of required social distancing measures are followed. Otherwise, the only work that can occur on a public works project is the construction necessary to ensure that the existing construction site that must be shut down is left in a safe and secure manner.

Making a determination whether a public works project should move forward as an Essential Governmental Function, or be shut down and delayed involves an analysis of a variety of factors, including: workers’ compensation and other liability issues; SB 117 payment issues; OSHA obligations; monitoring employees’ health; social distancing requirements; determining the location of where Essential Services are provided; and possible contract addenda. Accordingly, we strongly recommend that districts contact legal counsel for assistance with making these determinations.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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Appendix A: Social Distancing Protocol

Business name: Click or tap here to enter text.

Facility Address: Click or tap here to enter text.

Approximate gross square footage of space open to the public: Click or tap here to enter text.

Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.

Signage:

Signage at each public entrance of the facility to inform 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 a cloth or tissue or, if not available, into one's elbow; and not shake hands or engage in any unnecessary physical contact.

Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

Measures To Protect Employee Health (check all that apply to the facility):

Everyone who can carry out their work duties from home has been directed to do so.

All employees have been told not to come to work if sick.

Symptom checks are being conducted before employees may enter the work space.

All desks or individual work stations are separated by at least six feet.

Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

Break rooms:

Bathrooms:

Other (Click or tap here to enter text.): Click or tap here to enter text.

Disinfectant and related supplies are available to all employees at the following location(s): Click or tap here to enter text.

Hand sanitizer effective against COVID-19 is available to all employees at the following location(s): Click or tap here to enter text.

Soap and water are available to all employees at the following location(s): Click or tap here to enter text.

Copies of this Protocol have been distributed to all employees.

Optional—Describe other measures: Click or tap here to enter text.

Measures To Prevent Crowds From Gathering (check all that apply to the facility):

Limit the number of customers in the store at any one time to Click or tap here to enter text. [insert maximum number here], which allows for customers and employees to easily maintain at least six-foot distance from one another at all practicable times.

Post an employee at the door to ensure that the maximum number of customers in the facility set forth above is not exceeded.

Placing per-person limits on goods that are selling out quickly to reduce crowds and lines. Explain: Click or tap here to enter text.

Appendix A: Social Distancing Protocol

Optional—Describe other measures: [Click or tap here to enter text.](#)

Measures To Keep People At Least Six Feet Apart (check all that apply to the facility)

Placing signs outside the store reminding people to be at least six feet apart, including when in line.

Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.

Separate order areas from delivery areas to prevent customers from gathering.

All employees have been instructed to maintain at least six feet distance from customers and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.

Optional—Describe other measures: [Click or tap here to enter text.](#)

Measures To Prevent Unnecessary Contact (check all that apply to the facility):

Preventing people from self-serving any items that are food-related.

Lids for cups and food-bar type items are provided by staff; not to customers to grab.

Bulk-item food bins are not available for customer self-service use.

Not permitting customers to bring their own bags, mugs, or other reusable items from home.

Providing for contactless payment systems or, if not feasible, sanitizing payment systems regularly.
Describe: [Click or tap here to enter text.](#)

Optional—Describe other measures (e.g. providing senior-only hours): [Click or tap here to enter text.](#)

Measures To Increase Sanitization (check all that apply to the facility):

Disinfecting wipes that are effective against COVID-19 are available near shopping carts and shopping baskets.

Employee(s) assigned to disinfect carts and baskets regularly.

Hand sanitizer, soap and water, or effective disinfectant is available to the public at or near the entrance of the facility, at checkout counters, and anywhere else inside the store or immediately outside where people have direct interactions.

Disinfecting all payment portals, pens, and styluses after each use.

Disinfecting all high-contact surfaces frequently.

Optional—Describe other measures: [Click or tap here to enter text.](#)

* Any additional measures not included here should be listed on separate pages, which the business should attach to this document.

You may contact the following person with any questions or comments about this protocol:

Name: [Click or tap here to enter text.](#)

Phone number: [Click or tap here to enter text.](#)

Social Distancing Protocol

All employees and customers should:

- Avoid entering this facility if they have a cough or fever;
- Maintain a minimum six-foot distance from one another;
- Sneeze and cough into a cloth or tissue or, if not available, into one's elbow;
- And not shake hands or engage in any unnecessary physical contact.