

## Summary of March 31, 2020 Executive Order of Governor Abbott: Texas Residential and Commercial Construction Update

Earlier today, Governor Abbott issued Executive Order GA 14 (the “Executive Order”) relating to statewide continuity of essential services and activities during the COVID-19 disaster. The Executive Order becomes effective at 12:01 am on April 2, 2020, and continues through April 30, 2020 (subject to extension).

Under the Executive Order, every person in Texas shall, except where necessary to provide or obtain *essential services*, minimize social gatherings and minimize in-person contact with people who are not in the same household. Essential services under the Executive Order consist of everything listed in the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, Version 2.0 (the “CISA Guidance 2.0”), plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to the list with the approval of the Texas Division of Emergency Management, who is maintaining a list of essential services as specified in the Executive Order and any approved additions.

The CISA Guidance 2.0 identifies the following essential critical infrastructure workers with respect to commercial facilities and residential/shelter facilities:

### Commercial Facilities:

- Workers who support 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, and employees who provide services that enable repair materials and equipment for essential functions.
- Workers distributing, servicing, repairing, installing residential and commercial HVAC systems, boilers, furnaces and other heating, cooling, refrigeration, and ventilation equipment.

### Residential/Shelter Facilities & Services:

- 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.

The CISA Guidance 2.0 also identifies construction workers in several other sectors as essential critical infrastructure workers ( i.e., Electricity, Petroleum, Natural Gas/Liquid Fuels, Public Works, etc.). Unfortunately, the Governor’s Order did not expressly identify commercial construction as a separate “essential service”. However, a wide range of construction related activities are expressly identified in the CISA Guidance 2.0. Under the Executive Order, these activities are “essential services” and cannot be restricted by local (county and city) orders.

Importantly, the Executive Order supersedes any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such local order restricts essential services allowed by the Executive Order or allows gatherings prohibited by the Order. In counties/cities that have issued executive orders identifying commercial and/or residential construction as critical infrastructure in support of essential businesses such orders do not appear to restrict essential services allowed by the Executive Order and therefore, do not appear to be superseded. However, in counties/cities that have issued executive orders/guidance that prohibit residential and/or commercial construction, the Executive Order appears to supersede the local order to the extent that workers are engaged in activities identified in the broad CISA Guidance 2.0, including workers supporting the supply chain by installing/applying building materials or workers performing housing construction related activities.