KC Metro Stay-At-Home Orders and Construction Activity

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In response to evidence of possible community spread of the COVID-19 in Kansas City, Mayor Quinton D. Lucas and other city and county officials throughout the metro area recently issued Stay-at-Home Orders (the "Orders") ordering all individuals in Kansas City, Missouri, Jackson County, Missouri, Clay County, Missouri, Platte County, Missouri, Johnson County, Kansas, Wyandotte County, Kansas, and Leavenworth County, Kansas to stay at home. The Orders go into effect 12:01 a.m. Tuesday, March 24th and expire on 11:59 p.m., Friday, April 24, 2020 and may be extended.

While these Orders remain in place, individuals may leave their place of residence only to undertake Essential Activities, or to provide any services or perform any work necessary to the operations and maintenance of Essential Business, Essential Infrastructure, Healthcare Operations, and Minimum Basic Operations, as those terms are defined in the Orders.

So, what does this mean for our local construction industry? As explained below, it appears that all construction work may continue as an "Essential Business" under the Orders.

Each of the Orders defines "Essential Business" as including "Essential Infrastructure." "Essential Infrastructure" is defined as including construction. All of the Orders expressly define Essential Infrastructure as including public works construction and construction of residences (or some variation of those concepts).

But what about commercial construction? The Order issued by Johnson County, Kansas specifically refers to commercial construction in its definition of Essential Infrastructure. While the other Orders do not specifically reference commercial construction, guidance from local authorities clarify the intent of the Orders, which appears to be that all construction may continue as Essential Infrastructure. For example, Mayor Lucas tweeted on March 21st that "Construction can continue. Advice is to work to ensure social distancing to fullest extent possible." In addition, on Jackson County, Missouri's Frequently Asked Questions, Jackson County broadly refers to all construction as an Essential Business. And while we have yet to receive further guidance from other jurisdictions, it is likely that they have the same view given the coordinated nature of the Orders. Thus, it appears that all construction may continue under the Orders and not just public works and/or residential construction. From a practical standpoint this makes sense, as there is no reason construction of a public building or a residence would somehow be safer than private commercial projects.

In continuing operations, individuals/companies must follow the mandated "Social Distancing Requirements," which include "maintaining at least six-foot social distancing from other individuals,

washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands." In addition, all of the Orders require that if an employee is diagnosed with coronavirus or otherwise sick or vulnerable, that person must stay home. Further information concerning workforce protection can be found at the websites of the U.S. Occupational Safety and Health Administration and U.S. Center for Disease Control and Prevention.

Keep in mind that while the current versions of the Orders allow continuation of construction work, they are subject to change and changes are likely to be made as the COVID-19 situation evolves. We will continue to monitor amendments to the Orders or other mandates impacting the construction industry and will provide further updates as necessary. In the meantime, if you need additional information regarding the Orders and/or COVID-19 generally, visit our COVID-19 Resources page where you can access materials prepared by Seigfreid Bingham's employment law and other practice groups addressing various COVID-19 related issues.

The various Orders and FAQs can be found at:

o Jackson County, Missouri
? Order of Jackson County, Missouri
? Frequently Asked Questions

o Kansas City, Missouri
? Second Amended Order 20-01

o Clay County, Missouri
? CCPHC Public Health Emergency Order

o Platte County, Missouri
? Platte County Health Department Order

o Johnson County, Kansas
? Emergency Order of Local Health Officer
? Frequently Asked Questions

o Wyandotte County, Kansas
? Emergency Order of Local Health Officer

o Leavenworth County, Kansas
? Emergency Order of Local Health Officer

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis, so please monitor new developments. Readers with legal questions should contact construction attorneys Greg Gerstner (ggerstner@sb-kc.com), Greg Whiston (gwhiston@sb-kc.com), Dan McClain (dmcclain@sb-kc.com) or your regular contact at Seigfreid Bingham or its construction law group, 816-421-4460.