



ADVISORY ■

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Are You an “Essential Business” in California Counties Where Shelter-in-Place Orders Have Been Issued?

by [Maureen Gorsen](#)

Multiple counties in California are shutting down all nonessential businesses with their newly issued shelter-in-place orders. No individuals in these counties may leave their houses to go to work unless they work at an “essential” business, except to maintain “minimum basic operations.” Most of these orders extend until April 7 or 8. The original six counties in the San Francisco Bay Area [issued orders that are nearly identical](#) and define “essential” businesses similarly. Since then, additional counties have issued shelter-in-place orders but expanded the definition of “essential” business to allow for a wider range of businesses to remain open for now. These orders are also spreading to jurisdictions on such as Pennsylvania, Nevada, the City of Philadelphia, and soon possibly New York City.

In the Bay Area, there are 21 types of essential businesses. Most are related to health care, food, or providing public services. As additional counties impose shelter-in-place orders, they are expanding the list of essential businesses. For instance, Monterey County’s [order](#) is adding, among others, “on-going commercial construction,” food processing industries, and “hotels, motels and bed and breakfast establishments.” True to form, Sonoma County’s order adds cannabis dispensaries. Sacramento and Placer Counties’ orders are not mandatory.

The primary list of “essential” businesses in most counties include:

- Health care operations and “essential infrastructure.”
- Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products and products necessary to maintaining the safety, sanitation, and essential operation of residences.

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- Food cultivation, including farming, livestock, and fishing.
- Businesses that provide food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals.
- Newspapers, television, radio, and other media services.
- Gas stations and auto-supply, auto-repair, and related facilities.
- Banks and related financial institutions.
- Hardware stores.
- Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, “essential activities,” and “essential businesses.”
- Businesses providing mailing and shipping services, including post office boxes.
- Educational institutions—including 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 to the greatest extent possible.
- Laundromats, drycleaners, and laundry service providers.
- Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so if the food is provided to students or members of the public for pick-up and takeaway only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided or at any other gathering site.
- Businesses that supply products needed for people to work from home.
- Businesses that supply other essential businesses with the support or supplies necessary to operate.
- Businesses that ship or deliver groceries, food, goods, or services directly to residences.
- Airlines, taxis, and other private transportation providers providing transportation services necessary for essential activities and other purposes expressly authorized.
- Home-based care for seniors, adults, or children.
- Residential facilities and shelters for seniors, adults, and children.
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities.
- Childcare facilities providing services that enable essential employees to work as permitted.

All nonessential businesses can remain open as long as employees are only performing “minimum basic operations” such as maintaining the value of business inventory, facilitating telework for employees to work from home, or providing security.

Any business operating in one of these California counties—Alameda, Contra Costa, Marin, Monterey, Placer, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Sonoma (and the list is growing by the hour)—must review the terms of each order to determine if it may remain open and operational, determine whether its employees or contractors are permitted to leave their residences to go to work, and implement policies to minimize gatherings and maintain statewide social distancing guidelines.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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