

**FAQ from the HBA of Michigan's Town Hall Meeting
March 31, 2020**

To avoid repetition, we've rephrased and consolidated some individual questions on the same subject and while we appreciate everyone's comments, they have not been included in this FAQ.

We have broken these questions down into two categories, construction and financial and human resources. This FAQ sheet covers construction-related questions. The second FAQ will be sent later this week.

- **Is there is a chance that the Governor will change her Executive Order to follow the new guidelines on essential services from the Department of Homeland Security?**

The Advisory Memorandum from Cybersecurity and Infrastructure Security Agency (CISA) issued on March 28, 2020 does not require Governor Whitmer to allow home building as an essential industry. While residential construction is listed as an essential industry in the advisory memorandum, it also makes it clear that no jurisdiction is required to name residential construction as an essential industry if they do not want to. It is highly unlikely the Governor will change the current Executive Order (EO).

A copy of the March 28 Advisory Memorandum was sent to Senate Majority Leader Shirkey's office on March 28, 2020. His office is having discussions with the Administration on this and other COVID-19 issues. We have been working closely with the SML's office since early March. House Majority Floor Leader Tristen Cole has also asked Governor Whitmer to allow some non-essential businesses to reopen, saying the restrictions have had a "particularly adverse effect on the construction and landscaping industry."

What happens next is directly related to the impact of COVID-19 on Michigan. If the number of new cases in the state begins to significantly drop, we could see a number of restrictions on construction and other industries loosened or removed.

- **Does the Legislature need to approve any extension of the EO after it expires April 14th?**

Because the Governor cited two different laws (one needing legislative approval of any extension, one not) when she issued her emergency declaration, there was some uncertainty on this. The Legal Counsel for the SML has researched the issue and the consensus is the Legislature does not need to approve an extension.

While the final decision on such an extension rests with the Governor, the Legislature, particularly the Senate has been working with the Governor since before she issued her EO to identify short-, medium- and long-terms needs when dealing with this virus. HBAM staff has been in daily contact (even on the evening and weekend) with the Senate on these needs.

- **There is confusion about what construction work is and is not allowed under the Governor's EO. Can you tell us what we can do on our project?**

No, we can't. Residential construction is currently "limited to projects necessary to maintain the safety, sanitation and essential operation" of the home and "in-person tasks that are strictly necessary to protect the current condition of the project while the order is in effect, such as putting in place temporary security and weatherization measures.

Any non-emergency maintenance or improvements to the residence is not permitted. All other in-person work on the project must cease until the restrictions of the order are lifted and normal operations resume."

As the builder of the project, it's up to you to decide whether the work you do is an emergency repair or what minimum and temporary measures need to be taken for its security and weatherization and to justify that decision if challenged. You know if this is an emergency repair and what the least amount of work will provide for the temporary security and weatherization of the home.

We expect everyone to follow the Governor's order. Do not use her clarification to finish a project beyond the allowed minimum and temporary measures. If you think it's close or if you doubt if it qualifies, it probably doesn't.

- **What constitutes repair as opposed to new construction?**

The Michigan Residential Code defines "repair" as the "reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage."

- **I have 13 fire victim families that are homeless and need us to continue repair work to get them back home.**

If you can justify this as emergency repair under the EO, and that decision is up to you, you may continue the repair work.

- **Is waterproofing an essential service? I have a customer with a leaking basement. Can I repair it?**

In your judgment, does the leaking basement pose a threat to the maintenance of the safety, sanitation and essential operation of the home? If you can justify this as emergency repair under the EO, and that decision is up to you, you may do the repair work.

- **Can we complete construction on projects with the deadlines which impact the consumer having a place to live or not?**

Nothing in the Governor's EO specifically grants an exemption to these types of projects.

- **We are involved in affordable income, 9% tax credit, renovations for low income seniors. Can that work continue?**

We've been advised by the Michigan State Housing and Development Authority that "These decisions are made by employers and their interpretation of the EO."

- Indiana builders are showing their essential papers and are being allowed to work in certain counties in Southwest Michigan. Can they do this?

Indiana builders are not allowed to show exemption documents from Indiana and work in Michigan and they must also have a Michigan license. We suggest you call the local prosecutor and show him evidence this is happening. We also suggest you contact the Attorney General's office at 517-335-7632 or email them at miag@michigan.gov

- **Is there anywhere we can go for a semi-definitive answer on whether work is permitted or not?**

While there is no clear guidance from the Administration, we'd suggest you talk with your local building department if you're unsure about if you can do the work.

- **Should we be worried about shortages of materials or increased prices?**

Yes, we suggest including [this language in your contracts](#).

- **Are the reports of contractors being ticketed and having their licenses pulled true? What happens if we're caught disobeying the Governor's EO?**

Violation of the EO is a misdemeanor punishable by a \$500 fine per incident and, potentially 90 days in jail. While local law enforcement might issue you a ticket, you have the right to challenge that ticket in court. No one is sending anyone to jail for 90 days without the court ordering it to happen.

Your license can only be pulled by the Residential Builders and Maintenance and Alteration Contractors Board. Not even the Governor, let alone local authorities, can pull your license without going through the full (and slow) administrative hearing process with the final decision being made by the Board.

Enforcement of the Governor's Executive Order varies from jurisdiction to jurisdiction. We know of only one case where a builder was fined, and that builder had ignored a "cease and desist" order.

- **We need to suggest guidelines to keep construction workers safe!**

This will be the fourth time we've sent every member a link to the COVID-19 Exposure Prevention, Preparedness, and Response Plan for Construction that has been developed by the Construction Industry Safety Coalition ("CISC"). The CISC is comprised of over 25 construction industry trade associations representing all aspects of the construction industry. The CISC was formed to provide information to the Occupational Safety and Health Administration and contractors on important safety and health issues.

This plan is based on the best information that is currently available from the CDC and OSHA. We will update our link as the plan is updated.

For a copy of Construction Industry Safety Coalition Recommendations: COVID-19 Exposure Prevention, Preparedness, and Response Plan for Construction Click here ([PDF](#)) or here ([Word](#)).