Santa Clara County announced an updated “shelter in place” order (Order) on April 29, the full text of which is available at https://www.sccgov.org/sites/covid19/Pages/order-health-officer-050420.aspx. This Order takes effect at 11:59 p.m. on Sunday, May 3, 2020 and will continue to be in effect until 11:59 p.m. on May 31, 2020 unless extended or changed. This Order made modest changes to the previous order. The most important changes for our purpose are below.

1. The new Santa Clara County Order allows a limited number of additional essential and outdoor business activities to resume, including:
   a. Construction, so long as it is consistent with the State Order and compliant with new “Construction Project Safety Protocols included in Appendix B to the Order.
   b. Landscaping and gardening services and certain other “Outdoor Businesses” such as wholesale and retail plant nurseries but not outdoor restaurants, cafes, or bars.
   c. “Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages,” subject to certain additional parameters. This Order adds summer camps. With the expansion of individuals permitted to return to work (e.g. Outdoor Businesses and more construction personnel), the universe of workers that are permitted to utilize such childcare services has increased.
   d. Use of shared outdoor recreational facilities such as golf courses and athletic fields, so long as certain parameters are complied with such as social distancing and no use of shared equipment or physical contact between participants that are not from the same household.

2. There is now a more broad ability “to move residences” with the removal of the old requirement that it be only as necessary and not possible to defer.

3. Service providers that enable real estate transactions (as opposed to just residential transactions) can resume duties, subject to ongoing applicability of parameters related to virtual viewings, etc.

4. Like before, plumbers, electricians, exterminators, and other service providers may provide services that are necessary to maintaining the habitability, sanitation, and/or operation of residences and Essential Businesses, but the requirement that the services cannot be for “cosmetic or other purposes” has been removed.

5. Social Distancing Protocols need to be updated. For all businesses that have employees or are used by the public, there must be posted a “Social Distancing Protocol.” The
requirements for this are different than under the previous order, so new signs must be made and posted near the entrance of each building and given to people working in the building. The posting must be substantially as in the form in the Appendix to the Order. In addition to the previous requirements:

a. The Social Distancing Requirements must include new language that all employees and customers should (i) avoid entering the facility if they have “COVID-19 Symptoms” (as opposed to just if they have a cough or fever) and (ii) wear face coverings, with a few exceptions.

6. We were advised by the County Counsel’s Office for Santa Clara County that the Social Distancing Requirements now include a requirement (as opposed to guidance) that a face covering be worn when in any business that is permitted to remain open pursuant to the Order, which includes, among other things, when in any workplace that remains open and when in any food business such as a grocery store or dining hall. The Order recommends, but does not require, that face coverings also be worn while out in other public places, such as in connection with outdoor recreation.

7. The Order makes it clear that “all public and private gatherings of any number of people occurring outside a single household or living unit are prohibited” and this prohibition applies even if the participants engage in social distancing. There are very few exceptions in the Order, such as up to 10 people for a funeral. We were advised by the County Counsel’s Office for Santa Clara County that a “household or living unit” in the context of this order means only the people living in a dorm room or suite and not others in the dorm. Of course, common areas in the dorm cannot be used for gatherings and are required to be closed other than areas that residents need access to for basic needs, such as laundry facilities.

The activities allowed by this Order are being assessed on an ongoing basis and can be changed at any time. If the State Order is more restrictive on a given matter, then the State Order prevails. This is creating ambiguity in certain instances. The Governor has indicated that there may be a new State Order shortly.

Differences With San Mateo and Alameda County Orders

1. As before, each of the county orders is substantially identical.
2. San Mateo County now limits travel for outdoor recreational activity to 10 (as opposed to 5) miles from a person’s residence. This also applies to residents of other counties that wish to travel to San Mateo County for recreation.
3. San Mateo County requires that face coverings be worn when people are out in public.
4. San Mateo County expressly provides that “Parks, beaches, and other open spaces that remain open must be actively monitored and managed by the appropriate authority” and that beach parking must be closed to the public.
3. The San Mateo County Order indicates that it may have made a different Order but could not do so until the State first revises its Order.
4. The new Appendix Bs detailing “Construction Project Safety Protocols” are virtually identical, but to the extent we have any construction in these counties, there are some minor differences so they should use the Appendix B for the appropriate County.

Please let us know if you have any questions.