

COVID-19 UPDATE – Businesses Permitted To Stay Open And Sector Specific Restrictions



On January 12, 2021, the Government of Ontario publicly announced that it is immediately declaring a second provincial emergency under s 7.0.1 (1) of the Emergency Management and Civil Protection Act (EMPCA). While an emergency order has yet to be issued, the Government of Ontario released a press release and a presentation slide deck which indicate which construction-related businesses will be permitted to remain open and/or will be subject to restrictions.

According to this press release from the Government of Ontario, dated January 12, 2021, all “non-essential construction” is “further restricted, including below-grade construction, exempting survey.” No further details were provided in this press release.

“Permitted” Construction Activities

According to the presentation slide deck (the “**Presentation**”) prepared by the Government of Ontario, “Permitted construction activities or projects and related services, including land surveying and demolition services” are permitted to remain open [Emphasis added]. The Presentation does not define what are “permitted construction activities or projects”.

We were able to obtain a yet to be issued list of what construction activities will be “permitted”. This list is subject to change, once official guidance is released by the Government of Ontario. The list of essential construction projects are as follows:

- Construction projects and services associated with the healthcare sector and long-term care, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space
- Construction projects and services required to ensure safe and reliable operations of, or to provide new capacity in provincial and municipal infrastructure, including transit, transportation, energy, mining and justice sectors beyond the day-to-day maintenance
- Construction projects and services that support the operations of, and provide new capacity in schools, colleges, universities, municipal infrastructure and child care centres within the meaning of the Child and

Early Years Act, 2014

- Construction projects under the Investing in Canada Infrastructure Program
- Construction projects and services that support the operations of broadband internet and cellular technologies and services
- Critical industrial activities required for:
 - The maintenance and operations of petrochemical plants and refineries
 - Significant industrial petrochemical projects where preliminary work has already commenced
 - Industrial construction and modification to existing industrial structures limited solely to work necessary for the production, maintenance and/or enhancement of personal protective equipment, medical devices (such as ventilators) and other identified products directly combatting the COVID-19 pandemic
- Construction projects that are due to be completed before **July 2021** and that would provide additional capacity in the production, processing and manufacturing or distribution of food, beverages or agricultural products
- Construction projects that were commenced before **January 12** that would:
 - Provide additional capacity for businesses that provide logistical support, distribution services, warehousing, storage or shipping and delivery services, or
 - Provide additional capacity
- Residential construction projects where,
 - A footing permit has been granted for single-family, semi-detached and townhomes,
 - The project is a condominium, mixed-use or other residential building, or
 - The project involves renovations to residential properties and construction work was started before January 12, 2021
- Construction to prepare a site for institutional, commercial or industrial or residential development, including any necessary excavation, grading, roads or utilities infrastructure
- Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety
- Below grade multi-unit residential construction projects, such as apartments and condominiums.
- Construction on any project intended to provide either,
 - Affordable housing, or
 - Shelter or supports for vulnerable persons
- If the project is being funded in whole or in part by or is being undertaken by, any of the following:
 - A. the Crown in right of Canada or in right of Ontario,
 - B. an agency of the Crown in right of Canada or in right of Ontario,
 - C. a municipality,
 - D. a service manager as defined in the *Housing Services Act, 2011*, or
 - E. registered charity and not for profit within the meaning of the *Income Tax Act* (Canada).

We repeat that the above list is yet to be officially released by the Government of Ontario. We will release an updated notice once the list is officially released.

Other Construction-Related Activities

The Presentation states that other construction-related activities will also be permitted to continue or may be subject to restrictions. Supply chain businesses may remain open. Specifically, the Presentation states:

- Businesses that supply businesses or places that are permitted to open within Ontario, or that supply businesses or services that have been declared essential in a jurisdiction outside of Ontario, with the support, products, supplies, systems, or services, including processing, packaging, warehousing, distribution, delivery, and maintenance necessary to operate [may remain open].

Construction-related businesses may fall within the above supply chain provision, such as material suppliers and maintenance services. That being said, it should be noted that there is a restriction on retailers, which may affect the hours of operation of some construction related-retailers or supply chain businesses. The Presentation indicates that “Other retailers” (i.e., non-grocery or pharmacies) and “General Retail” (specifically including hardware stores), may only open between 7 am to 8 pm. Only curbside pick up or delivery are permitted.

The Presentation states that maintenance businesses may remain open. Specifically, the following maintenance businesses may remain open:

- Maintenance, repair and property management services that manage and maintain the safety, security, sanitation and operation of institutional, commercial, industrial and residential properties and buildings.

by Leonard Finegold and Christine Kellowan
Goldman Sloan Nash & Haber LLP