



Continuity of Critical Government Operations- Building and Planning

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Purpose and Goals

The purpose of this position paper is to provide local jurisdictions with recommendations from the building community that comply with the governor's current health orders, maintain safety, account for builder capabilities, and meet the needs of the community-at-large.

The goals of this recommendation are as follows:

- 1) Keeping families in safe, whole, and properly inspected homes to comply with health-related orders
- 2) Protecting the safety of our building community to include building officials and staff, builders, laborers, and tradesmen/tradeswomen
- 3) Preventing system backlogs to speed economic recovery when health orders are lifted, and citizens need employment

Recommendations in Brief

- 1) Building and Permitting departments should be identified as essential government services and remain available to inspect and permit the construction activities that are allowed under Governor Inslee's "Stay Home, Stay Healthy" order ("the order"). It is recommended that all city employees engaged in this work either work from home or implement rigid social distancing and no-contact protocols.
- 2) Permits "in the pipeline" for which departments have already received some form of payment should continue to be reviewed as best as jurisdictions are able given staff capacity.
- 3) Jurisdictions should continue to accept new permit applications electronically, by no-contact drop box, and through the mail. The Central Washington Home Builders Association (CWHBA) suggests a system of intake where permit applications are placed into three categories:
 - a) Permits related to occupied dwelling habitability and emergency repairs which are explicitly allowed in the order and essential to citizen compliance as well as health and human safety. These permits should be prioritized whenever possible.
 - b) Permits related to essential workforce support explicitly allowed in the order (i.e. agriculture, communications and IT, grocery, critical retail, healthcare, public works, etc.) or permits related to work that would "prevent spoliation and avoid damage or unsafe conditions"

- c) New construction, commercial construction and other permit applications for work not allowed under the order. These permits may have a lower priority for review, depending on staff capacity during the duration of the order.
- 4) Permit deadlines should be relaxed or deferred, and permit issuance should be delayed by option of the applicant on a case-by-case basis to allow proactive processing of permits for projects which cannot begin until after the order has been lifted.
- 5) Inspections on active permits ought to continue (especially on projects currently occupied) as a component of health and human safety.
 - a) When possible, CWHBA urges inspection authorities to allow video streaming inspections in lieu of physical entry to a structure for staff safety. Alternatively, remote inspections through digital photography and other documentation methods with appropriate accountability measures or no-contact site inspections should be used.
- 6) Jurisdictions, wherever possible, should accept payment through credit card by phone and checks by mail or otherwise defer payment until such a time as it becomes safe to accept.

Governor's Emergency Order

The CWHBA relies primarily on the below three provisions from the governor's public communications regarding "essential business" to guide these recommendations. Full and complete copies of these communications can be found attached.

- 1) Construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction) for all essential facilities, services and projects included in this document, and for residential construction related to emergency repairs and projects that ensure structural integrity. ("Essential Business" coronavirus.wa.gov 3/26/20)
- 2) Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste). ("Essential Business" coronavirus.wa.gov 3/26/20)
- 3) To prevent spoliation and avoid damage or unsafe conditions, and address emergency repairs at both non-essential businesses and residential structures. (Construction Guidance – Stay Home, Stay Healthy Proclamation 20-25, Office of the Governor 3/25/20)

Allowed Construction Activities and Critical Roles

The most recent memorandum from the governor's office dated March 25, 2020 clarifies that most construction activities are not allowed under the "Stay Home, Stay Healthy" order but does not halt all construction activity. Instead, the order includes certain exemptions which should be permitted and inspected by local jurisdictions. Along with the exemption for construction related to essential activities (such as critical retail, healthcare, agriculture, IT and communications, etc.) and a broad public works exemption, the memorandum also allows for work to continue in a specific set of circumstances. Those circumstances include construction activity on all projects that prevents spoliation, avoids damage, addresses unsafe conditions, and completes emergency repairs on non-essential businesses and residential structures.

While many of the other provisions such as emergency repairs and addressing unsafe conditions should be straightforward, the most economically imperative provision regarding allowed residential construction under the order is to prevent “spoliation.” The attached legal memorandum (Howsley, 2020) provides further detail regarding the legal concept of spoliation but the primary meaning for CWHBA purposes is: to prevent destruction or damage to property. Real-world examples provided by members that would fit this definition are half-completed roofs, exposed framing timber, bare siding, and other states of incomplete construction work which may or may not require inspection before completion and would very likely result in damage to property if left incomplete. Further, the governor in his press conference on March 26 included the additional example of an embankment which may collapse if left without a retaining wall or proper shoring.

These allowed construction activities, their critical or essential nature, the power granted by the governor’s order for local jurisdictions to classify employees as critical, and the need for much of it to be permitted and inspected are what prompted CWHBA recommendations for continued safe operation of permitting and planning offices.

Office Safety

Because the critical nature of allowed construction activity requires that planning and permitting offices remain functioning, CWHBA stands ready to assist local government in implementing safe office practices. Procedures like telecommuting, reduced hours, and closures to the public can be effective in combatting the spread of disease but also pose their own logistical challenges. Insofar as clear, consistent, and amplified communication is key to ensuring the effectiveness and efficiency of these changes in business practices, the CWHBA is committed to partnering with local jurisdictions in communicating those changes.

Efforts to reduce intra-office physical contact and contact with the public guide recommendations favoring electronic permit submission and payment acceptance. These systems help facilitate work from home schemes while no-contact alternatives will, at the very least, allow for minimal in-person staffing requirements. For jurisdictions with existing online submission, CWHBA proposes that governments ensure permitting offices have a designated point of contact, especially if the local staff are working remotely or not available face-to-face. For jurisdictions unable to implement online submission, CWHBA suggests a physical no-contact permit drop off or acceptance through mail so staff can process permits remotely.

A robust permit submission portal is ideal but electronic submission models need only a regularly staffed email account and a large file-size transfer capability through free products like Google Drive, OneDrive, DropBox, or similar cloud storage service to be successful. Moving forward, permanent implementation of electronic submission systems will increase resiliency in the case of building closures for reasons like HVAC failure, plumbing failure, fire, flood, or pandemic.

Inspection Safety

While office work may continue remotely or without public contact, building inspectors and officials are often on the front lines of interaction with customers and required to inspect sites in-person. With that in mind, CWHBA stands ready to assist local jurisdictions with temporary or permanent changes to their inspection protocols that ensures the safety of these inspectors.

In as many cases as possible, CWHBA would strongly recommend e-inspections held through Skype, Zoom, or similar teleconferencing services which are widely available for free use. Though many jurisdictions have e-inspection programs both as a matter of regular business and during emergency, the City of Sammamish has one of the more developed programs in the state. More information about the Sammamish program can be found attached to this paper and on this webpage:

<https://www.sammamish.us/permits-regulations/permit-center/>

In circumstances for which local jurisdictions are unwilling or unable to provide live streamed e-inspections, CWHBA endorses remote inspection protocols which require licensed contractors to provide electronic photography and videography as evidence accompanied by other documentation which would prove to building officials that they have complied with permit requirements. Requirements for submission of such documentation and the content of that documentation should be explicit and provided upfront.

If local jurisdictions cannot implement either e-inspection methods, a no-contact protocol can be implemented for inspections instead. This protocol may require sites be cleared for an hour or more before inspectors arrive and conduct the inspection without interacting with the applicant, members of the public, or employees. Inspectors could, upon arrival, post a sign or no-entry order to ensure that they do not encounter others. A briefing may be held with the applicant telephonically during or after the inspection has completed to address any questions or concerns.

Acceptance and Processing of Permits for Non-Essential Projects

Governor Inslee's order does not halt all work deemed non-essential; it only stops non-essential work that must be done outside the home or with physical contact. For example, and in the case of CWHBA staff, the order halts normal operation of non-profit trade associations yet staff continues their work from home, traveling to the office only to maintain allowed minimum business operations like processing payroll.

In the same way, all permit and plan review, including for non-essential business and residential, that can be done, should be. Video and telephone meetings can take the place of in-person meetings, electronic files may be used in lieu of physical plans, and non-essential permits can continue to be processed. Because some applications will be for work on essential businesses and critical infrastructure, permit offices should continue to work at as close to full capacity as possible so citizens can continue to rely on essential services and business operations.

CWHBA therefore recommends a triaged intake method that prioritizes emergency repairs to occupied structures, then all construction to essential businesses and residential construction allowed under the order, and finally permits for activity not allowed under the order last.

Permit Issuance

Processing of non-essential permits should continue to the point of permit issuance to prevent a large backlog once the order has been lifted, especially during the time which contractors and government staff will be working to learn and implement new building and energy codes this summer. At the point of issuance for all permits presumed non-essential, local jurisdictions should communicate with the applicant and accept written confirmation that the work is allowed by the order under provisions for spoliation, emergency repairs, minimum business operations, unsafe conditions, etc.

Conclusion

As the vast majority of jurisdictions across the state continue to operate their building and planning departments as a critical government function along with Washington State Department of Labor & Industries and other state regulators with oversight of the construction industry, CWHBA is pleased to act as a clearinghouse for best practices and innovative approaches as they evolve. Further, CWHBA and its members stand ready to lend whatever technical, policy, or communications assistance local jurisdictions may need.

Attachments

Stay Home, Stay Healthy Proclamation (20-25), Office of the Governor

Construction Guidance – Stay Home, Stay Healthy Proclamation 20-25, Office of the Governor

“Essential Business” coronavirus.wa.gov 3/26/20

Stay Home, Stay Healthy Proclamation (20-25); Interpretative Guidance on Commercial and Residential Construction, Howsley, 3/26/20

Virtual Inspection Customer Guidance, City of Sammamish, 3/26/2020

Virtual Inspections for Occupied Structures, City of Sammamish, 3/26/2020