



**ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
PUBLIC HEALTH DEPARTMENT**

**Colleen Chawla, Director
Kimi Watkins-Tartt, Director**

Office of the Health Officer
1000 Broadway, 5th Floor
Oakland, CA 94607

Erica Pan, MD, MPH
Interim Health Officer
(510) 267-3200
Fax (510) 268-2140

April 14, 2020

Mr. Edward Reiskin
Assistant City Manager, City of Oakland
1 Dr. Frank Ogawa Plaza, 3rd Floor
Oakland, California 94612

Re: Construction during the COVID-19 Pandemic

Dear Mr. Reiskin:

It has come to my attention that the City of Oakland's Planning & Building Department has issued a response to the March 31, 2020 Shelter-in-Place Order for the County of Alameda that includes language that some read as permitting resumption of all residential construction. The response suggests that

Residential Construction that is required to pay the Affordable Housing Impact Fee in lieu of on-site affordable units and/or projects that are otherwise compliant with the City's affordable housing requirements

is allowable under the Shelter-in-Place Order. Anecdotally, I am aware of at least one apparently market-rate project that resumed construction recently.

For purposes of clarifying, the seven Bay Area jurisdictions issued an initial Shelter-in-Place Order on March 16, 2020. That Order allowed for the continuation of construction of housing, including affordable housing. After reviewing the initial data reflecting the impact of the original Shelter-in-Place Order, I and the six other Health Officers concluded that the restrictions were helping but were not enough to protect the Bay Area's health care system from becoming overwhelmed. Thus, on March 31, 2020, the seven Bay Area jurisdictions issued a superseding Shelter-in-Place Order that further restricts allowable residential construction to construction of (a) "[a]ffordable housing that is or will be income-restricted," and (b) "multi-unit or mixed-use developments containing at least 10% income-restricted units." The Health Officers intended that only construction that includes on-site affordable housing may continue during the term of the Shelter-in-Place Orders.

Some have interpreted the response issued by the City's Planning & Building Department as authorizing residential construction that is neither itself affordable housing nor containing affordable housing, but instead involves payment of an in-lieu fee to fund future affordable housing. This interpretation is inconsistent with both the spirit and the letter of the Order, which prioritizes construction of affordable-housing units over other construction. And, because the Order controls over any other authorization, those following this interpretation are at risk of arrest and the imposition of fines.

I appreciate that the Shelter-in-Place Orders issued by Public Health Officers in Bay Area jurisdictions impose hardship on many, including those in the construction industry. But the extraordinary measures that we have taken through these Orders appear to be working; the rise of new infections, and serious cases in the County is relatively flat. Continued adherence to the Shelter-in-Place Orders will improve outcomes for the entire community.

It is my hope that the City of Oakland, including the Planning & Building Department, will be a partner in disseminating accurate information regarding the scope and reach of the Health Order by taking all necessary steps to correct the response and eliminate any confusion regarding permissible construction. Thank you for your work to spread the importance of the Shelter-in-Place Order as a partner in the protection of our community through the course of this pandemic.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erica Pan". The signature is fluid and cursive, with a large initial "E" and "P".

Dr. Erica Pan, Interim Health Officer
County of Alameda

CC: Colleen Chawla, Agency Director, Health Care Services Agency
Scott Dickey, Assistant County Counsel, Office of the County Counsel