

Essential Business Update: Cluster Action Initiative

Last week, Gov. Andrew Cuomo unveiled New York's "Cluster Action Initiative." This initiative details New York's current plans to deal with clusters of COVID-19: by designating red (severe), orange (less severe) and yellow (caution) zones. Red zones, which designate the most severe outbreaks, have the most restrictions in place, including the restriction that non-essential businesses must close all in-person operations. (For more information on cluster zones, [please see this information memo](#).) In response, Empire State Development (ESD) issued a separate essential business list for the Cluster Action Initiative (the CAI List), which may be found [here](#). We discuss the key differences between the CAI List and the original essential business list regarding New York on Pause (which may be found [here](#)) below.

What is the purpose of the CAI List?

The CAI List sets forth which essential businesses may continue in-person operations in a cluster red zone. All non-essential businesses must close in-person operations. The CAI list does not apply to orange or yellow zones.

What are the differences between the CAI List and the original essential business list?

There are many similarities between the original ESD essential business list and the CAI list. Both note that state and local governments are exempt from the essential business reductions. Both are split into 14 categories of essential businesses.

There are, however, important differences between the lists. The list below compares the CAI List to the original essential business list. Bold, underlined and blue text represents insertions, while a red strike through represents a deletion.

1. Essential health care operations including:

- research and laboratory services
- hospitals
- walk-in-care health clinics and facilities
- veterinary and livestock medical services
- senior/elder care
- medical wholesale and distribution
- home health care workers or aides for the elderly
- doctors and doctors' offices **for both emergency and non-emergency appointments**
- dentists and dental practices **for both emergency and non-emergency appointments**
- nursing homes, residential health care facilities, or congregate care facilities
- medical supplies and equipment manufacturers and providers
- licensed mental health providers
- licensed substance abuse treatment providers
- medical billing support personnel
- speech pathologists and speech therapy
- chiropractic services
- acupuncture

- physical therapy
- occupational therapy
- **medically necessary massage therapy**

2. Essential infrastructure including:

- public and private utilities including but not limited to power generation, fuel supply and transmission
- public water and wastewater
- telecommunications and data centers
- airlines/airports
- commercial shipping vessels/ports and seaports
- **public and private** transportation infrastructure such as bus, rail, for-hire vehicles, garages
- hotels, and other places of accommodation, including campgrounds.
 - Campgrounds must take precautions to ensure campers maintain appropriate social distancing and adhere to proper cleaning and disinfecting protocols, including but not limited to maintaining six feet of distance between campers, unless wearing an acceptable face covering, excluding persons from the same household who are camping together.

3. Essential manufacturing including:

- food processing, manufacturing agents including all foods and beverages
- chemicals
- medical equipment/instruments
- pharmaceuticals
- sanitary products including personal care products regulated by the Food and Drug Administration (FDA)
- telecommunications
- microelectronics/semi-conductor
- food-producing agriculture/farms
- household paper products
- defense industry and the transportation infrastructure
- automobiles
- any parts or components necessary for essential products that are referenced within this guidance

4. Essential retail including:

- grocery stores including all food and beverage stores
- pharmacies
- convenience stores
- farmer's markets
- gas stations
- restaurants/bars (but only for take-out/delivery)
- hardware, appliance and building material stores
- pet food
- telecommunications to service existing customers and accounts
- ~~in regions that are not yet within the first phase of the state's regional reopening plan, delivery for orders placed remotely via phone or online at non-essential retail establishments; provided, however, that~~ **all other retail may operate for curbside pick-up or delivery only with no customers allowed within the establishment and** only one employee ~~is~~ physically present at the business location to fulfill orders.

5. Essential services including:

- 2020 Census operations and activities
- trash and recycling collection, processing and disposal
- mail and shipping services
- laundromats and other clothing/fabric cleaning services
- building cleaning and maintenance
- childcare services
- bicycle repair
- auto repair and maintenance
- automotive sales conducted remotely or electronically, with in-person vehicle showing, return and delivery by appointment only
- warehouse/distribution and fulfillment
- funeral homes, crematoriums and cemeteries
- storage for essential businesses
- maintenance for the infrastructure of the facility or to maintain or safeguard materials or products therein
- animal shelters and animal care including dog walking, animal boarding and pet grooming but only to the extent necessary to ensure animal health
- **food and non-food agriculture**
- landscaping, gardening and horticulture
- designing, printing, publishing and signage companies to the extent that they support essential businesses or services
- remote instruction or streaming of classes from public or private schools or health/fitness centers; provided, however, that no in-person congregate classes are permitted

6. News media

7. **Financial Institutions** Certain office-based work, including financial services and research

- banks or lending institution
- insurance
- payroll
- accounting
- services related to financial markets, except debt collection
- **higher education research**
- **other office-based work not specified here may operate remotely**

8. Providers of basic necessities to economically disadvantaged populations including:

- homeless shelters and congregate care facilities
- food banks
- human services providers whose function includes the direct care of patients in state-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in state-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

9. Construction¹

- **Construction projects may continue, but any work that can be done remotely such as office-based work must proceed remotely, to the extent practicable. Employees/personnel who are not directly involved in in-person work at the business location/construction site are prohibited**

10. Defense

- defense and national security-related operations supporting the U.S. government or a contractor to the U.S. government

11. Essential services necessary to maintain the safety, sanitation and essential operations of residences or other businesses including:

- law enforcement, including corrections and community supervision
- fire prevention and response
- building code enforcement
- **security, including security personnel for residential and commercial buildings**
- emergency management and response, EMS and 911 dispatch
- building cleaners or janitors
- general and specialized maintenance whether employed by the entity directly or a vendor, including but not limited to heating, ventilation, and air conditioning (HVAC) and pool maintenance
- automotive repair
- cleaning, disinfection, and sanitation services
- occupational safety and health professionals
- residential and commercial moving services

12. Vendors that provide essential services or products, including logistics and technology support, childcare and services including but not limited to:

- technology support for online services
- childcare programs and services
- government owned or leased buildings
- essential government services
- any personnel necessary for online or distance learning or classes delivered via remote means

13. Recreation

- **Local government are permitted to determine whether parks and other public spaces, as well as low-risk recreational activities may be open.**
- **If open,** appropriate social distancing of at least six feet among individuals ~~can~~ **must be** abided, acceptable face coverings ~~are~~ **must be** worn by individuals who are over the age of two and able to medically tolerate such coverings, and frequent cleaning/disinfection measures ~~are~~ **must be** in place for hard surfaces and objects frequently touched by multiple people (e.g., handrails, benches).

¹ The construction section of the CAI List does differ from construction section of the original list. The original list's description of essential construction is not included here as it is lengthy. The CAI List is significantly more straightforward regarding construction.

14. **Other** professional services with extensive restrictions

- Lawyers may continue to perform all work necessary for any service so long as it is performed remotely.
 - Any in-person work presence shall be limited to work only in support of essential businesses or services; however, even work in support of an essential business or service should be conducted as remotely as possible.
- Real estate services shall be conducted remotely for all transactions, including but not limited to title searches, appraisals, permitting, inspections, and the recordation, legal, financial and other services necessary to complete a transfer of real property; provided, however, that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols; and nothing within this provision should be construed to allow brokerage and branch offices to remain open to the general public (i.e. not clients).

If you have questions, or want to effect the standards applicable to your industry, please contact [Hermes Fernandez](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.



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