

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	20-0797
Introduction Date	04/22/2020
Enactment Number	20-0551
Enactment Date	4/22/2020 os



# Memo

**To** Board of Education

**From** Joshua R. Daniels, General Counsel  
Tadashi Nakadegawa, Acting Deputy Chief of Facilities Planning and Management

**Board Meeting Date** April 22, 2020

**Subject** Approval of Resolution No. 1920-0225 - Specially Designating District Facility Projects to be Essential Business and Essential Governmental Functions

**Action** Approval by the Board of Education of Resolution No. 1920-0225 - Specially Designating District Facility Projects to be Essential Business and Essential Governmental Functions

**Background** On March 31, 2020, the County of Alameda issued an update shelter-in-place order, Order No. 20-04 (“Order”), which directed all individuals living in the County to continue sheltering at their place of residence, except for Essential Activities, Essential Governmental Functions, Essential Travel, work for Essential Businesses, or performance of Minimum Basic Operations.

The Order specifically defines “Essential Businesses” to include “public works projects, if specifically designated as an Essential Governmental Function by the lead governmental agency.” OUSD is the lead agency for all projects on OUSD-owned property.

The Order further provides: “[N]othing in this Order shall prohibit any individual from performing or accessing ‘Essential Governmental Functions, as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions.”

The Order also requires that “[e]ach governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.”

Based on the authority delegated by the Board, pursuant to Resolution No. 1920-0218, to “the Superintendent or her designee to take any and all actions necessary to ensure the continuation of public education, and the health and safety of the students and staff of OUSD,” OUSD’s General Counsel published a memorandum on March 31, 2020 that “determined all current OUSD facility projects to be Essential Business (as public works projects) and Essential Governmental Functions under” the Order. The General Counsel subsequently updated the memorandum on April 2, 2020, that included charter school facility projects on OUSD-owned sites.

## Discussion

Resolution No. 1920-0225 - Specially Designating District Facility Projects to be Essential Business and Essential Governmental Functions ratifies the General Counsel’s memoranda from their effective dates through the effective date of the Resolution and replaces them thereafter. Moving forward, the Resolution enumerates, on a project-by-project basis, which current projects are essential and why.

Under the Resolution, almost all current projects are proceeding as scheduled with a few exceptions. Two exceptions are the boiler replacement projects at Sankofa Academy and Melrose Leadership Academy. They are approved to proceed to order but not commence on-site work until either the expiration of the County’s order to shelter-in-place or May 28, 2020 if the Superintendent or designee determines that commencing on-site after that date is essential. The other exception is the Softball field at Emerson Elementary, which is approved to proceed to order but not commence on-site work until either expiration of the Order to Shelter-In-Place or May 15, 2020 if the Superintendent or designee determines that commencing on-site after that date is essential.

It is also important to note that all the projects listed in the Resolution are construction projects for District programs taking place on District-owned property with the exception of three: Sherman Campus, Berkley Maynard Academy, and Lodestar Lighthouse Charter School. The District is the lead agency for the Sherman Campus project and the Berkley Maynard Academy project because they are on District-owned property. Although Lodestar Lighthouse is not constructing

facilities on District-own property, the District serves as the charter school's authorizer and, therefore, has agreed to be the lead government agency with adequate legal protections (in the form of indemnification).

The Resolution does not expire and the Board can revisit or modify it at any time.

**Fiscal Impact**

N/A

**Attachment**

Resolution No. 1920-0225 - Specially Designating District Facility Projects to be Essential Business and Essential Governmental Functions

General Counsel's Memorandum, Dated March 31, 2020, Deeming All Facility Projects to be Essential under Order No. 20-04 of the Alameda County Health Officer

General Counsel's Memorandum, Update Dated April 2, 2020, Deeming All Facility Projects to be Essential under Order No. 20-04 of the Alameda County Health Officer

**RESOLUTION OF THE GOVERNING BOARD  
OF THE OAKLAND UNIFIED SCHOOL DISTRICT**

**SPECIFICALLY DESIGNATING DISTRICT FACILITY PROJECTS TO BE ESSENTIAL BUSINESS AND ESSENTIAL  
GOVERNMENTAL FUNCTIONS**

**RESOLUTION 1920-0225**

**WHEREAS**, California’s public health efforts to combat the spread of the novel coronavirus, also known as COVID-19, has forced the substantial disruption of daily life throughout Oakland, the Bay Area, the state, and the nation;

**WHEREAS**, on March 31, 2020, the County of Alameda (“County”) issued Order No. 20-04 (“Order”) directing all individuals living in the County to continue sheltering at their place of residence, except for Essential Activities, Essential Governmental Functions, Essential Travel, work for Essential Businesses, or performance of Minimum Basic Operations, all as defined in the Order;

**WHEREAS**, Section 13.d of the Order provides that each governmental entity “shall identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new employees or contractors to perform such functions”; and further provides that individuals may continue “performing ‘Essential Governmental Functions,’ as determined by the governmental agency performing those functions”;

**WHEREAS**, Section 13.f of the Order defines “Essential Businesses,” including, among other things, construction, but only of the types enumerated in Section 13.f.v, among which types the order lists “[p]ublic works projects if specifically designated as an Essential Governmental Function by the lead governmental agency”;

**WHEREAS**, Section 13.f of the Order also defines “Essential Businesses” to include “Education institutions – including public and private K-12 schools, . . . – for purposes of facilitating distance learning or performing essential functions”;

**WHEREAS**, the California Constitution contemplates education as a governmental function, with school districts as a public agency authorized to maintain schools within the Public School System, inclusive of kindergarten schools, elementary schools, and secondary schools;

**WHEREAS**, pursuant to state constitutional authority, the Legislature codified school districts as local educational agencies;

**WHEREAS**, the California Constitution underscores the importance of ongoing public education operations, stating, “[t]he Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established;”

**WHEREAS**, Governor Newsom’s Executive Order N-26-20, issued on March 13, 2020, noted that: “schools are critical to the daily lives of many Californians;”

**WHEREAS**, those sections of the Order cited herein are consistent with Executive Order N-26-20 as well

as other executive orders issued by California Governor Gavin Newsom in response to the COVID-19 crisis;

**WHEREAS**, the Board of Education (“Board”) is the governing body of the Oakland Unified School District (“District”), which is the lead governmental agency under the Order for the public works projects described herein;

**WHEREAS**, the Board approved Resolution No. 1920-0218, which delegated authority to “the Superintendent or her designee to take any and all actions necessary to ensure the continuation of public education, and the health and safety of the students and staff of OUSD”;

**WHEREAS**, based on this delegation of authority, OUSD’s General Counsel published a memorandum on March 31, 2020 that “determined all current OUSD facility projects to be Essential Business (as public works projects) and Essential Governmental Functions under” the Order, and the General Counsel subsequently updated the memorandum on April 2, 2020, to include charter school facility projects on OUSD-owned sites.

**NOW, THEREFORE, BE IT RESOLVED**, the Board of Education (“Board”) of the District, as the lead governmental agency, ratifies the General Counsel’s memoranda and, henceforth, replaces them with this resolution;

**BE IT FURTHER RESOLVED**, the Board—as the governing board of the lead governmental agency, in accordance with the Order, for all of the reasons set forth herein, and to the extent described herein—finds, determines, declares, and orders as follows:

- the public works projects (“Projects”) listed below constitute Essential Business (as public works projects) and Essential Governmental Functions, as those terms are defined in the Order,
- the District employees, contractors (and their employees), and consultants (and their employees) performing work or services on the Projects are performing work for Essential Business and performing Essential Governmental Functions, as those terms are defined in the Order,
- the Projects continue to the extent described below, with each Project otherwise in compliance with the contracts awarded by the Board for that Project, and
- the District employees, contractors (and their employees), and consultants (and their employees) performing work on the Projects comply with all applicable State and County orders, including the Order, regarding health, safety, and social distancing requirements and protocols;

**BE IT FURTHER RESOLVED**, the Projects addressed by this Resolution are as follows:

<u>School Site and Address</u>	<u>Project Title and Description</u>
1. <b>Fremont High School 4610 Foothill Boulevard Oakland, CA 94601</b>	School remodel includes demolition and new construction of a new academic building, soccer field, football field, instructional space to support academic pathways and renovation of Building B. Delay in current construction will result in delays to construction deadlines and delayed

completion of facilities and instructional space when in-class instruction resumes. Construction must continue for classroom space to be available when in-class instruction resumes.

- 2. Glenview Elementary School**  
**4125 La Cresta Avenue**  
**Oakland, CA 94602**

New classroom building replacing 21 classrooms, library, cafeteria, multi-purpose room (“MPR”), and administrative space. Scheduled move-in date of Summer 2020 will be compromised by construction delays and result in continued displacement of the school community to an alternative school site (Santa Fe) when in-class instruction resumes. Construction must continue for classroom space to be available when in-class instruction resumes.
- 3. Central Kitchen**  
**2850 West Street**  
**Oakland, CA 94608**

New construction of Central Kitchen, Instructional Farm and Education Center, and instruction space for academic pathways. Scheduled move in date of Summer 2020 will be compromised by construction delays. Central Kitchen move-in has already be planned and will be the production space for approximately 35,000 student meals per day when fully operational. Construction delays will impact operation of the District-wide food production system. Additionally, delays in construction to Central Kitchen will compromise student access to pathway aligned instruction when in-person instruction resumes.
- 4. Madison Park Academy**  
**400 Capistrano Drive**  
**Oakland, CA 94603**

New construction of high school classrooms to support the grade span expansion of middle school to high school. Construction includes 14 new classrooms, 2 labs, and 6 offices. Delays in construction will compromise substantial completion milestones and the availability of suitable classroom space for expansion of the high school program. Construction must continue for classroom space to be available when in-class instruction resumes.
- 5. Elmhurst Middle School**  
**1800 98<sup>th</sup> Avenue**  
**Oakland, CA 94603**

Sewer line replacement at Elmhurst Middle School to prevent a health and safety emergency when in-person instruction resumes. Delays in installation may result in health and safety risks when in-person instruction resumes due to issues with improper waste management and likely sewer backup and overflow. Construction must continue to ensure integrity of the sewer system prior to the commencement of in-class instruction.
- 6. Emerson Elementary School**  
**4803 Lawton Avenue**  
**Oakland, CA 94609**

Softball Field for community. District authorizes contractor to proceed to order but not commence on-site work until either expiration of the Order to Shelter-In-Place or May

15, 2020 if the Superintendent or designee determines that commencing on-site after that date is essential. Additional delays may result in access to the field being delayed until after in-person instruction has resumed, causing a disruption to the students due to construction noise and dust during in-person instruction, or even possibly until Summer 2021.

**7. Sankofa Academy  
581 61<sup>st</sup> Street  
Oakland, CA 94609**

Installation of mobile modular classrooms to support the Kaiser/Sankofa Merger. Delays to the installation of modulars (portable classrooms) will result in a lack of adequate classroom space when in-person instruction resumes. Construction must continue for classroom space to be available when in-class instruction resumes.

Boiler replacement at Sankofa Academy to ensure energy efficient heating and prevention of a health and safety emergency. District authorizes contractor to proceed to order but not commence on-site work until either expiration of the Order to Shelter-In-Place or May 28, 2020 if the Superintendent or designee determines that commencing on-site after that date is essential. Failure to commence on-site work after May 28, 2020 may result in health and safety risks when in-person instruction resumes due to issues with improper heating and site-wide water shut off being required to accommodate boiler installation.

**8. Melrose Leadership Academy  
4730 Fleming Avenue  
Oakland, CA 94619**

Boiler replacement at Melrose Leadership Academy to ensure energy efficient heating and prevention of a health and safety emergency. District authorizes contractor to proceed to order but not commence on-site work until either expiration of the Order to Shelter-In-Place or May 28, 2020 if the Superintendent or designee determines that commencing on-site after that date is essential. Failure to commence on-site work after May 28, 2020 may result in health and safety risks when in-person instruction resumes due to issues with inadequate heating, inadequate supply of hot water that is required for safe food preparation and sanitary handwashing, and site-wide water shut off being required during boiler installation.

**9. Cole Administration Center  
1011 Union Street  
Oakland, CA 94607**

New construction and rehabilitation construction to support the transition of District administrative offices from 1000 Broadway and various school site to one centralized location. This project has a scope of work that includes demolition, construction, ADA compliant facilities upgrades, and various technology upgrades for HVAC

controls. The District's lease for space at 1000 Broadway expires August 2022. Delays in construction will compromise major construction benchmarks that must be completed in order to staff at 1000 Broadway to move out prior to the end of the lease.

**10. Former Sherman Elementary  
5328 Brann St  
Oakland, CA 94619**

Storm drain replacement at site known as Former Sherman Elementary School and current home to District authorized charter school. Delays in installation may result in unsafe conditions and property damage after in-person instruction resumes because in absence of a timely replacement there will be inefficient drainage of rain and excess ground water.

**11. Berkley Maynard Academy  
6200 San Pablo Avenue  
Oakland, CA 94608**

Rehabilitation and new construction on District property through Proposition 51. This project has a scope of work that includes new construction, new roofing, ADA compliant facilities upgrades, and various technology upgrades for HVAC controls. Delays in construction will compromise major construction benchmarks that must be completed prior to students and faculty returning to the school site.

**12. Lighthouse Lodestar  
701 105<sup>th</sup> Avenue  
Oakland, CA 94603**

New construction on private property of District-authorized charter school. This project has a scope of work that includes new construction of classrooms and instructional space delays in construction will compromise major construction benchmarks that must be completed prior to students and faculty returning to the school site.

**BE IT FURTHER RESOLVED**, the Board finds, determines, declares, and orders that timely completion of each Project (including design services, site and construction preparation and mobilization, and construction for those Projects), to the extent described above, is also essential for the following non-exclusive list of reasons:

- to ensure the District's educational programs in provided in safe, accessible, and structurally sound facilities, and to support student health and safety,
- to ensure needed facilities and infrastructure for the District as it continues to provide education to its students during the COVID-19 crisis,
- to provide needed facilities and infrastructure for those students when the District is able to resume normal operations following the COVID-19 crisis and the cessation of State and County orders directing shelter-in-place,
- to ensure that the District is able to remain within its budget for the Projects and avoid increased costs to the public, and



- to preserve of the rights and liberties of the staff, students, and families of the District under the California Constitution.

Passed by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: James Harris, Gary Yee, Aimee Eng, Roseann Torres, Jumoke Hinton Hodge, Vice President Shanthi Gonzales, President Jody London

NOES: None

ABSTAINED: None

RECUSE: None

ABSENT: Student Directors Garibo and Smith-Dahl

**CERTIFICATION**

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on April 22, 2020.

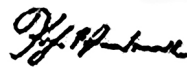
Legislative File	
File ID Number:	20-0797
Introduction Date:	04/22/2020
Enactment Number:	20-0551
Enactment Date:	4/22/2020
By:	os

**OAKLAND UNIFIED SCHOOL DISTRICT**




---

Jody London  
President, Board of Education




---

Kyla Johnson-Trammell  
Superintendent and Secretary, Board of Education



OFFICE OF THE GENERAL COUNSEL

---

MEMORANDUM

To: Facility Project Contractors for Oakland Unified School District  
Date: March 31, 2020  
Subject: Deeming All Facility Projects to be Essential under Order No. 20-04 of the Alameda County Health Officer

---

This memorandum provides direction to contractors overseeing or working on Oakland Unified School District (“OUSD”) facility projects in response to Order No. 20-04 by the Alameda County Health Officer, dated March 31, 2020 (Order No. 20-04), a copy of which is enclosed herewith. Order No. 20-04 requires individuals in Alameda County to remain in their residences, with certain exceptions.

Order No. 20-04 specifically provides: “[I]ndividuals currently living within the County . . . may leave their residence only for Essential Activities, Essential Governmental Functions, Essential Travel, to work for Essential Businesses, or to perform Minimum Basic Operations.” It defines “Essential Businesses” to include “public works projects, if specifically designated as an Essential Governmental Function by the lead governmental agency.”

Order No. 20-04 further provides: “[N]othing in this Order shall prohibit any individual from performing or accessing ‘Essential Governmental Functions, as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions.”

Order No. 20-04 also requires that “[e]ach governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.”

**This memorandum serves as notice that OUSD has determined all current OUSD facility projects to be Essential Business (as public works projects) and Essential Governmental Functions under Order No. 20-04.** It therefore directs all contractors to continue with all contracted work while complying with the Social Distancing Requirements under Order No., 20-04 to the greatest extent feasible. However, OUSD prohibits any facility project contractor from employing or contracting with anyone who is high risk (e.g., over 60-years-old, immunocompromised) or is showing COVID-19-like symptoms or has tested positive for COVID-19.

This memorandum shall stay in effect until the Office of General Counsel determines otherwise. Thank you for your partnership, for meeting the essential needs of students, and for working with us to meet this challenge.

Sincerely,

Joshua R. Daniels  
General Counsel



OFFICE OF THE GENERAL COUNSEL

---

**MEMORANDUM**

*(Update April 2, 2020)*

To: Facility Project Contractors for Oakland Unified School District and Charter School  
Facility Project Contractors on Oakland Unified School District-Owned Sites

Subject: Deeming All Facility Projects to be Essential under Order No. 20-04 of the  
Alameda County Health Officer

---

This memorandum (updated April 2, 2020) provides direction to contractors overseeing or working on Oakland Unified School District (“OUSD”) facility projects or on charter school facility projects on OUSD-owned sites (collectively, “PROJECTS”). This memorandum responds to Order No. 20-04 by the Alameda County Health Officer, dated March 31, 2020 (“Order No. 20-04”), a copy of which is enclosed herewith. Order No. 20-04 requires individuals in Alameda County to remain in their residences, with certain exceptions.

Order No. 20-04 specifically provides: “[I]ndividuals currently living within the County . . . may leave their residence only for Essential Activities, Essential Governmental Functions, Essential Travel, to work for Essential Businesses, or to perform Minimum Basic Operations.” It defines “Essential Businesses” to include “public works projects, if specifically designated as an Essential Governmental Function by the lead governmental agency.” Under Order No. 20-04, OUSD is the lead agency for all PROJECTS.

Order No. 20-04 further provides: “[N]othing in this Order shall prohibit any individual from performing or accessing ‘Essential Governmental Functions, as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions.’”

Order No. 20-04 also requires that “[e]ach governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.”

**This memorandum (updated April 2, 2020) serves as notice that OUSD has determined all current PROJECTS to be Essential Business (as public works projects) and Essential Governmental Functions under Order No. 20-04.** It therefore directs all contractors to continue with all contracted work while complying with the Social Distancing Requirements under Order No., 20-04 to the greatest extent feasible. However, OUSD prohibits any facility project contractor from employing or contracting with anyone who is high risk (e.g., over 60-years-old, immunocompromised) or is showing COVID-19-like symptoms or has tested positive for COVID-19.

Memorandum – Essential Facilities Projects

April 2, 2020

Page 2 of 2

This memorandum (updated April 2, 2020), which replaces the original memorandum issued on March 31, 2020, shall stay in effect until the Office of General Counsel determines otherwise. Thank you for your partnership, for meeting the essential needs of students, and for working with us to meet this challenge.

Sincerely,

A handwritten signature in black ink, appearing to read "JR Daniels". The signature is written in a cursive, fluid style.

Joshua R. Daniels  
General Counsel