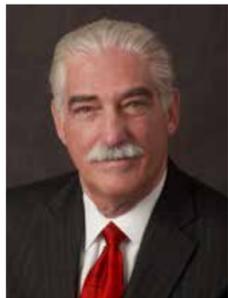


CONTRACTORS' GUIDE TO CONSTRUCTION SITE SHUTDOWNS IN NEW YORK CITY



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The Building Trades Employers Association has been in constant discussions with the Governor's Office and Mayor's Office in order to determine how contractors should proceed with the various Executive Orders set forth by NYS Empire State Development Corporation and NYC Department of Buildings. Here is what we know as of the date of this publication.

We will continue these efforts in coordination with our Member Associations and report them to you through reports of this nature which you can find on the website we set up to focus on information relating to the Coronavirus. Please go to www.bteany.com/covid19/ where these updates will be posted and for other critical information designed for contractors.

Questions?

Please submit any questions you may have and the BTEA will make every effort to get them answered and report it to the membership. Forward those questions to: dranshte@bteany.com

1 What Type of Construction Projects Can Remain Open, and Which Ones Must Be Shutdown Under Governor Cuomo's Executive Order?

Executive Order 202.13 issued by Governor Cuomo on March 29, 2020 states, "the previous Executive Order 202.6 is modified to clarify that construction which was an essential service not subject to the in-person work restrictions has been modified for affordable housing by the NYC Department of Buildings in its Guidance to Owners and Contractors Regarding Enforcement of Essential vs Non-Essential construction in accordance with Executive Order 202.6 with reference affordable Housing projects."

Empire State Development released the following guidance on Executive Order 202.6:

All Non-Essential Construction must shut down except emergency construction (i.e. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site).

Essential Construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing and homeless shelters. **At every site, if essential or emergency non-essential construction exists, this includes maintaining social distance, including for purposes of elevators/meals entry and exit.** Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city local governments. This will include fines of up to \$ 10,000 per violation. Vendors, manufacturers and suppliers supporting essential construction are also deemed essential under this order.

Essential construction for Affordable Housing guidelines now state: "Construction work on public housing, or a private or multiple dwelling or real property that is a new building (NB) or that is 100% vacant; or is work on unoccupied public housing units for the designation as housing for a specific populations (i.e. shelter set aside, domestic violence referrals), or work on the exterior to address emergency conditions requiring immediate corrective action, set forth in Section 1 (a) (iii) or within public housing, correction of critical systems for seasonal preparedness for the 2020-2021 heating season of an existing public housing building.

Construction work on a private or multiple dwelling or real property that is a new building (NB) or that is 100% vacant that is now used or will be converted to such use: (i) for the provision of affordable inclusionary housing or mandatory inclusionary housing pursuant to New York City zoning resolution, or (ii) where no less than 30% of the residential units are subject to a regulatory agreement, restrictive declaration, or similar instrument with a local, state, or federal governmental entity or a local housing authority in a city with a population of one million or more (NYC)"

2 How Long is it Expected to Last?

The Governor's Executive Order is in force until April 28, 2020.

3 Does the Governor's Order Impact NYC School Construction Authority (SCA) Projects?

Yes, the NYC SCA has announced a "pause" on all non-essential construction projects. Additional information is included below:

- Capacity projects, CIP projects and remediation of lead-based paint are stopped immediately
- Over the next few days, the SCA and its contractors will be working to safely and orderly shutdown approximately 670 active construction projects.
- All consultant design projects will stop immediately.
- Procurement of construction and design contracts will "pause" immediately.

It is expected that a similar ruling will be issued shortly on NYC Design and Construction projects.

The NYC Housing Authority has ordered its job sites to be shut done in compliance with the definitions outlined in Question 1, Paragraph 5 - "Essential housing for Affordable Housing"

4 Has New York City Issued Any of Its Own Guidelines?

Yes, the following three documents outline the protocols for closing, or working, securing, and making safe construction site in New York City under NYS Executive Order 202.6 (and following), ESD Guidance and NYC Executive Order 103.

Buildings Bulletin 004 of 2020

This Bulletin explains the requirements of an owner, or contractor, on any site where work is suspended, for ensuring the site is secured and maintained in such a manner as to safeguard the public and property throughout the duration of time operations are suspended. This includes the safe storage of materials and equipment. Please see Buildings Bulletin 029 of 2015, the Stalled Sites Program for more information on making suspended sites: https://www1.nyc.gov/assets/buildings/bldgs_bulletins/bb_2015-029.pdf

In addition, a (minimum) weekly inspection is required. This inspection shall be performed to ensure the construction or demolition site is safe and in continued compliance with these requirements and all other applicable laws and regulations. Where the site is subject to the training provisions of Section 3321 of the Building Code, these safety inspections shall be performed by an individual who possesses a Site Safety Training (SST) Supervisor Card. Find the full 2020-04 Buildings Bulletin here: https://www1.nyc.gov/assets/buildings/bldgs_bulletins/bb_2020-004.pdf

Guidance Regarding Enforcement of Essential vs. Nonessential Construction

In accordance with the NYS and NYC Executive Orders, the Commissioner mandates that all non-essential construction must shut down.

Essential construction, as listed in ESD Guidance #9, and emergency construction (a project that would be unsafe to allow to remain if undone), may continue.

On essential or emergency non-essential construction sites, workers must maintain social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation. Find the full document here: https://www1.nyc.gov/assets/buildings/pdf/essential_vs_non-essential.pdf

DOB Service Notice

The Department of Buildings will regularly inspect all construction sites to ensure compliance with emergency orders. However, if non-essential work continues the Department must be notified through the DOB NOW portal. The notification to the Department requires ESD approval. To perform emergency work, or work to secure and make safe a site, must be reported to the DOB at: www.nyc.gov/dobnow.

All permits for suspended sites must be kept current should the expiration date occur during the shutdown. Find the full Notice here: https://www1.nyc.gov/assets/buildings/pdf/covid-19_essential_construction_sn.pdf

5 What Happens if I Cannot Get My Union Trade Workers to Come to Work?

This is not covered by any governmental Executive Order or regulation and is one of the biggest issues contractors are currently facing. Many contractors are telling the BTEA that 20-40% of the workforce needed to meet project contract requirements are not coming to work. The only suggestion the BTEA can offer is to confer with your respective Trade Association.

Disclaimer

The information included in this BTEA Publication is for advisory purposes only. Please contact your attorney and other business advisors for legal advice.