



Lou Coletti
President
BTEA

The Building Trades Employers Association (BTEA) is committed to keeping our members 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

Disclaimer

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

NYC Department of Buildings Documents to Clarify Updated Guidance by ESD

As the Building Trades Employers Association (BTEA) continues to navigate the COVID-19 (coronavirus) outbreak, we are committed to keeping our members updated with important information, as well as ensuring the BTEA is involved in the important conversations taking class every day.

Today, NYC Department of Buildings (DOB) released three important documents to provide clarity on the updated guidance by Empire State Development (ESD). Volume 6 of the BTEA Contractors' Guide to Construction Site Shutdowns in New York City includes highlights and the released documents.

Highlights!

- Approvals for emergency and essential work will now include a Certificate of Authorization. To limit the possibility of disruption of this work, we ask that you post your Certificate at your job site.
- Essential Construction Requests for the following scopes of work will now be subject to professional-certification and Department audit:
- Work necessary to protect the safety of occupants
- Work in support of an Essential Business
- Work limited to a single worker
- A maximum of two appeals can be requested on a disapproved Essential Construction Request.
- We will be establishing a process to notify the Department electronically when work to make a site safe has concluded.

NYC Department of Building Documents:

1. Updated Service Notice 2
2. Updated Guidance Document on Enforcement of Essential and Nonessential Construction 4
3. Updated FAQ 6

Updated Service Notice



Issuance Date: 04/15/2020

To: Owners and Contractors

Purpose: Updated guidance to owners and contractors on enforcement of Essential vs. Nonessential construction in accordance with updated guidance from the Empire State Development Corporation issued on April 9, 2020 pursuant to NYS Governor's Executive Order 202.6 and subsequent orders

Related Code & Zoning Section(s):

- AC 28-103.8
- AC 28-201.1
- New York State Gubernatorial Emergency Order 202.6 and subsequent orders and related Empire State Development Corporation (ESD) guidelines
- New York City Mayoral Emergency Orders

In accordance with [NYS Governor's Executive Order 202.6](#), subsequent orders, and the [Guidance on Executive Order 202.6](#) published by the New York State Development Corporation (ESD) only the following construction projects subject to permits issued by the NYC Department of Buildings or otherwise regulated by the NYC Construction Codes and the NYC Electrical Code shall be permitted to continue until further notice:¹

1. Emergency Construction

- a. Projects necessary to protect the health and safety of the occupants, including:
 - i. Emergency work ordered by the Department;
 - ii. Restoration of essential services – heat, hot water, cold water, gas, electricity, or other utility services; or
 - iii. Work necessary to address any condition requiring corrective action that severely affects life, health, safety, property, or significant number of persons.

2. Essential Construction

- a. Transit facilities on private properties
- b. Utilities
- c. Hospitals or health care facilities
- d. Homeless shelters
- e. Public or private schools

¹ This guidance does not apply to construction on roads and bridges that are allowable under the Governor's Executive Orders and ESD guidance. This guidance also does not apply to transit facilities with the exception of transit facilities related to work on private properties as set forth in 2(a) herein. Any construction addressed herein is subject to any applicable requirements set forth in any and all guidance issued by New York State and New York City agencies, including but not limited to New York State Homes and Community Renewal, the New York City Department of Housing Preservation and Development, and the New York City Housing Development Corporation.



f. Affordable and public housing, including:

- i. Construction work on a private or multiple dwelling or real property where either a minimum of 20% of the residential units are or will be deemed affordable and are or will be subject to a regulatory agreement and/or a declaration from a local, state, or federal government agency or
- ii. Construction work where the project is being undertaken by, or on behalf of, a public housing authority.

g. Construction for projects in the energy industry in accordance with Question No. 14 in the FAQ at https://esd.ny.gov/sites/default/files/ESD_EssentialEmployerFAQ_033120.pdf

h. Construction for existing (i.e. currently underway) projects of essential businesses that do not fall under the categories listed in Sections 2(a) through 2(g):²

- i. Such construction is defined as alterations to existing buildings of essential businesses with construction permits issued prior to April 15, 2020;³

i. Construction work that is being completed by a single worker who is the sole employee/worker on the job site.

3. Construction work by local government agencies that has been identified to the Department.

Construction may continue solely with respect to those employees that must be present at the business location/construction site in support of essential business activities. No other employees/personnel shall be permitted to work in-person at the business location/construction site. Any other business activities being completed that are not essential are still subject to the restrictions provided by Executive Order 202.

ALL OTHER WORK TO CEASE

All other construction and demolition work permitted by the NYC Department of Buildings or otherwise regulated by the NYC Construction Codes and the NYC Electrical Code shall cease and comply with [Buildings Bulletin 2020-004](#).

All complaints from the public or workers should be directed to 311 where a Class 'A' complaint will be generated for DOB to address.

For a determination that work is either essential or emergency work in accordance with New York State Gubernatorial Emergency Order 202.6 and subsequent orders and related ESD guidelines shall be submitted to the Department in a form and manner acceptable to the Department.

REFERENCES

- [NYS Governor's Executive Order 202.6](#)
- [Guidance on Executive Order 202.6](#) published by ESD (UPDATED: April 9, 2020 at 8:00 a.m.)

² 'Essential businesses' are those designated as essential per the ESD guidance at <https://esd.ny.gov/guidance-executive-order-2026>.

³ If such work requires additional permit(s) not yet issued prior to April TK, 2020, requests for such permits may be submitted for approval by the Department.

**Updated Guidance Document on Enforcement of
Essential and Nonessential Construction**



Service Notice

COVID-19 Response: Updated Guidelines for Suspension of Work on Non-essential Construction and Demolition Sites Including Professional Certification Categories and new Certificate of Authorization Requirement

As part of the ongoing COVID-19 public health emergency, in accordance with [New York State Executive Order 202.6](#), [Empire State Development guidance](#) (updated 4/9/20) and [New York City Emergency Executive Order](#), all work on non-essential construction and demolition sites is suspended for the duration of this state of emergency.

See [Buildings Bulletin 2020-004](#) for guidance on securing suspended construction and demolition sites and [DOB Guidance Document on Enforcement of Essential vs. Nonessential Construction](#) (updated 4/15/20). For suspended sites that require a site safety manager, site safety coordinator or construction superintendent, a weekly certification must be submitted to the Department. See [the COVID-19 Response: Weekly Safety Inspection Reports Service Notice](#).

The Department of Buildings will regularly inspect all construction sites to ensure compliance with emergency orders. Non-compliance will result in the issuance of a violation carrying a penalty of up to \$10,000.

Essential Construction Requests

The Essential Construction request portal at www.nyc.gov/dobnow has been modified for the updated guidelines as set forth in Empire State Development guidance on NYS Executive Order 202.6 and the DOB Guidance Document.

For jobs in approved status, an Essential Construction request must be submitted to proceed with an initial work permit application (PW2). Antenna, Construction Fence, Curb Cut and Sidewalk Shed work types and jobs at a BIN that has already been identified as essential (see the [Essential Active Construction Sites](#) map for more information) are exempt and can proceed without submission of an Essential Construction request. See the [FAQs](#) for information about electrical, elevator and limited alteration applications.

Professionally Certifiable Essential Construction Requests

Essential Construction requests submitted as Emergency Construction section A (protect safety and health of occupants), work limited to a single worker or construction for other essential business will be professionally certified. All other categories will be submitted to the Department of Buildings for plan examiner review.

Appeals of Essential Construction Requests

Appeals are no longer available for requests submitted prior to the updated DOB guidance issued on April 15, 2020. Submit a new Essential Construction Request for consideration under the updated guidelines.

A maximum of two appeals are allowed for new requests submitted on or after April 15, 2020. To request an appeal, log in at www.nyc.gov/dobnow and from the Essential Construction dashboard select Appeal from the Filing Actions column. Selections made on the Essential Construction Questionnaire cannot be changed during the appeal process



Certificates of Authorization

Once a request is approved in the Essential Construction portal, a Certificate of Authorization must be printed for each approved job and posted at the work site. The certificate is valid from the date the Essential Construction request was approved until April 29, 2020. If the state of emergency is extended, the certificate date will be automatically updated and a new certificate will need to be printed.

To print the certificate, go to www.nyc.gov/dobnow and from the Essential Construction tab (without logging in), enter the job number and select Print Certificate. The certificate can also be printed when logging in from the Essential Construction dashboard by opening the request and selecting the printer icon on the Actions column for each Job Filing No.

A Certificate of Authorization is only required to be posted at work sites categorized as Approved Work on the [Essential Active Construction Sites](#) map. All other categories (affordable housing, homeless shelter, hospital/health care, schools and utilities) do not require a certificate provided the building is identified as such on the Essential Active Construction Sites map.

Permits

Permits already in effect, are required to remain active until the end of the term for which they were issued and must be renewed for as long as work remains suspended. There are no changes to the permit renewal process and all applicable fees apply.

After Hours Variances (AHV)

Initial AHVs can only be requested for jobs that have an approved Essential and Emergency Construction request. All approved jobs seeking a permit can drop off initial AHV applications at a borough office; it cannot be submitted in eFiling or DOB NOW. See the [Application Processing Service Notice](#) for information about drop off procedures.

For additional service updates see the [DOB COVID-19 Response page](#).

Updated FAQ



FAQs

**Essential and Non-Essential Construction In New York City During the COVID-19
New York State Emergency**

as of April 15, 2021

Emergencies

Q1. If I observe a condition on my site that I deem to be an emergency what should I do?

A1. Address the condition immediately and submit the appropriate application to the Department within two business days of commencement of the emergency work.

Local Law Compliance Inspections and Tests

Q1. Are local law compliance inspections and tests (elevators, facades, boilers) permissible during this suspension of non-essential construction work?

A1. Yes. Local Law compliance inspections and tests are considered projects necessary to protect the health and safety of occupants.

Elevators

Q1. What elevator work is permissible during this suspension of non-essential construction work?

A1. Only work necessary to maintain safe elevator service is permissible during this suspension of non-essential construction work. This includes in-progress modernization work of currently out of service elevators, and repairs of out of service elevators. This applies to all occupied buildings, regardless of the number of elevators they have.

Q2. Is the installation of door lock monitoring devices permissible during this suspension of non-essential construction work?

A2. Yes, door lock monitoring device installation is necessary to protect the health and safety of occupants.

Façades

Q1. Is façade restoration permissible during this suspension of non-essential construction work?

A1. Only façade restoration work necessary to correct conditions labeled as Unsafe in a Local Law 11 Façade Inspection Report, or necessary to address any condition requiring immediate corrective action that severely affects life, health, safety, property, or significant number of persons can continue during this suspension of non-essential construction work.

As a reminder, there must be appropriate protection (e.g. sidewalk shed) to protect the public.

Q2. Are façade inspections permissible during this suspension of non-essential construction work?

A2. Yes, façade inspections are permissible during this suspension of non-essential work.

Q3. Is the use of suspended scaffolds and other façade inspection related equipment permissible during this suspension of non-essential construction work?

A3. Equipment necessary to perform façade inspections (e.g. suspended scaffolds, industrial rope access) can be used during this suspension of non-essential work.

Q4. Is the use of probes in cavity walls permissible during this suspension of non-essential construction work?

A4. Probes that are required for cavity walls as part of Local Law 11 façade inspections are permissible. Probes on other types of walls or buildings will be evaluated based on the reason for performing the probe (e.g. correcting an emergency condition).

• This FAQ document is provided in conjunction with Governor's Order 202.6 and guidance from ESDC and DOB. It will be updated as appropriate and is subject to change.



**Plumbing, Fire Suspension, Sipsession,
Electrical, Mechanical (HVAC), and Boilers**

Q1. Can I perform the above work during this suspension of non-essential construction work?

A1. Only if the work is necessary to restore the interruption of essential services, or necessary to address any condition requiring immediate corrective action that severely affects life, health, safety, property, or significant number of persons.

New applications for electrical or Limited Alteration Application (LAA) permits require completion of an essential construction questionnaire to perform emergency or solitary work. On the application in DOB NOW: Build, complete the Essential Construction tab, located under the Scope of Work tab. The questionnaire must be completed in order for the application to be submitted. Electrical and LAA jobs cannot be submitted in the Essential Construction Request portal at www.nyc.gov/dobnow. Permits already in effect, are required to remain active until the end of the term for which they were issued and must be renewed for as long as work remains suspended. There are no changes to the permit renewal process.

Violations

Q1. What is the penalty associated with a violation for performing non-essential work?

A1. Beginning March 31, 2020, violations for performing non-essential construction work will result in a maximum penalty of \$10,000, issued to each permit holder found in violation on the site.

Q2. What is the penalty associated with a violation for not practicing social distancing on an essential construction site?

A2. Violations for not practicing social distancing on an essential construction site will result in a maximum penalty of \$10,000, issued to each permit holder found in violation on the site. Please visit the [DOB COVID-19 Response page](#) for safety guidance on construction sites.

A3. Such work requires approval by the Department. The applicant of record needs to submit an Essential Construction Request at www.nyc.gov/dobnow for the Department's consideration and response. The request must include an explanation as to why additional time is necessary and the amount of additional time requested. If approved, such work can proceed only until it is safe to shutdown the site.

Q4. I need to perform work to correct conditions in response to a Department-issued violation. Can I continue? If not, will I be subject to additional violations for non-compliance?

A4. You can perform work to correct conditions if the work is necessary to address any condition requiring corrective action that severely affects life, health, safety, property, or significant number of persons. Such work requires approval by the Department. The applicant of record needs to submit an Essential Construction Request at www.nyc.gov/dobnow for the Department's consideration and response. The request must include an explanation of the scope of work and what qualifies it to continue. If denied, you will not be subject to additional violations for non-compliance during the duration of this suspension of non-essential work.

Q5. I received a violation for performing non-essential construction work. I believe the work to be essential. How do I contest?

A5. The applicant of record needs to submit an Essential Construction Request at www.nyc.gov/dobnow for the Department's consideration and response. While the Department considers this request, work must be suspended except to secure and maintain the site. The request must include an explanation of the scope of work and why it should be treated as essential. Any supporting documentation should be provided. The Department's decision on your request will inform the resolution of the violation.

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Securing & Maintaining Sites

Q1. How should weekly inspection reports by safety professionals be submitted to the Department?

A1. For suspended sites that require a site safety manager, site safety coordinator or construction superintendent, a weekly certification must be submitted to the Department as outlined in [Buildings Bulletin 2020-004](#). To submit a report, use an eFiling account to log into DOB NOW at www.nyc.gov/dobnow and select the Essential Construction portal. If you need to create an eFiling account, visit www.nyc.gov/DOBNOWtips. You do not need to register for eFiling with your license number.

From the Essential Construction portal, select +Weekly Safety Inspection Report and enter the BIS job/document number. Complete the required fields and select the Save button to then complete the Statements & Signature section. Select the Submit button to complete the transaction. An email notification will be sent to confirm submission. A new submission must be made each week for every job that requires a safety inspection report.

Q2. Can hoists be used in furtherance of weekly and daily inspections to secure and maintain a site?

A2. Yes, as inspection of the entire site is critical to determine if it is appropriately secured and maintained, the use of hoists is necessary.

Q3. Are daily sidewalk shed inspections required during this suspension of non-essential construction work?

A3. Daily sidewalk shed inspections are only required for sheds in use for essential construction work.

Essential Construction Requests

Q1. I'm not sure if my project is essential based on the guidance. What do I do?

A1. The applicant of record needs to submit an Essential Construction Request at www.nyc.gov/dobnow for the Department's consideration and response. While the Department considers this request, work must be suspended except to secure and maintain the site. The request must include an explanation of the scope of work and why it should be treated as essential. Any supporting documentation should be provided.

Q2. Who can submit an Essential Construction Request?

A2. Only the applicant of record (the Registered Design Professional on the PW1) can submit an Essential Construction Request. Enter BIS job-doc in the format 123456789-01, enter DOB NOW jobs in the format M00000001-11.

Q3. Do all Essential Construction Requests require a plan examiner review?

A3. Essential Construction Requests submitted as Emergency Construction Section A (protect health and safety of occupants), work limited to a single worker, or construction in support of Essential Businesses will require professional certification and be subject to Department audit. All other requests will be reviewed by a plan examiner.

Q4. For those sites that received approval to continue operations to safely secure the site, how do I notify the Department when work is complete?

A4. When work to safely secure a site is complete the Department must be notified. Notifications will be submitted electronically at www.nyc.gov/dobnow. A Service Notice will be issued once the functionality is available.

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Q5. The Essential Construction Request I submitted at www.nyc.gov/dobnow was denied. Is there an appeals process?

A5. To request an appeal, login at www.nyc.gov/dobnow and from the dashboard, under Filing Actions, select Appeal. Submit and additional documentation required and resubmit the request. Selections made on the Essential Construction Questionnaire cannot be changed during the appeal process. A maximum of two appeals are allowed for new requests submitted on or after April 15, 2020. Appeals are no longer available for requests submitted prior to the updated Department guidance issued on April 15, 2020. Submit a new Essential Construction Request for consideration under the updated guidelines.

Q6. Is the submission of an Essential Construction Request at www.nyc.gov/dobnow required to continue work during this suspension of non-essential work?

A6. While it is not required it is recommended. See the [Essential Active Construction Sites Map](#) for more information.

Certificate of Authorization

Q1. What is a Certificate of Authorization and when does it need to be posted?

A1. Once an Essential Construction Request is approved in the Essential Construction portal, a Certificate of Authorization must be printed for each approved job and posted at the work site. The Certificate is valid from the date the Essential Construction request was approved until April 29, 2020. If the State of Emergency is extended, the Certificate date will automatically be updated and a new Certificate will need to be posted.

A Certificate of Authorization is only required to be posted at work sites categorized as Approved Work on the [Essential Active Construction Sites](#) map. All other categories (affordable housing, homeless shelter, hospital/health care, schools and utilities) do not require a certificate provided the building is identified as such on the Essential Active Construction Sites map.

Q2. How do I print a Certificate of Authorization?

A2. To print the Certificate, go to www.nyc.gov/dobnow and from the Essential Construction tab (without logging in), enter the job number and select Print Certificate. The Certificate can also be printed when logging in from the Essential Construction dashboard by opening the request and selecting the printer icon on the Actions column for each Job Filing No.

Miscellaneous

Q1. I am performing work by myself. Is that permissible?

A1. This work can be performed as long as there is only one worker on the job site.

Q2. My affordable housing project is only partially affordable. Can I continue? A2. Only affordable housing projects with a minimum of 20% of the units being affordable that are new building construction, that are subject to a regulatory agreement and/or declaration from a government agency can continue during this suspension of non-essential construction.

A2. Only affordable housing projects with a minimum of 20% of the units being affordable that are new building construction, that are subject to a regulatory agreement and/or declaration from a government agency can continue during this suspension of non-essential construction.

Q3. Is school construction permissible during this suspension of non-essential construction?

A3. Yes. Construction work on public and private schools is permissible during this suspension of non-essential construction.

Q4. Is construction work on behalf of the City of New York permissible during this suspension of non-essential construction?

A4. Yes, as determined by the City.

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Q5. Can construction work supporting the energy industry be performed during this suspension of non-essential construction work?

A5. Yes, to the extent it is needed to respond to the COVID-19 New York State Emergency, provide support for basic well-being (e.g. health, safety, housing, food), or proceed to a point where the work can be safely suspended.

Q6. Can construction work related to an ESDC-defined essential business be performed during this suspension of non-essential construction work?

A6. Construction of such work can proceed only if it pertains to alterations of existing buildings and has been permitted by the Department prior to April 15, 2020.

Q7. Can antenna, construction fencing, cub cut, and sidewalk shed work be performed during this suspension of non-essential construction work?

A7. Yes. These work types are exempt and can proceed. Already permitted work can proceed and new work does not require an Essential Construction Request.

Q8. Does construction work on assisted-living facilities qualify as essential?

A8. Yes. ESDC guidance treats assisted living facilities as Essential Health Care Operations.

Q9. Will the Department be issuing After-Hours Variances for essential construction work?

A9. All After-Hours Variance (AHV) permits are rescinded as of Monday, March 30, 2020. AHVs can only be requested for jobs that are essential or have an approved Essential Construction Request. AHV applications must be dropped off at a borough office; they cannot be submitted in eFiling or DOB NOW. See the [Application Processing Service Notice](#) for information about drop off procedures.

Q10. Can I remove my sidewalk shed if the associated hazard it was installed to protect has been made safe?

A10. Yes, the shed can be removed during this suspension of non-essential construction.

Q11. Do I have to renew permits?

A11. Permits already in effect must be kept active and renewed even though work has been suspended. There are no changes to the permit renewal process and all applicable fees apply.

Q12. Will Development Inspections continue during this suspension of non-essential work?

A12. Development Inspections will be prioritized for essential construction work. **Q13.** Will plan reviews and approvals for non-essential construction work continue during this suspension of non-essential work?

Q13. Will plan reviews and approvals for non-essential construction work continue during this suspension of non-essential work?

A13. Yes, plan reviews and approvals will continue. Only essential construction work will be permitted. Professionally certified PW1 applications in DOB NOW cannot be submitted with a PW2 work permit application.

Q14. Can I apply for a Place of Assembly (PA) or Temporary Place of Assembly (TPA) during this suspension of non-essential construction?

A14. No. PA and TPA requests are suspended for the duration of this state of emergency.

Q15. Does the suspension of non-essential construction apply to transportation infrastructure?

A15. No, the suspension does not apply to construction on roads, bridges, rails, airports, and transit facilities that is allowable under the Governor's Executive Orders and ESDC guidance.

Q16. Can I perform building construction work that does not require a permit from the Department during this suspension of non-essential construction work?

A16. No. This work cannot be performed unless there is only one worker on the job site.

Q17. For how long will this suspension of non-essential construction work be in place?

A17. This suspension of non-essential construction work will continue for as long as the state of emergency is in place. Please visit the [DOB COVID-19 Response page](#) for updates.