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To: Owners and Contractors

Purpose: Guidance to owners and contractors regarding enforcement of Essential vs. Nonessential construction in accordance with NYS Governor's Executive Order 202.6 and subsequent orders, and the Guidance on Executive Order 202.6 published by NYS ESDC Item 9

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 guidelines
- New York City Mayoral Emergency Order 103 and subsequent mayoral emergency orders

In accordance with [NYS Governor's Executive Order 202.6](#) and the [Guidance on Executive Order 202.6](#) and subsequent orders published by NYS ESDC Item 9, (1) All non-essential construction must shut down except emergency construction, (e.g. 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). (2) 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, 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. (3) For purposes of this section construction work does not include a single worker, who is the sole employee/worker on a job site.

Only the following construction projects permitted 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 This guidance does not apply to construction on roads, bridges, and transit facilities that is allowable under the Governor's Executive Orders and ESDC Guidance.



1. Emergency construction (ESDC Item 9, bullet 1):

- a. Project necessary to protect the health and safety of the occupants:
 - 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 immediate corrective action that severely affects life, health, safety, property, or significant number of persons.
- b. Project required to continue to the extent it would be unsafe to allow work to remain undone. Such project may continue only until it is safe to shut the site.

2. Essential construction (ESDC Item 9, bullet 2):

- a. Utilities;
- b. Hospitals or health care facilities;
- c. Transitional and/ or Homeless shelters;
- d. Affordable housing: 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 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 the 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.
- e. Other essential construction as approved by the Department.

3. Work that is limited to a single worker, who is the sole employee/worker on a job site (ESDC Item 9, bullet 3)

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 Empire State Development Corporation 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 ESDC (UPDATED: MARCH 27, 2020 at 11:00 AM)