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**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

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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:<sup>1</sup>

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.
  - b. Construction necessary to continue a project if it would be unsafe to allow to remain undone, but only to the point that it is safe to suspend work.

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<sup>1</sup> 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.

## 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
- 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](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)<sup>2</sup>
  - i. Such construction is defined as alterations to existing buildings of essential businesses with construction permits issued prior to April 15, 2020<sup>3</sup>
- 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 as determined by the City.

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.

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

<sup>3</sup> If such work requires additional permit(s) not yet issued prior to April 15, 2020, requests for such permits may be submitted for approval by the Department.

## **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 09, 2020 at 8:00 AM*)