

New York City Department of Buildings Updates its Guidance on Essential Construction Activities

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Client Advisories

April 16, 2020 by Michael H. Bauscher, Christopher Rizzo and Karen E. Meara

On April 15, 2020, the New York City Department of Buildings ("DOB") updated its March 30 guidance regarding restrictions on non-essential construction (which we summarized in a previous advisory, available [here](#)). DOB updated its guidance to align with related guidance on essential construction activities issued by Empire State Development ("ESD") (we summarized ESD's guidance in previous advisories, available [here](#) and [here](#)). In short, DOB added "Transit facilities on private properties" as a category of permitted essential construction, and it also modified its threshold for allowable affordable housing from 30% to 20% to be consistent with ESD. DOB also clarified that its guidance "does not apply to construction on roads and bridges that are allowable under the Governor's Executive Orders and ESD guidance." The full list of DOB's permitted construction activities is as follows:

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.

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 [here](#)

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

j. 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.

DOB's guidance continues to provide that "[c]onstruction 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."

As briefly mentioned above, DOB has explained that its suspension of non-essential construction "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."

It is also important to note that DOB has specifically stated that it "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." This includes violations for not social distancing on an essential construction site.

Additionally, DOB has updated its **Frequently Asked Questions** related to this guidance. Many important FAQs are set forth below, but we recommend that you review the full list, available [here](#).

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.

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.

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](#).

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.

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.

PLUMBING, FIRE SUPPRESSION, 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.

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.

MISCELLANEOUS

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 or will be 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.

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, cut and fill, 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.

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.

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.

The applicable rules and regulations during the COVID-19 emergency continue changing on a daily and sometimes hourly basis. The Carter Ledyard COVID-19 Response Group is monitoring developments in this area and will continue providing updates as the situation evolves.

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*Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, boxer@clm.com), **Judith A. Lockhart** (212-238-8603, lockhart@clm.com), **Bryan J. Hall** (212-238-8894, hall@clm.com), **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), **Melissa J. Erwin** (212-238-8622, erwin@clm.com), and **Leonardo Trivigno** (212-238-8724, trivigno@clm.com). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.*

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