



COVID-19 "PAUSE" Executive Order

In response to questions from AGC NYS and the industry, Empire State Development (ESDC) has this morning advised AGC NYS that the designation of construction as essential applies to "all construction."

Furthermore, as ESDC is being deluged by requests and questions from businesses relative to the Governor's Executive Order, they request that, in light of this clarification, firms engaged in construction refrain from asking for a "specific designation" as they work to handle an overwhelming volume of calls and e-mails.

Our original communication from yesterday about the Executive Order is below. We will keep you informed as updated information becomes available or if there are any changes. As you know, this is a highly fluid situation.

We encourage you to share this communication with your clients and other project partners.

--Mike Elmendorf

Governor Cuomo has issued guidance on essential services and businesses under his "[New York State on PAUSE" Executive Order](#), which requires non-essential businesses to close in-office functions effective 8pm Sunday.

The Governor's order declares construction as "essential" and updated [guidance posted by Empire State Development](#) further states that "essential businesses or entities, including any for profit or non-profit, regardless of the nature of the service, the function they perform, or its corporate or entity structure, are not subject to the in-person restriction."

Guidance on essential services states:

"Construction, Including:

- skilled trades such as electricians, plumbers
- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes"

The language in the original guidance has generated a great deal of questions and uncertainty from the industry and membership. AGC NYS sought to have the guidance for the Executive Order clarified to definitively answer these questions. We are advised that individual agencies are providing guidance and direction to contractors on how to proceed.

[NYSDOT issued a document](#) stating that, "the Executive Order provides that essential businesses and services not subject to the in- person restrictions include transportation infrastructure including vendors that provide essential services needed to ensure the continuing operation of government. The Department is continuing implementation of its capital program as an essential government function and will continue to let and construct projects. The companies awarded such contracts including subcontractors, suppliers, vendors and specialty firms are all exempt for work to support the capital program."

[The MTA has subsequently issued similar guidance](#), as well as the [Thruway Authority](#).

We have requested that other construction agencies provide guidance to contractors in similar fashion.

We are advised and hearing from members that the MTA, State University Construction Fund, Thruway Authority, DASNY and other public agencies are directing contractors to proceed with work.

At this time, we are continuing to seek additional clarification about how Governor's Executive Order applies to local government and private construction as well, but believe in the absence of delineation or limitation of "construction" in the issued ESD Guidance, that a reasonable reading of the Executive Order gives a contractor or construction-related firm a basis to affirm that they are exempt from the in-person restrictions. There are conflicting reports about particular private projects being told to proceed, while others are apparently being directed to stop work.

We also advise that contractors on such projects should communicate closely with their owners on these matters, as there is continuing confusion and conflicting information on these matters.

We understand that in some project-specific instances, ESD Regional Directors have been able to provide clarity by deeming individual projects “essential.” [You can find the list of ESD Regional Directors at this link.](#)

In all cases, contractors and related firms should be following all relevant public health guidelines and reducing density wherever possible to take all precautions against the spread and transmission of COVID-19. [Additional information and resources can be found on our AGC NYS COVID-19 Resources Page](#), which is being updated regularly.

We will continue to communicate to the membership if/when additional details or clarification becomes available.

For Immediate Release: 3/20/2020
GOVERNOR ANDREW M. CUOMO

GOVERNOR CUOMO ISSUES GUIDANCE ON ESSENTIAL SERVICES UNDER THE 'NEW YORK STATE ON PAUSE' EXECUTIVE ORDER

Earlier today, Governor Andrew M. Cuomo announced he is signing the "New York State on PAUSE" executive order, a 10-point policy to assure uniform safety for everyone. It includes a new directive that all non-essential businesses statewide must close in-office personnel functions effective at 8PM on Sunday, March 22. Guidance on essential services under the executive order is as follows:

ESSENTIAL BUSINESSES OR ENTITIES, including any for profit or non-profit, regardless of the nature of the service, the function they perform, or its corporate or entity structure, are not subject to the in-person restriction.

(Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health).

This guidance is issued by the New York State Department of Economic Development d/b/a Empire State Development and applies to each business location individually and is intended to assist businesses in determining whether they are an essential business and steps to request such designation. With respect to business or entities that operate or provide both essential and non-essential services, supplies or support, only those lines and/or business operations that are

necessary to support the essential services, supplies, or support are exempt from the restrictions.

For purposes of **Executive Order 202.6**, "Essential Business," means:

1. Essential Health Care Operations, Including:

- research and laboratory services
- hospitals
- walk-in-care health facilities
- emergency veterinary and livestock services
- elder care
- medical wholesale and distribution
- home health care workers or aides for the elderly
- doctor and emergency dental
- nursing homes, or residential health care facilities or congregate care facilities
- medical supplies and equipment manufacturers and providers

2. Essential Infrastructure, Including:

- utilities including power generation, fuel supply and transmission
- public water and wastewater
- telecommunications and data centers
- airports/airlines
- transportation infrastructure such as bus, rail, or for-hire vehicles, garages
- hotels, and places of accommodation

3. Essential Manufacturing, Including:

- food processing, manufacturing agents, including all foods and beverages
- chemicals
- medical equipment/instruments
- pharmaceuticals
- sanitary products
- telecommunications
- microelectronics/semi-conductor
- agriculture/farms
- household paper products

4. Essential Retail, Including:

- grocery stores including all food and beverage stores
- pharmacies
- convenience stores
- farmer's markets
- gas stations
- restaurants/bars (but only for take-out/delivery)
- hardware and building material stores

5. Essential Services, Including:

- trash and recycling collection, processing and disposal
- mail and shipping services
- laundromats
- building cleaning and maintenance
- child care services
- auto repair
- warehouse/distribution and fulfillment
- funeral homes, crematoriums and cemeteries
- storage for essential businesses
- animal shelters

6. News Media

7. Financial Institutions, Including:

- banks
- insurance
- payroll
- accounting
- services related to financial markets

8. Providers of Basic Necessities to Economically Disadvantaged Populations, Including:

- homeless shelters and congregate care facilities
- food banks
- human services providers whose function includes the direct care of patients in state-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in state-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

9. Construction, Including:

- skilled trades such as electricians, plumbers
- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes

10. Defense

- defense and national security-related operations supporting the U.S. Government or a contractor to the US government

11. Essential Services Necessary to Maintain the Safety, Sanitation and Essential Operations of Residences or Other Essential Businesses, Including:

- law enforcement
- fire prevention and response

- building code enforcement
- security
- emergency management and response
- building cleaners or janitors
- general maintenance whether employed by the entity directly or a vendor
- automotive repair
- disinfection

12. Vendors that Provide Essential Services or Products, Including Logistics and Technology Support, Child Care and Services:

- logistics
- technology support for online services
- child care programs and services
- government owned or leased buildings
- essential government services

If the function of your business is not listed above, but you believe that it is essential or it is an entity providing essential services or functions, you may request designation as an essential business.

Houses of worship are not ordered closed however it is strongly recommended no congregate services be held and social distance maintained.

Businesses and entities that provide other essential services must implement rules that help facilitate social distancing of at least six feet.

Requests by businesses to be designated an essential function as described above, should only be made if they are NOT covered by the guidance.

To request designation as an essential business, please [click here](#).

Restrictions on requesting designation as an essential business:

- Any business that only has a single occupant/employee (i.e. gas station) has been deemed exempt and need not submit a request to be designated as an essential business.
- Businesses ordered to close on Monday, March 15, 2020 under the restrictions on any gathering with 50 or more participants, including but not limited to, bars, restaurants, gyms, movie theaters, casinos, auditoriums, concerts, conferences, worship services, sporting events, and physical fitness centers, are presumed to be compliant with NYS issued restrictions and must remain closed and are not eligible for designation as an essential business for purposes of this guidance.

For Guidance on cleaning and disinfection of facilities, refer to the New York State Department of Health Interim Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID -19 at:

http://www.health.ny.gov/diseases/communicable/coronavirus/docs/cleaning_guidance_general_building.pdf.

For further information: New York State Department of Health's COVID-19 Webpage <https://coronavirus.health.ny.gov/home>

Center for Disease Control and Prevention Webpage:
<https://www.cdc.gov/coronavirus/2019-ncov/>

Local health department contact information can be found at: https://www.health.ny.gov/contact/contact_information/index.htm

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