

## Construction During COVID-19 Update What to Know During Phase One Reopening

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As of June 8, 2020, New York City has moved into Phase One of reopening. For construction, this means that regardless of whether the construction was previously deemed nonessential, work can continue so long as a work permit was issued by the New York City Department of Buildings (DOB) for the site, and New York state's minimum safety standards, as set forth in the Interim Guidance for Construction Activities during the COVID-19 Health Emergency, are met. The interim guidance standards require that before reopening construction activities, property owners and contractors must establish a safety plan, submit an affirmation to New York state, and then post both the site safety plan and the affirmation conspicuously at the job site for inspection.

The Interim Guidance for Construction Activities sets minimum standards for all construction activities and contains three distinct categories:

1. **People:** Regarding physical distancing, gatherings in enclosed spaces, workplace activities, and movement and commerce.
2. **Places:** Regarding protective equipment, hygiene, cleaning, disinfection, phased reopening, and communications plan.
3. **Processes:** Regarding screening, testing, tracing and tracking.

Of course, co-op and condo boards are free to implement stricter requirements than those the state and city have mandated.

In accordance with the state's Interim Guidance for Construction Activities, the safety plan must include, but is not limited to, the following:

- Ensuring six feet of distance between personnel, unless safety or core function of the work activity requires a shorter distance.
- Ensuring that all personnel and visitors to construction sites wear face coverings appropriate for their task, unless medically unable to do so.
- Requiring that tightly confined spaces (e.g., elevators, hoists) are only occupied by 50% of the maximum allowed number of people, and postings about this requirement are made within the cab *and* at each landing.
- Designating a site safety monitor whose responsibilities include continuous compliance with all aspects of the site safety plan.
- Placing appropriate signage throughout the site to remind personnel to adhere to proper hand hygiene, physical distancing rules, appropriate use of personal protective equipment, and cleaning and disinfecting protocols.
- Conspicuously posting the safety plan (or plans) on-site and including a copy of the submitted state affirmation.
- Providing a communication plan for employees, visitors and clients at the site.
- Maintaining an on-site continuous log of every person who may have had close contact with other individuals at the work site or area.
- Providing on-site hand hygiene stations that are readily accessible to workers.
- Maintaining an on-site cleaning and disinfecting log with minimum daily entries.



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For more details about the minimum requirements, please see: [Interim Guidance for Construction Activities during the COVID-19 Public Health Emergency](#).

Even if a contractor is performing work that does not require a permit, that contractor will still need to submit a safety plan and affirmation. And the safety plan and affirmation should be posted at all points of egress from the construction site. Contractors are also required to provide their employees with face coverings on the construction site, preferably N95 masks, not cloth masks. Handwashing facilities or hand sanitizing stations must be made available to the workers as well. All equipment and tools have to be regularly disinfected using registered disinfectants as often as the workers change workstations, or use a new set of tools. In addition, contractors must notify public health officials if any worker is confirmed or suspected of having COVID-19.

Pursuant to [Mayor Bill DeBlasio's Executive Order 120](#), the DOB was ordered to send out inspectors, and to enforce violations. Although the plain terms of the order appear to only have been in effect from June 3 to June 8, 2020, in accordance with the DOB guidance referenced above, it appears the DOB is taking the position that Executive Order 120 is still in effect. Therefore, boards should be aware that DOB inspectors and field staff are continuing to visit construction sites to ensure compliance with these requirements and to monitor for any COVID-19 symptoms. There is some respite, however, because until July 8, violations of the new DOB measures will carry no monetary penalty. But beginning July 8, DOB violations will carry an initial penalty of \$5,000 per violation along with issuance of a Stop Work Order. Any subsequent violations will result in a \$10,000 per violation penalty. If DOB inspectors or any field staff are denied access to the construction site, a Stop Work Order will also be issued against the property.

Given the ease with which the DOB can generate revenue for New York City during this time by issuing violations, and given the DOB's interpretation of Executive Order 120, we expect DOB inspectors will be taking an aggressive position to enforce COVID-19 violations.

Once the initial 30-day grace period is over on July 8, buildings could face steep fines. Boards should pay close attention to all construction taking place and ensure that all guidelines are followed.

One area of particular concern is shareholder and unit owner projects. While we would hope that a board's alteration agreement has shifted the burden of any such fines to the unit owner or shareholder undertaking work in their apartment, it may be a time-consuming process to address the violation and remove it. Therefore, the best practice is to avoid having any fine issued in the first place by, for example, scrutinizing the unit owner or shareholder's site safety plan, all postings, all provisions of hand sanitizing stations and personal protective equipment, and use of the elevator. In addition, because only one worker is permitted per every 250 square feet of indoor space, boards should pay close attention to projects in studio apartments and one-bedroom apartments, as it may be impossible for any major renovation project to proceed in these smaller spaces.

As we go through new phases of reopening in New York City, we hope this article helps co-op and condo boards navigate the new guidelines regarding construction in their buildings. Feel free to reach out to the Co-op and Condo team at Anderson Kill P.C. and follow our newsletter for continuing updates. ▲

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