



# Building Standards and Codes

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April 4, 2020

## GUIDANCE FOR CODE ENFORCEMENT PERSONNEL RELATING TO THE GOVERNOR'S EXECUTIVE ORDERS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

This Guidance responds to questions raised by Code Enforcement Personnel regarding whether building departments should remain open and operating during the COVID-19 public health emergency. This Guidance also provides helpful information for Code Enforcement Officials regarding the recently issued [Executive Orders](#).

In this Guidance, the term "Code Enforcement Personnel" includes any person responsible for administering and enforcing the Uniform Code and Energy Code, including but not limited to certified code enforcement officials and building safety inspectors of local building departments, as well as code coordinators and code compliance managers working in State agencies.

This Guidance covers the following topics:

- I. Executive Orders
- II. Local Government In-Person Workforce Reduction
- III. Nonessential Business and Not-For-Profit Entity Workforce Reduction
- IV. Suspension of Uniform Code, Energy Code, and Enforcement-Related Provisions for Certain Projects
- V. Enforcement of Use and Occupancy Restrictions by Local Code Enforcement Officials

### I. Executive Orders

In response to the 2019 novel coronavirus (COVID-19), on March 7, 2020 Governor Andrew M. Cuomo issued Executive Order 202 declaring a state of emergency. Subsequent Executive Orders have been issued to address this ongoing public health emergency. Local Governments should review all Executive Orders, in consultation with their legal counsel, as they seek to implement the applicable provisions therein. Executive Orders can be found online at <https://www.governor.ny.gov/executiveorders>. Local governments and their legal counsel should check this site regularly for updates.

### II. Local Government In-Person Workforce Reduction

Under [Executive Order 202.4](#), local governments have been tasked with designating at least 50% of their total workforce as non-essential, and to allow non-essential workers to work from home, except for those personnel deemed essential to the locality's response to the COVID-19 emergency.<sup>1</sup>

Please note that, in general, the Executive Orders do not specifically prescribe which local government services are to be deemed essential or nonessential. Local Governments, in consultation with their attorneys and State issued guidance, should determine what services are essential and nonessential and whether access to public buildings is necessary to

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<sup>1</sup> The relevant provision in Executive Order 202.4 provides as follows: "Any local government or political subdivision shall, effective March 17, 2020, allow non-essential personnel as determined by the local government, to be able to work from home or take leave without charging accruals, except for those personnel essential to the locality's response to the COVID-19 emergency. Such non-essential personnel shall total no less than fifty-percent (50%) of the total number of employees across the entire workforce of such local government or political subdivision."

discharge each such essential service. For essential services, local governments must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health and should maintain social distance of at least six feet between and among all persons, to the greatest extent possible.

While the Executive Orders do not expressly specify which employees a local government should designate as essential or non-essential, several Executive Orders include directives for business and not-for-profit corporations that may be helpful to local governments as they make such designations:

- [Executive Orders 202.6, 202.7, and 202.8](#) direct a workforce reduction for all nonessential businesses and not-for-profit entities. Local governments may use the [guidance](#), developed by the Empire State Development Corporation (ESD) to determine what services may be deemed essential. For example, ESD indicates that a business or not-for-profit entity that provides “essential services necessary to maintain the safety, sanitation and essential operations of residences or other businesses including . . . building code enforcement” is “essential.” Therefore, building code enforcement may be deemed to be an essential service by a local government and Code Enforcement Personnel could be designated as essential employees.
- [Executive Order 202.11](#) directs that a violation of any provision in any Executive Order that limits or prohibits the operation of a type of facility or limits the number of persons who may occupy any space, shall be deemed to be a violation of the Uniform Code or other local building code in effect in a jurisdiction in which the facility or space is located. Executive Order 202.11 also authorizes any local code enforcement official or fire marshal to issue appearance tickets, notices of violation, orders to remedy, and do not occupy orders relating to any such violation. Therefore, code enforcement officials should be deemed to be essential to the locality’s response to the COVID-19 public health emergency.

During the pendency of the COVID-19 public health emergency, the Department of State (DOS) recommends the use of electronic or other remote means, where feasible, to reduce in-person contact and promote social distancing. For example, when possible, plan reviews should be performed remotely.

### III. [Construction](#)

With respect to construction, the ESD guidance was updated on March 27, 2020 to provide as follows:

*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).*

*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.*

*For purposes of this section construction work does not include a single worker, who is the sole employee/worker on a job site.*

Please check the [ESD guidance](#) regularly for updates.

On March 30, 2020, Governor Cuomo issued [Executive Order 202.13](#) which included the following directive which modified the prior directive issued in Executive Order 202.6. The directive stated:

Executive Order 202.6 is hereby modified to clarify that construction which was an essential service not subject to the in-person work restrictions is modified to provide only **certain** construction is considered exempt from the in-person restrictions as of March 28, 2020. Further, on and after March 27, 2020, Empire State Development Corporation is hereby authorized to determine which construction projects shall be essential and thereby exempt from the in-person workforce prohibition, contained in EO 202.6 and subsequent Executive Orders which further

reduced the workforce requirements. All continuing construction projects shall utilize best practices to avoid transmission of COVID-19.

In accordance with these directives, Code Enforcement Personnel may consult the ESD guidance and contact ESD with inquiries relating to whether construction projects are deemed essential and thereby exempt from the in-person workforce prohibition.

#### IV. Suspension of Uniform Code, Energy Code, and Enforcement-Related Provisions for Certain Projects

Local governments should be aware that the Uniform Fire Prevention and Building Code, the State Energy Conservation Construction Code, and the New York City Construction and Energy Codes, as well as all state or local laws, ordinances, and regulations relating to administration and enforcement of those codes, have been suspended by [Executive Order 202.5](#) to the extent necessary to allow, upon approval by the Commissioner of Health or the Commissioner of Office for People with Developmental Disabilities, as applicable, the temporary changes to physical plant, bed capacities, and services provided; the construction of temporary hospital locations and extensions; the increase in and/or exceeding of certified capacity limits; and the establishment of temporary hospital locations and extensions.

#### V. Enforcement of Use and Occupancy Restrictions by Local Code Enforcement Officials

On March 27, 2020, Governor Cuomo issued [Executive Order 202.11](#), which included a directive related to enforcement of the use or occupancy restrictions of certain types of buildings. The directive stated:

During the period when an Executive Order limiting operation of a type of facility or limiting the number of persons who may occupy any space is in effect, any operation of such a facility or occupancy of any such space by more than the number of persons allowed by said Executive Order shall be deemed to be a violation of law and in particular, but not by way of limitation, shall be deemed to be a violation of the Uniform Code or other local building code in effect in the jurisdiction in which the facility or space is located. In the event of any such violation, any state, county, or local police officer authorized to enforce laws within the jurisdiction in which the space or facility is located is authorized to remove persons from such space or facility. In addition, in the event of such violation, any state, county, or local code enforcement official or fire marshal authorized to enforce the Uniform Code or other local building code within the jurisdiction in which the facility or space is located is authorized to issue an appearance ticket, a Notice of Violation, an Order to Remedy such violation, which shall require immediate compliance, and/or a Do Not Occupy Order to any owner, operator, or occupant of any such facility or space. Nothing in this provision shall limit the authority of any governmental unit or agency to take such other and/or additional enforcement actions to the extent necessary to ensure compliance with such occupancy-related directives or facility operation-related directives.

In accordance with this directive, Code Enforcement Personnel are permitted to take other and/or additional enforcement actions to the extent necessary to ensure compliance with any Executive Order issued by Governor Cuomo, limiting operation of a type of facility or limiting the number of persons who may occupy any space, during the period covered by the Executive Order(s). This means that provisions in any charter, local law or local regulation that is consistent with any such Executive Order may be enforced “to the extent necessary to ensure compliance with such occupancy-related directives or facility operation-related directives.”

In the event of such violation, any Code Enforcement Personnel authorized to enforce the Uniform Code or other local building code within the jurisdiction in which the facility or space is located is authorized to enforce the Governor’s directives within the Executive Orders by issuing to any owner, operator, or occupant of any such facility or space:

- An appearance ticket,
- A Notice of Violation,
- An Order to Remedy such violation, requiring immediate compliance, and/or
- A Do Not Occupy Order.

The Code Enforcement Personnel is also authorized to take any additional enforcement actions, to the extent necessary, to ensure compliance with such occupancy-related directives or facility operation-related directives. As always, Code Enforcement Personnel are encouraged to obtain voluntary compliance. Such voluntary compliance can be obtained through visiting the location at issue and advising that such operation is in violation of an Executive Order and warn that a violation will be issued if such operation does not cease.

With respect to legal citations to the Uniform Code, a proper citation issued by Code Enforcement Personnel in accordance with the directive will:

- Notify the property owner, operator, or occupant of the exact nature of the violation charged, and
- Show the Court that the violation is, in fact, a violation of a directive in an Executive Order; that pursuant to the Executive Order, the violation is deemed to be a violation of the Uniform Code; and that as such a violation of the Uniform Code, the person guilty of the violation is subject to the penalties prescribed in the Executive Law.

An example of a citation follows:

**EXAMPLE 1: Violation of Executive Order 202.3:**

The Code Enforcement Personnel observes that a restaurant is serving patrons on-premises at [*specify time and date*], which is after 8:00 PM on March 16, 2020. The Code Enforcement Personnel determines that the owner should be charged with violation of Executive Order 202.3. The Notice of Violation or other enforcement-related instrument cites Executive Order 202.3 as follows:

**Violation of:** Executive Order 202.3, providing as follows: “Any restaurant or bar in the state of New York shall cease serving patrons food or beverage on-premises effective at 8 pm on March 16, 2020, and until further notice shall only serve food or beverage for off-premises consumption.” Executive Order 202.11 provides that such violation shall be deemed to be a violation of law and in particular, but not by way of limitation, a violation of the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”).

In addition, in the event of any such violation, any state, county, or local police officer authorized to enforce laws within the jurisdiction in which the space or facility is located is authorized to remove persons from such space or facility.

Further, to assist local authorities with enforcement of these Executive Orders, the Governor established the [New York State PAUSE Enforcement Assistance Task Force](#) where individuals can file complaints regarding the operation of non-essential businesses or gatherings 24 hours a day, 7 days a week through an [online form](#) or by calling 1-833-789-0470. These complaints are reviewed for completeness, accuracy, and applicability under the orders, and then referred to local authorities by a team of investigators from multiple state agencies. In addition to assessing the credibility of complaints, these skilled investigators can assist local authorities in their front-line role of responding to alleged violations of the orders by providing guidance on available civil and criminal enforcement tools.

*The Department of State cannot give legal advice. In addition, local practice can vary from jurisdiction to jurisdiction. Therefore, when the Code Enforcement Personnel for a municipality is preparing a citation to a code provision to include in a Notice of Violation or other enforcement-related provision, the Code Enforcement Personnel should consult with the attorney for that municipality to verify that the citation is legally proper, and will satisfy the requirements of the local court.*