

## Important Update – The Impact of Coronavirus on the Construction Industry

March 26, 2020 | David L. Fine | Articles

Since our post on [March 18](#), a lot has happened from both a health and regulatory standpoint as far as the impact from the outbreak of COVID-19 (“coronavirus”) on local and state construction practice. Here is an update, as of today, March 25.

On March 23, Governor Charlie Baker issued an emergency order requiring all businesses and organizations that do not provide “COVID-19 Essential Services” to close their physical workplaces and facilities to workers, customers and the public as of Tuesday, March 24<sup>th</sup> at noon until Tuesday, April 7<sup>th</sup> at noon.

The order appended a [list of designated essential services](#), based on federal guidance and amended to reflect the needs of Massachusetts’ unique economy, including

*“Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)”*

*“Workers – including contracted vendors – involved in the construction of critical or strategic infrastructure including public works construction, airport operations, water, sewer, gas, electrical, nuclear, oil refining and other critical energy services, roads and highways, public transportation, solid waste collection and removal, and internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services)”*

*“Workers who maintain, ensure, or restore the reliable generation,*



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*transmission, and distribution of electric power”*

*“Workers to ensure continuity of building functions”*

The industry therefore largely interpreted the order to mean that most construction work was deemed a COVID-19 Essential Service and would be permitted to continue unimpeded.

Notably, the order also provided that it

**“supersedes and makes inoperative** any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this Order. With respect to work or travel in particular, any order or rule issued by a municipality is hereby **made inoperative** to the extent: (1) such municipal order or rule will or might interfere with provisions of this Order ensuring the continued operations of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within the Commonwealth of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.”

On its face, this order appeared to supersede and render inoperative prior directives from municipalities, including the City of Boston, which had ordered a systematic shut down of most construction work. Industry participants quickly appealed to the Governor’s Office for clarification.

## **\*\*ALERT\*\***

Yesterday, March 25, 2019, the Governor’s Office, through its Chief Legal Counsel, issued written guidance regarding the effect of the March 23 emergency order insofar as the order intersects with municipal efforts to address the COVID-19 crisis.

Importantly, the guidance provides that “all construction projects are to continue operations during the state of emergency, but to do so with allowance for social distancing protocols consistent with guidance provided from the Department of Public Health ... Local policies, regulations, or directives that provide otherwise are in direct conflict with the Order and should be withdrawn ... construction projects should continue as long as they observe social distancing protocols and otherwise can continue to operate safely.”

According to this guidance, Massachusetts cities and towns may not impose a ban on construction and may not order work to cease on existing projects, as such actions are in violation of the emergency order. However, all projects in the Commonwealth must adopt and implement *COVID-19 Guidelines and Procedures for all Construction Sites and Workers at all Public Work*, which are enclosed with the letter.

Industry participants are cautioned that, until cities and towns take formal action to withdraw the orders currently in place, the restrictions in cities such as Boston will remain in effect. The situation remains fluid and there is likely to be further, imminent instruction from city and state authorities. Indeed, just a few hours after the Governor's Office released its guidance, the City of Boston responded with its own [bulletin](#), stating that, "[d]ue to the public health emergency in Boston and across the Commonwealth of Massachusetts, **this pause is still in effect until further notice.**"

The Mirick O'Connell Construction Practice Group will continue to monitor these events.