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BULLETIN

To: Membership of Allied Building Metal Industries, Inc.

From: Steven N. Davi

Date: June 8, 2020

Re: COVID-19 Update: Phase One Reopening (NYC)

As we advised June 3, New York City construction enters Phase One of the State's "New York Forward" plan for the reopening of non-essential economic activity today, June 8.

Accordingly, effective today, pursuant to the governor's [Executive Order No. 202.34](#) and subsequent orders, construction projects subject to permits issued by the New York City Department of Buildings ("Department" or "DOB"), or otherwise regulated by the New York City Construction Codes and the New York City Electrical Code (collectively, the "Code"), are permitted to proceed, provided they comply with the [Reopening Guidance](#) for Phase One construction published by New York State on or about May 14 simultaneous with the issuance of [Executive Order 202.31](#).

DOB Inspections: Thirty-Day Grace Period

In accordance with New York City Mayor Bill de Blasio's Emergency [Executive Order No. 120](#), starting today the Department will periodically be checking construction sites for compliance with the Code and with employer safety plans¹ required by the New York State Reopening Guidance for Phase One construction, including, but not limited to, the following:

- Ensure six feet of distance between personnel, unless safety or core function of the work activity requires a shorter distance.
- All personnel and visitors to construction sites must wear face coverings appropriate for their task, unless medically unable to do so.

¹ As we previously advised in detail on May 24, the New York State [Interim Guidance](#) for Phase One construction provides that all employers are to develop a plan for each construction site and submit an online affirmation to the State that they have read and understand their obligation to operate in accordance with the Interim Guidance. In this regard, the State has made available a business reopening safety plan template to guide business owners and operators in developing plans to protect against the spread of COVID-19. Moreover, in accordance with Section IV of the State's Interim Guidance for construction, completed safety plans must be conspicuously posted on the construction site. The State's Interim Guidance is meant to set minimum requirements only; employers can implement additional precautions.

- Any time personnel are less than six feet apart from anyone (including other personnel, approved visitors, regulatory entities), they must wear face coverings.
- Tightly confined spaces (e.g., elevators, hoists) occupied by only one individual at a time OR under fifty (50%) percent maximum allowed number of people if all occupants wear a face covering.
 - Fifty (50%) percent capacity must be posted within the cab AND at each landing.
- A site safety monitor must be designated whose responsibilities include continuous compliance with all aspects of the site safety plan.
- Appropriate signage is posted 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.
- Safety plan(s) are conspicuously posted on site and include a copy of the submitted State affirmation.²
- A communication plan for employees, visitors, and clients is available at the site.
- A continuous log of every person who may have had close contact with other individuals at the work site or area is kept at the site.
- There are hand hygiene stations available on site and readily accessible to workers.
- A cleaning and disinfection log is present at the site with minimum daily entries.

During the first thirty days of construction resuming, through and including July 7, 2020, the Department will focus on education to help the industry learn how to implement the new standards and procedures. Initial DOB violations issued during these first thirty days carry no financial penalty. Thereafter, violations will result in financial penalties and further noncompliance may result in Stop Work Orders and summonses with accompanying civil penalties of up to \$5,000 for each offense.

The particulars of the Department's enforcement mandate are set forth in the attached COVID-19 Safety Enforcement Guidelines issued Friday, June 5. These new required safety measures for construction sites were developed by DOB in partnership with the New York City Department of Health and Mental Hygiene ("DOH"). As stated above, all sites will be inspected regularly for compliance with the Code and these Safety Enforcement Guidelines; provided, however, for the first thirty days, violations related to the above Safety Enforcement Guidelines will carry no monetary penalty.

Continued Expansion of eFiling

On Tuesday, May 26, we advised regarding the expansion of the Department of Buildings' eFiling system; specifically, that beginning June 8, 2020, most BIS transactions with the Department will

² This City DOB requirement to post onsite a copy of the submitted State affirmation is new and goes beyond anything contained in the State Reopening Guidance. Specifically, as set forth above, the State Reopening Guidance calls only for the posting onsite of the safety plan, not the affirmation.

have to be performed online through eFiling. See attached Service Notice- *Mandatory eFiling re BIS Transactions* providing details along with information on web-based training sessions. Please also see the Department's updated [FAQs](#) as of May 18.

The Department continues to expand its eFiling system to include many more transactions to coincide with the reopening of non-essential construction in New York City today, June 8. Accordingly, please be advised of the following:

- Alt-2 and Alt-3 BIS applications must be submitted through the Department's eFiling system. See attached Service Notice- *Mandatory eFiling re Alt2, Alt3 Submissions*;
- Inspection requests for non-essential construction can now be submitted through the Department's online [DOB NOW: Inspections](#) portal. Inspections will commence today, June 8, coincident with the reopening of non-essential construction;
- Initial permit requests for non-essential construction can also be submitted through the DOB NOW: Inspections online portal;
- Initial permit requests for BIS applications for non-essential construction should be submitted through the appropriate module in eSubmit on the Department's online [eFiling](#) portal. See attached the Department's eFiling Expansion FAQs updated June 8, 2020; see also the Department's [eFiling Expansion Training](#) updated June 3.

The Department also advises, effective today, as follows:

- All permits shall remain active throughout the "state of emergency," as long as the proper insurance is maintained. (The governor's [Executive Order No. 202.34](#), dated May 28, 2020, extended the state of emergency through June 27. The mayor's Emergency [Executive Order No. 112](#), issued May 9, 2020, contains a declaration of a state of emergency for the City of New York expiring today, June 8. Last night, the mayor's Emergency [Executive Order No. 123](#) extended the state of emergency for the City of New York for thirty days, through and including July 7, 2020;
- The Department shall resume development inspections for all permitted work;
- Weekly Inspection Reports should continue to be submitted through the Department's online portal for any job site that remains suspended³ and does not resume construction operations despite the reopening of all non-essential construction.

Additional Reference

[NYCDOB Press Release dated June 5, 2020](#)

[NYCDOB Buildings Bulletin 2020-010 dated June 7, 2020](#) (also attached)

[NYCDOB Phase One Reopening Homepage](#), including [Printable Flyer](#)

³ For instance, we are told that businesses that were issued Stop Work Orders during "New York on Pause" but then resumed working without authorization and in violation of said Stop Work Order and incurred outstanding civil penalties as a result, will not have clearance to resume work June 8.

[NYCDOH Reopening FAQs: What the Construction Industry Need to Know](#)

[Empire State Development Corporation Guidance updated June 4, 2020](#)

[CDC COVID-19 Homepage](#)

[OSHA COVID-19 Homepage](#)

Looking Ahead

We will continue to monitor and report on all material and relevant developments concerning these matters as they arise. Moreover, in the coming weeks, we expect to find clarity regarding some of the more ambiguous provisions in the guidance put out by the City and State, particularly relating to the affirmation. For example, questions persist around who is supposed to sign it (owner, developer, general contractor/construction manager, subcontractor, or all of the above) and whether it is possible to modify or supplement the online affirmation form so that it is tailored only to the particular COVID-19 health and safety protocols within the purview of the affirming employer. There is also at least some uncertainty around the specifics of the COVID-19 health and wellness protocols that should be implemented with regard to the front- or back-office staff of Phase One construction companies. Unlike for Phase One, the Reopening Guidance for Phase Two office-based employers and employees provides specific and extensive [summary](#) and [interim](#) guidance in this regard. We will keep you posted.