

FREQUENTLY ASKED QUESTIONS FOR CODE ENFORCEMENT PERSONNEL ON RECENT EXECUTIVE ORDERS ENACTED TO ADDRESS COVID-19 PUBLIC HEALTH EMERGENCY

Note: The answers provided are based on the best available information as of April 14, 2020. Code enforcement personnel, and their attorneys, should continue to monitor the Governor's Executive Orders, as well as any guidance issued related to those orders, such as by the Empire State Development Corporation (ESD).

General

1. Question: Is code enforcement deemed an “essential service”?

Answer: Yes, ESD Guidance identified “building code enforcement” as an essential service necessary to maintain the safety, sanitation, and essential operations of residences or other businesses, and can be found at <https://esd.ny.gov/guidance-executive-order-2026>. While this guidance does not directly apply to local governments, building departments should continue to operate, to the extent that they are able to do so. Departments should utilize telecommuting or work from home procedures, to the maximum extent possible, and adhere to Department of Health guidelines for those who report to work, which can be found at <https://coronavirus.health.ny.gov/home>.

2. Question: Can you provide clarification on what construction is considered “essential” during this COVID-19 outbreak?

Answer: The ESD Guidance was updated on April 9, 2020, to provide further clarification on what construction is essential. With respect to whether or not a particular construction project should be deemed “essential,” such inquiries should be directed to ESD at <https://esd.ny.gov/covid-19-help>. Code enforcement personnel should refer contractors or owners to ESD to obtain clarification for a particular construction project not covered by ESD Guidance. Code enforcement personnel should document responses provided by ESD.

3. Question: Can a code enforcement official, at the present time, issue new building permits for construction work?

Answer: Yes, new permits may be issued for construction work as identified in the ESD Guidance. Submission of building permit applications (plans and specifications) for all projects may continue. Plans received prior to May 12, 2020, may be reviewed to verify that they are substantially complete to be permitted under the 2015 I-Codes (as modified by the 2017 Uniform Code Supplement and 2016 Energy Code Supplement). Also, permits may be issued with a condition that work will not start until the Executive Order is lifted, if such construction does not fall under essential or emergency non-essential construction based on ESD Guidance.

4. Question: Are code enforcement personnel expected to check jobsites for compliance with the Uniform Code, Energy Code, and Executive Order 202.6?

Answer: If construction is deemed essential, emergency non-essential, or is work that is being completed by a single worker who is the sole worker on the job site, then code enforcement personnel are required to perform all normally required enforcement activities, such as the requisite plan review to issue a building permit, construction inspections, and to issue a certificate of occupancy/completion, upon completion of construction and final inspection if determined to be code compliant. However, prior to determining code compliance, code enforcement personnel must confirm whether the construction may proceed as essential, emergency non-essential, or work by a single worker in conformance with Executive Order 202.6, and subsequent modifications thereto, and with the ESD Guidance. Please note that code enforcement personnel should confirm that any construction that is deemed non-essential, and is also not considered emergency, has been safely shut down.

5. Question: To comply with the Executive Orders and maintain social distancing, can a Code Enforcement Department provide virtual inspections?

Answer: Yes, virtual (i.e. videoconferencing via FaceTime, Zoom, etc.) inspections may be acceptable for some aspects of a project, provided that such code enforcement personnel can still confirm Uniform Code and Energy Code compliance. Code enforcement personnel are required to do inspections in accordance with their code enforcement programs and the requirements of 19 NYCRR Part 1203.

6. Question: Are there safety guidelines for interior inspections of structures during this COVID-19 outbreak?

Answer: CDC (<https://www.cdc.gov/coronavirus/2019-ncov/>) and local and state health department (<https://coronavirus.health.ny.gov/home>) safety guidelines should be understood and abided.

7. Question: Should companies charged with inspections of sprinkler and fire alarm systems continue to operate?

Answer: Yes, fire protection systems must be maintained and inspected per the Uniform Code. Further, “fire prevention and response” falls under essential services necessary to maintain the safety, sanitation and essential operations of residences or other businesses within the ESD Guidance.

8. Question: Do code enforcement personnel enforce the directives and seek the fines listed in the Executive Orders?

Answer: Executive Order 202.11 provides that 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 the Uniform Code. When a local government addresses a violation as a violation of the Uniform Code, the penalties that can be sought are those prescribed in Executive Law §382. For additional information, please see the Guidance for Code Enforcement Personnel Relating to the Governor's Executive Orders During the COVID-19 Public Health Emergency, dated April 4, 2020, on the Department of State's website, available at https://www.dos.ny.gov/DCEA/pdf/DOS_COVID19_CodeEnforcement_040420.pdf, and the NYS PAUSE Enforcement Assistance Task Force guidance document dated April 1, 2020, available at <https://www.nychiefs.org/new-york-state-pause-enforcement-assistance-task-force>.

9. Question: What is meant in the ESD Guidance by “unsafe to allow to remain undone until it is safe to shut the site”?

Answer: The ESD Guidance provides that non-essential construction may take place to the extent necessary to continue a project, if allowing the project to remain undone would be unsafe, provided that the construction must be shut down as soon as it is safe to do so. This would include any work necessary to address any condition requiring immediate corrective action that would severely affect life, health, safety, or property.

Such conditions include, but are not limited to:

- Structurally unsafe or unstable;
- Open pits or foundations, without fencing or barriers not required by the code;
- Partially completed foundations which are unstable;
- Partially completed structural steel or framing which is unstable;
- A fire hazard;
- Otherwise dangerous to human life or the public welfare, as determined by the code enforcement personnel; or
- Exposure to the elements (e.g. completion of a partial roof, installation of a window, etc.)

Uniform Code / DBSC

1. Question: Will the effective date of the “New Code” still be May 12, 2020?

Answer: Yes, the effective date for both the Uniform Code and Energy Code will be May 12, 2020. Keep in mind that a substantially complete set of plans submitted prior to May 12, 2020, can be reviewed under the 2015 I-Codes as modified by the 2017 Uniform Code Supplement and 2016 Energy Code Supplement.

2. Question: As a result of this public health emergency, in-service training at some conferences has been canceled for the year. This is an annual requirement to maintain certification as a Code Enforcement Official. Will there be a waiver of the in-service training requirements for 2020?

Answer: The regulations allow for an extension or adjustment to the in-service training hours, if requested in writing and if good cause is shown (see 19 NYCRR §1208-3.5). Some

code officials have already received their 24 hours for 2020. Therefore, some individuals will not need an extension or adjustment. Also, it is early in the year and additional online training will become available throughout the year. Some of the conferences have already rescheduled for the fall of 2020. We understand that some conferences will not have that as an option and are working to provide additional online training and prepared to assist those who may need an adjustment or extension. Requests for extensions or adjustments can be submitted to dosCodesTraining@dos.ny.gov.

3. Question: Has the filing date for the annual Part 1203 - Uniform Code Administration and Enforcement Report been extended as a result of this public health emergency?

Answer: Local governments that have not yet submitted the annual Part 1203 - Uniform Code Administration and Enforcement Report, received a notice from the Department of State informing them that the reports may be submitted at their earliest convenience, when practicable, in recognition of the COVID-19 crisis, and its impacts on operations.