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Executive Order 122 and Essential Construction

On April 8, 2020, Governor Murphy signed Executive Order (EO) 122, (available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-122.pdf>), which, in part, ceases the physical operations of non-essential construction projects indefinitely effective Friday, April 10, 2020, at 8:00pm. This means that "essential construction projects" may continue and local and State construction offices are to remain open. EO 122 defines "essential construction projects" at #2 on page 7 and establishes requirements to be implemented by businesses engaged in and performing essential construction projects at #3 on page 9 and #4 on page 11, respectively. These provisions are outlined below. *In short, the person in responsible charge over essential projects permitted to continue must implement precautions to ensure social distancing, personnel limitations, frequent sanitization of equipment and of commonly used spaces, etc.* In order to continue as an essential construction project, the person in responsible charge must submit documentation to the local construction office attesting to how the project qualifies as an essential construction project and the measures/precautions put in place to satisfy #3 and #4 of EO 122. Please be advised that construction offices may still accept permit applications for non-essential construction projects but may not issue the permit until EO 122 is lifted. Idled projects during the pendency of EO 122 would be required to restart construction within 6 months of the revocation of EO 122, in accordance with N.J.A.C. 5:23-2.16(b).

2. Essential Construction Projects

- a. **Health Care** - Projects necessary for the delivery of health care services, including but not limited to hospitals, other health care facilities, and pharmaceutical manufacturing facilities;
- b. **Transportation** - Transportation projects, including roads, bridges, and mass transit facilities or physical infrastructure, including work done at airports or seaports;
- c. **Utilities** - Utility projects, including those necessary for energy and electricity production and transmission, and any decommissioning of facilities used for electricity generation;
- d. **Housing** - Residential projects that are exclusively designated as affordable housing; *(if the project has aspects of "f" below, it shall be applied also)*
- e. **Education** - Projects involving pre-K-12 schools, including but not limited to projects in Schools Development Authority districts, and projects involving higher education facilities;
- f. **Housing** - Projects already underway involving individual single-family homes, or an individual apartment unit where an individual already resides, with a construction crew of 5 or fewer individuals. This includes additions to single-family homes such as solar panels;
- g. **Housing** - Projects already underway involving a residential unit for which a tenant or buyer has already entered into a legally binding agreement to occupy the unit by a certain date, and construction



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is necessary to ensure the unit's availability by that date; *(if the project has aspects of "f" above, it shall be applied also)*

h. **Online/Essential Retail Businesses** - Projects involving facilities at which any one or more of the following takes place: the manufacture, distribution, storage, or servicing of goods or products that are sold by online retail businesses or essential retail businesses, as defined by Executive Order No. 107 (2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>, and subsequent Administrative Orders adopted pursuant to that Order;

i. **Data Centers** - Projects involving data centers or facilities that are critical to a business's ability to function;

j. **Social Services** - Projects necessary for the delivery of essential social services, including homeless shelters;

k. **Law Enforcement** - Any project necessary to support law enforcement agencies or first responder units in their response to the COVID-19 emergency;

l. **Government** - Any project that is ordered or contracted for by Federal, State, county, or municipal government, or any project that must be completed to meet a deadline established by the Federal government;

m. **Non-essential Construction Project Site Securing** - Any work on a non-essential construction project that is required to physically secure the site of the project, ensure the structural integrity of any buildings on the site, abate any hazards that would exist on the site if the construction were to remain in its current condition, remediate a site, or otherwise ensure that the site and any buildings therein are appropriately protected and safe during the suspension of the project *(see Chapter 33 of the International Building Code/2018 for guidance, <https://codes.iccsafe.org/content/document/1535>); and*

n. **Emergency Work** - Any emergency repairs necessary to ensure the health and safety of residents.

3. POLICY REQUIREMENTS for manufacturing businesses, warehousing businesses, and businesses engaged in essential construction projects.

a. Prohibit non-essential visitors from entering the worksite;

b. Limit worksite meetings, inductions, and workgroups to groups of fewer than ten individuals;

c. Require individuals to maintain six feet or more distance between them wherever possible;

d. Stagger work start and stop times where practicable to limit the number of individuals entering and leaving the worksite concurrently;

e. Stagger lunch breaks and work times where practicable to enable operations to safely continue while utilizing the least number of individuals possible at the site;

f. Restrict the number of individuals who can access common areas, such as restrooms and breakrooms, concurrently;

- g. Require workers and visitors to wear cloth face coverings, in accordance with CDC recommendations (*see <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>*), while on the premises, except where doing so would inhibit the individual's health or the individual is under two years of age, and require workers to wear gloves while on the premises. Businesses must provide, at their expense, such face coverings and gloves for their employees. If a visitor refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline entry to the individual. Nothing in the stated policy should prevent workers or visitors from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the business is otherwise required to provide such worker with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering on the premises due to a medical condition that inhibits such usage, neither the business nor its staff shall require the individual to produce medical documentation verifying the stated condition;
- h. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- i. Limit sharing of tools, equipment, and machinery;
- j. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to workers and visitors; and
- k. Require frequent sanitization of high-touch areas like restrooms, breakrooms, equipment, and machinery.

4. POLICY REQUIREMENTS for all essential retail businesses, warehousing businesses, manufacturing businesses, and businesses performing essential construction projects.

- a. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
- b. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;
- c. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness; and
- d. Continue to follow guidelines and directives issued by the New Jersey Department of Health, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment.

Can construction projects continue? What construction is deemed essential?



Written by Business.NJ.gov Team

Updated this week

Non-essential construction projects must cease, effective Friday, April 10, 2020, at 8 p.m.

If your business is conducting construction deemed essential, that construction may continue; these construction projects include:

- Projects for health care, including hospitals and health care facilities;
- Transportation projects, including roads, bridges, and physical infrastructure;
- Utility projects;
- Residential projects that are exclusively affordable housing;
- Projects involving K-12 schools in Schools Development Authority districts and higher education facilities;
- Projects already underway at a single-family home—or an individual apartment unit where an individual already resides—with a construction crew of 5 or fewer;
- Projects already underway involving a residential unit which a tenant or buyer has legally agreed to occupy by a certain date, if construction is necessary for the unit's availability;
- Projects involving the manufacture, distribution, storage, or servicing of products sold by essential retail businesses;
- Data centers or facilities critical to a business's ability to function;
- Projects for the delivery of essential social services, including homeless shelters;
- Projects supporting law enforcement or first responders;
- Projects ordered by Federal or State government.
- Any work to secure and protect a non-essential construction project for its suspension;
- Any emergency repairs necessary for the health and safety of residents.

All other construction projects must cease, effective Friday, April 10, 2020, at 8 p.m.

Updated: April 9, 2020

Source: [Executive Order No. 122](#)