

Enforcement of the COVID-19 Safety Guidelines and Procedures for Construction Sites

COVID-19 Order No. 13, as revised and extended on March 31, 2020, requires the Massachusetts Department of Transportation and the Division of Capital Asset Management and Maintenance to “issue guidance and enforcement procedures for the safe operation of public works construction sites.” The safety guidance is attached as “COVID-19 Guidelines and Procedures for All Construction Sites and Workers at All Public Works Sites” (hereinafter, the COVID-19 Construction Safety Guidance) and is posted online and may be revised from time to time. This document contains the required enforcement procedures, which shall be followed by all state agencies and authorities who undertake, manage or fund construction projects and may be used by each city or town for ensuring the safety of both publicly- and privately-owned construction projects.

- All Projects: Construction sites that cannot consistently comply with the COVID-19 Construction Safety Guidance , including ensuring that social distancing and safety requirements are being followed, must:
 - Safely secure the site and pause construction activities until a corrective action plan is prepared, submitted and approved by both the Owner and the city or town; or
 - Close down the site for the duration of the State of Emergency if repeatedly found by either the Owner’s COVID-19 Officer or a state or local inspector (including a third-party private inspector accountable to a city or town) to be in violation of the social distancing and safety requirements.
- A city or town may additionally require the Owner to develop and submit a site-specific risk analysis and enhanced COVID-19 safety plan. The city or town shall review and approve such plan and may require such projects to pause construction until such a risk analysis and plan is submitted and approved. Once such an enhanced COVID-19 safety plan is approved, a violation of the plan shall be treated the same as a violation of the COVID-19 Construction Safety Guidance.
- A site-specific COVID-19 Officer (who may also be the Health and Safety Officer) shall be designated for every site.
- The approved project Health and Safety Plan (HASP) shall be modified to require that the Contractor’s site-specific project COVID-19 Officer submit a written daily report to the Owner’s Representative. The COVID-19 Officer shall certify that the contractor and all subcontractors are in full compliance with the COVID-19 Construction Safety Guidance.
- Public Projects: For all projects undertaken, managed or funded by a state agency or authority there shall be joint enforcement responsibility between the project’s public Owner and the city or town where the project is located.
 - The Owner of the project has the lead responsibility for compliance and enforcement including frequent on-site inspections by an employee or contractor of the state agency or authority who is familiar with the COVID-19 Construction Safety Guidance and is authorized to enforce that guidance and shut down work at the site if violations are found.
 - The Owner of the project is required to notify the municipality where the work is taking place whenever a site is shut down or of any violations of the COVID-19 Construction

Safety Guidance and the resulting corrective action plan, as well as to provide copies of the COVID-19 Officer's written daily reports upon request.

- While the public Owner has the lead responsibility for enforcement, cities and towns retain the authority to take enforcement action against public projects found not in compliance with the COVID-19 Construction Safety Guidance, including the authority to order the project to shut down until a corrective action plan is developed, approved and implemented.
- Private Projects: For all private projects the primary enforcement responsibility rests with the city or town, with the Massachusetts Department of Transportation and other state agencies providing technical assistance and resource support.
 - Cities and towns are authorized to enforce the COVID-19 Construction Safety Guidance using their public health staff, building inspectors or any other appropriate official or contractor.
 - Cities and towns may enforce the safety and distance protocols including requiring the Owner and/or Contractor to safely secure the site and pause construction activities until a corrective action plan is prepared, submitted and approved by the city or town.
 - The city or town may require the Owner of a private project to pay for an independent, third party inspector or inspection firm (or to pay into a pool to pay for such inspections). The third party inspector shall be accountable solely to the city or town and shall be responsible for enforcement on behalf of the city or town. A city or town may require private projects to pause construction until such a third-party inspector has been secured.