



EMPIRE STATE DEVELOPMENT ISSUES NEW CONSTRUCTION GUIDELINES

April 9, 2020

Live Webinar Today at 3:30 PM

WEBINAR INSTRUCTIONS

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Empire State Development (“ESD”) issued new guidance this morning. As you know, ESD sets forth the guidance to “help” people/companies determine which industries and construction projects are deemed “essential” and thus can proceed. Below is the link to the latest guidance which contains changes that are important to the construction industry.

<https://esd.ny.gov/guidance-executive-order-2026>

Today at 3:30PM, attorney Ed Sheats and I will present a webinar regarding today’s ESD guidance. These changes will be discussed in-depth during the live session, and we will attempt to answer questions, but here is a brief summary:

Affordable Housing Change

The first change concerns affordable housing. It exempts construction if:

“the construction is for affordable housing, as defined as construction work where either (i) a minimum of 20% of the residential units are or will be deemed affordable and are or will be subject to a regulatory agreement and/or a declaration from a local, state, or federal government agency or (ii) where the project is being undertaken by, or on behalf of, a public housing authority.”

Affordable housing projects had always been exempt, but there was some confusion about whether mixed-use projects were also exempt. ESD seems to clarify that point here.

Essential Business Change

The second change from ESD concerns projects for an “essential business”. The previous guidance from ESD said that businesses supplying services to an “essential business” were also exempt. In other words, if you were repairing remodeling a Wegmans then your work could continue. There was some concern about how far that exemption could be stretched. Some wondered if the exemption also included the construction of a new Wegmans. The

new guidance seems to clarify that point some. ESD now says that the construction work is exempt if:

“the construction is for existing (i.e. currently underway) projects of an essential business”

Sole Employee/Worker Change

The last change worth noting is the reference to “sole employee/worker” on the job site. ESD’s previous guidance included a similar reference; however, it was drafted in such a way that left it open to interpretation. The new guidance does not fix the situation. The new guidance says:

“the construction work is being completed by a single worker who is the sole employee/worker on the job site.”

SEND US YOUR QUESTIONS

Please feel free to join us today at 3:30 PM for our third “live” webinar regarding ESD construction guidance. You may email your questions in advance to:

ehall@syabex.com or esheats@theconstructionlaw.com. Ed and I will do our best to answer as many questions as possible.

Earl R. Hall
Executive Director