March 25, 2020

Via Email

Mr. John Pourbaix, Jr., Executive Director
Construction Industries of Massachusetts
1500 Providence Highway-Suite 14
P.O. Box 667
Norwood MA, 02062

Subject: Essential Services Clarification and Covid-19 Guidelines/Procedures

Mr. Pourbaix:

Due to the recent COVID-19 outbreak, the MBTA has received a number of inquiries from the construction industry seeking confirmation that contractors, consultants, and service materials and suppliers to the MBTA are considered essential services as detailed in Governor Baker’s Executive Order (attached) titled “Assuring Continued Operations of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People” dated March 23, 2020. The Executive Order provides that essential businesses and services specifically include transportation infrastructure project contractors and their vendors that are necessary to ensure the continuing operation of public works construction projects.

Further, the Governor’s Legal Office issued a letter today (attached) with clarifications regarding functions and intent of the Governor’s March 23rd Executive Order along with COVID-19 Guidelines and Procedures (attached) for all construction sites and workers at all Public Work sites. Please note that these COVID-19 Guidelines and Procedures include required actions and compliance. Non-compliance can be a basis for suspension of work. Lastly, all public project are required to have a Safety Stand Down Day within the next week during which the contractors will be responsible to communicate the new procedures and guidelines to all contractor and subcontractor personnel assigned to their site(s). The Safety Stand Down Day for all MBTA projects shall be Monday March 30th, 2020.
In summary, the MBTA is continuing implementation of its capital program as an essential government function and will continue to bid, award and construct MBTA projects. The companies awarded such contracts including subcontractors, suppliers, vendors and specialty firms are all exempt for work to support the MBTA capital program.

Please feel free to contact me if you have any questions.

Sincerely,

[Signature]

Jay Neider, P.E
Chief of Capital Programs
MBTA

Attachments: Governor Baker’s Executive Order titled “Assuring Continued Operations of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People” dated March 23rd, 2020

Governor’s Legal Office a letter, dated March 25th 2020, and attached “COVID-19 Guidelines and Procedures (attached) for all construction sites and workers at all Public Work” sites.

Cc: Jay Neider, PE – For File
    Katie Choe – for dist. to Capital Delivery Project Offices
    Stephen Moore – for dist. to RL/OL Project Offices
    Angel Pena – for dist. to GLT Project Offices
    Chuck Cayton – for dist. to all TOD project teams
    Sean McDonnell – for dist. to all Capital Program field staff
    Christopher Brennan, PE – for dist. to Capital Support
    Vikram Dogra, PE
    Kevin Chesnik
    Jeff Cook
ORDER ASSURING CONTINUED OPERATION OF ESSENTIAL SERVICES IN THE COMMONWEALTH, CLOSING CERTAIN WORKPLACES, AND PROHIBITING GATHERINGS OF MORE THAN 10 PEOPLE

COVID-19 Order No. 13

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth. As of March 22, 2020, the Department of Public Health had reported 646 cases of COVID-19, including 5 deaths, with 13 of the 14 counties in the Commonwealth impacted;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times, both inside and outside of the home to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, on March 19, 2020, the Federal Cybersecurity and Infrastructure Security Agency issued guidance to assist States that identifies 14 critical infrastructure sectors whose workers provide services and functions that are essential to maintain in order to support a strong response to the COVID-19 pandemic;

WHEREAS, as Governor, I have identified additional services and functions that likewise are essential to promote the public health and welfare of the Commonwealth, and
therefore it is imperative to ensure that workers providing critical services and functions in these State and Federally designated sectors may continue to work to ensure community resilience and continuity of response efforts; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over public assemblages in order to protect the health and safety of persons, regulating the sale of articles of food and household articles, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, in order to minimize all unnecessary activities outside of the home during the state of emergency, I hereby order the following:

1. **Maintaining Operation of COVID-19 Essential Services and Workforces**

   The production and service sectors identified in Exhibit A are hereby designated as “COVID-19 Essential Services.” The workforces engaged and working in these production and service sectors are hereby designated as “COVID-19 Essential Workforces.” I shall amend and publish updates to Exhibit A as I determine necessary in response to conditions as they develop.

   Businesses and other organizations that provide the services and functions identified as COVID-19 Essential Services in Exhibit A are urged to continue operations during the state of emergency, but to do so with allowance for social distancing protocols consistent with guidance provided by the Department of Public Health.

   Restaurants, bars, and other retail establishments that sell food and beverage products to the public provide COVID-19 Essential Services and are designated as such in Exhibit A. These establishments are therefore encouraged to continue to offer food and beverages for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health guidance. Restaurants, bars, or other establishments that offer food or beverages to the public shall not permit on-premises consumption of food or beverages.

2. **Temporary Closing of Other Businesses and Organizations**

   All businesses and other organizations that do not provide COVID-19 Essential Services shall close their physical workplaces and facilities (“brick-and-mortar premises”) to workers, customers, and the public as of 12:00 noon on March 24, 2020 and shall not re-open to workers, customers, or the public before 12:00 noon on April 7, 2020. Churches, temples, mosques, and other places of worship shall not be required to close their brick and mortar premises to workers or the public; provided, however, that such institutions shall be required to comply with all limitations on gatherings established in section 3 below.
Businesses and other organizations that do not provide COVID-19 Essential Services are encouraged to continue operations where they are able to operate through remote means that do not require workers, customers, or the public to enter or appear at the brick-and-mortar premises closed by this Order.

3. **Limitations on Gatherings**

Gatherings of more than 10 people are prohibited throughout the Commonwealth. Gatherings subject to this Order include, without limitation, community, civic, public, leisure, faith-based, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, festivals, weddings, funerals, and any similar event or activity that brings together more than 10 persons in any confined indoor or outdoor space. This limitation shall not apply to the operations or activities of any business or organization in its provision or delivery of COVID-19 Essential Services.

This Order does not prohibit gatherings of more than 10 people in an unenclosed, outdoor space such as a park, athletic field, or parking lot.

Athletic and recreational activities that bring participants into close, physical contact are prohibited even when involving 10 or fewer people and regardless of where conducted.

4. **Exceptions**

(a) This Order shall not apply to any municipal legislative body or to the General Court or to the Judiciary.

(b) This Order shall not apply to residential schools for special needs students. This Order also does not apply to public and private elementary and secondary (K-12) schools in the Commonwealth, which are subject to the March 15, 2020 Order Temporarily Closing All Public and Private Elementary and Secondary Schools, as may be subsequently amended, which suspended all normal, in-person instruction.

(c) This Order does not apply to the operation of child care programs in the Commonwealth, which are subject to the March 18, 2020 Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs, as may be subsequently amended.

5. **Implementing Guidance and Enforcement**

The Commissioner of Public Health is directed to issue guidance ("DPH Guidance"), subject to my approval, to implement the terms of this Order. The DPH Guidance shall include a requirement that grocery stores and other retailers with substantial retail grocery sales establish special limited access hours during which elderly and other vulnerable populations may have exclusive access to make grocery purchases.
The Department of Public Health, along with any board of health or authorized agent pursuant to G. L. c. 111, § 30, shall enforce this Order and if necessary may do so with the assistance of State or municipal police. Violation of the terms of this Order or the DPH Guidance may result in a criminal penalty pursuant to Section 8 of Chapter 639 of the Acts of 1950 or a civil fine of up to $300 per violation, in the manner provided for non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. A criminal complaint for violation of or a motion for an injunction to enforce this Order or the DPH Guidance shall be filed in the district court with jurisdiction for the municipality in which the violation has been charged.

In addition, I hereby direct the Commissioner of Public Health to act under the authority of G. L. c. 17, § 2A and G. L. c. 111, § 6 or any other appropriate authority to supplement the terms of this Order in the event she determines additional measures are required to ensure that the terms of this Order are observed.

This Order supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this Order. With respect to work and travel in particular, any order or rule issued by a municipality is hereby made inoperative to the extent: (1) such municipal order or rule will or might interfere with provisions of this Order ensuring the continued operation of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within the Commonwealth of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.

This Order rescinds and revokes the Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink, issued March 15, 2020.

If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or the application thereof to other persons, entities, and circumstances.
This Order shall be effective at 12:00 noon March 24, 2020 and shall remain in effect through 12:00 noon on April 7, 2020 unless further extended.

Given in Boston at \(9\) AM this 23rd day of March, two thousand and twenty

\[\text{Signature}\]

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts
March 25, 2020

Dear Municipal Chief Executive Officer:

I write to provide guidance regarding the effect of the Governor’s March 23, 2020 Order “Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People” insofar as the Order intersects with municipal efforts to address the COVID-19 crisis.

The Governor’s Essential Services Order has two functions. First, the Order closes a broad range of public spaces, workplaces, and other establishments in order to reduce unnecessary movement of Commonwealth residents outside of the home and, in so doing, limit the spread of this highly contagious and potentially deadly virus. Second, the Order designates a range of critical services and functions as “COVID-19 Essential Services” to ensure their continued operation during the state of emergency in order to protect the public health and welfare of the Commonwealth and support community resilience and continuity of response efforts. Correspondingly, the Order designates workers engaged in delivering these critical services and functions as members of the “COVID-19 Essential Workforce.” Taken together, these designations seek to ensure that COVID-19 Essential Services continue without interruption during the period of the declared emergency.

The Baker-Polito Administration recognizes the value of local decision making in most circumstances. Nevertheless, ensuring an effective response to the COVID-19 emergency requires the Administration to prioritize consistency and clarity of action. A key requirement of any effective, statewide response will be that public officials avoid conflicting directives and duplication of efforts. The Massachusetts Civil Defense Act, the authority under which the Governor issued the Order, reflects the necessity for unified statewide directives in a time of crisis. Section 8A of the Act provides that that any rule, regulation, ordinance or by-law issued by a municipality or other political subdivision of the Commonwealth “shall be inoperative” to the extent that such provision is inconsistent with any order issued by the Governor during the period of the emergency.
Accordingly, the Order the Governor signed on Monday includes the following provision to ensure unitary management of this crisis:

This Order supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this Order. With respect to work and travel in particular, any order or rule issued by a municipality is hereby made inoperative to the extent: (1) such municipal order or rule will or might interfere with provisions of this Order ensuring the continued operation of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within the Commonwealth of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.

One important area in which the potential for conflict has presented itself is in questions surrounding the continuing operation of construction projects. A number of municipalities have announced policies to address construction work during the state of emergency that conflict with the terms of the Order. Exhibit A of the Order contains two entries that designate construction projects as COVID-19 Essential Services and identify workers engaged in construction projects as included within the Order’s COVID-19 Essential Workforce:

- **Guidance:** Workers – including contracted vendors – involved in the construction of critical or strategic infrastructure including public works construction, airport operations, water, sewer, gas, electrical, nuclear, oil refining and other critical energy services, roads and highways, public transportation, solid waste collection and removal, and internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services)

- **Guidance:** Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)

Accordingly, the Order provides that all construction projects are to “continue operations during the state of emergency, but to do so with allowance for social distancing protocols consistent with guidance provided by the Department of Public Health.” Local policies, regulations, or directives that provide otherwise are in direct conflict with the Order and should be withdrawn.

The Baker-Polito Administration is aware that cities and towns and local Boards of Health quite sensibly have raised questions about how to manage the health risks of COVID-19 in the context of an active construction site. In order to address these same concerns, Commonwealth agencies that undertake horizontal and vertical construction have adopted a detailed set of safety practices for all construction projects sponsored or managed by their agencies. The Commonwealth also plans to ensure that each project sponsored or managed by a state agency observes a “safety stand-down day” within the next week. This stand-down is
designed to ensure that all workers involved in the project are familiar with the health safety practices required for the continued operation of Commonwealth construction projects. I am attaching the Commonwealth’s construction site safety policy to this guidance for your review. The Administration encourages all cities and towns to issue similar requirements for construction projects undertaken by private owners.

Unitary management in this crisis will be essential to ensuring an appropriate balance statewide between taking actions necessary to combat the spread of COVID-19 and avoiding unnecessary hardships to the public and supporting community resilience over the weeks and months it may take for this crisis to run its course. The economic disruption and interruption in critical services and functions that could result from halting construction projects abruptly would be felt statewide and not simply in the locality where a particular project sits. For these reasons, construction projects should continue as long as they observe social distancing protocols and otherwise can continue to operate safely.

The Baker-Polito Administration recognizes and values the unceasing efforts of local officials to support an effective statewide response to COVID-19. We will continue to work with cities and towns to ensure a consistent application of the Governor’s Essential Services Order and to provide for effective enforcement of proper COVID-19 safety protocols at active construction sites.

Sincerely,

[Signature]

Robert C. Ross
Chief Legal Counsel

Cc: Geoffrey Beckwith, Massachusetts Municipal Association

Enclosure
Commonwealth of Massachusetts
COVID-19 GUIDELINES AND PROCEDURES
FOR ALL CONSTRUCTION SITES AND WORKERS AT ALL
PUBLIC WORK

These Guidelines and Procedures MUST be implemented at all times on all construction sites. All construction sites MUST conduct a Safety Stand Down day to disseminate these Guidelines to all employees and workers.

Employee Health Protection – ZERO Tolerance
The following applies to both State employees and contracted staff working on behalf of the State.

- ZERO TOLERANCE FOR SICK WORKERS REPORTING TO WORK. IF YOU ARE SICK, STAY HOME! IF YOU FEEL SICK, GO HOME! IF YOU SEE SOMEONE SICK, SEND THEM HOME!
- If you are exhibiting any of the symptoms below, you are to report this to your supervisor (via phone, text or email) right away, and head home from the job site or stay home if already there.

  If you notice a co-worker showing signs or complaining about such symptoms, he or she should be directed to their supervisor (via phone, text or email) and asked to leave the project site immediately.

  COVID-19 Typical Symptoms:
  - Fever
  - Cough
  - Shortness of Breath
  - Sore Throat

- Prior to starting a shift, each employee will self-certify to their supervisor that they:
  - Have no signs of a fever or a measured temperature above 100.3 degrees or greater, a cough or trouble breathing within the past 24 hours.
  - Have not had “close contact” with an individual diagnosed with COVID-19. “Close contact” means living in the same household as a person who has tested positive for COVID-19, caring for a person who has tested positive for COVID-19, being within 6 feet of a person who has tested positive for COVID-19 for about 15 minutes, or coming in direct contact with secretions (e.g., sharing utensils, being coughed on) from a person who has tested positive for COVID-19, while that person was symptomatic.
  - Have not been asked to self-isolate or quarantine by their doctor or a local public health official.
- Workers that are working in a confined space or inside a closed building envelope will have to be temperature screened by a Medical Professional or Trained Individual provided that such screening is out of public view to respect privacy and results are kept private.
- Employees exhibiting symptoms or unable to self-certify should be directed to leave the work site and seek medical attention and applicable testing by their health care provider. They are not to return to the work site until cleared by a medical professional.

March 2020
General On-the-Job Guidance to Prevent Exposure & Limit the Transmission of the Virus

- No handshaking
- Wash hands often with soap for at least 20 seconds or use an alcohol-based hand sanitizer with at least 60% ethanol or 70% isopropanol
- Contractor and State Agency Field Offices are locked down to all but authorized personnel
- Each jobsite should develop cleaning and decontamination procedures that are posted and shared. These Procedures must cover all areas including trailers, gates, equipment, vehicles, etc. and shall be posted at all entry points to the sites, and throughout the project site.
- A “No Congregation” policy is in effect, individuals must implement social distancing by maintaining a minimum distance of 6-feet from other individuals
- Avoid face to face meetings – critical situations requiring in-person discussion must follow social distancing
- Conduct all meetings via conference calls, if possible. Do not convene meetings of more than 10 people. Recommend use of cell phones, texting, web meeting sites and conference calls for project discussion
- All individual work crew meetings/tailgate talks should be held outside and follow social distancing
- Please keep all crews a minimum of 6’ apart at all times to eliminate the potential of cross contamination
- At each job briefing/tool box talk, employees are asked if they are experiencing any symptoms, and are sent home if they are
- Each jobsite should have laminated COVID-19 safety guidelines and handwashing instructions
- All restroom facilities/porta-potties should be cleaned and handwashing stations must be provided with soap, hand sanitizer and paper towels
- All surfaces should be regularly cleaned, including surfaces, door handles, laptops, etc.
- All common areas and meeting areas are to be regularly cleaned and disinfected at least once a day but preferably twice a day
- Be sure to use your own water bottle, and do not share
- To avoid external contamination, we recommend everyone bring food from home
- Please maintain Social Distancing separation during breaks and lunch.
- Cover coughing or sneezing with a tissue, then throw the tissue in the trash and wash hands, if no tissue is available then cough into your elbow
- Avoid touching eyes, nose, and mouth with your hands
- To avoid sharing germs, please clean up after Yourself. DO NOT make others responsible for moving, unpacking and packing up your personal belongings
- If you or a family member is feeling ill, stay home!
Work Site Risk Prevention Practices

- At the start of each shift, confirm with all employees that they are healthy.
- We will have a 100% glove policy from today going forward. All construction workers will be required to wear cut-resistant gloves or the equivalent.
- Use of eye protection (safety goggles/face shields) is recommended.
- In work conditions where required social distancing is impossible to achieve affected employees shall be supplied PPE including as appropriate a standard face mask, gloves, and eye protection.
- All employees shall drive to work site/parking area in a single occupant vehicle. Contractors / State staff shall not ride together in the same vehicle.
- When entering a machine or vehicle which you are not sure you were the last person to enter, make sure that you wipe down the interior and door handles with disinfectant prior to entry.
- In instances where it is possible, workers should maintain separation of 6’ from each other per CDC guidelines.
- Multi person activities will be limited where feasible (two person lifting activities).
- Large gathering places on the site such as shacks and break areas will be eliminated and instead small break areas will be used with seating limited to ensure social distancing.
- Contact the cleaning person for your office trailer or office space and ensure they have proper COVID-19 sanitation processes. Increase their cleaning visits to daily.
- Clean all high contact surfaces a minimum of twice a day in order to minimize the spread of germs in areas that people touch frequently. This includes but is not limited to desks, laptops and vehicles.

Wash Stations: All site-specific projects with outside construction sites without ready access to an indoor bathroom MUST install Wash Stations.

- Install hand wash stations with hot water, if possible, and soap at fire hydrants or other water sources to be used for frequent handwashing for all onsite employees.
- All onsite workers must help to maintain and keep stations clean.
- If a worker notices soap or towels are running low or out, immediately notify supervisors.
- Garbage barrels will be placed next to the hand wash station for disposal of tissues/towels.
Do all you can to maintain your good health by: getting adequate sleep; eating a balanced, healthy diet, avoid alcohol; and consume plenty of fluids.

Please Note: This document is not intended to replace any formalized procedures currently in place with the General Contractor.

Where these guidance does not meet or exceed the standards put forth by the General Contractor, everyone shall abide by the most stringent procedure available.

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 these guidelines.

Any issue of non-compliance with these guidelines shall be a basis for the suspension of work. The contractor will be required to submit a corrective action plan detailing each issue of non-conformance and a plan to rectify the issue(s). The contractor will not be allowed to resume work until the plan is approved by the Owner. Any additional issues of non-conformance may be subject to action against the contractor’s prequalification and certification status.

- Wash your hands often with soap and warm water, or use an alcohol-based hand sanitizer.
- Avoid touching your eyes, nose and mouth.
- Cover your mouth when you cough or sneeze. Use a tissue or your inner elbow, not your hands.
- Clean things that are frequently touched (like doorknobs and countertops) with household cleaning spray or wipes.
- Stay home if you are sick and avoid close contact with others.
- Think ahead about how to take care of yourself and your loved ones. Visit mass.gov/KnowPlanPrepare for preparedness tips.