



CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH

BOARD OF HEALTH: August 13, 2020
LAW DEPARTMENT: August 13, 2020
RECORDS DEPARTMENT:

**NINTH SUPPLEMENTAL EMERGENCY REGULATION GOVERNING
THE CONTROL AND PREVENTION OF COVID-19
(AUTHORIZED CONSTRUCTION ACTIVITY)**

WHEREAS, the Pennsylvania Disease Control and Prevention Act of 1955, 1956, April 23, P.L. 1510, 35 P.S. § 52.1 *et seq.*, (the DCPA) and Chapter 6-200 of The Philadelphia Code authorize the Board of Health to establish lists of reportable diseases and conditions, and further provide that the Board and the Department of Public Health are responsible for implementing appropriate disease control and prevention measures in order to limit the spread of disease in an epidemic emergency; and

WHEREAS, on March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, or global epidemic; and

WHEREAS, on March 12, 2020, the City's Board of Health by emergency regulation added COVID-19 to the City's list of reportable and quarantinable diseases; and

WHEREAS, beginning on March 17, 2020, the Mayor and the Commissioner of Health as well as the Governor of the Commonwealth of Pennsylvania issued a series of orders ordering certain businesses to close across the City and Commonwealth, respectively, and requiring individuals to remain at home with certain exceptions.

WHEREAS, on March 22, 2020, the Mayor and the Commissioner jointly issued an Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses and Congregation of Persons to Prevent the Spread of COVID-19, which superseded the prior emergency orders issued by the Mayor and Health Commissioner dated March 17, 2020, which prohibited, *inter alia*, most construction work in Philadelphia (the "March 22, 2020 Prohibition on Non-Essential Business"); and

WHEREAS, on March 26, 2020, the Board of Health approved an Emergency Regulation Governing the Control and Prevention of COVID-19 (effective March 27, 2020), which adopted the Mayor and the Health Commissioner's March 22, 2020 Prohibition on Non-Essential Business and expressly authorized the Health Commissioner to issue such additional orders as the Commissioner determines are necessary or appropriate control or prevention measures to limit the spread of COVID-19; and

WHEREAS, on April 22, 2020, the Board of Health approved a Second Supplemental Emergency Regulation Governing the Control and Prevision of COVID-19 (Long-Term Care Facilities) (effective April 23, 2020), adopting a prior order of the Health Commissioner concerning specific control measures applicable to Long-Term Care Facilities; and

WHEREAS, on April 15, 2020, the Secretary of Health of the Commonwealth of Pennsylvania issued an Order requiring comprehensive safety measures to be employed in all businesses maintaining physical operations, including standards for cleaning and disinfecting high-touch areas, establishing protocols for businesses exposed to probable or confirmed cases of COVID-19, limiting the numbers of employees on the premises and ensuring access to protective and sanitary equipment and supplies; and

WHEREAS, on April 20, 2020, the Governor and the Secretary of Health of the Commonwealth issued amendments to their March 19, 2020 orders concerning the closure of business that are no life sustaining to authorize, *inter alia*, “limited construction activity” that would be authorized to commence in-person operations beginning on May 8, 2020, provided such activity followed strict guidance related to mitigation measures described by the federal Centers for Disease Control and Prevention and the requirements of the Pennsylvania Secretary of Health’s April 15, 2020, Order “Directing Public Health Safety Measures for Business Permitted to Maintain In-person Operations”; and

WHEREAS, on April 23, 2020, the Governor issued a document entitled “Guidance for Businesses in the Construction Industry Permitted to Operate During the COVID-19 Disaster Emergency,” which stated that, absent the establishment or maintenance of more stringent requirement by local governments, such limited construction activity could begin on May 1, 2020, which provided additional detail regarding safety and mitigation measures required to be followed in connection with such construction activity; and

WHEREAS, Sections 6-205 and 6-206 of The Philadelphia Code provide that the Department of Public Health may by order forbid the congregation of persons when necessary to prevent the further spread of a communicable and quarantinable disease and may take such other measures as are necessary to prevent the spread of such disease; and

WHEREAS, the Mayor of the City of Philadelphia and the Health Commissioner have determined that, in order to allow limited economic activity to protect existing construction sites, and to protect jobs and investment in the City, within strict limitations appropriate to the situation and the need to limit the spread of COVID-19, construction activity may resume in the City on the bases outlined in an Order signed April 29, 2020, entitled “Authorization for the Conduct of Certain Construction Activity Currently Prohibited by the March 22, 2020 Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses And Individual Activity to Prevent the Spread of 2019 Novel Coronavirus (COVID-19),” (the “Limited Construction Authorization”), which was adopted by this Board effective April 30, 2020 as a “Third Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Authorized Construction Activity);” and

WHEREAS, on May 11, 2020, the Mayor and the Health Commissioner delegated certain authority regarding the conduct of construction activity under such Authorization to the Commissioner of the Department of Licenses & Inspections (the “May 11, 2020 Delegation”); and

WHEREAS, on May 13, 2020, the Department of Licenses & Inspections promulgated an “Emergency Regulation Modifying Restrictions Regarding the Periods of Authorized Construction Work for Certain Types of Projects Under Certain Conditions” (the “May 13, 2020 L&I Regulation”); and

WHEREAS, the Board of Health adopted the May 11, 2020 Delegation and the May 13, 2020 L&I Regulation effective May 15, 2020 as a “Fourth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Delegation of Authority);” and

WHEREAS, the Commonwealth of Pennsylvania’s “Guidance for Businesses in the Construction Industry Permitted to Operate During the COVID-19 Disaster Emergency” does not require construction projects operating in counties in the Green Phase of reopening to limit the number of persons on a job site, so long as all other applicable safety requirements, including those concerning social distancing, are observed; and

WHEREAS, on July 24, 2020, the Department of Licenses & Inspections promulgated an “Emergency Regulation Modifying Restrictions Regarding the Number of Workers Permitted On Site During Authorized Construction Work Under Certain Conditions” (the “L&I Regulation”); and

WHEREAS, the Board of Health agrees with these determinations, and recognizes that the situation involving the COVID-19 pandemic is fast moving and often requires changes to control measures both to impose additional measures and to roll back required measures when appropriate; and

WHEREAS, consistent with the foregoing, the Board hereby promulgates the below Ninth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Authorized Construction Activity) to adopt the July 24, 2020 L&I Regulation, as a temporary regulation effective upon delivery to the Department of Records, while the remaining procedures and formalities of Section 8-407 are followed to promulgate the amendment as a permanent regulation;

NOW, THEREFORE, the Board of Health hereby adopts the following regulation, effective immediately:

1. This Emergency Regulation supplements the Philadelphia Department of Public Health’s *Regulations Governing the Control of Communicable and Non-communicable Diseases and Conditions* and its other emergency regulations governing the control and prevention of COVID-19.

2. The Board hereby fully adopts the July 24, 2020 Department of Licenses & Inspections “Emergency Regulation Modifying Restrictions Regarding the Periods of Authorized Construction Works for Certain Types of Projects Under Certain Conditions,” which removes the

limitation on the number of workers authorized to work at a construction site in Section 3(D) of the Limited Construction Authorization, provided work remains otherwise compliant with the Limited Construction Authorization and all applicable laws, and which is attached hereto, as Attachment A.

3. This Emergency Regulation shall be effective upon filing with the Department of Records and remain effective until expressly superseded or repealed by the Board at the conclusion of the COVID-19 emergency.

Attachment A

**CITY OF PHILADELPHIA
DEPARTMENT OF LICENSES AND INSPECTIONS**

**EMERGENCY REGULATION MODIFYING RESTRICTIONS
REGARDING THE NUMBER OF WORKERS PERMITTED ON SITE DURING
AUTHORIZED CONSTRUCTION WORK UNDER CERTAIN CONDITIONS**

On March 22, 2020, as part of a series of emergency declarations and orders, the Mayor and the Health Commissioner jointly issued an Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses and Congregation of Persons to Prevent the Spread of COVID-19 (“Emergency Order”). On March 23, 2020, the Governor of Pennsylvania issued a Stay at Home Order that applies to Philadelphia and numerous surrounding counties and which limited the operations of non-life sustaining businesses. The City’s Emergency Order was approved as a regulation of the Board of Health on March 26, 2020 (effective March 27, 2020) and the Board of Health further expressly authorized the Health Commissioner to issue such additional orders as the Health Commissioner determines are necessary or appropriate control or prevention measures to limit the spread of COVID-19.

On April 20, 2020, the Governor and the Secretary of Health of the Commonwealth issued amendments to their March 19, 2020 orders concerning the closure of business that are not life sustaining to authorize, inter alia, “limited construction activity” that would be authorized to commence in-person operations beginning on May 8, 2020, provided such activity followed strict guidance related to mitigation measures described by the federal Centers for Disease Control and Prevention and the requirements of the Pennsylvania Secretary of Health’s April 15, 2020, Order “Directing Public Health Safety Measures for Business Permitted to Maintain In-person Operations.” On April 23, 2020, the Governor issued a document entitled “Guidance for Businesses in the Construction Industry Permitted to Operate During the COVID-

19 Disaster Emergency,” which stated that, absent the establishment or maintenance of more stringent requirement by local governments, such limited construction activity could begin on May 1, 2020, and provided additional detail regarding safety and mitigation measures required to be followed in connection with such construction activity.

On April 29, 2020, the Mayor and the Health Commissioner amended the Emergency Order to provide an Authorization for the Conduct of Certain Construction Activity Currently Prohibited by the Emergency Order (“Limited Construction Authorization”). The Limited Construction Authorization permitted work to recommence on certain construction projects for which a building or demolition permit was issued by the City of Philadelphia on or before March 20, 2020 during certain time periods provided certain safety and mitigation requirements are followed. On May 11, 2020 the Mayor and the Health Commissioner delegated authority to the Commissioner of the Department of Licenses & Inspections (“L&I”) to, *inter alia*, interpret, issue guidance, and relax safety and mitigation requirements provided for under Section 3 of the Limited Construction Authorization. On May 13, 2020, L&I promulgated the Emergency Regulation Modifying Restrictions Regarding the Periods of Authorized Construction Work for Certain Types of Projects Under Certain Conditions (“L&I Emergency Construction Regulation – Periods of Work ”).

On May 29, 2020, the Mayor and Health Commissioner determined that Philadelphia could move to the Yellow Phase with additional, Philadelphia-specific restrictions that would apply in addition to restrictions established by the Governor, including limitations on outdoor dining, and executed an Order entitled “Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians hat They are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19): Yellow Phase of

Reopening” (“Yellow Phase Order”) to implement that decision, effective on the date determined by the Governor that the City of Philadelphia should move into the Yellow Phase. On June 4, 2020, the Governor and Secretary of Health’s amended their respective orders for Limited Opening of Businesses, Lifting of Stay at Home Requirements, and Continued Aggressive Mitigation Efforts, to apply to Philadelphia effective June 5th, which generally moved the City into the Yellow Phase pursuant to the Governor’s guidelines.

Although the Governor has since announced that Philadelphia was authorized to join other southeastern Pennsylvania counties in moving to the Green Phase of reopening on June 26, 2020, the Mayor and Health Commissioner, in consideration of public health data and the noted effects on public health in June and July in states that have hastily reopened, including marked increases of positively identified COVID cases, the City has taken a cautious approach to moving to the Green Phase on a modified basis through a series of amendments to the City’s Yellow Phase Order designed to ease restrictions on the operation of businesses.

Under the “Guidance for Businesses in the Construction Industry Permitted to Operate During the COVID-19 Disaster Emergency” issued by the Commonwealth, construction projects operating in counties in the Green Phase of reopening are not required to limit the number of persons on a job site, so long as all other applicable safety requirements, including those concerning social distancing are observed. Consistent with these easement of restrictions in other areas, L&I has determined that it is in the best interest of the City and its residents to modify Section 3 of the Limited Construction Authorization to revise the number of persons that may work on a construction site, whether residential or commercial, and the Department therefore adopts the following emergency regulation:


1. The limitation on the number of workers authorized to work at a construction site of

Section 3(D) of the Limited Construction Authorization (“Safety and Mitigation Requirement”), specifically the third and fourth bullet points of subsection (D), shall no longer apply provided that: (a) such construction activity must strictly comply with all other aspects of such Section 3; and (b) such construction must comply with all other applicable requirements of the law.

2. The failure to comply with any applicable provision of the Limited Construction Authority shall be strictly enforced and may lead to the issuance of violation notices, stop work orders, the imposition of fines, the revocation or suspension of licenses, and any other remedies available under law.

3. This emergency regulation supplements but does not supersede the May 13, 2020 L&I Emergency Construction Regulation-Periods of Work and does not otherwise modify the Limited Construction Authorization, authorize additional construction projects, or impose requirements on essential construction that was authorized prior to the Limited Construction Authorization.

4. Based on the Mayor’s March 11, 2020, Declaration of Extraordinary Circumstance that allows regulations related to addressing the pandemic to become effective immediately upon transmission to the Department of Records, this emergency regulation shall be effective immediately.

By: 
David Perri
Commissioner
Department of Licenses & Inspections
City of Philadelphia

Date Signed: July 24, 2020