



City of Philadelphia

LAW DEPARTMENT
One Parkway
1515 Arch Street
17th Floor
Philadelphia, PA 19102

Memorandum

TO: David Perri, Commissioner, Department of Licenses & Inspections

FROM: Jo Rosenberger Altman, Senior Attorney

DATE: July 24, 2020

SUBJECT: Emergency Regulation Modifying Restrictions Regarding the Number of Workers Permitted on Site During Authorized Construction Work Under Certain Conditions

I have reviewed the Emergency Regulation Modifying Restrictions Regarding the Number of Workers Permitted on Site During Authorized Construction Work Under Certain Conditions, attached hereto. I find the regulation to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these regulations to the Department of Records where they will be made available for public inspection.

Consistent with Mayor Kenney's March 11, 2020 Declaration of Extraordinary Circumstance: Suspending the Formal Regulatory Process for Regulations Concerning a Novel Coronavirus, you may promulgate the amendment effective immediately upon delivery to the Department of Records as a temporary regulation, while the remaining procedures and formalities of Section 8-407 are followed to promulgate the amendment.

A handwritten signature in black ink, appearing to read 'JRA'.

Jo Rosenberger Altman
Senior Attorney

**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
David Perri
Commissioner
Department of Licenses & Inspections
City of Philadelphia

Date Signed: July 24, 2020