

Baker, Cities at Odds Over Construction Continuation

Gov's New Guidance Allows Projects to Proceed

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BOSTON, MARCH 26, 2020.....Public construction projects statewide will be brought to a temporary halt Friday while contractors review site-specific issues, develop mitigation strategies and communicate to workers about new state guidelines for construction work during the coronavirus pandemic.

The Baker administration is requiring adherence to the "safety stand down" as part of a sweeping set of guidelines provided to the construction industry Wednesday. Those new state rules require, among other things, all workers to self-certify before each shift that they are not sick and that certain construction workers have their temperatures taken daily.

While some municipalities have shut down construction sites as the coronavirus spreads and COVID-19 patients begin to inundate hospitals, Gov. Charlie Baker has been adamant that construction work should continue, despite the public health emergency, with some new precautions built in.

"There's no question that if people are going to be working on construction and job sites, they need to have access to sinks, warm water, hand sanitizer, and a commitment to implementing the physical distancing and the social distancing that we've all been talking about," Baker said Wednesday afternoon after the guidance was issued. "There's a lot to those guidances and those recommendations and those requirements, and local communities have made clear to us that they look forward to ensuring that the sites in their communities that are engaged in that activity live up to those standards, and if they don't, they'll do something about it, which is exactly as it should be."

The guidance imposes a zero tolerance policy at work sites. If a worker is sick, they are to remain home. If a worker begins to feel sick on the job, they are to go home. And if a supervisor sees a worker who appears sick, they are to send the worker home.

Before starting each shift, every employee will be required to self-certify to their supervisor that they do not have a fever of 100.3 degrees or more, that they do not have a cough and that they do not have

difficulty breathing. Workers must also certify that they have had no close contact with someone who has COVID-19 and that they have not been asked to self-isolate.

"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," the guidance advises. "They are not to return to the work site until cleared by a medical professional."

Employees who work in confined spaces 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," according to the administration's guidance.

Handshakes are to be banned on job sites, every job site is to develop and post cleaning and decontamination procedures, each worker must wear gloves at all times, all workers "shall drive to work site/parking area in a single occupant vehicle," large gathering spaces like break areas and shacks are to be eliminated and replaced with smaller break areas, and the administration suggests that all workers bring their own food from home.

Job site supervisors are told to "keep all crews a minimum of 6' apart at all times to eliminate the potential of cross contamination" and when a six-foot distance is not possible due to the work being conducted, the administration wants construction companies to give each employee "PPE including as appropriate a standard face mask, gloves, and eye protection." At the same time, the administration has been urging construction companies to donate their masks to hospitals and health care workers.

The new rules also require all outdoor construction sites that don't already have access to an indoor bathroom install "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."

Though the new rules are sure to require some adjustment period for workers and contractors, it's Baker's decision to keep construction work going through the pandemic that has irked some local officials and exposed a rift between the state response to the spread of COVID-19 and how it's being handled at the local level.

On Wednesday, Baker's chief legal counsel sent a letter to city and town executives with the new guidance and instructions that all construction projects should continue operations during the governor's state of emergency but with social distancing measures incorporated.

"Local policies, regulations, or directives that provide otherwise are in direct conflict with the Order and should be withdrawn," Bob Ross wrote.

Boston, Somerville and other municipalities that had already ordered construction to stop dissented, and announced later that their local orders will not be withdrawn.

"The safety and health of construction workers and all residents of Boston is my first priority, and I am not willing to put that at risk as the virus spreads throughout our communities," Boston Mayor Martin Walsh, who ordered all non-essential, city-permitted construction to cease by March 23, said. "Large gatherings such as those at construction sites have been proven to escalate the spread of the virus, and Boston must do everything in its power to flatten the curve, and stop the spread of coronavirus."

After Somerville Rep. Mike Connolly blasted the governor's decision to keep job sites up and running, Somerville Mayor Joseph Curtatone declared his resistance to the governor's order.

"Some times you have to put down your foot & say no. The construction stoppage will continue in Somerville. We tried to keep it open & it's just not safe. The sites will stay closed to prevent the spread of #COVID19," the mayor tweeted.

Cambridge also announced that its temporary construction moratorium "also remains in effect at this time."

During a conference call with U.S. Sen. Elizabeth Warren and reporters Thursday afternoon, Walsh said he had not changed course.

"As of right now, construction is still not allowed in the city of Boston. We're going to come up with some policies and procedures before we start the construction," Walsh said, reiterating his concern that construction workers are a risk.

"We going to put some safety precautions in place to try to limit the spread," Walsh said.

In a press conference Thursday afternoon, Baker suggested that he's OK with Boston and other municipalities ignoring his administration's order to withdraw their own construction moratoriums.

"In the guidelines that we issued, one of the things we said was that the act of actually overseeing and enforcing this stuff needs to be done at the municipal level, for municipal-permitted work," Baker said.

"Boston and several other municipalities have said -- and it's a fair point -- that they don't believe they're in a position at this point to do the work that would be associated with ensuring that those guidelines are being adhered to on the ground on all the projects."

Referring to Walsh, Baker said he is "very sympathetic to the mayor's point of view" and said that Walsh is "not going to open back up" until he feels comfortable that job sites in the city can adhere to the new state guidance.

"And I get that," Baker said Thursday.

Elsewhere in Ross's letter, he explains to cities and towns that orders from the governor supersede those issued at the local level, especially during a state of 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," he wrote. "A key requirement of any effective, statewide response will be that public officials avoid conflicting directives and duplication of efforts."

Baker has previously said, with regard to school closures, that cities and towns are welcome to go beyond what he has ordered statewide.

"I'm as confused as anyone about the different approaches to construction projects being taken by @marty_walsh and @MassGovernor," Lou Antonellis, business manager and financial secretary for IBEW Local 103 tweeted Thursday. "What about #SafetyFirst don't you understand!"

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