



LEGAL CORNER

Charles E. Schaub, Jr. Esq., Hinckley Allen Snyder LLP

Civilian Flaggers vs. Police Details

Effective October 3, 2008, Massachusetts began implementing the use of civilian flaggers on construction sites joining the other 49 states that already use civilian flaggers on roadway construction projects.

However, police details will continue to be used on major public roadway construction projects because the new regulation does not completely eliminate the use of police officers. Thus, a basic understanding of the new flagger regulation is helpful to know when, and under what circumstances, civilian road flaggers may be used instead of police details.



Use of Road Flaggers and Police Details on Public Works Projects

Lawmakers added a new section to the Code of Massachusetts Regulations 701 CMR 7, which now permits the use of civilian "road flaggers" on certain construction projects. On October 3, 2008, this new regulation became effective. Under the new regulation, "road flaggers" are individuals certified by the Massachusetts Highway Department or a MHD approved organization to perform traffic control services on public roads. Road flaggers must be at least 18 years of age, and are required to be trained in construction zone safety, traffic control, first aid and other necessary safety programs identified by the awarding authority.

A major component of the new regulation requires awarding authorities to develop a "Construction Zone Safety Plan" (CZSP) for roadwork projects, which is re-

quired for all work on public roads that require preparation of design plans. Under the new regulation, awarding authorities must consult with local law enforcement agencies in developing CZSPs which consist of traffic control plans, work zone safety guidelines and traffic management plans (including road detours, road closures and plans to mitigate traffic impact outside the roadway construction zone). The plans must be tailored to the particular roadway under construction, and they must account for roadway safety.

The CZSP must also identify the type and number of personnel used to assure safety in and around the roadway construction zone. Depending on the type of roadway, the CZSP must require the use of either police details or civilian road flaggers.

continued on page 11

Under the new 701 CMR 7, public roadways are classified into three categories:

- 1. High Speed Roads are divided and undivided public roads with a legal speed limit of 45 miles per hour or greater.**
- 2. Low Traffic High Speed Roads are those public roads that have a legal speed limit of 45 miles per hour or greater, but have a lesser volume of traffic (maximum of 4,000 vehicles per day).**
- 3. Low Speed Roads are defined in the regulation as divided and undivided public roads with speed limits of less than 45 miles per hour.**

Under the new regulation, a CZSP for high speed roads with speed limits of 45 miles per hour or greater, must require the use of police details. Thus, on many significant public roadway construction projects, police officers will continue to be used to direct traffic and oversee construction zone safety.

However, even in high speed zones, the new flagger regulation permits the use of civilian road flaggers in certain circumstances. The awarding authority may use civilian road flaggers, if appropriate, under the CZSP for the project, and if consistent with public safety.

In addition, in order to use civilian road flaggers on high speed roads, the traffic flow must be separated from the construction zone with the use of continuous and connected barriers, such as temporary concrete traffic barriers, crash walls or similar median barriers.

Unlike high speed roads, a CZSP for both low speed roads and low traffic high speed roads must require the use of civilian road flaggers. Here, again, there is an exception under the new regulation. In certain circumstances, the awarding authority may use police details on either low speed roads or low traffic high speed roads if the awarding authority deems it appropriate under the project CZSP, and if doing so is consistent with public safety.

The new civilian flagger regulation also permits the awarding authority to make a determination to use neither police details nor civilian road flaggers on roadway construction projects. First, the decision not to use either police details or road flaggers must be appropriate under the CZSP developed by the awarding authority for the project. In addition, it must be possible to protect the construction zone from traffic and ensure public safety without the use of police details or civilian flaggers. In these circumstances, the

awarding authority, by its authorized representative, may elect not to use police details or road flaggers on all or a portion of the public works roadway project.

Thus, police details will continue to be used on many construction projects throughout the state, even where civilian road flaggers are required under the regulation. This may indeed occur as awarding authorities are required to consult with local law enforcement agencies in developing these CZSPs. Local law enforcement agencies will probably favor the use of police details on roadway projects and advise awarding authorities accordingly in connection with the development of CZSPs despite the costs.

As a result, CZSPs may provide wide latitude for the use of police details on roadway projects that otherwise require civilian road flaggers under the new regulation. In the end, the decision to use police details or civilian road flaggers will often rest with the awarding authority.

Information regarding the new civilian road flagger regulation is available at: http://www.eot.state.ma.us/default.asp?pgid=content/police_detail&sid=about (last visited October 9, 2008).

(NOTE: I again acknowledge and thank my colleague Robert Ferguson for his assistance in the preparation of this article.) ■



A. GRAZIANO, INC.

- Ready Mix Concrete
- Quick Set Flowable Fill
- Flowable Fill
- Washed Sand
- Washed Stone
- Compactable Gravel
- Loam, Mulch

A. GRAZIANO, INC.
71 Adams Street, Braintree, MA
Tel: 1-800-462-9901
E-Mail: www.grazianoconcrete.com



SATURDAY DELIVERIES