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## Coates' Canons Blog: Can Counties and Cities Close Roads During an Emergency?

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Counties and cities are vested with broad authority to impose restrictions and prohibitions during a locally declared state of emergency (GS 166A-19.31; for more information on local state of emergency declarations, see this blog post). These restrictions and prohibitions must be included in county and city local emergency ordinances (for more discussion on the restrictions and prohibitions which may be authorized under a local emergency ordinance, see this blog post). Among the restrictions and prohibitions that may be included in a local emergency ordinance, and which may be triggered under a local state of emergency declaration, is placing limitations on “the movement of people in public places,” which includes imposing curfews, ordering evacuations, prescribing evacuation routes, and controlling ingress, egress, and movement within an emergency area (GS 166A-19.31(b)(1)). Does this authority extend to closing roads? Recent legislation enacted by the North Carolina General Assembly clarifies that the answer to this question is yes.

The authority of counties and cities to restrict the movement of people in public places under a local state of emergency declaration (assuming this authority is included in the unit’s local emergency ordinance) has long been interpreted to include closing roads because the scope of the authority specifically includes limiting ingress and egress in an “emergency area,” meaning the geographic area covered under a local state of emergency declaration. GS 166A-19.3(7). In addition, GS 166A-19.31(b)(5) authorizes counties and cities to include in their local emergency ordinances the ability to place restrictions on “other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.” The specific authority to limit ingress and egress in an emergency area, coupled with the board authority to place restrictions on other activities reasonably necessary to maintain order and protect lives or property, can be – and indeed, has been – interpreted to include the authority to close roads, even those roads not owned by the local government.

### ***Emergency Road Closure Authority Specifically Authorized***

Despite the broad authority described above, the lack of specific authorization to close roads has at times created confusion when a county or city closes a transportation route not owned by that unit, such as state roads and highways. To make clear that counties and cities have the authority to close roads during a locally declared state of emergency, the General Assembly enacted HB917 (S.L. 2019-89) during the 2019 legislative session. HB917 amends GS 166A-19.31(b)(1) to specifically authorize counties and cities to include in their local emergency ordinances the authority to close roads during a locally declared state of emergency. Under the new statutory provision (GS 166A-19.31(b)(1)(e)), county and city local emergency ordinances may specifically authorize the “closure, within the emergency area, of streets, roads, highways, bridges, public vehicular areas, or other areas ordinarily used for vehicular travel . . .” While the road closure authority, if included in the county or city local emergency ordinance, is limited to the geographic area covered under a

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locally declared state of emergency, it broadly includes virtually any transportation route, including those not owned by the unit of government such as state roads and highways.

As with any violation of restrictions or prohibitions imposed under a local state of emergency declaration, violating a road closure pursuant to a local declaration is punishable as a Class 2 misdemeanor (GS 166A-19.31(h), cross-referencing GS 14-288.20A). Unauthorized individuals who drive around road closure barriers or otherwise gain access to restricted areas may be cited by local law enforcement and are subject to criminal prosecution.

### ***Emergency Road Closures Cannot Restrict Access by Essential Personnel***

In granting broad road closure authority for counties and cities, HB971 specifies that this authority cannot restrict the “movements of emergency responders and other persons necessary for recovery from the emergency.” Such persons still must be granted access to restricted areas. For example, if a county closes a state highway, it cannot restrict access to first responders or state and federal emergency management personnel. Of course, if the road is impassable, local officials may prescribe other routes by which essential personnel can gain access to the restricted area.

### ***Curfews and Limited Ingress and Egress Cannot Restrict Access by Utility Crews and Essential Goods Transporters***

Since 2009, North Carolina has operated a state re-entry certification system for vehicles and drivers that transport essential goods or assist in restoring utility services during a state of emergency (GS 166A-19.70). The Department of Public Safety certifies drivers and vehicles that qualify under the statewide re-entry program to transport essential goods or assist in restoring utility service. A certified vehicle or driver is issued a printed or electronic state re-entry certification for easy identification by local emergency management and law enforcement personnel. This re-entry certificate authorizes the driver or vehicle access to otherwise restricted areas and applies even if a local curfew or restrictions on ingress to and egress from an emergency area are in place. State law requires that a vehicle or driver possessing a valid state re-entry certificate be allowed entry to and exit from the restricted area, and may remain in the restricted area as long as necessary for the limited purpose of delivering or assisting in the distribution of essential goods or services or assisting in restoring utility services. Local officials may specify permissible routes of ingress and egress for vehicles or drivers possessing a valid state re-entry certificate. Even if a county or city exercises its authority to close a road during a locally declared state of emergency, it still must allow access by drivers and vehicles possessing a valid state re-entry certificate (this requirement is specified in the new statutory provision authorizing road closures). If conditions on the road are unsafe, local personnel may direct the driver to other routes to gain access the restricted area.

### ***Notification of Road Closures***

If a county or city closes a road under a locally declared state of emergency, the new legislation requires that it notify the NC Department of Transportation (NC DOT) as soon as practicable. Most local emergency managers stay in close contact with their NC DOT Division during emergency situations, so notifying their local DOT Division satisfies this requirement. In addition, counties and cities should (and routinely do) widely disseminate information about road closures, curfews, and limited ingress and egress including reentry procedures after an evacuation.

### ***Sheriffs Can Be Authorized to Close Roads***

Under HB971, a local emergency ordinance may designate the Sheriff to exercise the authority to close roads under a locally declared state of emergency. If the Sheriff is so designated and exercises this authority, the Sheriff must comply with the requirements of HB971 – the Sheriff must notify NC DOT of the road closure and should coordinate with local emergency management officials. In addition, the Sheriff must allow access to essential personnel as well as utility crews and essential goods transporters possessing a valid statewide re-entry certification. Granting the Sheriff this authority does not eliminate that of other county and city officials, such as the Chair of the Board of County Commissioners or Mayor, to close roads under a local state of emergency declaration. Rather, a local emergency ordinance may grant this authority to the Sheriff in addition to those officials who the ordinance authorizes to declare local states of emergency.

### ***Amending Local Emergency Ordinances***

Counties and cities should consider amending their local emergency ordinances to include the new statutory authorization



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to close roads under a locally declared state of emergency. While the existing authorizations to impose restrictions and prohibitions pursuant to GS 166A-19.31 have been interpreted to include closing roads, incorporating the new statutory provision in local emergency ordinances will provide clearer legal authority to do so, thus strengthening the ability of law enforcement personnel to enforce this restriction and giving prosecutors a clear legal basis upon which to prosecute violators. Many counties and cities repeat verbatim in their local emergency ordinances the restrictions and prohibitions listed in GS 166A-19.31(b); adding the new road closure authorization to local emergency ordinances can be accomplished as simply as adopting the language in HB971 under the new GS 166A-19.31(b)(1)(e). In doing so, counties and cities should specify whether the Sheriff is designated to exercise road closure authority.

## Links

- [www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_166A/GS\\_166A-19.31.pdf](http://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_166A/GS_166A-19.31.pdf)
- [www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_166A/GS\\_166A-19.3.pdf](http://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_166A/GS_166A-19.3.pdf)
- [www.ncleg.gov/Sessions/2019/Bills/House/PDF/H917v4.pdf](http://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H917v4.pdf)
- [www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_14/GS\\_14-288.20A.html](http://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-288.20A.html)
- [www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_166A/GS\\_166A-19.70.pdf](http://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_166A/GS_166A-19.70.pdf)