

---

## Coates' Canons Blog: Emergency Restrictions under State of Emergency Declarations – Who Can Impose What?

By Norma Houston

Article: <https://canons.sog.unc.edu/emergency-restrictions-under-state-of-emergency-declarations-who-can-impose-what/>

This entry was posted on August 10, 2011 and is filed under Emergency Management, Emergency Restrictions, State Of Emergency

---



A massive hurricane is bearing down on the coast. Coates County issues a state of emergency

declaration ordering a mandatory evacuation and prohibiting alcohol sales (just to be on the safe side). Citizens in the Town of Albert start calling town hall wondering if they too are required to evacuate, and the local pub owner wants to know if he can still have his hurricane party that night. The Mayor agrees that an evacuation is necessary, but also feels a curfew should be imposed. And, while he thinks the ban on alcohol sales is excessive, he doesn't like the idea of a late-night hurricane party. Do the county's emergency restrictions apply within the town? Can the town impose different or additional restrictions? Who has the authority to do what?

Cities and counties in North Carolina are authorized to adopt ordinances imposing restrictions and prohibitions when they declare a local state of emergency. (**G.S. 166A-19.31**) These restrictions and prohibitions may be on:

1. The movement of people in public places, including any of the following:
  - o Imposing a curfew
  - o Directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction
  - o Prescribing routes, modes of transportation, and destinations in connection with evacuation
  - o Controlling ingress and egress of an emergency area, and the movement of persons within that area
  - o Closing streets, roads, highways, bridges, public vehicular areas, or other areas ordinarily used for vehicular travel, except to the movement of emergency responders and other persons necessary for recovery from the emergency (for more information on road closure authority, see **this post**).
2. The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.
3. The possession, transportation, sale, purchase, and consumption of alcoholic beverages.
4. The possession, transportation, sale, purchase, storage, and use of dangerous weapons (*except lawfully possessed firearms and ammunition*) and substances, and gasoline (for more information on firearms restrictions, see **this post**).
5. 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. (**G.S. 166A-19.31(b)**).

A state of emergency may be declared by the city or county governing board, who may also delegate its declaration authority by ordinance to the board chair, mayor, their designees, or the unit of government's chief executive official. (**G.S. 19.22(a)**)

While counties are responsible for coordinating local emergency management operations, including those of municipalities within the county, (**G.S. 166A-19.15**), counties and cities within those counties have independent legal authority to declare a state of emergency and impose emergency restrictions and prohibitions within their respective jurisdictions. Each may issue its own declaration regardless of whether the other has done so (and regardless of whether the governor has issued

---

a declaration at the state level). In fact, a county's emergency ordinance, and any restrictions and prohibitions imposed by a state of emergency declared under that ordinance, *cannot* apply within a municipality's jurisdiction unless the municipality's governing board consents by resolution. (**G.S. 166A-19.22(b)**) Similarly, a municipality's emergency ordinance and state of emergency declaration cannot apply within the county, although the county board chair may extend into the county one or more of the prohibitions and restrictions imposed by a city when requested to do so by that city's mayor to assist in controlling an emergency within the city.

So, what restrictions and prohibitions are actually imposed when a state of emergency is declared? There are some who incorrectly assume that *all* restrictions and prohibitions authorized in a local emergency ordinance will be automatically triggered when that city or county declares a state of emergency. Because of this misunderstanding, local officials are sometimes reluctant to issue a declaration, even in the face of almost certain disaster ("We didn't issue the declaration because we didn't want to ban alcohol sales," or "We didn't think an evacuation was necessary so we didn't issue the declaration").

The list of authorized restrictions and prohibitions cited above are *options* a city or county may choose to impose depending on the circumstances of a particular emergency situation. These options *are not* automatically triggered when a state of emergency is declared. Rather, the city or county determines from among those options which restrictions and prohibitions should be imposed depending on what it deems necessary to protect public health, safety, and welfare and minimize damage to property under the circumstances. Then it includes those specific measures in its state of emergency declaration. Only those measures included in the declaration are actually imposed.

In some situations, it may be necessary to declare a state of emergency (such as to activate emergency operations plans), but it may not be necessary to impose any restrictions or prohibitions, at least not yet. This decision rests entirely within the discretion of the city or county. Not only can the city or county choose *which* restrictions and prohibitions to impose within its jurisdiction, it can also choose to impose *none* at all if the situation does not warrant any. After the disaster has occurred and response and recovery operations progress, the city or county can amend its original declaration to impose new or modify existing restrictions or prohibitions depending on what is still (or becomes) necessary to continue to protect public health, safety, and welfare and minimize damage to property.

Because cities and counties have independent authority to declare states of emergency and impose restrictions and prohibitions pursuant to their respective local ordinances, and because each can act independently to determine which restrictions and prohibitions are – and are not – warranted given the facts and circumstances of a particular emergency situation, cities and counties can and sometimes do impose restrictions and prohibitions (or perhaps none at all) within their respective jurisdictions that differ from each other.

Of course, well-coordinated local emergency response operations will often result in the same sets of restrictions and prohibitions being imposed by both the county and municipalities within the county, especially in a major disaster. Uniformity can be important to avoid confusion among the public and ensure consistent enforcement of emergency measures across local jurisdictional lines. However, when the circumstances of a particular disaster warrant variation among local restrictions and prohibitions (perhaps only one isolated area within the county was struck), cities and counties can act accordingly within their respective jurisdictions.

Back to Coates County and the Town of Albert. As we see from the discussion above, the county's state of emergency declaration and the restrictions and prohibitions it imposed do not apply within the town unless the town council consents by resolution. The Mayor agrees with some, but not all, of the county's decisions. And, he's really concerned about the pub owner's hurricane party, fearing the revelry will put undue strain on public safety officials in the midst of preparations for the impending disaster. What to do? Assuming the town's emergency ordinance authorizes the Mayor to act on behalf of the council, he can declare a state of emergency within the town's jurisdiction ordering a mandatory evacuation just as the county did. He can also impose a curfew even though the county did not if he determines that this additional restriction is necessary to protect public health, safety, and welfare. He does not have to impose a ban on alcohol sales even though the county did, and the curfew will curtail the late-night hurricane party. With any luck, the town will weather the storm with nothing worse than a disgruntled pub owner.

## Links



- 
- [canons.sog.unc.edu/emergency-restrictions-under-state-of-emergency-declarations-who-can-impose-what/earl2/](https://canons.sog.unc.edu/emergency-restrictions-under-state-of-emergency-declarations-who-can-impose-what/earl2/)
  - [www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_166A/GS\\_166A-19.31.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_166A/GS_166A-19.31.pdf)
  - [www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_166A/GS\\_166A-19.22.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_166A/GS_166A-19.22.pdf)
  - [www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_166A/GS\\_166A-19.15.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_166A/GS_166A-19.15.pdf)