
Coates' Canons Blog: Enacting and Amending County and City Emergency Ordinances: What Rules Apply?

By Norma Houston

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As counties and cities continue their efforts to protect public health and safety during the COVID-19 crisis, some have discovered that their local emergency ordinances need updating. For jurisdictions that do not regularly face the threat of natural disasters such as hurricanes, wildfires, and winter ice storms, it is understandable that a local emergency ordinance might not be reviewed and updated as often as one which addresses matters more frequently considered such as zoning. Now, with COVID-19 impacting every jurisdiction in our state, some counties and cities are forced to exercise emergency powers they never envisioned needing. As city and county officials reach for their local emergency ordinances, some are discovering that their ordinances are out of date or don't properly vest the appropriate city or county official with the full array of legal authorities granted under the State Emergency Management Act (G.S. Chapter 166A). What do to?

As discussed in these posts on local state of emergency restrictions and local state of emergency declarations, counties and cities are authorized to "enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.22." (G.S. 166A-19.31) There is no *direct* grant of authority under Chapter 166A to impose local emergency restrictions or prohibitions; these restrictions and prohibitions *must* be authorized by the jurisdiction's ordinance. The statute itself merely states which restrictions and prohibitions a county or city may choose to include in its emergency ordinance, similar to other statutes which authorize local governments to adopt and enforce nuisance, animal protection, and noise ordinances.

Restrictions and prohibitions in emergency ordinances are imposed pursuant to a locally declared state of emergency issued by county or city officials *authorized* to issue such declarations under the ordinances. (G.S. 166A-19.31) Without this delegation, by default that authority rests with the governing board. Typically, local ordinances delegate this authority to the Chair of the County Board of Commissioners or the Mayor as authorized under G.S. 166A-19.31(a) and G.S. 166A-19.22(a).

As the preceding discussion hopefully makes clear, county and city emergency ordinances are the legal mechanism through which authority to impose emergency restrictions under a state of emergency declaration and delegated authority to take such actions are ultimately vested at the local level. Both matters lie within the discretion of the governing board as discussed below:

1. *Emergency Restrictions*: The ordinance must include the restrictions and prohibitions authorized under S. 166A-19.31(b) as determined by the governing board, thus reserving to the county or city the legal authority to impose them under a state of emergency. Which restrictions or prohibitions to include in the ordinance is within the discretion of the governing board. If the governing board does not wish to vest itself with a specific emergency power (such as banning alcohol), it simply does not include that restriction in its ordinance. However, if chooses not to include a specific restriction in its ordinance, it then cannot impose it under a state of emergency. Nor can a board include any restrictions or prohibitions in its emergency ordinance that are beyond the scope of those authorized under G.S. 166A-19.31(b)
2. *Delegated Authority*: If the governing board wants the Board Chair or Mayor to be able to declare a state of emergency and impose restrictions or prohibitions included in the ordinance, it must delegate that authority to the Board Chair or Mayor in the ordinance. Absent such a delegation, the governing board itself will have to issue the declaration and impose restrictions or prohibitions in a lawfully convened public meeting.

Simply put, if a restriction or prohibition authorized under G.S. 166A-19.31(b) is not included in an emergency ordinance, a

county or city cannot impose it. And, without delegated authority in the ordinance, the Board Chair or Mayor cannot declare a state of emergency or impose the restrictions and prohibitions included in the ordinance under a declaration.

How does a county or city amend its emergency ordinance?

The emergency powers authorized under Chapter 166A are police powers which have been specifically delegated to counties and cities by the General Assembly. *State v. Allred*, 21 N.C. App. 229, 204 S.E.2d 214 (1974); *State v. Dobbins*, 277 N.C. 484, 178 S.E.2d 449 (1971). Thus, if a county or city wishes to amend its emergency ordinance, it uses the same procedures applicable to any other general police power ordinance. In particular, the statutory voting rules that apply to the adoption of other ordinances and ordinance amendments apply. (G.S. 153A-45 (county ordinances); 160A-74 (city ordinances)); those voting rules are discussed in this blog by Frayda Bluestein.)

Although other ordinances must be properly filed and indexed or codified to be enforceable, G.S. 166A-19.31(c) recognizes that emergency ordinances are needed in emergency situations and permits the ordinance (or amendments to the ordinance) to go into effect immediately. The substance of the ordinance must be communicated to the public and, as soon as practicable, the full text distributed. Ultimately, the ordinance should be properly filed and codified. (Ordinance filing and codification requirements are examined in this blog by Trey Allen.)

While no public hearing is required, the governing board must take action to amend the ordinance in a lawfully convened public meeting, even during a state of emergency. If necessary, the board could convene an emergency meeting under G.S. 143-318.12 (for more discussion of compliance with open meetings requirements in the COVID-19 crisis, see Frayda's blog and Trey's blog).

What restrictions or prohibitions may be included in an emergency ordinance?

G.S. 166A-19.31(b) authorizes counties and cities to include in their emergency ordinances restrictions or prohibitions on:

- Movements of people in public places, including any of the following:
 1. Imposing a curfew.
 2. 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.
 3. Prescribing routes, modes of transportation, and destinations in connection with evacuation.
 4. Controlling ingress and egress of an emergency area, and the movement of persons within that area.
 5. Providing for the closure, within the emergency area, of 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. In addition to any other notice or dissemination of information, notification of any closure of a road or public vehicular area under the authority of this sub-subdivision shall be given to the Department of Transportation as soon as practicable. The ordinance may designate the sheriff to exercise the authority granted by this sub-subdivision. G.S. 166A-19.70(c) and (d) shall apply to this sub-subdivision.
- The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.
- The possession, transportation, sale, purchase, and consumption of alcoholic beverages.
- The possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subdivision, the term "dangerous weapons and substances" has the same meaning as it does under G.S. 14-288.1. As used in this subdivision, the term "firearm" has the same meaning as it does under G.S. 14-409.39(2).
- 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.

As I said above, the governing board has the discretion to adopt all or some of these restrictions and prohibitions in its local ordinance. However, bear in mind that any which are not included cannot then be imposed if needed during an emergency.



Must a county or city amend its local emergency ordinance to include any restrictions or prohibitions imposed by the Governor under an Executive Order?

No. As discussed in this blog, emergency restrictions or prohibitions imposed by the Governor under an Executive Order apply regardless of any actions taken (or not taken) by city or county officials. For example, Executive Order 121 (Stay at Home) applies within a city or county no matter what emergency powers are (or are not) included in that jurisdiction's local emergency ordinance. Whether the city or county chooses to amend its local emergency ordinance has no effect on the applicability or enforceability of the Executive Order within that jurisdiction.

Links

- www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_166A.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_166A/GS_166A-19.31.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_166A/GS_166A-19.22.html
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-45.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-75.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-318.12.pdf
- files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf