
Coates' Canons Blog: Local State of Emergency Declarations – Some FAQs

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Hurricane Matthew is bearing down on North Carolina's coast. State and local officials are

preparing for significant impacts. The Governor has issued a **state of emergency declaration** for much of central and eastern North Carolina. Local officials wonder whether they should issue local declarations within their own jurisdictions. Can they? Should they? If so, how do they?

This post answers some frequently asked questions about the authority of cities and counties to issue local state of emergency declarations. **For those who might be looking for a quick and easy resource, the School of Government has template state of emergency declarations available on our emergency management website at www.sog.unc.edu/ncem under "Sample Documents."**

What is a state of emergency declaration?

Under North Carolina law, a state of emergency declaration may be issued when state or local officials make a determination that an emergency situation exists. A state of emergency can be declared by the Governor, the General Assembly, a city council or mayor, or a county board of commissioners or chairman (**GS 166A-19.3(19)**). An emergency exists when there is "an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, terrorism, weather-related, public health, explosion-related, riot-related cause, or technological failure or accident, including, but not limited to, a cyber incident, an explosion, a transportation accident, a radiological accident, or a chemical or other hazardous material incident" (**GS 166A-19.3(6)**, amended by **SL 2016-87, s. 5**). So, if local officials find that any of these conditions exist within their jurisdiction at the present time or are imminent, they can make a finding to this effect and declare a state of emergency.

When can a state of emergency be declared?

A state of emergency can be declared when an emergency situation, as defined above, is found to either exist currently or is imminent, meaning it is likely to happen in the very near future. A state of emergency cannot be declared because an emergency situation may or may not arise at some point in the indefinite future. *Raynor v. Commissioners for Town of Louisburg*, 220 N.C. 348, 17 S.E.2d 495 (1941). For more discussion of the definition of an emergency in the context of the emergency exception to competitive bidding requirements, see **this post**.

Who can declare a state of emergency?

At the state level, a state of emergency can be declared by the Governor or the General Assembly (**GS 166A-19.20**). At the local government level, a state of emergency can be declared by a city council or its mayor, or by a county board of commissioners or its board chair (**GS 166A-19.22**). For cities and counties, the authority to declare a local state of emergency rests with the governing board itself unless the board has delegated its authority to the mayor or board chair by local ordinance (typically referred to as an emergency ordinance). If the mayor or board chair has been delegated this authority, he or she may declare a state of emergency without further action by the city council or county board of commissioners.

What if the Mayor or Board Chair isn't available? Can anyone else issue a local emergency declaration?

Yes. Under the state emergency management act (**GS Chapter 166A**), the chair of the board of county commissioners is defined to include the person who is authorized to act in the chair's place when the chair is absent or otherwise unable to act (**GS 166A-19.3(2)**). The office of mayor is similarly defined (**GS 166A-19.3(11)**). Thus, if a local ordinance grants declaration authority to the board chair or mayor, whoever is authorized to act in that official's place (typically the mayor *pro tem* or vice-chair of the board of county commissioners) is automatically authorized to declare a state of emergency if the board chair or mayor is unavailable or otherwise unable to carry out this act. In addition, the local governing board may delegate declaration authority in its local ordinance to any other person or persons it chooses.

If the Governor issues a state of emergency that covers our jurisdiction, do we still need to issue a local declaration?

Probably so. A local state of emergency declaration serves several important purposes. First, it triggers emergency powers and authorities vested under a local emergency ordinance. Second, it activates local emergency operations plans and mutual assistance compacts, and authorizes providing mutual aid assistance. Third, it is the vehicle by which local emergency measures, such as evacuations and curfews, are legally imposed (**GS 166A-19.31**). Finally, it is usually a requirement for receiving state and federal reimbursement for emergency-related expenses. A gubernatorial declaration, while important for other reasons, serves none of these purposes at the local level. In major emergency situations where there has been or is likely to be significant impact, it is always advisable to issue a local declaration even if a gubernatorial declaration is already in place.

What restrictions and prohibitions can be imposed under a local state of emergency declaration?

The local declaration is the legal vehicle by which emergency restrictions and prohibitions, such as curfews and evacuations, are imposed by a county or municipality. For more discussion of the restrictions and prohibitions counties and municipalities are authorized to impose, see **this post** for a general discussion of these emergency authorities, **this post** for a specific discussion of mandatory evacuations, and **this post** on restrictions that local governments may – and may not – impose on dangerous weapons and firearms under a state of emergency declaration.

What geographic areas are covered by a local state of emergency declaration?

The geographic area in which a local state of emergency applies is called the “emergency area” (**GS 166A-19.22(b)**). The emergency area of a county is the unincorporated areas of the county, and the emergency area of a municipality is the area within the municipality's corporate limits as well as any unincorporated areas over which a municipality has jurisdiction to enact general police-power ordinances, which means any property and rights-of-way belonging to a municipality located outside of its corporate limits (**GS 160A-176**). A municipality's emergency area would *not* include any

extraterritorial jurisdiction areas (ETJ) in which a municipality exercises only planning and development regulation authority under **Article 19 of Chapter 160A**.

Does a local state of emergency declaration apply to the entire jurisdiction, or can it be limited in scope?

The default rule is that, unless a specific geographic area is described within the declaration, the local declaration will apply within the entire jurisdiction (**GS 166A-10.22(b)(1)**). A county or municipality can limit the geographic scope of its declaration simply by describing the specific area or areas to which the declaration applies within the text of the declaration itself.

Does a county state of emergency declaration automatically apply within a municipality?

No. The emergency management act specifically limits the application of county and municipal declarations to within the emergency areas that correspond to their respective legal jurisdictions (**GS 166A-19.22(b)**). Simply put, a county's declaration does not apply within the corporate limits of a municipality and a municipal declaration does not apply within the unincorporated areas of the county. A mayor may request to have a county declaration apply within his municipality, but the mayor has to take this action for the extension to be legally valid. Otherwise, the mayor or city council must take the affirmative step of issuing a declaration within the municipality. This separate of declaration authority is particularly important to understand when imposing emergency restrictions or prohibitions. For example, if a county imposes a curfew, that curfew will not apply within a municipality unless the mayor either extends the county declaration into the corporate limits of the municipality or issues his or her own declaration and imposes the curfew within the city under that declaration.

Can a local declaration be modified once it has been issued?

Absolutely. As circumstances develop during an emergency event, a local declaration often must be modified to reflect changing conditions. Modifications can be accomplished simply by issuing an amendment to the existing declaration in the same manner that the original declaration was issued. For example, a county declares a state of emergency three days before the anticipated landfall of a major hurricane. It then amends its declaration the next day to order a mandatory evacuation. After the storm passes and damage assessments have been conducted, it amends its declaration again to allow reentry into areas of the county where conditions are safe but retains limitations on reentry in stricken areas. A few days later when conditions in the stricken areas are deemed safe, it further amends its declaration by lifting reentry restrictions in those areas. Finally, when there is no further need to keep the declaration in place, it is terminated.

Must a declaration be issued in writing?

At some point, yes. Although the emergency management act does not specifically require the declaration be in writing at the precise time it is made, it does require that any prohibitions and restrictions imposed under the declaration be communicated to the public as soon as possible and, "as soon as practicable," distribute the "full text of any declaration" (**GS 166A-19.31(d)**). So, while it is not legally necessary to memorialize a state of emergency declaration in writing at the time it is issued (in fact, this may not be practical depending on the circumstances), the declaration must be put in writing and distributed to the public as soon as this reasonably can be accomplished. It is always a good idea to have templates available so that a written declaration can be issued in real time, especially if the declaration (or an amendment to a declaration), imposes specific restrictions such as curfews or evacuations. **Template declarations are available on the School of Government's emergency management website at www.sog.unc.edu/ncem under "Sample Documents."**



Once a local declaration is issued, how long does it remain in effect?

The declaration does not have a pre-determined expiration date set in statute, so it will remain in effect until it is rescinded or terminated. The same official(s) authorized to issue the declaration also can terminate it (**GS 166A-19.22(c)**).

Good Luck!

Links

- ncgovernor.s3.amazonaws.com/s3fs-public/documents/files/McCrory%20EO%20107%20State%20of%20Emergency.pdf
- www.sog.unc.edu/resources/microsites/nc-emergency-management
- www.sog.unc.edu/resources/microsites/nc-emergency-management/sample-documents
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_166A/GS_166A-19.3.pdf
- www.ncleg.net/Sessions/2015/Bills/House/HTML/H1044v7.html
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