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EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: April 5, 2020
SUBJECT: Closing Roads During a Locally Declared State of Emergency

The current COVID-19 pandemic has given rise to local travel restrictions in counties throughout the State. Therefore, the following information briefly describes the legal authority of a county or municipality to close roads and restrict access during a locally declared state of emergency. It also answers some common questions sheriffs may have regarding this issue.

County/Municipal Authority to Close Roads During Local State of Emergency

G.S. 166A-19.31 contains the provisions of law that allow a county or municipality to issue various prohibitions and restrictions during a locally declared state of emergency. This includes the authority to limit the movement of people in public places and to make road closures. The operative provisions in this statute that can be used by local officials to restrict access into a county or municipality during an emergency like the coronavirus pandemic include the following:

- (1) G.S. 166A-19.31(b)(1)(b) authorizes: "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."
- (2) G.S. 166A-19.31(b)(1)(d) authorizes: "Controlling ingress and egress of an emergency area, and the movement of persons within that area."
- (3) Finally, G.S. 166A-19.31(b)(1)(e) authorizes the following restrictions: "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 order to take such action, the governing body of the county or municipality must first enact a local emergency ordinance that allows for the imposition of local restrictions within a locally designated emergency area (it is common for counties and municipalities to have such ordinances in place).



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Penalty and Enforcement of County/Municipal Road Closures

G.S. 166A-19.31(h) and G.S. 14-288.20A(1) make it a Class 2 misdemeanor for any person to violate any of the prohibitions or restrictions contained in a duly enacted emergency ordinance and imposed under a lawfully declared local declaration of a state of emergency.

Chapter 15A of our General Statutes authorizes local law enforcement officers to enforce these prohibitions and restrictions by either: (1) issuing a citation (G.S. 15A-302); (2) seeking a criminal summons (15A-303); (3) seeking an arrest warrant (G.S. 15A-304) , or (4) making a custodial arrest (G.S. 15A-401(b)).

As is the case with enforcing any misdemeanor offense, law enforcement officers have the discretion to decide whether to charge an individual or issue a verbal warning for violating a prohibition or restriction contained in a duly enacted emergency ordinance and imposed under a lawfully declared local declaration of a state of emergency.

Can a County or City Manager Impose the Above Restrictions During a Local State of Emergency?

Yes, but only if the authority to do so is delegated in a local emergency ordinance enacted by the board of county commissioners or by the city council.

G.S. 166A-19.22 authorizes a board of county commissioners or city council to delegate this authority **IF** the delegation of authority is specified in the local emergency ordinance. By way of example, a county emergency ordinance could delegate this authority to the chair of the board of county commissioners or to the county manager.

Does the Sheriff Have the Authority to Close Roads During a Local State of Emergency?

Yes, if authorized to do so in the local emergency ordinance.

G.S. 166A-19.31(b)(1)(e) allows a local governing body, such as a board of county commissioners, to delegate to the sheriff the authority to close roads pursuant to a locally declared state of emergency. Thus, the sheriff's authority to close roads during a locally declared state of emergency will depend on whether or not this authority has been delegated to the sheriff in the local emergency ordinance.

If this authority is delegated to the sheriff, G.S. 166A-19.31(b)(1)(e) requires the sheriff to notify the North Carolina Department of Transportation of the road closure and the sheriff must also allow access to essential personnel, as well as utility crews and essential goods transporters possessing a valid statewide re-entry certification.

Finally, the authority granted to the sheriff under this statute does not eliminate the authority of other county and municipal officials 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 already possess delegated authority under the ordinance to declare local states of emergency and impose restrictions and prohibitions under those declarations.

Can a County or Municipality Require the Sheriff to Staff Road Closures?

No. There is nothing in Chapter 166A, or elsewhere in the General Statutes or in case law, that gives a county or city the legal authority to require the sheriff to place sheriff's office personnel at road closures to prevent ingress and egress.

Can a County or Municipality Require the Sheriff to “Deputize” Citizens to Staff Road Closures?

No. There is nothing in Chapter 166A, or elsewhere in the General Statutes or in case law, that gives a county or municipality the legal authority to require the sheriff to “deputize” citizens so those persons can staff road closures or enforce the prohibitions and restrictions contained in a local emergency ordinance.

Any sheriff considering appointing a citizen as a special deputy to staff road closures or to enforce the prohibitions and restrictions contained in a local emergency ordinance should consider the following two points:

- (1) Although a sheriff does have the authority to appoint deputy sheriffs, reserve deputy sheriffs and special deputy sheriffs, Chapter 17E of our General Statutes and Chapter 10B of Title 12 of the North Carolina Administrative Code require that these deputies comply with the appointment and certification requirements required by the North Carolina Sheriffs’ Education and Training Standards Commission.
- (2) Liability – There are liability concerns the sheriff should consider when deciding whether or not to appoint a citizen to carry out public safety functions. For this reason, we recommend the sheriff consult with their own legal counsel or county attorney prior to making the decision to appoint a citizen to staff road closures or to enforce the prohibitions and restrictions contained in a local emergency ordinance.

If you have any questions regarding these issues, do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or at 919-459-6467.

Thanks!....Eddie C.



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