State of North Carolina

ROY COOPER
GOVERNOR

March 30, 2021

EXECUTIVE ORDER NO. 206

EXTENDING ASSISTANCE FOR NORTH CAROLINIANS AT RISK OF EVICTION

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-177, 180-181, 183-185, 188-193, 195, 197-198, 200, and 204-205; and

WHEREAS, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

WHEREAS, recent improvements in key COVID-19 metrics prompted the undersigned to relax certain restrictions on businesses and gatherings, most recently in Executive Order No. 204; and

WHEREAS, however, because the state's key COVID-19 metrics remain at elevated levels, and because of the potential impact of the presence of new variants of the virus in North Carolina, which may be more transmissible and may result in increased disease severity, the lifting of restrictions necessarily must continue to be undertaken in a targeted and phased manner to best protect the health and safety of all North Carolinians, with particular caution given to loosening restrictions in high-risk settings; and

WHEREAS, despite improvements in key COVID-19 metrics, the virus remains a serious threat to North Carolina communities, as evidenced by the fact that between February 28, 2021 and March 13, 2021, every county in the state is rated to have at least a "significant" rate of COVID-19 community spread, according to the County Alert System developed by the North Carolina Department of Health and Human Services ("NCDHHS"), which evaluates a county's COVID-19 case counts, percent positives, and hospital occupancy; and

WHEREAS, while the recent changes to the above metrics may provide cause for optimism in the ongoing battle against the virus, the impacts of the new variants of COVID-19, detected in North Carolina and the impact of loosening restrictions in the state remain yet unseen; and

WHEREAS, COVID-19 continues to extract an unprecedented toll on human life in North Carolina; and

WHEREAS, more than nine hundred twelve thousand (912,000) people in North Carolina have had COVID-19, and more than twelve thousand (12,000) people in North Carolina have died from the disease; and

WHEREAS, in light of the continuing dangers posed by COVID-19, it remains necessary to continue the measures of the residential evictions moratorium to protect the lives of North Carolinians, assist the state's most vulnerable communities, and to avoid further strain on the state's health care system capacity and other health care resources across the state; and

Residential Eviction Protection in North Carolina: the Centers for Disease Control and Prevention Order and Executive Order No. 171

WHEREAS, in addition to its public health consequences, the economic effects of the COVID-19 pandemic continue to broadly impact residential tenants across the country and in the state of North Carolina, many of whom have been unable to timely or fully make their rent payments, thereby facing the risk of eviction; and

WHEREAS, residential evictions remove people from their homes, where they are safest during the COVID-19 pandemic, which therefore increases the risk that such people will contract and spread COVID-19; and

WHEREAS, many residential evictions leave people homeless, where they are at heightened risk of contracting and spreading COVID-19 either through unsheltered living situations or through relocation to homeless shelters or other congregate living situations, where they face enhanced risk of contracting COVID-19; and

WHEREAS, in recognition of the public health threat posed by residential evictions during the pandemic, the Centers for Disease Control and Prevention issued an order, pursuant to 42 U.S.C. § 264 of the Public Health Act and 42 C.F.R. § 70.2, and titled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," temporarily halting certain residential evictions nationwide, beginning on September 4, 2020, as such order has been subsequently extended and modified (the "CDC Order"); and

WHEREAS, on December 27, 2020, the President signed the Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), which extended the CDC Order through January 31, 2021; and

WHEREAS, at the request of the President, on January 29, 2021 the CDC extended its order through March 31, 2021; and

WHEREAS, on March 29, 2021, the CDC further extended its Order, with modifications, through June 30, 2021; and

WHEREAS, to reaffirm and clarify the protections established by the CDC Order and to ensure accurate and consistent application of the CDC Order across the state, the undersigned issued Executive Order No. 171 to further protect North Carolinians at risk of eviction, from October 30, 2020 through the CDC Order's original termination date of December 31, 2020; and

WHEREAS, the undersigned, with the concurrence of the Council of State, issued Executive Order Nos. 184 and 191, which orders ultimately extended Executive Order No. 171 through March 31, 2021; and

WHEREAS, the CDC Order and Executive Order No. 171 do not block evictions of residential tenants for reasons other than nonpayment of rent, interest, late fees, or penalties; and

WHEREAS, the CDC Order and Executive Order No. 171 do not relieve any residential tenant from the obligation to pay rent, make housing payments, or comply with any other obligation that the tenant may have under a tenancy, lease or contract, and these orders do not protect tenants from eviction for reasons of criminal activity, threatening the health or safety of other tenants, or violating building codes or other ordinances; and

WHEREAS, to ensure the effective execution of the CDC Order, Executive Order No. 171 requires, among other measures, that a landlord provide his or her tenant with a copy of the declaration form required under the CDC Order (the "Declaration") prior to commencing an eviction action and provide the court with a copy of that Declaration; and

WHEREAS, Executive Order No. 171 provides for the modification of residential leases to effectuate certain procedures in the event a tenant's Declaration is filed with the court, and in the event the landlord decides to contest that Declaration; and

WHEREAS, Executive Order No. 171 also extends certain protections to individuals applying for assistance through the statewide Housing Opportunities and Prevention of Evictions Program ("HOPE Program") who have met the eligibility criteria for assistance under that program but who have not yet received protection from eviction by way of the final stage of that program; and

WHEREAS, the undersigned's administration recognizes the financial impacts of the pandemic may also be felt by some landlords, and, as of the date of this Executive Order, has distributed over $120 million dollars directly to landlords to cover tenants' rental payments, and over $20 million dollars directly to landlords to cover tenants' utility bills, all through the HOPE Program; and

<u>The Need to Extend Executive Order No. 171</u>

WHEREAS, according to the United States Census Bureau's Household Pulse Survey ("Pulse Survey") released on March 10, 2021, from data collected February 17, 2021 through March 1, 2021, nearly 81 million adults reported that their household found it somewhat difficult or very difficult to cover usual expenses, including rent or mortgage, food, car payments, medical expenses, or student loans; and

WHEREAS, data from the Pulse Survey shows that an estimated 9.5 million adult renters reported that they were not caught up on rent; and

WHEREAS, according a report from the Center on Budget and Policy Priorities ("CBPP"), dated March 15, 2021, more than 5 million renters report that they have lost employment income and expect to be evicted soon; and

WHEREAS, according to the CBPP's analysis of the Pulse Survey, the hardship is particularly more taxing on families with children, in that forty-one percent (41%) of adults with children reported difficulties covering usual household expenses, compared to thirty percent (30%) for adults without children, and twenty-eight percent (28%) of adults with children reported that they are not caught up on last month's rent, compared to twelve percent (12%) among adults not living with anyone under age eighteen (18); and

WHEREAS, according to the CBPP's analysis, this inability to pay rent disproportionately affects communities of color in that thirty-three percent (33%) of Black renters, twenty percent (20%) of Latino renters, and sixteen percent (16%) of Asian renters reported not being caught up on rent, compared to thirteen percent (13%) of White renters; and

WHEREAS, many North Carolina households are experiencing the economic hardships felt nationwide; and

WHEREAS, for example, since the HOPE program became effective in North Carolina, over forty-five thousand (45,000) individuals have applied for assistance, and of those, thirty-seven thousand (37,000) individuals have received an award through the program, underscoring the significant need for rental assistance and eviction protection across the state during the pandemic; and

WHEREAS, according to the Pulse Survey data, collected from February 17, 2021 through March 1, 2021, in North Carolina an estimated one hundred sixty-seven thousand seven hundred and fifty-one (167,751) adults in rental housing reported that they are not caught up on rent; and

WHEREAS, according to the Pulse Survey data, collected from February 17, 2021 through March 1, 2021, nearly 2.8 million adults in North Carolina reported that their household found it somewhat difficult or very difficult to cover usual household expenses; and

WHEREAS, a January 2021 report by the National Bureau of Economic Research found that "policies that limit evictions are found to reduce COVID-19 infections by 3.8% and reduce deaths by 11%"; and

WHEREAS, continuing eviction protections is necessary to prevent additional COVID-19 cases and deaths; and

WHEREAS, the undersigned's administration recognizes that eviction moratoria are not only effective public health measures to control the spread of COVID-19, but that they can also have significant impacts on the economic and socioeconomic realities of many North Carolinians; and

WHEREAS, in light of the extension of the CDC Order nationwide, the troubling COVID-19 metrics across the state, and the need for North Carolinians to have a safe and stable place to live, the undersigned finds it reasonable and necessary to continue the protections of Executive Order No. 171 under this Executive Order to protect the neediest North Carolinians from housing loss and housing insecurity; and

WHEREAS, the restrictions on evictions extended in this Executive Order shall extend only during the term set out in Executive Order No. 171, as extended by this Executive Order; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4), the undersigned is authorized to "cooperate and coordinate" with the President of the United States and the heads of department and other agencies of the federal government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over all resources, materials, and services, including shelter and rents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) further authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State on those provisions of this Executive Order requiring concurrence consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above and in Executive Order Nos. 171, 184, and 191, **IT IS ORDERED:**

Section 1. Extension of, and Updates to, Executive Order No. 171.

A. Executive Order No. 171, as amended herein, shall remain in effect through and including June 30, 2021. The effective date provision of Executive Order No. 171 is amended to continue in effect through the above-listed date.

B. References to the "CDC Order" in Executive Order No. 171 shall refer to the order as it was extended and modified by the CDC on March 29, 2021.

C. References to a "Declaration" in Executive Order No. 171 include any written document that qualifies under the CDC Order for use in place of the CDC declaration form.

Section 2. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 3. Savings Clause and Interpretation.

A. If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

B. The protections stated in this Executive Order are independent from the requirements of the CDC Order and shall be in force regardless of any repeal, recission, amendment, or administrative interpretation of the CDC Order. If any court without jurisdiction over the State of North Carolina enjoins or otherwise blocks or modifies the CDC Order, in whole or in part, this Executive Order shall continue to apply, and this Executive Order shall continue to provide the protections listed in the CDC Order.

Section 4. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 5. Enforcement.

A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 6. Effective Date.

Unless otherwise expressly stated herein or in another Executive Order, this Executive Order shall be in effect at the beginning of the day on March 31, 2021 and remain in effect through and including June 30, 2021, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 30th day of March in the year of our Lord two thousand and twenty-one.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State