State of North Carolina

ROY COOPER
GOVERNOR

January 27, 2021

EXECUTIVE ORDER NO. 190

EXTENSION OF AUTHORIZATION OF DELIVERY AND CARRY-OUT OF SERVICES AND PRODUCTS AS AN ALTERNATIVE TO ON-SITE CONSUMPTION AND RECEIPT

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 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, 169-173, 176-177, 180-181, 183-185, and 188-189; 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, on September 30, 2020, the undersigned issued Executive Order No. 169, which transitioned the state into Phase 3 of its COVID-19 response; and

WHEREAS, concerning trends then led the undersigned to implement further protective actions, including a more protective numerical limit on indoor gatherings, requiring Face Coverings in additional settings, requiring night-time closure to the public for certain business and activities, and directing that all North Carolinians stay at home, with exceptions, during the hours of 10:00 pm and 5:00 am every day; and

WHEREAS, these provisions are now part of Executive Order No. 181, as extended by Executive Orders No. 188 and 189 (the "Modified Stay at Home Order"); and

Benefits of Take-Out and Delivery During the Pandemic

WHEREAS, settings that are indoor, where people gather, remain stationary for an extended period of time, and cannot consistently wear a Face Covering have an increased risk of viral spread; and

WHEREAS, settings where there is increased respiratory effort — for example, conversations being held over music or background noise, singing, and dancing — increase the risk of viral spread; and

WHEREAS, these settings include restaurants, hotels, private clubs, private bars, and distilleries that sell mixed beverages; and

WHEREAS, in light of the risks of transmission presented by the sustained, maskless interactions inherent in indoor dining and drinking at restaurants, bars, and similar establishments, it reduces the risk of viral spread to allow delivery and take-out service; and

WHEREAS, for these reasons, restrictions should be lifted, wherever feasible and appropriate, to allow goods and services to be delivered to one's home; and

WHEREAS, for these reasons, the undersigned has determined that the Secretary of the North Carolina Health and Human Services requires authority to temporarily waive the enforcement of any legal or regulatory constraints that would prevent or impair the ability of open establishments to provide curbside pickup or delivery of health care goods and services; and

Benefits of Allowing To-Go or Delivery Sales for Mixed Beverages

WHEREAS, allowing delivery of food and drinks decreases customer-to-customer interactions between people who are not members of the same household and significantly reduces customer-to-employee interactions, thereby significantly reducing the likelihood of viral spread; and

WHEREAS, allowing delivery of mixed beverage drinks to homes, as is done for other goods and services, can reduce this risk; and

WHEREAS, during the pandemic, public health will benefit if it is easier for people to gather at home, reducing the number of people coming together in bars, restaurants, hotels, private clubs, and distilleries; and

Economic Benefits of Mixed Beverage Sales

WHEREAS, under the Modified Stay at Home Order, bars and restaurants and other businesses must cease the sale and service of alcohol for on-premises consumption earlier in the evening, and these businesses must also operate at reduced capacity; and

WHEREAS, the sale of alcoholic beverages generates a substantial percentage of revenue for many restaurants and bars in the state; and

WHEREAS, bars and restaurants are currently limited in how they may sell mixed beverages, and thereby are denied a much-needed source of revenue during the COVID-19 pandemic; and

WHEREAS, the undersigned's administration has taken action to alleviate the financial hardship borne by bars and restaurants in the COVID-19 pandemic, including through the implementation of grant and loan programs, and mortgage and utility relief for these impacted businesses; and

WHEREAS, the undersigned has determined that enabling the sale of mixed beverages for off-premise consumption ("to-go" sales) will provide an additional source of revenue for restaurants and bars in the state, that may offset any reduction in sales that may be caused by the reduced occupancy limits and limited hours of operation for these establishments under the Modified Stay at Home Order; and

WHEREAS, since the issuance of Executive Order No. 183, many bars have implemented to-go sales of mixed beverages and have benefitted from the additional source of revenue afforded by that order; and

WHEREAS, for the reasons stated herein and in Executive Order No. 183, the undersigned finds it reasonable and necessary to continue the measures of Executive Order No. 183 through March 31, 2021; and

Flexibility for the North Carolina Alcoholic Beverage Control Commission to Permit To-Go Sales of Mixed Beverages

WHEREAS, the undersigned has determined that it is in the best interests of all North Carolinians to have additional goods and services available via home delivery or to-go orders; and

WHEREAS, enabling these channels to sell mixed beverages may reduce crowding in bars, restaurants, and other open establishments, especially during the winter months when more patrons must necessarily move indoors; and

WHEREAS, the undersigned has determined that by opening up these additional channels of commerce, crowds may be limited in open establishments, abating a need that otherwise might arise to increase restrictions on bars, restaurants, and other similar businesses; and

WHEREAS, the North Carolina Alcoholic Beverage Control Commission ("ABC Commission") is charged under state law with regulating the access and availability of beer, wine, and mixed beverages; and

WHEREAS, the ABC Commission has the requisite experience and ability to monitor the sale, service, and distribution of alcoholic beverages in the state; and

WHEREAS, accordingly, the ABC Commission is best equipped to devise and implement all necessary terms and conditions to ensure that bars and restaurants engage in the sale of mixed beverages to-go in a safe and effective manner; and

WHEREAS, for the reasons stated above, the undersigned has determined that the Chair of the ABC Commission should have authority to temporarily waive the enforcement of any legal or regulatory constraints that would prevent or impair the sale of mixed beverages for off-premise consumption; and

WHEREAS, for avoidance of doubt, the terms of this Executive Order and the delegation of authority to the Chair of the ABC Commission herein do not permit unsealed containers of alcoholic beverages in vehicles, and do not permit the sale of mixed beverages to any individual who is under the age of twenty-one (21) or to any individual who is visibly intoxicated; 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 Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; 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), the undersigned may take such action and 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 the Emergency Management Act and with the orders, rules, and regulations made thereunder; 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 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 concurrence of the Council of State, may perform and exercise such other powers, functions, and duties as are necessary to promote the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State 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 stated above and in Executive Order No. 183, **IT IS ORDERED**:

Section 1. Extension of Executive Order No. 183.

Executive Order No. 183 shall remain in effect until 5:00 pm on March 31, 2021. The effective date provision of Executive Order No. 183 is amended to have that order continue in effect through the above-listed time and date.

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.

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.

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. This Executive Order does not limit Alcohol Law Enforcement's existing authority to take any action necessary (criminal or administrative through the ABC Commission) to enforce the provisions of this Executive Order or any waivers or modifications for sales and deliveries of alcoholic beverages prescribed by the ABC Commission.

D. 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.

This Executive Order is effective January 31, 2021, at 5:00 pm. This Executive Order shall remain in effect through March 31, 2021 at 5:00 pm. 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 27th day of January in the year of our Lord two thousand and twenty one.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State