State of North Carolina

ROY COOPER

GOVERNOR

October 21, 2020

EXECUTIVE ORDER NO. 170

EXTENSION OF THE PHASE 3 ORDER

The COVID-19 Public Health Emergency

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 and 169; and

WHEREAS, more than two hundred fifty thousand (250,000) people in North Carolina have had COVID-19, and over four thousand thirty-two (4,032) people in North Carolina have died from the disease; and

The Need to Extend Executive Order No. 169

WHEREAS, since the declaration of a state of emergency in Executive Order No. 116, North Carolina has accumulated increased PPE for health care workers and first responders, has developed health care protocols and procedures for the treatment of COVID-19, and has adopted measures to promote social distancing, the use of Face Coverings, and hygiene measures that reduce transmission of COVID-19; and

WHEREAS, slowing and controlling community spread of COVID-19 is critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance and remain able to reduce morbidity and mortality from COVID-19 in North Carolina; 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, to lower the risk of contracting and transmitting COVID-19, Executive Order No. 169 imposed restrictions on certain businesses designed to limit the contact between people, particularly in settings in which people exert increased respiratory effort, that are indoors, that involve people being in close physical contact for an extended period of time (more than 15 minutes), in which it is difficult to wear a Face Covering consistently, or that involve a large number of people; and

WHEREAS, since the issuance of Executive Order No. 169, there have been increases in the percent of emergency department visits that are for COVID-19-like illnesses, daily new case counts, the percent of COVID-19 tests that are positive, and COVID-19-associated hospitalizations; and

WHEREAS, COVID-19 daily case counts and associated hospitalizations remain considerably above their levels on May 20, 2020, when the state announced Phase 2 of COVID-19 restrictions and reopening; and

WHEREAS, COVID-19 cases and related metrics are increasing across the nation and in many locations worldwide, prompting localities, states and nations to reimpose previously-lifted restrictions in order to control the further spread of the virus across the globe; and

WHEREAS, the state's public health experts have expressed concern that the arrival of cooler weather may increase the spread of the virus and may also result in more people staying indoors, where the virus can spread more easily; and

WHEREAS, in addition to COVID-19, the arrival of seasonal influenza may add further strain on the health care system; and

WHEREAS, these troubling trends and considerations require the undersigned to continue certain public health restrictions to slow the spread of this virus during the pandemic; and

The Need for Continued Vigilance

WHEREAS, should there be a further increase in the percentage of emergency department visits that are due to COVID-19-like illness, a further consistent increase in the number of laboratory-confirmed cases, a further increase in the positive tests as a percent of total tests, a further increase in COVID-19-related hospitalizations that threaten the ability of the health care system to properly respond, or should the state's ability to conduct testing and tracing be compromised, it may be necessary to reinstate certain restrictions eased by the undersigned's COVID-19 executive orders so as to protect the health, safety, and welfare of North Carolinians; and

WHEREAS, businesses that are open during the duration of this Executive Order are encouraged to follow the Guidelines for Businesses published by the North Carolina Department of Health and Human Services ("NCDHHS"), as well as any other NCDHHS guidance applicable to their business model, available electronically on the NCDHHS website; and

WHEREAS, all North Carolinians are encouraged to remain vigilant in their efforts to prevent the further spread of the virus in their communities and should continue to exercise caution in their day-to-day activities, including by wearing a Face Covering and avoiding large gatherings; 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-19.12(3)(e), the Division of Emergency Management must coordinate with the State Health Director to revise the North Carolina Emergency Operations Plan as conditions change, including making revisions to set "the appropriate conditions for quarantine and isolation in order to prevent the further transmission of disease," and following this coordination, the Emergency Management Director and the State Health Director have recommended that the Governor develop and order the plan and actions identified in this Executive Order; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.23 in conjunction with N.C. Gen. Stat. §§ 75-37 and 75-38, the undersigned may issue a declaration that shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency or abnormal market disruptions; 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(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(3) authorizes the undersigned to restrict the possession, transportation, sale, purchase, and consumption of alcoholic beverages; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind the prohibitions and restrictions imposed by local authorities.

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 No. 169, **IT IS ORDERED**:

Section 1. Extension of the Phase 3 Order.

Executive Order No. 169, including, for avoidance of doubt, those provisions of Executive Order No. 163 which were incorporated into, and extended by, Executive Order No. 169, shall remain in effect until 5:00 pm on November 13, 2020. The effective date provision of Executive Order No. 169 is amended to have that order continue in effect through the above-listed time and date.

Section 2. Extension of Price Gouging Period.

Pursuant to N.C. Gen. Stat. § 166A-19.23, the undersigned extends the prohibition against excessive pricing, as provided in N.C. Gen. Stat. §§ 75-37 and 75-38, from the issuance of Executive Order No. 116 through 5:00 pm on November 13, 2020.

The undersigned further hereby encourages the North Carolina Attorney General to use all resources available to monitor reports of abusive trade practices towards consumers and make readily available opportunities to report to the public any price gouging and unfair or deceptive trade practices under Chapter 75 of the North Carolina General Statutes.

Section 3. 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 4. 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 5. 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 6. Enforcement.

6.1. 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. Enforcement of Face Covering requirements shall be limited as stated in Subsection 2.7 of Executive Order No. 169. Law enforcement and other public safety and emergency management personnel are strongly encouraged to educate and encourage voluntary compliance with all the provisions of this Executive Order.

6.2. 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.

6.3. 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 7. Effective Date.

This Executive Order is effective October 23, 2020, at 5:00 pm. This Executive Order shall remain in effect through 5:00 pm on November 13, 2020 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 21st day of October in the year of our Lord two thousand and twenty.

Roy Cooper

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall

Elaine F. Marshall
Secretary of State