State of North Carolina

ROY COOPER
GOVERNOR

January 27, 2021

EXECUTIVE ORDER NO. 189

FURTHER EXTENSION OF THE MODIFIED STAY AT HOME ORDER

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; 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 public health measures, including a more protective numerical limit on indoor gatherings, requiring Face Coverings in additional settings, requiring night-time closure to the public for certain businesses and activities, and directing that all North Carolinians stay at home, with exceptions, between the hours of 10:00 pm and 5:00 am every day; and

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

Continuing Dangers from COVID-19; Importance of Statewide Vaccination Efforts

WHEREAS, over recent days in North Carolina, due to the measures taken to-date by the undersigned and due to the resilience and persistence of all North Carolinians, there have been modest improvements in some of the state's key COVID-19 metrics, relative to recent weeks; and

WHEREAS, specifically, as of the date of this Executive Order, the state is experiencing a sustained leveling of COVID-19 daily diagnoses, and a sustained slight decline in the percent of total COVID-19 tests that are positives and the number of COVID-19-associated hospitalizations relative to its peak a few weeks earlier; and

WHEREAS, despite these modest and recent improvements to certain of the state's key COVID-19 metrics relative to recent weeks, COVID-19 remains a serious threat to North Carolina communities, as evidenced by the fact that between January 3, 2021 and January 16, 2021, ninety-nine of North Carolina's one hundred counties were experiencing "substantial (orange)" or "critical (red)" 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 capacity; and

WHEREAS, despite the modest and recent improvements to certain of the state's key COVID-19 metrics relative to recent weeks, the number of daily COVID-19 cases, the percent of total COVID-19 tests that are positive, the number of COVID-19 associated hospitalizations, and the number of daily deaths attributable to COVID-19 remain at troublingly elevated levels; 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 a new variant of COVID-19, recently detected in North Carolina, remain yet unseen; and

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

WHEREAS, more than seven hundred thirty-three thousand (733,000) people in North Carolina have had COVID-19, and more than eight thousand nine hundred (8,900) people in North Carolina have died from the disease; and

WHEREAS, as of the date of this Executive Order, the undersigned and his administration are engaged in robust vaccination efforts to distribute the state's allocated supply of FDA-authorized vaccines to North Carolinians, according to a priority order which takes into account an individual's age, their front-line exposure to the virus, and other risk factors as identified by public health experts; and

WHEREAS, while the undersigned has marshalled all state resources towards accelerating the state's vaccination efforts, the current supply of the vaccine, as allocated by the federal government, is not enough to meet demand, and as of the date of this Executive Order the amount of vaccines administered to North Carolinians is not enough to provide widespread immunity in the near-term; and

WHEREAS, until enough North Carolinians are vaccinated or otherwise become immune to this devastating disease, COVID-19 will continue to cause devastating illness and death; and

WHEREAS, in light of the continuing dangers posed by COVID-19, and the need for the state's vaccination efforts to continue apace, it remains necessary to continue the measures of the Modified Stay at Home Order to protect the lives of North Carolinians, to avoid further strain on the state's health care system capacity and other health care resources across the state; and

Continued Closure of Bars for Indoor Consumption

WHEREAS, in previous executive orders, the undersigned has ordered certain restrictions on bars, closing indoor areas for on-site consumption, but allowing for the limited operation of bars' outdoor areas, as well as enabling the sale of mixed beverages for off-premise consumption ("drinks to-go"), in an effort to provide an avenue for additional revenue for these establishments; and

WHEREAS, in Bars (as defined in Executive Order No. 181), people's risk of spreading COVID-19 is higher for many reasons, including because people traditionally engage in activities in Bars that result in increased respiratory effort, because people traditionally mingle in Bars and are in close physical contact for an extended period of time, and because people are less cautious when they drink alcoholic beverages; and

WHEREAS, these risks are mitigated, although not eliminated, in outdoor spaces where air circulates freely; and

WHEREAS, regression analyses have shown that new COVID-19 infections surge after Bars are reopened, and the rate of new COVID-19 infections falls when Bars are closed; and

WHEREAS, moreover, a statistical analysis of University of Wisconsin students determined that a predictor of whether a dormitory would have a high infection rate was how geographically close that dormitory was to the town's collection of Bars; and

WHEREAS, moreover, a Washington Post study of cellphone location data determined that, following Bar reopening, the level of foot traffic in Bars had a statistically significant relationship with the level of increase in COVID-19 cases in the following weeks; and

WHEREAS, across the country, COVID-19 spread has been repeatedly linked to Bars, including, for example, incidents where 200 cases were linked to an East Lansing, Michigan Bar, 100 cases were linked to a Baton Rouge, Louisiana Bar outbreak, 73 cases were linked to a single Bar in St. Cloud, Minnesota, and 20 cases were linked to a Washington State karaoke Bar even though it used extensive social distancing measures; and

WHEREAS, an analysis of exposures among people with known COVID-19 showed that people with COVID-19 were four times as likely to have gone to a Bar than those without known COVID-19; and

WHEREAS, there is now emerging evidence that a new variant of the coronavirus, recently detected in North Carolina, is more transmissible and may lead to increased disease severity; and

WHEREAS, therefore, in light of the evidence of heightened risk for the transmission of COVID-19 posed in the indoor areas of Bars, as outlined herein and in the undersigned's previous executive orders, it remains reasonable and necessary to continue the temporary closure of Bars for indoor consumption for the duration of 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 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, although the NCDHHS County Alert system has identified certain counties as having higher levels of community transmission in recent data, the professionals delegated the responsibility to maintain the County Alert system have determined that every county has a dangerous rate of community transmission of the virus — reflected in every county in the state being rated at least at "significant (yellow)" risk and all counties but one rated at or above the next level of "substantial" (orange) risk; 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)(1)(a) authorizes the undersigned to impose a curfew; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1)(d) authorizes the undersigned to control the movement of persons within the emergency area; 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 Nos. 181 and 188, **IT IS ORDERED**:

Section 1. Extension of the Modified Stay at Home Order.

Executive Order No. 181 (including, for avoidance of doubt, those amendments made by Executive Order No. 183 and those provisions of Executive Order No. 141 which were incorporated into, and extended by, Executive Order No. 181) shall remain in effect until 5:00 pm on February 28, 2021. The effective date provision of Executive Order No. 181 is amended to have that order continue in effect through the above-listed time and date.

Section 2. Extension of Price Gouging Period.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

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 February 28, 2021.

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.

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. Local governments are specifically authorized and encouraged to adopt ordinances that provide law enforcement officials with flexibility to use civil, rather than criminal, penalties to enforce violations of this Executive Order.

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 January 29, 2021, at 5:00 pm. This Executive Order shall remain in effect through 5:00 pm on February 28, 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 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