

**Buncombe County’s “Stay Home, Stay Safe” Order:
Guidance for Accommodations [updated April 9, 2020]**

This is not intended as legal advice, and is for general guidance only. Individual businesses are encouraged to seek their own legal counsel.

Yesterday, Buncombe County issued a “Superseding Declaration of a Local State of Emergency” (herein “Superseding Order”). As its title suggests, the Superseding Order supersedes and replaces the “Supplemental Declaration of a Local State of Emergency” issued March 25 (herein “Previous Order”). Like the Previous Order, the Superseding Order is in response to the Coronavirus and COVID-19 pandemic, and in response to the declaration of emergency issued by the State of North Carolina. The 3/19 Order was set to expire at 6:00 AM on April 9, 2020. The Superseding Order takes effect at that time, and in that sense, replaces the Previous Order.

Probably the most significant part of the Superseding Order is that it extends the restrictions of the Previous Order—with some modifications—“until such time as it is repealed, replaced, or rescinded,” which means that it remains in effect indefinitely.

In addition to the Superseding Order, there was a Supplemental Guidance Document (herein “Supplemental GDOC),” which is intended to aid in interpretation of the restrictions. In general, the Superseding Order does not change the restrictions substantially from the Previous Order (other than extending them, as explained above), but does bring the local restrictions more in line with the State’s restrictions in some areas.

The Superseding Order contains the following provision relevant to hotels and lodging facilities (EO121 refers to the Declaration issued by the Governor):

Hotels and motels, bed and breakfasts, short-term rentals, less than 30 days, homestays and campgrounds are instructed to cancel currently scheduled leisure travel reservations and refrain from scheduling future leisure and other non-essential travel reservations for so long as EO121 and any updates thereto, and/or extensions thereof, remain in effect. Current guests who have already checked in, and guests who are Buncombe County residents are permitted to stay. Any employees who work for businesses or organizations defined as essential may stay in any lodging. To comply with this order, operators must document the Essential business occupation of any new residents making reservations from outside the county.

The chief change from the Previous Order is that documentation of the essential nature of a guest’s reason for visiting the area is now required. This can be complied with by getting the guest to state the purpose of their visit, and providing some evidence of that purpose. The

Superseding Order now also specifically allows for residents of Buncombe County to stay in lodging facilities.

There was little additional information regarding hotels and motels, bed and breakfasts, short-term rentals, less than 30 days, homestays and campgrounds in the Supplemental GDOC. Hotels and places of accommodation still fall within the definition of “essential business” under the category of “essential infrastructure,” to the extent that they operate in support of essential businesses. The GDOC provides as follows:

Essential infrastructure, including: hotels, and places of accommodation, when used [sic] Any employees who work for a business or organization deemed essential can stay in any lodging.

It is clear from both the Superseding Order and the Previous Order (1) that providing lodging for leisure-related purposes is prohibited, and (2) that providing lodging for essential work-related purposes is allowed. As described in the Orders, “essential business” encompasses a range of activities, including health care, some types of manufacturing and retail, financial institutions, and construction. Persons covered by this category would include actual employees of those businesses. The Supplemental GDOC now clearly says that persons who are in the County for essential business purposes are permitted to stay in hotels and motels, bed and breakfasts, short-term rentals, less than 30 days, homestays and campgrounds, as long as the essential nature of the visit is documented. Although the Orders are not clear, the Supplemental GDOC suggests that persons whose work supports those essential businesses, such as salespeople or non-retail customers, would be encompassed by the exception (as work-related). Anyone who is not in the County on essential business (checking on second homes, travelling though the State, etc.) must self-quarantine for 14 days or for the length of their stay, if less than 14 days). This means essentially that the person cannot leave the room (unless checking out , even to get groceries, and would have to arrange for delivery of food or other items.

The chief purpose of the State and local Orders remains limiting discretionary activities and travel, and the County has said that restrictions will be enforced by education and dialog, with criminal process being a last resort. Since the restrictions are enforceable as a criminal offense (Class 2 misdemeanor) they would likely be narrowly construed against criminal liability, but may be broadly construed to ensure that its public health purposes are being met. In any event, hotels and motels, bed and breakfasts, short-term rentals, less than 30 days, homestays and campgrounds should not take chances, as consistent violations could result in even greater restrictions, and could lead to the spread of the virus. Hotels and motels, bed and breakfasts, short-term rentals, less than 30 days, homestays and campgrounds and others offering guest accommodations should err on the side of caution and follow the requirements of the orders in the interest of the public health and safety, with the objective of slowing or halting the spread of the virus and the disease.

Operators of hotels and motels, bed and breakfasts, short-term rentals, less than 30 days, homestays and campgrounds and their staff can help achieve the purposes of the orders by inquiring of any guest or person making a reservation or booking a room what the purpose of

the visit is. If the purpose of the visit is to engage in leisure activities, such as “vacation,” “sightseeing,” “visit XX attraction,” “shopping,” or some other discretionary activity, then they are not on essential business and must self-quarantine. If the purpose of the activity is work-related, a follow-up question should be asked regarding the nature of the work, so that a determination can be made as to whether that work falls within the definition of “essential.” Documentation of that essential purpose should be maintained by the hotel or motel, bed and breakfast, short-term rental, less than 30 days, homestay or campground, and guests should be advised in advance if possible that documentation will be required. Any commercially reasonable type of identification, such as a business ID or business card, should be sufficient for this purpose. If that is not available, then a written statement from the guest should be required. It may also be important to document why someone was determined not to be engaged in an essential business, and asked to self-quarantine. Providing false information is likely a criminal offense under the terms of the restrictions.

Essential businesses must observe social distancing requirements. All common areas, such as lobbies, lounges, and fitness facilities should be closed off, and social distancing be enforced in areas that cannot be closed, and that recommended sanitation practices be employed throughout the establishment. Extreme care should be exercised with respect to persons coming from areas experiencing a heavy incidence of COVID-19. Such areas would include states where a statewide “stay home” order has been issued. Those individuals, as with anyone from outside of Buncombe County, are required by the Order to self-quarantine upon arrival, and should be advised that they will have to remain in their room for the duration of their stay (if 14 days or less).

The County has established a method for seeking an “essential business” designation, or clarifying an exemption, and providers of accommodations with questions are urged to use that site.