

## Buncombe County's "Stay Home, Stay Safe" Order: Guidance for Accommodations

**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 Supplemental Declaration of a Local State of Emergency (herein "Order") 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 order takes effect at 8:00 PM today, March 26, 2020, and expires at 6:00 AM on April 9, 2020. The Order is subject to modification or amendment, and may be extended. There was a guidance document (herein "GDOC") issued in connection with the Order, to aid in its interpretation.

Hotels and others offering guest accommodations should err on the side of caution and follow the requirements of the Order in the interest of the public health and safety, with the objective of slowing or halting the spread of the virus and the disease.

The Order contains the following provision relevant to hotels and lodging facilities:

15. *All lodging facilities, including campgrounds, with rentals or leases for less than one month in duration shall be closed EXCEPT for work-related accommodations, facilities housing persons experiencing homelessness and any facility being used for isolation and quarantine purposes. Current residents at campgrounds are permitted to stay, but campgrounds should not allow new patrons to enter and establish themselves. Current residents at hotels, motels, and bed and breakfasts and other short-term rentals are permitted to stay, but these facilities should cancel any leisure travel reservations for the duration of this declaration. Any employees who work for a business or organization deemed essential can stay in any lodging.*

In the GDOC, hotels 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 the 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 Order, "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. Although the Order is not clear, the 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). There are some gray areas, such

as persons who are travelling through Buncombe County for business purposes, and need a place to stay overnight, persons who are visiting family members unable to care for themselves, or persons who are temporarily out of their homes due to some problem like storm damage or mechanical system failure.

The chief purpose of the Order is to limit discretionary activities and travel, and the GDOC says that the Order will be enforced by education and dialog, with criminal process being a last resort. Since the Order is enforceable as a criminal offense (Class 2 misdemeanor) the Order 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 should not take chances, as consistent violations could result in even greater restrictions, and could lead to the spread of the virus.

Hotel operators and their staff can help achieve the purposes of the order 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 the Order provides that that person may not be accommodated. 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.”

It is also recommended that all common areas, such as lobbies, lounges, and fitness facilities be closed off, that social distancing be enforced, and that recommended sanitation practices be followed. Extreme care should be exercised with respect to persons coming from New York, Washington State, California, or other area experiencing a heavy incidence of COVID-19. Such areas would include states where a statewide “stay home” order has been issued. Those individuals 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.