

North Carolina Governor Issues “Modified Stay at COVID-19 Response Resource Center: Timely Counsel for your Business

By Alexander Elkan and Ed Turlington on 12.09.2020

Posted in Government/Judicial Statements

This week, Governor Roy Cooper issued a “Modified Stay at Home” order. His new Executive Order 181, among other things, requires people to stay at home between 10 p.m. and 5 a.m. It also requires restaurants, bars, entertainment venues, personal care businesses and some other businesses to close at 10 p.m. Certain activities such as travel to and from work; obtaining food, medical care, fuel or social services; or to take care of a family member, are exempted. The new Order is effective on Dec. 11, 2020 at 5 p.m. and extends through at least Jan. 8, 2021.

What are the major changes under this Order?

Under this Order:

- Certain businesses and facilities are ordered to close to the public between 10:00 p.m. and 5:00 a.m. (the “Night-Time Public Closure Period”).
 - o This includes restaurants (with exceptions for take-out and delivery), bars, entertainment venues, parks, museums and aquariums, certain retail establishments and other businesses and facilities specified in the Order.
- All individuals in North Carolina must stay at home or the place they will remain for the night between 10:00 p.m. and 5:00 a.m. (the “Stay at Home Period”), unless an exception applies.
- The sale and service of alcoholic beverages is prohibited for on-site consumption between the hours of 9:00 p.m. and 7:00 a.m.
- Events or convenings outside of the home must end by 10:00 p.m. and guests must leave the establishment and travel home or to the place where they will stay for the night.
- The capacity limitations on certain businesses, indoor and outdoor gathering limits and other public health measures implemented by previous executive orders are extended through Jan. 8, 2021.

What remains the same under this Order?

Under this Order:

- The gathering limits remain at 10 individuals for indoor settings and 50 individuals for outdoor settings.
- The limitations on certain businesses, sanitation standards and other public health restrictions outlined in the Phase 3 Executive Order and North Carolina Department of Health and Human Services (NCDHHS) Guidance remain in effect.
- A face covering is still required in all public indoor settings if there are non-household members present, regardless of the individual’s ability to maintain social distance. As noted in the FAQs to EO 180, if a person is working alone in a space and has no expectation of interacting with another person, they do not need to wear a face covering. Face coverings continue to be required in public outdoor settings if individuals are unable to maintain six feet of social distance from non-household members.
- Retail business locations with more than 15,000 square feet of interior space must continue to have a worker at each entrance open to the public, who is responsible for enforcing the executive orders’ face covering and capacity limitations.

Some Notable FAQs

The Governor’s FAQs for the new Executive Order may be accessed at [this link](#). Some excerpts from the FAQs are as follows:

Temporary Night-Time Public Closure Period

Does this Order close any business completely?

No. This Order temporarily requires certain businesses to close their premises to the public from 10:00 p.m. to 5:00 a.m., during the Night-Time Public Closure Period. Establishments may remain open during those hours for workers, and may otherwise conduct their business and operations, as long as no guests are admitted onto the premises.

Which establishments are subject to the Night-Time Public Closure Period?

Establishments that are subject to this Order include: amusement parks and amusement transportation; bars, lounges, indoor venues, and arenas; fitness and physical activity facilities, movie theaters, meeting spaces, and other entertainment facilities; museums and aquariums;

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parks; personal care businesses; restaurants, breweries, distilleries, and wineries; and certain retail businesses.

Are there any exceptions to the Night-Time Public Closure Period?

Yes. Retail businesses that sell groceries, medication, health care supplies, and fuel may remain open between 10:00 p.m. and 5:00 a.m. Service at restaurants, breweries, distilleries, and wineries may continue for take-out and delivery after 10:00 p.m.

May my employees remain on site to stock the store, do bookkeeping, or other necessary business after 10:00 p.m. or before 5:00 a.m.?

Yes. This Order only requires closure to the public during the night-time closure period. Workers may remain on premise at the business to conduct necessary operations. During that time, businesses and facilities must still adhere to the applicable public health restrictions in the Order, including the face covering requirement.

Does this Order impose restrictions on office buildings and other professional work settings?

No. If a worker’s presence is required by his or her employer, that worker may remain on the premises and conduct their normal business operations during the Night-Time Public Closure Period, as long as no clients or customers are permitted onto the premises. During that time, businesses and facilities must still adhere to the applicable public health restrictions in the Order, including the face covering requirement for their employees.

Are movie theaters and other live performances required to cease from 10:00 p.m. to 5:00 a.m.?

Yes, movies, live entertainment performances, and entertainment events must cease or pause no later than 10:00 p.m. There is an exception to the 10:00 p.m. cut-off time for professional and collegiate athletic events that are already scheduled during the effective period of this Order.

May customers come inside a restaurant to pick up take-out orders?

Yes. Customers may enter restaurants, breweries, distilleries, and wineries to pick up take-out orders after 10:00 p.m. Customers must wear a face covering and practice social distancing.

May third-party delivery services, such as Instacart, UberEats, DoorDash, and others continue to operate during the Night-Time Public Closure Period?

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Yes. Third-party delivery services may continue to operate during the Night-Time Closure Period. Employees of these businesses may report to and from work and perform work duties as required by their employer during the Stay at Home Period.

If a patron refuses to leave the premises after an establishment has announced its closure, what can the establishment do?

Patrons who refuse to exit an establishment after being asking to leave may be subject to criminal trespass prosecution.

Modified Stay at Home Order

When are individuals required to stay at home?

Individuals must stay at home or the place they will stay for the night from 10:00 p.m. to 5:00 a.m.

Are there any exceptions to the modified Stay at Home Order?

Yes. Individuals may leave home during the Stay at Home Period to: travel to or from a place of work; perform work at their workplace when the worker’s presence is required by the worker’s employer; travel for work purposes; obtain food, medical care, fuel, or social services; travel from a business that closed at or after 10:00 p.m.; travel to a business that will open at 5:00 a.m.; travel to take care of a family member, friend or pet in another household; travel to or from a religious service; travel necessary for personal safety; and travel into or out of the state.

Are individuals permitted to stay with family and friends during the Stay at Home Period?

This Order requires individuals to remain at their home or place where they are staying for the night from 10:00 p.m. to 5:00 a.m. This Order does not prohibit individuals from staying with family and friends. However, due to evidence that gathering with friends and non-household family is associated with the spread of COVID-19, individuals must abide by gathering limits and face covering requirements when in the presence of non-household members.

I have to go to work during the Stay at Home Period, is that okay?

Yes. Individuals may leave their home or place where they are staying to travel to or from work.

If I am outside of my home during the Stay at Home Period, am I required to show proof?

No. Individuals are not required to show documentation that they fall within an exception to the Stay at Home Order.

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Will transportation services be available during the Stay at Home Period?

Yes. Using or providing shared transportation services, such as taxicabs, ride share services, buses, and trains, is not prohibited during the Stay at Home Period.

Can I leave my home if I feel unsafe?

Yes. Individuals in unsafe living situations, including domestic violence victims, are encouraged to leave home and find a safe place to stay.

Alcohol Sales

Are grocery stores and convenience stores required to cease selling alcohol?

Grocery stores and convenience stores, like other businesses, must cease the sale and service of alcoholic beverages for on-site consumption from 9:00 p.m. to 7:00 a.m. They may continue to sell alcoholic beverages for off-site consumption, subject to applicable laws and regulations.

Can restaurants serve alcohol after 9:00 p.m.?

No. Restaurants must adhere to the alcohol sales restrictions for on-site consumption. However, they may sell alcohol for off-site consumption to the extent authorized by law.

If you have questions, please contact Alex Elkan or Ed Turlington, linked below.

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our COVID-19 Response Resources page.