

**AN ORDINANCE ESTABLISHING TEMPORARY
ACCOMMODATIONS FOR REGULATIONS DURING
A DECLARED EMERGENCY**

Ordinance 21-04

WHEREAS, Section 166A – 19.31 of the North Carolina General Statutes authorizes local governments to enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to N.C.G.S. 166A-19.22; and

WHEREAS, N.C.G.S. 166A – 19.31 additionally authorizes the governing body of a municipality to impose by declaration such prohibitions and restrictions or delegate that authority by ordinance to the mayor of the municipality; and

WHEREAS, the Town of Duck initially adopted such emergency provisions as Town Code Chapter 32, *Emergencies*, on May 1, 2002. These standards were subsequently updated and amended by Ordinance 14-03, adopted on June 4, 2014; and

WHEREAS, the Town Council of the Town of Duck seeks to update the emergency provisions found in Chapter 32, *Emergencies*, consistent with recent changes to N.C.G.S. 166A – 19.31.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina:

PART I. The wording of Chapter 32 of the Town Code shall be amended as outlined in the attached document.

PART II. This ordinance shall be effective upon its adoption.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end. Below the signature is a horizontal line.

Don Kingston, Mayor

ATTEST:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end. Below the signature is a horizontal line.

Lori Ackerman, Town Clerk

Date adopted: September 1, 2021

Motion to adopt by: Monica Thibodeau

Vote: 5 AYES 0 NAYS

CHAPTER 32: EMERGENCIES

32.01 STATE OF EMERGENCY; RESTRICTIONS AUTHORIZED.

- (A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMERGENCY. An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause.

STATE OF EMERGENCY. The finding and declaration by the Mayor that an emergency exists.

- (B) If an emergency exists, the Mayor is hereby authorized and empowered under G.S. § 166A-19.22 and G.S. § 166A-19.31 to issue a public proclamation declaring to all persons the existence of a state of emergency, and, in order to more effectively protect the lives and property of people within the town, to place in effect any or all of the restrictions hereinafter authorized.
- (C) The Mayor is hereby authorized and empowered to limit by the proclamation the application of all or any part of the restrictions authorized by this chapter to any area specifically designated or described within the town and to specify hours of the day or night, and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firefighters, and other public employees, rescue squad members, doctors, nurses, employees of hospitals, and other medical facilities, on-duty military personnel whether state or federal, on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting, and television broadcasting corporations operated for profit, and such other classes of persons as may be deemed essential to the preservation of public order and immediately necessary to serve the safety, health, and welfare needs of the people within the town.

32.02 PROCLAMATION IMPOSING PROHIBITIONS AND RESTRICTIONS.

- (A) The Mayor by proclamation may impose the prohibitions and restrictions specified in § 32.03 through 32.08 of this chapter in the manner described in this chapter. The Mayor may impose as many of those specified prohibitions and restrictions as the Mayor finds necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety, and property. The Mayor shall recite findings in the proclamation.
- (B) The proclamation shall be in writing. The Mayor shall take reasonable steps to give notice of the terms of the proclamation to those affected by it and shall post a copy of it in the Town Hall. The Mayor shall retain a text of the proclamation and furnish upon request certified copies of it for use as evidence.

32.03 CURFEW.

- (A) The proclamation may impose a curfew prohibiting in certain areas and during certain periods the appearance in public of anyone who is not a member of an exempted class. The proclamation shall specify the geographical area or areas and the period during each 24 hours to which the curfew applies. The Mayor may exempt from some or all of the curfew restrictions classes of people whose exemption the Mayor finds necessary for the preservation of the public health, safety, and welfare. The proclamation shall state the exempt classes and the restrictions from which each is exempted.
- (B) Unless otherwise specified in the proclamation, the curfew shall apply during the specified period each day until the Mayor by proclamation removes the curfew, **or the state of emergency is terminated.**

32.04 RESTRICTIONS ON POSSESSION, CONSUMPTION, OR TRANSFER OF ALCOHOLIC BEVERAGES.

The proclamation pursuant to this chapter may prohibit the possession and/or consumption of alcoholic beverages, other than on one's own premises, and may prohibit the transportation, sale, and/or purchase of alcoholic beverages within the area of the town described in the proclamation.

32.05 RESTRICTIONS ON POSSESSION, TRANSPORTATION, AND TRANSFER OF DANGEROUS WEAPONS AND SUBSTANCES.

- (A) The proclamation pursuant to this chapter may prohibit the possession, transportation, sale, purchase, storage, and use of gasoline and dangerous weapons and/or substances, except lawfully possessed firearms or ammunition. The Mayor may exempt from some or all of the restrictions classes of people whose possession, transfer, or transportation of certain dangerous weapons or substances is necessary in the preservation of the public health, safety, or welfare. The proclamation shall state the exempted classes and the restrictions from which each is exempted.
- (B) For the purposes of this § 32.05, the term **DANGEROUS WEAPONS AND SUBSTANCES** shall have the same meaning as it does under G.S. § 14-288.1(2). ~~which, as of the adoption of this § 32.05, is as follows:~~
~~“Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. 14-288.8(e)(5), or any instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property; or any instrument or substance that is capable of being used to inflict serious bodily injury, when the circumstances indicate a probability that such instrument or substance will be so used; or any part or ingredient in any instrument or substance included above, when the circumstances indicate a probability that such part or ingredient will be so used.”~~
Notwithstanding the provisions of this § 32.05 to the contrary, for purposes of this section, the term **DANGEROUS WEAPONS AND SUBSTANCES** does not include a firearm, as that term is **separately** defined in this section.

- (C) For the purposes of this section, the term **FIREARM** shall have the same meaning as it does under G.S. 14-409.39(2). ~~which, as of the adoption of this section, is as follows: "A handgun, shotgun, or rifle which expels a projectile by action of an explosion."~~
- (D) If imposed, the restrictions of this section shall apply throughout the jurisdiction of the town or such part thereof designated in the proclamation.

32.06 RESTRICTION ON ACCESS TO AREAS.

- (A) The proclamation pursuant to this chapter may prohibit obtaining access or attempting to obtain access to any area, designated in the manner described in this section, in violation of any order, clearly posted notice, or barricade indicating that access is denied or restricted.
- (B) Areas to which access is denied or restricted shall be designated by the chief of police and his or her ~~subordinates~~ **designee(s)** when directed in the proclamation to do so by the Mayor. When acting under this authority, the chief of police and his or her ~~subordinates~~ **designee(s)** may restrict or deny access to any area, street, highway, or location within the ~~town~~ **emergency area** if that restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

32.07 EVACUATION OF AREAS.

The proclamation pursuant to this chapter or any amendment thereto may require the emergency evacuation of any ~~area stricken or threatened area within the governing body's jurisdiction~~. The proclamation shall state the geographic boundaries of the area to be evacuated and, upon issuance of the proclamation, the chief of police and his or her ~~subordinates~~ **designee(s)** shall take all necessary action to remove all persons from the area and to deny access to the area as set out in § 32.06.

32.08 PROHIBITIONS AND RESTRICTIONS GENERALLY.

~~The~~ Any proclamation pursuant to this chapter may prohibit or restrict:

- (A) ~~Movements of people in public places, ingress and egress of an emergency area, and the movement of persons within the area~~ including any of the following:
1. ~~Imposing a curfew.~~
 2. ~~Directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction.~~

3. Prescribing routes, modes of transportation, and destinations in connection with evacuation.
 4. Controlling ingress and egress of an emergency area, and the movement of persons within that area.
 5. Providing for the closure, within the emergency area, of streets, roads, highways, bridges, public vehicular areas, or other areas ordinarily used for vehicular travel, except to the movement of emergency responders and other persons necessary for recovery from the emergency.
- (B) The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;
- (C) The possession, transportation, sale, purchase, and consumption of alcoholic beverages;
- (D) The possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition.
- (E) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency, within the area designated in the proclamation.

Any proclamation authorized by this chapter need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency but instead authorize the Mayor to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

32.09 WHEN PROHIBITIONS AND RESTRICTIONS TAKE EFFECT

All prohibitions and restrictions imposed by proclamations adopted under this section shall take effect in the emergency area immediately upon publication of the proclamation unless the proclamation sets a later time. Publication shall include at least (i) posting of a signed copy of the proclamation conspicuously posted on the Town's website, and (ii) submittal of notice and a signed copy of the proclamation to the Department of Public Safety WebEOC critical incident management system. Publication may also consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any proclamation shall be made.

32.10 AMENDMENTS OF THE PROCLAMATION.

- (A) The Mayor may amend or extend the proclamation under this chapter from time to time, making such modifications as he or she would have been authorized to include in the original proclamation.
- (B) Any proclamation issued pursuant to this chapter shall expire 5 days after its last imposition unless sooner terminated.

32.11 ~~REMOVAL EXPIRATION OF PROHIBITIONS AND RESTRICTIONS.~~

~~The Mayor shall by proclamation remove the prohibitions and restrictions under this chapter as the emergency no longer requires them, or when directed to do so by the Town Council.~~

~~Prohibitions and restrictions imposed pursuant to this section shall expire upon the earliest occurrence of either of the following:~~

- ~~(A) The prohibition or restriction is terminated by the Mayor.~~
- ~~(B) The state of emergency terminates.~~

32.12 SEPARATE AND SUPERSEDING PROCLAMATIONS.

The Mayor in his or her discretion may invoke the restrictions authorized by this chapter in separate proclamations and may amend any proclamation by means of a superseding proclamation.

32.13 ABSENCE OR DISABILITY OF MAYOR.

In case of the absence or disability of the Mayor, the Mayor Pro Tempore or the Town Council itself shall have and exercise all of the powers given the Mayor in this chapter.

32.14 VIOLATIONS.

Any person who violates any provision of an ordinance or proclamation enacted or declared pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.