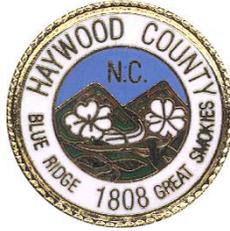


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28 April 2020

From: Frank G. Queen, County Attorney

Subjects: -- Retail establishments affected by Executive Order 131 and  
Haywood County Emergency Proclamation.

-- Short-term rentals as affected by state prohibition of leisure travel

In order to provide uniformity to the interpretation of the State and Local orders on these subjects, I have been asked to provide this guidance.

### **A. Background – Retail Establishments**

Haywood County amended its proclamation of emergency on March 26, 2020 by adopting a set of “stay home – stay safe” rules.

The next day, March 27, 2020, the state of North Carolina, acting through Governor Cooper’s Executive Order #121, adopted its own “stay at home” rules.

On April 9, 2020, by Executive Order # 131, the state adopted an additional set of rules specifically governing retail establishments, requiring the owners to limit the number of customers on the premises and requiring specific social distancing procedures.

#### **Issue:**

**What retail establishments may be open under the local and state rules?**

Nothing has changed about what businesses (retail or not) are deemed essential and allowed to remain open since the Governor’s March 27, 2020 Executive Order # 121.

Only Essential Activities, Essential Businesses and Operations, and Essential Travel (as defined in the county proclamation or Executive Order # 121) may

operate during the state of emergency, but the Governor’s Executive Order # 121 has a very broad definition of essential businesses. Section 2.C.1 of that order defines essential businesses to include “Businesses, not-for-profit organizations or educational institutions that conduct operations while maintaining Social Distancing Requirements: between and among its employees; and between and among employees and customers except at the point of sale or purchase.”

The additional rules of Executive Order # 131, dated April 9, 2020, simply **added** additional rules and requirements for **retail** businesses and operations that were already permitted under the prior rules.

This interpretation is made clear in Section 1 of Executive Order # 131, which opens with these words: “All retail establishments that are permitted to operate under Executive Order # 121 or under any Order issued by a political subdivision of the State are required to take additional steps specified in this section . . . .”

This interpretation is further bolstered by subsection E of Section 1 of Executive Order # 131, which reads:

E. “**No New Authority to Remain Open.** Nothing herein shall be deemed to authorize a business to operate which does not currently qualify as a COVID-19 Essential Business and Operation under Executive Order No. 121. Likewise, nothing herein shall be deemed to authorize a business to operate if it has been deemed nonessential or otherwise has been ordered to be closed by a political subdivision.”

As this analysis demonstrates, Executive Order # 131 made no change in the definition of Essential Businesses or Activities since the March 27 rules of Executive Order # 121 and the county’s proclamation of March 26.

## **B. Hospitality and leisure travel**

### **Background -**

Haywood County and the other western counties of North Carolina (joined by many other counties across the state) have enacted local proclamations affecting short-term rentals. Most of these proclamations, like Haywood County’s, prohibit or limit short-term rentals for leisure purposes.

Because the county proclamations are more restrictive than the State’s Executive Orders, they remain in effect, even if the state does not specifically address short-term rentals.

Some hospitality owners in Haywood and other local counties believe – and have communicated – that if the county’s local proclamation was rescinded, then that would eliminate the barrier to those businesses becoming open for leisure travelers. This is not correct.

The State’s Executive Order 121 continues to ban travel for leisure purposes (Section 1.2.: “Only travel for Essential Activities as defined herein is permitted.”). This Executive Order, which has been extended to May 8, will severely limit travel to vacation destinations like the mountains of North Carolina.

The State’s order remains effective regardless of any action that a local county might take regarding short-term rentals. If the State’s order is extended past May 8, it would continue to impact travel to leisure destinations.

Under Governor Cooper’s announced plans for a phased rescission of the state’s proclamation, leisure travel would become permitted, at the earliest, after the implementation of Phase 2, some two or three weeks after the successive initiation of Phase 1. All of those dates are subject to change depending on the rate of infection across the state and other indicators.