

**AN ORDINANCE AUTHORIZING THE PROCLAMATION OF A STATE OF
EMERGENCY AND THE IMPOSITION OF PROHIBITIONS AND
RESTRICTIONS DURING A STATE OF EMERGENCY**

Under the authority of Article 36A of Chapter 14, Chapter 166A, and Chapter 153A of the North Carolina General Statutes, the County of McDowell ordains:

Section 1. State of Emergency; Restrictions Authorized

- A. State of Emergency shall be deemed to exist whenever during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, for any reason, public safety authorities are unable to maintain public order or afford adequate protection for lives, safety of property, or whenever the occurrence of any such condition is imminent.
- B. In the event of an existing or threatened State of Emergency endangering the lives, safety, health and welfare of the people within McDowell County or any part thereof, or threatening damages to or destruction of property, the Chairperson of the Board of Commissioners of McDowell County is hereby authorized and empowered under Section 14-288.13 and 166A-8 to issue a public proclamation declaring to all persons the existence of such a State of Emergency, and, in order to more effectively protect the lives and property of people within the county, to place in effect any or all of the restrictions hereinafter authorized.
- C. The Chairperson is hereby authorized and empowered to limit by the proclamation the application of all or any part of such restrictions to any area specifically designated or described within the county and to specific 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, firemen 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 person as may be essential to the preservation of public order and immediately necessary to serve the safety, health, and welfare needs of people within the county.

Section 2. Proclamation Imposing Prohibitions and Restrictions

- A. The Chairperson of the Board of Commissioners of McDowell County by proclamation may impose the prohibitions and restrictions specified in Sections 3 through 8 of this ordinance in the manner described in those sections. The Chairperson may impose as many of those specified prohibitions and restrictions as he finds are necessary, because of an emergency to maintain an acceptable

level of public order and services, and to protect lives, safety, and property. The Chairperson shall recite his findings in the proclamation.

- B. The proclamation shall be in writing. The Chairperson 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 County Courthouse. The Chairperson shall send reports of the substance of the proclamation to the mass communications media which serves the affected area. The Chairperson shall retain a text of the proclamation and furnish upon request certified copies of it.

Section 3. Evacuation

The Chairperson may direct and compel the evacuation of all or part of the population of the County of McDowell, to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein. Details of the evacuation may be set forth or amended in a subsequent proclamation which shall be well publicized.

Section 4. 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-hour day to which the curfew applies. The Chairperson may exempt from some or all of the curfew restrictions classes of people whose exemption the Chairperson finds necessary for the preservation of the public health, safety, and welfare. The proclamation shall state the exempted 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 Chairperson by proclamation removes the curfew.

Section 5. Restrictions on Possession, Consumption, or Transfer of Alcoholic Beverages

The proclamation may prohibit the possession or consumption of any alcoholic beverages; including beer, wine, and spirituous liquor other than on one's own premises, and may prohibit the transfer, transportation, sale or purchases of any alcoholic beverage within the area of the County described in the proclamation. The prohibition, if imposed, may apply to transfers of alcoholic beverages by employees of Alcoholic Beverage Control stores as well as by anyone else within the geographical area described.

Section 6. Restriction on Possession, Transportation, and Transfer of Dangerous Weapons and Substances

- A. The proclamation may prohibit the transportation or possession off one's own premises, or the sale or purchase of any dangerous weapon or substance. The Chairperson 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 to the preservation of the public's health, safety, or welfare. The proclamation shall state the exempted classes and the restrictions from which each is exempted.
- B. "Dangerous Weapon or Substance" means:
1. Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device as defined in G.S. 14-288-8(c)(5), gasoline, or other instrument or substance designated for a use that carries a threat of serious bodily injury or destruction of property.
 2. Any other instrument or substance that is capable of being used to inflict serious bodily injury or destruction of property, when the circumstances indicate that there is some probability that such instrument or substance will be so used.
 3. Any part or ingredient in any instrument or substance included above when the circumstances indicate a probability that such a part or ingredient will be so used.
- C. If imposed, the restrictions shall apply throughout the jurisdiction of the County or such part thereof as designated in the proclamation.
- D. A violation of the section shall be punishable as provided in G.S. 14-288.7.

Section 7. Restrictions on Access to Areas

- A. The proclamation 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 Sheriff and his subordinates or other law enforcement officer when directed in the proclamation to do so by the Chairperson. When acting under this authority, the Sheriff and his subordinates may restrict or deny access to any area, street, highway or location within the County if that restriction or denial of access or use is reasonable necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

Section 8. The Proclamation May Prohibit or Restrict

- A. Movement of people in public places;
- B. The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate; and
- C. 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.

Section 9. Removal of Prohibitions and Restriction

The Chairperson shall by proclamation terminate the entire declaration of emergency or remove any of the prohibitions and restrictions when the emergency no longer require them, or when directed to do so by the Board of Commissioners.

Section 10. Superseding and Amendatory Proclamations

The Chairperson in his/her discretion may invoke the restrictions authorized by this ordinance in separate proclamations, and may amend any proclamation by means of a superseding proclamation in accordance with the procedures set forth in Section 2.

Section 11. Termination of Proclamation

Any proclamation issued under this ordinance shall expire five days after its last imposition unless sooner terminated in writing under the same procedures set forth in Section 2 for proclamations.

Section 12. In Case of Absence or Disability of Chairperson

In case of the absence or disability of the Chairperson, the Vice-Chairperson of the Board of Commissioners, or such other person as may be designated by the Board of Commissioners, shall have and exercise all of the powers herein given the Chairperson.

Section 13. Penalty for Violation

Except as provided in Section 6, any person violating any prohibition or restriction imposed by a proclamation authorized by this ordinance shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding fifty dollars (\$50.00) or imprisonment not exceeding thirty (30) days, as provided by G.S. 14-4.

Section 14. Repeal of Conflicting Ordinances

All ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 15. Territorial Applicability

This ordinance shall NOT apply within the corporate limits of any municipality, or within any area of the County over which the municipality has jurisdiction to enact general police-power ordinances, unless the municipality by resolution consents to its application or the Mayor of the municipality has requested its application in which event it shall apply to such area as fully and to the same extent as elsewhere in the County.

Section 16. Validity

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declares that it would have passed this ordinance and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 17. Effective Date of Ordinance

This ordinance shall take effect on the 18th day of July, 1988.

s/Jack A. Wood
Chairman of the
Board of Commissioners
McDowell County, NC

s/Carrie Padgett
Clerk to the Board of
Commissioners
McDowell County, NC

**ATTACHMENT 1 TO APPENDIX
PROCLAMATION OF A COUNTY STATE OF EMERGENCY**

- Section 1. Pursuant to County Ordinance 123 and Chapter 166A of the General Statutes and Article 36A Chapter 14 of the General Statutes, I have determined that a State of Emergency as defined in County Ordinance 123 exists in the County of McDowell.
- Section 2. I, therefore, proclaim the existence of a State of Emergency in the County of McDowell.
- Section 3. I hereby order all county law enforcement officers and employees and all other emergency management personnel subject to my control to cooperate in the enforcement and implementation of the provisions of the county emergency ordinances which are set forth below.
- Section 4. Evacuation. I have determined that, in the best interest of public safety and protection, it is necessary to evacuate the civilian population from the _____ of the _____ (Area) _____ (Roads) County of McDowell. Citizens are free to use any type of transportation, but they are to use only _____ in leaving the county. Evacuation is to occur as soon as possible. Further proclamation concerning evacuation will be issued as needed.
- Section 5. Curfew. Unless a member of the County's law enforcement agency or the emergency management program, every person who is located within a _____ radius of _____ is to be inside a house dwelling from the hours of _____ to _____.
- Section 6. No Alcoholic Beverages. There shall be no sale, consumption, transportation, or possession of alcoholic beverages during the State of Emergency in the County of McDowell, except possession or consumption is allowed on a person's own premises.
- Section 7. No Firearms, Ammunition or Explosives. During the State of Emergency, there shall be no sale or purchase of any type of firearm or ammunition, or any possession of such items along with any type of explosive off owner's own premises.
- Section 8. Execution of Emergency Plan. All civilians and emergency management personnel are ordered to comply with the emergency reaction plan.
- Section 9. This proclamation shall become effective immediately. Proclaimed this _____ day of _____, 20____, at _____ (a.m.) (p.m.)

Chairman of the Board of Commissioners

**ATTACHMENT 2 OF APPENDIX
PROCLAMATION TERMINATING A COUNTY STATE OF EMERGENCY**

- Section 1. On _____, at _____
(am/pm), I determined and proclaimed a local State of Emergency for the
County of McDowell.
- Section 2. On _____, at _____
(am/pm), I ordered the evacuation of all civilians from the area, imposed a
curfew, prohibiting alcoholic beverages, firearms, ammunition and
explosives, and ordered the execution of the emergency reaction plan.
- Section 3. I have determined that a State of Emergency no longer exists in the
County of McDowell.
- Section 4. I hereby terminate the proclamation of a local State of Emergency and all
of the restrictions and orders therein.
- Section 5. This proclamation is effective immediately. Proclaimed this the _____
day of _____, at _____ (am/pm).

Chairman of the Board of Commissioners