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Revealing the Matrix

Publication and Termination Notice for North Carolina Local Government Emergency Prohibitions and Restrictions

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Let me tell you why you're here.
You're here because you know something.
What you know, you can't explain.

—Morpheus[1]

Introduction

North Carolina counties and municipalities (also referred to as *local governments* in this bulletin) may sometimes impose local emergency prohibitions or restrictions during locally declared states of emergency.[2] The North Carolina Emergency Management Act (EMA) has a provision (the *publication provision*) that discusses "publication" of local emergency prohibitions or restrictions, which could impact when imposed local emergency prohibitions or restrictions actually go into effect.[3] The EMA also has a provision (the *termination-notice provision*) discussing when and how local governments must give notification about when local emergency prohibitions or restrictions "expire or terminate" (*terminate* or *end* in this bulletin).[4] The publication and termination-notice provisions are particular to the EMA; a different provision may apply when publishing or giving notice in other contexts.[5] Understanding these specific provisions could therefore be important for local governments desiring to put local emergency prohibitions or restrictions into effect and terminate them.

1. The Matrix, Univ. of N.C. at Chapel Hill Libr. at 27:03–27:10 (Warner Bros., Village Roadshow Pictures, Groucho Film Partnership, Silver Pictures, 3 Arts Entertainment 1999).

2. *See* Chapter 166A, Section 19.31, Subsection (a) of the North Carolina General Statutes [hereinafter G.S.].

3. *See* G.S. 166A-19.31(d) (discussing circumstances under which "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section shall take effect"). The bulletin will distinguish between prohibitions and restrictions *that have been imposed* and prohibitions and restrictions *that have taken effect* because the EMA appears to treat these terms differently. Per the language quoted above, "imposed" prohibitions and restrictions may not have yet "take[n] effect." *See* G.S. 166A-19.31(d). The bulletin assumes that "take effect" and similar phrasings mean something like "become legally enforceable." *See* Norma Houston, *New Law Requires Electronic Publication of Local State of Emergency Declarations*, Coates' Canons: N.C. Local Gov't L. Blog (July 7, 2020), https://canons.sog.unc.edu/2020/07/new-law-requires-electronic-publication-of-local-state-of-emergency-declarations/ (seeming to state that a state of emergency that "take[s] effect" would "be enforceable" and connecting the terms "effective" and "enforceable"). The bulletin also assumes that "impose" and its variants mean something like "specifically establish." The bulletin further assumes that "imposed" prohibitions or restrictions are essentially specifically established prohibitions or restrictions that may or may not have been put into effect.

4. *See* G.S. 166A-19.31(e1).

5. *Compare* G.S. 166A-19.31(d) ("This subsection shall not be governed by the provisions of G.S. 1-597."), *with* G.S. 1-597 (discussing publication "[w]henever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina . . . or by any order or judgment of any court of this State to be published or advertised in a newspaper"), *and* G.S. 166A-19.31(e1) (discussing notice "[a]t the time prohibitions or restrictions imposed pursuant to this section and states of emergency declared pursuant to G.S. 166A-19.22 expire or terminate").

Norma Houston wrote a post in 2020 about publication of local emergency prohibitions and restrictions.[6] That post discussed how the law had changed after a "new" provision that the General Assembly created.[7] That "new" provision, the publication provision, has now been around for several years, and the law has changed again since that post, with the added termination-notice provision.[8] The law also presents some challenges and questions not covered or not covered in great detail in the prior post.[9] This bulletin discusses, in depth, the publication and termination-notice provisions and explores some related law.

Theme and Organization

Readers may find referencing the 1999 film *The Matrix* helpful for grappling with this topic. For those unfamiliar, *The Matrix* focuses on Thomas "Neo" Anderson (Keanu Reeves). Neo has a day job as an office worker. For him, life is generally mundane, routine, and uninteresting in the confines of his cubicle. But Neo also has an interest in computer hacking that he pursues in his spare time. Through hacking, Neo begins to suspect that the world may be more complicated than it appears. Neo learns of something called the Matrix, which may unveil hidden truths about the nature of reality. Neo eventually meets Morpheus (Laurence Fishburne), a mysterious figure who offers to show Neo the truth about the Matrix and the world. But he warns Neo that after seeing the truth, he will not be able to return to life as it once was. He gives Neo a choice to take one of two pills: a blue pill that will essentially return him to life as he knew it or a red one that will let him learn more. Neo takes the red pill. He discovers that "the Matrix" is a computer simulation in which most human beings (including Neo) have been living their entire lives, with their actual, physical bodies plugged in. For the most part, these humans are completely unaware that their whole experience of existence has been simulated. But sometimes, small "glitches" in the Matrix drop hints that all may not be as simple as it seems. Neo spends the film learning more and negotiating his new understanding of reality.[10]

Learning about the publication and termination-notice provisions may feel much like living in and then discovering the Matrix: At first glance, these provisions may seem simple, straightforward, and unremarkable. Readers may have interacted with these provisions (perhaps in an office like Neo's) without many second thoughts. But small pieces of the law give glimpses of a more complex reality. When readers explore more, they may discover that the provisions have depth and nuance that are not evident at first glance. They may then have to contend with what these complexities mean for their lives.

The bulletin is divided into three parts that parallel Neo's journey in portions of *The Matrix*. Part I represents Neo's life until he meets Morpheus and chooses the red pill. It provides a general overview of some relevant law that gives context for the rest of the bulletin. Relatedly, Part I also presents the publication and termination-notice provisions at a basic, high level. Additionally, this part will begin to flag some of the complexities and questions raised by these provisions. After Part I, readers will see this area of law as it may appear at first glance. But they may also recognize that the law has more nuance and might wish to deepen their understanding.

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6. Houston, *supra* note 3.
7. *Id.* (citing S.L. 2020-83, § 11.7).
8. *See id.*; S.L. 2022-57 (adding the termination-notice provision); G.S. 166A-19.31(e1).
9. *See* Houston, *supra* note 3.
10. *See generally* The Matrix, Univ. of N.C. at Chapel Hill Libr. (Warner Bros., Village Roadshow Pictures, Groucho Film Partnership, Silver Pictures, 3 Arts Entertainment 1999) (showing what happens to Neo).

Part II represents the period when Neo chooses the red pill and begins to learn more about the Matrix. It addresses a variety of the complexities and questions that the provisions raise. Part III represents Neo's continued, deeper exploration of the Matrix. Some of the most complicated questions in this area of law may appear when one local government attempts to "share" an emergency area with another. Part III addresses these issues. Like *The Matrix*, the bulletin also offers a way, including in a conclusion following Part III, to reflect on how to consider proceeding after achieving a newfound understanding.[11]

Notes on the Tables and Appendix, and Bulletin

Since Parts II and III address numerous legal issues, tables (notably not matrices) follow them summarizing the major points from each respective part. These tables can be references for readers who need a quick reminder on the bulletin's conclusions. However, to remain brief, the tables are not very detailed and gloss over some of the nuances discussed elsewhere in the bulletin. So just reading the tables is not sufficient to understand this topic, and reading the tables is not a substitute for reading the bulletin. Readers are encouraged to refer to the tables only after reading the entire bulletin and getting a deeper grasp of this subject. Readers may also benefit from reading the bulletin, consulting the tables, and then referring back to the bulletin for more detail if needed.

Following the main text, the bulletin also includes a one-page appendix summarizing one possible approach for local government publication and termination notice under the publication and termination-notice provisions. The approach presented would err on the side of doing more work than might be required to publish or give termination notice under these provisions. But using an approach like this one might help with complying with the law, putting prohibitions or restrictions into effect, and/or increasing public knowledge. The appendix may be helpful as a reference for local government staff who want to go this general route or to just see a compact summary of a potential approach. Local government staff may also consider speaking with their own local government's attorney to help determine how to move forward in their specific situation. Like with the tables, readers are encouraged to read the appendix after reviewing the entire bulletin and to refer back to the bulletin as needed. The appendix glosses over details and nuances to be brief and convenient, and reading the appendix is also not a substitute for reading the bulletin. Note further that the appendix is not a guide, recommendation, or set of "best practices" for publishing or giving termination notice. As will be discussed below, the publication and termination-notice provisions might sometimes be subject to different interpretations. The appendix simply outlines one possible pathway for addressing publication and termination notice, providing another manner, beyond the bulletin and tables, for readers to grasp the topic.

11. *See generally id.* (showing how people who have taken the red pill proceed).

Part I. Background and Overview

This *is the world that you know.*

—Morpheus[12]

Before delving into the complexities, the bulletin first gives a broad overview of some relevant law to orient the reader. This part starts with some context for when local governments might impose emergency prohibitions or restrictions. It then lays out the publication and termination-notice provisions at a high level.

General Background

"The governing bod[ies]" of local governments have authority to declare "[a] state of emergency" if these "governing bod[ies] . . . find[] that an emergency exists."[13] North Carolina municipalities and counties may also delegate this authority "by ordinance to the mayor of a municipality or to the chair of the board of county commissioners of a county," respectively.[14]

During these locally declared states of emergency, North Carolina local governments are authorized to impose certain emergency prohibitions or restrictions in certain circumstances.[15] Again, authority in this area "may be delegated by ordinance to the mayor of a municipality or to the chair of the board of county commissioners of a county."[16] The potential types of prohibitions and restrictions authorized to be imposed under Chapter 166A, Section 19.31 of the North Carolina General Statutes [hereinafter G.S.] are listed more specifically in that section.[17] Violations of these emergency prohibitions or restrictions may be punished as misdemeanors.[18]

The process for putting these imposed prohibitions or restrictions into effect can involve several key steps, including (1) adoption of an ordinance (or ordinances) that would describe which types of prohibitions or restrictions that the local government may impose during a local state of emergency; (2) a local declaration of a state of emergency under G.S. 166A-19.22, which would "activate" these ordinance(s); and, most relevant of all to this bulletin, (3) proper

12. *Id.* at 40:32–40:34.
13. G.S. 166A-19.22(a).
14. *Id.*
15. *See id.* § 19.31(a)–(b).
16. *See id.* § 19.31(a).
17. *Id.* § 19.31(b) (providing that local governments are allowed to adopt ordinances that "permit prohibitions and restrictions" related to a number of areas, including, for instance, "movements of people in public places" or "the operation of offices, business establishments, or other places to or from which people may travel or at which they may congregate"). Note, though, that Section 19.31 signals another important nuance on this point: Section 19.31(f) clarifies that "[Section 19.31] is intended to supplement and confirm the powers conferred by G.S. 153A-121(a), G.S. 160A-174(a), and all other general and local laws authorizing municipalities and counties to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency." G.S. 166A-19.31(f). In other words, the law seems to explicitly affirm that counties and municipalities have broader powers, outside of G.S. 166A-19.31, to address emergencies. *See id.* But the EMA does not specify the precise bounds of this authority.
18. *See* G.S. 166A-19.31(h).

publication, under the publication provision in G.S. 166A-19.31(d), of any relevant declaration in a specific state of emergency.[19] The law then also has a provision about providing notice once relevant prohibitions or restrictions end.[20]

The EMA gives some guidance on local governments' authority to impose prohibitions or restrictions under G.S. 166A-19.31 during a state of emergency.[21] The law notes that local governments "*may enact* ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.22."[22] The law later states that "ordinances authorized by this section *may permit* prohibitions and restrictions" and then lists the types of prohibitions and restrictions authorized under Section 19.31.[23] The law goes on to say that "ordinances authorized by this section [G.S. 166A-19.31] need not require or provide for the imposition of all types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency."[24] The law allows the ordinances to "instead authorize the official or officials who impose those prohibitions or restrictions to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency."[25]

This language indicates that local governments have discretion in this area. Section 19.31 does not require local governments to adopt any ordinances authorizing any prohibitions or restrictions.[26] But if local governments do want to adopt any such ordinances, Section 19.31 appears to allow these ordinances to authorize anywhere from one to all of the listed prohibitions or restrictions.[27] The language also appears to say that just because a local government's ordinance *authorizes* a type of prohibition or restriction does not mean that that local government's ordinance must require *actually imposing* a prohibition or restriction of that type in every declared state of emergency.[28] The law appears to allow the ordinances to give appropriate officials a certain amount of choice about which (if any) prohibitions or restrictions to impose.[29]

These types of prohibitions and restrictions would be imposed in "emergency area[s]," which are "[t]he geographical area[s] covered by . . . state[s] of emergency."[30] For municipalities, the default emergency area is the whole "area over which the municipality . . . has jurisdiction to enact general police-power ordinances."[31] For counties, the default emergency area is the whole "area over which the . . . county has jurisdiction to enact general police-power ordinances," minus "any area within the corporate limits of any municipality . . . or . . . any area of the county over which a municipality has jurisdiction to enact general police-power ordinances."[32] But these emergency areas might be limited to smaller subsets of local government jurisdictions.[33]

19. *Id.* §§ 19.22, 19.31.
20. *See id.* § 19.31(e1).
21. *See id.* § 19.31.
22. *Id.* § 19.31(a) (emphasis added).
23. *Id.* § 19.31(b) (emphasis added).
24. *Id.*
25. *Id.*
26. *See id.* § 19.31.
27. *See id.* § 19.31(b).
28. *See id.*
29. *See id.*
30. *See id.* §§ 19.3(7), 19.31.
31. *Id.* § 19.22(b)(1).
32. *Id.* § 19.22(b)(1)–(2).
33. *See id.* § 19.22(b)(1).

Additionally, sometimes, one local government's emergency area might be extended into another local government's jurisdiction:

First, under some limited circumstances and subject to certain constraints, "[t]he board of commissioners or chair of the board of commissioners of any county . . . may by declaration extend the emergency area of a state of emergency declared by a municipality" to parts of the county.[34] In doing so, some or all of the municipally imposed emergency prohibitions and restrictions may be imposed in parts of the county.[35] In an apparent exception to normal procedures, this action appears allowed even if the county itself has no ordinances authorizing the imposition of prohibitions or restrictions under G.S. 166A-19.31.[36] That provision discusses how local governments would impose the emergency prohibitions or restrictions specified there given an ordinance authorizing such prohibitions or restrictions.[37]

Second, a "municipality's governing body or mayor" may "consent[] to or request[]" having a county's emergency area extend into the municipality's jurisdiction.[38] In these cases, some or all of the county's emergency prohibitions or restrictions potentially may be imposed in the municipality.[39] One detail is important to emphasize in this case. Unlike with the county extension mechanism mentioned above, the law does not specify that an additional "declaration" is involved for this kind of extension.[40]

General Overview of the Publication Provision in G.S. 166A-19.31(d)

Publishing under the publication provision is the express process that the EMA provides that leads certain imposed local emergency prohibitions and restrictions to go into effect.[41] Under G.S. 166A-19.31(d), "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section shall take effect in the emergency area immediately upon publication of the declaration unless the declaration sets a later time."[42] The EMA specifies that "[p]ublication" as described in G.S. 166A-19.31(d) "shall include at least"

1. placing a "conspicuously posted," signed declaration copy on the local government's website, if one exists, and

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34. *Id.* § 19.22(b)(3).

35. *See id.*

36. *See id.*

37. *See id.* § 19.31.

38. G.S. 166A-19.22(b)(2).

39. *See id.* Note that it does not seem clear whether all of the county's prohibitions or restrictions may always be imposed in a municipality under Section 19.22. For example, suppose that the municipality has not passed ordinances authorizing the types of prohibitions or restrictions that the county is imposing. In that instance, it does not seem clear whether the municipality may consent to having emergency prohibitions or restrictions imposed that the municipality itself did not authorize by ordinance.

40. *Compare* G.S. 166A-19.22(b)(2) (not mentioning a declaration), *with* G.S. 166A-19.22(b)(3) (discussing an extension "by declaration").

41. *See* G.S. 166A-19.31(d).

42. *Id.* The phrase "unless the declaration sets a later time" is explored in greater detail in Part II.

Note also that some steps aside from this "publication" might be enough to put certain locally imposed emergency prohibitions and restrictions into effect in some circumstances. The language referenced applies specifically to "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]." G.S. 166A-19.31(d). So to the extent that any local-government-imposed prohibitions or restrictions are *not* "imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]," those prohibitions or restrictions might be put into effect differently. *See* State *ex rel.* Hunt v. N.C. Reinsurance

2. "submittal of notice and a signed copy of the declaration to the Department of Public Safety [DPS] WebEOC [Web Emergency Operations Center] critical incident management system."[43]

These actions are what this bulletin will call the *baseline requirements* for publication under G.S. 166A-19.31(d). But more efforts may be required to achieve such publication (see below).

The EMA further notes that "publication" under G.S. 166A-19.31(d) "may also consist of reports of the substance of the prohibitions and restrictions" in certain "media . . . or other effective methods of disseminating the necessary information quickly."[44] But these efforts are not necessarily required to achieve initial publication (see Part II for more).

The EMA does then state, though, that "[a]s soon as practicable . . . appropriate distribution of the full text of any declaration shall be made."[45] As noted above, the baseline requirements for publication seem to include just the website posting (if applicable) and WebEOC submission. But some additional "appropriate distribution" might, in some cases, be required to achieve initial publication or then be required after a local government publishes under the publication provision. Again, see Part II for more details.

The EMA also highlights that G.S. 166-19.31(d) "shall not be governed by the provisions of G.S. 1-597," which provides general standards for how to publish notices or other items in a newspaper in North Carolina if publishing in that manner is "authorized or required by any of the laws of the State of North Carolina."[46] This point is important to flesh out. Publication under G.S. 166A-19.31(d) is *different* from these newspaper publication standards.[47] So following G.S. 1-597 does not mean that a local government has done "publication" under G.S. 166A-19.31(d).[48]

Facility, 275 S.E.2d 399, 407 (N.C. 1981) (noting that "[w]here a statute sets forth . . . the instances of its application or coverage, other . . . coverage [is] necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))). *But see* Marx v. Gen. Revenue Corp., 568 U.S. 371, 381 (2013) (noting "that the [*expressio unius*] canon can be overcome by 'contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion'" (quoting United States v. Vonn, 535 U.S. 55, 65 (2002))). Relatedly, note that this part of the EMA technically does not state that "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]" may go into effect *only* if "publication" occurs. However, this section does not seem to explicitly state any other condition under which these prohibitions and restrictions may go into effect, which might suggest that no other method would work. *See State ex rel. Hunt*, 275 S.E.2d at 407 (noting that "[w]here a statute sets forth one method for accomplishing a certain objective . . . other methods . . . are necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))). *But see Marx*, 568 U.S. at 381 (citing *Vonn*, 535 U.S. at 65). Houston also seems to take the view that publication is the only manner for putting the prohibitions and restrictions into effect. *See* Houston, *supra* note 3. So publishing under G.S. 166A-19.31(d) seems like the most certain path for local governments to do so. Nonetheless, the phrasing here may leave open the possibility that these prohibitions or restrictions might go into effect in some other manner. The bulletin addresses this general topic area further below.

43. G.S. 166A-19.31(d). Municipal governments may coordinate through their counties to submit information through WebEOC. *See* Houston, *supra* note 3. Note also that what exactly counts as a "website" does not seem completely clear. But the bulletin is written assuming that a "website" would be accessible to the general public.

44. G.S. 166A-19.31(d).

45. *Id.*

46. *Id.*; G.S. 1-597.

47. *Contrast* G.S. 166A-19.31(d), *with* G.S. 1-597 (showing different standards).

48. *Contrast* G.S. 166A-19.31(d), *with* G.S. 1-597 (showing different standards).

Finally, note that the publication provision does not appear to say directly that governments *must* publish any "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31(d)]."[49] Instead, the publication provision more directly addresses (1) what local governments *must or may do to* publish those prohibitions or restrictions under the publication provision and (2) what the effect of proper publication under the publication provision is—making those "prohibitions or restrictions . . . take effect" either "immediately" or "later."[50]

General Overview of the Termination-Notice Provision in G.S. 166A-19.31(e1)

A local government emergency prohibition or restriction under G.S. 166A-19.31 ends when (1) "the official or entity that imposed" it ends it or (2) "[t]he state of emergency terminates," whichever happens first.[51] "At the time prohibitions and restrictions imposed pursuant to this section [G.S. 166A-19.31] and states of emergency declared pursuant to G.S. 166A-19.22 expire or terminate," a local government is required to both

1. "conspicuously" post notice that the prohibition or restriction has ended on the local government's website, if one exists, and
2. "submit a notice" that the prohibition or restriction has ended to "[DPS's] WebEOC . . . system."[52]

The General Assembly added this provision in 2022, after Houston's previous post.[53] The termination-notice provision has some similar features to the publication provision.[54] But note that here, the law does not include a discussion of sending out general information (via media or otherwise) or mention "appropriate distribution" of the termination notice, instead focusing on just two actions.[55]

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49. *See* G.S. 166A-19.31(d).

50. *See id.*

51. *Id.* § 19.31(e).

52. *Id.* § 19.31(e1). Note especially that this provision relates to "prohibitions and restrictions imposed pursuant to this section and states of emergency declared pursuant to G.S. 166A-19.22." *Id.* To the extent that the prohibitions or restrictions do not meet these criteria, the provision may not apply. *See* State *ex rel.* Hunt v. N.C. Reinsurance Facility, 275 SE.2d 399, 407 (N.C. 1981) (noting that "[w]here a statute sets forth . . . the instances of its application or coverage, other . . . coverage [is] necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))). *But see* Marx v. Gen. Revenue Corp., 568 U.S. 371, 381 (2013) (noting "that the [*expressio unius*] canon can be overcome by 'contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion'" (quoting United States v. Vonn, 535 U.S. 55, 65 (2002))). The bulletin discusses this general topic more below.

53. *See* Houston, *supra* note 3; S.L. 2022-57 (adding termination-notice requirements).

54. *Compare* G.S. 166A-19.31(d), *with* G.S. 166A-19.31(e1) (showing similarities).

55. *See* G.S. 166A-19.31(e1). The termination-notice provision also does not specify that the provision is "not . . . governed by . . . G.S. 1-597." *See id.*; G.S. 166A-19.31(d). This point is speculation, but the law may not mention G.S. 1-597 here because the termination-notice provision does not talk about "publication" or sending out information via the media. *See* G.S. 166A-19.31(e1). And in context, G.S. 1-597 seems unlikely to apply to the termination-notice provision. G.S. 1-597 says that "[w]henever a notice . . . shall be authorized or required by any of the laws of the State of North Carolina . . . to be published or advertised in a newspaper, such . . . notice shall be of no force and effect unless it shall be published" as described in G.S. 1-597. G.S. 1-597(a). But the termination-notice provision discusses just two required notice methods, neither of which are newspaper publication or advertisement; the provision does not discuss other notice and does

Part I has presented a high-level overview of and some context for the publication and termination-notice provisions. Knowing the basics about these provisions could be important. But Part I also revealed some further complexities with the provisions that are not yet addressed in depth. Readers now have a choice: stop here with this basic understanding or continue to Part II to begin diving into the details.

Part II. Some Advanced Topics

This is your last chance. After this, there is no turning back.

—Morpheus[56]

Readers who have come this far have taken the metaphorical red pill. In Part II, they will now explore some of the nuances of the law on the publication and termination-notice provisions in G.S. 166A-19.31.

Publication when Delaying Imposition of Local Emergency Prohibitions or Restrictions

The EMA states that "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section [G.S. 166A-19.31] shall take effect in the emergency area immediately upon publication of the declaration *unless the declaration sets a later time*."[57] In other words, a local government appears allowed to delay when prohibitions or restrictions take effect.[58]

But take note: Choosing to delay in this manner would not mean that the prohibitions or restrictions go into effect *automatically* after a delay, without any steps taken to make them effective. The phrase "a later time" seems to suggest a time after the local government has taken proper steps to put the prohibitions or restrictions in effect. So this phrasing seems to allow, for instance, a local government to properly publish under the publication provision but specify in its declaration that any prohibitions or restrictions will go into effect sometime *after publication*.

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not mention newspaper publication or advertisement at all. *See* G.S. 166A-19.31(e1). I am also not aware of authority stating that G.S. 1-597 might apply in this specific context, which relates to a scenario in which "notice" is not "authorized or required by any of the laws of the State of North Carolina . . . to be published or advertised in a newspaper." So G.S. 1-597 does not seem like it would apply. *See State ex rel. Hunt*, 275 S.E.2d at 407 (noting that "[w]here a statute sets forth . . . the instances of its application or coverage, other . . . coverage [is] necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))). *But see Marx*, 568 U.S. at 381 (2013) (noting "that the [*expressio unius*] canon can be overcome by 'contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion'" (quoting *Vonn*, 535 U.S. at 65)).

56. The Matrix, Univ. of N.C. at Chapel Hill Libr. at 28:59–29:03 (Warner Bros., Village Roadshow Pictures, Groucho Film Partnership, Silver Pictures, 3 Arts Entertainment 1999).

57. G.S. 166A-19.31(d) (emphasis added).

58. *See id.*

To be clear, publishing under the publication provision only once in this scenario, following the initial declaration, seems sufficient to make the prohibitions or restrictions go into effect at "a later time."[59] In other words, to make the prohibitions or restrictions take effect, publication does not seem to be necessary again at the "later time" or otherwise; the information about these prohibitions or restrictions and when they will go into effect was already included with the initial declaration.[60] These prohibitions and restrictions are also not different from or in addition to those in the initial declaration.[61] Perhaps most critically, the text of G.S. 166A-19.31(d) also does not specify any further or different publication when prohibitions or restrictions take a delayed effect.[62]

Putting Amended or Additional Emergency Prohibitions or Restrictions into Effect and Ending Them

Suppose that a local government made some "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31] . . . take effect . . . immediately" by properly publishing the relevant declaration under the publication provision.[63] Then suppose that the local government amends those prohibitions or restrictions or adds new ones. Would any amended or added "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]" be in effect automatically, given that the original declaration got published?

Probably not. The publication provision talks about when certain types of prohibitions or restrictions "shall take effect."[64] So presumably, something must happen to put such prohibitions and restrictions into effect. Publishing the original declaration would seem to put the *original* prohibitions and restrictions into effect.[65] But these amended or added prohibitions or restrictions would be different and new, so some further action seems required to put them into effect; properly publishing the amended or added prohibitions or restrictions under the publication provision would seem sufficient for that purpose.[66]

Would the law require termination notice for any such amended or added prohibitions or restrictions?

Probably so. The termination-notice provision requires termination notice "[a]t the time prohibitions and restrictions imposed pursuant to this section and states of emergency declared pursuant to G.S. 166A-19.22 expire or terminate."[67] And the termination-notice provision appears to require notice for any such prohibitions or restrictions that end.[68] So termination notice appears required for any amended or added prohibitions or restrictions that have these features.

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59. *See* correspondence from Norma Houston to Taylor Morris (July 16, 2025, 06:53 p.m. EDT) (email attachment) (on file with author) (containing comments on draft writing about this subject); G.S. 166A-19.31(d).
60. *See id.*
61. *See id.*
62. *See* G.S. 166A-19.31(d).
63. *See id.*
64. *Id.*
65. *See* Houston, *supra* note 3.
66. *See id.*
67. G.S. 166A-19.31(e1).
68. *See id.*

Contrast these points with the previous example involving delayed prohibitions or restrictions. Here, different prohibitions or restrictions (either entirely new prohibitions or restrictions or modified ones) would be imposed beyond what was already included in the initial declaration. So local governments seem independently required to put those prohibitions or restrictions into effect and give notice of their ending, again assuming that they have the features mentioned in the law.

Publication and Termination Notice when a Declaration of a State of Emergency Contains No Emergency Prohibitions or Restrictions

Might the publication provision come into play for local declarations of states of emergency imposing *no* prohibitions or restrictions?

A good argument exists that the publication provision is *not* relevant to such declarations. The provision seems focused on outlining when and how publication would give effect to certain prohibitions or restrictions in declarations.[69] A declaration imposing zero prohibitions or restrictions may be outside of the scope of the publication provision.[70]

But Houston has noted that the law is not completely clear on this point.[71] Suppose that a declaration that includes no prohibitions and restrictions is later amended to impose prohibitions or restrictions "pursuant to ordinances adopted under [G.S. 166A-19.31]."[72] The law says that "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section [G.S. 166A-19.31] shall take effect . . . immediately upon publication of the declaration."[73] So publication under the publication provision might, in this scenario, involve some publication of the original declaration to put the prohibitions or restrictions into effect.[74]

Local governments might be safer in trying to publish all declarations or amended declarations under the standards of G.S. 166A-19.31, whether or not they contain prohibitions or restrictions.[75] Doing so might also help keep the general public informed, which might be a goal of local governments.

What about termination notice for local declarations that contain no prohibitions or restrictions? The EMA does not discuss termination notice just for declarations; the EMA's termination-notice provision talks specifically about "notice of the expiration or termination of the prohibition[s] or restriction[s]" described in the law.[76] But local governments might decide that they want to let the general public know about all terminated local declarations as well, again in the interest of keeping people informed.

What Is "Conspicuously" Posting?

The publication and termination-notice provisions discuss "conspicuously" posting information on a local government website (if one exists).[77] The EMA does not give explicit guidance on what "conspicuously" posting means. I am also not aware of case law that explains what

69. *See* G.S. 166A-19.31(d).
70. *See* Houston, *supra* note 3.
71. *See id.*
72. G.S. 166A-19.31(d).
73. *Id.*
74. *See* Houston, *supra* note 3.
75. *See id.*
76. G.S. 166A-19.31(e1).
77. *Id.* § 19.31(d), (e1).

"conspicuously" means in this specific context. Under North Carolina law, an interpreter of a statute may be allowed to use a dictionary to understand a word's meaning where (1) the statute itself does not say what the word means and (2) a court has not decided what the word means in that context.[78] *Conspicuously* is the adverb form of the adjective *conspicuous*. Merriam-Webster's online dictionary defines *conspicuous*, the adjective form, as "obvious to the eye or mind" and "attracting attention : STRIKING."[79] So if these definitions are any guide, a posting buried in fine print may be unlikely to be made sufficiently "conspicuously." And the posting may need to be more easily noticeable than average or typical website content to be conspicuous enough, given descriptors like "obvious," "attracting attention," or "striking" in the definitions.[80] But the exact threshold for an acceptably conspicuous posting is not clear. Local governments could consider proceeding by attempting to minimize the chances of a dispute over whether they have done any posting "conspicuously" under the law.

What Does "Shall Include at Least" Mean?

The EMA says that "[p]ublication shall include at least" the baseline requirements described in Part I: (1) a website posting, "if the municipality or county has a website," and (2) a "submittal on "[DPS's] WebEOC . . . system."[81] The law goes on to say that "[p]ublication may also consist of" certain other items.[82] *Shall include at least* might be interpreted in two very different ways here. One interpretation (the *sufficient interpretation*) might be that meeting the baseline requirements is always sufficient for achieving publication under G.S. 166A-19.31(d) but that taking other, optional steps is also allowed. A second (the *necessary interpretation*) might be that meeting the baseline requirements is always *necessary* to achieve such publication but that doing so alone is not always *sufficient*; taking other steps may be not just allowed but necessary sometimes to achieve publication. In both interpretations, local governments need to perform the baseline requirements mentioned in G.S. 166A-19.31(d) to publish under that provision. The question is whether local governments might ever be required to do more to have published as described in G.S. 166A-19.31.

The answer is probably yes. If the sufficient interpretation is right, the general public might sometimes have no affirmative notice that prohibitions and restrictions went into effect or will go into effect. If the local government has no website, the baseline requirements do not involve any public posting anywhere.[83] They only involve a submittal on DPS's WebEOC system, which is not

78. *See In re* Appeal of Oak Meadows Cmty. Ass'n, 899 S.E.2d 404, 407 (N.C. Ct. App. 2024) (first citing *In re* Appeal of R.W. Moore Equip. Co., 443 S.E.2d 734, 736 (N.C. Ct. App. 1994); and then citing Parkdale Am., LLC v. Hinton, 684 S.E.2d 458, 461 (N.C. Ct. App. 2009)); *Parkdale*, 684 S.E.2d at 461 (citing Perkins v. Ark. Trucking Servs., Inc., 528 S.E.2d 902, 904 (N.C. 2000)).

79. *Conspicuous*, Merriam-Webster, https://www.merriam-webster.com/dictionary/conspicuous (last visited Apr. 10, 2026) (all caps in original).

80. A plausible alternative argument might exist, to the extent that one believes that the text must be "conspicuous" in an absolute sense, rather than relative to other content. For instance, perhaps the average or typical content on a local government website would already be so conspicuous that posting the information on the website in that average or typical style would meet the standard.

81. G.S. 166A-19.31(d).

82. *Id.*

83. *See id.* (mentioning "posting" on a local government "website . . . if the municipality or county has a website").

publicly accessible.[84] Imagine also that a county or municipality with no website has delegated its authority to impose local emergency prohibitions or restrictions under G.S. 166A-19.31 to the chair of its board of commissioners or its mayor, respectively.[85] In that case, the chair or mayor might do so by issuing a declaration outside of a public meeting or other public setting.[86] Issuing such a declaration would "activate the local ordinances authorized in G.S. 166A-19.31" and, in certain circumstances, may require the chair or mayor to give some notification of any such ordinance to the public or others.[87] Doing so might at least give some people some idea that the local government may be planning to put local emergency prohibitions or restrictions into effect. But in other circumstances, no public alert might occur through which the general public could have heard (1) that local emergency prohibitions or restrictions were planned to be put into effect during a specific emergency or (2) what the specific prohibitions or restrictions would be once in effect. Plus, recall that declaring a local state of emergency during an emergency is optional.[88] Imposing any local emergency prohibitions or restrictions during a locally declared state of emergency is also optional.[89] So even in the face of emergency conditions, the general public might not necessarily expect emergency prohibitions or restrictions to go into effect. In some situations, the general public thus might not even have good reason to suspect that any such prohibitions or restrictions *might* be imposed, let alone know that prohibitions or restrictions *had* actually been imposed and gone into effect.

On this last point, suppose also that a local government with no website did decide at a public meeting to impose emergency prohibitions and restrictions. Suppose further that the local government publicly outlined what the prohibitions and restrictions would be. That information alone would not alert the public that the prohibitions or restrictions had actually gone into effect. That information just indicates that the local government *may intend* to put them into effect and may take such steps at some later time. *Publication* of any "prohibitions or restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31(d)]" of course *would* indicate that the prohibitions and restrictions are or will be in effect.[90] But if WebEOC submittal alone satisfies "publication," a local government would sometimes be allowed to put

84. *See id.*; *cf.* Houston, *supra* note 3 (noting that a "city must rely on the county to post [a] declaration in WebEOC").

85. *See generally* G.S. 166A-19.31(a) (noting that "[a]uthority to impose by declaration prohibitions and restrictions under this section, and to impose those prohibitions and restrictions at a particular time as appropriate, may be delegated by ordinance to the mayor of a municipality or to the chair of the board of county commissioners of a county").

86. *Cf.* G.S. 143-318.10 (discussing public meetings for "official meeting[s] of a public body," where a "public body" must be "composed of two or more members").

87. G.S. 166A-19.22(d) (discussing what happens upon declaring a state of emergency under G.S. 166A-19.22); *id.* § 19.31(c) (noting that "upon the declaration of a state of emergency by the mayor or chair of the board of county commissioners within the municipality or the county, any ordinance enacted under the authority of this section shall take effect immediately unless the ordinance sets a later time. If the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to the municipality or county, the mayor or chair of the board of county commissioners, as the case may be, shall take steps to cause reports of the substance of the ordinance to be disseminated in a fashion that its substance will likely be communicated to the public in general, or to those who may be particularly affected by the ordinance if it does not affect the public generally. As soon as practicable thereafter, appropriate distribution or publication of the full text of any such ordinance shall be made.").

88. *See* G.S. 166A-19.22.

89. *See id.* § 19.31.

90. *See id.*

such emergency prohibitions and restrictions into effect without alerting the general public at all.[91] So the sufficient interpretation may be incorrect because it might sometimes frustrate a major potential purpose of having a publication provision to begin with: giving the general public a chance to know when imposed, criminally enforceable emergency prohibitions or restrictions may be in effect.[92]

Relatedly, just following the baseline requirements to publish may also raise concerns under the Due Process Clause in the Fourteenth Amendment of the federal Constitution.[93] The local government would be allowed to put into effect criminally enforceable emergency prohibitions or restrictions (1) that are not normally in effect and (2) that could temporarily criminalize commonplace behaviors that are not normally crimes; these criminally enforceable prohibitions and restrictions also would be allowed to go into effect (1) with no publicly accessible notice that the local government was imposing them and (2) potentially with no notice that local prohibitions or restrictions were even planned to be imposed for this specific emergency.[94] In that instance, the local government may not have given fair notice under the Due Process Clause that the prohibited or restricted activities are now, temporarily, crimes.[95] An interpretation of a statute that raises "constitutional doubts" may be disfavored if an alternate interpretation is available that would not raise those doubts.[96]

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91. *See id.* § 19.31(d).

92. *See id.*; *see also* Ridge Cmty. Invs., Inc. v. Berry, 239 S.E.2d 566, 570 (N.C. 1977) (stating that "[i]n interpreting statutes, the primary duty of this Court is to ascertain and effectuate the intent of the Legislature" (first citing Newlin v. Gill, 237 S.E.2d 819 (N.C. 1977); then citing State Highway Comm'n v. Hemphill, 153 S.E.2d 22 (N.C. 1967); and then citing Lockwood v. McCaskill, 136 S.E.2d 67 (N.C. 1964))).

93. The Fourteenth Amendment says that states may not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Note that N.C. Const. art. I, § 19 has a similar provision, stating that "[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land." N.C. Const. art. I, § 19. The North Carolina Supreme Court has stated that this phrase, "the law of the land," is equivalent to the Fourteenth Amendment's "due process of law." *See* Parish v. E. Coast Cedar Co., 45 S.E. 768, 770 (N.C. 1903) (stating that "[i]t is well settled that the phrases 'due process of law' and 'the law of the land' mean identically the same thing, and the authorities on each are cited interchangeably"). The United States Supreme Court has also clarified that "a State's political subdivisions must comply with the Fourteenth Amendment," adding that "[t]he actions of local government are the actions of the State." Avery v. Midland Cnty., 390 U.S. 474, 480 (1968) (first citing Cooper v. Aaron, 358 U.S. 1, 16 (1958); then citing See v. City of Seattle, 387 U.S. 541 (1967); then citing Thompson v. City of Louisville, 362 U.S. 199 (1960); and then citing Terminello v. City of Chicago, 337 U.S. 1 (1949)).

94. *See* G.S. 166A, §§ 19.22, 19.31 (noting instances in which local governments may declare a state of emergency and impose local emergency prohibitions and restrictions and allowing for criminally enforceable local emergency prohibitions or restrictions on, for instance, "movements of people in public places" and "operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate").

95. *Cf.* Wright v. Georgia, 373 U.S. 284, 293 (1963) (noting that "[i]t is well established that a conviction under a criminal enactment which does not give adequate notice that the conduct charged is prohibited is violative of due process" (first citing Lanzetta v. New Jersey, 306 U.S. 451 (1939); then citing Connally v. Gen. Constr. Co., 269 U.S. 385 (1926); then citing United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921); and then citing United States v. Nat'l Dairy Prods. Corp., 372 U.S. 29 (1963))).

96. *See* State v. Irwin, 282 S.E.2d 439, 446 (N.C. 1981) (first citing Califano v. Yamasaki, 442 U.S. 682 (1979); then citing United States v. Bradley, 418 F.2d 688 (4th Cir. 1969); and then citing *In re* Arthur, 231 S.E.2d 614 (N.C. 1977)).

Of course, the necessary interpretation might still raise some doubts. The necessary interpretation, again, is that the baseline requirements are always necessary but are not always sufficient for publication under G.S. 166A-19.31(d). So even under the necessary interpretation, proper WebEOC submittal is always required to achieve publication. And local emergency prohibitions and restrictions would go into effect "upon publication" or after.[97] So learning whether WebEOC submittal has occurred is critical for the public to be able to know whether publication under the publication provision has occurred, which can impact whether certain activities—perhaps otherwise everyday activities—are or will be criminalized.[98] But WebEOC is, again, not publicly accessible, so the general public cannot check WebEOC to see if the WebEOC submittal occurred.[99] The publication provision also does not create an automatic way to alert the general public when the WebEOC submittal has occurred.[100] Further, publication on the relevant local government website or even description of the prohibitions or restrictions elsewhere does not necessarily signal that WebEOC submittal has occurred or will occur. If the general public cannot know that WebEOC submittal has happened, the general public may not have been given adequate notice to determine what is or will be criminally prohibited. So perhaps a court would be reluctant to allow criminal convictions under the statute, even under the necessary interpretation.

Alternatively, though, a court that sees a potential constitutional issue here might still find a way to read the statute to avoid both of the flagged constitutional concerns. This WebEOC-related issue might not raise a concern if a local government made some public statement confirming that WebEOC submittal has occurred and specifying when the submittal occurred. In that instance, the general public would have a way to learn about the WebEOC submittal to help understand whether prohibitions or restrictions are in effect. Perhaps a court seeing a constitutional issue here would just read the statute to say that "publication" implicitly involves including any needed information about WebEOC submittal in some publicly available part of the publication.[101] If the court also adopts a version of the necessary interpretation, the court could also avoid the other constitutional concern flagged above about possible lack of public notice. So adopting the necessary interpretation might still allow a court to avoid constitutional doubts. For this reason, the necessary interpretation again seems more likely to be correct.

Further, the phrasing of G.S. 166A-19.31(e1) seems to support the necessary interpretation. In that part of the EMA, the legislature seems to have made clear that local governments must take just two actions for a termination notice.[102] The law states that local governments "shall do the following" and lists the requirements, with no use of the phrase *at least* and no discussion of additional methods for notice.[103] If the legislature intended the two baseline requirements

97. *See* G.S. 166A-19.31(d).

98. *See id.* § 19.31(b), (d), (h).

99. *Cf.* Houston, *supra* note 3 (noting that a "city must rely on the county to post [a] declaration in WebEOC").

100. *See* G.S. 166A-19.31(d).

101. This reading does seem plausible under the statute. G.S. 166A-19.22 does not outline all of the specific contents of these declarations, and they might include information about the WebEOC submittal. *See* G.S. 166A-19.22. Further, the language discussing additional publication methods discusses using "effective methods of disseminating the necessary information quickly." G.S. 166A-19.31(d). Here, "the necessary information" might include any information required for the general public to understand what behavior is prohibited and when, including any necessary information about the WebEOC submittal.

102. *See* G.S. 166A-19.31(e1).

103. *Id.*

to be sufficient for publication under G.S. 166A-19.31(d) in all cases, it might have phrased Section 19.31(d) in a similar manner from the start.[104] Or, when amending the law to include Section 19.31(e1), the legislature might have adjusted Section 19.31(d) to include similar language and clarify that just the two baseline actions are needed.[105] However, the legislature did not take either of these steps.[106] These decisions may also suggest that sometimes steps beyond the baseline requirements may be needed for publication under G.S. 166A-19.31(d).[107]

Finally, a court might also apply the rule of lenity to resolve the ambiguity in favor of the necessary interpretation. The rule of lenity is a general principle related to deciding the meaning of an ambiguous criminal statute.[108] The North Carolina Supreme Court has noted "that penal statutes are construed strictly against the State and liberally in favor of the private citizen. All conflicts and inconsistencies are resolved in favor of the defendant."[109] And under the rule of lenity, a court deciding the meaning of an ambiguous criminal statute would "strictly construe the statute in favor of the defendant."[110] But the court would also interpret the statute in light of "common sense and legislative intent" and would not have to adopt the "narrowest or most strained possible meaning" for the statute's language.[111] The necessary interpretation may be more favorable to criminal defendants charged with violating a local emergency prohibition or restriction. Under the necessary interpretation, putting prohibitions and restrictions into effect through publication under G.S. 166A-19.31(d) might require more extensive notice efforts than doing so under the sufficient interpretation. So a defendant might be able to avoid convictions in a wider range of scenarios under the necessary interpretation. For instance, perhaps a defendant would avoid conviction under the necessary interpretation, but not the sufficient interpretation, if a local government with no website attempted to enforce a prohibition or restriction after "publishing" by merely using a WebEOC submittal. Adopting the necessary interpretation, in that circumstance, may also seem commonsensical and in comportment with potential legislative intent to encourage notice in some publicly available manner. The necessary interpretation also does not seem like an overly narrow or strained textual interpretation; if anything, the sufficient interpretation might seem overly narrow or strained in that it might allow for no public notice of prohibitions or restrictions before they go into effect.

As described below, other language in the law also appears more coherent when viewing the baseline requirements as a minimum that might be exceeded to publish under G.S. 166A-19.31(d). In the next section, this bulletin offers some thoughts on how to potentially address some of the uncertainty around what steps may be sufficient for publication.

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104. *See* S.L. 2020-83, § 11.7 (adding G.S. 166A-19.31(d) and not phrasing the provision in this manner).

105. *See* S.L. 2022-57 (adding G.S. 166A-19.31(e1) containing the termination-notice provision but not changing the phrasing of G.S. 166A-19.31(d), which contains the publication provision).

106. *See* S.L. 2020-83, § 11.7; *see also* S.L. 2022-57.

107. *Cf.* Ridge Cmty. Invs., Inc. v. Berry, 239 S.E.2d 566, 570 (N.C. 1977) (stating that "[i]n interpreting statutes, the primary duty of this Court is to ascertain and effectuate the intent of the Legislature" and that "[i]n ascertaining this intent, it is always presumed that the legislature acted with full knowledge of prior and existing law" (first citing Newlin v. Gill, 237 S.E.2d 819 (N.C. 1977); then citing State Highway Comm'n v. Hemphill, 153 S.E.2d 22 (N.C. 1967); then citing Lockwood v. McCaskill, 136 S.E.2d 67 (N.C. 1964); and then citing State v. Benton, 174 S.E.2d 793 (N.C. 1970))).

108. *See* State v. Williams, 784 S.E.2d 232, 234 (N.C. Ct. App. 2016) (citing *In re* N.T., 715 S.E.2d 183, 185 (N.C. Ct. App. 2011)).

109. State v. Scoggin, 72 S.E.2d 97, 103 (N.C. 1952).

110. *Williams*, 784 S.E.2d at 234 (quoting *In re N.T.*, 715 S.E.2d at 185).

111. *Id.* at 234–35 (internal quotation marks omitted in original) (quoting *In re N.T.*, 715 S.E.2d at 185).

What Is "Appropriate Distribution"?

Beyond discussing the baseline requirements for publication under G.S. 166A-19.31(d), the EMA later says that "[a]s soon as practicable . . . appropriate distribution of the full text of any declaration [presumably any declaration whose contents are being published under G.S. 166A-19.31] shall be made."[112] What does this language mean?

A 1969 report from the North Carolina Governor's Committee on Law and Order gives some clues on potential reasoning for including this statement.[113] This report discussed proposed language in Article 36A of Chapter 14 of the General Statutes, a forerunner of the EMA, about publishing prohibitions and restrictions.[114] Under this language, publication could involve "reports of the substance of the prohibitions and restrictions in the mass communications media serving the affected area or other effective methods of disseminating the necessary information quickly."[115] But the proposed language also said that "[a]s soon as practicable . . . appropriate distribution of the full text . . . shall be made."[116] The language is extremely similar to both language in the 1969 session law creating Article 36A and current EMA publication provision language.[117] The report opined that "[s]o long as the prohibitions and restrictions being imposed are reasonably simple and straightforward . . . the State should be able to require compliance on the basis of general notice of the terms that must be obeyed."[118] In other words, the report seemed to argue that publication of "reports of the substance of . . . prohibitions and restrictions" might be enough alone to "require compliance" with those prohibitions or restrictions.[119] But the report also seemed to opine that for criminal enforcement through prosecution, "it is necessary to require an after-the-fact distribution of the full text of any proclamation imposing prohibitions and restrictions."[120] The exact line between "requiring compliance" and doing

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112. G.S. 166A-19.31(d).

113. N.C. Governor's Comm. on L. & Ord., Proposed Legislation Relating to Riots and Civil Disorders (1969).

114. *Id.* at 1–2, 59; *see also* Act to Modernize the North Carolina Emergency Management Act and Related Statutes, S.L. 2012-12 (repealing most of G.S. 166A, creating the North Carolina Emergency Management Act (G.S. 166A, art. 1A), repealing parts of Article 36A, and shifting emergency-management law from Article 36A to Article 1A); Norma Houston, *2012 Emergency Management Legislative Wrap-Up: Big Changes Ahead*, Coates' Canons: N.C. Local Gov't L. Blog (July 17, 2012), https://canons.sog.unc.edu/2012/07/2012-emergency-management-legislative-wrap-up-big-changes-ahead/ (summarizing changes in S.L. 2012-12); Norma Houston, *State Emergency Management Act Rewrite: More Than Changes to Emergency Firearms Restrictions*, Coates' Canons: N.C. Local Gov't L. Blog (June 5, 2012), https://canons.sog.unc.edu/blog/2012/06/05/bateman-decision-on-emergency-weapons-restrictions-legislative-response-step-2-and-more/ (also summarizing changes in S.L. 2012-12).

115. N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 59 (appearing to quote N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 98).

116. *Id.*

117. *Compare id.* at 59 (appearing to quote N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 98), *with* S.L. 1969-869, § 1, *and* G.S. 166A-19.31(d) (containing similar language).

118. N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 59. This part of the report focused largely on the governor's powers under the proposed legislation, which may explain the reference to "the State." *See id.* at 53–60. However, the discussed language on publication also seems to apply to local government prohibitions and restrictions. *See id.* at 59, 91–95, 97–98 (showing that the discussed publication rules would apply to municipal and county prohibitions and restrictions).

119. *See id.* at 59 (appearing to quote N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 98).

120. *Id.* In this context, the term "proclamation" essentially appears to be a synonym for a "declaration," but subsequent legislation has resulted in more standard usage of the term "declaration" in the EMA. *See* Norma Houston, *2012 Emergency Management Legislative Wrap-Up: Big Changes Ahead*, Coates' Canons:

criminal enforcement through prosecution may not be completely clear here. Regardless, the appropriate-distribution language originally may have been intended to create public notice sufficient for successful criminal prosecutions of violations of prohibitions or restrictions.[121]

Further, note that before the current baseline requirements for publication were added, the law actually explicitly said that "[f]or *the purpose of requiring compliance*, publication may 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."[122] But the law then still later required "appropriate distribution of the full text."[123] This phrasing may lend support to the idea that the 1969 report's reasoning had informed the structure of the publication provision. In particular, the legislature may have viewed general reports as potentially sufficient for publication, at least for "requiring compliance," phrasing almost directly out of the 1969 report.[124] But perhaps the legislature also reasoned, like that report did, that these general reports may not be sufficient for all purposes.[125] The result may have been the later statement about "appropriate distribution of the full text," which the report flagged as important for criminal prosecutions.[126]

N.C. Local Gov't L. Blog (July 17, 2012) (citing S.L. 2012-12), https://canons.sog.unc.edu/2012/07/2012-emergency-management-legislative-wrap-up-big-changes-ahead/; Norma Houston, *State Emergency Management Act Rewrite: More Than Changes to Emergency Firearms Restrictions*, Coates' Canons: N.C. Local Gov't L. Blog (June 5, 2012) (citing S.L. 2012-12), https://canons.sog.unc.edu/blog/2012/06/05/bateman-decision-on-emergency-weapons-restrictions-legislative-response-step-2-and-more/.

121. *See* N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 59. As previously noted, violations of these prohibitions or restrictions may be punished as misdemeanors. G.S. 166A-19.31(h).

122. G.S. 166A-19.31(d) (amended by S.L. 2020-83, § 11.7) (emphasis added).

123. *Id.*

124. *Compare* N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 59 (discussing how "the State should be able to require compliance"), *with* G.S. 166A-19.31(d) (amended by S.L. 2020-83, § 11.7) (showing that the law had contained the phrase "[f]or the purpose of requiring compliance").

125. *See* N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 59.

126. *See id.* However, note also that the legislature actually removed the "[f]or the purpose of requiring compliance" phrasing when adding in the current baseline requirements for publication. *See* S.L. 2020-83, § 11.7. The exact reasoning for removing this phrasing does not seem completely clear. But the removal does not necessarily signal that the legislature has now massively changed its reasoning around the publication provision.

Instead, the legislature might have taken out this wording for one or more other reasons.

First, the rationale for including this phrasing may no longer apply under the amended law. Before, the legislature might have used this phrasing to show a potential limitation when giving notice using something less than a declaration's full text. Now, though, publication under G.S. 166A-19.31(d) must *always* include using the full text, at least on some level. *See* G.S. 166A-19.31(d). So the phrase "[f]or the purpose of requiring compliance" may no longer seem needed to distinguish publication using less than the full text.

Second, keeping this phrase in the amended text might have caused confusion. The legislature might have avoided using this qualifier to describe the baseline requirements for publication to avoid potentially suggesting that meeting them *would* always be sufficient "[f]or the purpose of requiring compliance." Following just the current baseline requirements for publication might be insufficient, since doing so might result in no public notice. *See id.* § 19.31(d). The legislature might have refrained from using this qualifier ahead of the slightly modified phrase "[p]ublication may also consist of reports of the substance" to avoid a different confusion given the law's new structure. These reports and "other effective methods" are now *not* sufficient alone for publication under G.S. 166A-19.31(d), whether for "requiring compliance" or otherwise. *See* G.S. 166A-19.31(d). So using this phrase in this new context might now be interpreted to limit the purposes for which this additional publication is authorized (just "[f]or purposes of requiring compliance").

One of Houston's blog posts also sheds some light on how this appropriate-distribution language worked in practice under a previous version of the EMA.[127] Prior to a change in 2020, baseline requirements for "publication" were not as clearly defined in G.S. 166A-19.31(d).[128] But the law did contain the abovementioned type of language saying that "publication may 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."[129] The law then discussed, "[a]s soon as practicable," the "appropriate distribution of the full text of any declaration."[130] In this context, a local government trying to act quickly during an emergency may have attempted to first "publish" prohibitions and restrictions by sharing some general information with the media.[131] In the interest of rapidly alerting the public, the local government may even have shared the information orally, before fully developing the final, written declaration.[132] The local government would then be required to share out the entire written declaration in some "appropriate" manner later, "[a]s soon as practicable."[133] The practical logic for the appropriate-distribution language seems fairly straightforward in this context; when "publication" involved giving general information about prohibitions or restrictions, the law required "appropriate distribution of the full text of [the relevant] declaration" later.[134]

However, now, "publication" necessarily involves posting a copy of the entire written, signed declaration to the local government website (if one exists) and submitting a copy to DPS's WebEOC system.[135] Yet the law still discusses, "[a]s soon as practicable," the "appropriate distribution of the full text."[136]

The law does not state exactly what the significance of the "appropriate distribution of the full text of any declaration" language is in the current context. Retaining this additional language about appropriate distribution, even with the baseline requirements, suggests that further sharing of the full text beyond the baseline requirements is still at least sometimes required to achieve initial publication or required later if local governments publish under the publication provision; otherwise, keeping this language in the law would seem unnecessary.[137] But exactly how much further sharing is needed and when that sharing is needed are not clear.

Removing the phrasing may have helped avoid doubts about whether such publication is allowed for other purposes, like actually keeping the public informed.

127. *See* Houston, *supra* note 3.

128. *Cf. id.* (stating that "'publication' was not specifically defined (other than to exempt declarations from newspaper publication under GS [sic] 1-597)"); G.S. 166A-19.31 (amended by S.L. 2020-83, § 11.7).

129. *See* G.S. 166A-19.31 (amended by S.L. 2020-83, § 11.7); *see also* Houston, *supra* note 3 (citing G.S. 166A-19.31 (amended by S.L. 2020-83, § 11.7))

130. *See* G.S. 166A-19.31 (amended by S.L. 2020-83, § 11.7); *see also* Houston, *supra* note 3 (citing G.S. 166A-19.31 (amended by S.L. 2020-83, § 11.7)).

131. *See* Houston, *supra* note 3.

132. *See id.*

133. See *id.* (quoting S.L. 2020-83).

134. *See* G.S. 166A-19.31 (amended by S.L. 2020-83, § 11.7); Houston, *supra* note 3.

135. G.S. 166A-19.31(d).

136. *Id.*

137. *See* TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (noting that "[i]t is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant" (quoting Duncan v. Walker, 533 U.S. 167, 174 (2001))).

One perhaps initially convincing explanation might come to mind. The current law allows publication to, in part, "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."[138] The appropriate-distribution language comes after the language describing this option, like in the older version of the law.[139] So perhaps the law just requires "appropriate distribution of the full text of any declaration" whenever this "reports of the substance . . . or other effective methods" option gets used as part of publication under G.S. 166A-19.31(d). The thought may be that the appropriate-distribution language functioned this way under the old version of the law and that the language still functions this way now.

But this explanation makes less sense when examined further and may mischaracterize the logic and function of the appropriate-distribution language. If the 1969 report is a useful guide, it seems doubtful that the logic of the older law was essentially that any time local governments use "reports of the substance . . . or other effective methods" for publication, they must do appropriate full-text distribution. Instead, the logic of the law may have been more that any time local governments' publications do not otherwise involve sufficient full-text distribution, they must do appropriate full-text distribution. Again, the reasoning for the appropriate-distribution requirement in the 1969 report seems to have been ensuring sufficient full-text distribution if such distribution had not occurred.[140] The distinction between these two lines of logic may be difficult to see under the old law. Under the old law, the only publication scenario presented that might involve insufficient full-text distribution happened to be the "reports of the substance . . . or other effective methods" option.[141] But in the new version of the law, it seems possible that other scenarios might result in insufficient full-text distribution. Therefore, the appropriate-distribution language might be tied to any such publication scenarios without sufficient full-text distribution.

In other words, the law might now require further "appropriate distribution," beyond the baseline requirements, to ensure that the full text is distributed sufficiently for applicable prohibitions or restrictions to be successfully criminally enforced. Of course, meeting the baseline requirements for publication might be enough to count as appropriate distribution, especially if the local government has posted its declaration in full on its publicly accessible website. In other words, no further distribution might be needed to have done "appropriate" distribution, even if "reports of the substance . . . or other effective methods" are also used. But meeting the baseline requirements might also not be enough.

In particular, further appropriate distribution might be required at least in some situations in which local governments do not have websites, for reasons described above. What might be the standards? When no local government website is available, a court may well read the law to require the local government to at least send out the "substance of the prohibitions and restrictions" in certain media or use "other effective methods of disseminating the necessary information quickly" to achieve initial publication. Then the court might apply the appropriate-distribution language to mandate certain sharing of the full text after such publication. But since the baseline publication requirements force the local government to have a copy of its written

138. G.S. 166A-19.31(d).

139. *Compare id.*, *with* G.S. 166A-19.31(d) (amended by S.L. 2020-83, § 11.7) (showing the prior positioning of the appropriate-distribution requirement).

140. *See* N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 59.

141. *See* G.S. 166A-19.31(d) (amended by S.L. 2020-83, § 11.7).

declaration to achieve publication anyway (it would have to have the full, written copy for its WebEOC submittal), the court might have an even higher standard. Perhaps the court would now believe that when no website is available, "appropriate distribution of the full text" by some other means—perhaps publicly accessible means—would be required to even achieve initial publication. Courts might be especially likely to take these views if there were no other steps taken to alert the general public (1) that local emergency prohibitions or restrictions might occur during a specific emergency and (2) what they would be. These statements are speculative. But it seems reasonable that a court might apply standards like these given (1) a reading of this section as a whole, which retains the "appropriate distribution" and media distribution language; (2) the presumption against surplus language, which suggests that this language still plays a role in the law; and (3) the presumption that the legislature was aware of the language in the prior law when it amended the publication provision, combined with the fact that the legislature did not remove this language.[142]

Further, extra "appropriate distribution" might be required more generally to achieve publication under the publication provision. If additional appropriate distribution were required for such publication *only* when a local government had no website or had no website *and* had not let the general public know about intended local prohibitions or restrictions, the legislature could have specified as much. But the law does not provide these limitations, despite the legislature's amendment of the publication provision in G.S. 166A-19.31; appropriate distribution might therefore be required in other circumstances to achieve publication under the publication provision.[143] However, what those circumstances might be and what precise efforts count as appropriate distribution are still not completely certain.

So to publish under G.S. 166A-19.31(d), local governments may need to publicize or appropriately distribute their declarations beyond the baseline requirements. And the exact potential extra requirements are unclear. Now what?

Local governments could consider routinely distributing declarations to maximize the chances that people affected will know relevant information about the declarations and local emergency prohibitions or restrictions. As a major example, local governments might consider noting in their public publications when WebEOC submittal occurred. Doing so might help address the abovementioned due-process concerns about notice of when the prohibitions and restrictions become effective. Local governments might also consider distributing notice in a

142. *See* N.C. Dep't of Transp. v. Mission Battleground Park, DST, 810 S.E.2d 217, 222 (N.C. 2018) (supporting interpreting a subsection of the General Statutes "holistically with the rest of the statute" because "[p]erhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts" (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012)); *TRW Inc.*, 534 U.S. at 31 ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" (quoting *Duncan*, 533 U.S. at 174)); Ridge Cmty. Invs., Inc. v. Berry, 239 S.E.2d 566, 570 (N.C. 1977) (stating that "[i]n interpreting statutes, the primary duty of this Court is to ascertain and effectuate the intent of the Legislature" and that "[i]n ascertaining this intent, it is always presumed that the legislature acted with full knowledge of prior and existing law" (first citing Newlin v. Gill, 237 S.E.2d 819 (N.C. 1977); then citing State Highway Comm'n v. Hemphill, 153 S.E.2d 22 (N.C. 1967); then citing Lockwood v. McCaskill, 136 S.E.2d 67 (N.C. 1964); and then citing State v. Benton, 174 S.E.2d 793 (1970))).

143. *See* G.S. 166A-19.31; *Ridge Cmty. Invs.*, 239 S.E.2d at 570 (citing *Benton*, 174 S.E.2d 793) (discussing the presumption of the legislature's awareness of prior law).

broad range of media and locations to maximize the chance that people affected will see the notice. Ultimately, the publication provision may well exist, at least in part, to ensure that the general public understands what is or is not prohibited or restricted during a particular declared state of emergency. If the local government takes the baseline requirements for publication and then takes any additional steps to achieve this goal, it might lower the chances of a dispute over publication. Doing so might also help the local government to better achieve a potential policy goal: actually ensuring that people are aware of and follow the desired prohibitions and restrictions when they are intended to be in effect.

How Much Termination Notice Might Be Needed?

Readers may have noticed that when local governments do not have websites, the termination-notice provision does not appear to require *any* public notice of termination, just a WebEOC submittal.[144] At the same time, the bulletin argued earlier that the publication provision probably should *not* be read to allow publication to occur just through WebEOC submittal. So could a local government actually comply with the termination-notice provision through just a WebEOC submittal, with no public notice?

Probably so. The basic reason is that (1) unlike the publication provision, the termination-notice provision seems clear in allowing notification in this manner and (2) a reading of the statute allowing termination notice in this manner seems plausible.

Normally, when a court determines how a statute's language should be applied, "[i]f the language used is clear and unambiguous, the [c]ourt does not engage in judicial construction but must apply the statute to give effect to the plain and definite meaning of the language."[145] Different from the language in the publication provision, the language in the termination-notice provision appears "clear and unambiguous" in requiring just two steps, a website posting (only as applicable) and a WebEOC submittal.[146] So if a relevant local government does not have a website, the language seems to say that only a WebEOC submittal is required; no alternative reading of the plain language appears convincing.[147]

Of course, "[c]ourts may 'venture beyond the plain meaning of the statute' . . . when 'literal application of the statute would produce an absurd result.'"[148] But note that "a statutory interpretation that produces surprising or anomalous results is not the same as one producing absurd results."[149] And "to truly be characterized as absurd, the interpretation of a statute must

144. *See* G.S. 166A-19.31(e1) (requiring, when the provision applies, just a WebEOC submittal if a relevant local government has no website); *cf.* Houston, *supra* note 3 (noting that a "city must rely on the county to post [a] declaration in WebEOC").

145. Fowler v. Valencourt, 435 S.E.2d 530, 532 (N.C. 1993) (citing Utils. Comm'n v. Edmisten, 232 S.E.2d 184, 192 (N.C. 1977)).

146. *See* G.S. 166A-19.31(e1).

147. *See id.*

148. N.C. Coastal Fisheries Reform Grp. v. Capt. Gaston LLC, 560 F. Supp. 3d 979, 1003 (E.D.N.C. 2021), *aff'd*, 76 F.4th 291 (4th Cir. 2023) (quoting Holland v. Big River Mins. Corp., 181 F.3d 597, 603 n.2 (4th Cir. 1999)).

149. *Id.* at 603 (emphasis omitted) (quoting Lara-Aguilar v. Sessions, 889 F.3d 134, 144 (4th Cir. 2018)).

result in an outcome that is so gross as to shock the general moral or common sense,"[150] meaning that "an interpretation of a statute that produces 'plausible' results cannot violate the absurd-result rule."[151]

At least one case has shown that a government that deprives a person of liberty but fails to give the person certain notice when their liberty has been restored could be violating constitutional due-process rights.[152] And local emergency prohibitions or restrictions might limit constitutional liberties.[153] So if the plain language forced local governments to give constitutionally inadequate notice, reading the law literally might arguably "produce an absurd result."[154]

But read literally, the termination-notice provision does not appear to force this result and appears to allow for a plausible type of notice. The termination-notice provision just requires two forms of notice, without claiming that they would be sufficient for all purposes.[155] The provision itself also does not seem to restrict the local government from otherwise communicating about the termination, to the extent authorized, desired, or required to notify the public.[156] And local governments might well notify the public of the termination in other ways; G.S. 166A-19.31 is "intended to supplement and confirm powers conferred by G.S. 153A-121(a) [and] G.S. 160A-174(a)," powers that might encompass authority to communicate related to local government efforts to "regulate" related to "health, safety, or welfare," like by notifying the public when local government emergency prohibitions or restrictions are over.[157] So this provision, read plainly, does not seem to require unconstitutionally inadequate notice, which might be an absurd result.[158] Furthermore, the previous version of G.S. 166A-19.31 did not contain *any* termination-notice provision, let alone one requiring *public* notice.[159] Therefore, it seems plausible that the legislature wanted to add *some* termination-notice provision but not necessarily one that always, by itself, results in *public* termination notice. This result might feel "surprising or anomalous." Perhaps readers would expect the legislature to more comprehensively require public termination

150. *Id.* (internal quotation marks omitted in original) (quoting *Lara-Aguilar*, 889 F.3d. at 144).

151. *Id.* (quoting *Lara-Aguilar*, 889 F.3d at 144 (quoting Sigmon Coal Co. v. Apfel, 226 F.3d 291, 308 (4th Cir. 2000)).

152. *See* Song v. United States, 43 Fed. Cl. 621, 643–44 (1999).

153. *See* State v. Allred, 204 S.E.2d 214, 215–16, 219 (N.C. Ct. App. 1974) (discussing how an emergency "prohibition against use of public parks during nighttime hours" created a "restraint . . . on the right of assembly"); State v. Dobbins, 178 S.E.2d 449, 451, 456–58 (N.C. 1971) (discussing how curfew restrictions might implicate a right to travel or First Amendment liberties); United States v. Chalk, 441 F.2d 1277, 1280, 1283 (4th Cir. 1971) (discussing the effect of emergency restrictions on free speech and "freedom of travel").

154. *See N.C. Coastal Fisheries Reform Grp.*, 560 F. Supp. 3d at 1003 (quoting Holland v. Big River Mins. Corp., 181 F.3d 597, 603 n.2 (4th Cir. 1999)).

155. *See* G.S. 166A-19.31(e1).

156. *See id.*

157. *See id.* § 19.31(f); G.S 153A-121(a); G.S. 160A-174(a); G.S. 153A-4 (noting that "the provisions of this Chapter . . . shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of this power"); G.S. 160A-4 (similarly noting that "the provisions of this Chapter . . . shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect," with some limitation).

158. *Cf. N.C. Coastal Fisheries Reform Grp.*, 560 F. Supp. 3d at 1003 (noting that absurd results would be results "so gross as to shock the general moral or common sense" (quotation omitted in original) (quoting Lara-Aguilar v. Sessions, 889 F.3d 134, 144 (4th Cir. 2018))).

159. *See* G.S. 166A-19.31 (amended by S.L. 2022-57); S.L. 2022-57 (adding G.S. 166A-19.31(e1)).

notice when adding a termination-notice provision. But especially given the previous lack of any specific notice provision, and the fact that the provision does not itself appear to prevent local governments from otherwise communicating about the termination, this result does not seem "so gross as to shock the general moral or common sense" and therefore be absurd.[160] This analysis should help show why local governments might comply with the termination-notice provision using only nonpublic notice, despite the analysis of the publication provision.

However, in practice, a local government might still consider giving public notice whenever prohibitions or restrictions have terminated, even when the termination-notice provision does not discuss doing so. Such notice might help educate people on what activities are no longer prohibited or restricted, which might be one goal of the local government.

That notice might also lower the chances of criticism that the local government violated due-process rights by failing to give adequate notice that any liberties restricted under the local prohibitions or restrictions had been restored.[161] Note that the case referenced that raises this potential issue, *Song*, discussed inadequate notice related to restoring liberties following Japanese internment.[162] The circumstances in *Song* might be considered very different and extreme compared to circumstances related to imposing and lifting certain local emergency prohibitions and restrictions. However, *Song* does appear to show that a government has some constitutional obligation to let people know when liberties are restored after the government deprives people of those liberties.[163] That point may come into play when imposing and lifting local emergency prohibitions and restrictions.

Table 1 summarizes the issues and conclusions presented in Part II.

160. *See N.C. Coastal Fisheries Reform Grp.*, 560 F. Supp. 3d at 1003 (quotation omitted in original) (quoting *Lara-Aguilar*, 889 F.3d at 144)).

161. *See* Song v. United States, 43 Fed. Cl. 621, 643–44 (1999).

162. *See generally id.* (showing the circumstances of the case).

163. *See id.* at 643.

Table 1. Potential Questions Raised About the Publication and Termination-Notice Provisions for Emergency Prohibitions and Restrictions in G.S. 166A-19.31, with Responses

Issue [EMA sections]	Potential question(s)	Response(s)
Delayed effectiveness of prohibitions or restrictions [19.31(d)]	1. A local government wants to make prohibitions or restrictions "imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]" effective after a delay. How does the publication provision factor in?	1. The publication provision essentially says that these prohibitions or restrictions "shall take effect . . . upon publication" or "later." This language seems to suggest that local governments may let these prohibitions or restrictions go into effect sometime *after* publication.
	2. Is any additional publication needed to make these delayed prohibitions or restrictions effective?	2. No, initial publication under G.S. 166A-19.31(d) seems sufficient to make these prohibitions or restrictions go into effect.
Publication and termination notice for amendments or additions to prohibitions or restrictions [19.31(d)]	1. A local government wants to adopt new or different prohibitions or restrictions from the ones originally imposed, and all prohibitions and restrictions would be "imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]." Would publication of the original declaration be enough to make these new or different prohibitions or restrictions effective?	1. No, the original publication does not seem sufficient. However, additional publication of the new or different prohibitions or restrictions under G.S. 166A-19.31(d) does seem enough to make them effective.
	2. Would the termination-notice provision apply to these new or additional prohibitions or restrictions?	2. Yes, assuming that they are "prohibitions and restrictions imposed pursuant to [G.S. 166A-19.31] and states of emergency declared pursuant to G.S. 166A-19.22." The termination-notice provision applies to any such prohibitions or restrictions that end.
State-of-emergency declarations with no emergency prohibitions or restrictions [19.31]	1. Does the publication provision apply to state-of-emergency declarations that contain no prohibitions or restrictions?	1. A good argument exists that the publication provision does not apply to these declarations, but the law may not be completely clear. Local governments could consider publishing all state-of-emergency declarations, regardless of whether they contain prohibitions or restrictions.
	2. What about giving termination notice of such a declaration?	2. The EMA does not discuss giving termination notice in this scenario. But local governments may also wish to consider giving termination notice to keep the general public informed.
"Conspicuously" posting [19.31(d), (e1)]	What does it mean to "conspicuously" post something on the local government's website?	Unclear. Local governments could consider proceeding by minimizing the chance of a dispute over whether their postings are "conspicuous" enough.

(table continued on next page)

(Table 1 continued)

Issue [EMA sections]	Potential question(s)	Response(s)
"Shall include at least" [19.31(d)]	Does "[p]ublication shall include at least" the two methods listed in the statute (the *baseline requirements*) mean that • publishing using just those two methods is always enough to achieve publication under G.S. 166A-19.31(d), but using additional methods is allowed OR • publishing using those two methods is always required to achieve publication under G.S. 166A-19.31(d), but using other methods may also be needed to achieve such publication?	Probably the second. Using just the baseline requirements might not publish the prohibitions or restrictions sufficiently to put them into effect, especially when the general public is not alerted to the potential imposition of the prohibitions or restrictions. Local governments might consider assuming that using the baseline requirements is not always sufficient and attempting to maximize the chance that members of the public know relevant information about the prohibitions or restrictions.
"Appropriate distribution" [19.31(d)]	What does the law mean when it says "[a]s soon as practicable . . . appropriate distribution of the full text of any declaration shall be made"?	In context, the law may mean that to achieve publication under G.S. 166A-19.31(d), local governments sometimes need to share "the full text of any declaration" beyond the two baseline requirements in the statute, especially when the general public is not otherwise alerted to the potential imposition of the prohibitions or restrictions. But exactly what local governments must do and when are unclear. Local governments might consider assuming that following the two baseline requirements is not always sufficient to achieve publication and attempting to maximize the chance that members of the public know relevant information about the prohibitions or restrictions.
Sufficient termination notice [19.31(e1)]	The termination-notice provision seems to just discuss notice through WebEOC submittal when a relevant local government has no website; could a WebEOC submittal alone, while giving no public termination notice, actually comply with the provision?	Probably so. However, local governments might have other reasons to consider giving public termination notice anyway, like keeping the public informed or avoiding a potential constitutional due-process issue.

Note: EMA = North Carolina Emergency Management Act (Chapter 166A, Article 1A of the North Carolina General Statutes); WebEOC = Web Emergency Operations Center. All section numbers are from Chapter 166A. The term *restraints* refers collectively to "prohibitions" and "restrictions" under the EMA.

Part III. Further Advanced Topics

I imagine that right now, you're feeling a bit like Alice, tumbling down the rabbit hole, hm?

—Morpheus[164]

Part I described the basic publication and termination-notice provisions in G.S. 166A-19.31. Part II explored some of the more complex issues related to these provisions. Part III will now cover some advanced issues that occur in this area of law when local governments essentially "share" emergency areas.

Basic Review of Shared Emergency Areas

As discussed in Part I, a local government would impose emergency prohibitions or restrictions in an "emergency area."[165] These emergency areas normally are limited to that government's jurisdiction, described in the law.[166] But a local government may sometimes also agree to extend another's emergency area (and prohibitions or restrictions imposed there) into its own jurisdiction.[167]

Counties Adopting Municipal Prohibitions and Restrictions Under G.S. 166A-19.22

Publication

In particular, like Part I notes, "the board of commissioners or chair of the board of commissioners of any county . . . may by declaration" and under certain constraints, "extend the emergency area of a state of emergency declared by a municipality" to parts of the county.[168] As a result, the county might impose some or all of the municipally imposed prohibitions and restrictions in parts of the county.[169] When a county extends a municipality's emergency area and imposes municipal prohibitions or restrictions like this, what steps would put those prohibitions and restrictions into effect in the county's jurisdiction?

The publication provision might explicitly apply, and publication under that provision might then be sufficient for putting those prohibitions and restrictions into effect. The EMA states that "[a]ll prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]" take their effect "upon publication" or after.[170] The municipal prohibitions and restrictions would be imposed in the county "by declaration."[171] The prohibitions or restrictions extended into the county's jurisdiction also presumably would have been established in the

164. The Matrix, Univ. of N.C. at Chapel Hill Libr. at 26:21–26:30 (Warner Bros., Village Roadshow Pictures, Groucho Film Partnership, Silver Pictures, 3 Arts Entertainment 1999).
165. G.S. 166A-19.31.
166. *See id.* §§ 19.22(b)(1)–(3), 19.31.
167. *See id.* § 19.22(b)(1)–(3).
168. *Id.* § 19.22(b)(3).
169. *See id.*
170. *See id.* § 19.31(d).
171. *See id.* § 19.22(b)(3) (discussing how this extension would occur "by declaration").

municipality's jurisdiction through ordinances adopted under G.S. 166A-19.31.[172] So they might be "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]." If so, publication under G.S. 166A-19.31(d) would seem sufficient alone for putting these prohibitions and restrictions into effect.

However, an argument exists that local governments might not be able to put these prohibitions and restrictions into effect through publishing under the publication provision. The prohibitions or restrictions discussed here may be imposed even when the county does not have its own ordinance(s) under G.S. 166A-19.31 authorizing prohibitions or restrictions.[173] The most direct authority for imposing these prohibitions and restrictions seems to come from G.S. 166A-19.22(b)(3) itself.[174] So one might argue that these prohibitions or restrictions are not imposed "pursuant to ordinances adopted under [G.S. 166A-19.31]" but are instead imposed through G.S. 166A-19.22(b)(3). In that case, the publication provision might not apply, and publication under that provision might not put these prohibitions or restrictions into effect; the publication provision only discusses putting into effect "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]."[175]

On the other hand, the publication provision does not explicitly say that it *only* puts into effect such prohibitions and restrictions.[176] And to the extent that the prohibitions and restrictions imposed under G.S. 166A-19.22(b)(3) are not "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]," they seem similar and related. So perhaps G.S. 166A-19.31(d) was intended to and does let these prohibitions and restrictions become effective, even if they are not "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]."[177]

Regardless, the law may also require other notice-related action in this scenario. G.S. 166A-19.22(b)(3) states that "[a] chair of a board of county commissioners extending the emergency area under the authority of this subdivision shall take reasonable steps to give notice of its terms to those likely to be affected."[178] In context, the phrase "its terms" seems likely to be referring to the terms of the declaration extending the emergency area (including any prohibitions and restrictions intended to be imposed).[179] However, the statute does not give clear guidance on when these steps are needed; what these steps are; whether they mean something different from publication under G.S. 166A-19.31(d); or what the precise consequences of taking these steps would be.[180]

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172. *See id.* §§ 19.22(b)(3), 19.31.

173. *See id.*

174. *See id.* § 19.22(b)(3).

175. *See id.* § 19.31(d); *see also* State *ex rel.* Hunt v. N.C. Reinsurance Facility, 275 S.E.2d 399, 407 (N.C. Ct. App. 2009) (noting that "[w]here a statute sets forth . . . the instances of its application or coverage, other . . . coverage [is] necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))).

176. *See* G.S. 166A-19.31(d).

177. *See* Marx v. Gen. Revenue Corp., 568 U.S. 371, 381 (2013) (noting "that the [*expressio unius*] canon can be overcome by 'contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion'" (quoting United States v. Vonn, 535 U.S. 55, 65 (2002))).

178. G.S. 166A-19.22(b)(3)(b).

179. *Cf. id.* § 19.22(b) (discussing an extension allowed "by declaration").

180. *See id.*

First, the law is not exactly clear on when the chair needs to "take reasonable steps." Recall that both the chair of the board of county commissioners and the board itself are authorized to do the emergency area extension mentioned in G.S. 166A-19.22(b)(3).[181] The law then says that "[a] chair of a board of county commissioners extending the emergency area . . . shall take reasonable steps."[182] The phrasing in the law does not seem to say that the chair must do so in both instances. But the law is ambiguous on whether the requirement applies in one instance or the other. Given the apparent legislative intent of providing notice, the law may more likely mean that the chair must "take reasonable steps" if the *chair* is "extending the emergency area."[183] A board of county commissioners seems required to issue the extension declaration under G.S. 166A-19.22(b)(3) at a public meeting, while a chair might act in private.[184] So outside of these "reasonable steps," the public might more easily get notice of board-issued extension declarations than chair-issued ones. The "reasonable steps" requirement might therefore exist to help promote notice about declarations from the chair. However, given the ambiguity, the chair might be safer in "tak[ing] reasonable steps to give notice . . . to those likely to be affected" by extension declarations both when the chair and when the board of county commissioners makes these declarations. Doing so would mean that the chair would do more work than seems necessary but would help to meet the requirement regardless of which interpretation is correct.

Second, the law is not clear about who is among "those likely to be affected" by the terms of such a declaration. This group might just include people in the part of the emergency area extended into the county. But this group might include other people. This extension tool is only explicitly authorized in certain circumstances.[185] Relevant here, the EMA states that this type of extension may occur in areas of the county where "the board or chair determines it to be necessary to assist in the controlling of the emergency within the municipality."[186] So perhaps "those likely to be affected" also includes people in the municipality's jurisdiction. And perhaps people from the neighboring parts of the county or other people with connections to the emergency area are "likely to be affected." Since the statute did not set a specific standard here, perhaps "those likely to be affected" is not a consistent set of people but will be different under different facts and circumstances.

Third, the statute does not state what "reasonable steps" may be. Especially if the publication provision does not apply, perhaps "tak[ing] reasonable steps" would involve publication under G.S. 1-597; in fact, such publication might even be *required* to make the notice effective if the publication provision does not apply.[187] If the publication provision in G.S. 166A-19.31(d)

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181. *See id.* § 19.22(b)(3).

182. *Id.* § 19.22(b)(3)(b).

183. *See id.*; *see also* Ridge Cmty. Invs., Inc. v. Berry, 239 S.E.2d 566, 570 (N.C. 1977) (stating that "[i]n interpreting statutes, the primary duty of this Court is to ascertain and effectuate the intent of the Legislature" (first citing Newlin v. Gill, 237 S.E.2d 819 (N.C. 1977); then citing State Highway Comm'n v. Hemphill, 153 S.E.2d 22 (N.C. 1967); and then citing Lockwood v. McCaskill, 136 S.E.2d 67 (N.C. 1964))).

184. *Cf.* G.S. 143-318.10 (discussing public meetings).

185. *See* G.S. 166A-19.22(b)(3)(b).

186. *Id.* § 19.22(b)(3).

187. *See* G.S. 1-597; *see also* G.S. 166A, §§ 19.22(b)(3)(b), 19.31(d). G.S. 1-597 says that "[w]henever a notice . . . shall be authorized or required by any of the laws of the State of North Carolina . . . to be published or advertised in a newspaper, such . . . notice shall be of no force and effect unless it shall be published" as described in G.S. 1-597. G.S. 1-597(a). As noted above, the publication provision is "not . . . governed by the provisions of G.S. 1-597." G.S. 166A-19.31(d). So presumably, notice of prohibitions and restrictions properly published under the publication provision would not also need to be published under G.S. 1-597 to be

does apply, perhaps "tak[ing] reasonable steps" could involve achieving publication under G.S. 166A-19.31(d), especially if the county can post the declaration on its website. But perhaps the "reasonable steps" involve different actions. This provision could have said, but does not say, simply that the chair may or shall give notice by achieving publication under G.S. 1-597 and/or G.S. 166A-19.31(d).[188] Additionally, even if the publication provision in G.S. 166A-19.31(d) is relevant, that provision itself has "appropriate distribution" language that may exist to provide some additional, sufficient notice to the public beyond the baseline requirements for publication.[189] That additional notice might involve different steps depending on the situation.[190] These factors might suggest that what is "reasonable" might depend on the specific facts and circumstances.

Fourth, it is not totally clear how these "reasonable steps" impact whether applicable prohibitions or restrictions go into effect. G.S. 166A-19.22(b)(3) does not specify whether taking such steps helps make any prohibitions or restrictions go into effect.[191] At the same time, G.S. 166A-19.31 does, again, say that "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31] shall take effect . . . upon publication" or after.[192] So if the prohibitions or restrictions are indeed considered "imposed by declaration

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effective. But again, the publication provision might not apply to prohibitions and restrictions imposed in extended emergency areas under G.S. 166A-19.22(b)(3). In that case, the phrasing of G.S. 166A-19.22(b)(3) might suggest that publishing under G.S. 1-597 is needed for this notice to be effective. G.S. 166A-19.22(b)(3) requires "[a] chair of a board of county commissioners extending the emergency area under the authority of this subdivision [to] take reasonable steps to give notice of its terms [again, presumably the terms of the extension declaration, including any prohibitions or restrictions]." G.S. 166A-19.22(b)(3). This language about "reasonable steps" might allow notice through newspaper publication. So potentially, this language might also mean that the required notice is "notice . . . authorized . . . by a[] . . . law[] of the State of North Carolina . . . to be published or advertised . . . in a newspaper." *See id.; see also* G.S. 1-597. In that case, publication under G.S. 1-597 would appear required to make the notice effective. *See* G.S. 166A-19.22(b)(3); *see also* G.S. 1-597. On the other hand, perhaps newspaper publication is only "authorized" when a statute explicitly names newspaper publication or advertisement as an option, rather than potentially allowing the option; G.S. 166A-19.22(b)(3) does not specifically talk about newspaper publication or advertisement, just generally about "tak[ing] reasonable steps." *See* G.S. 166A-19.22(b)(3). The term "authorized" is not defined in this part of the law. *See generally* G.S. 1 (appearing to not define this term in this section of the law). I am also not aware of case law defining the term in this precise context, so dictionary definitions may be helpful guides. *See In re* Appeal of Oak Meadows Cmty. Ass'n, 899 S.E.2d 404, 407 (N.C. Ct. App. 2024) (first citing *In re* Appeal of R.W. Moore Equip. Co., 443 S.E.2d 734, 736 (N.C. Ct. App. 1994); and then citing Parkdale Am., LLC v. Hinton, 684 S.E.2d 458, 461 (N.C. Ct. App. 2009)); *Parkdale*, 684 S.E.2d at 461 (citing Perkins v. Ark. Trucking Servs., Inc., 528 S.E.2d 902, 904 (N.C. 2000)). But definitions of the term *authorize* seem like they might encompass both possibilities. *Compare* Authorize, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/authorize (last visited Apr. 10, 2026) (defining *authorize* as "to give official permission for something to happen, or to give someone official permission to do something"), *with* Authorize, Merriam-Webster, https://www.merriam-webster.com/dictionary/authorize (last visited Apr. 10, 2026) (defining *authorize* as "to endorse, empower, justify or permit by or as if by some recognized or proper authority (such as custom, evidence, personal right, or regulating power"). So perhaps publication under G.S. 1-597 might not be required to make this notice effective. But whether required to make the notice effective or not, such publication under G.S. 1-597 might still be considered a possible "reasonable" step.

188. *See* G.S. 166A-19.22(b)(3).

189. *See id.* § 19.31.

190. *See id.*

191. *See id.* § 19.22(b)(3).

192. *Id.* § 19.31(d).

pursuant to ordinances adopted under [G.S. 166A-19.31]," then "publication" under the standards of G.S. 166A-19.31 alone seems sufficient. That section says that such publication is sufficient, and G.S. 166A-19.22(b)(3) does not say otherwise.[193] However, it is less clear whether some different notice under G.S. 166A-19.22(b)(3) might, separately, *also* be sufficient to put the applicable prohibitions or restrictions into effect. Perhaps only publication under the publication provision will work, since that provision provides the only explicit way to put such prohibitions or restrictions into effect.[194] But perhaps the requirement for notice in G.S. 166A-19.22(b)(3), which may differ from such publication, suggests that taking other steps might work.[195]

Further, if the prohibitions or restrictions are *not* considered "imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]," the situation seems especially murky. Publication under the publication provision might not put these prohibitions or restrictions into effect, since that provision only discusses "prohibitions or restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]."[196] In that case, the exact requirements would be unclear, but again, perhaps publication under G.S. 1-597 might be a required step to give effective notice of the prohibitions and restrictions.[197] But the publication provision also does not say that it *only* gives effect to "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]."[198] G.S. 166A-19.22(b)(3) also does not explicitly state how prohibitions or restrictions imposed under that provision become effective if they do not meet those criteria.[199] Further, to the extent that these prohibitions or restrictions are not "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]," they seem similar or related. So perhaps the publication provision was intended to provide a path for putting these prohibitions or restrictions into effect, even if they are not considered "prohibitions and restrictions imposed by declaration pursuant to

193. *See id.* §§ 19.22(b)(3), 19.31(d).

194. *See* State *ex rel.* Hunt v. N.C. Reinsurance Facility, 275 SE. 2d 399, 407 (N.C. Ct. App. 2009) (noting that "[w]here a statute sets forth one method for accomplishing a certain objective . . . other methods . . . are necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))).

195. *See* Marx v. Gen. Revenue Corp., 568 U.S. 371, 381 (2013) (noting "that the [*expressio unius*] canon can be overcome by 'contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion'" (quoting United States v. Vonn, 535 U.S. 55, 65 (2002))).

196. G.S. 166A-19.31(d); *see State ex rel. Hunt*, 275 S.E.2d at 407 (noting that "[w]here a statute sets forth . . . the instances of its application or coverage, other . . . coverage [is] necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))).

197. *See* G.S. 1-597; *see also* G.S. 166A, §§ 19.22(b)(3)(b), 19.31(d). Again, the phrasing of G.S. 166A-19.22(b)(3) might arguably mean that that provision requires "notice . . . authorized . . . by a[] . . . law[] of the State of North Carolina . . . to be published . . . in a newspaper." *See* G.S. 1-597; *see also* G.S. 166A-19.22(b)(3)(b). In that case, if the publication provision (or some other exception) does not apply, the notice would only appear to be effective if published per G.S. 1-597. *See* G.S. 1-597; G.S. 166A, §§ 19.22(b)(3), 19.31(d). It is unclear whether that step would be sufficient or if any additional action would be needed; G.S. 1-597 just says that "notice . . . authorized . . . by a[] . . . law[] of the State of North Carolina . . . to be published . . . in a newspaper" *must* be published under G.S. 1-597 to be effective, not that such publication alone is *enough* to make the notice effective. *See* G.S. 1-597.

198. G.S. 166A-19.31(d).

199. *See* G.S. 166A-19.22(b)(3).

ordinances adopted under [G.S. 166A-19.31]."[200] In that case, publication under the publication provision alone might still be enough. But the precise impact of any separate notice steps in G.S. 166A-19.22(b)(3) is still unclear.

Local governments might wish to consider erring on the side of more publication and other distribution, which might lower the chances of disputes about compliance with any relevant provisions or about whether prohibitions or restrictions are in effect.

Notice of Termination

What about requirements for giving termination notice for a prohibition or restriction in this scenario?

The EMA requires notice, as described above, "[a]t the time prohibitions and restrictions imposed pursuant to this section and states of emergency declared pursuant to G.S. 166A-19.22 expire or terminate."[201] In this instance, again, the county appears to be most directly imposing a municipality's prohibitions and restrictions using authority in a different section, G.S. 166A-19.22.[202] However, the original municipal prohibitions and restrictions presumably would have been imposed under G.S. 166A-19.31 and a "state[] of emergency declared pursuant to G.S. 166A-19.22."[203] So the notice requirement might still apply here. Since termination notice is explicitly required if the termination-notice provision applies, the safer option would appear to be assuming that the termination-notice provision does apply.[204]

Additionally, the EMA requires the chair of the county's board of commissioners to "declare the termination of any prohibitions and restrictions extended pursuant to this subdivision [G.S. 166A-19.22(b)(3)]" when (1) the chair decides that they are unneeded, (2) the board itself decides that they are unneeded, or (3) they are ended in the municipality, whichever occurs first.[205] Notably, the language here appears to require the chair to "declare the termination of *any* prohibitions and restrictions extended" at the earliest triggering event, regardless of who did the extension.[206] Contrast this point with the abovementioned requirement to "take reasonable steps to give notice" related to the extension, which does not appear to require the chair to act for every extension.[207] The law does not specify how or where the chair shall "declare the termination."[208] Posting and submitting under the terms of G.S. 166A-19.31(e1) might well be appropriate.[209] But perhaps different steps are needed.

Counties could consider again erring on the side of potentially overnoticing the public.

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200. *See Marx*, 568 U.S. at 381 (2013) (noting "that the [*expressio unius*] canon can be overcome by 'contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion'" (quoting *Vonn*, 535 U.S. at 65)).

201. G.S. 166A-19.31(e1).

202. *See id.* § 19.22(b)(3).

203. *See id.* §§ 19.22, 19.31.

204. *See id.* § 19.31(e1).

205. *Id.* § 19.22(b)(3)(c).

206. *Id.* (emphasis added).

207. *Contrast id.* § 19.22(b)(3)(b) (appearing to require notice in only certain instances), *with id.* § 19.22(b)(3)(c) (requiring a "chair of the board of commissioners [to] declare the termination of any prohibitions and restrictions extended pursuant to this subdivision" once a certain triggering condition has occurred).

208. *See* G.S. 166A-19.22(b)(3)(c).

209. *See id.*; *see also* G.S. 166A-19.31(e1).

Who Publishes, Gives Notice of Termination, or Shares Information About the Prohibitions or Restrictions?

In this scenario, may the county always fully rely on the municipality (or others) to give effective notice of prohibitions or restrictions or give notice that they are ending?

Probably not.

Assuming that the publication provision applies, publishing under that provision may need to involve the county.

The publication provision in G.S. 166A-19.31(d) says that publication involves "posting . . . the declaration . . . on the website of the municipality or county."[210] But if the county is extending a municipal emergency area, which entity is "the municipality or county"? Is it the entity that originally declared the emergency, the one that extended the emergency area, or the one that is imposing the prohibitions or restrictions in its jurisdiction? Not all of these actions are being taken by the same entity.[211] The municipality originally declared a state of emergency; the county extended the emergency area by its own declaration; and the county appears to be imposing the emergency prohibitions and restrictions in the extended area in its jurisdiction.[212] So which is responsible? Alternatively, could the phrase really be read as *either* the municipality *or* the county, meaning that either one could publish?

It is probably safest to assume that "the municipality or county" is a single entity imposing the prohibitions or restrictions in its jurisdiction, the county.

First, the phrase "the municipality or county" probably does not indicate an option for posting on either entity's website. Outside the publication and termination-notice provisions (where the same question about the phrase's meaning might arise), this phrase appears in only two places in the entire EMA.[213] In those places, "the municipality or county" seems to refer to a single entity that might happen to be a county or municipality in a particular instance.[214] A court may be "generally reluctant to give the 'same words a different meaning' when construing statutes."[215] However, this "presumption of consistent usage 'readily yields' to context."[216]

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210. G.S. 166A-19.31(d).

211. *See id.* §§ 19.22, 19.31.

212. *See id.*

213. *See generally* G.S. 166A, art. 1A (showing where this phrase appears in the law).

214. *See id.* §§ 19.22, 19.31. In one place where the phrase appears, the EMA appears to discuss local emergency areas when local governments declare nonshared states of emergency, stating that "[u]nless another subdivision of this subsection is applicable, the emergency area shall not exceed the area over which *the municipality or county* has jurisdiction to enact general police-power ordinances." *Id.* § 19.22(b)(1) (emphasis added). The EMA then puts limits on these emergency areas that appear to make the default county and municipal emergency areas nonoverlapping. *See id.* § 19.22(b). So in this context, referring to the emergency area of "the municipality or county" seems to refer to the emergency area of one entity or the other, not either. In the other place where the phrase appears, the EMA discusses notice connected to emergency-related ordinances, saying that "[i]f the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to *the municipality or county*, the mayor or chair of the board of county commissioners *as the case may be*, shall take steps" outlined in the law. G.S. 166A-19.31(c) (emphasis added). This language suggests that a "mayor" or "chair" would have responsibility "as the case may be," depending on whether the single entity involved is a "municipality or county."

215. Bank of Am. Nat'l Ass'n v. Caulkett, 575 U.S. 790, 796 (2015) (internal quotation marks omitted in original) (quoting Pasquantino v. United States, 544 U.S. 349, 358 (2005)).

216. Util. Air Regul. Grp. v. Env't Prot. Agency, 573 U.S. 302, 320 (2014) (nested quotation marks omitted) (quoting Env't Def. v. Duke Energy Corp., 549 U.S. 561, 574 (2007)).

Second, though, in context, the language of G.S. 166A-19.31(d) seems directed toward the entity imposing the prohibitions or restrictions. The section discusses what a local government unit must do to make imposed emergency prohibitions or restrictions take effect.[217] So the focus here seems to be on the local government unit establishing the prohibitions and restrictions and attempting to give them effect. Relatedly, emergency prohibitions or restrictions take effect "upon publication" or after.[218] As discussed above, a major point of publication may well be alerting those potentially subject to the prohibitions and restrictions that the prohibitions and restrictions exist and are or will be in effect.[219] The entity imposing the restrictions or prohibitions seems most intuitively responsible for alerting the public about them.

Third, the county does appear to be the entity imposing the prohibitions or restrictions. The county must consent to having those prohibitions or restrictions imposed in its jurisdiction, and the county issues its own declaration for the extension of the municipal emergency area, which presumably contains the prohibitions or restrictions being established.[220] Therefore, in this instance, a county might reduce its risk more by posting on its own website (if available) rather than relying on the municipality to post on its own.

Part II of the bulletin also mentioned that following the two baseline requirements may not be sufficient in every case to achieve publication under the publication provision. If further steps are needed for such publication, the county might be safer in assuming that it must take those steps, rather than relying on others.

Note further that the law elsewhere suggests county involvement with notice in versions of this scenario. The law requires the chair to perform the aforementioned "reasonable steps to give notice of its terms [the terms of the declaration imposing emergency prohibitions and restrictions] to those likely to be affected" in some instances.[221] This phrasing seems like it might permit the chair to take "reasonable steps" by delegating duties for giving notice to others at the county or coordinating with the municipality or another organization; the language does not specify that the chair has to personally perform every aspect of giving notice.[222] Nonetheless, the county seems involved on some level through the chair.

A county might also be safer in issuing all of its own termination notices.

The termination-notice provision uses the phrase "the municipality or county" to describe the entity that must take the two specified termination-notice actions.[223] Here again, "the municipality or county" can be interpreted in several ways: (1) the entity issuing the declaration, (2) the entity imposing the prohibitions or restrictions in the municipality, or (3) the entity whose action has caused the prohibitions or restrictions at issue to terminate in the municipality's jurisdiction. Perhaps, since it seems likely that "the municipality or county" means "the municipality or county imposing the prohibitions or restrictions" for purposes of publication, "the municipality or county" here means the same.[224] It seems intuitive that the entity responsible for publication might be the same entity responsible for termination notice, especially since

217. *See* G.S. 166A-19.31(d).
218. *Id.*
219. *See* N.C. Governor's Comm. on L. & Ord., *supra* note 113, at 59.
220. *See* G.S. 166A-19.22(b)(3).
221. *Id.* § 19.22(b)(3)(b).
222. *See id.*
223. *See id.* § 19.31(e1).
224. *See id.* § 19.31; Bank of Am. Nat'l Ass'n v. Caulkett, 575 U.S. 790, 796 (2015) (citing Pasquantino v. United States, 544 U.S. 349, 358 (2005)) (discussing the canon of consistent usage).

the law discusses "*the* municipality or county" in both places without differentiating the two phrasings.[225] The context thus seems to favor an interpretation like this one.[226] Assuming that the termination-notice provision applies, this reading suggests that a county may be safer in issuing its own notice under this provision, as opposed to relying on municipal notice.

Additionally, as indicated above, the EMA separately states that "[t]he chair of the board of commissioners shall declare the termination of any prohibitions and restrictions extended pursuant to this subdivision."[227] This language seems to specifically require the county's chair—not someone else from the county, the municipality, or elsewhere—to "declare the termination."[228] Out of an abundance of caution, a county might assume that performing a proper termination notice under G.S. 166A-19.31(e1) also means having the required notice come from the chair. To be clear, the chair probably would not have to be the one *posting* or *submitting* the notice; the language just talks about the chair's doing the declaration.[229] But the notice might take the form of a written declaration from the chair. In any event, the county, again, would be involved on some level.

Municipalities Adopting County Prohibitions and Restrictions Under G.S. 166A-19.22

As described above, under G.S. 166A-19.22(b)(2), a "municipality's governing body or mayor" may "consent[] to or request[]" having a county's emergency area extend into areas of the municipality's jurisdiction.[230] In these cases, some or all of the county's emergency prohibitions or restrictions might potentially be imposed in the municipality.[231] How might the publication and termination-notice provisions apply in this instance?

Publication

The analysis related to the publication provision in this scenario is similar in many ways to the analysis above in the context of G.S. 166A-19.22(b)(3).

The publication provision might arguably apply to the types of prohibitions and restrictions imposed in the municipal jurisdiction through an extension under G.S. 166A-19.22(b)(2). Following the publication provision could put into effect "[a]ll prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]."[232] Per the EMA, a governing body declaring a state of emergency would specify the emergency area where the state of emergency applies, if differing from its default emergency area.[233] If a "municipality's governing body or mayor consents . . . or requests" to have a county state-of-emergency declaration apply in the municipality's jurisdiction, the county's declaration would presumably

225. *Compare* G.S. 166A-19.31(d), *with* G.S. 166A-19.31(e1) (both containing the phrase "the municipality or county").

226. *Cf.* Util. Air Regul. Grp. v. Env't Prot. Agency, 573 U.S. 302, 320 (2014) (discussing how "the presumption of consistent usage 'readily yields' to context" (nested quotation marks omitted) (quoting Env't Def. v. Duke Energy Corp., 549 U.S. 561, 574 (2007))). But again, in this case, the context seems to point toward giving a consistent meaning to the phrase.

227. G.S. 166A-19.22(b)(3)(c).

228. *See id.*

229. *See id.*

230. *Id.* § 19.22(b)(2).

231. *See id.* Again, it does not seem clear whether all of the county's prohibitions or restrictions may always be imposed in a municipality under G.S. 166A-19.22.

232. *Id.* § 19.31(d).

233. *See id.* § 19.22(b)(1).

say as much; inclusion of the municipality would be different from the default.[234] The county would presumably also note in the declaration what prohibitions and restrictions would be imposed and whether the ones imposed in the municipality's jurisdiction differ in some way from the ones imposed in the county's. So any such prohibitions or restrictions seem like they would be imposed "by declaration."[235] The prohibitions and restrictions extended into the municipal jurisdiction also presumably would have been established in the county's jurisdiction "pursuant to ordinances adopted under [G.S. 166A-19.31]."[236] So any such prohibitions and restrictions extended into the municipality's jurisdiction might arguably be imposed "by declaration" and "pursuant to ordinances adopted under [G.S. 166A-19.31]."[237] If the prohibitions or restrictions are considered to be so imposed, publication under G.S. 166A-19.31(d) seems sufficient for putting those prohibitions or restrictions into effect.[238]

However, an argument might exist on the other side. The most direct authority for imposing county prohibitions or restrictions in a municipal jurisdiction in this scenario comes from G.S. 166A-19.22.[239] So perhaps these prohibitions or restrictions would not be considered "imposed . . . pursuant to ordinances adopted under [G.S. 166A-19.31]."

If they are not considered so imposed, then the impact of following the publication provision seems less clear. Again, perhaps because publication under the publication provision only explicitly puts into effect "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section [G.S. 166A-19.31]," such publication does not put into effect any other prohibitions or restrictions.[240] But again, the publication provision also does not say that it gives effect *only* to "prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]."[241] The law also does not provide any explicit way to make prohibitions or restrictions under G.S. 166A-19.22(b)(2) effective if they do not meet those criteria.[242] Further, to the extent that these prohibitions or restrictions are not "prohibitions and

234. *See id.* § 19.22(b) (noting that an emergency area would generally include a certain default area, specified in the law, unless otherwise specified).

235. *See id.* §§ 19.22, 19.31.

236. *See id.* § 19.31.

237. *See id.* §§ 19.22(b)(2), 19.31.

238. *See id.* § 19.31(d).

239. *See id.* § 19.22(b)(2).

240. *Id.* § 19.31(d); *see* State *ex rel.* Hunt v. N.C. Reinsurance Facility, 275 S.E.2d 399, 407 (noting that "[w]here a statute sets forth . . . the instances of its application or coverage, other . . . coverage [is] necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))).

241. *See* G.S. 166A-19.31(d).

242. Note that if the publication provision in G.S. 166A-19.31(d) does not make these prohibitions or restrictions effective, publishing under G.S. 1-597 is not necessarily a sufficient alternative. That rule discusses publication "[w]henever a notice . . . shall be authorized or required by any of the laws of the State of North Carolina . . . to be published or advertised in a newspaper." G.S. 1-597(a). But G.S. 166A-19.22(b)(2) does not, itself, appear to give permission for or mandate notice via newspaper publication or advertisement. *See* G.S. 166A-19.22(b)(2). Like with the termination-notice provision, I am also not aware of authority stating that G.S. 1-597 might apply in this specific context, which relates to a scenario in which "notice" is not "authorized or required by any of the laws of the State of North Carolina . . . to be published or advertised in a newspaper." So G.S. 1-597 does not seem like it would apply. *See State ex rel. Hunt*, 275 S.E. 2d at 407 (noting that "[w]here a statute sets forth . . . the instances of its application or coverage, other . . . coverage [is] necessarily excluded under the maxim expressio unius est exclusio alterius" (quoting 12 Strong's N.C. Index 3d *Statutes* § 5.10 (1978))). *But see* Marx v. Gen. Revenue Corp., 568 U.S. 371, 381 (2013) (noting "that the [*expressio unius*] canon can be overcome by 'contrary indications that adopting a

restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31],” they seem similar or related. So perhaps the publication provision was intended to provide a path for putting these prohibitions or restrictions into effect, even if they are not considered “prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31].”[243]

In any event, local governments might again wish to consider erring on the side of more publication and other distribution, which might lower the chances of disputes about compliance with any relevant provisions or about whether prohibitions or restrictions are in effect.

Notice of Termination

Similar logic applies for whether the termination-notice provision in G.S. 166A-19.31(e1) relates to these prohibitions or restrictions. The provision applies and requires notice when prohibitions or restrictions that are “imposed pursuant to [G.S. 166A-19.31] and states of emergency declared pursuant to G.S. 166A-19.22” end.[244] In this case, the county prohibitions and restrictions would have been initially imposed by the county under G.S. 166A-19.31 (and then imposed in the municipality with the help of G.S. 166A-19.22).[245] The municipally joined county state of emergency would have been declared under G.S. 166A-19.22.[246] So these prohibitions or restrictions might arguably be “imposed pursuant to [G.S. 166A-19.31] and states of emergency declared pursuant to G.S. 166A-19.22.” Local governments might therefore be safest in assuming that the termination-notice provision does apply to these prohibitions and restrictions.

Who Publishes and Gives Notice of Termination?

Assuming that the publication provision applies, the website where posting would occur under the publication provision again seems uncertain. As mentioned above, the meaning of “posting . . . on the website of the municipality or county” in G.S. 166A-19.31(d) is not exactly clear. The meaning is probably not something like “posting on the website of either the municipality or the county,” for reasons already described. But especially in this specific context, the meaning is ambiguous.

Houston points to one potential interpretation.[247] She writes that when a municipality joins a county declaration, “it appears that the . . . electronic publication requirements will be satisfied if the county electronically publishes the declaration on behalf of the city because the county is the issuing jurisdiction.”[248] In other words, “the municipality or county” may mean something

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particular rule or statute was probably not meant to signal any exclusion’” (quoting *Vonn*, 535 U.S. at 65)). Additionally, even if G.S. 1-597 *did* apply, publication under that provision would not guarantee effective notice. G.S. 1-597 does not say that publication under that provision alone makes notice effective; G.S. 1-597 instead indicates that when the provision applies, notice shall *not* be effective *without* that publication. *See* G.S. 1-597. So other steps might be needed.

243. *See Marx*, 568 U.S. at 381 (noting “that the [*expressio unius*] canon can be overcome by ‘contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion’” (quoting *Vonn*, 535 U.S. at 65)).

244. G.S. 166A-19.31(e1).

245. *See id.* §§ 19.22(b)(2), 19.31.

246. *See id.* § 19.22(a), (b)(2).

247. *See* Houston, *supra* note 3.

248. *Id.*

like "the municipality or county that issued the declaration." If that interpretation is correct, as Houston notes, a municipality may meet the website-publication portion of the baseline requirements if the county properly posts on the county website.[249]

But another possible interpretation of "the municipality or county" is something like "the municipality or county imposing the prohibitions or restrictions." For reasons noted above, it might make more sense to assume that "the municipality or county" does have a meaning like this one.

Of course, one might argue that this entity is still the county. Essentially, this argument centers on noting that the prohibitions or restrictions are imposed "by declaration."[250] Under G.S. 166A-19.22(b)(2), only the county is issuing a declaration; the municipality merely "consents to or requests" to be included under that declaration.[251] Since the county actually issues the declaration, under this view, the county is still imposing the prohibitions or restrictions, even in the municipality's jurisdiction. In other words, the argument might be that under G.S. 166A-19.22(b)(2), the county is imposing the prohibitions or restrictions in the municipality precisely because the county is the one issuing the declaration imposing the prohibitions and restrictions.[252] If this view is correct, then again, the municipality appears able to rely on the county's website posting.

But a second view exists. The prohibitions or restrictions are indeed imposed "by declaration," and the county is indeed issuing the relevant declaration.[253] Recall that the law does not explicitly require the municipality to issue a declaration in this scenario.[254] However, the municipality still actually decides which of the county's specific prohibitions or restrictions will be established in the municipal jurisdiction when the municipality "consents to or requests the state of emergency's application."[255] Therefore, one could argue that the municipality is really the entity "imposing" the prohibitions or restrictions in its jurisdiction "by declaration"; but instead of doing so by *issuing* a declaration, the municipality is doing so by "consent[] . . . or request[]" to have a declaration apply.[256] So in this specific case, the argument would go, the entity *issuing the declaration* would be the county, but the entity *imposing the prohibitions or restrictions* "by declaration" in the municipality would be the municipality.

This view is also consistent with the general relationship between counties and municipalities when they exercise authority related to prohibitions or restrictions under the EMA. By default, counties and municipalities each independently exercise their own authority to decide what emergency prohibitions and restrictions to establish in their own jurisdictions.[257] They have authority to declare states of emergency, set emergency areas, and impose emergency prohibitions and restrictions independently of one another.[258] And under the EMA, every mechanism that allows a county to extend its emergency area into a municipality (and then possibly introduce emergency prohibitions or restrictions) requires some level of municipal

249. *See id.*
250. *See* Houston, *supra* note 59.
251. *See* G.S. 166A-19.22(a), (b)(2).
252. *See* Houston, *supra* note 59.
253. *See* G.S. 166A, §§ 19.22, 19.31.
254. *See id.* § 19.22(b)(2).
255. *See id.*
256. *See id.*
257. *See id.* §§ 19.22, 19.31.
258. *See id.*

consent and/or request; in other words, the EMA never permits county emergency prohibitions or restrictions to be applied in a municipality without some type of municipal approval.[259] This feature of the EMA lends support to the idea that municipalities are the entities that would impose emergency prohibitions or restrictions within their own jurisdictions.

If this view is correct, and "the municipality or county" means something like "the municipality or county that is imposing the prohibitions or restrictions," then publication on the municipal website seems necessary to have achieved publication under G.S. 166A-19.31. For municipalities, it might also be safer, from a legal standpoint, to assume that publication on the municipal website is indeed necessary to achieve publication under G.S. 166A-19.31(d). Why? As I have just explained, it is not totally clear whether a municipality may rely on a posting on the county website for publication or if publication on the municipal website is needed for publication in this scenario; there are differing, reasonable interpretations of the law. But if the municipality properly posts on its own website, the municipality is covered regardless of which legal interpretation is correct, assuming that the county also properly publishes. Through this tactic, the municipality might also create greater actual knowledge of the imposed emergency prohibitions or restrictions among its population, which may be a municipal goal. The main disadvantage of this tactic is that, if the county *also* publishes on its own website, the municipality would do publication work that may turn out to be unnecessary.

Note that, consistent with Part I of the bulletin, if the municipality publishes, the municipality would still appear to rely on the county to assist with performing the WebEOC submittal.[260] The EMA says that "[p]ublication shall include . . . submittal of notice and a signed copy of the declaration to . . . [DPS's] WebEOC . . . system."[261] As Houston notes, WebEOC is not accessible to municipalities.[262] So a municipality would likely need to coordinate with the county anyway to perform the WebEOC submittal.[263] Sending the materials to the county to be placed on WebEOC, knowing that the county would further transmit the materials, thus might count as submittal for these purposes.[264]

However, if efforts beyond meeting the baseline requirements are required to achieve publication under G.S. 166A-19.31(d) in this scenario, the municipality might also be safer in assuming that it is responsible for taking those steps to achieve publication, in case county action would not work.

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259. *See id.* § 19.22(b)(2) (noting that "[t]he emergency area of a state of emergency declared by a county shall not include any area within the corporate limits of any municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the municipality's governing body or mayor consents to or requests the state of emergency's application"); *id.* § 19.22(b)(3) (noting that the emergency-area extension described in this part of the EMA "shall not include any area within the corporate limits of a municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the mayor or governing body of that other municipality consents to its application").

260. *See* Houston, *supra* note 3.

261. G.S. 166A-19.31(d).

262. *See* Houston, *supra* note 3 (stating that a "city must rely on the county to post [a] declaration in WebEOC"). If municipalities gain access to WebEOC, though, they might be safer in assuming that they must perform the WebEOC submittal themselves to achieve publication.

263. *See id.*

264. *See id.*

Finally, the municipality might also be safer in assuming that it must issue any termination notices required under G.S. 166A-19.31(e1). As discussed above, "the municipality or county" required to give such notice is not crystal clear; however, again, since "the municipality or county" seems likely to mean "the municipality or county imposing the prohibitions or restrictions" for purposes of publication, "the municipality or county" here may mean the same.[265] The municipality might be able to rely on a county action if the county is "the municipality or county" here. However, if the municipality properly issues its own termination notice regardless of what the county does, the municipality might increase its chances of complying with the termination-notice provision.

Given the complexities discussed above, this part comes with two summary tables. Consult Table 2 for a summary of the issues raised and conclusions drawn related to G.S. 166A-19.22(b)(3). As a reminder, G.S. 166A-19.22(b)(3) generally relates to county extensions of municipal emergency areas into counties. Table 3 summarizes the issues related to G.S. 166A-19.22(b)(2). As a reminder, G.S. 166A-19.22(b)(2) generally relates to extension of county emergency areas into municipalities.

265. *See* G.S. 166A-19.31; Bank of Am. Nat'l Ass'n v. Caulkett, 575 U.S. 790, 796 (2015) (applying the canon of consistent usage (citing Pasquantino v. United States, 544 U.S. 349, 358 (2005))). *But see* Util. Air Regul. Grp. v. Env't Prot. Agency, 573 U.S. 302, 320 (2014) (discussing how "the presumption of consistent usage 'readily yields' to context" (nested quotation marks omitted) (quoting Env't Def. v. Duke Energy Corp., 549 U.S. 561, 574 (2007))). Again, the context seems to point toward giving a consistent meaning to the phrase; the entity responsible for publishing seems likely responsible for giving termination notice.

Table 2. Potential Questions Raised when a Municipality's Emergency Area Is Being Extended into the County and Municipal Prohibitions or Restrictions Are Being Imposed in the County Under G.S. 166A-19.22(b)(3), with Responses

Issue [EMA sections]	**Potential question(s)**	**Response(s)**
General publication under 166A-19.31(d) [19.22(b)(3), 19.31(d)]	Would proper publishing under G.S. 166A-19.31(d) be sufficient to make local prohibitions or restrictions become effective in the county in this scenario?	Perhaps. If these prohibitions and restrictions are "imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]," then such publication seems sufficient. But an argument exists that the types of prohibitions and restrictions imposed in the county in this scenario do not meet these criteria. In that case, the law appears more uncertain. Counties could consider erring on the side of overnoticing.
The "chair of a board of county commissioners extending the emergency area under the authority of this subdivision shall take reasonable steps to give notice . . . to those likely to be affected" [19.22(b)(3)(b)]	1. Does the chair need to "take reasonable steps to give notice" when the *chair* does the extension, when the *board* does, or in both cases?	1. The law seems to require such "reasonable steps" in one instance or the other, but not both. In context, the law might be more likely to refer to instances when the *chair* does the extension. But the language is ambiguous. Counties might proceed by "tak[ing] reasonable steps" in both cases.
	2. Who is "likely to be affected"?	2. Unclear. This group might differ based on the facts and circumstances and include people in the expanded county emergency area, people in the municipality's jurisdiction, or others.
	3. What "reasonable steps" are required?	3. Also unclear. Perhaps these steps involve doing publication under G.S. 1-597 or G.S. 166A-19.31(d), but the law might require different or additional steps. What is "reasonable" may differ depending on the facts and circumstances. Counties could consider erring on the side of overnoticing.
	4. If the "reasonable steps" are different from publication under G.S. 166A-19.31(d), could taking these steps be sufficient to make prohibitions or restrictions effective in this scenario?	4. Unclear, but a potentially less risky approach might be assuming not. Counties, again, could consider erring on the side of overnoticing.
	5. Does the chair personally have to give notice?	5. Perhaps not. Taking "reasonable steps" might mean that the chair delegates to others.
Notice of termination under G.S. 166A-19.31(e1) [19.22(b)(3), 19.31(e1)]	Is termination notice under G.S. 166A-19.31(e1) required in this scenario?	The law is not totally clear, but counties might be safest in assuming that the termination-notice provision applies.
Chair's "declar[ing] the termination of any prohibitions and restrictions" [19.22(b)(3)(c), 19.31(e1)]	How and where must the chair "declare the termination of any prohibitions and restrictions" under G.S. 166A-19.22(b)(3)(c) in this scenario?	Unclear. Posting the declaration by following the termination-notice requirements of G.S. 166A-19.31(e1) might be appropriate, but different steps may be required. Counties could consider erring on the side of overnoticing.

(table continued on next page)

(Table 2 continued)

Issue [EMA sections]	Potential question(s)	Response(s)
Who would give notice of the prohibitions or restrictions? [19.22(b)(3), 19.31(d)]	1. May the county totally rely on the municipality for notice in this scenario?	1. Probably not.
	2. If the publication provision applies, who is "the municipality or county" referenced in G.S. 166A-19.31(d) in this scenario?	2. The meaning of "the municipality or county" is not clear, but it is probably safest to assume that it is the local government imposing the prohibitions or restrictions in its jurisdiction (the county, in this case).
Who needs to give termination notice? [19.22(b)(3)(c), 19.31(e1)]	1. If the termination-notice provision applies, who is "the municipality or county" referenced in G.S. 166A-19.31(e1) in this scenario?	1. The safest interpretation might be that it means something like "the municipality or county attempting to impose the prohibitions or restrictions" and that that entity is the county in this instance.
	2. May the county fully rely on a municipality for termination notice in this scenario?	2. Probably not. G.S. 166A-19.22(b)(3)(c) requires the chair to "declare the termination of any prohibitions and restrictions" once a triggering event occurs. The county might also be safer in assuming that any notice required under G.S. 166A-19.31(e1) should come from the chair.
	3. Could part of this termination-notice duty be delegated?	3. Potentially. The chair must "declare the termination" but could potentially delegate providing notice of this declaration to others.

Note: EMA = North Carolina Emergency Management Act (Chapter 166A, Article 1A of the North Carolina General Statutes). All section numbers are from Chapter 166A. *Chair* refers to the chair of the board of county commissioners.

Table 3. Potential Questions Raised when a County's Emergency Area Is Being Extended into the Municipality's Jurisdiction and County Prohibitions or Restrictions Are Being Imposed in the Municipality Under G.S. 166A-19.22(b)(2), with Responses

Issue [EMA sections]	Potential question(s)	Response(s)
General publication under 166A-19.31(d) [19.22(b)(2), 19.31(d)]	Would proper publishing under G.S. 166A-19.31(d) be sufficient to make local prohibitions and restrictions become effective in the municipality this scenario?	Perhaps. If these prohibitions and restrictions are "imposed by declaration pursuant to ordinances adopted under [G.S. 166A-19.31]," then such publication seems sufficient. But an argument exists that the types of prohibitions and restrictions imposed in the municipality in this scenario do not meet these criteria. In that case, the law appears more uncertain. Local governments could consider erring on the side of overnoticing.
Notice of termination under 166A-19.31(e1) [19.22(b)(2), 19.31(e1)]	Is termination notice under 166A-19.31(e1) required under this scenario?	The law is not totally clear, but local governments might be safest in assuming that the termination-notice provision applies.
Relying on the county for publication [19.22(b)(2), 19.31(d)]	1. May a municipality rely on a county for any publication under G.S. 166A-19.31(d) in this scenario?	1. Unclear. The safer approach might be assuming that the municipality must itself publish to achieve publication under G.S. 166A-19.31 in this scenario.
	2. If the publication provision applies, who is "the municipality or county" referenced in G.S. 166A-19.31(d) in this scenario?	2. The safest interpretation might be that it means something like "the municipality or county imposing the prohibitions or restrictions" and that, in this case, that entity is the municipality.
Relying on the county for termination notice [19.22(b)(2), 19.31(e1)]	1. May a municipality totally rely on a county for termination notice in this scenario?	1. Unclear. The safer approach might be assuming that the municipality is responsible for termination notice.
	2. If the termination-notice provision applies, who is "the municipality or county" referenced in G.S. 166A-19.31(e1) in this scenario?	2. "[T]he municipality or county" might mean a few different things. The safest interpretation might be that it means something like "the municipality or county attempting to impose the prohibitions or restrictions" and that that entity is the municipality.

Note: EMA = North Carolina Emergency Management Act (Chapter 166A, Article 1A of the North Carolina General Statutes). All section numbers are from Chapter 166A.

Concluding Thoughts

I can only show you the door.
You have to walk through it.

—Morpheus[266]

When Neo learns about the nature of the Matrix, he is daunted.[267] At first, he even refuses to accept that what he has learned is true.[268] Certainly, in many ways, his life may have been more comfortable had he chosen the blue pill.[269] But as Morpheus says, once you take the red pill, "there is no turning back."[270] A major theme of *The Matrix* is what we do when confronted with information that could change our outlooks, especially in ways that might feel overwhelming or inconvenient.[271]

For some readers, these parts of the film might feel like more than just elements of a fictional tale. The sections of the EMA explored in this bulletin may not have been on some readers' radars. If they were, these rules may have seemed straightforward or easy to follow, without the need for deeper analysis. After reviewing this bulletin, readers may now see the rules as much more complicated than before. They may also feel uncertain about what local governments must do to comply with the rules. They might even have concerns about the burdens that these rules may place on local government staff members. Indeed, life may have been more comfortable with the blue pill.

What readers now choose to do with the information that they received is, ultimately, up to them. Readers could ignore what they have heard or try to forget it. Or they could confront this new information head-on, gain mastery of it, and incorporate it into their lives going forward. I do not wish to spoil the end of the film. But I will say that in *The Matrix*, this decision is critical for the fate of those who chose to take the red pill.[272]

For readers wanting to use this information, I do have some hopefully comforting parting thoughts. As readers can now see, many parts of the publication and termination-notice provisions contain considerable gray area, which may be a source of confusion and worry.[273] But readers might also look at this reality with a different perspective. Reasonable minds might differ on how much a local government unit must do to achieve publication or give termination notice under these provisions. So until receiving more authoritative guidance, like a court ruling, readers might reasonably interpret some of the rules differently.

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266. The Matrix, Univ. of N.C. at Chapel Hill Libr. at 1:10:32–1:10:36 (Warner Bros., Village Roadshow Pictures, Groucho Film Partnership, Silver Pictures, 3 Arts Entertainment 1999).

267. *See id.* at 40:32–44:12.

268. *See id.* at 43:18–44:12.

269. *See generally* The Matrix, *supra* note 266 (showing Neo's life before and after taking the red pill).

270. *Id.* at 29:02–29:03.

271. *See generally* The Matrix, *supra* note 266 (showing how Neo responded after learning about the Matrix).

272. *See generally id.* (showing what happens to the people who have taken the red pill).

273. *See* G.S. 166A-19.31(d), (e1); *see also* Houston, *supra* note 3 (noting differing potential interpretations of the publication provision).

A more conservative approach for a local government, involving more local government efforts, might lower the chances that (1) the local government fails to properly put into effect or give termination notice for prohibitions or restrictions or (2) someone feels insufficiently aware of what is prohibited or restricted or of when prohibitions or restrictions have ended. In turn, this approach may lower the chance that anyone challenges the local government's actions or fails to follow its prohibitions or restrictions. The appendix following this conclusion outlines a version of this type of approach.

But taking this type of approach may also feel overly burdensome. A "looser" interpretation of the rules for a local government might save the local government time and resources, while still potentially complying with the law. However, this way of proceeding comes with possible drawbacks. Local governments going this route may not have properly put into effect or terminated their emergency prohibitions or restrictions or might be more likely to receive a legal challenge to their actions. Further, members of the public might be more likely not to follow their prohibitions or restrictions because these members of the public are unaware of them.

This bulletin has attempted to identify areas where the rules may be gray and subject to differing, potentially valid interpretations. Local government staff can consider working with their local government attorneys to decide how to approach publication and termination notices under these rules.

Appendix. Outline of One Potential Approach to Publishing and Termination Notice

As noted, the above publication and termination-notice provisions are not totally clear. So as stated earlier, the appendix is not a guide, recommendation, or set of "best practices." It illustrates one potentially more conservative approach to publication and termination notice under these provisions. Local governments may consider consulting with their own attorneys for advice on how to proceed in their specific situations.

Publication

Publish everything yourself. Do not rely on any other local government or others to publish on your behalf, even if "sharing" or "joining onto" a state-of-emergency declaration. But municipalities may need to coordinate with their counties to publish on WebEOC. Note that when prohibitions or restrictions are imposed in a county under G.S. 166A-19.22(b)(3), a chair of the county-commissioners board specifically may also need to "take reasonable steps to give notice" of those prohibitions and restrictions "to those likely to be affected."

Publish all local declarations of a state of emergency affecting your jurisdiction and amendments or additions to them. Do so even if the declarations of a state of emergency do not include any local emergency prohibitions or restrictions.

Publish a signed, full-text copy to your website (if applicable) and submit on WebEOC, following the explicit language in G.S. 166A-19.31(d).

Post "conspicuously" on your website (if applicable). Minimize chances of a dispute about whether the post was "conspicuous" enough.

Publicize elsewhere to maximize the chance that people affected know relevant details about local declarations/prohibitions/restrictions and are properly informed.

Termination Notice

Give notice yourself. Again, do not rely on others, but municipalities may need to coordinate with their counties to submit on WebEOC. For counties, have termination notice come as a written declaration from the chair of the board of county commissioners.

Give termination notice for all terminated local declarations, prohibitions, or restrictions affecting your jurisdiction.

Publish notice on your website (if applicable) and submit on WebEOC, following the explicit language in G.S. 166A-19.31(e1).

Post "conspicuously" on your website (if applicable). Minimize chances of a dispute about whether the post was "conspicuous" enough.

Publicize elsewhere to maximize the chances that people affected know relevant details about any relevant local terminations and are properly informed.