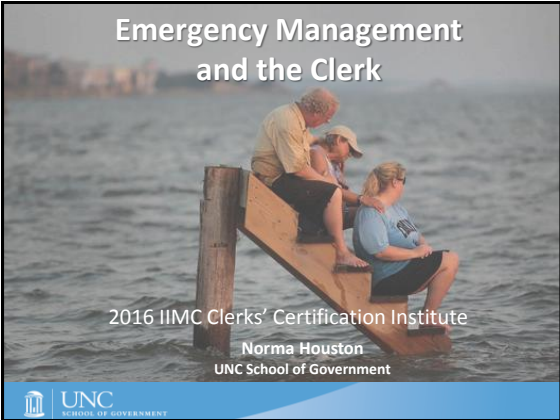



**Emergency Management  
and the Clerk**



2016 IIMC Clerks' Certification Institute  
Norma Houston  
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**Welcome to the World of  
Emergency Management**

*What is Your Role?*



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**Today We'll Cover**

- EM Legal Framework
- Role of Local Governments
- Local Government Authorities
- Local Ordinances
- Local State of Emergency
- Local Emergency Restrictions
- Paying for Disasters
- Liability Issues
- EM Legal Planning



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**ARE YOU SMARTER  
THAN AN . . .  
...EMERGENCY  
MANAGER?**




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**What Do You Think?**

1. Does a curfew imposed by a county automatically apply to a municipality within that county?
2. Can law enforcement arrest someone for violating a state of emergency restriction?
3. Can a local government enforce a mandatory evacuation?




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**What Do You Think?**

4. Is alcohol automatically banned under a state of emergency declaration?
5. Can local governments ban guns under a state of emergency declaration?
6. Can the Governor take over a local government's emergency operations?




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### What Do You Think?

- 7. Is a city liable for injuries caused by a car wreck during a hurricane evacuation ordered by the city?
- 8. Is the county liable if it suspends EMS during a storm and does not respond to a 911 call?
- 9. Is a local government required to competitively bid its debris removal contract?



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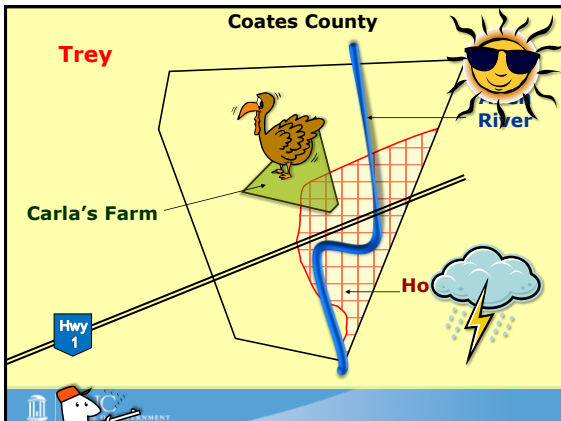
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**EM Legal Framework**

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**EM Legal Framework**

FEDERAL

- Robert T. Stafford Act - Public Law 93-288, as amended, 42 U.S.C. 5121 et seq.; Title 44 CFR
- President – DHS – FEMA

STATE

- GS Chapter 166A
- Governor – DPS – DEM

LOCAL

- Chapter 166A, Local Ordinance
- Board Chair/Mayor – Manager – EM Coordinator

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**What is an “Emergency”?**

NC law follows the “**all-hazards**” approach:

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

*G.S. 166A-19.3(6)*

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## What is an “Emergency”?

“**Emergency**” means **any** occasion or instance for which, in the determination of the President, Federal assistance is needed to **supplement** State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”

*Stafford Act, 42 U.S.C. 5122(1)*

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## What is Emergency Management?

**Emergency Management** includes “the **never-ending preparedness cycle** of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.”

*G.S. 166A-19.3(8)*

**State Emergency Management Program** includes “**all aspects** of preparations for, response to, recovery from, and mitigation against war or peacetime emergencies.”

*G.S. 166A-19.10(a)*

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## The “Never Ending Cycle”



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## Role of Local Governments




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## Role of Local Governments

All emergencies (disasters) begin and end at the **local** level.

“Local government has the **primary role** of planning and managing all aspects of the community’s recovery. Individuals, families and businesses look to local governments to articulate their recovery needs.”

*-National Disaster Recovery Framework (Sept. 2011, p. 22)*




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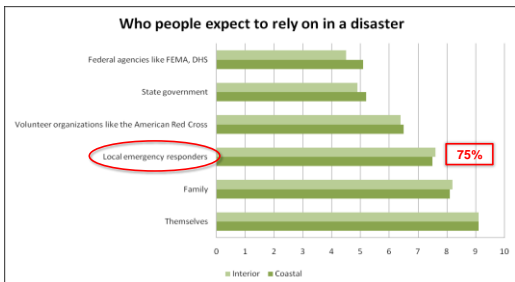
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## Citizens Look to Local Governments



Source: Donahue, A., *Household Survey Findings, Disaster Risk Perception, Preferences, and Preparedness Project*, UCONN Department of Public Policy (August 2010)




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## County-Municipality Relationship

### County

has primary responsibility within the county to coordinate with state and federal agencies



**Municipality** operates EM programs subject to coordination with county, but has independent legal authorities

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## Local Government Authorities

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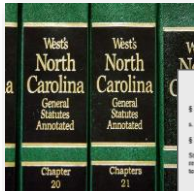
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## Delegated Police Powers



Article 1A.  
North Carolina Emergency Management Act.

§ 166A.19. Short title.  
This Article may be cited as "North Carolina Emergency Management Act." (1977, c. 448, s. 2, 1979, 2nd Sess., c. 1310, s. 2, 1995, c. 309, s. 120, 2012-12, s. 103.)

§ 166A.19.1. Purpose.  
The purpose of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary actions and to do the following:

- (1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
- (2) Prepare for prompt and efficient rescue, care, and treatment of threatened or afflicted persons;
- (3) Provide for the rapid and orderly rehabilitation of persons and restoration of property;
- (4) Provide for cooperation and coordination of activities relating to emergency mitigation, preparation, response, and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations. (1978, c. 372, s. 1, 1979, c. 734, s. 1, 1977, c. 448, s. 2, 1995, c. 309, s. 121; 2012-12, s. 103.)

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## Local Government Authorities

### Only Cities and Counties Can:

- Establish emergency management department and appoint director
- Expend local funds
- Develop and coordinate emergency management plans
- Coordinate confidential, voluntary registry of functionally & medically fragile persons



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## Local Government Authorities

### Only Cities and Counties Can:

- Enter into mutual aid and interlocal agreements
- Adopt **local ordinances** to impose restrictions and take necessary actions
- Issue **State of Emergency Declarations**
- **Impose emergency restrictions**



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## Local Emergency Ordinances



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## Local Emergency Ordinances

- Local ordinances are the **primary source** of local governments' legal authorities to exercise emergency powers under a State of Emergency Declaration
- Local governments **authorized by statute** to adopt local emergency ordinances
- Local ordinances **must** authorize emergency restrictions and prohibitions (not vested directly by statute)
- Restrictions and prohibitions are **triggered** by State of Emergency Declaration

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## Local Emergency Ordinances

*To maximize legal authority, local ordinances should:*

- Specify local powers & restrictions when emergency is declared
- Clarify who local decision-making body is
- Delegate declaration authority if necessary
- Activate local EOP
- Affirm compliance with NIMS and use of ICS
- Cite legal authority for local state of emergency declarations
- Provide penalties for violations - *clear citation for law enforcement*

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## City "Under" County Ordinance?



- YES:** GS 153A-122 – City council may apply county ordinance within city
- BUT:** City must still take **independent legal** action when declaring state of emergency

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**EMERGENCY ASSEMBLY POINT**

Local State of Emergency

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Local State of Emergency

**How is it issued?**

- Declared by city or county when it finds that an emergency exists
- Can be issued by County Board Chair, Mayor, Chief Executive Official of City or County, or other designated in local ordinance
- Does not require governing board ratification

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Local State of Emergency

**How is it communicated?**

- Reports of substance of declaration may be communicated to mass communications media or other effective methods to communicate quickly
- “Appropriate” distribution of full text as soon as practicable
- Formal published notice in newspaper not required

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## Local State of Emergency

### Where does it apply?

- Applies only within the jurisdiction issuing it (county declaration cannot apply within municipality without consent)
- Can apply in part(s) or all of the jurisdiction (default – entire jurisdiction)
- One jurisdiction’s declaration can be extended by Mayor/BOC Chair into their own jurisdiction

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## Local State of Emergency

### When is it effective?

- Immediately (when issued) unless a later date is set in the declaration
- Until terminated by the entity or official who issued it

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## Local State of Emergency

### What does it do?

- Triggers **local emergency ordinances**, plans, and operations
- Imposes **only the prohibitions and restrictions deemed necessary** in response to the circumstances of the emergency
- May be necessary for state and federal reimbursement

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## Local Emergency Restrictions



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## Local Emergency Restrictions

Restrictions and Prohibitions allowed:

Movements of people in public places, mandatory and voluntary evacuations, limited ingress and egress



Violations punishable as Class 2 misdemeanor



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## Local Emergency Restrictions

Restrictions and Prohibitions allowed:

Operation of businesses and places people travel to and from and gather



Violations punishable as Class 2 misdemeanor



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### Local Emergency Restrictions

Restrictions and Prohibitions allowed:

Possession, transportation, sale,  
purchase and consumption of alcohol



Violations punishable as Class 2 misdemeanor



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### Local Emergency Restrictions

Restrictions and Prohibitions allowed:

Possession, transportation, sale, purchase, storage  
and use of dangerous weapons and gasoline  
EXCEPT LAWFULLY POSSESSED FIREARMS (handguns,  
rifles, and shotguns) AND AMMUNITION



Violations punishable as Class 2 misdemeanor



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### Emergency Gun Restrictions

**Can:**

- Restrict other "dangerous weapons and substances"
- Enforce curfew or non-weapons restrictions against person even if lawfully possessing a firearm
- Enforce other state gun laws (ex: concealed-carry permit)
- Include gun stores among other business restrictions

**Cannot:**

- Limit or restrict the "possession, transportation, sale, purchase, storage, and use" of lawfully possessed firearms and ammo
- Prohibit lawful sale of ammo for lawfully possessed firearms
- Prohibit lawful concealed carrying



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## Local Emergency Restrictions

Restrictions and Prohibitions allowed:

Other actions necessary to maintain order and protect lives and property



Violations punishable as Class 2 misdemeanor

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## Extent of Local Authorities

### Restrictions held **INVALID**:

- Lack of legal authority
- State preemption
- Language in ordinance vague, overbroad, or subject to arbitrary enforcement
- Threat not imminent

### Restrictions held **VALID**:

- Threat of disaster imminent
- Reasonably tailored to actual circumstances
- Clear legal authority
- Unsafe conditions persisted following disaster and restrictions modified as conditions improved

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## SoE Declaration Should Include:

- Findings of imminent or actual disaster (describe disaster event)
- Findings of imminent or actual threat of widespread or severe damage, injury, loss of life or property
- Statement that SoE and restrictions or prohibitions are necessary to maintain order and protect public health, safety, and welfare

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### SoE Declaration Should Include:

- Cite legal authority of official to take action under state law and local ordinance
- Areas of jurisdiction SoE applies in
- Restrictions and prohibitions imposed (be specific)
- Duration of declaration
- Date and time issued
- Signature of authorizing official

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### Recap: Legal Chain of Authority

Chapter 166A, Art. 1A



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\$\$ Paying for Disasters \$\$

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## Sources of Funding

- **Local** Funding
- **State** Funding – available in *some* state and federally declared disasters
- **Federal** Funding (FEMA) – available in federally declared disasters
  
- Two main types of funding assistance:
  - Individual Assistance (paid to individuals)
  - Public Assistance (paid to public entities)

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## FEMA Public Assistance

Costs must be:

1. Direct result of disaster
2. Within designated disaster area
3. Legal responsibility of applicant



Source: [www.fema.gov/public-assistance-grant-application-process](http://www.fema.gov/public-assistance-grant-application-process)

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## Examples of Reimbursable Costs

- Debris removal
- “Emergency protective measures”, such as:
  - EOC operations
  - Search & Rescue / Security in disaster area
  - Provisions for population (food, water, etc.)
  - Temporary medical facilities / medical evacuation
  - Shelters / Mass care
  - Generators
  - Emergency repairs / reestablishing access
- Infrastructure repair – roads, bridges, facilities, utilities, etc.

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## Common Federal Reimbursement Problems

(44 CFR Parts 13, 206)

- Personnel – overtime compensation
- Contracting – competitive bidding required
- Debris removal (“non-system roads”)
- Private property exclusion
- “Lack of legal responsibility” exclusion
- Documentation
- No local state of emergency declaration

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## Liability Protection



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## NCEM Liability Immunity

GS 166A-19.60

- Broad protection for emergency management functions
- Broad protection for emergency management workers
- Also protects volunteers if working under direction or control of government officials
- Does not protect against gross negligence, willful, wonton or intentional acts

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**Importance of Planning**

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### Emergency Management Planning

- Planning is a critical component of emergency management
- **Inter**-governmental and **Intra**-governmental
- Local plans must be consistent with state and federal laws and regulations, and NCDM standards
- Federal and state grant funding tied to local planning and professional competencies

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### EM Legal Preplanning Checklist

- Become NIMS compliant
- Preposition contracts (such as debris removal)
- Execute mutual aid & interlocal agreements
- Compile & back-up relevant documents
- Develop templates for declarations, contracts, etc.
- Check local ordinances for needed updates
- Be familiar with local, state, and federal laws
- Involve local attorney

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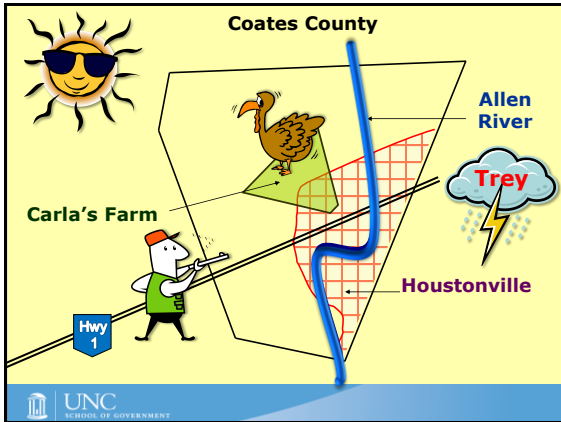
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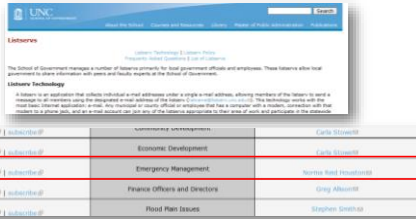
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## SOG EM List Serv

[ncem@listserv.unc.edu](mailto:ncem@listserv.unc.edu)




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## [www.ReadyNCLocal.org](http://www.ReadyNCLocal.org)




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## NCDEM & NCEMA

[www.ncema.net](http://www.ncema.net)



[www.ncdps.gov](http://www.ncdps.gov)




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FEMA [www.fema.gov](http://www.fema.gov)

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**STAY SAFE!**

Norma Houston  
 (919) 843-8930  
[nhouston@sog.unc.edu](mailto:nhouston@sog.unc.edu)

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