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SLED guidance on compliance with Governor McMaster's "home or work" order

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SLED GUIDANCE ON COMPLIANCE WITH GOVERNOR McMASTER’S “HOME OR WORK” ORDER

Effective at 5:00 PM on Tuesday, April 7, 2020, Executive Order 2020-21, which is South Carolina’s mandatory “Home or Work” order, goes into full effect and is enforceable throughout the duration of the Emergency Declaration or until modified or rescinded. In this Order, Governor McMaster states:

I hereby order and direct that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice “social distancing” in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their home, place of residence, or current place of abode (collectively, “Residence”), except as allowed by this Order, for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as set forth below and as such terms are further defined herein.

According to the CDC’s website, “Social distancing, also called ‘physical distancing,’ means keeping space between yourself and other people outside of your home. To practice social or physical distancing: 1. Stay at least 6 feet from other people, 2. Do not gather in groups, and 3. Stay out of crowded places and avoid mass gatherings.” <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>. This is now mandated in South Carolina and is enforceable via S.C. Code Ann. § 16-7-10.

In addition, the Governor has prohibited individuals from traveling outside their respective Residence to engage in any “non-essential business”. The following businesses, venues, and facilities have been deemed **NON-ESSENTIAL**:

Night clubs	Bowling alleys	Arcades	Concert Venues	Bingo Halls
Social clubs	Theaters	Museums	Adult Entertainment Venues	Racetracks
Auditoriums	Tourist Attractions	Aquariums	Indoor Children Play Areas	Performing Arts

Fitness and Exercise Centers	Spas and Pools	Sports that Involve Interaction and Close Proximity
Group Exercise Facilities	Commercial Gyms	Activities that Require Shared Sporting Apparatus and Equipment
Spectator Sports	Yoga, Barre, Spin Studios	Activities on Commercial or Public Playground Equipment



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NON-ESSENTIAL CONT'D

Barber Shops	Hair Salons	Nail Salons	Threading Salons	Waxing Salons
Tattoo Services	Tanning Salons	Spas	Body-art Facilities	Massage Services

Furniture and Home-Furnishings	Jewelry Stores	Clothing, Shoe, and Clothing-Accessory Stores
Department Stores, with the exception of Hardware and Home-Improvement Stores	Florists	Leather Goods Stores and Luggage Stores
Sporting Goods Stores	Flea Markets	Book, Craft, and Music Stores

In addition, the Executive Order provides:

Subject to the emergency rules and restrictions set forth below, this Section does not prohibit the continued operation of retail stores, as set forth above, for the limited purpose of fulfilling online or telephone orders or providing alternate means of purchasing or delivering products or services—to include curbside purchase, pickup, or delivery and home or off-site delivery—provided that such options or measures can be implemented in a manner that facilitates and maintains effective “social distancing” and is consistent with any applicable guidance issued by state and federal public health and safety officials.

The Governor has also imposed the following emergency rules and restrictions on essential businesses that remain open:

1. **Emergency Maximum Occupancy Rate.** The business shall limit the number of customers allowed to enter and simultaneously occupy the premises so as not to exceed five (5) customers per 1,000 square feet of retail space, or twenty percent (20%) of the occupancy limit as determined by the fire marshal, whichever is less.
2. **Social Distancing Practices.** The business shall not knowingly allow customers, patrons, or other guests to congregate within six (6) feet of one another, exclusive of family units.
3. **Sanitation.** The business shall implement all reasonable steps to comply with any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials.

However, the Order also specifically provides that this “[s]ection shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the sale or transportation of firearms or ammunition or any component thereof.”

The Order also authorizes the following **ESSENTIAL ACTIVITIES** so long as social distancing practices are followed and individuals “take reasonable steps to maintain six (6) feet of separation from any other person”:

Caring for or Visiting Family	Engaging in Activities Essential for the Health and Safety of Family (Seeking Medical, Behavioral Health, or Emergency Services)
Attending Religious Services Conducted in Churches, Synagogues, or Other Houses of Worship	Obtaining Necessary Supplies and Services for Family or Household (Food and Supplies) or Equipment to Work from Home
Obtaining Medical Supplies or Medication or Other Products Needed to Maintain Safety, Sanitation, And Essential Maintenance of Home	Caring for Pets
Engaging in Outdoor Recreational Activities (Provided that a minimum distance of six (6) feet is maintained between all persons who are not occupants of the same Residence)	Travelling as Required by Law (Including Court Proceedings, and Transporting Children for Custody Agreements)

The following **CRITICAL INFRASTRUCTURE OPERATIONS** have also been specifically authorized:

Individuals operating commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips); individuals employed by airlines; and individuals otherwise engaged in commercial transportation activities.	Individuals performing or assisting with military, healthcare, public safety, or emergency response operations, as well as any other operations or services identified by the United States Cybersecurity and Infrastructure Security Agency in its March 28, 2020 Memorandum, or any future amendments or supplements thereto, as essential to continued critical infrastructure viability
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The above provisions and all requirements of Executive Order 2020-21, and all similar orders issued by Governor McMaster related to this emergency situation are enforceable via S.C. Code Ann. § 16-7-10. Each of these Executive Orders are accessible via <https://governor.sc.gov/executive-branch/executive-orders>. Below is some general law enforcement guidance on the enforcement of these provisions.

In pertinent part, S.C. Code Ann. § 16-7-10(A) states:

“In any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to:

- (1)(a) violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation;
- (b) congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or
- (c) wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer.

A person violating the provisions of this item is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.”

The CDR Code information for this offense is:

CDR Code: 1156

Offense Description: Looting / Violation of curfew, congregation, failure to disperse in emergency area

Offense Statute: 16—070-0010(a)

Penalty Statute: 16—070-0010(a)

Offense Type: Misdemeanor

Offense Class: Unclassified

Law enforcement officers should continue to conduct enforcement activity in accordance with their own agency’s practices and protocols. During the course of these normal operations, if an officer develops reasonable suspicion or probable cause that an individual is in violation of Executive Order 2020-21, or any other Executive Order, the officer may take the appropriate enforcement action. However, there is no requirement in any existing Executive Order that an individual must possess or be able to provide written proof regarding the individual’s activities or travel, essential or otherwise.

Accordingly, officers should proceed as normal as it relates to the underlying basis for law enforcement encounters with citizens. If, during such an encounter, the officer determines that a violation of S.C. Code Ann. § 16-7-10 (including a violation of an Executive Order) has been freshly committed or was committed in the presence of the officer, the officer retains discretion on whether or not to issue a citation or a warning for the violation of S.C. Code Ann. § 16-7-10, or for any other criminal violation. Public contacts should be documented as appropriate and as required. In addition, South Carolina courts have noted that “an officer can arrest for a misdemeanor when the facts and circumstances observed by the officer give him probable cause to believe that a crime has been freshly committed.” State v. Martin, 275 S.C. 141, 146, 268 S.E.2d 105, 107 (1980).

In accordance with the April 3, 2020 Supreme Court Order, if an officer makes a warrantless arrest, the officer must submit an affidavit setting forth the facts on which the warrantless arrest was made to the appropriate judge within eight (8) hours of the arrest. The appropriate judge would be any judge authorized to issue an arrest warrant in that jurisdiction. Any properly notarized affidavit will satisfy this requirement, including any affidavit form approved for use by the officer’s respective agency.

While this procedure is in place, all officers should strongly consider securing arrest warrants whenever possible. That said, ultimate discretion will always remain with the officer. Please also note that the above warrantless **arrest** procedure does **not** require any change to the procedures for the issuance of Uniform Traffic Tickets (or any other warning ticket or administrative violation) when no arrest is made.

Moreover, when considering the enforcement of any of the above provisions, the South Carolina Attorney General’s Office has cautioned that the enforcement of the above provisions “should be applied such that gatherings involving established fundamental constitutional protections should be authorized, even if prudence dictates they be discouraged.” “Some examples of these fundamental constitutional protections are the freedom of religion inherent in a church or other religious meeting, or a wedding or funeral; the constitutional protections of the family unit; and the freedom of assembly for political purposes.”

Finally, should any additional guidance regarding outdoor recreation in accordance with the existing Executive Orders be needed, the South Carolina Department of Natural Resources (SCDNR) has provided a Frequently Asked Questions (FAQs) section to the SCDNR website. This page is accessible via <http://www.dnr.sc.gov/covid19faqs.html>.