

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: January 7, 2008

SUBJECT: Foothills Highland Games

ATTACHMENTS: Yes

SUMMARY OF REQUEST:

The County has been contacted by representatives of the Scottish Clans of the South (SCOTS) Games Committee requesting that they be permitted to again hold the Foothills Highland Games at Jackson Park on November 1, 2008 and be given exemptions from the current park rules to allow open fires, weapons and overnight camping. The 2006 and 2007 Foothills Highland Games were held at Jackson Park. The park is available on the date requested.

BOARD ACTION REQUESTED:

Staff is supportive of permitting the SCOTS to utilize Jackson Park for the 2008 Foothills Highlands Games. The SCOTS have again requested an exemption from current park rules to allow open fires, weapons to be used during the Games and overnight camping. County staff addressed park ordinance issues regarding open fires, weapons used during the Games, and overnight camping for the 2007 event.

Suggested Motion:

I move that the SCOTS be permitted to use Jackson Park for the Foothills Highland Games, and be granted an exemption from current park rules to allow overnight camping, open fires and antique weapons to be used during the Games.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement"), made and entered into this _____ day Of _____, 2008, by and among Henderson County, a body corporate and politic (hereinafter referred to as "Lessor") and Scottish Clans of the South, a charitable or religious corporation organized and existing pursuant to N.C. Gen. Stat. §55A-2-02 *et seq.* (hereinafter referred to as "Lessee").

STATEMENT OF PURPOSE

Lessor and Lessee have agreed that Lessee lease a portion of the "Clyde Jackson Park" property owned by the Lessor for the period and purposes defined herein, and wish to memorialize the terms of such agreement herein.

STATEMENT OF AGREEMENT

NOW THEREFORE, and subject to the terms and conditions hereinafter set forth, Lessor does hereby lease and let unto Lessee the Property, together with all privileges and appurtenances thereto, upon the following terms and conditions.

1. The term of this Agreement shall commence as of _____ October, 2008, at 8:00 a.m. E.S.T., and shall expire on _____ November, 2008, at 7:00 p.m. E.S.T.
2. Throughout the full term of this Agreement, Lessee shall pay to Lessor, without notice, demand reduction, setoff or any defense, the sum of _____ per day, to be paid in full in advance of the date of commencement of this Lease.
3. The parties agree that the Lessee shall be allowed to use such portion of the Lessor's Clyde Jackson Park property as shown on the attachment, Exhibit "A" hereto, for only the purposes shown on said attachment.
4. Lessee, and all subtenants of the Lessee, shall follow all rules and directives contained on the attachment, Exhibit "B" hereto, taken from Chapter 130A of the Henderson County Code, which is incorporated herein by reference. Lessee shall take whatever measures are necessary to insure that any subtenants of the Lessee comply with such attachment.
5. Lessee shall, at its sole expense, keep all property owned by the Lessee located on or in the Property insured for the benefit of the Lessee in such amount and such extent that Lessee determines desirable against loss or damage by fire and against such other risks of loss or damage by fire and against such other risks of similar or dissimilar nature as are, or shall be,

customarily covered with respect to said property. Lessor shall, at its sole cost and expense, keep the improvements and other property and interests in property owned by the Lessor on or in the property insured for the benefit of Lessor in such amount and to such extent as the Lessor determines desirable.

6. Lessee shall indemnify and hold harmless the Lessor from and against any and all liability, fines, suits, claims, demands, actions and costs and expense of any kind or nature whatsoever caused by arising out of or in any manner connection with (a) any breach, violation or nonperformance of any covenant, condition or agreement set forth in this Agreement to be fulfilled or performed by the Lessee; (b) any damage to property occasioned by the Lessee's use or occupancy of the Property or (c) any injury to a person or persons, including death, resulting at any time therefrom, or any damage occurring in or about the Property and resulting from or occasioned by Lessee's use of occupancy of the Property.

7. This instrument contains the entire agreement between the parties hereto with respect to Lessee's occupancy of the Property, and all prior and contemporaneous agreements are merged herein, and this instrument shall not be altered or modified except in writing and signed by all parties hereto.

WITNESS our hands and seals as of this day and year first above written.

HENDERSON COUNTY

By: _____
Chairman, Board of Commissioners

Attest:

Secretary to the Board of Commissioners

SCOTTISH CLANS OF THE SOUTH

By: _____
President

Exhibit B

§ 130A-1. Title.

This chapter shall be referred to as the "Henderson County Parks and Recreation Ordinance."

§ 130A-2. Authority.

This chapter is enacted pursuant to N.C.G.S. 160A, Article 18, and N.C.G.S. 153A-169.

§ 130A-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DEPARTMENT — The Parks and Recreation Department of Henderson County.

DIRECTOR — The Director of the Parks and Recreation Department of Henderson County, or his/her designee.

PARK — A park, reservation, playground, community center, recreation center, stadium or any other area or structure in the County, owned or leased or used by the County and devoted to active or passive recreation, including property owned by others and devoted to park purposes under the jurisdiction of the Department.

PERSON — Any individual, firm, partnership, association, corporation, company or organization of any kind, but does not apply to park employees or law enforcement officers to the extent necessary to carry out their duties.

PUBLIC PLACE — Any place which is viewable from any location open to the view of the public at large.

PUBLIC NUDITY — A person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area or female breasts below a point from the top of the areola while in a public place, excluding toilet facilities.

SEXUAL CONDUCT — Vaginal, anal or oral intercourse, whether actual or simulated, or masturbation.

UNNECESSARY STOPPING — Bringing a vehicle to a complete stop at a point other than in a parking place, or other than in conformity with traffic regulations and other than because of a defect in said vehicle.

VEHICLE — Any wheeled conveyance, whether motor-powered, animal-drawn or self-propelled; except wheelchairs and similar vehicles, baby carriages and vehicles in the service of the County parks or emergency vehicles.

§ 130A-4. Park property.

A. Buildings and other property. No person in a park shall:

- (1) Willfully mark, deface, disfigure, adulterate, injure, tamper with or displace or remove any buildings, bridges, tables, fireplaces, railings, paving or paving materials, water lines, or other public utilities or parts of appurtenances thereof, fences, signs, notices or placards, whether temporary or permanent, receptacles, monuments, stakes, posts, or other boundary markers, or other structures, improvements or equipment, facilities or park property or appurtenances whatsoever, either real or personal.

- (2) Force entry into any rest room or washroom that is locked or bolted; and no person over the age of six years shall enter any rest room, washroom or locker room designated for the opposite sex.
- (3) Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon or across such lands, except on special written permit or permission of the Director.
- (4) Camp or sleep overnight in any area of the park. No person shall set up tents, shacks or any other temporary shelter for the purpose of overnight camping, nor shall any person leave in any park any movable structure or special vehicle to be used or that could be used for such purpose, such as a camper-trailer, house trailer, motor home or the like.

B. Trees, shrubbery, lawns. No person in a park shall:

- (1) Damage, cut, carve, transplant or remove any tree or plant or injure the bark, or pick the flowers or seeds, of any tree or plant; attach any rope, wire or other contrivance to any tree or plant or tie or hitch an animal to any tree or plant.
- (2) Dig or remove any soil, rock or stones, or any trees, shrubs, plants, plantings, grass, down-timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency.
- (3) Climb, stand or sit upon monuments, vases, fountains, failings, fences, shelters, trees or upon any other property, real or personal, not designated or customarily used for such purposes.

C. Wild animals, birds. No person in a park shall:

- (1) Hunt, molest, harm, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; remove or possess the young of any wild animal, or the eggs or nest or young of any reptile or bird; except that it shall not be unlawful to kill snakes or other reptiles thought to be poisonous.
- (2) Give or offer, or attempt to give to any animal or bird any tobacco, alcohol or other known noxious substances.

§ 130A-5. Sanitation.

No person in a park shall:

- A. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream or other body of water in or adjacent to any park or any tributary system, storm sewer, or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters.
- B. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cigarette or cigar butts, cans, dirt, rubbish waste, garbage or refuse, or other trash anywhere on the park grounds; except such matter may be placed in proper receptacles where provided. Where receptacles are not provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.
- C. Dump, deposit or leave household garbage or waste generated outside the park in the park facilities, park receptacles or dumpsters, or on park grounds.

§ 130A-6. Traffic.

No person in a park shall:

- A. Fail to comply with the provisions of the motor vehicle traffic laws of the state and ordinances of the County in regard to equipment and operation of vehicles.
- B. Fail to obey all traffic officers, law enforcement officers and parks and recreation employees, such persons being authorized and instructed to direct traffic whenever and wherever needed in the park.
- C. Fail to obey all traffic signs indicating speed, direction, caution, stopping or parking, and all others posted for proper control and to safeguard life and property.
- D. Ride or drive a vehicle at a rate of speed exceeding 10 miles an hour, except upon such roads as the Director may specifically designate, by posted signs, for speedier travel.
- E. Drive any vehicle on any area except the paved park roads or designated parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the Director, except that bicycles shall be permitted on all trails unless specifically prohibited.
- F. Park a vehicle, or allow it to stand in other than an established or designated parking area, and such use shall be in accordance with the posted directions and with the instructions of any traffic officer, law enforcement officer or parks and recreation employee who may be present.
- G. Cause or permit a vehicle to obstruct the flow of traffic.
- H. Cause or permit a vehicle to be parked unattended or abandoned overnight except by written permission of the Director.
- I. Stand, sit, congregate or in any way block or cause a hazard for vehicles in any roadway or parking area, except as may be specifically designated by the director during special events.
- J. Operate any motorized vehicle at any location within the park other than such places, if any, as are specifically designated for such purposes by the Director, except that regularly licensed vehicles and operators, or mopeds, may have access to the streets, roadways and parking areas within parks to the same extent as public streets, subject to all other rules of this article and Code.
- K. Ride a bicycle on other than the right-hand side of a paved vehicular road or path designated for that purpose; or fail to keep in single file when two or more bicycles are operating as a group, except as specifically designated by the Director during special bicycle events.
- L. Ride any other person over the age of six years on a single-passenger bicycle in any park.
- M. Leave a bicycle unattended in a place other than a bicycle rack when such is provided and there is space available.
- N. Leave a bicycle lying on the ground or paving, or against trees, or in any place or position where other persons may trip over or be injured by it.
- O. Ride a bicycle on any road or parking area between 30 minutes after sunset and 30 minutes before sunrise without an attached headlight plainly visible at least 200 feet from the front, and without a red taillight or red reflector plainly visible from at least 100 feet from the rear of such bicycle.

§ 130A-7. Recreational activities.

- A. Bathing and swimming. No person in a park shall swim, bathe or wade in any waters or waterways in or adjacent to any park, except in such waters and at such places as are provided therefor, and in compliance with such regulations as are now or may be hereafter adopted.
- B. Boating. No person in a park shall operate any boat, raft or other watercraft, whether motor-

powered or not, upon any waters within a park.

C. Fishing. No person in a park shall:

- (1) Engage in commercial fishing, or the buying or selling of fish caught in any waters.
- (2) Fish in any waters, whether by the use of hook and line, net, trap or other device, where specifically prohibited by the Director for that use and under such regulations and restrictions as have been or may be prescribed by the Director.

D. Picnic areas, shelters and use. No person in a park shall:

- (1) Picnic or lunch in a place other than those designated for that purpose. The parks and recreation staff shall have the authority to regulate the activities in such areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of the public. Visitors shall comply with any directions given to achieve this end.
- (2) Violate the regulations that the use of the individual picnic areas and shelters, together with fireplaces, tables and benches, follows generally the rule of "first come, first served," or occupy a reserved area without authorization.
- (3) Leave a picnic area before the fire is completely extinguished and before all trash in the nature of boxes, papers, cans, bottles, garbage, cigarette and cigar butts, and other refuse, is placed in the disposal receptacles where provided. If no such receptacles are available, then refuse and trash shall be carried away from the park area by the user to be properly disposed of elsewhere.

§ 130A-8. Behavior.

No person in a park shall:

A. Possess, consume, or be under the influence of:

- (1) Any malt beverage or unfortified wine, as defined in Chapter 18B of the North Carolina General Statutes.
- (2) Any fortified wine or spirituous liquor, as defined in Chapter 18B of the North Carolina General Statutes.

B. Possess, use, consume or be under the influence of any illegal drugs.

C. Build or attempt to build a fire, except in such areas as may be designated by the Department for the building of fires; or throw or otherwise scatter lighted matches, burning cigarettes, tobacco paper or other flammable material, within any park area.

D. Enter an area posted as "closed to the public," nor shall any person use or abet the use of any area in violation of posted notices.

E. Engage in any disorderly conduct or behavior tending to be a breach of the public peace.

F. Engage in public nudity in any area of the park.

G. Engage in any sexual conduct in any area of the park.

H. Produce or emit any amplified speech, music or any other sounds that annoy, disturb or frighten park users, without a permit. This provision does not apply to events organized by the Department.

I. Disturb or unreasonably interfere with the activities of any other person or persons occupying an area of a park.

J. Cause or permit any animal owned by or in the custody of such person to run at large or be

out of the immediate control such person. Each animal found at large may be seized and disposed of as provided by local ordinance governing disposal of stray animals. **Editor's Note:** See Ch. 66A, Animals.

- K. Enter, use or remain within any park during the hours when the park is closed.

§ 130A-9. Firearms; weapons; explosives.

No person in a park shall:

- A. Carry, use or possess firearms or other dangerous weapons of any nature within any park or other recreation facility; provided, however, that this section shall not apply to sworn law enforcement officers of any branch of federal or state government or to any County or municipal law enforcement officer of any jurisdiction within Henderson County.
- B. Possess or cause to explode, discharge, burn, or otherwise set off, any pyrotechnic, firecracker, other fireworks or explosives, or to discharge or throw them into any such land or highway adjacent thereto, except as may be specifically authorized by the Henderson County Board of County Commissioners. This provision does not apply to events organized by the Department.

§ 130A-10. Merchandising, advertising and signs.

No person in a park shall:

- A. Expose, offer for sale or advertise any food, beverage, article or service, or solicit donations, except as allowed by County policy or ordinance.
- B. Paste, glue, tack or otherwise post any sign, placard, advertisement or inscription whatever; except as allowed by County policy or ordinance.

§ 130A-11. Park operating policy.

- A. The opening and closing hours for each individual park or recreation facility shall be determined by the Director and shall be posted therein for public information.
- B. All or any section of any park or recreation area or facility may be declared closed to the public by the Director at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise), and either entirely or merely to certain uses, as the Director shall find reasonably necessary.
- C. The findings of lost articles by park attendants shall be reported to the Director, who shall make every reasonable effort to locate the owners.
- D. A permit shall be obtained from the Director before participating in any park activity which the Department shall from time to time designate as requiring such a permit.
- E. The Director shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance, or upon good cause shown.

§ 130A-12. Liability.

Any person or persons entering into a lease or rental agreement of any recreation facility agrees to hold harmless the County of Henderson and park and recreation staff for any injuries or death occurring while using the facilities. The sponsor shall assume full responsibility.

§ 130A-13. Enforcement.

- A. The Director has the authority and responsibility to enforce any rules and regulations governing the use and maintenance of the parks and recreation facilities as adopted by the Henderson County Board of Commissioners.
- B. The Director, employees of the department, the Henderson County Sheriff or his deputies, and any law enforcement officer having territorial jurisdiction over said park, shall have the authority to eject from any park any person acting in violation of this or any section of this Code, or any law of the state.
- C. When there is a violation of any provision of this chapter, the County, or any person set forth in § 130A-13B, in his/her discretion, may take one or more of the courses of action set forth in Chapter 1, General Provisions, Article II.