

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 16 March 2016

SUBJECT: Revisions to Weapons and Parks ordinances

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Proposed amendments, and amendment redline

SUMMARY OF REQUEST:

Recent revisions to North Carolina statutes have caused the County's ordinances regarding weapons to become non-compliant. However, rather than merely requiring the non-enforcement of the non-compliant law, the latest statutory change (S.L. 2015-195) imposes a penalty of sorts on local government:

A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any unit of local government in violation of this section may bring an action for declaratory and injunctive relief and for actual damages The court shall award the prevailing party . . . reasonable attorneys' fees and court costs.

The proposed ordinance changes were drafted with consultation with Sheriff's Office Staff Attorney Jason Smith, and are intended to bring the Code provisions involving the parks and involving weapons into compliance with the General Statutes.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Adoption of the revisions to the Code shown on the attached.

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt the proposed amendments to the Code.

Chapter 19 Parks and Recreation Areas

...

§ 19-9. Explosives.

No person in a park shall 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.

....

Chapter 23 Weapons

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 11-15-1995; 6-3-2003; 8-20-2003; __-__-2016.]

Article I- Deadly Weapons on County Property

§ 23-1. Title.

This Article I shall be referred to as the "Henderson County Deadly Weapons Ordinance."

§ 23-2. Prohibition against Deadly Weapons in County Buildings and Appurtenant Premises; Parks.

A. As used in this Chapter, deadly weapons shall include guns, bowie knives, dirks, daggers, slingshots, loaded canes, metallic knuckles, razors, shurikins, stun guns or other deadly weapons of like kind, as defined by N.C. Gen. Stat. §14-269 and the caselaw interpreting the same. Notwithstanding, however, no provision of this Chapter shall be interpreted in a manner contrary to the provisions of N.C. Gen. Stat. §14-415.23.

B. To the full extent permitted by Article 54B of Chapter 14 of the North Carolina General Statutes (as the same exists and may be amended), it shall be unlawful for any person to bring any deadly weapon, openly or concealed, into any building or portion of a building now or hereafter owned, leased as lessee, operated, occupied, managed or controlled by Henderson County, as well as the appurtenant premises to such buildings, collectively hereinafter referred to as "County-owned or County-controlled property."

B. It shall be unlawful for any person to bring any deadly weapon, openly or concealed, in or on to any County owned or operated recreational facility, so long as the same is posted in accord

with N.C. Gen. Stat. §14-415.23. As used herein, the term “recreational facility” includes only the following:

- (1) An athletic field, including any appurtenant facilities such as restrooms, during an organized athletic event if the field had been scheduled for use with the municipality or county office responsible for operation of the park or recreational area.
- (2) A swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool.
- (3) A facility used for athletic events, including, but not limited to, a gymnasium.

The holder of a valid concealed handgun permit may, nevertheless, secure such handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle.

§ 23-3. Posting Of Signs Required.

The County Manager is hereby ordered to post appropriate signage on each building or portion of a recreational facility, building now or hereafter owned, leased as lessee, operated, occupied, managed or controlled by Henderson County, as well as the appurtenant premises to such buildings, indicating that, pursuant to the authority of N.C. Gen. Stat. §14-269 and Chapter 23 of the Henderson County Code, all deadly weapons are prohibited therein, and violators will be prosecuted to the fullest extent of the law.

§ 23-4. Location of Signs.

Signs required by §23-3 of this Article I shall be visibly posted on the exterior of each entrance by which the general public can access the recreational facility, building, appurtenant premises or park. The County Manager shall exercise discretion in determining the necessity and appropriate location for other signs posted on the interior of the building, appurtenant premises or park.

§ 23-5. Henderson County Courthouse.

The County Manager shall cause a notice to be posted in conspicuous locations on and about the Henderson County Courthouse that, pursuant to N.C. Gen. Stat. §14-269.4, it is unlawful for any person, not otherwise exempted by N.C. Gen. Stat. §14-269.4, to carry any deadly weapon, openly or concealed, within the Henderson County Courthouse and that violation shall be a Class 1 misdemeanor.

§ 23-6. Violations and Penalties.

Any violation of this Article shall be a Class 3 misdemeanor as authorized by N.C. Gen. Stat. §14-4.

§ 23-7. Exemptions.

The prohibition in § 23-2 shall not apply to:

- A. Any person who is exempted from the provisions of N.C. Gen. Stat. §14-269 by virtue of N.C. Gen. Stat. §14-269(b).
- B. Any County Commissioner with a valid North Carolina Concealed Carry Permit.
- C. A County employee with a valid North Carolina Concealed Carry Permit and prior approval granted by the County Manager.

Article II - Restrictions Regarding Discharge of Firearms

§ 23-8. Title.

This Article II shall be referred to as the "Henderson County Ordinance Regulating the Discharge and Display of Firearms."

§ 23-9. Authority and Jurisdiction.

This Article II is enacted pursuant to the authority of N.C. Gen. Stat. §153A-129. This Article II shall be interpreted in accordance with any sections of the General Statutes which, by their terms, limit the authority of the County to regulate the discharge of firearms. This Article II shall apply to the unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C. Gen. Stat. §153A-122.)

§ 23-10. Restrictions.

- A. It is unlawful for any person to discharge a firearm:
 - (1) Carelessly or heedlessly in wanton disregard for the safety of others; or
 - (2) Without due caution or circumspection and in a manner so as to endanger any person or property; or
 - (3) Resulting in the unlawful property damage or bodily injury of another.
- B. It is unlawful for any person to discharge a firearm on the property of another without his or her permission.
- C. It is unlawful to discharge a firearm in any manner which actually results in the projectile leaving the property on which it is being fired.
- D. This section shall not be construed as prohibiting discharge of a firearm when used:
 - (1) In lawful defense of person or property;
 - (2) To lawfully take birds or animals pursuant to Chapter 113, Subchapter IV, of the General Statutes;

- (3) Pursuant to lawful directions of law enforcement officers;
- (4) By persons lawfully engaged in pest control or the taking of dangerous animals;
- (5) By members of the armed forces acting in the line of duty; or
- (6) At historical ceremonial or commemoration functions held for such purpose, provided in no event shall live ammunition be used or discharged.

§ 23-11. Violations and Penalties.

Any person violating any provision of this Article II shall be subject to the penalties set forth in the Henderson County Code, Chapter 1, General Provisions, Article II.

§ 23-12. Through 23-25. (Reserved)

Chapter 19 Parks and Recreation Areas

...

§ 19-9. ~~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.

....

Chapter 23 Weapons

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 11-15-1995; 6-3-2003; 8-20-2003; - -2016.]

Article I- Deadly Weapons on County Property

§ 23-1. Title.

This Article I shall be referred to as the "Henderson County Deadly Weapons Ordinance."

§ 23-2. Prohibition against Deadly Weapons in County Buildings and Appurtenant Premises; Parks.

A. — As used in this Chapter, deadly weapons shall include guns, bowie knives, dirks, daggers, slingshots, loaded canes, metallic knuckles, razors, shurikins, stun guns or other deadly weapons of like kind, as defined by N.C. Gen. Stat. §14-269 and the caselaw interpreting the same. Notwithstanding, however, no provision of this Chapter shall be interpreted in a manner contrary to the provisions of N.C. Gen. Stat. §14-415.23.

B. ~~It~~ To the full extent permitted by Article 54B of Chapter 14 of the North Carolina General Statutes (as the same exists and may be amended), it shall be unlawful for any person to bring any deadly weapon, openly or concealed, into any ~~park~~, building or portion of a building now or hereafter owned, leased as lessee, operated, occupied, managed or controlled by Henderson County, as well as the appurtenant premises to such buildings, collectively hereinafter referred to as "County-owned or County-controlled property." ~~Deadly weapons shall include bowie knives, dirks, daggers, slingshots, loaded canes, metallic knuckles, razors, shurikins, stun guns or other deadly weapons of like kind, as defined by N.C.G.S. 14-269.~~

B. It shall be unlawful for any person to bring any deadly weapon, openly or concealed, in or on to any County owned or operated recreational facility, so long as the same is posted in accord with N.C. Gen. Stat. §14-415.23. As used herein, the term "recreational facility" includes only the following:

(1) An athletic field, including any appurtenant facilities such as restrooms, during an organized athletic event if the field had been scheduled for use with the municipality or county office responsible for operation of the park or recreational area.

(2) A swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool.

(3) A facility used for athletic events, including, but not limited to, a gymnasium.

The holder of a valid concealed handgun permit may, nevertheless, secure such handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle.

§ 23-3. Posting Of Signs Required.

The County Manager is hereby ordered to post appropriate signage on each ~~park~~, building or portion of a recreational facility, building now or hereafter owned, leased as lessee, operated, occupied, managed or controlled by Henderson County, as well as the appurtenant premises to such buildings, indicating that, pursuant to the authority of N.C. Gen. Stat. §14-269 ~~and~~ Chapter 23 of the ~~the~~ Henderson County Code ~~Deadly Weapons Ordinance~~, all deadly weapons are prohibited therein, and violators will be prosecuted to the fullest extent of the law.

§ 23-4. Location of Signs.

Signs required by §23-3 of this Article I shall be visibly posted on the exterior of each entrance by which the general public can access the recreational facility, building, appurtenant premises or park. The County Manager shall exercise discretion in determining the necessity and appropriate location for other signs posted on the interior of the building, appurtenant premises or park.

§ 23-5. Henderson County Courthouse.

The County Manager shall cause a notice to be posted in conspicuous locations on and about the Henderson County Courthouse that, pursuant to N.C. Gen. Stat. §14-269.4, it is unlawful for any person, not otherwise exempted by N.C. Gen. Stat. §14-269.4, to carry any deadly weapon, openly

or concealed, within the Henderson County Courthouse and that violation shall be a Class 1 misdemeanor.

§ 23-6. Violations and Penalties.

~~A. County owned or County controlled property other than the County Courthouse. With respect to all County owned or County controlled property other than the Henderson County Courthouse, the following shall apply:~~

~~(1) Carrying a concealed handgun with a valid permit lawfully issued onto any County owned or County controlled property in violation of this Article I shall be a Class 2 misdemeanor as is set out in N.C.G.S. 14-415.21(b).~~

~~(2) Carrying a concealed deadly weapon other than a handgun, gun or pistol onto any County owned or County controlled property shall be a Class 2 misdemeanor as is set out in N.C.G.S. 14-269(e).~~

~~(3) Carrying a concealed gun pistol which is not a handgun or carrying a handgun without a valid permit lawfully issued in conjunction with N.C.G.S. Chapter 14, Article 54B onto County owned or County controlled property shall be a Class 2 misdemeanor for a first offense and a Class 1 felony for a second or subsequent offense as is set out in N.C.G.S. 14-269(e).~~

~~(4) Carrying a deadly weapon openly onto any County owned or County controlled property~~ Any violation of this Article shall be a Class 3 misdemeanor as authorized by N.C. Gen. Stat. §14-4.

~~B. The Henderson County Courthouse. Carrying any deadly weapon, openly or concealed, within the Henderson County Courthouse, or about the premises thereof, shall be a Class 1 misdemeanor, as is set out in N.C.G.S.14-269.4.~~

§ 23-7. Exemptions.

~~This Article I~~ The prohibition in § 23-2 shall not apply to:

A. Any person who is exempted from the provisions of N.C. Gen. Stat. §14-269 by virtue of N.C. Gen. Stat. §14-269(b).

B. Any County Commissioner with a valid North Carolina Concealed Carry Permit.

C. A County employee with a valid North Carolina Concealed Carry Permit and prior approval ~~which may be~~ granted by the County Manager.

Article II - Restrictions Regarding Discharge of Firearms

§ 23-8. Title.

This Article II shall be referred to as the "Henderson County Ordinance Regulating the Discharge and Display of Firearms."

§ 23-9. Authority and Jurisdiction.

This Article II is enacted pursuant to the authority of N.C. Gen. Stat. §153A-129. This Article II shall be interpreted in accordance with any sections of the General Statutes N.C.G.S. which, by their terms, limit the authority of the County to regulate the discharge of firearms. This Article II shall apply to the unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C. Gen. Stat. §153A-122.)

§ 23-10. Restrictions.

- A. It is unlawful for any person to discharge a firearm:
 - (1) Carelessly or heedlessly in wanton disregard for the safety of others; or
 - (2) Without due caution or circumspection and in a manner so as to endanger any person or property; or
 - (3) Resulting in the unlawful property damage or bodily injury of another.
- B. It is unlawful for any person to discharge a firearm on the property of another without his or her permission.
- C. It is unlawful to discharge a firearm in any manner which actually results in the projectile leaving the property on which it is being fired.
- D. This section shall not be construed as prohibiting discharge of a firearm when used:
 - (1) In lawful defense of person or property;
 - (2) To lawfully take birds or animals pursuant to N.C.G.S. Chapter 113, Subchapter IV. of the General Statutes;
 - (3) Pursuant to lawful directions of law enforcement officers;
 - (4) By persons lawfully engaged in pest control or the taking of dangerous animals;
 - (5) By members of the armed forces acting in the line of duty; or
 - (6) At historical ceremonial or commemoration functions held for such purpose, provided in no event shall live ammunition be used or discharged.

§ 23-11. Violations and Penalties.

Any person violating any provision of this Article II shall be subject to the penalties set forth in the Henderson County Code, Chapter 1, General Provisions, Article II.

§ 23-12. Through 23-25. (Reserved)

Ordinance Amendments Relating to Weapons

For Henderson County
Board of Commissioners
March 7, 2016



Statutory Limits on County Authority

- N.C. Gen. Stat. §14-409.40 requires “**statewide uniformity of local regulation**”

Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

- N.C. Gen. Stat. §14-415.23 regulates **concealed carry**
- *A person adversely affected by any ordinance, rule, or regulation promulgated or caused to be enforced by any unit of local government in violation of . . . [concealed carry law] may bring an action for declaratory and injunctive relief and for actual damages The court shall award the prevailing party . . . reasonable attorneys’ fees and court costs.*



Permitted County Regulation

What is Permitted?

- **Zoning**, but only as a part of an overall scheme of “lawful, general and similar” regulation of commercial uses at the location.
- A county or municipality **may** regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government. (§14-409.40(e))
- **Regulation on County property:**
 - *County-owned buildings*
 - *Grounds and parking areas of such buildings*
 - *Public parks and recreation areas, with limits*
 - *ALWAYS requires conspicuous signs*



Signage



Regulation in Parks and Recreation Areas

- N.C. Gen. Stat. §14-409.40 generally allows the regulation of weapons in parks and recreation areas:
 - *The ordinance **must** allow storing a firearm within a motor vehicle while the vehicle is on park grounds or areas (this is also true for County buildings). The storage must “secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle”.*
 - *The recreational facilities must be specially identified (signage).*
- “Recreational Facilities”
 - **Playgrounds**
 - **Athletic Fields, including appurtenance such as restrooms, IF the field had been scheduled for use with the County**
 - **Swimming Pools**
 - **Athletic Facilities, including gymnasiums**



Proposed Revisions

- Moves any regulations of firearms from Chapter 19 (“Parks and Recreation Areas”) to the already exist Chapter 23 (“Weapons”)
- Expressly is co-extensive with the statute (“*To the full extent . . .*”), avoiding possible overbreadth (and potential lawsuits)
- Limits prohibitions in park/recreation areas
- Clarifies that violations are Class 3 misdemeanors
- Keeps current exemptions (listed in N.C. Gen. Stat. §14-269(b))
- As to weapons discharges, clarifies that only *lawful* hunting is exempt from the ordinance.



Questions?

