

SWAIN COUNTY
NORTH CAROLINA

ORDINANCE
CONCEALED HANDGUN

AN ORDINANCE PERMITTING THE POSTING OF SIGNS TO PROHIBIT THE
CARRYING OF CONCEALED HANDGUNS ON CERTAIN COUNTY PROPERTY

WHEREAS, Chapter 398 of the 1995 Session Laws changes prior law by establishing a system that will allow private citizens to obtain permits to carry concealed handguns; and

WHEREAS, this change in the law will significantly increase the number of individuals who may legally carry concealed handguns; and

WHEREAS, the Board of Commissioners is concerned about the increased presence of concealed handguns on County property and about the threat that such increased presence will pose to the health, safety, and general welfare of the community; and

WHEREAS, N.C.G.S. #14-415.23 authorizes Counties to adopt ordinances to permit the posting of a prohibition against carrying a concealed handgun, in accordance with N.C.G.S. #14-415.11(c), on County buildings, their appurtenant premises, and parks; and

WHEREAS, it is the intent of this ordinance to permit the posting of County property such that the carrying of concealed handguns on the posted premises will constitute a violation of N.C.G.S. Chapter 14, Article 54B;

NOW, THEREFORE, BE IT ORDAINED by the Swain County Board of Commissioners that:

Section 1. Posting of Signs Required. The County Manager is hereby ordered to post appropriate signage on each park, building or portion of a building now or hereafter owned, leased as lessee, operated, occupied, managed or controlled by Swain County, as well as the appurtenant premises to such buildings, indicating that concealed handguns are prohibited therein.

Section 2. Location of Signs. Said signs shall be visibly posted on the exterior of each entrance by which the general public can access the building, appurtenant premise, 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 premise, or park.

Section 3. Exemptions. This ordinance shall not apply to the following:

(List desired exemptions)

Section 4. Effective Date. This ordinance shall be effective on and after December 1, 1995.

Adopted this the 12th day of October, 1995

Bill Lewis
Chairman, Bill Lewis

Wayne Cope
Vice-Chairman Wayne Cope

Austin Greene
Commissioner Austin Greene

ATTEST:

Linda Cable
Linda Cable, Clerk to the Board



NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

MEMORANDUM

TO: County Managers and County Attorneys
FROM: Kimberly Grantham, Assistant General Counsel
DATE: September 26, 1995
SUBJECT: Concealed Handguns Ordinance

Read & Sign Please
(yes) Bill
(yes) Austin Greene
(yes) Wayne Co

On December 1 of this year, a new law will go into effect which will allow private citizens to carry concealed handguns if they obtain a concealed handgun permit. This new law could profoundly affect counties since under the law gun owners who have valid permits may carry concealed handguns onto county property, into county buildings, and around county employees and patrons.

med
cor
no
However, the new statute does authorize counties to pass an ordinance to permit the posting of signs that prohibit the carrying of concealed handguns on county property and to post such signs pursuant to the ordinance. The effect of such an ordinance would be to make the carrying of concealed handguns on the posted premises a violation of the new law--N.C.G.S. Chapter 14, Article 54B. Violation of the statute is a Class 2 misdemeanor.

The statute does *not* authorize counties to pass an ordinance that prohibits carrying or possessing *all* weapons, concealed or otherwise. Counties may or may not be able to enforce such blanket prohibitions under their general police powers or under other statutory schemes, but this statute specifically addresses concealed handguns, and in order to make it unlawful for persons to carry concealed handguns on county property, counties must pass an ordinance and post notices that specifically prohibit concealed handguns. General prohibitions are not sufficient. Counties that have passed weapons ordinances under other statutory provisions should review them to ensure that they comply with and have not been preempted by Article 54B.

The Association is neither trying to encourage individual counties to adopt such an ordinance nor discourage them from doing so. If as a policy matter, however, county officials find that such an ordinance is needed to promote the best interests of the county, the Association is providing a model ordinance for that purpose. Association staff worked with staff for the League of Municipalities to prepare this model, and incorporated ideas, drafts, and suggestions submitted by several county managers and attorneys.

The remainder of this memorandum consists of a basic overview of the new

concealed handguns law. Most of this information appeared in an article in the September 13, 1995, edition of *County Lines*. Original copies of Chapter 398 may be obtained by contacting the Printed Bills Office at (919) 733-5648. The model ordinance is attached to this memorandum.

CHAPTER 398 OF THE 1995 SESSION LAWS

The new law, codified as Article 54B of Chapter 14 of the General Statutes, amends § 14-269, which makes it unlawful for a person to carry various types of weapons concealed about his or her person. Section 14-269, as modified by the new article, provides that it is unlawful for a person to carry concealed knives, slung shots, metallic knuckles, and deadly weapons *other than pistols and guns*, except on his or her own property. However, the prohibition on carrying concealed pistols and guns is changed so that, in addition to being able to carry a concealed gun or pistol on one's own property, a person may also carry a concealed handgun if he or she has obtained a concealed handgun permit issued in accordance with the new article. This change in the law will allow any person who has lawfully and properly obtained a concealed handgun permit to carry that handgun *anywhere* unless they are specifically prohibited by law from doing so.

There are several legal prohibitions on carrying a permitted concealed handgun. First, a person cannot carry a properly permitted handgun concealed about their person when they do not have the permit in their possession. Just as a driver must have a license in their possession while operating a car, a gun owner must have a valid permit in their possession when carrying that gun in a concealed manner. The statute provides that "[a]ny person who has been issued a valid permit who is found carrying a concealed handgun without the permit in his or her possession . . . shall be guilty of an infraction for the first offense. Subsequent offenses for failing to carry a valid permit . . . shall be punishable as a Class 2 misdemeanor."

Second, a person may *not* carry a concealed handgun of any type--permitted or otherwise--while consuming alcohol or at any time while any alcohol remains in their body or a controlled substance in their blood. There is an exception to this prohibition, however, for persons who have taken controlled substances that were lawfully obtained and taken in therapeutically appropriate amounts. Any violation of this provision is punishable as a Class 2 misdemeanor.

Finally, there are some specific places that are just off-limits to those carrying concealed handguns--even if the handguns are properly permitted. The list of places that are beyond the scope of concealed handgun permits includes:

- Property belonging to public or private educational institutions (*See G.S. § 14-269.2*);

- Assemblies where a fee has been charged for admission or establishments where alcoholic beverages are sold and consumed (*See G.S. § 14-269.3*);
- State-owned property (excluding rest areas, highway rest stops, and hunting and fishing reserves) and all courts of the General Court of Justice (*See G.S. § 14-269.4*);
- Parades and other public demonstrations—including funeral processions and picket lines (*See G.S. § 14-277.2*);
- Areas prohibited under 18 U.S.C. § 922 or any other federal law;
- Any law enforcement or correctional facility;
- State and federal offices or buildings;
- Financial institutions; and,
- Premises where the person in legal possession or control of the premises has posted a conspicuous notice or statement that carrying a concealed handgun is prohibited on those premises.

You will notice that, although the General Assembly excluded state and federal offices, buildings, and other property from the scope of the permit, with the exception of courthouses and jails, it has not barred permit holders from carrying concealed weapons onto property belonging to local governments. *If a unit of local government wants to restrict the carrying of concealed handguns on its property, it may do so, but it must adopt an ordinance that authorizes the posting of a prohibition notice, and it must then conspicuously post that prohibition statement on all government property to be excluded from the scope of the permit.*

The act creates some confusion with regard to the types of local government property that may be posted. The statute expressly provides that local governments may post "local government buildings, their appurtenant premises, and parks." However, allowing local governments to post *only* buildings, their appurtenant premises, and parks, would effectively prevent local governments from posting local government offices that are not located in buildings exclusively occupied by the local government, vehicles owned by the local government, certain recreational areas, and other types of real and personal property that may not qualify as buildings, appurtenant premises, or parks.

Association staff believe that this was not intended by the drafters. A very likely explanation for listing "buildings, appurtenant premises, and parks" rather than referring to local government "property", generally, is that the drafters wanted

to prevent municipal governments from regulating concealed handguns on public streets and county governments from regulating them on public state roads. While the specific language of the statute has been followed in drafting the model ordinance, Association staff feel that the most reasonable interpretation of the statute would allow a unit of local government to post prohibitions on *any property that it legally owns or controls* with the exception of public roads and streets. Once a local government has passed an ordinance and posted local government premises, the local government property is deemed to be beyond the scope of concealed handgun permits, as are other premises which have been posted by the persons who own or control them.

Another interpretational issue is that it is not entirely clear what the penalty is for carrying a concealed handgun onto premises that are deemed beyond the scope of concealed handgun permits. One interpretation is that, because a permit has no effect in these areas, carrying a concealed handgun into one of them is the equivalent of carrying a concealed handgun without any permit at all. Under this interpretation, a person carrying a concealed handgun into one of the proscribed places would violate G.S. § 14-269(a1), and would be guilty of a Class 2 misdemeanor for the first offense and a Class I felony for all subsequent offenses. A second interpretation is that carrying a permitted concealed handgun into one of the proscribed places is simply a permit violation under G.S. § 14-415.21(b) and would be a Class 2 misdemeanor irrespective of the number of times the person had violated the act. Association staff prefer the former interpretation, although equally strong arguments can be made for either interpretation.

Finally, nothing in this new article applies to persons who are already exempted from concealed weapons prohibitions under G.S. § 14-269(b). Such persons include:

- Military personnel when in discharge of their official duties and under orders to carry weapons;
- U.S. civil officers while in discharge of their official duties;
- Members of the militia and national guard when called into actual service;
- Officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; and,
- Off-duty, sworn law-enforcement officers, where certain requirements are met.