

BOARD OF ALDERMEN

ITEM NO. C(4)

AGENDA ITEM ABSTRACT

MEETING DATE: November 1, 2011

TITLE: An Ordinance Amending Chapter 14 of the Town Code to Conform Section 14-18 (Weapons on Town Property) to S.L. 2011-268

DEPARTMENT: Recreation and Parks	PUBLIC HEARING: NO
ATTACHMENTS: A. Resolution from Recreation and Parks Commission B. Draft Ordinance	FOR INFORMATION CONTACT: Anita Jones-McNair: 918-7381

PURPOSE:

The purpose of this item is for the Board of Aldermen to review and approve the draft ordinance as a result of recent legislation enacted by the North Carolina General Assembly that limits municipalities' authority to regulate concealed handguns within Town recreational facilities.

INFORMATION:

Doris Murrell, Recreation and Parks Commission Chair attended the North Carolina Recreation and Parks CBM Forum in Greensboro. One of the sessions at that conference discussed the recent changes to the state statute concerning regulation of handguns in the parks. At the next scheduled commission meeting she mentioned various concerns and requested that the topic be placed on the next meeting for discussion. Each member voiced their concern at the October 3rd meeting and the commission voted to present a resolution to the Board of Aldermen for consideration. The resolution is attachment A.

Also attached (attachment B) is an ordinance amending Chapter 14 of the Town Code to deal with Section 21 of Chapter 268 of the 2011 Session Laws. That act, which becomes effective December 31, 2011, removes the authority we previously had to include all town parks among the areas where the town could prohibit concealed handguns by posting signs to that effect. The new law says that, with respect to recreational facilities, we can only do that for playgrounds, athletic fields, athletic facilities, and swimming pools, and the ordinance has to name those facilities where the ban would apply. Even then, the statute says that a person with a handgun permit can keep it locked in a car. The attached ordinance makes the necessary changes.

The Recreation and Parks Commission also felt distributing the information below would provide some context to the changes. This information comes from a UNC School of Government blog entry entitled, Guns in Parks by Jeff Welty, Assistant Professor of Public Law and Government on September 26, 2011.

I've had a huge number of calls about one particular aspect of S.L. 2011-268, the omnibus gun rights bill enacted during the recently completed legislative session. The provision in question is Section 21.(b) of the bill, which limits municipalities' authority to regulate guns in parks. Specifically, Section 21.(b) amends G.S. 14-415.23 as follows:

14-415.23. Statewide uniformity.

It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local ~~government buildings, their appurtenant premises, and parks.~~ buildings and their appurtenant premises. A unit of local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the unit of local government. If a unit of local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle. For purposes of this section, the term "recreational facilities" includes only the following: a playground, an athletic field, a swimming pool, and an athletic facility.

So generally, the statute says that municipalities can't regulate concealed carry – only the state can do that. But the statute provides a limited exception, formerly encompassing municipal "buildings, their appurtenant premises, and parks," but now limited to municipal "buildings, their appurtenant premises" and certain "recreational facilities."

Here are some of the recurrent questions I've had, usually from municipal officials, and the answers I've given. If you have additional questions, or have something to say about the answers, please join the conversation.

Q. My municipality has an ordinance that prohibits concealed handguns on all municipal property. Is it invalid now?

*A. Not completely. It is certainly invalid as to parks, greenways, and other property that isn't a building, appurtenant to one, or a recreational facility. And because it likely doesn't "specifically identif[y]" any recreational facilities as defined in the current version of G.S. 14-415.23, it is probably ineffective as to those locations. But if the ordinance was otherwise valid under the former version of the statute, it should still be valid under the new statute as to municipal buildings and their appurtenant premises. Certainly the ordinance is overbroad when compared to the authority given in the current version of the statute, but "[t]he overbreadth doctrine has been applied almost exclusively in the areas of first amendment expressive or associational rights." *Treants Enterprises, Inc. v. Onslow County*, 94 N.C. App. 453, 458 (1989) (quoting *Clark v. City of Los Angeles*, 650 F.2d 1033 (9th Cir. 1981)). So a person who brings a*

concealed gun into a county building can't rely on the overbreadth of the ordinance, which remains valid as to his conduct.

Q. Most of our parks have buildings in them, if only restrooms. Can we say that the parks are "appurtenant premises" to the buildings?

A. I doubt it. I would expect a court to interpret "appurtenant premises" to mean something similar to the "grounds or parking areas" of a municipal building, G.S. 14-409.40(f), or to the curtilage of the building (even though buildings other than residences technically don't have curtilages).

Q. Can we still ban the open display of guns in parks?

A. Yes. North Carolina has two preemption or uniformity statutes. G.S. 14-415.23 concerns concealed carry specifically, while G.S. 14-409.40 concerns guns generally. The general preemption statute allows municipalities to "prohibit[] the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas." G.S. 14-409.40(f). See also G.S. 153A-129 (counties may prohibit the display of firearms "on the public roads, sidewalks, alleys, or other public property"); G.S. 160A-189 (same, for cities). The more specific concealed carry preemption statute trumps the general one when it comes to concealed handguns, but the general statute allows municipalities to ban other firearms on public property, including those carried openly. Of course, a gun rights advocate might argue that the Second Amendment protects the right to carry a gun openly but peaceably in a public park. If a court were to agree, that would trump municipalities' statutory authority. This post isn't intended to express an opinion on the merits of such a claim.

Q. Can we still ban the discharge of guns in parks?

Yes. G.S. 153A-129 allows a county to "regulate . . . or prohibit" the discharge of firearms at any time except when used for defensive purposes or to hunt birds, and G.S. 160A-189 provides similar authority to cities.

Q. What about other weapons?

A. There's no preemption provision that applies to knives, nunchucks, brass knuckles, and other weapons, so municipalities presumably may prohibit their possession in parks, or on all municipal property, under their general health and welfare ordinance-making authority. See generally G.S. 160A 174(a) (cities); G.S. 153A-121 (counties).

Q. What are the limits of an "athletic field" and the other locations named in the statute?

A. The new version of the statute uses several terms that are not defined in the law: "athletic field," "athletic facility," "swimming pool," and "playground." Boundary issues exist for each of the terms. For example, presumably "swimming pool" includes more than just the pool itself – I doubt that many people want to bring their firearms in the water – and extends to the pool deck. But does it include the locker rooms? The snack bar? The grassy area used for tanning?

Likewise, I doubt that “athletic field” was intended to include only the playing surface. I presume that it includes the stands and sidelines. But what about the wooded area next to the field where the ball gets lost? “Playground” clearly includes the teeter-totter, but does it include the picnic table fifteen yards away? My recommendation to municipalities interested in exercising their authority under G.S. 14-415.23 is to be as specific as possible when enacting their ordinances. If a municipality believes that the sideline, stands, and snack bar are part of a soccer field, include those areas in the ordinance. A court can always disagree, but at least the municipality will have given as much guidance as possible to officers attempting to enforce the ordinance and to citizens attempting to comply with it.

Q. The statute says that we can ban concealed carry at “municipal and county recreational facilities that are specifically identified by the unit of local government.” Does that mean that our ordinance has to list each and every pool, playground, and soccer field where we want to prohibit concealed handguns?

A. I think so. The most natural reading of the statute, to me, is that the municipality must “specifically identif[y]” the recreational facilities in the ordinance, though I can imagine an argument in favor of having an ordinance that delegates the task of identifying recreational facilities and keeping a list of them to a municipal official such as a parks and rec director. Similarly, to me, the most natural reading of “specifically identif[y]” is to list, by name or by a precise description. I don’t recommend enacting an ordinance that identifies recreation areas by category – e.g., “all swimming pools owned and operated by the City of Raleigh” – because categories are inherently general rather than specific, and such an ordinance may be invalid.

Sorry for the long post, but as I mentioned, this issue has been burning up my phone, so I wanted to get as much information as possible out there. As I noted at the beginning, please weigh in on this if you have a point of view. It’s slightly outside my bailiwick and I want to be as accurate and as helpful as possible.

FISCAL IMPACT:

None identified at this time.

RECOMMENDATION:

Town Staff recommends that the Board of Aldermen approve the resolution and draft ordinance.