

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** January 3, 2022

**SUBJECT:** Re-criminalization of certain ordinances

**PRESENTER:** Charles Russell Burrell

**ATTACHMENT(S):** Proposed Ordinance Amendments

**SUMMARY OF REQUEST:**

In adopting what became North Carolina Session Law 2021-138, the General Assembly decriminalized all county and city ordinances adopted under the police power in North Carolina.

The same session law allowed for the possibility of limited “re-criminalization” of certain (but not all) ordinances, at least to the extent of imposing a maximum \$500.00 fine for violations (no possibility of incarceration).

The session law also created new defenses to violations of ordinances applicable to no other criminal violations in North Carolina in the new N.C. Gen. Stat. §14-4(c):

**A person may not be found responsible or guilty of a local ordinance violation . . . if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:**

- (1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.**
- (2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.**

Notwithstanding the normal rule, set out in N.C. Gen. Stat. §153A-45, that an ordinance may be passed on first reading if all members vote in favor, “no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced”. So the proposed amendments are for first reading only today, and must, to be finally approved, be adopted at a second meeting.

The proposed ordinance amendments re-impose criminal penalties (for the same acts for which criminal penalties were possible prior to the enactment of Session Law 2021-138) for violations of the following:

- Animal ordinances
- Noise ordinance
- Parks and recreation areas (including sex offender-free zones)

- Weapons on certain posted county property and failure to keep projectiles on property
- Massage parlors
- Nuisances
- Violation of emergency plans or order

The following violations for which criminal penalties were formerly possible are changed to civil penalties only, due to the restrictions on the types of ordinances for which criminal penalties are now possible as a result of the session law:

- Failure to obtain pawnbrokers' license
- Junkyards
- Abandoned or junked vehicles
- Motor sports facilities
- Emergency medical service franchises

County staff will present further information on this matter.

**BOARD ACTION REQUESTED:**

Adoption of the ordinance amendments

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

***I move that the Board adopt the first reading of the proposed ordinance amendments.***

**Henderson County  
North Carolina**

**Before the Board of Commissioners**

**ORDINANCE AMENDMENTS**

BOARD OF COMMISSIONERS ENACTMENT 2022-\_\_\_\_\_

WHEREAS, the North Carolina General Assembly has adopted Session Law 2021-138, which decriminalized all violations of county ordinances in North Carolina, but allowed the re-criminalization of certain such ordinances; and,

WHEREAS, the Board of Commissioners of Henderson County, after consultation with the Henderson County Sheriff's Office, is of the opinion that the recriminalization of certain of its ordinances provides Henderson County law enforcement officers with a powerful and appropriate tool in certain circumstances;

THEREFORE, the Board of Commissioners of Henderson County hereby ORDAINS as follows:

**Part 1**      **General**

Section 1-14.A. of the Henderson County Code is amended by striking the same, and by adopting in lieu thereof the following:

**1-14 Violations and Penalties**

Any of the below-stated actions or a combination thereof may be pursued for any violation of this Henderson County Code.

A. Criminal penalties. Violations of provisions codified in this Code shall be Class 3 misdemeanors under the law of North Carolina where so stated, and shall be punished as stated in N.C. Gen. Stat. §14-4(a) and in such provisions. Each day's violation shall be treated as a separate offense.

1. Warning ticket. Upon the violation of a particular provision of the Henderson County Code, an individual may be issued a warning ticket. Such warning ticket shall identify the particular violation of the Code and shall state the time, date and place of the violation. Such warning ticket shall further state that if the individual commits further violations following the date of the warning ticket, Henderson County may seek a criminal sanction for such violations.

2. Arrest or citation. Upon the violation of a particular provision of

this Henderson County Code, a law enforcement officer having jurisdiction may charge the offender with a misdemeanor committed in the officer's presence, by arrest or citation, as set forth in N.C.G.S. Chapter 15A.

3. Warrant. Upon the violation of a particular provision of this Henderson County Code, Henderson County, by and through an enforcement agent may request from a magistrate that a warrant be issued for the arrest of the individual.

## **Part 2**      **Animals**

2.01 A new section 16-1(45A) is added, as follows:

(45A) Unlawful – As used herein, the phrase “it shall be unlawful” shall be interpreted to denote a misdemeanor violation pursuant to N.C. Gen. Stat. §14-4, with a maximum fine of \$50 per violation unless otherwise stated, in addition to any civil penalties set forth in this Chapter.

2.02 Section 16-19.A. is modified by striking the same, and by adopting in lieu thereof the following:

### 16-19. Violations and Fines

A. Misdemeanor. The violation of any provision of this Chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as provided in N.C. Gen. Stat. §14-4. Each violation of this Chapter (or if a continuing violation, each day in which the violation continues) is a separate offense. Each violation for each animal is a separate offense.

2.03 Section 16-19.E. is modified by adding the following at the end thereof.

The penalty for any person convicted of such interference as set out in this subsection shall be \$500.00 per occurrence.

2.04 Section 16-25.D. is modified by striking the same, and by adopting in lieu thereof the following:

D. Willful Abandonment. Any person found to be willfully releasing animals into the community, including but not limited to leaving animals by the side of the road, releasing animals into parks or leaving animals in parking lots shall be guilty of a misdemeanor pursuant to N.C. Gen. Stat. §14.4, and shall be subject to a fine not to exceed \$500.

2.05 Section 16-51.A. is modified by striking the same, and by adopting in lieu thereof the following:

A. The failure by an owner to vaccinate under this Article is a misdemeanor

pursuant to N.C. Gen. Stat. §14-4, and shall be subject to a fine not to exceed \$50 per day. The owner's duty to vaccinate begins when the dog or cat is four months of age, and continues for the animal's life.

2.06 Article IV of Chapter 16 is hereby deleted.

**Part 3**      **Miscellany**

3.01 Section 18-6.A. is modified by striking the same, and by adopting in lieu thereof the following:

A. Misdemeanor. The violation of any provision of this Chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as a misdemeanor as provided in N.C. Gen. Stat. §14-4.

3.02 Section 18-6.C. is hereby deleted.

3.03 Section 19-13.C. is modified by striking the same, and by adopting in lieu thereof the following:

A. Misdemeanor. The violation of any provision of this Article shall be a misdemeanor and any person convicted of such violation shall be punishable as a misdemeanor as provided in N.C. Gen. Stat. §14-4.

3.04 Section 19-52 is modified by striking the same, and by adopting in lieu thereof the following:

A. Misdemeanor. The violation of any provision of this Article shall be a misdemeanor and any person convicted of such violation shall be punishable as provided in N.C. Gen. Stat. §14-4.

3.05 Section 20-7 is modified by striking the same, and by adopting in lieu thereof the following:

Violations and Penalties. Any person, firm or corporation violating any provision of this chapter shall be subject to civil penalties of \$50.00 for each violation, with each day of violation being treated as a separate violation.

3.06 Section 23-6 is modified by striking the same, and by adopting in lieu thereof the following:

Misdemeanor. The violation of any provision of this Chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as a misdemeanor as provided in N.C. Gen. Stat. §14-4.

3.07 Section 23-11 is modified by striking the same, and by adopting in lieu thereof the following:

Misdemeanor. The violation of any provision of this Article shall be a misdemeanor and any person convicted of such violation shall be punishable as provided in N.C. Gen. Stat. §14-4.

3.08 Section 43-8 is modified by striking the same, and by adopting in lieu thereof the following:

Violations and Penalties. Any person, firm or corporation violating any provision of this chapter shall be subject to civil penalties of \$50.00 for each violation, with each day of violation being treated as a separate violation.

3.09 Section 44-7 is modified by striking the same, and by adopting in lieu thereof the following:

Violations and Penalties. Any person, firm or corporation violating any provision of this chapter shall be subject to civil penalties of \$50.00 for each violation, with each day of violation being treated as a separate violation.

3.10 Section 50-10 is modified by striking the same, and by adopting in lieu thereof the following:

Misdemeanor. The violation of any provision of this Chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as a misdemeanor as provided in N.C. Gen. Stat. §14-4.

3.11 Section 51-17 is modified by striking the same, and by adopting in lieu thereof the following:

Violations and Penalties. Any person, firm or corporation violating any provision of this chapter shall be subject to civil penalties of \$50.00 for each violation, with each day of violation being treated as a separate violation.

3.12 Section 52.12.A. is modified by striking the same, and by adopting in lieu thereof the following:

Misdemeanor. The violation of any provision of this Chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as a misdemeanor as provided in N.C. Gen. Stat. §14-4.

3.13 Section 76-8 is modified by striking the same, and by adopting in lieu thereof the following:

Misdemeanor. The violation of any provision of this Chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as a misdemeanor as provided in N.C. Gen. Stat. §14-4.

3.14 Section 76.22 is modified by striking the same, and by adopting in lieu thereof the following:

Misdemeanor. The violation of any provision of this Chapter shall be a misdemeanor and any person convicted of such violation shall be punishable as a misdemeanor as provided in N.C. Gen. Stat. §14-4.

3.15 Section 77-13 is modified by striking the same, and by adopting in lieu thereof the following:

Violations and Penalties. Any person, firm or corporation violating any provision of this chapter shall be subject to civil penalties of \$50.00 for each violation, with each day of violation being treated as a separate violation.

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Adopted on first reading on \_\_\_\_\_.

Adopted in second and final reading on \_\_\_\_\_.

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Henderson County Board of Commissioners Chair