

**ORDINANCE 2017-254**  
**AN ORDINANCE TO AMEND THE ORIENTAL CODE OF GENERAL ORDINANCES.**

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ORIENTAL,

**Section 1.** That Chapter H, Article II, entitled GENERAL NUISANCES, following sections be amended as follows:

Section 6 – Firearms Regulated

Strike ALL of Section (b):

(b) It shall be unlawful for any person to discharge any firearm of any type within the Town except a police officer in the performance of his duty, except that it shall be lawful to use a small caliber (22 caliber or less) firearm to rid property of pest. In such case, the person shall either be 16 years of age or older, or the parent or legal guardian shall accept the full responsibility for any damage done.

**Section 2.** That these changes become effective immediately following adoption.

**ADOPTED THIS 8<sup>th</sup> DAY OF NOVEMBER, 2017.**

\_\_\_\_\_  
Sally Belangia, Mayor

\_\_\_\_\_  
Diane H. Miller, Town Manager

Ordinance # 2017-254\_\_\_\_\_

## Town Manager

---

**From:** Michael S Davis <dhwlegal1@me.com>  
**Sent:** Wednesday, October 25, 2017 9:35 AM  
**To:** Manager@TownOfOriental.com  
**Subject:** Re: Ordinance H

Good morning Diane -

Here are the state statutes that authorize local governments to regulate firearms. (I've added emphasis in bold for your ready reference)

### § 14-409.40. Statewide uniformity of local regulation.

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments **except as provided by this section.**

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) 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, taxation, manufacture, transportation, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) 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.

(f) **Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas.**

Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in states of emergency declared under Article 1A of Chapter 166A of the General Statutes. . . ."

## § 160A-189. Firearms.

**A city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement officers,** and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 1A of Chapter 166A of the General Statutes. (1971, c. 698, s. 1; 2012-12, s. 2(zz).)

Given the above-cited statutory authorities, local governments may regulate, restrict, or prohibit the DISCHARGE of firearms at any time or place in the city EXCEPT when used in self-defense, or pursuant to lawful directions of law enforcement officers.

Oriental Code Section 6(a) of Chapter H complies with the provides of G.S. 160A-189. The ordinance makes it unlawful to discharge a firearm in the Town, with 3 specific exceptions:

1. Police officers in the performance of their duties;
2. Private citizens in justifiable self defense; and
3. Private citizens using small caliber firearms or shotguns to rid property of pests. When ridding property of pests, citizens may only use .22 caliber firearms or shotguns with nothing larger than #8 shot.

It's not entirely clear to me, but it appears that Mr. Barton mistakenly attaches the condition "In such case, a private citizen may use no larger than a .22 caliber firearm or a shotgun with no larger than number 8 shot." to all 3 subsections of Code Section 6(a) when it only modifies subsection (3).

First, the sentence very clearly appears as part of subsection (3) as the format and context indicate. If it were absurdly intended to modify all 3 subsections, the sentence would stand alone and apart from subsection (a)(3).

Second, the phrase begins "In such case . . ." Note that the word case is singular rather than plural. It is singular in that it only modifies the once instance of using a small caliber firearm or shotgun to rid property of pests. If it were intended to modify all 3 subsections, the sentence would read "In such cases . . . ."

Third, note that subsection (a)(3) deals exclusively with "small caliber firearm or shotgun." Note further that the second sentence of subsection (a)(3), not coincidentally, specially addresses the type of small caliber firearm and the type of shot in a shotgun.

Fourth, as a matter of statutory interpretation, we don't read laws to reach an absurd result when a logical result is readily available. It is absurd to think that the code section should be read to mean that police officers may only use .22s and shotguns with birdshot.

As to Section 6, subsection (b), I would recommend that it be deleted. Subsection (b) appears to be a poor attempt to restate subsection (a) for no logical reason. Most importantly, it eliminates the "self-defense" exception that is provided in subsection (a) and required by law.

If you have any additional questions, please don't hesitate to contact me.

Scott

---

Michael Scott Davis  
Davis Hartman Wright, PLLC  
209 Pollock Street  
New Bern, North Carolina 28560  
Telephone: 252.514.2828  
Facsimile: 252.514.9878  
Cellular Telephone: 252.571.2050  
[www.dhwlegal.com](http://www.dhwlegal.com)

From: Jim Barton [<mailto:utes68@centurylink.net>]  
Sent: Friday, October 20, 2017 4:05 PM  
To: [Manager@TownOfOriental.com](mailto:Manager@TownOfOriental.com)  
Cc: [sallybelangia@townoforiental.com](mailto:sallybelangia@townoforiental.com); [charlieovercash@townoforiental.com](mailto:charlieovercash@townoforiental.com); [davidwhite@townoforiental.com](mailto:davidwhite@townoforiental.com); [barbventuri@gmail.com](mailto:barbventuri@gmail.com); [sandywinfrey@townoforiental.com](mailto:sandywinfrey@townoforiental.com); [allenprice@townoforiental.com](mailto:allenprice@townoforiental.com); [selah380@gmail.com](mailto:selah380@gmail.com)  
Subject: Ordinance H

Dear Ms. Miller,

Please review and clarify from a Town of Oriental perspective the intent of the language quoted below from the Town of Oriental Code of General Ordinances, CHAPTER H -- DISORDERLY CONDUCT AND PUBLIC NUISANCES ARTICLE II -- GENERAL NUISANCE Section 6 – Firearms Regulated which reads:

“(a) It shall be unlawful for any person to discharge any firearm, pellet gun, or BB gun, of any type within the Town, except:

- (1) A police officer in the performance of his duty;
- (2) A private citizen in justifiable self-defense; or
- (3) A private citizen using a small caliber firearm or shotgun to rid property of pests. In such case, a private citizen may use no larger than a .22 caliber firearm or a shotgun with no larger than number 8 shot.

(b) It shall be unlawful for any person to discharge any firearm of any type within the Town except a police officer in the performance of his duty, except that it shall be lawful to use a small caliber (22 caliber or less) firearm or a shotgun with no larger than number 8 shot to rid property of pest. In such case, the person shall either be 16 years of age or older, or the parent or legal guardian shall accept the full responsibility for any damage done”.

I am concerned about this Ordinance language on a couple of levels.

My first concern is an apparent infringement of 2nd Amendment rights. While provision is made in paragraph (a) that a citizen may act in justifiable self-defense, it seems that to do so unless using a hand gun of greater than .22 caliber or number 8 shot from a shotgun the Town of Oriental would hold the citizen acting in self-defense in violation of paragraph (b) of the Ordinance.

As to paragraph (b) itself, it seems that any larger hand gun equipped with snake shot would be a far more effective weapon against snakes or a larger caliber firearm against a rabid animal than a .22 caliber firearm.

My second concern, particularly after discussion with the North Carolina National Rifle Association, is the nature of the restriction itself from a Town legal authority standpoint. Please cite the authority for this Ordinance language particularly since there are North Carolina preemption laws on the books which state that the firearm laws of the state shall not be superseded. I do not know the history of this language but as a registered gun owner I find such restrictions a potential infringement of my Constitutional rights. I do not own a .22 caliber firearm nor do I intend to procure one. I do not have nor do I intend to purchase in the near future number 8 shot for a shotgun.

Clarification as to the specific intent of this Ordinance would be most appreciated. I believe an easy fix to the Ordinance language would be to strike the words "small caliber (.22 caliber or less)" "or a shotgun with no larger than number 8 shot". In doing so the Town still restricts firearms within the Town except for self-defense or to rid the property from pests, both in accordance with State and Federal statute.

Thank you for your attention in this matter.

Jim Barton

Captain James D. Barton (US Navy - ret)  
104 Pelican Circle  
Oriental, NC 28571  
252-249-01307