



CITY of NOVI CITY COUNCIL

Agenda Item 2
September 24, 2012

SUBJECT: Consideration of adoption of Ordinance 12-23.28 to amend the City's Code of Ordinances, Chapter 22, Offenses, Article VI, Offenses Against Public Safety, Section 22-129, Possession of Dangerous or Deadly Weapons; Transportation of Firearms, in order to clarify the weapons to which the existing general prohibition of discharge applies, to clarify the areas where discharge is not prohibited, and to remove the discretion of the police chief to issue permits allowing the discharge of certain weapons. **Second Reading.**

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

At its September 10, 2012 meeting, the City Council approved first reading of this proposed ordinance amending Section 22-129 of the City Code, which currently prohibits possession and/or discharge of certain firearms while also allowing the Chief of Police to issue permits as an "exception" to the requirements for the purpose of hunting. The hunting exception section is proposed to be removed, as there is no provision for it in state law. In addition, the various "exceptions" to the discharge prohibition (gun ranges, archery ranges, etc.) are slightly re-worded for clarification.

Novi is generally precluded from enacting ordinances that are stricter than Michigan state law when it comes to the area of firearms, under MCL 123.1102. However, it is expressly allowed under MCL 123.1104 to pass an ordinance that prohibits the discharge of a firearm within the city:

This act does not prohibit a city or a charter township from prohibiting the discharge of a pistol or other firearm within the jurisdiction of that city or charter township.

The existing Code prohibits the discharge of a firearm within the City at Section 22-129(a)(6), which provides:

It shall be unlawful for any person in the city to:

Discharge a pistol or other firearm within the jurisdiction of the City of Novi.

The Novi ordinance then provides an exception to this prohibition under 22-129(a)(7), for a number of purposes, including activities at shooting ranges, hunting with a City permit, and others. While there may have been a basis for this exception when adopted (in the 1970s), there is no apparent basis for it in state law. While a municipality can regulate hunting directly by ordinance, any such *hunting* ordinance must be established pursuant to a procedure under state law involving the Department of Natural Resources (DNR).

A question did come up at first reading about the addition of references extending the prohibition on discharging "firearms" -- which is expressly permitted under the language of MCL 123.1104 -- to firing a projectile from a "bow or similar device." The question was where that authority would come from if not MCL 123.1104. From the City administration and City Attorney's perspective the limitation would be within the City's general home rule "police powers," since the preemptive provisions of the firearms laws would not apply. This general conclusion is supported by the fact that many communities in the area have similar prohibitions with regard to projectiles launched from bows. In fact, one of those ordinances, in Saginaw, was the subject of the case that confirmed a local municipality's right to prohibit the discharge of firearms even though it could have the same practical effect as a ban on hunting. *Czymbor's Timber Inc., v City of Saginaw*, 478 Mich 348, 733 NW 2d 1 (2007) (ordinance included the discharge of an arrow, long bow, or cross bow).

RECOMMENDED ACTION: Adoption of Ordinance 12-23.28, to amend the City of Novi Code of Ordinances at Chapter 22, Offenses, Article VI, Offenses Against Public Safety, Section 22-129, Possession of Dangerous or Deadly Weapons; Transportation of Firearms, in order to clarify the weapons to which the existing general prohibition of discharge applies, to clarify the areas where discharge is not permitted, and to remove the discretion of the chief of police to issue permits allowing the discharge of certain weapons.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

ORDINANCE NO. 12-~~23.28~~_____

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 22, "OFFENSES," ARTICLE VI, "OFFENSES AGAINST PUBLIC SAFETY," SECTION 22-129, "POSSESSION OF DANGEROUS OR DEADLY WEAPONS; TRANSPORTATION OF FIREARMS," IN ORDER TO CLARIFY THE WEAPONS TO WHICH THE EXISTING GENERAL PROHIBITION AGAINST DISCHARGE APPLIES, TO CLARIFY THE AREAS WHERE DISCHARGE IS NOT PROHIBITED, AND TO REMOVE THE DISCRETION OF THE CHIEF OF POLICE TO ISSUE PERMITS ALLOWING THE DISCHARGE OF CEERTAIN WEAPONS

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 22, "Offenses," of the City of Novi Code, at Article VI, "Offenses Against Public Safety," Section 22-129, "Possession of Dangerous or Deadly Weapons; Transportation of Firearms," is hereby amended to read as follows:

Sec. 22-129. - Possession of dangerous or deadly weapons; transportation of firearms.

(a)

It shall be unlawful for any person in the city to:

(1) - (5) Unchanged

(6) Discharge a pistol or other firearm, or fire or launch a projectile from a bow or similar device, within the jurisdiction of the City of Novi.

(7) a. The prohibition in subsection (a)(1) shall not apply to ~~licensed~~ activities conducted at shooting galleries and ranges, ~~or to activities at~~ archery ranges, provided that such facilities are licensed and in compliance with all provisions of applicable state laws and the City of Novi Code of Ordinances. The prohibition of subsection (a)(1) shall not apply to the transportation of items pursuant to subsections (a)(3) and (a)(4) or as otherwise authorized unde applicable state laws, or to bow hunting when conducted pursuant to subpart (a)(7)(d), below.

b. Unchanged

c. The prohibition in subpart (a)(6) shall not apply to the discharge of a firearm at a ~~licensed~~ shooting range, provided that such facilities are licensed and in compliance with all provisions of applicable state laws and the City of Novi Code of Ordinances. ~~or to shotgun hunting when conducted pursuant to subpart (a)(7)d., below.~~ The prohibition in subpart (a)(6) shall not apply to the discharge of a firearm consisting solely of a blank charge without projectile, when the discharge is made as part of an historical reenactment, memorial service or similar ceremony, provided ~~that permission for~~ such discharge is obtained in advance from the chief of police or his designee, who shall review such request and determine whether the proposed discharge is safe with regard to time, location as compared to adjacent or nearby uses, duration, and proposed precautions against injury.

~~d. The chief of police may issue sixty day permits for shotgun or bow and arrow hunting on private property within the city in accordance with the requirements of this subpart, and upon a determination that such activities can be conducted in a manner so as not to endanger persons or property. A permit application shall be accompanied by the written permission of the owner of the property or other person in control of the property, a description of the property and a diagram of the property which depicts its dimensions. All permits shall be subject to compliance with the following requirements:~~

- ~~1. Activities shall be limited to the use of shotguns and bows and arrows, which shall be in accordance with the licensing and other requirements of state law.~~
- ~~2. Shotguns shall be limited to steel shot which is no larger than 0.2 inches in diameter. Slugs, lead shot and steel shot in excess of 0.2 inches in diameter shall be prohibited.~~
- ~~3. Activities shall be restricted to areas no less than eight hundred (800) feet from any inhabited dwelling, any structure and public roadway, and not less than six hundred (600) feet from any boundary line with property not included in the permit.~~
- ~~4. The boundaries of the property included in the permit shall be posted every two hundred fifty (250) feet with signs reading "NO TRESPASSING—Violators will be prosecuted."~~

~~5. — No more than four (4) sixty-day permits shall be granted as to a given property within a twelve-month period. Permits for a given property shall not overlap in time.~~

~~Permits may be revoked by the chief of police, or his designee, for failure to comply with the requirements of this section, or a change in circumstances rendering such activity unsafe.~~

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V.

Effective Date: Publication. The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the Novi City Council this ____ day of _____, 2012.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2012.

Maryanne Cornelius, City Clerk

Adopted:
Published:
Effective: