



## CITY of NOVI CITY COUNCIL

**Agenda Item 4**  
**September 10, 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. **FIRST READING**

**SUBMITTING DEPARTMENT:**

**CITY MANAGER APPROVAL:**

**BACKGROUND INFORMATION:**

The City currently has a prohibition against possession and/or discharge of certain firearms in Section 22-129 of the City Code. There is a provision in the current ordinance section that allows the chief of police to issue permits as an "exception" to the requirements for the purpose of hunting. This 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.

A municipality, such as the City of Novi, is generally precluded from enacting ordinances that are stricter than Michigan state law when it comes to the area of firearms. Specifically, MCL 123.1102 provides:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

This provision of state law was further clarified in *Michigan Coalition For Responsible Gun Owners v City of Ferndale*, 256 Mich. App. 401, 662 NW2d 864 (2003), where the Michigan Court of Appeals held that the City of Ferndale was not able to pass an ordinance regulating the possession of a firearm that was contrary to or more restrictive than existing state law. Although a municipality may not enact ordinances that are more restrictive than state law, they can enact local ordinances consistent with state law, and this authority is found in MCL 123.1103(a).

Michigan law does allow, however, a city to pass an ordinance that prohibits the discharge of a firearm within that city. Specifically, MCL 123.1104 provides:

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 City of Novi has utilized the authority under MCL 123.1104 and passed a City Ordinance that prohibits the discharge of a firearm within the City of Novi, under local ordinance 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.

This current exception for hunting to the complete ban is not found in State Law, and in addition, the rationale behind allowing a discharge of a firearm within the City for a hunting purpose, in the City as currently developed and inhabited, is now clearly different than when the local ordinance exception was originally created. (Note: This ordinance was originally implemented in the 1970's and has not been updated or revised since 1994).

The Novi City Council is authorized to eliminate or modify the hunting exception provided for under Novi ordinance 22-129(a)(7)d, if they so desire. There is no requirement that any exceptions to a complete ban on the discharge of a firearm within the City of Novi be made.

However, unless or until the ordinance is modified, the Chief of Police is required to follow the existing ordinances and accept applications for hunting permits under 22-129(a)(7)d, and to issue or deny the permits according to the criteria specified in the ordinance.

It is also important to note that this ordinance revision is not a "ban on hunting." There are procedures that Novi can follow to enact a separate ban on hunting, if we so desire, however that process will require the involvement of the Department of Natural Resources (DNR) and the utilization of a process they have in place to study the geography of the City.

Although this ordinance revision is not a legal ban on hunting, it is a legal ban on the discharge of a firearm, which could be construed by some as reaching the same result as a ban on hunting since a hunter would be legally prohibited from discharging a firearm, even for hunting.

**RECOMMENDED ACTION:** Approve FIRST READING 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.

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Maryanne Cornelius, City Clerk

Adopted:  
Published:  
Effective: