



CITY OF GRAND RAPIDS AGENDA ACTION REQUEST

DATE: October 22, 2019

TO: Mark Washington, City Manager

COMMITTEE: Committee of the Whole
LIAISON: Mark Washington, City Manager

FROM: Kristen Rewa, Assistant City Attorney, Police Legal Advisor
 Department of Law

SUBJECT: **Resolution providing for the publication of and setting a date to consider a proposed ordinance repealing and replacing Chapter 153 of Title IX of the Code of the City of Grand Rapids entitled "Firearms"**

Attached for your consideration is a resolution to authorize the publication of an ordinance repealing Chapter 153 of Title IX of the City Code "Firearms" and replacing it with a Weapons Ordinance. The resolution also schedules the proposed ordinance for consideration and a vote on November 12, 2019.

Over the past two years, pneumatic guns (like bb guns and airsoft rifles) have contributed to public safety concerns in the City of Grand Rapids. Pneumatic guns look like real firearms - so much so, that use of pneumatic guns has resulted in residents calling 911 believing they have observed real firearms. Officers respond to these calls for service as real firearm calls. This has resulted in negative interactions between youth and law enforcement. From January 2018 through September 2019, the police department has come into possession of 142 pneumatic gun or imitation firearms (up from the 106 reported at the July 23 Committee of the Whole discussion of this ordinance).

Due to changes in state law, the City's current firearms ordinance does not adequately regulate the use of pneumatic guns. The city commission can take steps to improve public safety and assist with community policing efforts by updating the current firearms ordinance to regulate pneumatic guns as allowed by state law.

The current firearms ordinance was adopted in 1967. Piecemeal amendments to the ordinance have been approved over the years, with the last amendments to the ordinance being approved in 2006.

In 2015, state law changed by removing "pneumatic guns" from the definition of "firearms." State laws governing youth possession and use of pneumatic guns were also

repealed. Now, it is up to cities to regulate pneumatic guns. While cities are not allowed to regulate the look or manufacture of pneumatic guns, cities are allowed to pass laws regulating conduct with pneumatic guns including discharge, brandishing, and youth possession within certain confines delineated by state law. Currently, the city code does not address pneumatic guns.

Separate but related to pneumatic guns are “imitation firearms”. Federal law requires toys that have the appearance, shape or configuration of a firearm to contain federally approved markings – like a blaze orange tip, or the body be entirely transparent or brightly colored. Federal law allows states and municipalities to have some local control over regulation of these items, consistent with federal law requirements.

The key concepts of the proposed new ordinance include:

- Aligning the city definition of “firearm” with the state law definition.
- Regulating pneumatic guns as allowed by state law, including prohibiting brandishing, regulating discharge, and prohibiting minors under 16 from possessing them without supervision.
- Regulating other non-firearm projectile weapons, including bows and crossbows, in a manner consistent with pneumatic guns. Currently these devices are treated as “firearms” under city code.
- Regulating imitation firearm toys consistent with federal law. This generally requires that imitation firearms cannot be possessed unless they have markings required by federal law (like an orange tip or a brightly colored body). Federally required markings cannot be altered.
- Maintaining the current prohibition on discharging a firearm in the city. The proposed ordinance replaces the prohibition on “flourishing” a firearm in a public place with “brandishing” a firearm in a public place – to be more consistent with state law. Exceptions to these rules are maintained, but language is updated to be consistent with recent changes to state law.
- Providing a mechanism to dispose of weapons used in violation of this ordinance.

If the ordinance is passed, city staff would embark on a public education campaign to inform the community about the changes to the city’s ordinance, focusing particularly on information and outreach to parents and school-aged children about the regulations concerning bb guns.

Please place this item on the next City Commission agenda.

YOUR COMMITTEE OF THE WHOLE recommends adoption of the following resolution providing for the publication of a proposed ordinance repealing and replacing Chapter 153 of Title IX of the Code of the City of Grand Rapids entitled "Firearms".

RESOLVED that:

1. The attached ordinance repealing and replacing Chapter 153 of Title IX of the Code of the City of Grand Rapids shall be published as part of the proceedings;
2. In accordance with Title V, Section 10(b) of the Grand Rapids City Charter, the City Clerk shall publish a summary of the ordinance in a newspaper of general circulation in the city; and
3. The proposed ordinance shall be considered for adoption on November 12, 2019.

Prepared by Kristen Rewa

CORRECT IN FORM

DEPARTMENT OF LAW

AN ORDINANCE TO REPEAL AND REPLACE IN ITS ENTIRETY CHAPTER 153 OF TITLE IX OF THE CODE OF THE CITY OF GRAND RAPIDS ENTITLED "FIREARMS."

ORDINANCE NO. 2019 - _____

THE PEOPLE OF THE CITY OF GRAND RAPIDS DO ORDAIN:

Section 1. That Chapter 153 of Title IX of the Code of the City of Grand Rapids be repealed in its entirety.

Section 2. That the existing Chapter 153 of Title IX of the Code of the City of Grand Rapids be replaced as follows:

"Chapter 153 - WEAPONS

Sec. 9.171—Purpose, Findings, and Interpretations

- (1) The purpose of this Chapter is to secure and maintain the public peace, health, safety, welfare and convenience of the residents and property owners of the City by the regulation of firearms, pneumatic guns, imitation firearms, and other devices capable of expelling a projectile.
- (2) The City of Grand Rapids is the second most populated city in Michigan, with a population over 200,000 (Census Bureau population estimate, July 1, 2018) and a population density at or exceeding 4,235.6 people per square mile (Census Bureau, 2010). The City Commission finds that the City is so heavily populated as to make unregulated conduct anywhere within city limits to be dangerous to the inhabitants of the City.
- (3) Nothing within this Chapter shall relieve a person of the duties and obligations imposed by state or federal law or regulations. Nothing in this Chapter shall be construed in a manner as to conflict with applicable state or federal law or regulations. To the extent of any conflict between any provision of this Chapter and any provision of state or federal law, the provision of state or federal law shall control. In the event any court of competent jurisdiction shall hold any provision of this Chapter invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Sec. 9.172. - Definitions

- (1) "Brandish" means to point, wave about, or display in a manner intended to induce fear in another person.

- (2) "Bow" means a device for propelling an arrow from a string drawn, held, and released by hand if the force used to hold the string in the drawn position is provided by the archer's muscles.
- (3) "Crossbow" means a weapon consisting of a bow, with a draw weight of 100 pounds or more, mounted transversely on a stock or frame and designed to fire an arrow, bolt, or quarrel by the release of a bow string controlled by a mechanical or electric trigger with a working safety.
- (4) "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive. Firearm does not include pneumatic gun or imitation firearm.
- (5) "Other device capable of expelling a projectile" means a device other than a firearm, pistol, or pneumatic gun from which is propelled a missile, projectile, pellet, or other mass by means of springs, rubber, elastic strip, levers or other mechanical means which device shall be capable by the discharge of any such missile, projectile, pellet, or other mass of inflicting personal injury or death upon any person. "Other device capable of expelling a projectile" is not a toy item or apparatus deemed by the manufacturer to be usable by an individual under age ten (10) that discharges low risk projectiles including but not limited to foam, Nerf, and ping-pong balls.
- (6) "Pneumatic gun" means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact. For purposes of this Chapter, pneumatic gun does not include an imitation firearm.
- (7) "Projectile" means any missile, bullet, shot, pellet, or other mass.
- (8) "Public place," means any street, alley, park, sidewalk, public building, any place of business open to the public or frequented by the public or any portion thereof, and any other place which is open to public view or to which the public, or any portion thereof, has access.
- (9) "Imitation firearm" means any toy, imitation, facsimile or imitation pistol, revolver, shotgun, rifle, air rifle, BB gun, pellet gun, machine gun, or other similarly simulated weapon which because of its color, size, shape, or other characteristics, can reasonably be perceived to be a real firearm or pneumatic gun. "Imitation Firearm" does not include:
- (a) A pneumatic gun;

- (b) A non-firing collector replica antique firearm, which looks authentic and may be a scale model but is not intended as a toy, modelled on real firearms designed, manufactured, and produced prior to 1898;
- (c) Decorative, ornamental, and miniature objects having the appearance, shape and/or configuration of a firearm, including those intended to be displayed on a desk or worn on bracelets, necklaces, key chains, and so on, provided that the objects measure no more than thirty-eight (38) millimeters in height by seventy (70) millimeters in length, the length measurement excluding any gun stock length measurement; or
- (d) A toy item or apparatus deemed by the manufacturer to be usable by an individual under age ten (10) that discharges low-risk projectiles including but not limited to foam, Nerf, and ping-pong balls.

Sec. 9.173. Regulation of Firearms

- (1) No person shall discharge any firearm in the City of Grand Rapids.
- (2) No person shall brandish any firearm in any public place.

Sec. 9.174. – Regulation of Pneumatic Guns, Bows, Crossbows, and Other Devices Capable of Expelling a Projectile

- (1) No person shall discharge any bow, crossbow, pneumatic gun, or other device capable of expelling a projectile in the City of Grand Rapids, except
 - (a) At authorized target ranges;
 - (b) On other property where firearms may be discharged; or
 - (c) On or within private property with the permission of the owner or possessor of that property if conducted with reasonable care to prevent a projectile from crossing the bounds of the property.
- (2) A person that grants permission to discharge a bow, crossbow, pneumatic gun, or other device capable of expelling a projectile on private property and fails to exercise reasonable care to prevent a projectile from crossing the bounds of the property, and where such projectile crosses the bounds of the property, is in violation of this Chapter.
- (3) No person shall brandish a bow, crossbow, pneumatic gun, or other device capable of expelling a projectile.

- (4) No person under the age of sixteen (16) shall possess a bow, crossbow, pneumatic gun, or other device capable of expelling a projectile in a public place without the supervision of a parent, a guardian, or a person eighteen (18) years of age or older.

Sec. 9.175. - Exceptions.

- (1) The prohibitions in Sections 9.173 and 9.174 do not apply:
- (a) To persons acting lawfully in self-defense or defense of another under the self-defense act, 2006 PA 309, MCL 780.971 to 780.974;
 - (b) To police officers or other peace officers in the lawful performance of their duties;
 - (c) To indoor enclosed firearm ranges so constructed as to prevent damage to property or injury or death to any person where such firearm ranges are otherwise lawful; or
 - (d) To persons engaged in an authorized military or civic activity, including a flag ceremony, color guard, parade, award presentation, historical reenactment, or memorial by permission of the director of public safety.
- (2) Nothing in this Chapter shall prevent police officers from using an open-air range within the City, for the purpose of training. Such activity shall be subject to the control and discretion of the chief of police as to scheduling the time and determining the location for such target practice and all other respects.

Sec. 9.176. – Regulation of Imitation Firearms

- (1) No person shall knowingly display or expose any imitation firearm in a public place.
- (2) No person shall brandish an imitation firearm.
- (3) No person shall manufacture, enter into commerce, ship, transport, receive, sell or offer to sell an imitation firearm in violation of federal law.
- (4) No person shall knowingly give, sell, or otherwise furnish an imitation firearm to any person under the age of 18.
- (5) This section does not apply to:
- (a) An imitation firearm that has a blaze orange tip or other approved marking as described in 15 USC § 5001, 15 CFR 272, or other applicable federal law or regulation, and the blaze orange tip or marking is not concealed;
 - (b) An imitation firearm used in a theatrical production, including any motion picture, film, video, television, stage production, or commercial film or video production;

- (c) An imitation firearm used in conjunction with a certified or regulated sporting event or competition;
- (d) An imitation firearm used in an authorized military, civil defense, or civic activity, including a flag ceremony, color guard, parade, award presentation, historical reenactment, or memorial;
- (e) An imitation firearm used for a public display authorized by a school or a display that is part of a museum collection;
- (f) An imitation firearm used in a parade, ceremony, or other similar activity for which a permit has been obtained from the City; or
- (g) An imitation firearm displayed on a wall plaque or in a presentation case.
- (h) An imitation firearm that is being used in an area where the discharge of a firearm is lawful or in conjunction with law enforcement training.

Sec. 9.177 - Alteration of an Imitation Firearm; Possession of an altered imitation firearm.

- (1) No person shall alter, remove, or obliterate any coloration, markings, or bands that are required by 15 USCA Section 5001 and accompanying federal regulations for any imitation firearm in a way that makes the imitation firearm look more like a firearm or pneumatic gun.
- (2) No person shall knowingly possess an imitation firearm on which the blaze orange tip or other approved markings as described in 15 USCA Section 5001 and accompanying federal regulations has been altered, removed or obscured.
- (3) This section does not apply to a lawful use of an imitation firearm in any theatrical production, including any motion picture, video, television, or stage production.

Sec. 9.178 Parental Responsibility

A parent, guardian or other person having the physical custody or charge of a minor under the age of seventeen (17) years shall exercise reasonable parental control by requiring the minor to observe the provisions of this Chapter.

Sec. 9.179. – Seizure and Forfeiture of Weapons

- (1) The police department, upon seizing or otherwise coming into possession of a weapon or part of a weapon used in violation of this Chapter, shall retain possession thereof for a time period sufficient to notify the owner of the weapon, as provided in this section. The retention, disposition and forfeiture of firearms

by the police department shall be in compliance with MCL 750.239a or other applicable state law.

- (2) All weapons carried, possessed or used contrary to this Chapter are hereby declared forfeited to the City. Forfeiture shall not apply to the owner if the owner is not alleged to have been involved in the conduct for which forfeiture is required or did not knowingly allow the weapon to be possessed illegally. Written notification shall be given to the owner at the conclusion of the criminal case stating that the owner has ninety (90) days to claim the weapon. The police department shall return a weapon to its owner if the owner claims the weapon within the notification period and the police department determines that the owner was not involved in the violation for which the weapon was seized. A weapon shall be returned under this subsection within thirty (30) days after the weapon is claimed by the owner unless the weapon is a firearm and the owner is prohibited from possessing a firearm under state or federal law.
- (3) For purposes of this section, "weapon" means any firearm, pneumatic gun, bow, crossbow, other device capable of expelling a projectile, or imitation firearm.

Sec. 9.180 Penalty.

Any person who violates any provision of this Chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of up to \$500 or imprisonment for up to 90 days or both."

SUMMARY OF ORDINANCE 2019 –

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 153 ENTITLED
“FIREARMS” TO TITLE IX POLICE REGULATIONS OF THE CODE OF THE CITY OF
GRAND RAPIDS

The Grand Rapids City Commission will vote on an ordinance to repeal the current firearms ordinance and replace it with a weapons ordinance. The replacement ordinance would:

- (1) Prohibit discharge of firearms; brandishing firearms in a public place;
- (2) Regulate pneumatic guns, bows, crossbows, and other devices capable of expelling a projectile, including prohibiting brandishing; regulating discharge, and; prohibiting possession by a minor under 16 unless with adult supervision;
- (3) Regulate imitation firearms consistent with federal law, 15 USC 5001; prohibiting alteration or possession of an altered imitation firearm; and
- (4) Define key terms; require reasonable parental responsibility for dependent minor’s observance of ordinance; regulate seizure or forfeiture of weapons used in violation of ordinance; provide that violations of ordinance are a misdemeanor criminal offense.

The full text of the proposed ordinance is available on the City’s website or printed copies are available for inspection and distribution at the office of the City Clerk.