

ORDINANCE NO. 2023-03-01

**AN ORDINANCE REPLACING ORDINANCE NO. 609 TITLED "FIREARMS" AND
REPEALING ORDINANCE NO. 608 TITLED "TRAPPING PROHIBITED."**

Findings and Purpose:

Birchwood is very limited in how it can regulate firearms. Our current code may not be enforceable. The League of Minnesota Cities writes:

Since 1985, the state legislature has explicitly preempted all cities, counties, towns and other governmental subdivision from regulating "firearms, ammunition or their respective components," with two exceptions. A governmental subdivision such as a city may regulate the discharge of firearms and it may adopt regulations identical to state law.

The term "firearm" is not defined for the purposes of the law. However, in the context of criminal law, Minnesota courts have relied on a statutory definition pertaining to fish and game. Under this definition, a firearm is "a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air."

Using this definition, case law has provided that neither BB guns nor paintball guns are considered firearms for purposes of criminal law. Due to the state preemption, Minnesota cities have no authority to ban assault weapons, high capacity magazines or any other firearm, ammunition or component thereof unless already banned by state law. Whether BB guns and paintball guns may be banned because they are not "firearms" within the context of criminal law is less clear.

This change makes the definition of firearm match that which Minnesota courts use, and makes this regulation more likely to be enforceable. It also makes explicit that exceptions to § 609.020 are to the discharge of firearms, not to hunting, and that attempted discharge is also included.

Because the City has sometimes hosted veteran's groups that have provided gun salutes for Independence Day, an exception for this purpose is provided.

The code allows for a suspension of hunting and trapping provisions related to the code.

Our trapping code can be consolidated into this section, because it is very brief and because the prohibition may also be suspended under § 609.020; the section prohibiting the sale of traps is removed.

Section 1.

Ordinance No. 608, and titled "TRAPPING PROHIBITED" is hereby repealed.

Section 2.

Ordinance No. 609, and titled "FIREARMS" is hereby repealed and replaced with the following:

609. FIREARMS, HUNTING AND TRAPPING

609.010. DEFINITIONS.

1. Firearm. A gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air. A bow is not a firearm.
2. Trapping. The setting, laying, using, or having in possession of any mechanical device or snare which seeks to hold, capture or kill an animal.

609.020. FIREARM DISCHARGE PROHIBITED. No person shall discharge or attempt to discharge any firearm in the City, except:

1. in lawful defense of person or property against an unlawful act; or
2. by peace officers or military personnel in the course of their duties and in necessary connection with enforcement of the laws; or
3. for the discharge of a blank cartridge pistol or rifle in connection with an event hosted by the City and by arrangement with the City.

609.030. HUNTING PROHIBITED. No person shall hunt any bird or animal by any means within the City.

609.040. TRAPPING PROHIBITED. No person shall engage in trapping, except:

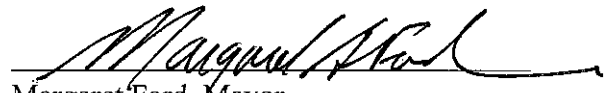
1. for the use of live traps which are tended to at least every 12 hours and which are employed for the control of nuisance animals; and
2. for the purposes of trapping rats, mice, gophers and moles.

609.050. HUNTING AND TRAPPING EXCEPTIONS. The City Council may, by resolution, provide for limited and temporary suspensions of § 609.030 and/or § 609.040.

609.100. PENALTIES. Any person violating any of the provisions of this ordinance is guilty of a misdemeanor.

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this 11th day of April, 2023


Margaret Ford, Mayor

Attest:


Rebecca Kellen, City Administrator-Clerk

