

Ordinance # 7
Discharging Rifle, Etc., or Other Explosives

The State of Delaware regulates by statute the acquisition, ownership transfer, transfer, possession and transportation of firearms. It prohibits its municipalities from regulating these matters but permits them to prohibit the discharge of firearms within their borders. Delaware has enacted the following law:

“The municipal governments shall enact no law, ordinance or regulation restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in Title 11. Nothing contained herein shall be construed to invalidate municipal ordinances existing before July 4, 1985, and any ordinance enacted after July 4, 1985, is hereby repealed.” Delaware Code, Title 22, Section 111(a); see also Title 22, Section 855(b).

Arden’s Ordinance # 7, apparently enacted in June 1976, prohibits the discharge of firearms in Arden. Ordinance #7 does not incorporate the justification defenses (for example, self-defense, defense of another person and defense of property) found in Title 11 of the Delaware Code. It is not clear whether the savings clause for ordinances existing before July 4, 1985 sustains Ordinance #7 without an amendment incorporating the justification defenses. To avoid doubt Ordinance #7 should be amended to incorporate the justification defenses.

Section 1 of Ordinance #7 defines what is prohibited by the Ordinance. Some of the language is confusing. It is not clear what is meant by “or any other appliance, whether projecting or exploding.” What does “appliance” mean? What does “projecting or exploding” mean? Does it modify “appliance” or all of the terms used previously in the sentence. Does it cover pellet guns? Air rifles? Bows and cross bows? Stun guns and taser guns? New Castle County in its ordinance uses “firearm or other deadly weapon.” The definitions should be revised to clarify the language by including examples (“including but not limited to”).

Another ambiguity in section 1 of Ordinance #7 is the phrase “or of any explosive nature?” Does this phrase refer to firearms powered by gunpowder? Or does it prohibit explosives like hand grenades, dynamite or pipe bombs? To fireworks? This language needs to be clarified using more examples.

An exemption to section 1 of Ordinance #7 is included in the last sentence of section 1 for “Peace Officers in the regular discharge of their duties.” This language should be modernized to “law enforcement officers.”

New Castle County includes provisions limiting use of bows and cross bows and prohibiting stun guns and Taser guns, except by law enforcement officers. See New Castle County Code Sections 22.03007 and 22.03.10. These provisions apply to Arden.

Section 2 of Ordinance #7 should be revised to increase the permitted fines for violations of the Ordinance #7 if the Village charter is amended to permit fines for violations of ordinances to more than \$100.

A Committee should be designated to have responsibility for ensuring that copies of Ordinance #7 are posted in public places within the Village.

Recommendations:

- 1. Amend Section 1 to clarify what types of weapons are covered by Ordinance #7.*
- 2. Amend Section 1 to incorporate the justification exemptions from Title 11 of the Delaware Code.*
- 3. Increase the fines for violations of Ordinance #7, if the Village charter is amended to increase the limit on the amounts of fines for violations of ordinances.*
- 4. The caption of Ordinance # 7 should be changed to be more descriptive of its contents.*
- 5. Designate a Village committee to be responsible for posting copies of Ordinance #7 in public places within the Village and on the Village website.*