

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 00-088

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. Section NR 19.40 (3) (d) requires the Department of Natural Resources (DNR) to consider whether the ordinance requires a permit to discharge a firearm or bow, whether a fee is charged that exceeds 150% of the issuance fee established by s. NR 19.02 (4) (b), creates a higher fee for nonresidents or requires a background check.

Section 66.092, Stats., relates to authorized local regulation of firearms. Section 66.092 (2), Stats., provides:

Except as provided in subs. (3) and (4), no political subdivision may enact an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

Among the exceptions is: “Nothing in this section prohibits a city, village or town that is authorized to exercise village powers under s. 60.22 (3) from enacting an ordinance or adopting a resolution that restricts the discharge of a firearm.”

It is questionable whether an ordinance that, for example, allows discharge of a firearm upon payment of a fee of less than 150% of the DNR's fee is authorized under s. 66.092, Stats. That is, although a local ordinance may *restrict* discharge of a firearm by, for example, prohibiting discharges, it is questionable whether requiring a permit, charging a fee or requiring a background check is authorized under s. 66.092, Stats. The provision of the rule should be examined for consistency with this statute.

b. Section NR 19.40 (4) (e) provides that the DNR may “rescind” ordinances found in violation of s. 29.038, Stats. However, s. 29.038, Stats., authorizes the DNR, if it determines that an ordinance, regulation, resolution or other restriction exceeds the authority granted to local governments, to issue a notice of the DNR's intent to issue an order. If it issues an order, that order may declare the ordinance, regulation, resolution or other restriction *void*. The DNR does not have authority to “rescind” ordinances that violate s. 29.038, Stats. The terminology of s. 29.038 (4), Stats., should be used.

## **2. Form, Style and Placement in Administrative Code**

- a. In s. NR 19.40 (2), par. (a) should be preceded by “In this section:”.
- b. In s. NR 19.40 (4) (e), “certain” should be inserted before “times.”

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The analysis to the rule states that the standards in the rule are not weighted and do not appear in order of importance. However, the text of the rule does not state this. Is there a need to state this in the text?

- b. In s. NR 19.40 (4) (d), “The” should be inserted before “decision.”