Rifle Hunting & Discharge of Firearms Ordinances

The Wisconsin Department of Natural Resources (DNR) has historically maintained areas of the state where hunters were only allowed to use shotguns and not rifles during the popular gun-deer hunting season. The DNR has now ended this practice of maintaining shotgun-only zones during the gun-deer season effective November 1, 2013. Simultaneously, the DNR is stating that local governments have the authority to pass local ordinances restricting the discharge of rifles and is advising hunters to check with local municipalities on this topic to see whether rifles will in fact be allowed where they will plan to hunt. Although the DNR is theoretically correct, practical problems with such an ordinance are legion and described below.

Shotgun-only rollback

The common public perception is that shotgun-only gun-deer hunting zones were safer for the general public in more populated areas because the average high-powered rifle bullet can travel much further than the average shotgun slug. The DNR is eliminating shotgun-only gun-deer hunting zones because it has come to disagree with the premise that there is necessarily any real safety difference, however. The DNR states several reasons for its conclusion:

Over time an increasing number of hunters are of the age that they have completed hunter safety education causing the overall population of hunters to be safer. There are several current facets of hunting that did not seem to show any appreciable difference in safety when using rifles as opposed to shotguns: there are many different types of other game animal seasons where rifles are used for the hunt, only the gun-deer season involved shotgun-only zones; shotgun-only zones have always allowed handgun hunting and many of those handguns are in rifle-type calibers; the DNR has actually been rolling back shotgun-only gun-deer hunting zones since 2002 with no appreciable difference in accident rates in those areas. Besides its Wisconsin data, the DNR also reviewed information on this topic from at least one other state (Pennsylvania). Finally, there has been citizen input to do away with shotgun-only gun-deer hunting zones.

Given the citizen input, the DNR reviewed its available information and felt it could no longer conclude that imposition of the shotgun-only gun-deer hunting zones provided any appreciable safety difference over allowing rifles in those areas too. The DNR rule requiring shotgun-only gun-deer hunting zones proceeded to be changed.

Problems with local ordinances

Villages and towns with village powers may generally adopt ordinances that create reasonable restrictions on citizens’ liberty for the purpose of things like added public safety. This could even potentially include limitations on the discharge of firearms. Wis. Stat. § 66.0409(3)(b). However, the idea that a town or village can recreate shotgun-only gun-deer hunting zones will prove elusive.

The first problem will be establishing a public safety justification to legally underpin an ordinance restricting the use of rifles. This is because the DNR has pointedly reviewed its data
detailed above and come to the conclusion that there is no appreciable safety difference between
gun-deer hunting with shotguns-only versus shotguns and rifles. In other words, the DNR’s data
and conclusions are the exact opposite of what a local municipality would need to find and
declare as the reason for an ordinance regulating the discharge of rifles. The comparison seems
like a tall order for a local municipality to overcome, in particular by the start of this year’s gun-
deer season.

A second problem is that only the DNR may regulate hunting in Wisconsin. § 29.038. Local municipalities can have local ordinances that may have an incidental effect on hunting, but cannot directly regulate hunting. This means that any local ordinances should probably not refer to “hunting” at all because they cannot regulate anything specific to hunting directly. Local

governments thus only have the ability to regulate firearm discharges, or types of them, in a very
broad sense.

I have seen sample ordinances that say something like “it shall be unlawful for any
person to discharge a rifle (or some types of them, such as any larger than a .22 caliber)
anywhere within the boundaries of the town/village.” Meaning: all of those rifles are illegal to
fire all the time in the entire jurisdiction. Is that what you or your citizens would actually intend
or desire? For most towns, even those with formerly shotgun-only gun-deer hunting zones,

probably not. Because you may not regulate hunting per se, but instead only firearm discharge in
an incidental sense, any attempted ordinance is forced into being quite broad.

**Enforcement issues**

A third problem is that the DNR does not intend to keep a database of local ordinances
regulating the discharge of firearms. DNR wardens will not enforce any local ordinance of these
types, assuming that they would even be aware whether there is one wherever they happen to be.
Therefore, if you choose to pass an ordinance regulating the discharge of firearms in any way,
enforcement of it will likely fall to your local municipality and however it can arrange to do that.

**Conclusion**

As always, the final decision to pass a local ordinance, such as on firearm discharge to
limit rifles specifically, rests with your village or town with village powers. Major problems that
I have identified with such an ordinance are: (1) a very dubious legal underpinning without some
kind of independent findings by your local government in opposite to the DNR data and
conclusions; (2) local municipalities’ inability to regulate hunting can make a local ordinance
broader than many would find appropriate; and (3) enforcement of such an ordinance could be
very difficult, probably more so than most ordinances.

There is a fourth and final problem: the timing of the rule change’s effect has been
unfortunate in regard to the printing of this year’s deer hunting regulations. The printed deer
hunting regulations for 2013 do not indicate that there has been the elimination of the formerly
 shotgun-only gun-deer hunting zones although copies of the regulations online have been
updated. Therefore, you can expect for 2013 at least that there will be some confusion on this
issue in general. In any case, a safe and happy deer season to you all.