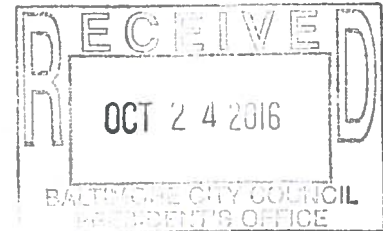




October 21, 2016

Honorable President and Members
of the City Council of Baltimore
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attn: Natawna Austin
Executive Secretary



Re: City Council Bill No. 16-0761
Police Ordinances – Replica Gun Ban

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 16-0761. City Council Bill 761 amends Article 19, by adding Subtitle 39, Replica Guns. The bill prohibits owning, carrying or possessing replica guns. “Replica gun” is defined as “any toy, imitation, facsimile, or replica pistol, revolver, shotgun, rifle, air rifle, b-b gun, pellet gun, machine gun, or other simulated weapon, which because of its color, size, shape, or other characteristics, can reasonably be perceived to be a real firearm.” The bill also provides that replica firearms are subject to seizure and forfeiture and establishes procedures and provides for other penalties.

Under Article 15 U.S. Code Service Section 5001(g), Congress has specifically preempted local government from regulating certain imitation firearms. In general, Section 5001 provides that toy, look alike or imitation firearms must be marked in a specific manner. Section 5001(g) further provides that the provisions of Section 5001 shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no State shall ... (ii) prohibit the sale (other than the sale to minors) of traditional B-B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

Although, the preemption language refers to “a State”, the legislative intent is clear. In testimony during the Congressional hearings on the bill, Senator Dole, the law’s sponsor, noted that “any State or local laws or ordinances which provide for inconsistent or conflicting marking or identification shall be preempted and superseded. For example, a local ordinance banning sale of traditional B-B, paint ball,

Fav w/ Amend

or pellet-firing air guns would be of no force and effect.” 134 Cong. Rec. S 15531 (October 6, 1988). Although the federal law prohibits a ban on the sale of paint ball guns, courts have found that the federal law allows for some local regulation. See City of New York v. Job-Lot Pushcart et al., 666 N.E.2d 537(1996)(the Federal Toy Gun Law is not an attempt to dominate the field. State and localities can erect a regulatory framework that expands upon the Federal foundation. Local laws can stand to the extent that they can coexist with the Federal law.), New Jersey v. Rackis, 755 A2d 649(2000) (discussing licensing of BB guns the court state that we conclude that Congress did not intend to preclude states from regulating the possession and use of B-B guns by the sub-provision of the imitation gun markings statute which disallows states form prohibiting a total ban of the sale of BB guns.)

The City therefore can enact legislation that regulates owning, carrying and possessing replica guns, it cannot ban the sale of “traditional B-B guns, paint ball or pellet- firing air guns that expel a projectile through the force of air pressure to adults. Bill 16-0761 cannot therefore be interpreted in such a way that is preempted by federal law. The Law Department recommends an amendment §39-2 which provides that the ban is “subject to federal law on imitation firearms.”

The Law Department also has several other concerns. First, in §39-6 (A), to avoid the appearance of legislating with respect to the operation of the Police Department, strike “the Police Department shall notify” and after “Solicitor” insert “shall be notified”. In §39-8(A), Strike “filing” and insert “mailing of the notice”. In §39-9(A), in order not to impinge on the authority of the Court, strike “shall” and insert “may” and after “City” insert “or provide for other means of disposal of the replica firearm.”

Accordingly, subject to amendment as noted above, the Law Department could approve the City Council Bill 16-0761 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor

cc: Angela Gibson, City Council Liaison,
David Ralph, Acting City Solicitor
Hilary Ruley, Chief Solicitor
Victor Tervalo, Chief Solicitor
Jennifer Landis, Chief Solicitor