

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 16-0761

Introduced by: Councilmember Kraft, President Young, Councilmembers Middleton, Curran,
Scott, Holton, Henry, Clarke, Costello, Reisinger, Mosby, Spector, Welch

Introduced and read first time: September 19, 2016

Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments

Council action: Adopted

Read second time: November 14, 2016

AN ORDINANCE CONCERNING

Police Ordinances – Replica Gun Ban

1
2 FOR the purpose of prohibiting the possession of replica guns in Baltimore City; defining a
3 certain term; making replica guns subject to seizure and forfeiture; establishing the
4 procedures for seizing and forfeiting replica guns; exempting certain replica guns used for
5 specific purposes from the general prohibition of replica guns; imposing certain penalties;
6 and generally relating to replica guns.

7 BY adding

8 Article 19 - Police Ordinances

9 Section(s) 39-1 to 39-13, to be under the new subtitle designation

10 “Subtitle 39. Replica Guns”

11 Baltimore City Code

12 (Edition 2000)

13 BY adding

14 Article 1. Mayor, City Council, and Municipal Agencies

15 Section 41-14(2)(§ 39-2. Replica gun possession prohibited)

16 Baltimore City Code

17 (Edition 2000)

18 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
19 Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

SUBTITLE 39. REPLICA GUNS

PART 1. IN GENERAL

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

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1 § 39-1. REPLICA GUN DEFINED.

2 (A) IN GENERAL.

3 IN THIS SUBTITLE, “REPLICA GUN” MEANS ANY TOY, IMITATION, FACSIMILE OR REPLICA
4 PISTOL, REVOLVER, SHOTGUN, RIFLE, AIR RIFLE, B-B GUN, PELLET GUN, MACHINE GUN, OR
5 OTHER SIMULATED WEAPON, WHICH BECAUSE OF ITS COLOR, SIZE, SHAPE, OR OTHER
6 CHARACTERISTICS, CAN REASONABLY BE PERCEIVED TO BE A REAL FIREARM.

7 (B) EXCLUSION.

8 “REPLICA GUN” DOES NOT INCLUDE ANY TOY, IMITATION, FACSIMILE OR REPLICA
9 FIREARM THAT IS IN COMPLIANCE WITH U.S. CODE TITLE 15, CHAPTER 76, § 5001
10 {“PENALTIES FOR ENTERING INTO COMMERCE OF IMITATION FIREARMS”} AND ITS
11 IMPLEMENTING REGULATIONS IN 15 C.F.R. § 272.3 {“MARKING OF TOY, LOOK-ALIKE
12 AND IMITATION FIREARMS: APPROVED MARKINGS”}.

13 § 39-2. REPLICA GUN POSSESSION PROHIBITED.

14 ~~NO~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, NO PERSON MAY OWN, CARRY, OR
15 POSSESS A REPLICA GUN IN THE CITY OF BALTIMORE.

16 § 39-3. ~~Reserved~~ EXEMPTIONS.

17 (A) IN GENERAL.

18 § 39-2 {“REPLICA GUN POSSESSION PROHIBITED”} OF THIS SUBTITLE DOES NOT APPLY TO A
19 REPLICA GUN IF THE REPLICA GUN IS:

20 (1) ACTIVELY BEING TRANSPORTED IN INTRASTATE, INTERSTATE, OR FOREIGN
21 COMMERCE;

22 (2) OR IS USED PRIMARILY FOR:

23 (I) THE PRODUCTION OF A TELEVISION PROGRAM, A THEATRICAL OR MOTION
24 PICTURE PRESENTATION, OR A HISTORICAL REENACTMENT, PROVIDED THE USE
25 COMPLIES WITH ALL APPLICABLE LAWS, RULES, OR REGULATIONS CONCERNING
26 THE USE;

27 (II) A FIREARM TRAINING CLASS TAUGHT BY A CERTIFIED QUALIFIED FIREARM
28 INSTRUCTOR PURSUANT TO MARYLAND LAW;

29 (III) COMPETITIONS, OR IN TRAINING FOR COMPETITIONS, THAT TEST THE SHOOTING
30 SKILLS OF COMPETITORS;

31 (IV) DISPLAY OR USE ON REAL PROPERTY OWNED BY THE OWNER OF A REPLICA
32 GUN, PROVIDED THE DISPLAY OR USE COMPLIES WITH ALL APPLICABLE LAWS,
33 RULES, OR REGULATIONS CONCERNING THE DISPLAY OR USE; OR

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1 (V) PAINTBALL, PROVIDED THE USE COMPLIES WITH CITY CODE ARTICLE 19, §
2 59-26 {"GAS- OR AIR-PELLET GUNS"}.

3 (B) REQUIRED STORAGE WHEN NOT IN USE.

4 A REPLICIA GUN MUST BE STORED IN A LOCKED CASE OR AFFIXED TO A WALL AT ALL TIMES
5 WHEN NOT IN USE FOR AN EXEMPT USE UNDER PARAGRAPH (A)(2) OF THIS SECTION IN
6 ORDER TO QUALIFY FOR THE EXEMPTION.

7 ***PART 2. SEIZURE AND FORFEITURE***

8 **§ 39-4. SEIZURE AND FORFEITURE AUTHORIZED.**

9 A REPLICIA GUN IS SUBJECT TO SEIZURE AND FORFEITURE IF IT IS FOUND IN VIOLATION OF THIS
10 SUBTITLE.

11 **§ 39-5. SEIZURE BY POLICE.**

12 (A) *WHEN WARRANT NOT NEEDED.*

13 A POLICE OFFICER NEED NOT HAVE A WARRANT TO SEIZE A REPLICIA GUN IF:

14 (1) THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE REPLICIA GUN IS IN
15 VIOLATION OF THIS SUBTITLE; AND

16 (2) A WARRANT IS NOT CONSTITUTIONALLY REQUIRED UNDER THE CIRCUMSTANCES.

17 (B) *REMOVAL OF REPLICIA GUN.*

18 WHENEVER A POLICE OFFICER SEIZES A REPLICIA GUN UNDER THIS SUBTITLE, THE POLICE
19 OFFICER MAY CAUSE IT TO BE MOVED TO A PLACE DESIGNATED BY THE POLICE
20 COMMISSIONER.

21 (C) *REPLICIA GUN NOT REPLEVIABLE.*

22 A REPLICIA GUN SEIZED UNDER THIS SUBTITLE IS NOT REPLEVIABLE AND REMAINS IN THE
23 CUSTODY OF THE POLICE DEPARTMENT, SUBJECT ONLY TO THE ORDERS AND DECREES OF
24 THE COURT OR OFFICIAL WITH JURISDICTION OVER IT.

25 **§ 39-6. REFERRAL TO SOLICITOR.**

26 (A) *POLICE TO REFER CASE.*

27 ~~PROMPTLY AFTER SEIZURE, THE POLICE DEPARTMENT SHALL NOTIFY~~ THE CITY SOLICITOR
28 MUST BE NOTIFIED IN WRITING OF THE FACTS AND CIRCUMSTANCES SUPPORTING THE
29 SEIZURE.

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1 (B) *SOLICITOR'S REVIEW.*

2 (1) ON RECEIVING THE REPORT, THE SOLICITOR ~~SHALL~~ MUST CONDUCT AN INDEPENDENT
3 REVIEW OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE SEIZURE.

4 (2) IF THE SOLICITOR FINDS SUFFICIENT EVIDENCE THAT THE ALLEGED REPLIC A GUN WAS
5 IN VIOLATION OF THIS SUBTITLE, THE SOLICITOR ~~SHALL~~ MUST NOTIFY THE REPLIC A
6 GUN'S OWNER, BY REGISTERED OR CERTIFIED MAIL, OF THE SEIZURE AND OF THE
7 ~~CITY'S INTENT TO INSTITUTE FORFEITURE PROCEEDINGS~~ OWNERS RIGHT TO SEEK THE
8 RETURN OF THE REPLIC A GUN UNDER § 39-7 {"JUDICIAL REVIEW"} OF THIS SUBTITLE.

9 (3) IF, ON THE OTHER HAND, THE SOLICITOR FINDS THAT THERE IS INSUFFICIENT EVIDENCE
10 TO PROVE A VIOLATION, THE SOLICITOR ~~SHALL~~ MUST SURRENDER THE ALLEGED
11 REPLIC A GUN TO THE OWNER ON THE OWNER'S REQUEST.

12 ~~§ 39-7. FORFEITURE PETITION; NOTICE.~~

13 (A) ~~FILING; COPIES TO PARTIES IN INTEREST.~~

14 ~~IF THE SOLICITOR DETERMINES THAT THE REPLIC A GUN SHOULD BE FORFEITED, THE~~
15 ~~SOLICITOR SHALL, WITHIN 90 DAYS AFTER THE SEIZURE OF THE REPLIC A GUN:~~

16 (1) ~~FILE A FORFEITURE PETITION IN A COURT OF COMPETENT JURISDICTION, IN THE~~
17 ~~NAME OF THE CITY AGAINST THE REPLIC A GUN; AND~~

18 (2) ~~AT THE SAME TIME, SEND COPIES OF THE PETITION BY REGISTERED OR CERTIFIED~~
19 ~~MAIL TO THE OWNER.~~

20 (B) ~~CONTENTS.~~

21 ~~THE PETITION FOR FORFEITURE SHALL CONTAIN:~~

22 (1) ~~THE NAME OF THE OWNERS OF THE REPLIC A GUN;~~

23 (2) ~~A STATEMENT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE SEIZURE OF~~
24 ~~THE REPLIC A GUN;~~

25 (3) ~~A STATEMENT OF THE SPECIFIC GROUNDS FOR FORFEITURE; AND~~

26 (4) ~~A REQUEST THAT THE REPLIC A GUN BE FORFEITED TO THE CITY.~~

27 § 39-7. JUDICIAL REVIEW.

28 (A) IN GENERAL.

29 THE OWNER OF A REPLIC A GUN SEIZED UNDER THIS SUBTITLE MAY PETITION THE DISTRICT
30 COURT FOR BALTIMORE CITY FOR THE RETURN OF THE REPLIC A GUN.

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1 (B) TIME ALLOWED FOR PETITION.

2 A PETITION UNDER THIS SECTION MUST BE FILED WITHIN 30 DAYS OF THE NOTIFICATION
3 REQUIRED BY § 39-6(B)(2).

4 ~~§ 39-8. ANSWER TO PETITION.~~

5 ~~(A) WHEN TO BE MADE.~~

6 ~~ANY DEFENSE TO THE PETITION MUST BE FILED WITHIN 15 DAYS AFTER THE FILING OF THE~~
7 ~~FORFEITURE PETITION.~~

8 ~~(B) HOW TO BE MADE.~~

9 ~~(1) ALL DEFENSES TO A PETITION FOR FORFEITURE MUST BE MADE BY ANSWER.~~

10 ~~(2) THE ANSWER MUST:~~

11 ~~(i) COMPLY WITH THE MARYLAND RULES OF PROCEDURE AS TO FORM AND~~
12 ~~CONTENTS;~~

13 ~~(ii) BE DIVIDED INTO NUMBERED PARAGRAPHS, EACH CONTAINING A SEPARATE~~
14 ~~AND DISTINCTIVE AVERMENT; AND~~

15 ~~(iii) RESPOND TO EACH MATERIAL ALLEGATION CONTAINED IN THE PETITION,~~
16 ~~SPECIFICALLY ADMITTING, DENYING, OR EXPLAINING THE FACTS ALLEGED,~~
17 ~~UNLESS THE RESPONDENT IS WITHOUT KNOWLEDGE OR AN ADMISSION OR~~
18 ~~EXPLANATION WOULD TEND TO INCRIMINATE THE RESPONDENT, IN EITHER OF~~
19 ~~WHICH EVENTS THE RESPONDENT MUST SO STATE AND THAT STATEMENT WILL~~
20 ~~OPERATE AS A DENIAL.~~

21 ~~(C) EFFECT.~~

22 ~~(1) EVERY ALLEGATION IN THE PETITION THAT IS NOT DENIED IN THE ANSWER IS~~
23 ~~CONSIDERED ADMITTED, EXCEPT AS TO PERSONS UNKNOWN.~~

24 ~~(2) NEW OR AFFIRMATIVE MATTER ALLEGED IN THE ANSWER IS CONSIDERED DENIED OR~~
25 ~~AVOIDED BY THE PETITIONER WITHOUT THE NEED OF ANY REPLICATION, UNLESS THE~~
26 ~~COURT ORDERS OTHERWISE.~~

27 **§ 39-9. ORDER OF FORFEITURE FORFEITURE.**

28 (A) ~~IN GENERAL~~ COURT DISPOSAL OF REPLIC A GUN.

29 IF THE COURT DETERMINES THAT THE REPLIC A GUN SHOULD BE FORFEITED, THE COURT
30 ~~SHALL~~ MAY ORDER THE REPLIC A GUN FORFEITED TO THE CITY OR PROVIDE OTHER MEANS
31 TO DISPOSE OF THE REPLIC A GUN.

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1 (B) REPLICA GUNS DEEMED FORFEITED WITHOUT PETITION.

2 A REPLICA GUN THAT HAS BEEN SEIZED BY THE CITY IS DEEMED FORFEITED TO THE CITY IF
3 THE REPLICA GUN OWNER HAS NOT TIMELY FILED IN THE DISTRICT COURT FOR THE
4 RETURN OF THE REPLICA GUN UNDER § 39-7 {"JUDICIAL REVIEW"} OF THIS SUBTITLE.

5 (C) CITY DISPOSAL ~~(B) DISPOSITION OF FORFEITED REPLICA GUN.~~

6 A REPLICA GUN THAT HAS BEEN ~~ORDERED~~ FORFEITED TO THE CITY MUST BE DESTROYED.

7 **§ 39-10. ORDER OF RELEASE.**

8 IF, AFTER A FULL HEARING, THE COURT DETERMINES THAT THE REPLICA GUN SHOULD NOT BE
9 FORFEITED, THE COURT SHALL ORDER THE REPLICA GUN RELEASED.

10 **§ 39-11. {Reserved}**

11 ***PART 3. PENALTIES***

12 **§ 39-12. ENFORCEMENT BY CITATION.**

13 (A) *IN GENERAL.*

14 IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT PROCEDURE,
15 § 39-2 OF THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF A CIVIL CITATION UNDER
16 CITY CODE ARTICLE 1, SUBTITLE 41 {"CIVIL CITATIONS"}.

17 (B) *PROCESS NOT EXCLUSIVE.*

18 THE ISSUANCE OF A CIVIL CITATION TO ENFORCE § 39-2 OF THIS SUBTITLE DOES NOT
19 PRECLUDE PURSUING ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT ACTION
20 AUTHORIZED BY LAW.

21 **§ 39-13. PENALTIES – 3RD OR SUBSEQUENT OFFENCE.**

22 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE AFTER HAVING TWICE
23 PREVIOUSLY BEEN FOUND TO HAVE VIOLATED THIS SUBTITLE IS GUILTY OF A MISDEMEANOR
24 AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR TO IMPRISONMENT
25 FOR NOT MORE THAN 30 DAYS OR TO BOTH FINE AND IMPRISONMENT FOR EACH OFFENSE.

26 **Article 1. Mayor, City Council, and Municipal Agencies**

27 **Subtitle 41. Civil Citations**

28 **§ 41-14. Offenses to which subtitle applies – Listing.**

29 (2) *Article 19. Police Ordinances*

30

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1	§ 39-2. REPLICAS GUN POSSESSION PROHIBITED.	
2	1 ST OFFENSE	\$250
3	2 ND OFFENSE OR SUBSEQUENT OFFENSE	\$1,000
4	

5 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
6 are not law and may not be considered to have been enacted as a part of this or any prior
7 Ordinance.

8 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
9 after the date it is enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City