

**Testimony of John Feinblatt
New York City Criminal Justice Coordinator
New York City Council
Committee on Consumer Affairs
December 8, 2009**

Good afternoon, Chairman Comrie, members of the Consumer Affairs Committee, and members of the Council. My name is John Feinblatt and I am the City's Criminal Justice Coordinator. I am joined today by Jonathan Mintz, Commissioner of the Department of Consumer Affairs. Thank you for the opportunity today to discuss Intro. 240, which increases the penalties for retailers who violate the law by selling realistic-looking toy guns.

We are proud that New York City continues to be the safest big city in the country. Since 2001, crime in New York City has dropped 35% and murders are down 19%--a historic low. This year, we are on course for the fewest number of homicides in more than four decades. A key factor in this decline has been the Bloomberg Administration's multi-level strategy to prevent the flow of illegal guns onto our streets. Our strategy has involved tougher enforcement of gun laws, innovative litigation, and the development of new state and local legislation. Here are a few examples:

- The City's recent undercover investigation into illegal gun sales at seven gun shows in three states found that 74% of sellers at gun shows sold guns illegally — further evidence of the need to close the gun show loophole.
- In the area of litigation, the City filed lawsuits against 27 gun dealers in five states who were caught on camera making illegal straw sales. After settling with the vast majority of the dealers, research has found a 75 percent decrease in crime guns from those dealers that ended up in New York City.
- On the legislative front, we successfully lobbied Albany to raise the mandatory minimum sentence for carrying loaded illegal handguns to 3 ½ years and closed the loophole that allowed judges to avoid sentencing defendants to any jail time at all. Since the new law took effect, the likelihood of a prison sentence for criminal possession of a weapon has increased 71%.
- At the local level, we also worked with the Council to pass the Gun Offender Registration Act: a first-of-its-kind law to help police tightly monitor people who have committed gun crimes. So far, thanks to the efforts of the NYPD, 98% of gun offenders are in compliance with the new law.

This year, shooting incidents are down 6% and homicide is down 13% compared to the same period last year. Although we have seen a great deal of progress, we are not going to stop there. We have heard from law enforcement about the dangers posed by toy guns that look real, and real guns that are painted to look like toys. An ATF special agent has said it is a problem, the

FBI put out a bulletin highlighting the threat, and we know of some cases where local law enforcement has already come face to face with the consequences. In 2007, a man used a realistic-looking fake pistol to rob eight taxi drivers in Manhattan and a 27-year old man pointed a fake AK-47 assault rifle at NYPD officers in Brooklyn. In the hands of children, realistic-looking toy guns create the risk that police officers will mistake these toys for real guns. In 2006, police shot and killed a 15 year-old middle school student in Florida after he brandished a look-alike gun whose safety markings had been painted black. And in 2007, police in Arkansas shot a 12-year old boy with a toy gun designed to look like a Smith & Wesson semiautomatic pistol.

That's why we are pleased to support Intro. 240, which increases the penalties for retailers who sell toy guns that look dangerously real.

We think it is the right next step after the work we did in 2006 with the Council to enact legislation to ban the sale of real guns that are painted to look like toys, as well as gun coloration kits. Unfortunately, despite this law, colored guns still make their way into the City, a point made clear last year when police recovered a shotgun in Staten Island during a gun buyback initiative that was partially painted pink.

As the holidays approach, many parents are criss-crossing the City to shop for gifts for their children. Today, we are launching an ad campaign to educate the public, especially parents and children, about the dangers of toy guns that look real and real guns that are painted to look like toys. The ad demonstrates how confusing it can be when toy guns look real and when real guns are painted to look like toys. The ad also reminds the public that both types of guns are illegal in New York City. Over the next two months, the ad will appear on more than 5,400 buses, all 468 subway stations, and 2,100 subway cars throughout the five boroughs. We ask the public to help us in our enforcement efforts by contacting 311 to report anyone selling or carrying these types of guns.

Thank you again for the opportunity to express our support for Intro. 240. We look forward to working with the City Council to ensure that this legislation passes. I am happy to take your questions.

**Statement of Jonathan Mintz, Commissioner
Department of Consumer Affairs
before the
City Council Committee on
Consumer Affairs
on
Intro. 240-A**

December 8, 2009

Good afternoon Chairman Comrie and Committee members. I am Jonathan Mintz, Commissioner of the Department of Consumer Affairs. I welcome this opportunity to join the Mayor's Criminal Justice Coordinator John Feinblatt to add my support for Intro 240-A and to urge the Committee to support its passage as well.

Intro 240-A significantly raises the bar for businesses selling illegal imitation firearms in three important ways:

- First, it substantially ramps up the monetary penalties with a minimum penalty *of* \$1,000 up to \$5,000 for the first offense, and not less than \$3,000 to \$8,000 for each succeeding offense occurring within two years of the first offense.
- Second, it gets a strong message out to such businesses by authorizing the sealing for up to five days of any business which has incurred three violations within two years.
- Third, it seeks to prevent business owners with prior fake gun sale violations from evading recidivist penalties by selling the business in sweetheart deals that aren't really at arm's length.

These proposed penalty enhancements are significant. So, too, are the public safety dangers posed by the sale of illegally realistic fake guns to the public and law enforcement alike, as just described.

DCA shares the sense of urgency on this issue. We have taken strong enforcement measures against sellers of fake guns since 1999, when the Council revised the ban on the sale of imitation guns by adding a civil penalty of up to \$1,000 and designated DCA as the enforcing agency with the specific hearing authority to adjudicate these violations.

DCA has repeatedly sent strong enforcement pulses to City retailers. Our sweeps in the first term, that is through 2005, identified and had removed over 5,600 fake guns, and led to our imposing more than \$600,000 in penalties against close to 100 stores.

For awhile, that message seemed clearly received: from FY 2005 through today, the number of violations we needed to issue annually dropped in half, and the number of illegal guns we found and seized plunged dramatically as well. Fine amounts reflect a

similar picture of compliance - declining from \$547,614 in FY 2005 to \$185,318 in FY 08.

In April 2008, DCA found it needed to send out a second strong pulse, charging Party City with more than 800 counts of violating the imitation gun law, and settling last October with the company agreeing to pay \$500,000 in fines, the largest fine settlement in DCA's 40-year history. We cracked down particularly hard on Party City because of their recidivism: in 2003, the company had paid a settlement of \$150,000 after our search of its records revealed some 2,210 imitation guns available for sale in its 11 stores across the City.

The Administration agrees with this Committee that we cannot let up on the strong signals and enforcement efforts aimed at compliance with this critical public safety issue. Imitation firearms that look real are anything but toys, anything but party items to be wrapped up and given as a gift to children or adults. We look forward to working with the Council to continue to send that strong and unequivocal message to the City's retailers, who must do right by their customers and their communities and keep such dangerous items off their shelves forever and urge the Committee and the Council to act favorably on Intro 240-A.

Thank you for this opportunity to comment. We are happy to answer your questions.

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THE CITY OF NEW YORK**

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