



Legislation Text

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Int. No. 240-A

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A Local Law to amend the administrative code of the city of New York, in relation to the penalties associated with the sale of toy guns.

Be it enacted by the Council as follows:

Section 1. Findings and Intent. Toy manufacturers and retailers in New York City and around the nation produce and sell imitation firearms bearing a striking resemblance to real weapons, whether in size, shape, or overall appearance. Therefore, New York City presently prohibits the sale of toy firearms unless the physical appearance of the toy gun conforms with the requirements set out in subdivision g of section 10-131 of the administrative code. New York State's highest court has held that that this provision is not preempted by federal law, which requires only minimal markings on toy guns, such as an orange blaze around the barrel. Although the federal statute preempts local laws that require "inconsistent" markings, it allows cities to require clearer markings in addition to the federal ones.

Since this local legislation was enacted, the City's Department of Consumer Affairs (DCA) has uncovered numerous violations. DCA has removed more than 7,000 toy guns from the shelves of over 220 stores and levied \$3.3 million in fines. However, the current penalty scheme insufficiently deters the sale of toy guns by City businesses. Indeed, some stores are repeat offenders, selling fake guns even after having paid penalties for previous violations. By increasing the base penalty for first violations and by imposing greater penalties for repeat offenses, the revised code provision would more forcefully deter businesses from stocking toy guns and would also target businesses that continue to flout the law even after paying penalties for previous

violations. If a business commits three or more violations in a two-year period, then the revised code provision would allow it to be closed briefly to allow the business time to take corrective actions including, but not limited to, removing and disposing of all fake guns that do not comply with the law; reviewing inventory; reviewing shipment orders; removing promotional materials; drafting policies and procedures; and training staff to ensure that remaining fake guns comply with the law and to stop the ordering of fake guns that do not comply with the law.

Not only are realistic-looking fake guns used to commit crimes, but there have been a variety of tragic incidents involving young people carrying imitation guns who were wounded or killed by police officers who mistook toy weapons for real ones. In 2006, for example, police killed a 15-year-old at a middle school in Longwood, Florida after he brandished a look-alike gun whose safety markings had been painted black. On February 24, 2007, a 27-year-old man pointed a fake AK-47 assault rifle at New York City police officers, leading them to fire back but not to injure him.

Accordingly, the Council finds that legislation increasing penalties for stores that fail to abide by the terms of subdivision g of section 10-131 of the administrative code is warranted.

§ 2. Paragraph 3 of subdivision g of section 10-131 of the administrative code of the city of New York, as added by local law 58 for the year 1999, is hereby amended to read as follows:

3. (a) Authorized agents and employees of the department of consumer affairs, and of any other agency designated by the mayor, shall have the authority to enforce the provisions of this subdivision. A proceeding to recover any civil penalty pursuant to this subdivision shall be commenced by service of a notice of hearing that shall be returnable to the administrative tribunal of the department of consumer affairs. The administrative tribunal of such department shall have the power to impose civil penalties for a violation of this subdivision of not [more] less than one thousand dollars (\$1000) nor more than five thousand dollars (\$5000) for the first offense and not less than three thousand dollars (\$3000) nor more than eight thousand dollars (\$8000) for each succeeding offense occurring within two years of the first offense, without regard to whether the first offense

involved a toy or imitation firearm of the same model involved in any succeeding offense. For the purposes of this subdivision, selling, offering for sale, possessing, using or attempting to use or give away any single toy or imitation firearm in violation of this subdivision shall be considered a single violation.

(b) If any person is found to have violated the provisions of paragraph one of this subdivision on three or more separate occasions within two years, then, in addition to imposing the penalties set forth in subparagraph (a) of this paragraph, the department shall be authorized to order that any or all premises operated by such person where the violations occurred be sealed for a period not to exceed five consecutive days, except that such premises may be entered with the permission of the department solely for actions necessary to remedy past violations of this subdivision or prevent future violations. Notice of any third violation for engaging in a violation of paragraph one of this subdivision shall state that premises may be ordered sealed after a finding of a third violation and specify which premises may be subject to sealing. For the purpose of this subparagraph, any violations at a place of business operated by a different person shall not be included in determining the number of violations of any subsequent operator of a business at that location unless the commissioner establishes that the subsequent operator of such business did not acquire the premises or business through an arm's length transaction as defined in subparagraph (c) of this paragraph or that the sale or lease was conducted, in whole or in part, for the purpose of permitting the previous operator of the business who had been found guilty of violating paragraph one at such premises to avoid the effect of violations on the premises. The procedures provided for in subdivisions c, e, f, i, and j of section 20-105 of title twenty of this code shall apply to an order of the commissioner for sealing of such premises.

(c) For purposes of subparagraph (b) of this paragraph, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or a lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the

sale or lease was made for the purpose of permitting the original operator to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original operator to avoid the effect of violations on the premises:

(i) a sale between relatives, which term shall mean, for purposes of this paragraph, a person and his or her spouse, domestic partner, parent, grandparent, child, stepchild, or stepparent, or any person who is the direct descendant of the grandparents of the person or of the spouse or domestic partner of the person;

(ii) a sale between related companies or partners in a business; or

(iii) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original operator to avoid the effect of violations on the premises.

(d) For purposes of this paragraph:

(i) the term "department" shall refer to the department of consumer affairs;

(ii) the term "commissioner" shall refer to the commissioner of the department of consumer affairs;

(iii) the term "premises" shall refer to land and improvements or appurtenances or any part thereof;

and

(iv) companies shall be deemed "related" if an officer, principal, director, or stockholder owning more than ten percent of the outstanding stock of the corporation of one company is or has been an officer, principal, director, or stockholder owning more than ten percent of the outstanding stock of the other, but companies shall not be deemed related solely because they share employees other than officers, principals, or directors.

(e) A closing directed by the department pursuant to this paragraph shall not constitute an act of possession, ownership or control by the city of the closed premises.

(f) Mutilation or removal of a posted order of the commissioner or his designee shall be a violation

punishable by a fine of not more than two hundred fifty dollars or by imprisonment not exceeding fifteen days, or both, provided such order contains therein a notice of such penalty. Any other intentional disobedience or resistance to any provision of the orders issued pursuant to this paragraph, including using or occupying or permitting any other person to use or occupy any premises ordered closed without the permission of the department as described in subparagraph (b) shall, in addition to any other punishment prescribed by law, be a misdemeanor punishable by a fine of not more than one thousand dollars (\$1000), or by imprisonment not exceeding six months, or both.

§3. This local law shall take effect 30 days after it shall have become a law, provided that, prior to such effective date, the commissioner of consumer affairs and the head of any other agency designated by the mayor in accordance with paragraph 3 of subdivision g of section 10-131 of the New York City administrative code may promulgate such rules and take such other actions as are necessary to its timely implementation.

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