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Thursday, October 20, 2016

(Via Email)
Council President Bernard C. Young
City of Baltimore City Council
100 Holliday Street
Suite 400
Baltimore, Maryland 21202

RE: COUNCIL BILL 16-0761 (First Reader)

Dear Council President Young:

As you know, on October 25, 2016, the Baltimore City Council will conduct a public hearing on the above referenced proposed ordinance that will impose a total ban on the mere possession of replica guns if the replica can "reasonably be perceived to be a real firearm." For the reasons set forth below, we at Maryland Shall Issue believe that this proposed ordinance would make bad law and would be bad public policy for the City of Baltimore. The bill should be withdrawn.

First, the bill is hopelessly vague and subjective. Citizens simply have no way of knowing if the replica can be "reasonably be perceived to be a real firearm." There are no definitions and no safe harbor provisions. It appears to sanction effectively arbitrary seizures by law enforcement personnel and those seizures are subject to review only through elaborate and expensive proceedings that can only be navigated by a lawyer. The risk of a wrongful seizures is great.

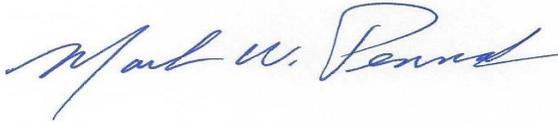
Second, and more fundamentally, the bill effectively bans the sale of replica guns that are expressly permitted by federal law (15 U.S.C. § 5001), and federal regulations (15 C.F.R. § 272.2, et seq.). That federal law provides that no state may prohibit the sale of "traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure." The implementing regulations state that "the provisions of this part supersede any provision of State or local laws or ordinances which provides for markings or identification inconsistent" with the regulations adopted by the Department of Commerce under federal law. 15 C.F.R. § 272.5. See *Coalition of New Jersey Sportsmen v. Florio*, 744 F.Supp. 602, 608 (D. N.J. 1990) ("the public interest is served in ensuring that congressional regulation of interstate commerce supercedes conflicting and contradictory state regulations"). In short, if the ordinance became law, the City would be just asking for an expensive federal lawsuit in which it may well end up paying substantial attorneys' fees and costs, not only in the defense of this ordinance, but also to *plaintiffs* when the City loses. Respectfully, the citizens of Baltimore have better uses for that money.

Third, the bill not only would permit the warrantless seizure and destruction of toy replicas, it actually criminalizes a third offense by jail time (30-days) and fines (\$1,000), all for the mere possession of replicas which were legally purchased and are otherwise legally possessed. The ordinance would thus create a whole new class of criminals in the City of Baltimore for the mere home possession by entire families of otherwise perfectly legal toys! The risk of arbitrary and discriminatory enforcement is apparent.

Finally, the bill is absolute in its ban, thus refusing to recognize legitimate reasons for the use and possession of replicas. For example, the bill would ban without exception replicas used for instructional or educational purposes. As a result, a State-certified firearms instructor would be forced to use real firearms for instruction, instead of replicas, for the training actually mandated by State law for the purchase of handguns. MD Code, Public Safety, § 5-117.1. The City, of course, is preempted by State law from regulating the possession of actual firearms and "may not prohibit the teaching of or training in firearms safety, or other educational or sporting use" of firearms. MD Code, Criminal Law, § 4-209.

We do not believe that the bill, as written, significantly benefits the citizens of the City of Baltimore. There are better ways to address the underlying concerns without flouting federal law and without subjecting the citizens of the City to the spectre of arbitrary arrest and prosecution for violations of a vague law that will likely accomplish little at potentially great cost.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mark W. Pennak, President
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cc (via email): Council Members James B. Kraft, Brandon M. Scott, Robert Curran, Bill Henry, Rochelle "Rikki" Spector, Sharon Green Middleton, Nick Mosby, Helen Holton, William "Pete" Welch, Edward Reisinger, Eric Costello, Carl Stokes, Warren Branch, Mary Pat Clarke