

**CITY OF BALTIMORE
COUNCIL BILL 16-0761
(First Reader)**

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

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Police Department, Environmental
Control Board

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Police Ordinances – Replica Gun Ban**

3 FOR the purpose of prohibiting the possession of replica guns in Baltimore City; defining a
4 certain term; making replica guns subject to seizure and forfeiture; establishing the
5 procedures for seizing and forfeiting replica guns; imposing certain penalties; and generally
6 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:

20 **Baltimore City Code**

21 **Article 19. Police Ordinances**

22 **SUBTITLE 39. REPLICA GUNS**

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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PART 1. IN GENERAL

§ 39-1. REPLIC A GUN DEFINED.

IN THIS SUBTITLE, “REPLIC A GUN” MEANS ANY TOY, IMITATION, FACSIMILE OR REPLIC A 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.

§ 39-2. REPLIC A GUN POSSESSION PROHIBITED.

NO PERSON MAY OWN, CARRY, OR POSSESS A REPLIC A GUN IN THE CITY OF BALTIMORE.

§ 39-3. *{Reserved}*

PART 2. SEIZURE AND FORFEITURE

§ 39-4. SEIZURE AND FORFEITURE AUTHORIZED.

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

§ 39-5. SEIZURE BY POLICE.

(A) *WHEN WARRANT NOT NEEDED.*

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

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

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

(B) *REMOVAL OF REPLIC A GUN.*

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

(C) *REPLIC A GUN NOT REPLEVIABLE.*

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

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§ 39-6. REFERRAL TO SOLICITOR.

(A) POLICE TO REFER CASE.

PROMPTLY AFTER SEIZURE, THE POLICE DEPARTMENT SHALL NOTIFY THE CITY SOLICITOR IN WRITING OF THE FACTS AND CIRCUMSTANCES SUPPORTING THE SEIZURE.

(B) SOLICITOR'S REVIEW.

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

(2) IF THE SOLICITOR FINDS SUFFICIENT EVIDENCE THAT THE ALLEGED REPLIC A GUN WAS IN VIOLATION OF THIS SUBTITLE, THE SOLICITOR SHALL NOTIFY THE REPLIC A GUN'S OWNER, BY REGISTERED OR CERTIFIED MAIL, OF THE SEIZURE AND OF THE CITY'S INTENT TO INSTITUTE FORFEITURE PROCEEDINGS.

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

§ 39-7. FORFEITURE PETITION; NOTICE.

(A) FILING; COPIES TO PARTIES IN INTEREST.

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

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

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

(B) CONTENTS.

THE PETITION FOR FORFEITURE SHALL CONTAIN:

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

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

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

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

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§ 39-8. ANSWER TO PETITION.

(A) *WHEN TO BE MADE.*

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

(B) *HOW TO BE MADE.*

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

(2) THE ANSWER MUST:

(I) COMPLY WITH THE MARYLAND RULES OF PROCEDURE AS TO FORM AND CONTENTS;

(II) BE DIVIDED INTO NUMBERED PARAGRAPHS, EACH CONTAINING A SEPARATE AND DISTINCTIVE AVERMENT; AND

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

(C) *EFFECT.*

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

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

§ 39-9. ORDER OF FORFEITURE.

(A) *IN GENERAL.*

IF THE COURT DETERMINES THAT THE REPLICIA GUN SHOULD BE FORFEITED, THE COURT SHALL ORDER THE REPLICIA GUN FORFEITED TO THE CITY.

(B) *DISPOSITION OF FORFEITED REPLICIA GUN.*

A REPLICIA GUN THAT HAS BEEN ORDERED FORFEITED TO THE CITY MUST BE DESTROYED.

§ 39-10. ORDER OF RELEASE.

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

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1 **§ 39-11. {Reserved}**

2 **PART 3. PENALTIES**

3 **§ 39-12. ENFORCEMENT BY CITATION.**

4 (A) *IN GENERAL.*

5 IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT PROCEDURE,
6 § 39-2 OF THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF A CIVIL CITATION UNDER
7 CITY CODE ARTICLE 1, SUBTITLE 41 {"CIVIL CITATIONS"}.

8 (B) *PROCESS NOT EXCLUSIVE.*

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

12 **§ 39-13. PENALTIES – 3RD OR SUBSEQUENT OFFENCE.**

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

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

18 **Subtitle 41. Civil Citations**

19 **§ 41-14. Offenses to which subtitle applies – Listing.**

20 (2) *Article 19. Police Ordinances*

21

22 § 39-2. REPLICIA GUN POSSESSION PROHIBITED.

23	1 ST OFFENSE	\$250
24	2 ND OFFENSE OR SUBSEQUENT OFFENSE	\$1,000

25

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

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