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March 27, 2014

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Councilmember Mike Bonin
Councilmember Mitch O'Farrell
Councilmember Nury Martinez
LOS ANGELES PUBLIC SAFETY COMMITTEE
200 N Spring St., Room 1010
Los Angeles, CA 90012
VIA EMAIL & U.S. MAIL

Re: Council File No. 11-0962: Imitation Firearms / Ordinance – OPPOSITION

Honorable Chair and Committee Members,

We write on behalf of our clients, the National Rifle Association (“NRA”), the California Rifle and Pistol Association (“CRPA”), as well as the thousands of their members in California, including those who reside in the City of Los Angeles. It is our understanding that the Public Safety Committee will be considering Council File No. 11-0962, “Imitation Firearms / Ordinance,” at its upcoming committee meeting on March 28, 2014. We write to convey our clients’ concerns regarding the proposed ordinance.

The Proposed Ordinance seeks to ban, with limited exceptions, the manufacture, sale, or other transfer of imitation firearms unless it is colored bright orange or bright green. It also prohibits the open display or exposure of imitation firearms in public places. Our clients oppose adoption of the Proposed Ordinance because it is preempted by federal law, and it ultimately does nothing to address the City’s concerns with imitation firearms.

We urge you to reject this flawed proposal.

I. THE PROPOSED ORDINANCE IS PREEMPTED BY FEDERAL STATUTE

Imitation firearms are subject to strict guidelines under federal law. Primarily, 15 U.S.C. § 5001, which describes the penalties for entering into the unlawful commerce of imitation firearms, requires that all imitation firearms have a permanently affixed blaze orange plug inserted into the barrel, recessed no more than 6 millimeters from the muzzle end of the barrel. Subsection (g) goes on to expressly “supersede any provision of State or local laws or ordinances *which provide for markings*

or identification inconsistent with provisions of this section provided that no State shall . . . prohibit the sale (other than prohibiting the sale to minors) of traditional B-B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.” (emphasis added.)

The Proposed Ordinance prohibits the manufacture, sale, transfer, and public display of any device, including traditional B-B guns, paint-ball guns, and pellet-firing air guns, so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive the device is a firearm. Requiring that the entire body of all imitation firearms be colored bright orange or bright green is inconsistent with the marking requirements of 15 U.S.C. § 5001(b). And banning the sale of those that are not compliant with the City’s marking requirements is expressly preempted by § 5001 and is unenforceable.

II. THE PROPOSED ORDINANCE MERELY AGGRAVATES THE PROBLEM IT PURPORTS TO RESOLVE

The Proposed Ordinance cites, as justification for the law, examples of officer-involved shootings that resulted in the death or serious injury of suspects brandishing B-B devices or Airsoft pistols. It claims that these incidents may have been avoided had the imitation firearms not have had the same appearance and color of actual firearms.

This is a naive opinion as to how these situations may have been avoided. It does not identify what a real firearm’s appearance and color actually is. And it cannot. Firearms today come in a great variety of colors, even such bright and enticing colors as those required by the Proposed Ordinance. It is dangerous to assume that “real” firearms will come in a black or metallic color, as the proposal suggests, and that only “toys” are brightly colored.

And, in fact, law enforcement cannot safely make that assumption—even if the Proposed Ordinance passes. Police officers are trained to assume any weapon held by a suspect is real and should be treated as life-threatening.¹ Even though an imitation firearm may be bright orange or green in compliance with this law, officers must still assume that any weapon could kill them regardless of it’s color.

As Tyler Izen, president of the Los Angeles Police Protective League, stated in opposition to this legislation: “This is a horrible idea that may cause officers to hesitate when confronted with a colored rifle when we already know that fully operable handguns and rifles have been painted bright colors. . . . The law is designed to create doubt in an officer’s mind. If they hesitate they could be killed.” *City Council: Brightly-Colored BB Guns Would Reduce LAPD Shootings*, Police (Aug. 12, 2013), available at <http://www.policemag.com/channel/weapons/news/2013/08/12/los-angeles-law-requires-pink-bb-guns.aspx>. Indeed. Far from helping officers distinguish imitation firearms from

¹ The City’s own “use of force” expert testified in a trial involving an officer involved shooting involving a minor holding an imitation firearm that “[the officer] could not be expected to determine in a split second whether [the minor] was carrying an airsoft gun or a [real] 9mm Beretta, and that the LAPD officers are trained to assume that all guns are real.” See Matthew Heller, *Toy Guns, “Trigger-Happy” Cops Equal Tragedy For Children*, MintPress News (Dec. 5, 2013), available at <http://www.mintpressnews.com/toy-guns-trigger-happy-cops-equal-tragedy-for-children/174315/>.

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others, the proposal is far more likely to entice criminals to mask their real guns by painting them orange or green, endangering the lives of officers led to believe a suspect is armed with only a B-B gun.

In short, the ordinance would have no discernable, positive effect on the occurrence of the sort of tragic events that inspired this proposal. Simply changing the color of an imitation firearm will not alleviate the potential threat to officer safety, nor would it change the consequences of law enforcement's perception of that threat.

IV. CONCLUSION

For the foregoing reasons, we strongly urge the Public Safety Committee to reject this proposal.

Should you require further guidance, our office is available to discuss in further detail the issues analyzed in this correspondence.

Sincerely,

Michel & Associates, P.C.

A handwritten signature in black ink, appearing to read "Anna M. Barvir", with a long horizontal flourish extending to the right.

Anna M. Barvir