

DECEMBER 2003

Toy Guns: A Deadly Game



illegal toy gun

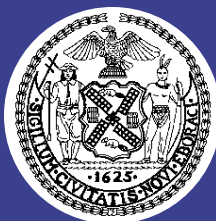
actual firearm

Can you tell the difference?

A Staff Report To

**The Council Of
The City Of New York**

Hon. Gifford Miller • Speaker



**The Committee On
Oversight And Investigations
Hon. Eric Gioia • Chair**

**and
Hon. Albert Vann**

**THE COUNCIL OF
THE CITY OF NEW YORK**

HON. GIFFORD MILLER
SPEAKER

**The Committee on
Oversight And Investigations**

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TABLE OF CONTENTS

Executive Summary.....	p. i
Background.....	p. 1
Methodology.....	p. 8
Findings.....	p. 9
Conclusion.....	p. 11
Recommendations.....	p. 12
Appendices	
Appendix A: NYC Administrative Code §10-131.....	p.A-1
Appendix B: “Federal Toy Gun Law” 15 USCS §5001 (2003).....	p.B-1
Appendix C: Correspondence between the New York City Council and the Department of Consumer Affairs regarding the 2000 Investigation on Illegal Toy Guns.....	p.C-1
Appendix D: New York City Council Resolution No.705 (1994).....	p.D-1
Appendix E: New York City Council Resolution No. 702 (1994).....	p.E-1
Appendix F: U.S. House of Representatives Bill 211 (7 January 2003).....	p.F-1

This report can be found at the Council’s website at
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EXECUTIVE SUMMARY

A 16 year-old is shot in the leg while brandishing a water gun that resembled an assault weapon. Police shoot a boy waving a toy gun while riding a bicycle. These are two of many instances in New York City (NYC) where toy guns have been mistaken for real guns—with tragic consequences. Toy gun legislation has been on the books in NYC since 1955, New York State since 1970, and nationwide since 1988. Yet a City Council investigation reveals that nearly 20% of toy stores investigated are still selling illegal toy guns. Toy guns present obvious dangers that have long demonstrated a need for additional regulation including a total ban on the sale of toy guns.

Over a four-year span, more than 1,400 crimes involving toy or replica guns were committed in New York City.¹ In fact, the New York Police Department (NYPD) reported that since 1998, toy guns have resulted in at least 12 cases where police officers have fired at someone whose toy gun they mistook for an actual firearm; many of these incidents resulted in death.²

Recent examples include:

- January 2003: a 17 year-old in Manhattan put a BB gun to the head of an undercover detective dressed as a deliveryman. Police fatally shot him.³
- August 2002: a Brooklyn man holding a toy gun was shot and killed by police.⁴

¹United States Bureau of Justice Statistics, “Toy Guns: Involvement in Crime and Encounters with Police” June, 1990 NCJ 124543.

²Testimony of the NYPD. New York City Council Hearing Transcript of the Minutes of the Committee of Consumer Affairs, 6 February 2003, pp.20, 15.

³ Lowe, Herbert. “Push for Tougher Toy-Gun Ban; Bill would amend existing city law” *Newsday*. 6 January 2003, A13.

- April 2000: two Brooklyn teenagers used toy guns wrapped in black tape to attempt robbery. Two undercover officers shot and killed them.⁵

In 1999, the New York City Council expanded and amended the 1955 law requiring that toy guns be colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink or bright purple, or constructed entirely of transparent or translucent materials.⁶ In addition, the toy gun cannot have a laser pointer, its barrel must be closed and the toy gun itself must be stamped with the name or brand of the manufacturer.⁷

In an effort to end the needless injuries and deaths related to toy guns, Council Members introduced a bill to ban the sale of all toy guns in January 2003 (Intro. No. 298). The bill would make it a misdemeanor for merchants to sell any kind of toy gun in NYC. The Department of Consumer Affairs (DCA), the New York City Police Department, and 100 Blacks in Law Enforcement expressed support for the intent and purpose of the bill.⁸ If passed, Intro No. 298 would be the first legislation of its kind nationwide. Nevertheless, it appears that the current Federal law could pre-empt this legislation.

A November 2000 City Council investigation found that investigators were able to purchase illegal toy guns at seven of the 64 stores they surveyed. DCA subsequently inspected and issued violations to each of these stores. In November of 2003, the City Council Investigation

⁴ Office of New York State Attorney General Eliot Spitzer Press Release, “Nation’s Largest Retailer Sued Over Toy Gun Sales” 10 April 2003.

⁵ Cheng, Mae. “Police: It Was a Botched Holdup.” *Newsday*. 2 April 2000, A4.

⁶ NYC Administrative Code §10-131(g).

⁷ *Id.*

⁸ *Infra* note 3.

Division (CID) sought to determine if stores in NYC continue to sell toy guns that fail to comply with the City's Administrative Code. CID randomly visited 47 of the 260 (18%) stores that sell toys listed in Yahoo!'s Yellow Pages. In addition, investigators re-visited six of the seven stores where City Council found illegal toy guns in 2000. (The seventh store no longer exists.) CID found:

- **10 stores out of the 53 stores surveyed (19%) sold illegal toy guns.**
- **Three out of the six stores from the Council's 2000 investigation (50%) were still selling illegal toy guns.**
- **In the 10 noncompliant stores, investigators found 13 brands of illegal toy guns.**
 - **5 illegal toy guns were found in Brooklyn.**
 - **4 illegal toy guns were found in the Bronx.**
 - **3 illegal toy guns were found in Manhattan.**
 - **1 illegal toy gun was found in Queens.**
 - **0 illegal toy guns were found in Staten Island.**
- **Toy guns are inexpensive and easily accessible.**
 - **Nine out of the 10 stores (90%) sold toy guns for under \$12.**
 - **In those stores, the average price of an illegal toy guns was \$6.18.**
 - **The cheapest model was \$1.**
 - **One out of the 10 stores (10%) sold two models of toy guns that cost more than \$12.**

In an effort to ensure that NYC is free from the violent dangers of toy guns, the City Council has developed the following recommendations:

- **Pass legislation to increase the fines and penalties for the sale of illegal toy guns.**

- **Pass legislation banning the sale of all toy guns in NYC — although this may be pre-empted by Federal law.**
- **Pass legislation to hold manufacturers and retailers liable for injuries or death caused by illegal toy guns.**
- **Call upon the Mayor and the Department of Consumer Affairs to enact a strong campaign against illegal toy guns, including outreach to toy stores.**
- **Pass a resolution supporting a U.S. House of Representatives bill that bans toys that resemble real handguns in size, shape, or overall appearance.⁹**
- **Pass a resolution urging the United States Congress to legislate further studies involving the incidence of crimes, injuries or deaths involving toy guns.**
- **Pass a resolution urging the United States Congress to allow municipalities to ban toy guns.**

⁹ H.R. 211 (7 January 2003).

BACKGROUND

In August 1987, a man held a realistic-looking toy gun on KNBC-TV (Los Angeles) reporter David Horowitz during a live newscast and threatened to kill Horowitz if he didn't read a statement about "space creatures and the CIA."¹ Since this incident that first brought light to the dangers of toy guns, there have been many documented incidents when people have lost their lives because they brandished a toy gun either for fun or in the commission of a crime.

In New York City (NYC), several toy gun-related incidents have resulted in death. In 1999, New York Police Department (NYPD) officers shot Michael Jones, a 16-year-old boy holding a toy water gun.² In April of 2000, two undercover officers shot and killed two Brooklyn teenagers who wielded toy guns wrapped in black tape during an attempted robbery.³ In January of 2003, police fatally shot a 17 year-old in Manhattan after he put a BB gun to the head of an undercover detective dressed as a deliveryman.⁴

In 1990, the U.S. Bureau of Justice Statistics (BJS) reported that 31,650 toy guns were seized during crime-related incidents across the nation between January 1985 and September 1989.⁵ According to New York State (NYS) Attorney General Eliot Spitzer's office, five people in NYS have been killed by police officers who mistook toy guns for actual guns since

¹ United States Bureau of Justice Statistics, "Toy Guns: Involvement in Crime and Encounters with Police" June, 1990 NCJ 124543.

² Herszenhorn, David. "Panel Backs Tougher Laws on Toy Guns." *The New York Times*. 14 September 1999, B3.

³ Cheng, Mae. "Police: It Was a Botched Holdup." *Newsday*. 2 April 2000, A4.

⁴ Lowe, Herbert. "Push for Tougher Toy-Gun Ban; Bill would amend existing city law" *Newsday*. 6 January 2003, A13.

⁵ *Infra* note 1.

1997.⁶ In NYC, the most recent statistics available indicate that 1,400 crimes have been committed using toy or replica guns.⁷ Since 1998, there have been 12 cases in NYC where officers had fired at someone holding a toy gun that had been mistaken for an actual firearm.⁸

Legislation

The 1988 “Federal Toy Gun Law” prohibits manufacturers from selling imitation firearms unless there is a blaze orange plug in the barrel or a marking designated by the Secretary of Commerce.⁹ Federal legislation pending in the U.S. House of Representatives would require the Consumer Product Safety Commission to ban toys that resemble real handguns in size, shape, or overall appearance.¹⁰

In addition to Federal Law, NYS Law requires that toy guns must not be colored black, blue, silver, or aluminum, must have a non-removable 1” orange stripe around the barrel and must have a closed barrel 1” in diameter.¹¹ The law fines toy gun manufacturers with a penalty of not more than \$1,000 for each violation.¹²

Since 1955, NYC has banned the sale, possession or use of any toy or imitation gun that resembles an actual firearm unless it has a closed barrel and is not black, blue, silver or aluminum.¹³ The law went

⁶ Office of New York State Attorney General Eliot Spitzer Press Release, “Nation’s Largest Retailer Sued Over Toy Gun Sales” 10 April 2003..

⁷ *Infra* note 1.

⁸ *Id* at pp.38.

⁹ The Secretary of Commerce may provide for an alternative marking or device for any toy gun not capable of being marked with the orange plug. The Secretary of Commerce may also make adjustments and changes in the marking system. 15 USCA §5001 (2003).

¹⁰ H.R. 211 (7 January 2003).

¹¹ NY Gen Bus Law §873 (2003).

¹² *Id*.

¹³ Proc of NYC Council at 24, 18 January 1955.

unchallenged until 1994, when the City sought to permanently forbid merchants located near City Hall from selling toy guns. The merchants asserted that NYC could not enforce its toy gun law because the Federal Toy Gun Law preempted it. However, in 1996, the New York Court of Appeals upheld the validity of the City's Public Safety Law and ruled that the 1988 Federal Toy Gun Law did not preempt the City law, because it is not impossible to comply with both.¹⁴

In 1994, the New York City Council adopted two Resolutions pertaining to the sale of toy guns. Resolution 705 honored the Toys "R" Us chain of toy stores for its decision to discontinue the sale of particularly realistic-looking toy guns.¹⁵ Resolution 702 called upon the NYC Board of Education to teach young persons about the dangers posed by playing with toy guns.¹⁶ In 1999, the Council expanded and amended the 1955 law. Currently, New York City's toy gun law states that:

*It shall be **unlawful for any person to sell** or offer for sell, possess or use or attempt to use or give away, **any toy or imitation firearm which substantially duplicates or can reasonable be perceived to be an actual firearm unless:***

*(a) the entire exterior surface of such toy or imitation firearm is **colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink or bright purple**, either singly or as the predominant color in combination with other colors in any pattern; or*

*(b) such toy or imitation firearm is **constructed entirely of transparent or translucent materials** which permits unmistakable observation of the imitation or toy firearm's complete contents; and*

*(c) the barrel of such toy or imitation firearm, other than the **barrel** of any such toy or imitation firearm that is a water gun, **is closed** with the same material of which the toy or imitation firearm is made for a distance of not less than one-half inch from the front end of said barrel, and;*

¹⁴ City of New York, Respondent, v. Job-Lot Pushcart et al., Defendants, and JA-RU, Appellant. 88 N.Y.2d 163, 666 N.E.2d 537, 643 N.Y.S. 2d 944 (1996).

¹⁵ New York City Council Resolution No. 705, 23 November 1994.

¹⁶ New York City Council Resolution No. 702, 23 November 1994.

(d) such toy or imitation firearm has **legibly stamped** thereon, the **name of the manufacturer** or some trade name, mark or brand by which the manufacturer can be readily identified; and

(e) such toy or imitation or firearm **does not have** attached thereto **a laser pointer...**¹⁷

Violators of the legislation are subject to fines of up to \$1,000 and/or sentences of up to one year in jail.¹⁸

In January of 2003, Council Members introduced Intro. No. 298, a bill to ban the sale of all toy guns. In an effort to end the violence related to toy guns, the bill would make it a misdemeanor for merchants to sell any kind of toy gun in NYC. The Department of Consumer Affairs (DCA), the NYPD, and 100 Blacks in Law Enforcement have expressed support for the intent and purpose of the bill.¹⁹ If passed, Intro No. 298 would be the first legislation of its kind nationwide. However, it appears from initial analysis that the current Federal law may pre-empt this legislation.

Other jurisdictions are also making legislative strides on the issue. In the State of California toy guns can only be bright orange or bright green, or both.²⁰ The city of Baltimore, Maryland recently passed a law making the sale of a BB gun to a minor a misdemeanor.²¹ In Chicago, a bill has been introduced that would ban toy-pellet guns and in Carrollton, Texas, the public use of replica guns is illegal.²²

¹⁷ NYC Administrative Code §10-131(g) (emphasis added).

¹⁸ *Id.*

¹⁹ New York City Council Hearing Transcript of the Minutes of the Committee of Consumer Affairs, 6 February 2003, pp.20, 15.

²⁰ 2003 Cal ALS 246; 2003 Cal AB 1455; Stats 2003 ch 246.

²¹ *Supra.*

²² Christian Science Monitor, "New York's Latest Crime-Buster: Muzzling Toy Guns", 2 January 2003.

Studies

The Federal Toy Gun Law mandated that the United States Bureau of Justice Statistics (BJS) document the number of crimes committed by people using imitation guns, as well as the number of confrontations with people who had imitation guns that were perceived to be real.²³

The report identified several problems with the current federal legislation. Officers interviewed by BJS reported that many people with real handguns have the front sight ramp colored orange to aid in aiming their weapon.²⁴ Because Federal law mandates that toy guns be marked in orange, this could be a confusing element to an officer. According to the Police Executive Research Forum, a collaborator of the BJS report, police department reporting systems are typically not coded to identify the involvement of imitation or toy guns in crimes.²⁵ Additionally, the Department of Health and Human Services Centers for Disease Control and Prevention's (CDC) National Violent Death Reporting System (NVDRS) – being designed to collect information on all violent deaths, including those involving toy guns – was not yet operational as of September 30, 2003.²⁶

Others have found criminals sometimes disguise their weapons by making them look like toys, such as painting them a bright color, in an attempt to fool the observer into thinking there is no danger.²⁷ There

²³ *Infra* note 9.

²⁴ *Infra* note 1 at ix.

²⁵ Letter to The Honorable Edolphus Town (U.S. House of Representatives) from the United States General Accounting Office (GAO). Dated September 30, 2003. *available at* <http://www.gao.gov/new.items/d031135r.pdf>.

²⁶ *Id.*

²⁷ Testimony of Inspector Steven Silks, Commanding Officer of the Firearms and Tactic Section of the New York City Police Department. New York City Council Hearing Transcript of the Minutes of the Committee of Consumer Affairs, 6 February 2003 (pp.15).

have also been cases where small children have confused actual firearms for toy guns and accidentally harmed themselves or others.²⁸ In fact, an Emory University study found that half of 8- to 12-year-old boys couldn't differentiate between a toy gun and an actual firearm.²⁹

Enforcement and Campaigns

There have been many efforts to mitigate the use and sale of toy guns, from organizing trade-ins of children's toy guns for educational toys and materials, to lawsuits and fines against large toy retailers.

In November 2000, City Council investigators were sent to visit shopping strips in all boroughs except Staten Island to determine if it were possible to purchase toy guns that resembled actual firearms. Investigators visited 64 stores and purchased eight illegal toy guns at seven stores. The Council requested that the appropriate agencies develop a policy to enforce criminal prohibitions against offenders, conduct year-round investigations to enforce the current toy gun law — especially during the holiday season — and recommended that those agencies investigate the stores that Council staff had visited. DCA inspectors also found the seven stores to be selling illegal toy guns, and issued violations to each of the stores.

Toy guns were an important issue for the late Council Member James Davis, who founded the non-profit organization "LOVE YOURSELF" Stop the Violence to combat youth violence. In 1994, he helped persuade

²⁸ *Supra.*

²⁹ Jackman, G.A. et al, *Seeing is Believing: What do Boys do When They Find a Real Gun?* Pediatrics 107(6) June 2001, pp. 1247-1250.

Toys “R” Us to stop selling toy guns that could be mistaken for real guns.³⁰

³⁰“Our Founder: James E. Davis.” “LOVE YOURSELF” Stop the Violence.
<http://www.jedavis-stopviolence.org/meta2.html>. Last accessed 10 December 2003.

METHODOLOGY

From October 24, 2003 to November 14, 2003 investigators from the New York City Council Investigation Division (CID) visited stores that sell toys. CID randomly chose 47 of the 260 (18%) stores listed in Yahoo!'s Yellow Pages. In addition, investigators re-visited six of the seven stores where City Council staff found illegal toy guns in 2000. (The seventh store no longer exists.) Therefore, investigators visited a total of 53 stores, of which 10 were in Brooklyn, 10 were in the Bronx, seven were in Manhattan, 10 in Staten Island and 16 were in Queens.

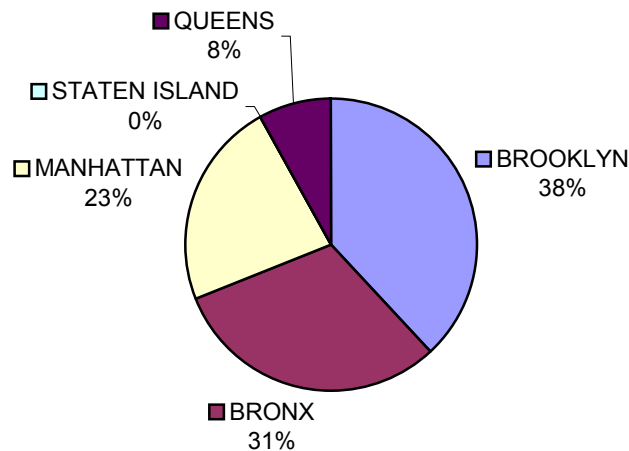
Investigators visited each store during normal business hours (9 a.m. – 5 p.m.). Investigators searched for toy guns and then purchased a toy gun if they believed it violated the guidelines set in Section 10-131(g) of the City's Administrative Code. Investigators were asked to record the name of the toy gun manufacturer as well as the cost of the toy.

FINDINGS

The following results are based on the 53 stores that were visited by investigators.

- **10 stores out of the 53 stores (19%) surveyed sold illegal toy guns.**
- **Three out of the six stores (50%) that CID re-visited from the Council's 2000 investigation still sold illegal toy guns.**
- **In the 10 noncompliant stores, investigators found 13 brands of illegal toy guns.**
 - **5 illegal toy guns were found in Brooklyn.**
 - **4 illegal toy guns were found in the Bronx.**
 - **3 illegal toy guns were found in Manhattan.**
 - **1 illegal toy gun was found in Queens.**
 - **0 illegal toy guns were found in Staten Island.**

PERCENTAGE OF ILLEGAL TOY GUNS FOUND PER BOROUGH



Costs:

- **Nine out of the 10 stores (90%) sold toy guns for under \$12.**
 - **In those stores, the average price of an illegal toy guns was \$6.18.**
 - **The cheapest model was \$1.**
- **One out of the 10 stores (10%) sold two models of toy guns that cost more than \$12.**
 - **One model cost \$225 and included a suede children's cowboy costume.**
 - **One model cost \$60.**

CONCLUSION

- Enforcement of the City's toy gun law needs to be strengthened because investigators were able to purchase illegal toy guns at 50% of the stores to which DCA issued violations in 2001. No stores should be selling illegal toy guns, but it is particularly disturbing that store owners are repeat offenders, continuing to sell illegal toy guns after they have already been fined.
- Illegal toy guns in New York City are cheap and easily accessible. Based on CID's findings, New Yorkers can purchase illegal toy guns for as little as \$1.
- Since the 1990 BJS report, little data exists on the incidence of crimes, injuries or deaths involving toy guns and BJS has no current plans to undertake a follow-up to their study.³¹
- Several barriers constrain further analysis of issues relating to toy guns, including the fact that not all police reporting systems track incidents involving toy guns, as well as that the National Violent Death Reporting System, (NVDRS) designed to collect information on deaths involving toy guns, is inoperative.

³¹ *Infra* note 30.

RECOMMENDATIONS

- **Pass legislation to increase the fines and penalties for the sale of illegal toy guns.**

Currently, DCA and any other agency designated by the Mayor have the power to impose civil penalties of no more than \$1,000 per violation. Violators are guilty of a misdemeanor and are subject to fines and/or imprisoned for up to one year. Amending section 10-131(g) of the City's Administrative Code to increase the penalties and fines for violators may help end the sale of illegal toy guns.

- **Pass legislation banning the sale of all toy guns in NYC.**

City Council Intro No. 298 would ban the sale of toy guns in NYC. In an effort to end the violence related to toy guns, the bill would make it a misdemeanor for merchants to sell any kind of toy gun in NYC. However, it appears from initial analysis that the current Federal law may pre-empt this legislation.

- **Pass legislation to hold manufacturers and retailers liable for injuries or death caused by illegal toy guns.**

An individual injured by another with an illegal toy gun should have a civil cause of action against a toy gun manufacturer and/or the merchant who sold the toy gun.

- **Call upon the Mayor and the Department of Consumer Affairs to enact a strong campaign against illegal toy guns.**

The Mayor should penalize stores where CID found illegal toy guns sold, especially to stores issued violations in 2001. There should

be routine, in-depth inspections of stores that sell toys. In addition, DCA should increase education and outreach about the dangers of toy guns.

- **Pass a resolution supporting a U.S. House of Representatives bill that bans certain toy guns.**

H.R. 211 would require nationally that the Consumer Product Safety Commission ban toys that resemble real handguns in size, shape, or overall appearance.³²

- **Pass a resolution urging the United States Congress to legislate further studies involving the incidence of crimes, injuries or deaths involving toy guns.**

Such initiatives may include requiring police department reporting systems to identify the involvement of imitation or toy guns in crimes, or completing and instituting CDC's National Violent Death Reporting System (NVDRS).

- **Pass a resolution urging the United States Congress to allow municipalities to ban toy guns.**

The Federal government should amend the Federal Toy Gun Law to allow state or local laws to ban toy guns. This change would allow municipalities such as NYC to pass laws to prevent violence and accidental deaths involving toy guns.

³² *Infra* note 25.

APPENDIX A:
NYC Administrative Code §10-131

1 of 3 DOCUMENTS

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CURRENT THROUGH FIRST QUARTER 2001

ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

TITLE 10: PUBLIC SAFETY

CHAPTER 1: PUBLIC SAFETY

NYC Administrative Code § 10-131 (2001)

§ 10-131 Firearms.

a. Pistols or revolvers, keeping or carrying.

1. The police commissioner shall grant and issue licenses hereunder pursuant to the provisions of article four hundred of the penal law. Unless they indicate otherwise, such licenses and permits shall expire on the first day of the second January after the date of issuance.

2. Every license to carry or possess a pistol or revolver in the city may be issued for a term of no less than one or more than three years. Every applicant for a license to carry or possess a pistol or revolver in the city shall pay therefor, a fee of one hundred seventy dollars for each original or renewal application for a two year license period or part thereof and a fee of ten dollars for each replacement application of a lost license. If a license or renewal is issued for a term of more than two years there shall be an additional prorated fee for the period in excess of two years.

3. Every applicant to whom a license has been issued by any person other than the police commissioner, except as provided in paragraph five of this subdivision, for a special permit from the commissioner granting it validity within the city of New York, shall pay for such permit a fee of one hundred seventy dollars, for each renewal a fee of one hundred seventy dollars, and for each replacement of a lost permit a fee of ten dollars.

4. Fees paid as provided herein shall not be refunded in the event that an original or renewal application, or a special validation permit application, is denied by the police commissioner.

5. A fee shall not be charged or collected for a license to have and carry concealed a pistol or revolver which shall be issued upon the application of the commissioner of correction or the warden or superintendent of any prison, penitentiary, workhouse or other institution for the detention of persons convicted or accused of crime or offense, or held as witnesses in criminal cases in the city.

6. The fees prescribed by this subdivision shall be collected by the police commissioner, and shall be paid into the general fund of the city established pursuant to section one hundred nine of the charter, and a return in detail shall be made to the comptroller by such commissioner of the fees so collected and paid over by the commissioner.

7. A fee shall not be charged or collected for the issuance of a license, or the renewal thereof, to have and carry concealed a pistol or revolver which is issued upon the application of a qualified retired police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a qualified retired bridge and tunnel officer, sergeant or lieutenant of the triborough bridge and tunnel authority as defined under subdivision twenty of section 2.10 of the criminal procedure law, or a qualified retired uniformed court officer in the unified court system, or a qualified retired court clerk in the unified court system in the first and second judicial departments, as defined in paragraphs (a)

and (b) of subdivision twenty-one of section 2.10 of the criminal procedure law, or a retired correction officer as defined in subdivision twenty-five section 2.10 of the criminal procedure law.

b. Air pistols and air rifles; selling or possessing.

1. It shall be unlawful for any person to sell, offer to sell or have in such person's possession any air pistol or air rifle or similar instrument in which the propelling force is a spring or air, except that the sale of such instruments if accompanied by delivery to a point without the city, and possession for such purpose, shall not be unlawful if such person shall have secured an annual license from the police commissioner of the city authorizing such sale and possession. The sale and delivery of such instruments within the city from one licensee to another licensee, and the use of such instruments in connection with an amusement licensed by the department of consumer affairs or at rifle or pistol ranges duly authorized by law shall not be considered a violation of this subdivision.

2. All persons dealing in such instruments referred to in this subdivision, shall keep a record showing the name and address of each person purchasing such instrument or instruments, together with place of delivery and said record shall be open to inspection during regular business hours by the officers of the police department of the city.

3. Every person to whom a license shall be granted to sell, possess and deliver the instruments described in this subdivision shall pay therefor an annual fee of ten dollars.

c. Discharge of small-arms. It shall be unlawful for any person to fire or discharge any gun, pistol, rifle, fowling-piece or other firearms in the city; provided that the provisions hereof shall not apply to premises designated by the police commissioner, a list of which shall be filed with the city clerk and published in the City Record.

d. Sale of toy-pistols. It shall be unlawful for any person to sell or dispose of to a minor any toy-pistol or pistol that can be loaded with powder and ball or blank cartridge to be exploded by means of metal caps; but nothing herein contained shall apply to the sale or disposal of what are known as firecracker pistols, torpedo pistols or such pistols as are used for the explosion of paper caps.

e. Tear gas; sale or possession of; fees for permits.

1. It shall be unlawful for any person to manufacture, sell or offer for sale, possess or use, or attempt to use, any lachrymating, asphyxiating, incapacitating or deleterious gas or gases, or liquid or liquids, or chemical or chemicals, without a permit issued by the police commissioner under such regulations as the commissioner or council may prescribe; nor shall any person manufacture, sell or offer for sale, possess or use any weapon, candle, device, or any instrument of any kind designed to discharge, emit, release or use any lachrymating, asphyxiating, incapacitating or deleterious gas or gases, or liquid or liquids, or chemical or chemicals, without a similar permit, similarly issued, except that the members of the police department in the line of duty may possess or use any such gas, liquid or chemical.

2. Applicants for permits under the provisions of this subdivision shall pay annual fees as follows:

(a) To carry or possess such gas or liquid.....Ten dollars
Renewals.....Five dollars

(b) To install such gas or liquid on any premises....Twenty-five dollars
Renewals.....Five dollars

(c) To manufacture such gas or liquid.....One hundred dollars

(d) To sell such gas or liquid at wholesale.....One hundred dollars

(e) To sell such gas or liquid at retail.....Fifty dollars

(f) To sell instruments or devices designed to discharge or emit such gas or liquid.....Fifty dollars

(g) To possess or carry any instrument or device to discharge or emit such gas or liquid.....Five dollars

f. Violations. Except as is otherwise specifically provided in this section, any person who shall wilfully violate any of the provisions of this section shall, upon conviction, be punished by a fine of not more than fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

g.

NYC Administrative Code § 10-131 (2001)

1. It shall be unlawful for any person to sell or offer for sell, possess or use or attempt to use or give away, any toy or imitation firearm which substantially duplicates or can reasonably be perceived to be an actual firearm unless:

(a) the entire exterior surface of such toy or imitation firearm is colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink or bright purple, either singly or as the predominant color in combination with other colors in any pattern; or

(b) such toy or imitation firearm is constructed entirely of transparent or translucent materials which permits unmistakable observation of the imitation or toy firearm's complete contents; and

(c) the barrel of such toy or imitation firearm, other than the barrel of any such toy or imitation firearm that is a water gun, is closed with the same material of which the toy or imitation firearm is made for a distance of not less than one-half inch from the front end of said barrel, and;

(d) such toy or imitation firearm has legibly stamped thereon, the name of the manufacturer or some trade name, mark or brand by which the manufacturer can be readily identified; and

(e) such toy or imitation or firearm does not have attached thereto a laser pointer, as defined in paragraph one of subdivision a of section 10-134.2 of this code.

2. Paragraph one of this subdivision shall not apply to:

(a) the possession or display of toy or imitation firearms by a manufacturer or dealer solely for purposes of sales that are accompanied by delivery to a point without the city;

(b) any toy or imitation firearm that will be used only for or in the production of television programs or theatrical or motion picture presentations, provided, however, that such use of any toy or imitation firearm complies with all applicable laws, rules or regulations concerning request and receipt of waivers authorizing such use;

(c) non-firing collector replica antique firearms, which look authentic and may be a scale model but are not intended as toys modeled on real firearms designed, manufactured and produced prior to 1898;

(d) decorative, ornamental, and miniature objects having the appearance, shape and/or configuration of a firearm, including those intended to be displayed on a desk or worn items such as bracelets, necklaces and key chains, provided that the objects measure no more than thirty-eight (38) millimeters in height by seventy (70) millimeters in length, the length measurement excluding any gun stock length measurement.

3. 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 than one thousand dollars (\$1000).

4. Any person who shall violate this subdivision shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1000) or imprisonment not exceeding one (1) year or both.

h. Rifles and shotguns; carrying or possessing.

1. It shall be unlawful for any person to carry or possess a loaded rifle or shotgun in public within the city limits. Any person who shall violate this paragraph shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment.

2. It shall be unlawful for any person to carry or possess an unloaded rifle or shotgun in public within the city limits unless such rifle or shotgun is completely enclosed, or contained, in a non-transparent carrying case. Any person who shall violate this paragraph shall be guilty of an offense punishable by a fine of not more than fifty dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

3. The above provisions shall not apply to persons in the military service of the state of New York when duly authorized by regulations issued by the chief of staff to the governor to possess same, police officers and peace officers as defined in the criminal procedure law, or to participants in special events when authorized by the police commissioner.

i.

1. It shall be unlawful for any person, except as otherwise authorized pursuant to law, to dispose of any ammunition or any ammunition feeding device, as defined in section 10-301, designed for use in a firearm, rifle or shotgun, unless he or she is a dealer in firearms or a dealer in rifles and shotguns and such disposition is in accordance with law, provided that a person in lawful possession of such ammunition or ammunition feeding device may dispose of such ammunition or ammunition feeding device to a dealer in firearms who is authorized, or a dealer in rifles and shotguns who is authorized, to possess such ammunition or ammunition feeding device.

2. It shall be unlawful for any dealer in firearms or dealer in rifles and shotguns to dispose of any pistol or revolver ammunition of a particular caliber to any person not authorized to possess a pistol or revolver of such caliber within the city of New York.

3. It shall be unlawful for any person not authorized to possess a pistol or revolver within the city of New York to possess pistol or revolver ammunition, provided that a dealer in rifles and shotguns may possess such ammunition.

4. It shall be unlawful for any person authorized to possess a pistol or revolver of a particular caliber within the city of New York to possess pistol or revolver ammunition of a different caliber.

5. Notwithstanding the provisions of paragraphs two, three and four of this subdivision, any person authorized to possess a rifle within the city of New York may possess ammunition suitable for use in such rifle and a dealer in firearms or dealer in rifles and shotguns may dispose of such ammunition to such person pursuant to section 10-306.

6. It shall be unlawful for any person to possess any ammunition feeding device designed for use in a firearm except as provided in subparagraphs (a), (b), (c), (d) and (e) of this paragraph.

(a) Any pistol or revolver licensee or permittee may possess an ammunition feeding device designed for use in the pistol or revolver such licensee or permittee is authorized to possess, provided that such ammunition feeding device is not capable of holding more than seventeen rounds of ammunition and provided further that such ammunition feeding device does not extend below the grip of the pistol or revolver.

(b) Any person who is exempt pursuant to section 265.20 of the penal law from provisions of the penal law relating to possession of a firearm and who is authorized pursuant to any provision of law to possess a firearm without a license or permit therefor, may possess an ammunition feeding device suitable for use in such firearm, subject to the same conditions as apply with respect to such person's possession of such firearm.

(c) Any dealer in firearms may possess such ammunition feeding devices for the purpose of disposition authorized pursuant to paragraph seven of this subdivision.

(d) Any person who leases a firearm that has been certified by the commissioner as deactivated, from a dealer in firearms or a special theatrical dealer, for use during the course of any television, movie, stage or other similar theatrical production, or any professional photographer who leases a firearm that has been certified by the commissioner as deactivated, from a dealer in firearms or a special theatrical dealer, for use in the pursuance of his or her profession, may possess an ammunition feeding device suitable for use in such firearm, subject to the same conditions as apply with respect to such person's possession of such firearm.

(e) Any special theatrical dealer may possess such ammunition feeding devices exclusively for the purpose of leasing such ammunition feeding devices to such persons as are described in subparagraph (d) of this paragraph.

7. It shall be unlawful for any person to dispose of to another person any ammunition feeding device designed for use in a firearm, provided that a dealer in firearms may dispose of, to such persons as are described in subparagraphs (a) and (b) of paragraph six of this subdivision, such ammunition feeding devices as may be possessed by such persons and provided further that a person in lawful possession of such ammunition feeding devices may dispose of such ammunition feeding devices to a dealer in firearms. In addition, a dealer in firearms or a special theatrical dealer may lease, to such persons as are described in subparagraph (d) of paragraph six of this subdivision, such ammunition feeding devices as may be possessed by such persons.

8. Notwithstanding the provisions of paragraphs six and seven of this subdivision any person may, within ninety days of the effective date of this local law, dispose of an ammunition feeding device designed for use in a firearm to a dealer in firearms.

9. The regular and ordinary transport of ammunition or ammunition feeding devices as merchandise shall not be limited by this subdivision, provided that the person transporting such ammunition or ammunition feeding devices,

NYC Administrative Code § 10-131 (2001)

where he or she knows or has reasonable means of ascertaining what he or she is transporting, notifies, in writing, the police commissioner of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by the police commissioner as the police commissioner may deem necessary for investigation as to whether the consignee may lawfully receive and possess such ammunition or ammunition feeding devices.

10. The regular and ordinary transport of ammunition or ammunition feeding devices by a manufacturer of ammunition or ammunition feeding devices, or by an agent or employee of such manufacturer who is duly authorized in writing by such manufacturer to transport ammunition or ammunition feeding devices on the date or dates specified, directly between places where the manufacturer regularly conducts business, provided such ammunition or ammunition feeding devices are transported in a locked opaque container, shall not be limited by this subdivision, provided that transportation of such ammunition or ammunition feeding devices into, out of or within the city of New York may be done only with the consent of the police commissioner of the city of New York. To obtain such consent, the manufacturer must notify the police commissioner in writing of the name and address of the transporting manufacturer, or agent or employee of the manufacturer who is authorized in writing by such manufacturer to transport ammunition or ammunition feeding devices, the quantity, caliber and type of ammunition or ammunition feeding devices to be transported and the place where the manufacturer regularly conducts business within the city of New York and such other information as the commissioner may deem necessary. The manufacturer shall not transport such ammunition or ammunition feeding devices between the designated places of business for such reasonable period of time designated in writing by the police commissioner as such official may deem necessary for investigation and to give consent. The police commissioner may not unreasonably withhold his or her consent. For the purposes of this paragraph, places where the manufacturer regularly conducts business include, but are not limited to, places where the manufacturer regularly or customarily conducts development or design of ammunition or ammunition feeding devices, or regularly or customarily conducts tests on ammunition or ammunition feeding devices.

11. A person shall be deemed authorized to possess a pistol or revolver within the city of New York if such person is authorized to possess a pistol or revolver within the city of New York pursuant to this section, section 10-302 or section 400.00 of the penal law, or is exempt pursuant to section 265.20 of the penal law from provisions of the penal law relating to possession of a firearm and is authorized pursuant to any provision of law to possess a pistol or revolver within the city of New York without a license or permit therefor. A person shall be deemed authorized to possess a rifle within the city of New York if such person is authorized to possess a rifle within the city of New York pursuant to section 10-303, or is a person permitted pursuant to section 10-305 to possess a rifle without a permit therefor.

12. No pistol or revolver ammunition or ammunition feeding device shall be disposed of to any person pursuant to this subdivision unless such person exhibits the license or permit authorizing him or her to possess a pistol or revolver within the city of New York or exhibits proof that he or she is exempt pursuant to section 265.20 of the penal law from provisions of the penal law relating to possession of a firearm and proof that he or she is authorized pursuant to any provision of law to possess a pistol or revolver within the city of New York without a license or permit therefor.

13. A record shall be kept by the dealer of each disposition of ammunition or ammunition feeding devices under this subdivision which shall show the quantity, caliber and type of ammunition or ammunition feeding devices disposed of, the name and address of the person receiving same, the date and time of the transaction, and the number of the license or permit exhibited or description of the proof of status as a person not required to have a license or permit as required by paragraph twelve of this subdivision.

14. Any person who shall violate this subdivision shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment.

15. Any person who shall violate this subdivision shall be liable for a civil penalty of not more than one thousand dollars, to be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction.

16. The provisions of paragraph three, four and six of this subdivision shall not apply to a person voluntarily surrendering ammunition or ammunition feeding devices, provided that such surrender shall be made to the police commissioner or the commissioner's designee; and provided, further, that the same shall be surrendered by such person only after he or she gives notice in writing to the police commissioner or the commissioner's designee, stating his or her name, address, the nature of the property to be surrendered, and the approximate time of day and the place where such surrender shall take place. Such notice shall be acknowledged immediately upon receipt thereof by such authority. Nothing in this paragraph shall be construed as granting immunity from prosecution for any crime or offense except that

of unlawful possession of such ammunition or ammunition feeding devices surrendered as herein provided. A person who possesses any such ammunition or ammunition feeding devices as an executor or administrator or any other lawful possessor of such property of a decedent may continue to possess such property for a period of not over fifteen days. If such property is not lawfully disposed of within such period, the possessor shall deliver it to the police commissioner or the commissioner's designee or such property may be delivered to the superintendent of state police. When such property is delivered to the police commissioner or the commissioner's designee, such officer shall hold it and shall thereafter deliver it on the written request of such executor, administrator or other lawful possessor of such property to a named person, provided such named person is licensed to or is otherwise lawfully permitted to possess the same. If no request to deliver the property is received within two years of the delivery of such property to such official, he or she shall dispose of it in accordance with the provisions of section 400.05 of the penal law.

HISTORICAL NOTES:

10-131 (a) 2 amd by LL 1989 No 51, § 1, eff Jul 1, 1989; amd by LL 1992 No 42, § 1, eff July 1, 1992.

10-131 (a) 3 amd by LL 1989 No 51, § 1, eff Jul 1, 1989; amd by LL 1992 No 42, § 1, eff July 1, 1992.

10-131 (a) 6 amd by *L 1995 Ch 503*, § 9, eff Aug 2, 1995.

10-131 (a) 7 add by *L 1991 Ch 414*, § 2, eff July 19, 1991; amd by *L 1994 Ch 636*, § 2, eff Aug 2, 1994; amd by *L 1994 Ch 637*, § 2, eff Aug 2, 1994.

10-131 (f) amd by LL 1991 No 78, § 2, eff 5 days after it shall become law, approved by Mayor Aug 16, 1991.

10-131 (g) rpld and add by LL 1999 No 58, § 1, eff 90 days after enactment, approved by Mayor Oct 18, 1999.

10-131 (h) 1 amd by LL 1991 No 78, § 3, eff 45 days after it shall become law, approved by Mayor Aug 16, 1991.

10-131 (h) 2 amd by LL 1991 No 78, § 3, eff 45 days after it shall become law, approved by Mayor Aug 16, 1991.

10-131 (i) add by LL 1991 No 78, § 4, eff 45 days after it shall become law, approved by Mayor Aug 16, 1991.

10-131 (i) 6 d add by LL 1992 No 22, § 1, eff immediately, approved by Mayor on April 10, 1992.

10-131 (i) 6 e add by LL 1992 No 22, § 1, eff immediately, approved by Mayor on April 10, 1992.

10-131 (i) 7 amd by LL 1992 No 22, § 1, eff immediately, approved by Mayor on April 10, 1992.

ANNOTATIONS:

Assault Weapon Ban

CONSTITUTIONAL

The Second Circuit Court of Appeals upheld the decision of the Federal District Court for the Eastern District of New York which granted summary judgment for defendant New York City. The Second Circuit agreed with the District Court that the amendments to the Administrative Code rendering illegal the possession or transfer of certain assault weapons and ammunition feeding devices (Administrative Code § 10-131 and §§ 10-301 through 10-310) was neither an unconstitutional taking of a property or liberty interest without due process of law, nor void for vagueness. Additionally, the court ruled that the area of assault weapon control had not been pre-empted by the federal statutes governing the *Civilian Marksmanship Program*. *Richmond Boro Gun Club, Inc. v City of New York*, 97 F.3d 681 (2d Cir., 1996), affg 896 F. Supp. 276.

NYC Administrative Code § 10-131 (2001)

Assault Weapons

CRIMINAL POSSESSION, CONSTITUTIONAL

The provisions of AdCode § § 10-131 and 10-301, et seq. which criminalize the possession of assault weapons and certain ammunition feeding devices are valid, constitutional and not pre-empted by federal law or regulation. *Richmond Boro Gun Club v NYC*, 896 F. Supp. 276 (EDNY, 1995).

Pistol Revocation

NO HEARING REQUIRED

An Article 78 proceeding to review the revocation of a pistol permit does not lie since § 10-131 AdCode and § 38 RCNY 5-30(h) do not require a hearing; therefore no question of substantial evidence exists. A gun license is a privilege, not a right. *Matter of Shapiro v New York City Police Department*, 157 Misc 2d 28; 595 NYS2d 864.

NOT PRE-EMPTED BY FEDERAL TOY GUN LAW

Congress had not expressly or impliedly pre-empted local regulation of the markings on toy guns, and the provisions of AdCode § 10-131(g) are not incompatible with the 1988 Federal Toy Gun Law in that compliance with both is not impossible. *City of New York v Job-Lot Pushcart, et al*, 88 NY2d 163, aff'g.

REAL BUT INOPERABLE GUN

The court held that a real but inoperable gun is within the meaning of § 436-5.0, which makes unlawful the possession, use or sale of a toy or imitation pistol or revolver which substantially duplicates an actual pistol or revolver.

The legislative

Pistol Revocation

REAL BUT INOPERABLE GUN--(cont'd)

intent of the term "imitation" was not solely to prevent a model of a weapon, but the weapon itself. *People v Pearson*, 85 Misc 2d 1029 (3-3-76).

STARTER'S PISTOL

An "imitation" pistol as defined by § 436-5.0 includes a starter's pistol which has been altered to accept live cartridges, even though inoperable. *People v Williams*, 113 Misc 2d 595 (4-1-82).

Police Commissioner

POWERS AND DUTIES

Pursuant to § 10-131 AdCode the NYC Police Commissioner is responsible for regulating the issuance of firearms licenses within the city. This policy limiting the number of pistols and/or revolvers a retired police officer may have on his carry permit is neither arbitrary nor capricious, nor is it an abuse of discretion. *Matter of Caruso v Ward*, 143 Misc 2d 5.

Prohibition Against Possession of Toy Pistol

CONSTITUTIONAL

Since there is a reasonable relationship between the public welfare and the act proscribed, the court held that the § 436-5.0 proscription against possession of a toy pistol which resembles a real gun is a valid exercise of the police powers delegated to the city and, therefore, constitutional. *People v Judiz*, 38 NY2d 529 (2-10-76).

Toy or Imitation Pistol

The court held that within the meaning of § 436-5.0, possession of a starter's pistol is prohibited as an "imitation pistol," while an inoperable but real gun does not fall within that definition. *Matter of Michael R.*, 61 NY2d 316 (3-22-84).

ANNOTATIONS:

Air-Guns

MUST BE OPERABLE

A necessary element of the crime of possession of an air pistol or rifle in violation of Administrative Code § 10-131(b)(1) is that the weapon be operable. Thus a complaint failing to allege that the seized weapons were operable renders it facially insufficient. *People v Blackwell*, 176 Misc 2d 896, 675 NYS2d 486 (1998).

Air-Guns Prohibited

GUNS PROPELLED BY CARBON DIOXIDE INCLUDED IN PROHIBITION

At issue was whether the possession of a gun propelled by a carbon dioxide canister fell within the proscription of Administrative Code § 10-131(b)(1), which makes it unlawful to possess any air pistol or air rifle "in which the propelling force is a spring or air." The Appellate Division ruled that, whether powered by

Air-Guns Prohibited

GUNS PROPELLED BY CARBON DIOXIDE INCLUDED IN PROHIBITION--(cont'd)

air or carbon dioxide, the aim of Penal Law § 265.05 and Administrative Code § 10-131(b)(1) was to prohibit weapons using gaseous propellants and concluded that the possession of an air-gun powered by a CO2 propellant is prohibited by both Penal Law § 265.05 and Administrative Code § 10-131(b)(1). In so ruling, the court specifically overruled its previous decision in *People v Delisser*, 177 AD2d 702. *Matter of Cesar P.*, 230 AD2d 61 656 NYS2d 684 (Second Dept. 1997). ANNOTATIONS:

Imitation Pistol

INTENT NOT REQUIRED; JURY INSTRUCTION

The provisions of AdCode § 10-131(6)(g) make it unlawful to sell, possess, use or attempt to use certain described imitation pistols. The intent of the person possessing such pistols is irrelevant. The jury should be instructed that the prosecution must prove beyond a reasonable doubt that the item possessed was never designed to be a usable firearm but rather was an "imitation pistol." Such charge, however, is not required for Penal Law § 265.01, which prohibits possession of an imitation pistol with intent to use it unlawfully. *People v Wilfong*, 141 Misc 2d 574.

Practice and Pleading

SUFFICIENCY OF ACCUSATORY INSTRUMENT

An accusatory instrument that alleges a police officer recovered a black imitation pistol from defendant's person was legally sufficient with respect to the charge regarding Administrative Code § 10-131(g). *People v Diaz*, 147 Misc 2d 121, NYS2d (4-25-90).

Toy Gun Colors

NOT PRE-EMPTED

The provisions of § 10-131(g), which prohibit toy guns from being certain colors, are not pre-empted by federal law which requires that toy guns have an orange plug. The manufacturer could comply with both requirements. *City of New York v Joblot Pushcart*, 211(71) NYLJ (4-14-94) 27, col. 6T, 213 AD2d 210 (First Dept. March, 1995). ANNOTATIONS:

Loaded Shotgun

DEFINITION

Defendants were properly charged, pursuant to Administrative Code § 10-301 and § 10-131(h)(1) and Penal Law § 265.00(15) with acting in concert in concealing a loaded shotgun in public, even though the gun was disassembled (but capable of being readily assembled), and the person carrying the ammunition was not carrying the gun. The Penal Law does not allow a would-be criminal to avoid the sanction of a felony loaded gun possession charge by simply carrying around an unloaded firearm while his accomplice carries the ammunition until they are ready to commit a crime. *People v Walston*, 147 Misc 2d 679, NYS2d (4-19-90).--(cont'd)

NYC Administrative Code § 10-131 (2001)

Rifles and Shotguns

POSSESSION

A weapon need not be operable at the moment of its seizure by police in order for there to be a violation of 10-131(h)(1) AdCode. That co-defendants possessed parts of a shotgun and ammunition, which were operable when assembled, satisfies the element of possession of a loaded shotgun in violation of 10-131(h)(1) AdCode. People v Walston, NYLJ, Thursday, May 10, 1990, (p. 29, col. 4).

APPENDIX B:
15 USCS §5001 (2003)

2 of 2 DOCUMENTS

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*** CURRENT THROUGH P.L. 99, APPROVED 10/15/03 ***

TITLE 15. COMMERCE AND TRADE

CHAPTER 76. IMITATION FIREARMS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

15 USCS § 5001 (2003)

§ 5001. Penalties for entering into commerce of imitation firearms.

(a) Acts prohibited. It shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce, as provided in subsection (b).

(b) Distinctive marking or device; exception; waiver; adjustments and changes.

(1) Except as provided in paragraph (2) or (3), each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.

(2) The Secretary of Commerce may provide for an alternate marking or device for any toy, look-alike, or imitation firearm not capable of being marked as provided in paragraph (1) and may waive the requirement of any such marking or device for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industry.

(3) The Secretary is authorized to make adjustments and changes in the marking system provided for by this section, after consulting with interested persons.

(c) "Look-alike firearm" defined. For purposes of this section, the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. Such term does not include any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

(d) Study and report. The Director of the Bureau of Justice Statistics is authorized and directed to conduct a study of the criminal misuse of toy, look-alike and imitation firearms, including studying police reports of such incidences and submit a report on such incidences relative to marked and unmarked firearms.

[(e)](c) Technical evaluation of marking system. The Director of [the] National Institute of Justice is authorized to conduct a technical evaluation of the marking systems provided for in subsection (b) to determine their effectiveness in police combat situations. The Director shall begin the study within 3 months after the date of enactment of this section [enacted Nov. 5, 1988] and such study shall be completed within 9 months after such date of enactment [enacted Nov. 5, 1988].

15 USCS § 5001

(f) Effective date. This section shall become effective on the date 6 months after the date of its enactment [enacted Nov. 5, 1988] and shall apply to toy, look-alike, and imitation firearms manufactured or entered into commerce after such date of enactment [enacted Nov. 5, 1988].

(g) Preemption of State or local laws or ordinances; exceptions. The provisions of this section shall 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--

(i) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

(ii) 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.

HISTORY: (Nov. 5, 1988, P.L. 100-615, § 4, 102 Stat. 3190.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed subsection designation (e) was inserted to indicate the subsection designation probably intended by Congress.

The bracketed word "the" was inserted in subsec. [(e)](c)(1) as the word probably intended by Congress.

INTERPRETIVE NOTES AND DECISIONS

State is enjoined from enforcing weapons statute prohibiting sale of assault firearms designed to be fired from shoulder which do not fire fixed ammunition, where BB guns and pellet-firing air guns fall under statute, because statute is preempted by 15 USCS § 5001(g), which precludes prohibition of sale of traditional BB, point-ball, or pellet-firing air guns that expel projectile through force of air pressure. *Coalition of New Jersey Sportsmen v Florio* (1990, DC NJ) 744 F Supp 602.

APPENDIX C:

**Correspondence between the New
York City Council and the
Department of Consumer Affairs
regarding the 2000 Investigation on
Illegal Toy Guns**



THE COUNCIL
OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, N.Y. 10007

December 4, 2000

BY HAND

Hon. Jane S. Hoffman, Commissioner
Department of Consumer Affairs
42 Broadway
New York, NY 10004

Dear Commissioner Hoffman:

We are writing to inform you of the disturbing results of a recent investigation undertaken by Council staff. On November 27th, 2000, Council investigators purchased illegal toy guns at stores throughout the city. These purchases were made at independently owned toy stores, as well as at one large chain store (see attachment).

As you know, pursuant to an amendment to the Administrative Code that became effective at the beginning of this year, a toy gun must be either brightly colored or constructed entirely of transparent or translucent materials. Accordingly, you should be aware that the Department of Consumer Affairs' ("DCA") October 24th, 2000 "Halloween Costume Safety Tips" press release provided the following outdated information regarding toy guns:

"Do not carry real looking toy guns. It is illegal for stores to sell toy guns that resemble the real thing. Toy guns must have a visible orange strip and must be topped with an orange cap to insure a toy is not mistaken for a real weapon."

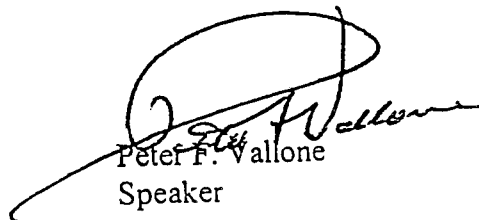
In light of the grave consequences which can result from the possession of these illegal toys, DCA should correct the information on its web site. In addition, as Council investigators were able to make multiple purchases of these toys with relative ease, DCA should conduct year-round investigations to enforce the current law and make a special effort to ensure that these unsafe toys are not sold during the holiday season.

Hoffman, Hon. Jane S.
Page 2

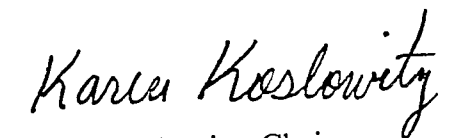
We also request that you investigate the stores Council investigators visited that sold these toys and advise us of your results.

We look forward to your response.

Sincerely,



Peter F. Vallone
Speaker



Karen Koslowitz, Chair
Committee on Consumer Affairs

PFV/js
Enc. (1)
#1951

cc: Hon. Bernard B. Kerik



THE COUNCIL
OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, N.Y. 10007

December 4, 2000

BY HAND

Hon. Bernard B. Kerik, Commissioner
New York City Police Department
One Police Plaza
New York, NY 10038

Dear Commissioner Kerik:

We are writing to inform you of the disturbing results of a recent investigation undertaken by Council staff. On November 27th, 2000, Council investigators purchased illegal toy guns at stores throughout the city. These purchases were made at independently owned toy stores, as well as at one large chain store (see attachment).

As you are aware, pursuant to the Administrative Code of the City of New York, a toy gun cannot resemble an actual firearm and must be either brightly colored or constructed entirely of transparent or translucent materials. In addition, the barrel of a toy gun, which is not a water gun, must be closed and the toy gun itself must be stamped with the name or brand of the manufacturer and must not incorporate a laser pointer. Violation of this law is a misdemeanor, punishable by a fine of no more than \$1000 and/or imprisonment not exceeding one year.

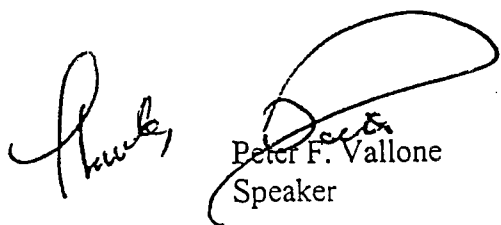
Realistic toy guns can be as dangerous as the real thing. Persons brandishing toy guns have been shot by police officers who believed they were armed. We, therefore, urge the NYPD to develop a policy in consultation with the Department of Consumer Affairs to enforce criminal prohibitions against offenders.

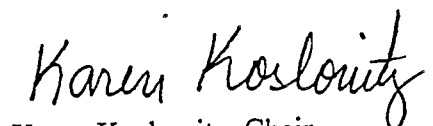
Kerik, Hon. Bernard B.
Page 2

We also request that you investigate the stores Council investigators visited that sold these toys and advise us of your results.

We look forward to your response.

Sincerely,


Peter F. Vallone
Speaker


Karen Koslowitz, Chair
Committee on Consumer Affairs

PFV/js
Enc. (1)
#1952

cc: Hon. Jane S. Hoffman

Illegal Toy Guns Purchased By Council Staff (November 27, 2000)

Name of Gun	Description	Name of Store	Address	Borough
Navy Seals M-16 Assault Rifle	Black with orange tip	Discount Plus	82-10 37 Avenue	Queens
Super Cap Gun	Saturday Night Special with red tip	Lee's Gift Center	84-22 Roosevelt Avenue	Queens
Commando	Gray automatic with black handle	Hallmark Party Center ¹	90-22 Roosevelt Avenue	Queens
Of Gun	Black automatic with brown handle	99¢ City	780 Flatbush Avenue	Brooklyn
Star Zone Play Space Gun Set	Silver with orange tip	W.P. Rainbow, Inc.	3726 White Plains Road	Bronx
Tootsietoy American West Texan	Silver six-shooter with white handle and orange tip	C.H. Martin	3938 White Plains Road	Bronx
Tootsietoy American West Desperado	Black six-shooter with brown handle and orange tip	C.H. Martin	3938 White Plains Road	Bronx
Western Gear Electronic Deluxe Six-Shooter	Silver with brown handle and orange tip	K-Mart	Bay Plaza (near Co-op City)	Bronx

¹ The name of this store was not apparent. However, the name on the awning was Hallmark Party Center.

NYC Consumer Affairs

DCA 2000 PRESS RELEASES



TOPIC	DATE
Thanksgiving Price Survey	November 19
Tobacco Sales To Minors	November 12
Used Mattresses Sold As New	November 1
Halloween Costume Safety Tips	October 24
Salad Bars Overcharging At The Scales	October 19
Home Heating Oil Task Force Hearings	October 3
Illegal Ticket Brokers	September 26
10-10 Phone Number & Hidden Fees	September 24
New Legislation For Sightseeing Buses	September 13
Hearings On Home Heating Oil Crisis	September 12
Box Cutter Sales Enforcement	September 4
School Uniform Price Survey	August 28
Cell Phone Buyer's Guide	August 24
Video Rental Survey	August 10

FOR IMMEDIATE RELEASE

Commissioner Hoffman Advises Parents on Costume Safety Tricks to Make Halloween a Treat

*Consumer Affairs Commissioner Jane S. Hoffman Warns that Many Popular Costumes
Can Ignite – Offers Tips to Make this Ghoulish Season a Screaming Good Time Rather
than a Terrible Nightmare*

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As thousands of children prepare to haunt New York City neighborhoods in their costumes next Tuesday, Consumer Affairs Commissioner Jane S. Hoffman today warned parents to look out for safety hazards that may also be cloaked in disguise.

"Amid the Pikachus, Harry Potters, and Batmans seeking treats, a very real danger lurks. Across the nation, approximately 1,300 Trick -Or- Treaters in costumes suffer burns, bruises, and other injuries every year," Commissioner Hoffman said. "If parents and children follow some basic safety tips, ghosts, goblins and ghouls are the only things they should have to worry about this Halloween."

The Department of Consumer Affairs (DCA) examined Halloween costumes and various accessories in order to uncover the dangers hidden behind these Trick -Or- Treat staples. DCA tests concluded that materials such as nylon and polyester, labeled as 'flame resistant', can ignite and burn. Commissioner Hoffman urged parents to choose costumes carefully.

DCA tested three costumes and two masks by placing an open flame to each item in order to simulate the

Jack-o-lantern or candle. A vinyl fireman costume, purchased at K-Mart located at 250 West 34th Manhattan, burned and melted slightly when exposed to an open flame. A popular polyester Racers costume, also purchased at K-Mart, ignited and burned until it was extinguished by DCA personnel. Another K-Mart purchase, the popular polyester Powerpuff costume, was deemed safe. The costume burned and melted slightly, but did not ignite. However, the accompanying plastic mask can ignite and burn. Two rubber masks, purchased at Odd-Job located at 10 Cortlandt Street, were tested under an open flame. A skull mask and a pumpkin mask both easily ignited and burned when exposed to the flame.

Parents should not outfit children in easy flammable materials like cotton. Children should only wear costumes or accessories that are labeled 'flame resistant' or are made of flame resistant fibers like nylon, polyester, or wool. Commissioner Hoffman, however, cautioned parents that children in these costumes are still susceptible to burns. The Nascar Racer costume made of 100% polyester still ignited and burned when exposed to a flame.

"Parents should keep in mind that 'flame-resistant' does not necessarily mean 'flame-proof,'" said Commissioner Hoffman.

The Department also warned against certain masks and wigs that restrict a child's vision and breathing. A helmet accompanying the Nascar Racer costume has only three small openings that could possibly impede breathing. A glow-in-the-dark mask purchased at Odd-Job could also obstruct breathing. An alien mask from Odd-Job could not only make breathing a chore, but also significantly impair vision.

"The worst mask by far was the 'Light Up Eyes' pumpkin mask purchased at Odd-Job," recounted Commissioner Hoffman. "This mask only provided tiny slits for seeing and breathing. In addition, the mask was lined with an exposed battery pack and wires that were connected to the 'light up' eyes."

DCA personnel were also able to purchase various accessories that posed other dangers. A toy knife purchased at the Duane Reade at 37 Broadway was as sharp as the real thing. Toy axes and pitch forks from Odd-Job could also be used as handy weapons.

Commissioner Hoffman offered the following safety reminders:

- **Beware of potential fire hazards.** Though a costume may read flame resistant, many materials will still ignite. Use caution when outfitting children with costumes made of 100% cotton (typically hand made items), as they are particularly susceptible to burning.
- **Be sure masks do not obstruct a child's vision or impair breathing.** As an alternative to masks, parents should consider make-up or face paint. Be aware, however, that some make-up can irritate a child's skin. Purchase safe, hypoallergenic make-up. If a child is wearing a mask, have the child avoid wearing it when traveling from house to house and make sure vision is not obstructed or breathing is not impaired.
- **Trim costumes with reflective tape.** When possible, outfit children with costumes that are bright and reflective.
- **Carry a flashlight.** Children should carry flashlights when they go trick-or-treating to help them see more easily and to make it easier for motorists to see them.
- **To avoid tripping, make sure costumes do not drag on the ground and wear sensible shoes.** Make sure that shoes fit well and costumes are short enough to prevent falling or entanglement. Also, capes, hats and scarves should be tied securely to avoid getting caught in elevator doors. Avoid

riding bicycles as costumes could get tangled in the spokes

- **Do not carry real looking toy guns.** It is illegal for stores to sell toy guns that resemble the real thing. Toy guns must have a visible orange strip and must be topped with an orange cap to insure a toy is not mistaken for a real weapon.
- **Costume swords or knives should be made of soft, flexible material.**
- **Examine all treats before eating.** Instruct children to bring the candy home to be inspected before eating it.
- **Children should always be accompanied by an adult.**
- **Teach children how to call 9-1-1:** If they have an emergency or become lost, remind children that 9-1-1 can be dialed free of charge from any payphone.

"If parents and children follow these simple guidelines, Halloween is certain to be a treat for all," concluded Commissioner Hoffman.

Today's press conference was held at the Lenox Hill Neighborhood House, a settlement house offering a variety of programs to children and the elderly.

To see a list of dangerous costumes, go back to the homepage and click directly under "DCA Surveys"

Consumers can learn more about DCA's Halloween safety tips or file a complaint online by visiting DCA's website at www.nyc.gov/consumers. Consumers can also file a complaint by calling the Department's Consumer Hotline at 212-487-4444.

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For more information or to file a complaint against a business, consumers can call DCA's hotline at (212) 487-4444 or visit the DCA Website: www.nyc.gov/consumers.

Go to Dept. of Consumer Affairs Home Page || NYC.GOV Home Page
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Commissioner

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Speaker Peter F. Vallone
The City Council
City Hall
New York, NY 10007

February 13, 2001

Dear Speaker Vallone:

The disturbing findings you brought to the attention of Consumer Affairs regarding the sale of illegal toy guns has been investigated.

In December 2000, DCA inspectors visited each of the seven stores your investigators found to be selling illegal guns. Our investigators found these stores to be selling them as well. We issued violations to each of the stores, which has resulted in the following:

<u>Store</u>	<u>NOV</u>	<u>Settlement</u>	<u>Settlement Document</u>
Small Gift Shop (Hallmark Party Ct)	CL/GL 49095	\$1,000	Assurance of Discontinuance
W.P. Rainbow, Inc.	CL/GL 49097	\$1,000	Assurance of Discontinuance
Green Dollar (Discount Plus)	CL/GL 49092	\$1,000	Assurance of Discontinuance
K-Mart	CL/GL 49096	\$1,000	Assurance of Discontinuance
99cent Rockaway Inc.	CL/GL 49094	Pending	
Lees Gift Center	CL/GL 49093	\$3,000	Outstanding
C.H. Martin of White Plains	CL/GL 49098	\$1,500	Outstanding

You can be sure that DCA is vigorously pursuing the cases that remain open to impose in full the penalties the law provides.

We are also discussing plans for enforcement strategies and educational campaigns that we can implement in coordination with the Police Department that would maximize the impact and efficiency of our joint commitment to ensuring compliance. The Council has enacted important laws regarding the safety of the youths in our City, such as the ban on the sale of laser pointers and box cutters to minors.

The Department of Consumer Affairs did, of course, immediately update its website to reflect the changes in the law that the Council had enacted by Local Law No. 58 for the Year 1999 which had become effective in January 2000.

Thank you for this opportunity to address your concerns. The illegal sale of toy and airguns remains a priority for Consumer Affairs.

Sincerely,

JANE S. HOFFMAN
Commissioner

cc: Tony Carbonetti, Chief of Staff
Rudy Washington, Deputy Mayor

APPENDIX D:

**New York City Council Res. No. 705
(1994)**

THE COUNCIL

November 23, 1994

Res. No. 705

Resolution honoring the "Toys 'R' Us" chain of toy stores for its recent, socially conscientious decision to discontinue the sale of particularly realistic-looking types of toy guns.

By Council Members Williams, Malave-Dilan, Lasher, Warden, Fossella and Fusco; also Council Members Dear, DiBrienza, Harrison, Koslowitz, Leffler, Michels, O'Donovan, Pinkett, Rivera, Spigner, White, Wooten and Millard

WHEREAS, It is estimated that a dozen or more New York City children are killed or injured each year as the result of displaying toy guns which are mistaken by others for real weapons; and

WHEREAS, The most recent example of such a tragic mistake occurred on September 27, 1994, when 12-year old Nicholas Hayward was shot and killed by a uniformed member of the Housing Authority Police Department, who mistook Nicholas' realistic-looking toy shotgun for a real gun; and

WHEREAS, In an environment where it is not unusual for youngsters to carry real guns, this tragedy appears to have been an honest mistake, caused not by any willful wrongdoing on anyone's part, but attributable instead to the mistaking of a very realistic-looking toy gun for a lethal weapon; and

WHEREAS, In spite of the popularity of toy guns, which have entertained young children for years, there is a growing sentiment that the sale of such toys should be banned as a way of preventing youngsters from thinking that guns are toys; and

WHEREAS, Some toy manufacturers and retailers, most notably the "Toys 'R' Us" chain of toy stores, have recently shown the courage and social conscientiousness to voluntarily discontinue the sale of certain particularly realistic-looking toy guns; and

WHEREAS, This action, which will perhaps cost "Toys 'R' Us" profits in the short run, is to be commended because it shows, admirable corporate "good citizenship" and responsibility in placing the public good before the company's profit margin; therefore, be it

RESOLVED, That the Council of the City of New York commends the "Toys 'R' Us" chain of toy stores for its recent, socially conscientious decision to discontinue the sale of particularly realistic-looking types of toy guns.

Adopted.

APPENDIX E:

**New York City Council Res. No. 702
(1994)**

THE COUNCIL

November 23, 1994

Res. No. 702

Resolution calling upon the New York City Board of Education to teach young persons about the dangers posed by playing with toy guns.

By Council Members Leffler, Fossella, Fusco and Stabile; also Council Members Albanese, Cruz, Foster, Michels, O'Donovan, Rivera and White

WHEREAS, The act of police officers firing upon children who are brandishing toy guns, in a manner consistent with an individual committing a real crime, has occurred far too often; and

WHEREAS, Many toy guns are manufactured in a manner that makes them appear and sound like real guns; and

WHEREAS, Toy guns are also often used in real crimes; and

WHEREAS, Police officers are often called upon to make decisions quickly, and therefore frequently do not have ample time to determine whether or not what appears to be a real gun poses a genuine threat to them or to innocent bystanders; and

WHEREAS, During the 1993-94 school year, 284 school children were found with air guns or toy guns inside New York City schools; now, therefore, be it

RESOLVED, That the Council of the City of New York calls upon the New York City Board of Education to teach young persons about the dangers posed by playing with toy guns.

Referred to the Committee on Education.

APPENDIX F:
H.R. 211 (7 January 2003)

108TH CONGRESS
1ST SESSION

H. R. 211

To require the Consumer Product Safety Commission to ban toys which in size, shape, or overall appearance resemble real handguns.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Mr. TOWNS introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To require the Consumer Product Safety Commission to ban toys which in size, shape, or overall appearance resemble real handguns.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TOY HANDGUNS.**

4 The Consumer Product Safety Commission shall pro-
5 mulgate a rule in accordance with section 9 of the Con-
6 sumer Product Safety Act (15 U.S.C. 2058) to declare
7 as a banned hazardous product under section 8 any toy
8 which in size, shape, or overall appearance resembles a
9 real handgun.