

5/23/07

ORDINANCE NO. 26761

An ordinance amending Section 31-16 of CHAPTER 31, "OFFENSES - MISCELLANEOUS," of the Dallas City Code, as amended; defining terms; prohibiting the display or brandishing of a replica firearm in a public place within the city, with certain defenses; prohibiting the removal or obstruction of the blaze orange tip required by federal law on a replica firearm or any other colors or markings required by city ordinance or state or federal law on a replica firearm; prohibiting possession of a replica firearm on which any required colors and markings been removed or obscured; prohibiting the sale of a replica firearm from an ice cream vending truck or pushcart; prohibiting the presence of a replica firearm on an ice cream vending truck or pushcart; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, many replica firearms are manufactured in a manner that makes them appear and sound like real firearms; and

WHEREAS, the close resemblance of many replica firearms to real firearms creates confusion and alarm in law enforcement officers and the general public when such replica firearms are displayed or brandished in public; and

WHEREAS, this confusion and alarm created by replica firearms have resulted in the death and injury of minors caused by the reactions of law enforcement officers and members of the public who mistakenly believe the minors are displaying or brandishing real firearms; and

WHEREAS, the city council has determined that a need exists to adopt certain regulations and restrictions relating to the display, brandishing, sale, and possession of replica firearms in the city of Dallas in order to further the health, safety, and welfare of minors residing in or visiting the city of Dallas; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 31-16, "Replica Firearms," of CHAPTER 31, "OFFENSES - MISCELLANEOUS," of the Dallas City Code, as amended, is amended to read as follows:

"SEC. 31-16. REPLICIA FIREARMS.

(a) In this section:

(1) AIR SOFT GUN means a spring-operated, gas-operated, or battery-powered replica firearm made of hard plastic or light metal that fires plastic or other nonmetallic projectiles.

(2) FIREARM means [:

~~(A)~~ any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance, or any device readily convertible to that use~~;~~ ~~or~~

~~(B)~~ a pellet gun or BB gun].

(3) ICE CREAM VENDING TRUCK OR PUSHCART means any vehicle from which ice cream or other frozen desserts are sold or offered for sale.

(4) PAINTBALL GUN means a replica firearm that is powered by compressed gas (carbon dioxide, nitrogen, or ordinary air) and fires dye-filled gelatinous capsules.

(5) PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(6) ~~(4)~~ REPLICIA FIREARM means [:

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(A)] any device or object that is a toy version or facsimile of, or is reasonably likely to be perceived as, a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or other firearm, and includes but is not limited to [; or

(B)] a starter pistol, BB gun, pellet gun, air soft gun, paintball gun, or air rifle.

(b) A person commits an offense if he recklessly displays or brandishes a replica firearm in a manner or under circumstances that cause another person to:

(1) reasonably believe that the replica firearm is actually an operable firearm; and

(2) fear imminent bodily injury from a firearm.

(c) It is defense to prosecution under Subsection (b) that the person displaying or brandishing the replica firearm did so in self defense.

(d) A person commits an offense if he displays or brandishes a replica firearm in any public place within the city.

(e) It is a defense to prosecution under Subsection (d) that the replica firearm was:

(1) a non-firing collector replica firearm modeled on a real firearm and not intended for use as a toy; or

(2) a decorative, ornamental, or miniature object having the appearance, shape, or configuration of a firearm and measuring not more than 38 millimeters in height and 70 millimeters in length (excluding any gun stock length measurement), including, but not limited to, an object intended to be displayed on a desk, worn on a bracelet or necklace, or attached to a keychain; or

(3) being displayed or brandished at a lawfully-operated, contained location designated for games, events, and activities that involve replica firearms such as, but not limited to, paintball guns and air soft guns; or

(4) being displayed at a lawfully-operated business establishment authorized to sell merchandise, including replica firearms; or

(5) being displayed or brandished as part of an event, performance, demonstration, or ceremony authorized by the city or sponsored and conducted by a subdivision of any federal, state, or local government; or

(6) being displayed or brandished in the production of a television program, a theatrical presentation, or a motion picture or other filming event in the city and written permission was obtained from the city to use the replica firearm in the production; or

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(7) being displayed or brandished in a historical reenactment, military event, or other special event in the city requiring the use of a replica firearm and written permission was obtained from the city to use the replica firearm in the event; or

(8) being displayed or brandished for the purpose of protecting persons or property as authorized under Chapter 9 of the Texas Penal Code; or

(9) being displayed or brandished by a law enforcement officer or other government employee or official while acting in the performance of official duties.

(f) A person commits an offense if he:

(1) removes or obscures:

(A) the blaze orange tip required to be on a replica firearm under Title 15, Section 5001 of the United States Code; or

(B) any other colors or markings required to be on a replica firearm under city ordinance or federal or state law; or

(2) possesses a replica firearm on which the blaze orange tip required by Title 15, Section 5001 of the United States Code or any other colors or markings required by city ordinance or state or federal law have been removed or obscured.

(g) A person commits an offense if he, either personally or through an employee or agent, sells or offers for sale a replica firearm from an ice cream vending truck or pushcart.

(h) The owner, operator, or person in control of an ice cream vending truck or pushcart commits an offense if a replica firearm is present in or on the truck or pushcart while it is in the city.

(i) A person who violates a provision of this section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500."

SECTION 2. That CHAPTER 31 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

