IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTIRICT OF ILLINOIS EASTERN DIVISION

SHAWN GOWDER,)	
Plaintiff,)	
)	
V.)	
)	No. 11-cv-1304
CITY OF CHICAGO, a municipal corporation,)	
the CITY OF CHICAGO DEPARTMENT OF)	Judge Der-Yeghiayan
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER,)	
Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,)	
Superintendent of the City of Chicago Department)	
of Police,)	
)	
Defendants.)	

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

NOW COMES plaintiff Shawn Gowder, by and through his attorney Stephen A. Kolodziej of the law firm of Brenner, Ford, Monroe & Scott, Ltd., and moves the Court pursuant to FRCP 12(c) to enter judgment on the pleadings in his favor and against defendants. In support of this motion, plaintiff states as follows:

Introduction and Procedural History

1. Plaintiff filed this action in the Circuit Court of Cook County, Illinois, seeking administrative review under the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, of the decision of the City of Chicago Department of Administrative Hearings' ("DOAH") decision affirming the denial of his application for a Chicago Firearm Permit ("CFP") by the City of Chicago Department of Police ("CPD"). Plaintiff's state court complaint asserted a claim for administrative review, and alleged that the DOAH improperly interpreted § 8-20-010(b)(3)(iii) of

the City of Chicago firearm ordinance so as to raise a substantial constitutional question under the Second Amendment to the U.S. Constitution and Article I, § 22 of the Illinois Constitution. Plaintiff's complaint also alleged claims for declaratory judgment and injunctive relief pursuant to 42 U.S.C. § 1983 and Article I § 22 of the Illinois Constitution, alleging that denial of plaintiff's CFP application based upon the erroneous interpretation of MCC § 8-20-010(b)(3)(iii) violated plaintiff's federal and state constitutional right to keep and bear arms.

- 2. Defendants CPD and Jody Weis removed the action to this Court based upon federal question jurisdiction [Doc. # 1]. Thereafter, plaintiff filed an amended complaint bearing the caption of this Court [Doc. # 13]; however, the substantive allegations of the amended complaint are identical to the allegations of plaintiff's state court complaint. Plaintiff's amended complaint, with exhibits, is attached hereto as Exhibit 1. Pursuant to the Court's prior agreed protective order, however, Exhibit B to that complaint [Doc. # 13-2], has been removed. An unredacted copy of this exhibit will be provided to the Court should the Court request it.
- 3. Defendants City of Chicago, Scott V. Bruner, CPD, and Jody Weis filed an answer to the complaint on April 7, 2011 [Doc. #17], a copy of which is attached hereto as Exhibit 2. Pursuant to section 108 of the Illinois Administrative Review Law, 735 ILCS 5/3-108, defendant DOAH filed an answer consisting of the certified copy of the Record of Proceedings in the administrative proceeding under review, *City of Chicago v. Gowder*, 10GR000041 [Doc. #18]. A copy of DOAH's answer with the certified Record of Proceedings is attached hereto as Exhibit 3.
- 4. Plaintiff now brings this motion for judgment on the pleadings pursuant to FRCP 12(c), premised upon the admitted facts established by the pleadings, set forth below.

Facts

5. On June 28, 2010, the Supreme Court of the United States held in McDonald v. City

of Chicago, 130 S.Ct. 3020 (2010), that the Second Amendment right to keep and bear arms restrains state and local governments through incorporation in the Fourteenth Amendment. The Supreme Court remanded the case for the lower courts to apply the Second Amendment to the challenged ordinance that effectively banned private ownership of handguns within the city. On July 2, 2010, the City Council of Chicago amended the Municipal Code of Chicago as it pertains to firearms. The amended ordinance, codified as Municipal Code of Chicago ("MCC") Chapter 8-20, is attached to plaintiff's amended complaint as Exhibit A. Exhs. 1 and 2 at paragraph 6.

- 6. Pursuant to MCC § 8-20-110(a), it is unlawful for any person to carry or possess a firearm in Chicago without a Chicago Firearm Permit ("CFP"). MCC § 8-20-110(b) provides that no CFP application shall be approved unless the applicant, inter alia, "has not been convicted by a court in any jurisdiction of . . . an unlawful use of a weapon that is a firearm." MCC § 8-20-110(b)(3)(iii). Exhs. 1 and 2 at paragraph 7.
- 7. MCC 8-20-010 contains the Definitions applicable to Chapter 8-20 of the ordinance. Neither § 8-20-010 nor any other provision of MCC Chapter 8-20 defines the term "use." Exhs. 1 and 2 at paragraph 8.
- 8. On November 1, 2010, plaintiff filed an application for a CFP with the City of Chicago Department of Police. Plaintiff's application included a current copy of his Illinois Firearm Owner's Identification Card ("FOID Card"). Exhs. 1 and 2 at paragraph 11.
- 9. Plaintiff has one misdemeanor conviction, entered in 1995, for carrying/possessing a firearm on a public street in violation of 720 ILCS 5/24-1(a)(10). Exhs. 1 and 2 at paragraph 12.

¹ Pursuant to the Court's agreed protective order pursuant to Rule 5.2(e), the plaintiff's CFP application has been redacted from the copy of the amended complaint attached hereto. A copy of the application will be provided to the Court upon request.

- 10. On November 10, 2010, the City of Chicago Department of Police denied plaintiff's application for a CFP on the sole ground that "You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago 8-20-110(b)(3)(iii)." A copy of CPD's denial letter to plaintiff is attached to the amended complaint as Exhibit C. Exhs. 1 and 2 at paragraph 13.
- 11. On November 22, 2010, plaintiff filed a written request for a hearing to contest the denial of his CFP application with the DOAH, pursuant to MCC § 8-20-200. That request is attached to the amended complaint as Exhibit D. Exhs. 1 and 2 at paragraph 14.
- Pursuant to plaintiff's request, the DOAH held a hearing on the denial of plaintiff's 12. CFP application on December 8, 2010. At that hearing, plaintiff submitted, through counsel, a written brief and oral argument, in which plaintiff argued that because the term "use" is not defined in MCC Chapter 8-20, that term must be given its plain and ordinary meaning in linguistic usage of operating, discharging or actively employing a firearm, rather than merely carrying or possessing a firearm. Therefore, plaintiff's prior conviction for carrying/possessing a firearm while on a public street did not constitute a conviction for the unlawful "use" of a weapon within the meaning of MCC § 8-20-110(b)(3)(iii), and the DOAH must so construe the ordinance in order to avoid raising a substantial constitutional question. Plaintiff further argued that a prior misdemeanor conviction, as opposed to a felony conviction, cannot form the basis for denial of the fundamental constitutional right to keep and bear arms. Thus, the denial of plaintiff's CFP application, based solely upon a prior misdemeanor conviction for carrying/possessing a weapon in a public street and the erroneous interpretation of the ordinance by the DOAH, would violate plaintiff's fundamental right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution and Article I § 22 of the Illinois Constitution. Exhs. 1 and 2 at paragraph 16; Exh. 3, Doc. 18-1 at

pp. 74-78.

- 13. At the administrative hearing, the City of Chicago introduced as its group Exhibit 6 the Illinois State Police records of plaintiff's criminal background check, which included a Certified Statement of Conviction/Disposition from the Circuit Court of Cook County, Illinois. Exh. 3, Doc. 18-1 at pp. 31-34, 67. The Certified Statement shows a misdemeanor conviction entered on a charge of "Carry/Posses [sic] Firearm in P" pursuant to 720 ILCS 5/24-1(A)(10)1. *Id.* at p. 31, 67.
- 14. The DOAH issued a decision on December 8, 2010, which was served upon plaintiff on December 22, 2010. The DOAH affirmed the denial of plaintiff's CFP application on the grounds that the Illinois Criminal Code, 720 ILCS 5/24-1(a)(1), defines "unlawful use of a weapon" as including the offense of carrying or possessing a handgun on or about the person upon any public street or lands within the corporate limits of a city. Therefore, the DOAH concluded that "the plain and ordinary meaning and usage given to 'unlawful use of a weapon' in this jurisdiction is to "carry or possess a firearm" as provided in 720 ILCS 5/24-1(a)(10)." The DOAH further concluded that "There is no distinction between the meanings of 'use of a weapon' and 'carry and possess a firearm['] as used in MCC 8-20-110." Therefore, the DOAH ruled that "the basis for the denial of the application has not been rebutted by the Applicant," and affirmed the CPD's denial of plaintiff's CFP application. Exhs. 1 and 2 at paragraphs 17-18.
- 15. Plaintiff timely filed this action for administrative review of the DOAH's decision within 35 days of the date the decision was served upon the plaintiff, pursuant to section 103 of the Illinois Administrative Review Law, 735 ILCS 5/3-103. Exhs. 1 and 2 at paragraph 19.

Argument

As set forth in plaintiff's supporting Memorandum of Law filed simultaneously with this motion, the DOAH's interpretation of MCC § 8-20-110(b)(3)(iii) to include misdemeanor convictions for carrying/possessing a weapon in a public place is contrary to ordinary linguistic usage, raises a substantial constitutional question, and is therefore clearly erroneous and must be reversed. Alternatively, in the event the Court determines that DOAH's interpretation of the ordinance was not erroneous, the ordinance constitutes an impermissible categorical ban on the ownership of firearms in the home by misdemeanants, and therefore violates the fundamental right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution and Article I § 22 of the Illinois Constitution.

WHEREFORE, plaintiff Shawn Gowder prays that the Court enter judgment on the pleadings in his favor and against defendants, and enter an order granting the following relief:

- Finding and declaring that MCC § 8-20-110(b)(iii) does not bar the issuance of a Chicago Firearm Permit based upon a misdemeanor conviction for carrying or possessing a handgun in a public place;
- 2) Reversing the decision of the City of Chicago Department of Administrative Hearings and ordering the City of Chicago Department of Police to issue plaintiff a Chicago Firearm Permit;
- 3) In the event the Court determines that the DOAH's interpretation of MCC § 8-20-110(b)(3)(iii) was not erroneous, finding and declaring that this section of the ordinance, on its face and as applied to plaintiff, violates the fundamental right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution and Article I, § 22 of the Illinois Constitution, and enjoining the defendants from

denying any applicant's application for a Chicago Firearm Permit on the grounds of a misdemeanor conviction for merely carrying or possessing a firearm in public;

- 4) Awarding plaintiff his reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
- 5) Granting such other and further relief as the Court deems equitable and appropriate.

Respectfully submitted,

s/ Stephen A. Kolodziej____

Stephen A. Kolodziej Brenner, Ford, Monroe & Scott, Ltd. 33 North Dearborn Street, Suite 300 Chicago, Illinois 60602 (312) 781-1970 Fax: (312) 781-9202

skolodziej@brennerlawfirm.com

Attorney for Plaintiff Shawn Gowder

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTIRICT OF ILLINOIS EASTERN DIVISION

SHAWN GOWDER,)	
Plaintiff,)	
)	
V.)	No. 11-cv-1304
CITY OF CHICAGO, a municipal corporation,)	140. 11-CV-130 4
the CITY OF CHICAGO DEPARTMENT OF)	Judge Der-Yeghiayan
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER, Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,	*	
Superintendent of the City of Chicago Department)	
of Police,)	
Defendants.)	

APPENDIX OF EXHIBITS TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

- 1. Plaintiff's Amended Complaint, with Exhibits
- 2. Defendants', City of Chicago, Scott V. Bruner, CPD, and Jody Weis, Answer to Complaint
- 3. Defendant City of Chicago Department of Administrative Hearings' Answer to Complaint, with Certified Record of Proceedings

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EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

SHAWN GOWDER,)	
Plaintiff,	<i>)</i>)	
v.))	
) No.	11-cv-1304
CITY OF CHICAGO, a municipal corporation,)	
the CITY OF CHICAGO DEPARTMENT OF) Judg	ge Der-Yeghiayan
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER,)	
Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,)	
Superintendent of the City of Chicago Department)	
of Police,)	
)	
Defendants.)	

COMPLAINT FOR ADMINISTRATIVE REVIEW, DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Shawn Gowder, for his complaint against defendants The City of Chicago, a Municipal Corporation; the City of Chicago Department of Administrative Hearings, Municipal Hearings Division; Scott V. Bruner, Director of the City of Chicago Department of Administrative Hearings; the City of Chicago Department of Police; and Jody P. Weis, Superintendant of the City of Chicago Department of Police, states as follows:

INTRODUCTION

1. This is an action for administrative review brought to vindicate plaintiff's constitutional rights under the Second and Fourteenth Amendments to the United States Constitution and Article I, Section 22 of the Illinois Constitution, which were unlawfully infringed by the defendants when they denied plaintiff's application for a Chicago Firearm Permit ("CFP") pursuant Section 8-20-110 of the Chicago Municipal Code ("MCC"). This action seeks relief in

the form of a reversal of the decision of the Chicago Department of Administrative Hearings affirming the denial of plaintiff's application for a CFP; a declaratory judgment that defendants have violated plaintiff's Federal and State Constitutional rights and that MCC Section 8-20-110 is unconstitutional on its face and as applied to plaintiff; and a mandatory injunction requiring defendants to issue a CFP to plaintiff.

PARTIES

- 2. Plaintiff Shawn Gowder is a resident of the City of Chicago.
- 3. Defendant City of Chicago is a political subdivision of the State of Illinois. Defendant City of Chicago Department of Administrative Hearings, Municipal Hearings Division is the administrative agency in which the hearing giving rise to this action occurred. Defendant City of Chicago Department of Police is an agency of the City of Chicago that denied plaintiff's application for a CFP, which denial was reviewed and affirmed by the Department of Administrative Hearings, as described more fully herein. Defendant Scott V. Bruner is Director of the City of Chicago Department of Administrative Hearings. Defendant Jody P. Weis is Superintendant of Police for the City of Chicago Department of Police.

JURISDICTION and VENUE

- 4. This Court has jurisdiction of this claim under the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq*. Plaintiff's Federal and State Constitutional claims arise out of, and are inextricably intertwined with, plaintiff's administrative review claim to review the denial of plaintiff's application for a CFP, and this court has jurisdiction over those claims pursuant to 735 ILCS 5/2-701; Article 6, Section 9 of the Illinois Constitution, ILCS Const. Art. 6, § 9; and U.S. Const. Amend. II and XIV.
- 5. This action is brought pursuant to the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, and 42 U.S.C. § 1983. Venue is proper in this circuit under 735 ILCS

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5/2-101 and 2-103.

BACKGROUND

- 6. On June 28, 2010, the Supreme Court of the United States held in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), that the Second Amendment right to keep and bear arms restrains state and local governments through incorporation in the Fourteenth Amendment. The Supreme Court remanded the case for the lower courts to apply the Second Amendment to the challenged Chicago ordinance that effectively banned private ownership of handguns within the city. In anticipation that the ordinance challenged in *McDonald* would be struck down, the City Council of Chicago, on July 2, 2010, amended the Municipal Code of Chicago as it pertains to firearms. The newly enacted firearms ordinance is codified as Municipal Code of Chicago ("MCC") Chapter 8-20, and is attached hereto as Exhibit A.
- 7. Pursuant to MCC § 8-20-110(a), it is unlawful for any person to carry or possess a firearm in Chicago without a Chicago Firearm Permit ("CFP"). MCC § 8-20-110(b) provides that no CFP application shall be approved unless the applicant, *inter alia*, "has not been convicted by a court in any jurisdiction of. . . an unlawful use of a weapon that is a firearm." MCC § 8-20-110(b)(3)(iii).
- 8. MCC § 8-20-010 contains the Definitions applicable to Chapter 8-20. Neither that Section nor any other provision of MCC Chapter 8-20 defines the term "use."
- 9. Plaintiff Shawn Gowder lives in a high-crime area of Chicago, in which violent crimes, including drive-by and gang-related shootings, home invasions, rapes, murders, armed robberies, and other violent crimes, are frequent. He is greatly concerned for his own safety and the safety of his family, and wishes to keep a handgun in his home for self-defense.
- 10. At all times relevant hereto, plaintiff held and still holds a valid Illinois Firearm Owner's Identification Card ("FOID Card") issued by the Illinois State Police, pursuant to the

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Illinois Firearm Owner's Identification Card Act, 430 ILCS 65/1 et seq.

11. On November 1, 2010, plaintiff filed an application for a CFP with the City of

Chicago Department of Police. A true and correct copy of plaintiff's CFP application is attached

hereto as Exhibit B. A copy of plaintiff's valid and current FOID Card was attached to plaintiff's

CFP application, and appears at page 3 of Exhibit B.

12. Plaintiff has never been convicted of a felony in any jurisdiction. Plaintiff has one

misdemeanor conviction, entered in 1995, for carrying/possessing a firearm on a public street in

violation of 720 ILCS 5/24-1(a)(10). Plaintiff is eligible to possess and receive firearms under the

laws of Illinois and the United States.

13. On November 10, 2010, the City of Chicago Department of Police denied

plaintiff's application for a CFP on the sole ground that "You have been convicted by a court in

any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago

8-20-110(b)(3)(iii)." A true and correct copy of the denial letter served upon plaintiff by the

Department of Police is attached hereto as Exhibit C.

14. On November 22, 2010, plaintiff filed a written request for a hearing to contest the

denial of his CFP application with the Chicago Department Administrative Hearings, pursuant to

MCC § 8-20-200. A true and correct copy of plaintiff's written request for an administrative

hearing is attached hereto as Exhibit D.

15. The Department of Administrative Hearings scheduled a hearing on the denial of

plaintiff's CFP application for November 24, 2010. The hearing was continued at plaintiff's

request, without objection by the City of Chicago, to December 8, 2010, and proceeded on that

date.

16. At the December 8, 2010 hearing, plaintiff submitted a written brief in support of

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his position, as well as oral argument of counsel. Plaintiff argued that because the term "use" is not defined in MCC Chapter 8-20, that term must be given its plain and ordinary meaning in the law of operating, discharging, or actively employing a firearm, rather than merely carrying or possessing a firearm; therefore, plaintiff's prior conviction for carrying/possessing a firearm on a public street did not constitute a conviction for the unlawful "use" of a weapon within the meaning of MCC § 8-20-110(b)(3)(iii). Plaintiff further argued that a prior misdemeanor conviction, as opposed to a felony conviction, cannot form a basis for denial of the fundamental constitutional right to keep and bear arms. Thus, the denial of plaintiff's CFP application, based solely on a prior misdemeanor conviction for carrying/possessing a weapon in a public street, violated plaintiff's fundamental right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution. Accordingly, MCC § 8-20-110(b)(3)(iii), on its face and as applied, was unconstitutional and void.

17. On or about December 16, 2010, plaintiff received in the mail a Decision issued by the Chicago Department of Administrative Hearings, which was dated "November 9, 2010." No certificate of service was included with this Decision, and the postmark on the envelope was illegible, so that plaintiff could not determine when it was served upon him. A copy of this Decision is attached hereto as Exhibit E. The Decision affirmed the denial of plaintiff's CFP application, but because it was dated a month before the hearing took place, plaintiff's counsel requested clarification from the Department as to what date the Decision was actually issued and served. The Department advised plaintiff's and Chicago's counsel that it would have the Administrative Law Judge re-issue the Decision, and would send it to counsel once this had occurred. A true and correct copy of the email correspondence between counsel for plaintiff and Chicago, and the Senior Administrative Law Judge of the Department, Michele McSwain, dated

December 17, 2010, is attached hereto as Exhibit F. Plaintiff's counsel subsequently received by certified mail a second Decision, dated "12/8/10." This second Decision arrived in an envelope postmarked December 22, 2010. True and correct copies of the second Decision dated 12/8/10, and the envelope postmarked December 22, 2010, are attached hereto as Exhibits G and H, respectively.

- 18. Both copies of the Decision state the following reasons for affirming the denial of plaintiff's CFP application (numbered as they appear in the Decision):
 - 6. 720 ILCS 5/24-1(a)(1) provides as follows:
 - (a) A person commits the offense of unlawful use of a weapon when he knowingly: . . .
 - (10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or other incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm. . .
 - 7. The provisions of 720 ILCS 5/24-1(a)(10) is [sic] clear as to what constitutes an unlawful use of a weapon.
 - 8. The plain and ordinary meaning and usage given to "unlawful use of a weapon" in this jurisdiction is to "carry or possess a firearm" as provided in 720 ILCS 5/24-1(a)(10).
 - 9. There is no distinction between the meanings of "use of a weapon" and "carry and possess a firearm["] as used in MCC 8-20-110.
 - 10. The basis for the denial of the application has not been rebutted by the Applicant.
 - 11. The denial by the Chicago Police Department of the Applicant's application for a CFP is affirmed.
 - 12. This body does not have jurisdiction to hear Constitutional issues raised by the Applicant.

13. Pursuant to Section 2-14-102 of the Chicago Municipal Code, this final decision is subject to review under the Illinois Administrative Review Act.

Exh. E, p. 2 at paragraphs 6-13; Exh. G, p. 2 at paragraphs 6-13.

19. Plaintiff has timely filed this action seeking judicial review of the Decision within 35 days from the date a copy of the Decision was served upon the plaintiff, pursuant to Section 3-103 of the Illinois Administrative Review law, 735 ILCS 5/3-103.

COUNT I --JUDICIAL REVIEW UNDER ILLINOIS ADMINISTRATIVE REVIEW LAW (735 ILCS 5/3-101 et seq.)

- 20. Paragraphs 1-19 are incorporated herein by reference.
- 21. The Chicago Department of Administrative Hearings' construction and interpretation of MCC § 8-20-110(b)(3)(iii) to bar issuance of a CFP for a misdemeanor conviction for carrying/possessing a firearm in a public place, on the basis that this constituted "an unlawful use of a weapon that is a firearm," is a clearly erroneous interpretation of the ordinance that raises a substantial constitutional question, and results in an impermissible infringement of plaintiff's fundamental constitutional right to keep and bear arms.
- 22. The decision of the Chicago Department of Police denying plaintiff's application for a CFP, and the Decision of the Chicago Department of Administrative Hearings affirming that ruling, should therefore be reversed pursuant to Section 3-111 of the Illinois Administrative Review Law, 735 ILCS 5/3-111.
- 23. The plaintiff has exhausted all available remedies under the Illinois Administrative Review law, and the Decision of the Chicago Department of Administrative Hearings expressly states that it is a final decision subject to review under the Illinois Administrative Review Act, pursuant to Section 2-14-102 of the Chicago Municipal Code.

24. Pursuant to Section 3-108 of the Illinois Administrative Review Law, 735 ILCS 5/3-108, the defendants are requested to file with the Court as part of their answer hereto a certified copy of the complete record of proceedings in the Department of Administrative Hearings, including the transcript of the evidence, the report of proceedings, and all exhibits and submissions by the parties.

WHEREFORE, plaintiff prays that the Court enter judgment reversing the decision of the Chicago Department of Administrative Hearings, ordering the Chicago Department of Police to issue a Chicago Firearm Permit to plaintiff, and granting such other and further relief as the Court deems equitable and proper, consistent with Section 3-111 of the Illinois Administrative Review Law, 735 ILCS 5/3-111.

COUNT II – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (U.S. CONST., AMENDS. II AND XIV, 42 U.S.C. § 1983)

- 25. The preceding paragraphs are incorporated herein by reference.
- 26. The denial of plaintiff's CFP application effectively denies plaintiff the right to own and keep a handgun or any other firearm for self-defense in his home in the City of Chicago, because MCC § 8-20-110 makes it unlawful for any person to carry or possess a firearm without a CFP.
- 27. The denial of plaintiff's CFP application has deprived plaintiff of the fundamental right under the Second and Fourteenth Amendments to the U.S. Constitution to keep a handgun in his home in Chicago for self-defense.
- 28. MCC § 8-20-110(b)(3)(iii), both on its face and as applied to plaintiff, therefore infringes on plaintiff's right to keep and bear arms in violation of the Second and Fourteenth Amendments to the U.S. Constitution, and is void.
 - 29. The defendants' denial of plaintiff's CFP application constitutes a deprivation of

plaintiff's fundamental constitutional right to keep and bear arms under color of law.

WHEREFORE, plaintiff prays that the Court enter judgment in his favor and against defendants, as follows:

- (A) Declaring that MCC § 8-20-110 (b)(3)(iii), on its face and as applied, violates plaintiff's constitutional right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution, and is void;
- (B) Declaring that the denial of plaintiff's application for a Chicago Firearm Permit violates plaintiff's constitutional right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution;
- (C) Granting a mandatory injunction requiring defendants to issue a Chicago Firearm Permit to plaintiff;
 - (D) Awarding plaintiff his reasonable attorney's fees and costs; and
 - (E) Awarding such other and further relief as may be equitable and proper.

COUNT III – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF ILLINOIS CONST. ART. I, § 22

- 30. The preceding paragraphs are incorporated herein by reference.
- 31. Article I, § 22 of the Illinois Constitution provides: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Ill. Const. 1970, Art. I, § 22.
- 32. The denial of plaintiff's CFP application effectively denies plaintiff the right to own and keep a handgun or any other firearm for self-defense in his home in the City of Chicago, because MCC § 8-20-110 makes it unlawful for any person to carry or possess a firearm without a CFP.
 - 33. MCC § 8-20-110(b)(3)(iii), both on its face and as applied to plaintiff, therefore

infringes on plaintiff's right to keep and bear arms in violation of Article I, § 22 of the Illinois

Constitution, and is void.

34. The denial of plaintiff's CFP application violates plaintiff's right to keep and bear

arms under Article I, § 22 of the Illinois Constitution, and must be reversed.

WHEREFORE, plaintiff prays that the Court enter judgment in his favor and against

defendants, as follows:

(A) Declaring that MCC § 8-20-110 (b)(3)(iii), on its face and as applied, violates

plaintiff's constitutional right to keep and bear arms under Article I, § 22 of the Illinois

Constitution, and is void;

(B) Declaring that the denial of plaintiff's application for a Chicago Firearm Permit

violates plaintiff's constitutional right to keep and bear arms under Article I, § 22 of the Illinois

Constitution;

(C) Granting a mandatory injunction requiring defendants to issue a Chicago Firearm

Permit to plaintiff;

(D) Awarding plaintiff his reasonable attorney's fees and costs; and

(E) Awarding such other and further relief as may be equitable and proper.

Respectfully submitted,

s/ Stephen A. Kolodziej

Stephen A. Kolodziej

Brenner, Ford, Monroe & Scott, Ltd.

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTIRICT OF ILLINOIS EASTERN DIVISION

SHAWN GOWDER,)	
Plaintiff,))	
v.))	
) No.	11-cv-1304
CITY OF CHICAGO, a municipal corporation,)	
the CITY OF CHICAGO DEPARTMENT OF) Judg	ge Der-Yeghiayan
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER,)	
Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,)	
Superintendent of the City of Chicago Department)	
of Police,)	
)	
Defendants.)	

LIST OF EXHIBITS TO COMPLAINT

- A. Municipal Code of Chicago, Chapter 8-20
- B. Plaintiff's Chicago Firearm Permit Application
- C. November 10, 2010 Letter Denying Plaintiff's CFP Application
- D. Plaintiff's Written Request for Administrative Hearing
- E. Decision of Department of Administrative Hearings dated "November 9, 2010"
- F. Correspondence between Counsel and Senior Administrative Law Judge, Michele McSwain, dated Dec. 17, 2010
- G. Second Decision of Department of Administrative Hearings dated "12/8/10"
- H. Envelope postmarked December 22, 2010

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EXHIBIT A

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Municipal Code of Chicago

TITLE 8 OFFENSES AFFECTING PUBLIC PEACE, MORALS AND WELFARE CHAPTER 8-20 WEAPONS

♥CHAPTER 8-20 WEAPONS

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ARTICLE I. DEFINITIONS

№8-20-010 Definitions.

For purposes of this chapter the following terms shall apply:

"The Act" means the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/1 et seq., as amended.

"Ammunition" means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable to use in a firearm; excluding however:

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- (1) any ammunition used exclusively for line-throwing, signaling, or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission; or
- (2) any ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

"Antique firearm" has the same meaning ascribed to that term in 18 U.S.C. § 921(a)(16).

"Assault weapon" means:

- (1) A semiautomatic rifle that has the ability to accept a detachable magazine and has one or more of the following:
 - (i) a folding or telescoping stock
 - (ii) a handgun grip which protrudes conspicuously beneath the action
 - (iii) a bayonet mount
 - (iv) a flash suppressor or a barrel having a threaded muzzle
 - (v) a grenade launcher; or
 - (2) A semiautomatic shotgun that has one or more of the following:
 - (i) a folding or telescoping stock
 - (ii) a handgun grip which protrudes conspicuously beneath the action
 - (iii) a fixed magazine capacity in excess of 5 rounds
 - (iv) an ability to accept a detachable magazine; or
- (3) A semiautomatic handgun that has an ability to accept a detachable magazine and has one or more of the following:
 - (i) an ammunition magazine that attaches to the handgun outside the handgun grip
 - (ii) a barrel having a threaded muzzle
- (iii) a shroud that is attached to, or partially or completely encircles the barrel, and permits the shooter to hold the firearm with the non-trigger hand without being burned
 - (iv) a manufactured weight of 50 ounces or more when the handgun is unloaded
 - (v) a semiautomatic version of an automatic firearm.

"Chicago Firearm Permit" or "CFP" means the permit issued by the City which allows a person to possess a firearm.

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"Corrections officer" means wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

"Department" means the department of police.

"Dwelling unit" has the same meaning ascribed to that term in section 17-17-0248.

"Duty-related firearm" shall mean any firearm which is authorized by any law enforcement agency or employer to be utilized by their personnel in the performance of their official duties.

"Firearm" means any device, by whatever name known, which is designed or restored to expel a projectile or projectiles by the action of any explosive, expansion of gas or escape of gas. Provided, that such term shall not include:

- (1) any pneumatic gun, spring gun, paint ball gun or B-B gun which either expels a single globular projectile not exceeding .18 inch in diameter and which has a maximum muzzle velocity of less than 700 feet per second or breakable paint balls containing washable marking colors;
- (2) any device used exclusively for line-throwing, signaling, or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission; or
- (3) any device used exclusively for firing explosives, rivets, stud cartridges, or any similar industrial ammunition.

"Firearm case" means any firearm case, carrying box, shipping box or other similar container that is designed for the safe transportation of the firearm.

"FOID" means the Firearm Owner's Identification Card issued pursuant to the Act.

"Handgun" means a firearm designed to be held and fired by the use of a single hand, and includes a combination of parts from which such firearm can be assembled.

"High capacity magazine" means any ammunition magazine having a capacity of more than 12 rounds of ammunition.

"Home" means the inside of a person's dwelling unit which is traditionally used for living purposes, including the basement and attic. A "home" does not include: (i) any garage, including an attached garage, on the lot; (ii) any space outside the dwelling unit, including any stairs, porches, back, side or front yard space, or common areas; or (iii) any dormitory, hotel, or group living, as that term is defined in section 17-17-0102-A.

"Laser sight accessory" means a laser sighting device which is either integrated into a firearm or capable of being attached to a firearm.

"Lawful transportation" means the transportation of a firearm by a person:

- (1) in compliance with section 8-20-090; or
- (2) who has a valid FOID card, a CFP and firearm registration certificate, if applicable, and the firearm is:

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- (i) broken down in a nonfunctioning state;
- (ii) not immediately accessible; and
- (iii) unloaded and in a firearm case.

"Long gun" means any firearm, other than a handgun.

"Machine gun" means any firearm which can fire multiple rounds of ammunition by a single function of the firing device or one press of the trigger.

"Metal piercing bullet" means any bullet that is manufactured with other than a lead or lead alloy core, or ammunition of which the bullet itself is wholly composed of, or machined from, a metal or metal alloy other than lead, or any other bullet that is manufactured to defeat or penetrate bullet resistant properties of soft body armor or any other type of bullet resistant clothing which meets the minimum requirements of the current National Institute for Justice Standards for "Ballistic Resistance of Police Body Armor."

"Organization" means partnership, company, corporation or other business entity, or any group or association of two or more persons united for a common purpose.

"Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

"Retired department police officer" means a person who is retired from the department in good standing and without any disciplinary charges pending, and who is, or is eligible to become, an annuitant of the Policemen's Annuity and Benefit Fund of the City of Chicago.

"Sawed-off shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

"Security personnel" means special agents employed by a railroad or public utility to perform police functions, guards of armored car companies, watchmen, security guards or persons regularly employed in a commercial or industrial operation for the protection of persons employed by, or property related to, such commercial or industrial operation; and watchmen while in the performance of the duties of their employment.

"Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

"Superintendent" means the superintendent of the department or his designated representative.

"Safety mechanism" means a design adaption or nondetachable accessory that lessens the likelihood of unanticipated use of the handgun.

"Trigger lock" means a device that when locked in place by means of a key, prevents a potential user from pulling the trigger of the firearm without first removing the trigger lock by use of the trigger lock's

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key.

"Unregistrable firearm" means any firearm listed in section 8-20-170.

"Unsafe handgun" means any handgun that is listed on the superintendent's roster of unsafe handguns because, in the determination of the superintendent, the handgun is unsafe due to its size, ability to be concealed, detectability, quality of manufacturing, quality of materials, ballistic accuracy, weight, reliability, caliber, or other factors which makes the design or operation of the handgun otherwise inappropriate for lawful use.

"Violent crime" has the same meaning ascribed to that term in the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/1, et seq., as amended.

(Added Coun. J. 7-2-10, p. 96234, § 4)

ARTICLE II. POSSESSION OF FIREARMS

8-20-020 Unlawful possession of handguns.

- (a) It is unlawful for any person to carry or possess a handgun, except when in the person's home.
- (b) The provisions of this section shall not apply to:
- (1) peace officers, and any person summoned by a peace officer to assist in making arrests or preserving the peace, while assisting such officer;
- (2) corrections officers while in the performance of their official duty, or while commuting between their homes and places of employment;
- (3) members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard or the Reserve Officers Training Corps, while in the performance of their official duty;
 - (4) security personnel;
- (5) persons licensed as private security contractors, private detectives, or private alarm contractors, or employed by an agency certified by the Illinois Department of Professional Regulation;
- (6) persons regularly employed in a commercial or industrial operation as a security guard for the protection of persons employed and private property related to such commercial or industrial operation, while in the performance of their duties or traveling between sites or properties belonging to the employer, and who, as a security guard, is registered with the Illinois Department of Professional Regulation;
- (7) persons employed by a financial institution for the protection of other employees and property related to such financial institution, while in the performance of their duties, commuting between their homes and places of employment, or traveling between sites or properties owned or operated by such financial institution;
 - (8) persons employed by an armored car company to drive an armored car, while in the

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performance of their duties;

- (9) persons who have been classified as peace officers pursuant to the Peace Officer Fire Investigation Act;
- (10) investigators of the Office of the State's Attorneys Appellate Prosecutor authorized by the board of governors of the Office of the State's Attorneys Appellate Prosecutor to carry weapons pursuant to Section 7.06 of the State's Attorneys Appellate Prosecutor's Act;
- (11) special investigators appointed by a State's Attorney under Section 3-9005 of the Counties Code;
- (12) probation officers while in the performance of their duties, or while commuting between their homes, places of employment or specific locations that are part of their assigned duties, with the consent of the chief judge of the circuit for which they are employed;
- (13) court security officers while in the performance of their official duties, or while commuting between their homes and places of employment, with the consent of the sheriff;
- (14) persons employed as an armed security guard at a nuclear energy, storage, weapons or development site or facility regulated by the Nuclear Regulatory Commission who have completed the background screening and training mandated by the rules and regulations of the Nuclear Regulatory Commission;
- (15) duly authorized military or civil organizations while parading, with the special permission of the Governor;
- (16) persons engaged in the manufacture, transportation, or sale of firearms to persons authorized under this subsection to possess those firearms;
 - (17) a person while engaged in the lawful transportation of a firearm.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-030 Unlawful possession of long guns.

- (a) It is unlawful for any person to carry or possess a long gun, except when in the person's home or fixed place of business.
 - (b) The provisions of this section shall not apply to:
 - (1) any person listed in section 8-20-020(b); or
- (2) any duly licensed hunter who has a valid FOID card, a CFP and firearm registration certificate, while engaged in hunting in an area where hunting is permitted.

(Added Coun. J. 7-2-10, p. 96234, § 4)

№8-20-035 Unlawful possession of unregisterable firearms.

(a) It is unlawful for any person to carry or posses any unregisterable firearm.

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- (b) The provisions of this section shall not apply to corrections officers, members of the armed forces of the United States, or the organized militia of this or any other state, and peace officers, to the extent that any such person is otherwise authorized to acquire or possess assault weapons, and is acting within the scope of his duties, or to any person while engaged in the manufacturing, transportation or sale of assault weapons to people authorized to possess them under this section.
- (c) Notwithstanding the provisions of subsection (a), those firearms listed in section $\underline{8-20-170}(a)$ may be possessed and used by the department for training and tactical operation, as authorized by the superintendent.
- (d) Any firearm carried or possessed in violation of this section is hereby declared to be contraband and shall be seized by and forfeited to the city.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-040 Firearms kept or maintained in a home.

Subject to section 8-20-050, every person who keeps or possesses a firearm in his home shall keep no more than one firearm in his home assembled and operable. If more than one person in the home has a valid CFP and registration certificate, each person with a valid CFP and registration certificate is entitled to have one such firearm assembled and operable in the home. All other firearms kept or possessed by that person in his home shall be broken down in a nonfunctioning state or shall have a trigger lock or other mechanism, other than the firearm safety mechanism, designed to render the firearm temporarily inoperable.

The provisions of this section shall not apply to peace officers.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-050 Firearms – Protection of minors.

- (a) It is unlawful for any person to keep or possess any firearm or ammunition in his home if the person knows or has reason to believe that a minor under the age of 18 years is likely to gain access to the firearm or ammunition, unless:
- (1) the person is physically present in the home and the firearm is either being held by the person or is physically secured on the person's body;
- (2) the firearm is secured by a trigger lock or other mechanism, other than the firearm safety mechanism, designed to render a firearm temporarily inoperable; or
 - (3) the firearm and ammunition are placed in a securely locked box or container.
 - (b) No person shall be punished for a violation of this section under the following circumstances:
- (1) if the minor gains access to the firearm and uses it in a lawful act of self-defense or defense of another; or
- (2) if the minor gains access to the firearm because of an unlawful entry of the premises by the minor or another person.

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The provisions of this section shall not apply to peace officers.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-060 Possession of a laser sight accessory, firearm silencer or muffler.

- (a) It is unlawful for any person to carry, possess, display for sale, sell or otherwise transfer any laser sight accessory, or a firearm silencer or muffler.
- (b) The provisions of this section shall not apply to any members of the armed forces of the United States, or the organized militia of this or any other state, or peace officers, to the extent that any such person is otherwise authorized to acquire or possess a laser sight accessory, or firearm silencer or muffler, and is acting within the scope of his duties.
- (c) Any laser sight accessory, or firearm silencer or muffler, carried, possessed, displayed or sold in violation of this section is hereby declared to be contraband and shall be seized by and forfeited to the city.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-070 Unlawful firearm, laser sight accessory, or firearm silencer or muffler in a motor vehicle – Impoundment.

- (a) The owner of record of any motor vehicle that contains a firearm registered to a person who is not the driver or occupant of the vehicle, an unregistered firearm, a firearm that is not being lawfully transported, an unregisterable firearm, a laser sight accessory, or a firearm silencer or muffler, shall be liable to the city for an administrative penalty of \$1,000.00 plus any towing and storage fees applicable under Section 9-92-080. Any such vehicle shall be subject to seizure and impoundment pursuant to this section.
- (b) Whenever a police officer has probable cause to believe that a vehicle is subject to seizure and impoundment pursuant to this section, the police officer shall provide for the towing of the vehicle to a facility controlled by the city or its agents. Before or at the time the vehicle is towed, the police officer shall notify any person identifying himself as the owner of the vehicle at the time of the alleged violation, of the fact of the seizure and of the vehicle owner's right to request a vehicle impoundment hearing to be conducted under Section 2-14-132 of this Code.
- (c) The provisions of Section $\underline{2-14-132}$ shall apply whenever a motor vehicle is seized and impounded pursuant to this section.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-080 Possession of ammunition.

- (a) It is unlawful for any person to carry or possess any ammunition in the city, unless the person:
- (1) has a valid CFP and registration certificate for a firearm of the same gauge or caliber as the ammunition possessed, and while in possession of the ammunition, has the CFP and registration certificate in his possession when he is not in his home, or, when he is in his home, has the CFP and registration certificate readily available in his home; or

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- (2) is a licensed weapons dealer; or
- (3) is a person listed in section 8-20-020(b).
- (b) Any ammunition carried or possessed in violation of this section is hereby declared to be contraband and shall be seized by and forfeited to the city.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-085 High capacity magazines and metal piercing bullets – Sale and possession prohibited – Exceptions.

- (a) It is unlawful for any person to carry, possess, sell, offer or display for sale, or otherwise transfer any high capacity magazine or metal piercing bullets. This section shall not apply to corrections officers, members of the armed forces of the United States, or the organized militia of this or any other state, and peace officers, to the extent that any such person is otherwise authorized to acquire or possess metal piercing bullets, and is acting within the scope of his duties, or to any person while in the manufacturing, transportation or sale of high capacity magazines or metal piercing bullets to people authorized to possess them under this section.
- (b) Any high capacity magazine or metal piercing bullets carried, possessed, displayed, sold or otherwise transferred in violation of this section is hereby declared to be contraband and shall be seized by and forfeited to the city.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-090 Interstate transportation of firearms.

It shall not be a violation of this chapter if a person transporting a firearm or ammunition while engaged in interstate travel is in compliance with 18 U.S.C.A. § 926A. There shall be a rebuttable presumption that any person within the city for more than 24 hours is not engaged in interstate travel, and is subject to the provisions of this chapter.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-100 Permissible sales and transfers of firearms and ammunition.

- (a) Except as authorized by subsection (e) and section <u>2-84-075</u>, no firearm may be sold, acquired or otherwise transferred within the city, except through inheritance of the firearm.
- (b) No ammunition may be sold or otherwise transferred within the city, except through a licensed weapons dealer, or as otherwise allowed by this code.
- (c) No firearm or ammunition shall be security for, or be taken or received by way of any mortgage, deposit, pledge or pawn.
- (d) No person may loan, borrow, give or rent to or from another person, any firearm or ammunition except in accordance with this chapter.
- (e) Notwithstanding any other provision of this section, a peace officer may sell or transfer any lawfully held firearm or ammunition to another peace officer in accordance with the other provisions of

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this chapter.

(Added Coun. J. 7-2-10, p. 96234, § 4)

ARTICLE III. PERMITS FOR AND REGISTRATION OF FIREARMS

8-20-110 CFP - Required.

- (a) Subject to subsection (d), it is unlawful for any person to carry or possess a firearm without a CFP.
 - (b) No CFP application shall be approved unless the applicant:
- (1) is 21 years of age or older; provided that an application of a person 18 years or older but less than 21 may be approved if the person has the written consent of his parent or legal guardian to possess and acquire a firearm or firearm ammunition and that he has never been convicted of a misdemeanor, other than a traffic offense or adjudged a delinquent; provided that such parent or legal guardian is not an individual prohibited from having a FOID or CFP, and that the parent files an affidavit with the department attesting that the parent is not an individual prohibited from having a FOID or CFP;
 - (2) possesses a valid Illinois FOID;
 - (3) has not been convicted by a court in any jurisdiction of:
 - (i) a violent crime,
 - (ii) two or more offenses for driving under the influence of alcohol or other drugs; or
 - (iii) an unlawful use of a weapon that is a firearm;
- (4) has vision better than or equal to that required to obtain a valid driver's license under the standards established by the Illinois Vehicle Code;
- (5) is not otherwise ineligible to possess a firearm under any federal, state or local law, statute or ordinance; and
- (6) has not been convicted, adjudicated, admitted to, or found liable for a violation of section $\underline{8}$ - $\underline{20}$ - $\underline{060}$ or $\underline{8}$ - $\underline{20}$ - $\underline{100}$.
 - (c) Each CFP issued shall be accompanied by a copy of this ordinance.
- (d) Any person who has a valid firearm registration certificate issued before the effective date of this 2010 ordinance shall be exempted from acquiring a CFP until the expiration of the registration certificate; provided that upon the expiration of the registration certificate, the person shall be required to obtain a CFP. Any such person who has submitted an application for a CFP prior to or on the date of the expiration of his current registration certificate shall be deemed to be in compliance with the requirement for a CFP while his application is pending.
 - (e) The provisions of this section shall not apply to any person listed in section 8-20-020(b)(1) –

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(16) or a person engaged in interstate travel in compliance with section 8-20-100.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-120 CFP - Application.

- (a) An applicant for a CFP shall submit an application to the superintendent on a form or in a manner prescribed by the superintendent. The application shall include the following:
 - (1) name, residential address and telephone number of the applicant;
 - (2) the applicant's date of birth and sex;
- (3) the applicant's Illinois firearm owner's identification number and a copy of the applicant's FOID card;
 - (4) evidence that the applicant meets the criteria of section 8-20-110;
- (5) two identical photographs of the applicant taken within 30 days immediately prior to the date of filing the application, equivalent to passport size, showing the full face, head and shoulders of the applicant in a clear and distinguishing manner;
- (6) the applicant's Illinois driver's license number and a copy of the applicant's driver's license or Illinois identification card;
- (7) an affidavit signed by a firearm instructor certified by the State of Illinois to provide firearm training courses attesting that the applicant has completed a firearm safety and training course, which, at a minimum, provides one hour of range training and four hours of classroom instruction that is in compliance with the requirements of the classroom instruction course, as established in rules and regulations; and
- (8) any other information as the superintendent shall find reasonably necessary to effectuate the purpose of this chapter and to arrive at a fair determination as to whether the terms of this chapter have been complied with.

The superintendent shall be the custodian of all applications for CFPs under this chapter.

- (b) The applicant shall submit to fingerprinting in accordance with procedures established in rules and regulations promulgated by the superintendent.
- (c) For an application for a CFP submitted within 180 days of the effective date of this 2010 ordinance, the superintendent shall either approve or deny such application no later than 120 days after the date the application is submitted, unless good cause is shown. For an application for a CFP submitted thereafter, the superintendent shall either approve or deny an application within 45 days from the date the application is submitted, unless good cause is shown. An application shall not be deemed submitted until the applicant provides all the required information or documentation.
- (d) All CFPs issued by the superintendent shall contain the applicant's name, date of birth, sex, and signature. Each CFP shall have the expiration date boldly and conspicuously displayed on the face of the CFP.

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(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-130 CFP card - Fee and expiration.

- (a) A CFP card shall expire 3 years after the date of issuance.
- (b) The fee shall be \$100.00.
- (c) The CFP fee shall not be applicable to any resident of the city who is a retired department police officer.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-140 Firearm registration certificate – Required.

- (a) Subject to subsection (d), it is unlawful for any person to carry or possess a firearm without a firearm registration certificate.
- (b) No application for a registration certificate shall be approved unless the applicant has been issued a valid CFP; provided no CFP shall be required for the issuance of a registration certificate if the person is an exempt person pursuant to section 8-20-110(e).
- (c) An applicant for a registration certificate shall submit an application to the superintendent on a form or in a manner prescribed by the superintendent. The application shall include the following:
 - (1) name, telephone number and the address at which the firearm shall be located:
 - (2) a copy of the applicant's CFP and Illinois FOID card;
- (3) the name of the manufacturer, the caliber or gauge, the model, type and the serial number identification of the firearm to be registered;
 - (4) the source from which the firearm was obtained;
 - (5) the address at which the firearm will be located;
 - (6) if an antique firearm, the year of manufacture of the firearm;
 - (7) the date the firearm was acquired; and
- (8) any other information as the superintendent shall find reasonably necessary to effectuate the purpose of this chapter and to arrive at a fair determination as to whether the terms of this chapter have been complied with.

The superintendent shall be the custodian of all applications for registration certificates under this chapter.

(d) (1) Subject to subsection (d)(2), an application for a registration certificate shall be submitted no later than 5 business days after a person takes possession within the city of a firearm from any source; provided that any applicant who has submitted a complete application within the required 5 business days shall be considered in compliance with this subsection until his registration certificate is

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either approved or denied.

- (2) Notwithstanding any provision of this chapter to the contrary, a person has 90 days after the effective date of this 2010 ordinance to register a firearm, including a handgun, which had not been previously registered; provided that the person and firearm meet all the requirements of this ordinance.
- (e) For an application for a firearm registration certificate submitted within 180 days after the effective date of this 2010 ordinance, the superintendent shall either approve or deny such application no later than 45 days after the date the application is submitted. For an application for a firearm registration certificate submitted thereafter, the superintendent shall either approve or deny the application within 21 days of the submission of the application, unless good cause is shown. An application shall not be deemed submitted until the applicant provides all the required information or documentation.
 - (f) The provisions of this section shall not apply to:
- (1) firearms owned or under the direct control or custody of any federal, state or local governmental authority maintained in the course of its official duties;
- (2) duty-related firearms owned and possessed by peace officers who are not residents of the city;
- (3) duty-related firearms owned or possessed by corrections officers and who are not residents of the city;
- (4) firearms owned, manufactured or possessed by licensed manufacturers of firearms, bulk transporters or licensed sellers of firearms at wholesale or retail, provided that such persons have federal firearms license;
- (5) any nonresident of the city participating in any lawful recreational firearm-related activity in the city, or on his way to or from such activity in another jurisdiction; provided that such firearm shall be (i) broken down in a nonfunctioning state; (ii) not immediately accessible; and (iii) unloaded and in a firearm case;
- (6) persons licensed as private security contractors, security guards, private detectives, or private alarm contractors, or employed by an agency certified as such by the Department of Professional Regulation;
- (7) duty-related firearms of investigators of the Office of the State's Attorneys Appellate Prosecutor authorized by the board of governors of the Office of the State's Attorneys Appellate Prosecutor to carry weapons pursuant to Section 7.06 of the State's Attorneys Appellate Prosecutor's Act;
- (8) duty-related firearms of special investigators appointed by a State's Attorney under Section 3-9005 of the Counties Code;
- (9) firearms being transported by a person engaged in interstate travel in compliance with section 8-20-100; or
- (10) those persons summoned by a peace officer to assist in making an arrest or preserving the peace while actually engaged in assisting the peace officer.

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(g) Each registration certificate issued shall contain a unique registration certificate number, the person's name, the address at which the firearm will be located, and any other information the superintendent deems necessary to identify the person and the firearm.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-145 Registration certificates – Expiration.

- (a) A registration certificate issued prior to the effective date of this 2010 ordinance shall remain in effect until its expiration.
- (b) For registration certificates issued after the effective date of this 2010 ordinance, a registration certificate shall expire on the same date as the date of the expiration of the CFP issued to that person.
- (c) A person shall file an annual registration report with the superintendent on a form, and in a manner, prescribed by the superintendent. The annual registration report shall set forth such information as required by the superintendent in rules and regulations. If a person has multiple registration certificates, the superintendent may align the dates for the annual registration reports to the same reporting date and combine such annual registration reports into one report. Failure to file an annual registration report may result in revocation of a person's CFP or registration certificate, and may cause that firearm to become unregisterable to that person.

(Added Coun. J. 7-2-10, p. 96234, § 4)

№8-20-150 Application fees.

- (a) A nonrefundable application fee of \$15.00 shall be payable for each firearm registered. The fee shall accompany each initial application for a registration certificate.
 - (b) Any person who files an annual registration report late shall pay a late filing fee of \$60.00.
 - (c) The application fee shall not be applicable to:
 - (1) any duty-related firearm of a peace officer domiciled in the city, or
- (2) any duty-related firearm that was registered to that retired department police officer at the time of the his separation from active duty in the department.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-160 Restrictions on issuance of registration certificates.

- (a) Subject to subsections (b) and (c), the superintendent shall issue no more than one firearm registration certificate to a person for a handgun during any 30-day period; provided that the superintendent may permit a person first becoming a city resident to register more than one handgun if those handguns were lawfully owned in another jurisdiction for a period of 6 months prior to the date of application.
- (b) In addition to a registration certificate for a handgun pursuant to subsection (a), an applicant may be issued a registration certificate for:

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- (1) any firearm possessed by an applicant that was lawfully registered on the date of the enactment of this ordinance;
 - (2) any long gun which is eligible to be registered; or
 - (3) any antique firearm, including antique handguns.

The burden of proving that a firearm is an antique firearm shall be on the applicant.

(c) In addition to a registration certificate for a handgun pursuant to subsection (a), a retired department police officer may be issued a registration certificate for each duty-related handgun that was registered to that retired department police officer at the time of the his separation from active duty in the department.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-170 Unregisterable firearms.

No registration certificate shall be approved for any of the following types of firearms:

- (a) a sawed-off shotgun, .50 caliber rifle, machine gun, or short-barreled rifle;
- (b) an unsafe handgun;
- (c) a firearm that becomes unregisterable under the provisions of this chapter; provided that it shall only be unregisterable for that person; or
- (d) assault weapons, unless they are owned by a person who is entitled to carry or possess them pursuant to section 8-20-035.

(Added Coun. J. 7-2-10, p. 96234, § 4)

■8-20-180 CFP and registration certificate – General provisions.

(a) After issuance of a CFP or a registration certificate to a person, the person shall examine the CFP or registration certificate to insure that the information thereon is correct. If the information is incorrect in any respect, the person shall return it to the superintendent with a signed statement showing the nature of the error. The superintendent shall correct the error if it occurred as a result of the superintendent's administrative process.

In the event that the error resulted from incorrect information contained in the application, the person shall submit an amended application setting forth the correct information and a statement explaining the error in the original application.

- (b) A CFP and the registration certificate shall be valid only for the person to whom it was issued.
- (c) A registration certificate shall only be valid for the address on the registration certificate. Except in the lawful transportation of a firearm, a person shall not carry or possess any firearm at any location other than that authorized by the registration certificate.
 - (d) A CFP or registration certificate shall not be subject to sale, assignment, or transfer, voluntary

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or involuntary.

(e) Any application for a CFP or a registration certificate shall be held in abeyance when there is a criminal proceeding for a violent crime, or an offense involving a weapon, or a proceeding to deny or revoke a CFP or firearm registration certificate pending against the person, until such proceeding has terminated.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-185 Additional duties.

- (a) Every person issued a CFP or a firearm registration certificate, in addition to any other requirements of this code, shall immediately notify the department in a manner prescribed by the superintendent of:
- (1) the destruction of his firearm, or when the person knows, or should have known, that his firearm is lost, stolen or otherwise missing;
- (2) the loss, theft or destruction of the CFP or registration certificate within 72 hours of the discovery of such loss, theft, or destruction;
 - (3) a change in any of the information appearing on the CFP or firearm registration certificate;
- (4) the sale, transfer, inheritance, or other disposition of the firearm not less than 48 hours prior to delivery.
- (b) Every person issued a CFP or a firearm registration certificate, in addition to any other requirements of this code, shall:
- (1) immediately return to the superintendent his copy of the registration certificate for any firearm which is lost, stolen, destroyed or otherwise disposed of; and
- (2) keep all information current. Any change in required information shall be reported, on a form and in manner prescribed by the superintendent, within 24 hours after the change.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-190 Denials and revocations.

- (a) An application for a CFP or a registration certificate shall be denied for any of the following reasons:
 - (1) any of the eligibility criteria of this chapter are not currently met;
 - (2) the firearm is an unregisterable firearm;
- (3) the information furnished on or in connection with the application for a CFP or a registration certificate is false or misleading; or
- (4) the person fails to respond to any additional information, or investigation inquiries, requested by the superintendent regarding any application.

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- (b) A registration certificate shall be revoked:
 - (1) when the firearm becomes an unregisterable firearm; or
 - (2) if the CFP of the person was revoked.
- (c) A CFP shall be revoked if any of the eligibility criteria of this chapter are not currently met.
- (d) A CFP or registration certificate may be denied or revoked for a violation of this chapter, or any rules or regulations promulgated hereunder.
- (e) The CFP and all registration certificates of any person convicted of a felony after the issuance of a CFP or registration certificate to that person shall be automatically revoked by operation of law, without a further hearing. The person shall immediately dispose of all firearms by:
- (i) peaceably surrendering to the department all firearms for which a registration certificate was issued;
 - (ii) removing such firearm from the city; or
 - (iii) otherwise lawfully disposing of his interest in such firearm.

The person shall submit to the superintendent evidence of the disposition of any such firearm in accordance with rules and regulations promulgated by the superintendent.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-200 Procedure for denial.

- (a) If an application for a CFP or a registration certificate is denied by the superintendent, the superintendent shall notify the person making such application, in writing, of the denial. The notice of denial shall:
 - (1) set forth the basis of the denial;
- (2) include a statement that within ten days of the notice of denial, the person is entitled to request a hearing, in person and in writing, at the department of administrative hearings;
- (3) include a statement that the person is entitled to appear at the hearing to testify, present documents, including affidavits, and any other evidence to contest the denial;
- (4) include a statement that if the person fails to request a hearing within ten days, the person is deemed to have conceded the validity of the reason stated in the notice and the denial shall become final;
 - (5) include a certificate of service; and
- (6) include an oath or affirmation by the superintendent certifying the correctness of the facts set forth in the notice of denial.
 - (b) The person, within ten days after notice is sent of the denial, may file with the department of

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administrative hearings a request for a hearing. Such hearing request shall be made in person, and in writing, at the department of administrative hearings. An administrative law officer of the department of administrative hearings shall conduct such hearing within 72 hours of the request, excluding Saturdays, Sundays, and legal holidays.

- (c) The department of administrative hearings shall conclude the hearing no later than 7 days after the commencement of the hearing.
- (d) Based upon the evidence contained in the record, an administrative law officer of the department of administrative hearings shall, within 5 days of the conclusion of the hearing, issue written findings and enter an order granting or denying the application. A copy of the findings and order shall be served upon the person and all parties appearing or represented at the hearing.
- (e) If the person does not request a hearing within ten days after the notification of the denial is sent, the person shall be deemed to have conceded the validity of the reason stated in the notice and the denial shall become final.
 - (f) Within three days after all the time for hearings or appeals has expired, the person shall:
- (1) peaceably surrender to the department the firearm for which the registration certificate was denied;
 - (2) remove such firearm from the city; or
 - (3) otherwise lawfully dispose of his interest in such firearm.

The person shall submit to the superintendent evidence of the disposition of any such firearm in accordance with rules and regulations promulgated by the superintendent.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-205 Procedure for revocation.

- (a) Except in cases where a CFP or registration certificate is automatically revoked pursuant to section 8-20-190(e), if, in the determination of the superintendent, a CFP or a registration certificate should be revoked, he shall notify the person whose CFP or registration certificate is the subject of such revocation, in writing, of the proposed revocation. The notice shall:
 - (1) set forth the basis for the revocation;
 - (2) specify the location, date, and time for a hearing on the revocation;
- (3) include a statement that the person is entitled to appear at the hearing to testify, present documents, including affidavits, and any other evidence to contest the proposed revocation;
- (4) include a statement that failure of the person to appear at the hearing may include an entry of an order revoking the person's CFP or registration certificate;
 - (5) include a certificate of service; and

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- (6) include an oath or affirmation by the superintendent certifying the correctness of the facts set forth in the notice.
- (b) The department of administrative hearings shall convene the hearing at the location and on the date and time specified in the revocation notice.
- (c) Based upon the evidence contained in the record, an administrative law officer of the department of administrative hearings shall, within 5 days of the conclusion of the hearing, issue written findings and enter an order granting or denying the proposed revocation. A copy of the findings and order shall be served upon the person and all parties appearing or represented at the hearing.
- (d) Within three days after notification of a decision unfavorable to the person, and all time for appeals has expired, the person shall:
 - (1) for revocation of a registration certificate:
- (i) peaceably surrender to the department the firearm for which the registration certificate was revoked;
 - (ii) remove such firearm from the city; or
 - (iii) otherwise lawfully dispose of his interest in such firearm.
 - (2) for revocation of a CFP, dispose of all firearms in accordance with subsection (d)(1).

The person shall submit to the superintendent evidence of the disposition of any such firearm in accordance with rules and regulations promulgated by the superintendent.

(e) In cases where a CFP or registration certificate is automatically revoked pursuant to section $\underline{8}$ - $\underline{20}$ - $\underline{190}$ (e), the superintendent shall notify the person of the automatic revocation of the person's CFP or registration certificate. Within three days after notification of the automatic revocation, the person may file with the department of administrative hearings a request, in writing, for a hearing on the sole issue of identity and whether he was the person so convicted. It shall be a rebuttable presumption that the person whose CFP or registration certificate was automatically revoked is the same person who was convicted of a felony.

An administrative law officer of the department of administrative hearings shall conduct such hearing within 5 days of the request for a hearing.

Based upon the evidence contained in the record, an administrative law officer of the department of hearings shall, within 5 days of the conclusion of the hearing, issue written findings as to sole issue of the identity of the person. A copy of the findings and order shall be served upon the person and all parties appearing or represented at the hearing.

If the person does not request a hearing within three days after the notification, the person shall be deemed to have conceded the validity of the identification.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-210 Automatic revocation of registration certificates.

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If, after a hearing, a CFP issued to a person is revoked, all firearm registration certificates issued to that person shall automatically be revoked and the person shall comply with section 8-20-205(d) for disposition of the firearms.

(Added Coun. J. 7-2-10, p. 96234, § 4)

ARTICLE IV. MISCELLANEOUS PROVISIONS.

8-20-220 False information - Forgery - Alteration.

- (a) It is unlawful for any person purchasing any firearm or ammunition, or applying for any CFP or registration certificate, or, in giving any information pursuant to the requirements of this chapter, to knowingly give false information or offer false information or evidence of identity.
- (b) It is unlawful for any person to forge or materially alter any application for a CFP or firearm registration certificate.
- (c) It is unlawful for any person to forge or materially alter a CFP or a firearm registration certificate.
- (d) It is unlawful for any person to knowingly possess a forged or materially altered CFP or firearm registration certificate.
- *(f) It is unlawful for any person to knowingly make any false statement, submit any false information or misrepresent any information required in this chapter.

(Added Coun. J. 7-2-10, p. 96234, § 4)

* Editor's note - As set forth in Coun. J. 7-2-10, p. 96234, § 4. Intended lettering of paragraph is "(e)." Future legislation will correct the section as needed.

№8-20-230 Notice.

For the purposes of this chapter, service of any notice, finding or decision upon a person shall be completed by any of the following methods by:

- (a) personal delivery of a copy of such notice, finding or decision to the person;
- (b) leaving a copy of such notice, finding or decision at the address identified on the application for a CFP or registration certificate; or
- (c) mailing, by first class mail, a copy of the notice, finding or decision to the address identified on the application for a CFP or registration certificate, in which case service shall be complete as of the date the notice was mailed.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-240 Posting of unsafe handguns.

(a) The superintendent shall post on the department's web site the roster of unsafe handguns.

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(b) No less than 10 days prior to placing any handgun on the roster of unsafe handguns, the superintendent shall post on the department's web site the type or model of the handgun that will be placed on the roster.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-250 Seizure and forfeiture of firearms, ammunition, laser sight accessories and firearm silencers and mufflers – Authority and destruction.

The superintendent has the authority to seize any firearm, assault weapon, ammunition, laser sight accessories, or firearm silencer or muffler carried or possessed in violation of this chapter or any applicable state or federal law. Such items are hereby declared contraband and shall be seized by and forfeited to the city.

Whenever any firearm, ammunition, laser sight accessories, or firearm silencer or muffler is surrendered or forfeited pursuant to the terms of this chapter, or any applicable state or federal law, the superintendent shall ascertain whether such firearm, ammunition, assault weapon, laser sight accessories, or firearm silencer or muffler is needed as evidence in any matter. All such items which are not required for evidence shall be destroyed at the direction of the superintendent; provided that those firearms and ammunition that the superintendent shall deem to be of use to the department may be retained for the use of the department. A record of the date and method of destruction and an inventory of the firearm or ammunition so destroyed shall be maintained.

(Added Coun. J. 7-2-10, p. 96234, § 4)

■8-20-260 Rules and regulations.

The superintendent has the authority to promulgate rules and regulations for the implementation of this chapter and to prescribe all forms and the information required. All rules and regulations promulgated by the superintendent pursuant to this chapter shall be posted on the department's web site.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-270 Acquisition or possession prohibited by law.

Nothing in this chapter shall make lawful the acquisition or possession of firearms or ammunition which is otherwise prohibited by law.

(Added Coun. J. 7-2-10, p. 96234, § 4)

8-20-280 Prohibition on shooting galleries and target ranges.

Shooting galleries, firearm ranges, or any other place where firearms are discharged are prohibited; provided that this provision shall not apply to any governmental agency. The discharge of a firearm in an area where hunting is permitted shall not be a violation of this section.

(Added Coun. J. 7-2-10, p. 96234, § 4)

№8-20-290 Severability.

If any provision or term of this chapter, or any application thereof, is held invalid, the invalidity shall not affect other applications of the provisions or terms of this chapter which reasonably can be given

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effect without the invalid provision or term for the application thereof.

(Added Coun. J. 7-2-10, p. 96234, § 4)

ARTICLE V. VIOLATION OF CHAPTER PROVISIONS

8-20-300 Violation - Penalty.

- (a) Any person who violates section <u>8-20-020</u>, <u>8-20-030</u>, <u>8-20-035</u>, <u>8-20-060</u>, <u>8-20-080</u> or <u>8-20-110</u> shall upon conviction be fined not less than \$1,000.00 nor more than \$5000.00 and be incarcerated for a term not less than 20 days nor more than 90 days. Each day that such violation exists shall constitute a separate and distinct offense.
- (b) Unless another fine or penalty is specifically provided, any person who violates any provision of this chapter, or any rule or regulation promulgated hereunder, shall upon conviction or a finding of liability for the first offense, be fined not less than \$1,000.00, nor more than \$5,000.00, or be incarcerated for not less than 20 days nor more than 90 days, or both. Any subsequent conviction for a violation of this chapter shall be punishable by a fine of not less than \$5,000.00 and not more than \$10,000.00, and by incarceration for a term of not less than 30 days, nor more than six months. Each day that such violation exists shall constitute a separate and distinct offense.
- (c) In addition to any other fine or penalty provided in this chapter, the CFP or registration certificate of any person who violates any provision of this chapter, or rule or regulation promulgated hereunder, may be revoked. Any person whose CFP is revoked shall not be eligible for a CFP for 5 years from the date of the revocation; provided that the superintendent may waive this restriction if, in the determination of the superintendent, the applicant has demonstrated that the applicant has good reason to fear injury to his person or property.
- (d) Upon the determination that a person has violated any provision of this chapter or any rule or regulation promulgated hereunder, the superintendent may institute an administrative adjudication proceeding with the department of administrative hearings by forwarding a copy of a notice of violation or a notice of hearing, which has been properly served, to the department of administrative hearings.

(Added Coun. J. 7-2-10, p. 96234, § 4)

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EXHIBIT B

Redacted Pursuant to Court's Agreed Protective Order

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EXHIBIT C

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Richard M. Daley Mayor

Department of Police · City of Chicago 3510 S. Michigan Avenue · Chicago, Illinois 60653

Jody P. Weis Superintendent of Police

Mr. Shawn Gowder 7533 S. Winchester Chicago, Illinois 60707

Re: Notice of Denial of

November 10, 2010

Dear Mr. Gowder,

A review of your application and the records maintained by the Chicago Police Department indicates that you are ineligible to be approved for a Chicago Firearm Permit (CFP). Pursuant to Chapter 8-20-190 of the Municipal Code of Chicago, your application for a CFP is denied for the following reason:

You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago 8-20-110 (b) (3) (iii).

Pursuant to Municipal Code of Chicago 8-20-200, within ten (10) days of this Notice of Denial, you are entitled to request a hearing, in person and in writing, at the Department of Administrative Hearings. The Department of Administrative Hearings is located at the following address:

> Department of Administrative Hearings **Municipal Hearings Division** 740 N Sedgwick, 2nd Floor Chicago, Il 60610

You are entitled to appear at the hearing to testify, present documents, including affidavits, and any other evidence to contest this denial. If you fail to request a hearing within ten (10) days, you will be deemed to have conceded the validity of the reason for the denial stated above and the denial shall become final.

I hereby affirm, under penalties as provided by law, that the information contained herein is correct to the best of my knowledge, information and belief.

Gun Registration Section

Chicago Police Department

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Certificate of Service

The undersigned, under penalties as provided by law, hereby certifies that this Notice of Denial was served upon the person to whom directed, by placing the Notice in an envelope, addressed as shown above and depositing it into the US mail located at CPD Headquarters at or before 5:00 pm on the 10th of November 2010, using prepaid certified mail postage.

Sgt. Jeffrey Schaaf #2274 Gun Registration Section Chicago Police Department Case: 1:11-cv-01304 Document #: 26-2 Filed: 06/21/11 Page 41 of 55 PageID #:513

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EXHIBIT D

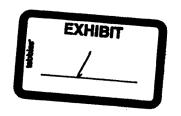
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706R000041 22 NOV 2010

I (SHAWN GOWDER) AM REQUESTING
A HEARTING REGARDING MY
Denial of Application for A
Chicago Finehroms Permit
Phone # 773 757-9799



Shown D Coping 75335 winchester ChiOAGO IC 60620



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City of Chicago Richard M. Daley, Mayor

Department of Administrative Hearings

Scott V. Bruner Director

Administrative Offices

"40 North Sedgwick Street

(hicago, Illinois 60610 (312) 742-8200

(312) 742-8222 (FAX) (312) 742-8249 (TTY)

http://www.cityofchicago.org

706K0004/

November 22, 2010

Mr. Shawn Gowder 7533 S. Winchester Chicago, IL 60620

NOTICE OF HEARING

Please be advised that you have been scheduled for an administrative hearing pursuant to your request for hearing under 8-20-200 of the Municipal Code of Chicago. This hearing is based upon the denial of a Chicago Firearm Permit by City of Chicago, Department of Police. The denial of Firearm Permit specifies

1) You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See MCC 8-20-110 (b) (3) (iii).

You are hereby noticed to appear for hearing on Wednesday, November 24, 2010 at 2:00 p.m., 400 W. Superior, Room 111, Chicago, Illinois. Please take notice that at the hearing you may be represented by counsel and you may produce witnesses and evidence on your behalf. Your failure to appear may result in an order of default being entered against you.

Should you have any questions, you may call me at (312) 742-8350.

Sincerely,

Michele McSwain

Division Chief

Municipal Hearings Division

PROOF OF SERVICE BY PERSONAL SERVICE

I, Michele McSwain, at attorney, certify that I served a copy of the above Notice of Hearing by personally serving it to Shawn Gowder at 740 N. Sedgwick, 2nd floor, Chicago, IL, 60654 on November 22, 2010 at 11:00 a.m.

2010 at 11:00 a.m.







Case: 1:11-cv-01304 Document #: 26-2 Filed: 06/21/11 Page 44 of 55 PageID #:516

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Docket # 10GR000041 Re: Shawn Gowder

I hereby affirm under penalties as provided by law that the information contained herein is correct to the best of my information and belief; was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with personal knowledge of those matters; was kept in the course of the regularly conducted activity; and was made by the regular conducted activity as a regular practice of the Chicago Police Department.

Sgt. Jeffre Schaaf#2274
Gun Registration Section



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EXHIBIT E

Case: 1:11-cv-01304 Document #: 26-2 Filed: 06/21/11 Page 46 of 55 PageID #:518

Case: 1:11-cv-01304 Document #: 13-2 Filed: 03/02/11 Page 37 of 46 PageID #:194

THE CITY OF CHICAGO, ILLINOS DEPARTMENT OF ADMINISTRATIVE BEARINGS MUNICIPAL HEARINGS DIVISION

CITY OF CHICAGO, a Municip	al)
Corporatio 1,)
Petitioner)
)
v.) Docket No. 10 GR 000041
)
SHAWN G DWDER,)
Respondent)

DECISION

- 1. This body has jurisdiction of the subject matter and over the parties.
- 2. This matter is before this body on an Appeal of the Denial of a Chicago Firearm Permit to Shawn Gowder ("the Applicant") by the Chicago Police Department, City of Chicago (the "Police Department")
- 3. The Applicant filed an application for a Chicago Firearm Permit ("CFP") with the Police Department. See Peritioner's Group Exhibit 5
- 4. By notice dated November 10, 2010, the Police Department advised the Applicar t that he was ineligible to be approved for a CFP, and thus his application for a permit was denied. See Petitioner's Group Exhibit 4
- 5. The P slice Department based its denial on the provisions four d in MCC 8-20-110 (b) (3) (i i) which provides, in part that:
 - (a)). . it is unlawful for any person to carry or possess a firearm without a CFP
 - (b) No CFP application shall be approved unless the applicant:
 - (3) has not been convicted by a court in any jurisdiction of:
 - (iii) an unlawful use of a weapon that is a firearm...

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- 5. The Applicant had been convicted on August 25, 1995 in Cook County Circuit Court of an *unlawful use of a weapon* in violation of 720 ILCS :/24-1(a)(10). See Petition 1's Group Exhibits 6, ?, 8 and 9.
- 6. 720 ILCS 5/24-1(a) (10) provides as follows:
 - (a) A person commits the offense of unlawful use of a weapon when he know ingly:...
 - (10) ('arries or possesses on or about his person, upon any public street, alley, or of her public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person is permission, any pistol, revolver, stungun or taser or other firearm...
- 7. The provisions of 720 ILCS 5/24-1(a)(10) is clear as to what constitutes an unlawful use of a weapon.
- 8. The plain and ordinary meaning and usage given to "unlawful use of a weapon" in this jurisdict on is to "carry or possess a firearm" as provided in 720 ILCS 5/24-1(a) (10)
- 9. There is no distinction between the meanings of "use of a weapon" and "carry and possess a fir arm, as used in MCC 8-20-110
- 10. The bar is for the denial of the application has not been rebutted by the Applicant
- 11. The detail by the Chicago Police Department of the Applicant's application for a CFP is affir ted.
- 12. This bo ly does not have jurisdiction to hear Constitutional issues as raised by the Applicant.
- 13. Pursuar t to Section 2-14-102 of the Chicago Municipal Code, t as final decision is subject to regiew under the Illinois Administrative Review Act.

Entered:

Sharon K. Davis

Administrative Law Judge

November 9, 2010

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Case: 1:11-cv-01304 Document #: 13-2 Filed: 03/02/11 Page 39 of 46 PageID #:196

EXHIBIT F

Case: 1:11-cv-01304 Document #: 26-2 Filed: 06/21/11 Page 49 of 55 PageID #:521

Case: 1:11-cv-01304 Document #: 13-2 Filed: 03/02/11 Page 40 of 46 PageID #:197

Kolodziej, Stephen

From: McSwain, Michele [michele.mcswain@cityofchicago.org]

Sent: Friday, December 17, 2010 9:16 AM
To: Sachnoff, Scott, Kolodziej, Stephen

Cc: Nichols, Helen

Subject: RE: City of Chicago v. Gowder, 10 GR 000041

I directed the ALJ to re-issue the order last night after Mr. Kolodziej brought this to my attention. As soon as I get it, I will send you copies.

Michele McSwain
Senior Administrative Law Judge/Division Chief
City of Chicago, Department of Administrative Hearings
740 N. Sedgwick, 2nd Floor
Chicago, IL 60654
(312) 742-8350 Office
(312) 742-8248 Fax

From: Sachnoff, Scott

Sent: Friday, December 17, 2010 9:13 AM

To: Kolodziej, Stephen

Cc: McSwain, Michele; Nichols, Helen

Subject: RE: City of Chicago v. Gowder, 10 GR 000041

Mr. Kolodziej,

I, too, have not received a copy of any decision in the Gowder case as of today, Friday, 12/17/10.

I have copied Michele McSwain, who is Senior Hearing Officer in charge of these types of matters for the Department of Administrative Hearings, as well as her administrative assistant, Helen Nichols, on this response for her review and comment.

Scott Sachnoff
Senior Counsel
Municipal Prosecutions Division
City of Chicago Law Department
740 N. Sedgwick Street First Floor
Chicago, IL 60654
312.742.1393 Voice
312. 742.8420 FAX
ssachnoff@cityofchicago.org

From: Kolodziej, Stephen [mailto:skolodziej@brennerlawfirm.com]

Sent: Thursday, December 16, 2010 4:17 PM

To: Sachnoff, Scott

Subject: City of Chicago v. Gowder, 10 GR 000041

Dear Mr. Sachnoff:

Mr. Gowder advised me that he received by mail today the hearing officer's decision in this matter. I myself have not received a copy from the Department of Administrative Hearings, and the decision does not contain a proof of service or any other indication that it was served on either me or you. In any event, the decision is

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dated November 9, 2010, which is obviously incorrect since the hearing did not occur until December 8, 2010. I believe the decision must be re-issued by the hearing officer to reflect a correct date, as this obviously affects the time for seeking review under the Administrative Review Act.

Please call me with your thoughts as soon as possible.

Thank you,

Steve

Stephen A. Kolodziej Brenner, Ford, Monroe & Scott, Ltd. 33 North Dearborn Street Suite 300 Chicago, Illinois 60602 312-781-1970 Direct Dial 312-924-7508

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail (or the person responsible for delivering this document to the intended recipient), you are hereby notified that any dissemination, distribution, printing or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please respond to the individual sending the message, and permanently delete the original and any copy of any e-mail and printout thereof.

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Case: 1:11-cv-01304 Document #: 13-2 Filed: 03/02/11 Page 42 of 46 PageID #:199

EXHIBIT G

Case: 1:11-cv-01304 Document #: 26-2 Filed: 06/21/11 Page 52 of 55 PageID #:524

Case: 1:11-cv-01304 Document #: 13-2 Filed: 03/02/11 Page 43 of 46 PageID #:200

THE CITY OF CHICAGO, ILLINOS DEPARTMENT OF ADMINISTRATIVE HEARINGS MUNICIPAL HEARINGS DIVISION

CITY OF CHICAGO, a Municip Corporation,	oal)	
Petitioner)	
v.)	Docket No. 10 GR 000041
SHAWN COWNED)	Docket No. 10 GR (0004)
SHAWN GOWDER,)	
Respondent)	

DECISION

- 1. This body has jurisdiction of the subject matter and over the parties.
- 2. This matter is before this body on an Appeal of the Denial of a Chicago Firearm Permit to Shawn Gowder ("the Applicant") by the Chicago Police Department, City of Chicago (the "Police Department")
- 3. The Applicant filed an application for a Chicago Firearm Permit ("CFP") with the Police Department. See Petitioner's Group Exhibit 5
- 4. By notice dated November 10, 2010, the Police Department advised the Applicant that he was ineligible to be approved for a CFP, and thus his application for a permit was denied. See Petitioner's Group Exhibit 4
- 5. The Police Department based its denial on the provisions found in MCC 8-20-110 (b) (3) (iii) which provides, in part that:
 - (a))... it is unlawful for any person to carry or possess a firearm without a CFP.
 - (b) No CFP application shall be approved unless the applicant:
 - (3) has not been convicted by a court in any jurisdiction of:
 - (iii) an unlawful use of a weapon that is a firearm...

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5. The Applicant had been convicted on August 25, 1995 in Cook County Circuit Court of an *unlawful use of a weapon* in violation of 720 ILCS 5/24-1(a)(10). See Petitioner's Group Exhibits 6, 7, 8 and 9.

- 6. 720 ILCS 5/24-1(a) (10) provides as follows:
 - (a) A person commits the offense of unlawful use of a weapon when he knowingly:...
 - (10)Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stungun or taser or other firearm...
- 7. The provisions of 720 ILCS 5/24-1(a)(10) is clear as to what constitutes an unlawful use of a weapon.
- 8. The plain and ordinary meaning and usage given to "unlawful use of a weapon" in this jurisdiction is to "carry or possess a firearm" as provided in 720 ILCS 5/24-1(a) (10)
- 9. There is no distinction between the meanings of "use of a weapon" and "carry and possess a firearm, as used in MCC 8-20-110
- 10. The basis for the denial of the application has not been rebutted by the Applicant
- 11. The denial by the Chicago Police Department of the Applicant's application for a CFP is affirmed.
- 12. This body does not have jurisdiction to hear Constitutional issues as raised by the Applicant.
- 13. Pursuant to Section 2-14-102 of the Chicago Municipal Code, this final decision is subject to review under the Illinois Administrative Review Act.

Entered:

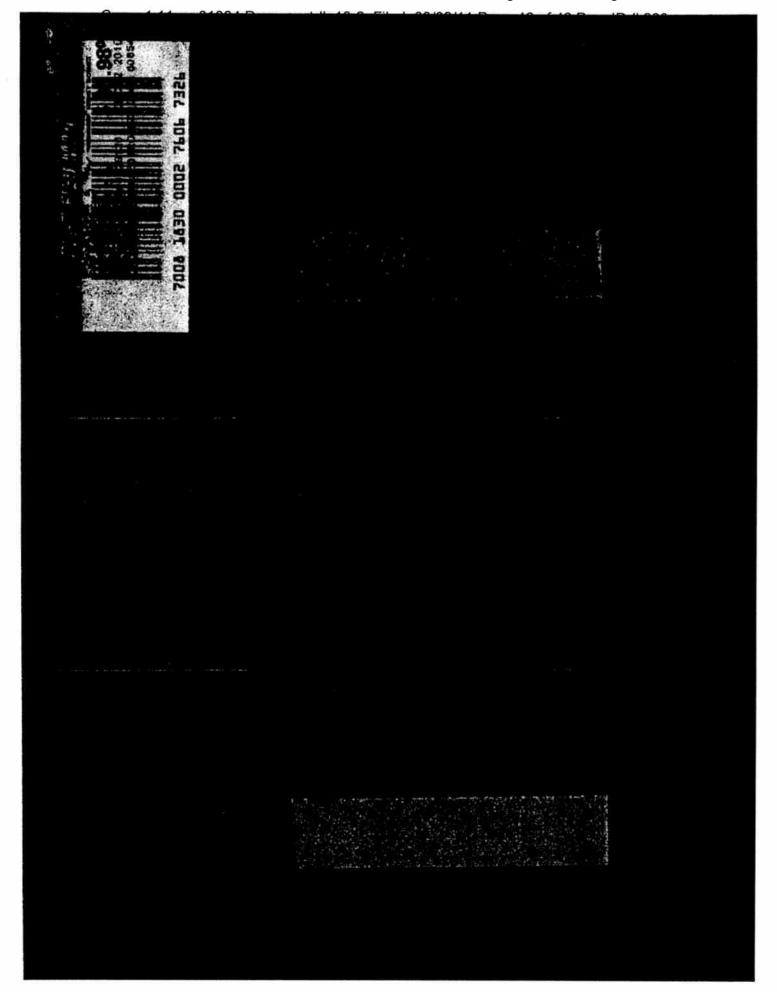
Sharon K. Davis Administrative Law Judge

Administrative Lav

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Case: 1:11-cv-01304 Document #: 13-2 Filed: 03/02/11 Page 45 of 46 PageID #:202

EXHIBIT H



Case: 1:11-cv-01304 Document #: 26-3 Filed: 06/21/11 Page 1 of 15 PageID #:528

EXHIBIT 2

Case: 1:11-cv-01304 Document #: 26-3 Filed: 06/21/11 Page 2 of 15 PageID #:529

Case: 1:11-cv-01304 Document #: 17 Filed: 04/07/11 Page 1 of 14 PageID #:313

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

SHAWN GOWDER,)	
)	
Plaintiff,)	
)	
V.)	
)	No. 11 CV 1304
CITY OF CHICAGO, a municipal corporation,)	
the CITY OF CHICAGO DEPARTMENT OF)	JUDGE DER-YEGHIAYAN
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER,)	
Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,)	
Superintendent of the City of Chicago Department)	
of Police,)	
)	
Defendants.)	

DEFENDANTS' ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT FOR ADMINISTRATIVE REVIEW, DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Defendants City of Chicago (the "City"), Scott V. Bruner ("Bruner"), City of Chicago Department of Police ("CPD"), and Jody P. Weis ("Weis"), by and through their attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, hereby file their Answer and Defenses to Plaintiff's Complaint for Administrative Review, Declaratory Judgment, and Injunctive Relief.

INTRODUCTION

1. This is an action for administrative review brought to vindicate plaintiff's constitutional rights under the Second and Fourteenth Amendments to the United States Constitution and Article I, Section 22 of the Illinois Constitution, which were unlawfully infringed by the defendants when they denied plaintiff's application for a Chicago Firearm Permit ("CFP") pursuant Section 8-20-110 of the Chicago Municipal Code ("MCC"). This action seeks relief in the form of a reversal of the decision of the Chicago Department of Administrative Hearings affirming the denial of plaintiff's application for a CFP; a declaratory judgment that defendants have violated plaintiff's

Federal and State Constitutional rights and that MCC Section 8-20-110 is unconstitutional on its face and as applied to plaintiff; and a mandatory injunction requiring defendants to issue a CFP to plaintiff.

ANSWER: Defendants admit that Plaintiff brings this action for administrative review and under the Second and Fourteenth Amendment to the United States Constitution and Article I, Section 22 of the Illinois Constitution, but Defendants deny that any of Plaintiff's rights were violated. Defendants further admit that Plaintiff seeks reversal of the decision of the Chicago Department of Administrative Hearings ("DOAH"), a declaratory judgment and injunctive relief, but deny that Plaintiff is entitled to any such relief. Defendants deny the remaining allegations contained in Paragraph 1.

PARTIES

2. Plaintiff Shawn Gowder is a resident of the City of Chicago.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.

3. Defendant City of Chicago is a political subdivision of the State of Illinois. Defendant City of Chicago Department of Administrative Hearings, Municipal Hearings Division is the administrative agency in which the hearing giving rise to this action occurred. Defendant City of Chicago Department of Police is an agency of the City of Chicago that denied plaintiff's application for a CFP, which denial was reviewed and affirmed by the Department of Administrative Hearings, as described more fully herein. Defendant Scott V. Bruner is Director of the City of Chicago Department of Administrative Hearings. Defendant Jody P. Weis is Superintendent of Police for the City of Chicago Department of Police.

ANSWER: Defendants admit the allegations contained in the first three sentences contained in Paragraph 3. Defendants admit that Scott V. Bruner was the Director of the City of Chicago Department of Administrative Hearings but deny that he is currently serving in such capacity. Defendants further admit that Jody P. Weis was the Superintendent of Police for the City of Chicago but deny that he is currently serving in such capacity.

JURISDICTION and VENUE

4. This Court has jurisdiction of this claim under the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.* Plaintiff's Federal and State Constitutional claims arise out of, and are inextricably intertwined with, plaintiff's administrative review claim to review the denial of plaintiff's application for a CFP, and this court has jurisdiction over those claims pursuant to 735 ILCS 5/2-701; Article 6, Section 9 of the Illinois Constitution, ILCS Const. Art. 6, § 9; and U.S. Const. Amend. II and XIV.

ANSWER: Defendants admit that this Court has jurisidiction over Plaintiff's federal constitutional claims pursuant to 28 U.S.C. §§ 1331 and 1343. Defendants further admit that this Court has jurisdiction over Plaintiff's administrative review and state constitutional claims pursuant to 28 U.S.C. § 1367. Defendants deny the remaining allegations contained in Paragraph 4.

5. This action is brought pursuant to the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, and 42 U.S.C. § 1983. Venue is proper in this circuit under 735 ILCS 5/2-101 and 2-103.

ANSWER: Defendants admit that Plaintiff has brought this action pursuant to the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, and 42 U.S.C. § 1983. Defendants further admit that venue is proper in this district pursuant to 28 U.S.C. § 1391(b), but deny the remaining allegations contained in Paragraph 5.

BACKGROUND

6. On June 28, 2010, the Supreme Court of the United States held in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), that the Second Amendment right to keep and bear arms restrains state and local governments through incorporation in the Fourteenth Amendment. The Supreme Court remanded the case for the lower courts to apply the Second Amendment to the challenged Chicago ordinance that effectively banned private ownership of handguns within the city. In anticipation that the ordinance challenged in McDonald would be struck down, the City Council of Chicago, on July 2, 2010, amended the Municipal Code of Chicago as it pertains to firearms. The newly enacted firearms ordinance is codified as Municipal Code of Chicago ("MCC") Chapter 8-20, and is attached hereto as Exhibit A.

ANSWER: Defendants admit the allegations contained in the first and second sentences

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of Paragraph 6. Defendants admit that the Chicago City Council amended the Municipal Code of Chicago as it pertains to firearms on July 2, 2010, but lack knowledge or information sufficient to form a belief as to the remaining allegations contained in the third sentence of Paragraph 6. Defendants admit that the firearms ordinance is codified as Municipal Code of Chicago ("MCC") Chapter 8-20, and that Exhibit A attached to Plaintiff's Complaint appears to be a true and correct

7. Pursuant to MCC § 8-20-110(a), it is unlawful for any person to carry or possess a firearm in Chicago without a Chicago Firearm Permit ("CFP"). MCC § 8-20-110(b) provides that no CFP application shall be approved unless the applicant, inter alia, "has not been convicted by a court in any jurisdiction of . . . an unlawful use of a weapon that is a firearm." MCC § 8-20-ll0(b)(3)(iii).

copy of such ordinance.

ANSWER: Defendants admit that, subject to MCC § 8-20-110(d), it is generally unlawful for any person to carry or possess a firearm in Chicago without a Chicago Firearm Permit ("CFP"). Defendants admit the remaining allegations contained in Paragraph 7.

8. MCC § 8-20-010 contains the Definitions applicable to Chapter 8-20. Neither that Section nor any other provision of MCC Chapter 8-20 defines the term "use."

ANSWER: Defendants admit the allegations contained in Paragraph 8.

9. Plaintiff Shawn Gowder lives in a high-crime area of Chicago, in which violent crimes, including drive-by and gang-related shootings, home invasions, rapes, murders, armed robberies, and other violent crimes, are frequent. He is greatly concerned for his own safety and the safety of his family, and wishes to keep a handgun in his home for self-defense.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth of the allegations contained in Paragraph 9.

10. At all times relevant hereto, plaintiff held and still holds a valid Illinois Firearm Owner's Identification Card ("FOID Card") issued by the Ilinois State Police, pursuant to the Illinois Firearm Owner's Identification Card Act, 430 ILCS 65/1 *et seq*.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to truth

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of the allegations contained in Paragraph 10.

11. On November 1, 2010, plaintiff filed an application for a CFP with the City of Chicago Department of Police. A true and correct copy of plaintiff's CFP application is attached hereto as Exhibit B. A copy of plaintiff's valid and current FOID Card was attached to plaintiff's CFP application, and appears at page 3 of Exhibit B.

ANSWER: Defendants admit that on or about November 1, 2010, Plaintiff filed an application for a CFP with the City of Chicago Department of Police. Defendants further admit that Exhibit B to Plaintiff's Complaint appears to be a true and correct copy of Plaintiff's CFP application and current Illinois FOID card.

12. Plaintiff has never been convicted of a felony in any jurisdiction. Plaintiff has one misdemeanor conviction, entered in 1995, for carrying/possessing a firearm on a public street in violation of 720 ILCS 5/24-1 (a)(10). Plaintiff is eligible to possess and receive firearms under the laws of Illinois and the United States.

ANSWER: Defendants admit that Plaintiff has at least one misdemeanor conviction in 1995 for carrying/possessing a firearm on a public street in violation of 720 ILCS 5/24-1(a)(10). Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 12.

13. On November 10, 2010, the City of Chicago Department of Police denied plaintiff's application for a CFP on the sole ground that "You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago 8-20-110(b)(3)(iii)." A true and correct copy of the denial letter served upon plaintiff by the Department of Police is attached hereto as Exhibit C.

ANSWER: Defendants admit the allegations contained in Paragraph 13, and further admit that Exhibit C to Plaintiff's Complaint appears to be a true and correct copy of the denial letter issued by the Department of Police.

14. On November 22, 2010, plaintiff filed a written request for a hearing to contest the denial of his CFP application with the Chicago Department Administrative Hearings, pursuant to MCC § 8-20-200. A true and correct copy of plaintiff's written request for an administrative hearing

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is attached hereto as Exhibit D.

ANSWER: Defendants admit the allegations contained in Paragraph 14, and further admit that Exhibit D to Plaintiff's Complaint appears to be a true and correct copy of Plaintiff's written request for an administrative hearing.

15. The Department of Administrative Hearings scheduled a hearing on the denial of plaintiff's CFP application for November 24, 2010. The hearing was continued at plaintiff's request, without objection by the City of Chicago, to December 8, 2010, and proceeded on that date.

ANSWER: Defendants admit the allegations contained in Paragraph 15.

16. At the December 8, 2010 hearing, plaintiff submitted a written brief in support of his position, as well as oral argument of counsel. Plaintiff argued that because the term "use" is not defined in MCC Chapter 8-20, that term must be given its plain and ordinary meaning in the law of operating, discharging, or actively employing a firearm, rather than merely carrying or possessing a firearm; therefore, plaintiff's prior conviction for caring/possessing a firearm on a public street did not constitute a conviction for the unlawful "use" of a weapon within the meaning of MCC § 8-20-110(b)(3)(iii). Plaintiff further argued that a prior misdemeanor conviction, as opposed to a felony conviction, cannot form a basis for denial of the fundamental constitutional right to keep and bear arms. Thus, the denial of plaintiffs CFP application, based solely on a prior misdemeanor conviction for carrying/possessing a weapon in a public street, violated plaintiff's fundamental right to keep and bear arms under the Second and Fourteenth Amendments to the U.S. Constitution. Accordingly, MCC § 8-20-110(b)(3)(iii), on its face and as applied, was unconstitutional and void.

ANSWER: Defendants admit that Plaintiff submitted a written brief in support of his position, as well as oral argument of counsel, at the December 8, 2010 hearing. Defendants further admit that Plaintiff made the arguments in support of his appeal of the denial of a CFP contained in Paragraph 16, but deny that any of those arguments have merit. Defendants further deny that Plaintiff's rights were violated or that MCC § 8-20-110(b)(3)(iii), on its face and as applied, is unconstitutional and void. Further answering, Defendants state that Defendant DOAH has filed a certified copy of the complete administrative record as its answer pursuant to 735 ILCS § 5/3-108.

17. On or about December 16, 2010, plaintiff received in the mail a Decision issued by the Chicago Department of Administrative Hearings, which was dated "November 9, 2010." No

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certificate of service was included with this Decision, and the postmark on the envelope was illegible, so that plaintiff could not determine when it was served upon him. A copy of this Decision is attached hereto as Exhibit E. The Decision affirmed the denial of plaintiff's CFP application, but because it was dated a month before the hearing took place, plaintiff's counsel requested clarification from the Department as to what date the Decision was actually issued and served. The Department advised plaintiff's and Chicago's counsel that it would have the Administrative Law Judge re-issue the Decision, and would send it to counsel once this had occurred. A true and correct copy of the email correspondence between counsel for plaintiff and Chicago, and the Senior Administrative Law Judge of the Department, Michele McSwain, dated December 17, 2010, is attached hereto as Exhibit F. Plaintiff's counsel subsequently received by certified mail a second Decision, dated "12/8/10." This second Decision arrived in an envelope postmarked December 22, 2010. True and correct copies of the second Decision dated 12/8/10, and the envelope postmarked December 22, 2010, are attached hereto as Exhibits G and H, respectively.

ANSWER: Defendants admit that Exhibit E attached to Plaintiff's Complaint appears to be a true and correct copy of the Decision issued by DOAH dated November 9, 2010. Defendants admit that the Decision affirmed the denial of Plaintiff's CFP application and that Plaintiff's counsel requested clarification from DOAH as to what date the Decision was actually issued. Defendants admit that DOAH advised Plaintiff's and Chicago's counsel that it would have the Administrative Law Judge re-issue the Decision and would send it to counsel once this had occurred. Defendants admit that Exhibit F attached to Plaintiff's Complaint appears to be a true and correct copy of email correspondence between counsel for plaintiff and Chicago and Senior Administrative Law Judge Michele McSwain. Defendants further admit that Exhibits G and H attached to Plaintiff's Complaint appear to be, respectively, true and correct copies of the Decision of DOAH dated December 8, 2010 and the envelope dated December 22, 2010. Further answering, Defendants state that Defendant DOAH has filed a certified copy of the complete administrative record as its answer pursuant to 735 ILCS § 5/3-108.

18. Both copies of the Decision state the following reasons for affirming the denial of plaintiff's CFP application (numbered as they appear in the Decision):

Case: 1:11-cv-01304 Document #: 26-3 Filed: 06/21/11 Page 9 of 15 PageID #:536

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- 6. 720 ILCS 5/24-1(a)(l) provides as follows:
 - (a) A person commits the offense of unlawful use of a weapon when he knowingly: . . .
 - (10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or other incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm. . .
- 7. The provisions of no ILCS 5/24-1(a)(l0) is [sic] clear as to what constitutes an unlawful use of a weapon.
- 8. The plain and ordinary meaning and usage given to "unlawful use of a weapon" in this jurisdiction is to "carry or possess a firearm" as provided in 720 ILCS 5/24-1(a)(l0).
- 9. There is no distinction between the meanings of "use of a weapon" and "carry and possess a firearm["] as used in MCC 8-20-110.
- 10. The basis for the denial of the application has not been rebutted by the Applicant.
- 11. The denial by the Chicago Police Department of the Applicant's application for a CFP is affirmed.
- 12. This body does not have jurisdiction to hear Constitutional issues raised by the Applicant.
- 13. Pursuant to Section 2-14-102 of the Chicago Municipal Code, this final decision is subject to review under the Illinois Administrative Review Act.

Exh. E, p. 2 at paragraphs 6-13; Exh. G, p. 2 at paragraphs 6-13.

ANSWER: Defendants admit that Paragraph 18 appears to be a true and correct excerpt from the Decision of DOAH stating reasons affirming the denial of Plaintiff's CFP application,

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numbered as they appear in the Decision, but denies that these are the only reasons stated in the Decision. Further answering, Defendants state that Defendant DOAH has filed a certified copy of the complete administrative record as its answer pursuant to 735 ILCS § 5/3-108.

19. Plaintiff has timely filed this action seeking judicial review of the Decision within 35 days from the date a copy of the Decision was served upon the plaintiff, pursuant to Section 3-103 of the Illinois Administrative Review law, 735 ILCS 5/3-103.

ANSWER: Defendants admit the allegations contained in Paragraph 19. Further answering, Defendants state that Defendant DOAH has filed a certified copy of the complete administrative record as its answer pursuant to 735 ILCS § 5/3-108.

COUNT I

JUDICIAL REVIEW UNDER ILLINOIS ADMINISTRATIVE REVIEW LAW (735 ILCS 5/3-101 et seq.)

20. Paragraphs 1-19 are incorporated herein by reference.

ANSWER: Defendants incorporate by reference their answers to Paragraphs 1-19 as if set forth fully herein.

21. The Chicago Department of Administrative Hearings' construction and interpretation of MCC § 8-20-110(b)(3)(iii) to bar issuance of a CFP for a misdemeanor conviction for carrying/possessing a firearm in a public place, on the basis that this constituted "an unlawful use of a weapon that is a firearm," is a clearly erroneous interpretation of the ordinance that raises a substantial constitutional question, and results in an impermissible infringement of plaintiff's fundamental constitutional right to keep and bear arms.

ANSWER: Defendants deny the allegations contained in Paragraph 21.

22. The decision of the Chicago Department of Police denying plaintiff's application for a CFP, and the Decision of the Chicago Department of Administrative Hearings affirming that ruling, should therefore be reversed pursuant to Section 3-111 of the Illinois Administrative Review Law, 735 ILCS 5/3-111.

ANSWER: Defendants deny the allegations contained in Paragraph 22.

23. The plaintiff has exhausted all available remedies under the Illinois Administrative Review law, and the Decision of the Chicago Department of Administrative Hearings expressly states that it is a final decision subject to review under the Illinois Administrative Review Act, pursuant to Section 2-14-102 of the Chicago Municipal Code.

ANSWER: Defendants admit that the Decision of DOAH expressly states that it is a final decision subject to review under the Illinois Administrative Review Act pursuant to Section 2-14-102 of the Chicago Municipal Code. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23.

24. Pursuant to Section 3-108 of the Illinois Administrative Review Law, 735 ILCS5/3-108, the defendants are requested to file with the Court as part of their answer hereto a certified copy of the complete record of proceedings in the Department of Administrative Hearings, including the transcript of the evidence, the report of proceedings, and all exhibits and submissions by the parties.

ANSWER: Defendants admit that, pursuant to 735 ILCS § 5/3-108, Defendant DOAH is required to file with the Court a certified copy of the complete record of proceedings in the Department of Administrative Hearings, including the transcript of the evidence, the report of proceedings, and all exhibits and submissions by the parties. Further answering, Defendants state that Defendant DOAH has filed a certified copy of the complete administrative record as its answer pursuant to 735 ILCS § 5/3-108.

WHEREFORE, Defendants deny that Plaintiff is entitled to any of the relief requested in Paragraph 24.

COUNT II

<u>DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF</u> (U.S. CONST., AMENDS. II AND XIV, 42 U.S.C. § 1983)

25. The preceding paragraphs are incorporated herein by reference.

ANSWER: Defendants incorporate by reference their answers to Paragraphs 1-24 as if set

Case: 1:11-cv-01304 Document #: 26-3 Filed: 06/21/11 Page 12 of 15 PageID #:539

Case: 1:11-cv-01304 Document #: 17 Filed: 04/07/11 Page 11 of 14 PageID #:323

forth fully herein.

26. The denial of plaintiff's CFP application effectively denies plaintiff the right to own and keep a handgun or any other firearm for self-defense in his home in the City of Chicago, because MCC § 8-20-110 makes it unlawful for any person to carry or possess a firearm without a CFP.

ANSWER: Defendants admit that MCC § 8-20-110 generally makes it unlawful for any person to carry or possess a firearm within the City of Chicago without a CFP. Defendants deny the remaining allegations contained in Paragraph 26.

27. The denial of plaintiff's CFP application has deprived plaintiff of the fundamental right under the Second and Fourteenth Amendments to the U.S. Constitution to keep a handgun in his home in Chicago for self-defense.

ANSWER: Defendants deny the allegations contained in Paragraph 27.

28. MCC § 8-20-110(b)(3)(iii), both on its face and as applied to plaintiff, therefore infringes on plaintiff's right to keep and bear arms in violation of the Second and Fourteenth Amendments to the U.S. Constitution, and is void.

ANSWER: Defendants deny the allegations contained in Paragraph 28.

29. The defendants' denial of plaintiff's CFP application constitutes a deprivation of plaintiff's fundamental constitutional right to keep and bear arms under color of law.

ANSWER: Defendants deny the allegations contained in Paragraph 29.

WHEREFORE, Defendants deny that Plaintiff is entitled to any of the relief requested in Paragraph 29.

COUNT III

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF ILLINOIS CONST. ART. I, § 22

30. The preceding paragraphs are incorporated herein by reference.

ANSWER: Defendants incorporate by reference their answers to Paragraphs 1-29 as if set forth fully herein.

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31. Article I, § 22 of the Illinois Constitution provides: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed."

Ill. Const. 1970, Art. I, § 22.

ANSWER: Defendants admit the allegations contained in Paragraph 31.

32. The denial of plaintiff's CFP application effectively denies plaintiff the right to own and keep a handgun or any other firearm for self-defense in his home in the City of Chicago, because

MCC § 8-20-110 makes it unlawful for any person to carry or possess a firearm without a CFP.

ANSWER: Defendants admit that MCC § 8-20-110 generally makes it unlawful for any

person to carry or possess a firearm within the City of Chicago without a CFP. Defendants deny the

remaining allegations contained in Paragraph 32.

33. MCC § 8-20-110(b)(3)(iii), both on its face and as applied to plaintiff, therefore

infringes on plaintiff's right to keep and bear arms in violation of Article I, § 22 of the Illinois

Constitution, and is void.

ANSWER: Defendants deny the allegations contained in Paragraph 33.

34. The denial of plaintiff's CFP application violates plaintiff's right to keep and bear

arms under Article I, § 22 of the Illinois Constitution, and must be reversed.

ANSWER: Defendants deny the allegations contained in Paragraph 34.

WHEREFORE, Defendants respectfully request that the Court enter judgment in its favor

and against Plaintiff on his Complaint for Administrative Review, Declaratory Judgment and

Injunctive Relief, and grant Defendants such further relief as the Court deems just and appropriate.

DEFENSE-FAILURE TO STATE A CLAIM

The Complaint fails to state any claim upon which relief can be granted.

Dated: April 7, 2011

Respectfully submitted,

12

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MARA S. GEORGES CORPORATION COUNSEL CITY OF CHICAGO

By: /s/ Rebecca Alfert Hirsch
One of Its Attorneys

Michael A. Forti Mardell Nereim Andrew W. Worseck William M. Aguiar Rebecca Alfert Hirsch Attorneys for the City of Chicago Constitutional & Commercial Litigation Division 30 North LaSalle Street, Suite 1230 Chicago, IL 60602 (312) 742-0260 Case: 1:11-cv-01304 Document #: 26-3 Filed: 06/21/11 Page 15 of 15 PageID #:542

Case: 1:11-cv-01304 Document #: 17 Filed: 04/07/11 Page 14 of 14 PageID #:326

CERTIFICATE OF SERVICE

The undersigned, an attorney of record for the Defendants, hereby certifies that on April 7, 2011, she served a copy of the foregoing **Defendants' Answer and Defenses to Plaintiff's Complaint For Administrative Review, Declaratory Judgment and Injunctive Relief** on the party listed below by electronic means pursuant to Electronic Case Filing (ECF):

Stephen Kolodziej Brenner Ford Monroe & Scott Ltd. 33 N. Dearborn St., Suite 300 Chicago, IL 60602 Tel: (312) 781-1970

Fax:(312)781-9202

Email: skolodziej@brennerlawfirm.com

/s/ Rebecca Alfert Hirsch

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EXHIBIT 3

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 2 of 99 PageID #:544

Case: 1:11-cv-01304 Document #: 18 Filed: 04/07/11 Page 1 of 2 PageID #:327

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

SHAWN GOWDER,)	
)	
Plaintiff,)	
)	
V.)	
)	No. 11 CV 1304
CITY OF CHICAGO, a municipal corporation,)	
the CITY OF CHICAGO DEPARTMENT OF)	JUDGE DER-YEGHIAYAN
ADMINISTRATIVE HEARINGS, MUNICIPAL)	
HEARINGS DIVISION, SCOTT V. BRUNER,)	
Director of the City of Chicago Department of)	
Administrative Hearings, the CITY OF CHICAGO)	
DEPARTMENT OF POLICE, and JODY P. WEIS,)	
Superintendent of the City of Chicago Department)	
of Police,)	
)	
Defendants.)	

DEFENDANT CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS' ANSWER TO COMPLAINT FOR ADMINISTRATIVE REVIEW

Defendant City of Chicago Department of Administrative Hearings, by and through its attorney, Mara S. Georges, Corporation Counsel of the City of Chicago, hereby submits as its Answer to Plaintiff's Complaint for Administrative Review a copy of the Record of Proceedings in the matter of *City of Chicago v. Gowder*, 10GR000041, certified on February 28, 2011, which is attached hereto as Exhibit A.

Date: April 7, 2011 Respectfully submitted,

MARA S. GEORGES Corporation Counsel for the City of Chicago

By: /s/ Rebecca Alfert Hirsch Assistant Corporation Counsel Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 3 of 99 PageID #:545

Case: 1:11-cv-01304 Document #: 18 Filed: 04/07/11 Page 2 of 2 PageID #:328

Michael A. Forti
Mardell Nereim
William Macy Aguiar
Rebecca Alfert Hirsch
Andrew W. Worseck
City of Chicago, Department of Law
Constitutional and Commercial Litigation Division
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312) 742-0260
Attorney No. 90909

CERTIFICATE OF SERVICE

The undersigned, an attorney of record for the Defendants, hereby certifies that on April 7, 2011, she served a copy of the foregoing **Defendant City of Chicago Department of Administrative Hearings' Answer to Complaint for Administrative Review** on the party listed below by electronic means pursuant to Electronic Case Filing (ECF):

Stephen Kolodziej Brenner Ford Monroe & Scott Ltd. 33 N. Dearborn St., Suite 300 Chicago, IL 60602 Tel: (312) 781-1970

Fax:(312)781-9202

Email: skolodziej@brennerlawfirm.com

/s/ Rebecca Alfert Hirsch

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 4 of 99 PageID #:546

Case: 1:1/1-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 1 of 96 PageID #:329

DOAH-Record on Appeal (A)			(5/97)
APPEAL TO THE CIRCUIT COURT COUNTY DEF	Г OF C PARTM	OOK COUNTY, I	
Shawn Gowder,			·
v. Plaintiff(s),)))	11CH01361	
CITY OF CHICAGO, a Municipal Corporation, et al. Defendants.)		8
FROM THE CITY OF C DEPARTMENT OF ADMINI MUNICIPAL HEAR	HICAGO STRATI	VE HEARINGS	
CITY OF CHICAGO, a Municipal Corporation, Department of POLICE,)		
v. Petitioner,)))	10GR01361	
Shawn Gowder, Respondent.)		
	·		
CERTIFICATION	OF REC	CORD	
I, Lisa Adam, keeper of the records of the City of Chic	ago Dep	partment of Administ	rative Hearings, Municipal
Hearings Division, do hereby certify the attached 41 pages to b	e a true,	perfect and complete	copy of the Record in the
above captioned matter before the City of Chicago Department o			
			`.
	In witn	ness whereof, I have l	hereto set my hand
			oruary , 2011.
-	Lisa A	Sa Sdur	

City of Chicago, Department of Administrative Hearings 740 N. Sedgwick St., 2nd Fl., Chicago, IL 60654 312-742-8200

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 5 of 99 PageID #:547

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 2 of 96 PagetD



Richard M. Daley

Mayor

Department of Police · City of Chicago : Ilicago : 3510 S. Michigan Avenue · Chicago, Illinois Groff ARINGS

Jody P. Weis Superintendent of Police

Mr. Shawn Gowder

November 10, 2010

Re: Notice of Denial of your Application for a Chicago Firearm Permit

Dear Mr. Gowder,

A review of your application and the records maintained by the Chicago Police Department indicates that you are ineligible to be approved for a Chicago Firearm Permit (CFP). Pursuant to Chapter 8-20-190 of the Municipal Code of Chicago, your application for a CFP is denied for the following reason:

You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago 8-20-110 (b) (3) (iii).

Pursuant to Municipal Code of Chicago 8-20-200, within ten (10) days of this Notice of Denial, you are entitled to request a hearing, in person and in writing, at the Department of Administrative Hearings. The Department of Administrative Hearings is located at the following address:

Department of Administrative Hearings Municipal Hearings Division 740 N Sedgwick, 2nd Floor Chicago, Il 60610

You are entitled to appear at the hearing to testify, present documents, including affidavits, and any other evidence to contest this denial. If you fail to request a hearing within ten (10) days, you will be deemed to have conceded the validity of the reason for the denial stated above and the denial shall become final.

I hereby affirm, under penalties as provided by law, that the information contained herein is correct to the best of my knowledge, information and belief.

Sgt. Jeffrey Schaaf #2274
Gun Registration Section
Chicago Police Department

R2

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 6 of 99 PageID #:548 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 3 of 96 PageID #:331



Certificate of Service

The undersigned, under penalties as provided by law, hereby certifies that this Notice of Denial was served upon the person to whom directed, by placing the Notice in an envelope, addressed as shown above and depositing it into the US mail located at CPD Headquarters at or before 5:00 pm on the 10th of November 2010, using prepaid certified mail postage.

Sgt. Jeffrey Schaaf #2274
Gun Registration Section
Chicago Police Department

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 7 of 99 PageID #:549

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 4 of 96 PageID #:332

22 NOV 2010

I (SHAWN GOWDER) AM REQUESTING
A HEARTXG REGARDING MY
Denial of APPOliciation for A
Chicogo Finenins Permit,
Those #



Shum D Goeing ChiopGo Ic Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 8 of 99 PageID #:550

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 5 of 96 PageID #:333



City of Chicago Richard M. Daley, Mayor

Department of **Administrative Hearings**

Scott V. Bruner Director

Administrative Offices 6th Floor 740 North Sedgwick Street Chicago, Illinois 60610 (312) 742-8200 :312) 742-8222 (FAX) (312) 742-8249 (TTY) http://www.cityofchicago.org November 22, 2010

Mr. Shawn Gowder

NOTICE OF HEARING

106K000041

Please be advised that you have been scheduled for an administrative hearing pursuant to your request for hearing under 8-20-200 of the Municipal Code of Chicago. This hearing is based upon the denial of a Chicago Firearm Permit by City of Chicago, Department of Police. The denial of Firearm Permit specifies

1) You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See MCC 8-20-110 (b) (3) (iii).

You are hereby noticed to appear for hearing on Wednesday, November 24, 2010 at 2:00 p.m., 400 W. Superior, Room 111, Chicago, Illinois. Please take notice that at the hearing you may be represented by counsel and you may produce witnesses and evidence on your behalf. Your failure to appear may result in an order of default being entered against you.

Should you have any questions, you may call me at (312) 742-8350.

Sincerely.

Michele McSwain

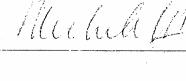
Division Chief

Municipal Hearings Division

PROOF OF SERVICE BY PERSONAL SERVICE

I, Michele McSwain, at attorney, certify that I served a copy of the above Notice of Hearing by personally serving it to Shawn Gowder at 740 N. Sedgwick, 2nd floor, Chicago, IL, 60654 on November 22,

2010 at 11:00 a.m.







Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 9 of 99 PageID #:551 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 6 of 96 PageID #:334

DOAH-Order

CITY OF CHICAGO, a Municipal Corporation,

(1/00)

IN THE CITY OF CHICAGO, ILLINOIS DEPARTMENT OF ADMINISTRATIVE HEARINGS

Petitioner,)	·
GOWPER ;	Docket #
SHAWN ;	
)	Issuing City Department.:
Respondent.)	
FINDINGS, DECISI	IONS & ORDER
This matter coming for Hearing, notice given and the Aconsidered any motions, evidence and arguments pres Administrative Body finds by a preponderance of the evid Citation or Counts Finding Finding WICE 8-10-2006 15 9 1044 15 9 1044 MICE 8-10-2006 15 9 1044 MICE 8-10-2006 15 9 1044 MICE 8-10-2006 MICE 8-	ented, IT IS ORDERED: As to the count(c) this
DUDGMENT TOTAL+5	R6
Respondent is further ordered-to immediately correct an	ny and all outstanding above found violation(s),
[] Liability was: [] contested or [] stipulated to.	
[] Respondent being noticed and failing to: [] appear at, has 21 days from the above stamped mailing date to	or [] timely request a hearing is held in default; and vacate (void) this default for good cause.
[] Petitioner is granted leave to re-inspect the premises or b	business as it relates to the above found violation(s).
[] Respondent is ordered to comply with all requirements of	of City's community service program.
[] Case is: [] dismissed with prejudice, [] dismissed	d without prejudice, or [] non-suited by petitioner.
Motion to set-aside prior default order(s) of	is granted denied.
Case is continued to December 2	for: [] service [] Hearing.
Entered Allu Administrative Law	Officer and ALO# Date

You may appeal this Order to the Circuit Court of Cook Co. (Daley Center 6th Fl.) within 35 days by filing a civil law suit against the City of Chicago and by paying the appropriate State mandated filing fees.

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 10 of 99 PageID #:552

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 7 of 96 PageID #:335

DOAH-Appearance (A) IN THE CITY OF DEPARTMENT OF ADD	CHICAGO, ILLINOIS (5/05) MINISTRATIVE HEARINGS
	_ HEARINGS DIVISION
	SECTION
CITY OF CHICAGO, a Municipal Corporation, (by the Department of Petitioner) }
v.	Doc. No. 106R0009/
Shawn Gowder) Cit. No
Responde	nt.)
	FOR RESPONDENT
1, Stephen A. Kolodziej	, do hereby enter my Appearance on behalf of the above
captioned Respondent. I do further state under oath that I	am the Respondent/Owner or that Lam the
Lessee, Attorney, or au	thorized Agent/Representative of the above
captioned Respondent. (1-24-10 (Date)	Signature) 33 N. Dearborn SR 300 (Address) Chicago, IC 60602 (City, State Zip) 312 - 781-1970 (Phone #) 38007
	(Attorney #, if applicable)

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 11 of 99 PageID #:553 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 8 of 96 PageID #:336

DOAH-Appearance (A)	IN THE CITY OF CHIC DEPARTMENT OF ADMINIS	CAGO, ILLINOIS STRATIVE HEARINGS (5/05)
	Maxicipal HE	ARINGS DIVISION
		SECTION
CITY OF CHICAGO, a M. (by the Department of	funicipal Corporation,	·
. v.	Petitioner,)
v.) Doc. No. 10 GR 0004/
Shawn Gow	der	Cit. No.
•		·)
	Respondent.	
)
)
	APPEARANCE FOR F	RESPONDENT
1, Stephen	A. Kolodziej,	do hereby enter my Appearance on behalf of the above
captioned Respondent. I do f	further state under oath that I am th	e Respondent/Owner, or that I am the
Lessee, Atto	orney, or authorize	ed Agent/Representative of the above
captioned Respondent.		
12-8-10	· _	Testen A Kolody (Signature)
(Date)	3	3 N. Dearborn, S.E. 300
		City, State Zip
-		3/2 - 78/ - 1970 (Phone #)
		38007 (Attorney #, if applicable)

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Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 9 of 96 PageID #:337

IN THE CITY OF CHICAGO, ILLINOIS DEPARTMENT OF ADMINISTRATIVE HEARINGS MUNICIPAL HEARINGS DIVISION

CITY OF CHICAGO, a li Corporation,	Municipal) · · · · · · · · · · · · · · · · · · ·
	Petitioner,	,
v.) Docket No. 10 GR 000041
SHAWN GOWDER,) Issuing City Department: Police
	Respondent.)

APPEAL OF DENIAL OF A CHICAGO FIREARM PERMIT MUNICIPAL CODE OF CHICAGO § 8-20-200

Shawn Gowder, by undersigned counsel, hereby submits the following in support of his appeal of the denial of a Chicago Firearm Permit (CFP):

I. THE CONVICTION WAS NOT FOR "UNLAWFUL USE OF A WEAPON."

The Notice of Denial, dated Nov. 10, 2010, states: "You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago 8-20-110(b)(3)(iii)." However, the Certified Statement of Conviction/Disposition shows a misdemeanor conviction for: "Carry/possess firearm in P." The terms "carry/possess" do not constitute "use."

The legal distinction between "carry or possess" and "use" is recognized in MCC 8-20-110 itself, which provides in part:

- (a) . . . it is unlawful for any person to carry or possess a firearm without a CFP.
- (b) No CFP application shall be approved unless the applicant: . . .
 - (3) has not been convicted by a court in any jurisdiction of: ...

 (iii) an unlawful use of a weapon that is a firearm (Emphasis added.)¹

Since the above refers to having been "convicted by a court in any jurisdiction" of the "unlawful use" of a firearm, the term "use" refers to its ordinary meaning in the law by jurisdictions generally, not an uncommon meaning by a single jurisdiction.² No special

¹See also MCC 8-20-202(a) ("It is unlawful for any person to carry or possess a handgun, except when in the person's home.").

²"Because it is undefined, this statutory term must be given its plain and ordinary meaning." Village of Northfield v. BP America, Inc., 403 III. App.3d 55, 61, 933 N.E.2d 413 (2010). See People v. Fort, 373 III. App.3d 882, 885, 311 III. Dec. 937, 869 N.E.2d 950, 953 (2007) (a court

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definition is set forth in MCC 8-20-010, "Definitions." A reference is made there to the Illinois Firearms Owners Identification Card Act, 430 ILCS 65/1 et seq., but not in connection with the issue here.

The conviction here is for a violation of 720 ILCS 5/24-1(a)(10), which has the following uncommon meaning of "use":

A person commits the offense of unlawful use of weapons when he knowingly: . . .

(10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, . . . any pistol, revolver, stun gun or taser or other firearm

Other jurisdictions – including the United States, other States, and Illinois municipalities – do not equate the mere carrying or possession of a firearm with the "use" thereof. For instance, the federal Gun Control Act penalizes "possession" in some contexts, and "use" in others. Compare 18 U.S.C. § 922(g) ("possession" of firearm by certain persons) with § 924(c) ("use" of firearm during drug trafficking or crime of violence). Bailey v. United States, 516 U.S. 137, 143 (1995), held about the latter that "use' signifies active employment of a firearm... We... hold that § 924(c)(1) requires evidence sufficient to show an active employment of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense." "We agree... that 'use' must connote more than mere possession of a firearm..." Id. See also id. at 146 ("a firearm can be carried without being used").

The term "use" in MCC 8-20-110 must be given its ordinary meaning, which would be, as explained in *Bailey*, id. at 145:

The word "use" in the statute must be given its "ordinary or natural" meaning, a meaning variously defined as "[t]o convert to one's service," "to employ," "to avail oneself of," and "to carry out a purpose or action by means of." . . . (citing Webster's New International Dictionary of English Language 2806 (2d ed. 1949) and Black's Law Dictionary 1541 (6th ed. 1990)).

Unless construed with its ordinary meaning, MCC 8-20-110 would allow a person with a conviction for mere possession or carrying of a firearm in any jurisdiction in the United States to be issued a CFP. The lone exception would be a person convicted under 720 ILCS 5/24-1(a)(10)1. "Statutes must be construed to avoid absurd results." *Jones v. Nissan North America, Inc.*, 385 Ill. App.3d 740, 751, 895 N.E.2d 303 (2008). Moreover, the provision must be interpreted according to ordinary usage to avoid the constitutional issue of whether the resulting

may "turn to a dictionary when determining the meaning of an otherwise undefined word or phrase").

³"The active-employment understanding of 'use' certainly includes brandishing, displaying, bartering, striking with, and, most obviously, firing or attempting to fire a firearm." *Id.* at 148.

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 14 of 99 PageID #:556 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 11 of 96 PageID #:339

ban on possession of a firearm by the applicant would violate Amends. II and XIV, U.S. Const., and Art. I, § 22, Ill. Const.⁴

II. DENIAL OF THE CFP BASED ON A MISDEMEANOR CONVICTION FOR MERE POSSESSION/CARRYING OF A FIREARM VIOLATES THE RIGHT TO KEEP AND BEAR ARMS

Denial of the CFP infringes on the applicant's right to keep and bear arms in the meaning of Amends. II and XIV, U.S. Const., and Art. I, § 22, Ill. Const. He may lawfully possess firearms under the laws of the United States and Illinois. He has a FOID car issued pursuant to the Illinois Firearms Owners Identification Card Act, 430 ILCS 65/1 et seq., and thus is not among the "persons who are not qualified to acquire or possess firearms... within the State of Illinois..." Id. § 1. He is entitled to the FOID card because "[h]e... has not been convicted of a felony under the laws of this or any other jurisdiction..." Id. § 4(a)(2)(ii).

The applicant's misdemeanor conviction for "carr[ying] or possess[ing] on or about his person" a firearm under 720 ILCS 5/24-1(a)(10) does not disqualify him from possessing a firearm under the laws of the United States and Illinois. That offense itself is constitutionally suspect given that he has a right to "bear arms" under both constitutional guarantees.

A. Violation of the Second and Fourteenth Amendments

The Second Amendment provides in part that "the right of the people to keep and bear arms, shall not be infringed." District of Columbia v. Heller, 128 S.Ct. 2783 (2008), held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and struck down a law that banned the possession of handguns in the home. McDonald v. City of Chicago, 130 S.Ct. 3020 (2010), held the right to apply to the states.

A person with a misdemeanor conviction, particularly for the victimless crime of carrying or possessing a firearm, may not be deprived of the right to keep and bear arms. "We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill,'" *McDonald*, 130 S.Ct. at 3047, citing *Heller*, 128 S.Ct. at 2816-2817. The Court conspicuously made no mention of misdeameanants, who have not forfeited the right as have felons.

The only misdemeanor that has been held to disqualify one from Second Amendment rights is the "misdemeanor crime of domestic violence" under 18 U.S.C. § 922(g)(9). "The belief underpinning § 922(g)(9) is that people who have been convicted of violence once – toward a spouse, child, or domestic partner, no less – are likely to use violence again." *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (en banc). But the term "violent crime" does

⁴See Villegas v. Board of Fire & Police Commissioners, 167 Ill.2d 108, 124, 212 Ill. Dec. 240, 656 N.E.2d 1074 (1995) ("where possible, courts are to interpret statutes and ordinances in such manner as to avoid raising serious constitutional questions.").

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not apply to the mere unlawful possession of a firearm, Stinson v. United States, 508 U.S. 36, 47 (1993), or carrying a concealed weapon, United States v. Archer, 531 F.3d 1347, 1351 (11th Cir. 2008).

Moreover, the prohibition on "carr[ying] or possess[ing] on or about his person" a firearm under 720 ILCS 5/24-1(a)(10)1 criminalizes the exercise of a constitutional right and thus may not be the basis for denial of the same constitutional right. "At the time of the founding, as now, to 'bear' meant to 'carry." Heller, 128 S.Ct. at 2793. Heller equated "bear arms" with "carries a firearm," including to "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." Id.

The Illinois statute makes it a crime to exercise the constitutional right to bear arms in any fashion. *Heller* noted the limited, traditional "prohibitions on carrying concealed weapons" and "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." Id. at 2816-2817. *McDonald* made clear that the Fourteenth Amendment, in extending the Second Amendment to the states, would invalidate outright bans on the carrying of firearms in any form.⁵

Accordingly, MCC 8-20-110(b)(3)(iii) on its face and as applied violates the Second and Fourteenth Amendments to the U.S. Constitution, and is void.

B. Violation of Ill. Const., Art. I, § 22

Article I, § 22, of the Illinois Constitution provides: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Unless construed not to disqualify the applicant for a CFP, MCC 8-20-110(b)(3)(iii) would infringe on his right to keep and bear arms in that it would prohibit him from possession of any firearm.

"Based on the floor debates and the official explanation, as well as on the language of the provision, it is apparent to us that section 22, as submitted to the voters, meant that a ban on all firearms that an individual citizen might use would not be permissible..." Kalodimos v. Village of Morton Grove, 103 Ill.2d 483, 498, 470 N.E.2d 266 (1984). "We emphasize again that section 22 bestows upon individual citizens for the first time a right to possess some form of weapon suitable for self-defense or recreation..." Id. at 499.

Accordingly, MCC 8-20-110(b)(3)(iii) on its face and as applied violates Ill. Const., Art. I, § 22, and is void.

⁵These laws which the Fourteenth Amendment would invalidate typically provided that freedmen may not "keep or carry fire-arms of any kind." 130 S.Ct. at 3038. An enactment preceding the Fourteenth Amendment and underlying its intent declared that the rights to "personal liberty" and "personal security" included "the constitutional right to bear arms" for all. *Id.* at 3040.

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CONCLUSION

The denial should be reversed and the applicant Shawn Gowder should be issued a Chicago Firearm Permit.

Respectfully submitted,

SHAWN GOWDER

Stephen A. Kolodziej

His Attorney

Stephen A. Kolodziej Brenner, Ford, Monroe & Scott, Ltd. 33 North Dearborn Street, Suite 300 Chicago, Illinois 60602 312-781-1970 Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 17 of 99 PageID #:559 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 14 of 96 PageID #:342

DOAH-Order

(1/00)

IN THE CITY OF CHICAGO, ILLINOIS DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CHICAGO, a Municip	-	
v.	Petitioner,)	
	,)	18 6 to 0000 (1)
COUNTY S	HAWN ?	Docket # 100 AUUVOTT
)	Issuing City
	Respondent.)	Department.: / D//CQ
	FINDINGS, DECISI	IONS & ORDER
considered any motions, evidence	e and arguments pres	Administrative Body advised in the premises, having sented, IT IS ORDERED: As to the count(s), this
Administrative Body finds by a pre	ponderance of the evid	ence and rules as follows:
Citation or Count(s)	<u>Finding</u>	Fines, costs & other penalties
This mate	El 15	Jakou indo
advisor	rest to	1 wing
within	I day	15
		R14
JUDGMENT TOTAL: S	=	
Respondent is further ordered to	immediately correct a	ny and all outstanding above found violation(s).
[] Liability was: [] contested		
[] Respondent being noticed and has 21 days from the above s		, or [] timely request a hearing is held in default; and watcate (void) this default for good cause.
Petitioner is granted leave to r	e-inspect the premises or l	business as it relates to the above found violation(s).
•		of City's community service program.
[] Case is: [] dismissed with	prejudice, [] dismisse	d without prejudice, or [] non-suited by petitioner.
[] Motion to set-aside prior defau	ult order(s) of	is [] granted [] denied.
Case is continued to		for: [] service [] Hearing.
Eutered:	Administrative Law	Oms #27 12/8/10 Officer and ALO# Date

You may appeal this Order to the Circuit Court of Cook Co. (Daley Center 6th Fl.) within 35 days by filing a civil law suit against the City of Chicago and by paying the appropriate State mandated filing fees.

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 18 of 99 PageID #:560 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 15 of 96 PageID #:343

106R000041 22 NOV 2010

I (SHAWN GOWDER) AM REQUESTING

A HEARTNG REGARDING MY

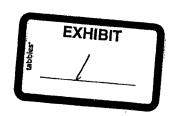
Denial of Appolention for A

Chicago Finermons Permit

Phone #



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Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 19 of 99 PageID #:561 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 16 of 96 PageID #:344

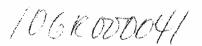


City of Chicago Richard M. Daley, Mayor

Department of Administrative Hearings

Scott V. Bruner Director

Administrative Offices 6th Floor 740 North Sodgwick Street Chicago, Illinois 60610 (312) 742-8200 (312) 742-8222 (FAX) (312) 742-8249 (TTY) http://www.eityofchicago.org



November 22, 2010

Mr. Shawn Gowder

CHICAGO, IL

NOTICE OF HEARING

Please be advised that you have been scheduled for an administrative hearing pursuant to your request for hearing under 8-20-200 of the Municipal Code of Chicago. This hearing is based upon the denial of a Chicago Firearm Permit by City of Chicago, Department of Police. The denial of Firearm Permit specifies

1) You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See MCC 8-20-110 (b) (3) (iii).

You are hereby noticed to appear for hearing on Wednesday, November 24, 2010 at 2:00 p.m., 400 W. Superior, Room 111, Chicago, Illinois. Please take notice that at the hearing you may be represented by counsel and you may produce witnesses and evidence on your behalf. Your failure to appear may result in an order of default being entered against you.

Should you have any questions, you may call me at (312) 742-8350.

Sincerely,

Michele McSwain Division Chief

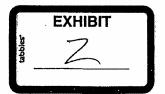
Municipal Hearings Division

PROOF OF SERVICE BY PERSONAL SERVICE

I, Michele McSwain, at attorney, certify that I served a copy of the above Notice of Hearing by personally serving it to Shawn Gowder at 740 N. Sedgwick, 2nd floor, Chicago, IL, 60654 on November 22, 2010 at 11:00 a_{rm}.

Michilal

R16





NEIGHBORHOODS

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 20 of 99 PageID #:562 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 17 of 96 PageID #:345

Docket # 10GR000041 Re: Shawn Gowder

I hereby affirm under penalties as provided by law that the information contained herein is correct to the best of my information and belief; was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with personal knowledge of those matters; was kept in the course of the regularly conducted activity; and was made by the regular conducted activity as a regular practice of the Chicago Police Department.

Sgt. Jeffrey Schaaf#2274
Gun Registration Section

EXHIBIT

Septimental September 1997

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 21 of 99 PageID #:563

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106200041

Richard M. Daley Mayor

Department of Police · City of Chicago 35 to S. Michigan Avenue - Chicago, Illinois 60653

Jody P. Weis Superintendent of Police

Mr. Shawn Gowder

November 10, 2010

Dear Mr. Gowder,

Re: Notice of Denial of

A review of your application and the records maintained by the Chicago Police Department indicates that you are ineligible to be approved for a Chicago Firearm Permit (CFP). Pursuant to Chapter 8-20-190 of the Municipal Code of Chicago, your application for a CFP is denied for the following reason:

You have been convicted by a court in any jurisdiction of an unlawful use of a weapon that is a firearm. See Municipal Code of Chicago 8-20-110 (b) (3) (iii).

Pursuant to Municipal Code of Chicago 8-20-200, within ten (10) days of this Notice of Denial, you are entitled to request a hearing, in person and in writing, at the Department of Administrative Hearings. The Department of Administrative Hearings is located at the following address:

> Department of Administrative Hearings-Municipal Hearings Division 740 N Sedgwick, 2nd Floor Chicago, Il 60610

You are entitled to appear at the hearing to testify, present documents, including affidavits, and any other evidence to contest this denial. If you fail to request a hearing within ten (10) days, you will be deemed to have conceded the validity of the reason for the denial stated above and the denial shall become final.

I hereby affirm, under penalties as provided by law, that the information contained herein is correct to the best of my knowledge, information and belief.

> Sgt. Jeffrey Schaaf #2274 Gun Registration Section

Chicago Police Department

R18

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Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 19 of 96 PageID #:347

Certificate of Service

The undersigned, under penalties as provided by law, hereby certifies that this Notice of Denial was served upon the person to whom directed, by placing the Notice in an envelope, addressed as shown above and depositing it into the US mail located at CPD Headquarters at or before 5:00 pm on the 10th of November 2010, using prepaid certified mail postage.

Sgt Jeffrey Schaaf #2274
Gun Registration Section
Chicago Police Department

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 23 of 99 PageID #:565

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 20 of 96 PageID #:348

A CHICAGO FIREARMS PERMIT (CFP) CITY OF CHICAGO/ DEPARTMENT OF POLICE	W DUPLICATE DUPLICATE
GOWDER - Shawn - D	ENOMENT
HOME ADDRESS (STREET)	CITY-STATE -ZIP CODE HOME PHONE NO.
SOCIAL SECURITY NO. I DATE O	SIRTH (Dav-Monitif-Year)
DRIVERS LICENSE NO STATE	NO/S BALE D FEMALE
APPLICANT'S BUSINESS ADDRESS	
IL. FIREARM OWNER IDENTIFICATION NO.	BACE CODE (CIRCLE ONE) 2 3 4 5 6 7 (Describe Other Below) See reverse side for race codes.
* Shemo Cours / Hov	OCID OTHER



C CHICAGO FIREARMS PERMIT (CFP CITY OF CHICAGO/ DEPARTMENT OF POLI) M NEW	DUPLICATE		
NAME OF APPLICANT (LAST FIRST-MI)	<u> </u>			
Gowder-Shawn - D				
HOME ADDRESS (STREET)	` *	CITY-STATE -ZIP C	ODE	HOME PHONE NO.
SOCIAL SECURITY NO.	· · · · · · · · · · · · · · · · · · ·	ChicagoIL		=
- SOUND SECOND FINO.	DATE OF BIRTH	(Day-Month-Year)		
STIVERS LICENSE NO. S	Tale	S SEV	MALE FEMALE	
. S. S. S. O SOCIAL DO ADDITION			1 I CIVIACE	
II FIREARM OWNER IDENTIFICATION NO.			7	
APPLICANT O OIGINATURE	ATE	(Describe Other Below See reverse side for	w) race codes.	
Main Docery 1.	NOVZOID	OTHER		

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 24 of 99 PageID #:566 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 21 of 96 PageID #:349

Chicago Police Department Gun Registration Program, Unit 163 3510 S. Michigan Avenue Room 1027 SE Chicago, IL 60653



To: Superintendent, Chicago Police Department
Please be advised that (Name of Applicant) Showh Crwder
has completed a firearm safety and training course on (Date)
Training Entity/Facility(ies) Sporting Arms & Supply, Inc.
Address: 14216 S. Western Avenue
City, State, Zip Code: Posen, IL 60469
The firearm safety and training course consisted of a minimum of one hour of range training and for hours of classroom instruction, and included all of the following: (a) instruction in the dangers of and misuse of firearms, and their care, cleaning and storage and safety rules: (b) practice firing on a range with live ammunition: (c) instruction in the legal use of firearms; and, (d) a presentation of the ethical and moral considerations necessary for any person who possesses a firearm.
Under penalties as provided by law, I am approved as a firearm instructor by the Illinois Department of Financial & Professional Regulation. I further attest the above information is truthful, correct and complete.
x Sum Thomas I I - 3 0 1 0 Firearm Instructor's Signature Date
Name: Gerald L. Vernon
Address:
City, State, Zip Code: Chicago, IL
Phone Number:
Under penalties as provided by law, as the CFP applicant, I attest that I have completed the firearm safety and training course in compliance with MCC 8-20-120(a) (7).
x
Applicant's Signature Name: Shawn Gowder
Addr
City, State, Zip Code: Chicago IL
Phone Numbe
FOID Number:
i e e e e e e e e e e e e e e e e e e e

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 25 of 99 PageID #:567



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Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 26 of 99 PageID #:568

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 23 of 96 PageID #:351 --

ILLINOIS STATE POLICE BUREAU OF IDENTIFICATION 260 NORTH CHICAGO STREET JOLIET, ILLINOIS 60432-4075

CHICAGO PD - GUN OWNERS ATTN: JOESEPH PERFETTI, UNIT 166 3510 S MICHIGAN CHICAGO, IL 60653

THIS CRIMINAL HISTORY RECORD IS BEING ISSUED BY THE ILLINOIS STATE POLICE, BUREAU OF IDENTIFICATION PURSUANT TO THE FEE APPLICANT FINGERPRINT CARD SUBMITTED BY YOUR AGENCY. THIS RESPONSE IS BASED UPON FINGERPRINT IDENTIFICATION.

THE APPLICANT FINGERPRINT CARD WILL BE RETAINED IN THE FILES OF THE ILLINOIS STATE POLICE TO FACILITATE FUTURE DISSEMINATION TO YOUR AGENCY OF ANY ADDITIONAL CONVICTION INFORMATION PERTAINING TO THIS SUBJECT.

THE ILLINOIS STATE POLICE IS PERMITTED TO DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION AS AUTHORIZED BY STATE LAW ATTEMPTS ARE MADE TO MAKE RECORDS AS COMPLETE AS POSSIBLE BY OBTAINING MISSING COURT DISPOSITIONS FROM VARIOUS SOURCES. IN SOME CASES HOWEVER, DISPOSITION INFORMATION IS UNAVAILABLE.

THE SEARCH ROUTINE USED TO PROCESS YOUR SUBMISSION DID NOT INCLUDE AN INQUIRY INTO THE ILLINOIS STATE POLICE SEX OFFENDER REGISTRATION FILE. TO DETERMINE IF THE SUBJECT OF YOUR INQUIRY IS A REGISTERED SEX OFFENDER, PLEASE CHECK THE ILLINOIS STATE POLICE REGISTERED SEX OFFENDER INFORMATION WEB SITE AT "WWW.ISP.STATE.IL.US".

IF YOU HAVE ANY QUESTIONS CONCERNING THIS MATTER, PLEASE FEEL FREE TO CONTACT THE BUREAU OF IDENTIFICATION SWITCHBOARD OPERATOR AT (815) 740-5160.

IDENTIFIERS

DCN: J00216850

TCN: HST0104J00216850

PURPOSE: LGE

SUBMISSION TYPE: FEAPP

RESULT: HIT

SID:

Name: GOWDER, SHAWN D

Employer #: ILL14203S

SSN#.

Sex Code: M

Race Code: B

DOB:

STATE USE ONLY

WARNING: Release of this information to unauthorized individuals or agencies or misuse is prohibited by Federal Law Title 42 USC 3789g pertaining to criminal history information.

R23

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 27 of 99 PageID #:569 Case: 1:11-cv-01304 Document #: 18-1 - Filed: -04/07/11 Page 24 of 96 PageID #:352

ILLINOIS STATE POLICE × Bureau Of Identification 260 North Chicago Street Joliet, IL 60432-4075 Criminal History of: State Identification Number: GOWDER, SHAWN (Last Known Name) Conviction Status: MISDEMEANOR CONVICTIONS Custodial Status: NO STATUS FOUND Custodial Status Date: Juvenile Data: Informal Adjustment: 0 Formal Adjustment: 0 Probation Adjustment: Alias Name(s) Date of Birth GOWDER, SHAWN GOWDER, SHAWN D SUBJECT IDENTIFICATION DATA Sex: FEMALE / MALE BLACK Race: Height: 600 Date Reported: FBI#: 794923VA3 Weight: 200 IR1067696 Date Reported: Chicago IR#: Eyes: BROWN

Hair: BALD / BLACK

Skin: DARK / MEDIUM

Scars/Marks/Tattoos

Place of Birth ILLINOIS

Drivers License Number

IDOC#

DL State

IL

UNITED STATES OF AMERICA

Social Security Number 359644128

Miscellaneous Number

Palm Prints Available

Photo Available

FOID# INS#

CHICAGO POLICE DEPARTMENT

Occupation **ELECTRICIAN** Date Reported 05/05/2004

Employer

Date Reported

R24

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 28 of 99 PageID #:570

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 25 of 96 PageID #:353

une .	05/05/	2004			
	CRIMINAL HISTOR	Y DATA	neterkerert ett til e teoption		enternati in 100 ette e 2000 (erranule 2002) Geografia ette ette e 200 (erranule 2002)
	Arrest				
DCN: CB9915800 Name: GOWDER, SHAWN D	Date of Arrest: Date of Birth:	01/10/1995			
Residence:					
Arresting Agency: CHICAGO POL	ICE DEPARTMENT	1	NCIC:	ILCPD0000	
Agency Case Number:	Officer Badge Number:			Photo Available:	Yes
Arrest Charges Count Statute Citation 1 720 ILCS 5.0/24-1-A-10 Arrest Type: Date of Offense:	Literal Description CARRY/POSS FIRI 01/10/1995	EARM IN PUBL	IC	Inchoate Code O	Class 4
States Attorney Section Filing Decision: DIRECT FILED WITH Count Statute Citation 1 720 ILCS 5.0/24-1-A-10	Literal Description CARRY/POSS FIRE		IC	Inchoate Code O	Class
Agency Name: COOK COUNTY STATE	'S ATTORNEY	NCIC:	IL0160	13A	
Court Charges/Disposition Count Statute Citation 1 720 ILCS 5.0/24-1-A-10 Disposition: GUILTY Case Number: 95CR0257101	Literal Description CARRY/POSS FIRE	EARM IN PUBL Dispositio		Inchoate Code O 08/21/1995	Class A
Agency Name: COOK COUNTY CIRCU	IT COURT	NCIC:	IL0160	25J ·	
Status Sente SENTENCED TO I YE	ence AR(S) PROBATION		Fine /	Amount	Date 08/21/1995
	END OF RECO	RD =	=		
	STATE USE ON				
WARNING: RELEASE OF THIS INFOR TITLE 42 USC 37896	MATION TO UNAUTHOR PROHIBITED BY FED G PERTAINING TO CRIM	ERAL LAW			VIISUSE IS

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 29 of 99 PageID #:571

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 26 of 96 PageID #:354 Chicago Police Department on 22-NOV-2010 12:05 by PC09808 for IR # 1067696 Page 1 of 2



CHICAGO POLICE DEPARTMENT

3510 South Michigan Avenue/Chicago, Illinois 60653 Identification Section

CRIMINAL HISTORY REPORT

EXHIBIT



MALE

BLACK

6'00'

225 lbs

EYES: BRO

HAIR: BLK

SHORT

DRK

HAIR STYLE:

COMPLEXION

CPD photo

CPD-31903C (REV. 7/04)

GOWDER, SHAWN D IR# 1067696

SID#

FBI # 794923VA3

IDOC#

Current Arrest Information:

Date of Birth:

Age:

38 years

Place of Birth:

ILLINOIS

SSN #:

Drivers License #:

Drivers Lic. State:

ILLINOIS

Scars, Marks & Tattoos:

Key Historical Identifiers:

Alias or AKA used Date Used **GOWDER, SHAWN**

GOWDER, SHAWN D

GOWDER, SHAWN D 18-DEC-1993

Dates of Birth Used 03-MAY-2004

10-JAN-1995

Criminal Justice Summary: Total arrests: 3 (0 Felony, 2 Misdemeanor)

Sec.

Total convictions: 0

"ARREST

Arrest Name: GOWDER, SHAWN

Arrest Date:

03-MAY-2004

Holding Facility: CPD - DISTRICT 008

Date of Birth:

DCN or CB: 015809200

Arrest Address:

!ICAGO, IL 60632

Residence:

HICAGO, IL 60621

Officer:

MINICH

Officer Badge#: 3732

Arresting Agency: CPD

Count Class Type Statute -

Arrest Charge Description

Inchoate

[1] C

M 720 ILCS 5.0/12-1-A

Assault - Simple

COURT CHARGES/DISPOSITION

https://com abiaggamalia. . . / 1

Statute

<u>Charge</u>

<u>Class</u> Case#

Social Security Numbers Used

720-5/12-1-A

ASSAULT - SIMPLE

20041227684

Disposition: STRICKEN FROM DOCKET WITH LEAVE TO REINSTATE

Disposition Date: 12-OCT-2004

Sentence: NO SENTENCE 000 YEARS 00 MONTHS 000 DAYS

Sentence Date:

R26

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 30 of 99 PageID #:572

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 27 of 96 PageID #:355

Chicago Police Department on 22-NOV-2010 12:05 by PC09808 for IR # 1067696

Page 2 of 2

ARREST

Arrest Name: GOWDER, SHAWN D

Arrest Date:

10-JAN-1995 Holding Facility:

Date of Birth:

Arrest Address:

DCN or CB:

Residence:

60621-0000

Officer:

MORGAN

Officer Badge#: 9939

Arresting Agency: CPD

Count Class Type Statute

Arrest Charge Description

Inchoate

[1]

POSSS FIREARM/PERSON Possession Of Firearm On Person

COURT CHARGES/DISPOSITION

Statute

Charge

Class Case#

720-5/24-1(A)(10)1

CARRY/POSSES FIREARM IN P

95CR0257101

Disposition: PROBATION - TERMINATED - SATISFACTORY

Sentence Date:

Sentence: NO SENTENCE 000 YEARS 00 MONTHS 000 DAYS

Disposition: SENTENCED/PROBATION -

Disposition Date: 21-AUG-1995 Sentence Date: 21-AUG-1995

Disposition Date: 07-AUG-1996

Sentence: PROBATION 1 YEARS 0 MONTHS 0 DAYS

ARREST

Arrest Name: GOWDER, SHAWN D

Arrest Date:

18-DEC-1993 Holding Facility:

Date of Birth:

Arrest Address: :

DCN or CB:

Officer:

Residence: Officer Badge#:

Arresting Agency:

Count Class Type Statute

Arrest Charge Description

OBSTR SERV OF PROCES

Inchoate

M RESIST

Resisting Arrest

:COURT CHARGES/DISPOSITION

Statute 38 31-3

Charge ~

Case# 93140017801

Disposition: STRICKEN FROM DOCKET WITH LEAVE TO REINSTATE

Disposition Date: 11-JAN-1994

Sentence: NO SENTENCE 000 YEARS 00 MONTHS 000 DAYS

Sentence Date:

End of Report

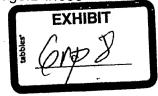
This Chicago Police Department IR rap-sheet should not replace the use of the Illinois State Police statewide criminal history transcript, which may contain additional criminal history data and can be obtained by performing a CQR1 inquiry via your LEADS terminal.

22-NOV-2010 12:05

Requested by: PC09808

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 31 of 99 PageID #:573

. Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 28 of 96 PageID #:356



(720 ILCS 5/24-1) (from Ch. 38, par. 24-1)

Sec. 24-1. Unlawful Use of Weapons.

- (a) A person commits the offense of unlawful use of weapons when he knowingly:
- (1) Sells, manufactures, purchases, possesses or

carries any bludgeon, black-jack, slung-shot, sand-club, sand-bag, metal knuckles or other knuckle weapon regardless of its composition, throwing star, for any knife, commonly referred to as a switchblade knife, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or a ballistic knife, which is a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material or compressed gas; or

(2) Carries or possesses with intent to use the same unlawfully against another, a dagger, dirk, billy, dangerous knife, razor, stiletto, broken bottle or other piece of glass, stun gun or taser or any other dangerous or deadly weapon or instrument of like character; or

- (3) Carries on or about his person or in any vehicle,
- a tear gas gun projector or bomb or any object containing noxious liquid gas or substance, other than an object containing a non-lethal noxious liquid gas or substance designed solely for personal defense carried by a person 18 years of age or older; or
- (4) Carries or possesses in any vehicle or concealed

on or about his person except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a) (4) does not apply to or affect transportation of weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or
- (ii) are not immediately accessible; or
- (iii) are unloaded and enclosed in a case,

firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; or

- (5) Sets a spring gun; or
- (6) Possesses any device or attachment of any kind

designed, used or intended for use in silencing the report of any firearm; or

- (7) Sells, manufactures, purchases, possesses or carries:
- (i) a machine gun, which shall be defined for the

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 32 of 99 PageID #:574

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 29 of 96 PageID #:357

purposes of this subsection as any weapon, which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot without manually reloading by a single function of the trigger, including the frame or receiver of any such weapon, or sells, manufactures, purchases, possesses, or carries any combination of parts designed or intended for use in converting any weapon into a machine gun, or any combination or parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person;

(ii) any rifle having one or more barrels less

than 16 inches in length or a shotgun having one or more barrels less than 18 inches in length or any weapon made from a rifle or shotgun, whether by alteration, modification, or otherwise, if such a weapon as modified has an overall length of less than 26 inches; or

(iii) any bomb, bomb-shell, grenade, bottle or

other container containing an explosive substance of over one-quarter ounce for like purposes, such as, but not limited to, black powder bombs and Molotov cocktails or artillery projectiles; or

(8) Carries or possesses any firearm, stun gun or

taser or other deadly weapon in any place which is licensed to sell intoxicating beverages, or at any public gathering held pursuant to a license issued by any governmental body or any public gathering at which an admission is charged, excluding a place where a showing, demonstration or lecture involving the exhibition of unloaded firearms is conducted.

This subsection (a)(8) does not apply to any auction

or raffle of a firearm held pursuant to a license or permit issued by a governmental body, nor does it apply to persons engaged in firearm safety training courses; or

(9) Carries or possesses in a vehicle or on or about

his person any pistol, revolver, stun gun or taser or firearm or ballistic knife, when he is hooded, robed or masked in such manner as to conceal his identity; or



(10) Carries or possesses on or about his person,

upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a) (10) does not apply to or affect transportation of weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or
- (ii) are not immediately accessible; or

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 33 of 99 PageID #:575

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 30 of 96 PageID #:358

(iii) are unloaded and enclosed in a case,

firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.

A "stun gun or taser", as used in this paragraph (a)

means (i) any device which is powered by electrical charging units, such as, batteries, and which fires one or several barbs attached to a length of wire and which, upon hitting a human, can send out a current capable of disrupting the person's nervous system in such a manner as to render him incapable of normal functioning or (ii) any device which is powered by electrical charging units, such as batteries, and which, upon contact with a human or clothing worn by a human, can send out current capable of disrupting the person's nervous system in such a manner as to render him incapable of normal functioning; or

(11) Sells, manufactures or purchases any explosive

bullet. For purposes of this paragraph (a) "explosive bullet" means the projectile portion of an ammunition cartridge which contains or carries an explosive charge which will explode upon contact with the flesh of a human or an animal. "Cartridge" means a tubular metal case having a projectile affixed at the front thereof and a cap or primer at the rear end thereof, with the propellant contained in such tube between the projectile and the cap; or

- (12) (Blank); or
- (13) Carries or possesses on or about his or her

person while in a building occupied by a unit of government, a billy club, other weapon of like character, or other instrument of like character intended for use as a weapon. For the purposes of this Section, "billy club" means a short stick or club commonly carried by police officers which is either telescopic or constructed of a solid piece of wood or other man-made material.

(b) Sentence. A person convicted of a violation of subsection 24-1(a) (1) through (5), subsection 24-1(a) (10), subsection 24-1(a) (11), or subsection 24-1(a) (13) commits a Class A misdemeanor. A person convicted of a violation of subsection 24-1(a) (8) or 24-1(a) (9) commits a Class 4 felony; a person convicted of a violation of subsection 24-1(a) (6) or 24-1(a) (7) (ii) or (iii) commits a Class 3 felony. A person convicted of a violation of subsection 24-1(a) (7) (i) commits a Class 2 felony and shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years, unless the weapon is possessed in the passenger compartment of a motor vehicle as defined in Section 1-146 of the Illinois Vehicle Code, or on the person, while the weapon is loaded, in which case it shall be a Class X felony. A person convicted of a second or subsequent violation of subsection 24-1(a) (4), 24-1(a) (8), 24-1(a) (9), or 24-1(a) (10) commits a Class 3 felony. The possession of each weapon in violation of this Section constitutes a single and separate violation.

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 34 of 99 PageID #:576

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 31 of 96 PageID #:359

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 001

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 95CR0257101

SHAWN

GOWDER

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

720-5/24-1 (A) (10)1 F 4 CARRY/POSSES FIREARM IN P The following disposition(s) was/were rendered before the Honorable Judge(s):

01/19/95 IND/INFO-CLK OFFICE-PRES JUDGE 02/0 95CR0257101 ID# CR100070900	01/95	1701	
	08/95	6715	
02/01/95 MOTION TO SUBSTITUTE JUDGE BASTONE, ROBERT P.		S	.2
	06/95	1723	
02/06/95 DEFENDANT ON BOND NEVILLE, RICHARD E.		,	-
02/06/95 APPEARANCE FILED NEVILLE, RICHARD E.			
02/06/95 DEFENDANT ARRAIGNED NEVILLE, RICHARD E.			
02/06/95 PLEA OF NOT GUILTY NEVILLE, RICHARD E.			
02/06/95 CONTINUANCE BY AGREEMENT 04/0 NEVILLE, RICHARD E.	7/95		
04/07/95 DEFENDANT ON BOND NEVILLE, RICHARD E.			
04/07/95 MOTION TO QUASH ARREST NEVILLE, RICHARD E.	J	Ξ	2
04/07/95 MOTION TO SUPPRESS NEVILLE, RICHARD E.	I	Ξ	2
04/07/95 CONTINUANCE BY AGREEMENT 05/1 NEVILLE, RICHARD E.	.0/95		
05/10/95 WITNESSES ORDERED TO APPEAR 05/1 NEVILLE, RICHARD E.	.0/95 1	1723	
05/10/05 0037777777	.2/95		



Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 35 of 99 PageID #:577 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 32 of 96 PageID #:360

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 95CR0257101

SHAWN

GOWDER

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed	an IND	ICTMENT/I	NFORMATI	ON
06/12/95 DEFENDANT ON BOND 06/12/95 WITNESSES ORDERED TO APPEAR				
06/12/95 WITNESSES ORDERED TO APPEAR 06/12/95 CONTINUANCE BY AGREEMENT		00/11/100		
06/14/95 CONTINUANCE BY AGREEMENT		06/14/95		
NEVILLE, RICHARD E.		07/11/95		•
07/11/95 DEFENDANT ON BOND				
NEVILLE, RICHARD E.				
07/11/95 WITNESSES ORDERED TO APPEAR				
NEVILLE, RICHARD E.				
07/11/95 CONTINUED BENCH TRIAL	•	08/21/95		
NEVILLE, RICHARD E.		00/21/95		
08/21/95 DEFENDANT ON BOND				
NEVILLE, RICHARD E.			war i	7 AL
08/21/95 MOTION TO QUASH ARREST			D. *.	2
NEVILLE, RICHARD E.				
08/21/95 FINDING OF GUILTY	C001			
NEVILLE, RICHARD E.	0001			7,97
08/21/95 JGMT ON FINDING/VERDICT/PLEA			·F	CANAG
NEVILLE, RICHARD E.			_	
08/21/95 DEF SENTENCED TO PROBATION	C001			
1 YRS				
NEVILLE, RICHARD E.				
08/21/95 CHANGE PRIORITY STATUS	M			
NEVILLE, RICHARD E.				
08/21/95 CASH BOND REFUND TO ATTORNEY	B001			
NEVILLE, RICHARD E.				
08/25/95 CASH BOND REFUND TO ATTORNEY	B001			
D6325337			•	
08/25/95 CBR PROCSED FRWD ACCT DEP				
09/01/95 MOTION DEFENDANT - NEW TRIAL	*		E	2
09/01/95 NOTICE OF MOTION/FILING		09/08/95	1723	
09/08/95 DEFENDANT NOT IN COURT	•		, , , , , , , , , , , , , , , , , , ,	
NEVILLE, RIGHARD E.				
09/08/95 MOTION DEFENDANT - NEW TRIAL			D	2
NEVILLE, RICHARD E.				
09/08/95 NOTICE OF APPEAL FILED, TRNSFR				
NEVILLE, RICHARD E.				

Page 002

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 36 of 99 PageID #:578 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 33 of 96 PageID #:361

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Page 003

VS

NUMBER 95CR0257101

SHAWN

GOWDER

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION 09/08/95 ILL STATE APPELLATE DEF APPTD NEVILLE, RICHARD E.

09/08/95 CONTINUED FOR APPEAL

NEVILLE, RICHARD E.

09/08/95 NOTICE OF APPEAL FILED, TRNSFR 09/12/95 NOTICE OF NOTICE OF APP MAILED

09/12/95 CONTINUANCE BY ORDER OF COURT 09/15/95 1713

09/15/95 ILL STATE APPELLATE DEF APPTD

09/15/95 O/C FREE REPT OF PROCD ORD N/C

09/15/95 MEMO OF ORDS & NOA PICKED-UP

10/02/95 REPT OF PRCDS ORD FR CRT RPT

09/21/95 APPELLATE COURT NUMBER ASGND 95-3292

12/15/95 COMMON LAW RECORD PREPARED

12/19/95 CLR RECD BY APP COUNSEL

STATE APPELLATE DEFENDER

01/26/96 TRANS PROC REC/FILED CLKS OFF

02/07/96 REPORT OF PROCEEDINGS PREPARED

02/15/96 REPRT/PROCDS RECD BY APP ATTRY

STATE APPELLATE DEFENDER

07/30/96 MOTION FOR TERMINATION HEARING

07/30/96 PROB HEARING DATE ASSIGNED 08/07/96 1723

08/07/96 DEFENDANT NOT IN COURT

NEVILLE, RICHARD E.

08/07/96 PROB TERMINATED - SATISFACTORY

NEVILLE, RICHARD E.

09/26/97 MANDATE FILED

10/03/97 1701

10/03/97 REVIEW COURT AFFIRMANCE FITZGERALD, THOMAS R.

04/08/03 SPECIAL ORDER 00/00/00 F

VACATE FELONY CONVICTION.

04/08/03 HEARING DATE ASSIGNED 04/21/03 1701 04/21/03 CASE ASSIGNED 04/21/03 1723

WOOD, WILLIAM S.

04/21/03 DEFENDANT ON BOND 00/00/00

SACKS STANLEY J.

04/21/03 SPECIAL ORDER 00/00/00

ATTY. PETERS IN COURT DRAFT ORDER ENTERED. DE T. CONVICTED

SACKS STANLEY J.

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 37 of 99 PageID #:579

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 34 of 96 PageID #:362

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 004

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 95CR0257101

SHAWN

GOWDER

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION 04/21/03 SPECIAL ORDER 00/00/00

OF 8-21-1995 IS REDUCED FROM A FELONY TO A MIS EMEANOR. OFF CALL.

SACKS STANLEY J.

04/21/03 CHANGE PRIORITY STATUS SACKS STANLEY J.

M 00/00/00



I hereby certify that the foregoing has been entered of record on the above captioned case.

Date 11/23/10

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 38 of 99 PageID #:580

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 35 of 96 PageID #:363

THE CITY OF CHICAGO, ILLINOS DEPARTMENT OF ADMINISTRATIVE HEARINGS MUNICIPAL HEARINGS DIVISION

CITY OF CHICAGO, a Municip Corporation,	al)
Petitioner)
v) Docket No. 10 GR 000041
SHAWN GOWDER,-)
Respondent	j · · · · · · · · · · · · · · · · · · ·

DECISION

- 1. This body has jurisdiction of the subject matter and over the parties.
- 2. This matter is before this body on an Appeal of the Denial of a Chicago Firearm Permit to Shawn Gowder ("the Applicant") by the Chicago Police Department, City of Chicago (the "Police Department")
- 3. The Applicant filed an application for a Chicago Firearm Permit ("CFP") with the Police Department. See Petitioner's Group Exhibit 5
- 4. By notice dated November 10, 2010, the Police Department advised the Applicant that he was ineligible to be approved for a CFP, and thus his application for a permit was denied. See Petitioner's Group Exhibit 4
- 5. The Police Department based its denial on the provisions found in MCC 8-20-110 (b) (3) (iii) which provides, in part that:
 - (a))... it is unlawful for any person to carry or possess a firearm without a CFP.
 - (b) No CFP application shall be approved unless the applicant:
 - (3) has not been convicted by a court in any jurisdiction of:
 - (iii) an unlawful use of a weapon that is a firearm...

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 39 of 99 PageID #:581 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 36 of 96 PageID #:364

- 5. The Applicant had been convicted on August 25, 1995 in Cook County Circuit Court of an *unlawful use of a weapon* in violation of 720 ILCS 5/24-1(a)(10). See Petitioner's Group Exhibits 6, 7, 8 and 9.
- 6. 720 ILCS 5/24-1(a) (10) provides as follows:
 - (a) A person commits the offense of unlawful use of a weapon when he knowingly:...
 - (10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm...
- 7. The provisions of 720 ILCS 5/24-1(a)(10) is clear as to what constitutes an unlawful use of a weapon.
- 8. The plain and ordinary meaning and usage given to "unlawful use of a weapon" in this jurisdiction is to "earry or possess a firearm" as provided in 720 ILCS 5/24-1(a) (10)
- 9. There is no distinction between the meanings of "use of a weapon" and "carry and possess a firearm, as used in MCC 8-20-110
- 10. The basis for the denial of the application has not been rebutted by the Applicant
- 11. The denial by the Chicago Police Department of the Applicant's application for a CFP is affirmed.
- 12. This body does not have jurisdiction to hear Constitutional issues as raised by the Applicant.
- 13. Pursuant to Section 2-14-102 of the Chicago Municipal Code, this final decision is subject to review under the Illinois Administrative Review Act.

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Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 40 of 99 PageID #:582

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 37 of 96 PageID #:365

THE CITY OF CHICAGO, ILLINOS DEPARTMENT OF ADMINISTRATIVE HEARINGS MUNICIPAL HEARINGS DIVISION

CITY OF CHICAGO, a Municip	al)	
Corporation,)	and the second s
Petitioner)	
)	
v.)	Docket No. 10 GR 000041
SHAWN GOWDER,)	
	•	
Respondent)	•

DECISION

- 1. This body has jurisdiction of the subject matter and over the parties.
- 2. This matter is before this body on an Appeal of the Denial of a Chicago Firearm Permit to Shawn Gowder ("the Applicant") by the Chicago Police Department, City of Chicago (the "Police Department")
- 3. The Applicant filed an application for a Chicago Firearm Permit ("CFP") with the Police Department. See Petitioner's Group Exhibit 5
- 4. By notice dated November 10, 2010, the Police Department advised the Applicant that he was ineligible to be approved for a CFP, and thus his application for a permit was denied. See Petitioner's Group Exhibit 4
- 5. The Police Department based its denial on the provisions found in MCC 8-20-110 (b) (3) (iii) which provides, in part that:
 - (a))... it is unlawful for any person to carry or possess a firearm without a CFP.
 - (b) No CFP application shall be approved unless the applicant:
 - (3) has not been convicted by a court in any jurisdiction of:
 - (iii) an unlawful use of a weapon that is a firearm...

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 41 of 99 PageID #:583 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 38 of 96 PageID #:366

- 5. The Applicant had been convicted on August 25, 1995 in Cook County Circuit Court of an *unlawful use of a weapon* in violation of 720 ILCS 5/24-1(a)(10). See Petitioner's Group Exhibits 6, 7, 8 and 9.
- 6. 720 ILCS 5/24-1(a) (10) provides as follows:
 - (a) A person commits the offense of unlawful use of a weapon when he knowingly:...
 - (10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stungun or taser or other firearm...
- 7. The provisions of 720 ILCS 5/24-1(a)(10) is clear as to what constitutes an unlawful use of a weapon.
- 8. The plain and ordinary meaning and usage given to "unlawful use of a weapon" in this jurisdiction is to "carry or possess a firearm" as provided in 720 ILCS 5/24-1(a) (10)
- 9. There is no distinction between the meanings of "use of a weapon" and "carry and possess a firearm, as used in MCC 8-20-110
- 10. The basis for the denial of the application has not been rebutted by the Applicant
- 11. The denial by the Chicago Police Department of the Applicant's application for a CFP is affirmed.
- 12. This body does not have jurisdiction to hear Constitutional issues as raised by the Applicant.
- 13. Pursuant to Section 2-14-102 of the Chicago Municipal Code, this final decision is subject to review under the Illinois Administrative Review Act.

Entered:

Sharon K. Davis

Administrative Law Judge

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 42 of 99 PageID #:584

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 39 of 96 PageID #:367

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Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 43 of 99 PageID #:585

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 40 of 96 PageID #:368

THE CITY OF CHICAGO, ILLINOS DEPARTMENT OF ADMINISTRATIVE HEARINGS MUNICIPAL HEARINGS DIVISION

CITY OF CHICAGO, a Municip	al)
Corporation,)
Petitioner	
ν.) Docket No. 10 GR 000041
SHAWN GOWDER, Respondent)))

DECISION

- 1. This body has jurisdiction of the subject matter and over the parties.
- 2. This matter is before this body on an Appeal of the Denial of a Chicago Firearm Permit to Shawn Gowder ("the Applicant") by the Chicago Police Department, City of Chicago (the "Police Department")
- 3. The Applicant filed an application for a Chicago Firearm Permit ("CFP") with the Police Department. See Petitioner's Group Exhibit 5
- 4. By notice dated November 10, 2010, the Police Department advised the Applicant that he was ineligible to be approved for a CFP, and thus his application for a permit was denied. See Petitioner's Group Exhibit 4
- 5. The Police Department based its denial on the provisions found in MCC 8-20-110 (b) (3) (iii) which provides, in part that:
 - (a))... it is unlawful for any person to carry or possess a firearm without a CFP.
 - (b) No CFP application shall be approved unless the applicant:
 - (3) has not been convicted by a court in any jurisdiction of:
 - (iii) an unlawful use of a weapon that is a firearm...

Case: 1:11-cv-01304 Document #: 26-4 Filed: 06/21/11 Page 44 of 99 PageID #:586 Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 41 of 96 PageID #:369

- 5. The Applicant had been convicted on August 25, 1995 in Cook County Circuit Court of an *unlawful use of a weapon* in violation of 720 ILCS 5/24-1(a)(10). See Petitioner's Group Exhibits 6, 7, 8 and 9.
- 6. 720 ILCS 5/24-1(a) (10) provides as follows:
 - (a) A person commits the offense of unlawful use of a weapon when he knowingly:...
 - (10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stungun or taser or other firearm...
- 7. The provisions of 720 ILCS 5/24-1(a)(10) is clear as to what constitutes an unlawful use of a weapon.
- 8. The plain and ordinary meaning and usage given to "unlawful use of a weapon" in this jurisdiction is to "earry or possess a firearm" as provided in 720 ILCS 5/24-1(a) (10)
- 9. There is no distinction between the meanings of "use of a weapon" and "carry and possess a firearm, as used in MCC 8-20-110
 - 10. The basis for the denial of the application has not been rebutted by the Applicant
- 11. The denial by the Chicago Police Department of the Applicant's application for a CFP is affirmed.
- 12. This body does not have jurisdiction to hear Constitutional issues as raised by the Applicant.
- 13. Pursuant to Section 2-T4-102 of the Chicago Municipal Code, this final decision is subject to review under the Himois Administrative Review Act.

Entered:

Sharon K. Davis

Administrative Law Judge

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Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 43 of 96 PageID #:371

IN THE CITY OF CHICAGO
DEPARTMENT OF ADMINISTRATIVE HEARINGS
MUNICIPAL HEARINGS DIVISION
GUN REGISTRATION

ORIGINAL CITY OF CHICAGO, (Dept. of Police) Petitioner, V.) Docket #10GR000041 Shawn Gowder, Respondent. Hearing date: November 24, 2010 Location: Central Hearing Facility, 400 W. Superior, Chicago, IL Administrative Law Judge: Pamela Harris For the City of Chicago: Attorney: Scott Sachnoff Other Representative: None Witness: None Witness: None For the Respondent: Respondent: None Attorney: Steven Kolodziei Other Representative: None Other Representative: None R43

1

2 ADMINISTRATIVE LAW JUDGE HARRIS: The case 1 is the City of Chicago versus -- oh, it's actually 2 in the -- it's in referring the -- let me see, 3 Chicago Police Department, a request for a hearing 4 by -- is that Gowder, Shawn Gowder? 5 MR. SACHNOFF: Correct. 6 ADMINISTRATIVE LAW JUDGE HARRIS: The 7 Docket is 10GR000041. The Respondent is 8 represented by counsel. Counsel, could you state 9 your name? 10 MR. KOLODZIEJ: Yes, it's Steven Kolodziej, 11 K-o-l-o-d-z-i-e-j for the Respondent, Mr. Gowder. 12 ADMINISTRATIVE LAW JUDGE HARRIS: 13 there's also a representative here on behalf of the 14 City. Sir, could you state your name? 15 MR. SACHNOFF: Scott Sachnoff, Assistant 16 Corporation Counsel for the City. 17 ADMINISTRATIVE LAW JUDGE HARRIS: Now, this 18 matter is on the call regarding the Respondent's 19 request for a hearing regarding the denial of his 20 petition for a permit for a firearm by the Chicago 21 Police Department. 22 **R44** The matter was set to be heard today at 2; 23 however, counsel it's my understanding you're 24

3 requesting a continuance; is that correct? 1 2 MR. KOLODZIEJ: That is correct. ADMINISTRATIVE LAW JUDGE HARRIS: Why are 3 you requesting a continuance? 4 5 MR. KOLODZIEJ: Your Honor, because I was just retained formally this -- just a few minutes 6 before this hearing. Mr. Gowder completed his 7 application and request, or his request rather for 8 this hearing on Monday, the 22nd and was given this 9 day less than 48 hours later, so I have not had 10 time as his attorney to get up to speed and in a 11 position to argue the case at this point. 12 13 ADMINISTRATIVE LAW JUDGE HARRIS: And counsel, I just am going to make aware to you now 14 the ordinance does require that the hearing be 15 conducted within 72 hours from the request, 16 17 excluding Saturdays, Sundays and holidays. understand that by requesting a continuance that 18 you're waiving the Respondent's right to have the 19 hearing conducted within that 72 hours? 20 **R45** 21 MR. KOLODZIEJ: I do understand, your Honor, and because I am making a request for a 22 continuance, I do agree to waive such rule. 23 24 ADMINISTRATIVE LAW JUDGE HARRIS: And the

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4
 1
      City has no objection to the Respondent's motion
 2
      for a continuance?
              MR. SACHNOFF: That's correct.
 3
              ADMINISTRATIVE LAW JUDGE HARRIS:
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 5
      grant the Respondent's motion continuing this
      matter, and there was a discussion, we were not on
 6
 7
      the record, but nonetheless there was a discussion
 8
      regarding the continuance date, and it's my
 9
      understanding that both parties have agreed to
      continue this matter to December the 8th at 2
10
11
      o'clock; is that correct?
12
              MR. SACHNOFF:
                             Yes.
                              That is correct.
13
              MR. KOLODZIEJ:
              ADMINISTRATIVE LAW JUDGE HARRIS:
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15
      grant the Respondent's motion to continue this
      matter to December the 8th at 2 o'clock.
16
17
      Sachnoff's completing the copy of the order.
18
              Counsel, I'll give you a copy in one
19
      moment.
20
              MR. KOLODZIEJ:
                              Thank you very much.
21
              ADMINISTRATIVE LAW JUDGE HARRIS:
22
     welcome, sir.
                                                     R46
23
              MR. KOLODZIEJ: I don't know if you want
24
      this on the record.
                           I just -- do I get a copy of
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 1
      the appearance form?
 2
              ADMINISTRATIVE LAW JUDGE HARRIS:
                                                 Oh,
      absolutely.
 .3
 4
              MR. KOLODZIEJ:
                               Okay.
 5
              ADMINISTRATIVE LAW JUDGE HARRIS: Yes, I'll
 6
      give you a copy.
 7
              MR. KOLODZIEJ:
                              Thank you.
 8
              ADMINISTRATIVE LAW JUDGE HARRIS:
                                                 You're
 9
      welcome.
10
              Okay.
                     Counsel, here's a copy of the order
11
      continuing the matter for a hearing to December the
12
            You didn't put the time in there.
13
                             Oh, sorry.
              MR. SACHNOFF:
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              ADMINISTRATIVE LAW JUDGE HARRIS:
                                                That's
15
      okay.
             I'll put it in there at 2 o'clock.
16
              MR. KOLODZIEJ: May I ask a question on the
17
      record, please?
                                                     R47
18
              ADMINISTRATIVE LAW JUDGE HARRIS:
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              MR. KOLODZIEJ: We do anticipate making a
20
      constitutional challenge to the provision that's at
21
      issue here. I understand that this tribunal's
22
      capacity in that regard is limited, but I would
23
      like to ask may I submit a written brief in support
24
     of our position at the hearing on December 8th or
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will it be ...

ADMINISTRATIVE LAW JUDGE HARRIS: I don't think -- yeah, I think a hearing officer will allow you to do that, especially because the ordinance does allow us to take it under advisement and not enter -- we don't have to enter written...

Well, we have to enter a written decision within five days at the conclusion of a hearing, so we are allowed to take it under advisement, which means that if you submit it, just make sure you give a copy...

If you're going to do that, I would probably make sure you want to give a copy to counsel, maybe a couple of days before. We're not going to hear this until the 8th. Can you have a copy of that written brief to him by the 1st, at least a week before because he should be given an opportunity to respond to it. Do you want to put that in the order just in case?

I mean I'm making it part of the record, I might not be the hearing officer who hears the case, and so I just want to make sure it's clear that I am ordering you that if you're going to be submitting a written brief, would you be wanting to

respond to that in writing? Because you're right, they're not going to be allowed to -- we don't have the authority to entertain constitutional arguments to the ordinance.

We decide whether or not there was a violation of the city's municipal ordinance. You can make a record in the event you do want to appeal it on constitutional basis. That being said, if you're going to be written -- entering a written brief making it part of the record, arguing constitutional grounds I would want to give the City an opportunity to respond to that brief, which means that we probably might or might not be -- if I were the hearing officer, may or may not be able to do it December the 8th.

MR. KOLODZIEJ: I understand, and if the limitation is five days for you to reach a ruling, I mean I think that's fair.

ADMINISTRATIVE LAW JUDGE HARRIS: But then he would have to have an opportunity to respond to your brief, so if you have, you know, unless you're going to give it to him tomorrow and he's going to respond by the 3rd, if I'm telling you that you need -- the hearing is set for the 8th. This is

. 9

8 the 24th, so if I give you a week to give that brief to him, he's going to need an opportunity to respond to it, and I don't know if all of that can be done by the deadline of having the hearing set for December the 8th is what I'm saying. MR. KOLODZIEJ: That's what I was trying to I agree with what you're saying, and I will make every effort to get any -- if we are going to submit a brief. I will let him know for sure by next Wednesday whether we're going to submit one, and if we are, if at all possible, i would get it to him. But if I can't get it to him until next Thursday, I mean would that be okay? I'll do my best, it's just -- I mean if want to order me to have it to him, obviously I'll comply with the order. I'm -- I don't know how much time counsel would want. ADMINISTRATIVE LAW JUDGE HARRIS: Well, if he submits a written brief, are you intending to respond to it? **R50** MR. SACHNOFF: If the brief we're talking about is anything like what counsel and I discussed when we were talking about this matter generally,

then you've pretty much summed up my response,

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 1
      which is constitutional issues can be made of
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      record here, but cannot be ruled on at
      Administrative Hearings, and can't -- can only be
 3
 4
      preserved for any possible appeal.
 5
              ADMINISTRATIVE LAW JUDGE HARRIS: So that
 6
      would be your response in any event, so you
      wouldn't need time to for a written response?
 7
 8
              MR._SACHNOFF: I can't --
 9
              ADMINISTRATIVE LAW JUDGE HARRIS: I know.
10
      I know.
11
              MR. SACHNOFF: -- predict what's going to
      be in there.
12
13
              ADMINISTRATIVE LAW JUDGE HARRIS:
14
      understand, and I'm not asking you to do that, I
15
      know that's different.
              MR. SACHNOFF: Sure.
16
17
              ADMINISTRATIVE LAW JUDGE HARRIS:
18
      no way you can...
19
              MR. SACHNOFF: Sure.
                                    I mean if he's going
20
      to say something more substantive about what's
      actually at issue here, then of course I would want
21
22
      to respond.
                                                   R51
23
              ADMINISTRATIVE LAW JUDGE HARRIS:
24
      then let's just leave it open. We'll set it for
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		10
1	December the 8th. If you're going to be providing	
2	a written brief, just make sure you give it to	
3	counsel, and if necessary, if you need time to	
4	respond, then you have to come back on the 8th and	
5	make that argument. Okay?	
6	MR. SACHNOFF: Yes.	
7	ADMINISTRATIVE LAW JUDGE HARRIS: You can	
.8	step up, counsel. And it's not a cold, I just got	
9	choked, so don't worry, I'm not contagious. There	
10	you go, here's a copy to December the 8th at 2	
11	o'clock. Well, there you go.	
12	MR. KOLODZIEJ: Thank you.	
13	ADMINISTRATIVE LAW JUDGE HARRIS: You're	
14	welcome.	
15	MR. KOLODZIEJ: Do we are we	
16	ADMINISTRATIVE LAW JUDGE HARRIS: That's	
17.	it.	
18	MR. KOLODZIEJ: Adjourned? Thank you.	
19	ADMINISTRATIVE LAW JUDGE HARRIS: Yes.	
20	Thank you, gentlemen.	
21		
22		
23	R52	
24	(END OF PROCEEDINGS)	

I, Susanne M. Carlin, do hereby certify or affirm that I have impartially transcribed the foregoing from an audiotape record of the above-captioned proceedings to the best of my ability. warne Mearlin. Susanne M. Carlin **R53**

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Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 54 of 96 PageID #:382

Name of the State	1			
IN THE CITY	OF CHICAGO			
DEPARTMENT OF ADMINISTRATIVE HEARINGS				
MUNICIPAL HEAR	INGS DIVISION			
GUN REGIS	STRATION			
CITY OF CHICAGO,				
(Dept. of Police)	ORIGINAL			
(Dept. of forfee))			
Petitioner,)			
,)			
V) Docket #10GR000041			
)			
Shawn Gowder,)			
)			
Respondent.)			
Hearing date:	December 8, 2010			
Location:	Central Hearing Facility,			
	400 W. Superior,			
_	Chicago, IL			
Administrative Law Judge:	Sharon Davis			
For the City of Chicago:	Sharon bavis			
Attorney:	Scott Sachnoff			
Other Representative:	None			
Witness:	None			
Witness:	None			
	,			
For the Respondent:	None			
Respondent:	None			
Attorney: Other Representative:	Steven Kolodziej None			
Other Representative:	None R54			
other representative:	1,041			

Case: 1:11-cv-01304 Document #: 18-1 Filed: 04/07/11 Page 55 of 96 PageID #:383

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2
 1
              ADMINISTRATIVE LAW JUDGE DAVIS: City
 2
      versus Shawn Gowder, Docket 10GR000041.
 3
              Counsel, your name for the record?
 4
              MR. KOLODZIEJ: Steven Kolodziej,
 5
      K-o-l-o-d-z-i-e-j for the Respondent, Shawn Gowder.
              ADMINISTRATIVE LAW JUDGE DAVIS: Is that
 6
 7
      spelled G-o-w-d-e-r?
 8
              MR. KOLODZIEJ: Correct.
 9
              ADMINISTRATIVE LAW JUDGE DAVIS: And how is
10
      it pronounced?
              MR. KOLODZIEJ: Gow-der.
11
              ADMINISTRATIVE LAW JUDGE DAVIS: Gowder,
12
13
      all right. Counsel, your name for the record?
              MR. SACHNOFF: Scott Sachnoff,
14
15
      S-a-c-h-n-o-f-f, Assistant --
              ADMINISTRATIVE LAW JUDGE DAVIS: And are
16
17
     you ready --
18
              MR. SACHNOFF: -- Corporation Counsel for
19
      the City.
20
              ADMINISTRATIVE LAW JUDGE DAVIS: Are you
21
     ready to proceed, counsel?
22
             MR. SACHNOFF: Yes.
23
             MR. KOLODZIEJ: Yes.
                                                     R55
24
             MR. SACHNOFF: Just so your Honor is aware,
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3

this is up on a continued continuation. The matter was originally scheduled for November 24th. was an order entered on that date. Counsel for Mr. Gowder having waived the requirement of a hearing within 72 hours. He requested a continuance, which was granted, without objection to today's date.

At this time the City has already tendered the documents it plans to use as part of its case to counsel for today, and this afternoon counsel tendered to me a document that I assume he's intending to file today. Perhaps the hearing officer can inquire if Mr. Kolodziej ...

MR. KOLODZIEJ: Kolodziej.

MR. SACHNOFF: Has any objection to the documents the City intends to enter into evidence.

ADMINISTRATIVE LAW JUDGE DAVIS: review the documents, counsel?

MR. KOLODZIEJ: I have, your Honor, and the documents which I was given which are marked Exhibits 1 through 8, I have no objection, and in fact they are the same exhibits upon which I will rely, so they are fine. **R56**

MR. SACHNOFF: Okay. Then for the record, I'll be tendering the originals.

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               ADMINISTRATIVE LAW JUDGE DAVIS: All right.
 2
       City --
 3
               MR. SACHNOFF: Of those documents to the
 4
      hearing officer today.
              ADMINISTRATIVE LAW JUDGE DAVIS: All right.
 5
 6
      City --
 7
              MR. SACHNOFF: I'm moving that they be
      entered into evidence as City's Exhibits 1 through
 8
 9
      8.
              ADMINISTRATIVE LAW JUDGE DAVIS: All right.
10
      Petitioner's Exhibits 1 through 8 will be admitted
11
12
      into evidence.
13
                           (Whereby Petitioner's Exhibits
14
                            1 through 8 having been
15
                           admitted into evidence.)
16
              MR. KOLODZIEJ: If I may, and the document
      to which counsel just referred is a brief that I
17
      prepared. The hearing officer last time we were
18
19
      here gave me leave to file this.
                                                   R57
20
              It is a -- this is a case involving a
21
      denial of Chicago firearms permit. Our position is
      and understanding that the jurisdiction of this
22
23
      tribunal, but our position is that there are
     serious constitutional implications with this
24
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5 denial of the application, and we have prepared a 1 brief outlining our position on that that we would 2 like to introduce into the record. 3 4 ADMINISTRATIVE LAW JUDGE DAVIS: When were you supposed to tender the brief, counsel? 5 6 MR. KOLODZIEJ: Today. 7 ADMINISTRATIVE LAW JUDGE DAVIS: To be read today and decided on today? 8 9 MR. KOLODZIEJ: Well, not necessarily 10 decided, but to be read. It's my understanding 11 that the disposition has to be entered within five days after the hearing is concluded, so. 12 13 ADMINISTRATIVE LAW JUDGE DAVIS: Counsel. any objection? Is this your understanding, because 14 15 I don't see it in the order, in the file I don't 16 see that. **R58** 17 MR. SACHNOFF: The hearing officer's right. 18 There's nothing about being granted leave to file 19 the brief in the order, but there was some extensive discussion on the record at the last 20 hearing about the possibility of filing a brief. 21 22 There was also some discussion about the 23 fact that counsel was going to be making some constitutional arguments, which I pointed out to 24

6 1 him under the rules and regulations of the 2 Department of Administrative Hearings can only be made for the record and not be ruled upon by an 3 4 Administrative Law Judge. 5 I would like to briefly for the record go 6 through the City's documents that have been entered 7 into evidence, so that there's something on the 8 written record about what we're basing the denial 9 of counsel's client's application for the firearm 10 permit. 11 ADMINISTRATIVE LAW JUDGE DAVIS: I'm sorry, 12 Mr. Sachnoff, start that again. You said you 13 wanted to go through each document because you 14 wanted to --15 MR. SACHNOFF: Just briefly to explain 16 what's been entered into evidence and what the 17 basis of the denial was. 18 ADMINISTRATIVE LAW JUDGE DAVIS: All right. 19 Are you bringing your client here today? 20 MR. KOLODZIEJ: I was not planning to. 21 can if need be. **R59** 22 ADMINISTRATIVE LAW JUDGE DAVIS: Well, 23 that's up to you, it's your client, but are you 24 ready to go to a hearing today?

7 1 MR. KOLODZIEJ: Yes. 2 ADMINISTRATIVE LAW JUDGE DAVIS: This is 3 for a hearing? 4 MR. KOLODZIEJ: It is. 5 ADMINISTRATIVE LAW JUDGE DAVIS: All right. 6 So now let's first address this before we go onto that. Counsel is absolutely right. This can be 7 noted for the record, but we don't rule on 8 constitutional issues. 9 10 MR. KOLODZIEJ: I do understand that, but I do need to make a record on that if there is 11 12 further appeal, and that is the reason for 13 tendering this to make this Court aware of our 14 position. I did think this would be helpful as well in outlining the arguments I'm going to make. 15 16 I do understand that you cannot rule upon 17 constitutional issues. I don't believe that is 18 necessary for a disposition of this case, but -and I will get to that in my presentation, but this 19 20 does outline the issues that I wish to bring to 21 your attention. R60 22 ADMINISTRATIVE LAW JUDGE DAVIS: All right, 23 counsel, so let me just make sure I'm understanding 24 what -- so you have filed an appeal of a denial of

		8
. 1	the Chicago firearm permit. Are you using this as	
2	a basis for discussion today or is this something	
3		
4	(Phone ringing.)	
5	ADMINISTRATIVE LAW JUDGE DAVIS: Sharon	
6	Davis. Yes. Okay. All right. Bye bye.	
7	(End of call.)	
8	MR. KOLODZIEJ: That is correct. I am	
9	using this as a basis for discussion today. If you	
10	wish to take, you know, 10 minutes or so to read	
11	that, I know it's a four-page document, that might	
12	facilitate things, it's totally	
13	ADMINISTRATIVE LAW JUDGE DAVIS: I would	
14	certainly like to, but, you know, I mean this is	
15	just coming as a surprise because I had no idea	
16	that anything was going to be written in written	
17	form, and I would assume that the Administrative	
18	Law Judge would have required that this be	
19	submitted sometime prior to the hearing.	
20	MR. KOLODZIEJ: Well, I have the transcript	
21	of that last hearing, and it was discussed.	
22	ADMINISTRATIVE LAW JUDGE DAVIS: But	
23	discussed, was there some conclusion as to what you	
24	discussed? Was there a resolution?	

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              MR. SACHNOFF: I think the correct answer
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 2
      to that is no, because I couldn't anticipate what
 3
      he was going to file, and now that I've looked at
      it in part it does relate to his constitutional
 4
 5
      arguments, but there's also a statutory
 6
      interpretation argument in here as well, which I'm
 7
      perfectly ready to address on the record with the
      documents that the City has...
 8
 9
              ADMINISTRATIVE LAW JUDGE DAVIS: Well, I'll
10
      have --
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              MR. SACHNOFF: Put into evidence.
              ADMINISTRATIVE LAW JUDGE DAVIS: -- I'll
12
13
      have to take about 15 minutes to read this if you
14
      have no objection.
15
              MR. SACHNOFF: That's fine.
              ADMINISTRATIVE LAW JUDGE DAVIS: All right.
16
17
              MR. SACHNOFF: Recess?
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              ADMINISTRATIVE LAW JUDGE DAVIS:
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      please until 2:30. Please, thank you.
20
                          (Whereby a recess was had.)
21
              ADMINISTRATIVE LAW JUDGE DAVIS:
                                               All right,
22
      counsel, I'm ready. Is the court reporter still
23
      here?
                                                     R62
24
              THE REPORTER: Yes.
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10 1 ADMINISTRATIVE LAW JUDGE DAVIS: Okay. Down there. All right. We're still on the record, 2 so I just took a few minutes. 3 4 All right. Counsel, your first -- the 5 conviction was for unlawful use of a weapon seems to me a statutory interpretation as opposed to a 6 constitutional issue. 7 8 Counts -- the other one, denial of -- based 9 on a misdemeanor conviction for mere possession 10 carrying of a firearm violates the right to keep and bear arms. I'll let you --11 12 THE REPORTER: I'm sorry, your Honor? 13 ADMINISTRATIVE LAW JUDGE DAVIS: 14 THE REPORTER: I'm having a hard time 15 hearing you. 16 ADMINISTRATIVE LAW JUDGE DAVIS: You can't hear me? 17 18 THE REPORTER: I'm having a hard time 19 hearing you. 20 ADMINISTRATIVE LAW JUDGE DAVIS: Okay. 21 I'll try to speak up. 22 THE REPORTER: Okay. **R63** 23 ADMINISTRATIVE LAW JUDGE DAVIS: All right. 24 I'm not going to -- I'll note, for the record, I

11 1 will accept this and note it and enter it into -do you have any objection, counsel, to this being 2 3 filed today? 4 MR. SACHNOFF: Assuming that we have --5 that I have the ability to orally respond to it at 6 the hearing, no, I don't. 7 ADMINISTRATIVE LAW JUDGE DAVIS: Well, I 8 want to start off there. I don't want you to 9 respond to Number 2 because that's a constitutional 10 issue, but I wanted to state for the record that 11 that would be noted for the record but not ruled 12 upon because we don't have jurisdiction to hear 13 constitutional issues. 14 MR. SACHNOFF: And that's basically my 15 entire response to that section. 16 ADMINISTRATIVE LAW JUDGE DAVIS: All right. 17 Do you have a -- but not section 1? 18 MR. SACHNOFF: No. 19 ADMINISTRATIVE LAW JUDGE DAVIS: Okay. 20 right. Counsel? **R64** 21 MR. SACHNOFF: Well, I really think that we 22 need to address the City's exhibits that are in 23 evidence so we know why we're here and what it is that counsel is responding to. 24

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              ADMINISTRATIVE LAW JUDGE DAVIS: All right.
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            Then you could put your case on. You know,
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      since I didn't have this before, I don't know what
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     has transpired, so all right.
 4
              MR. SACHNOFF:
                             Okay.
 5
 6
              ADMINISTRATIVE LAW JUDGE DAVIS: Put your
 7
      case on.
              MR. SACHNOFF: Just to briefly go through
 8
      the City's exhibits.
 9
              ADMINISTRATIVE LAW JUDGE DAVIS: Um-hmm.
10
             MR. SACHNOFF: This is 10GR000041, it's an
11
      appeal by Mr. Shawn Gowder of a denial by the
12
      Chicago Police Department of his application for a
13
      Chicago firearms permit. The City's submitted
14
      eight exhibits into evidence.
15
              City↓s Exhibit 1 is Mr. Gowder's
16
      handwritten request for a hearing regarding the
17
      denial of his application. It was dated November
18
      22nd and filed with the Department of
19
      Administrative Hearings that day. It's signed by
20
      him and has his address.
21
                                                      R65
              City's Exhibit 2 is the Notice of Hearing
22
      that the Department of Administrative Hearings
23
      scheduled for him dated that same day November 22nd
24
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to Mr. Gowder, identifying a specified hearing date of November 24th, 2 o'clock, in Room 111. the date and time that I previously referred to that this matter was continued from.

City's Exhibit 3 is a certification by Sergeant Jeffrey Schaaf that all the documents that the police department has provided regarding this docket number and Mr. Gowder's case are true and accurate and kept in the regular course of business by the police department, signed by Sergeant Jeffrey Schaaf, that's S-c-h-a-a-f.

City's Group Exhibit 4 is the denial letter that was issued by the Chicago Police Department. It's to Mr. Gowder, it's dated November 10th. specifies the basis of denial of the Chicago firearm permit application as being you have been convicted by a court in any jurisdiction of an unlawful use of a weapon that's a firearm, city municipal code of Chicago 8-20-110(3)(iii). And then it gives Mr. Gowder the information regarding how to file an appeal, which he then did. **R66**

The second page of that document is a certificate of service indicating that it was mailed to him on or before 5 o'clock November 10th,

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2010, signed again by the same Sergeant Jeffrey Schaaf of the gun registration section.

City's Group Exhibit 5 is Mr. Gowder's
Chicago firearms permit application. It consists
of three pages. The application is the first page,
it has various information about Mr. Gowder
himself. The second page is the certification that
he has actually accomplished the firearms training
which is a necessary part of the application, and
the third page is a photocopy of his FOID card,
F-O-I-D card and his driver's license.

There -- City's Group Exhibit 6 is the

Illinois State Police records of Mr. Gowder's

criminal background history, and on that we have on

the third page the reference to Mr. Gowder's

disposition of guilty to a statute citation 7-20

ILCS 5.0 24-1-A-10, literal description:

Carry/Poss, firearm in public. Disposition was

guilty, the disposition date 8/21/1995, and it

specifies a case number and the sentence of

one-year of probation.

ADMINISTRATIVE LAW JUDGE DAVIS: All right,

counsel, I missed that, the last...

MR. SACHNOFF: So we're talking about the

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15
      third and last page --
 1
 2
              ADMINISTRATIVE LAW JUDGE DAVIS:
 3
              MR. SACHNOFF: -- of City's Group 6?
              ADMINISTRATIVE LAW JUDGE DAVIS:
 4
                                                Yeah, I
 5
      know, but I...
 6
              MR. SACHNOFF:
                             Okay.
 7
              ADMINISTRATIVE LAW JUDGE DAVIS:
 8
      disposition I see, 8/21/1995, yes, I see it.
 9
              MR. SACHNOFF: Okay. The City's Group 7 is
10
      the Chicago Police Department records for Mr.
11
      Gowder, commonly known as a rap sheet. It again on
12
      page 2 specifies that Mr. Gowder was charged with
13
      and convicted of carry/possess firearm. Under that
14
      same cite it's state statute, indicates a one-year
15
      probation, and has a sentence date and disposition
16
      date of August 21st, 1995.
17
              City's Group 8 is the copy of the state
      statute in question, 7-20 ILCS 5/24-1, which is
18
19
      entitled, "Unlawful use of a weapon."
20
              UNIDENTIFIED: (Inaudible).
                                                    R68
21
              MR. SACHNOFF:
                            This document consists of
22
      three pages, and on the second page is the
      subsection that Mr. Gowder was charged under, which
23
24
      is subsection 10, carries or possesses on or about
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his person, and that references or describes the violation that Mr. Gowder was convicted of.

Finally, City's Group Exhibit 8 is the certified statement of conviction disposition that was -- that the City obtained regarding Mr.

Gowder's case, wherein he was found liable and sentenced to one year's probation for the carry/possess firearm.

So those are the City's documents that we're basing this on. Now, as far as argument is concerned, I don't think there's any argument about the facts here. This is all about -- constitutional challenges are statutory interpretation.

The statutory interpretation I'll address because the City is entitled to rely on the public record and the plain language of the ordinances and statutes that people are found guilty of, convicting. It is a fact that as counsel cites, the basis for denying Chicago firearms permit is if you've been convicted in a court of any jurisdiction of unlawful use of a weapon that's a firearm.

The state statute that Mr. Gowder was

Carlin Transcription Services

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convicted under is unlawful use of a weapon.
1
2
     Whether he was using it in a common sense,
     colloquial sense or any other sense is irrelevant,
 3
     because unless you're going to find the state
 4
      statute to be invalid, that statute is and
 5
      identifies a crime which is of the type that this
 6
 7
      allows one from being able to get a Chicago
      firearms permit.
                       Now --
8
              ADMINISTRATIVE LAW JUDGE DAVIS:
9
      counsel, I -- you -- right there you said that
10
      there's no question that Mr. Gowder was convicted
11
      of a violation of a state statute; is that correct?
12
              MR. SACHNOFF: Right.
                                     Right.
                                             I don't
13
      think there's any dispute, I don't -- and there's
14
      no dispute about what state statute he was charged
15
      under, convicted of, sentenced under.
16
              ADMINISTRATIVE LAW JUDGE DAVIS: Okay.
17
              MR. SACHNOFF: The question is I think how
18
      that impacts his ability to get a Chicago firearms
19
      permit and whether it actually constitutes unlawful
20
      use of a weapon. I mean if you look at the
21
      description, I mean this section is called unlawful
22
      use of weapons, and it has 10 subsections.
23
      Actually, it has 13 subsections.
24
                                                   R70
```

18 1 ADMINISTRATIVE LAW JUDGE DAVIS: What 2 exhibit are you referring to? 3 MR. SACHNOFF: All of which -- we're looking at City's Group 1, which is the actual 4 5 statute that Mr. Gowder was convicted under. 6 says: 7 A person who commits the offense 8 .of unlawful use of a weapon when 9 he knowingly... 10 And then it has 13 subsections, the one that Mr. Gowder was convicted of was subsection 10. 11 12 Okay? 13 Carries or possesses on or about 14 his person a weapon. 15 That constitutes unlawful use of a weapon 16 in the state of Illinois under that state statute, because that's an unlawful use of a weapon and it's 17 18 a conviction for unlawful use of a weapon, the City was entitled to deny Mr. Gowder's application for a 19 20 Chicago firearms permit. I'll leave it at that for 21 now. R71 ADMINISTRATIVE LAW JUDGE DAVIS: 22 Counsel? 23 MR. KOLODZIEJ: Well, I am not as counsel's 24 suggested, stating or suggesting that you have to

find the Illinois criminal statute
unconstitutional, that's not the point of this, nor
am I asking this tribunal to interpret that section
of the Illinois criminal code.

What I am asking you to do is interpret the section of the Chicago municipal code that's at issue here, which is section 8-20-110(b)(3), sub iii. Now, if I -- and I'm stating this merely as preparatory remarks, but I need to get these in the record, but as is pointed out in the brief, the Illinois Supreme Court recognized in District of Columbia versus Heller that the right to keep and bear arms is a fundamental right protected by the 2nd Amendment to the U.S. Constitution.

In McDonald versus City of Chicago, the

Illinois Supreme Court ruled that that fundamental

right is incorporated by the 14th Amendment, and

therefore applicable to the states and

municipalities.

R72

In the Illinois Constitution, Article 1, Section 22, also protects the fundamental right to keep and bear arms. That being said, the Chicago municipal code section 8-20-110(b)(3) requires as a condition to possess a firearm in the City of

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Chicago, that a person have a Chicago firearms permit or CFP. It further requires that a CFP application will be denied if the applicant has been convicted, and this is the language, in any jurisdiction of unlawful use of a weapon.

The ordinance does not distinguish between felony and misdemeanor convictions, and under the holding in District of Columbia versus Heller, the Supreme Court recognized that only felons, only felony convictions constitute a basis to infringe the fundamental right to keep and bear arms. Okay.

It -- federal and Illinois law do not allow a person to be denied the right to own firearms based on a misdemeanor conviction. The Firearm Owners Identification Act, the Illinois statute only sets forth that you cannot have a felony conviction. There's no reference to misdemeanor convictions.

R73

The Chicago ordinance however, lumps them all together, and by including misdemeanor and felony convictions broadly as a grounds for denial of a CFP and thereby denial of the right to own a handgun in the City of Chicago, section 8-20-110 violates the federal and state constitutional right

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 1
      to keep and bear arms.
               ADMINISTRATIVE LAW JUDGE DAVIS: So you're
 2
 3
      getting --
 4
               MR. KOLODZIEJ: I'm not asking --
 5
              ADMINISTRATIVE LAW JUDGE DAVIS: -- well,
 6
      that sounds like you're asking me.
 7
              MR. KOLODZIEJ:
                               Well, but the reason I'm
      saying this, your Honor, is that you don't need to
 8
      reach that issue if you interpret the ordinance in
 9
      the manner that we are suggesting, which is the
10
11
      ordinance itself does not define the word "use".
12
              Interestingly, the Illinois statute does,
13
      but the ordinance, the Chicago ordinance does not
      define the word use, nor does it incorporate the
14
      definition of the word use from the Illinois
15
16
      statute, the criminal statute specifically.
17
              ADMINISTRATIVE LAW JUDGE DAVIS: And the --
              MR. KOLODZIEJ: And it refers broadly to
18
19
      any jurisdiction.
                                                     R74
20
              ADMINISTRATIVE LAW JUDGE DAVIS:
                                                Um-hmm.
21
              MR. KOLODZIEJ: We don't know what statutes
     in other jurisdictions might provide about what the
22
     meaning of unlawful use is as opposed to carrying
23
     or possessing, but my point is that because the
24
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ordinance does not define the word use, it has to under well settled case law, you have to as a tribunal give that word its plain and ordinary meaning, and the plain and ordinary meaning of the word use as the U.S. Supreme Court recognized in Bailey versus United States, which we've cited, held that the word "use" means:

An active employment of a firearm.

In other words discharging or firing a firearm. Now, Mr. Gowder here and counsel just argued it, Mr. Gowder was convicted of carrying or possessing.

The section of the Illinois criminal code under which he was convicted does not list use in the sense of firing or discharging a weapon as a basis for a conviction, only the mere carrying or possessing. And therefore, the elements of that offense are not active employment or use of a firearm in the common plain ordinary meaning of the word use.

ADMINISTRATIVE LAW JUDGE DAVIS: Well, no, go on counsel, I'm listening.

MR. KOLODZIEJ: Mr. Gowder was convicted of

23 carrying or possessing only, not of discharging or operating or in the ordinary meaning using a firearm. Therefore, he must be in compliance with section 8-20-110(b)(3) of the municipal code, and his action is wrongfully denied, his application is wrongfully denied. The reason I say this is that if you rule otherwise, if you interpret in the manner that counsel is suggesting, the word "use" in the Chicago ordinance, the undefined word use, if you interpret it to have the exact same meaning as the Illinois criminal statute appears to, in other words, use encompasses --ADMINISTRATIVE LAW JUDGE DAVIS: MR. KOLODZIEJ: -- which is an abnormal meaning. ADMINISTRATIVE LAW JUDGE DAVIS: Yeah, but go on. Finish it. **R76** MR. KOLODZIEJ: Okay. If you interpret it

MR. KOLODZIEJ: Okay. If you interpret it that way, then you are raising the serious constitutional question of whether precluding someone from possessing a firearm in Chicago on the basis of a misdemeanor conviction violates the fundamental right to keep and bear arms.

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There is an easy way out. Interpret this in the logical manner, give the word "use" the undefined word "use" in the ordinance the plain and ordinary meaning of firing, employing actively, not mere carrying or possessing, and the reason you do that is because the ordinance refers to a conviction in any jurisdiction, not just Illinois. If it were only Illinois --

ADMINISTRATIVE LAW JUDGE DAVIS: But do you want me to -- do you want me to -- not to consider Illinois?

MR. KOLODZIEJ: No, I do, but the point is because they have expanded this to the entire country, any jurisdiction, and the Illinois Supreme Court itself ruled under federal law the word "use" means active employment, operating, discharge of the weapon. That's what the Bailey case held, so under Illinois federal -- or U.S. federal law, use does not mean the mere carrying or possessing, and the Supreme Court's been very clear that merely a conviction for merely carrying, or possessing a misdemeanor conviction, that is not grounds to infringe the fundamental right to keep and bear arms.

So what I'm suggesting to this Court is that only by interpreting the ordinance in the fashion I'm suggesting, and giving the word "use" its ordinary plain meaning of operating or discharging the firearm can you avoid a serious constitutional issue being raised by a -- by the denial of this application, and the Illinois Supreme Court has instructed us -- has instructed courts that they are to construe statutes and ordinances whenever possible in a manner so as to avoid raising serious constitutional questions.

ADMINISTRATIVE LAW JUDGE DAVIS: counsel, let me just stop you right there. you're arguing that -- you're telling me about the ordinary use of the word use, and in the state statute the use -- the word unlawful use of weapons has about 10 different, maybe more than that, interpretations, one of which is the one under which your client was convicted. So are you telling me I should ignore that? Because this is unlawful use of a weapon, section 24-1, part 10 says:

R78

Carries or possesses on or about his person.

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26 1 And then it gives you a litany of -- a 2 description of what that interprets, what that 3 means. 4 MR. KOLODZIEJ: That's correct. 5 ADMINISTRATIVE LAW JUDGE DAVIS: So do you 6 want me to ignore that? 7 MR. KOLODZIEJ: You -- I'm not asking you 8 to ignore that. 9 ADMINISTRATIVE LAW JUDGE DAVIS: Oh, okay. 10 MR. KOLODZIEJ: But I'm not -- nor am I 11 asking you to interpret the Illinois statute. 12 ADMINISTRATIVE LAW JUDGE DAVIS: No, it's 13 already been -- this has been interpreted for me, 14 unlawful use of a weapon definition in effect is 15 here. It tells me what the unlawful use of a 16 weapon is comprised of under the statute. 17 MR. KOLODZIEJ: But the Chicago ordinance 18 does not so define the word use, nor does it refer to this Illinois statute and adopt its meaning of 19 20 the word use. It uses that word generically, and 21 refers to any jurisdiction which would be unlawful 22 use in Idaho or California. **R79** 23 ADMINISTRATIVE LAW JUDGE DAVIS: Well. 24 let's don't go to Idaho, let's just go to Illinois.

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  1
       Why can't I stop at Illinois?
  2
               MR. KOLODZIEJ: Because the ordinance uses
  3
       the word "any jurisdiction".
  4
               ADMINISTRATIVE LAW JUDGE DAVIS: Well, any
       would be Illinois, wouldn't it?
  5
               MR. KOLODZIEJ: It -- that is one of many.
  6
  7
               ADMINISTRATIVE LAW JUDGE DAVIS:
      don't -- I don't have to go outside of Illinois, do
 8
          I mean if I have -- if I have the definition in
 9
      Illinois, what do I need to go to Idaho for?
10
              MR. KOLODZIEJ: Let me give you an example.
11
      If the Idaho criminal statute has a criminal
12
      statute that makes illegal the unlawful firing or
13
      unlawful use of a firearm and another statute that
14
      makes the unlawful carrying of a firearm, then if
15
16
      you were convicted under the Iowa -- the Idaho
      statute for unlawful carrying, under the Chicago
17
      ordinance, you could not be denied a Chicago
18
      firearms permit as Mr. Gowder has been.
19
                                                      R80
20
              As a practical matter, the elements of the
      offense here are no different because they are mere
21
     possession or carrying. Regardless of the way the
22
      Illinois legislature defined the term "use" in that
23
     statute, it is undisputed that Mr. Gowder's offense
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involved only carrying or possessing and was a misdemeanor conviction, and so given the fact that the ordinance encompasses any jurisdiction, not just Illinois, it's not limited just to Illinois.

ADMINISTRATIVE LAW JUDGE DAVIS: Well, counsel, what -- I mean I would -- if it had said all under jurisdictions, but any jurisdiction seems to be that you can be selective. If I were even to accept that argument, that premise, all jurisdictions, but any jurisdiction means that you can pick any of them.

MR. KOLODZIEJ: Well, given that fact, you have to define -- you have to construe the word "use" then in the broad sense of the word because you can pick any of them. Not all jurisdictions, and we know this from the Bailey case, the United States does not define the word "use" the way Illinois does, so as we pointed out in our brief -- ADMINISTRATIVE LAW JUDGE DAVIS: Say that again.

R81

MR. KOLODZIEJ: The United States federal law does not interpret the way -- the word "use", unlawful use of a firearm in the manner that Illinois does, and that's -- the argument that

we've made in our brief, so if Mr. Gowder were convicted under federal law of a misdemeanor of carrying or possessing, he could not be denied a firearms permit in Chicago, but if he's convicted under the Illinois statute for carrying or possessing, he can be merely because the Illinois statute uses an uncommon meaning of the word use.

And what I'm saying to you is if you interpret the ordinance to have that unusual meaning of the word use that the Illinois statute does, then you are raising a very serious constitutional question here, because other jurisdictions do not define the word use that way, and so the right to keep and bear arms, a fundamental right is being raised here if you affirm the denial of this CFP.

ADMINISTRATIVE LAW JUDGE DAVIS: Counsel, are you telling me that every jurisdiction in these -- in the United States uses the definition that you want me to use?

MR. KOLODZIEJ: I cannot tell you that, I do not know.

ADMINISTRATIVE LAW JUDGE DAVIS: Well, then

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R82

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              MR. KOLODZIEJ: But I do --
              ADMINISTRATIVE LAW JUDGE DAVIS: -- there
 2
 3
      may be some that uses the same one that we use,
 4
      right?
 5
              MR. KOLODZIEJ:
                              There may be, but that --
              ADMINISTRATIVE LAW JUDGE DAVIS: Oh, okay.
 6
              MR. KOLODZIEJ: -- is not the test.
 7
 8
              ADMINISTRATIVE LAW JUDGE DAVIS: Well, but
 9
      that's what you just told me.
              MR. KOLODZIEJ: We know for a fact that at
10
11
      least one jurisdiction, the United States, the
      federal government does not use that definition.
12
13
              ADMINISTRATIVE LAW JUDGE DAVIS:
14
      usually -- state not federal.
15
              MR. KOLODZIEJ:
                              The U.S. Supreme Court in
16
      the Bailey case defined the word "use" as:
                   The active employment of a
17
18
                   firearm.
                                                      R83
19
              That's not the way the Illinois statute
20
      defines it, so by wording this ordinance in Chicago
      to encompass any jurisdiction, that has to be taken
21
22
      into account, and the Chicago ordinance could
      easily have defined the word "use" and did not do
23
24
           And under the case law we have cited to, you
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31 1 have to therefore give the word its ordinary 2 meaning, and that I suggest is the manner you 3 should decide this case, because it will avoid any 4 serious constitutional question. 5 ADMINISTRATIVE LAW JUDGE DAVIS: Counsel. you know, unlawful use of weapon has been around 6 7 for so long I can't tell you, and nobody has brought up this argument that I know of. I mean 8 9 unlawful use of weapon by its common term as far as 10 I know has always been possessing a firearm. 11 are you coming up with this? 12 I mean it's -- and I don't know that it's 13 been defined anywhere, but that is the common usage, unlawful use of a weapon has always meant 14 15 carrying or possessing a weapon. 16 MR. KOLODZIEJ: But the longevity of the 17 Illinois statute is not at issue. This is a new 18 ordinance passed by the City --19 ADMINISTRATIVE LAW JUDGE DAVIS: Well, 20 you're talking about --21 **R84** MR. KOLODZIEJ: -- in July. 22 ADMINISTRATIVE LAW JUDGE DAVIS: -- the 23 common usage, so that's why I went to that because 24 that's what I've always understood it to mean.

I've never understood it necessarily to mean that you fired a firearm or anything else other than possessing it. But do you want to respond to that? Are you done, counsel?

MR. KOLODZIEJ: I think I've said what I need to say, thank you.

ADMINISTRATIVE LAW JUDGE DAVIS: Thank you.

MR. SACHNOFF: I just want to briefly mention that I think that the Bailey case can be distinguished here, and part of that is because the Bailey case, as counsel cites, defines use in the context of a firearm during drug trafficking or a crime of violence.

So Bailey was a criminal matter, and Mr.

Bailey's liberty was at issue based upon the interpretation of whether "use" meant carry or not.

That is not the context here. No one is going to send Mr. Gowder to jail because of this denial.

This is simply about whether or not he gets a Chicago firearms permit, not whether he gets convicted and goes to federal prison, so therefore, I think the City is entitled to rely on the use of the word use that the state legislature has adopted.

R85

The other point I want to make is there's been no testimony or evidence at all about what Mr. Gowder actually did or didn't do. All we have is documentary evidence about the nature of his charge, the statute that he was convicted under and the disposition. So I don't want to get personal about this because this isn't personal, and because what Mr. Gowder may have done or actually did isn't relevant, it's just what ordinance or statute was he convicted under.

If there's some distinction between felony and misdemeanor, which the City stipulates, that the ordinance does not contain, our ordinance does not distinguish between felony and misdemeanor convictions as far as disqualifying someone from getting a Chicago firearms permit. And that the disposition under what statute he was charged with and what effect that has on his ability to get a firearms permit, so I just want to make sure that we're not talking about...

ADMINISTRATIVE LAW JUDGE DAVIS: All right.

Mr. Sachnoff, you -- R86

MR. SACHNOFF: -- what Mr. Gowder may have done or didn't do.

ADMINISTRATIVE LAW JUDGE DAVIS: And you're not taking the position that whatever -- whatever the facts situation under which he was convicted would have no relevance in any event, is that your...

MR. SACHNOFF: No.

ADMINISTRATIVE LAW JUDGE DAVIS: I'm...

MR. SACHNOFF: I'm fairly certain that we are in agreement that there aren't any felony convictions here, although I'm not really sure about that.

I mean if you look at City's Group 7, the first page does have criminal justice summary total list 3, zero felony, two misdemeanor. Then if you look at the second page of that, you've got Class F or what he was charged with, and then later some other types of issues that Mr. Gowder had, and those are Class M, and I'm just not sure whether we're talking about whether this was originally a felony charge, and then at some point maybe later was reduced once the probation was completed or not, I -- I'm just not an expert in interpreting these kind of things.

I'm not in a position at this point to

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       stipulate that we're not talking about a felony.
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               ADMINISTRATIVE LAW JUDGE DAVIS: Would it
  3
       make a difference?
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               MR. SACHNOFF: I'm sorry?
               ADMINISTRATIVE LAW JUDGE DAVIS: Would it
  5
       make a difference?
  6
 7
               MR. SACHNOFF: Under counsel's
      interpretation, yes, because he's saying --
 8
 9
              ADMINISTRATIVE LAW JUDGE DAVIS: But not
10
      under the ordinance.
11
              MR. SACHNOFF: -- that only felony
      convictions can deprive you of the right to bear
12
13
      arms.
              ADMINISTRATIVE LAW JUDGE DAVIS: Well, I'm
14
15
      not getting to the constitutional issue.
16
              MR. SACHNOFF: I understand.
17
              ADMINISTRATIVE LAW JUDGE DAVIS: I know the
18
      ordinance says --
19
              MR. SACHNOFF: I just want to make sure for
      the record that I don't know for a fact, and I'm
20
21
      not in a position to stipulate that there's no
22
      felony conviction here.
                                                      R88
23
              MR. KOLODZIEJ:
                              Well, the certified
      statement of conviction does show what happened,
24
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36 1 and that's in evidence in the last page of it. 2 ADMINISTRATIVE LAW JUDGE DAVIS: Well, I'm, 3 you know --4 MR. KOLODZIEJ: Answers the question. 5 ADMINISTRATIVE LAW JUDGE DAVIS: -- I'm not 6 concerned whether there's a misdemeanor or a felony 7 because the ordinance doesn't make a distinction. 8 It says: 9 Unlawful use of a weapon. 10 MR. KOLODZIEJ: Let me then if I may just respond to what counsel said about the Bailey case 11 12 involving a deprivation of liberty. I would suggest that -- well, not suggest, I will argue 13 forcefully that the Illinois Supreme Court held in 14 District of Columbia versus Heller and McDonald 15 versus City of Chicago that the right to keep and 16 17 bear arms is a fundamental right just like the fundamental right to liberty, so I don't think 18 19 there's a distinction in the qualitative rights here. They're both fundamental rights, and they're 20 21 both on equal pairing here, and I do think the fact that it is a misdemeanor... 22 **R89** 23 I understand your position, but I 24 respectfully disagree, and the only way that you

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       can avoid raising a constitutional issue here is to
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       rule according to the interpretation I ve
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  3
       suggested.
               ADMINISTRATIVE LAW JUDGE DAVIS: All right.
  4
  5
       Thank you, counsel. Anything else?
  6
               MR. SACHNOFF:
                              Nothing further.
               ADMINISTRATIVE LAW JUDGE DAVIS: All right.
  7
      You don't plan to call any witnesses, counsel?
  8
  9
               MR. KOLODZIEJ: I do not.
               ADMINISTRATIVE LAW JUDGE DAVIS: All right.
 10
11
      City, you've rested, right?
, 12
              MR. SACHNOFF: Yes.
13
              ADMINISTRATIVE LAW JUDGE DAVIS: Okay.
14
              MR. KOLODZIEJ: And if I may, I -- the
      exhibits that counsel introduced, which are
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16
      Exhibits 1 through 9?
17
              MR. SACHNOFF: 8 I believe.
              ADMINISTRATIVE LAW JUDGE DAVIS: 1 through
18
19
      8
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              MR. KOLODZIEJ: 1 through 8 would be the --
21
      I have 1 through 9 actually.
22
              MR. SACHNOFF: Really?
                                                    R90
              MR. KOLODZIEJ: I want to make sure I'm not
23
24
      misspeaking, but this -- the --
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 1
              ADMINISTRATIVE LAW JUDGE DAVIS: Yes, this
 2
      does say --
 3
              MR. KOLODZIEJ: -- criminal statute is
 4
      Group 8, and then the certified statement of
 5
      conviction is Group 9, according to the package.
 6
              MR. SACHNOFF: Oh, you're right, you're
      right.
 7
 8
              ADMINISTRATIVE LAW JUDGE DAVIS: Right.
 9
      All right.
10
              MR. KOLODZIEJ: So I would ask that those
      nine exhibits be admitted with respect to my case
11
12
      as well.
13
              ADMINISTRATIVE LAW JUDGE DAVIS: All right.
14
      Petitioner's Exhibits 1 through 9 will be admitted
      into evidence.
15
16
                           (Whereby Petitioner's Exhibit
17
                           Number 9 having been admitted
18
                            into evidence.)
19
              ADMINISTRATIVE LAW JUDGE DAVIS:
20
      will also be admitted on Respondent's request.
21
              MR. KOLODZIEJ:
                              Thank you.
                                                    R91
22
              ADMINISTRATIVE LAW JUDGE DAVIS:
                                                As your
      exhibits.
23
24
                           (Whereby Respondent's Exhibits
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39
 1
                            1 through 9 having been
 2
                            admitted into evidence.)
 3
              ADMINISTRATIVE LAW JUDGE DAVIS:
                                                And your
      appeal -- appeal of denial of Chicago firearms
 4
      permit municipal code of Chicago is -- what's the
 5
      word I want to use? Well, it's filed.
 6
 7
              MR. KOLODZIEJ:
                               The brief I submitted?
 8
              ADMINISTRATIVE LAW JUDGE DAVIS:
 9
      yes.
10
              MR. KOLODZIEJ:
                               Thank you.
11
              ADMINISTRATIVE LAW JUDGE DAVIS: You're
12
      welcome.
13
              MR. KOLODZIEJ: And that will be part of
14
      the record then?
15
              ADMINISTRATIVE LAW JUDGE DAVIS:
                                                Yes.
16
              MR. KOLODZIEJ:
                              Thank you.
17
              ADMINISTRATIVE LAW JUDGE DAVIS: All right.
18
     Anything else?
19
              MR. SACHNOFF: No, not from the City.
20
              MR. KOLODZIEJ:
                              No.
                                                  R92
21
              ADMINISTRATIVE LAW JUDGE DAVIS: All right.
22
     I'll have a written response within five days, is
23
     that what I have, Mr. Sachnoff?
24
             MR. SACHNOFF: I believe -- I believe
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40 1 that's correct. 2 ADMINISTRATIVE LAW JUDGE DAVIS: Business 3 days or? 4 MR. SACHNOFF: I know we've had this discussion before. I think we're talking about 5 6 8-2200, so 200(d): 7 Based on the evidence contained, 8 the record of the administrative 9 law officer and the Department of 10 Administrative Hearings shall 11 within five days of the 12 conclusion of the hearing issue 13 written findings and enter an 14 order granting or denying the 15 application. It's the City's position that's five 16 calendar days, just because of the reference 17 18 earlier in the section where it specifies the time 19 period for scheduling a hearing, which is 72 hours, 20 excluding Saturdays, Sundays and holidays, so 21 therefore if the city council had meant to define 22 that as working days or business days, then they 23 would have included that same provision. R93 ADMINISTRATIVE LAW JUDGE DAVIS: 24 Okav. So

41 1 it's five calendar days? 2 MR. SACHNOFF: Five calendar days from 3 today, December 8th. 4 ADMINISTRATIVE LAW JUDGE DAVIS: And is that the date on which counsel has to receive it 5 also, the fifth day? Yeah, you can -- it can be 6 7 faxed to you. 8 MR. KOLODZIEJ: That's fine. 9 ADMINISTRATIVE LAW JUDGE DAVIS: Do you 10 have something to say, counsel? 11 MR. KOLODZIEJ: I would like to note for 12 the record that counsel just made the argument regarding the interpretation of the ordinance on 13 14 the number of days by saying: 15 If the city council wished to define it, it would have done so, and I have made the same 16 argument regarding the word "use," so I'd just like 17 18 to note that for the record. 19 ADMINISTRATIVE LAW JUDGE DAVIS: 20 December the 15th, is that right? It would be the 21 fifth day. All right. **R94** 22 That'll conclude the hearing for today, and 23 you'll get a response counsel, by the 15th of 24 December, written response.

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               MR. KOLODZIEJ:
                                Thank you very much.
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              ADMINISTRATIVE LAW JUDGE DAVIS: You're
      welcome, counsel, thank you.
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 4
              MR. SACHNOFF:
                               Thank you.
 5
              ADMINISTRATIVE LAW JUDGE DAVIS: You're
 6
      welcome.
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                         (END OF PROCEEDINGS)
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1	I, Susanne M. Carlin, do hereby certify or	
2	affirm that I have impartially transcribed the	
3	foregoing from an audiotape record of the	
4	above-captioned proceedings to the best of my	
5	ability.	
6	J. Sail.o	
7	Susanne Mearlen.	
8	Susanne M. Carlin	
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