

July 14, 2022

Via e-mail: [SFPDchief@sfgov.org](mailto:SFPDchief@sfgov.org)

Chief William “Bill” Scott  
SAN FRANCISCO POLICE DEPARTMENT  
CITY AND COUNTY OF SAN FRANCISCO  
1245 3rd Street  
San Francisco, CA 94158

**Re: Handgun Carry Licenses and Request for Public Records**

Dear City and County of San Francisco and Chief Scott:

I write you on behalf of Firearms Policy Coalition and California Gun Rights Foundation, as well as their members who reside in the City, regarding your local policies and practices, as well as those interpreting and applying the State’s laws, regarding licenses to carry handguns under Cal. Penal Code § 26155, et seq.

On June 23, 2022, the U.S. Supreme Court held, “consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U. S. \_\_\_\_, 142 S.Ct. 2111 (2022).

Your current policy (available at <https://bit.ly/3uMCjQZ>), found on your Web page entitled “Carrying a Concealed Weapon (CCW) Information and Application,” online at <https://bit.ly/3z0njBs>, is both defective under state law and unconstitutional under the Second and Fourteenth Amendments to the United States Constitution. Indeed, your policies and practices prevent non-prohibited applicants from exercising their fundamental human right to bear arms in public for self-defense. You must take immediate action to correct these infirmities.

**Background**

The Second Amendment to the United States Constitution provides: “A well-regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.” The Second Amendment is fully applicable to the States through the Fourteenth Amendment’s Due Process and Privileges or Immunities Clauses. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *id.* at 805 (Thomas, J., concurring).

The City’s residents have a fundamental right to bear arms in public for self-defense. “The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*, 142 S.Ct. at 2156 (quoting *McDonald*, 561 U. S., at 780 (plurality opinion)) (cleaned up). Indeed, “[t]he very enumeration of the [Second Amendment] right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Bruen*, 142 S.Ct. at 2129, quoting *Heller*, 554 U.S. 570, 635 (emphasis in original).

When seconds count, the police are minutes or hours away, if they come at all—they certainly have no obligation to, *see, e.g., Castle Rock v. Gonzales*, 545 U.S. 748 (2005). That is why the ability to carry loaded, operable firearms for self-defense isn’t just a right—it’s a necessity.

You must correct your unconstitutional and non-compliant policies and practices immediately.

### **Your Unlawful and/or Unconstitutional Policies and Practices**

Your published “San Francisco Police Department CCW Licensing Policy” continues to require “good cause.” But that is clearly unconstitutional under *Bruen*.

Moreover, you require that applicants are “[a]t least 21 years of age at the time the application is submitted.” However, a “historical analysis leads us to conclude that young adults have a Second Amendment right to keep and bear arms.” *Jones v. Bonta*, 34 F.4th 704, 723 (9th Cir. 2022). *See also*, David B. Kopel & Joseph G.S. Greenlee, *The Second Amendment Rights of Young People*, 43 S. ILL. L.J 495 (2019).

Further, in order to be considered for a license, you require applicants to “[h]ave no history of citations, arrests, convictions, civil lawsuits, employment discharges, license denials, license revocations or other actions indicating a possible propensity for violence, moral turpitude, drug and/or alcohol abuse, carelessness with weapons and/or dishonesty,” as well as “[p]rovide positive personal character references, preferably from members of the community who are not relatives and who are aware that the applicant seeks a license to carry a concealed weapon.” These incredibly expansive limitations deny and vest you with unbridled discretion to approve or deny licenses. This is underscored by your policy’s express terms: “The Chief’s moral character determination is discretionary and based on the totality of the circumstances presented in each individual case.”

But your policy continues to pile on subjective requirements. For example, your policy states that “[t]he SFPD requires applicants to successfully complete a psychological examination.” This goes beyond checking an applicant’s mental health history for proof of legal eligibility, as performed within the State’s background check. *See, e.g., Cal. Penal Code § 26185* (“Upon receipt of the fingerprints and the fee as prescribed in Section 26190, the department shall promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited by

state or federal law from possessing, receiving, owning, or purchasing a firearm.” *Id.* (a)(2).).

Your policy states that “[an] applicant must establish legal ownership and registration of the weapon he or she seeks to carry concealed.” But no such requirement is found or allowable under state law. Further, you can easily check an applicant’s AFS records using your police systems that connect with or otherwise query the California Department of Justice’s (“DOJ”) databases. *See, e.g.,* Cal. Penal Code §§ 11105; 11106. (And more, “Things which a person possesses are presumed to be owned by them,” Cal. Evidence Code § 637, and “a person who exercises acts of ownership over property is presumed to be the owner of it,” *id.* § 638.)

Your policy requires that “[a]pplication and fingerprinting fees must be paid when the application is submitted.” First of all, only “[t]he first 20 percent of [a local fee] may be collected upon filing of the initial application. The balance of the fee shall be collected only upon issuance of the license.” Cal. Penal Code. § 26190(b)(2).

Lastly, your policy states: “Application forms, detailed application instructions, and a current fee schedule are available from the SFPD Legal Division at 1245 - 3rd St, San Francisco, CA - 94158. Applications must be submitted in person, by appointment. Questions about the application process and other CCW related inquiries should be directed to the SFPD Legal Division Lieutenant at (415) 837-7394.”

It is unclear what you mean by “application forms,” but we remind you that “[a]pplications for licenses and applications for amendments to licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.” Cal. Penal Code § 26175(a)(1). Requiring any other forms would violate state law.

Unless you have an agreement with the sheriff “for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to” Cal. Penal Code § 26155, et seq., “[i]t is the duty of the [police chief] to make such an investigation and determination, on an individual basis, on every application under section [26155].” *Salute v. Pitchess*, 61 Cal.App.3d 557, 560-61, 132 Cal. Rptr. 345, 347 (1976).

Your policies and practices expressly rely on “discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability for the relevant license.” *Bruen*, 142 S.Ct. at 2124. And they “in effect deny the right to carry handguns for self-defense to many ordinary, law-abiding citizens.” *Id.*, at 2161 (Kavanaugh, J., concurring) (cleaned up).

At bottom, if you are accepting and processing license applications, you must treat such matters with the timeliness and care required of any constitutionally enshrined fundamental right. Requiring appointments, imposing delays, and otherwise denying non-prohibited individuals access to their fundamental right to bear arms is unconstitutional. You must immediately cease enforcing your unconstitutional policies.

**The State's Carry License Process**

The State's process for carry license applications, which you are mandated to follow unless you have an agreement with the Sheriff of San Francisco (as discussed above), works as follows:

- Applicants submit a signed completed copy of the standard DOJ BOF 4012 application form.
  - At the time of application, the applicants must pay the DOJ fees.
    - If you have a local fee, the applicant may be required to pay up to 20% of that fee.
    - After the DOJ fee is paid, at the time of application, you must take the applicant's fingerprints and submit them to DOJ.
- Applicants complete a course of training as described in Cal. Penal Code § 26165.
  - Note: A policy that delays or burdens applicants through, e.g., limiting access to licenses by requiring more than standard, widely available handgun carry training would almost certainly be unconstitutional.
- The DOJ conducts a background check, including criminal and mental health history checks and queries of state and federal databases.
- You confirm that:
  - The applicant is of good moral character.
    - Because subjective standards are unconstitutional, "good moral character" should be interpreted and applied to mean that the applicant passes the DOJ background check.
  - The applicant is a resident of the City.
  - The applicant has completed the required course of training.
  - You have received the report from the DOJ, and the report indicates whether the person is prohibited or not.
- Provided that the applicant is a resident of the City, completes the required training course, pays required fees, and is not "prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm," you must issue them a carry license without delay.

**Request for Public Records**

We request immediate access to and copies of the following public records:

- 1) All current or otherwise enforced or required forms, instructions, fee schedules, policies, practices regarding firearm carry licenses and applications.
- 2) For the period of June 23, 2022, through the time you have fulfilled all production of responsive under this request, all records about firearm carry licenses, including but not limited to communications, applications, calendars and appointment logs, fee receipts, copies of licenses, telephone logs, and staffing/personnel duty scheduling regarding firearm carry licenses and applications.

*Request Notes:*

A) No request seeks personally identifying information about individual applicants that is required to be withheld from disclosure; such information may be redacted from responsive records.

B) This request seeks public records and information pertaining to fundamental rights and matters of great public concern, unique to California, and important to our members and City taxpayers and residents. Please provide these records as soon as possible.

C) Note that when a public official or employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act. This request potentially requires the production of records that exist or are maintained in electronic form, including but not limited to e-mails and chat/mobile phone messages.

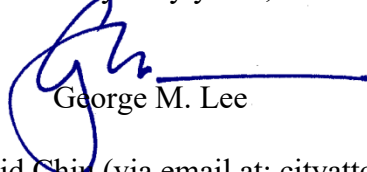
D) Records, including e-mails and other electronic records, are often subject to “retention” or “destruction” policies that require their automatic deletion at some point in time. If any records that are potentially responsive to this request are subject to such a retention or destruction policy, please prevent their deletion/destruction before you can locate, review and provide me with copies. For all records, please take all steps necessary to prevent the intentional or accidental destruction/loss of these records during the pendency of this request. We request that you confirm that you have placed a “litigation hold” on all responsive records and information. Please provide all records and information responsive to this request via e-mail attachment(s); if the files are too large to e-mail, please let us know and we will make arrangements for an alternative means of transmitting the responsive records and information.

**Conclusion**

You should take immediate action to conform your policies and practices to comply with constitutional requirements. Please inform us in writing of your intention and specific plan to remedy your defective and constitutionally infirm policies and practices within fourteen (14) days.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'G. Lee', is written over a horizontal line.

George M. Lee

cc: San Francisco City Attorney David Chiu (via email at: [cityattorney@sfcityatty.org](mailto:cityattorney@sfcityatty.org))  
Firearms Policy Coalition  
California Gun Rights Foundation