

July 14, 2022

Via e-mail: sheriff@sfgov.org

Sheriff Paul Miyamoto
SAN FRANCISCO SHERIFF'S DEPARTMENT
COUNTY OF SAN FRANCISCO
City Hall, Room 456
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Handgun Carry Licenses and Request for Public Records

Dear City and County of San Francisco and Sheriff Miyamoto:

I write you on behalf of Firearms Policy Coalition, California Gun Rights Foundation, and Chris Cheng, a law-abiding gun owner, adult over the age of 21, a noted firearms expert and champion shooting competitor, and member of both organizations who resides in San Francisco, as well as the organizations' other non-prohibited members who reside in the County, regarding your unlawful and unconstitutional local policies and practices, as well as those interpreting and applying the State's laws, regarding licenses to carry handguns under Cal. Penal Code § 26150, et seq.

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).

About three weeks ago, 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).

The County'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.

Your current policy is not available on your Web page entitled “What’s your situation? Apply for a permit to carry a concealed,” online at <https://www.sfsheriff.com/whats-your-situation/apply-permit-carry-concealed-weapon>. We note here that “[e]ach licensing authority shall publish and make available a written policy summarizing the provisions of Section 26150 and subdivisions (a) and (b) of Section 26155.” Cal. Penal Code § 26160. Thus, you must immediately publish your policy(s).

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

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 police chief 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.

“When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county may issue a license to that person if they are eligible under State law. Given that *Bruen* makes clear that “good cause” are discretionary and subjective standards are not constitutional, eligibility should exclusively turn on the following objective factors:

- An applicant being a resident of the county or a city within the county, or the applicant’s principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business;
- The applicant’s completion of a course of training as described in Cal. Penal Code § 26165;
- An applicant’s submission of a completed and signed application.

Your stated requirements are 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.

Your Unlawful and/or Unconstitutional Policies and Practices

We have been informed that you are requiring of Chris Cheng and other carry license applicants:

- A scheduled date and time to meet at 120 14th Street (“BY APPOINTMENT ONLY”).
- Original and copies of the following:
 - A letter explaining the need for your CCW or a letter from your employer stating CCW is required
 - Original proof of US citizenship or legal residency
 - Valid ID (21 and over)
 - Proof of residency in San Francisco (current bill or ID)
 - An application fee of \$20.00 (check/cashier’s check made out to: San Francisco Sheriff’s Office)

In a response to Chris Cheng’s request to apply for a carry license through your office, you stated that you “will contact [him] with dates and times when they are available and we arrive at you [*sic*] name on the list.” However, 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.

The policies that you have and continue to enforce require “good cause” through your requirement that an applicant provide “[a] letter explaining the need for [a] CCW or a letter from [their] employer stating CCW is required.” 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).

Unless you have an agreement with the “the chief or other head of a municipal police department of a city to process all applications for licenses, renewals of licenses, or amendments to licenses pursuant to this chapter, in lieu of the sheriff,” Cal. Penal Code § 26150(c)(1), “[i]t is the duty of the sheriff to make such an investigation and determination, on an individual basis, on every application under section [26150].” *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.

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 County taxpayers and residents. Please provide these records as soon as possible.

C) 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.

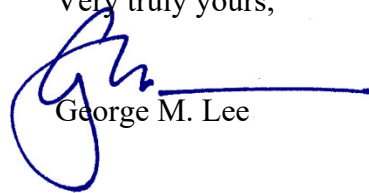
Conclusion

You should take immediate action to conform your policies and practices to comply with constitutional requirements for all applicants, including Mr. Cheng. You must further: 1) allow Chris Cheng, and all similarly-situated City residents, to apply for carry licenses without delay, and 2) if they are not found to be prohibited from possessing firearms through the DOJ background check, they show that they are residents of the County, they pay allowable fees, and provide proof of training as required by the statutes, issue them licenses to carry.

Please inform us in writing of your intention and specific plan to remedy your defective and constitutionally infirm policies and practices within seven (7) days. If we do not hear from you in that time, or if you refuse to comply, we will be forced to conclude that you are continuing to resist the right to bear arms protected under the express text of the Constitution and the Supreme Court’s binding precedents securing that right to all law-abiding County residents, including Chris Cheng and the organizations’ other similarly situated members in the County.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'G. Lee', with a long horizontal line extending to the right.

George M. Lee

cc: San Francisco Sheriff's Department CCW Background Investigation Unit (via email at: sfso.ccw@sfgov.org)
San Francisco City Attorney David Chiu (via email at: cityattorney@sfcityatty.org)
Firearms Policy Coalition
California Gun Rights Foundation