

APPENDIX

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1a

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 08-4241, 08-4243 & 08-4244

NATIONAL RIFLE ASSOCIATION OF AMERICA,
INC., *et al.*,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, ILLINOIS, and
VILLAGE OF OAK PARK, ILLINOIS,

Defendants-Appellees.

Appeals from the United States District Court for
the Northern District of Illinois, Eastern Division.
Nos. 08 C 3645 *et al.*—**Milton I. Shadur**, *Judge*.

ARGUED MAY 26, 2009—DECIDED JUNE 2, 2009

Before EASTERBROOK, *Chief Judge*, and
BAUER and POSNER, *Circuit Judges*.
EASTERBROOK, *Chief Judge*. Two

municipalities in Illinois ban the possession of most handguns. After the Supreme Court held in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), that the second amendment entitles people to keep 2 Nos. 08-4241, 08-4243 & 08-4244 handguns at home for self-protection, several suits were filed against Chicago and Oak Park. All were dismissed on the ground that *Heller* dealt with a law enacted under the authority of the national government, while Chicago and Oak Park are subordinate bodies of a state. The Supreme Court has rebuffed requests to apply the second amendment to the states. See *United States v. Cruikshank*, 92 U.S. 542 (1876); *Presser v. Illinois*, 116 U.S. 252 (1886); *Miller v. Texas*, 153 U.S. 535 (1894). The district judge thought that only the Supreme Court may change course. 2008 U.S. Dist. LEXIS 98134 (N.D. Ill. Dec. 4, 2008).

Cruikshank, *Presser*, and *Miller* rejected arguments that depended on the privileges and immunities clause of the fourteenth amendment. The *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873), holds that the privileges and immunities clause does not apply the Bill of Rights, en bloc, to the states. Plaintiffs respond in two ways: first they contend that *Slaughter-House Cases* was wrongly decided; second, recognizing that we must apply that decision even if we think it mistaken, plaintiffs contend that we may use the Court's "selective incorporation" approach to the second amendment. *Cruikshank*, *Presser*, and *Miller* did

not consider that possibility, which had yet to be devised when those decisions were rendered. Plaintiffs ask us to follow *Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009), which concluded that *Cruikshank*, *Presser*, and *Miller* may be bypassed as fossils. (*Nordyke* applied the second amendment to the states but held that local governments may exclude weapons from public buildings and parks.) Another court of appeals has concluded that *Cruikshank*, *Presser*, and *Miller* still control even though their reasoning is obsolete. Nos. 08-4241, 08-4243 & 08-4244 3 *Maloney v. Cuomo*, 554 F.3d 56 (2d Cir. 2009). We agree with *Maloney*, which followed our own decision in *Quilici v. Morton Grove*, 695 F.2d 261 (7th Cir. 1982).

Repeatedly, in decisions that no one thinks fossilized, the Justices have directed trial and appellate judges to implement the Supreme Court's holdings even if the reasoning in later opinions has undermined their rationale. "If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson / American Express, Inc.*, 490 U.S. 477, 484 (1989). *Cruikshank*, *Presser*, and *Miller* have "direct application in [this] case". Plaintiffs say that a decision of the Supreme Court has "direct application" only if the opinion expressly considers the line of argument that has been

offered to support a different approach. Yet few opinions address the ground that later opinions deem sufficient to reach a different result. If a court of appeals could disregard a decision of the Supreme Court by identifying, and accepting, one or another contention not expressly addressed by the Justices, the Court's decisions could be circumvented with ease. They would bind only judges too dim-witted to come up with a novel argument.

Anyone who doubts that *Cruikshank*, *Presser*, and *Miller* have “direct application in [this] case” need only read footnote 23 in *Heller*. It says that *Presser* and *Miller* “reaffirmed [*Cruikshank*'s holding] that the Second Amendment applies only to the Federal Government.” 128 S. Ct. at 2813 4 Nos. 08-4241, 08-4243 & 08-4244 n.23. The Court did not say that *Cruikshank*, *Presser*, and *Miller* rejected a particular *argument* for applying the second amendment to the states. It said that they hold “that the Second Amendment applies only to the Federal Government.” The Court added that “*Cruikshank*'s continuing validity on incorporation” is “a question not presented by this case”. *Ibid*. That does not license the inferior courts to go their own ways; it just notes that *Cruikshank* is open to reexamination by the Justices themselves when the time comes. If a court of appeals may strike off on its own, this not only undermines the uniformity of national law but also may compel the Justices to grant certiorari before they think the question ripe

for decision.

State Oil Co. v. Khan, 522 U.S. 3 (1997), illustrates the proper relation between the Supreme Court and a court of appeals. After *Albrecht v. Herald Co.*, 390 U.S. 145 (1968), held that antitrust laws condemn all vertical maximum price fixing, other decisions (such as *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977)) demolished *Albrecht*'s intellectual underpinning. Meanwhile new economic analysis showed that requiring dealers to charge no more than a prescribed maximum price could benefit consumers, a possibility that *Albrecht* had not considered. Thus by the time *Khan* arrived on appeal, *Albrecht*'s rationale had been repudiated by the Justices, and new arguments that the *Albrecht* opinion did not mention strongly supported an outcome other than the one that *Albrecht* announced. Nonetheless, we concluded that only the Justices could inter *Albrecht*. See *Khan v. State Oil Co.*, 93 F.3d 1358 (7th Cir. 1996). By plaintiffs' lights, we should have treated *Albrecht* as defunct and reached what we Nos. 08-4241, 08-4243 & 08-4244 5 deemed a better decision. Instead we pointed out *Albrecht*'s shortcomings while enforcing its holding. The Justices, who overruled *Albrecht* in a unanimous opinion, said that we had done exactly the right thing, "for it is this Court's prerogative alone to overrule one of its precedents." 522 U.S. at 20. See also, e.g., *Eberhart v. United States*, 546 U.S. 12 (2005).

What's more, the proper outcome of this case is not as straightforward as the outcome of *Khan*. Although the rationale of *Cruikshank*, *Presser*, and *Miller* is defunct, the Court has not telegraphed any plan to overrule *Slaughter-House* and apply all of the amendments to the states through the privileges and immunities clause, despite scholarly arguments that it should do this. See Akhil Reed Amar, *America's Constitution: A Biography* 390–92 (2005) (discussing how the second amendment relates to the privileges and immunities clause). The prevailing approach is one of “selective incorporation.” Thus far neither the third nor the seventh amendment has been applied to the states—nor has the grand jury clause of the fifth amendment or the excessive bail clause of the eighth. How the second amendment will fare under the Court's selective (and subjective) approach to incorporation is hard to predict.

Nordyke asked whether the right to keep and bear arms is “deeply rooted in this nation's history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). It gave an affirmative answer. Suppose the same question were asked about civil jury trials. That institution also has deep roots, yet the Supreme Court has not held that the 6 Nos. 08-4241, 08-4243 & 08-4244 states are bound by the seventh amendment. Meanwhile the Court's holding that double-jeopardy doctrine is not “so rooted in the traditions and conscience of our people as to be ranked as fundamental,” *Palko v.*

Connecticut, 302 U.S. 319, 325 (1937) (concluding that it is enough for the state to use res judicata to block relitigation of acquittals), was overruled in an opinion that paid little heed to history. *Benton v. Maryland*, 395 U.S. 784 (1969). “Selective incorporation” thus cannot be reduced to a formula.

Plaintiffs’ reliance on William Blackstone, 1 *Commentaries on the Laws of England* *123–24, for the proposition that the right to keep and bear arms is “deeply rooted” not only slights the fact that Blackstone was discussing the law of another nation but also overlooks the reality that Blackstone discussed arms-bearing as a *political* rather than a *constitutional* right. The United Kingdom does not have a constitution that prevents Parliament and the Queen from matching laws to current social and economic circumstances, as the people and their representatives understand them. It is dangerous to rely on Blackstone (or for that matter modern European laws banning handguns) to show the meaning of a constitutional amendment that this nation adopted in 1868. See Nicholas Quinn Rosenkranz, *Condorcet and the Constitution*, 59 *Stan. L. Rev.* 1281 (2007). Blackstone also thought determinate criminal sentences (*e.g.*, 25 years, neither more nor less, for robbing a post office) a vital guarantee of liberty. 4 *Commentaries* *371–72. That’s not a plausible description of American constitutional law.

One function of the second amendment is to prevent the national government from interfering

with state militias. It Nos. 08-4241, 08-4243 & 08-4244 7 does this by creating individual rights, *Heller* holds, but those rights may take a different shape when asserted against a state than against the national government. Suppose Wisconsin were to decide that private ownership of long guns, but not handguns, would best serve the public interest in an effective militia; it is not clear that such a decision would be antithetical to a decision made in 1868. (The fourteenth amendment was ratified in 1868, making that rather than 1793 the important year for determining what rules must be applied to the states.) Suppose a state were to decide that people cornered in their homes must surrender rather than fight back—in other words, that burglars should be deterred by the criminal law rather than self help. That decision would imply that no one is entitled to keep a handgun at home for self-defense, because self-defense would itself be a crime, and *Heller* concluded that the second amendment protects only the interests of law-abiding citizens. See *United States v. Jackson*, 555 F.3d 635 (7th Cir. 2009) (no constitutional right to have guns ready to hand when distributing illegal drugs).

Our hypothetical is not as farfetched as it sounds. Self-defense is a common-law gloss on criminal statutes, a defense that many states have modified by requiring people to retreat when possible, and to use non-lethal force when retreat is not possible. Wayne R. LaFave, 2 *Substantive*

Criminal Law §10.4 (2d ed. 2003). An obligation to avoid lethal force in self-defense might imply an obligation to use pepper spray rather than handguns. A modification of the self-defense defense may or may not be in the best interest of public safety—whether guns deter or facilitate crime is 8 Nos. 08-4241, 08-4243 & 08-4244 an empirical question, compare John R. Lott, Jr., *More Guns, Less Crime* (2d ed. 2000), with Paul H. Rubin & Hashem Dzehbakhsh, *The effect of concealed handgun laws on crime*, 23 *International Rev. L. & Econ.* 199 (2003), and Mark Duggan, *More Guns, More Crime*, 109 *J. Pol. Econ.* 1086 (2001)—but it is difficult to argue that legislative evaluation of which weapons are appropriate for use in self-defense has been out of the people’s hands since 1868. The way to evaluate the relation between guns and crime is in scholarly journals and the political process, rather than invocation of ambiguous texts that long precede the contemporary debate. See *Clark v. Arizona*, 548 U.S. 735 (2006) (state may reformulate, and effectively abolish, insanity defense); *Martin v. Ohio*, 480 U.S. 228 (1987) (state may assign to defendant the burden of raising, and proving, self-defense).

Chicago and Oak Park are poorly placed to make these arguments. After all, Illinois has *not* abolished self-defense and has *not* expressed a preference for long guns over handguns. But the municipalities can, and do, stress another of the

themes in the debate over incorporation of the Bill of Rights: That the Constitution establishes a federal republic where local differences are to be cherished as elements of liberty rather than extirpated in order to produce a single, nationally applicable rule. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”); *Crist v. Bretz*, 437 U.S. 28, 40–53 (1978) (Powell, J., dissenting) (arguing that only “fundamental” liberties Nos. 08-4241, 08-4243 & 08-4244 9 should be incorporated, and that even for incorporated amendments the state and federal rules may differ); Robert Nozick, *Anarchy, State, and Utopia* (1974). Federalism is an older and more deeply rooted tradition than is a right to carry any particular kind of weapon. How arguments of this kind will affect proposals to “incorporate” the second amendment are for the Justices rather than a court of appeals.

AFFIRMED

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 6, 2009

By the Court:

NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., et al.,
Plaintiffs-Appellants,

Nos. 08-4241 and 08-4243 v.

THE CITY OF CHICAGO and VILLAGE OF
OAK PARK,
Defendants-Appellees.

Appeals from the United States District Court for
the Northern District of Illinois, Eastern Division.
Nos. 1:08-cv-03697
1:08-cv-03696

Milton I. Shadur, Judge

The following is before the court:
**PLAINTIFF-APPELLANTS' PETITION FOR
INITIAL EN BANC HEARING**, filed on April 17,

12a

2009, by counsel for the appellants,

No judge in active service has requested a vote on the petition for hearing en banc.* Accordingly, the petition for initial en banc hearing is **DENIED**.

* Judge Flaum did not participate in the consideration of this petition.

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

NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., Dr. KATHRYN TYLER,
ANTHONY BURTON, VAN F. WELTON,
and BRETT BENSON,

Plaintiffs,

v.

No. 08 CV 3697
Honorable Milton J.
Shadur

THE CITY OF CHICAGO

Defendant.

ORDER

The Court having ruled on December 4, 2008, that it is bound to follow the holding of *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982) that the Second Amendment is not incorporated into the Fourteenth Amendment, the Plaintiffs having objected to that determination, and the Plaintiffs having taken the position that the viability of Counts I and II in their Complaint depends on a ruling that the Second Amendment is

incorporated into the Fourteenth Amendment, the Court hereby grants the December 9, 2008 oral motion of the The City of Chicago pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings on Counts I and II of the Complaint. Judgment is hereby entered in favor of the City of Chicago and against Plaintiffs on Count I and II of the Complaint.

Dated: December 18, 2008

ENTERED:

The Honorable Milton I. Shadur
United States District Court Judge

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

NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., ROBERT KLEIN
ENGLER and DR. GENE A. REISINGER,

Plaintiffs,

v.

No. 08 CV 3696
Honorable Milton J.
Shadur

VILLAGE OF OAK PARK

Defendant.

ORDER

The Court having ruled on December 4, 2008, that it is bound to follow the holding of *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982) that the Second Amendment is not incorporated into the Fourteenth Amendment, the Plaintiffs having objected to that determination, and the Plaintiffs having taken the position that the viability of Counts I and II in their Complaint depends on a ruling that the Second Amendment is incorporated into the Fourteenth Amendment, the

Court hereby grants the December 9, 2008 oral motion of the Village of Oak Park pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings on Counts I and II of the Complaint. Judgment is hereby entered in favor of the Village of Oak Park and against Plaintiffs on Count I and II of the Complaint.

Dated: December 18, 2008

ENTERED:

The Honorable Milton I. Shadur
United States District Court Judge

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

NATIONAL RIFLE ASSOCIATION
OF AMERICA, INC., et al.,
Plaintiffs,

No. 08 C 3696

v.

VILLAGE OF OAK PARK,

Defendant.

NATIONAL RIFLE ASSOCIATION
OF AMERICA, INC., et al.,
Plaintiffs,

No. 08 C 3697

v.

CITY OF CHICAGO,

Defendant.

MEMORANDUM OPINION AND ORDER

Fresh from a historic victory for their cause

before the Supreme Court in *Dist. of Columbia v. Heller*, 128 S.Ct. 2783 (2008), the National Rifle Association, Inc. (“Association”) and some of its members filed these two lawsuits just one day after the *Heller* decision.¹ These cases have taken aim at the gun control ordinances in the City of Chicago and the Village of Oak Park. Although counsel’s constitutional arguments are set out in 15 well-written pages,² they may be encapsulated in a simple syllogism:

1. Under *Heller*, the Second Amendment’s guaranty of the right to keep and bear arms has invalidated the District of Columbia’s prohibition on the possession of handguns.

2. Almost all of the guaranties that apply against the federal government and its agencies under the Bill of Rights (the first ten amendments to the Constitution) have been held to have been incorporated in the guaranties that apply against

¹Even so, the Association was not quite as quick on the trigger as counsel for the plaintiffs in *McDonald v. City of Chicago*, 08 C 3645, who actually filed suit here on the same morning that *Heller* was decided in Washington! What is eminently plain is that both sets of lawyers - - the counsel who are handling both of these cases and another set of lawyers in *McDonald* - - came loaded for bear, on the assumption that the Supreme Court majority would rule as it did.

²After brief introductory paragraphs, the remaining 14 pages of the two memoranda are word-for-word replicas of each other. This memorandum order will accordingly cite only to the memorandum filed in the City of Chicago case.

the states and their subordinate units of government under the Fourteenth Amendment.

3. Ergo, the Second Amendment's guaranty of the right of the people to keep and bear arms, as construed in *Heller*, also extends to Oak Park and Chicago via the Fourteenth Amendment. QUE.

That approach, however, ignores a fundamental and critical jurisprudential curb that confronts a district judge such as the writer who is asked to confirm that third proposition - - the judge's duty to follow established precedent in the Court of Appeals to which he or she is beholden, even though the logic of more recent caselaw may point in a different direction. As stressed in *Sabin v. United States Dep't. of Labor*, 509 F.3d 376, 378 (emphasis in original) - - one of many cases standing for the same proposition:³

The Supreme Court has told the lower courts that they are not to anticipate the overruling of a Supreme Court decision, but are to consider themselves bound by it until and unless the Court overrules it, however out of step with current trends in the relevant case law the case may be.

That posture of the Court of Appeals vis-a-vis the

³ See also, e.g., *United States v. Santiago-Ochoa*, 447 F.3d 1015, 1020-21 (7th Cir. 2006).

Supreme Court is of course echoed in the posture of this Court vis-a-vis our Court of Appeals.

In this instance our Court of Appeals has squarely upheld the constitutionality of a ban on handguns a quarter century ago in *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982). And in reaching that conclusion, *Quilici, id.* at 269 relied on the Supreme Court's decision in *Presser v. Illinois*, 116 U.S. 252, 265 (1886):

It is difficult to understand how appellants can assert that *Presser* supports the theory that the second amendment right to keep and bear arms is a fundamental right which the state cannot regulate when the *Presser* decision plainly states that “[t]he Second Amendment declares that it shall not be infringed, but this . . . means no more than that it shall not be infringed by Congress. This is one of the amendment s that has no other effect than to restrict the powers of the National government”

In doing so, *Quilici, id.* at 270 rejected arguments (1) that later Supreme Court decisions that had incorporated other Bill of Rights provisions into the Fourteenth Amendment had effectively overruled *Presser* and (2) that the entire Bill of Rights had been implicitly incorporated into the Fourteenth Amendment to apply to the states.

Indeed, *Heller* itself (128 S.Ct. At 2812-13) confirmed that both *Presser* and the Court's

predecessor decision in *United States v. Cruikshank*, 92 U.S. 542 (1876) have held that the Second Amendment applies only to the federal government. *Heller, id.* at 2812 described *Cruikshank* as having “held that the Second Amendment does not by its own force apply to anyone other than the Federal Government,” after which *Heller, id.* At 2813 n.23 went on to state:

With respect to *Cruikshank*’s continuing validity on incorporation, a question not presented by this case, we note that *Cruikshank* also said that the First Amendment did not apply against the States and did not engage in the sort of Fourteenth Amendment inquiry required by our later cases. Our later decisions in *Presser v. Illinois*, 116 U.S. 252, 265, 6 S.Ct. 580, 29 L.Ed. 615 (1886) and *Miller v. Texas*, 153 U.S. 535, 538, 14 S.Ct. 874, 38 L.Ed. 812 (1894), reaffirmed that the Second Amendment applies only to the Federal Government.

To be sure, as the just-quoted language reflects, both *Cruikshank* and *Presser* long antedated the more modern jurisprudence of the implied incorporation that began with the initial suggestions in *Gitlow v. New York*, 268 U.S. 652 (1925) that the First Amendment was brought into play against the states via the Fourteenth Amendment, and then continued with the selective incorporation thereafter. But *Heller* deliberately and properly did not opine on the subject of

incorporation vel non of the Second Amendment (after all, that question was not before the Court). It is simply wrong - - an overreaching obviously prompted by the enthusiasm of advocacy - - for plaintiffs' counsel to state (Mem. 8-9, emphasis added):

Heller's holding that the Second Amendment guarantees an individual right to keep and bear arms, including handguns, squarely overrules the Seventh Circuit's ruling that "the right to keep and bear handguns is not guaranteed by the second amendment."

This Court should not be misunderstood as either rejecting or endorsing the logic of plaintiffs' argument - - it may well carry the day before a court that is unconstrained by the obligation to follow the unreversed precedent of a court that occupies a higher position in the judicial firmament. But as later-to-be-Justice Oliver Wendell Holmes famously observed in 1881 in The Common Law:

The life of the law has not been logic: it has been experience.

In sum, this Court - - duty bound as it is to adhere to the holding in *Quilici*, rather than accepting plaintiffs' invitation to "overrule" it (!) - - declines to rule that the Second Amendment is incorporated into the Fourteenth Amendment so as to be applicable to the Chicago or Oak Park ordinances. These actions are set for a status hearing at 8:45 a.m. December 9, 2008 to discuss

23a

further proceedings.

Milton I. Shadur
Senior United States District

Judge

Date: December 4, 2008

Constitution and Ordinances

United States Constitution

Amendment II

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.

Amendment XIV, § 1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ordinances

Municipal Code of Chicago

8-20-030 Definitions.

As used in this Title 8: . . .

(k) “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.

8-20-040 Registration of firearms.

(a) All firearms in the City of Chicago shall be registered in accordance with the provisions of this

chapter. It shall be the duty of a person owning or possessing a firearm to cause such firearm to be registered. No person shall within the City of Chicago, possess, harbor, have under his control, transfer, offer for sale, sell, give, deliver, or accept any firearm unless such person is the holder of a valid registration certificate for such firearm. No person shall, within the City of Chicago, possess, harbor, have under his control, transfer, offer for sale, sell, give, deliver, or accept any firearm which is unregistrable under the provisions of this chapter.

(b) 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 of Chicago;
- (3) Duty-related firearms owned or possessed by corrections officers; provided, that such corrections officers are not residents of the City of Chicago;
- (4) Firearms owned, manufactured or processed by licensed manufacturers of firearms, bulk transporters or licensed sellers of firearms at wholesale or retail, provided that such persons have, in addition to any other license required by law, a valid deadly weapons dealer license issued under Chapter 4-144 of this Code;
- (5) Any nonresident of the City of Chicago 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 weapon shall be unloaded and securely wrapped and that his possession or control of such firearm is lawful in the jurisdiction in which he resides;

(6) Peace officers, while in the course of their official duties, who possess and control any firearm or ammunition issued by their department, bureau or agency in the normal course of business;

(7) Private security personnel who possess or control any firearm or ammunition within the City of Chicago; provided, that such firearms shall be owned and maintained by the security firm employing such personnel and shall be registered by the security firm in accordance with this chapter;

(8) 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.

8-20-050 Unregisterable firearms.

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

(c) Handguns, except:

(1) Those validly registered to a current owner in the City of Chicago prior to the effective date of this chapter, and which contain each of the following:

(i) A safety mechanism to hinder the use of the handgun by unauthorized users. Such devices shall include, but shall not be limited to, trigger locks, combination handle locks, and solenoid use-limitation devices; and

(ii) A load indicator device that provides reasonable warning to potential users such that even users unfamiliar with the weapon would be forewarned and would understand the nature of the warning;

- (2) Those owned by peace officers who are residents of the City of Chicago,
- (3) Those owned by security personnel,
- (4) Those owned by private detective agencies licensed under Chapter 111.2601, et seq., Illinois Revised Statutes;

8-20-250 Violation – Penalty.

Any person who violates any provision of this chapter, where no other penalty is specifically provided, shall upon conviction for the first time, be fined not less than \$300.00, nor more than \$500.00; or be incarcerated for not less than ten days nor more than 90 days or both. Any subsequent conviction for a violation of this chapter shall be punishable by a fine of \$500.00 and by incarceration for a term of not less than 90 days, nor more than six months.

Oak Park Municipal Code

27-1-1: DEFINITIONS [ercerpts]

FIREARMS: For the purpose of this Article firearms are: pistols, revolvers, guns and small arms of a size and character that may be concealed on or about the person, commonly known as handguns.

LICENSED FIREARM COLLECTOR: Any person licensed as a collector by the Secretary of the Treasury of the United States under and by virtue of title 18, United States Code, section 923;

provided however, that a copy of said license is filed with the Chief of Police.

**27-2-1: UNLAWFUL TO POSSESS OR CARRY;
EXCEPTIONS:**

It shall be unlawful for any person to possess or carry, or for any person to permit another to possess or carry on his/her land or in his/her place of business any firearm, assault weapon or assault ammunition feeding device, and it shall be unlawful for any person to carry any rifle, shotgun, firearm, or assault weapon or assault ammunition feeding device in any vehicle or permit same to be carried in any vehicle to which such person is the title owner of record or about his/her person, except that a person may carry any rifle or shotgun when on his/her land or in his/her abode or fixed place of business: provided that this Section shall not apply to:

- A. Peace officers or any person summoned by any such officers to assist in making arrests or preserving the peace while he/she is actually engaged in assisting such officer;
- B. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense; provided, however, that this exemption shall apply to the carrying of a weapon only while one is engaged in the performance of his/her official duty or while commuting between his/her home and place of employment;
- C. Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard or Organized Militia; provided, however, that

this exemption shall apply to the carrying of a weapon only while one is engaged in the performance of his/her official duty;

D. Special agents employed by a railroad or a public utility to perform police functions, watchmen, security guards and "special police" appointed under Section 19-2-2 of this Code; provided, however, that this exemption shall apply to the carrying of a weapon only while one is actually engaged in the performance of the duties of his/her employment or while commuting between his/her home and place of employment; and provided further that said security guards are in full compliance with appropriate provisions of subsection (a)(4) of section 24-2 of the Illinois Criminal Code and other applicable laws and that said "special police" are in full compliance with Sections 19-2-1 through 19-2-4 of this Code and other applicable laws;

E. Agents and investigators of the Illinois Crime Investigating Commission authorized by the Commission to carry weapons; provided, however, that this exemption shall apply to the carrying of a weapon only while one is on duty in the course of any investigation for the Commissioner;

F. Manufacture, transportation or sale of weapons to persons authorized under law to possess such; (Ord. 1994-0-66, 10-17-94)

G. Duly authorized military or civil organizations while parading, with the special permission of the Governor;

H. Licensed hunters or fishermen while commuting to or from established game areas; provided, however, that this exemption shall not apply to the

possession or carrying of "firearms" as defined in Section 27-1-1 of this Code;

I. Transportation of weapons broken down in a nonfunctioning state and not immediately accessible; provided, however, that the transportation of firearms and/or assault weapons must not originate or terminate within the Village to qualify as an exception to this Section;

J. Antique firearms;

K. Licensed firearm collectors;

L. Members of established theater organizations located in Oak Park and performing a regular performance schedule to the public, utilizing only blank ammunition in the discharge of weapons only during rehearsals, classes or performances; provided further that said organization maintains possession and control over these weapons in a safe place with a designated member of the organization when the weapons are not in use;

M. No person who, prior to the effective date of this Section, was legally in possession of an assault weapon or assault ammunition feeding device prohibited by this Section, for ninety (90) days from the effective date of this Section. Such person shall have ninety (90) days from the effective date hereof; to do any of the following without being subject to prosecution hereunder:

1. Remove the assault weapon or assault ammunition from within the limits of the Village;
2. Modify the assault weapon either to render it permanently inoperable or to permanently make it a device no longer defined as an "assault weapon";
3. Surrender the assault weapon or assault ammunition feeding device to the Chief of Police or

his designee for appropriate disposal.
Any weapon carried pursuant to the exemptions F through I shall be carried unloaded, and anyone possessing a firearm pursuant to exemptions J and L shall not possess or carry any ammunition therefor.

27-4-1: FINE AND/OR IMPRISONMENT UPON CONVICTION; CONFISCATION OF WEAPON:

A. Except as set forth in Section 27-4-4 below, any person who violates any of the sections of this Chapter shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars (\$1,000.00) for the first offense and not more than two thousand dollars (\$2,000.00) for any subsequent offense.

B. In any prosecution brought to enforce the provisions of Article 2 or 3 of this Chapter, the prosecution need not negate any exemptions contained therein, and the defendant shall have the burden of proving that any exemption applies.

C. Upon conviction of any violation of Article 2 or 3 of this Chapter, any weapon involved shall be confiscated by the trial court and, when no longer needed for evidentiary purposes, the court may transfer such weapon to the Oak Park Police Department which shall destroy them in accordance with Section 27-4-3 of this Code. (Ord. 1994-0-77, 11-21-94)

27-4-3: DISPOSITION OF WEAPONS:

All weapons ordered confiscated by the court under the provisions of Section 27-4-1 and all weapons received by the Oak Park Police Department under

and by virtue of Section 27-4-2, shall be held and identified as to owner, where possible, by the Oak Park Police Department for a period of two (2) years prior to their being destroyed.

27-4-4: IMPOUNDMENT OF MOTOR VEHICLE CONTAINING UNLAWFUL WEAPONS:

Any motor vehicle which a police officer has probable cause to believe contains any weapon in violation of Section 27-2-1 shall be subject to seizure and impoundment, and the owner of record, as established by the title records of the Illinois Secretary of State, of said motor vehicle may avoid prosecution and obtain possession of such motor vehicle by paying the minimum penalty amount of five hundred dollars (\$500.00) within fifteen (15) days of the violation, plus all related towing and storage fees. If the vehicle owner, however, requests a court date on the violation within fifteen (15) days of the violation or the fifteen (15) day time period from the date of the violation has elapsed without a request for a hearing from the owner and the Village, at its option, seeks to prosecute the violation in court rather than enforce the minimum penalty administratively, then any fine for said violation shall be determined by the court in accordance with Section 27-4-1 above. A motor vehicle shall not be subject to seizure and impoundment if the motor vehicle was stolen at that time and the theft was reported to the appropriate police authorities within twenty four (24) hours after the theft was discovered or reasonably should have been discovered, or the motor vehicle is operating as a common carrier and

the weapon is brought upon the vehicle without the knowledge of the person in control of the motor vehicle.

A. 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. Before or at the time the vehicle is towed, the police officer shall notify the owner of record in accordance with notification provisions set forth in Chapter 15, Article 10 of the Village Code, and shall notify any person identifying him or herself, if any, as the owner of the vehicle, or any person who is found to be in control of the vehicle at the time of the alleged violation of the seizure and impoundment of the vehicle and of the vehicle owner's right to request a hearing pursuant to Section 15-10-10 of the Village Code.

B. Owners of motor vehicles towed and impounded pursuant to this Section shall be provided with notice and an opportunity for a hearing in accordance with the procedures set forth in Chapter 15, Article 10 of the Village Code relating to the immobilization or towing and impoundment of motor vehicles, except that the following provisions shall be in addition to and shall take precedence over conflicting provisions in Chapter 15, Article 10 of the Village Code in all instances in which a motor vehicle is towed and/or impounded pursuant to this Section, based upon a police officer having probable cause to believe that a motor vehicle contains an unlawful weapon in violation of Section 27-2-1 of this Chapter:

1. At any time within the fifteen (15) day time

period following the violation, the owner may request a court date in the Circuit Court of Cook County to obtain a judicial determination on the sole issue of whether or not the owner transported or permitted to be transported unlawful weapons in his or her vehicle in violation of Section 27-2-1 of this Chapter.

2. If fifteen (15) days has elapsed from the date of the violation and the owner has failed to request a hearing, the Village may, at its option, administratively enforce the minimum penalty of five hundred dollars (\$500.00) against the owner in the manner set forth hereinbelow or it may choose to prosecute the violation in the Circuit Court and seek to enforce any judgment in the manner specified herein.

3. If, after the hearing, the hearing officer determines by a preponderance of evidence that the vehicle contained an unregistered firearm or a firearm not broken down in a nonfunctioning state and/or easily accessible and that none of the exceptions described in subsections [27-2-1A](#) through M of this Chapter applies, the hearing officer shall enter an order finding the owner of record of the vehicle civilly liable to the Village for an administrative penalty in the amount of five hundred dollars (\$500.00). If the owner of record fails to appear at the hearing, the hearing officer shall enter a default order in favor of the Village, requiring the payment to the Village of an administrative penalty in the amount of five hundred dollars (\$500.00). If the hearing officer finds at the conclusion of the hearing that no such violation occurred or that there is a court order

which has determined that no violation occurred, then the hearing officer shall order the immediate return of the owner's vehicle or cash deposit. For purposes of this Section, it shall constitute permission of the owner to transport illegal weapons in the owner's vehicle if the vehicle in which the weapon was being transported was in the possession and control of the person permitted to be in possession and control of the vehicle by the owner at the time of the violation.

4. If an administrative penalty is imposed pursuant to this Section, such penalty shall constitute a debt due and owing to the Village. If a cash deposit has been posted pursuant to this Section, the deposit shall be applied to the penalty. If a vehicle has been impounded when such a penalty is imposed, the Village may seek to obtain a judgment on the debt and enforce such judgment against the vehicle as provided by law. Except as otherwise provided in this Section, a vehicle which has been properly impounded in accordance with this Section shall remain impounded until: 1) the penalty, plus any applicable towing and storage fees, are paid to the Village, in which case possession of the vehicle shall be given to the person who is legally entitled to possess the vehicle or 2) the vehicle is sold or otherwise disposed of to satisfy a judgment or enforce a lien as provided by law. If the penalty and applicable fees are not paid within thirty (30) days after a penalty is imposed hereunder against an owner of record who defaults by failing to appear at the hearing, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles. In all

other cases, if the penalty and applicable fees are not paid within thirty (30) days after the expiration of time at which administrative review of the hearing officer's determination may be sought, or within thirty (30) days after an action seeking administrative review has been resolved in favor of the Village, whichever is applicable, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles.

5. Except as otherwise provided by law, no owner, lienholder or other person shall be legally entitled to take possession of a vehicle impounded under this Section until the civil penalty and fees applicable under this Section have been paid. However, whenever a person with a lien of record against an impounded vehicle has commenced foreclosure proceedings, possession of the vehicle shall be given to that person if he or she agrees in writing to refund to the Village the amount of the net proceeds of any foreclosure sale, less any amounts required to pay all lienholders of record, up to five hundred dollars (\$500.00), plus the applicable fees.

6. Any final decisions rendered by the hearing officer under this Section shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, 735 Illinois Compiled Statutes, 5/3-101 et seq., as amended, and rules adopted pursuant thereto.