

Buckeye Firearms Foundation, Inc.
15 West Winter Street
Delaware, Ohio 43015

and

James Malcom Irvine
16435 Selby Circle
Strongsville, Ohio 44136

and

Gilbert Croteau
3812 West 22nd Street
Cleveland, Ohio 44109

Plaintiffs

vs.

City of Cleveland, Ohio
An Ohio Charter City
and Municipal Corporation
601 Lakeside Ave Room 106
Cleveland, Ohio 44114

and

Robert J. Triozzi, Esq.
Cleveland Director of Law
601 Lakeside Ave Room 106
Cleveland, Ohio 44114

and

Hon. Frank Jackson
Cleveland Mayor
601 Lakeside Ave

IN THE COMMON PLEAS
COURT OF CUYAHOGA
COUNTY, OHIO

CASE _____

JUDGE _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Cleveland, Ohio 44114

:

and

:

Michael McGrath
Cleveland Chief of Police
1300 Ontario Street
Cleveland, Ohio 44114

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:

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and

Hon. Ronald B. Adrine
Administrative and Presiding Judge
Cleveland Municipal Court
1200 Ontario Street
Cleveland, Ohio 44113

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and

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Martin L. Flask
Director, Cleveland Dept. of Public Safety
601 Lakeside Ave Room 230
Cleveland, Ohio 44114

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and

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David Whitehead
President, Cleveland Metroparks Board
4101 Fulton Parkway
Cleveland, Ohio 44144

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and

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Cleveland Metroparks
An Ohio Political Subdivision
4101 Fulton Parkway
Cleveland, Ohio 44144

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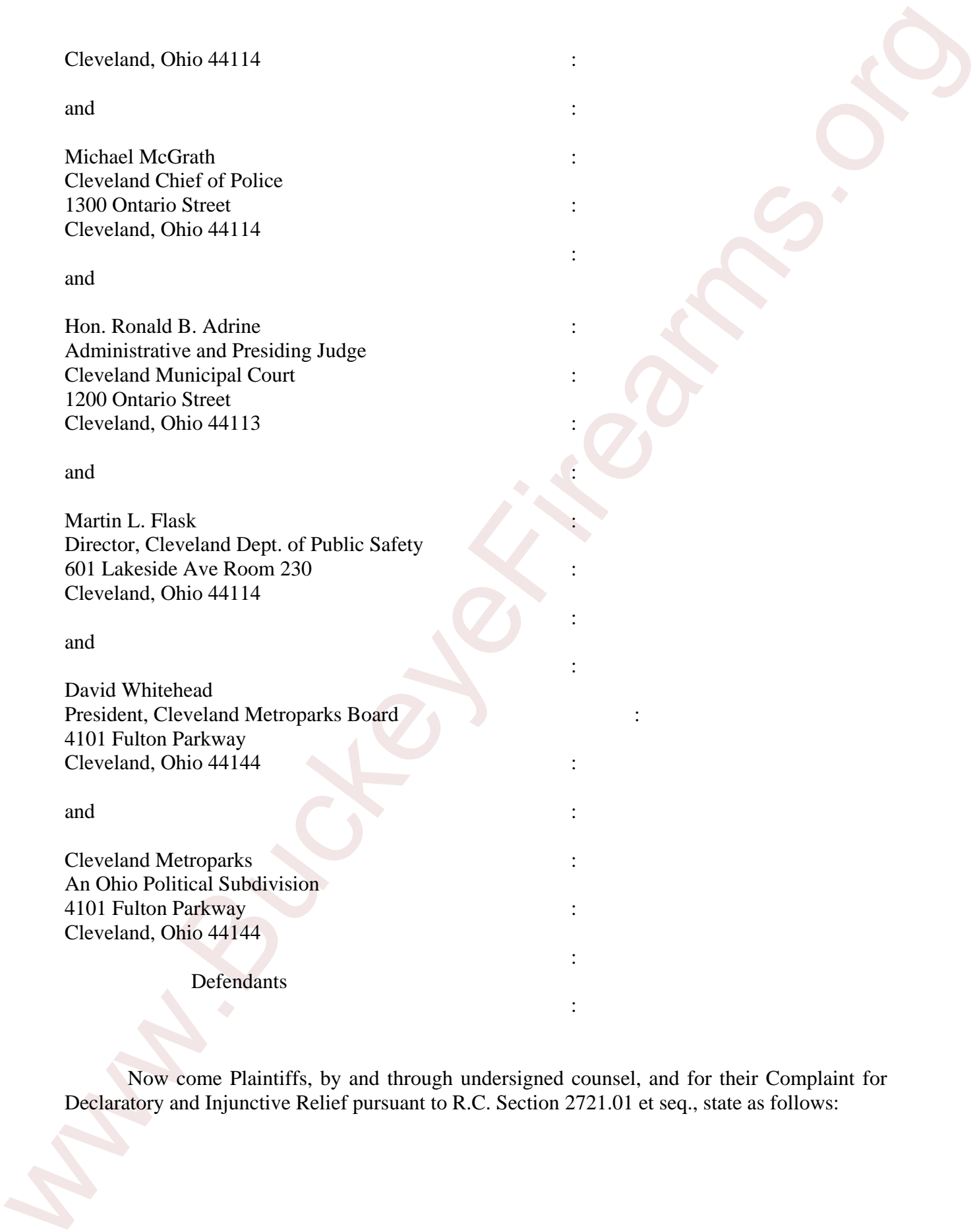
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Defendants

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Now come Plaintiffs, by and through undersigned counsel, and for their Complaint for Declaratory and Injunctive Relief pursuant to R.C. Section 2721.01 et seq., state as follows:



1. Plaintiff Buckeye Firearms Foundation Inc. (“Buckeye”) is an Ohio not-for-profit foundation with IRS 501(C)(3) status. The charitable purpose of the foundation is to engage in activities designed to defend and advance human and civil rights secured by law, specifically defending and advancing the rights of Ohio citizens to own and use firearms for all legal activities, including, but not limited to, self-defense, hunting, competition, and recreation. The members, officers, donors and supporters of Buckeye are all individuals and taxpayers residing in Ohio and other states, including, but not limited to, the City of Cleveland and Cuyahoga County, Ohio who own, possess and use firearms for all lawful purposes. Some, but not all, of the members, officers, donors and supporters of the foundation possess a license to carry a concealed handgun (“CHL”) issued by, or recognized by, Ohio pursuant to R.C. 2923.125 et seq. For relevant purposes, the members, officers, donors and supporters of Buckeye desire to use firearms for all lawful purposes, pursuant to state and federal law, within the City of Cleveland and Cuyahoga County, Ohio.
2. Plaintiff James Irvine (“Irvine”) is an individual residing in Strongsville, Ohio. As part of his normal work and leisure activities, Irvine is on occasion required to, and on occasion desires to, travel to and through the City of Cleveland with a firearm, pursuant to state and federal law. Irvine is uncertain as to his requirement to comply with, observe, or ignore the various ordinances of Defendants as they pertain to firearms.
3. Plaintiff Gilbert Croteau (“Croteau”) is an individual residing in Cleveland, Ohio. Croteau owns and uses firearms in a lawful manner, pursuant to state and federal law, and desires to do so within the City of Cleveland. Croteau is uncertain as to his requirement to comply with, observe, or ignore the various ordinances of Defendants as they pertain to firearms.
4. Defendant City of Cleveland (“Cleveland”) is an Ohio Municipal Corporation which has adopted a City Charter (“Charter”) pursuant to Article XVIII, Section 7 of the Ohio Constitution. The principal place of business of Cleveland for relevant purposes is within Cuyahoga County, Ohio.
5. Defendant Robert J. Triozzi (“Triozzi”) Esq. is the duly appointed and acting Director of Law for Cleveland and is included as Defendant only in this official capacity. The principal place of business and jurisdiction of Triozzi for relevant purposes is within Cuyahoga County, Ohio. Chapter 15, Section 84 of Cleveland’s Charter provides that the Director of Law is the Prosecuting Attorney of the Municipal Court.
6. Defendant Frank Jackson (“Jackson”) is the duly elected and acting Mayor for Cleveland and is included as Defendant only in this official capacity. The principal place of business and jurisdiction of Jackson for relevant purposes is within Cuyahoga County, Ohio. Chapter 11, Section 68 of Cleveland’s Charter provides that

- the Mayor is the Chief Executive officer of Cleveland, and Section 71 of that same Chapter provides that the Mayor is the chief conservator of the peace. Chapter 25, Section 115 of Cleveland's Charter provides that the Mayor is the executive head of Cleveland's police force.
7. Defendant Michael McGrath ("McGrath") is the duly appointed and acting Chief of Police for Cleveland and is included as Defendant only in this official capacity. The principal place of business and jurisdiction of McGrath for relevant purposes is within Cuyahoga County, Ohio. Chapter 25, Section 116 of Cleveland's Charter provides that the Chief of Police is appointed by the Mayor and serves at the pleasure of the Mayor.
 8. Defendant Hon. Ronald B. Adrine ("Adrine") is the duly appointed and acting Administrative and Presiding Judge of Cleveland Municipal Court and is included as Defendant only in this official capacity. The Cleveland Municipal Court is a Court of general jurisdiction for relevant purposes within Cuyahoga County, Ohio. Among other criminal offenses, the Cleveland Municipal Court has jurisdiction over alleged criminal violations of the codified ordinances of Cleveland. As Administrative and Presiding Judge, Judge Adrine oversees the assignment of cases to associate judges for hearing.
 9. Defendant Martin L. Flask ("Flask") is the duly appointed and acting Director of Public Safety for Cleveland and is included as Defendant only in this official capacity. The principal place of business and jurisdiction of Flask for relevant purposes is within Cuyahoga County, Ohio. Chapter 135, Section 135.01 of Cleveland's Charter provides that the Director of Public Safety is the executive head and appointing authority of Cleveland's police, all under the direction of the Mayor.
 10. Defendant David Whitehead ("Whitehead") is the President of the Cleveland Metroparks Board of Park Commissioners and is included as Defendant only in this official capacity. The principal place of business and jurisdiction of Whitehead for relevant purposes is within Cuyahoga County, Ohio.
 11. Defendant Cleveland Metroparks is a political subdivision of Ohio separate from Defendant Cleveland and is generally charged with operation of park properties located primarily in Cuyahoga County, Ohio. The principal place of business of Cleveland Metroparks for relevant purposes is in Cuyahoga County, Ohio, though some properties are located outside of Cuyahoga County. Upon information and belief, Defendant Cleveland Metroparks also maintains a law enforcement force charged with enforcing ordinances within Cleveland Metroparks' properties.

12. On March 14, 2007, R.C. Section 9.68 went into effect. The entire text of R.C. Section 9.68 is set forth in Exhibit A and is incorporated by reference as if fully rewritten herein. The applicable provision of R.C. 9.68 provides “Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.”
13. Defendant Cleveland attempted to have R.C. Section 9.68 declared unconstitutional in Cleveland v. Ohio, Cuyahoga County Common Pleas Court Case # CV-07-618492. Said attempts failed and the Cuyahoga County Common Pleas Court ruled that R.C. Section 9.68 was constitutional pursuant to the Ohio Supreme Court decision in Ohioans for Concealed Carry, Inc. et al v. Clyde, et al (2008) 120 Ohio St.3d 96. Defendant Cleveland also filed amicus briefs in the Clyde case.
14. Defendant Cleveland conceded in their Amicus brief filed in the Clyde case that “Revised Code Section 9.68 operates to nullify all local gun regulation regarding the ownership, possession, purchase, sales, transfer, transport, storage, or keeping of any firearm, part of a firearm, its components, and its ammunition. (Amicus Brief of Cleveland, Page 1, Paragraph 2.) See Attached Exhibit B.
15. Despite legally binding precedent and Cleveland’s legal admission of nullification of their firearm ordinances, Defendants Cleveland, Jackson, Triozzi and McGrath continue to use their official offices to criminally prosecute violations of Cleveland’s codified ordinances nullified by R.C. Section 9.68. These prosecutions occur in Cleveland Municipal Court and are heard by Judge Adrine and such other associate Judges he assigns the cases to.
16. Upon information and belief, Jackson has ordered his police force to continue enforcing said ordinances, and the Cleveland Police have in fact continued to arrest and file criminal complaints against citizens for violations of these ordinances, and Triozzi has overseen criminal prosecution of these criminal complaints in Cleveland Municipal Court.
17. Plaintiffs are bringing their Complaint for Declaratory and Injunctive relief with regard to any Cleveland Codified Ordinance regulating ownership, possession, purchase, sale, transfer, transport, storage, or keeping of any firearm, part of a firearm, its components, and its ammunition, and also with regard to one Ordinance of Cleveland Metroparks regulating ownership, possession, storage, or keeping of any firearm, part of a firearm, its components, and its ammunition.

Count 1 – Declaratory Judgment

18. Plaintiffs incorporate paragraphs 1-17 above as if fully rewritten herein.
19. Plaintiffs are each a “person” as defined under Revised Code Section 2721.01. Further, the members, officers, donors and supporters of Plaintiff Buckeye qualify as a “person” under said statute and Buckeye acts in a representative/derivative capacity for said persons.
20. Plaintiffs and the members, officers, donors and supporters of Plaintiff Buckeye, without regard to their status as a person license to carry a concealed handgun, are each persons interested in advancing and defending the right to own and use firearms for lawful purposes in the state of Ohio, including full enforcement and operation of R.C. Section 9.68. Further, persons with a CHL issued by Ohio or a state that is recognized by Ohio have an interest in knowing that the state laws of Ohio are valid and operate to nullify purported legal regulation of concealed and open carry of firearms by each and every municipality in Ohio and have urgent need to rely upon the state laws of Ohio when traveling in and through Ohio.

Prohibited Possession of Certain Handguns

21. Defendants adopted Codified Ordinance #674.02 by way of Ordinance # 1107-76 on May 10, 1976, with an effective date of May 14, 1976. A complete copy of Codified Ordinance #674.02 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.
22. Codified Ordinance #674.02 purports to: 1.) prohibit possession of a handgun unless the handgun is engraved with a serial number, 2.) prohibit possession of a handgun unless the person has an “identification card” for the person and a “registration card” for the handgun, and 3.) prohibit transfer of a handgun to anyone who is not in possession of “identification card” for the transferee and a “registration card” for the handgun. Further, Codified Ordinance #674.99 provides that violation of Codified Ordinance #674.02 is an unclassified misdemeanor punishable by at least \$100.00 but not more than \$1,000 in fines and up to 12 months imprisonment, with each day of violation constituting a separate offense.
23. R.C. Section 9.68 specifically grants persons the right possess, keep, sell and transfer firearms without further license, permission or process unless prohibited by state or federal law. There is no provision in state or federal law requiring an engraved serial number, a “registration card” or an “identification card” as required by Ordinance #674.02.

24. Consequently, Ordinance #674.02 is attempting to impose further license, permission or process on the possession, keeping, selling and transfer of handguns in a manner not provided for in state or federal law.

Handgun Confiscation

25. Defendants adopted Codified Ordinance #674.03 by way of Ordinance #975-A-75 on February 2, 1976 with an effective date of February 9, 1976. A complete copy of Codified Ordinance #674.03 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.
26. Codified Ordinance #674.03 purports to provide for the confiscation and destruction of any handgun in violation of Cleveland Codified Ordinances, and is an exercise of police power by virtue of providing for the taking and destruction of private property. Further, Codified Ordinance #674.99 provides that violation of Codified Ordinance #674.03 is an unclassified misdemeanor punishable by at least \$100.00 but not more than \$1,000 in fines and up to 12 months imprisonment, with each day of violation constituting a separate offense.
27. R.C. Section 9.68 specifically grants persons the right to possess firearms unless prohibited by state or federal law. R.C. Section 2981.01 et seq. provides for the statutory process of confiscation and destruction of illegally possessed firearms, and provides for statutory safeguards such as notice and hearing. R.C. Section 2981.01 et seq. superseded R.C. Section 2933.42 et seq., which was found to be the applicable procedure for surrender and destruction of firearms in State v. Cola, (8th District February 24, 1992) 76 Ohio App.3d 840. R.C. Section 2923.163 further governs seizure and return of firearms.
28. Consequently, Ordinance #674.03 is attempting to provide for confiscation and destruction of firearms in a manner not provided for in state or federal law.

Handgun Owner I.D. Card

29. Defendants adopted Codified Ordinance #674.04 by way of Ordinance Number 2393-03 on February 3, 2003 and was effective on that same day. A complete copy of Codified Ordinance #674.04 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.
30. Codified Ordinance #674.04 purports to establish a handgun owners "identification card" and provides for the application process, the application fee, the form of the card and the qualifications needed to obtain said identification card, including ownership disqualifications beyond those contained in state or federal law. Further, Codified Ordinance #674.99 provides that violation of Codified Ordinance #674.04 is an unclassified misdemeanor punishable by at least \$100.00 but not more than \$1,000

in fines and up to 12 months imprisonment, with each day of violation constituting a separate offense.

31. R.C. Section 9.68 specifically grants persons the right possess, keep and carry firearms without further license, permission or process unless prohibited by state or federal law. There is no provision in state or federal law requiring an “identification card,” application process, application fee or further ownership qualifications as provided for by Ordinance #674.04.
32. Consequently, Ordinance #674.04 is attempting to impose further license, permission or process on the possession of handguns in a manner not provided for in state or federal law.

Handgun Registration Card

33. Defendants adopted Codified Ordinance #674.05 by way of Ordinance Number 2393-02 on February 3, 2003 and was effective on that same day. A complete copy of Codified Ordinance #674.05 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.
34. Codified Ordinance #674.05 purports to establish a handgun “registration card” and provides for the application process, the application fee, the form of the card and purports to require persons to obtain or update said registration card upon the sale or transfer of the handgun. Further, Codified Ordinance #674.99 provides that violation of Codified Ordinance #674.05 is an unclassified misdemeanor punishable by at least \$100.00 but not more than \$1,000 in fines and up to 12 months imprisonment, with each day of violation constituting a separate offense.
35. R.C. Section 9.68 specifically grants persons the right possess, keep, carry, sell and transfer firearms without further license, permission or process unless prohibited by state or federal law. There is no provision in state or federal law requiring a “registration card,” application process, application fee or further sale conditions as provided for by Ordinance #674.05.
36. Consequently, Ordinance #674.05 is attempting to impose further license, permission or process on the possession, keeping, carrying, sale or transfer of handguns in a manner not provided for in state or federal law.

Dealer’s License

37. Defendants adopted Codified Ordinance #674.07 by way of Ordinance Number 90-96 on March 18, 1996 with an effective date of March 26, 1996. A complete copy of Codified Ordinance #674.07 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.

38. Codified Ordinance #674.07 purports to establish a handgun “dealer’s license” and provides for the application process, the application fee and purports to restrict the area where firearm dealers may be located in a manner different from other retail establishments within the same zoning district. Further, Codified Ordinance #674.99 provides that violation of Codified Ordinance #674.07 is an unclassified misdemeanor punishable by at least \$100.00 but not more than \$1,000 in fines and up to 12 months imprisonment, with each day of violation constituting a separate offense.
39. R.C. Section 9.68 specifically grants persons the right sell, transfer or store firearms without further license, permission or process unless prohibited by state or federal law. There is no provision in state or federal law requiring a separate city issued “dealer’s license,” application process, application fee or further sale conditions as provided for by Ordinance #674.07. Further, R.C. 9.68(D)(2) only allows zoning-types of location restrictions if those restrictions are consistent for all retail locations with that type of zoning class and do not result in a de facto ban of gun dealers. Ordinance #674.07(d) purports to impose geographical restrictions that are not consistent with other retail locations within the same zoning class, and, upon information and belief, leaves no area within Cleveland city limits where a gun dealer may be located.
40. Consequently, Ordinance #674.07 is attempting to impose further license, permission or process on the possession, sale or transfer of handguns in a manner not provided for in state or federal law, and attempts to limit and eliminate locations of gun dealers in a manner not provided for in state or federal law.

Dealer Records

41. Defendants adopted Codified Ordinance #674.09 by way of Ordinance Number 1107-76 on May 10, 1976 with an effective date of May 14, 1976. A complete copy of Codified Ordinance #674.09 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.
42. Codified Ordinance #674.09 purports to require handgun “dealer’s” records of all handgun purchases on forms promulgated by the Chief of Police. Said records contain personally identifiable information on the purchaser and the handgun, and are kept “permanently” by the Chief of Police. Further, Codified Ordinance #674.99 provides that violation of Codified Ordinance #674.09 is an unclassified misdemeanor punishable by at least \$100.00 but not more than \$1,000 in fines and up to 12 months imprisonment, with each day of violation constituting a separate offense.
43. R.C. Section 9.68 specifically grants persons the right to sell and transfer firearms without further license, permission or process unless prohibited by state or federal

law. There is no provision in state or federal law requiring a separate city “handgun dealer’s record” as provided for by Ordinance #674.09.

44. Consequently, Ordinance #674.09 is attempting to impose further license, permission or process on the sale or transfer of handguns in a manner not provided for in state or federal law.

Theft Reporting

45. Defendants adopted Codified Ordinance #674.10 by way of Ordinance Number 975-A-75 on February 2, 1976 with an effective date of February 9, 1976. A complete copy of Codified Ordinance #674.10 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.

46. Codified Ordinance #674.10 purports to require reporting of the theft of a firearm immediately to the Chief of Police and provides a format that the report must comport to. Further, Codified Ordinance #674.99 provides that violation of Codified Ordinance #674.10 is an unclassified misdemeanor punishable by at least \$100.00 but not more than \$1,000 in fines and up to 12 months imprisonment, with each day of violation constituting a separate offense.

47. R.C. Section 9.68 specifically grants persons the right to possess firearms without further process unless prohibited by state or federal law. R.C. Section 2923.20(A)(5) requires the report of the theft or loss of a firearm “forthwith” to law enforcement authorities, without further restriction on which law enforcement authority is to receive the report nor the content of the report. There is no provision in state or federal law requiring the report of the theft of a firearm “immediately” nor requiring the report be made to the Chief of Police and in a specified format.

48. Consequently, Ordinance #674.10 is attempting to impose further process on the sale or transfer of handguns in a manner not provided for in state or federal law.

Storage of Firearms

49. Defendants adopted Codified Ordinance #627A.02 and 627A.03 by way of Ordinance Number 1130-92 on May 11, 1992 with an effective date of May 15, 1992. A complete copy of Codified Ordinance #627A.02 and 627A.03 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.

50. Codified Ordinance #627A.02 purports to restrict the storing of a loaded or unloaded firearm. Codified Ordinance #627A.03(b) purports to require firearm dealers to give written notice to all firearm purchasers of these storage requirements. Further, Codified Ordinance #627A.99 provides that violation of Codified Ordinance

#627A.02 is a first degree misdemeanor and violation of Codified Ordinance 627A.03 is a third degree misdemeanor.

51. R.C. Section 9.68 specifically grants persons the right to possess, store and keep firearms without further process, permission or restriction unless prohibited by state or federal law. There is no provision in state or federal law requiring storage in the manner required by 627A.02 and no provision in state or federal law requiring firearm dealers to provide written notice of storage requirements as required by 627A.03.
52. Consequently, Ordinance #627A.02 and 627A.03 are attempting to impose further process or restriction on the possession, storage or keeping and sale or transfer of firearms in a manner not provided for in state or federal law.

Firearm Ban

53. Defendants adopted Codified Ordinance #628.03 by way of Ordinance Number 2661-91 on November 18, 1991 with an effective date of November 20, 1991. A complete copy of Codified Ordinance #628.03 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.
54. Codified Ordinance #628.03 purports to restrict the types of firearms and firearm components that may be bought, owned, possessed, kept, transferred or sold within the city limits. Further, Codified Ordinance #628.99 provides that violation of Codified Ordinance #628.03 is an unclassified misdemeanor and carries a mandatory sentence of 6 months imprisonment and \$1,000.00 in fines, with no possibility of reduction.
55. R.C. Section 9.68 specifically grants persons the right to buy, sell, transfer, possess, store and keep firearms without further process, license or permission unless prohibited by state or federal law. There is no provision in state or federal law barring possession, carrying, keeping, storing, transferring or selling of these same firearms or firearm components.
56. Consequently, Ordinance #628.03 is attempting to impose further process, permission or restriction on the purchase, possession, storage, keeping, sale and transfer of firearms in a manner not provided for in state or federal law.

Certain Firearms Declared Contraband

57. Defendants adopted Codified Ordinance #628.04 by way of Ordinance Number 2661-91 on November 18, 1991 with an effective date of November 20, 1991. A complete copy of Codified Ordinance #628.04 is attached in Exhibit A and is incorporated by reference as if fully rewritten herein.

