

1 C. D. Michel - SBN 144258
Don B. Kates - SBN 39193
2 Glenn S. McRoberts - SBN 144852
Thomas E. Maciejewski - SBN 222736
3 TRUTANICH • MICHEL, LLP
180 East Ocean Blvd.
4 Suite 200
Long Beach, CA 90802
5 Telephone: (562) 216-4444
Fax: (562) 216-4445
6

7 Attorneys for Plaintiffs and Petitioners

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED JURISDICTION

11 PAULA FISCAL et al.,
12 Plaintiffs and Petitioners,

14 vs.

15 CITY AND COUNTY OF SAN
16 FRANCISCO et al.,
17 Defendants and Respondents.

) CASE NO. CPF-05-505960

) **OBJECTION AND MOTION TO STRIKE**
) **POLICY MATERIAL AND RELATED**
) **DECLARATIONS; MEMORANDUM OF**
) **POINTS & AUTHORITIES IN SUPPORT**
) **THEREOF**

) Hearing Date: February 15, 2006
) Hearing Judge: Warren
) Time: 9:30 a.m.
) Location: Dept. 301

) Date Action Filed: December 29, 2005
) Trial Date: None scheduled

1 Petitioners hereby object to the admission of and move that the following matters filed by
2 respondents be stricken from the record:

- 3 1. pp. 1-5 of CITY's Opposition;
- 4 2. Declaration of Kathy Hood in Support of City's Opposition to Petition for Writ of
5 Mandate
- 6 3. Declaration of Diane Bradford in Support of City's Opposition to Petition for Writ of
7 Mandate
- 8 4. Declaration of Cathy Tyson in Support of City's Opposition to Petition for Writ of
9 Mandate
- 10 5. Declaration of Colleen Fatooh in Support of City's Opposition to Petition for Writ of
11 Mandate
- 12 6. Declaration of John Hennessey in Support of City's Opposition to Petition for Writ of
13 Mandate
- 14 7. Declaration of Vince Chhabria in Support of City's Opposition to Petition for Writ of
15 Mandate and accompanying exhibits.
- 16 8. Exhibits B and C to Respondents' Request for Judicial Notice in Support of Opposition
17 to Petition for Writ of Mandate.

18
19 **MEMORANDUM OF POINT & AUTHORITIES**

20 **INTRODUCTION**

21 In moving to strike CITY's Exhibits Petitioners are not ignoring or discounting the suffering of
22 victims of gun violence. In fact, plaintiffs include crime victims and retired law enforcement officers
23 whose concern is to vindicate the interests of victims. But state law already makes gun ownership
24 illegal for criminals, juveniles and the mentally impaired. Because the Ordinance expressly states that
25 it does not cover any of these it applies only to law abiding, responsible adults who are victims of
26 violent crime, not perpetrators.

27 In objecting to CITY's irrelevant submissions plaintiffs are not denying the frequency and often
28 tragic results of violent crime in our society, including San Francisco. Indeed, in relation to the *legal*

1 issues raised in Petitioners’ brief we urge the court to consider that violent crimes take place, and that
2 the Legislature has sanctioned the ability of responsible, law abiding adults to choose to arm
3 themselves for defense of themselves, their families, and others, e.g., Pen C. 12025.5 (responsible
4 persons who have secured restraining orders against violent predators are entitled to carry concealed,
5 loaded handguns for their protection), 12026 (b) (responsible gun owners are entitled to keep handguns
6 in their homes and offices for self-defense), 12027 (retired federal and California law enforcement
7 officers are entitled to permit that allows them to carry concealed loaded handgun) and 12050 (persons
8 of good character who have good reason are entitled to permit that allows them to carry concealed
9 loaded handgun). *It bears emphasis that CITY contends its Ordinance voids all these state legislative*
10 *permissions.* See paragraph 9 of CITY’s answer to our petition.

11
12 **ARGUMENT**

13 **I. CITY’S POLICY EVIDENCE IS IRRELEVANT**
14 **AND MORE PREJUDICIAL THAN PROBATIVE**

15 Only relevant evidence is admissible. Evidence Code Section 350. Relevant evidence is
16 evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequences
17 to the determination of the action.” Evidence Code Section 210. Evidence must be excluded when it is
18 not “relevant.” *Id.*

19 In determining whether evidence is relevant, a court must consider its materiality, the strength
20 of its relationship to the issues upon which it is offered, whether it goes to the elements of the causes
21 of action at issue, or whether it is merely collateral to the issues. *Burke v. Almaden Vineyards, Inc.*
22 (1978) 86 Cal.App.3d 768, 774. Relevance of evidence is tested by whether it logically, naturally, and
23 by reasonable inference proves or disproves a material issue. *Roberts v. Permanente Corp.* (1961) 188
24 Cal.App.2d 526, 533. *See* Evidence Code, § 210 (evidence must have some tendency in reason to
25 prove or disprove a disputed fact that is of consequence to the determination of the action).

26 While a court has wide discretion in determining the relevance of evidence, that discretion is not
27 absolute or unlimited: the trial judge must balance the probative value of the proffered evidence
28 against its prejudicial effect in the context of the case before the court. *Brainard v. Cotner* (1976) 59

1 Cal.App.3d 790, 796; *Kessler v. Gray* (1978) 77 Cal.App.3d 284, 291.

2 Policy justifications for the Ordinance challenged in this case are not relevant to a
3 determination of whether the Ordinance is legal. Given the irrelevance of such matters in evaluating or
4 establishing the legality of the Ordinance, the policy related evidence should be excluded as irrelevant.

5 Additionally, Evidence Code Section 352 provides for the exclusion of evidence if it is more
6 prejudicial than probative. Introduction of victim statements would serve no other purpose than to
7 invite the Court to weigh the facts in an unduly prejudicial manner based on sympathy and emotion
8 rather than reason.

9 The appellate courts have held discussion of the merits of gun control to be irrelevant and
10 inappropriate in cases like this. The opinion in *Galvan v. Superior Court* (1969) 70 Cal.2d 851, 76
11 Cal.Rptr. 642 ends with the observation:

12 Finally, both San Francisco and Galvan have submitted materials concerning the
13 desirability of weapons control, and the effect of weapons control on crime rates. It is
14 well established that the wisdom of legislation is beyond the competence of the
15 court....The arguments made in this connection, although of possible interest to the
16 Legislature, are without merit in this court. [Citations deleted.]

15 **II. CITY'S POLICY EVIDENCE IS DISPUTABLE**

16 Where the Court to determine that CITY's submissions are relevant, Petitioners should be
17 entitled to submit their our evidence on the issues, and they so request leave to do. CITY claims that
18 law abiding, responsible adults are perpetrators of gun crime so that it is necessary to leave them
19 defenseless. In fact, however, the whole corpus of social scientific research shows that – unlike
20 ordinary people – the perpetrators of “life threatening” crime "*almost always* have a long history of
21 involvement in criminal behavior."¹ While only about 15% of Americans have ever been arrested, 90-

22
23 ¹ Delbert S. Elliott, "Life Threatening Violence is *Primarily* a Crime Problem: A Focus on
24 Prevention," 69 COLO. L. REV. 1081-1098 at 1089 (1998), emphasis added. To the same effect
25 see e.g., James B. Jacobs, CAN GUN CONTROL WORK 11 (Oxford U. Press, 2003), Don B.
26 Kates & Daniel D. Polsby, "Long Term Non-Relationship of Firearm Availability to Homicide" 4
27 HOMICIDE STUDIES 165, 192 (2000); Anthony Braga, et al., "Youth Homicide in Boston: An
28 Assessment of the Supplementary Homicide Report Data," 3 HOMICIDE STUDIES 277, 283-84
(1999), David Kennedy, et al., "Homicide in Minneapolis: Research for Problem Solving," 2
HOMICIDE STUDIES 263, 269 (1998); Thomas B. Marvell & Carlisle E. Moody, "The Impact
of High Out-of-State Prison Population on State Homicide Rates," 36 CRIMINOLOGY 513, 517
(1998); David Finkelhor, "The Homicides of Children and Youth" in G. Kaufman Kantor & J.

1 95% of adult murderers have criminal records, and large percentages are known members of criminal
2 gangs and/or have mental records or have been subject to restraining orders. So universally do
3 homicide studies find that murderers have prior histories of violence, crime, mental defect and/or
4 substance abuse that these have become "criminological axioms" in research on murder.²

5 CITY also claims, wrongly, that victims rarely use guns to defend themselves against crime. To
6 the contrary, in an Oxford University Press study Prof. James B. Jacobs (Director of the NYU Center
7 for Research in Crime and Justice) summarizes the results of more than a score or national surveys:
8 "All these surveys reveal *a great deal of self-defensive gun use of firearms; in fact, more defensive gun*
9 *uses than crimes committed with firearms.*"³

11 Jasinski (eds.) OUT OF THE DARKNESS: CONTEMPORARY PERSPECTIVES ON FAMILY
12 VIOLENCE (Sage, 1997); Roger Lane, MURDER IN AMERICA: A HISTORY (Ohio U. Press,
13 1997) p. 259 ; Sheilagh Hodgins, "Mental Disorder, Intellectual Deficiency, and Crime," 49
14 ARCH. GEN. PSYCHI. 476 (1992); Gerald D. Robin, VIOLENT CRIME AND GUN
15 CONTROL 46 ("the average murderer turns out to be no less hardened a criminal than the average
16 robber or burglar") (Academy of Criminal Justice Sciences: 1991) at p. 46, references omitted;
17 Gary Kleck & David Bordua, "The Factual Foundation for Certain Key Assumptions of Gun
18 Control", 5 LAW & POLICY Q. 271, 292ff. (1983);

19 ² Kennedy, et al.,supra " 2 HOMICIDE STUDIES at 269 (1998). Typical are the articles in
20 the November, 1998 ("Femicide") issue of HOMICIDE STUDIES, the following quote from one
21 of them being representative of all: "The overriding theme to emerge from these cases was that
22 partner homicide is most often the final outcome of chronic women battering." Paige Hall-Smith,
23 Kathryn E. Moracco & John D. Butts, "Partner Homicide in Context," 2 HOMICIDE STUDIES
24 400-421 at 411 (1998). See also, e.g., Anthony A. Braga, Jack McDevitt, & Glenn L. Pierce,
25 UNDERSTANDING AND PREVENTING GANG VIOLENCE: PROBLEM ANALYSIS AND
26 RESPONSE DEVELOPMENT (to be published in Police Quarterly (2005, Volume 8, Number 3,
27 specific page numbers unknown)); Linda Langford, et al. "Criminal and Restraining Order
28 Histories of Intimate Partner-Related Homicide Offenders in Massachusetts, 1991-95" in Paul H.
Blackman, et al., THE VARIETIES OF HOMICIDE AND ITS RESEARCH (Quantico, VA, F.B.I.
Academy, 2000); A. Swersey and E. Enloe, HOMICIDE IN HARLEM (N.Y., Rand, 1975) 17
("the great majority of both perpetrators and victims of assaults and murders had previous arrests,
probably over 80% or more"); R. Narloch, CRIMINAL HOMICIDE IN CALIFORNIA 53-54
(Sacramento, Cal. Bur. of Crim. Stats., 1973); FBI, UNIFORM CRIME REPORT-1971 at 38
(77.9% of adult homicide arrestees nationally over a year period had prior criminal records); D.
Mulvihill, et al. CRIMES OF VIOLENCE: REPORT OF THE TASK FORCE ON INDIVIDUAL
ACTS OF VIOLENCE (Washington, D.C., Gov't. Printing Office, 1969) at 532.

³ James B. Jacobs, CAN GUN CONTROL WORK? 14 (Oxford U. Press, 2003) (emphasis added).

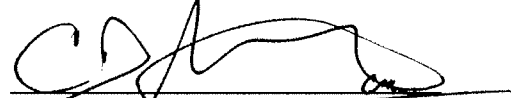
1 Contrast the following as to the efficacy of gun control: In 2004 the U.S. National Academy of
2 Sciences released its evaluation from on review of 253 journal articles, 99 books, 43 government
3 publications and some empirical research of its own. It could not identify any gun control that had
4 reduced violent crime, suicide or gun accidents.⁴ The same conclusion was reached in a 2003 study by
5 the U. S. Centers for Disease Control's review of then-extant studies⁵

6
7 **CONCLUSION**

8 Petitioners are prepared to litigate these policy issues if the Court determines that is
9 appropriate. But preliminarily Petitioners submit that CITY's policy related evidence should be
10 stricken.

11 Dated: February 8, 2006

Respectfully Submitted,
TRUTANICH • MICHEL, LLP

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14 C. D. MICHEL
15 Attorney for Petitioners
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24 ⁴ Charles F. Wellford, John V. Pepper, and Carol V. Petrie (eds.), FIREARMS AND
25 VIOLENCE: A CRITICAL REVIEW (National Academy of Sciences, 2004). It is perhaps not
26 amiss to note that the review panel, which was set up during the Clinton Administration, was
27 almost entirely composed of scholars who, to the extent their views were publicly known before
28 their appointments, favored gun control.

⁵ "First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms
Laws" (CDC, 2003) <cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm>

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Claudia Ayala, am employed in Long Beach, Los Angeles County, California. I am over the
5 age eighteen (18) years and am not a party to the within action. My business address is 180 East
6 Ocean Boulevard, Suite 200, Long Beach, California 90802.

6 On February 8, 2006, I served the foregoing document(s) described as

7 **OBJECTION AND MOTION TO STRIKE POLICY MATERIAL**
8 **AND RELATED DECLARATIONS; MEMORANDUM OF**
9 **POINTS & AUTHORITIES IN SUPPORT THEREOF**

9 on the interested parties in this action by placing
10 the original
11 a true and correct copy
12 thereof enclosed in sealed envelope(s) addressed as follows:

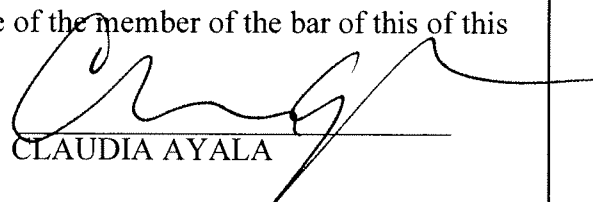
11 Wayne K. Snodgrass, Deputy City Attorney
12 Vince Chhabria, Deputy City Attorney
13 SAN FRANCISCO CITY ATTORNEY'S OFFICE
14 #1 Dr. Carlton B. Goodlett Place
15 City Hall, Room 234
16 San Francisco, CA 94102
17 Fax: (415) 554-4699

16 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
17 processing correspondence for mailing. Under the practice it would be deposited with the U.S.
18 Postal Service on that same day with postage thereon fully prepaid at Long Beach, California,
19 in the ordinary course of business. I am aware that on motion of the party served, service is
20 presumed invalid if postal cancellation date is more than one day after date of deposit for
21 mailing an affidavit.
22 Executed on February 8, 2006, at Long Beach, California.

20 X (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
21 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the
22 practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt
23 on the same day in the ordinary course of business. Such envelope was sealed and placed for
24 collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance
25 with ordinary business practices.
26 Executed on February 8, 2006, at Long Beach, California.

24 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

25 (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this
26 court at whose direction the service was made.

27 
28 CLAUDIA AYALA