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CITY OF OAKLAND



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Office of the City Attorney  
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April 15, 2008

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Honorable City Council  
Oakland, California

City Council President Ignacio De La Fuente and Members of the City Council:

**Subject: Report and Resolution Authorizing the City of Oakland to Join in an Amicus Brief in Support of San Francisco's Petition Asking the California Supreme Court to Reverse a Lower Court's Decision in *Fiscal v. City And County of San Francisco, No. S160968* that Invalidated San Francisco's Ban on the Sale, Manufacture, Distribution and Transfer of Firearms and Ammunition**

### Summary of Action Requested

San Francisco has asked the City of Oakland to sign onto an amicus brief in support of its petition asking the California Supreme Court to review the decision of the Court of the Appeal in the case of *Fiscal v. City and County of San Francisco, No. S160968*. San Francisco is requesting that the Supreme Court reverse the Court of Appeal's decision invalidating San Francisco's ban on the sale, manufacture, distribution and transfer of firearms and ammunition (Proposition H). The Court of Appeal ruled that Proposition H constituted an impermissible local regulation of guns that is preempted (prohibited) by state law.

### Background

On November 8, 2005, San Francisco passed Proposition H, which became effective on January 1, 2006. Proposition H bans the sale, manufacture, transfer and distribution of firearms. Proposition H also prohibits possession of handguns by San Francisco residents unless they are required to possess a handgun for the professional purposes enumerated in the legislation which include but are not limited to peace officers, animal control officers, and on duty security guards (see provisions of Proposition H below).

*Section 2. Ban on Sale, Manufacture, Transfer or Distribution of Firearms in the City and County of San Francisco.*

*Within the limits of the City and County of San Francisco, the sale, distribution, transfer and manufacture of all firearms and ammunition shall be prohibited.*

*Section 3. Limiting Handgun Possession in the City and County of San Francisco. Within the limits of the City and County of San Francisco, no resident of the City and County of San Francisco shall possess any handgun unless required for professional purposes, as enumerated herein. Specifically, any City, state or federal employee carrying out the functions of his or her government employment, including but not limited to peace officers as defined by California Penal Code Section 830 et. seq. and animal control officers may possess a handgun. Active members of the United States armed forces or the National Guard and security guards, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment, may also possess handguns. Within 90 days from the effective date of this section, any resident of the City and County of San Francisco may surrender his or her handgun at any district station of the San Francisco Police Department, or to the San Francisco Sheriff's Department without penalty under this section.*

On December 29, 2005, the National Rifle Association and several other organizations and individuals filed a petition for writ of mandate in San Francisco Superior Court, alleging among other grounds that Proposition H is preempted by state law. The trial court held that Proposition H is preempted by state law. San Francisco appealed. The Court of Appeal, in a published decision filed on January 9, 2008 affirmed the trial court's decision, holding that Proposition H is preempted by three state statutes.

First, the court found that San Francisco's gun ban conflicts with Government Code Section 53071 and therefore is preempted by that law. Section 53071 regulates the registration and licensing of firearms and the court reasoned that San Francisco's prohibition of the sale, manufacture, transfer, and/or distribution of firearms "effectively cancels" the commercial licenses of firearm *dealers* thereby conflicting with the state law..

Second, the court concluded that Penal Code §§ 12125-12233 preempt San Francisco's gun ban. In response to a rising tide of violence associated with the use of "junk guns" or "Saturday Night Specials" the Legislature passed these Penal Code provisions to specifically regulate the manufacture, importation, and sale of unsafe handguns.

Third, the court found that Penal Code section 12026 which provides permitting and licensing laws preempts San Francisco's gun ban.

In its petition requesting review in the California Supreme Court, San Francisco argues that the lower court's conclusions are erroneous, irreconcilable with other court

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rulings, and at odds with the intent behind the state statutes cited by the court as preempting local gun bans. San Francisco further argues the court's decision contradicts Penal Code section 12071 which expressly authorizes cities and counties to regulate firearm dealers. San Francisco requests that the Supreme Court reverse the Court of Appeal's decision invalidating San Francisco's gun ban.

By signing onto an amicus brief in support of San Francisco's petition for review in this matter, Oakland will be joining San Francisco, Los Angeles, and other cities in urging the courts to protect the rights of local governments to exercise their police powers to protect their residents by passing local gun regulations that are carefully crafted so as not to conflict with state laws or to regulate areas that the state has decided only the state may regulate.

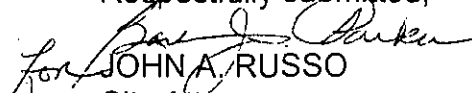
**Fiscal Impact**

None. The brief will be prepared and filed at no cost to the City of Oakland.

**Recommendation**

We recommend that the City Council authorize the City Attorney to join in an amicus brief in support of San Francisco's petition for review in the California Supreme Court asking the Court to reverse the Court of Appeal's decision that California law preempts local cities from regulating the sale, manufacture, distribution, transfer and possession of firearms.

Respectfully submitted,

  
JOHN A. RUSSO  
City Attorney

Attorney Assigned: Rocio V. Fierro

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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# Oakland City Council

08 APR -3 PM 12:13 RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**Resolution Authorizing the City of Oakland to Join in an Amicus Brief in Support of San Francisco's Petition Asking the California Supreme Court to Reverse a Lower Court's Decision in *Fiscal v. City And County of San Francisco*, No. S160968 that Invalidated San Francisco's Ban on the Sale, Manufacture, Distribution and Transfer of Firearms and Ammunition**

**WHEREAS**, on November 8, 2005, San Francisco, through the Board of Supervisors, approved Proposition H, which became effective on January 1, 2006; and

**WHEREAS**, Proposition H imposes a ban on the sale, manufacture, transfer or distribution of firearms and ammunition in San Francisco; and

**WHEREAS**, Proposition H limits handgun possession in San Francisco by providing that residents shall not possess any handgun unless required for professional purposes or as otherwise permitted by law; and

**WHEREAS**, (1) on December 29, 2005, the National Rifle Association and several other organizations and individuals filed a petition for writ of mandate in San Francisco Superior Court, alleging that Proposition H is preempted by state law and is otherwise invalid; (2) the trial court held that the measure is preempted by state law and therefore invalid; (3) San Francisco appealed; and (4) in January 2008 the court of appeal affirmed the trial court's decision, holding that Proposition H is preempted by three state statutes; and

**WHEREAS**, San Francisco filed a petition seeking review of the Court of Appeal's decision in the California Supreme Court and asking the Court to reverse the lower court's decision invalidating Proposition H; and

**WHEREAS**, San Francisco has asked Oakland and several other cities to file an amicus (friend of the court) brief in support of San Francisco's petition; and

**WHEREAS**, Oakland supports the rights of cities to pass local laws regulating the sale and possession of firearms in an effort to protect the safety and health of citizens; now, therefore, be it

**RESOLVED:** that the City Council authorizes the City Attorney to sign onto an amicus brief asking the California Supreme Court to review and reverse the Court of Appeal's decision in *Fiscal v. City and County of San Francisco*, No. S160968.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID,  
CHANG, AND PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

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