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13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15  
16 **FOR THE COUNTY OF LOS ANGELES**

17 SHASTA COUNTY SHERIFF THOMAS  
18 BOSENKO, et al.,

19 Plaintiffs and Petitioners,

20 vs.

21 THE CITY OF LOS ANGELES; MAYOR  
22 ERIC GARCETTI, in his official capacity; LOS  
23 ANGELES POLICE DEPARTMENT CHIEF  
24 CHARLIE BECK, in his official capacity; and  
25 DOES 1 through 10,

26 Defendants and Respondents.

Case No. BS158682

Honorable James C. Chalfant

**DEFENDANTS CITY OF LOS ANGELES,  
MAYOR ERIC GARCETTI, AND LOS  
ANGELES POLICE DEPARTMENT  
CHIEF CHARLIE BECK'S OPPOSITION  
TO PLAINTIFFS' EX PARTE  
APPLICATION FOR A STAY OF  
ENFORCEMENT**

Date: November 12, 2015

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1 Defendants The City of Los Angeles, Mayor Eric Garcetti, and Los Angeles Police Department  
2 Chief Charlie Beck (collectively, the “City”) file this Opposition to Plaintiffs’ Ex Parte Application  
3 (“Application”), which seeks to stay enforcement of Los Angeles Municipal Code section 46.30 (the  
4 “Ordinance”) based, not on a Constitutional claim, but on a claim of state law preemption.

5 **I. INTRODUCTION**

6 On July 28, 2015, the City enacted the Ordinance, which, with certain exceptions, prohibits  
7 any person from possessing a magazine with the capacity to accept more than ten rounds within Los  
8 Angeles. (Mun. Code § 46.30(a), (b)(1).) One of these exceptions is a peace officer exemption that  
9 applies to both on-duty and off-duty peace officers. (Mun. Code § 46.30(c)(1).)<sup>1</sup> The Ordinance does  
10 not prohibit all magazines. Rather, it only prohibits large-capacity magazines because they  
11 “significantly increase[] the lethal capacity of the automatic and semi-automatic firearms with these  
12 magazines.” (Ordinance at 1.) The Ordinance is not unique. At least eight cities and states around the  
13 country have enacted similar measures. All have withstood attempts to enjoin their enforcement. *See*  
14 *Fyock v. The City of Sunnyvale* (N.D. Cal. 2014) 25 F.Supp.3d 1267, 1271 (“No court has yet entered  
15 a preliminary injunction against a law criminalizing the possession of magazines having a capacity to  
16 accept more than ten rounds.”).

17 On August 7, 2015, Mayor Garcetti approved the Ordinance, and on September 19, 2015, it  
18 went into effect. (Ordinance at 8-9.) Any person possessing a large-capacity magazine must now  
19 store it outside the City, surrender it to the LAPD, or lawfully sell or transfer by November 19, 2015.  
20 (Mun. Code § 46.30(b)(2).) The City agrees to keep (rather than destroy) any surrendered magazines,  
21 and to return them should Plaintiffs prevail in this lawsuit.

22 On October 23, 2015, Plaintiffs filed a Petition for Writ of Mandate and Complaint for  
23 Declaratory and Injunctive Relief claiming the Ordinance is preempted by state law. Now, on  
24 November 12, 2015, more than three months after the Ordinance was passed by the City Council,  
25 three weeks after filing the Complaint, and just a week before the Ordinance is to be enforced,  
26 Plaintiffs belatedly seek an order staying its enforcement. Plaintiffs could have properly noticed and  
27 filed a preliminary injunction motion months ago. There is simply no good reason—and certainly  
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<sup>1</sup> Accordingly, as discussed in Section III, *infra*, the Sheriff Plaintiffs do not have standing.

1 none is provided in the Application—why this Court should be forced to consider this important  
2 matter of public safety on such an urgent basis. The Application should be denied on this basis alone.

3 Moreover, Plaintiffs cannot meet either of the two requirements for a stay. First, Plaintiffs do  
4 not show the necessary irreparable injury to justify the extraordinary relief they request. Other courts  
5 considering similar large-capacity magazine prohibitions have found that there is no irreparable injury  
6 to Plaintiffs because during the pendency of the lawsuit, they can simply store their large-capacity  
7 magazines outside of the City and use magazines which hold less than ten rounds, and the City will  
8 return any surrendered magazines should Plaintiffs prevail. *S.F. Veteran Police Officers Ass'n v. The*  
9 *City and Cnty. of S.F.* (N.D. Cal. 2014) 18 F.Supp.3d 997, 1005. Second, Plaintiffs cannot establish  
10 that they will prevail on the merits. Although not addressed in the Application, there is a long line of  
11 California cases consistently upholding local firearm-related ordinances against state law preemption  
12 challenges. *E.g., Great Western Shows, Inc. v. Cnty. of L.A.* (2002) 27 Cal.4th 853, 861-64.  
13 Accordingly, Plaintiffs' Application should be denied.

## 14 II. FACTUAL BACKGROUND

### 15 A. The Ordinance.

16 In 1994, Congress enacted the Violent Crime Control and Law Enforcement Act, which  
17 prohibited the possession of "large capacity ammunition feeding devices," which were defined as  
18 magazines capable of accepting more than ten rounds of ammunition. The Act expired in 2004.

19 In 2000, the California Legislature enacted Penal Code section 32310, which provides:

20 (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and  
21 in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing  
22 January 1, 2000, any person in this state who manufactures or causes to be manufactured,  
imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends,  
buys, or receives any large-capacity magazine is punishable by imprisonment....

23 However, California law does not prohibit the *possession* of large-capacity magazines. Accordingly,  
24 to close "this gap in the law threaten[ing] public safety" (Ordinance at 4), on July 28, 2015, the Los  
25 Angeles City Council passed the Ordinance, which makes it unlawful for any person to possess a  
26 magazines having the capacity to accept more than 10 rounds. (Mun. Code § 46.30(a)(1), (b)(1).) The  
27 Ordinance identifies a number of mass-shootings in recent years where "large-capacity magazines  
28 were used," including four in the Los Angeles area. (Ordinance at 1-3.) It also sets forth alarming

1 statistics unique to Los Angeles—that the LAPD’s Gun Unit has “seen a significant increase in the  
2 number of large-capacity magazines recovered, from 38 in 2003 to anywhere from 151 to 940 each  
3 year between 2004 and 2010,” and that the number of assault rifles recovered annually ranged from 45  
4 to 93 between 2010 to 2013. (*Id.*)

5 **B. Similar Large-Capacity Magazine Laws Have Been Upheld.**

6 In the wake of a number of mass-shootings around the country, at least eight state and local  
7 municipalities have enacted similar large-capacity magazine prohibitions. *Heller v. Dist. of Columbia*  
8 (D.C. Cir. 2011) 670 F.3d 1244; *S.F. Veteran Police Officers Ass’n v. The City and Cnty. of S.F.* (N.D.  
9 Cal. 2014) 18 F.Supp.3d 997; *Fyock v. The City of Sunnyvale* (N.D. Cal. 2014), 25 F.Supp.3d 1267;  
10 *Friedman v. City of Highland Park* (N.D. Ill. 2014) 68 F.Supp.3d 895; *Colorado Outfitters Ass’n v.*  
11 *Hickenlooper* (D. Colo. 2014) 24 F.Supp.3d 1050; *Kolbe v. O’Malley* (D. Md. 2014) 42 F.Supp.3d  
12 768; *Shew v. Malloy* (D. Conn. 2014) 994 F.Supp.2d 234; *N.Y. State Rifle & Pistol Ass’n v. Cuomo*  
13 (W.D.N.Y. 2013) 990 F.Supp.2d 349, *aff’d* in relevant part, 2015 U.S. App. LEXIS 18121 (2d Cir.  
14 Oct. 19, 2015). All have withstood challenges to enjoy their enforcement.

15 The Ordinance “is nearly identical” to large-capacity magazine prohibitions enacted by San  
16 Francisco and Sunnyvale. (Compl., Exh. C, p.1.) San Francisco’s ordinance was challenged on  
17 Second Amendment grounds by large-capacity magazine owners who lived in the city and were  
18 required to either surrender their large-capacity magazines or store them outside the city, and by non-  
19 residents who were subject to the ordinance while traveling through the city. *S.F. Veteran Police*  
20 *Officers*, 18 F.Supp.3d at 999-1002. The district court denied the plaintiffs’ motion for a preliminary  
21 injunction, finding the balance of equities and the “public interest” favored the city because its  
22 “interest in protecting the lives and safety of its police officers” and desire to save “innocent lives”  
23 “vastly outweighed” the plaintiffs’ harm in “resort[ing] to using” lower-capacity magazines. *Id.* at  
24 1005-06. Sunnyvale’s ordinance was also challenged on Second Amendment grounds. The district  
25 court also denied the plaintiffs’ preliminary injunction motion, holding that the plaintiffs were unlikely  
26 to succeed on the merits given Sunnyvale’s “compelling government interest of public safety.” *Fyock*,  
27 25 F.Supp.3d at 1281. The Ninth Circuit Court of Appeals affirmed this ruling, holding it is “‘self-  
28 evident’ that Sunnyvale’s interests in promoting public safety and reducing violent crime are



1 substantial and important government interests.... So, too, are Sunnyvale’s interests in reducing the  
2 harm and lethality of gun injuries in general ... and in particular as against law enforcement officers.”  
3 *Fyock v. City of Sunnyvale* (9th Cir. 2015) 779 F.3d 991, 999-1000 (citations omitted).

4 **C. The Complaint.**

5 On October 23, 2015, Plaintiffs filed a Petition for Writ of Mandate and a Complaint for  
6 Declaratory and Injunctive Relief. Plaintiffs fall into four categories. The first, the “Sheriffs,” claim  
7 they will be “subject to arrest and criminal prosecution for possessing firearms with magazines having  
8 capacities over ten rounds” while off duty and traveling through Los Angeles. (Compl., ¶ 47.) The  
9 second, City residents, claim they will be forced to either relinquish their magazines or store them  
10 outside the City. (*Id.*, ¶¶ 48, 50-52.) The third, non-residents, claim they will be subject to the  
11 Ordinance because it is “impossible” for them to travel “without passing through the City.” (*Id.*,  
12 ¶¶ 49, 53.) The fourth, law enforcement and gun-rights’ organizations, claim their members have an  
13 “interest” in possessing and traveling with large-capacity magazines in Los Angeles. (*Id.*, ¶¶ 54-56.)

14 Plaintiffs do not allege that the Ordinance is unconstitutional. Rather, they claim the  
15 Ordinance is preempted by state law because it: (1) “contradicts” state law (App., 5-7); (2) is expressly  
16 preempted by Government Code section 53071 (*id.*, 7-8); and (3) is impliedly preempted. (*Id.*, 8-11.)

17 **III. THE SHERIFFS ARE EXEMPT FROM THE ORDINANCE**

18 Twelve county sheriffs have submitted identical, boilerplate declarations stating that they “fear  
19 arrest and criminal prosecution if [they] travel into or through Los Angeles while possessing [their]  
20 lawfully-owned magazines with the capacity to hold more than ten rounds while [they are] off duty, on  
21 or after November 19, 2015.” (*E.g.*, Sheriff Bosenko Decl., ¶ 9.) However, this fear is not well-  
22 founded because the Ordinance specifically states that it “shall not apply to”:

23 Any government officer, agent, or employee, member of the armed forces of the United  
24 States, or peace officer, to the extent that such person is otherwise authorized to possess a  
large-capacity magazine, and does so while acting within the scope of his or her duties.

25 (Mun. Code § 46.30(c)(1).) It is well established that “police officers are literally on duty 24 hours a  
26 day under California law.” *Long v. Valentino* (1989) 216 Cal.App.3d 1287, 1298; *see also Melendez*  
27 *v. City of L.A.* (1998) 63 Cal.App.4th 1, 8 (“[P]eace officers ... retain peace officer status and  
28 authority, both during and beyond regular duty hours.”); *Orange Cnty. Emps. Ass’n, Inc. v. Cnty. of*

1 *Orange* (1993) 14 Cal.App.4th 575, 579. (“[O]ff-duty officers sometimes must act as peace officers ...  
2 and in that sense are never off duty.”). Since the Sheriffs and their deputies are never “off-duty,” they  
3 fall within the peace officer exemption, and they do not have standing to bring any claims related to  
4 the Ordinance. *Blumhorst v. Jewish Family Servs. of L.A.* (2005) 126 Cal.App.4th 993, 1000-01.<sup>2</sup>

5 **IV. LEGAL STANDARD FOR A TEMPORARY RESTRAINING ORDER / INJUNCTION**

6 In determining whether to issue a temporary restraining order or injunction, a court considers:  
7 (1) the likelihood the plaintiff will prevail on the merits at trial; and (2) the interim harm the plaintiff  
8 may suffer if the injunction is denied as compared to the harm the defendant may suffer if the  
9 injunction is granted. *Tahoe Keys Prop. Owners' Ass'n v. State Water Res. Control Bd.* (1994) 23  
10 Cal.App.4th 1459, 1470-71. “[A] plaintiff must make some showing [of irreparable harm] which  
11 would support the exercise of the rather extraordinary power to restrain the defendant’s actions prior  
12 to a trial on the merits.” *Id.* at 1471. Taken in reverse order, Plaintiffs cannot meet either requirement.

13 **V. PLAINTIFFS CANNOT SHOW IRREPARABLE INJURY**

14 *First*, during the pendency of the lawsuit, Plaintiffs can simply store their large-capacity  
15 magazines outside of the City and, while in the City, use magazines which hold less than ten rounds.  
16 And for those citizens who choose to surrender their large-capacity magazines, the City will agree to  
17 return them. In *San Francisco Veteran Police Officers*, the district court found that the plaintiffs could  
18 not establish irreparable injury under the same circumstances. 18 F.Supp.3d at 1005.

19 In response, plaintiffs Takahashi, Wiley, and Wolcott claim they carry large-capacity  
20 magazines as part of their jobs, and that discontinuing a method of conducting business because of  
21 fear of arrest “under a constitutionally unsound law is sufficient irreparable injury.” (App., 12-13.)  
22 Even assuming *arguendo* that carrying a large-capacity magazine is a “method of conducting  
23 business”—a dubious claim—this argument still fails. First, Plaintiffs do not even assert in their  
24

25 <sup>2</sup> Moreover, the Sunnyvale and San Francisco ordinances contain identical peace officer exemptions.  
26 See Sunnyvale Mun. Code § 9.44.050(c)(2) (excepting “[a]ny government officer, agent, or employee,  
27 member of the armed forces of the United States, or peace officer, to the extent that such person is  
28 otherwise authorized to possess a large-capacity magazine and does so while acting within the course  
and scope of his or her duties”). In the two years since the ordinances have been in effect, none of the  
declarants state that they have ever been cited for possessing large-capacity magazines in Sunnyvale  
or San Francisco while off-duty. And they will not be cited in Los Angeles either.

1 Complaint that the Ordinance is unconstitutional. Second, Plaintiffs’ alleged irreparable injury is  
2 entirely imagined. None of the declarants explains how using lower-capacity magazines will  
3 negatively impact his work.<sup>3</sup> And as to “transient citizens” (*id.*, 11-12), the irreparable harm Plaintiffs  
4 conjure is easily avoided since they can simply leave their large-capacity magazines at home and use  
5 magazines that do not hold more than ten rounds while passing through the City. In sum, Plaintiffs’  
6 declarations do not establish why having to use lower-capacity magazines constitutes “irreparable  
7 harm.” *S.F. Veteran Police Officers*, 18 F.Supp.3d at 1005 (finding no irreparable injury where  
8 plaintiffs “can use magazines accepting ten rounds or fewer”).

9 Plaintiffs also claim the balance of hardships is in their favor because “Defendants will suffer  
10 no harm sufficient to outweigh the harm to plaintiffs absent [a state of enforcement].” (App., 14-15.)  
11 But two district courts have rejected this exact argument. *See S.F. Veteran Police Officers*, 18  
12 F.Supp.3d at 1005 (“If a preliminary injunction is denied, then plaintiffs will have to resort to using  
13 magazines that can accept ten rounds or fewer [and] San Francisco will return plaintiffs’ surrendered  
14 magazines back to them if the ordinance is ultimately found unconstitutional. These considerations  
15 are vastly outweighed by the demonstrated need to remove magazines from circulation that are  
16 capable of accepting more than ten rounds.”); *Fyock*, 25 F.Supp.3d at 1282 (“[T]he risk that a major  
17 gun-related tragedy would occur [during the pendency of the case] is enough to at least balance out the  
18 inconvenience to Plaintiffs in disposing of their now-banned magazines.”).

19 **Second**, Plaintiffs’ three-month delay in seeking to stay or enjoin the Ordinance’s enforcement  
20 contradicts their claims of irreparable injury. *See O’Connell v. Super. Ct.* (2006) 141 Cal.App.4th  
21 1452, 1481 (vacating trial court’s entry of preliminary injunction, holding “the urgency with which the  
22 trial court was forced to decide plaintiffs’ motion may have been, to some extent, of plaintiffs’ own  
23 making—a fact that the trial court, as a court of equity, should have taken into account in determining  
24 what weight to give plaintiffs’ claim of imminent irreparable injury”); *Berjikian v. Franchise Tax Bd.*  
25 (C.D. Cal. Aug. 30, 2013) 2013 U.S. Dist. LEXIS 124745, at \*4-5 (“[T]his court is particularly  
26

27  
28 <sup>3</sup> Plaintiff Takahashi, for example, does not explain why he must use a large-capacity magazine to teach  
his classes, or why a lower-capacity magazine would be inadequate. Nor does he explain why he  
cannot leave his large-capacity magazines at his “base of operations” in Azusa.

1 unpersuaded that Plaintiffs have established ... a possibility of irreparable harm. At the TRO stage,  
2 courts consider whether the movant would have been able to file a noticed preliminary injunction  
3 motion had it acted diligently.... Here, Plaintiffs have been on notice of the ... authorities' intentions  
4 for at least three months.... While the ... sanction may soon take effect, Plaintiffs provide no  
5 explanation why they waited until the eleventh hour to seek ex parte relief.”).

6 **Third**, public policy concerns weigh heavily against a stay and in favor of immediate  
7 enforcement of the Ordinance. “Where ... the defendants are public agencies and the plaintiff seeks to  
8 enjoin them in the performance of their duties, public policy considerations also come into play.  
9 There is a general rule against enjoining public officers or agencies from performing their duties....  
10 [T]o support a request for such relief the plaintiff must make a significant showing of irreparable  
11 injury.” *Tahoe Keys*, 23 Cal.App.4th at 1471. The Ordinance itself directly addresses the significant  
12 public policy considerations that led the City to enact it. (Ordinance at 1-4.) *See, e.g., S.F. Veteran*  
13 *Police Officers*, 18 F.Supp.3d at 1005-06 (“[P]ublic interest favor[s] immediate enforcement of the ...  
14 ordinance” given San Francisco’s “interest in protecting the lives and safety of its police officers”);  
15 *Fyock*, 25 F.Supp.3d at 1283 (same). In response, Plaintiffs do not address any of these public safety  
16 concerns. Instead, they disingenuously claim the public interest weighs in favor of an injunction  
17 because “[i]t is in the best interest of the public to determine the legitimacy of a recently passed  
18 ordinance *prior* to enforcement, rather than allow it to take effect....” (App., 14:5-19.) However, the  
19 case cited by Plaintiffs, *City of Santa Monica v. Super. Ct.* (1964) 231 Cal.App.2d 223, rejects this  
20 exact argument. *See id.* at 226 (“With all presumptions favoring the validity and constitutionality of  
21 the enactments of various legislative bodies, it should be only under extraordinary circumstances that  
22 anyone challenging the validity of such a law should immediately be granted the ultimate relief he  
23 seeks prior to any trial on the merits.”).

24 **VI. THE ORDINANCE IS NOT PREEMPTED BY STATE LAW.**

25 **A. Preemption Standard.**

26 “A county or city may make and enforce within its limits all local, police, sanitary, and other  
27 ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) However,  
28 “[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.”

1 *Great Western*, 27 Cal.4th at 860 (quotation marks omitted). There are four ways preemption can  
2 exist—if the local legislation: (1) duplicates or (2) contradicts general law, or enters an area fully  
3 occupied by general law either (3) expressly or (4) by legislative implication. *Id.* “Whether local  
4 ordinances are preempted by state statutes is a question of law.” *Conejo Wellness Ctr., Inc. v. City of*  
5 *Agoura Hills* (2013) 214 Cal.App.4th 1534, 1553. “The party claiming that general state law preempts  
6 a local ordinance has the burden of demonstrating preemption.” *Big Creek Lumber Co. v. Cnty. of*  
7 *Santa Cruz* (2006) 38 Cal.4th 1139, 1149.

8 **B. California Courts Have Consistently Upheld Local Firearm-Related Regulations.**

9 The “seminal case” is *Galvan v. Super. Ct.* (1969) 70 Cal.2d 851.<sup>4</sup> There, the California  
10 Supreme Court upheld a San Francisco ordinance requiring the registration of all firearms within the  
11 city, holding that the Legislature has not impliedly preempted the field of gun control. *See id.* at 859-  
12 61 (“Although [plaintiff] cites a great number of statutes relating to weapons, these statutes do not  
13 show that the entire area of gun or weapons control has been so fully and completely covered by  
14 general law ... as to clearly indicate that the subject has become exclusively a matter of state  
15 concern.” (quotation marks and citation omitted)). *Galvan* also held that there is no “paramount state  
16 concern” precluding “further or additional local” gun-related laws since “problems with firearms are  
17 likely to require different treatment in San Francisco County than in Mono County.” *Id.* at 864.

18 In *Cal. Rifle and Pistol Ass’n, Inc. v. City of W. Hollywood* (1998) 66 Cal.App.4th 1302  
19 (“CRPA”), the Court of Appeal upheld an ordinance banning the sale of Saturday-Night-Special guns.  
20 *Id.* at 1306-08. The court examined the legislative response to *Galvan*, as well as subsequent gun  
21 control cases, and concluded that there are only three fully preempted firearm-related fields:

22 [1] The Legislature has expressly declared that the City may not require the licensing or  
23 registration of firearms. (*Gov. Code*, § 53071.) [2] The Legislature has also declared that  
24 the City may not require permits or licenses to purchase, own, possess, keep, or carry a  
25 pistol, revolver, or other firearm capable of being concealed within a place of residence,  
26 place of business, or on private property.... (*Pen. Code*, § 12026.) [3] The Legislature  
has also declared that the City may not regulate the sale of “imitation” firearms. (*Gov.*  
*Code*, § 53071.5.) This, however, is the extent of the fully preempted fields.

27 *Id.* at 1313.

28 <sup>4</sup> *Great Western*, 27 Cal.4th at 861 (describing *Galvan* as the “seminal case” holding that “the  
Legislature has preempted discrete areas of gun regulation rather than the entire field of gun control”).

1 More recently, in response to the Ninth Circuit Court of Appeal’s certification of the specific  
2 question, the California Supreme Court held that state laws regulating the sale of firearms and gun  
3 shows do not preempt a county ordinance prohibiting gun sales on county property, reaffirming that  
4 “the Legislature has chosen not to broadly preempt local control of firearms but has targeted certain  
5 specific areas for preemption.” *Great Western*, 27 Cal.4th at 864. The California Supreme Court also  
6 acknowledged, as it had in *Galvan*, that local firearm regulations are exactly the type of “significant  
7 local interest” for which legislative intent to preempt should *not* be inferred:

8 It is true today as it was more than 30 years ago when we stated it in *Galvan*, “[t]hat  
9 problems with firearms are likely to require different treatment in San Francisco County  
10 than in Mono County.” ... “[T]he need for the regulation or prohibition of the carry of  
11 deadly weapons ... may be much greater in large cities ... than in the county districts.”

12 *Id.* at 867 (quotation marks and citations omitted); *see also Nordyke v. King* (2002) 27 Cal.4th 875,  
13 882 (“[T]here are significant local interests in gun regulation that the Legislature has not sought to  
14 override except in specific areas”).

15 Finally, in *Calguns Found., Inc. v. Cnty. of San Mateo* (2013) 218 Cal.App.4th 661, the Court  
16 of Appeal noted that “*Galvan*, *Great Western*, and *Nordyke* make clear” that the California Supreme  
17 Court “has determined that ‘the Legislature has chosen not to broadly preempt local control of  
18 firearms but has targeted certain specific areas for preemption’ ... and that ‘there are significant local  
19 interests in gun regulation that the Legislature has not sought to override except in specific areas.’” *Id.*  
20 at 672 (citations omitted).<sup>5</sup>

### 21 C. The Ordinance Is Not Preempted By State Law.

#### 22 1. Penal Code section 32415 expressly allows cities to “prohibit[]” the 23 “possession of ... large capacity magazine[s].”

24 Plaintiffs argue that the Ordinance is preempted because state law “has extensively regulated  
25 magazines capable of holding more than ten rounds” (App., 1:22-28), which is “strong evidence of the

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26 <sup>5</sup> Plaintiffs do not address any of these cases. Instead, they cite *Fiscal v. City and Cnty. of S.F.* (2008)  
27 158 Cal.App.4th 895 (App., 9:23-10:3), which held that an ordinance banning the sale of *all* firearms  
28 in San Francisco was preempted by a state law explicitly stating that specific types of handguns “may  
be sold in this state.” *Fiscal*, 158 Cal.App.4th at 912-13 (quoting Pen. Code § 12131(a)). In contrast,  
there is no state law explicitly stating that large-capacity magazines “may be possessed in this state,”  
and the Ordinance does not prohibit the possession of all magazines, only large-capacity magazines.

1 Legislature’s intent to ‘fully and completely’ occupy the entire field of magazines over ten rounds.”  
2 (*Id.*, 9:12-19.) To support their position, Plaintiffs cite certain statutes addressing large-capacity  
3 magazines (*id.*, 1:25-28), including Penal Code section 32415, which states:

4 Section 32310 does not apply to the loan of a lawfully possessed large-capacity magazine  
5 between two individuals if all of the following conditions are met:

6 (a) The person being loaned the large-capacity magazine is not prohibited ... from  
7 possessing firearms or ammunition.

8 (b) The loan of the large-capacity magazine occurs *at a place or location where  
9 the possession of the large-capacity magazine is not otherwise prohibited*, and the  
10 person who lends the large-capacity magazine remains in the accessible vicinity....

11 (*Id.* (emphasis added).) Thus, one of statutes Plaintiffs rely on actually indicates the Legislature’s  
12 intent to allow local municipalities to place restrictions on the possession of large-capacity magazines.

## 13 2. The Ordinance does not contradict state law.

14 Plaintiffs argue the Ordinance is preempted because it “contradicts” Penal Code sections  
15 32420, 32405, and 26150. (*App.*, 5-7.) Plaintiffs are incorrect. As an initial matter, there can only be  
16 a contradiction if there is a state law directly forbidding cities from prohibiting the possession of large-  
17 capacity magazines or if there is a state law expressly mandating that California citizens have a right  
18 to possess them. *See Great Western*, 27 Cal.4th at 866 (finding no conflict where the ordinance “does  
19 not mandate what state law expressly forbids, nor does it forbid what state law expressly mandates”).  
20 None of the statutes cited by Plaintiffs directly forbid cities from prohibiting the possession of large-  
21 capacity magazines nor do they expressly mandate that citizens have a right to possess them.<sup>6</sup>

22 Moreover, there is no contradiction between the Ordinance and the Penal Code statutes cited  
23 by Plaintiffs. Penal Code sections 32405 and 32420 are exemptions to Penal Code section 32310:

- 24 • Penal Code § 32405: “*Section 32310 does not apply to the sale to, lending to, transfer to,  
25 purchase by, receipt of, or importation into this state of, a large-capacity magazine by a  
26 sworn peace officer, ... who is authorized to carry a firearm in the course and scope of that  
27 officer’s duties.*” (emphasis added).

28 <sup>6</sup> The cases cited by Plaintiffs prove this point. *See, e.g., Ex parte Daniels* (1920) 183 Cal. 636, 637,  
641 (finding conflict between state law setting maximum speed limit *and* prohibiting cities from  
setting a lower limit—“[l]ocal authorities shall have no power to enact ... any ordinance ... in any  
way ... contrary to or inconsistent with ... this act”—and local ordinance setting lower speed limit).

- 1           • Penal Code § 32420: “**Section 32310 does not apply** to the importation of a large-capacity  
2 magazine by a person who lawfully possessed the large-capacity magazine in the state prior  
3 to January 1, 2000, lawfully took it out of the state, and is returning to the state with the  
4 same large-capacity magazine.” (emphasis added).

5 It is well established, however, that statutes providing immunities to criminal prosecution, such as  
6 Penal Code sections 32405 and 32420, do not “‘authorize’ activities, to the exclusion of local bans,  
7 simply by exempting those activities from otherwise applicable state prohibitions.” *City of Riverside*  
8 *v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 758.

9           *Nordyke v. King* is directly on point. There, Alameda County enacted an ordinance prohibiting  
10 the possession of firearms on county property. 27 Cal.4th at 880-81. As a consequence, gun shows on  
11 county property were effectively prohibited. Gun show promoters sought to enjoin the ordinance,  
12 arguing it conflicted with Penal Code section 171b, which prohibits the possession of firearms in state  
13 or local public buildings with certain exceptions, including an exception allowing persons to bring  
14 firearms into public buildings for gun shows. *Id.* (citing Pen. Code §§ 171b(a), 171b(b)(7)). The  
15 plaintiffs argued that the gun show exception under section 171b(b)(7) preempted the ordinance from  
16 applying to gun shows in public buildings. *Id.* at 883-84. The California Supreme Court rejected this  
17 argument: “We disagree. The provision merely exempts gun shows from the state criminal prohibition  
18 on possessing guns in public buildings, thereby permitting local government entities to authorize such  
19 shows. It does not *mandate* that local government entities permit such a use....” *Id.* at 884.<sup>7</sup>

20           Similarly, here, there is a state law prohibiting certain acts related to large-capacity magazines  
21 (Pen. Code § 32310), and there are certain exceptions to this law providing limited criminal  
22 immunities. (*Id.* §§ 32405, 32420.) The Ordinance prohibits the possession of large-capacity  
23 magazines in the City. Plaintiffs argue the Ordinance contradicts the state exemptions to Penal Code  
24 section 32310 and is, thus, preempted. As in *Nordyke*, *City of Riverside*, and *Conejo Wellness*, there is  
25 no contradiction and, thus, no preemption, because nothing in Penal Code sections 32405 and 32420

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26 <sup>7</sup> See also *City of Riverside*, 56 Cal.4th at 758-59 (zoning ordinance prohibiting medical marijuana  
27 dispensaries does not conflict with state law that “merely exempts the ... cultivation and distribution  
28 of medical marijuana ... from prohibitions that would otherwise apply under state law. The state  
statute does not thereby *mandate* that local governments authorize ... the existence of such  
facilities.”); *Conejo Wellness*, 214 Cal.App.4th at 1557-58 (same).



1 mandates that local governments permit the possession of large-capacity magazines.

2 Finally, Plaintiffs claim the Ordinance “contradicts state law by interfering with state licenses  
3 issued by county sheriffs pursuant to Penal Code section 26150.” (App., 6:20-28.) But Penal Code  
4 section 26150 merely authorizes a county sheriff to issue a concealed weapons license upon proof the  
5 applicant meets certain requirements. It does not give a licensee the right to carry a large-capacity  
6 magazine. Thus, there is no conflict because “it is reasonably possible to comply with both state and  
7 local laws.” *City of Riverside*, 56 Cal.4th at 743.

8 **3. The Ordinance is not expressly preempted by Gov. Code § 53071.**

9 Plaintiffs contend the Ordinance is preempted by Government Code section 53071 because the  
10 Ordinance “requires residents to enter the state firearm-licensing scheme to retain their magazines.”  
11 (App., 7-8.)<sup>8</sup> The Court of Appeal’s decision in *Calguns* is directly on point. In *Calguns*, the  
12 plaintiffs argued that a county ordinance precluding the possession and use of guns in county parks  
13 was preempted by Government Code section 53071. 218 Cal.App.4th at 664, 677. The trial court  
14 sustained the County’s demurrer to the complaint, holding Government Code section 53071  
15 “‘indicates the legislature intends to occupy the field of regulation of the registration or licensing of  
16 commercial manufactured firearms. Nothing on the face of the subject ordinance purports to regulate  
17 registration or licensing of any firearm.’” *Id.* at 677 (quoting trial court). The Court of Appeal  
18 affirmed: “To put the matter simply, the San Mateo ordinance at issue in this case has nothing at all to  
19 do with ‘the registration and licensing of firearms’ and hence cannot be considered preempted by  
20 *Government Code section 53071.*” *Id.* at 678; *see also CRPA*, 66 Cal.App.4th at 1311 (“This section  
21 [53071] expressly deals only with *registration* or *licensing*.... The fact that the Legislature expressly  
22 limited its preemption in this statute to ‘registration and licensing’ shows a legislative intent not to  
23 preempt other areas of firearms regulation....”). Similarly, here, the Ordinance has nothing to do with  
24 the registration and licensing of firearms. And it certainly does not require Los Angeles residents to

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28 <sup>8</sup> Government Code § 53071 states: “It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms....”

1 obtain a *firearms license* “to retain their magazines.” (App., 7:10-12.)<sup>9</sup>

2 **4. The Ordinance is not impliedly preempted.**

3 “Claims of implied preemption must be approached carefully, because they by definition  
4 involve situations in which there is no express preemption.... Hence the rule has developed that  
5 implied preemption can properly be found only when the circumstances ‘clearly indicate’ a legislative  
6 intent to preempt.” *CRPA*, 66 Cal.App.4th at 1317. Implied preemption may only be found in three  
7 circumstances. *Great Western*, 27 Cal.4th at 860-61. None compel a finding of preemption here.

8 **a. Large-capacity magazine regulation is not so fully covered by general**  
9 **law as to clearly indicate it is exclusively a matter of state concern.**

10 Plaintiffs allege the Ordinance is impliedly preempted because “California law establishes a  
11 broad and comprehensive scheme for the regulation of magazines over ten rounds.” (App., 9:12-13.)  
12 This is not so. *First*, as previously discussed, Penal Code section 32415 indicates the Legislature’s  
13 intent to allow local municipalities to “prohibit[]” the “possession of ... large capacity magazine[s].”  
14 *Second*, California courts have explicitly held that there are only three fully preempted firearm-related  
15 fields. *CRPA*, 66 Cal.App.4th at 1313; *see also id.* at 1318 (“The very existence of the three code  
16 sections ... each of which specifically preempts a narrowly limited field of firearms regulation, is a  
17 rather clear indicator of legislative intent to leave areas not specifically covered within local control.”);  
18 *Big Creek Lumber*, 38 Cal.4th at 1157 (“The Legislature’s preemptive action in specific and expressly  
19 limited areas weighs against an inference that preemption by implication was intended elsewhere.”  
20 (quotation marks omitted)). Large-capacity magazines do not fall within these three categories.

21 *Third*, Plaintiffs speculate that because certain state statutes addressing large-capacity  
22 magazines do not prohibit their possession, the Legislature has “‘by implication’” expressed that such  
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24 <sup>9</sup> Plaintiffs rely on *Doe v. City & Cnty. of S.F.* (1982) 136 Cal.App.3d 509. There, the court held that a  
25 San Francisco ordinance banning residents from possessing handguns unless they had a license under  
26 state law was a de facto licensing requirement that was preempted by Government Code section 53071.  
27 *Id.* at 516-17. However, courts have refused to apply *Doe* to ordinances which do not specifically  
28 require the licensing of firearms. *See, e.g., CRPA*, 66 Cal.App.4th at 1316 n.5 (The City’s ordinance ...  
does not create any de facto licensing requirement similar to that involved in *Doe*. Gun Dealers in the  
City cannot, simply by obtaining a license, avoid the ordinance. Nor is a license required for a person  
to possess a [Saturday-Night-Special] handgun in the home, place of business, etc.”).

1 conduct “shall not be criminal.” (App., 9:2-22 (quoting *In re Lane* (1962) 58 Cal.2d 99, 104).) But  
2 this argument conveniently ignores *Galvan*, which directly rejected the application of *In re Lane* to  
3 local firearm-related ordinances. 70 Cal.2d at 865 (reliance on *In re Lane* “misplaced” since the  
4 “statutory pattern governing sexual behavior differs from that governing guns and other weapons”).  
5 Instead, *Galvan* found that a local ordinance was not preempted despite the “great number of statutes  
6 relating to weapons” because “[t]he fact that there are numerous statutes dealing with guns ... does not  
7 by itself show that the subject of gun or weapons control has been completely covered so as to make  
8 the matter one of exclusive state concern.... A field cannot properly consist of statutes unified by a  
9 single common noun.” *Id.* at 861-62; *Olsen v. McGillicuddy* (1971) 15 Cal.App.3d 897, 902 (same).  
10 Similarly, here, while Plaintiffs cite various state statutes “unified by a single common noun,” none of  
11 them prohibits the possession of large-capacity magazines, and to hold otherwise would “fly in the  
12 face of the well-settled doctrine that the use of specific words and phrases connotes an intent to  
13 exclude that which is not specifically stated. By limiting the general statutes to regulation or  
14 prohibition of specifically enumerated activities, the Legislature did not intend to prevent local  
15 authority from legislating on those subjects in regard to which the former are silent.” *Bamboo Bros. v.*  
16 *Carpenter* (1982) 133 Cal.App.3d 116, 124 (quotation marks omitted).

17                   **b. Large-capacity magazine regulation has not been partially covered**  
18                   **by general law couched in such terms as to indicate clearly that a**  
19                   **paramount state concern will not tolerate additional local action.**

20 Plaintiffs allege “the Legislature has partially covered the field by general law regulating  
21 magazines over ten rounds, and it has done so in terms indicating that further local regulation cannot  
22 be tolerated.” (App., 10:4-8 (citing Pen. Code, § 32315).) Plaintiffs are incorrect.

23                   **First**, exceptions to Penal Code section 32310, like Penal Code section 32315, do not  
24 “authorize” activities, to the exclusion of local bans, simply by exempting those activities from  
25 otherwise applicable state prohibitions.” *City of Riverside*, 56 Cal.4th 729, 758. **Second**, Plaintiffs do  
26 not cite a single case supporting their position. Instead, the “issue of paramount state concern ...  
27 involves the question whether substantial, geographic, economic, ecological or other distinctions are  
28 persuasive of the need for local control, and whether local needs have been adequately recognized and  
comprehensively dealt with at the state level.” *Galvan*, 70 Cal.2d at 863-64. The California Supreme

1 Court is “reluctant to find ... a paramount state concern, and therefore implied preemption, when there  
2 is a significant local interest to be served that may differ from one locality to another.” *Great*  
3 *Western*, 27 Cal.4th at 866; *Big Creek Lumber*, 38 Cal.4th at 1149. And local firearm-related  
4 regulations are a “significant local interest” for which legislative intent to preempt should not be  
5 inferred. *Great Western*, 27 Cal.4th at 867. Here, the Ordinance itself directly addresses the  
6 significant local interest in prohibiting the possession of large-capacity magazines. (Ordinance at 1-4.)  
7 As previously discussed, numerous courts have recognized similar public safety interests in upholding  
8 other local firearm-related ordinances. *E.g.*, *Great Western*, 27 Cal.4th at 866-67. In contrast,  
9 Plaintiffs do not identify a single “paramount state concern” preempting the Ordinance.

10 **c. The Ordinance has “very little impact on transient citizens.”**

11 Plaintiffs claim the Ordinance harms transient citizens because “criminal bans on mere  
12 possession expose unsuspecting citizens traveling ... through the jurisdiction to prosecution for  
13 unknowingly violating a local law....” (App., 10:22-26.) But the California Supreme Court—in the  
14 only case Plaintiffs cite—explicitly rejected this argument, holding that it “agree[s] with previous  
15 cases that laws designed to control the sale, use *or possession of firearms* in a particular community  
16 have very little impact on transient citizens, indeed, far less than other laws that have withstood  
17 preemption challenges.” *Great Western*, 27 Cal.4th at 867 (quotation marks omitted; emphasis  
18 added); *CRPA*, 66 Cal.App.4th at 1321 (same).<sup>10</sup>

19 **VII. CONCLUSION**

20 For all of these reasons, Plaintiffs’ Application should be denied.  
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24 <sup>10</sup> Plaintiffs also argue that the Ordinance “harm[s] transient citizens by creating a patchwork quilt of  
25 laws throughout the state....” (App., 10:16-22.) But this argument has also been rejected by courts.  
26 *See, e.g., Cal. Veterinary Med. Ass’n v. City of W. Hollywood* (2007) 152 Cal.App.4th 536, 559-60  
27 (rejecting argument that “local regulation of veterinary practice could ultimately result in a chaotic  
28 situation in which licensed veterinarians struggle to know what procedures are legal in which  
jurisdictions” because this “speculative fear of ‘fragmented localization’ is ... wholly insufficient to  
overcome West Hollywood’s significant interest in exercising its police power to set minimum  
standards for the humane treatment of animals within its borders”).

1 DATED: November 10, 2015

MICHAEL N. FEUER, City Attorney  
JAMES P. CLARK, Chief Deputy City Attorney  
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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 No. Main Street, Room 916, Los Angeles, CA 90012.

On November 10, 2015, I served the foregoing documents:

**DEFENDANTS CITY OF LOS ANGELES, MAYOR ERIC GARCETTI, AND LOS ANGELES POLICE DEPARTMENT CHIEF CHARLIE BECK'S OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR A STAY OF ENFORCEMENT**

on the interested parties in this action by placing the true copies thereof enclosed in sealed envelope(s) addressed as follows:

Clint Monfort  
Michel & Associates, P.C.  
180 E. Ocean Blvd.  
Suite 200  
Long Beach, CA 90802

**BY MAIL** – I am readily familiar with the practice of the Los Angeles City Attorney's Office for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is placed for collection and mailing. On the date referenced above, I placed a true copy of the above documents(s) in a sealed envelope and placed it for collection in the proper place in our office at Los Angeles, California.

**BY FACSIMILE TRANSMISSION:** I transmitted the documents(s) to the offices of the addressee(s) via facsimile transmission at the fax numbers(s) indicated above.

**BY ELECTRONIC MAIL:** I transmitted the document(s) to the addressee(s) via electronic mail to the following address: CMonfort@michellawyers.com.

**BY PERSONAL SERVICE:** I placed a true copy of the above document(s) in a sealed envelope for delivery via messenger by Los Angeles City Attorney's Document Services, 200 No. Main Street, 8<sup>th</sup> Floor, City Hall East, Los Angeles, CA 90012.

**BY OVERNIGHT DELIVERY:** I served the documents by placing them in an envelope or package addressed to the persons listed above and providing them to UPS Courier for delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 10, 2015

  
BENJAMIN CHAPMAN, Declarant