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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**
10 **DOWNTOWN COURTHOUSE**

11 G. MITCHELL KIRK; and CALIFORNIA
12 RIFLE & PISTOL ASSOCIATION,
INCORPORATED,

13 Plaintiffs and Petitioners,

14 vs.

15 CITY OF MORGAN HILL; MORGAN HILL
16 CHIEF OF POLICE DAVID SWING, in his
17 official capacity; MORGAN HILL CITY
CLERK IRMA TORREZ, in her official
18 capacity; and DOES 1-10,

19 Defendants and Respondents.
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Case No: 19CV346360

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

Date: July 2, 2020
Time: 9:00 a.m.
Judge: Judge Peter Kirwan
Dept.: 19

[Filed concurrently with Plaintiffs' Notice of
Motion and Motion for Summary Judgment,
Separate Statement of Undisputed Facts, Request
for Judicial Notice, and Declarations of Anna M.
Barvir, G. Mitchell Kirk, and Michael Barranco]

Action filed: April 15, 2019

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1 report the theft or loss of any firearm in their possession to local law enforcement within five days.
2 (Pls. SUMF Nos. 4-5.)³ Failure to do so is a crime punishable by fine for the first two violations
3 and by fine, imprisonment or both for a third violation. (Pls.’ SUMF No. 23, quoting Pen. Code, §
4 25265, subds. (a)-(c).)

5 Proposition 63 also created about a dozen other sections and subsections related to firearm
6 theft-reporting. (Pls.’ SUMF No. 12-18.) Penal Code section 25270, for instance, lays out what
7 must be part of a section 25250 report to law enforcement. (Pls.’ SUMF No. 12.) These facts
8 include “the make, model, and serial number of the firearm, if known by the person, and any
9 additional relevant information required by the local law enforcement agency taking the report.”
10 (Pls.’ SUMF No. 12, citing Pen. Code, § 25270.) The voter-enacted law provides guidance for
11 those who recover a firearm previously reported lost or stolen. (Pls.’ SUMF No. 13, citing Pen.
12 Code, § 25250, subd. (b) [giving firearm owners five days to notify local law enforcement that
13 they recovered their firearms].) It furthers statewide law enforcement interests by directing “every
14 sheriff or police chief [to] submit a description of each firearm that has been reported lost or stolen
15 directly into the Department of Justice Automated Firearms System [“AFS”].” (Pls.’ SUMF No.
16 17, citing Pen. Code, § 25260.) And it made it a crime to knowingly make a false report. (Pls.’
17 SUMF No. 18, citing Pen. Code, § 25275.)

18 Finally, Proposition 63 created several important exceptions to the statewide reporting law.
19 (Pls.’ SUMF No. 14, citing Pen. Code, § 25250, subd. (c), 25255.) Under section 25250,
20 subdivision (c), for instance, no person must report the theft or loss of any firearm that qualifies as
21 an “antique” under state law. (Pls.’ SUMF No. 15.) And section 25255 explicitly exempts from
22 section 25250’s theft-reporting mandate:

- 23 1. Any law enforcement officer or peace officer acting within the scope of
24 their duties who reports the theft or loss to their employing agency;
- 25 2. Any United States marshal or member of the United States armed forces
26 or the National Guard engaged in their official duties;

27 _____
28 ³ The five-day period begins to run either from the day the theft or loss occurred or from
the day the person reasonably should have known it occurred. (Pen. Code, § 25250, subd. (a).)

- 1 3. Any federally licensed firearms importer, manufacturer, or dealer who
2 reports the theft or loss in compliance with applicable federal law; and
3 4. Any person whose firearm was stolen or lost before July 1, 2017.

4 (Pls.’ SUMF No. 16, citing Pen. Code, § 25255.)

5 In late November 2018, some two years later after voters adopted Prop 63, the City of
6 Morgan Hill adopted Ordinance No. 2289, amending section 9.04.030 of the Morgan Hill
7 Municipal Code (“MHMC”). (Pls.’ SUMF No. 21.) Drawing from “model laws” championed by
8 the Giffords Law Center to Prevent Gun Violence (formerly the Legal Community Against
9 Violence) and the Association of Bay Area Governments, section 9.04.030 purports to shorten the
10 timeframe for reporting a firearm stolen or lost. (Pls.’ SUMF Nos. 57-60.) As amended by the
11 ordinance, MHMC section 9.04.030 reads:

12 Any person who owns or possesses a firearm (as defined in Penal Code
13 Section 16520 or as amended) shall report the theft or loss of the firearm to
14 the Morgan Hill Police Department within forty-eight hours of the time he
15 or she knew or reasonably should have known that the firearm had been
stolen or lost, whenever: (1) the person resides in the city of Morgan Hill; or
(2) the theft or loss of the firearm occurs in the city of Morgan Hill.

16 (Pls.’ SUMF No. 22, citing Morgan Hill Mun. Code, § 9.04.030.) The local ordinance thus gives
17 firearm owners only two days to report a firearm theft or loss to the Morgan Hill Police
18 Department whenever the theft or loss occurs in the City or the firearm owner resides there. (Pls.’
19 SUMF No. 2.) Failure to comply with the City’s reporting mandate is crime punishable by
20 confiscation or fine or, potentially, both. (Pls.’ SUMF No. 24, citing Morgan Hill Mun. Code, §§
21 1.19.060, 9.04.060.)

22 **II. THE PARTIES**

23 Plaintiff Kirk is a resident, taxpayer, and law-abiding firearm owner in Morgan Hill,
24 California. (Pls.’ SUMF No. 1.) He is not a law enforcement officer, peace officer, United States
25 marshal, member of the United States military or National Guard, or a federally licensed firearms
26 dealer. (Pls.’ SUMF No. 2.) So if he ever discovers his firearm missing, he must comply with the
27 state theft-reporting requirement. (Pls.’ SUMF Nos. 16, 19.) At the same time however, he is
28 subject to the laws of the city of Morgan Hill. (Pls.’ SUMF No. 1.)

1 Plaintiff CRPA is a nonprofit membership organization incorporated under the laws of
2 California with headquarters in Fullerton, California. (Pls.’ SUMF No. 2.) It was founded in 1875,
3 and it has been CRPA’s mission since that time to work to protect the rights of those who choose
4 to lawfully own a firearm for sport or defense of self and others. (Decl. Michael Barranco Supp.
5 Pls.’ Mot. Summ J. Decl. (“Barranco Decl.”), ¶ 2.) CRPA has tens of thousands of supporters in
6 California, including members who reside in, do business in, visit, or travel through Morgan Hill.
7 (Pls.’ SUMF No. 4.) The organization represents the interests of a wide range of members and
8 supporters, including, but not limited to, law enforcement officers, peace officers, members of the
9 United States military or National Guard, and federally licensed firearm dealers. Pls.’ SUMF Nos.
10 5-6.)

11 Defendants are the City of Morgan Hill, a municipal corporation formed under the laws of
12 California (Pls.’ SUMF No. 7), Morgan Hill Chief of Police David Swing, and Morgan Hill City
13 Clerk Irma Torrez, (Pls.’ SUMF Nos. 8-9).

14 While the City was considering adopting the ordinance, Plaintiff CRPA twice notified
15 lawmakers of its opposition to the law, explaining that state law preempted the City’s proposed 48-
16 hour reporting requirement. (Pls’ SUMF No. 25.) After the City adopted MHMC section 9.04.030,
17 Plaintiff CRPA again notified the City of its position, requesting that the City voluntarily repeal
18 the law. (Pls.’ SUMF No. 26.)⁴ The City refused to voluntarily repeal its reporting requirement,
19 and the law took effect on December 29, 2018. (Pls.’ SUMF No. 27.) The City has enforced the
20 law since that time and has never disavowed its intention to do so. (Pls.’ SUMF No. 27.)

21 **III. PROCEDURAL POSTURE**

22 In light of the City’s refusal to appeal MHMC section 9.04.030, Plaintiffs filed a complaint
23 seeking declaratory and injunctive relief, as well as a writ of mandate, prohibition, or both. (Decl.
24 Anna M. Barvir Supp. Pls.’ Mot. Summ. J. (“Barvir Decl.”) Ex. X.) The essence of Plaintiffs’
25 claim was that state law, including Penal Code section 25250 preempts MHMC 9.04.030. (Barvir

26 ⁴ Plaintiff CRPA also wrote to the city of Palm Springs, notifying local lawmakers that
27 Prop 63 preempted its similar attempt to shorten the time that firearm-theft victims have to report
28 their property stolen. (Pls.’ SUMF No. 28.) In November 2018, after receiving CRPA’s analysis
and just months after adopting the law, the city of Palm Springs voluntarily repealed its 48-hour
reporting requirement. (Pls.’ SUMF No. 28.)

Decl. Ex. X ¶¶ 21-36.) Three months later, the City answered the complaint, denying Plaintiffs’ claims. (Barvir Decl. Ex. Y.) Soon after, Plaintiffs filed a voluntary request to dismiss their writ of mandate, which the Court granted. (Req. for Dismissal (Form CIV-110) (July 26, 2019).)

Having engaged in several case management conferences and having conducted discovery in accord with the parties’ February 27, 2020 Case Management Statement, Plaintiffs now bring this motion for summary judgment per the Court’s March 4, 2020 Minute Order setting deadlines.

ARGUMENT

I. LEGAL STANDARD FOR SUMMARY JUDGMENT

A motion for summary judgment should be granted when “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347.) “A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action.” (Code Civ. Proc., § 437c, subd. (p)(1).) If Plaintiffs meet that burden, “the burden shifts to the defendant . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.” (*Ibid.*) A defendant cannot merely rely on the allegations or denials in its pleadings to show that a triable issue of fact exists. (*Ibid.*) More is generally needed.

But, even on the pleadings alone, there is no material fact in dispute here. Through its Verified Answer to Plaintiffs’ Verified Complaint, the City has already conceded every essential fact necessary to grant this motion, and judicially noticeable material and well-established principles of preemption guide the rest of the analysis. No doubt, this case is a straightforward one. The Court should grant Plaintiffs’ motion for summary judgment, declare the ordinance invalid under the preemption doctrine, and immediately enjoin its enforcement.

II. STATE LAW PREEMPTS THE CITY’S THEFT-REPORTING ORDINANCE

The California Constitution commands that a county or city must take care not to fall “in conflict with general laws.” (Cal. Const., art. XI, § 7.) Courts have long interpreted this as a limitation on local government’s ability to interfere with the proper operation of state law through

1 local legislation. (*Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1.) In short, a local law “[i]s
2 invalid if it attempts to impose additional requirements in a field that is preempted by the general
3 law.” (*In re Lane* (1962) 58 Cal.2d 99, 102.) In determining whether a local measure is preempted,
4 the Court asks if it “duplicates, contradicts, or enters an area fully occupied by general law, either
5 expressly or by legislative implication.” (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4
6 Cal.4th 893, 897 (“*Sherwin-Williams*”).) If it does, “it is preempted by such law and is void.”
7 (*Candid Enterps., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 879.)

8 Meeting any one of these tests is enough on its own to establish preemption. But Plaintiffs
9 will show that the City’s theft-reporting ordinance defies the constitutional mandate that counties
10 govern subordinate to state law (see *Sherwin-Williams, supra*, 4 Cal.4th at p. 898; Cal. Const., art.
11 XI, § 7) at least thrice over because it duplicates section 25250, contradicts it, *and* enters a field
12 that state law has fully occupied. The Court should thus grant Plaintiffs’ motion for summary
13 judgment and declare the local law void.

14 **A. The City’s Theft-reporting Ordinance Duplicates State Law**

15 “A local ordinance *duplicates* state law when it is ‘coextensive’ with state law.”
16 (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 (“*O’Connell*”), quoting *Sherwin-*
17 *Williams, supra*, 4 Cal.4th at p. 897.) That is, “where local legislation purport[s] to impose the
18 same criminal prohibition that general law impose[s],” the local law duplicates state law and is
19 void as preempted. (*In re Portnoy* (1942) 21 Cal.2d 237, 240.) “The reason that a conflict [with the
20 ‘general laws’ under article XI, section 7 of the state Constitution] is said to exist where an
21 ordinance duplicates state law is that a conviction under the ordinance will operate to bar
22 prosecution under state law for the same offense.” (*Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d
23 277, 292.) This improperly serves to frustrate the enforcement of supreme state criminal law.

24 MHMC 9.04.030 requires “any person who owns or possesses a firearm” to report the theft
25 or loss of that firearm to the Morgan Hill Police Department within 48 hours. (Pls.’ SUMF Nos.
26 21-22.) The law applies to any person who resides in Morgan Hill, and importantly, any firearm
27 theft or loss of a firearm that *takes place in the City*. (Pls.’ SUMF No. 22.) This duplicates state
28 law, which also requires gun owners to report firearm theft or loss, but gives them five days to

1 make the report. (Pen. Code, § 25250, subd. (a).) MHMC 9.04.030 thus imposes the “same
2 criminal prohibition that general law impose[s]” (*In re Portnoy*, *supra*, 21 Cal.2d at p. 240) in that
3 both the state law and MHMC section 9.04.030 prohibit a person from failing to report a firearm
4 lost or stolen to local law enforcement. So if someone who lives in or has their firearm stolen or
5 lost within the City fails to report it, they will have violated *both* state law *and* local law. (See
6 *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 179-180.)

7 MHMC section 9.04.030 duplicates section 25250 and is thus preempted.

8 **B. The City’s Theft-reporting Ordinance Contradicts State Law**

9 Local ordinances “contradicting” state law are preempted and void. (*O’Connell*, *supra*, 41
10 Cal.4th at pp. 1067-1068.) A local law contradicts state law when it commands what state law
11 prohibits *or prohibits locally what a state statute authorizes*. (*Sherwin-Williams*, *supra*, 4 Cal.4th
12 at p. 902.) Such laws are “inimical to or cannot be reconciled with state law,” (*O’Connell*, *supra*,
13 41 Cal.4th at p. 1068), and courts simply strike them as preempted (*Fiscal v. City and County of*
14 *San Francisco* (2008) 158 Cal.App.4th 895, 903 (“*Fiscal*”). MHMC 9.04.030 prohibits Plaintiff
15 Kirk and members of Plaintiff CRPA from doing what state law, at least, implicitly allows them to
16 do take up to five days before they must report the theft or loss of their firearms.⁵ A patent
17 contradiction with California law, the ordinance is preempted and void.

18 In *Ex parte Daniels* (1920) 183 Cal. 636, 641-648, the California Supreme Court held that
19 local legislation purporting to fix a lower maximum speed limit for motor vehicles than what
20 general law fixed was preempted as “contradicting” state law. While later precedent tells us that no
21 “contradictory and inimical conflict” “will be found where it is *reasonably* possible to comply with
22 both the state and local laws,” (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr.,*
23 *Inc.* (2013) 56 Cal.4th 729, 743 (“*Riverside*”), *italics added*), *Ex parte Daniels* still has important
24 lessons for us today. Decided in an era before speed limit signs were a common sight, *Ex parte*

25 ⁵ There are very good reasons (not associated with a lack of care) that an individual may
26 need to wait up to five days to report a theft or loss. For example, they may be uncertain if their
27 firearm really was stolen or lost, as they may reasonably believe they left it locked up in a second
28 home, in the trunk of a vehicle, or in a storage unit. Under those circumstances, many responsible
gun owners might choose to wait to report until they know it is missing before reporting and
unnecessarily burdening law enforcement. In any event, they would not have that option if the
City’s ordinance stands.

1 *Daniels* recognized that it would not be reasonably possible for someone traveling throughout the
2 state to know the speed limits in each area. Indeed, the Court held, if localities had a right to
3 reduce the statewide speed limits at their discretion, “every part of a trip from Siskiyou to San
4 Diego would be controlled by arbitrary speed limits fixed by legislative bodies whose action [the
5 traveler] is presumed to know, but of which he is much more likely to be totally unaware.” (*Id.* at
6 p. 645.) The Legislature, however, had “authorized the citizens of the state to travel upon the
7 highways . . . at a speed which is not unreasonable and unsafe.” (*Ibid.*) It was not the prerogative
8 of the localities to second-guess the state’s measured judgment.

9 Here, section 25250 gives victims of firearm theft, or those who lose a firearm, up to five
10 days to report to local law enforcement. Put another way, taking up to five days to report the theft
11 or loss of a firearm is authorized by state law. Like the Legislature in *Ex parte Daniels* that
12 adopted a “not unreasonable and unsafe” speed limit for the state’s roadways (183 Cal. at p. 645),
13 California voters, weighing the perceived benefits to law enforcement and the feasibility for gun
14 owners to make a timely report, adopted what they believed to be a “not unreasonable and unsafe”
15 reporting period. (Pls.’ SUMF Nos. 10-11, 61-62; Req. Jud. Ntc. Ex. C at pp. 164, 165.) It is not
16 the City’s place to discard that judgement. For, it is *not* “reasonably possible” for citizens passing
17 through Morgan Hill to know that the City’s ordinance would differ from the statewide law. Like
18 our forebears of a century ago who would be unaware of lower local speed limits, so too would
19 people passing through Morgan Hill (or one of the many other localities that might adopt similar
20 laws) be unaware of shorter local theft-reporting periods. Should they fail to report a theft or loss
21 within five days, they would “unknowingly commit two offenses instead of one—one against the
22 municipality and the other against the state.” (*Ex parte Daniels, supra*, 183 Cal. at pp. 645-646.)
23 This is exactly the sort of situation the preemption doctrine was established to avoid.

24 The Court of Appeal’s decision in *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109
25 (“*Suter*”) does not change the outcome. To be sure, the *Suter* court held that a city law increasing
26 firearm storage requirements for dealers did not “contradict” state law because, in complying with
27 the local law, “a dealer automatically complies with state law.” (*Id.* at p. 1124.) And so too would
28 compliance with MHMC section 9.04.030 necessarily mean that one has complied with state law.

(Compare Pls.’ SUMF No. 11, citing Pen. Code § 25250, with Pls’ SUMF Nos. 21-22, citing Morgan Hill Mun. Code, § 9.04.030.) But *Suter*’s “contradiction” analysis is distinguishable. Unlike the firearm dealers in *Suter*, it is not “reasonably” possible for run-of-the-mill gun owners passing through the City to comply with *both* state and local theft-reporting laws. (*Riverside, supra*, 56 Cal.4th at p. 743.) As explained above, they are unlikely to know of the City’s contradictory law. Nor do they have benefit of being sophisticated businesspeople with permanent locations within the City who are charged with a greater knowledge of applicable gun laws.

In short, California voters have seen fit to authorize firearm owners up to five days to report the theft or loss of a firearm, and the City cannot undermine their measured judgment by prohibiting conduct that state law allows. So, even if the Court holds that there is no “duplication” preemption, the City’s ordinance contradicts state law and is preempted by it.

C. The City’s Theft-reporting Ordinance Enters an Area of Law Fully Occupied by State Law

“Local government[s] may not enact additional requirements in regard to a subject matter which has been fully occupied by general state law.” (*In re Hubbard* (1964) 62 Cal.2d 119, 125 (“*Hubbard*”), overruled on another point by *Bishop v. City of San Jose* (1969) 1 Cal.3d 56.) Indeed, “where the Legislature has manifested an intention, *expressly or by implication*, wholly to occupy the field . . . municipal power [to regulate in that area] is lost.” (*Fiscal, supra*, 158 Cal.App.4th at p. 904, quoting *O’Connell, supra*, 41 Cal.4th at p. 1067, italics added.) When, as here, the state has not expressly stated its intent to preempt local regulation, “courts look to whether it has impliedly done so.” (*O’Connell, supra*, 41 Cal.4th at p. 1068.) The state has impliedly preempted a field when:

(1) [T]he subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

(*Ibid.*, citing *Sherwin-Williams, supra*, 4 Cal.4th at p. 898.)

1 For the reasons described below, the circumstances make clear the state intended to occupy
2 the field of mandatory firearm theft-reporting. The City’s attempt to encroach on the state’s
3 domain in that field violates preemption and is void.

4
5 **1. State Law So Fully and Completely Covers the Field of Firearm Theft-
reporting That It Has Become a Matter of Exclusive State Concern**

6 “Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a
7 particular subject, the entire control over whatever phases of the subject are covered by state
8 legislation ceases as far as local legislation is concerned.” (*In re Lane, supra*, 58 Cal.2d at p. 102.)
9 As for “the *implied* occupation of an area of law by the Legislature’s full and complete coverage of
10 it,” (*Am. Fin. Servs. Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1253 (“*Am. Fin. Servs.*”),
11 italics original), the California Supreme Court has held that courts must glean the state’s intent
12 “not just by looking to “the language used but by the *whole purpose and scope* of the legislative
13 scheme” (*ibid.*, italics added.) Moreover, where “the state expressly permits operation under a
14 certain set of standards, it implies that the specified standards are exclusive,” prohibiting local
15 authorities from imposing stricter standards. (*Suter, supra*, 57 Cal.App.4th at 1125, citing *Water*
16 *Quality Assn. v. Cty. of Santa Barbara* (1996) 44 Cal. App. 4th 732, 741-742 [local law imposing
17 requirements on water softeners preempted by state law imposing less strict requirements].) Here,
18 state theft-reporting law “fully and completely” covers the subject matter. It is thus clear the matter
19 is exclusively one of state concern.

20 Not only does state law establish a basic reporting requirement for stolen and lost firearms
21 (Pls.’ SUMF Nos. 11-12; Pen. Code, § 25250, subd. (a)), it provides a statewide scheme aimed at
22 addressing both state and local concerns and regulating all manner of conduct related to reporting
23 firearm theft and loss (Pls.’ SUMF Nos. 10-18); Pen. Code, §§ 25250, subds. (b)-(c), 25255,
24 25260, 25265, 25270, 27275). This broad and comprehensive scheme is strong evidence that the
25 state intended to occupy the field of the firearm theft-reporting, foreclosing local action.

26 Recall, aside from Penal Code section 26250, subdivision (a), Proposition 63 also created
27 about a dozen other sections and subsections related to firearm theft-reporting. (Pls.’ SUMF Nos.
28 12-18.) Penal Code section 25270, for instance, details what facts must be part of a section 25250

1 report to law enforcement. (Pls.’ SUMF No. 12.) Section 25250, subdivision (b), provides
2 guidance for those who recover a firearm previously reported lost or stolen, giving them five days
3 to notify local law enforcement. (Pls.’ SUMF No. 13.) Section 25260 directs “every sheriff or
4 police chief [to] submit a description of each firearm that has been reported lost or stolen” into
5 AFS. (Pls.’ SUMF No. 17.) And section 25275 makes it a crime to knowingly make a false report.
6 (Pls.’ SUMF No. 18.)

7 Perhaps even more important, Proposition 63 created a whole host of exceptions to the
8 statewide reporting law. (Pls. SUMF No. 14, citing Pen. Code, § 25250, subd. (c), 25255.) Under
9 Penal Code section 25250, subdivision (c), no person must report the theft or loss of any firearm
10 that qualifies as an “antique” under state law. And section 25255 explicitly exempts four whole
11 classes of Californians from section 25250’s theft-reporting mandate. (Pls.’ SUMF No. 16, citing
12 Pen. Code, § 25255.) Among those classes are various sorts of law enforcement officers, peace
13 officers, U.S. marshals, and military members, as well as federally licensed firearm dealers. (Pls.’
14 SUMF No. 16, citing Pen. Code, § 25255.) As to these individuals and businesses, section 25255
15 reveals a respect for federal and state requirements, including those that already require timely
16 firearm theft-reporting. (Pls.’ SUMF No. 16, citing Pen. Code, § 25255, subd. (a) [exempting law
17 enforcement and peace officers who must report to their employing agency]; *id.* § 25255, subd. (b)
18 [exempting U.S. marshals, military members, and National Guard member while engaged in their
19 official duties]; *id.* § 25255, subd. (c) [exempting federally licensed firearm dealers who, under 18
20 U.S.C. § 923(g)(6), must report to the Attorney General and local authorities].)

21 MHMC 9.04.030 makes *no* attempt to account for the comprehensive nature of the state
22 reporting requirements or their important exemptions. (Morgan Hill Mun. Code, § 9.04.030.)
23 Instead, it presumably requires that, even if you fall within one of these many exceptions, if you
24 live in or have your firearm stolen in the City, you must still report the incident to local police and
25 you must act within just two days—something you extremely unlikely to know. (Pls.’ SUMF No.
26 22; Morgan Hill Mun. Code, § 9.04.030.) It makes no sense that state law would inform firearm
27 owners so fully as to their rights and responsibilities regarding theft-reporting, only for local
28 governments to disrupt that scheme by interjecting their own (more stringent, but far less

comprehensive) reporting laws. (*See Fiscal, supra*, 158 Cal.App.4th at p. 919 [holding that “the creation of a uniform regulatory scheme is a matter of statewide concern, which should not be disrupted by permitting this type of contradictory local action”], citing *L.B. Police Officers Assn. v. City of Long Beach* (1976) 61 Cal.App.3d 364.)

Finally, recall, we glean the state’s intent not just by looking to “the language used but by the whole purpose and scope of the legislative scheme.” (*Am. Fin. Servs., supra*, 34 Cal.4th at p. 1253.) To that end, the fact that section 25250 reports are to be made to *local* law enforcement (Pls.’ SUMF No. 11) reflects the statute’s intent to address the very same local law enforcement concerns the City cited when passing MHMC 9.04.030. (See Pls.’ SUMF Nos. 42-46) [discussed in Argument Part II.C.2.b, *infra*.]) At the same time, the related requirement that local law enforcement agencies then enter all theft and loss reports into AFS reveals the broader, statewide law enforcement concerns the law is meant to serve. (See Pls.’ SUMF No. 17; Pen. Code, § 25260.)

Similarly, Prop 63 drafters and voters sought fit to include not one, *but two*, statutes sanctioning additional regulation, *including local action*, in other parts of the same initiative measure. (Req. Jud. Ntc. Ex. C, at pp. 23, 26, 31, .) Prop 63’s broader context thus removes any doubt of the voters’ intent. Certainly, that they did not include similar language in the theft-reporting mandate is good indication that no authorization of further local regulation was intended. (See *People v. Guzman* (2005) 35 Cal.4th 577, 588 [discussing the principle of statutory construction known as *expressio unius est exclusio alterius* or “the expression of one thing . . . ordinarily implies the exclusion of other things”]; see also *Bates v. United States* (1997) 522 U.S. 23, 29-30 [“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”]; *People v. Briceno* (2004) 34 Cal.4th 451, 459 [“In interpreting a voter initiative . . . we apply the same principles that govern statutory construction.”].)

The City may seek to dispose of this type of implied field preemption, citing the simple proposition that the Legislature has not preempted the entire field of gun control. (See *Great*

1 *Western Shows v. County of Los Angeles* (2002) 27 Cal.4th 853, 861-864.) (“*Great Western*”)
2 But the question is *not* whether the state has preempted the broad field of gun control,
3 generally. It has not. (*Ibid.*) The state has, however, “targeted certain specific areas for
4 preemption,” and so local intrusion into *those* areas is preempted and unlawful. (See *id.* at p.
5 864.) Indeed, even the *Great Western* Court, having found that the Legislature did not intend to
6 occupy the entire field of gun regulation generally, still considered whether the state intended to
7 occupy the narrower field of gun *show* regulation. (See *id.* at p. 866.) The Court ultimately
8 determined it had not preempted *that* field because “the conduct of business at such [gun] shows
9 [was expressly] subject to ‘applicable local laws.’ ” (*Ibid.*, citing Pen. Code, §§ 12071, subd.
10 (b)(I)(B), 12071.4, subd. (b)(2), italics added.)

11 Here, the area of general law that operates to preempt the City’s mandate that firearm
12 owners report the theft or loss of their firearms is “fully and completely” regulated by state law. As
13 described above, state law in that field does *not* contemplate further municipal regulation. Morgan
14 Hill’s contradictory theft-reporting law is thus impliedly preempted.

15 **2. State Law at Least Partially Covers Firearm Theft-reporting and the**
16 **Adverse Effects of the City’s Conflicting Law Far Outweigh Any**
Possible Benefit to the City

17 Even if the Court holds that state law only partially covers the relevant subject matter, Type
18 3 implied preemption—the adverse effect of local regulation on transient citizens—establishes the
19 People’s manifestation of their intent to fully occupy the field. Indeed, because the adverse effect
20 of the challenged ordinance on transient citizens *far* outweighs any particularized interest the
21 municipality might conjure, Type 3 implied field preemption is clearly established.

22 **a. The Adverse Effects on Transient Citizens**

23 Under this breed of implied preemption, “a *significant* factor in determining if the
24 Legislature intends to preempt an area of law is the impact that local regulation may have on
25 transient citizens of the state.” (*Suter, supra*, 57 Cal.App.4th at p. 1119, citing *Hubbard, supra*, at
26 p. 128 and *Galvan v. Superior Court (City & County of San Francisco)* (1969) 70 Cal.2d 851,
27 860.) When, as here, a local law threatens to adversely impact citizens moving about the state,
28 imposing criminal penalties for violating local laws they are unlikely to be aware of given

1 contradictory state law, preemption is clear.

2 Countless Californians may travel through the City with firearms while on a hunting trip, as
3 part of a move, or for any number of other reasons. Should their firearm be stolen or lost while
4 they are within the City's limits, they would have to comply with both state law and local law. Yet
5 the City's challenged ordinance gives them three fewer days to report the theft or loss, a fact of
6 which they are unlikely to be aware. If the 58 counties and 482 cities within the state could enact
7 their own theft-reporting ordinances, each arbitrarily setting any number of days to report, a
8 hopeless "patchwork quilt" of varying reporting requirements will confront visiting gun owners
9 whenever move about the state. (Cf. *Great Western, supra*, 27 Cal.4th at p. 867 [holding that
10 prohibiting sales of arms on county-owned fairgrounds had "very little impact on transient
11 citizens"].) This is exactly the situation Type 3 implied preemption seeks to avoid.

12 That localities may not uniformly adopt a 48-hour reporting deadline is not mere
13 hypothetical—it is fact. (Pls.' SUMF Nos. 29-40, citing L.A. Mun. Code, § 55.12 [48 hours],
14 Oakland Mun. Code, § 9.36.131 [48 hours], Port Hueneme Mun. Code, § 3914.10 [48 hours],
15 Sacramento Mun. Code, § 9.32.180 [48 hours], S.F. Mun. Code, § 616 [48 hours], Sunnyvale Mun.
16 Code, § 9.44.030 [48 hours], Tiburon Mun. Code, § 32-27 [48 hours], Oxnard Mun. Code, § 7-
17 141.1 [72 hours], Simi Valley Mun. Code, § 5-22.12 [72 hours], Thousand Oaks Mun. Code, § 5-
18 11.02 [72 hours], Santa Cruz Mun. Code, § 9.30.010 [5 days].) The City itself recognized that the
19 city of San Jose requires reporting within 24 hours. (Pls.' SUMF No. 41.) While the cities of
20 Oxnard, Simi Valley, and Thousand Oaks require reporting within 72 hours. (SUMF Nos. 38-40.)
21 And the city of Santa Cruz gives victims 5 days to report. (Pls.' SUMF No. 40.)⁶ Even the gun-

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23 ⁶ For more proof of just how arbitrary the theft-reporting periods are, one need only look to
24 the varied laws in effect throughout the nation. States that have adopted reporting requirements
25 demand compliance anywhere from "immediately" to seven days. Only *one* state, Virginia, has
26 seen fit to adopt a 48-hour reporting requirement, suggesting there is no consensus that 48 hours is
27 some "magic number" particularly related to serving the purposes the City cites for its ordinance.
28 (Mass. Gen. Laws, ch. 140, § 129C (requiring gun owners to report theft or loss "forthwith"); Ohio
Rev. Code Ann., § 2923.20, subd. (A)(5) (same); D.C. Code Ann., § 7-2502.08, subds. (a), (e)
("immediately"); Haw. Rev. Stat. Ann., § 134-29 (24 hours); N.Y. Pen. Law, § 400.10 (24 hours),
R.I. Gen. Laws, § 11-47-48.1 (24 hours); N.J. Stat. Ann., § 2C:58-19 (36 hours); Va. Code Ann., §
18.2-287.5 (48 hours); Conn. Gen. Stat., § 53-202g. (72 hours); 720 Ill. Comp. Stat. 5/24-4.1 (72
hours); Md. Code Ann., Pub. Safety, § 5-146 (72 hours); Mich. Comp. Laws, § 28.430 (5 days);
Del. Code, tit. 11, § 1461 (7 days).)

control advocates who push “model ordinances” mandating reporting have not uniformly advocated for reporting within 48 hours. (Compare Req. Jud. Ntc. Ex. L at pp. 405-406 [supporting the city of Santa Cruz’s five-day reporting requirement], with Barvir Decl., Ex. NN, at pp. 199-206 [advocating for a 48-hour reporting requirement] and Ex. QQ, at pp. 329-333 [same].) The wildly varying local laws governing theft reporting exposes transient Californians to *criminal prosecution* for unknowing violations of local law and, where they have failed to report within five days, violation of both state *and* local laws for identical conduct. To prevent widespread confusion—and unjust prosecution—state law must control.

b. The City’s Purported Interests

“The significant issue in determining whether local regulation should be permitted depends upon a ‘balancing of two conflicting interests: (1) the needs of local governments to meet the *special needs of their communities*; and (2) the need for uniform state regulation.’ [citation].” (*Robins v. County of L.A.* (1966) 248 Cal.App.2d 1, 9-10 (“*Robins*”), italics added.) “As a general rule it may be said that ordinances affecting the local use of static property might reasonably prevail, while ordinances purporting to proscribe social behavior of individuals *should normally be held invalid if state statutes cover the areas of principal concern with reasonable adequacy.*” (*Id.* at p. 10, italics added.) The City has identified no particularized local interest not already purportedly served by state law. Nor has it identified any “special need” that could justify the harmful effects its contradictory theft-reporting law will have on transient Californians.

Under section 25250, victims of firearm theft, or those who misplace their firearm, must report to local law enforcement within just days of discovering their firearm missing. (Pls.’ SUMF No. 11.) Theft-reporting laws, like section 25250, et seq., are said to serve four main purposes:

1. To discourage firearm owners from falsely reporting the theft or loss of their firearm to hide their involvement in illegal activities and to provide a tool for law enforcement to ferret out such behavior. (Pls.’ SUMF No. 43.)
2. To help disarm prohibited persons by deterring them from falsely claiming their firearms were stolen or lost. (Pls.’ SUMF No. 44.)

3. To protect firearm owners from unwarranted criminal accusations if law enforcement recovers their firearms at a crime scene and to make it easier for law enforcement to locate a stolen or lost firearm and return it to its lawful owner. (Pls.’ SUMF No. 45.)
4. To make firearm owners more accountable for their firearms. (Pls.’ SUMF No. 46.)

In fact, the point of Penal Code section 25250, et seq., according to its supporters, was to help law enforcement “investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners.” (Pls.’ SUMF No. 61. See also Pls.’ SUMF No. 62 [citing claims by Prop 63 proponents in the official ballot pamphlet that Prop 63 would “help police shut down gun trafficking rings and locate caches of illegal weapons,” “recover stolen guns before they’re used in crimes and return them to their lawful owners”].)

Even if the state law cannot serve these purposes,⁷ there is no reason to think that the City’s law, shortening the reporting period by *three* days, is any more likely to serve them. (See Pls.’ SUMF Nos. 47-52.) The City cited no evidence that it would (Pls. SUMF Nos. 47-52), and there is simply is no body of reliable research establishing that it could (Pls.’ SUMF No. 54). Nor does the City cite any “special need” for a shortened reporting period. (Pls. SUMF Nos. 47-52. See also Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 308-309, Ex. J, pp. 347-362.) To the contrary, it cites largely the same interests the state law (and all LCAV-backed local theft-reporting laws) cite. (Pls.’ SUMF Nos. 61-62; Barvir Decl. Ex. NN, at pp. 199-206, Ex. QQ, at pp. 329-333; Req. Jud. Ntc. Ex. L at p. 375.)

⁷ There may be some disagreement out there over whether theft-reporting laws serve the purposes advocates cite. (Pls.’ SUMF No. 53, citing Morral, et al., *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States* (Rand Corp. 2018) at p. 97-98 [recognizing that there have simply been no qualifying studies on the effects of firearm theft-reporting laws]. See also Morral, *supra*, p. 98 [explaining that firearm theft-reporting requirements might have the unintended consequence of discouraging reporting if firearm owners miss the reporting deadline]; Barranco Decl. ¶ 10 [explaining that theft-reporting ordinances might also hamper law enforcement efforts by discouraging some gun owners from cooperating with police without legal representation if they are unsure when their firearm was lost or stolen].) But this potential point of contention does not prevent summary judgment because the City can provide no evidence that its 48-hour requirement is any more effective. (Pls.’ SUMF Nos. 47-52.)

1 In short, it is unlikely that shortening the reporting period by mere days would have any
2 impact on the City's interests at all. As the City itself admitted when considering the ordinance,
3 "[r]esponsible gun owners will report with or without an ordinance." (Req. Jud. Ntc. Ex. F at p.
4 403. See also Barranco Decl. ¶ 10; Decl. G. Mitchell Kirk Supp. Pls.' Mot. Summ. J. ("Kirk
5 Decl.") ¶ 8.) Indeed, according to the United States Department of Justice, gun owners reported
6 about 90% of burglaries involving stolen firearms to law enforcement between 2005 and 2010.
7 (Pls.' SUMF No. 55.) But only about *1 of every 5* firearms had been recovered between 1 day and
8 *6 months* after reporting. (Pls.' SUMF No. 55.) And, although "victimizations involving stolen
9 firearms could have occurred . . . up to six months before the NCVS [National Crime
10 Victimization Study] interview [from which these statistics were drawn], the amount of time that
11 had elapsed *made no significant difference in the percentage of households for which guns had not*
12 *been recovered . . .*" (Pls.' SUMF No. 56, italics added.)

13 What's more, the City's purported interest in deterring false reporting (Pls.' SUMF Nos.
14 43-44), is no doubt served *better* by state law, which expressly criminalizes that behavior. (Pls.'
15 SUMF No. 18 [citing Proposition 63, which also created Penal Code section 25275, making it a
16 crime to falsely report that a firearm has been lost or stolen].) MHMC 9.04.030 does not address
17 the issue at all. It is thus hard to see how the City could claim its law addresses some concern that
18 state law does not already seek to address.

19 So, even if state law does not fully cover the field of firearm theft-reporting, the harmful
20 effect on transients far outweighs any interest the City might have in shortening the timeframe for
21 compliance. There is no benefit, specific to Morgan Hill (or any locality) that would justify
22 allowing the City to shorten the reporting period and invite the adverse effects on transient citizens
23 described above. For all these reasons, MHMC section 9.04.030 is implicitly preempted by section
24 25250. The Court should strike it as void and unenforceable.

25 CONCLUSION

26 MHMC section 9.04.030 is preempted by state law in at least three ways under
27 longstanding preemption precedent. It duplicates state law. It contradicts state law. And it enters a
28 field fully occupied by state law. While Plaintiffs believe they have met nearly every possible test

1 for preemption, if this Court finds that Plaintiffs prevail on *any* of these three tests, it must grant
2 Plaintiffs' motion for summary judgment, declare the law void as preempted, and enjoin the City
3 from enforcing it.

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5 Dated: May 1, 2020

MICHEL & ASSOCIATES, P.C.

6
7 *s/ Anna M. Barvir*

Anna M. Barvir

8 Attorneys for Plaintiffs
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**PROOF OF SERVICE
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

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

On May 1, 2020, I served the foregoing document(s) described as

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the interested parties in this action by placing

☐ the original
☒ a true and correct copy

thereof by the following means, addressed as follows:

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 X (BY ELECTRONIC TRANSMISSION) As follows: I served a true and correct copy by electronic transmission via One Legal. Said transmission was reported and completed without error.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 1, 2020, at Long Beach, California.

s/ Laura Palmerin

Laura Palmerin