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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE
17

18 G. MITCHELL KIRK; and CALIFORNIA
19 RIFLE & PISTOL ASSOCIATION,
20 INCORPORATED,

21 Plaintiffs and Petitioners,

22 vs.

23 CITY OF MORGAN HILL; MORGAN HILL
24 CHIEF OF POLICE DAVID SWING, in his
official capacity; MORGAN HILL CITY
25 CLERK IRMA TORREZ, in her official
capacity; and DOES 1-10,,
26

27 Defendants and Respondents.
28

Case No. 19CV346360

**MORGAN HILL'S SEPARATE
STATEMENT IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

Judge: Hon. Peter Kirwan

Date: July 2, 2020

Time: 9 a.m.

Dept: 19

Action Filed: April 15, 2019

Pursuant to Code of Civil Procedure Section 437c, and California Rules of Court, Rule 3.1350(f), Defendants City of Morgan Hill, Chief of Police David Swing in his official capacity, and Morgan Hill City Clerk Irma Torrez in her official capacity (“Morgan Hill”) hereby submit this Separate Statement in Opposition to Plaintiffs’ Motion for Summary Judgment.

#	Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
1	Plaintiff G. Mitchell Kirk is a resident, taxpayer, and law-abiding firearm owner in and subject to the laws of the city of Morgan Hill, California. Pls.’ Ver. Compl. Decl. & Inj. Rel. & Verif. Petit. Writ Mand. &/or Prohib. (“Pls.’ Verif. Compl.”), at ¶ 13 & p.21 (attached to Decl. Anna M. Barvir (“Barvir Decl.”) as Ex. X); Defs.’ Ver. Answer Verif. Compl. Decl. & Inj. Rel. & Verif. Petit. Writ Mand. &/or Prohib. (“Defs.’ Verif. Answer”) ¶ 13 (attached to Barvir Decl. as Ex. Y); Decl. G. Mitchell Kirk (“Kirk Decl.”) ¶¶ 2-4.	Undisputed.
2	Plaintiff Kirk is not a law enforcement officer, peace officer, United States marshal, member of the United States military or National Guard, or a federally licensed firearm dealer. Kirk Decl. ¶ 5.	Undisputed.
3	Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”), is a nonprofit membership organization incorporated under the laws of California with headquarters in Fullerton, California. Pls.’ Verif. Compl. ¶ 14 & pp. 12, Barvir Decl. Ex. X; Defs.’ Verif. Answer ¶ 14, Barvir Decl. Ex. Y; Statement of Information (Form SI-100) Re: CRPA (May 11, 2018) (attached to Barvir Decl. as Ex. AA); Decl. Michael Barranco (“Barranco Decl.”) ¶ 3.	Undisputed.

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
4	CRPA has tens of thousands of members and supporters in California, including members who reside in, conduct business in, visit, or travel through Morgan Hill, or who are otherwise subject to the laws of the city of Morgan Hill. Pls.' Verif. Compl. ¶ 14, Barvir Decl. Ex. X; Defs.' Verif. Answer ¶ 14, Barvir Decl. Ex. Y; Barranco Decl. ¶¶ 3, 5.	Undisputed.
5	Plaintiff CRPA counts among its members and supporters law enforcement officers, peace officers, members of the United States military and National Guard, and federally licensed firearm dealers. Barranco Decl. ¶¶ 3, 6.	Undisputed.
6	Plaintiff CRPA also represents the interests of countless members and supporters who are not law enforcement officers, peace officers, United States marshals, members of the United States military or National Guard, or federally licensed firearm dealers. Barranco Decl. ¶ 7.	Undisputed.
7	Defendant City of Morgan Hill is a municipal corporation formed under the laws of California. Pls.' Verif. Compl. ¶ 15, Barvir Decl. Ex. X; Defs.' Verif. Answer ¶ 15, Barvir Decl. Ex. Y.	Undisputed.
8	Defendant David Swing is the Chief of Police of the Morgan Hill Police Department. Pls.' Verif. Compl. ¶ 16, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 16, Barvir Decl., Ex. Y.	Disputed, though immaterial; former Chief David Swing left the Morgan Hill Police Department and Shane Palsgrove is the interim Chief of Police.

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
9	<p>Defendant Irma Torrez is the City Clerk of Morgan Hill.</p> <p>Pls.' Verif. Compl. ¶ 17, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 17, Barvir Decl., Ex. Y.</p>	Undisputed.
10	<p>On November 8, 2016, California voters enacted Proposition 63, which included, among other things, a requirement that firearm owners report to law enforcement if their firearm is lost or stolen.</p> <p>Pls.' Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Pls.' Req. Jud. Ntc. Supp. Mot. Summ. J. ("Pls.' Req. Jud. Ntc.") Ex. C, at pp. 22-23.</p>	Undisputed.
11	<p>Proposition 63 created Penal Code section 25250, which requires victims of firearm theft within the state to report to a local law enforcement agency that their firearm has been stolen within five days of the theft or within five days after the victim reasonably becomes aware of the theft.</p> <p>Pls.' Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. C, at pp. 22-23; Pen. Code § 25250, subd. (a) ("Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.")</p>	<p>Undisputed, except to the extent that Plaintiffs' summary inaccurately characterizes the reporting timeframe as starting on the day of a theft or when an owner actually becomes aware of a theft. Instead, as Plaintiffs' direct quote from Penal Code §25250 shows, state law requires reporting a firearm theft within five days from when a person "knew or reasonably should have known that the firearm had been stolen or lost." This exactly matches the knowledge requirement in Morgan Hill Municipal Code § 9.04.030, and thus refutes Plaintiffs' argument (Pls.' Mem. ISO MSJ at p. 13 n.5) that under Morgan Hill's shorter reporting timeframe, owners would "not have that option" to wait to report until they <i>reasonably</i> could determine their firearm was lost or stolen.</p>

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
12	<p>Proposition 63 also created Penal Code section 25270, which lays out which facts must be included in a section 25250 report to law enforcement. These details include "the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report."</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25270.</p>	Undisputed.
13	<p>Under Penal Code section 25250, subdivision (b), if a firearm owner recovers any firearm previously reported lost or stolen, they must so inform local law enforcement within five days.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen Code, § 25250, subd. (b) ("Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days if the firearm is subsequently recovered by the person.")</p>	Undisputed.
14	<p>Proposition 63 also created a number of exceptions to the state theft-reporting law.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, §§ 25250, subd. (c), 25255.</p>	Undisputed.
15	<p>Under Penal Code section 25250, subdivision (c), created by Proposition 63, no person is required to report the theft or loss of "an antique firearm within the meaning of subdivision (c) of [Penal Code] section 16170."</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code § 25250, subd. (c).</p>	Undisputed.

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
16	<p>Under Penal Code section 25255, subdivisions (a) through (d), created by Proposition 63, the state theft-reporting requirement does not apply to:</p> <p>(1) any law enforcement officer or peace officer acting within the scope of their duties who reports the loss or theft to their employing agency;</p> <p>(2) any United States marshal or member of the United States armed forces or the National Guard engaged in their official duties;</p> <p>(3) any federally licensed firearms importer, manufacturer, or dealer who reports the theft or loss in compliance with applicable federal law; or</p> <p>(4) any person whose firearm was lost or stolen before July 1, 2017.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25255.</p>	Undisputed.
17	<p>Proposition 63 also created Penal Code section 25260, which requires “every sheriff or police chief [to] submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.”</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25260.</p>	Undisputed.
18	<p>Proposition 63 also created Penal Code section 25275, which makes it a crime to report a firearm has been lost or stolen knowing that report to be false.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25275, subd. (a) (“No person shall report to a local law enforcement agency that a firearm has been lost or stolen, know that report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first</p>	Undisputed.

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	offense, and by a fine no exceeding one thousand dollars (\$1000) for a second or subsequent offense.”)	
19	<p>Under Penal Code section 25250, should his firearm be lost or stolen, Plaintiff Kirk has five days to report the loss or theft to local law enforcement in the jurisdiction where the loss or theft occurred.</p> <p>Pls.' Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. C, at pp. 22-23; Pen. Code § 25250, subd. (a); Kirk Decl. ¶ 5.</p>	Undisputed, except that Plaintiff Kirk need only report within five days from the time he “ <i>knew or reasonably should have known</i> that his firearm had been stolen or lost.” Allison Decl. ISO MSJ, Ex. 9 (Penal Code § 25250) (emphasis added).
20	<p>Under Penal Code section 25250, should a member of CRPA have their firearm lost or stolen, they have five days to report the loss or theft to local law enforcement in the jurisdiction where the loss or theft occurred.</p> <p>Pls.' Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. C, at pp. 22-23; Pen. Code § 25250, subd. (a); Barranco Decl. ¶ 8.</p>	Undisputed, except that individuals need only report within five days from the time a person “ <i>knew or reasonably should have known</i> that the firearm had been stolen or lost.” Allison Decl. ISO MSJ, Ex. 9 (Penal Code § 25250) (emphasis added).
21	<p>On November 28, 2018, the City of Morgan Hill adopted Ordinance No. 2289 (“the Ordinance”), which amended, inter alia, section 9.04.030 of the Morgan Hill Municipal Code.</p> <p>Pls.' Verif. Compl. ¶ 1, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 1, Barvir Decl., Ex. Y; Req. Jud. Ntc. Exs. A, at pp. 8-9, E, at pp. 61-62, Ex. F, at pp. 61, 67; Morgan Hill Mun. Code § 9.04.030.</p>	Undisputed.
22	The Ordinance requires individuals to report the loss or theft of a firearm to the Morgan Hill Police Department within 48 hours if the loss or theft occurred	Undisputed, except that individuals need only report within 48 hours of the “time he or she <i>knew or reasonably should have known</i> that the firearm had been stolen or

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	<p>within the city of Morgan Hill <i>or</i> the owner of the firearm resides in the city of Morgan Hill.</p> <p>Pls.' Verif. Compl. ¶¶ 2-3, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶¶ 2-3, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. A, at pp. 8-9, Ex. D, at pp. 45-46, 48, Ex. F at pp. 75-76; Morgan Hill Mun. Code § 9.04.030 ("Duty to report theft or loss of firearms. Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight hours of the time he 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").</p>	<p>lost." Allison Decl. ISO MSJ, Ex. 2 (Morgan Hill Mun. Code § 9.04.030) (emphasis added).</p>
23	<p>The penalties for violating Penal Code Section 25250 are listed in Section 25265 and are as follows:</p> <p>"(a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction, punishable by a fine not to exceed one hundred dollars (\$100).</p> <p>(b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars (\$1,000).</p> <p>(c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment."</p> <p>Pen. Code, § 25265.</p>	<p>Undisputed.</p>

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
24	<p>Violation of MHMC section 9.04.030 include confiscation and/or fines.</p> <p>Req. Jud. Ntc. Ex. B, at p. 12; Morgan Hill Mun. Code, § 1.19.010 (“This chapter provides for an administrative citation process that may be used by the city to address any violation of the municipal code . . .”); Req. Jud. Ntc. Ex B, at p. 14; Morgan Hill Mun. Code. § 1.19.060, subd. (B) (“If no specific fine amount is set, the amount of the fine shall be one hundred dollars for a first violation, two hundred dollars for a second violation of the same ordinance within one year, and five hundred dollars for each additional violation of the same ordinance within one year”); Req. Jud. Ntc. Ex. A, at p. 10; Morgan Hill Mun. Code, § 9.04.060 (“Any instrument, device or article used or possessed in violation of the provisions of this chapter is declared to be a public nuisance and may be confiscated and possessed by a police officer of the city and turned over to the chief of police under the conditions set forth in this section. If no complaint for violation of this chapter is filed within seventy-two hours of the taking, the instrument or device shall be returned to the person from whom it was taken. If a complaint for violation of this chapter is filed within seventy-two hours, the chief of police may return it to the person from whose possession it was taken upon such conditions as he deems desirable for the public welfare. If the person from whom it was taken is not convicted of a violation of this chapter, then the device or instrument shall be returned to him without any conditions. If there is a conviction and sixty days have expired since the date of conviction, the same may be destroyed by the chief of police or returned to the person from whom it was taken upon such conditions</p>	<p>Disputed, though immaterial. The evidence and code sections cited by Plaintiffs do not show that violations would result in confiscation of any property, or any penalty beyond an administrative citation process that could result in a fine.</p> <p>Supporting evidence: Pls.’ Req. Jud. Ntc. Ex. B, at p. 12 (Morgan Hill Mun. Code, § 1.19.010); Pls.’ Req. Jud. Ntc. Ex B, at p. 14 (Morgan Hill Mun. Code. § 1.19.060, subd. (B)); Pls.’ Req. Jud. Ntc. Ex. A, at p. 10 (Morgan Hill Mun. Code, § 9.04.060).</p>

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	as the chief deems desirable for the public welfare.”)	
25	While the City was considering adopting the ordinance, Plaintiff CRPA twice notified lawmakers of its opposition to the law, explaining that section 25250 preempted the City's proposed 48-hour reporting requirement. Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (June 1, 2018) (attached to Barvir Decl. as Ex. BB, at pp. 53-60); Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (Oct. 22, 2018) (attached to Barvir Decl. as Ex. CC, at pp. 62-65).	Undisputed but immaterial.
26	On October 30, 2018, Plaintiff CRPA again notified Defendant Morgan Hill in writing of its position that Penal Code section 25250 preempted Ordinance No. 2289, requesting that the City voluntarily repeal the Ordinance. Pls.' Verif. Compl. ¶ 7, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 7, Barvir Decl., Ex. Y; Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (Oct. 30, 2018) (attached to Barvir Decl. as Ex. DD, at pp. 67-69).	Undisputed but immaterial.
27	Defendant City of Morgan Hill did not voluntarily repeal Ordinance No. 2289, and it took effect as Morgan Hill Municipal Code 9.04.030 on December 29, 2018. The City has enforced the law since that time and has never disavowed its intention to do so. Pls.' Verif. Compl. ¶¶ 7, 8, 11 Barvir Decl. Ex. X; Defs.' Verif. Answer ¶¶ 7, 11, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. A, at p. 9; Def. Morgan Hill's Resp. Pls.' Form Interrogs., Set One, at p. 8:16-	Undisputed, except that Plaintiffs' cited evidence does not show that anyone has ever been cited for a violation of Morgan Hill Municipal Code 9.04.030. As of July 19, 2019, no one had been cited. Supporting evidence: Barvir Decl., Ex. Y (Defs.' Verif. Answer ¶ 11).

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	18 (attached to Barvir Decl. as Ex. Z).	
28	Plaintiff CRPA also wrote to the city of Palm Springs, notifying local lawmakers that section 25250 preempted its local attempt to shorten the time that firearm-theft victims have to report their property stolen. On November 14, 2018, after receiving CRPA's analysis, the city of Palm Springs voluntarily repealed its 48-hour reporting requirement. Barvir Decl. Exs. EE-KK, at pp. 71-111.	Undisputed, but immaterial and misleading. Palm Springs expressly declined to acknowledge that its 48-hour reporting requirement was preempted. <i>See</i> Barvir Decl. Ex. JJ, at p. 94 (report by City Attorney of Palm Springs stating that "the City of Palm Springs is a charter city and does not acknowledge that it lacks the authority to establish a timeline for reporting a firearm lost or stolen that is shorter than that mandated by state law.").
29	Like Morgan Hill, a number of cities throughout California have adopted their own local firearm theft-reporting laws. Req. Jud. Ntc. Exs. M-W, at pp. 424-444.	Undisputed.
30	The city of Los Angeles requires the reporting of lost or stolen firearms to local law enforcement within 48 hours. Req. Jud. Ntc. Ex. M, at p. 423; L.A. Mun. Code, § 55.2	Undisputed.
31	The city of Oakland requires the reporting of lost or stolen firearms to local law enforcement within 48 hours. Req. Jud. Ntc. Ex. N, at p. 426; Oakland Mun. Code, § 9.36.131.	Undisputed.
32	The city of Port Hueneme requires the reporting of lost or stolen firearms to local law enforcement within 48 hours. Req. Jud. Ntc. Ex. P, at p. 430; Port Hueneme Mun. Code, § 3914.10.	Undisputed.
33	The city of Sacramento requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	Undisputed.

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	Req. Jud. Ntc. Ex. Q, at p. 430; Sacramento Mun. Code, § 9.32.180.	
34	The city of San Francisco requires the reporting of lost or stolen firearms to local law enforcement within 48 hours. Req. Jud. Ntc. Ex. R, at p. 434; S.F. Mun. Code, § 616.	Undisputed.
35	The city of Sunnyvale requires the reporting of lost or stolen firearms to local law enforcement within 48 hours. Req. Jud. Ntc. Ex. U, at p. 440; Sunnyvale Mun. Code, § 9.44.030.	Undisputed.
36	The city of Tiburon requires the reporting of lost or stolen firearms to local law enforcement within 48 hours. Req. Jud. Ntc. Ex. W, at p. 444; Tiburon Mun. Code, § 32-27.	Undisputed.
37	The city of Oxnard requires the reporting of lost or stolen firearms to local law enforcement within 72 hours. Req. Jud. Ntc. Ex. O, at p. 428; Oxnard Mun. Code, § 7-141.1.	Undisputed.
38	The city of Simi Valley requires the reporting of lost or stolen firearms to local law enforcement within 72 hours. Req. Jud. Ntc. Ex. T, at p. 438; Simi Valley Mun. Code, § 5-22.12.	Undisputed.
39	The city of Thousand Oaks requires the reporting of lost or stolen firearms to local law enforcement within 72 hours. Req. Jud. Ntc. Ex. V, at p. 442; Thousand Oaks Mun. Code, § 5-11.02.	Undisputed.

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
40	The city of Santa Cruz requires the reporting of lost or stolen firearms to local law enforcement within five days. Req. Jud. Ntc. Ex. S, at p. 436; Santa Cruz Mun. Code, § 9.30.010.	Undisputed.
41	At the October 24, 2018 meeting of the Morgan Hill City Council, councilmembers received within their agenda packets a City Council Staff Report and a PowerPoint Presentation citing that the city of San Jose requires reporting of lost or stolen firearms to local law enforcement within 24 hours. Req. Jud. Ntc. Ex. F, at pp. 73, 75-76, 277.	Undisputed, but immaterial.
42	In adopting MHMC section 9.40.030, the City of Morgan Hill cited four general "reasons for requiring theft reporting." Req. Jud. Ntc. Ex. F, at p. 75.	Undisputed that these are four of the reasons considered by the Morgan Hill City Council for requiring theft reporting.
43	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that "[w]hen a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking" and that "[r]eporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it." Req. Jud. Ntc. Ex. F, at p. 75.	Undisputed.
44	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that "[r]eporting laws help disarm prohibited persons by deterring them from falsely claiming that their firearms were lost or stolen."	Undisputed.

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	Req. Jud. Ntc. Ex. F, at p. 75.	
45	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that "[r]eporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner." Req. Jud. Ntc. Ex. F, at p. 75.	Undisputed.
46	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that "[r]eporting laws make gun owners more accountable for their weapons." Req. Jud. Ntc. Ex. F, at p. 75.	Undisputed.
47	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to serve the City's interests than the statewide 5-day requirement. 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.	Disputed, but immaterial to any preemption theory. An ordinance's effectiveness at serving public safety interests is not material to establishing whether an ordinance is preempted. <i>See, e.g., Fiscal v. City & Cty. of S.F.</i> , 158 Cal. App. 4th 895, 895 (2008) ("we need not, and do not, pass judgment on the merits of" a local initiative or decide "whether gun control is an effective means to combat crime"). Morgan Hill alternatively disputes this fact because the City Council, in its "official legislative records" for Municipal Code section 9.40.030 (<i>see</i> Pls.' Req. Jud. Ntc., p. 4), cited the following factors weighing in favor of a 48-hour requirement: <ul style="list-style-type: none"> • "Earlier notification of lost or stolen firearms allows police to more easily identify stolen weapons during the course of an investigation." • "The 48-hour reporting period also provides an opportunity for early identification and may reduce the chance

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
		<p>of lost or stolen firearms being used in additional crimes.”</p> <ul style="list-style-type: none"> • “48 hours is the time for reporting by firearms dealers” and it is “commonly used in other local ordinances.” <p>The record also shows that Morgan Hill based its reporting ordinance on Sunnyvale Mun. Code, § 9.44.030, which requires reporting within 48 hours, because Sunnyvale’s ordinance “has been in place for several years without any significant issues, and we believe it is easier to understand and enforce” than a competing model by the Association of Bay Area Governments.</p> <p>Supporting evidence: Plaintiffs’ Req. Jud. Ntc. Ex. F, p. 75-76 (packet pp. 203-04) (from adopted City Council Staff Report dated Oct. 24, 2018); <i>id.</i> Ex. F, p. 277 (packet p. 405) (from City Council presentation in agenda packet dated Oct. 24, 2018); <i>id.</i> Ex. U, p. 440 (Sunnyvale Mun. Code, § 9.44.030).</p>
48	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to deter false reporting that a firearm has been lost or stolen to cover up criminal activity than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	<p>Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs’ Allegedly Undisputed Material Fact No. 47, which Morgan Hill incorporates here as if fully set out at length. This is additionally disputed because the Morgan Hill City Council, in its “official legislative records” for Municipal Code section 9.40.030 (<i>see</i> Pls.’ Req. Jud. Ntc., p. 4), cited the following factors:</p> <ul style="list-style-type: none"> • “The 48-hour reporting period . . . provides an opportunity for early identification and may reduce the chance of lost or stolen firearms being used in additional crimes.” • Sunnyvale’s 48-hour reporting ordinance was chosen as a model because it “has been in place for several years without any significant issues, and we believe it is easier to

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
		understand and enforce . . .” Supporting evidence: Plaintiffs' Req. Jud. Ntc. Ex. F, p. 75-76 (packet pp. 203-04) (from adopted City Council Staff Report dated Oct. 24, 2018).
49	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to deter false reporting by prohibited persons that a firearm has been lost or stolen than the statewide 5- day requirement. Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.	Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs' Allegedly Undisputed Material Fact No. 47, which Morgan Hill incorporates here as if fully set out at length. This is additionally disputed because the Morgan Hill City Council, in its “official legislative records” for Municipal Code section 9.40.030 (<i>see</i> Pls.' Req. Jud. Ntc., p. 4), cited the following factors: <ul style="list-style-type: none"> • “The 48-hour reporting period . . . provides an opportunity for early identification and may reduce the chance of lost or stolen firearms being used in additional crimes,” which could include crimes by prohibited people. • Sunnyvale's 48-hour reporting ordinance was chosen as a model because it “has been in place for several years without any significant issues, and we believe it is easier to understand and enforce . . .” Supporting evidence: Plaintiffs' Req. Jud. Ntc. Ex. F, p. 75-76 (packet pp. 203-04) (from adopted City Council Staff Report dated Oct. 24, 2018).
50	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene than the statewide 5-day requirement. Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at	Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs' Allegedly Undisputed Material Fact No. 47, which Morgan Hill incorporates here as if fully set out at length. This is additionally disputed because the Morgan Hill City Council, in its “official legislative records” for Municipal Code section 9.40.030 (<i>see</i> Pls.' Req. Jud. Ntc., p. 4), cited the following factors:

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	pp. 323-326, Ex. J, pp. 347-362.	<ul style="list-style-type: none"> • “Earlier notification of lost or stolen firearms allows police to more easily identify stolen weapons during the course of an investigation.” • “The 48-hour reporting period also provides an opportunity for early identification and may reduce the chance of lost or stolen firearms being used in additional crimes.” <p>Supporting evidence: Plaintiffs’ Req. Jud. Ntc. Ex. F, p. 75-76 (packet pp. 203-04) (from adopted City Council Staff Report dated Oct. 24, 2018, pp. 73-81 of Ex. F).</p>
51	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to aid law enforcement in recovering lost or stolen firearm than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	<p>Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs’ Allegedly Undisputed Material Fact No. 47, which Morgan Hill incorporates here as if fully set out at length. This is additionally disputed because the Morgan Hill City Council, in its “official legislative records” for Municipal Code section 9.40.030 (<i>see</i> Pls.’ Req. Jud. Ntc., p. 4), cited the following factors:</p> <ul style="list-style-type: none"> • “Earlier notification of lost or stolen firearms allows police to more easily identify stolen weapons during the course of an investigation.” • “The 48-hour reporting period also provides an opportunity for early identification and may reduce the chance of lost or stolen firearms being used in additional crimes.” <p>Supporting evidence: Plaintiffs’ Req. Jud. Ntc. Ex. F, p. 75-76 (packet pp. 203-04) (from adopted City Council Staff Report dated Oct. 24, 2018).</p>
52	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to make gun owners more accountable for their weapons than the statewide 5-day	Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs’ Allegedly Undisputed Material Fact No. 47, which Morgan Hill incorporates here as if fully set out at length. This is additionally disputed because the

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	<p>requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	<p>Morgan Hill City Council, in its "official legislative records" for Municipal Code section 9.40.030 (<i>see</i> Pls.' Req. Jud. Ntc., p. 4), cited the following factors:</p> <ul style="list-style-type: none"> Sunnyvale's 48-hour reporting ordinance was chosen as a model because it "has been in place for several years without any significant issues, and we believe it is easier to understand and enforce . . ." <p>Supporting evidence: Plaintiffs' Req. Jud. Ntc. Ex. F, p. 75-76 (packet pp. 203-04) (from adopted City Council Staff Report dated Oct. 24, 2018).</p>
53	<p>There is no reliable body of academic or scientific work establishing that firearm theft-reporting requirements, in general, have any impact on the City's purported interests in its 48-hour reporting requirement.</p> <p>Morrall et al., <i>The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States</i> (Rand Corp. 2018) p. 180. ("RAND Study") (attached to Barvir Decl. as Ex. EE).</p>	<p>Disputed, but immaterial to any preemption theory. Reliable research supports Morgan Hill's adoption of a firearm theft-reporting requirement to mitigate the danger lost or stolen firearms pose to the community. But a local ordinance's impact on public safety interests is not material to establishing whether it is preempted. <i>See, e.g., Fiscal v. City & Cty. of S.F.</i>, 158 Cal. App. 4th 895, 895 (2008) ("we need not, and do not, pass judgment on the merits of" a local initiative "or engage ourselves in the sociological and cultural debate about whether gun control is an effective means to combat crime").</p> <p>Plaintiff also cannot use an academic dispute about the effectiveness of a 48-hour reporting requirement to shift the burden to Morgan Hill to show that its ordinance's benefits outweigh asserted adverse effects on transient Californians. The relevant question for this form of preemption is whether any adverse effect "outweighs the <u>possible</u> benefit to the municipality." <i>Sherwin-Williams Co. v. City of L.A.</i> (1993) 4 Cal. 4th 893, 898 (citations omitted) (emphasis added). Morgan Hill is unaware of any preemption ruling that has declined to credit "possible" benefits of a local ordinance, as stated in the legislative record, and instead</p>

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
		<p>credited external evidence questioning the impact of a local ordinance.</p> <p>Supporting evidence: Allison Decl. ISO MSJ, Ex. 4 (David Hemenway, Deborah Azrael, and Matthew Miller, "Whose Guns are Stolen? The Epidemiology of Gun Theft Victims," <i>Injury Epidemiology</i> 4, no. 1 (2017)); <i>id.</i> Ex. 5 (Brian Freskos, "Missing Pieces: Gun Theft from Legal Gun Owners is on the Rise, Quietly Fueling Violent Crime, <i>The Trace</i>, November 20, 2017); <i>id.</i> Ex. 6 (Daniel W. Webster et al., "Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws," in <i>Reducing Gun Violence in America: Informing Policy with Evidence and Analysis</i> (Baltimore: The Johns Hopkins University Press, 2013), 118).</p>
54	<p>There is no reliable body of academic or scientific work that would establish that requiring the reporting of firearm theft or loss to law enforcement within 48 hours is more likely to aid law enforcement than requiring the reporting within 5 days.</p> <p><i>See</i> RAND Study, at p. 180, Barvir Decl. Ex. EE.</p>	<p>Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs' Allegedly Undisputed Material Fact No. 53, which Morgan Hill incorporates here as if fully set out at length.</p>
55	<p>According to the United States Department of Justice, while about 90% of burglaries involving stolen firearms were reported to law enforcement between 2005 and 2010, only about 1 of every 5 firearms had been recovered between 1 day and 6 months after reporting.</p> <p>Langton, U.S. Dept. of Justice, Crime Data Brief: Firearms Stolen During Household Burglaries and Other Property Crimes, 2005- 2010 (Nov. 2012) ("USDOJ Crime Brief") p. 256 (attached to Barvir Decl. as Ex. PP); see also RAND Study, at p. 180, Barvir Decl. Ex.</p>	<p>Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs' Allegedly Undisputed Material Fact No. 53, which Morgan Hill incorporates here as if fully set out at length. This fact is disputed for the additional reason that the cited source does not support Plaintiffs' suggestion that 1 out of 5 firearms (20%) is a low rate of recovery. There is no basis for this implication because the report does not compare the 20% recovery figure for firearms recovered after burglaries to the rate of recovery for firearm thefts that were not reported at all.</p> <p>Supporting evidence: Barvir Decl. Ex. PP (Langton, U.S. Dept. of Justice, Crime Data</p>

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	EE.	Brief: Firearms Stolen During Household Burglaries and Other Property Crimes, 2005-2010 (Nov. 2012)).
56	<p>According to the United States Department of Justice, although “victimizations involving stolen firearms could have occurred from one day to up to six months before the NCVS [National Crime Victimization Study] interview [from which these statistics were drawn], the amount of time that had elapsed made no significant difference in the percentage of households for which guns had not been recovered at the time of the interview.”</p> <p>USDOJ Crime Brief, at p. 256, Barvir Decl. Ex. PP.</p>	<p>Disputed, but immaterial to any preemption theory for the reasons provided in the response to Plaintiffs' Allegedly Undisputed Material Fact No. 53, which Morgan Hill incorporates here as if fully set out at length. This fact is immaterial for the additional reason that Plaintiffs' quotation from the cited source refers to the amount of time that passed between reported burglaries and interviews to collect data about those burglaries. It does not address or analyze the amount of time that passed between burglaries and reports being made of a stolen firearm, or reports and subsequent recovery of firearms, and so provides no basis to draw any conclusions about reporting timeframes and the speed of firearm recovery.</p> <p>Supporting evidence: Barvir Decl. Ex. PP, pp. 256, 258 (Langton, U.S. Dept. of Justice, Crime Data Brief: Firearms Stolen During Household Burglaries and Other Property Crimes, 2005- 2010 (Nov. 2012)).</p>
57	<p>The Legal Community Against Violence (“LCAV”), now known as the Giffords Law Center to Prevent Gun Violence, has published a series of “model laws” for state and local governments to adopt. Among the model laws the organization has promoted throughout California requires the reporting of lost or stolen firearms.</p> <p>Legal Community Against Violence, Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales (Sept. 2011) (“LCAV Model Laws”) pp. 273, 329-333 (attached to Barvir Decl. at Ex. QQ).</p>	<p>Undisputed, but immaterial to any preemption theory. No theory of preemption requires consideration of Morgan Hill's legislative drafting process or use of model laws—or, in this case, rejection of a model law not propounded by the LCAV which Morgan Hill declined to use. <i>See</i> Pls.' Req. Jud. Ntc. Ex. F, p. 76 (packet p. 204) (from adopted City Council Staff Report dated Oct. 24, 2018).</p>

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
58	<p>The LCAV Model Laws cite the federal law requirement that firearm dealers report the loss or theft of firearms in their inventory within 48 hours as justification for the 48- hour limit proposed in the 2011 version of the organizations' theft-reporting model law.</p> <p>LCAV Model Laws, at pp. 332-333, Barvir Decl. Ex. OO.</p>	<p>Undisputed, but immaterial to any preemption theory. No theory of preemption requires consideration of Morgan Hill's legislative drafting process or use of model laws—or, in this case, rejection of a model law not propounded by the LCAV which Morgan Hill declined to use. <i>See</i> Pls.' Req. Jud. Ntc. Ex. F, p. 76 (from adopted City Council Staff Report dated Oct. 24, 2018).</p>
59	<p>In 2011, the Association of Bay Area Governments ("ABAG") published a report recommending that area cities and counties, including the City of Morgan Hill, adopt model ordinances requiring the reporting of lost or stolen firearms.</p> <p>Req. Jud. Ntc. Ex. F, at pp. 75-76, 89-104; Association of Bay Area Governments, A High Price to Pay: The Economic and Social Costs of Youth Gun Violence in San Mateo County (Sept. 2011) ("ABAG Report") p. 192 (attached to Barvir Decl. at Ex. MM).</p>	<p>Undisputed.</p>
60	<p>LCAV has assisted ABAG in its efforts to promote gun control laws in the Bay Area region of California, and it prepared the model laws for ABAG's Youth Gun Violence Task Force. Among those model laws was a requirement for the reporting of firearm theft or loss.</p> <p>Legal Community Against Violence, 2009 California Report: Recent Developments in Federal, State, and Local Gun Laws (June 12, 2009) pp. 390-391 (attached to Barvir Decl. as Ex. RR).</p>	<p>Disputed, though immaterial to any preemption theory. The report Plaintiffs cite does not support this assertedly material fact that ABAG "promot[es] gun control laws," with or without LCAV's assistance. The report describes the Association of Bay Area Governments (ABAG) as "a comprehensive planning agency of local governments in the San Francisco Bay Area composed of nine counties and 101 cities" and refers to ABAG's work as involving "[r]egional partnerships among cities and counties to adopt uniform regulatory policies." The report indicates that LCAV provided model laws to ABAG for use in a gun violence task force by its local government members, not that LCAV and ABAG jointly "promote[d]" gun laws.</p> <p>Supporting evidence: Barvir Decl. at Ex.</p>

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
		RR, pp. 390-91.
61	In enacting Penal Code section 25250, the statewide theft-reporting requirement, Proposition 63 voters recognized that such laws help law enforcement "investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners." Req. Jud. Ntc. Ex. C, at p. 22.	Undisputed.
62	Supporters of Proposition 63, which created Penal Code section 25250, informed voters that the reporting of lost and stolen firearms 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." Ballot Pamp., Gen. Elec. (Nov. 8, 2016) rebuttal to argument against Prop. 63, p. 402 (attached to Barvir Decl. as Ex. SS).	Undisputed.

Dated: June 11, 2020

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