

COURT OF APPEAL, SIXTH APPELLATE DISTRICT, DIVISION ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: 268728 NAME: Anna M. Barvir FIRM NAME: Michel & Associates, P.C. STREET ADDRESS: 180 East Ocean Blvd., Suite 200 CITY: Long Beach STATE: CA ZIP CODE: 90802 TELEPHONE NO.: (562) 216-4444 FAX NO.: (562) 216-4445 E-MAIL ADDRESS: abarvir@michellawyers.com ATTORNEY FOR (name): G. Mitchell Kirk, et al. APPELLANT: G. Mitchell Kirk, et al. RESPONDENT: City of Morgan Hill, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 161 North First Street MAILING ADDRESS: 161 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Old Courthouse JUDGES (all who participated in case): Peter H. Kirwan	COURT OF APPEAL CASE NUMBER (if known): H048745 FOR COURT USE ONLY SUPERIOR COURT CASE NUMBER: 19-CV-346360
CIVIL CASE INFORMATION STATEMENT	
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).	

PART I – APPEAL INFORMATION**1. APPEALABILITY****a. Appeal is from:**

- ☐ judgment after jury trial.
☐ judgment after court trial.
☐ default judgment.
☐ judgment after an order granting a summary judgment motion.
☐ judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430.
☐ judgment of dismissal after an order sustaining a demurrer.
☐ an order after judgment under Code Civ. Proc., § 904.1(a)(2).
☐ an order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13).
☒ Other (describe and specify code section that authorizes this appeal): Order Granting a Summary Judgment Motion

b. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

☒ Yes ☐ No (If no, please explain why the judgment is appealable):

2. TIMELINESS OF APPEAL (Provide all applicable dates.)

- a.** Date of entry of judgment or order appealed from: Jul 30, 2020
b. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104: N/A, See Attachment 2
c. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?
☐ Yes ☒ No (If yes, please specify the type of motion):
 Date notice of intention to move for new trial (if any) filed: _____
 Date motion filed: _____ Date motion denied: _____ Date denial served: _____
d. Date notice of ☒ appeal or ☐ cross-appeal filed: Jan 12, 2021

3. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal? ☐ Yes ☒ No
 (If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE: Kirk, et al. v. City of Morgan Hill, et al.	APPELLATE COURT CASE NUMBER:
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4. APPELLATE CASE HISTORY *(Provide additional information, if necessary, on attachment 4.)* Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

☐ Yes ☒ No (If yes, insert name of appellate court):

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

5. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

☐ Yes ☒ No (If yes, please indicate the rule or statute that applies)

☐ Rule 8.29 (e.g., constitutional challenge; state or county party) ☐ Code Civ. Proc., § 1355 (Escheat)

☐ Bus. & Prof. Code, § 16750.2 (Antitrust)

☐ Gov. Code, § 946.6(d) (Actions against public entities)

☐ Bus. & Prof. Code, § 17209 (Unfair Competition Act)

☐ Gov. Code, § 4461 (Disabled access to public buildings)

☐ Bus. & Prof. Code, § 17536.5 (False advertising)

☐ Gov. Code, § 12656(a) (False Claims Act)

☐ Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney)

☐ Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)

☐ Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)

☐ Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)

☐ Pub. Resources Code, § 21167.7 (CEQA)

☐ Other (specify statute):

NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.

PART II – NATURE OF ACTION

1. Nature of action *(check all that apply)*:

a. ☐ Conservatorship

b. ☐ Contract

c. ☐ Eminent domain

d. ☒ Equitable action (1) ☒ Declaratory relief (2) ☒ Other *(describe)*: Injunctive relief prohibiting enforcement of

e. ☐ Family law

f. ☐ Guardianship

g. ☐ Probate

h. ☐ Real property rights (1) ☐ Title of real property (2) ☐ Other *(describe)*:

i. ☐ Tort

(1) ☐ Medical malpractice

(2) ☐ Product liability

(3) ☐ Other personal injury

(4) ☐ Personal property

(5) ☐ Other tort *(describe)*:

j. ☐ Trust proceedings

k. ☐ Writ proceedings in superior court

(1) ☐ Mandate (Code Civ. Proc., § 1085)

(2) ☐ Administrative mandate (Code Civ. Proc., § 1094.5)

(3) ☐ Prohibition (Code Civ. Proc., § 1102)

(4) ☐ Other *(describe)*:

l. ☐ Other action *(describe)*:

2. ☐ This appeal is entitled to calendar preference/priority on appeal *(cite authority)*:

APPELLATE CASE TITLE: Kirk, et al. v. City of Morgan Hill, et al.	APPELLATE COURT CASE NUMBER:
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PART III – PARTY AND ATTORNEY INFORMATION

In the spaces below or on a separate page or pages, list all the parties and all their attorneys of record who will participate in the appeal. For each party, provide all of the information requested on the left side of the page. On the right side of the page, if a party is self-represented please check the appropriate box and provide the party's mailing address, telephone number, fax number, and e-mail address. If a party is represented by an attorney, on the right side of the page, check the appropriate box and provide all of the requested information about that party's attorney.

☒ Responses to Part III are attached instead of below

Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: Email address:
Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: Email address:
Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: Email address:
Name of Party: Appellate court designation: <input type="checkbox"/> Appellant <input type="checkbox"/> Respondent Trial court designation: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Represented by attorney <input type="checkbox"/> Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: Email address:

☒ Additional pages attached
 Date: January 29, 2021

This statement is prepared and submitted by:

(SIGNATURE OF ATTORNEY OR SELF-REPRESENTED PARTY)

APPELLATE CASE TITLE:

Kirk, et al. v. City of Morgan Hill, et al.

APPELLATE COURT CASE NUMBER:

NOTICE TO PARTIES: A copy of this form must be served on the other party or parties to this appeal. If served by mail or personal delivery, THE MAILING OR DELIVERY MUST BE PERFORMED BY SOMEONE WHO IS NOT A PARTY TO THE APPEAL. Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

PROOF OF SERVICE

☐ Mail☐ Personal Service☒ Electronic Service

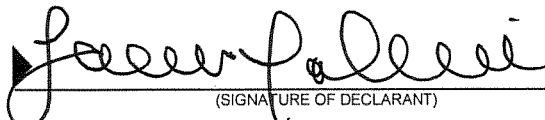
1. At the time of service I was at least 18 years of age.
2. My residence or business address is (*specify*):
180 East Ocean Blvd., Suite 200, Long Beach, CA 90802
3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows (*complete a, b, or c*):
 - a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
 - (1) I enclosed a copy in an envelope **and**
 - (a) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. ☐ **Personal delivery.** I am not a party to this legal action. I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:
 - c. ☒ **Electronic service.** My electronic service address is (*specify*): lpalmerin@michellawyers.com
I electronically served a copy as follows:
 - (1) Name of person served: Anthony P. Schoenberg
 - (2) Electronic service address of person served: tschoenberg@fbm.com
 - (3) On (*date*): January 29, 2021

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

Date: January 29, 2021

Laura Palmerin

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

SHORT TITLE: Kirk, et al. v. City of Morgan Hill, et al.	CASE NUMBER: H048745
-------------------------------------------------------------	-------------------------

ATTACHMENT (Number): 1

(This Attachment may be used with any Judicial Council form.)

Name of Party: G. Mitchell Kirk
 Appellate court designation: Appellant
 Trial court designation: Plaintiff
 Represented by attorneys
 Name of attorney: Anna M. Barvir
 State Bar no.: 203714
 Email address: abarvir@michellawyers.com
 Name of attorney: C.D. Michel
 State Bar no.: 144258
 Email address: cmichel@michellawyers.com
 Name of attorney: Tiffany D. Cheuvront
 State Bar no.: 317144
 Email address: tcheuvront@michellawyers.com
 Firm name: Michel & Associates, P.C.
 Mailing Address: 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802
 Telephone no.: (562) 216-4444
 Fax no.: (562) 216-4445

Name of Party: California Rifle & Pistol Association, Incorporated
 Appellate court designation: Appellant
 Trial court designation: Plaintiff
 Represented by attorneys
 Name of attorney: Anna M. Barvir
 State Bar no.: 203714
 Email address: abarvir@michellawyers.com
 Name of attorney: C.D. Michel
 State Bar no.: 144258
 Email address: cmichel@michellawyers.com
 Name of attorney: Tiffany D. Cheuvront
 State Bar no.: 317144
 Email address: tcheuvront@michellawyers.com
 Firm name: Michel & Associates, P.C.
 Mailing Address: 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802
 Telephone no.: (562) 216-4444
 Fax no.: (562) 216-4445

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this
 Attachment are made under penalty of perjury.)

Page 1 of 3
 (Add pages as required)

SHORT TITLE: Kirk, et al. v. City of Morgan Hill, et al.	CASE NUMBER: H048745
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ATTACHMENT (Number): 1

(This Attachment may be used with any Judicial Council form.)

Name of Party: City of Morgan Hill
 Appellate court designation: Respondent
 Trial court designation: Defendant
 Represented by attorneys
 Name of attorney: Anthony P. Schoenberg
 State Bar no.: 203714
 Email address: tschoenberg@fbm.com
 Name of attorney: James Allison
 State Bar no.: 319204
 Email address: jallison@fbm.com
 Firm name: Farella Braun + Martel, LLP
 Mailing Address: 235 Montgomery Street, 17th Floor, San Francisco, CA 94104
 Telephone no.: (415) 954-4400
 Fax no.: (415) 954-4480
 Name of attorney: Hannah Shearer
 State Bar no.: 292710
 Email address: hshearer@giffords.org
 Firm name: Giffords Law Center to Prevent Gun Violence
 Mailing Address: 262 Bush Street #555, San Francisco, CA 94104
 Telephone no.: (415) 433-2062
 Fax no.: (415) 433-3357

Name of Party: Morgan Hill Chief of Police David Swing
 Appellate court designation: Respondent
 Trial court designation: Defendant
 Represented by attorneys
 Name of attorney: Anthony P. Schoenberg
 State Bar no.: 203714
 Email address: tschoenberg@fbm.com
 Name of attorney: James Allison
 State Bar no.: 319204
 Email address: jallison@fbm.com
 Firm name: Farella Braun + Martel, LLP
 Mailing Address: 235 Montgomery Street, 17th Floor, San Francisco, CA 94104
 Telephone no.: (415) 954-4400
 Fax no.: (415) 954-4480
 Name of attorney: Hannah Shearer
 State Bar no.: 292710
 Email address: hshearer@giffords.org
 Firm name: Giffords Law Center to Prevent Gun Violence
 Mailing Address: 262 Bush Street #555, San Francisco, CA 94104
 Telephone no.: (415) 433-2062
 Fax no.: (415) 433-3357

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this
 Attachment are made under penalty of perjury.)

Page 2 of 3
 (Add pages as required)

SHORT TITLE: Kirk, et al. v. City of Morgan Hill, et al.	CASE NUMBER: H048745
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ATTACHMENT (Number): 1

(This Attachment may be used with any Judicial Council form.)

Name of Party: Morgan Hill City Clerk Irma Torrez
 Appellate court designation: Respondent
 Trial court designation: Defendant
 Represented by attorneys
 Name of attorney: Anthony P. Schoenberg
 State Bar no.: 203714
 Email address: tschoenberg@fbm.com
 Name of attorney: James Allison
 State Bar no.: 319204
 Email address: jallison@fbm.com
 Firm name: Farella Braun + Martel, LLP
 Mailing Address: 235 Montgomery Street, 17th Floor, San Francisco, CA 94104
 Telephone no.: (415) 954-4400
 Fax no.: (415) 954-4480
 Name of attorney: Hannah Shearer
 State Bar no.: 292710
 Email address: hshearer@giffords.org
 Firm name: Giffords Law Center to Prevent Gun Violence
 Mailing Address: 262 Bush Street #555, San Francisco, CA 94104
 Telephone no.: (415) 433-2062
 Fax no.: (415) 433-3357

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 3 of 3
(Add pages as required)

Attachment 2

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/12/2021 9:21 AM
Reviewed By: A. Rodriguez
Case #19CV346360
Envelope: 5621425

C. D. Michel – SBN 144258
Anna M. Barvir – SBN 268728
Tiffany D. Chevront – SBN 317144
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445
cmichel@michellawyers.com

Attorneys for Plaintiffs/Petitioners
G. Mitchell Kirk and California Rifle
& Pistol Association, Incorporated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
DOWNTOWN COURTHOUSE

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

Plaintiffs and Petitioners,

vs.

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

Defendants and Respondents.

Case No: 19CV346360

[Assigned to the Honorable Peter H. Kirwan;
Department 19]

**DECLARATION OF ANNA M. BARVIR RE:
NOTICE APPEAL**

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1 Mr. James Allison, attorney of record for the Defendants, informing him of the missing signature
2 line and requesting that Defendants file another proposed judgment for the court's consideration
3 and signature. (Exhibit B.)

4 8. The City filed a revised Proposed Judgment on November 24, 2020. (See revised
5 Proposed Judgment filed on Nov. 24, 2020, attached hereto as **Exhibit C.**)

6 9. On December 29, 2020, having still received nothing indicating that the court had
7 adopted Defendants' Proposed Judgment or otherwise entered judgment in this matter, I directed
8 Ms. Palmerin to once again send an email to the Civil Department Court Clerk requesting an
9 update on the status on the revised Proposed Judgment. (Exhibit B.) We still have not received a
10 response.

11 10. Out of an abundance of caution and to prevent missing any deadline for the filing of
12 an appeal that might have been triggered even though the court has not yet entered a final
13 judgment in this matter, we are now filing a Notice of Appeal.

14
15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed on January 11, 2021, at Stanton, California.

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19 Anna M. Barvir
20 Declarant
21
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EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 203714 NAME: Anthony P. Schoenberg FIRM NAME: Farella Braun + Martel, LLP STREET ADDRESS: 235 Montgomery Street, 17 th Floor CITY: San Francisco STATE: CA ZIP CODE: 94104 TELEPHONE NO.: 415-954-4400 FAX NO.: 415-954-4480 E-MAIL ADDRESS: tschoenberg@fbm.com CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE ATTORNEY FOR (name): DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ		FOR COURT USE ONLY CASE NUMBER: 19CV346360 JUDICIAL OFFICER:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 161 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:		
PLAINTIFF/PETITIONER: G. MITCHELL KIRK; and CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED CITY OF MORGAN HILL; MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; DEFENDANT/RESPONDENT: MORGAN HILL CITY CLERK IRMA TORREZ OTHER:		DEPT:
PROPOSED ORDER (COVER SHEET)		

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

- Name of the party submitting the proposed order:
CITY OF MORGAN HILL; MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN HILL CITY CLERK IRMA TORREZ
- Title of the proposed order:
[Proposed] Judgment
- The proceeding to which the proposed order relates is:
Motion for Summary Judgment
 - Description of proceeding: Summary Judgment Hearing
 - Date and time: July 30, 2020, 9:00 a.m.
 - Place: Department 6, Santa Clara Superior Court
- The proposed order was served on the other parties in the case.
Yes

Anthony P. Schoenberg

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:
Kirk v. City of Morgan Hill

CASE NUMBER:
19CV346360

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action**.

a. My residence or business address is (*specify*):
235 Montgomery Street, 17th Floor, San Francisco, CA 94104

b. My electronic service address is (*specify*):
pwoodfin@fbm.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
C.D. Michel, Esq.
Anna M. Barvir, Esq.
Tiffany D. Cheuvront, Esq.
MICHEL & ASSOCIATES, P.C.
180 Est Ocean Blvd., Suite 200
Long Beach, CA 90802
Tel: (562) 216-4444
Fax: (562) 216-4445

b. To (*electronic service address of person served*):
cmichel@michellawyers.com
tcheuvront@michellawyers.com
abarvir@michellawyers.com

c. On (*date*):
August 25, 2020


☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date:
August 25, 2020

Pam Woodfin

(TYPE OR PRINT NAME OF DECLARANT)

▶ 
(SIGNATURE OF DECLARANT)

1 Anthony P. Schoenberg (State Bar No. 203714)
tschoenberg@fbm.com

2 James Allison (State Bar No. 319204)
jallison@fbm.com

3 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
4 San Francisco, California 94104
Telephone: (415) 954-4400
5 Facsimile: (415) 954-4480

6 Hannah Shearer (State Bar No. 292710)
hshearer@giffords.org
7 Giffords Law Center to Prevent Gun Violence
268 Bush Street #555
8 San Francisco, CA 94104
Telephone: (415) 433-2062
9 Facsimile: (415) 433-3357

10 Attorneys for CITY OF MORGAN HILL,
MORGAN HILL CHIEF OF POLICE DAVID
11 SWING, MORGAN HILL CITY CLERK IRMA
TORREZ

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE
14

15 G. MITCHELL KIRK; and CALIFORNIA
16 RIFLE & PISTOL ASSOCIATION,
INCORPORATED,

17 Plaintiffs and Petitioners,

18 vs.

19 CITY OF MORGAN HILL; MORGAN HILL
20 CHIEF OF POLICE DAVID SWING, in his
official capacity; MORGAN HILL CITY
21 CLERK IRMA TORREZ, in her official
capacity; and DOES 1-10,,
22

23 Defendants and Respondents.

Case No. 19CV346360

PROPOSED JUDGMENT

Action Filed: April 15, 2019

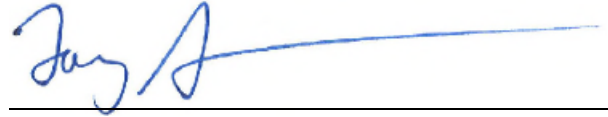
24 The Court hereby enters judgment in favor of Defendants, CITY OF MORGAN HILL;
25 MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN HILL
26 CITY CLERK IRMA TORREZ, in her official capacity sued herein as CITY OF MORGAN
27 HILL; MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN
28 HILL CITY CLERK IRMA TORREZ, in her official capacity, and against Plaintiff G.

1 MITCHELL KIRK; and CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED,
2 pursuant to the attached Order granting Defendants' Motion for Summary Judgment, signed by the
3 Court on July 30, 2020.

4 Dated: August 24, 2020

FARELLA BRAUN + MARTEL LLP

5
6 By:



Anthony Schoenberg

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8 Attorneys for CITY OF MORGAN HILL, MORGAN
9 HILL CHIEF OF POLICE DAVID SWING, MORGAN
10 HILL CITY CLERK IRMA TORREZ
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Document received by the CA 6th District Court of Appeal.

1 Roderick M. Thompson (State Bar No. 96192)
rthompson@fbm.com
2 Anthony P. Schoenberg (State Bar No. 203714)
tschoenberg@fbm.com
3 James Allison (State Bar No. 319204)
jallison@fbm.com
4 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
5 San Francisco, California 94104
Telephone: (415) 954-4400
6 Facsimile: (415) 954-4480

7 Hannah Shearer (State Bar No. 292710)
hshearer@giffords.org
8 Giffords Law Center to Prevent Gun Violence
268 Bush Street #555
9 San Francisco, CA 94104
Telephone: (415) 433-2062
10 Facsimile: (415) 433-3357

11 Attorneys for CITY OF MORGAN HILL,
MORGAN HILL CHIEF OF POLICE DAVID
12 SWING, MORGAN HILL CITY CLERK IRMA
TORREZ
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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE
16

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

19 Plaintiffs and Petitioners,
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21 vs.
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23 CITY OF MORGAN HILL; MORGAN HILL
CHIEF OF POLICE DAVID SWING, in his
official capacity; MORGAN HILL CITY
CLERK IRMA TORREZ, in her official
capacity; and DOES 1-10,
24

25 Defendants and Respondents.
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27
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Case No. 19CV346360

PROOF OF SERVICE

Action Filed: April 15, 2019

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STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

On August 25, 2020, I served true copies of the following document(s) described as

NOTICE OF APPEARANCE;

on the interested parties in this action as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address pwoodfin@fbm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on August 25, 2020, at San Francisco, California.

Pamela Woodfin

EXHIBIT B

Laura Palmerin

From: Laura Palmerin
Sent: Wednesday, October 14, 2020 10:36 AM
To: ssweb@scscourt.org
Subject: Kirk v. City of Morgan Hill, Case No. 19CV346360 [MA-Interwoven.FID78693]
Attachments: 2132695_2020-08-25 Proposed Judgment.PDF


Follow Up Flag: Follow up
Flag Status: Completed

Hello,

Attorneys for Plaintiffs in the above-referenced matter would like to follow up on the attached Proposed Judgment filed on August 25, 2020 by Defendants. Please let us know if a Judgment will be issued by the Court or if anything else is required from us to get the Judgment issued.

Please feel free to contact me if you have any questions or concerns.

Best regards,

<p>Laura Palmerin Legal Secretary/Paralegal</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4473 Main: (562) 216-4444 Fax: (562) 216-4445 Email: lpalmerin@michellawyers.com Web: www.michellawyers.com</p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

Document received by the CA 6th District Court of Appeal.

Laura Palmerin

From: SSCivil Info <sscivilinfo@scscourt.org>
Sent: Monday, October 26, 2020 12:57 PM
To: Laura Palmerin
Subject: Re: Kirk v. City of Morgan Hill, Case No. 19CV346360 [MA-Interwoven.FID78693]

Good Afternoon,

The Proposed Judgment does not have a signature line for the Judge. We will be notifying the submitting party to resubmit their order.

clerk

Document received by the CA 6th District Court of Appeal.

Laura Palmerin

From: SSWeb <ssweb@scscourt.org>
Sent: Friday, November 20, 2020 11:58 AM
To: Laura Palmerin
Subject: FW: Kirk v. City of Morgan Hill, Case No. 19CV346360 [MA-Interwoven.FID78693]

We apologize for the delay in response to your email due to shortage of staffing.

It appears there is no signature line on the proposed judgment for the judge to sign.

Civil Clerk - ar

Document received by the CA 6th District Court of Appeal.

Laura Palmerin

From: Laura Palmerin
Sent: Friday, November 20, 2020 5:31 PM
To: tschoenberg@fbm.com; James Allison
Cc: Anna M. Barvir
Subject: Kirk v. City of Morgan Hill, Case No. 19CV346360 [MA-Interwoven.FID78693]
Attachments: 2132695_2020-08-25 Proposed Judgment.PDF; Court's 10-26-20 Email Response.pdf; Court's 11-20-20 Email Response.pdf


Hello Counsel,

Since we had not heard back from the Court regarding your filed Proposed Judgment (attached here) we reached out to the Clerk on October 14, 2020. The Clerk replied to our email on October 26, 2020 stating that the Proposed Judgment did not have a signature line for the Judge to sign off and that they would be informing the filing party of this, their email response attached here. Today we got another response from the Court stating the same (but did not say they would let the filing party know), email attached here.

So we just wanted to let you know to see if you could please file a revised Proposed Judgment with a signature line for the Judge to sign.

Please feel free to contact our office if you have any questions or concerns.

Best regards,

<p>Laura Palmerin Legal Secretary/Paralegal</p> 	<p>Direct: (562) 216-4473 Main: (562) 216-4444 Fax: (562) 216-4445 Email: lpalmerin@michellawyers.com Web: www.michellawyers.com</p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

ease notify us immediately by reply e-mail

Document received by the CA 6th District Court of Appeal.

Laura Palmerin


From: Laura Palmerin
Sent: Tuesday, December 29, 2020 12:18 PM
To: sscivilinfo@scscourt.org
Subject: Kirk v. City of Morgan Hill, Case No.: 19CV346360 [MA-Interwoven.FID78693]
Attachments: 2142083_2020-11-24 Revised Proposed Judgment.PDF

Hello,

We would like to follow up regarding a Proposed Judgment that was filed on November 24, 2020, attached here. Please let us know when we could expect to receive the signed Judgment.

Please feel free to contact us if there are any issues with processing the document.

Best regards,

<p>Laura Palmerin Legal Secretary/Paralegal</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4473 Main: (562) 216-4444 Fax: (562) 216-4445 Email: lpalmerin@michellawyers.com Web: www.michellawyers.com</p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

Document received by the CA 6th District Court of Appeal.

EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 203714 NAME: Anthony P. Schoenberg FIRM NAME: Farella Braun + Martel, LLP STREET ADDRESS: 235 Montgomery Street, 17 th Floor CITY: San Francisco STATE: CA ZIP CODE: 94104 TELEPHONE NO.: 415-954-4400 FAX NO.: 415-954-4480 E-MAIL ADDRESS: tschoenberg@fbm.com CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE ATTORNEY FOR (name): DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 161 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:		
PLAINTIFF/PETITIONER: G. MITCHELL KIRK; and CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED CITY OF MORGAN HILL; MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; DEFENDANT/RESPONDENT: MORGAN HILL CITY CLERK IRMA TORREZ OTHER:		CASE NUMBER: 19CV346360 JUDICIAL OFFICER:
PROPOSED ORDER (COVER SHEET)		DEPT:

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

- Name of the party submitting the proposed order:
CITY OF MORGAN HILL; MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN HILL CITY CLERK IRMA TORREZ
- Title of the proposed order:
[Proposed] Judgment
- The proceeding to which the proposed order relates is:
Motion for Summary Judgment
 - Description of proceeding: Summary Judgment Hearing
 - Date and time: July 30, 2020, 9:00 a.m.
 - Place: Department 6, Santa Clara Superior Court
- The proposed order was served on the other parties in the case.
Yes

Anthony P. Schoenberg
(TYPE OR PRINT NAME)

► 
(SIGNATURE OF PARTY OR ATTORNEY)

1 Anthony P. Schoenberg (State Bar No. 203714)
tschoenberg@fbm.com

2 James Allison (State Bar No. 319204)
jallison@fbm.com

3 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
4 San Francisco, California 94104
Telephone: (415) 954-4400
5 Facsimile: (415) 954-4480

6 Hannah Shearer (State Bar No. 292710)
hshearer@giffords.org
7 Giffords Law Center to Prevent Gun Violence
268 Bush Street #555
8 San Francisco, CA 94104
Telephone: (415) 433-2062
9 Facsimile: (415) 433-3357

10 Attorneys for CITY OF MORGAN HILL,
MORGAN HILL CHIEF OF POLICE DAVID
11 SWING, MORGAN HILL CITY CLERK IRMA
TORREZ

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE

15 G. MITCHELL KIRK; and CALIFORNIA
16 RIFLE & PISTOL ASSOCIATION,
INCORPORATED,

17 Plaintiffs and Petitioners,

18 vs.

19 CITY OF MORGAN HILL; MORGAN HILL
20 CHIEF OF POLICE DAVID SWING, in his
official capacity; MORGAN HILL CITY
21 CLERK IRMA TORREZ, in her official
capacity; and DOES 1-10,

22 Defendants and Respondents.
23

Case No. 19CV346360

PROPOSED JUDGMENT

Action Filed: April 15, 2019

24 The Court hereby enters judgment in favor of Defendants, CITY OF MORGAN HILL;
25 MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN HILL
26 CITY CLERK IRMA TORREZ, in her official capacity sued herein as CITY OF MORGAN
27 HILL; MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN
28 HILL CITY CLERK IRMA TORREZ, in her official capacity, and against Plaintiff G.

1 MITCHELL KIRK; and CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED,
2 pursuant to the Order granting Defendants' Motion for Summary Judgment, signed by the Court
3 on July 30, 2020.

4 Dated:
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7 _____
8 Peter H. Kirwan
9 Judge of the Superior Court
10 County of Santa Clara
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Document received by the CA 6th District Court of Appeal.

CASE NAME:
Kirk v. City of Morgan Hill

CASE NUMBER:
19CV346360

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):
235 Montgomery Street, 17th Floor, San Francisco, CA 94104

b. My electronic service address is (*specify*):
abrown@fbm.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
C.D. Michel, Esq.
Anna M. Barvir, Esq.
Tiffany D. Cheuvront, Esq.
MICHEL & ASSOCIATES, P.C.
180 Est Ocean Blvd., Suite 200
Long Beach, CA 90802
Tel: (562) 216-4444 / Fax: (562) 216-4445

b. To (*electronic service address of person served*):
cmichel@michellawyers.com; tcheuvront@michellawyers.com; abarvir@michellawyers.com

c. On (*date*):
11-24-2020

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date:
11-24-2020

Alison Brown
(TYPE OR PRINT NAME OF DECLARANT)

► 
(SIGNATURE OF DECLARANT)

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FILED
JUL 30 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY [Signature] DEPUTY
S. Hernandez

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

*Order Issued
on Submitted Matter*

G. MITCHELL KIRK, et al.,

Plaintiffs,

vs.

CITY OF MORGAN HILL, et al.,

Defendants,

Case No. 19-CV-346360

ORDER RE: MOTIONS FOR
SUMMARY JUDGMENT

The following matters came on for hearing before the Honorable Peter H. Kirwan on July 30, 2020, at 9:00 a.m. in Department 19: (1) the motion by plaintiffs G. Mitchell Kirk ("Kirk") and California Rifle Pistol Association, Incorporated ("CRPA") (collectively, "Plaintiffs") for summary judgment of the complaint; and (2) the motion by defendants City of Morgan Hill (the "City"), Morgan Hill Chief of Police David Swing, and Morgan Hill City Clerk Irma Torrez (collectively, "Defendants") for summary judgment of the complaint. The matters having been submitted, the Court finds and orders as follows:

Factual and Procedural Background

This is an action for declaratory, injunctive, and writ relief. According to the allegations of the complaint, California voters enacted Proposition 63 (“Prop 63”) on November 8, 2016. (Complaint, ¶ 4.) Prop 63 was an omnibus gun-control initiative that included a mandatory reporting requirement for all victims of firearm theft within the state, Penal Code section 25250. (*Ibid.*) That statute requires victims of firearm theft within the state to report to a local law enforcement agency that a firearm has been stolen within five days of the theft or within five days after the victim reasonably becomes aware of the theft. (*Ibid.*)

The City adopted Ordinance No. 2289 (the “Ordinance”) on October 24, 2018, to amend section 9.04.030 of the Morgan Hill Municipal Code (“Municipal Code”). (Complaint, ¶ 1.) The Ordinance has been in full force and effect since its enactment, and Defendants have enforced and are currently enforcing Municipal Code section 9.04.030. (*Id.* at ¶ 11.) The intended effect of the Ordinance was to require persons to report the theft of their firearms to local law enforcement. (*Id.* at ¶ 2.) Under the new law, victims of firearm theft in the City—whether residents or visitors—must report to the City’s Police Department that a firearm has been stolen within 48 hours of the theft or within 48 hours after the victim reasonably becomes aware of the theft. (*Ibid.*)

As amended by the Ordinance, Municipal Code section 9.04.030 now reads as follows:

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 (48) 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.

(Complaint, ¶ 3.) The language in Municipal Code section 9.04.030 mirrors the language in other theft reporting ordinances adopted by other California cities. (*Id.* at ¶ 3, fn. 1.)

1 Kirk is a resident of the City and a firearm owner. (Complaint, ¶ 13.) In the event Kirk
2 is a victim of firearm theft, he is subject to the requirements of the Ordinance. (*Ibid.*) Kirk has,
3 within the past year, paid sales taxes and property taxes while a resident of the City, with
4 portions of the proceeds of those taxes transferred to the City for funding general law
5 enforcement activities of its police department, including training its officers on the enforcement
6 of the Ordinance. (*Ibid.*)

7 CRPA is a nonprofit membership organization incorporated under the laws of California
8 that works to preserve and expand constitutional and statutory rights of gun ownership, including
9 the right to self-defense and the right to keep and bear arms. (Complaint, ¶ 14.) Many of
10 CRPA's members reside in the City or the surrounding county, conduct business in the City, visit
11 or travel through the City, or are otherwise subject to the Municipal Code. (*Ibid.*) CRPA
12 represents its members both in their general interest as citizens and in their particular interest in
13 the right to lawfully own and possess firearms. (*Ibid.*)

14 Plaintiffs claim that declaratory and writ relief is warranted because an actual controversy
15 has arisen and now exists between them and Defendants over the validity of the Ordinance, and
16 there is no adequate remedy in the ordinary course of law. (Complaint, ¶¶ 10 & 22.) Plaintiffs
17 allege that “[b]y passing Prop 63 and enacting [Penal Code] section 25250, voters caused state
18 law to occupy the whole of the field of firearm-theft-reporting, such that a local ordinance that
19 purports to prescribe reporting requirements for firearm theft, like the Ordinance, is preempted.”
20 (*Id.* at ¶ 5.) Plaintiffs further allege that the Ordinance is preempted because it conflicts with the
21 less onerous reporting requirement set forth in Penal Code section 25250. (*Id.* at ¶ 6.) “Because
22 those preempted portions of the Ordinance continue to remain in effect, and because there is a
23 danger that firearm-theft victims who reside in or who are victimized in the City may be subject
24 to prosecution for conduct that Penal Code section 25250 deems lawful, Plaintiffs[] seek judicial
25 relief declaring the Ordinance, codified at Municipal Code 9.04.030, to be void as preempted by
26 state law.” (*Id.* at ¶¶ 8 & 12.) Specifically, Plaintiffs ask the Court to declare that “the
27 Ordinance is preempted by state law because: (1) it duplicates state law that obligates victims of
28 firearms theft to report such theft to a law enforcement agency; (2) it contradicts state law that

1 sets for[th] the maximum time period by which such theft must be reported; or (3) it enters into
2 areas fully occupied by the state.” (*Id.* at ¶ 24.) Plaintiffs urge that a judicial declaration is
3 necessary and appropriate at this time so that they may ascertain their rights and duties without
4 first subjecting themselves to criminal liability by violating the Ordinance. (*Id.* at ¶ 12.)
5 Plaintiffs further contend that Defendants’ ongoing enforcement of an invalid law constitutes a
6 waste of taxpayer funds and an undue burden on them. (*Ibid.*) Plaintiffs also seek a permanent
7 injunction “forbidding Defendants, their agents, employees, representatives, and all those acting
8 in concert with them from enforcing the Ordinance, and further requiring Defendants to remove
9 corresponding Municipal Code [section] 9.04.030 from the ... Municipal Code.” (*Id.* at ¶ 28.)

10 Based on the foregoing allegations, Plaintiffs filed a complaint for declaratory and
11 injunctive relief and petition for writ of mandate and/or prohibition against Defendants on April
12 15, 2019. Defendants filed an answer on July 19, 2019. Dismissal of Plaintiffs’ second cause of
13 action for a writ of mandate and/or prohibition was entered as requested on July 26, 2019. Thus,
14 the first cause of action for declaratory and injunctive relief is the only claim that remains at
15 issue.

16 Thereafter, Plaintiffs and Defendants filed cross-motions for summary judgment of the
17 complaint. The parties then filed oppositions and replies in connection with the pending
18 motions. The motions were originally set for hearing on July 2, 2020, but the Court continued
19 the hearing to July 30, 2020.

20 Discussion

21 I. Plaintiffs’ Motion for Summary Judgment

22 Pursuant to Code of Civil Procedure section 437c, Plaintiffs move for summary judgment
23 of the complaint on the ground that Municipal Code section 9.04.030 is preempted by Penal
24 Code section 25250.

25 A. Plaintiffs’ Request for Judicial Notice

26 Plaintiffs ask the Court to take judicial notice of: chapters from the Municipal Code; the
27 Ballot Pamphlet for Prop 63; excerpts from the Morgan Hill City Council Agenda Packets;
28

1 minutes from Morgan Hill City Council Meetings; excerpts from a Santa Cruz City Council
2 Agenda Packet; and municipal code provisions enacted in other municipalities in California.

3 Defendants do not oppose Plaintiffs' request for judicial notice.

4 The Court may properly take judicial notice of the foregoing materials as "[r]egulations
5 and legislative enactments issued by or under the authority of the United States or any public
6 entity in the United States" and "[o]fficial acts of the legislative, executive, and judicial
7 departments of the United States and any state of the United States." (Evid. Code, § 452, subds.
8 (b) & (c); see *Otay Land Co., LLC v. U.E. Limited, L.P.* (2017) 15 Cal.App.5th 806, 826, fn. 9
9 [taking judicial notice of documents comprising the legislative history of a statute]; see also *St.*
10 *John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 967, fn. 5 (*St.*
11 *John's*) [taking judicial notice of a ballot pamphlet text and arguments in favor of a proposition];
12 *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027 [courts may take
13 judicial notice of local ordinances and the official resolutions, reports, and other official acts of a
14 city], disapproved on other grounds in *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th
15 1193, 1202-1203; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th
16 172, 178, fn. 3 [taking judicial notice of city council agenda].)

17 Accordingly, Plaintiffs' request for judicial notice is GRANTED.

18 **B. Legal Standard**

19 "A motion for summary judgment shall be granted when 'all the papers submitted show
20 that there is no triable issue as to any material fact and that the moving party is entitled to a
21 judgment as a matter of law.' ([Code Civ. Proc.,] § 437c, subd. (c).) Where a plaintiff moves for
22 summary judgment, the plaintiff bears the initial burden of showing that there is no defense to a
23 cause of action by proving each element of the cause of action entitling the plaintiff to judgment.
24 (Code Civ. Proc., § 437, subd. (p)(1); see *Paramount Petroleum Corporation v. Super.*
25 *Ct.* (2014) 227 Cal.App.4th 226, 241.) If the plaintiff makes such a showing, the burden then
26 shifts to the defendant to show that a triable issue of one or more material facts exists as to a
27 cause of action or a defense thereto. (*Ibid.*)

1 For purposes of establishing their respective burdens, the parties involved in a motion for
2 summary judgment must present admissible evidence, which is to say the motion is evidentiary
3 in nature and cannot be based solely upon the allegations in a complaint. (*Saporta v.*
4 *Barbagelata* (1963) 220 Cal.App.2d 463 (*Saporta*).) In ruling on the motion, however, a court
5 cannot weigh the evidence presented or deny summary judgment on the ground any particular
6 evidence lacks credibility. (*Melovich Builders v. Super. Ct.* (1984) 160 Cal.App.3d 931, 935
7 (*Melovich*); *Lerner v. Super. Ct.* (1977) 70 Cal.App.3d 656, 660 (*Lerner*).) As summary
8 judgment “is a drastic remedy eliminating trial,” the court must liberally construe evidence in
9 support of the party opposing summary judgment and resolve all doubts concerning the evidence
10 in favor of that party. (See *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389 (*Dore*);
11 see also *Hepp v. Lockheed-California Co.* (1978) 86 Cal.App.3d 714, 717-718 (*Hepp*).)

12 **C. State Law Preemption In General and As Applied to Gun Control**

13 “ ‘ “Under article XI, section 7 of the California Constitution, ‘[a] county or city may
14 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations
15 not in conflict with general [state] laws.’ [¶] ‘If otherwise valid local legislation conflicts
16 with state law, it is preempted by such law and is void.’ [Citations.] [¶] ‘A conflict exists if
17 the local legislation “ ‘duplicates, contradicts, or enters an area fully occupied by general law,
18 either expressly or by legislative implication.’ ” ’ [Citations.]” [Citations.]’ [Citation.]” (*People*
19 *v. Nguyen* (2014) 222 Cal.App.4th 1168, 1174 (*Nguyen*).)

20 “Local legislation is ‘duplicative’ of general law when it is coextensive therewith.”
21 (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin-Williams*).)
22 The term “coextensive” means having the same scope or boundaries, or corresponding exactly in
23 extent. (See Lexico Online Dict. <https://www.lexico.com/en/definition/coextensive> [as of July
24 27, 2020]; see also Merriam-Webster Dict. <https://www.merriam->
25 [webster.com/dictionary/coextensive](https://www.merriam-webster.com/dictionary/coextensive) [as of July 27, 2020]; *Nordyke v. King* (2002) 27 Cal.4th
26 875, 883 (*Nordyke*) [stating that a local ordinance duplicates state law if it criminalizes precisely
27 the same acts as the state law]; *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27
28 Cal.4th 853, 865 (*Great Western*) [same].) Local legislation is not duplicative of state law if the

1 local legislation increases the requirements set forth in the state law. (See e.g., *Suter v. City of*
2 *Lafayette* (1997) 57 Cal.App.4th 1109, 1123 (*Suter*) [“An ordinance duplicates state law if it is
3 coextensive with state law. [Citation.] Section 8–609, although echoing the provisions of Penal
4 Code section 12071, is not co-extensive with it. Rather, it increases the storage requirements set
5 forth in the Penal Code.”].)

6 “[L]ocal legislation is ‘contradictory’ to general law when it is inimical thereto.”
7 (*Sherwin-Williams, supra*, 4 Cal.4th at p. 898.) “ ‘[A] local ordinance is not impliedly
8 preempted by conflict with state law unless it “mandate[s] what state law expressly forbids, [or]
9 forbid[s] what state law expressly mandates.” [Citation.] That is because, when a local
10 ordinance “does not prohibit what the statute commands or command what it prohibits,” the
11 ordinance is not “inimical to” the statute. [Citation.]’ [Citation.]” (*Browne v. County of*
12 *Tehama* (2013) 213 Cal.App.4th 704, 721 (*Browne*); *Great Western, supra*, 27 Cal.4th at p. 866.)
13 Where it is possible to comply with both the local legislation and the state law, the local
14 legislation does not contradict state law. (See e.g., *Suter, supra*, 57 Cal.App.4th at p. 1124.)

15 “[L]ocal legislation enters an area that is ‘fully occupied’ by general law when the
16 Legislature has expressly manifested its intent to ‘fully occupy’ the area [citation], or when it has
17 impliedly done so in light of one of the following indicia of intent: ‘(1) the subject matter has
18 been so fully and completely covered by general law as to clearly indicate that it has become
19 exclusively a matter of state concern; (2) the subject matter has been partially covered by general
20 law couched in such terms as to indicate clearly that a paramount state concern will not tolerate
21 further or additional local action; or (3) the subject matter has been partially covered by general
22 law, and the subject is of such a nature that the adverse effect of a local ordinance on the
23 transient citizens of the state outweighs the possible benefit to the’ locality [citations].”
24 (*Sherwin-Williams, supra*, 4 Cal.4th at p. 898.)

25 “ ‘ “Whether state law preempts a local ordinance is a question of law” [Citation.]’
26 [Citation.]” (*Nguyen, supra*, 222 Cal.App.4th at p. 1177; *Browne, supra*, 213 Cal.App.4th at p.
27 718.) “ ‘The party claiming that general state law preempts a local ordinance has the burden of
28 demonstrating preemption.’ [Citation.]” (*Nguyen, supra*, 222 Cal.App.4th at p. 1177.)

1 “ ‘[W]hen local government regulates in an area over which it traditionally has exercised
2 control, ..., California courts will presume, absent a clear indication of preemptive intent from the
3 Legislature, that such regulation is *not* preempted by state statute. [Citation.]’ [Citations.] ‘The
4 presumption against preemption accords with [the] more general understanding that “it is not to
5 be presumed that the legislature in the enactment of statutes intends to overthrow long-
6 established principles of law unless such intention is made clearly to appear either by express
7 declaration or by necessary implication.” [Citations.]’ [Citation.]” (*In re Jennifer S.* (2009) 179
8 Cal.App.4th 64, 69; *Browne, supra*, 213 Cal.App.4th. at p. 719.) In addition, courts “ ‘have been
9 particularly “reluctant to infer legislative intent to preempt a field covered by municipal
10 regulation when there is a significant local interest to be served that may differ from one locality
11 to another.” ’ [Citation.] ‘ “The common thread of the cases is that if there is a significant local
12 interest to be served which may differ from one locality to another then the presumption favors
13 the validity of the local ordinance against an attack of state preemption.” ’ [Citation.]” (*City of*
14 *Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 744
15 (*City of Riverside*).)

16 “A review of the gun law preemption cases indicates that the Legislature has preempted
17 discrete areas of gun regulation rather than the entire field of gun control.” (*Great Western,*
18 *supra*, 27 Cal.4th at p. 861.) In response to cases determining that various local laws were not
19 preempted by state law, the Legislature’s response has been measured and limited, extending
20 state preemption into narrow areas in which legislative interest had been aroused, but at the same
21 time carefully refraining from enacting a blanket preemption of all local firearms regulation. (*Id.*
22 at pp. 861-863; *Suter, supra*, 57 Cal.App.4th at pp. 1119-1120.) For example, in response to
23 *Galvan v. Superior Court* (1969) 70 Cal.2d 851 (*Galvan*), the Legislature adopted Government
24 Code section 9619, the predecessor to current Government Code section 53071, which made
25 clear an “intent ‘to occupy the whole field of registration or licensing of ... firearms.’ ” (*Id.* at p.
26 862.) Similarly, in response to *Olsen v. McGillicuddy* (1971) 15 Cal.App.3d 897, the Legislature
27 enacted Government Code section 53071.5, which expressly occupies the field of the
28 manufacture, possession, or sale of imitation firearms. (*Id.* at p. 863.) “In sum, a review of case

1 law and the corresponding development of gun control statutes in response to that law
2 demonstrates that the Legislature has chosen not to broadly preempt local control of firearms but
3 has targeted certain specific areas for preemption.” (*Id.* at p. 864; *Suter, supra*, 57 Cal.App.4th
4 at p. 1119 [“That state law tends to concentrate on specific areas, leaving unregulated other
5 substantial areas relating to the control of firearms, indicates an intent to permit local
6 governments to tailor firearms legislation to the particular needs of their communities.”].)

7 With this framework in mind, the Court turns to California law regulating the reporting of
8 lost or stolen firearms to determine whether and to what extent the Legislature has preempted
9 this area of the law.

10 **D. Analysis**

11 Plaintiffs contend Penal Code section 25250 preempts Municipal Code section 9.04.030
12 because: (1) Municipal Code section 9.04.030 duplicates Penal Code section 25250; (2)
13 Municipal Code section 9.04.030 contradicts Penal Code section 25250; (3) the subject matter
14 has been so fully and completely covered by state law as to clearly indicate that it has become
15 exclusively a matter of state concern; and (4) the subject matter has been partially covered by
16 state law, and the subject is of such a nature that the adverse effect of Municipal Code section
17 9.04.030 on the transient citizens of the state outweighs the possible benefit to the City.

18 In opposition, Defendants assert Municipal Code section 9.04.030 is not preempted by
19 Penal Code section 25250 because: (1) Municipal Code section 9.04.030 does not duplicate
20 Penal Code section 25250; (2) Municipal Code section 9.04.030 does not contradict Penal Code
21 section 25250; (3) the subject matter has not been so fully and completely covered by state law
22 as to clearly indicate that it has become exclusively a matter of state concern; and (4) although
23 the subject matter has been partially covered by state law, and the subject is of such a nature that
24 the adverse effect of Municipal Code section 9.04.030 on the transient citizens of the state does
25 not outweigh the possible benefit to the City.

1 **1. Municipal Code Section 9.04.030 is Not Duplicative of Penal Code**
2 **Section 25250**

3 Plaintiffs argue Municipal Code section 9.04.030 duplicates Penal Code section 25250
4 because they both prohibit a person from failing to report a lost or stolen firearm to local law
5 enforcement. Plaintiffs state that Municipal Code section 9.04.030 requires any person who
6 owns or possesses firearm to report the theft or loss of that firearm to the Morgan Hill Police
7 Department within 48 hours, and applies to any resident of the City or any theft or loss of a
8 firearm that occurs in the City. Plaintiffs assert this duplicates Penal Code section 25250, which
9 also requires gun owners to report firearm theft or loss, but gives them five days to make the
10 report. Plaintiffs contend Municipal Code section 9.04.030 is duplicative of Penal Code section
11 25250 because a person will violate both local law and state law if the person lives in or has their
12 firearm stolen or lost within the City and fails to report it.

13 Conversely, Defendants argue Municipal Code section 9.04.030 is not duplicative of
14 Penal Code section 25250 merely because it is possible to violate both local law and state law by
15 failing to report a lost or stolen firearm. Defendants contend that instead of asking whether it is
16 merely possible to violate both state law and local law, courts ask whether the local law prohibits
17 precisely the same acts that are prohibited by state law. Defendants assert that although
18 Municipal Code section 9.04.030 and Penal Code section 25250 prohibit some of the same acts,
19 Municipal Code section 9.40.030 imposes stricter reporting requirements than Penal Code
20 section 25250 and some acts are punishable under Municipal Code section 9.04.030 but not
21 Penal Code section 25250 or vice-versa.

22 Penal Code section 25250 states:

23 (a) Commencing July 1, 2017, every person shall report the loss or theft of
24 a firearm he or she owns or possesses to a local law enforcement agency in
25 the jurisdiction in which the theft or loss occurred within five days of the
26 time he or she knew or reasonably should have known that the firearm had
27 been stolen or lost.

1 (b) Every person who has reported a firearm lost or stolen under
2 subdivision (a) shall notify the local law enforcement agency in the
3 jurisdiction in which the theft or loss occurred within five days if the
4 firearm is subsequently recovered by the person.

5 (c) Notwithstanding subdivision (a), a person shall not be required to
6 report the loss or theft of a firearm that is an antique firearm within the
7 meaning of subdivision (c) of Section 16170.

8 Municipal Code section 9.04.030 provides:

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

15 As Defendants persuasively argue, Municipal Code section 9.04.030 is not duplicative of
16 Penal Code section 25250 because the local law is not coextensive with the state law. (See
17 *Sherwin-Williams, supra*, 4 Cal.4th at p. 897 [“Local legislation is ‘duplicative’ of general law
18 when it is coextensive therewith.”].) Municipal Code section 9.04.030 does not have the same
19 scope or boundaries as Penal Code section 25250 and it does not criminalize precisely the same
20 acts. (See Lexico Online Dict. <https://www.lexico.com/en/definition/coextensive> [as of July 27,
21 2020]; see also Merriam-Webster Dict. [https://www.merriam-
22 webster.com/dictionary/coextensive](https://www.merriam-webster.com/dictionary/coextensive) [as of July 27, 2020]; *Nordyke, supra*, 27 Cal.4th at p. 883
23 [stating that a local ordinance duplicates state law if it criminalizes precisely the same acts as the
24 state law]; *Great Western, supra*, 27 Cal.4th at p. 865 [same].) For example, a resident of the
25 City who waits three days to report a lost or stolen firearm would violate Municipal Code section
26 9.04.030, but not Penal Code section 25250. Similarly, a resident of the City whose gun was
27 stolen in San Jose and who timely reported the theft to the City’s police department would
28 violate Penal Code section 25250, but not Municipal Code section 9.04.030. Additionally, a

1 resident of the City who lost his gun in San Jose and reported to the City's police department
2 four days later would violate both Municipal Code section 9.04.030 and Penal Code section
3 25250, but for different reasons. Municipal Code section 9.04.030 is not duplicative of Penal
4 Code section 25250 because it imposes different and stricter reporting requirements than state
5 law (i.e., Municipal Code section 9.04.030 requires lost or stolen firearms to be reported within
6 48 hours while Penal Code section 25250 requires lost or stolen firearms be reported within 5
7 days). (See *Suter, supra*, 57 Cal.App.4th at p. 1123 ["An ordinance duplicates state law if it is
8 coextensive with state law. [Citation.] Section 8–609, although echoing the provisions of Penal
9 Code section 12071, is not co-extensive with it. Rather, it increases the storage requirements set
10 forth in the Penal Code."]; see also *Great Western, supra*, 27 Cal.4th at pp. 865-866 [although a
11 local ordinance prohibiting the sale of firearms or ammunition on county property overlapped in
12 some respects with state statutes prohibiting the sale of certain dangerous firearms, the local
13 ordinance was not duplicative of the state statutes because the crimes were not identical].)

14 **2. Municipal Code Section 9.04.030 is Not Contradictory to Penal Code**
15 **Section 25250**

16 Plaintiffs argue Municipal Code section 9.04.030 contradicts Penal Code section 25250
17 because Municipal Code section 9.04.030 prohibits them from doing what Penal Code section
18 25250, at least implicitly, allows them to do—take up to five days to report a lost or stolen
19 firearm to a local law enforcement agency in the jurisdiction in which the theft or loss occurred.
20 Plaintiffs contend taking up to five days to report a theft or loss of a firearm is authorized by
21 state law and it is not reasonably possible for citizens passing through the City to know that the
22 Ordinance differs from state law. Plaintiffs cite the case of *Ex parte Daniels* (1920) 183 Cal. 636
23 (*Daniels*) to support is position.

24 In opposition, Defendants assert Plaintiffs advance an incorrect test as Plaintiffs claim an
25 ordinance is preempted by contradiction if it prohibits locally what state statute authorizes.
26 Defendants contend the correct test is that an ordinance is preempted by contradiction only if it
27 prohibits what the state statute commands or commands what it the state statute prohibits.
28 Defendants argue Municipal Code section 9.04.030 does not contradict Penal Code section

1 25250 because Municipal Code section 9.04.030 does not prohibit what Penal Code section
2 25250 mandates or mandate what Penal Code section 25250 prohibits. Defendants point out that
3 Municipal Code section 9.04.030 requires gun owners to report firearm loss or theft within 48
4 hours and Penal Code section 25250 allows, but does not require, waiting up to 5 days before
5 reporting the loss or theft of a firearm. Defendants conclude a person can thus reasonably
6 comply with both the Ordinance and state law by reporting the loss or theft of a firearm to the
7 City's police department within 48 hours.

8 As Defendants persuasively argue, Municipal Code section 9.04.030 is not contradictory
9 to Penal Code section 25250 because it is not inimical to Penal Code section 25250. (*Sherwin-*
10 *Williams, supra*, 4 Cal.4th at p. 898 ["[L]ocal legislation is 'contradictory' to general law when it
11 is inimical thereto."].) A local ordinance is only inimical to a state statute if it mandates what
12 state law expressly forbids, or forbids with state law expressly mandates. (See *Browne, supra*,
13 213 Cal.App.4th at p. 721 [" '[A] local ordinance is not impliedly preempted by conflict with
14 state law unless it "mandate[s] what state law expressly forbids, [or] forbid[s] what state law
15 expressly mandates." [Citation.] That is because, when a local ordinance "does not prohibit
16 what the statute commands or command what it prohibits," the ordinance is not "inimical to" the
17 statute. [Citation.] [Citation.]"]; see also *Great Western, supra*, 27 Cal.4th at p. 866 [same];
18 *Sherwin- Williams, supra*, Cal.4th at p. 902 [same].) Here, Municipal Code section 9.04.030
19 requires a person who owns or possesses a firearm to report the theft or loss of the firearm to the
20 City's police department within 48 hours of the time he or she knew or reasonably should have
21 known that the firearm had been stolen or lost, whenever the person resides in the City or the
22 theft or loss of the firearm occurs in the City. The conduct mandated by Municipal Code section
23 9.04.030 is not prohibited by Penal Code section 25250, which allows a person to report a lost or
24 stolen firearm to a local law enforcement agency within five days from the time a person knew
25 or reasonably should have known that the firearm had been stolen or lost. Moreover, Municipal
26 Code section 9.04.030 does not prohibit conduct that Penal Code section 25250 expressly
27 mandates. Penal Code section 25250 merely permits reporting of lost or stolen firearms up to
28 five days from the time a person knew or reasonably should have known that the firearm had

1 been stolen or lost; the statute does not expressly mandate that persons wait up to five days
2 before reporting a lost or stolen firearm.

3 Furthermore, Municipal Code section 9.04.030 is not inimical to Penal Code section
4 25250 because it is reasonably possible to comply with both Municipal Code section 9.04.030
5 and Penal Code section 25250. (See *Suter, supra*, 57 Cal.App.4th at p. 1124 [providing that
6 where it is possible to comply with both the local legislation and the state law, the local
7 legislation does not contradict state law]; see also *City of Riverside, supra*, 56 Cal.4th at pp. 743
8 & 754-755 “[N]o inimical conflict will be found where it is reasonably possible to comply with
9 both the state and local laws.”]; *Great Western, supra*, 27 Cal.4th at p. 866 [ordinance banning
10 sale of firearms or ammunition on county property was not “inimical” to state statutes
11 contemplating lawful existence of gun shows; ordinance did not require what state law forbade
12 or prohibit what state law demanded].) For example, a gun owner who resides in the City and
13 learns that his firearm has been stolen in the City can comply with both Municipal Code section
14 9.04.030 and Penal Code section 25250 by reporting the theft of the firearm to the City’s police
15 department within 48 hours.

16 Lastly, *Daniels* does not undermine the foregoing analysis. In *Daniels*, the court opined
17 that if the Legislature “had merely fixed the maximum speed limit, it is clear that local
18 legislation fixing a lesser speed limit would not be in conflict therewith, but would be merely an
19 additional regulation.” (*Daniels, supra*, 183 Cal. at p. 645.) Instead, the Legislature made it
20 unlawful to travel at an unreasonable or unsafe speed. (*Id.* at p. 643.) The court determined that
21 a city ordinance fixing a speed limit of 15 miles per hour was a declaration of the local
22 legislative body to the effect that to exceed the limit would be unreasonable, and thereby
23 foreclosed the question of the reasonableness of the speed and substituted the judgment of the
24 local legislative body for the judgment of a jury. (*Id.* at pp. 644 & 647-648.) The court stated:

25 It is evident that the two plans are in direct conflict and that the conflict is a very
26 material one. Under the state law a motor vehicle driver, provided he keeps
27 within the limits expressly fixed by law, is only confronted with the problem of
28 keeping his vehicle at a speed which reasonable men would conclude to be a

1 reasonable speed. While, on the other hand, he is confronted with an arbitrary
2 rule fixed by a local legislative body, so that he would be wholly within his rights
3 in traveling at a speed of 14.9 miles, and violating a criminal law if traveling at a
4 speed of 15.1 miles, whereas, in fact, it might be much more reasonable to travel
5 at a speed of 15.1 miles sometimes on that particular highway than to travel at a
6 slower rate of speed at other times when the traffic was more congested.

7 (*Id.* at p. 644.) For these reasons, the court held that the local ordinance was in direct conflict
8 with the state law. (*Id.* at pp. 647-648.)

9 The state law at issue in this case, Penal Code section 25250, is readily distinguishable
10 from the state law at issue in *Daniels* and much more akin to the hypothetical state law
11 mentioned in *Daniels*, which merely fixed a maximum speed limit. (See *Daniels, supra*, 183
12 Cal. at p. 645 [if the Legislature “had merely fixed the maximum speed limit, it is clear that local
13 legislation fixing a lesser speed limit would not be in conflict therewith, but would be merely an
14 additional regulation”].) Consequently, *Daniels* does not compel a different outcome in this
15 case.

16 **3. Municipal Code Section 9.04.030 Does Not Enter an Area Fully**
17 **Occupied by State Law**

18 **a. The Subject Matter Has Not Been so Fully and Completely**
19 **Covered by State Law as to Clearly Indicate That It Has**
20 **Become Exclusively a Matter of State Concern**

21 Plaintiffs argue Municipal Code section 9.04.030 enters an area fully occupied by state
22 law because the subject matter has been so fully and completely covered by state law as to
23 clearly indicate that it has become exclusively a matter of state concern. Plaintiffs contend state
24 law not only establishes a basic reporting requirement for stolen and lost firearms (i.e., Penal
25 Code, 25250, subdivision (a)), but provides a statewide scheme aimed at addressing both state
26 and local concerns and regulating all manner of conduct related to reporting firearm theft and
27 loss (i.e., Penal Code sections 25250, subdivisions (b)-(c), 25255, 25260, 25265, 25270, and
28 27275). Plaintiffs point out that Penal Code section 25270 details what facts must be part of a

1 report to law enforcement; Penal Code section 25250, subdivision (b) addresses the recovery of
2 lost or stolen firearms, giving a person who owns or possesses a recovered firearm five days to
3 notify local law enforcement of its recovery; Penal Code section 25260 directs every sheriff or
4 police chief to submit description of each firearm that has been reported lost or stolen to the
5 Department of Justice Automated Firearms System; and Penal Code section 25275 makes it
6 crime to knowingly make false report. Plaintiffs further highlight that Penal Code sections
7 25250, subdivision (c) and 25255 contain several exceptions to the reporting requirement,
8 exempting persons such as law enforcement officers and military members. Plaintiffs assert that
9 it makes no sense that state law would inform firearm owners so fully as to their rights and
10 responsibilities regarding theft-reporting, only for local governments to disrupt that scheme by
11 interjecting their own contradictory reporting requirements. Finally, Plaintiffs note that other
12 provisions in the Penal Code (i.e., Prop 63, Section 9, Penal Code section 26915, subdivisions
13 (d) and (f), and Penal Code section 25275, subdivision (b)) expressly sanction additional local
14 gun regulation and conclude that the absence of such language in the reporting provisions
15 demonstrates that no further local regulation was intended.

16 Conversely, Defendants argue the subject matter has not been so fully and completely
17 covered by state law as to clearly indicate that it has become exclusively a matter of state
18 concern. Defendants assert that Prop 63 did not establish a statewide scheme regulating all
19 manner of conduct related to reporting lost or stolen firearms, but merely adopted six narrow and
20 procedural code sections addressing only some circumstances related to reporting lost or stolen
21 firearms. Defendants note that courts have previously determined that state gun regulations
22 spanning multiple Penal Code sections could not reasonably be said to show a comprehensive
23 scheme for the regulation of the particular subject to the exclusion of local regulation.
24 Defendants contend Prop 63's reporting provisions are not obstructed, frustrated, or rendered
25 null by local law requiring people to report lost or stolen guns in 48 hours; rather, Municipal
26 Code section 9.04.030 is in synergy with the purpose of Prop 63. Defendants further assert that
27 the exceptions to the state law reporting requirement do not create a clear indication of
28 preemptive intent because a statutory exception from a state law does not mandate that local

1 governments preserve the exception. Finally, Defendants urge that Prop 63 contemplates local
2 regulation of reporting of lost or stolen firearms because Penal Code section 25270 states that a
3 report must include any additional relevant information required by the local law enforcement
4 agency taking the report. Defendants conclude that Penal Code section 25270 shows voters had
5 no problem with local variations in lost or stolen firearms reporting—which already existed
6 when the statute was adopted in the 17 localities with their own timeframes for theft reporting—
7 and intentionally incorporated local law enforcement discretion into state law.

8 Here, the subject matter of Municipal Code section 9.04.030 is the reporting of lost or
9 stolen firearms. (See *Sherwin-Williams, supra*, 4 Cal.4th at p. 904 [“The first potential indicium
10 of implied preemptive intent focuses on whether the subject matter of the ordinance has been so
11 covered by the statute as to clearly indicate that the field has become exclusively a matter of state
12 concern. [¶] At the outset, the subject matter of the ordinance must be specified”].)

13 It appears that Prop 63 does not exclusively cover the field of reporting lost or stolen
14 firearms such that the matter is exclusively a matter of state concern and there is no room for
15 supplementary or complementary local legislation. (See *Nguyen, supra*, 222 Cal.App.4th at p.
16 1174 [“ ‘If the subject matter or field of the legislation has been fully occupied by the state, there
17 is no room for supplementary or complementary local legislation [Citations.]’ ”].)

18 As is relevant here, the “Findings and Declarations” section for Prop 63 states:

19 [] Under current law, stores that sell ammunition are not required to report to law
20 enforcement when ammunition is lost or stolen. Stores should have to report lost
21 or stolen ammunition within 48 hours of discovering that it is missing so law
22 enforcement can work to prevent that ammunition from being illegally trafficked
23 into the hands of dangerous individuals.

24 [] Californians today are not required to report lost or stolen guns to law
25 enforcement. This makes it difficult for law enforcement to investigate crimes
26 committed with stolen guns, break up gun trafficking rings, and return guns to
27 their lawful owners. We should require gun owners to report their lost or stolen
28 guns to law enforcement.

1 (Ds. RJN, Ex. A.)

2 Similarly, the “Purpose and Intent” section for Prop 63 provides:

3 [] To keep guns and ammunition out of the hands of convicted felons, the
4 dangerously mentally ill, and other persons who are prohibited by law from
5 possessing firearms and ammunition.

6 [¶]

7 [] To require all stores that sell ammunition to report any lost or stolen
8 ammunition within 48 hours of discovering that it is missing.

9 [¶]

10 [] To require the reporting of lost or stolen firearms to law enforcement.

11 (Ds. RJN, Ex. A.)

12 The Voter Guide for Prop 63 contained arguments for the initiative, stating that initiative
13 would “[r]equire people to notify law enforcement if their guns are lost or stolen, before the
14 weapons end up in the wrong hands,” “help police shut down gun trafficking rings and locate
15 caches of illegal weapons,” and “help police recover stolen guns before they’re used in crimes
16 and return them to their lawful owners.”

17 (Ds. RJN, Ex. B.)

18 Municipal Code section 9.04.030 is not inconsistent with the purpose of Prop 63, but
19 synergistic as it also requires the reporting of lost or stolen firearms. (See *Fiscal v. City and*
20 *County of San Francisco* (2008) 158 Cal.App.4th 895 [“[C]ourts have found, in the absence of
21 express preemptive language, that a city or county may make additional regulations, different
22 from those established by the state, if not inconsistent with the purpose of the general law.”]; see
23 also *Great Western, supra*, 27 Cal.4th at p. 868 [“when a statute or statutory scheme seeks to
24 promote a certain activity and, at the same time, permits more stringent local regulation of that
25 activity, local regulation cannot be used to completely ban the activity or otherwise frustrate the
26 statute’s purpose.”].)

27 Moreover, the steps that Prop 63 took in pursuit of its objectives were limited and
28 specific. Prop 63 contains a handful of code sections—Penal Code sections 25250, 25255,

1 25260, 25265, 25270, and 25275—that address certain aspects of the reporting of lost or stolen
2 firearms. Specifically, these provisions address the reporting of lost or stolen firearms,
3 exceptions to the reporting requirements, the submission of a description of lost or stolen
4 firearms, violations and penalties, information required when reporting a lost or stolen firearm,
5 and violations and penalties for making a false report. These statutes do not exclusively cover
6 the field of reporting lost or stolen firearms because their scope is limited. More significantly,
7 the provisions regarding the reporting of lost or stolen firearms contemplate local regulation.
8 (See *Suter, supra*, 57 Cal.App.4th at p. 1121 [“There can be no implied preemption of an area
9 where state law expressly allows supplementary local legislation.”].) Specifically, Penal Code
10 section 25270 states “[e]very person reporting a lost or stolen firearm pursuant to Section 25250
11 shall report the make, model, and serial number of the firearm, if known by the person, *and any*
12 *additional relevant information required by the local law enforcement agency taking the report.*”
13 Thus, the statutory scheme contemplates local regulation regarding the reporting of lost or stolen
14 firearms. Although the statutory scheme seeks to promote a certain activity (i.e., the reporting of
15 lost or stolen firearms), at the same time it permits more stringent local regulation of that
16 activity.

17 Case law demonstrates that rather than intending to deprive municipalities of their police
18 power to regulate guns, the Legislature has been cautious about depriving local municipalities of
19 aspects of their constitutional police power to deal with local conditions. (*California Rifle &*
20 *Pistol Assn. v. City of West Hollywood* (1998) 66 Cal.App.4th 1302, 1318.) “The general fact
21 that state legislation concentrates on specific areas, and leaves related areas untouched (as has
22 been done here), shows a legislative intent to permit local governments to continue to apply their
23 police power according to the particular needs of their communities in areas not specifically
24 preempted.” (*Ibid.*) The fact that Prop 63 only addresses some aspects of reporting lost or stolen
25 firearms, and acknowledges the existence of local regulations regarding the reporting of lost or
26 stolen, is a rather clear indicator that the field has not been fully occupied by the state such that
27 there is no room for supplementary or complementary local legislation.

1 b. **Although the Subject Matter is Partially Covered by State**
2 **Law, the Subject is of Such a Nature that the Adverse Effect of**
3 **Municipal Code Section 9.04.030 on Transient Citizens Does**
4 **Not Outweigh the Possible Benefit to the City**

5 Plaintiffs argue Municipal Code section 9.04.030 enters an area fully occupied by state
6 law because the subject matter has been partially covered by state law, and the subject is of such
7 a nature that the adverse effect of Municipal Code section 9.04.030 on the transient citizens of
8 the state outweighs the possible benefit to the City. Plaintiffs contend Municipal Code section
9 9.04.030 has an adverse effect on transient citizens because it imposes “criminal penalties for
10 violating local laws they are unlikely to be aware of given contradictory state law.” Plaintiffs
11 assert transient citizens could face a “patchwork quilt” of varying reporting requirements that
12 confront gun owners as they move about the state. Plaintiffs also contend that the burden is not
13 outweighed by the possible benefit to the City because “[t]he City has identified no
14 particularized local interest not already purportedly served by state law” and it has not “identified
15 any ‘special need’ that could justify the harmful effects its contradictory theft-reporting law will
16 have on transient Californians.”

17 In opposition, Defendants argue there is no case law providing that local firearm laws
18 burden transient citizens because citizens are obligated to learn about gun regulations that differ
19 from state law. Defendants point out that courts have repeatedly held that local gun regulations
20 have an insignificant adverse effect on transient citizens, far less than other laws that have
21 withstood preemption challenges. Defendants also contend that Plaintiffs use the wrong test by
22 claiming Defendants must present evidence showing that the Ordinance more effectively
23 achieves a local purpose than state law. Defendants point out that the City sought to achieve a
24 number of benefits by adopting Municipal Code section 9.04.030. Defendants assert that those
25 possible benefits are not outweighed by the minimal impact on transient citizens.

26 As Defendants persuasively argue, laws designed to control the sale, use or possession of
27 firearms in a particular community have very little impact on transient citizens, indeed, far less
28 than other laws that have withstood preemption challenges. (*Great Western, supra*, 27 Cal.4th at

1 p. 867; *Suter, supra*, 57 Cal.App.4th at p. 1119.) Notably, Plaintiffs do not identify any case law,
2 and the Court is aware of none, providing that an obligation to learn about local laws that differ
3 from state law constitutes an adverse effect on transient citizens. (See *Schaeffer Land Trust v.*
4 *San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2 (*Schaeffer*) “[A] point which is
5 merely suggested by a party’s counsel, with no supporting argument or authority, is deemed to
6 be without foundation and requires no discussion.”].) In any event, Municipal Code section
7 9.04.030 does not interfere with transient citizens any more than local ordinances prohibiting the
8 consumption of alcoholic beverages on the street, prohibiting gambling, or prohibiting
9 loitering—all of which were found not preempted by state law, and all of which apply to anyone
10 within the geographic confines of the city, not merely to residents. (See *Galvan, supra*, 70
11 Cal.2d at p. 865, superseded by statute as stated in *Great Western, supra*, 27 Cal.4th 853; see
12 also *In re Jennifer S.* (2009) 179 Cal.App.4th 64, 70-71 & 74 [opining that appellant’s argument
13 “that a transient person under the age of 21 who does not reside in Del Norte County could
14 potentially be adversely affected by the Ordinance ‘by drinking one alcoholic beverage and
15 stepping outside of a private home though such an act would not be punishable elsewhere in the
16 state’ ” lacked merit and failed to show that the potential adverse effects on transient citizens
17 outweighed the possible benefits to the county].)

18 Moreover, the fact that problems with firearms are likely to require different treatment in
19 different localities requires no elaborate citation of authority. (*Galvan, supra*, 70 Cal.2d at p.
20 864, superseded by statute as stated in *Great Western, supra*, 27 Cal.4th 853; *Great Western,*
21 *supra*, 27 Cal.4th at p. 867; *Suter, supra*, 57 Cal.App.4th at p. 1119.) The City identified several
22 possible benefits when it passed the Ordinance. (Allison Dec., Ex. 11, Morgan Hill City Council
23 Staff Report, Meeting Date October 24, 2018.) The City highlighted that its ongoing priorities
24 include enhancing public safety and supporting youth, seniors, and the entire community. (*Ibid.*)
25 The City found that laws requiring guns owners to report the loss or theft of a firearm serve
26 several purposes, such as helping law enforcement detect illegal behavior and charge criminals
27 who engage in it, protecting gun owners from criminal accusations when guns are recovered at a
28 crime scene, and making it easier for law enforcement to locate a lost or stolen firearm and return

1 it to its lawful owner. (*Ibid.*) The City also determined that the danger lost or stolen firearms
2 posed to public safety required a heightened level of accountability on the part of individuals
3 who choose to own firearms. (*Ibid.*) After acknowledging state law regarding the reporting of
4 lost and stolen firearms, the City noted that it had multiple local law enforcement agencies and it
5 was important to clarify that the appropriate local law enforcement agency to report lost or stolen
6 firearms to was the City's police department. (*Ibid.*) Finally, the City found that earlier
7 notification of lost or stolen firearms (i.e., within 48 hours instead of 5 days) allowed police to
8 more easily identify stolen weapons during the course of an investigation, provided an
9 opportunity for early identification, and may reduce the chance of lost or stolen firearms being
10 used in additional crimes. (*Ibid.*)

11 Plaintiffs do not cite any legal authority, and the Court is aware of none, providing that
12 Defendants must present evidence showing that the Ordinance effectively, or more effectively
13 than state law, achieved the possible benefits identified by the City. (See *Schaeffer, supra*, 215
14 Cal.App.3d at p. 619, fn. 2 [“[A] point which is merely suggested by a party's counsel, with no
15 supporting argument or authority, is deemed to be without foundation and requires no
16 discussion.”].) Instead, Plaintiffs were required to show that the adverse effect of the Ordinance
17 on the transient citizens of the state outweighs the possible benefit to the City. (See *Nguyen,*
18 *supra*, 222 Cal.App.4th at p. 1177 [“ ‘The party claiming that general state law preempts a local
19 ordinance has the burden of demonstrating preemption.’ [Citation.]”]; see also *Sherwin-*
20 *Williams, supra*, 4 Cal.4th at p. 898 [local legislation enters an area that is fully occupied by
21 general law when the subject matter has been partially covered by general law, and the subject is
22 of such a nature that the adverse effect of a local ordinance on the transient citizens of the state
23 outweighs the possible benefit to the locality].) Plaintiffs failed to meet their burden because the
24 possible benefits to the City are not outweighed by the minimal impact Municipal Code section
25 9.04.030 imposes on transient citizens.

26 **E. Conclusion**

27 Accordingly, Plaintiffs' motion for summary judgment is DENIED.
28

1 **II. Defendants' Motion for Summary Judgment**

2 Pursuant to Code of Civil Procedure section 437c, Defendants move for summary
3 judgment of the complaint on the ground that Municipal Code section 9.04.030 is not preempted
4 by Penal Code section 25250.

5 **A. Defendants' Request for Judicial Notice**

6 In connection with their moving papers, Defendants ask the Court to take judicial notice
7 of Prop 63 and the Voter Guide that accompanied Prop 63.

8 Plaintiffs do not oppose Defendants' request for judicial notice.

9 The Court may properly take judicial notice of the foregoing materials as “[r]egulations
10 and legislative enactments issued by or under the authority of the United States or any public
11 entity in the United States” and “[o]fficial acts of the legislative, executive, and judicial
12 departments of the United States and any state of the United States.” (Evid. Code, § 452, subs.
13 (b) & (c); see *St. John's*, *supra*, 50 Cal.4th at p. 967, fn. 5 [taking judicial notice of a ballot
14 pamphlet text and arguments in favor of a proposition]; see also *Nguyen*, *supra*, 222 Cal.App.4th
15 at p. 1175 [“The Legislature’s ‘ ‘intent with regard to occupying the field to the exclusion of
16 all local regulation is not to be measured alone by the language used but by the whole purpose
17 and scope of the legislative scheme.” [Citations.]’ [Citation.]”]; *Hogoboom v. Superior*
18 *Court* (1996) 51 Cal.App.4th 653, 659 [“In evaluating whether preemption has occurred, an
19 appellate court is not confined in ascertaining legislative intent to solely examining the language
20 used in the relevant statutes.”]; *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th
21 893, 905 [providing that courts may look to intrinsic and extrinsic materials to determine
22 whether an implied intent to preempt exists]; *Persky v. Bushey* (2018) 21 Cal.App.5th 810, 818
23 [“[E]xtrinsic evidence of the voters’ intent may include ... the ballot arguments for and against
24 the initiative.”]; *In re Ogea* (2004) 121 Cal.App.4th 974, 986, fn. 5 [taking judicial notice of
25 official voter information guide pertaining to a proposition].)

26 Accordingly, Defendants' request for judicial notice is GRANTED.
27
28

1 **B. Plaintiffs' Request for Judicial Notice**

2 In connection with their opposition, Plaintiffs submit the same request for judicial notice
3 that they submitted in connection with their motion for summary judgment.

4 Defendants do not oppose Plaintiffs' request for judicial notice.

5 For the reasons explained above, Plaintiffs' request for judicial notice is GRANTED.

6 **C. Plaintiffs' Evidentiary Objections**

7 In connection with their opposition, Plaintiffs submit evidentiary objections to articles
8 attached to the declaration of James Allison, which are offered by Defendants in support of their
9 motion for summary judgment. Plaintiffs also submit objections to statements made by
10 Defendants in their memorandum of points and authorities.

11 The Court declines to rule on Plaintiffs' objections because they are not material to the
12 disposition of the motion. (See Code Civ. Proc., § 437c, subd. (q) ["In granting or denying a
13 motion for summary judgment ..., the court need rule only on those objections to evidence that it
14 deems material to its disposition of the motion."].)

15 **D. Legal Standard**

16 "Summary judgment is properly granted when no triable issue of material fact exists and
17 the moving party is entitled to judgment as a matter of law. A defendant moving for summary
18 judgment bears the initial burden of showing that a cause of action has no merit by showing that
19 one or more of its elements cannot be established or that there is a complete defense. Once the
20 defendant has met that burden, the burden shifts to the plaintiff 'to show that a triable issue of
21 one or more material facts exists as to that cause of action or a defense thereto.' 'There is a
22 triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to
23 find the underlying fact in favor of the party opposing the motion in accordance with the
24 applicable standard of proof.' " (*Madden v. Summit View, Inc.* (2008) 165 Cal.App.4th 1267,
25 1272, internal citations omitted.)

26 A trial court may grant summary adjudication on a cause of action for declaratory relief
27 when only legal issues are presented for its determination. (*City of Torrance v. Castner* (1975)
28 46 Cal.App.3d 76, 83, fn. 3.) "When seeking summary judgment on a claim for declaratory

1 relief, the defendant must show that the plaintiff is not entitled to a declaration in its favor by
2 establishing ‘(1) the sought-after declaration is legally incorrect; (2) [the] undisputed facts do not
3 support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is
4 appropriate for declaratory relief.’ [Citation.] If this is accomplished, the burden shifts to the
5 plaintiff to prove, by producing evidence of specific facts creating a triable issue of material fact
6 as to the cause of action or the defense.” (*Cates v. California Gambling Control Com.* (2007)
7 154 Cal.App.4th 1302, 1307-1308.) “When summary judgment is appropriate, the court should
8 decree only that plaintiffs are not entitled to the declarations in their favor.” (*Gafcon, Inc. v.*
9 *Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1402.)

10 For purposes of establishing their respective burdens, the parties involved in a motion for
11 summary judgment must present admissible evidence. (*Saporta, supra*, 220 Cal.App.2d at p.
12 468.) Additionally, in ruling on the motion, a court cannot weigh said evidence or deny
13 summary judgment on the ground that any particular evidence lacks credibility. (See *Melovich,*
14 *supra*, 160 Cal.App.3d at p. 935; see also *Lerner, supra*, 70 Cal.App.3d at p. 660.) As summary
15 judgment “is a drastic remedy eliminating trial,” the court must liberally construe evidence in
16 support of the party opposing summary judgment and resolve all doubts concerning the evidence
17 in favor of that party. (See *Dore, supra*, 39 Cal.4th at p. 389; see also *Hepp, supra*, 86
18 Cal.App.3d at pp. 717-718.)

19 **E. Analysis**

20 The arguments and evidence presented by the parties in connection with the instant
21 motion are virtually identical to the arguments and evidence that the presented in connection
22 with Plaintiffs’ motion for summary judgment. For the same reasons articulated above, the
23 undisputed material facts demonstrate that the declaration sought by Plaintiffs—that Municipal
24 Code section 9.04.030 is preempted by Penal Code section 25250—is legally incorrect.
25 Consequently, Defendants are entitled to summary judgment of the complaint.
26
27
28

Accordingly, Defendants' motion for summary judgment is GRANTED.

Per H. K. - 1911

Peter H. Kirwan
Judge of the Superior Court



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

**Anna Marie Barvir
180 E Ocean Blvd Ste 200
Long Beach CA 90802**

RE: **G. MITCHELL KIRK vs. CITY of MORGAN HILL, et al.**
Case Number: **19CV346360**

PROOF OF SERVICE

Order Re: Motions for Summary Judgment was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on July 31, 2020. CLERK OF THE COURT, by Shantel Hernandez, Deputy.

cc: James Allison FARELLA BRAUN & MARTEL LLP 235 Montgomery Street 17th Floor San Francisco CA 94104

Document received by the CA 6th District Court of Appeal.