

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SIXTH APPELLATE DISTRICT

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

Case No. H048745

PLAINTIFFS AND APPELLANTS,

V.

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.

**APPELLANTS' APPENDIX
VOLUME IX OF XI
(Pages 2092 to 2391 of 2813)**

Superior Court of California, County of Santa Clara
Case No. 19CV346360
Honorable Judge Peter H. Kirwan

C. D. Michel – SBN 144258
Anna M. Barvir – SBN 268728
Tiffany D. Cheuvront – SBN 317144
Konstadinos T. Moros – SBN 306610
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Email: abarvir@michellawyers.com

Counsel for Plaintiffs-Appellants

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1 Roderick M. Thompson (State Bar No. 96192)
rthompson@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 Hannah Friedman (State Bar No. 324771)
hfriedman@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

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

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

18 Plaintiffs and Petitioners,

19 vs.
20

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

24 Defendants and Respondents.
25
26
27
28

Case No. 19CV346360

**DEFENDANT CITY OF MORGAN
HILL'S MEMORANDUM OF POINTS &
AUTHORITIES IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

Judge: Hon. Peter Kirwan
Date: July 2, 2020
Time: 9 a.m.
Dept: 19
Action Filed: April 15, 2019

**ACCOMPANYING DOCUMENTS:
SEPARATE STATEMENT IN
OPPOSITION TO SUMMARY
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5	Center, <i>Communities on the Move: Local Gun Safety Legislation in California</i>	
6	(Oct. 1, 2018), https://lawcenter.giffords.org/resources/communities-on-the-	
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I. INTRODUCTION

The preemption analysis in Plaintiffs’ Motion for Summary Judgment starts from the wrong place. For one, Morgan Hill is *presumptively entitled* to pass a stricter firearm theft-reporting ordinance. *See Cal. Rifle & Pistol Ass’n v. City of W. Hollywood*, 66 Cal. App. 4th 1302, 1320 (Cal. Ct. App. 1998) (“The relevant question is not whether a statute *grants* the City a power, but whether a statute *deprives* the City of a power already bestowed upon the City by the Constitution.”). There is therefore a presumption that the state law requiring gun owners to report lost or stolen firearms within 5 days (Penal Code § 25250 *et seq.*, or “Prop. 63”) does not impliedly preempt Morgan Hill’s 48-hour reporting requirement (Municipal Code 9.04.030, the “Ordinance”) unless it “clearly indicates” an intent to deprive Morgan Hill of its constitutional authority to adopt stronger regulations in this area. *See id.* at 1318; *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 904 (Cal. 1993). And there is no indication, clear or otherwise, that the People of California intended to foreclose such action by Morgan Hill—or by the 17 other cities that already had stronger reporting requirements when voters passed Prop. 63.

Ignoring this outcome determinative presumption, and with little support from preemption law or Prop. 63’s text and purpose, Plaintiffs nonetheless contend the Ordinance is preempted because it: 1) duplicates state law; 2) contradicts state law; 3) impliedly enters into an area state law fully occupies; and 4) burdens transient citizens.

They are wrong on all counts. *First*, local ordinances do not duplicate state law unless the ordinance and law proscribe “precisely the same acts,” which the Ordinance and Prop. 63 do not. *Second*, local ordinances do not conflict with state law unless they forbid what the state mandates or mandate what the state forbids. Localities may prohibit conduct state law merely authorizes, and may narrow or remove exceptions state law provides—as Morgan Hill has done. *Third*, the existence of a single statutory enactment, like Prop. 63’s reporting provisions, is not a reason to find that a state law entirely occupies a regulatory area unless there is a “clear indication” of an intent to preempt, not present here. *Finally*, the California Supreme Court has already rejected Plaintiffs’ claim that a “patchwork” of local gun laws unduly burdens transient citizens.

For these reasons, Plaintiffs fail to discharge their burden to show that the Ordinance is

1 preempted. Morgan Hill has a constitutional right to regulate firearms to protect its residents'
2 safety and health. The city adopted a stronger local regulation for firearm theft-reporting in
3 response to constituent demand, a legislative record showing that lost and stolen guns pose risks to
4 the Morgan Hill community, and specific discussion of why a 48-hour requirement is better than 5
5 days. The Court should hold that the Ordinance is consistent with Prop. 63's aims, not preempted
6 by it, and deny Plaintiffs' Motion and grant Morgan Hill's.

7 **II. STATEMENT OF FACTS**

8 Morgan Hill supplied a statement of undisputed facts in its Motion for Summary
9 Judgment. Below is a summary of facts relevant to this Opposition.

10 **A. California Adopted Lost or Stolen Reporting in Prop. 63: "The Safety for All 11 Act of 2016."**

12 On November 8, 2016, California voters approved Proposition 63, entitled "The Safety for
13 All Act of 2016." As part of Prop. 63, Penal Code § 25250, *et seq.*, took effect on July 1, 2017. In
14 relevant part, Penal Code § 25250 states:

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

18 Prop. 63 also created related Penal Code sections to facilitate implementation by specifying basic
19 information to be reported to law enforcement as well as exceptions and penalties. *E.g.*, Penal
20 Code § 25270 (report should include firearm "make, model, and serial number" and "additional
21 relevant information required by the local law enforcement agency taking the report"); *id.* § 25260
22 (requiring law enforcement to enter firearm descriptions into preexisting state database); *id.*
23 § 25255 (exemptions from reporting requirement); *id.* § 25275 (penalty for filing a false report).¹

24
25 _____
26 ¹ As discussed below, Plaintiffs now seek to rely on these requirements as proof of a "broad and
27 comprehensive scheme" that supplies "strong evidence that the state intended to occupy the field
28 of the firearm theft-reporting" (Pls.' Mem. ISO MSJ at 16). This is a revealing change in strategy.
Plaintiffs did not even mention these additional code sections in their Complaint or in their pre-
litigation communications with Morgan Hill. Until their Motion for Summary Judgment,
Plaintiffs' preemption claim was premised only on Penal Code § 25250, not on §§ 25255, 25260,

1 **B. Neither Prop. 63 Nor Penal Code § 25250 *et seq.* Contained a Statement of**
2 **Intent to Preempt Shorter Local Reporting Requirements**

3 When voters adopted Prop. 63, at least 18 cities and towns already had local reporting
4 ordinances, with 17 requiring that lost or stolen guns be reported in less than 5 days.² Prop. 63 was
5 silent about these ordinances. The initiative’s statements of purpose did not suggest a preference
6 for uniformity or an intent to invalidate stricter local laws as inconsistent with state law. Instead,
7 Prop. 63 announced a general purpose of requiring that all Californians report lost or stolen guns.
8 *See* Prop 63. Sec. 2: Findings and Declarations (cited in Allison Decl. ISO Morgan Hill MSJ, Ex.
9 8, at p. 164, sec. 2, ¶ 9) (“Californians today are not required to report lost or stolen guns to law
10 enforcement. This makes it difficult for law enforcement to investigate crimes committed with
11 stolen guns, break up gun trafficking rings, and return guns to their lawful owners. We should
12 require gun owners to report their lost or stolen guns to law enforcement.”).

13 Penal Code § 25250 and the code sections that follow it also contain no statement of an
14 intent to require uniformity or preempt local action. As Plaintiffs acknowledge, one of the
15 statutory provisions gives local police the discretion to require that additional information be
16 reported. Penal Code § 25270 (reports of lost or stolen firearms must include “any additional
17 relevant information required by the local law enforcement agency taking the report”).

18 **C. Morgan Hill Adopted a 48-Hour Lost or Stolen Reporting Requirement in**
19 **2018 in Response to Local Concerns**

20 On November 28, 2018, responding to demands for gun safety legislation after the high
21

22 25270, and 25275. Now that they have raised these sections in their motion as presenting a
preemption issue for the first time, Morgan Hill addresses them in this Opposition memorandum.

23 ² Oakland (Mun. Code Sec. 9.36.131 – 48 hours), San Francisco (Police Code Sec. 616 – 48
24 hours), Los Angeles (Mun. Code Sec. 5512 – 48 hours), Campbell (Mun. Code Sec. 8.12.045 – 48
25 hours), Berkeley (Mun. Code Sec. 13.75.020 – 48 hours), Sacramento (City Code Sec. 9.32.180 –
26 48 hours), Port Hueneme (Mun. Code Sec. 3914.10 – 48 hours), Simi Valley (Mun. Code Sec. 5-
27 22.12 – 72 hours), West Hollywood (Mun. Code Sec. 9.27.010 – 48 hours), Thousand Oaks (Mun.
Code Sec. 5-11.03 – 72 hours), Richmond (Mun. Code. Sec. 11-97.020 – 48 hours), Sunnyvale
(Mun. Code Sec. 9.44.030 – 48 hours), Santa Cruz (Mun. Code Sec. 9.3.010 – 5 days), Huntington
Park (Mun. Code Sec. 5.17.05 – 48 hours), Maywood (Mun. Code Sec. 4-4.11 – 48 hours),
28 Oxnard (Mun. Code Sec. 7-141.1 – 72 hours), Tiburon (Mun. Code Sec. 32-27 – 48 hours), and
Palm Springs (Mun. Code Sec. 11.16.040 – 48 hours (repealed 2018)).

1 school shooting in Parkland, Florida, the Morgan Hill City Council approved Local Ordinance
2 2289, codified at Municipal Code 9.04.030 (the “Ordinance”). The Ordinance requires residents
3 and those whose firearms are lost or stolen in Morgan Hill to report the loss or theft to Morgan
4 Hill Police within 48 hours of when they knew, or reasonably should have known, about their
5 firearm loss or theft.³ The Ordinance took effect on December 29, 2018.

6 The legislative record shows that the Morgan Hill City Council focused on local benefits
7 of the Ordinance. Among other considerations, the Council recognized that the firearm reporting
8 legislation was recommended by the Association of Bay Area Governments (of which Morgan
9 Hill is a member) as a “model ordinance[...for cities and counties to pursue” to help reduce gang-
10 related youth gun violence. (Allison Decl. ISO Morgan Hill MSJ, Ex. 11, Agenda Packet pp. 203,
11 217–32.) The City Council also recognized specific benefits of a 48-hour reporting timeframe,
12 including that earlier notification aids police, “provides an opportunity for early identification” of
13 stolen guns, and can “reduce the chance of lost or stolen firearms being used in additional crimes.”
14 (See Pls.’ Req. Jud. Ntc. Ex. F, at p. 76 (from adopted City Council Staff Report dated Oct. 24,
15 2018).)

16 **III. LEGAL STANDARD**

17 Summary judgment shall be granted when “there is no triable issue as to any material fact”
18 and “the moving party is entitled to a judgment as a matter of law.” Cal. Civ. Proc. Code
19 § 437c(c); *see also Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 843 (Cal. 2001). The parties have
20 filed cross-motions for summary judgment. Although the moving party generally holds the burden
21 on a summary judgment motion, where, as here, one party claims the Ordinance is preempted by
22 state law, that party (Plaintiffs here) bears the burden on both motions. *See, e.g. First Resort, Inc.*
23 *v. Herrera*, 80 F. Supp. 3d 1043, 1055 (N.D. Cal. 2015), *aff’d*, 860 F.3d 1263 (9th Cir. 2017).

24 **IV. ARGUMENT**

25 This Court should deny Plaintiffs’ Motion for Summary Judgment and grant Morgan
26

27 ³ The “reasonably should have known” requirement is a safeguard that ensures gun owners are not
28 unfairly penalized for thefts and losses that are difficult to reasonably discover within 48 hours.
For simplicity, however, the “reasonably should have known” caveat has been omitted throughout.

1 Hill's. The state Constitution gives Morgan Hill broad authority to adopt police ordinances and
2 regulations. *See Birkenfeld v. City of Berkeley*, 130 Cal. Rptr. 465, 473 (Cal. 1976). There is a
3 presumption against preemption of ordinances adopted to advance significant local interests
4 pursuant to these constitutionally guaranteed powers—including firearm-related ordinances like
5 Morgan Hill's. *See, e.g., Calguns Found., Inc. v. Cty. of San Mateo*, 218 Cal. App. 4th 661, 666–
6 67 (Cal. Ct. App. 2013) (citations omitted) (“[t]he party claiming that general state law preempts a
7 local ordinance has the burden of demonstrating preemption”); *see also* Morgan Hill Mem. ISO
8 MSJ at 7–8 (discussing local interests in gun regulations and theft-reporting).

9 Plaintiffs have not rebutted that presumption because each of their four theories of
10 preemption fail under the applicable law.

11 **A. The Ordinance Does Not Duplicate State Law**

12 Plaintiffs first argue the Ordinance is preempted because it duplicates state law. They claim
13 the enactments are duplicative because it is *possible* to violate “*both* state law *and* local law” on
14 the subject of reporting lost or stolen guns. (Pls.’ Mem. ISO MSJ at 13.) For example, someone
15 who never reports a firearm theft or loss would violate both the Ordinance and Prop. 63. (*Id.*)

16 This is not the correct test. Instead of asking whether it is merely possible to violate both a
17 state statute and local ordinance, courts ask whether a local ordinance prohibits “precisely the
18 same acts which are ... prohibited” by statute. *Nordyke v. King*, 27 Cal. 4th 875, 883 (Cal. 2002).
19 Preemption by duplication only arises if a violation of a local law is necessarily a violation of state
20 law, *see id.*, or if the local ordinance is a lesser included offense of the state law. *See Great W.*
21 *Shows v. Cty. of Los Angeles*, 27 Cal. 4th 853, 866 (Cal. 2002).

22 For example, in *Nordyke*, plaintiffs challenged an Alameda County ordinance prohibiting
23 guns on county property. They argued that the ordinance duplicated a state law that prohibited
24 carrying firearms without a license since a person who carried an unlicensed gun on county
25 property would violate both measures. *Nordyke*, 27 Cal. 4th at 883. But the Supreme Court found
26 that since the ordinance did not “criminalize precisely the same acts which are prohibited by the
27 statute,” they were “not duplicative.” *Id.* (citations omitted).

28 The same is true of Morgan Hill's ordinance. Although the Ordinance and state law both

1 prohibit some acts, such as failing to report a lost or stolen gun, other acts are punishable under the
2 Ordinance but not state law or vice-versa. For example, a Morgan Hill resident who waits 3 days
3 to report would violate the Ordinance but not state law. A Morgan Hill resident whose gun was
4 stolen in San Jose and who timely reported to Morgan Hill police would violate state law but not
5 the Ordinance. *See* Penal Code § 25250(b) (reports must be made in “jurisdiction in which the
6 theft or loss occurred”). A Morgan Hill resident who lost his gun in San Jose and reported to
7 Morgan Hill police 4 days later would violate *both* local and state law, but for different reasons—
8 just as in *Nordyke*. *Compare* Allison Decl. ISO Morgan Hill MSJ, Ex. 2 (Municipal Code 9.04.030
9 requires reporting within 48 hours) *with* Penal Code § 25250(b) (requiring report be made in
10 jurisdiction where firearm was stolen).

11 Courts analyze whether a local and state law prohibit “precisely” the same acts because the
12 doctrine of preemption by duplication is rooted in double jeopardy principles. When a local
13 ordinance exactly duplicates a state criminal law, or criminalizes only a lesser included offense,
14 then a conviction under the ordinance will “operate to bar a prosecution of the same offense under
15 the [state] law.” *People v. Orozco*, 266 Cal. App. 2d 507, 511 (Cal. Ct. App. 1968) (citing *In re*
16 *Sic*, 73 Cal. 142, 148 (Cal. 1887)). If there is no way to enforce the local ordinance without barring
17 a state prosecution, the ordinance is preempted (*see id.*); but if the duplication is not exact, double
18 jeopardy will *not* always attach, and courts will not find preemption. As the Court explained, “we
19 only hold that there is a conflict [based on double jeopardy] where the ordinance and the general
20 law punish precisely the same acts.” *In re Sic*, 73 Cal. at 149. “We do not wish to be understood as
21 holding that the sections of the ordinance which make criminal other acts not punishable under the
22 general law are void because the legislature has seen fit to legislate upon the same subject.” *Id.*

23 Plaintiffs’ contrary test is unbounded by this principle. Plaintiffs would have courts find
24 duplication if there is any overlapping conduct punishable by a local and state law. But that cannot
25 be right, because it would bar *all* local ordinances that tighten restrictions imposed by the state and
26 in doing so create areas of overlap. Cities are allowed to pass stricter requirements in an area
27 where the state has also legislated. *See In re Iverson*, 199 Cal. 582, 586 (Cal. 1926) (upholding
28 local law setting a lower limit than state law on maximum volume of alcohol pharmacies may

1 dispense); *Ex parte Hoffman*, 155 Cal. 114, 118 (Cal. 1909) (upholding local law setting a lower
2 limit than state law on maximum percentage milk may be adulterated); *Am. Fin. Servs. Ass’n v.*
3 *City of Oakland*, 4 Cal. Rptr. 3d 745, 756 (Cal. Ct. App. 2003) (collecting cases), *rev’d on other*
4 *grounds*, 34 Cal. 4th 1239 (Cal. 2005).⁴ And cities may pass stricter *gun laws* than the state, even
5 if some conduct would violate both a local and state enactment. *See, e.g., Great W. Shows*, 27 Cal.
6 4th at 858 (county ordinance banning gun shows not preempted by state statute regulating gun
7 shows).

8 Plaintiffs’ duplication theory cannot be squared with these cases. The Morgan Hill
9 Ordinance is not duplicative or preempted.

10 **B. The Ordinance Does Not Contradict State Law**

11 The Ordinance also does not contradict state law. Plaintiffs advance another incorrect test
12 here, claiming an ordinance is preempted by contradiction if it “prohibits locally what a state
13 statute authorizes.” (Pls.’ Mem. ISO MSJ at 13 (citing *Sherwin-Williams*, 4 Cal. 4th at 902).) But
14 ordinances are preempted only if they “prohibit what the statute commands or command what it
15 prohibits,” *Sherwin-Williams*, 4 Cal. 4th at 902, not if they prohibit conduct state law only
16 authorizes. *Nordyke*, 27 Cal. 4th at 884. A contradiction arises only if it is impossible to comply
17 with both an ordinance and state law. *O’Connell v. City of Stockton*, 41 Cal. 4th 1061, 1068 (Cal.
18 2007) (ordinance preempted if it is “inimical to or cannot be reconciled with state law”).

19 In *Nordyke*, the Supreme Court upheld Alameda County’s measure prohibiting firearms on
20 county property, including for gun shows. 27 Cal. 4th at 882. The Court held that the ordinance
21 did not contradict a state law allowing firearms at gun shows in public buildings, explaining that
22 the state law “merely . . . permit[s] local government entities to authorize [gun] shows. It does not
23 *mandate* that local government entities permit such a use.” *Id.* at 883–84. One can comply with
24 both laws by not holding a gun show on county property. As in *Nordyke*, and as discussed below,
25 compliance with both the Ordinance and Prop. 63 is possible here too.

26 ⁴ As noted in Morgan Hill’s summary judgment brief (Mem. ISO MSJ at 11 n.12), the *Hoffman*
27 line of cases was partly overruled on other grounds in *In re Lane*, 58 Cal. 2d 99, 109 (Cal. 1962),
28 but that decision does not foreclose reliance on the principle discussed here. *See Galvan*, 70 Cal.
2d at 865 (“The considerations involved in *Lane* do not apply to the instant case. The statutory
pattern governing sexual behavior differs from that governing guns and other weapons.”).

1 **1. It Is Reasonably Possible to Comply with the Ordinance and Prop. 63**

2 Ordinances are preempted if they foreclose compliance with state law by “prohibit[ing]
3 what the statute commands or command[ing] what it prohibits.” *Sherwin-Williams*, 4 Cal. 4th at
4 902. Morgan Hill’s Ordinance does neither. It requires gun owners to report firearm loss or theft
5 within 48 hours. Prop. 63 allows, but does not require, waiting up to 5 days before reporting. One
6 can thus reasonably comply with both the Ordinance and state law by reporting within 48 hours.

7 Other provisions of the Ordinance and Prop. 63 relate to each other similarly. For instance,
8 Morgan Hill requires its residents to report a lost or stolen gun to Morgan Hill Police even when
9 the loss occurs outside of Morgan Hill (*see* Allison Decl. ISO Morgan Hill MSJ, Ex. 2)—for
10 instance, in a neighboring county. State law only requires reporting to a law enforcement agency
11 in the jurisdiction where a loss or theft occurred (*see* Penal Code § 25250). However, the state
12 does not prohibit also reporting to one’s local police, as Morgan Hill requires, so one could
13 comply with both laws. Another example: Morgan Hill’s reporting law has no exceptions for
14 individuals, while the state exempts reporting by some law enforcement officials, U.S. marshals,
15 and others (*see* Penal Code §§ 25250(c), 25255). However, the state does not prohibit these
16 exempt persons from reporting to a local agency that would accept such reports; a person who is
17 exempt under state law could comply with both laws by reporting as Morgan Hill requires.

18 Plaintiffs try to elide the critical difference between “authorizes” and “requires” by arguing
19 the distinction only applies in cases where it is “‘reasonably’ possible for run-of-the-mill gun
20 owners passing through the City to comply with both state and local” law. (Pls.’ Mem. ISO MSJ at
21 13–15.) It is true that state and local laws are in harmony where “it is reasonably possible to
22 comply” with both, whereas impossibility of compliance creates a conflict. *City of Riverside v.*
23 *Inland Empire Patients Health and Wellness Ctr., Inc.*, 56 Cal. 4th 729, 743–44 (Cal. 2013). But
24 Plaintiffs offer no support for the idea that compliance with both enactments is impossible; as
25 discussed above, compliance is undoubtedly reasonably possible. Instead, Plaintiffs speculate that
26 “run of the mill gun owners” “passing through the City” are “unlikely to *know* of the City’s
27 contradictory law”—but they do not argue owners who know of the law cannot reasonably *comply*
28 with it and state law. (Pls.’ MSJ at 14–15 (emphasis added).)

1 Plaintiffs’ point actually helps show why the Ordinance is not preempted. It is reasonably
2 possible for Morgan Hill gun owners to stay apprised of their obligations under state and local law
3 when a firearm is lost or stolen, and it is possible for someone passing through the City who
4 experiences a gun theft or loss (hopefully a rare occurrence) to go to law enforcement to ask about
5 them.⁵ But even if this were not the case, learning about applicable local law is, by definition,
6 *reasonably* possible. It is what city residents and responsible travelers are expected to do in a state
7 that presumptively allows for local laws that constrain the behavior of all people in a city—
8 residents and pass-through visitors alike. *See, e.g., Galvan v. Super. Ct. of City & Cty. of San*
9 *Francisco*, 70 Cal. 2d 851, 865 (Cal. 1969) (overturned on other grounds by statute) (listing lawful
10 local ordinances regulating alcohol consumption, gambling, and loitering that “apply to *anyone*
11 within the geographic confines of the city, and not merely to residents”) (emphasis in original).

12 In fact, in *Nordyke*, the Supreme Court was unpersuaded by the suggestion that it is too
13 challenging for travelers to learn about the gun laws of a city they visit. *See* 27 Cal. 4th at 885
14 (Brown, J., dissenting) (arguing that the majority’s reasoning on preemption would inconvenience
15 travelers because “a person authorized to carry firearms who happened to be traveling across the
16 state would have to consult legal counsel each time he or she crossed a county line or entered a
17 city”).⁶ The Court should reject that suggestion here too.

18 **2. Plaintiffs’ Speed Limit Example is Unsupported**

19 Unable to establish that it is impossible to comply with the Ordinance and Prop. 63,
20 Plaintiffs claim support from a one hundred-year-old Supreme Court case striking down a city’s
21 speed limit ordinance. *Ex parte Daniels*, 183 Cal. 636, 641–68 (Cal. 1920) (cited at Pls.’ Mem.
22 ISO MSJ at 13–14). But Plaintiffs quote this case out of context. Contrary to Plaintiffs’
23 description, the Court did *not* hold that local governments are unable to impose a lower speed limit
24

25 ⁵ For Morgan Hill residents, the Ordinance facilitates this by requiring local gun dealers to post
26 signs in stores outlining the firearm theft-reporting law and distribute the relevant chapter to
customers. *See* Allison Decl. ISO Morgan Hill MSJ, Ex. 1, p.2 (Municipal Code 9.04.020).

27 ⁶ This rejected reasoning, expressed in the *Nordyke* dissent and in Plaintiffs’ motion, is in tension
28 with the basic principle that “ignorance of a law is no excuse for a violation thereof.” *People v.*
Snyder, 32 Cal. 3d 590, 592-93 (1982) (internal citation omitted).

1 if state law sets a maximum speed limit. *See Daniels*, 183 Cal. at 641–48 (“local legislation fixing
2 a lesser speed limit” than a state law maximum would not contradict state law, but “would be
3 merely an additional regulation”). That case dealt instead with a different issue: a state law that
4 prohibited driving at an “unsafe and unreasonable rate of speed under all the circumstances” as
5 found by a jury, which in any event could not exceed 20 miles per hour in a city. Pasadena then
6 adopted a maximum speed limit of 15 miles per hour in some parts of the city. The Court held that
7 Pasadena’s ordinance conflicted with state law, but not, as Plaintiffs represented, because it set a
8 speed limit below the state’s, but because of the state’s “unsafe and unreasonable” provision:

9 “[L]ocal legislation which determines the question of what speed is reasonable and
10 which forecloses that question in a judicial investigation, is in direct conflict with
11 the legislative scheme by which that question is left open for the determination of a
12 jury. **If the legislature had merely fixed the maximum speed limit [of 20 miles
13 per hour], it is clear that local legislation fixing a lesser speed limit [of 15 miles
14 per hour] would not be in conflict therewith, but would be merely an
15 additional regulation.** (Citations omitted.) . . . [However, i]n this case the
petitioner had a right to drive on the highway at a speed that was reasonable and
proper under all the circumstances, and the fixing of an arbitrary speed limit by the
city authorities restricted that right and was, therefore, in conflict with that right.”

16 *Daniels*, 183 Cal. at 645–47 (emphasis added). The Court was clear that there is no contradiction
17 when the state legislature simply fixes a maximum speed limit without including any type of
18 “reasonable and proper” standard or other indicia of intent to foreclose localities’ authority to set a
19 lower limit. *See* 183 Cal. at 645. As discussed above (*supra* pp. 6–7), this is consistent with other
20 case law establishing that cities may pass stricter local laws in areas where the state has also
21 legislated. Here, Morgan Hill is simply setting a lower “speed limit” than state law does, and its
22 Ordinance is not preempted by contradiction under *Daniels*.

23 C. The Ordinance Does Not Enter into an Area Fully Occupied by State Law

24 Having failed to show express preemption by duplication or by contradiction, Plaintiffs
25 next argue that Prop. 63 impliedly preempts the Ordinance (Pls.’ Mem. ISO MSJ at 15). They aim
26 to prove that, by implication rather than by an express voter or legislative statement, the subject
27 matter of lost or stolen firearm reporting “has been so fully and completely covered by [state] law
28 as to clearly indicate that it has become exclusively a matter of state concern,” foreclosing local

1 action (*id.* at 16).

2 Plaintiffs’ implied preemption claim fails for two reasons: there is no “full and complete”
3 coverage by general law, and there is no other “clear indication” that lost or stolen reporting is an
4 exclusive matter of state concern. In fact, Prop. 63 clearly indicates the opposite.

5 **1. State Law Has Not “Fully and Completely Covered” the Field of**
6 **Firearm Loss or Theft Reporting**

7 Plaintiffs claim that the Penal Code sections that make up Prop. 63’s lost or stolen
8 reporting requirement constitute a “statewide scheme” regulating “all manner of conduct related to
9 reporting firearm theft and loss.” Their description of Prop. 63 as creating a dozen new laws (Pls.’
10 Mem. ISO MSJ at 8) is off-base: although the statewide lost or stolen reporting requirement is
11 parceled out into six different code sections, all were adopted via a single legislative enactment,
12 Prop. 63, and occupied half a page of the ballot initiative’s text. The code sections Plaintiffs cite
13 cannot be viewed in isolation but must be read alongside Prop. 63’s statements of voter intent,
14 which address none of the particular code sections Plaintiffs claim are critical elements
15 establishing an all-encompassing “statewide scheme.” *See infra* pp. 14–16 (discussing voter
16 intent); Pls.’ Mem. ISO MSJ at 16 (courts must discern intent to preempt not only by looking to
17 “language used” but “whole purpose and scope of the legislative scheme”).

18 But even starting with the statutory text, the Penal Code sections Plaintiffs rely on do not,
19 on their face, occupy an entire regulatory field to the exclusion of ordinances like Morgan Hill’s.
20 The code sections are narrow and procedural, rather than covering any sweeping policy matters.
21 Among them are provisions that address guns that were reported lost but subsequently recovered
22 by an owner (Penal Code §25250(b)), how law enforcement should enter lost or stolen firearms
23 into statewide databases (*id.* § 25260), and penalties for false reporting (*id.* § 25275). The Morgan
24 Hill Ordinance does not even address any of these implementation details, nor does the Ordinance
25 change how firearm recovery, database use, or false reporting is handled. Therefore, the Ordinance
26 does not enter into or intrude upon these subjects and cannot be said to frustrate the purpose of
27 these Prop. 63 provisions. It is odd that Plaintiffs focus so heavily on implementing subsections
28 that coexist in harmony with the Morgan Hill Ordinance as evidence of preemptive state action.

1 Indeed, the weakness of Plaintiffs’ theory reflects the fact that the State does not “fully and
2 completely cover” a field simply by passing one or more laws, even lengthy regulations, in a given
3 area. *See, e.g., Galvan*, 70 Cal. 2d at 860 (three state gun registration laws, spanning 16 Penal
4 Code sections, “cannot reasonably be said to show a general scheme for the regulation of the
5 subject of gun registration”); *Nordyke*, 27 Cal. 4th at 884 (state law authorizing gun shows on
6 county property did not preempt county regulation disallowing gun shows). Otherwise, there
7 would be no need for an implied preemption test at all: whenever the state passes one or more laws
8 in a given area or sets a regulatory standard (such as requiring reporting of gun thefts within five
9 days), it would impliedly apply uniformly throughout the state to the exclusion of local legislation.

10 Instead of equating a single state statute or standard with an impliedly preempted field of
11 regulation, courts approach the implied preemption analysis much more “carefully.” *Cal. Rifle &*
12 *Pistol Ass’n v. City of W. Hollywood*, 66 Cal. App. 4th 1302, 1317 (1998). That is because implied
13 preemption claims “by definition involve situations in which there is no express preemption”—
14 where the legislature has declined to say clearly that it is removing local regulatory powers the
15 Constitution otherwise protects. *See id.* Without an express statement of intent, courts will find
16 implied preemption only if the purpose and scope of a state regulatory scheme “‘clearly
17 indicate[s]’ a legislative intent to preempt,” *id.* (emphasis added), such as by making it apparent
18 that local actions are “inconsistent with the purpose of the general law.” *Fiscal v. City & Cty. of*
19 *San Francisco*, 158 Cal. App. 4th 895, 915 (Cal. Ct. App. 2008).

20 One example of impliedly preemptive state regulatory scheme is the “broad, evolutionary
21 statutory regime enacted by the Legislature” to address public and private handgun possession. *See*
22 *id.* at 911, 909. The Court of Appeal in *Fiscal* described this regime as “a myriad of statewide
23 licensing schemes, exceptions, and exemptions” taking up “almost one hundred pages’ of the
24 statute books.” *Id.* at 909. The court’s analysis of the scheme led it to conclude that the legislature
25 had preempted local handgun possession bans that “completely frustrate” and “obstruct the
26 accomplishment and execution of the full purposes and objectives” of the state’s comprehensive
27 scheme of handgun regulations, which contemplates handgun ownership. *Id.* at 911.

28 Broad as it was, however, the existence of the statutory regime in *Fiscal* was not enough

1 itself to support a finding of implied preemption. The key was that the local ordinance at issue—a
2 handgun ban—plainly obstructed and frustrated the legislature’s scheme. The *Fiscal* court struck
3 down the handgun ban after finding that the ordinance “swallow[ed] the state regulations
4 whole”—each handgun regulation was rendered null within the city and state-issued concealed
5 carry permits became invalid. *See id.* at 919, 911. The *Fiscal* Court contrasted this impermissible
6 local action with situations where a “local entity has legislated in synergy with state law,” *id.* at
7 915, or “impos[ed] additional restrictions on state law to accommodate local concerns.” *Id.*

8 Unlike in *Fiscal*, here, Plaintiffs fail to show that the legislature has clearly indicated an
9 intent to preempt by adopting a “broad, evolutionary statutory regime” on firearm-theft reporting
10 *that will actually be thwarted* by local action requiring reporting in 48 hours. In sharp contrast to
11 the statutes considered to preempt in *Fiscal*, Prop. 63’s reporting provisions are not obstructed,
12 frustrated, or rendered null by a local law requiring people to report lost or stolen guns in 48
13 hours. Under Morgan Hill’s Ordinance, and under the 17 preexisting local laws that require
14 reporting in less than five days, the core of the statewide statutory scheme stays in place, but the
15 timeframe for reporting is sped up. These local laws do not “obstruct the accomplishment and
16 execution of [Prop. 63’s] full purposes and objectives,” *Fiscal*, 158 Cal. App. 4th at 911, but in
17 fact advance and are wholly consistent with the only purpose announced in Prop. 63. That sole
18 purpose—set out unmistakably by voters—is “[t]o require the reporting of lost or stolen firearms
19 to law enforcement.” (Allison Decl. ISO Morgan Hill MSJ, Ex. 8 at p. 164, sec. 3, ¶ 6.) Local laws
20 setting a shorter timeframe for reporting are “in synergy” to that purpose; they do not obstruct it.

21 Plaintiffs point to various Prop. 63 exceptions, which exempt some individuals from
22 having to report lost or stolen firearms, in an attempt to establish a legislative interest the
23 Ordinance undermines. Prop. 63 does exempt the reporting of antique firearm losses and thefts as
24 well as reporting by law enforcement, U.S. marshals, and others (*see* Penal Code §§ 25250(c),
25 25255), while Morgan Hill’s Ordinance does not exclude these (or any other) individuals from the
26 local reporting requirement. But the California Supreme Court has twice rejected the argument
27 that, without more, a state law that provides exceptions preempts a local law that omits those
28 exceptions. *See City of Riverside*, 56 Cal. 4th 729, 759 (statutory exception from a state-law

1 prohibition is not a mandate that local governments preserve the exception); *Nordyke*, 27 Cal. 4th
2 at 884 (“the fact that certain classes of persons are exempt from state criminal prosecution for gun
3 possession does not necessarily mean that they are exempt from local prosecution”). Although
4 Plaintiffs declare that the Prop. 63 exceptions are “important” (Pls.’ Mem. ISO MSJ at 8), the
5 initiative and the statutory text give no indication that these exceptions are in fact so essential that
6 localities cannot impose their own regulations on exempt individuals. Because “a state law does
7 not ‘authorize’ activities, to the exclusion of local bans, simply by exempting those activities from
8 otherwise applicable state prohibitions,” *City of Riverside*, 56 Cal. 4th at 758, state-level
9 exemptions cannot, alone, supply a “clear indicator” that Prop. 63 impliedly preempts.

10 Plaintiffs also point to one of Prop. 63’s reporting provisions that specifies that local police
11 can choose what information to collect about a lost or stolen gun. Penal Code § 25270 (reports of a
12 lost or stolen firearm must include “any additional relevant information required by the local law
13 enforcement agency taking the report”). Plaintiffs claim that this shows the State “intend[ed] to
14 address,” and accordingly preempt, “local law enforcement concerns.” (Pls.’ Mem. ISO MSJ at
15 18.) The opposite is true: § 25270 shows that voters had no problem with local variations in lost or
16 stolen reporting—which indeed, already existed when the statute was adopted in the 17 localities
17 with their own timeframes for theft reporting—and intentionally incorporated local law
18 enforcement discretion into state law. Localities like Morgan Hill that exercise further discretion
19 to tighten state law—under their constitutionally granted, presumptively valid authority—are not
20 acting inconsistently with Prop. 63. Indeed, it is state law itself that envisions a “patchwork”
21 approach where different local police agencies request different information about firearms.

22 Even if there was more ambiguity in state law, caution is due to avoid finding implied
23 preemption based on anything other than a clear indication of intent to foreclose local regulation.
24 A “clear” indicator is required because, if the Legislature impliedly intended to preempt local
25 regulation, it could easily have simply said it was doing so, as it has done many times before. *See*
26 *Cal. Rifle & Pistol Ass’n*, 66 Cal. App. 4th at 1317. California’s firearm-theft reporting statutes
27 supply no such indicator, and as discussed below, there is no “clear” indication of voter intent in
28 Prop. 63’s findings and statements of purpose either.

1 **2. Voter Intent Does not “Clearly Indicate” an Intent to Preempt**

2 Courts look to a legislative scheme’s whole purpose and scope when determining whether
3 there is a clear intent to make a field “exclusively a matter of state concern.” *Galvan*, 70 Cal. 2d at
4 859. When California voters enact a state law by ballot initiative, voter intent is considered in
5 place of the Legislature’s. *Persky v. Bushey*, 21 Cal. App. 5th 810, 818-19 (Cal. Ct. App. 2018).

6 Plaintiffs’ analysis of voters’ intent in passing Prop. 63 is one paragraph long. (Pls.’ Mem.
7 ISO MSJ at 18). The analysis boils down to an argument that since voters did not say they were
8 *not* going to preempt local regulation on gun theft-reporting, as they did in other measures
9 contained within Prop. 63, then they were preempting. But an affirmative showing is not the test
10 because state laws are *assumed* not to preempt. Therefore, Plaintiffs must not only show that
11 voters departed from this presumption by barring local legislation, but also that voters’ intent is so
12 clear as to not tolerate any local action. *Cal. Rifle & Pistol Ass’n*, 66 Cal. App. 4th at 1320 (“The
13 relevant question is not whether a statute grants the City a power, but whether a statute deprives
14 the City of a power already bestowed upon the City by the Constitution.”); *id.* at 1317 (requiring
15 “clear” signal of intent to overcome presumption against preemption, since the Legislature—or
16 here, voters—could have said it was preempting local legislation if that was the intended aim).

17 Morgan Hill addressed voter intent at pages 3–4, 14, and 17–19 of its Motion for Summary
18 Judgment. Surveying Prop. 63’s text, findings, and statement of purpose and intent, there is no
19 indication—clear or otherwise—that voters sought to establish a uniform state reporting
20 requirement to the exclusion of local enactments. Rather, the purpose and findings of Prop. 63
21 demonstrate that voters intended to combat gun trafficking and facilitate the recovery of lost or
22 stolen firearms by requiring that gun losses and thefts be reported, without expressing a preference
23 for a uniform 5-day timeframe. Prop. 63 notes a clear intention to require “the reporting of lost or
24 stolen firearms to law enforcement,” but it does not include any specific time by which reporting
25 should be accomplished (*see* Allison Decl. ISO MSJ Ex. 7), in contrast to timeframes expressly
26 provided elsewhere in Prop. 63 (*see* Morgan Hill Mem. ISO MSJ at 18).

27 Moreover, and critically, Prop. 63 was enacted against a backdrop of preexisting local
28 firearm theft-reporting laws that went further than state law, yet the ballot initiative was silent

1 about these local laws. Silence on the existence of so many local ordinances, legitimately adopted
2 as part of cities’ and municipalities’ police powers, cuts against an implied intent to preempt those
3 ordinances. *See, e.g., Calguns Found., Inc. v. Cty. of San Mateo*, 218 Cal. App. 4th 661, 666–67
4 (Cal. Ct. App. 2013) (citations omitted) (“it is not to be presumed that the Legislature in the
5 enactment of statutes intends to overthrow long-established principles of law unless such intention
6 is made clearly to appear either by express declaration or by necessary implication”). To the extent
7 there is any ambiguity about voter intent, as a result of voters’ adopting an initiative that included
8 no language either explicitly overruling local theft-reporting ordinances or explicitly leaving them
9 in place, that ambiguity cannot constitute a “clear” indicator of voter intent to preempt.

10 **D. Morgan Hill’s Ordinance Does Not Have a Significant Adverse Effect on**
11 **Transient Citizens.**

12 As a fourth alleged basis for preemption, Plaintiffs argue that the subject of lost or stolen
13 reporting is partly addressed in state law and “is of such a nature that the adverse effect of a local
14 ordinance on the transient citizens of the state outweighs the possible benefit to the locality” (Pls.’
15 Mem. ISO MSJ at 15, 19). There is no such adverse effect, and any hypothetical adverse effect is
16 not substantial enough to outweigh the benefits to Morgan Hill.

17 **1. The Ordinance’s Effect on Transient Citizens is Insubstantial**

18 Though there are many hundreds of local firearms ordinances in California,⁷ Plaintiffs
19 point to no firearm ordinance, and Morgan Hill is not aware of any, that has ever been invalidated
20 based on an adverse effect on transient citizens. That is not surprising because courts have
21 repeatedly held that local gun regulations have an insignificant adverse effect on transient citizens.
22 “Laws designed to control the sale, use or possession of firearms in a particular community have
23 very little impact on transient citizens, indeed, far less than other laws that have withstood
24 preemption challenges.” *Great W. Shows, Inc.*, 27 Cal. 4th at 867; *see also Suter v. City of*
25 *Lafayette*, 57 Cal. App. 4th 1109, 1119 (Cal. Ct. App. 1997); *Galvan*, 70 Cal. 2d at 864–65.
26 Furthermore, courts have recognized that, having not preempted broad areas of gun regulation,

27 ⁷ *See generally* Giffords Law Center, *Communities on the Move: Local Gun Safety Legislation in*
28 *California* (Oct. 1, 2018), <https://lawcenter.giffords.org/resources/communities-on-the-move-local-gun-safety-legislation-in-california/>.

1 California supports the development of varied local firearm laws. *Suter*, 57 Cal. App. 4th at 1119
2 (California legislature has “indicate[d] an intent to permit local governments to tailor firearms
3 legislation to the particular needs of their communities”).

4 Contrary to Plaintiffs’ contention, courts have not found that local firearm laws burden
5 transient citizens by obligating travelers to learn about gun regulations that differ from state law.
6 In *Nordyke*, for example, the Supreme Court upheld an Alameda County ordinance forbidding
7 firearms on county property, including a county fairground that hosts a gun show, with no
8 exceptions—even though a state law authorized bringing licensed firearms to gun shows held on
9 public land, and exempted retired law enforcement, animal control officers, and correctional
10 officers from firearm licensing restrictions. *See* 27 Cal. 4th 875, 883–84. The Court upheld the
11 local ordinance, despite the fact that transient visitors might need to educate themselves on
12 Alameda County’s county building and fairgrounds firearm ban and learn that it applies to
13 normally exempt individuals. *See id.*; *cf. id.* at 885 (Brown, J., dissenting) (noting that majority’s
14 reasoning would burden travelers by requiring them to learn local gun laws).

15 Plaintiffs offer no basis to distinguish *Nordyke* from this case, and their account of the
16 burdens on transient citizens “passing through” Morgan Hill (Pls.’ Mem. ISO MSJ at 14–15) such
17 as “while on a hunting trip” or “as part of a move” (*id.* at 20) is even more speculative. Any
18 possible burden the Ordinance could have on travelers would only come into play if (a) a visitor
19 reasonably became aware that their firearm was lost or stolen while passing through Morgan Hill,
20 and (b) such a visitor wished to wait to report the loss or theft to Morgan Hill police until day
21 three, four or five. Since state law would require those passing through Morgan Hill to report
22 firearm losses or thefts to the *Morgan Hill police* (not the police in their hometown), a person in
23 this situation might wish to report right away, before leaving Morgan Hill to continue a move or
24 hunting trip without their firearm. Even if potentially inconvenient, the burden on visitors to report
25 a lost or stolen firearm in Morgan Hill is ultimately imposed by state law, and the obligation to
26 learn about Morgan Hill’s 48-hour reporting requirement poses no more of a burden than the local
27 regulations the Court determined Alameda County visitors would need to comply with in *Nordyke*.

28 Elsewhere in their Motion, Plaintiffs suggest that the sheer number of local reporting laws

1 obligates transient citizens to learn all of them. Pls.’ Mem. ISO MSJ at 20 (noting that if each
2 county and city in California could “arbitrarily set any number of days to report, a hopeless
3 ‘patchwork quilt’ of varying reporting requirements will confront visiting gun owners whenever
4 [they] move about the state.”). But gun owners need not learn every reporting requirement in this
5 supposedly hopeless patchwork quilt. Local theft-reporting requirements only confront gun
6 owners *whose firearm is lost or stolen* while traveling through a different city or county—quite an
7 abnormal experience, one hopes, that does not occur often. State law already requires traveling
8 gun owners to report to *local* police in the jurisdiction where a theft or loss takes place, and
9 already requires such owners to abide by *local* rules for the information that must be reported. *See*
10 Penal Code § 25270 (requiring reporting of “any additional relevant information required by the
11 local law enforcement agency taking the report”). Given the individualized responsibilities state
12 law already assigns, it is far from unreasonable for cities and counties to ask travelers who lose a
13 deadly weapon or experience a dangerous crime in their borders to comply with any additional
14 local requirements when reporting the lost or stolen gun now endangering the community.⁸

15 Ultimately, local laws in the area of firearm-theft reporting are no more onerous than any
16 other local law—including the hundreds of local gun regulations already on the books that cities
17 have the broad authority to adopt. *See Galvan*, 70 Cal. 2d at 864 (“That problems with firearms are
18 likely to require different treatment in San Francisco County than in Mono County should require
19 no elaborate citation of authority.”). Nor are local theft-reporting laws more onerous than local
20 regulations on any subject that apply to visitors as well as residents. As the Supreme Court
21 explained in *Galvan*, courts routinely find local ordinances not preempted even though they “apply
22 to *anyone* within the geographic confines of the city, and not merely to residents.” 70 Cal. 2d at
23 865 (emphasis in original). This includes a “Fresno ordinance prohibiting the consumption of
24 _____

25 ⁸ If gun owners are concerned they will be caught unaware by local laws while traveling with a
26 firearm, there are several resources that would allow them to look up this information. Attorneys
27 for Plaintiff California Rifle & Pistol Association market a publication advising California gun
28 owners on applicable federal and state laws and local ordinances, and their obligation to comply
with them. Cal. Rifle & Pistol Ass’n, *California Gun Laws* (accessed Jun. 2, 2020),
<https://crpa.org/california-gun-laws/>. Counsel for Morgan Hill, Giffords Law Center, also
publishes a free list of localities that have gun ordinances on a number of subjects. *See supra* n.7.

1 alcoholic beverages on the street” (*id.* (citing *People v. Butler*, 252 Cal. App. 2d Supp. 1053, 1058
2 (Cal. Super. Ct. 1967))); a Los Angeles ordinance prohibiting assembling at gambling houses
3 (*People v. McGennis*, 244 Cal. App. 2d 527, 532 (Cal. Ct. App. 1966)); and a Los Angeles
4 ordinance making it unlawful to loiter in tunnels (*Gleason v. Mun. Court for Los Angeles Judicial*
5 *Dist.*, 226 Cal. App. 584, 585 (Cal. Ct. App. 1964)). Such ordinances were not preempted even
6 though they required traveling citizens to learn about local ordinances that differ from state law on
7 alcohol consumption, gambling, and loitering.

8 **2. Any Effect on Transient Citizens Cannot Outweigh the Benefits to**
9 **Morgan Hill**

10 Since the Ordinance’s effects on transient citizens are reasonable and in line with other
11 local laws, Morgan Hill’s public safety interests are strong enough to outweigh any burdens. As
12 described in Morgan Hill’s summary judgment motion, Morgan Hill sought to achieve a number
13 of local benefits by adopting a 48-hour reporting requirement, including reducing gun crime and
14 youth gun violence. (Morgan Hill Mem. ISO MSJ at 8.) The benefits are further supported by
15 compelling research showing that thefts from legal gun owners is a growing problem and that too
16 many firearms are recovered too slowly—only after they have been used in crime. *Id.* at 1–2. And
17 there is research showing that much gun crime is local crime, confirming that local interventions
18 are well-suited to recover crime guns quickly, before they are used to harm someone. *Id.* at 8.

19 Plaintiffs attempt to cast doubt on this reasoning by arguing the relevant research is disputed
20 (Pls.’ Mem. ISO MSJ at 22 & n.7, 23), but that debate is immaterial. Courts do not ask whether a
21 local law *effectively achieves* a local benefit, which would improperly intrude into a municipality’s
22 police powers. *See, e.g., Great W. Shows*, 27 Cal. 4th at 867 (crediting ordinance’s legislative
23 findings on the “grave problems” ordinance was intended to address and acknowledging munici-
24 pality’s authority to do its “own calculations of the costs and benefits” of a gun regulation). Morgan
25 Hill is not aware of any court in a firearm preemption case that has engaged in an effectiveness
26 analysis of a local regulation. As the Court of Appeal explained in *Fiscal*: “we need not, and do not,
27 pass judgment on the merits of Prop. H, or engage ourselves in the sociological and cultural debate
28 about whether gun control is an effective means to combat crime.” 158 Cal. App. 4th at 902.

1 Nor do courts in this position demand that a city council justify its policy decisions with a
2 legislative record of studies that would satisfy courtroom evidentiary standards, as Plaintiffs
3 suggest is needed here. (Pls.’ Mem. ISO MSJ at 22 & n.7.) That suggestion is off-base because
4 cities and municipalities have constitutionally broad latitude to adopt police regulations. Indeed,
5 courts draw every inference “in favor of the validity of the exercise of the police power,” and may
6 look beyond reasons cited by a local legislature and uphold an ordinance as furthering public
7 safety for reasons that “differ from the determination of the legislative body.” *See, e.g., Ensign*
8 *Bickford Realty Corp. v. City Council*, 68 Cal. App. 3d 467, 474 (Cal. Ct. App. 1977) (overruled
9 in part on other grounds by *Hernandez v. City of Hanford*, 41 Cal. 4th 279 (Cal. 2007)).

10 No preemption precedent suggests the Court should re-weigh Morgan Hill’s policy choices
11 and interrogate the strength of the evidence supporting the City’s theft-reporting requirement.
12 Instead, the relevant question in this preemption case is whether “the adverse effect of a local
13 ordinance on the transient citizens of the state outweighs the *possible* benefit to the municipality.”
14 *Sherwin-Williams Co.*, 4 Cal. 4th at 898 (citations omitted) (emphasis added). Here, since there is
15 no substantial impact on transient citizens and a legislative record that details numerous possible
16 benefits to Morgan Hill, the Ordinance is not preempted on this basis.

17 V. CONCLUSION

18 The Constitution safeguards local government authority to use police powers to regulate in
19 the area of firearms, and the California Supreme Court has carefully protected this right by
20 enforcing a robust presumption against the preemption of local gun regulations. Reporting
21 requirements for lost or stolen firearms, including the Morgan Hill Ordinance and the similar laws
22 that exist in 18 other California cities today, enjoy this presumption.

23 Plaintiffs failed to meet their burden of showing that the presumption should be set aside
24 because the Ordinance duplicates or contradicts state law. They have also failed to articulate, let
25 alone establish, a “clear intent” by Prop. 63 voters to preempt the Ordinance. The relevant evidence
26 and applicable precedents demonstrate that the Ordinance permissibly strengthens a reporting time-
27 frame set by state law, furthering and not undermining the public safety goals of that law. The Court
28

1 should deny Plaintiffs' Motion for Summary Judgment and grant summary judgment to Morgan Hill.

2 Dated: June 11, 2020

FARELLA BRAUN + MARTEL LLP

3
4 By: 
Roderick M. Thompson

5 Attorneys for CITY OF MORGAN HILL, MORGAN
6 HILL CHIEF OF POLICE DAVID SWING, MORGAN
7 HILL CITY CLERK IRMA TORREZ

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

7 Hannah Shearer (State Bar No. 292710)
hshearer@giffords.org
8 Hannah Friedman (State Bar No. 324771)
hfriedman@giffords.org
9 Giffords Law Center to Prevent Gun Violence
268 Bush Street #555
10 San Francisco, CA 94104
Telephone: (415) 433-2062
11 Facsimile: (415) 433-3357
12

13 Attorneys for CITY OF MORGAN HILL,
MORGAN HILL CHIEF OF POLICE DAVID
14 SWING, MORGAN HILL CITY CLERK IRMA
TORREZ

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

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

21 Plaintiffs and Petitioners,

22 vs.

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

27 Defendants and Respondents.
28

Case No. 19CV346360

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

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

Action Filed: April 15, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	Req. Jud. Ntc. Ex. F, at p. 75.	
45	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that "[r]eporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner."</p> <p>Req. Jud. Ntc. Ex. F, at p. 75.</p>	Undisputed.
46	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that "[r]eporting laws make gun owners more accountable for their weapons."</p> <p>Req. Jud. Ntc. Ex. F, at p. 75.</p>	Undisputed.
47	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to serve the City's interests than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 308-309, Ex. J, pp. 347-362.</p>	<p>Disputed, but immaterial to any preemption theory. An ordinance's effectiveness at serving public safety interests is not material to establishing whether an ordinance is preempted. <i>See, e.g., Fiscal v. City & Cty. of S.F.</i>, 158 Cal. App. 4th 895, 895 (2008) ("we need not, and do not, pass judgment on the merits of" a local initiative or decide "whether gun control is an effective means to combat crime").</p> <p>Morgan Hill alternatively disputes this fact because the City Council, in its "official legislative records" for Municipal Code section 9.40.030 (<i>see</i> Pls.' Req. Jud. Ntc., p. 4), cited the following factors weighing in favor of a 48-hour requirement:</p> <ul style="list-style-type: none"> • "Earlier notification of lost or stolen firearms allows police to more easily identify stolen weapons during the course of an investigation." • "The 48-hour reporting period also provides an opportunity for early identification and may reduce the chance

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

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

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

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

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

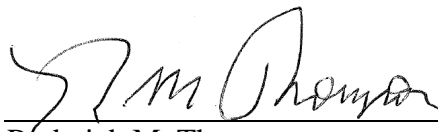
#	Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	EE.	Brief: Firearms Stolen During Household Burglaries and Other Property Crimes, 2005-2010 (Nov. 2012)).
56	<p>According to the United States Department of Justice, although “victimizations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

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

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

Dated: June 11, 2020

FARELLA BRAUN + MARTEL LLP

By: 
Roderick M. Thompson

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

C. D. Michel – SBN 144258
Anna M. Barvir – SBN 268728
Tiffany D. Cheuvront – 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

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**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

**PLAINTIFFS' MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

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

[Filed concurrently with Response to Defendants'
Separate Statement of Undisputed Facts and
Additional Undisputed Material Facts; Request
for Judicial Notice; Declaration of Anna M.
Barvir; Evidentiary Objections; and Proposed
Order for Evidentiary Objections]

Action filed: April 15, 2019

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4	(2007) 41 Cal.4th 1061.....	16, 17, 21
5	<i>People v. Briceno</i>	
6	(2004) 34 Cal.4th 451.....	12, 24
7	<i>People v. Guzman</i>	
8	(2005) 35 Cal.4th 577.....	24
9	<i>Persky v. Bushey</i>	
10	(2018) 21 Cal.App.5th 810.....	11
11	<i>In re Portnoy</i>	
12	(1942) 21 Cal.2d 237.....	16
13	<i>Robins v. County of Los Angeles</i>	
14	(1966) 248 Cal.App.2d 1.....	20, 26
15	<i>S.F. Apartment Assn. v. City and County of San Francisco</i>	
16	(2016) 3 Cal.App.5th 463.....	11, 13
17	<i>Sherwin-Williams Co. v. City of Los Angeles</i>	
18	(1993) 4 Cal.4th 893.....	15, 16, 17, 21
19	<i>Shin v. Ahn</i>	
20	(2007) 42 Cal.4th 482.....	10
21	<i>Soon Hing v. Crowley</i>	
22	(1885) 113 U.S. 703.....	11
23	<i>Suter v. City of Lafayette</i>	
24	(1997) 57 Cal.App.4th 1109.....	20, 21, 24
25	<i>Water Quality Assn. v. Cty. of Santa Barbara</i>	
26	(1996) 44 Cal. App.4th 732.....	21
27	<i>Yanowitz v. L'Oreal USA, Inc.</i>	
28	(2005) 36 Cal.4th 1028.....	11

1	Statutes	
2	18 U.S.C. § 923(g)(6)	23
3	Code Civ. Proc., § 437c	10
4	Conn. Gen. Stat., § 53-202g	25
5	D.C. Code Ann., § 7-2502.08	25
6	Del. Code, tit. 11, § 1461	25
7	Haw. Rev. Stat. Ann., § 134-29	25
8	Ill. Comp. Stat. 5/24-4.1	25
9	Mass. Gen. Laws, ch. 140, § 129C	25
10	Md. Code Ann., Pub. Safety, § 5-146	25
11	Mich. Comp. Laws, § 28.430	25
12	Morgan Hill Mun. Code, § 1.19.060	10
13	Morgan Hill Mun. Code § 9.04.030	<i>passim</i>
14	Morgan Hill Mun. Code, 9.04.060	10
15	N.J. Stat. Ann., § 2C:58-19	25
16	N.Y. Pen. Law, § 400.10	25
17	Ohio Rev. Code Ann., § 2923.20	25
18	Pen. Code, § 16520	10
19	Pen. Code, § 25250	<i>passim</i>
20	Pen. Code, § 25255	9, 22
21	Pen. Code, § 25260	9, 22, 23
22	Pen. Code, § 25265	8, 22
23	Pen. Code, § 25270	8, 22
24	Pen. Code, § 25275	9, 15, 22
25	Pen. Code, § 26835	9, 22
26	Pen. Code, § 26885	13
27	R.I. Gen. Laws, § 11-47-48.1	25
28	Va. Code Ann., § 18.2-287.5	25

1	Other Authorities	
2	Cal. Const., art. XI, § 7	15, 16
3	Jansen, <i>Florida Shooting Suspect Bought Gun Legally, Authorities Say</i> , USA Today	
4	(Feb. 15, 2018) < https://www.usatoday.com/story/news/2018/02/15/florida-shooting-suspect-bought-gun-legally-authorities-say/340606002/ >	14

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INTRODUCTION

Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, allege that Defendant City of Morgan Hill adopted an ordinance that state law preempts. The challenged ordinance requires victims of firearm theft who live in, and those whose firearms are lost or stolen within, the City to report the theft or loss to the Morgan Hill Police Department within *48 hours*. But under Proposition 63, which California voters enacted in 2016, gun owners must *also* report the theft or loss of a firearm to local law enforcement, but they are given *five days* to do so. In short, the City's ordinance criminalizes conduct that the voters of the state have found permissible. And it undermines the state's broad effort to create consistent and rational statewide compliance with its comprehensive theft-reporting requirements.¹

The City cites no compelling reason it would need a more restrictive theft-reporting requirement. To the contrary, in the very first line of its motion for summary judgment, the City admits that what motivated it to adopt the offending ordinance was not some particularized local need for stricter theft reporting, but a bare desire to do *something* in response to the Parkland tragedy. The legislative history of the City's theft-reporting ordinance includes *no* evidence that a 48-hour theft-reporting requirement is more likely to serve the City's purported interests than the statewide five-day requirement. And even now, with the parties filing dueling dispositive motions, the City *still* has no evidence that a shortened period will provide any local benefit beyond what state law already provides. Instead, the City defends its ordinance by pointing to dubious claims that gun violence is a growing epidemic, that firearm theft is on the rise,² and that theft-reporting requirements will somehow reduce both. But even assuming each of these broad notions were true, and assuming they justify theft-reporting requirements generally, the City *still* would not have shown that its particular requirement is valid.

Let Plaintiffs be clear. They are not challenging theft-reporting requirements, generally. They are not even challenging California's theft-reporting requirement, specifically. They are only

¹ For ease of reference, Plaintiffs often refer to the reporting of firearms as stolen or lost as "firearm theft reporting" or "theft reporting."

² See Pls.' Evid. Objs. Supp. Oppn. Defs.' Mot. Summ. J., filed simultaneously herewith.

1 challenging the City’s authority to pass its own theft-reporting requirement—a local law at odds
2 with state law that cannot be justified by any special local need. As Plaintiffs will show, the City
3 lacks such authority. For its theft-reporting ordinance duplicates, contradicts, and enters a field
4 implicitly occupied by state law, and is preempted. The Court should grant Plaintiffs’ Motion for
5 Summary Judgment, deny the City’s, and enter an order enjoining enforcement of the City’s law.

6 **STATEMENT OF FACTS**

7 In November 2016, California voters enacted Prop 63, creating (among other things) Penal
8 Code section 25250,³ which reads in relevant part:

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

12 (Pls.’ Resp. Defs.’ Sep. State. Undisp. Mat. Facts & Additional Undisp. Mat. Facts (“RUMF”) No.
13 10, citing Pen. Code, § 25250, subd. (a).) In short, state law requires that firearm owners report
14 firearm theft or loss to local law enforcement within five days. (Pls. RUMF No. 10.) Failure to do
15 so is a crime punishable by fine for the first two violations and by fine, imprisonment, or both for a
16 third violation. (RUMF No. 25, quoting Pen. Code, § 25265, subds. (a)-(c).)

17 Prop 63 also created about a dozen other sections and subsections related to firearm theft
18 reporting. (RUMF Nos. 16-25, 67.) Penal Code section 25270, for instance, lays out what must be
19 part of a section 25250 report, including “the make, model, and serial number of the firearm, if
20 known by the person, and any additional relevant information required by the local law
21 enforcement agency taking the report.” (RUMF No. 16, citing Pen. Code, § 25270.) The law also
22 provides guidance for those who recover a firearm previously reported lost or stolen. (RUMF No.
23 17, citing Pen. Code, § 25250, subd. (b) [giving firearm owners five days to notify local law
24 enforcement that they recovered their firearms].) It furthers statewide law enforcement interests by
25 directing “every sheriff or police chief [to] submit a description of each firearm that has been
26 reported lost or stolen directly into the Department of Justice Automated Firearms System [AFS].”

27
28 ³ Unless otherwise noted, all statutory references are to the California Penal Code.

(RUMF No. 21, citing Pen. Code, § 25260.) It made it a crime to knowingly make a false report. (RUMF No. 22, citing Pen. Code, § 25275.) And it created a requirement that firearm retailers notify consumers of the statewide five-day theft-reporting requirement on a visible sign printed in block letters. (RUMF No. 67, citing Pen. Code, § 26835.)

Finally, Prop 63 created several exceptions to the statewide reporting law. (RUMF No. 18, citing Pen. Code, §§ 25250, subd. (c), 25255.) Under section 25250, subdivision (c), for instance, no person must report the theft or loss of any firearm that qualifies as an “antique” under state law. (RUMF No. 19.) And section 25255 explicitly exempts:

1. Any law enforcement officer or peace officer acting within the scope of their duties who reports the theft or loss to their employing agency;
2. Any United States marshal or member of the United States armed forces or the National Guard engaged in their official duties;
3. Any federally licensed firearms importer, manufacturer, or dealer who reports the theft or loss in compliance with applicable federal law; and
4. Any person whose firearm was stolen or lost before July 1, 2017.

(RUMF No. 20, citing Pen. Code, § 25255.)

Interestingly, even though voter approval of Prop 63 created this comprehensive scheme regulating firearm theft reporting, the official ballot language for Prop 63 did not include a single reference to it:

Requires background check and Department of Justice authorization to purchase ammunition. Prohibits possession of large-capacity ammunition magazines. Establishes procedures for enforcing laws prohibiting firearm possession by specified persons. Requires Department of Justice’s participation in federal National Instant Criminal Background Check System. Fiscal Impact: Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.

(RUMF No. 65, citing Pls.’ Req. Jud. Ntc. Supp. Oppn. Defs.’ Mot. Summ. J. (“Pls.’ Req. Jud. Ntc.”) Exs. UU-VV.)

In late November 2018, some two years later after voters adopted Prop 63, the City adopted Ordinance No. 2289, amending section 9.04.030 of the Morgan Hill Municipal Code. (RUMF Nos. 11-12.) Drawing from “model laws” championed by the Giffords Law Center to Prevent Gun

1 Violence (formerly the Legal Community Against Violence) and the Association of Bay Area
2 Governments, section 9.04.030 shortens the time for reporting a firearm stolen or lost. (RUMF Nos.
3 59-62.) MHMC section 9.04.030 reads:

4 Any person who owns or possesses a firearm (as defined in Penal Code
5 Section 16520 or as amended) shall report the theft or loss of the firearm to
6 the Morgan Hill Police Department within forty-eight hours of the time he or
7 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.

8 (RUMF No. 13, citing Morgan Hill Mun. Code, § 9.04.030.) The local law thus gives firearm
9 owners only two days to report a firearm theft or loss to the MHPD whenever the theft or loss
10 occurs in the City or the firearm owner resides there. (RUMF No. 13.) Failure to comply with the
11 City's reporting mandate is crime punishable by confiscation or fine or, potentially, both. (RUMF
12 No. 26, citing Morgan Hill Mun. Code, §§ 1.19.060, 9.04.060.) Unlike the Penal Code, the MHMC
13 has no exceptions to its theft-reporting mandate.

14 While the City was considering adopting the ordinance, Plaintiff CRPA twice notified
15 lawmakers of its opposition to the law, explaining that state law preempted the City's proposed 48-
16 hour reporting requirement. (RUMF No. 27.) After the City adopted MHMC section 9.04.030,
17 Plaintiff CRPA again notified the City of its position, requesting that the City voluntarily repeal the
18 law. (RUMF No. 28.)⁴ The City refused, the law took effect in December 2018, and the City has
19 enforced the law since that time. (RUMF No. 29.)

20 ARGUMENT

21 I. LEGAL STANDARD FOR SUMMARY JUDGMENT

22 Summary judgment is appropriate only if the moving party can show there is no triable issue
23 of material fact and it is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd.
24 (c).) On summary judgment, courts view the evidence in the light most favorable to the nonmoving
25 party, resolving any evidentiary doubts in their favor. (*Shin v. Ahn* (2007) 42 Cal.4th 482, 499;

26 ⁴ Plaintiff CRPA also wrote to the city of Palm Springs, notifying local lawmakers that
27 Prop 63 preempted its similar attempt to shorten the time that firearm-theft victims have to report
28 their property stolen. (RUMF No. 30.) After receiving CRPA's analysis (and just months after
adopting the law), Palm Springs voluntarily repealed its 48-hour reporting requirement. (RUMF
No. 30.) The City acknowledged the repeal but did not address the reasons for it. (Defs.' MSJ, p. 4.)

1 *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

2
3 **II. THERE IS NO EVIDENCE THAT VOTERS INTENDED FOR THE STATEWIDE**
4 **THEFT-REPORTING LAW TO NOT PREEMPT FURTHER LOCAL REGULATION**

5 Throughout its motion, the City repeatedly refers to the “intent of the voters” in passing
6 Prop 63 by referencing the initiative’s “Findings and Declarations” and “Purpose and Intent”
7 sections. (Defs.’ MSJ, pp. 2-3, 6, 16-17.) But this extrinsic evidence of subjective voter intent is
8 inappropriate here. As the City correctly notes, “when California voters enact a state law by ballot
9 initiative, voter intent is considered in place of the Legislature’s.” (Defs.’ MSJ, p. 14, citing *Persky*
10 *v. Bushey* (2018) 21 Cal.App.5th 810, 818-819.) Like a legislature then, evidence of the voters’
11 subjective intent is secondary to the operation and effect of their enactment. (*S.F. Apartment Assn.*
12 *v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 476.) Indeed, “[t]he motives of the
13 legislators, considered as the purposes they had in view, will always be presumed to be to
14 accomplish that which follows as the natural and reasonable effect of their enactments.” (*County of*
15 *Los Angeles v. Superior Court (Burroughs)* (1975) 13 Cal.3d 721, 726, citing *Soon Hing v. Crowley*
16 (1885) 113 U.S. 703, 710-711.) As will be shown, the “natural and reasonable effect” of Prop 63’s
17 comprehensive theft-reporting scheme preempts further local regulation, so resort to extrinsic
18 evidence of subjective voter intent is unnecessary and improper.

19 But even if one were to try to discern a purported “intent of the voters” by looking beyond
20 the effect of their enactment, one would quickly realize that the task is much harder than examining
21 legislative history. Legislatures are made up of relatively few people, their proceedings are
22 recorded, and the people who comprise them are not laypeople, but lawmakers. In contrast, when
23 millions of voters take the place of the legislature, there is no reliable legislative history to refer to.
24 The City points to various sections of Prop 63’s full text and its voter guide. (Defs.’ MSJ, pp. 3-4.)
25 But it cites no evidence about how many of the millions of people who voted on Prop 63 read the
26 full text of the initiative or even the voter guide’s excerpts. The text of Prop 63 was over *15 pages*,
27 including complicated “legalese,” unlikely to have been read by most laypeople. (See Pls.’ Req.
28 Jud. Ntc. Ex. C.) As the Center for Civic Design explained in 2014, there is:

[S]trong evidence from many sources that voters feel that preparing for an

election can be an overwhelming task. The number of pages is one of the factors that figures into the “20-second test.” If recipients get a large document in the mail, they’re less likely to even flip through it, regardless of how compelling the cover might be.

(RUMF No. 66.)

The City thus has no way to know whether voters even read what their “intent” was, let alone that they expressed it through their vote. The only reliable extrinsic evidence of the voters’ intent is the language on the ballot itself. But the ballot did not even reference theft reporting, focusing instead on other aspects of Prop 63. (RUMF No. 65.) A voter who reasonably chose not to wade through the “legalese” of Prop 63’s full text would have had no idea that firearm theft reporting was even a part of the measure. So, beyond the scope of the enactment itself, there is really no way to determine voter intent about theft reporting, generally, or preemption, specifically.

The only people the City can definitively argue read all of Prop 63 were those who drafted it. And *they* saw fit to include not one, *but two*, statutes expressly sanctioning further regulation, including local action, in other parts of the very same initiative measure. (Pls.’ Req. Jud. Ntc. Ex. C, at pp. 23, 26.)⁵ That they did not include similar language in the theft-reporting mandate is good indication that no authorization of further local regulation was intended. (See *Bates v. United States* (1997) 522 U.S. 23, 29-30 [“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”]; *People v. Briceno* (2004) 34 Cal.4th 451, 459 [“In interpreting a voter initiative . . . we apply the same principles that govern statutory construction.”].) Certainly, if the drafters wanted to authorize local action on theft reporting, they knew how, as several other sections of Prop 63 itself demonstrate.

The City makes a final argument about voter intent, relying again on Prop 63’s “Purpose and Intent” section, which makes reference to Prop 63’s requirement that ammunition retailers report ammunition theft or loss within 48 hours. (Defs.’ MSJ, p. 18.) Noting that the section quotes the length of the reporting period for these retailers, but is silent as to the length of the reporting

⁵ For more evidence of the drafters’ intent about which types of state laws left room for local restriction under Prop 63, see section 9, which reads: “Nothing in this Act shall preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition.” (Pls.’ Req. Jud. Ntc. Ex. C, at p. 31.)

1 period for common gun owners, the City claims the

2 discrepancy . . . demonstrates that the purpose of the 48-hour stolen
3 ammunition reporting requirement for *sellers* may be to remove localities'
4 ability to mandate a shorter reporting requirement for ammunition sellers.
5 But because there is no corresponding statement that five days is the only
6 appropriate time for individuals to report lost or stolen firearms,⁶ Prop 63
7 indicates an intent to allow further local regulation in this area.

8 (Defs.' MSJ, p. 18.) The City is making a stunning argument that elevates improper extrinsic
9 evidence of voter intent in the "Purpose and Intent" section *above the law the voters actually*
10 *enacted*. Given the absurd weight the City lends to what amounts to a preamble, it is understandable
11 that it overlooks that Prop 63 voters did, in fact, specify the "appropriate time for individuals to
12 report lost or stolen firearms." (Defs.' MSJ, p. 18.) *That time is five days*. (Pen Code, § 25250.) And
13 of course, it is the reasonable effect of the enactment that counts, not the (likely unknowable)
14 subjective intent behind it. (*S.F. Apartment Assn.*, *supra*, 3 Cal.App.5th at p. 476.) That the
15 "Purpose and Intent" did not itself cite the actual length of the reporting period is irrelevant.

16 Additionally, the City's wholly speculative argument about why the drafters specified that
17 ammunition reports be made within 48 hours in the preamble should be dismissed offhand. Even
18 before Prop 63, state law required retailers to report firearm loss "within 48 hours of discovery."
19 (Pen. Code, § 26885, subd. (b).) The *only* change Prop 63 made to that section was to add
20 ammunition loss to the list of reportable events. (*Ibid.* See also Pls.' Req. Jud. Ntc. Ex. C, at p. 26.)
21 It is thus more likely the "purpose and intent" of Prop 63 (as regards retailer reporting) was to add
22 ammunition, *not* to impact how long retailers have to report or to make any broad-sweeping
23 statement about the preemptive effect of section 26885 or any other law, for that matter.

24 **III. THE CITY HAS NO SPECIAL INTEREST IN ITS THEFT-REPORTING PERIOD**

25 The City argues that there is a strong presumption against preemption "when considering a
26 local regulation that covers an area of significant local interest differing from one locality to
27 another." (Defs.' MSJ, p. 7, citing *Big Creek Lumber Co. v. City of Santa Cruz* (2006) 38 Cal.4th
28 1139, 1149.) It goes further, claiming that "the reporting of lost or stolen firearms in particular

⁶ The "Purpose and Intent" section does not say that the "*only* appropriate time" for retailers
to report ammunition loss is 48 hours either. (Pls.' Req. Jud. Ntc. Ex. C, at p. 22.)

1 implicates particularly localized interests,” and that preemption would leave them “unable to
2 address acute public health issues.” (Defs.’ MSJ, pp. 8, 13.) Yet the City has *never* identified what
3 particularized interest, “acute public health issue,” or other need it has to shorten the reporting
4 period. To the contrary, the very first line of the City’s motion reveals that the City passed the
5 ordinance as a response to “its citizens’ desire to take action on gun violence in light of the
6 Parkland mass shooting,” and not any local need related to theft reporting. (Defs.’ MSJ, p. 1.) A
7 tragedy that occurred across the country is not a particularly local interest, especially when no theft-
8 reporting law, *regardless of the length of the reporting period*, would have prevented that crime.⁷

9 Further, in adopting MHMC section 9.40.030, the City cited four general purposes for theft-
10 reporting ordinances, but never mentioned any “significant local interest” in requiring reporting
11 within 48 hours, as opposed to five days (or any other reporting period). (Pls. RUMF Nos. 44-54.
12 See also Pls.’ Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp.
13 308-309, Ex. J, pp. 347-362.) The City’s goals for MHMC section 9.04.030 were purportedly:

- 14 1. To discourage firearm owners from falsely reporting the theft or loss of a
15 firearm to hide their involvement in illegal activities and to provide a tool
for law enforcement to ferret out such behavior. (RUMF No. 45.)
- 16 2. To help disarm prohibited persons by deterring them from falsely
17 claiming their firearms were stolen or lost. (RUMF No. 46.)
- 18 3. To protect firearm owners from unwarranted accusations if law
19 enforcement recovers their firearm at a crime scene and to make it easier
to return a lost or stolen firearm to its lawful owner. (RUMF No. 47.)
- 20 4. To make firearm owners more accountable for their firearms. (RUMF
No. 48.)

21 The City has cited no evidence that its 48-hour theft-reporting requirement would be more
22 likely to serve these interests than the statewide five-day requirement (RUMF No. 49), which itself
23 seeks to serve the very same purposes (RUMF Nos. 63-64). Even if state law cannot serve these
24 purposes, there is no reason to think that the City’s law, shortening the reporting period by just
25 three days, is any more likely to. The City cited no evidence that it would (RUMF Nos. 49-54), and
26 there is no body of reliable research establishing that it could (RUMF No. 55).

27 ⁷ See Jansen, *Florida Shooting Suspect Bought Gun Legally, Authorities Say*, USA Today
28 (Feb. 15, 2018) <<https://www.usatoday.com/story/news/2018/02/15/florida-shooting-suspect-bought-gun-legally-authorities-say/340606002/>> [as of June 4, 2020].

1 In fact, it is unlikely that shortening the reporting period by mere days would have any
2 impact on the City’s interests at all. As the City itself admitted when considering the ordinance,
3 “[r]esponsible gun owners will report with or without an ordinance.” (Pls.’ Req. Jud. Ntc. Ex. F, at
4 p. 275.) Indeed, according to the U.S. Department of Justice, gun owners reported about 90% of
5 burglaries involving stolen firearms to law enforcement between 2005 and 2010. (RUMF No. 57.)
6 But only about *1 of every 5* firearms had been recovered between 1 day and *6 months* after
7 reporting. (RUMF No. 57.) And, although “victimizations involving stolen firearms could have
8 occurred . . . up to six months before the [National Crime Victimization Study] interview [from
9 which these statistics were drawn], the amount of time that had elapsed *made no significant*
10 *difference in the percentage of households for which guns had not been recovered . . .*” (RUMF
11 No. 58, italics added.)

12 What’s more, the City’s purported interest in deterring false reporting (RUMF Nos. 45-46),
13 is no doubt served *better* by state law, which expressly criminalizes that behavior. (RUMF No. 22
14 [citing Prop 63, which also created section 25275, making it a crime to falsely report a firearm lost
15 or stolen].) MHMC section 9.04.030 does not address the issue at all.

16 For all these reasons, it is hard to see how the City could claim its law addresses some local
17 concern that state law does not already seek to address. And the City cites no evidence that it’s
18 specific theft-reporting ordinance—limiting the reporting period to 48 hours—serves those interests
19 any better than state law.

20 **IV. STATE LAW PREEMPTS THE CITY’S THEFT-REPORTING ORDINANCE**

21 The California Constitution commands that a county or city must take care not to fall “in
22 conflict with general laws.” (Cal. Const., art. XI, § 7.) Courts have long interpreted this as a
23 limitation on local governments’ ability to interfere with the proper operation of state law through
24 local legislation. (*Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1.) In short, a local law “[i]s
25 invalid if it attempts to impose additional requirements in a field that is preempted by the general
26 law.” (*In re Lane* (1962) 58 Cal.2d 99, 102.) In determining whether a local measure is preempted,
27 courts ask if it “duplicates, contradicts, or enters an area fully occupied by general law, either
28 expressly or by legislative implication.” (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4

Cal.4th 893, 897 (“*Sherwin-Williams*”).) If it does, “it is preempted by such law and is void.” (*Candid Enterps., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 879.)

Meeting any one of these tests is enough to establish preemption. But the City’s theft-reporting ordinance defies the constitutional mandate that counties govern subordinate to state law (see *Sherwin-Williams, supra*, 4 Cal.4th at p. 898; Cal. Const., art. XI, § 7) at least thrice over because it duplicates state law, contradicts it, *and* enters a field that state law has fully occupied.

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

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

MHMC section 9.04.030 requires “any person who owns or possess a firearm” to report the theft or loss of that firearm to the MHPD within 48 hours. (RUMF No. 13.) The law applies to any person who resides in the City and any theft or loss that takes place in the City. This duplicates state law, which also requires gun owners to report firearm theft or loss but gives them five days to make the report. (Pen. Code, § 25250, subd. (a).) MHMC section 9.04.030 thus imposes the “same criminal prohibition that general law impose[s]” (*In re Portnoy, supra*, 21 Cal.2d at p. 240) in that both state law and local law criminalize the failure to report a firearm lost or stolen. So, if a City resident or visitor has their firearm stolen and fails to report it, they will have violated *both* state law *and* local law. (See *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 179-180.)

The City’s reliance on *Nordyke v. King* (2002) 27 Cal.4th 875 (“*Nordyke*”) misses the mark. There, Alameda County banned possession of firearms at gun shows held at its fairgrounds, presenting the California Supreme Court with a narrow issue of first impression: “Does state law

1 regulating the possession of firearms and gun shows preempt a municipal ordinance prohibiting gun
2 possession on county property?” (*Id.* at p. 880.) Answering that question, the Court relied heavily
3 on the county’s statutorily recognized authority to regulate commercial activities on its own
4 property, holding that under state law

5 [A] county is given *substantial authority to manage its property*, including
6 the most fundamental decision as to how the property will be used, and that
7 nothing in the gun show statutes evince an intent to override that authority.
8 The gun show statutes do not mandate that counties use their property for
9 such shows. . . . In sum, whether or not the [o]rdinance is partially preempted,
Alameda County has the authority to prohibit the operation of gun shows
held on its property and, at least to that extent, may ban possession of guns
on its property.

10 (*Id.* at pp. 882-885, italics added.) In short, *Nordyke* stands for little more than the proposition that
11 state gun-show laws—which expressly contemplate further local regulation—do not preclude local
12 governments from banning the possession of firearms *at gun shows held on county-owned property*.
13 Though the Court did observe that “possessing a gun on county property is not identical to the
14 crime of possessing an unlicensed firearm that is concealable or loaded, nor is it a lesser included
15 offense, and therefore someone may lawfully be convicted of both offenses” (*Nordyke, supra*, 27
16 Cal.4th at p. 883), the case is distinguishable. For the City’s ordinance *does* criminalize the same
17 behavior state law criminalizes—failing to report the loss or theft of a firearm to local law
18 enforcement. This is precisely the sort of local intrusion into state affairs that preemption prohibits.

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

20 Local ordinances that “contradict” state law are preempted and void. (*O’Connell, supra*, 41
21 Cal.4th at pp. 1067-1068.) A local law contradicts state law when it commands what state law
22 prohibits *or prohibits what a state law authorizes*. (*Sherwin-Williams, supra*, 4 Cal.4th at p. 902.)
23 Such laws are “inimical to or cannot be reconciled with state law,” (*O’Connell, supra*, 41 Cal.4th at
24 p. 1068), and courts should strike them as preempted. (*Fiscal v. City and County of San Francisco*
25 (2008) 158 Cal.App.4th 895, 903 (“*Fiscal*”).) MHMC section 9.04.030 prohibits Plaintiff Kirk and
26 members of Plaintiff CRPA from doing what state law, at least implicitly, allows them to do—take
27 up to five days before they must report the theft or loss of their firearms. A patent contradiction
28 with California law, the ordinance is preempted and void.

1 Arguing that local governments are free to narrow what state law permits by creating stricter
2 local requirements, the City points out that “Prop 63 *allows* a gun owner to wait up to five days
3 before reporting a loss or theft; it does not *require* an individual to wait that long.” (Defs.’ MSJ, p.
4 10.) But even if the City’s ordinance merely narrowed what state law allows, such local action is
5 not *always* permissible. For the reasons explained below, it is *not* permissible here.

6 In *Ex parte Daniels* (1920) 183 Cal. 636, 641-648, the California Supreme Court held that
7 local legislation purporting to fix a lower maximum speed limit for motor vehicles than what
8 general law fixed was preempted as “contradicting” state law. While later precedent tells us that no
9 “contradictory and inimical conflict” “will be found where it is *reasonably possible* to comply with
10 both the state and local laws,” (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr.,*
11 *Inc.* (2013) 56 Cal.4th 729, 743 (“*Riverside*”), *italics added*), *Ex parte Daniels* still has important
12 lessons for us today. Decided in an era before speed limit signs were common, *Ex parte Daniels*
13 recognized that it would not be reasonably possible for someone traveling throughout the state to
14 know the speed limits in each area. Indeed, the Court held, if localities had a right to reduce the
15 statewide speed limits at their discretion, “every part of a trip from Siskiyou to San Diego would be
16 controlled by arbitrary speed limits fixed by legislative bodies whose action [the traveler] is
17 presumed to know, but of which he is much more likely to be totally unaware.” (*Id.* at p. 645.) The
18 Legislature, however, had “authorized the citizens of the state to travel upon the highways . . . at a
19 speed which is not unreasonable and unsafe.” (*Ibid.*) It was not the prerogative of the localities to
20 second-guess the state’s measured judgment.

21 Here, section 25250 gives victims of firearm theft, or those who lose a firearm, up to five
22 days to report to local law enforcement. Put another way, taking up to five days to report the theft
23 or loss of a firearm is authorized by state law. Like the Legislature in *Ex parte Daniels* that adopted
24 a “not unreasonable and unsafe” speed limit for the state’s roadways (183 Cal. at p. 645), California
25 voters adopted what they believed to be a “not unreasonable and unsafe” reporting period (RUMF
26 Nos. 10, 15, 63-64; Pls.’ Req. Jud. Ntc. Ex. C, at pp. 22-23). It is not the City’s place to discard that
27 judgment. For, it is *not* “reasonably possible” for citizens passing through Morgan Hill to know that
28 the City’s ordinance would differ from the statewide law. Like our forebears of a century ago who

1 would be unaware of lower local speed limits, so too would people passing through Morgan Hill (or
2 one of the many other cities with similar laws) be unaware of shorter local theft-reporting periods.⁸
3 Should they fail to report a theft or loss within five days, they would “unknowingly commit two
4 offenses instead of one—one against the municipality and the other against the state.” (*Ex parte*
5 *Daniels, supra*, 183 Cal. at pp. 645-646.) This is the sort of situation that preemption seeks to avoid.

6 Even *In re Hoffman* (1909) 155 Cal. 114, a case the City leans heavily on for support (Defs.’
7 MSJ, p. 11), makes clear that cities are not always free to adopt stricter requirements than state law
8 mandates. There, the California Supreme Court concededly did hold that Los Angeles could adopt a
9 regulation requiring that all milk sold in the city contain a higher percentage of milkfat than
10 mandated by state law without violating preemption. (*Hoffman, supra*, 155 Cal. at p. 118.) But there
11 are two important reasons *Hoffman* is inapt.

12 First, *Hoffman* notes that stricter local regulation is appropriate when, as the challenged
13 ordinance did in that case, it serves some special local interest. (*Hoffman, supra*, 155 Cal. at p. 118.)
14 For instance, the Court hypothesized that it would be uncontroversial for a city *within an*
15 *earthquake zone* to adopt a law for chimney heights lower than that required by state law. (*Ibid.*)
16 The Court then held that state law, which operates upon the whole of the state, is often inadequate
17 “to meet the demands of densely populated municipalities; so that it becomes proper and even
18 necessary for municipalities to add to state regulations provisions *adapted to their special*
19 *requirements. Such is the nature of the legislation here questioned.*” (*Ibid.*, italics added.) While
20 Morgan Hill baldly asserts that it has some special local need for a stricter reporting requirement
21 (Defs.’ MSJ, pp. 8, 13), it simply does not have one. (Pls. RUMF Nos. 49-54. See also Pls.’ Req.
22 Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 308-309, Ex. J, pp.
23 347-362.) To the contrary, the City’s purported justifications are largely the same general interests
24

25 ⁸ The City references the Prop 63 requirement that firearm dealers post the theft-reporting
26 law (among others) to argue against contradiction preemption because dealers in Morgan Hill also
27 must post the City’s local gun laws. (Defs.’ MSJ, p. 12.) But Plaintiffs hardly see how presenting
28 consumers with seemingly contradictory sets of laws at the point of sale would create anything but
more confusion. What’s more, a person who has never visited a gun shop in the City would have *no*
reason to know the contradictory local law was posted there. Such signage is *not* like speed limit
signs which are, today, ubiquitous.

1 in theft reporting that the state law cites. (RUMF Nos. 63-64.) And the City does not even try to
2 establish how its shortened reporting period would serve those general interests better than the
3 statewide law. (Pls. RUMF Nos. 49-54, 55.)

4 Second, unlike Morgan Hill’s theft-reporting requirement which applies to run-of-the-mill
5 firearm owners just passing through the City, the local ordinance at issue in *Hoffman* operated upon
6 fixed businesses that sought to sell their products in the city. The distinction is important because,
7 as the court recognized in *Robins v. County of Los Angeles* (1966) 248 Cal.App.2d 1, 10
8 (“*Robins*”), “ordinances affecting the local use of static property might reasonably prevail, while
9 ordinances purporting to proscribe social behavior of individuals should normally be held invalid if
10 state statutes cover the areas of principal concern with reasonable adequacy.”

11 The same vital distinction is present in other cases the City relies on, including *Great*
12 *Western Shows v. County of Los Angeles v. County of Los Angeles* (2002) 27 Cal.4th 853 (“*Great*
13 *Western*”), *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109 (“*Suter*”), and *CRPA v. City of*
14 *West Hollywood* (1998) 66 Cal.App.4th 1302 (“*CRPA*”). Unlike the milk retailers in *Hoffman*, the
15 gun-show promoters and retailers doing business at the county fairgrounds in *Great Western*, and
16 the firearm retailers in *Suter* and *CRPA*, it is not “reasonably possible” for gun owners passing
17 through the City to comply with *both* state and local theft-reporting laws. (*Riverside, supra*, 56
18 Cal.4th at p. 743.) As explained above, they are unlikely to know of the City’s contradictory law.
19 And they do not have benefit of being sophisticated businesspeople with static locations within the
20 City who are reasonably charged with a greater knowledge of the laws applicable to their
21 businesses. In short, unlike the City’s ordinance, none of the laws at issue in the cases the City cites
22 pose a threat of unjust enforcement against laypeople passing through the locality.

23 Ultimately, California voters have seen fit to give firearm owners up to five days to report
24 the theft or loss of a firearm. The City cannot undermine their measured judgment by prohibiting
25 conduct that state law allows—especially without some special local need. So even if the Court
26 holds that there is no “duplication,” the City’s ordinance contradicts state law and is preempted.

27 **C. The City’s Theft-reporting Ordinance Is Implicitly Preempted by State Law**

28 “Local government[s] may not enact additional requirements in regard to a subject matter

1 which has been fully occupied by general state law.” (*In re Hubbard* (1964) 62 Cal.2d 119, 125
2 (“*Hubbard*”), overruled on another point by *Bishop v. City of San Jose* (1969) 1 Cal.3d 56.) Indeed,
3 “where the Legislature has manifested an intention, *expressly or by implication*, wholly to occupy
4 the field . . . municipal power [to regulate in that area] is lost.” (*Fiscal, supra*, 158 Cal.App.4th at p.
5 904, quoting *O’Connell, supra*, 41 Cal.4th at p. 1067, italics added.) When, as here, the state has
6 not expressly stated its intent to preempt local regulation, “courts look to whether it has impliedly
7 done so.” (*O’Connell, supra*, 41 Cal.4th at p. 1068.) The state impliedly preempts a field when:

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

13 (*Ibid.*, citing *Sherwin-Williams, supra*, 4 Cal.4th at p. 898.) As explained below, it is clear the state
14 intended to occupy the field of mandatory firearm theft reporting. The City’s attempt to encroach on
15 the state’s domain in that field violates preemption and is void.

16
17 **1. The City’s Theft-reporting Ordinance Improperly Intrudes Upon a Field
that State Law Has Fully Occupied**

18 “Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a
19 particular subject, the entire control over whatever phases of the subject are covered by state
20 legislation ceases as far as local legislation is concerned.” (*In re Lane, supra*, 58 Cal.2d at p. 102.)
21 As for “the *implied* occupation of an area of law by the Legislature’s full and complete coverage of
22 it,” the California Supreme Court has held that courts glean the state’s intent by looking both at the
23 language used *and* the entire scope of the legislative scheme. (*Am. Fin. Servs. Assn. v. City of*
24 *Oakland* (2005) 34 Cal.4th 1239, 1253, italics original.) Moreover, where “the state expressly
25 permits operation under a certain set of standards, it implies that the specified standards are
26 exclusive,” prohibiting local authorities from imposing stricter standards. (*Suter, supra*, 57
27 Cal.App.4th at 1125, citing *Water Quality Assn. v. Cty. of Santa Barbara* (1996) 44 Cal. App.4th
28 732, 741-742 [local law regulating water softeners preempted by state law imposing less strict

requirements].) Here, state theft-reporting laws “fully and completely” cover the subject of firearm theft reporting, making it exclusively a matter of state concern.

Clear indication of the preemptive intent of Prop 63’s theft-reporting sections is that the initiative did not simply establish a basic reporting requirement for lost and stolen firearms. Rather, it created a robust statewide scheme aimed at addressing both state and local concerns and regulating all manner of conduct related to reporting firearm theft and loss. (RUMF Nos. 10, 16-22, 67; Pen. Code, §§ 25250, subds. (b)-(c), 25255, 25260, 25265, 25270, 27275, 26835.) This broad and comprehensive scheme is strong evidence that the state intended to occupy the field of the firearm theft reporting, foreclosing local action.

Recall, aside from Penal Code section 25250, subdivision (a), Prop 63 also created about a dozen other sections and subsections related to firearm theft reporting. (RUMF Nos. 16-22, 67.) Penal Code section 25270, for instance, details what facts must be part of a section 25250 report to law enforcement. (RUMF No. 16.) Section 25250, subdivision (b), provides guidance for those who recover a firearm previously reported lost or stolen, giving them five days to notify local law enforcement. (RUMF No. 17.) Section 25260 directs “every sheriff or police chief [to] submit a description of each firearm that has been reported lost or stolen” into AFS. (RUMF No. 21.) And section 25275 makes it a crime to make a false report. (RUMF No. 22.)

Perhaps even more importantly, Prop 63 created a whole host of exceptions to the statewide reporting law. (Pls. RUMF No. 18, citing Pen. Code, § 25250, subd. (c), 25255.) Under Penal Code section 25250, subdivision (c), no person must report the theft or loss of any firearm that qualifies as an “antique” under state law. And, as discussed, section 25255 explicitly exempts four classes of Californians from section 25250’s theft-reporting mandate. (RUMF No. 20, citing Pen. Code, § 25255.) Among those classes are various sorts of law enforcement officers, peace officers, U.S. marshals, and military members, as well as federally licensed firearm dealers. (RUMF No. 20, citing Pen. Code, § 25255.) As to these individuals and businesses, section 25255 reveals a respect for federal and state requirements, including those that already require timely firearm theft reporting. (RUMF No. 20, citing Pen. Code, § 25255, subd. (a) [exempting law enforcement and peace officers who must report to their employing agency]; *id.* § 25255, subd. (b) [exempting U.S.

marshals, military members, and National Guard members while engaged in their official duties];
id. § 25255, subd. (c) [exempting federally licensed firearm dealers who, under 18 U.S.C. §
923(g)(6), must report to the Attorney General and local authorities].)

MHMC section 9.04.030 makes *no* attempt to account for the comprehensive nature of the
state reporting requirements or their important exemptions. (Morgan Hill Mun. Code, § 9.04.030.)
Instead, it presumably requires that, even if you fall within one of these many exceptions, if you
live in or have your firearm stolen in the City, you must still report the incident to local police and
you must act within just two days—something you are extremely unlikely to know. (RUMF No. 13;
Morgan Hill Mun. Code, § 9.04.030.) It makes no sense that state law would inform firearm owners
so fully as to their rights and responsibilities regarding theft reporting, only to allow local
governments to disrupt that scheme by interjecting their own (more stringent, but far less
comprehensive) reporting laws. (*See Fiscal, supra*, 158 Cal.App.4th at p. 919 [holding that “the
creation of a uniform regulatory scheme is a matter of statewide concern, which should not be
disrupted by permitting this type of contradictory local action”].)

What’s more, the fact that section 25250 reports are to be made to local law enforcement
(RUMF No. 10) reflects the statute’s intent to address the same local law enforcement concerns the
City cited when passing MHMC section 9.04.030 (see RUMF Nos. 44-48). At the same time, the
related requirement that local law enforcement enter all theft and loss reports into AFS so that other
law enforcement agencies have access to the information reveals the broader, statewide law
enforcement concerns the law is meant to serve. (See RUMF No. 21; Pen. Code, § 25260.)

Ignoring all of this, the City argues that “there is nothing to indicate, let alone ‘clearly
indicate,’ that the Legislature impliedly intended to occupy the field of lost and stolen firearms
reporting, thereby preempting the ordinance.” (Defs.’ MSJ, p. 15.) The City cites again to *CRPA*,
this time quoting the court’s reasoning that “ ‘the very existence of three code sections discussed
above, each of which specifically preempts a narrowly limited field of firearms regulation, is a
rather clear indicator of legislative intent to leave areas not specifically covered within local
control.’ ” (Defs.’ MSJ, p. 16, quoting *CRPA, supra*, 66 Cal.App.4th at p. 1318.) But Prop 63 itself
expressly allowed for local regulation in *three other areas of the initiative*. (Pls.’ Req. Jud. Ntc. Ex.

1 C, at pp. 23, 26, 31.) So by *CRPA*'s very reasoning, the fact that Prop 63 itself expressly allows for
2 local action in other fields of firearm regulation, *but not as to theft reporting*, reveals an implicit
3 intent to preempt the field of firearm theft reporting. (See *People v. Guzman* (2005) 35 Cal.4th 577,
4 588 [discussing *expressio unius est exclusio alterius*, the principle of statutory construction that "the
5 expression of one thing . . . ordinarily implies the exclusion of other things"]; see also *Bates v.*
6 *United States*, *supra*, 522 U.S. at pp. 29-30; *People v. Briceno*, *supra*, 34 Cal.4th at p. 459.)

7 In short, the field of firearm theft reporting is "fully and completely" regulated by state law.
8 State law in that field does *not* contemplate further municipal regulation. So the City's theft-
9 reporting law is impliedly preempted.

10 **2. The City's Theft-reporting Ordinance Enters a Field at Least Partially**
11 **Covered by State Law and Its Adverse Effects on Transient Citizens Far**
12 **Outweigh Any Possible Benefit to the City**

13 Even if the Court holds that state law only partially covers the relevant subject matter, Type
14 3 implied preemption—the adverse effect of local regulation on transient citizens—establishes the
15 People's manifestation of their intent to fully occupy the field. Indeed, because the adverse effect of
16 the challenged ordinance on transient citizens *far* outweighs any particularized interest the City
17 might possibly conjure, Type 3 implied field preemption is clearly established.

18 Under this breed of implied preemption, "a significant factor in determining if the
19 Legislature intends to preempt an area of law is the impact that local regulation may have on
20 transient citizens of the state." (*Suter*, *supra*, 57 Cal.App.4th at p. 1119, citing *Hubbard*, *supra*, 62
21 Cal.2d at p. 128 and *Galvan v. Superior Court (City & County of San Francisco)* (1969) 70 Cal.2d
22 851, 860.) When, as here, a local law threatens to adversely impact citizens moving about the state,
23 imposing criminal penalties for violating local laws they are unlikely to know of, preemption is
24 clear.

25 Countless Californians may travel through the City with firearms while on a hunting trip, as
26 part of a move, or for any number of other reasons. Should their firearm be stolen or lost while they
27 are within the City's limits, they would have to comply with both state law and local law. Yet the
28 City's challenged ordinance gives them three fewer days to report the theft or loss, a fact of which
they are unlikely to be aware. If the 58 counties and 482 cities within the state could enact their own

1 theft-reporting ordinances, each arbitrarily setting any number of days to report, a hopeless
2 “patchwork quilt” of varying reporting requirements will confront gun owners whenever they move
3 about the state. (Cf. *Great Western, supra*, 27 Cal.4th at p. 867 [holding that prohibiting sales of
4 arms on county-owned fairgrounds had “very little impact on transient citizens”].) This is exactly
5 the situation Type 3 implied preemption seeks to avoid.

6 That a “patchwork quilt” of reporting deadlines might appear is not a mere hypothetical—it
7 is already fact. (Defs.’ MSJ, p. 4; RUMF Nos. 31-42.) While many localities have adopted 48-hour
8 rules (RUMF Nos. 32-38), others have chosen to require reporting within 72 hours (RUMF Nos.
9 39-41). And one city, like the state, gives victims 5 days to report. (RUMF No. 42.)⁹ The City itself
10 acknowledges that its ordinance can require duplicative reporting, citing an example of a Morgan
11 Hill resident who loses their firearm outside the City. (Defs.’ MSJ, p. 11.) That person would have
12 to report the theft to MHPD within 48 hours under local law. (RUMF No. 13.) Then, under state
13 law, they’d have to report the theft in a duplicate report within five days to the police in the
14 jurisdiction where the theft actually occurred. (RUMF No. 10.) Unless, of course, the theft occurred
15 in a city with its own unique reporting period, in which case the theft victim would need to make a
16 duplicate report within some other window. The wildly varying local laws governing theft reporting
17 expose transient Californians to *criminal prosecution* for unknowing violations of local law and,
18 where they have failed to report within five days, violation of both state *and* local laws for identical
19 conduct. To prevent widespread confusion—and unjust prosecution—state law must control.

20 This is especially so because the City cites no local interest that state law does not already
21 serve. “The significant issue in determining whether local regulation should be permitted depends
22 upon a ‘balancing of two conflicting interests: (1) the needs of local governments to meet the

23 ⁹ For more proof of just how arbitrary theft-reporting periods are, one need only look to the
24 varied laws in effect throughout the nation. States that have adopted reporting requirements demand
25 compliance anywhere from “immediately” to seven days. Only *one* state, Virginia, has seen fit to
26 adopt a 48-hour reporting requirement, suggesting there is no consensus that 48 hours is some
27 “magic number” related to serving the purposes the City cites. (Mass. Gen. Laws, ch. 140, § 129C
28 (requiring gun owners to report theft or loss “forthwith”); Ohio Rev. Code Ann., § 2923.20, subd.
(A)(5) (same); D.C. Code Ann., § 7-2502.08, subds. (a), (e) (“immediately”); Haw. Rev. Stat. Ann.,
§ 134-29 (24 hours); N.Y. Pen. Law, § 400.10 (24 hours), R.I. Gen. Laws, § 11-47-48.1 (24 hours);
N.J. Stat. Ann., § 2C:58-19 (36 hours); Va. Code Ann., § 18.2-287.5 (48 hours); Conn. Gen. Stat., §
53-202g. (72 hours); 720 Ill. Comp. Stat. 5/24-4.1 (72 hours); Md. Code Ann., Pub. Safety, § 5-146
(72 hours); Mich. Comp. Laws, § 28.430 (5 days); Del. Code, tit. 11, § 1461 (7 days).)

1 *special needs of their communities*; and (2) the need for uniform state regulation.’ [citation].”
2 (*Robins, supra*, 248 Cal.App.2d at pp. 9-10, italics added.) And again, “ordinances purporting to
3 proscribe social behavior of individuals should normally be held invalid if state statutes cover the
4 areas of principal concern with reasonable adequacy.” (*Id.* at p. 10.) But the City has identified no
5 “special need” not already purportedly served by state law. (See Section III, *supra*, at pp. 10-12.)
6 Nor does it even try to establish how its shortened reporting period would serve those general
7 interests better than the statewide law. (*Ibid.* See also RUMF Nos 49-54.) Instead, it claims, without
8 support, that shortening the period more effectively serves the very same purpose that Prop 63
9 serves. (Defs.’ MSJ, p. 17.) This is not enough.

10 To conclude, even if state law does not fully cover the field of firearm theft reporting, the
11 harmful effect on transients far outweighs any interest the City might have in shortening the time
12 for compliance. MHMC section 9.04.030 is thus implicitly preempted by state law.

13 CONCLUSION

14 For the reasons discussed above, the Court should deny Defendants’ Motion for Summary
15 Judgment, grant Plaintiffs’, and enter an order enjoining enforcement of MHMC section 9.04.030.

16
17 Dated: June 11, 2020

MICHEL & ASSOCIATES, P.C.

18 s/ Anna M. Barvir

19 Anna M. Barvir
20 Attorneys for Plaintiffs
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PROOF OF SERVICE
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

On June 11, 2020, I served the foregoing document(s) described as

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

on the interested parties in this action by placing

☐ the original
☒ a true and correct copy

thereof by the following means, addressed as follows:

Roderick M. Thompson
rthompson@fbm.com
James Allison
jallison@fbm.com
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Attorneys for Defendants/Respondents

Hannah Shearer
hshearer@giffords.org
Hannah Friedman
hfriedman@giffords.org
Giffords Law Center to Prevent Gun Violence
268 Bush Street #555
San Francisco, CA 94104

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

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 11, 2020, at Long Beach, California.

s/ Tiffany M. Harber
Tiffany M. Harber

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

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Case #19CV346360
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**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

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' SEPARATE STATEMENT
OF UNDISPUTED FACTS AND
PLAINTIFFS' ADDITIONAL UNDISPUTED
MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

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

[Filed concurrently with Opposition to
Defendants' Motion for Summary Judgment;
Request for Judicial Notice; Declaration of Anna
M. Barvir; Evidentiary Objections; and Proposed
Order for Evidentiary Objections]

Action filed: April 15, 2019

Under Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, rule 3.1350, Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, submit the following Response to Defendants City of Morgan Hill, Morgan Hill Chief of Police David Swing, and Morgan Hill City Clerk Irma Torrez's Separate Statement of Undisputed Facts in Support of Defendants' Motion for Summary Judgment.

RESPONSE TO DEFENDANTS' UNDISPUTED FACTS

#	Moving Parties' Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
1	In November 2016, California Voters enacted Proposition 63 ("Prop. 63") entitled "The Safety for All Act of 2016." (Allison Decl. Ex. 7); (RJN Ex. A).	Undisputed.
2	Prop 63. Section 2 Findings and Declarations sets out findings made by the "people of the State of California". (Allison Decl. Ex. 7); (RJN Ex. A).	Disputed to the extent that it assumes that the "people of the State of California" could effectively make "findings and declarations" absent any proof that voters read, understood, or were even aware of the "findings and declarations" they are purported to have made. Indeed, no "findings and declarations" appeared anywhere on the official ballot that voters did see when voting to adopt Prop 63. L.A. County (Calabasas) 2016 General Election Sample Ballot (attached to Barvir Decl. as Ex. UU); San Luis Obispo County 2016 General Election Sample Ballot (attached to Barvir Decl. as Ex. VV). Otherwise, undisputed that the full text of Proposition 63 includes a section called "Section 2 Findings and Declarations."
3	Finding 8 states: "Under current law, stores that sell ammunition are not required to report to law enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen ammunition within 48 hours of discovering that it is missing so law enforcement can work to prevent that ammunition from being illegally trafficked into the hands of dangerous individuals." (Allison Decl. Ex. 7); (RJN Ex. A).	Undisputed.

4	<p>Finding 9 states: “Californians today are not required to report lost or stolen guns to law enforcement. This makes it difficult for law enforcement to investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners. We should require gun owners to report their lost or stolen guns to law enforcement.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
5	<p>Prop 63. Section 3 Purpose and Intent sets out the purpose and intent of the people of the State of California in enacting the Safety for All Act of 2016.</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	<p>Disputed to the extent that it assumes that the “people of the State of California” could effectively set forth the “purpose and intent” of Prop 63 absent any proof that voters read, understood, or were even aware of the “purpose and intent” they are purported to have had. Indeed, no “purpose and intent” appeared anywhere on the official ballot that voters did see when voting to adopt Prop 63.</p> <p>Barvir Decl., Exs. UU-VV.</p> <p>Otherwise, undisputed that the full text of Proposition 63 includes a section called “Section 3 Purpose and Intent.”</p>
6	<p>Purpose and Intent 2 states: “To keep guns and ammunition out of the hands of convicted felons, the dangerously mentally ill, and other persons who are prohibited by law from possessing firearms and ammunition.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
7	<p>Purpose and Intent 4 states: “To require all stores that sell ammunition to report any lost or stolen ammunition within 48 hours of discovering that it is missing.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
8	<p>Purpose and Intent 6 states: “To require the reporting of lost or stolen firearms to law enforcement.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
9	<p>Following Prop. 63’s passage, Penal Code 25250 took effect in 2017.</p> <p>(Allison Decl. Ex. 9)</p>	Undisputed.

10	<p>Penal Code 25250 states, in part: “Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.”</p> <p>(Allison Decl. Ex. 9)</p>	Undisputed.
11	<p>In November 2018, Morgan Hill City Council adopted Local Ordinance No. 2289.</p> <p>(Allison Decl. Ex. 1)</p>	Undisputed.
12	<p>Local Ordinance No. 2289 amended Municipal Code Section 9.04.030.</p> <p>(Allison Decl. Ex. 1)</p>	Undisputed.
13	<p>Municipal Code Section 9.04.030 now reads:</p> <p>“9.04.030. Duty to report theft or loss of firearms. Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (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.”</p> <p>(Allison Decl. Ex. 2)</p>	Undisputed.
14	<p>Municipal Code 9.04.030 took effect in December 2018.</p> <p>(Allison Decl. Ex. 2)</p>	Undisputed.

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Under Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, rule 3.1350, Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, submit the following Additional Undisputed Material Facts in Support of their Opposition to Plaintiffs' Motion for Summary Judgment.

PLAINTIFFS' ADDITIONAL UNDISPUTED MATERIAL FACTS

#	Plaintiffs' Additional Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
15	<p>On November 8, 2016, California voters enacted Proposition 63, which included, among other things, a requirement that firearm owners report to law enforcement if their firearm is lost or stolen.</p> <p>Pls.' Ver. Compl. Decl. & Inj. Rel. & Verif. Petit. Writ Mand. &/or Prohib. ("Pls.' Verif. Compl."), at ¶ 4 (attached to Decl. Anna M. Barvir ("Barvir Decl.") as Ex. X; Defs.' Ver. Answer Verif. Compl. Decl. & Inj. Rel. & Verif. Petit. Writ Mand. &/or Prohib. ("Defs.' Verif. Answer"), at ¶ 4 (attached to Barvir Decl. as Ex. Y); Pls.' Req. Jud. Ntc. Supp. Oppn. Defs.' Mot. Summ. J. ("Pls.' Req. Jud. Ntc.") Ex. C, at pp. 22-23.</p>	
16	<p>Proposition 63 also created Penal Code section 25270, which lays out which facts must be included in a section 25250 report to law enforcement. These details include "the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report."</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25270.</p>	
17	<p>Under Penal Code section 25250, subdivision (b), if a firearm owner recovers any firearm previously reported lost or stolen, they must so inform local law enforcement within five days.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen Code, § 25250, subd. (b) ("Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five</p>	

1		days if the firearm is subsequently recovered by the person.”)	
2	18	Proposition 63 also created a number of exceptions to the state theft-reporting law.	
3		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, §§	
4		25250, subd. (c), 25255.	
5	19	Under Penal Code section 25250, subdivision (c), created by Proposition 63, no person is required to report the theft or loss of “an antique firearm within the meaning of subdivision (c) of [Penal Code] section 16170.”	
6		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code §	
7		25250, subd. (c).	
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10	20	Under Penal Code section 25255, subdivisions (a) through (d), created by Proposition 63, the state theft-reporting requirement does not apply to:	
11		(1) any law enforcement officer or peace officer acting within the scope of their duties who reports the loss or theft to their employing agency;	
12		(2) any United States marshal or member of the United States armed forces or the National Guard engaged in their official duties;	
13		(3) any federally licensed firearms importer, manufacturer, or dealer who reports the theft or loss in compliance with applicable federal law; or	
14		(4) any person whose firearm was lost or stolen before July 1, 2017.	
15		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, §	
16		25255.	
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23	21	Proposition 63 also created Penal Code section 25260, which requires “every sheriff or police chief [to] submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.”	
24		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, §	
25		25260.	
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22	<p>Proposition 63 also created Penal Code section 25275, which makes it a crime to report a firearm has been lost or stolen knowing that report to be false.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25275, subd. (a) (“No person shall report to a local law enforcement agency that a firearm has been lost or stolen, know that report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first offense, and by a fine no exceeding one thousand dollars (\$1000) for a second or subsequent offense.”)</p>	
23	<p>Under Penal Code section 25250, should his firearm be lost or stolen, Plaintiff Kirk has five days to report the loss or theft to local law enforcement in the jurisdiction where the loss or theft occurred.</p> <p>Pls.’ Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.’ Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. C, at pp. 22-23; Pen. Code § 25250, subd. (a); Kirk Decl. Supp. Pls.’ Mot. Summ. J. ¶ 5.</p>	
24	<p>Under Penal Code section 25250, should a member of CRPA have their firearm lost or stolen, they have five days to report the loss or theft to local law enforcement in the jurisdiction where the loss or theft occurred.</p> <p>Pls.’ Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.’ Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. C, at pp. 22-23; Pen. Code § 25250, subd. (a); Barranco Decl. Supp. Pls.’ Mot. Summ. J. ¶ 8.</p>	
25	<p>The penalties for violating Penal Code Section 25250 are listed in Section 25265 and are as follows:</p> <p>“(a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction, punishable by a fine not to exceed one hundred dollars (\$100).</p> <p>(b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars (\$1,000).</p> <p>(c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty</p>	

1	of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.”	
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3	Pen. Code, § 25265.	
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5	26 Violation of MHMC section 9.04.030 include confiscation and/or fines.	
6	Req. Jud. Ntc. Ex. B, at p. 12; Morgan Hill Mun. Code, § 1.19.010 (“This chapter provides for an administrative citation process that may be used by the city to address any violation of the municipal code . . .”); Req. Jud. Ntc. Ex B, at p. 14; Morgan Hill Mun. Code. § 1.19.060, subd. (B) (“If no specific fine amount is set, the amount of the fine shall be one hundred dollars for a first violation, two hundred dollars for a second violation of the same ordinance within one year, and five hundred dollars for each additional violation of the same ordinance within one year”); Req. Jud. Ntc. Ex. A, at p. 10; Morgan Hill Mun. Code, § 9.04.060 (“Any instrument, device or article used or possessed in violation of the provisions of this chapter is declared to be a public nuisance and may be confiscated and possessed by a police officer of the city and turned over to the chief of police under the conditions set forth in this section. If no complaint for violation of this chapter is filed within seventy-two hours of the taking, the instrument or device shall be returned to the person from whom it was taken. If a complaint for violation of this chapter is filed within seventy-two hours, the chief of police may return it to the person from whose possession it was taken upon such conditions as he deems desirable for the public welfare. If the person from whom it was taken is not convicted of a violation of this chapter, then the device or instrument shall be returned to him without any conditions. If there is a conviction and sixty days have expired since the date of conviction, the same may be destroyed by the chief of police or returned to the person from whom it was taken upon such conditions as the chief deems desirable for the public welfare.”)	
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27	27 While the City was considering adopting the ordinance, Plaintiff CRPA twice notified lawmakers of its opposition to the law,	
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1		explaining that section 25250 preempted the City's proposed 48-hour reporting requirement.	
2		Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (June 1, 2018) (attached to Barvir Decl. as Ex. BB, at pp. 54-61); Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (Oct. 22, 2018) (attached to Barvir Decl. as Ex. CC, at pp. 63-66).	
3	28	On October 30, 2018, Plaintiff CRPA again notified Defendant Morgan Hill in writing of its position that Penal Code section 25250 preempted Ordinance No. 2289, requesting that the City voluntarily repeal the Ordinance.	
4		Pls.' Verif. Compl. ¶ 7, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 7, Barvir Decl., Ex. Y; Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (Oct. 30, 2018) (attached to Barvir Decl. as Ex. DD, at pp. 68-70).	
5	29	Defendant City of Morgan Hill did not voluntarily repeal Ordinance No. 2289, and it took effect as Morgan Hill Municipal Code 9.04.030 on December 29, 2018. The City has enforced the law since that time and has never disavowed its intention to do so.	
6		Pls.' Verif. Compl. ¶¶ 7, 8, 11 Barvir Decl. Ex. X; Defs.' Verif. Answer ¶¶ 7, 11, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. A, at p. 9; Def. Morgan Hill's Resp. Pls.' Form Interrogs., Set One, at p. 8:16-18 (attached to Barvir Decl. as Ex. Z).	
7	30	Plaintiff CRPA also wrote to the city of Palm Springs, notifying local lawmakers that section 25250 preempted its local attempt to shorten the time that firearm-theft victims have to report their property stolen. On November 14, 2018, after receiving CRPA's analysis, the city of Palm Springs voluntarily repealed its 48-hour reporting requirement.	
8		Barvir Decl. Exs. EE-KK, at pp. 71-111.	
9	31	Like Morgan Hill, a number of cities throughout California have adopted their own local firearm theft-reporting laws.	

1		Req. Jud. Ntc. Exs. M-W, at pp. 424-444.	
2	32	The city of Los Angeles requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
3		Req. Jud. Ntc. Ex. M, at p. 423; L.A. Mun. Code, § 55.2	
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5	33	The city of Oakland requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
6		Req. Jud. Ntc. Ex. N, at p. 426; Oakland Mun. Code, § 9.36.131.	
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9	34	The city of Port Hueneme requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
10		Req. Jud. Ntc. Ex. P, at p. 430; Port Hueneme Mun. Code, § 3914.10.	
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12	35	The city of Sacramento requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
13		Req. Jud. Ntc. Ex. Q, at p. 430; Sacramento Mun. Code, § 9.32.180.	
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16	36	The city of San Francisco requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
17		Req. Jud. Ntc. Ex. R, at p. 434; S.F. Mun. Code, § 616.	
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19	37	The city of Sunnyvale requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
20		Req. Jud. Ntc. Ex. U, at p. 440; Sunnyvale Mun. Code, § 9.44.030.	
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23	38	The city of Tiburon requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
24		Req. Jud. Ntc. Ex. W, at p. 444; Tiburon Mun. Code, § 32-27.	
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26	39	The city of Oxnard requires the reporting of lost or stolen firearms to local law enforcement within 72 hours.	
27		Req. Jud. Ntc. Ex. O, at p. 428; Oxnard Mun.	
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1		Code, § 7-141.1.	
2	40	The city of Simi Valley requires the reporting of lost or stolen firearms to local law enforcement within 72 hours.	
3		Req. Jud. Ntc. Ex. T, at p. 438; Simi Valley Mun. Code, § 5-22.12.	
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5	41	The city of Thousand Oaks requires the reporting of lost or stolen firearms to local law enforcement within 72 hours.	
6		Req. Jud. Ntc. Ex. V, at p. 442; Thousand Oaks Mun. Code, § 5-11.02.	
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9	42	The city of Santa Cruz requires the reporting of lost or stolen firearms to local law enforcement within five days.	
10		Req. Jud. Ntc. Ex. S, at p. 436; Santa Cruz Mun. Code, § 9.30.010.	
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12	43	At the October 24, 2018 meeting of the Morgan Hill City Council, councilmembers received within their agenda packets a City Council Staff Report and a PowerPoint Presentation citing that the city of San Jose requires reporting of lost or stolen firearms to local law enforcement within 24 hours.	
13		Req. Jud. Ntc. Ex. F, at pp. 73, 75-76, 277.	
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17	44	In adopting MHMC section 9.40.030, the City of Morgan Hill cited four general “reasons for requiring theft reporting.”	
18		Req. Jud. Ntc. Ex. F, at p. 75.	
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20	45	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[w]hen a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking” and that “[r]eporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it.”	
21		Req. Jud. Ntc. Ex. F, at p. 75.	
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27	46	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[r]eporting laws help disarm prohibited persons by deterring them from falsely claiming that	
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1		their firearms were lost or stolen.”	
2		Req. Jud. Ntc. Ex. F, at p. 75.	
3	47	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[r]eporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner.”	
4		Req. Jud. Ntc. Ex. F, at p. 75.	
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8	48	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[r]eporting laws make gun owners more accountable for their weapons.”	
9		Req. Jud. Ntc. Ex. F, at p. 75.	
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11	49	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to serve the City’s interests than the statewide 5-day requirement.	
12		Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 308-309, Ex. J, pp. 347-362.	
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17	50	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to deter false reporting that a firearm has been lost or stolen to cover up criminal activity than the statewide 5-day requirement.	
18		Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.	
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23	51	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to deter false reporting by prohibited persons that a firearm has been lost or stolen than the statewide 5-day requirement.	
24		Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.	
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52	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	
53	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to aid law enforcement in recovering lost or stolen firearm than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	
54	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to make gun owners more accountable for their weapons than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	
55	<p>There is no reliable body of academic or scientific work establishing that firearm theft-reporting requirements, in general, have any impact on the City's purported interests in its 48-hour reporting requirement.</p> <p>Morrall et al., The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States (Rand Corp. 2018) p. 181 ("RAND Study") (attached to Barvir Decl. as Ex. EE).</p>	
56	<p>There is no reliable body of academic or scientific work that would establish that requiring the reporting of firearm theft or loss to law enforcement within 48 hours is more likely to aid law enforcement than requiring the reporting within 5 days.</p> <p>See RAND Study, at p. 181, Barvir Decl. Ex.</p>	

1	EE.	
2	57 According to the United States Department	
3	of Justice, while about 90% of burglaries	
4	involving stolen firearms were reported to	
5	law enforcement between 2005 and 2010,	
6	only about 1 of every 5 firearms had been	
7	recovered between 1 day and 6 months after	
8	reporting.	
9	Langton, U.S. Dept. of Justice, Crime Data	
10	Brief: Firearms Stolen During Household	
11	Burglaries and Other Property Crimes, 2005-	
12	2010 (Nov. 2012) ("USDOJ Crime Brief")	
13	p. 257 (attached to Barvir Decl. as Ex. PP);	
14	see also RAND Study, at p. 181, Barvir Decl.	
15	Ex. EE.	
16	58 According to the United States Department	
17	of Justice, although "victimizations involving	
18	stolen firearms could have occurred from one	
19	day to up to six months before the NCVS	
20	[National Crime Victimization Study]	
21	interview [from which these statistics were	
22	drawn], the amount of time that had elapsed	
23	made no significant difference in the	
24	percentage of households for which guns had	
25	not been recovered at the time of the	
26	interview."	
27	USDOJ Crime Brief, at p. 257, Barvir Decl.	
28	Ex. PP.	
29	59 The Legal Community Against Violence	
30	("LCAV"), now known as the Giffords Law	
31	Center to Prevent Gun Violence, has	
32	published a series of "model laws" for state	
33	and local governments to adopt. Among the	
34	model laws the organization has promoted	
35	throughout California requires the reporting	
36	of lost or stolen firearms.	
37	Legal Community Against Violence, Model	
38	Laws for a Safer America: Seven	
39	Regulations to Promote Responsible Gun	
40	Ownership and Sales (Sept. 2011) ("LCAV	
41	Model Laws") pp. 274, 330-334 (attached to	
42	Barvir Decl. at Ex. QQ).	
43	60 The LCAV Model Laws cite the federal law	
44	requirement that firearm dealers report the	
45	loss or theft of firearms in their inventory	
46	within 48 hours as justification for the 48-	
47	hour limit proposed in the 2011 version of	
48	the organization's theft-reporting model law.	

1		LCAV Model Laws, at pp. 333-334, Barvir Decl. Ex. OO.	
2	61	In 2011, the Association of Bay Area Governments (“ABAG”) published a report recommending that area cities and counties, including the City of Morgan Hill, adopt model ordinances requiring the reporting of lost or stolen firearms.	
3		Req. Jud. Ntc. Ex. F, at pp. 75-76, 89-104; Association of Bay Area Governments, A High Price to Pay: The Economic and Social Costs of Youth Gun Violence in San Mateo County (Sept. 2011) (“ABAG Report”) p. 193 (attached to Barvir Decl. at Ex. MM).	
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9	62	LCAV has assisted ABAG in its efforts to promote gun control laws in the Bay Area region of California, and it prepared the model laws for ABAG’s Youth Gun Violence Task Force. Among those model laws was a requirement for the reporting of firearm theft or loss.	
10		Legal Community Against Violence, 2009 California Report: Recent Developments in Federal, State, and Local Gun Laws (June 12, 2009) pp. 391-392 (attached to Barvir Decl. as Ex. RR).	
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16	63	In enacting Penal Code section 25250, the statewide theft-reporting requirement, Proposition 63 voters recognized that such laws help law enforcement “investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners.”	
17		Req. Jud. Ntc. Ex. C, at p. 22.	
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21	64	Supporters of Proposition 63, which created Penal Code section 25250, informed voters that the reporting of lost and stolen firearms would “help police shut down gun trafficking rings and locate caches of illegal weapons,” “recover stolen guns before they’re used in crimes and return them to their lawful owners.”	
22		Ballot Pamp., Gen. Elec. (Nov. 8, 2016) rebuttal to argument against Prop. 63, p. 403 (attached to Barvir Decl. as Ex. SS).	
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28	65	The ballot language of Proposition 63 read as	

1	follows:	
2	“PROPOSITION 63	
3	FIREARMS. AMMUNITION SALES.	
4	INITIATIVE STATUTE. Requires	
5	background check and Department of Justice	
6	authorization to purchase ammunition.	
7	Prohibits possession of large-capacity	
8	ammunition magazines. Establishes	
9	procedures for enforcing laws prohibiting	
10	firearm possession by specified persons.	
11	Requires Department of Justice’s	
12	participation in federal National Instant	
13	Criminal Background Check System. Fiscal	
14	Impact: Increased state and local court and	
15	law enforcement costs, potentially in the tens	
16	of millions of dollars annually, related to a	
17	new court process for removing firearms	
18	from prohibited persons after they are	
19	convicted.”	
20	Barvir Decl., Exs. UU-VV.	
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22	66 In 2014, the Center for Civic Design raised	
23	concerns with the length of voter guides,	
24	concluding that there is:	
25	“[S]trong evidence from many sources that	
26	voters feel that preparing for an election can	
27	be an overwhelming task. The number of	
28	pages is one of the factors that figures into	
	the “20-second test.” If recipients get a large	
	document in the mail, they’re less likely to	
	even flip through it, regardless of how	
	compelling the cover might be.”	
	Center for Civil Design, “Final report on	
	Recommendations for Voter Guides in	
	California” at p. 417 (Oct. 10, 2014)	
	(attached to Barvir Decl. as Ex. TT).	
	67 Proposition 63 also created a separate	
	requirement that firearm retailers notify	
	consumers of the statewide theft-reporting	
	requirement on a sign that reads, in part:	
	“If a firearm you own or possess is lost or	
	stolen, you must report the loss or theft to a	
	Local law enforcement agency where the loss	
	or theft occurred within five days of the time	
	you knew or reasonably should have known	
	that the firearm had been lost or stolen.”	
	Req. Jud. Ntc. Ex. C, at p. 24; Pen. Code, §	

26835, subd. (a)(9).

Dated: June 11, 2020

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir

Anna M. Barvir

Attorneys for Plaintiffs

**PROOF OF SERVICE
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

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

On June 11, 2020, I served the foregoing document(s) described as

**PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF
UNDISPUTED FACTS AND PLAINTIFFS' ADDITIONAL UNDISPUTED
MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

on the interested parties in this action by placing

☐ the original
☒ a true and correct copy

thereof by the following means, addressed as follows:

Roderick M. Thompson
rthompson@fbm.com

James Allison
jallison@fbm.com

Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Attorneys for Defendants/Respondents

Hannah Shearer

hshearer@giffords.org

Hannah Friedman

hfriedman@giffords.org

Giffords Law Center to Prevent Gun Violence
268 Bush Street #555
San Francisco, CA 94104

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

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

Executed on June 11, 2020, at Long Beach, California.

s/ Tiffany M. Harber
Tiffany M. Harber

C. D. Michel – SBN 144258
Anna M. Barvir – SBN 268728
Tiffany D. Cheuvront – 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

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 6/11/2020 4:16 PM
Reviewed By: R. Nguyen
Case #19CV346360
Envelope: 4446090**

**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

**DECLARATION OF ANNA M. BARVIR IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

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

[Filed concurrently with Opposition to
Defendants' Motion for Summary Judgment;
Response to Defendants' Separate Statement of
Undisputed Facts and Additional Undisputed
Material Facts; Request for Judicial Notice;
Evidentiary Objections; and Proposed Order for
Evidentiary Objections]

Action filed: April 15, 2019

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1. I am an attorney licensed to practice before all courts in the state of California. The law firm where I am employed, Michel and Associates, P.C., is council of record for Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, in the above-entitled matter. I make this declaration in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify hereto.

3. On July 19, 2019, Defendants filed and electronically served Plaintiffs with Defendants' Verified Answer to Complaint for Declaratory Relief and Verified Petition for Writ of Mandate or Other Appropriate Relief. A true and correct copy of Defendants' Verified Answer to Complaint for Declaratory Relief and Verified Petition for Writ of Mandate or Other Appropriate Relief is attached as **Exhibit Y**.

5. A true and correct copy of the Statement of Information (Form SI-100) filed with the California Secretary of State on May 11, 2018 for California Rifle & Pistol Association, Incorporated, available at <https://businesssearch.sos.ca.gov/> (by searching for “California Rifle & Pistol Association, Incorporated”) (last visited Apr. 29, 2020) is attached as **Exhibit AA**.

6. On or about June 1, 2018, my office, on the behalf of Plaintiff CRPA, sent a letter to Morgan Hill City Attorney Donald Larkin opposing the City's proposed theft-reporting

1 ordinance on preemption grounds. A true and correct copy of the June 1, 2018 letter from Michel
2 & Associates, P.C., attorney Tiffany D. Chevront to Morgan Hill City Attorney Donald Larkin is
3 attached as **Exhibit BB**. Our office uses a shared electronic server which preserves all our
4 documents, including correspondence. I retrieved the saved PDF of this correspondence from our
5 server on or about Apr. 28, 2020.

6 7. On or about October 22, 2018, my office, on the behalf of Plaintiff CRPA, sent a
7 letter to Morgan Hill City Attorney Donald Larkin again opposing the City's proposed theft-
8 reporting ordinance on preemption grounds. A true and correct copy of the October 22, 2018 letter
9 from Michel & Associates, P.C., attorney Tiffany D. Chevront to Morgan Hill City Attorney
10 Donald Larkin is attached as **Exhibit CC**. Our office uses a shared electronic server which
11 preserves all our documents, including correspondence. I retrieved the saved PDF of this
12 correspondence from our server on or about Apr. 28, 2020.

13 8. On or about October 30, 2018, my office, on the behalf of Plaintiff CRPA, sent a
14 letter to Morgan Hill City Attorney Donald Larkin again opposing the City's recently adopted
15 theft-reporting ordinance on preemption grounds and requesting that the City voluntarily repeal the
16 law. A true and correct copy of the October 30, 2018 letter from Michel & Associates, P.C.,
17 attorney Tiffany D. Chevront to Morgan Hill City Attorney Donald Larkin is attached as **Exhibit**
18 **DD**. Our office uses a shared electronic server which preserves all our documents, including
19 correspondence. I retrieved the saved PDF of this correspondence from our server on or about Apr.
20 28, 2020.

21 9. On or about July 6, 2016, my office, on the behalf of Plaintiff CRPA, sent a letter to
22 Palm Springs City Council opposing the city's proposed theft-reporting ordinance on preemption
23 grounds. A true and correct copy of the July 6, 2016 letter from Michel & Associates, P.C.,
24 attorney Matthew D. Cubeiro to the members of the Palm Springs City Council is attached as
25 **Exhibit EE**. Our office uses a shared electronic server which preserves all our documents,
26 including correspondence. I retrieved the saved PDF of this correspondence from our server on or
27 about Apr. 29, 2020.

28 10. On or about September 6, 2016, my office, on the behalf of Plaintiff CRPA, sent a

1 letter to Palm Springs City Council opposing the city's proposed theft-reporting ordinance on
2 preemption grounds. A true and correct copy of the September 6, 2016 letter from Michel &
3 Associates, P.C., attorney Matthew D. Cubeiro to the members of the Palm Springs City Council is
4 attached as **Exhibit FF**. Our office uses a shared electronic server which preserves all our
5 documents, including correspondence. I retrieved the saved PDF of this correspondence from our
6 server on or about Apr. 29, 2020.

7 11. On or about August 14, 2018, my office, on the behalf of Plaintiff CRPA, sent a
8 letter to Palm Springs City Attorney Edward Kotkin opposing the city's recently adopted theft-
9 reporting ordinance on preemption grounds. A true and correct copy of the August 14, 2018 letter
10 from Michel & Associates, P.C., attorney Joshua Robert Dale to Palm Springs City Attorney
11 Edward Kotkin is attached as **Exhibit GG**. Our office uses a shared electronic server which
12 preserves all our documents, including correspondence. I retrieved the saved PDF of this
13 correspondence from our server on or about Apr. 29, 2020.

14 12. On or about September 14, 2018, my office, on the behalf of Plaintiff CRPA, sent a
15 follow-up letter to Palm Springs City Attorney Edward Kotkin opposing the city's recently
16 adopted theft-reporting ordinance on preemption grounds. A true and correct copy of the
17 September 14, 2018 letter from Michel & Associates, P.C., attorney Joshua Robert Dale to Palm
18 Springs City Attorney Edward Kotkin, is attached as **Exhibit HH**. Our office uses a shared
19 electronic server which preserves all our documents, including correspondence. I retrieved the
20 saved PDF of this correspondence from our server on Apr. 29, 2020.

21 13. On or about October 10, 2018, my office, on the behalf of Plaintiff CRPA, once
22 more sent a follow-up letter to Palm Springs City Attorney Edward Kotkin opposing the city's
23 recently adopted theft-reporting ordinance on preemption grounds. A true and correct copy of the
24 October 10, 2018 letter from Michel & Associates, P.C., attorney Joshua Robert Dale to Palm
25 Springs City Attorney Edward Kotkin, is attached as **Exhibit II**. Our office uses a shared
26 electronic server which preserves all our documents, including correspondence. I retrieved the
27 saved PDF of this correspondence from our server on Apr. 29, 2020.

28 14. On or about November 14, 2018, after receiving my office's preemption analysis,

1 the Palm Springs City Council voted to repeal its theft-reporting ordinance. A true and correct
2 copy of Palm Springs City Council Staff Report Re: Introduction of an Ordinance Repealing Palm
3 Springs Municipal Code Section 11.16.040 (Nov. 14, 2018), available at
4 https://destinyhosted.com/palmsdocs/2018/CC/20181114_131/1142_Item%203A%20OCR.pdf
5 (last visited Apr. 29, 2020) is attached as **Exhibit JJ**.

6 15. A true and correct copy of Corinne S. Kennedy, *Palm Springs Repeals Gun*
7 *Ordinance Passed After Pulse Shooting, Will Look at Other Measures*, Palm Springs Desert Sun
8 (Nov. 15, 2018), available at [https://www.desertsun.com/story/news/local/palm-springs/2018/](https://www.desertsun.com/story/news/local/palm-springs/2018/11/15/palm-springs-consider-additional-gun-control-measures/1973202002/)
9 [11/15/palm-springs-consider-additional-gun-control-measures/1973202002/](https://www.desertsun.com/story/news/local/palm-springs/2018/11/15/palm-springs-consider-additional-gun-control-measures/1973202002/) (last visited Apr. 29,
10 2020) is attached as **Exhibit KK**.

11 16. A true and correct copy of pages 1-67 and 129-132 of Morral et al., *The Science of*
12 *Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the*
13 *United States* (Rand Corp 2018), available at [https://www.rand.org/pubs/research_reports/](https://www.rand.org/pubs/research_reports/RR2088.html)
14 [RR2088.html](https://www.rand.org/pubs/research_reports/RR2088.html) (last visited Apr. 29, 2020) is attached as **Exhibit LL**.

15 17. On or about April 30, 2020, I visited [http://morganhillca.iqm2.com/Citizens/](http://morganhillca.iqm2.com/Citizens/Calendar.aspx?From=1/1/2018&To=12/31/2018)
16 [Calendar.aspx?From=1/1/2018&To=12/31/2018](http://morganhillca.iqm2.com/Citizens/Calendar.aspx?From=1/1/2018&To=12/31/2018), an official website of the City of Morgan Hill.
17 From there, I accessed video coverage of the October 24, 2018 Morgan Hill City Council meeting
18 and clicked on public regards regarding Item No. 4, including “Youth Gun Violence Report 2011.”
19 A true and correct copy of that document, Association of Bay Area Governments, *A High Price to*
20 *Pay: The Economic and Social Costs of Youth Gun Violence in San Mateo County* (Sept. 2011) is
21 attached as **Exhibit MM**.

22 18. A true and correct copy of Legal Community Against Violence, *LCAV Model Law:*
23 *Requiring the Reporting of Lost or Stolen Firearms (Local Governments in California)* (May
24 2009), available at [https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_](https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf)
25 [file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf](https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf) (last visited Apr. 29, 2020) is
26 attached as **Exhibit NN**.

27 19. A true and correct copy of International Association of Chiefs of Police, *Taking a*
28 *Stand: Reducing Gun Violence in Our Communities* (2007), available at <https://www.theiacp.org>

1 /sites/default/files/all/a/ACF1875.pdf (last visited Apr. 29, 2020) is attached as **Exhibit OO**.

2 20. A true and correct copy of U.S. Department of Justice, Office of Justice Programs,
3 Crime Data Brief: Firearms Stolen During Household Burglaries and Other Property Crimes,
4 2005-2010, available at <https://www.bjs.gov/content/pub/pdf/fshbopc0510.pdf> (last visited Apr.
5 29, 2020) is attached as **Exhibit PP**.

6 21. A true and correct copy of Legal Community Against Violence, Model Laws for a
7 Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales (Sept. 2011),
8 available at [https://lawcenter.giffords.org/wp-content/uploads/2012/05/Model_Laws_
9 for_a_Safer_America.pdf](https://lawcenter.giffords.org/wp-content/uploads/2012/05/Model_Laws_for_a_Safer_America.pdf) (last visited Apr. 29, 2020) is attached as **Exhibit QQ**.

10 22. A true and correct copy of Legal Community Against Violence, 2009 California
11 Report: Recent Developments in Federal, State and Local Gun Laws (June 12, 2009), available at
12 https://lawcenter.giffords.org/wp-content/uploads/2012/05/2009_California_Report.pdf (last
13 visited Apr. 30, 2020) is attached as **Exhibit RR**.

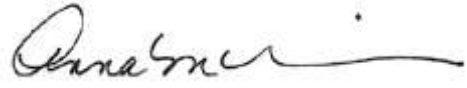
14 23. A true and correct copy of pages 1 and 84-89 of Ballot Pamphlet, General Election
15 (Nov. 8, 2016) analysis of Prop. 63, available at [https://vig.cdn.sos.ca.gov/2016/general/en/pdf/
16 complete-vig.pdf](https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf) (last visited Apr. 30, 2020) is attached as **Exhibit SS**.

17 24. A true and correct copy of Center for Civil Design, Final report on
18 Recommendations for Voter Guides in California (Oct. 10, 2014), available at
19 [https://civicdesign.org/wp-content/uploads/2014/05/FOCE-how-voters-get-information-final-14-
20 1015.pdf](https://civicdesign.org/wp-content/uploads/2014/05/FOCE-how-voters-get-information-final-14-1015.pdf) (last visited June 5, 2020) is attached as **Exhibit TT**.

21 25. A true and correct copy of LA County (Calabasas) 2016 General Election Sample
22 Ballot <<http://www.cityofcalabasas.com/elections/2016-specialelection/sample-ballot-220.pdf>>
23 (last visited June 5, 2020) is attached as **Exhibit UU**.

24 26. A true and correct copy of San Luis Obispo County 2016 General Election Sample
25 Ballot <[https://www.slocounty.ca.gov/Departments/Clerk-Recorder/Forms-Documents/Elections-
26 and-Voting/Past-Elections/General-Elections/2016-11-08-Presidential-General/Sample-
27 Ballot/Sample-Ballot-Ballot-Type-1-2016-11-08.aspx](https://www.slocounty.ca.gov/Departments/Clerk-Recorder/Forms-Documents/Elections-and-Voting/Past-Elections/General-Elections/2016-11-08-Presidential-General/Sample-Ballot/Sample-Ballot-Ballot-Type-1-2016-11-08.aspx)> (last visited June 5, 2020) is attached as
28 **Exhibit VV**.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on June 11, 2020, at Stanton, California.

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5 Anna M. Barvir
6 Declarant
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16	Exhibit NN	Legal Community Against Violence, <i>LCAV Model Law: Requiring the Reporting of Lost or Stolen Firearms</i> (Local Governments in California) (May 2009), available at https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf (last visited Apr. 29, 2020)	199
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20	Exhibit OO	International Association of Chiefs of Police, <i>Taking a Stand: Reducing Gun Violence in Our Communities</i> (2007), available at https://www.theiacp.org/sites/default/files/all/a/ACF1875.pdf (last visited Apr. 29, 2020)	208
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23	Exhibit PP	U.S. Department of Justice, Office of Justice Programs, <i>Crime Data Brief: Firearms Stolen During Household Burglaries and Other Property Crimes, 2005-2010</i> , available at https://www.bjs.gov/content/pub/pdf/fshbopc0510.pdf (last visited Apr. 29, 2020)	253
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26	Exhibit QQ	Legal Community Against Violence, <i>Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales</i> (Sept. 2011), available at https://lawcenter.giffords.org/wp-	269
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content/uploads/2012/05/Model_Laws_
for_a_Safer_America.pdf (last visited Apr. 29, 2020)

Exhibit RR	Legal Community Against Violence, 2009 California Report: Recent Developments in Federal, State and Local Gun Laws (June 12, 2009), available at https://lawcenter.giffords.org/wp-content/uploads/2012/05/2009_California_Report.pdf (last visited Apr. 30, 2020)	358
Exhibit SS	Excerpts of Ballot Pamphlet, General Election (Nov. 8, 2016) analysis of Prop. 63, available at https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf (last visited Apr. 30, 2020)	396
Exhibit TT	Center for Civil Design, Final report on Recommendations for Voter Guides in California (Oct. 10, 2014), available at https://civicdesign.org/wp-content/uploads/2014/05/FOCE-how-voters-get-information-final-14-1015.pdf (last visited June 5, 2020)	404
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EXHIBIT X

1 C. D. Michel – SBN 144258
2 Anna M. Barvir – SBN 268728
3 Tiffany D. Cheuvront– SBN 317144
4 **MICHEL & ASSOCIATES, P.C.**
5 180 East Ocean Blvd., Suite 200
6 Long Beach, CA 90802
7 Telephone: (562) 216-4444
8 Fax: (562) 216-4445
9 cmichel@michellawyers.com

10 Attorneys for Plaintiffs/Petitioners
11 G. Mitchell Kirk and California Rifle
12 & Pistol Association, Incorporated
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DOWNTOWN COURTHOUSE

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

Plaintiffs and Petitioners,

15 vs.

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

Defendants and Respondents.

CASE NO. 19CV346360

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; VERIFIED
PETITION FOR WRIT OF MANDATE
AND/OR PROHIBITION OR OTHER
APPROPRIATE RELIEF**

INTRODUCTION

I. NATURE OF THE CASE

1. On October 24, 2018, Defendant and Respondent CITY OF MORGAN HILL (the “City”) adopted Ordinance No. 2289 (the “Ordinance”) to amend, inter alia, section 9.04.030 of the Morgan Hill Municipal Code.

2. The intended effect of the Ordinance was to impose upon victims of firearm theft a mandatory requirement that they report such theft to law enforcement. Under the new law, victims of firearm theft in the City—whether residents or visitors—must now 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.

3. As amended by the Ordinance, the new language of Morgan Hill Municipal Code 9.04.030 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.

The language of the Ordinance, as now codified at Municipal Code 9.04.030, is the subject of this lawsuit.¹

4. California voters enacted Proposition 63 (“Prop 63”) on November 8, 2016. Prop

¹ Municipal Code 9.04.030’s language mirrors language of theft reporting ordinances recently adopted by other California cities. (See, e.g., Palm Springs Municipal Code 11.16.040 [Ordinance 1899, § 1, adopted 2016] [nearly identical to Morgan Hill Municipal Code 9.04.030].) On information and belief, the Giffords Law Center to Prevent Gun Violence drafted the language of the Ordinance now codified at Morgan Hill Municipal Code 9.04.030 as well as other cities’ similarly worded theft-reporting laws, and then lobbied those cities to adopt the lobbyist-drafted language as a local ordinance notwithstanding the clear preemption of local theft-reporting laws by Prop 63 or the attendant legal liability adopting a preempted ordinance would bring to those cities.

63 was an omnibus gun-control initiative that included, among other things, a mandatory reporting requirement for all victims of firearm theft within the state. Prop 63 created Penal Code section 25250, which 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.

5. By passing Prop 63 and enacting section 25250, voters caused state law to occupy the whole of the field of firearm-theft-reporting, such that a local ordinance that purports to prescribe reporting requirements for firearm theft, like the Ordinance, is preempted.

6. Moreover, Penal Code section 25250 contains a less onerous requirement for firearm victims to report theft, such that the Ordinance criminalizes conduct that the voters of the state have deemed to be permissible—waiting up to five days instead of 48 hours—to report a firearm theft to law enforcement. Thus, the Ordinance and its codification directly conflict with section 25250.

7. California Rifle & Pistol Association, Incorporated notified the City in writing that section 25250 preempted the Ordinance and requested that the City voluntarily repeal the Ordinance. The City, however, ignored the guidance and refused to repeal the Ordinance.

8. Because those preempted portions of the Ordinance continue to remain in effect, and because there is a danger that firearm-theft victims who reside in or who are victimized in the City may be subject to prosecution for conduct that Penal Code section 25250 deems lawful, Plaintiffs-Petitioners seek judicial relief declaring the Ordinance, codified at Municipal Code 9.04.030, to be void as preempted by state law.

9. Plaintiffs-Petitioners further seek to enjoin Defendants-Respondents² from training their law enforcement officers on the enforcement of the Ordinance. They further request a writ of mandate or of prohibition or both directing the City Clerk to strike Municipal Code 9.04.030 from the Morgan Hill Municipal Code.

///

² In matters combining a complaint for declaratory relief and a writ petition, the parties are uniformly referred to as “plaintiff” and “defendant.” (See Code Civ. Proc., §§ 308 & 1063.)

1 **II. DECLARATORY AND WRIT RELIEF IS NECESSARY**

2 10. Declaratory and writ relief is warranted because: (1) an actual controversy has
3 arisen and now exists between Plaintiffs and Defendants over the validity of the Ordinance; and
4 (2) there is no adequate remedy in the ordinary course of law.

5 11. The Ordinance, codified at Municipal Code 9.04.030, took effect on October 24,
6 2018, and has since its enactment been in full force and effect. On information and belief,
7 Plaintiffs allege that Defendants have, since the law took effect, enforced and currently are
8 enforcing 9.04.030.

9 12. Thus, victims of firearm theft risk unlawful enforcement and prosecution for
10 engaging in conduct that California voters deemed lawful. A judicial declaration is necessary and
11 appropriate at this time so that Plaintiffs may ascertain their rights and duties without first
12 subjecting themselves to criminal liability by violating the Ordinance. Moreover, Defendants'
13 ongoing enforcement of an invalid law constitutes a waste of taxpayer funds and an undue burden
14 on Plaintiffs.

15 **PARTIES**

16 **I. PLAINTIFFS**

17 13. Plaintiff G. MITCHELL KIRK is a resident of Morgan Hill, California, and a
18 firearm owner. In the event Mr. Kirk is a victim of firearm theft, he is subject to the requirements
19 of the Ordinance. If he reports such theft to the City's police department within 120 hours after the
20 theft occurred or he reasonably discovered it to have occurred, he would be subject to prosecution
21 under the Ordinance, even though his conduct would conform with Penal Code section 25250. Mr.
22 Kirk has, within the past year, paid sales taxes and property taxes while a resident of the City, with
23 portions of the proceeds of those taxes transferred to the City for funding general law enforcement
24 activities of its police department, including training its officers on the enforcement of the
25 Ordinance.

26 14. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED
27 ("CRPA") is a nonprofit membership organization incorporated under the laws of California with
28 headquarters in Fullerton, California. Among its other activities, CRPA works to preserve and

1 expand constitutional and statutory rights of gun ownership, including the right to self-defense and
2 the right to keep and bear arms. CRPA accomplishes this through their many educational
3 offerings, publications, member engagement events, support of legislation, and legislative
4 initiatives. CRPA has tens of thousands of members and supporters, many of whom reside in
5 Morgan Hill or the surrounding county, conduct business in Morgan Hill, visit or travel through
6 Morgan Hill, or are otherwise subject to the Morgan Hill Municipal Code. Their members are
7 firearm retailers, sportsmen, hunters, junior and youth competitors, Olympians, police officers,
8 professionals, and loving parents and grandparents. CRPA represents all its members both in their
9 general interest as citizens and in their particular interest in the right to lawfully own and possess
10 firearms.

11 **II. DEFENDANTS**

12 15. Defendant CITY OF MORGAN HILL is a municipal corporation formed under the
13 laws of California. The City is the entity that enacted, and is beneficially interested in, the
14 Ordinance.

15 16. Defendant DAVID SWING is the Chief of Police of the Morgan Hill Police
16 Department. He is sued in his official capacity. He is charged with enforcing the Ordinance, as
17 codified in the Morgan Hill Municipal Code.

18 17. Defendant IRMA TORREZ is the City Clerk of Morgan Hill. She is sued in her
19 official capacity. She is charged with recording, keeping, and printing the ordinances of the City,
20 including the Ordinance referenced in this Complaint. She is charged with recording and printing
21 the codification of such ordinances within the Municipal Code for the City.

22 18. Plaintiff is unaware and genuinely ignorant of the true identities of DOES 1
23 through 10. Doe Defendants are fictitiously named. The true names and capacities, whether an
24 individual, corporation, heirs, assigns, successor in interest, or otherwise, of the Doe Defendants,
25 are unknown to Plaintiff at the time of filing of this complaint and petition. Plaintiff will amend
26 this complaint and petition to show the true names and capacities of these Doe Defendants when
27 the same have been ascertained. Plaintiff is informed, and believes, and on that basis alleges, that
28 at all times herein mentioned, Defendants fictitiously designated, and each of them, were the

1 agents, servants, employees, representatives, and/or other persons or entities acting or purporting
2 to act on Defendants' behalf or over whom Defendants exercise management and control, and
3 were at all times herein mentioned within the course and scope of such agency and/or
4 employment. Plaintiff is informed and believes, and on that basis alleges, that each of the
5 Defendants named as DOES 1 through 10 were in some manner acting unlawfully or otherwise
6 responsible for the events and happenings hereinafter alleged.

7 **JURISDICTION AND VENUE**

8 19. This Court has jurisdiction under sections 525, 526, 1060 and 1085 of the
9 California Code of Civil Procedure. Plaintiffs lack under section 1086 a "plain, speedy, and
10 adequate remedy, in the ordinary course of law."

11 20. Because this action is brought against the city of Morgan Hill and its public
12 officers, Plaintiffs properly bring this action in the county of Santa Clara. (Code Civ. Proc., §§
13 393, subd. (b), & 394, subd.(a).) Further, at least one Plaintiff resides in the city of Morgan Hill
14 and the county of Santa Clara.

15 **FIRST CAUSE OF ACTION**

16 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

17 **(By All Plaintiffs Against All Defendants)**

18 21. Plaintiffs reallege Paragraphs 1 through 20 and incorporate them as to this cause of
19 action as though fully set forth herein.

20 22. An actual controversy has arisen and now exists between Plaintiffs and Defendants
21 relative to their respective rights and duties under the Ordinance, as codified in Morgan Hill
22 Municipal Code 9.04.030. Plaintiffs contend that the Ordinance is invalid and unenforceable
23 because it is preempted by state law. On information and belief, Defendants dispute this
24 contention and contend the Ordinance is valid, continue to print the Ordinance as codified in the
25 Municipal Code, and continue to enforce the Ordinance, and train their officers to enforce the
26 Ordinance.

27 23. Plaintiffs desire a declaration on the validity of the Ordinance, as codified in
28 Municipal Code 9.04.030. A judicial declaration is necessary and appropriate so that Plaintiffs

1 may ascertain their rights and duties without first subjecting themselves to criminal liability by
2 violating the Ordinance.

3 24. To resolve this controversy, Plaintiffs request that, under Code of Civil Procedure
4 section 1060, this Court declare that the Ordinance is preempted by state law because: (1) it
5 duplicates state law that obligates victims of firearms theft to report such theft to a law
6 enforcement agency; (2) it contradicts state law that sets for the maximum time period by which
7 such theft must be reported; or (3) it enters into areas fully occupied by the state.

8 25. In addition, Plaintiffs seek an injunction under Code of Civil Procedure sections
9 525 and 526. The City's wrongful conduct, unless enjoined by order of this Court, will continue to
10 cause great and irreparable injury to Plaintiffs. For they will be forced to choose between
11 complying with the reporting requirements of the Ordinance, or complying with the reporting
12 requirements of Penal Code section 25250 in a manner which violates the Ordinance and causes
13 Plaintiffs or their members to be subject to local prosecution.

14 26. Further, the City's wrongful conduct, unless enjoined by order of this Court, will
15 continue to cause great and irreparable injury to Plaintiffs in that Plaintiffs who reside in the City
16 and who have paid and will continue to pay property tax and sales tax to the City will have such
17 tax revenue wasted on training and enforcement of a preempted and invalid local ordinance.

18 27. The City's wrongful conduct will be of a continuing nature for which Plaintiffs will
19 have no adequate remedy at law because it is impossible to determine monetary damages caused
20 by the City's wrongful conduct.

21 28. Accordingly, Plaintiffs seek a permanent injunction forbidding Defendants, their
22 agents, employees, representatives, and all those acting in concert with them from enforcing the
23 Ordinance, and further requiring Defendants to remove corresponding Municipal Code 9.04.030
24 from the Morgan Hill Municipal Code.

25 **SECOND CAUSE OF ACTION**

26 **FOR A WRIT OF MANDATE AND/OR PROHIBITION**

27 **(By All Plaintiffs Against All Defendants)**

28 29. Plaintiffs reallege Paragraphs 1 through 28 and incorporate them as to this cause of

1 action as though fully set forth herein.

2 30. Based on the plain language and legislative history of Prop 63 and Penal Code
3 section 25250, the Ordinance, as codified in the Morgan Hill Municipal Code, conflicts with and
4 is preempted by state law.

5 31. Defendants thus have a clear, present, and ministerial duty *not* to enforce the
6 Ordinance against Plaintiffs or anyone.

7 32. Plaintiffs are beneficially interested in this matter, as they are subject to
8 Defendants' enforcement of the Ordinance.

9 33. Defendants' wrongful conduct in enforcing the unlawful Ordinance is of a
10 continuing nature for which Plaintiffs have no plain, speedy, adequate remedy at law, and which
11 has and will continue to result in irreparable harm, as set forth above in the general allegations and
12 First Cause of Action.

13 34. The named individual plaintiffs, and the individuals and entities represented in this
14 action, are irreparably injured by the mere enactment, existence, and ongoing enforcement of the
15 invalid Ordinance, the continuing threat of criminal and civil penalties for each separate violation
16 of the Ordinance, and in the following ways:

17 a. The Ordinance purports to regulate matters already fully occupied by state law. It
18 also conflicts with state law and deprives Plaintiffs of their rights under these laws,
19 prohibiting them from actions they wish to take as hereinafter alleged. Plaintiffs are also
20 irreparably injured as taxpayers and citizens because the Ordinance results in invalid,
21 improper, and unauthorized conduct of public officials and its administration and
22 enforcement is a waste of tax funds. Plaintiffs have no adequate remedy at law to redress
23 these wrongs and protect their rights.

24 b. Plaintiffs, and those represented by Plaintiffs, are lawful firearm owners within the
25 City who must comply with the Ordinance if they are the victim of a firearm theft. If
26 Plaintiffs or their members instead chose to comply with state law—Penal Code section
27 25250—and wait for a period of up to 120 hours after a theft of or learning of a theft of
28 their firearm to report such theft, they would be subject to prosecution under the Ordinance

1 even though they have fully complied with state law.

2 c. Plaintiffs, and those represented by Plaintiffs who live in the City, are taxpayers
3 who, within the past year, have paid property tax, or sales tax, or both, with the proceeds
4 of same, or portions thereof, remitted to the City treasury for use in general law
5 enforcement purposes. Plaintiffs, as they continue to pay property tax, sales tax, or both,
6 will continue to see such tax funds wasted in the training of officers of the Morgan Hill
7 Police Department to enforce the Ordinance, in the enforcement by officers of the
8 Ordinance, and in the printing, publication, and distribution of the Ordinance, and its
9 codification in Municipal Code 9.04.030, within the official laws and publications of the
10 City.

11 d. Plaintiffs and those represented by Plaintiffs, as citizens, properly bring this
12 complaint for declaratory relief and petition for writ of mandate in the nature of a citizen
13 mandamus action to promote the public interest in having the general laws obeyed. The
14 Ordinance is preempted by state law, i.e., Penal Code section 25250. The statute upon
15 which Plaintiffs rely is intended to assure orderly, consistent, and rational statewide
16 compliance with firearm-theft-reporting requirements, without regard to whatever
17 jurisdiction such victim may reside or be passing through. Such a “patchwork” approach
18 would cause confusion to the public and cause members of the public seeking to comply
19 with state law to nonetheless be unwitting violators of a local law of which they may have
20 no knowledge. State law relating to theft-reporting is also intended to provide transparency
21 and uniform application of laws by law enforcement in order to prevent, e.g., law
22 enforcement officials in jurisdictions other than the City from having to apply one law to
23 most victims of firearms theft, but another, more stringent law to a victim of firearms theft
24 who also happens to be a resident of the City. Thus, the public has an interest in having the
25 City refrain from enacting and enforcing laws such as the Ordinance, which duplicate or
26 conflict with state law, otherwise encroach upon a field of law fully occupied by the State,
27 and cause conflict in other, neighboring jurisdictions where law enforcement may be
28 required to apply the City’s law in one instance, and state law in another instance, when

1 handling a report of a firearm theft.

2 35. Plaintiffs present important questions of statutory and constitutional interpretation,
3 questions of public interest which further warrant prompt disposition of this matter.

4 36. Accordingly, Plaintiffs seek a writ of mandate, under Code of Civil Procedure
5 sections 1085 and 1087, commanding that Defendants (a) stop enforcing the Ordinance, and (b)
6 remove the Ordinance from any list of municipal ordinances and, specifically, delete the section
7 requiring the reporting of stolen and lost firearms from Morgan Hill Municipal Code 9.04.030.

8 **PRAYER FOR RELIEF**

9 Wherefore Plaintiffs pray for the following relief:

10 1. For issuance of a declaration that the portion of the challenged Ordinance identified
11 in Paragraph 3 of this complaint, and codified at Morgan Hill Municipal Code 9.04.030, is
12 preempted by Penal Code section 25250, and is void and invalid;

13 2. For issuance of a peremptory writ and/or permanent injunction ordering Defendants
14 to not enforce the Ordinance, and to strike the corresponding Morgan Hill Municipal Code
15 9.04.030 from its books and records;

16 3. For issuance of a peremptory writ and/or permanent injunction ordering Defendants
17 to not expend money from the City treasury on training regarding or enforcement of the Ordinance;

18 4. For a declaration that the striking of and enjoining of enforcement of the Ordinance
19 confers a substantial benefit on the public;

20 5. For an award of reasonable costs of suit and attorney's fees under Code of Civil
21 Procedure section 1021.5 and under any other state law for which such fees and costs are provided;
22 and

23 6. For such other relief as may be just and proper.

24
25 Dated: April 15, 2019

MICHEL & ASSOCIATES, P.C.

26 
27 Anna M. Barvir
28 Attorneys for Plaintiffs

VERIFICATION

I, the undersigned, declare:

I am one of the petitioners in this action. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts regarding my personal circumstances that are alleged in the petition are within my own knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Morgan Hill, California.


G. Mitchell Kirk
Petitioner

VERIFICATION

I, the undersigned, declare:

I am the Executive Director of California Rifle & Pistol Association, Incorporated (CRPA), one of the petitioners in this action. As Executive Director, I am authorized to make this verification on behalf of CRPA. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts alleged in the petition regarding the particular circumstances of CRPA or its members are within my personal knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Fullerton, California.

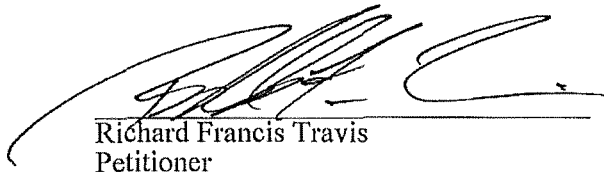

Richard Francis Travis
Petitioner

EXHIBIT Y

1 Roderick M. Thompson (State Bar No. 96192)
rthompson@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 Hannah Friedman (State Bar No. 324771)
hfriedman@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

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE
15

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

18 Plaintiffs and Petitioners,

19 vs.
20

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

Defendants and Respondents.

Case No. 19CV346360

**DEFENDANTS' ANSWER TO
COMPLAINT FOR DECLARATORY
RELIEF; VERIFIED PETITION FOR
WRIT OF MANDATE AND/OR
PROHIBITION OR OTHER
APPROPRIATE RELIEF**

Action Filed: April 15, 2019

25 Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID
26 SWING, MORGAN HILL CITY CLERK IRMA TORREZ ("Defendants") answer as follows
27 Plaintiffs' G. MITCHELL KIRK and CALIFORNIA RIFLE & PISTOL ASSOCIATION,
28 INCORPORATED ("Plaintiffs") verified Complaint For Declaratory Relief; Verified Petition For

1 Writ of Mandate And/or Prohibition or Other Appropriate Relief (“Complaint”). Any and all
2 allegations not specifically admitted herein are denied. No statement herein constitutes a comment
3 on the legal theories upon which Plaintiff purports to proceed. To the extent the Complaint asserts
4 legal contentions, such legal contentions require no response in this Answer. To the extent any
5 response is required to the headings in the Complaint, Defendants deny the factual allegations, if
6 any, contained in such headings.

7 **I. NATURE OF THE CASE**

8 1. Defendants deny the allegations in paragraph 1 and allege that, on November 28, 2018,
9 the CITY OF MORGAN HILL (“City”) adopted Ordinance No. 2289 (the “Ordinance”).

10 2. Defendants deny the allegations in paragraph 2 and allege that the
11 Ordinance requires individuals to report the loss or theft of a firearm to the City’s Police
12 Department within 48 hours if the loss or theft occurred within the City or the owner of the
13 firearm resides in the City.

14 3. Defendants admit that the Ordinance now reads as written in paragraph 3 of the
15 Complaint. Except as expressly admitted herein, Defendants deny the allegations in Paragraph 3
16 of the Complaint, including footnote 1.

17 4. Defendants deny the allegations in paragraph 4 and allege that California voters
18 passed Proposition 63 (“Prop 63”) on November 8, 2016. Among other things, Prop 63 included a
19 mandatory reporting requirement when firearms are lost or stolen.

20 5. The allegations of Paragraph 5 constitute legal conclusions, to which no answer is
21 required.

22 6. The allegations of Paragraph 6 constitute a legal conclusion, to which no answer is
23 required.

24 7. Defendants admit that California Rifle & Pistol Association, Incorporated notified the
25 City in writing that section 25250 (allegedly) preempted the Ordinance and requested that the City
26 voluntarily repeal the Ordinance. The City did not voluntarily repeal the Ordinance. Except as
27 expressly admitted herein, Defendants deny the allegations in Paragraph 7 of the Complaint.

28 8. Paragraph 8 includes a legal conclusion, to which no answer is required. As to the

1 remaining allegations, Defendants lack information or belief regarding the allegations set forth in
2 Paragraph 8 of the Complaint, and on that basis deny each and every such allegation.

3 9. Defendants lack information or belief regarding the allegations set forth in Paragraph 9
4 of the Complaint, and on that basis deny each and every such allegation.

5 **II. DECLARATORY AND WRIT RELIEF IS NECESSARY**

6 10. Paragraph 10 constitutes a legal conclusion, to which no answer is required.

7 11. Defendants deny the allegations in Paragraph 11 and allege that Municipal Code
8 9.04.030 took effect on December 29, 2018. As of the date of this writing, no one has been cited
9 for a violation.

10 12. Paragraph 12 constitutes a legal conclusion, to which no answer is required.

11 **PARTIES**

12 **I. PLAINTIFFS**

13 13. Defendants lack information or belief regarding the allegations set forth in Paragraph
14 13 of the Complaint, and on that basis deny each and every such allegation. Defendants deny that
15 if Plaintiff were to report a stolen firearm within 120 hours he would necessarily be subject to
16 prosecution under the Ordinance, even though his conduct would conform with Penal Code
17 section 25250.

18 14. Defendants lack information or belief regarding the allegations set forth in Paragraph
19 14 of the Complaint, and on that basis deny each and every such allegation.

20 **II. DEFENDANTS**

21 15. Defendants admit that CITY OF MORGAN HILL is a municipal corporation formed
22 under the laws of California.

23 16. Defendants admit that DAVID SWING is the Chief of Police of the Morgan Hill Police
24 Department.

25 17. Defendants admit that IRMA TORREZ is the City Clerk of Morgan Hill.

26 18. Defendants lack information or belief regarding the allegations set forth in Paragraph
27 18 of the Complaint, and on that basis deny each and every such allegation.

1 **JURISDICTION AND VENUE**

2 19. The allegations in Paragraph 19 constitute legal conclusions, to which no answer is
3 required. To the extent a response is required, Defendants deny the allegations.

4 20. The allegations in Paragraph 20 constitute legal conclusions, to which no answer is
5 required. To the extent a response is required, Defendants deny the allegations.

6 **FIRST CAUSE OF ACTION**
7 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
8 **(By All Plaintiffs Against All Defendants)**

9 21. Defendants admit that Plaintiffs purport to incorporate by reference the allegations
10 contained in all previous Paragraphs, and incorporates by this reference their responses to those
11 Paragraphs.

12 22. Defendants admit that Plaintiffs purport to contend that the Ordinance is invalid and
13 unenforceable because it is preempted by state law. Defendants contend the Ordinance is valid.

14 23. Defendants lack information or belief regarding the allegations set forth in Paragraph
15 23 of the Complaint, and on that basis deny each and every such allegation.

16 24. Defendants admit that Plaintiffs purport to request that this Court declare that the
17 Ordinance is preempted by state law.

18 25. The allegations in Paragraph 25 constitute legal conclusions, to which no answer is
19 required. To the extent a response is required, Defendants deny the allegations.

20 26. The allegations in Paragraph 26 constitute legal conclusions, to which no answer is
21 required. To the extent a response is required, Defendants deny the allegations.

22 27. The allegations in Paragraph 27 constitute legal conclusions, to which no answer is
23 required. To the extent a response is required, Defendants deny the allegations.

24 28. Defendants admit that Plaintiffs purport to request an injunction forbidding
25 Defendants, their agents, employees, representatives, and all those acting in concert with them
26 from enforcing the Ordinance, and further requiring Defendants to remove corresponding
27 Municipal Code 9.04.030 from the Morgan Hill Municipal Code.
28

SECOND CAUSE OF ACTION
FOR A WRIT OF MANDATE AND/OR PROHIBITION
(By All Plaintiffs Against All Defendants)

29. Defendants admit that Plaintiff purports to incorporate by reference the allegations contained in all previous Paragraphs, and incorporates by this reference their responses to those Paragraphs.

30. The allegations in Paragraph 30 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

31. The allegations in Paragraph 31 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

32. Defendants lack information or belief regarding the allegations set forth in Paragraph 32 of the Complaint, and on that basis deny each and every such allegation.

33. The allegations in Paragraph 33 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

34. The allegations in Paragraph 34 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

a. The allegations in Paragraph 34(a) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

b. The allegations in Paragraph 34(b) constitute legal conclusions, to which no answer is required. Defendants admit that if Plaintiffs chose to wait for a period of more than 48 hours after learning of a lost or stolen firearm to report the loss or theft, they could be subject to prosecution under the Ordinance.

c. Defendants lack information or belief regarding the allegations set forth in Paragraph 34(c) of the Complaint, and on that basis deny each and every such allegation.

d. The allegations in Paragraph 34(d) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the

1 barred from bringing or maintaining this action because they have failed to exhaust their
2 administrative remedies.

3 **Fourth Affirmative Defense**

4 **(No Attorneys' Fees)**

5 As a fourth, separate and distinct affirmative defense, Defendants allege that Plaintiffs
6 have failed to state facts sufficient to set forth a claim for recovery of their attorneys' fees.

7 **Fifth Affirmative Defense**

8 **(Irreparable Harm)**

9 As a fifth, separate and distinct affirmative defense, Defendants allege that Plaintiffs have
10 not experienced irreparable harm, making injunctive relief improper.

11 **Sixth Affirmative Defense**

12 **(Ripeness)**

13 As a sixth, separate and distinct affirmative defense, Defendants allege that some or all of
14 Plaintiffs' causes of action are premature and not ripe for adjudication.

15 **Seventh Affirmative Defense**

16 **(Statute of Limitations)**

17 As a seventh, separate and distinct affirmative defense, Defendants allege that the
18 Complaint, and some or all of each cause therein, is barred by the applicable statute of limitations.

19 **Eighth Affirmative Defense**

20 **(Waiver)**

21 As an eighth, separate and distinct affirmative defense, Defendants allege that Plaintiffs
22 have waived, expressly or by implication, the claims asserted in the Complaint.

23 **Ninth Affirmative Defense**

24 **(Estoppel)**

25 As a ninth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'
26 causes of action are barred, in whole or in part, by the equitable doctrine of estoppel.

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1 **Tenth Affirmative Defense**

2 **(Laches)**

3 As a tenth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'
4 causes of action are barred, in whole or in part, by the equitable doctrine of laches.

5 **Eleventh Affirmative Defense**

6 **(Unclean Hands)**

7 As an eleventh, separate and distinct affirmative defense, Defendants allege that Plaintiffs'
8 causes of action are barred, in whole or in part, by the equitable doctrine of unclean hands.

9 **Twelfth Affirmative Defense**

10 **(Additional Defenses)**

11 The Complaint is barred by other affirmative defenses that Defendants may allege as those
12 defenses become known through discovery.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Defendants pray for relief as follows:

- 15 1. That Plaintiffs take nothing by their Complaint and that the Complaint be dismissed
16 in its entirety, with prejudice;
- 17 2. That Defendants be awarded judgment in this action;
- 18 3. That Defendants be awarded costs of suit and attorneys' fees incurred herein; and,
- 19 4. That Defendants be awarded such other and further relief as the Court deems just
20 and proper.

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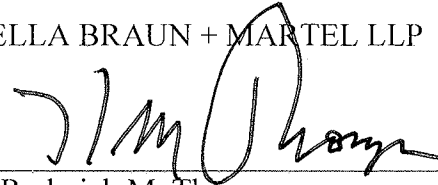
DEMAND FOR JURY TRIAL

Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ, hereby demand trial by jury in this matter.

Dated: July 19, 2019

FARELLA BRAUN + MARTEL LLP

By:



Roderick M. Thompson

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

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am the Deputy City Clerk for the City of Morgan Hill, and am authorized to make this verification on behalf of the City Clerk, a party to this action. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July19, 2019, at Morgan Hill, California.

For Morgan Hill City Clerk Irma Torrez
Michelle Bigelow
Deputy City Clerk


Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am the City Attorney for the City of Morgan Hill, a party to this action, and am authorized to make this verification on its behalf. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July 19, 2019, at Morgan Hill, California.

City of Morgan Hill
Donald A. Larkin
City Attorney


Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July 19, 2019, at Morgan Hill, California.

Morgan Hill Chief of Police David Swing
David Swing


Signature

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PROOF OF SERVICE

**Kirk v. City of Morgan Hill
Case No. 19CV346360**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery Street, 17th Floor, San Francisco, CA 94104.

On July 19, 2019, I served true copies of the following document(s) described as on the interested parties in this action as follows: **DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

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
cmichel@michellawyers.com

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

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

Executed on July 19, 2019, at San Francisco, California.

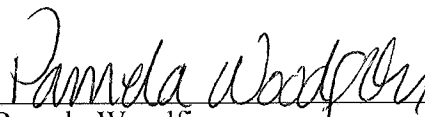

Pamela Woodfin

EXHIBIT Z

1 Roderick M. Thompson (State Bar No. 96192)
rthompson@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 Hannah Friedman (State Bar No. 324771)
hfriedman@giffords.org
8 Giffords Law Center to Prevent Gun Violence
9 268 Bush Street #555
San Francisco, California 94104
10 Telephone: (415) 433-2062
Facsimile: (415) 433-3357
11

12 Attorneys for CITY OF MORGAN HILL,
MORGAN HILL CHIEF OF POLICE DAVID
13 SWING, MORGAN HILL CITY CLERK IRMA
TORREZ

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,
18 INCORPORATED,

19 Plaintiffs and Petitioners,

20 vs.

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

24 Defendants and Respondents.

Case No. 19CV346360

**DEFENDANT CITY OF MORGAN HILL
RESPONSE TO PLAINTIFF'S FORM
INTERROGATORIES, SET ONE**

Action Filed: April 15, 2019

25 PROPOUNDING PARTIES: PLAINTIFF G. MITCHELL KIRK

26 RESPONDING PARTIES: DEFENDANT CITY OF MORGAN HILL

27 SET NO: ONE
28

Pursuant to California Civil Procedure Code § 2030.260, Defendant CITY OF MORGAN HILL (hereinafter “Morgan Hill”) hereby responds to the Form Interrogatories (Set One) propounded by plaintiff G. MITCHELL KIRK (hereinafter “Plaintiff”).

GENERAL OBJECTIONS

Morgan Hill objects to the definition of “the INCIDENT” to the extent that it seeks information not relevant to the parties’ claims or defenses. The test for preemption does not entail an analysis of Morgan Hill’s legislative drafting process, Morgan Hill’s legislative intent or motive, or Morgan Hill legislators’ deliberations or justifications.

Morgan Hill objects to the definition of “YOU OR ANYONE ACTING ON YOUR BEHALF” as overbroad and seeking information not relevant to the parties’ claims or defenses. Morgan Hill will limit this definition to the Morgan Hill City Council, City Manager, Police Chief, and City Attorney acting in their official capacities.

RESPONSES TO FORM INTERROGATORIES

FORM INTERROGATORY NO. 1.1:

1.0. Identity of Persons Answering These Interrogatories.

1.1. State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. *(Do not identify anyone who simply typed or reproduced the responses.)*

RESPONSE:

Subject to and without waiving its objections, Morgan Hill states as follows:

- 1) Donald Larkin, Morgan Hill City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
(408) 778-3490
- 2) Roderick M. Thompson, undersigned counsel
- 3) Hannah Shearer, undersigned counsel
- 4) James Allison, undersigned counsel
- 5) Hannah Friedman, undersigned counsel

1 **FORM INTERROGATORY NO. 12.2:**

2 12.0. Investigation—General.

3 12.2. Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any
4 individual concerning the **INCIDENT**? If so, for each individual state:

5 (a) the name, **ADDRESS**, and telephone number of the individual interviewed;

6 (b) the date of the interview; and

7 (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the
8 interview.

9 **RESPONSE TO INTERROGATORY NO. 12.2:**

10 Morgan Hill objects to this Interrogatory because, incorporating Plaintiff's definition of
11 "the Incident," the Interrogatory seeks information not relevant to the parties' claims or defenses.
12 The test for preemption does not entail an analysis of any interviews Morgan Hill may have
13 conducted about "the passage, interpretation, application, enforcement, and notice of effective date
14 of Ordinance No. 2289."

15 Morgan Hill objects to this Interrogatory on grounds that in context, the word "interview"
16 is vague and ambiguous. The Morgan Hill City Council reviewed a body of information, including
17 materials, reports, and public comments, in its deliberations before the passage of Ordinance No.
18 2289, and it is unclear whether any of these materials reference or constitute interviews as defined
19 in this Interrogatory. If the Interrogatory is intended to be interpreted to cover such materials, the
20 information sought is equally available to the Plaintiff, from a public source
21 (<https://morganhillca.iqm2.com/Citizens/Calendar.aspx>) that is more convenient and can be
22 accessed at no cost to Morgan Hill, and without requiring Morgan Hill to create new records
23 containing names of individuals who provided information in public records concerning
24 Ordinance No. 2289.

25 Morgan Hill objects to this Interrogatory to the extent that it seeks attorney work product
26 and/or communications or documents covered by the attorney-client privilege.

27 Based on this objection, Morgan Hill will not respond to this Interrogatory. Morgan Hill
28 proposes instead to meet and confer with Plaintiffs to confirm that Plaintiffs can access the

1 requested information through Morgan Hill's website, and determine whether there is any other
2 interpretation of this Request for Production that will resolve Morgan Hill's objections.

3 **FORM INTERROGATORY NO. 12.3:**

4 12.0. Investigation—General.

5 12.3. Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or
6 recorded statement from any individual concerning the **INCIDENT**? If so, for each statement
7 state:

8 (a) the name, **ADDRESS**, and telephone number of the individual from whom the
9 statement was obtained;

10 (b) the name, **ADDRESS**, and telephone number of the individual who obtained the
11 statement;

12 (c) The date the statement was obtained; and

13 (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original
14 statement or a copy.

15 **RESPONSE TO FORM INTERROGATORY NO. 12.3:**

16 Morgan Hill objects to this Interrogatory as vague, ambiguous, burdensome, overbroad,
17 and seeking information not relevant to the parties' claims or defenses. Plaintiffs have defined the
18 Incident as "the passage, interpretation, application, enforcement, and notice of effective date of
19 Ordinance No. 2289." Ordinance No. 2289 is legislation that the Morgan Hill City Council passed
20 in the regular course of business and in connection with that legislation, Morgan Hill maintained
21 an official volume of publicly available records that constitute written and recorded statements
22 from individuals concerning the Ordinance's passage, interpretation, application, enforcement, and
23 effective date. Given the Interrogatory's vague and burdensome scope, the fact that the parties
24 have not yet completed discovery, the fact that the requested records are publicly available, and
25 the fact that the test for preemption does not involve an analysis of statements Morgan Hill
26 obtained from anyone about the passage of Ordinance No. 2289, this Interrogatory should properly
27 be propounded as a Request for Production for Morgan Hill's records about Ordinance No. 2289.

28 Morgan Hill objects to this Interrogatory to the extent that it seeks attorney work product

1 and/or communications or documents covered by the attorney-client privilege.

2 Morgan Hill objects to this Interrogatory to the extent it asks Morgan Hill to identify
3 persons with knowledge of facts that are not personally known, but are facts concerning matters of
4 public record. Morgan Hill will interpret the request to identify persons with knowledge of
5 Morgan Hill's awareness or consideration of those facts.

6 Subject to and without waiving its objections, Morgan Hill states as follows:

7 Based on these objections, Morgan Hill will respond to this Interrogatory by producing all
8 non-privileged, responsive records in its possession, custody, or control concerning Ordinance
9 2289.

10 **FORM INTERROGATORY NO. 12.4:**

11 12.0. Investigation—General.

12 12.3. Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any
13 photographs, films, or videotapes depicting any place, object or individual concerning the
14 **INCIDENT** or plaintiff's injuries? If so, state:

- 15 (a) the number of photographs or feet of film or videotape;
16 (b) the places, objects, or persons photographed, filmed, or videotaped;
17 (c) the date the photographs, films, or videotapes were taken;
18 (d) the name, **ADDRESS**, and telephone number of the individual taking the photographs,
19 films, or videotapes; and
20 (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original
21 or a copy of the photographs, films, or videotapes.

22 **RESPONSE TO FORM INTERROGATORY NO. 12.4:**

23 Morgan Hill objects to this Interrogatory as vague, ambiguous, burdensome, overbroad,
24 and seeking information not relevant to the parties' claims or defenses. Plaintiffs have defined the
25 Incident as "the passage, interpretation, application, enforcement, and notice of effective date of
26 Ordinance No. 2289." Ordinance No. 2289 is legislation that the Morgan Hill City Council passed
27 in the regular course of business and in connection with that legislation, Morgan Hill maintained
28 an official volume of publicly available records that constitute written and recorded statements

1 from individuals concerning the Ordinance's passage, interpretation, application, enforcement, and
2 effective date. Given the Interrogatory's vague and burdensome scope, the fact that the parties
3 have not yet completed discovery, the fact that the requested records are publicly available, and
4 the fact that the test for preemption does not involve an analysis of statements Morgan Hill
5 obtained from anyone about the passage of Ordinance No. 2289, this Interrogatory should properly
6 be propounded as a Request for Production for Morgan Hill's records about Ordinance No. 2289.

7 Morgan Hill objects to this Interrogatory to the extent it asks Morgan Hill to identify
8 persons with knowledge of facts that are not personally known, but are facts concerning matters of
9 public record. Morgan Hill will interpret the request to identify persons with knowledge of
10 Morgan Hill's awareness or consideration of those facts.

11 Subject to and without waiving its objections, Morgan Hill states as follows:

12 Based on these objections, Morgan Hill will respond to this Interrogatory by producing all
13 non-privileged, responsive records in its possession, custody, or control concerning Ordinance
14 2289.

15 **FORM INTERROGATORY NO. 15.1:**

16 15.0. Denials and Special or Affirmative Defenses.

17 15.1. Identify each denial of a material allegation and each special or affirmative defense
18 in your pleadings and for each:

19 (a) state all facts upon which you base the denial or special or affirmative defense;

20 (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have
21 knowledge of those facts, and

22 (c) identify all **DOCUMENTS** and other tangible things that support your denial or
23 special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the
24 **PERSON** who has each **DOCUMENT**.

25 **RESPONSE TO FORM INTERROGATORY NO. 15.1:**

26 Morgan Hill objects to this Interrogatory to the extent it asks Morgan Hill to identify
27 persons with knowledge of facts that are not personally known, but are facts concerning matters of
28 public record. Morgan Hill will interpret the request to identify persons with knowledge of

1 Morgan Hill's awareness or consideration of those facts.

2 Morgan Hill objects to this contention-type Interrogatory as unduly burdensome in that it is
3 premature, as discovery has only recently opened. Morgan Hill will respond to the best of its
4 current abilities, but notes that Morgan Hill's factual investigation and analysis of the issues are
5 ongoing. The Interrogatory is premature to the extent it requests the basis for Morgan Hill's
6 affirmative defenses, which will depend on factual investigation during the discovery process.
7 Morgan Hill will update its response, if necessary, as its investigation and analysis develops.

8 Morgan Hill objects to this Interrogatory to the extent that it seeks attorney work product
9 or other documents covered by the attorney-client privilege. Morgan Hill will not describe legal
10 theories supporting its affirmative defenses in the fact discovery process.

11 Subject to and without waiving its objections, Morgan Hill states as follows:

12 Morgan Hill identifies the following as denials of material allegations in its pleadings, and
13 provides the information requested in parts (a), (b), and (c) for each.

14 (1) "Defendants deny the allegations in paragraph 2 and allege that the Ordinance requires
15 individuals to report the loss or theft of a firearm to the City's Police Department within 48
16 hours if the loss or theft occurred within the City or the owner of the firearm resides in the
City" (Answer ¶ 2)

17 (a) Bases:

- 18 • Ordinance 2289: publicly available.

19 (b) Names:

- 20 • Donald Larkin, Morgan Hill City Attorney (address and telephone number above)

21 (c) Documents:

- 22 • Ordinance 2289: publicly available.
- 23 • Publicly available materials presented to and considered by the City Council in
24 connection with the passage of Ordinance 2289, including materials available at
<https://morganhillca.igim2.com/Citizens/Calendar.aspx>.

25 (2) Denial that ordinance is preempted (E.g., Answer ¶¶ 3, 7, 30, 34)

26 (a) Bases:

- 27 • Ordinance 2289: publicly available.
- 28

- 1 • California Penal Code § 25250 et seq., added by voter initiative Proposition 63, Sec.
2 4.1: publicly available.
- 3 • Proposition 63 ballot materials: publicly available. These materials include the text of
4 Proposition 63 (http://downloads.capta.org/leg/BallotMeasures/Prop63_FullText.pdf);
5 and the voter guide (<https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf>,
6 starting at page 84), which includes the official title and summary, fiscal impact
7 statement, analysis by the Legislative Analyst's office, and arguments in favor and
8 against the proposition.
- 9 • Information provided to Proposition 63 voters about the ballot initiative, including the
10 archived version of the Proposition 63 proponents' website, which is publicly available
11 at <http://web.archive.org/web/20161028221844/http://safetyforall.com/>.
- 12 (b) Without waiving applicable work product protection and attorney/client privilege,
13 Morgan Hill states that its attorneys have knowledge of these facts:
- 14 • Donald Larkin, Morgan Hill City Attorney (address and telephone number above)
15 • Roderick M. Thompson, undersigned counsel
16 • Hannah Shearer, undersigned counsel
17 • James Allison, undersigned counsel
18 • Hannah Friedman, undersigned counsel
- 19 (c) Documents: publicly available documents listed in (a), above.
- 20 (3) "Defendants deny the allegations in Paragraph 11 and allege that Municipal Code 9.04.030
21 took effect on December 29, 2018. As of the date of this writing, no one has been cited for a
22 violation." (Answer ¶ 11)
- 23 (a) Bases:
- 24 • Ordinance 2289: publicly available.
- 25 (b) Names:
- 26 • Donald Larkin, Morgan Hill City Attorney (address and telephone number above)
- 27 (c) Documents:
- Ordinance 2289: publicly available.
- Publicly available materials presented to and considered by the City Council in
connection with the passage of Ordinance 2289, including materials available at
<https://morganhillca.igm2.com/Citizens/Calendar.aspx>.
- (4) "Defendants deny that if Plaintiff were to report a stolen firearm within 120 hours he
would necessarily be subject to prosecution under the Ordinance, even though his conduct

would conform with Penal Code section 25250.” (Answer ¶ 13)

(a) Bases:

Ordinance 2289: publicly available.

(b) Names:

- Donald Larkin, Morgan Hill City Attorney (address and telephone number above)

(c) Documents:

Ordinance 2289: publicly available.

(5) Affirmative defenses, including first, second, and sixth affirmative defenses (no standing, failure to state a claim, and ripeness)

(a) Bases: Without waiving the right to assert a basis for additional affirmative defenses later in the discovery process, Morgan Hill states that its bases include the following.

- Ordinance 2289: publicly available

(b) Names:

- Donald Larkin, Morgan Hill City Attorney (address and telephone number above)


(c) Documents:

- Ordinance 2289: publicly available.

- Publicly available materials presented to and considered by the City Council in connection with the passage of Ordinance 2289, including materials available at <https://morganhillca.iqm2.com/Citizens/Calendar.aspx>.

1
2 Dated: February 3, 2020

3
4 By:


Roderick M. Thompson

5 Attorneys for CITY OF MORGAN HILL, MORGAN
6 HILL CHIEF OF POLICE DAVID SWING, MORGAN
7 HILL CITY CLERK IRMA TORREZ

8 Dated: February 3, 2020

GIFFORDS LAW CENTER TO PREVENT GUN
VIOLENCE

9
10 By: //s// Hannah Shearer

11 Hannah Shearer

12 Attorneys for CITY OF MORGAN HILL, MORGAN
13 HILL CHIEF OF POLICE DAVID SWING, MORGAN
14 HILL CITY CLERK IRMA TORREZ

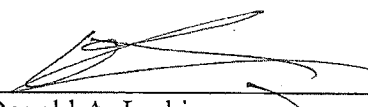
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VERIFICATION

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

Dated: February 3, 2020

By:


Donald A. Larkin

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PROOF OF SERVICE

**Kirk v. City of Morgan Hill
Case No. 19CV346360**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery Street, 17th Floor, San Francisco, CA 94104.

On March 3, 2020, I served true copies of the following document(s) described as on the interested parties in this action as follows: **DEFENDANT CITY OF MORGAN HILL
RESPONSE TO PLAINTIFFS FORM INTERROGATORIES, SET ONE**

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
cmichel@michellawyers.com
ABarvir@michellawyers.com
tcheuvront@michellawyers.com

BY ELECTRONIC SERVICE: I served the document(s) on the person(s) listed in the Service List by submitting an electronic version of the document(s) to the emails listed thereon.

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

Executed on March 3, 2020, at San Francisco, California.


Pamela Woodfin

EXHIBIT AA



State of California Secretary of State

N

Statement of Information

(Domestic Nonprofit, Credit Union and General Cooperative Corporations)

Filing Fee: \$20.00. If this is an amendment, see instructions.
IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

FW71792**FILED**

In the office of the Secretary of State
of the State of California

MAY-11 2018**1. CORPORATE NAME**

CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED

2. CALIFORNIA CORPORATE NUMBER

C0327194

This Space for Filing Use Only

Complete Principal Office Address (Do not abbreviate the name of the city. Item 3 cannot be a P.O. Box.)**3. STREET ADDRESS OF PRINCIPAL OFFICE IN CALIFORNIA, IF ANY**

CITY

STATE

ZIP CODE

271 E. IMPERIAL HWY., #620, FULLERTON, CA 92835

4. MAILING ADDRESS OF THE CORPORATION

CITY

STATE

ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)**5. CHIEF EXECUTIVE OFFICER/**

ADDRESS

CITY

STATE

ZIP CODE

CARL DAWSON MICHEL 180 E. OCEAN BLVD., SUITE 200, LONG BEACH, CA 90802

6. SECRETARY

ADDRESS

CITY

STATE

ZIP CODE

MATTHEW CORWIN 766 CANYON ROAD, REDWOOD CITY, CA 94062

7. CHIEF FINANCIAL OFFICER/

ADDRESS

CITY

STATE

ZIP CODE

RICHARD MINNICH 554 LONE OAK DRIVE, THOUSAND OAKS, CA 91362

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 9 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 9 must be left blank.

8. NAME OF AGENT FOR SERVICE OF PROCESS [Note: The person designated as the corporation's agent MUST have agreed to act in that capacity prior to the designation.]

MICHEL & ASSOCIATES, A PROFESSIONAL CORPORATION

9. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL

CITY

STATE

ZIP CODE

Common Interest Developments

10. ☐ Check here if the corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (California Civil Code section 4000, et seq.) or under the Commercial and Industrial Common Interest Development Act, (California Civil Code section 6500, et seq.). The corporation must file a Statement by Common Interest Development Association (Form SI-CID) as required by California Civil Code sections 5405(a) and 6760(a). Please see instructions on the reverse side of this form.

11. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

05/11/2018

JOSHUA ROBERT DALE

ATTORNEY

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

SI-100 (REV 01/2016)

APPROVED BY SECRETARY OF STATE

EXHIBIT BB

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
JOSEPH A. SILVOSO, III
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
TIFFANY D. CHEUVRONT
MATTHEW D. CUBEIRO
ALEXANDER A. FRANK
JENNIFER F. HOOSHMAND
LOS ANGELES, CA



OF COUNSEL
SCOTT M. FRANKLIN
CLINT B. MONFORT
ERIC M. NAKASU
MICHAEL W. PRICE
TAMARA M. RIDER
LOS ANGELES, CA

WRITER'S DIRECT CONTACT:
562-216-4450
TCHEUVRONT@MICHELLAWYERS.COM

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

June 1, 2018

VIA FAX & U.S.MAIL

Donald Larkin, City Attorney
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037
Fax: 408-779-1592

Re: City Council Consideration of Proposals to Prevent Gun Violence

Dear Mr. Larkin:

We write to you on behalf of our client California Rifle & Pistol Association, Inc. ("CRPA") as well as the hundreds of thousands of their members in California, many residing within the Morgan Hill ("City") area.

It has come to our attention that the City intends to consider several proposed ordinances that seek to impose firearm related restrictions on residents and visitors to the City. These proposals include: (1) A duty to report the theft or loss of a firearm within 48 hours; (2) A mandatory lock storage requirement while in the home; (3) A prohibition on the possession of magazines holding more than 10 rounds; and, (4) A requirement that all firearm retailers obtain a special permit as a condition of obtaining a business license. The City has also proposed certifying staff training for gun retailers, maintaining ammunition sale logs, and prohibiting the sale of "Assault-Style" weapons to persons under the age of 21.

We ask that the City carefully consider the intended objectives of any proposed ordinances, as many of these issues as identified in the May 16, 2018 staff report raise serious constitutional concerns and would fail to meet objectives of reducing gun violence or promoting public safety.

I. REQUIRING INDIVIDUALS TO REPORT THE THEFT OF LOSS OF A FIREARM WITHIN 48 HOURS IS UNENFORCEABLE AND WILL ONLY RESULT IN FEWER REPORTS TO POLICE.

Under the preemption doctrine a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.¹ In the present case, the mandatory reporting of the theft or loss of a firearm is already required under state law following the enactment of Proposition 63.² This provision subjects gun owners to penalties if a firearm, which is lost or stolen, is not reported to authorities within 5 days of the time he or she knew or reasonably should have known that the firearm was lost or stolen.³

With the enactment of Proposition 63, the state has fully and completely occupied the field regarding the reporting of lost or stolen firearms. To pass additional requirements at the local level that is duplicative and otherwise contradictory to state law will be struck down as preempted.

From a policy perspective, mandatory reporting requirements may appear sound, but in practice will only result in fewer firearms being reported. This is because when coupled with the mandatory locked-storage requirements also being considered by the City, reporting a firearm as lost or stolen may expose an individual to additional criminal liability should the person have failed to secure their firearms in accordance with the ordinance. The Fifth Amendment of the United States Constitution, which reads “[n]o person. . . shall be compelled in any criminal case to be a witness against himself,” will prevent such individuals from being compelled to report the loss.⁴

As a bedrock of our criminal justice system, the Fifth Amendment prohibits police, prosecutors, and judges from requiring an individual to provide evidence or testimony that could result in potential criminal charges against them (compelled speech). Governor Brown noted these complicated policy issues when he vetoed numerous pieces of legislation prior to the voters passing Proposition 63. In his veto message, Governor Brown wrote that he had vetoed similar measures in 2012 and 2013 stating “I continue to believe that responsible people report the loss or theft of a firearm and irresponsible people do not... it is not likely that this bill would change that.” Even Governor Brown’s predecessor Governor Schwarzenegger vetoed a similar bill reasoning that it “could result in cases where law-

¹ *Fisacal v. City of San Francisco* (2008) 158 Cal. App. 4th 895, 903-04.

² Cal. Penal Code § 25250.

³ *Id.*

⁴ U.S. Const. amend.V.

abiding citizens face criminal penalties simply because they were the victim of a crime, which is particularly troubling.”⁵

Given the enforcement difficulties, other jurisdictions considering similar measures have rejected them. Recently, the Sacramento Police Department reviewed identical Oakland, Berkley, and Alameda County reporting requirements, only to discover that not a single investigation, arrest, or conviction had taken place. In San Francisco, when police do try to enforce this portion of the municipal code, the cases are dismissed on constitutional grounds. One District Attorney for the County of San Francisco even stated, “I do not believe [the ordinance] will expand my ability to prosecute crime.” This complete lack of the ability to enforce clearly illustrates how such a requirement will not further the objectives of the City.

What’s more, law abiding citizens already report firearms lost or stolen. Doing so protects them from becoming a suspect in any potential criminal investigation involving the misuse of the firearm and increases the chances of the firearm being returned. Therefore, the City should be taken steps to encourage the reporting by not imposing penalties on otherwise law-abiding gun owners for failing to do so.

II. MANDATING FIREARMS TO BE STORED IN A LOCKED CONTAINER IN ONE’S HOME RAISES SERIOUS SECOND AND FOURTH AMENDMENT CONCERNS AND IS OTHERWISE PREEMPTED

As a threshold matter, the City cannot enforce the proposed locked storage requirements without running afoul of the Fourth Amendment of the United States Constitution, which provides for “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁶ This prevents the City from inspecting how individuals are storing their firearms in their home or vehicle without first having established probable cause that the person is in violation of the ordinance. Tellingly, although some California cities have similar ordinances in effect, we are unaware of a single instance of enforcement.

In the words of the United States Supreme Court, the “inherent right of self-defense has been central to the Second Amendment right[,]” and “the need for self-defense, family, and property is most acute” in the home.⁷ At issue in *Heller* was a District of Columbia ordinance substantially similar to the recommendations of Morgan hill requiring residence to store firearms in a locked container or disable the firearm when not in use. But because of the importance of self-protection in the home, the

⁵ A copy of Governor Schwarzenegger’s veto letter for SB59 can be viewed online at [ftp://leginfo.publicca.gov/pub/05-06/bill/sen/sb_0051-0100/sb_59_vt_20060929.html](http://leginfo.publicca.gov/pub/05-06/bill/sen/sb_0051-0100/sb_59_vt_20060929.html)

⁶ U.S. Const. amend IV.

⁷ *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

Supreme Court expressly held that “any ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home operable for the purposes of immediate self-defense.”⁸ Given the striking similarity, the proposed recommendation is completely at odds with *Heller* and violates the Second Amendment.

The Ninth Circuit case of *Jackson v. City of San Francisco*, while on point, is not dispositive of this issue. In *Jackson*, the Ninth Circuit only heard an appeal for the denial of a motion for preliminary injunction, not a final decision on the merits of the case. Upon appeal to the Supreme Court, where certiorari was denied, Justice Thomas wrote a scathing opinion noting that “The Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights.”⁹ Because of the *Heller* decision and the fact that *Jackson* was never decided on the merits, it is likely that the should the Supreme Court ever hear a case regarding a mandatory lock storage ordinance, it would hold such an ordinance unconstitutional.

In addition to the Second Amendment concerns, the ordinance also raises serious preemption concerns. As stated above, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulations, either expressly or by implication.¹⁰ Dictating the manner in which residents keep their firearms while in the home, and requiring that they keep handguns in a locked storage container or disabled with a trigger lock, runs afoul of the preemption doctrine insofar as it contradicts state law and enters into an area that is fully occupied by state law.

A local law “contradicts state law when it is inimical to or cannot be reconciled with state law.”¹¹ The recommended ordinance is likely contrary to state law to the extent it dictates the manner one must store their firearms in the home. California maintains a comprehensive set of statutes, creating liability for the criminal storage of a firearm whenever a minor or prohibited person may access a firearm and uses that firearm to cause death or bodily injury or carries it to a public place.¹² Liability for such is subject to an equally comprehensive set of exceptions.¹³ The proposed ordinance that would mandate locked storage of firearms in the home for residents of Morgan hill would strip from those residents the rights to engage in behavior specifically deemed lawful by the state.

⁸ *Id.* at 635.

⁹ See *Heller*, 554 U.S., at 634; *Id.* at 635 (explaining that the Second Amendment “elevates above all other interest the right of the law-abiding, responsible citizens to use arms in defense of hearth and home.”).

¹⁰ *Fiscal v. City and County of San Francisco*, 158 Cal. App.4th 895, 903-04 (2008).

¹¹ *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1068 (2007).

¹² Cal. Penal Code §§ 25100-25135, 25200-25225.

¹³ Cal. Penal Code §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.

Similarly, a recommended ordinance mandating locked storage of firearms is impliedly preempted by state law because it encroaches on an area of law occupied by state law. The storage of firearms is fully and completely regulated by the California Penal Code. In addition to the laws regarding the prevention of access by minors and prohibited persons discussed earlier, California mandates that any firearm sold by a licensed dealer must include a firearm safety device.¹⁴ Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.¹⁵ Such safety devices must meet rigorous safety standards as determined by the California Attorney General so that they “significantly reduce the rate of firearm-related injuries to children 17 years of age and younger.”¹⁶

There are also several firearm storage requirements when one lives with another individual who is prohibited by state or federal law from owning firearms.¹⁷ Because the state’s firearm storage scheme is so comprehensive, any local interference with that scheme (except that which was expressly authorized) is preempted. If local governments are permitted to enact further criminal restrictions on the storage of firearms, firearm holders will be confronted by a patchwork quilt of firearm and storage laws each time they enter another jurisdiction, sowing frustration, uncertainty, and the fear of prosecution among California residents as they travel throughout the state.

III. ANY ORDINANCE PROHIBITING THE POSSESSION OF LARGE CAPACITY MAGAZINES IS PREEMPTED AND OTHERWISE AMOUNTS TO AN UNCONSTITUTIONAL TAKING

As noted in the City Council May 16, 2018 report, there are challenges currently underway and pending in the courts regarding the legality of banning the possession of magazines over 10 rounds. One such case, *Duncan v. Becerra*,¹⁸ challenges the state’s ban on magazines holding over 10 rounds and is currently working its way through the courts. On June 29, 2017, the court granted a motion for preliminary injunction and stayed enforcement of the state’s magazine possession ban for magazines holding more than 10 rounds while the case is litigated. In the preliminary injunction from the court, the Judge noted “The State of California’s desire to criminalize simple possession of a firearm magazine able to hold more than 10 rounds is precisely the type of policy choice that the Constitution takes off the table.” With the federal injunction in place, it would be completely improper for the City to consider an ordinance in direct conflict with such an injunction.

¹⁴ Cal. Penal Code § 23650(a).

¹⁵ See State of California, Bureau of Firearms Form 978 (Re. 01/2013), available at https://oag.ca.gov/all/files/agweb/pdf/firearms/forms/bof_978.pdf

¹⁶ *Id.* at § 23650(a).

¹⁷ *Id.* at § 25135.

¹⁸ *Duncan v. Becerra*, 265 F.Supp.3d 1106 (2017).

What's more, such an ordinance will also be preempted under state law. In 2015 the City of Los Angeles attempted to pass a ban on the possession of magazines that held more than 10 rounds. They were sued by organizations and law enforcement. Eventually under the pressure of constitutional violations and the injunction ruling in *Duncan*, Los Angeles repealed the ordinance.

The Judge in *Duncan* spoke of the "complexity" of the state law and how the state has continued to add layers. ¹⁹Banning the possession of "large capacity magazines" runs afoul of the preemption doctrine insofar as it contradicts state law and enters into an area of law that is fully occupied by state law.

By banning the possession of magazines lawfully acquired, the City's actions would constitute a physical appropriation of property without just compensation, which is *per se* unconstitutional.²⁰ A regulation that "goes too far"-for example, by depriving a property owner of economically beneficial use or otherwise "interfering with legitimate property interest"-also requires just compensation.²¹

IV. THE PROPOSED FIREARM RETAIL SALE RESTRICTIONS ARE PREEMPTED AND WILL DO NOTHING TO PROMOTE PUBLIC SAFETY

As noted in the City Council's May 16, 2018 report, the City does not currently regulate retail firearm sales. The proposal that the City should regulate retail firearm sales in the City poses serious preemption and Second Amendment issues. The City has proposed the following: (1) Certify that staff members who engage in retail sales are trained to recognize and prevent straw purchases, (2) Maintain an ammunition sales log, which records all ammunition sales made by the retailer, and (3) Prohibit the sale of assault-style firearms to minors under the age of 21, (4) proposals for restricting firearms on City property, and (5) Potential regulations of locations where firearms may be sold. Each of these proposals is likely preempted by state and federal law.

Pursuant to the Gun Control Act (GCA), a federal firearm license (FFL) holder must be a person engaged in the business of selling firearms at wholesale or retail, a person engaged in the business of repairing or making or fitting special barrels, stocks, or trigger mechanisms to firearms, or any person who is a pawnbroker. An FFL must be licensed under the provisions of 18 U.S.C. § 921.

Training to recognize and prevent straw purchases is already provided by the Bureau of Alcohol Firearms, Tobacco, and Explosives. The federal fine for making false statements on a federal firearm record is up to \$250,000 dollars and prison for up to 10 years. Additionally, in June of 2014, the U.S. Supreme Court issued a ruling in *Abramski v. U.S.* further emphasizing that an FLL is

¹⁹ *Id. Duncan v. Becerra*, Order Granting Preliminary Injunction (June 29, 2017).

²⁰ *See Horne v. Dep't of Agric.*, -- U.S.--, 135 S. Ct. 2419, 2427 (2015).

²¹ *Lingle v. Chevron*, 544 U.S. 528, 537-39 (2005).

forbidden from “selling a gun to anyone it knows or has reasonable cause to believe is a forbidden buyer.”²² This is clearly an area that is preempted by federal law because the federal government has completely permeated the field.

California Federal Licensed firearm dealers are one of the most heavily regulated businesses in the county. The Penal Code addressed all requirements and inspections by state officials for licensed dealers. California generally prohibits anyone without a firearm license from selling, leasing, or transferring a firearm to another.²³ The California Department of Justice (CADOJ) must approve of any licenses for persons desiring to sell firearms or ammunition in California. The CADOJ conducts background checks on all owners of a business and any employee of the business who must now have a Certificate of Eligibility if they have access to firearms or ammunition.²⁴ California law also requires a licensee to report any secondhand or pawned firearms to the DOJ on a daily basis.²⁵ This includes any firearm taken in trade, pawn, accepted for sale on consignment, or accepted for auction.

Several times in the City Council meeting dated March 7, 2018, the terms “assault-style” or “assault weapons” were referred to. Assault Weapons have been banned from sale since the 1990’s.²⁶ *There are no Assault Weapons currently being sold.* California banned the sale even before the federal government in the late 1980s. The term “assault-style” is an undefined media term that is extremely difficult to distinguish for determining which firearms are being singled out and which are not. Any attempt by the City to prohibit “assault-style” firearm would be ambiguous and overly-broad at best.

Limits on those under the age of 21 years would violate numerous federal and state preemption laws. Specifically, the age restriction would violate the California Unruh Civil Rights Act which courts have held applies to age discrimination as well as the listed categories of discrimination within the Act. Just this week the California Senate passed SB 1100 which prohibits the sale of firearms to those persons under 21 years of age who do not possess a valid hunting license. This area of the law is very much still in flux at this point and any action by the City would be premature at this time.

Action from the City to further regulate ammunition sales would also run afoul of state law and would therefore be preempted. Beginning in January 2018 all transactions (sale, transfer, purchase) must occur through a face-to-face transaction.²⁷ There are no more on-line transactions. While this is being currently challenged in the courts, the finality as to the legal basis for this law has not yet been

²² 134 S.Ct. 2259 (2014).

²³ Cal. Penal Code § 26500.

²⁴ Cal. Penal Code §§ 26700-27140 26915, 30347.

²⁵ Business & Professional Code § 21628.2.

²⁶ See Federal Assault Weapons Ban of 1994.

²⁷ Cal. Penal Code § 30312 (b).

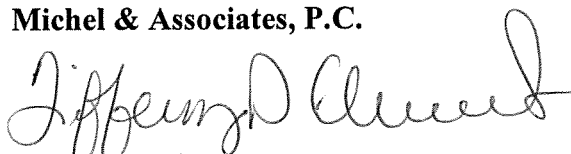
determined. Additionally, beginning in January 2019 the state will require those purchasing ammunition to obtain a license from the state, undergo an additional background check, and mandates that licensed ammunition dealers must maintain records on each transaction.²⁸ The collected information must be submitted to the CADOJ where the CADOJ will maintain an information database. Any person who is prohibited from owning or possessing a firearm is also now prohibited from possessing or owning ammunition.²⁹ Several years ago the City of Pasadena repealed a similar ordinance because the police found that “The registration information sat unused in a filing cabinet in police headquarters, and police investigators said it would not help them solve crimes because the information would not stand up in court.” As you can see, action by the City would not only be preempted by state laws already in place but would also seek to add additional burdens on ammunition dealers that are an unnecessary government action and unconstitutional.

V. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms and to keep communities safe. The proposed items only seek to target law-abiding citizens, licensed dealers who already report to the state and federal authorities, and residents will be powerless to prevent or minimize the criminal elements that you seek to eliminate in your communities should these provisions be enacted. For the reasons noted herein, we strongly encourage the City Council not to adopt the recommended ordinances noted in the City Council May 16, 2018 report and instead look at how education and community action can better work to serve the safety needs in your community.

Sincerely,

Michel & Associates, P.C.



Tiffany D. Cheuvront

Cc: Hon. Steve Tate, Mayor
Hon. Rich Constantine Mayor Pro Tem
Hon. Larry Carr, Council Member
Hon. Rene Spring, Council Member
Hon. Caitlin Robinett Jachimowicz, Council Member

²⁸ Cal. Penal Code § 30352(a).

²⁹ Cal. Penal Code § 30305(a)(1).

EXHIBIT CC

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
TIFFANY D. CHEUVRONT
MATTHEW D. CUBEIRO
ALEXANDER A. FRANK
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA



OF COUNSEL
JOSEPH DI MONDA
SCOTT M. FRANKLIN
CLINT B. MONFORT
ERIC M. NAKASU
MICHAEL W. PRICE
TAMARA M. RIDER
LOS ANGELES, CA

WRITER'S DIRECT CONTACT:
562-216-4450
TCHEUVRONT@MICHELLAWYERS.COM

October 22, 2018

VIA FAX & U.S. MAIL

Donald Larkin, City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Fax: 408-779-1592

**Re: Pre-Litigation Demand
Proposed Firearm Ordinance-Theft or Lost Firearm Reporting
and Mandatory Locked Storage of Firearms- OPPOSED**

Dear Mr. Larkin:

On June 1, 2018 our office wrote to you on behalf of our clients California Rifle & Pistol Association, Incorporated ("CRPA") and their tens of thousands of supporters, many of which live in the Morgan Hill area, to oppose the proposed ordinances that seek to impose firearm related restrictions on residents and visitors to the City of Morgan Hill ("City").

Since then, the City has held two meetings regarding the proposed changes. Both supporters and opponents to the new regulations voiced their concerns at the meetings but the media reported that most of those in attendance at the community meetings were more interested in promoting education and firearm safety training programs than they were in the City presenting more regulations against law-abiding gun owners. <https://www.morganhilltimes.com/2018/10/11/gun-control-ordinance-to-come-before-council/> Nonetheless, the City has placed consideration of these ill-conceived proposed ordinances on its October 24, 2018 agenda.

Our clients continue to oppose the proposed ordinances, and urge you to advise your client concerning the illegality of these ordinances -- which are preempted by existing state laws.

There is Already a State Law Requiring Theft or Loss of a Firearm to be Reported That Preempts Duplicative or Conflicting Local Ordinances

A local regulation will be struck down if it duplicates state law, conflicts with state law, or enters a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.¹ An explicit contradiction between an ordinance and a state statute occurs “where the language of the ordinance directly contradicts the operative language and statute, e.g., by penalizing conduct which the state law expressly authorizes...” (See *Small Property Owners of S.F. Instit. v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 86 (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396-397.)

Proposition 63² created a state statute that subjects gun owners to penalties if a lost or stolen firearm is not reported to authorities within 5 days of the time he or she knew or reasonably should have known that the firearm was lost or stolen.³

The proposed ordinance mandating the reporting of the theft or loss of a firearm within 48 hours both duplicates and conflicts with the existing state law. The proposed ordinance conflicts with the existing state law and the 5-day reporting requirement. (See, e.g., *O’Connell v. City of Stockton* (2007) 41 Cal.App.4th 895, 1068.) Under the City’s proposed ordinance, after 48 hours the victim who has not yet reported the theft would still be in compliance with state law but would be in violation of the proposed ordinance. The proposed Ordinance contains the sort of localized penalization of conduct otherwise authorized under state law that the preemption doctrine forbids. (See *Small Property Owners, supra*, 22 Cal.App.5th at p. 86.) “The consequences of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118.)

Mandating Locked Storage of Firearms in One’s Home Raises Second and Fourth Amendment Concerns and is Preempted

Dictating the manner in which residents keep their firearms while in their own home and requiring that they keep handguns in a locked storage container or disabled with a trigger lock, runs afoul of the preemption doctrine because it contradicts state law and enters into an area that is fully occupied by state law.⁴

California state laws create liability for the criminal storage of a firearm for any gun owner who allows a minor or prohibited person to access and misuse a firearm.⁵ The statute contains a comprehensive set of exceptions.⁶ There are also several firearm storage requirements when one lives

¹ *Fiscal v. City of San Francisco* (2008) 158 Cal. App. 4th 895, 903-04.

² Cal. Penal Code § 25250.

³ *Id.*

⁴ *Fiscal v. City and County of San Francisco*, 158 Cal.App.4th 895, 903-04 (2008).

⁵ Cal. Penal Code §§ 25100-25135, 25200-25225.

⁶ Cal. Penal Code §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.

with another individual who is prohibited by state or federal law from owning firearms.⁷ California law also mandates that any firearm sold must include a firearm safety device.⁸ Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.⁹ Such safety devices must meet rigorous safety standards.

The state's firearm storage regulatory scheme is comprehensive. Local ordinances imposing further criminal restrictions on the storage of firearms are preempted.

Additionally, the City will generally not be able to enforce the proposed locked storage requirements because the Fourth Amendment prohibits an inspection unless probable cause is established.¹⁰

The ordinance also infringes on Second Amendment rights. The "inherent right of self-defense has been central to the Second Amendment right[.]" and "the need for self-defense, family, and property is most acute" in the home.¹¹ At issue in *Heller* was a District of Columbia ordinance substantially similar to the proposed ordinance. The Supreme Court held that "any ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home operable for the purposes of immediate self-defense."¹² The proposed recommendation is completely at odds with the ruling in *Heller*.

The Ninth Circuit case of *Jackson v. City of San Francisco* is not dispositive of this issue and did not address preemption at all. In *Jackson*, the Ninth Circuit only heard an appeal from the denial of a motion for preliminary injunction, not a final decision on the merits of the case. A request for review by the Supreme Court was denied, but Justice Thomas wrote a scathing opinion noting that "The Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights."¹³ Because of the *Heller* decision and the fact that *Jackson* was never decided on the merits, it is likely that the newly comprised Supreme Court would find the proposed ordinance unconstitutional.

⁷ *Id.* at § 25135.

⁸ Cal. Penal Code § 23650(a).

⁹ See State of California, Bureau of Firearms Form 978 (Re. 01/2013), available at https://oag.ca.gov/all/files/agweb/pdfe/firearms/forms/bof_978.pdf

¹⁰ U.S. Const. amend IV.

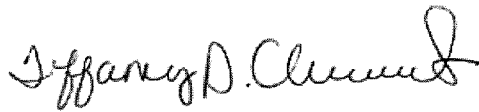
¹¹ *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

¹² *Id.* at 635.

¹³ See *Heller*, 554 U.S., at 634; *Id.* at 635 (explaining that the Second Amendment "elevates above all other interest the right of the law-abiding, responsible citizens to use arms in defense of hearth and home.").

We welcome any question you may have, and hope that a legal challenge to these ordinances will not be necessary.

Sincerely,
Michel & Associates, P.C.

A handwritten signature in black ink, appearing to read "Tiffany D. Cheuvront". The signature is fluid and cursive, with a large loop at the end.

Tiffany D. Cheuvront

cc: Hon. Steve Tate, Mayor
Hon. Rich Constantine, Mayor Pro Tem
Hon. Larry Carr, Council Member
Hon. Rene Spring, Council Member
Hon. Caitlin Robinett Jachimowicz, Council Member

EXHIBIT DD

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
TIFFANY D. CHEUVRONT
MATTHEW D. CUBEIRO
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LOS ANGELES, CA



OF COUNSEL
JOSEPH DI MONDA
SCOTT M. FRANKLIN
CLINT B. MONFORT
ERIC M. NAKASU
MICHAEL W. PRICE
TAMARA M. RIDER
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:
562-216-4450
TCHEUVRONT@MICHELLAWYERS.COM

October 30, 2018

VIA EMAIL & CERTIFIED U.S.MAIL

Donald Larkin, Esq.
City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
EMAIL: donald.larkin@morganhill.ca.gov

**Re: Morgan Hill Ordinance Regarding Mandatory Reporting of Lost
and Stolen Firearms (Proposed 9.04.030)
Pre-Litigation Demand**

Dear Mr. Larkin:

On October 24, 2018, Morgan Hill enacted and has in effect an ordinance ("Ordinance") that is more onerous toward firearm-theft victims than subsequently enacted state law. The Ordinance criminalizes theft victims for reasonably being unaware of a theft and compels victims to speak under threat of criminal prosecution. On behalf of one of our clients, the California Rifle & Pistol Association, Incorporated, we previously identified the legal complications and policy reasons why such an ordinance was foolhardy and subject to challenge. (See letters of June 1, 2018 and October 22, 2016.)

Irrespective of policy issues weighing against the passage of the Ordinance, the fact that the subject of the Ordinance is also the subject of a less onerous state law precludes Morgan Hill from continuing to have and enforce an Ordinance with conflicting obligations imposed on victims of firearm theft. In 2016, California voters approved Proposition 63, which, among its provisions, requires victims of firearm theft to report such thefts to law enforcement no later than five days after the victim knows or reasonably should have known about the theft. (See Penal Code, § 25250, subd. (a) [effective July 1, 2017].)

As you know, the Ordinance contains a more onerous reporting requirement than Section 25250: 48 hours. For the reasons discussed below, this more onerous requirement, as well as the whole of the Ordinance, is preempted by Penal Code section 25250. Because Section 25250 preempts the Ordinance, if the Ordinance is not repealed, we will file suit on behalf of affected and interested parties

seeking writ relief and a declaration invalidating the ordinance and enjoining its enforcement. If successful, we will seek our attorney's fees and costs of suit in invalidating the ordinance.

Why the Penal Code Preempts Ordinance 11.16.040

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. (See Cal. Const., art. XI, §7; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 (*O'Connell*); *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 903-904.) A local law "duplicates state law when it is 'coextensive' with state law." (See *O'Connell*, supra, 41 Cal.4th at p. 1068.) It "contradicts state law when it is inimical to or cannot be reconciled with state law." (*Ibid.*)

Here, the subject of the Ordinance and Penal Code section are the same: reporting requirements for firearm theft victims. (Compare the Ordinance ["Any person who owns or possesses a firearm . . . 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. . . ."] with Penal Code, § 25250, subd. (a) ["Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost."].) To the extent that both the Ordinance and Section 25250 impose a mandatory reporting obligation on firearm theft victims, they are duplicative, and state law preempts the Ordinance. (See *O'Connell*, supra, 41 Cal.4th at p. 1068.)

But the Ordinance further runs afoul of the preemption doctrine by imposing an obligation on firearm theft victims that cannot be reconciled with Section 25250's express requirement, i.e., the five-day reporting requirement. (See, e.g., *O'Connell*, supra, 41 Cal.4th at 1068.) For purposes of determining whether state law preempts a local ordinance, an explicit contradiction between an ordinance and a state statute occurs "where the language of the ordinance directly contradicts the operative language of the statute, e.g., by penalizing conduct which the state law expressly authorizes. . . ." (See *Small Property Owners of S.F. Instit. v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 86 (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396-397.)

Here, the state statute allows a firearm theft victim to wait up to 120 hours after knowledge of a theft to report it. Under the Ordinance, after the 48th hour, the victim who had not yet reported the theft would still be in compliance with state law but would nonetheless be in violation of the ordinance and subject to local prosecution. The Ordinance contains the sort of local penalization of conduct otherwise authorized under Section 25250 that the preemption doctrine forbids. (See *Small Property Owners*, supra, 22 Cal.App.5th at p. 86.) [Where a local ordinance prohibiting landlords from making changes to rental property after an eviction was found to be in conflict with an existing law that prohibited cities from preventing landlords from evicting tenants and making improvements and was preempted].)

Mr. Donald Larkin, Esq.
October 30, 2018
Page 3 of 3

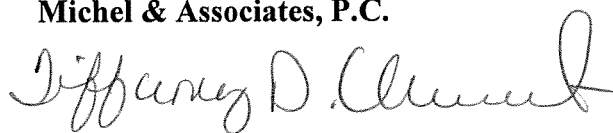
“The consequence of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118, italics omitted.) Because the Ordinance is both coextensive with the subject of Section 25250 as well as penalizes conduct that is lawful under Section 25250, the Ordinance is preempted and unenforceable. Our clients are therefore entitled to seek a declaration that the Ordinance is void and an order that it be stricken from the Morgan Hills Municipal Code.

The City Will Be Liable for Attorney’s Fees and Costs of Suit Should They Be Forced to File Suit to Have the Ordinance Declared Void

If our clients are forced to seek a judicial declaration that the Ordinance is void and must be stricken from the Municipal Code, then our clients will be entitled to seek and recover their reasonable attorney’s fees and costs of suit. (See Code Civ. Proc., § 1021.5, and see *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 220-221 [where writ relief confers a significant benefit on a large class of persons, an award of attorney’s fees is appropriate].) In light of the indisputable application of the preemption doctrine to the Ordinance, however, hopefully legal action will not be required, and the City Council will act quickly to repeal the Ordinance.

Please let us know within 30 days of the date of this letter what steps the City is taking to repeal the ordinance. If we do not learn within that time period that significant, demonstrable steps are being taken to repeal the ordinance, we will file suit.

Sincerely,
Michel & Associates, P.C.



Tiffany D. Cheuvront

Cc: Hon. Steve Tate, Mayor
Steve.Tate@morganhill.ca.gov

EXHIBIT EE

SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
ERIC M. NAKASU
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
MICHELLE BIGLARIAN
SEAN A. BRADY
MATTHEW D. CUBEIRO
SCOTT M. FRANKLIN
MARGARET E. LEIDY
BEN A. MACHIDA
CLINT B. MONFORT
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

OF COUNSEL
MATTHEW M. HORECZKO
LOS ANGELES, CA



WRITER'S DIRECT CONTACT:
562-216-4444
MCUBEIRO@MICHELLAWYERS.COM

July 6, 2016

Mayor Robert Moon
Mayor Pro Tem Chris Mills
Councilmember Ginny Foat
Councilmember Geoff Kors
Councilmember J.R. Roberts
Executive Assistant Jennifer Nelson
CITY HALL
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

**Re: Ordinance Amending Chapter 11.16 of the Palm Springs Municipal
Code Relating to Firearms - OPPOSITION**

Dear Honorable Members of the Palm Springs City Council,

We write on behalf of our clients, the National Rifle Association of America and the California Rifle and Pistol Association, as well as the hundreds of thousands of their members in California, including those members residing in the City of Palm Springs.

Our clients oppose adoption of the proposed ordinance amending Chapter 11.16 of the Palm Springs Municipal Code as related to firearms. The proposal seeks to (1) require the reporting of lost or stolen firearms, (2) require the safe storage of firearms in the home, (3) prohibit the possession of firearm magazines capable of holding more than 10 rounds, (4) require ammunition sales to be recorded at the time of purchase, and (5) prohibit unsecured firearms and ammunition in vehicles.

We ask the City Council to reconsider its support for the proposal because it is preempted by state law, duplicative of recently enacted state legislation, raises serious constitutional concerns under the Second Amendment, Fifth Amendment, and Equal Protection Clause of the United States Constitution, and will expose the city to costly and time consuming litigation, all while failing to promote public safety.

I. MANY OF THE KEY PROVISIONS OF THE PROPOSED ORDINANCE ARE PREEMPTED AND UNENFORCEABLE BECAUSE THEY DUPLICATE OR CONFLICT WITH STATE LAW

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.¹ A local law “*duplicates* state law when it is “coextensive” with state law.”² A local law “*contradicts* state law when it is inimical to or cannot be reconciled with state law.”³

On Friday, July 1, 2016, California Governor Jerry Brown signed a number of firearm-related bills into law. These include Senate Bill 1235 (De Leon) - Ammunition (“SB 1235”), and Senate Bill 1446 (Hancock) - Firearms: Magazine Capacity (“SB 1446”). SB 1235 establishes a comprehensive ammunition sales registration and licensing scheme that will apply to all ammunition sales in the state of California. SB 1446 bans the possession magazines capable of holding more than 10 rounds.

With the passage of these bills, sections 11.16.070 (barring possession of magazines capable of holding more than 10 rounds) and 11.16.080 (requiring the reporting of ammunition sales) of the proposed ordinance are now duplicative of and/or conflict with state law. They are thus preempted. Because enacting either provision of the proposed ordinance will only serve to expose the city to costly and time consuming litigation, we urge the City Council to reconsider its support for such an ordinance.

As the California Court of Appeals has made clear, “the goal of any local authority wishing to legislate in the area of gun control should be to accommodate the local interest with the least possible interference with state law[,]” and thus, “when it comes to regulating firearms, local governments are well advised to tread lightly.”⁴ Jurisdictions failing to follow this advice have subjected themselves to expensive and time consuming litigation, contrary to what the City Council Staff Report states.

For example, the City of Sunnyvale was sued in 2013 for enacting an ordinance that, among its other provisions, prohibited the possession of lawfully owned magazines capable of holding more than 10 rounds.⁵ Although the Ninth Circuit upheld a denial for a motion for preliminary injunction, the case has yet to be resolved. And just last year, the City of Los Angeles was sued for enacting a nearly identical ordinance relating to the possession of magazines capable of holding more than 10 rounds because such an ordinance is preempted by state law.

¹ See Cal. Const., art. XI, § 7; *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1067 (2007); *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 903-04 (2008).

² *O’Connell*, 41 Cal.4th at 1068.

³ *Id.*

⁴ *Id.* at 919-20.

⁵ *Fyock v. Sunnyvale*, Case No. 13-05807 (N.D. Cal. 2013).

II. GOVERNOR BROWN RECENTLY VETOED A PROPOSED BILL REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS BECAUSE SUCH A LAW DOES NOT PROMOTE PUBLIC SAFETY

While he signed SB 1235 and SB 1446, Governor Brown vetoed several proposals because they would not promote public safety or further any law enforcement efforts to prevent crime. One such bill was Senate Bill 894 (Jackson) - Firearms: Lost or Stolen: Reports ("SB 894"), which would require every person to report the theft or loss of a firearm to a local law enforcement agency within 5 days of the time they knew or reasonably should have known that the firearm had been stolen or lost.

In his veto message of SB 894,⁶ Governor Brown stated that he "did not believe that a measure of this type would help identify gun traffickers or enable law enforcement to disarm people prohibited from having guns." Governor Brown also noted "responsible people report the loss of theft of a firearm and irresponsible people do not; it is not likely that this [proposed law] would change that."

As a result, the City of Palm Springs should carefully consider the intended goals of the proposed ordinance. By mandating the reporting of lost or stolen firearms, otherwise innocent and responsible citizens may be deterred from reporting the theft or loss of a firearm should they be subject to potential prosecution simply because they may have failed to make the report within the specified time.

III. LAW ENFORCEMENT WIDELY OPPOSE SIMILAR MEASURES

Setting the above aside, law enforcement professionals are opposed to measures identical to those contained in the proposed ordinance. In the case of the Los Angeles Ordinance which is now facing a legal challenge, the lead plaintiffs are composed of over two dozen county sheriffs.⁷ Many of the ordinance's proposals are contained in a proposed ballot initiative that will be included in the November general election.⁸ But not a single law enforcement agency or organization has publicly supported this initiative. In fact, the Association of Deputy District Attorneys,⁹ the California State Sheriffs' Association,¹⁰ the California Fish and Game Wardens' Association,¹¹ and Los Angeles

⁶ A copy of Governor Brown's veto letter for SB 894 can be viewed online at https://www.gov.ca.gov/docs/SB_894_Veto_Message.pdf.

⁷ *Id.*

⁸ The initiative, titled by its proponents as the "Safety for All Act of 2016," has just recently qualified for the November 2016 ballot.

⁹ See http://stoptheammograb.com/images/ADDA_Letter_to_Newsom.pdf.

¹⁰ See <http://stoptheammograb.com/images/CSSALetterreOpposeSafetyforAllActof2016.pdf>.

¹¹ See <https://www.facebook.com/CACFCL/photos/a.456595907859437.1073741828.445776255608069/467534206765607/?type=3&fref=nf>.

County District Attorney Steve Cooley (Ret.)¹² are just a handful of the growing number of law enforcement groups opposing the initiative as it would do nothing to promote public safety or law enforcement efforts to deter crime.

IV. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms, and they have a variety of effective programs for doing so available to the City upon request. These programs do not overburden responsible business owners or flout the constitutional guarantees of law-abiding citizens. We ask the City Council to consider implementing such programs before pursuing any action on this proposal that targets otherwise lawful firearm businesses who are the purveyors of constitutional rights and their law-abiding customers. For these reasons, we strongly encourage the City Council not to adopt the Ordinance.

If you have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew Cubeiro

¹² See http://stoptheammograb.com/images/Coalition_Letter-March_28.pdf.

EXHIBIT FF

SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
ERIC M. NAKASU
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
MICHELLE BIGLARIAN
SEAN A. BRADY
MATTHEW D. CUBEIRO
SCOTT M. FRANKLIN
MARGARET E. LEIDY
BEN A. MACHIDA
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LOS ANGELES, CA



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Honorable City Council Members,

We write on behalf of our clients, the National Rifle Association of America and the California Rifle and Pistol Association, as well as the hundreds of thousands of their members in California, including those members residing in the City of Palm Springs.

Our clients oppose adoption of the proposed ordinance amending Chapter 11.16 of the Palm Springs Municipal Code as related to firearms. As currently drafted, the proposal seeks to: (1) require the reporting of lost or stolen firearms; (2) mandate the locked-storage of firearms in the home; and, (3) prohibit unsecured firearms and ammunition in vehicles.

We ask the City Council to carefully consider the intended objectives of the proposed ordinance, as many of its provisions are generally unenforceable until after the fact. What's more, the ordinance raises serious constitutional concerns, and it will actually be detrimental to its intended objective while simultaneously failing to promote public safety.

I. REQUIRING INDIVIDUALS TO REPORT THE THEFT OR LOSS OF A FIREARM WITHIN 48 HOURS IS UNENFORCEABLE AND WILL ONLY RESULT IN FEWER REPORTS TO POLICE

On its face, a requirement that gun owners report the theft or loss of a firearm appears to be sound public policy. But in reality, such a requirement conflicts with the Fifth Amendment and will only result in individuals being *less likely* to report to police the theft or loss of a firearm, thereby obstructing the ordinance's purported goals.

The Fifth Amendment to the United States Constitution reads "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."¹ As a bedrock of our criminal justice system, the amendment prohibits police, prosecutors, and judges from requiring individuals to provide evidence or testimony that could result in potential criminal charges against them. The proposed ordinance, however, completely ignores these protections.

For example, if a person prohibited from possessing firearms nonetheless possesses a firearm illegally, they can be prosecuted for that crime. But if the firearm is ever lost or stolen from that same prohibited person, the Fifth Amendment prohibits that person from being prosecuted for failing to incriminate themselves by not reporting the firearm as lost or stolen.

Given these enforcement difficulties, other jurisdictions considering similar ordinances have rejected them. Recently, the Sacramento Police Department reviewed identical Oakland, San Francisco, Berkeley, and Alameda County reporting requirements, only to discover that not a single investigation, arrest, or conviction had taken place. This complete lack of enforcement clearly illustrates how such a requirement will not further any purported objective. As one Assistant District Attorney for the County of San Francisco stated, "I do not believe [the ordinance] will expand my ability to prosecute crime."

What's more, law-abiding gun owners already report stolen or lost firearms to police. Doing so protects them from becoming a suspect in any potential criminal investigation involving the misuse of the firearm, and increases the chances that the firearm is returned to its lawful owner if ever recovered. As a result, law-abiding individuals already have more than enough incentive to report the theft or loss of a firearm.

But by placing criminal and civil penalties for the failure to report the theft or loss of a firearm, the ordinances forces crime victims to decline to cooperate with police for fear of prosecution. This is because many gun owners may not be aware of the 48-hour legal requirement, or are otherwise unsure at exactly which point they "knew or reasonably should have known" the firearm was lost or stolen. In these situations, lawyers will advise their clients to remain silent while immunity is negotiated, rather than quickly supplying police with the necessary information to properly and promptly investigate the crime, which may be time sensitive.

¹ U.S. Const. amend. V.

II. EVERY PROPOSED CALIFORNIA LAW REQUIRING THE REPORTING OF THE THEFT OR LOSS OF A FIREARM HAS BEEN VETOED—AND FOR GOOD REASON

In July of this year, Governor Jerry Brown vetoed Senate Bill 894, which would require every person to report the theft or loss of a firearm to a local law enforcement agency within five days of the time they knew or reasonably should have known that the firearm had been stolen or lost.

In his veto message, Governor Brown stated that he “did not believe that a measure of this type would help identify gun traffickers or enable law enforcement to disarm people prohibited from having guns,” and that “responsible people report the loss of theft of a firearm and irresponsible people do not; it is not likely that this [proposed law] would change that.”²

In addition to vetoing Senate Bill 894, Governor Brown has vetoed every identical bill that has come before him. In 2013, he vetoed Senate Bill 299, stating that he “was not convinced that criminalizing the failure to report a lost or stolen firearm would improve identification of gun traffickers or help law enforcement disarm people prohibited from possessing guns.”³ And in 2012, he vetoed Senate Bill 1366 with a similar message.⁴

Even Brown’s predecessor, Arnold Schwarzenegger, vetoed an identical bill in 2006, stating that “the ambiguous manner in which this bill was written would make compliance with the law confusing for legitimate gun-owners and could result in cases where law-abiding citizens face criminal penalties simply because they were the victim of a crime, which is particularly troubling given the unproven results of other jurisdictions in California that have passed similar measures.”⁵

The recurring theme in all of these veto messages is this—a mandatory theft/loss reporting requirement will *not* achieve a higher rate of reporting, and will instead be *detrimental* to this objective. As a result, we strongly urge the City of Palm Springs to reconsider its proposal and seek an alternative that will educate gun owners on the benefits associated with reporting the loss or theft of a firearm without subjecting them to criminal or civil penalties for failing to do so.

² A copy of Governor Brown’s veto letter for SB 894 can be viewed online at https://www.gov.ca.gov/docs/SB_894_Veto_Message.pdf.

³ A copy of Governor Brown’s veto letter for SB 299 can be viewed online at https://www.gov.ca.gov/docs/SB_299_2013_Veto_Message.pdf.

⁴ A copy of Governor Brown’s veto letter for SB 1366 can be viewed online at https://www.gov.ca.gov/docs/SB_1366_Veto_Message.pdf.

⁵ A copy of Governor Schwarzenegger’s veto letter for SB 59 can be viewed online at ftp://leginfo.public.ca.gov/pub/05-06/bill/sen/sb_0051-0100/sb_59_vt_20060929.html.

III. THE LOCKED-STORAGE REQUIREMENTS WILL NOT PREVENT THE UNAUTHORIZED ACCESS OF FIREARMS AND WILL BE DETRIMENTAL TO THE SAFETY OF PALM SPRINGS RESIDENTS

As a threshold matter, the City of Palm Springs cannot enforce the proposed locked storage requirements without running afoul of the Fourth Amendment, which provides for “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.”⁶ This prevents the City from inspecting how individuals are storing their firearms in their home or vehicle without first having established probable cause that they are in violation of the ordinance. Tellingly, although some California cities have similar ordinances in effect, we are unaware of a single instance of enforcement.

What’s more, California already provides a comprehensive series of laws regarding the criminal storage of firearms.⁷ Among these provisions are restrictions against storing a firearm in a manner that allows a child to gain unauthorized access, with varying degrees of punishment depending on the result of the child’s access (such as if the child injured themselves or another).⁸ These laws specifically provide for an exception to the restriction if the firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.⁹ Finally, California law also requires any person who owns a firearm, and who knows or has reason to know that another person residing with them is prohibited from possessing firearms, to store the firearm in a locked container or keep the firearm disabled with a firearm safety device.¹⁰

As you can see, California law already addresses many aspects of the proposed ordinance’s provisions. But California law is written in a manner allowing individuals to choose, based on their particular needs and circumstances, how best to store their firearms. The ordinance’s blanket approach fails to consider the needs of many Palm Springs residents who may wish to have immediate access to their firearms for the lawful purpose of self-defense and are otherwise unable to quickly access their firearms in an emergency.

IV. CONCLUSION

As we stated in our previous letter, our clients have a number of programs available to the City upon request that will promote public safety and not flout the constitutional guarantees of law-abiding

⁶ U.S. Const. amend. IV.

⁷ See Cal. Penal Code §§ 25000-25225.

⁸ *Id.*

⁹ Cal. Penal Code § 25205(b).

¹⁰ Cal. Penal Code § 25135.

citizens.¹¹ These programs include firearm safety training,¹² the Eddie Eagle GunSafe® Program,¹³ the National School Shield Program,¹⁴ and youth specific programs,¹⁵ all of which have proven to reduce accidental gun deaths and promote public safety more than any gun-control law ever will. Instead of implementing laws that will be detrimental to the City's objectives and otherwise ineffective, we ask the City to consider such alternatives.

For these reasons, we strongly encourage the City Council not to adopt the Ordinance. If you have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew Cubeiro

¹¹ <https://explore.nra.org/interests/safety-and-education/>.

¹² <https://explore.nra.org/interests/firearms-training/>. With roughly 1 million people attending NRA training courses annually, the NRA is recognized nationally as the Gold Standard for firearm safety training.

¹³ <https://eddieeagle.nra.org/>. The Eddie Eagle GunSafe® program is a gun accident prevention program that seeks to help parents, law enforcement, community groups and educators navigate a topic paramount to our children's safety, teaching children when they see a gun to "Stop! Don't touch! Leave the Area, and tell an adult."

¹⁴ <https://www.nationalschoolshield.org/>. The National School Shield program is committed to addressing the many facets of school security, including best practices in security infrastructure, technology, personnel, training, and policy.

¹⁵ <http://youth.nra.org/>.

EXHIBIT GG

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
TIFFANY D. CHEUVRON
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ALEXANDER A. FRANK
JENNIFER F. HOOSHMAND
LOS ANGELES, CA



OF COUNSEL
JOSEPH DI MONDA
SCOTT M. FRANKLIN
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MICHAEL W. PRICE
TAMARA M. RIDER
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:
562-216-4448
JDALE@MICHELLAWYERS.COM

August 14, 2018

VIA EMAIL & CERTIFIED U.S. MAIL

Edward Kotkin, Esq.
City Attorney
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Edward.Kotkin@palmspringsca.gov

**Re: Palm Springs Ordinance 11.16.040
Pre-litigation Demand**

Dear Mr. Kotkin:

Palm Springs enacted and still has in effect an ordinance that is more onerous toward firearm-theft victims than subsequently enacted state law. Ordinance 11.16.040 criminalizes theft victims for reasonably being unaware of a theft and compels victims to speak under threat of criminal prosecution. On behalf of one of our clients, the California Rifle & Pistol Association, Incorporated, we previously identified the policy reasons why such an ordinance was foolhardy and subject to challenge. (See letters of July 6, 2016 and September 6, 2016.)

Irrespective of policy issues weighing against the passage of the ordinance, the fact that the subject of the ordinance is also the subject of a less onerous state law precludes Palm Springs from continuing to have and enforce an ordinance with conflicting obligations imposed on victims of firearm theft. In 2016, California voters approved Proposition 63, which, among its provisions, requires victims of firearm theft to report such thefts to law enforcement no later than five days after the victim knows or reasonably should have known about the theft. (See Penal Code, § 25250, subd. (a) [effective July 1, 2017].)

As you know, Ordinance 11.16.040 contains a more onerous reporting requirement than Section 25250: 48 hours. For the reasons discussed below, this more onerous requirement, as well as the whole of Ordinance 11.16.040, is preempted by Penal Code section 25250. Because Section 25250 preempts the ordinance, if Ordinance 11.16.040 is not repealed, we will file suit on behalf of affected and interested parties seeking writ relief and a declaration invalidating the ordinance and enjoining its

enforcement. If successful, we will seek our attorney's fees and costs of suit in invalidating the ordinance.

Why the Penal Code Preempts Ordinance 11.16.040

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. (See Cal. Const., art. XI, §7; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 (*O'Connell*); *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 903-904.) A local law "duplicates state law when it is 'coextensive' with state law." (See *O'Connell*, supra, 41 Cal.4th at p. 1068.) It "contradicts state law when it is inimical to or cannot be reconciled with state law." (*Ibid.*)

Here, the subject of Ordinance 11.16.040 and Penal Code section are the same: reporting requirements for firearm theft victims. (Compare Ordinance 11.16.040 ["Any person who owns or possesses a firearm . . . shall report the theft or loss of the firearm to the Police Department of the City of Palm Springs 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. . . ."] with Penal Code, § 25250, subd. (a) ["Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost."].) To the extent that both the ordinance and Section 25250 impose a mandatory reporting obligation on firearm theft victims, they are duplicative, and state law preempts the ordinance. (See *O'Connell*, supra, 41 Cal.4th at p. 1068.)

But Ordinance 11.16.040 further runs afoul of the preemption doctrine by imposing an obligation on firearm theft victims that cannot be reconciled with Section 25250's express requirement, i.e., the five-day reporting requirement. (See, e.g., *O'Connell*, supra, 41 Cal.4th at 1068.) For purposes of determining whether state law preempts a local ordinance, an explicit contradiction between an ordinance and a state statute occurs "where the language of the ordinance directly contradicts the operative language of the statute, e.g., by penalizing conduct which the state law expressly authorizes. . . ." (See *Small Property Owners of S.F. Instit. v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 86 (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396-397.)

Here, the state statute allows a firearm theft victim to wait up to 120 hours after knowledge of a theft to report it. Under Ordinance 11.16.040, after the 48th hour, the victim who had not yet reported the theft would still be in compliance with state law but would nonetheless be in violation of the ordinance and subject to local prosecution. Ordinance 11.16.040 contains the sort of local penalization of conduct otherwise authorized under Section 25250 that the preemption doctrine forbids. (See *Small Property Owners*, supra, 22 Cal.App.5th at p. 86.) [Where a local ordinance prohibiting landlords from making changes to rental property after an eviction was found to be in conflict with an existing law that prohibited cities from preventing landlords from evicting tenants and making improvements and was preempted].)

Mr. Edward Kotkin, Esq.

August 2, 2018

Page 3 of 3

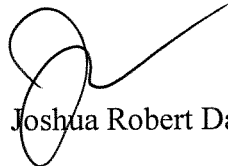
“The consequence of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118, italics omitted.) Because Ordinance 11.16.040 is both coextensive with the subject of Section 25250 as well as penalizes conduct that is lawful under Section 25250, Ordinance 11.16.040 is preempted and unenforceable. Our clients are therefore entitled to seek a declaration that Ordinance 11.16.040 is void and an order that it be stricken from the Palm Springs Municipal Code.

The City Will Be Liable for Attorney’s Fees and Costs of Suit Should They Be Forced to File Suit to Have the Ordinance Declared Void

If our clients are forced to seek a judicial declaration that Ordinance 11.16.040 is void and must be stricken from the Municipal Code, then our clients will be entitled to seek and recover their reasonable attorney’s fees and costs of suit. (See Code Civ. Proc., § 1021.5, and see *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 220-221 [where writ relief confers a significant benefit on a large class of persons, an award of attorney’s fees is appropriate].) In light of the indisputable application of the preemption doctrine to Ordinance 11.16.040, however, hopefully legal action will not be required, and the City Council will act quickly to repeal the ordinance.

Please let us know within 30 days of the date of this letter what steps the City is taking to repeal the ordinance. If we do not learn within that time period that significant, demonstrable steps are being taken to repeal the ordinance, we will file suit.

Sincerely,
Michel & Associates, P.C.



Joshua Robert Dale

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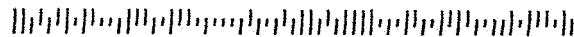
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MICHEL & ASSOCIATES, P.C.
Attorneys at Law

180 East Ocean Boulevard, Suite 200
Long Beach, CA 90802

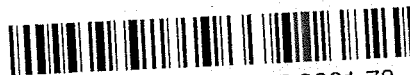
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1. Article Addressed to:
Edward Kotkin, Esq.
City Attorney
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262



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EXHIBIT HH

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
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Re: Palm Springs Ordinance 11.16.040

Dear Mr. Kotkin:

On August 14, 2018, our office sent you a detailed letter requesting that the City of Palm Springs repeal Palm Springs Municipal Ordinance 11.16.040, which is a preempted local ordinance requiring that the loss or theft of any firearm be reported to law enforcement within 48 hours of discovery. As set forth in our prior letter, the mandatory reporting of the theft or loss of a firearm is already required under state law following the enactment of Proposition 63. And the provisions of Ordinance 11.16.040 materially conflict with portions of this state law.

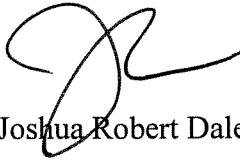
In our earlier letter, we informed you that we planned on behalf of affected citizens and civil rights groups to file suit to have Ordinance 11.16.040 declared void and repealed. We also requested that the City take concrete steps to begin repeal of the ordinance within 30 days of our demand letter in lieu of such a lawsuit being necessary. **We have received no response to our letter.** Although we have record that the letter was received, and that it was on the closed session agenda for the September 5, 2018 City Council meeting, neither you nor any other city official has acknowledged receipt of the letter, identified steps that the City will be taking to repeal the clearly preempted ordinance, or provided any other response.

As evidenced by the September 5th council agenda, the City has had time to consider the matter, yet remains silent. Notwithstanding our attempts to correct this issue short of litigation, we reasonably interpret the City's consideration of our August 14, 2018 letter and its complete silence in response as an indication that the City has no intent to take any action to repeal the ordinance. We are thus filing suit.

Mr. Edward Kotkin, Esq.
September 14, 2018
Page 2 of 2

Litigation should be wholly unnecessary in light of the patent and thoroughly explained preemption issues dooming the City's ordinance, but because of the City's silence and inaction in response to our efforts, we are left with no choice but to file suit to address the illegal ordinance. Given this, we will seek to recover the reasonable attorney's fees and costs of litigation incurred to resolve an issue that should have been voluntarily resolved by the City.

Sincerely,
Michel & Associates, P.C.



Joshua Robert Dale

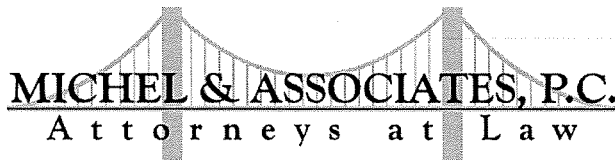
EXHIBIT II

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
TIFFANY D. CHEUVRON
MATTHEW D. CUBEIRO
ALEXANDER A. FRANK
LOS ANGELES, CA



OF COUNSEL
JOSEPH DI MONDA
SCOTT M. FRANKLIN
CLINT B. MONFORT
ERIC M. NAKASU
MICHAEL W. PRICE
TAMARA M. RIDER
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:
562-216-4448
JDALE@MICHELLAWYERS.COM

October 10, 2018

VIA EMAIL & U.S. MAIL

Edward Kotkin, Esq.
City Attorney
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Edward.Kotkin@palmspringsca.gov

**Re: Palm Springs Municipal Ordinance 11.16.040
Preemption Issues**

Dear Mr. Kotkin:

I am following up our telephone conversation on October 9, 2018 regarding Palm Springs Municipal Ordinance 11.16.040. In that conversation, you indicated that the Palm Springs City Council was taking steps to repeal or modify the ordinance in response to our August 14, 2018 letter sent on behalf of our clients.

The proposed modifications you discussed included modifying the current ordinance to increase the theft reporting period from 48 hours to 5 days, which time period matches the reporting period under state law, i.e., Penal Code section 25250. Another modification apparently being considered is changing the language of the statute to expressly defer to the Penal Code section itself.

Until such time as the language for the modification or repeal is proposed, we cannot say for certain whether any such modified ordinance language is appropriate or comports with the preemption doctrine we previously identified. In the absence of the specific language, we can state that as a general rule, any municipal ordinance that purports to address conduct already fully occupied by state law would be void as preempted by state law, and subject to the same legal attack as the current ordinance.

While we appreciate the City agreeing to address without the need for litigation the aspect of the ordinance that requires a shorter time period for firearm theft reporting than state law allows, we believe that any modification to the ordinance where the ordinance would still purport to mandate a duty under the municipal code for citizens to report firearm theft would leave the ordinance still preempted, void, and subject to a lawsuit. Thus, we urge the City to repeal the ordinance in its entirety, instead of attempting a modification, to address the current preemption problems with it.

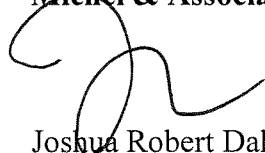
As a reminder, under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. (See Cal. Const., art. XI, §7; *Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067; *Fiscal v. City and County of San Francisco* (2008) 58 Cal.App.4th 895, 903-904.) A local law “duplicates state law when it is ‘coextensive’ with state law.” (See *O’Connell, supra*, 41 Cal.4th at 1068.)

The general principles governing state statutory preemption are well settled. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893.) An ordinance may be preempted by state law if it is duplicative of state law, i.e., it criminalizes “ ‘precisely the same acts which are . . . prohibited’ ” by statute.” (*Great Western Shows* (2002) 27 Cal.4th 853, 865, quoting *Pipoly v. Benson* (1942) 20 Cal.2d 366, 370.) Here, should the City act to change the ordinance in a matter that only make it a restatement of existing state law, the ordinance would be duplicative because it denotes the exact same law that is already in place. Where local laws are duplicative, they are void because a “conviction under the ordinance will operate to bar prosecution under state law for the same offense.” (*People v. Orozco* (1968) 266 Cal.App.2d 507, 511, fn. 1.)

The state has also pervaded the field of mandatory reporting of lost or stolen firearms with Penal Code section 25250 and provides a firearm theft victim up to 120 hours after the victim has knowledge of a theft to report it to law enforcement. Local legislation enters an area that is “fully occupied” by general law when the Legislature has expressly manifested its intent to “fully occupy” the area, or when it has impliedly done so. (*Sherwin-Williams Co., supra*, 4 Cal.4th at 897-898.) Unquestionably, Penal Code section 25250 marks the state’s entrance into the field of regulation regarding reporting requirements for victims of firearm theft in such a manner such that the state law has “so completely covered this field and clearly indicated that it has become exclusively a matter of state concern.” (*Id.* at 898.) The City’s modification of Ordinance 11.16.040 to duplicate the state Penal Code would therefore be pointless and would not work to meet any government interest of the City that is not already met by enforcement of the state law.

“The consequence of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118, italics omitted.) A modification of Ordinance 11.16.040 to expressly or impliedly restate Penal Code section 25250 or its requirements would make the ordinance coextensive with the subject of Section 25250 and would make the ordinance preempted, unenforceable, and void.

Sincerely,
Michel & Associates, P.C.



Joshua Robert Dale

EXHIBIT JJ



CITY COUNCIL STAFF REPORT

DATE: November 14, 2018

LEGISLATIVE

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA REPEALING PALM SPRINGS MUNICIPAL CODE SECTION 11.16.040 AND DISCUSSION OF POTENTIAL NEW FIREARMS REGULATIONS

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

SUMMARY

Staff recommends that the City Council repeal Palm Springs Municipal Code (PSMC) Section 11.16.040. In reviewing the matter of this ordinance's repeal for Council consideration, staff engaged in a comprehensive review of the substance and history of the PSMC provisions addressing firearms. In addition to the proposed repeal, staff requests a City Council discussion of potential new firearm regulations, including without limitation a potential prohibition of firearms at certain public gatherings.

RECOMMENDATION:

1. Waive the reading of text in its entirety, read by title only, and introduce for first reading Ordinance No. _____, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA REPEALING PALM SPRINGS MUNICIPAL CODE SECTION 11.16.040."
2. Discuss potential new firearm regulations, including but not limited to a potential prohibition of firearms at certain public gatherings, and provide direction to staff.

STAFF ANALYSIS:

REPEAL OF PSMC 11.16.040

The City Council adopted Ordinance 1899, the City's local ordinance that regulates firearms, on September 21, 2016. After the City acted, the state's voters approved Proposition 63 on November 8, 2016. California Penal Code Section 25250, effective January 1, 2017 as a part of Proposition 63, mandated reporting of a lost or stolen firearm

ITEM NO. 3.A.

to a local law enforcement agency within five (5) days. PSMC Section 11.16.040 mandates the same type of reporting to the Palm Springs Police Department within forty-eight (48) hours of a firearm loss or theft.

Staff has consulted with the Police Chief in this matter. Reporting of stolen firearms is taking place and will very likely continue under state law. As of the beginning of last month when staff inquired, since September 30, 2016 (just prior to the effective date of PSMC Section 11.16.040, the Police Department received forty six (46) reports of sixty one (61) stolen firearms. Some statutes adopted as part of Proposition 63 provide that cities may adopt more stringent standards than the state. There is no such provision in relation to the reporting requirement in Penal Code Section 25250, the state law addressing reporting of lost or stolen firearms. An impermissible conflict between state law and a local ordinance only exists when the ordinance contradicts, duplicates, or enters an area occupied by general law, either expressly or by legislative implication. The City of Palm Springs is a charter city and does not acknowledge that it lacks the authority to establish a timeline for reporting a firearm lost or stolen that is shorter than that mandated by state law. Regardless of whether there is in fact an impermissible conflict between Proposition 63 and PSMC Section 11.16.040, staff has determined that the repeal proposed will not have any foreseeable impact on the reporting of firearm theft or loss. Staff has determined that based upon a threat of litigation, any arguable conflict with state law should be resolved, and that it is appropriate to repeal PSMC Section 11.16.040. The proposed repeal ordinance is attached to this report as **ATTACHMENT A**.

DISCUSSION RE POTENTIAL NEW FIREARMS REGULATIONS

On June 15, 2016 in the wake of the Orlando nightclub shootings, the City Council considered adoption of a firearms regulatory program. On July 6, 2016, the Council discussed the legal landscape with respect to firearm regulation, including the issue of preemption. The Council reviewed the 2016 "California Firearm Laws Summary" published by the Attorney General. That version, although somewhat dated, remains the most up to date iteration of this publication. It is available for review, along with a wide variety of material available through the Attorney General's Bureau of Firearms at the following URL: <https://oag.ca.gov/firearms>.

Notwithstanding the Second Amendment right to bear arms as it has been broadly interpreted by the courts, municipalities have the right to regulate firearms. The State Constitution's fundamental and straightforward rule is that cities have the broad and elastic power to suppress, prohibit and regulate all things injurious to the public welfare. See e.g., California Constitution Article XI, section 7, providing for what is often referenced as the City's "police power." Despite its breadth and depth, the City's police power has limits. Cities cannot pass ordinances that conflict with the Constitution and laws of the State of California or the United States. See e.g., California Government Code Section 37100. However, conflict does not exist in many instances.

One good example of a local law explicitly upheld by a court is the Alameda County gun dealer zoning ordinance upheld in 2017 by the Ninth Circuit Court of Appeals sitting as an eleven (11) judge panel. See *Teixeira v. Cnty. of Alameda* (9th Cir. 2016) 822 F.3d 1047. Another is the state court of appeal that upheld a law prohibiting minors from entering premises where firearm sales are the primary on-site business. See *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109. The Eighth Circuit Court of Appeals has held that since firearms dealers are not a suspect class, and their right to operate without a conditional use permit is not a fundamental right, a local ordinance should be upheld if it bears a rational relationship to a legitimate governmental interest. See *Koscielski v. Minneapolis* (8th Cir. 2006) 435 F.3d 898). The important principle at work in that case is an important one: local gun legislation not in conflict with federal or state law, and tailored to address a regulatory issue (such as zoning for firearms dealerships) squarely within the local jurisdiction's authority to regulate, will be upheld.

At the previously referenced City Council meeting on July 6, 2016, the Council considered a draft ordinance that addressed the following topics:

1. Shooting permits,
2. Imposition of a duty to report theft or loss of firearms,
3. Requiring safe storage of firearms in the home,
4. Prohibition, with certain exceptions, of possession of large-capacity ammunition magazines,
5. Imposition of record-keeping requirements for ammunition sales, and
6. Prohibiting unsecured firearms and ammunition in unattended vehicles.

On September 7, 2018 the City Council introduced, and on September 21, 2016 it adopted Ordinance 1899, codified in PSMC Chapter 11.16. At the Council's direction, the City Attorney deleted some provisions previously discussed (numbers 4 and 5 above) as state law adopted in the interim time had addressed them.¹ Since its adoption, Ordinance 1899 has not changed. As a matter of interest, the Council should note that the Ninth Circuit Court of Appeals upheld the "safe storage" ordinance adopted by the City and County of San Francisco. See *Jackson v. City and County of San Francisco* (9th Cir. 2014) 746 F.3d 953. Now, in the context of evaluating the proposed repeal, Councilmember Kors, in his role as City Council liaison to staff regarding potential new firearm regulations, worked with staff explored additional subject areas that the Council may wish to address in Chapter 11.16.

To assist the Council in defining its options to be considered during the requested discussion, staff notes that California expressly preempts very few specific areas of firearms law. Preempted areas include (1) licensing and registration of commercially

¹ Proposition 63 also addressed record-keeping in the field of ammunition sales, but explicitly stated that its adoption would not "preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition." As is noted in the section of the staff report addressing the repeal of PSMC Section 11.16.040, the provision of Proposition 63 addressing reporting of lost or stolen firearms contains no such language.

manufactured firearms, (2) licensing and permitting related to the purchase, ownership, possession or carrying of a concealable firearm in the home, or in a place of business, and the (3) regulation of the manufacture, sale or possession of “imitation firearms.”

Various options for new firearm regulation in the City exist. Councilmember Kors identified and staff researched an ordinance unanimously adopted by the City and County of San Francisco on May 8, 2018 regarding “Firearms Prohibited at Public Gatherings.” Staff has verified with the San Francisco City Attorney’s office that since its adoption, this ordinance has not been subject to any legal challenge. A copy of the ordinance is provided as **ATTACHMENT B**; the Council will note that this ordinance, which complements San Francisco’s general prohibition of firearms on City property, only applies to a discreet and well-defined class of public gatherings.

In support of this ordinance, staff notes that the Ninth Circuit Court of Appeals has determined that the second amendment right to keep and bear arms, does not include, to any degree, the right of member of general public to carry concealed firearms in public. *See Peruta v. Cty. of San Diego* (9th Cir. 2016) 824 F.3d 919. In 2017 the United States Supreme Court refused to grant review of the *Peruta* case. Staff would be remiss if it did not note that other U.S. Circuit Courts of Appeals have diverged from the position of the Ninth in the *Peruta* decision, and viewed this issue through a different lens. An important state case worth noting in support of the San Francisco ordinance held that a county ordinance prohibiting possession and use of guns in parks and recreational areas was not preempted by state law authorizing sheriffs to issue concealed weapon licenses, and that a local agency has the authority to provide, *via* its legislative process, for exceptions and conditions to when and where an issued “carry license” may be validly used. *See Calguns Found., Inc. v. Cty. of San Mateo* (2013) 218 Cal. App. 4th 661.

In the event that the Council wants to provide direction on other specific potential areas for local legislation, those might include:

- Requirement of a special permit issued to firearm sellers by police chief with conditions attached;
- Requirement of videotaping of areas where firearm purchases occur;
- Prohibition of firearm possession on city property;
- Zoning restrictions applicable to firearm sellers;
- Prohibition of firearm sales businesses in residences as home occupation;
- Requirement of posting of warnings at firearm sellers;
- Requirement of firearm sellers having liability insurance;
- Requirement of mandatory reporting of inventory by firearm sellers;
- Required mandatory periodic inspection of firearm sellers’ premises;
- Revision of M-2 and E-I zoning, fabrication of ordinance and firearms are currently a permitted use and/or revision of C-2 zoning, gun shops are currently allowed with a land use permit; and
- Prohibition of firearm sellers operating within certain distance of sensitive uses.

ALTERNATIVES:

Decline to repeal PSMC 11.16.040.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

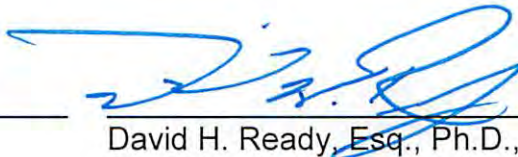
Neither introduction nor adoption of this Ordinance represents a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378, because this Ordinance is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

FISCAL IMPACT:

Not analyzed.



Edward Z. Kotkin,
City Attorney



David H. Ready, Esq., Ph.D.,
City Manager

Attachments:

- A. Proposed Ordinance
- B. San Francisco Ordinance re "Firearms Prohibited at Public Gatherings"

ATTACHMENT A

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF PALM SPRINGS,
CALIFORNIA REPEALING PALM SPRINGS MUNICIPAL
CODE SECTION 11.16.040.**

City Attorney's Summary

*This Ordinance repeals a provision of the Palm Springs Municipal
Code that is adequately addressed by state law.*

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS FINDS:

The City Council of the City of Palm Springs ordains:

SECTION 1. Title 11, Chapter 11.16, Section 11.16.040 of the Palm Springs Municipal Code (PSMC), the section of the City's municipal code that provides for a "Duty to Report Theft or Loss of Firearms," is hereby repealed.

SECTION 2. Neither introduction nor adoption of this Ordinance represents a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378, because this Ordinance is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

SECTION 3. The Mayor shall sign, and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of applicable law; this Ordinance shall take effect thirty (30) days after passage.

PASSED AND ADOPTED THIS _____ DAY OF NOVEMBER 2018.

AYES:
NOES:
ABSTAIN:
ABSENT:

Robert Moon, Mayor

ATTEST:

Anthony J. Mejia, MMC, City Clerk

ATTACHMENT B

[Police Code - Prohibition of Firearms at Public Gatherings]

Ordinance amending the Police Code to prohibit firearms at certain public gatherings.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Police Code is hereby amended by adding Article 36C, to read as follows:

ARTICLE 36C: PROHIBITION OF FIREARMS AT PUBLIC GATHERINGS

SEC. 3600C. FINDINGS.

(a) The presence of concealed firearms in crowds of people at large public gatherings has the potential to present public safety risks associated with the accidental or intentional discharge of a weapon. Subject to limited exceptions, Section 617 of the Police Code prohibits the possession of firearms on City property. But Section 617 does not apply to the public right-of-way owned by the City.

(b) The U.S. Supreme Court emphasized in District of Columbia v. Heller, its 2008 decision which characterized the Second Amendment as recognizing an individual right to keep and bear arms, that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" are valid public safety regulations under the Second Amendment.

1 (c) In recent years, public, densely populated spaces have been targeted by gunmen with the
2 apparent goal of causing mass physical and emotional harm, particularly apparent with the recent and
3 horrific mass shootings on the Las Vegas strip and at a nightclub in Orlando.

4 (d) A July 2015 Congressional Research Service Report found that between 1999 and 2013,
5 offenders committed 66 mass shootings in public places, killing 446 victims and injuring 329 victims.
6 The report defined a mass shooting as one where four or more victims are killed at a single event.

7 (e) Studies show that in general guns do not protect those who possess them from gun violence.
8 A 2009 study published in the American Journal of Public Health found that individuals possessing a
9 gun were 4.46 times more likely than individuals not possessing a gun to be shot when assaulted by
10 another individual possessing a gun.

11 (f) City residents must have a reasonable expectation of safety while at public gatherings.
12 Perceptions of safety are important to encouraging civic engagement and participation. The presence
13 of firearms at public gatherings can therefore depress involvement in civic life.

14 (g) The presence of firearms at public gatherings where expressive activity is taking place is
15 likely to intimidate some participants and chill or suppress speech, and cause some interested persons
16 not to attend such gatherings. According to news reports, the presence of firearms at the recent white
17 supremacist rallies in Charlottesville, Virginia, intimidated some people who disagreed with the
18 message of the rally participants into silence. While the threat of such chilling is reduced when the
19 open carrying of firearms is prohibited, nonetheless the knowledge that demonstrators may be carrying
20 concealed firearms can operate to deter and silence speech.

21 (h) Prohibiting the possession of firearms at certain outdoor public gatherings in the City will
22 promote the public health and safety by reducing the presence of firearms and the potential for gunshot
23 fatalities and injuries. The prohibition will also promote public participation at events involving
24 expressive activities, because it will reduce the likelihood of people being intimidated by the presence
25 of concealed firearms.

1 **SEC. 3601C. DEFINITIONS.**

2 For purposes of this Article 36C, the following definitions shall apply:

3 "Demonstration" shall mean a group of persons advocating for or against a political or other
4 cause by conveying a message to the public through expressive conduct, such as carrying or wearing
5 signs, singing, or speaking.

6 "Firearm" means any gun, pistol, revolver, rifle, or any other device designed or modified to be
7 used as a weapon, from which is expelled through a barrel a projectile by the force of an explosion or
8 other form of combustion. "Firearm" does not include imitation firearms as defined by California
9 Penal Code Section 16700, or BB devices or air rifles as defined in California Penal Code Section
10 16250.

11 "Public Gathering" shall mean:

12 (1) a parade that requires a permit under Article 4 of the Police Code and involves ~~50~~
13 ~~20~~ or more persons;

14 (2) a Demonstration held in the Right-of Way involving ~~50-20~~ or more persons within
15 an area circumscribed by a 500-foot radius;

16 (3) a Demonstration on publicly-owned park land within the geographic boundaries of
17 the City involving ~~50-20~~ or more persons within an area circumscribed by a 500-foot radius; and

18 (4) an event that requires a permit under Article 6 of the Transportation Code and
19 involves ~~50-20~~ or more persons.

20 "Right of Way" shall mean any area across, along, on, over, upon, and within the dedicated
21 public alleys, boulevards, courts, lanes, roads, sidewalks, streets, and ways within the City.

22
23 **SEC. 3602C. FIREARMS PROHIBITED AT PUBLIC GATHERINGS.**

24 Except as stated in Section 3603C, no person shall possess a Firearm at any Public Gathering.
25

1 **SEC. 3603C. EXCEPTIONS.**

2 Section 3602C shall not apply to the following:

3 (a) A peace officer, retired peace officer, or person assisting a peace officer, when authorized
4 to carry a concealed weapon under California Penal Code Sections 25450-25475 or a loaded firearm
5 under California Penal Code Sections 25900-25925, and/or under 18 U.S.C. 926B or 926C;

6 (b) Members of the armed forces when on duty, and members of other organizations when
7 authorized to carry a concealed weapon under California Penal Code Section 25620 or a loaded
8 firearm under California Penal Code Section 26000;

9 (c) Military or civil organizations carrying unloaded weapons while parading or when
10 authorized to carry a concealed weapon under California Penal Code Section 25625;

11 (d) Patrol special police officers, animal control officers, zookeepers, and harbor police
12 officers, when authorized to carry a loaded firearm under California Penal Code Section 26025; and

13 (e) A guard or messenger of a common carrier, bank, or other financial institution; a guard of
14 a contract carrier operating an armored vehicle; a licensed private investigator, patrol operator, or
15 alarm company operator; a uniformed security guard or night watch person employed by a public
16 agency; a uniformed security guard or uniformed alarm agent; a uniformed employee of a private
17 patrol operator or private investigator, when any of the above are authorized to carry a loaded firearm
18 under California Penal Code Section 26030.

19
20 **SEC. 3604C. PENALTY.**

21 Any person who violates Section 3602C shall be deemed guilty of a misdemeanor and upon
22 conviction shall be punished by a fine not to exceed \$1,000 or by imprisonment in the county jail not to
23 exceed six months, or by both.

1 **SEC. 3605C. PERMIT CONDITIONS.**

2 For any Public Gathering that requires a permit issued by the City, the City official,
3 department, board, commission, committee, or other authority responsible for issuing such permit shall
4 include as a condition of the permit that Firearms be prohibited at the Public Gathering, subject to the
5 exceptions stated in Section 3603C. This Article 36C shall not preclude the City from exercising its
6 discretion to impose a similar condition on a permit that does not meet the definition of a Public
7 Gathering.

8
9 **SEC. 3606C. UNDERTAKING FOR THE GENERAL WELFARE.**

10 In enacting and implementing this Article 36C, the City is assuming an undertaking only to
11 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
12 obligation for breach of which it is liable in money damages to any person who claims that such breach
13 proximately caused injury.

14
15 **SEC. 3607C. SEVERABILITY.**

16 If any provision, clause, or word of this Article 36C or the application thereof to any person or
17 circumstance is held invalid, such invalidity shall not affect any other provision, clause, word, or
18 application of this Article which can be given effect without the invalid provision, clause, word, or
19 application; and to this end the provisions of this Article are declared to be severable.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

1 Section 2. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

7
8 By:


BRADLEY A. RUSSI
Deputy City Attorney

9
10 n:\vegana\as2018\1800525\01268994.docx



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 180159

Date Passed: May 08, 2018

Ordinance amending the Police Code to prohibit firearms at certain public gatherings.

April 18, 2018 Public Safety and Neighborhood Services Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

April 18, 2018 Public Safety and Neighborhood Services Committee - CONTINUED AS AMENDED

April 25, 2018 Public Safety and Neighborhood Services Committee - RECOMMENDED

May 01, 2018 Board of Supervisors - PASSED ON FIRST READING

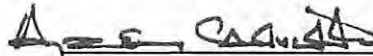
Ayes: 11 - Breed, Cohen, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Stefani, Tang and Yee

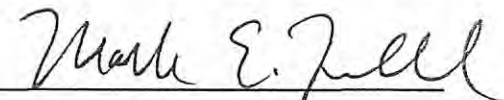
May 08, 2018 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Breed, Cohen, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Stefani, Tang and Yee

File No. 180159

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
5/8/2018 by the Board of Supervisors of the
City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mark E. Farrell
Mayor

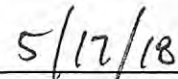

Date Approved

EXHIBIT KK

Palm Springs repeals gun ordinance passed after Pulse shooting, will look at other measures

Corinne S Kennedy, Palm Springs Desert Sun

Published 9:47 a.m. PT Nov. 15, 2018 | Updated 10:54 a.m. PT Nov. 15, 2018



(Photo: The Desert Sun)

The Palm Springs City Council voted to repeal part of a series of gun control measures put in place after the Pulse nightclub shooting in Orlando in 2016, but will discuss implementing additional measures such as preventing people from bringing firearms to some public events.

Council members voted 3-2 to repeal a law that required Palm Springs residents to report stolen firearms to the police within 48 hours. A state law, which was passed by the voters as a proposition a few months after the Palm Springs ordinance was passed, requires the reporting of stolen firearms within five days.

Council members Christy Holstege and Geoff Kors voted against the repeal.

A [staff report prepared by City Attorney Ed Kotkin \(https://destinyhosted.com/palmsdocs/2018/CC/20181114_131/1142_Item%203A%20OCR.pdf\)](https://destinyhosted.com/palmsdocs/2018/CC/20181114_131/1142_Item%203A%20OCR.pdf) concluded repealing Palm Springs' law would not have a "foreseeable impact" on people reporting lost or stolen guns.

He wrote that "based on a threat of litigation, any arguable conflict with state law should be resolved." The National Rifle Association sent a letter to Palm Springs before the measure was passed threatening to sue the city, but no lawsuit was filed. Kotkin did not specify if the current litigation threat was from the NRA.

Holstege said she wasn't swayed by the threat of litigation and she "couldn't politically support reducing gun safety legislation at this time."

LAW ENFORCEMENT: [Election 2018: Chad Bianco elected in heated Riverside County Sheriff's race \(/story/news/politics/elections/2018/11/05/election-2018-riverside-county-sheriffs-race-deserts-most-expensive/1858572002/\)](#)

LOCAL NEWS: [Palm Springs police chief OK with pot possession at airport, but prefers people just leave it home \(/story/money/business/tourism/2018/11/14/palm-springs-international-airport-pot-possession-policy/2005612002/\)](#)

The city staff report noted that from Sept. 30, 2016, shortly before the Palm Springs ordinance took effect, to the beginning of October, Palm Springs police received 46 reports of 61 stolen firearms.



The Palm Springs City Council could repeal controversial gun laws it passed in 2016 and replace them with new restrictions. (Photo: Associated Press)

“Reporting of stolen firearms is taking place and will very likely continue under state law,” Kotkin wrote.

Council member Lisa Middleton said she hoped the federal government would follow California’s lead.

“We’re doing this because the state of California has acted very responsibly and the California public has acted very responsibly,” she said. “I look forward to the day that we can say that the president and the United States Congress has acted responsibly to pass gun safety legislation and I hope that happens before the next mass shooting.”

The council also agreed to form a subcommittee to research other potential firearms regulations that could be brought forward for a vote.

There was no public comment on the matter Wednesday.

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Two other firearms restrictions put in place in 2016 — that guns and ammunition left in unattended vehicles must be in the trunk or a locked container and at home and that gun owners must keep firearms in a locked container or disabled with a trigger lock when not in their immediate possession — remain on the books.

The measures were the subject of heated debate in the meetings leading up to the council’s final approval two years ago. While gun-control advocacy groups like Moms Demand Action applauded the council’s move and said the restrictions could prevent accidental shootings, local gun owners said the measures were overly restrictive and could make law-abiding gun owners less safe by making it more difficult to access and use their firearms in life-threatening situations.

City Council members were also split by the debate. The measure passed 3-2, with former council members Ginny Foat and Chris Mills voting no.

Corinne Kennedy covers the west valley for The Desert Sun. She can be reached at Corinne.Kennedy@DesertSun.com or on Twitter @CorinneSKennedy

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EXHIBIT LL

The Science of Gun Policy

**A Critical Synthesis of Research Evidence
on the Effects of Gun Policies in the United States**

A PART OF THE RAND

**Gun Policy
in AMERICA**

INITIATIVE



For more information on this publication, visit www.rand.org/t/RR2088

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Gun Policy in America Research Synthesis Project Team

Project Director

Andrew R. Morral, Ph.D.

Research Synthesis Project Leadership

Rajeev Ramchand, Ph.D.

Rosanna Smart, Ph.D.

Literature Review Groups

Suicides

Rajeev Ramchand, Ph.D.

Homicides and Violent Crime

Carole Roan Gresenz, Ph.D.

John Speed Meyers, M.P.A.

Rouslan I. Karimov, M.P.A.

Lea Xenakis, M.P.A.

Accidents and Unintentional Injuries

Eric Apaydin, M.P.P.

Rajeev Ramchand, Ph.D.

Mass Shootings and Taxation

Rosanna Smart, Ph.D.

Officer-Involved Shootings

Carter C. Price, Ph.D.

Defensive Gun Use

Nancy Nicosia, Ph.D.

John Speed Meyers, M.P.A.

Hunting and Sport Shooting

Rosanna Smart, Ph.D.

Eric Apaydin, M.P.P.

Gun Industry

Carter C. Price, Ph.D.

Mental Health

Stephanie Brooks Holliday, Ph.D.

Public Information Campaigns

Elizabeth L. Petrun Sayers, Ph.D.

Policy Descriptions

Samantha Cherney, J.D.

Rosanna Smart, Ph.D.

Methodology Review

Carole Roan Gresenz, Ph.D.

Beth Ann Griffin, Ph.D.

Andrew R. Morral, Ph.D.

Nancy Nicosia, Ph.D.

Rajeev Ramchand, Ph.D.

Terry L. Schell, Ph.D.

Rosanna Smart, Ph.D.

Effect-Size Calculation

Brett Ewing, M.S.

Programming

Joshua Lawrence Traub, M.S.

Preface

Effective gun policies in the United States must balance the constitutional right to bear arms and public interest in gun ownership with concerns about public health and safety. However, current efforts to craft legislation related to guns are hampered by a paucity of reliable information about the effects of such policies. To help address this problem, the RAND Corporation launched the Gun Policy in America initiative. Throughout RAND's 70-year history, in multiple projects, in many policy arenas, and on topics that are sensitive and controversial, researchers have conducted analyses, built tools, and developed resources to help policymakers and the public make effective decisions. The primary goal of the Gun Policy in America project is to create resources where policymakers and the general public can access unbiased information that facilitates the development of fair and effective firearm policies.

This report is one of several research products stemming from the initiative. The research described here synthesizes the available scientific evidence on the effects of 13 types of firearm policies on a range of outcomes related to gun ownership. In addition, this report includes essays on several topics that frequently arise in discussions of gun policy.

Other project components include a survey of policy experts that identifies where access to reliable data would be most useful in resolving policy debates, plus an online tool allowing users to explore how different combinations of gun policies are likely to affect a range of outcomes. In another line of effort, RAND conducted simulation studies to evaluate the strengths and weaknesses of different approaches to modeling the effects of gun policies on outcomes, the results of which will be used to develop new estimates of the effects of state firearm policies. Finally, the project includes the development of a longitudinal database of state firearm laws as a resource for other researchers and the public.

The Gun Policy in America initiative did not attempt to evaluate the merits of different values or principles that sometimes drive policy disagreements. Rather, our focus is strictly on the empirical effects of policies on the eight outcomes specified in this report. All of our resources are publicly available on the project website at www.rand.org/gunpolicy.

The work should be of interest to policymakers and other stakeholders considering decisions related to firearm policy. Furthermore, this report may be of interest to the research community and to the general public.

RAND Ventures

The RAND Corporation is a research organization that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. RAND is nonprofit, nonpartisan, and committed to the public interest.

RAND Ventures is a vehicle for investing in such policy solutions. Philanthropic contributions support our ability to take the long view, tackle tough and often-controversial topics, and share our findings in innovative and compelling ways. RAND's research findings and recommendations are based on data and evidence and therefore do not necessarily reflect the policy preferences or interests of its clients, donors, or supporters.

Funding for this venture was provided by gifts from RAND supporters and income from operations.

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Summary

The RAND Corporation's Gun Policy in America initiative is a unique attempt to systematically and transparently assess available scientific evidence on the real effects of gun laws and policies. Our goal is to create resources where policymakers and the general public can access unbiased information that informs and enables the development of fair and effective policies. Good gun policies in the United States require consideration of many factors, including the law and constitutional rights, the interests of various stakeholder groups, and information about the likely effects of different policies on a range of outcomes. This report seeks to provide the third factor—objective information about what the scientific literature examining gun policies can tell us about the likely effects of those policies.

This report synthesizes the available scientific evidence on the effects of various gun policies on firearm deaths, violent crime, the gun industry, participation in hunting and sport shooting, and other outcomes.¹ It builds and expands on earlier comprehensive reviews of scientific evidence on gun policy conducted more than a decade ago by the National Research Council (NRC) (see NRC, 2004) and the Community Preventive Services Task Force (see Hahn et al., 2005).

Methodology

We used Royal Society of Medicine guidelines for conducting systematic reviews of a scientific literature (Khan et al., 2003). We focused on the empirical literature assessing the effects of 13 classes of firearm policies or of the prevalence of firearms on any of eight outcomes, which include both public health outcomes and outcomes of concern to many gun owners. We reviewed scientific reports that have been published since 2003, a date chosen to capture studies conducted since the last major systematic reviews of the science of gun policy were published by NRC (2004) and Hahn et al. (2005).

¹ Although not all guns are firearms, in this report, we follow conventional use in U.S. policy discussions and treat the terms *gun* and *firearm* as interchangeable.

The 13 classes of gun policies considered in this research are as follows:

1. background checks
2. bans on the sale of assault weapons and high-capacity magazines
3. stand-your-ground laws
4. prohibitions associated with mental illness
5. lost or stolen firearm reporting requirements
6. licensing and permitting requirements
7. firearm sales reporting and recording requirements
8. child-access prevention laws
9. surrender of firearms by prohibited possessors
10. minimum age requirements
11. concealed-carry laws
12. waiting periods
13. gun-free zones.

The eight outcomes considered in this research are

1. suicide
2. violent crime
3. unintentional injuries and deaths
4. mass shootings
5. officer-involved shootings
6. defensive gun use
7. hunting and recreation
8. gun industry.²

Policy Analyses, by Outcome

Building on the earlier reviews (NRC, 2004; Hahn et al., 2005) and using standardized and explicit criteria for determining the strength of evidence that individual studies provide for the effects of gun policies, we produced research syntheses that describe the quality and findings of the best available scientific evidence. Each synthesis defines the class of policies being considered; presents and rates the available evidence; and describes what conclusions, if any, can be drawn about the policy's effects on outcomes.

In many cases, we were unable to identify any research that met our criteria for considering a study as providing minimally persuasive evidence for a policy's effects. Studies were excluded from this review if they offered only correlational evidence for a

² The terms in these lists describe broad categories of policies and outcomes that are defined and described in detail in the full report.

possible causal effect of the law, such as showing that states with a specific law had lower firearm suicides at a single point in time than states without the law. Correlations like these can occur for many reasons other than the effects of a single law, so this kind of evidence provides little information about the effects attributable to specific laws. We did not exclude studies on the basis of their findings, only on the basis of their methods for isolating causal effects. For studies that met our inclusion criteria, we summarize key findings and methodological weaknesses, when present, and provide our consensus judgment on the overall strength of the available scientific evidence. We did this by establishing the following relativistic scale describing the strength of available evidence:

1. *No studies.* This designation was made when no studies meeting our inclusion criteria evaluated the policy's effect on the outcome.
2. *Inconclusive evidence.* This designation was made when studies with comparable methodological rigor identified inconsistent evidence for the policy's effect on an outcome or when a single study found only uncertain or suggestive effects.
3. *Limited evidence.* This designation was made when at least one study meeting our inclusion criteria and not otherwise compromised by serious methodological problems reported a significant effect of the policy on the outcome, even if other studies meeting our inclusion criteria identified only uncertain or suggestive evidence for the effect of the policy.
4. *Moderate evidence.* This designation was made when two or more studies found significant effects in the same direction and contradictory evidence was not found in other studies with equivalent or strong methods.
5. *Supportive evidence.* This designation was made when (1) at least three studies found suggestive or significant effects in the same direction using at least two independent data sets or (2) the effect was observed in a rigorous experimental study.

These ratings are meant to describe the relative strengths of evidence available across gun policy research domains, not any rating of our absolute confidence in the reported effects. For instance, when we find *supportive* evidence for the conclusion that child-access prevention laws reduce self-inflicted injuries and deaths, we do not mean to suggest that it is comparable to the evidence available in more-developed fields of social science. That is, in comparison to the evidence that smoking causes cancer, the evidence base in gun policy research is very limited. Nevertheless, we believe that it may be valuable to the public and to policymakers to understand which laws currently have more or less persuasive evidence concerning the effects the laws are likely to produce.

Table S.1 summarizes our judgments for all policy and outcome pairings. Several outcomes show multiple judgments, and these correspond to different characterizations of the specific policy-outcome association. For instance, we identified limited evidence that background checks reduce *total suicides* and moderate evidence that they reduce *firearm suicides*.

Table S.1
Strength of Evidence Across Gun Policies and Outcomes

	Background Checks	Bans on the Sale of Assault Weapons and High-Capacity Magazines	Stand-Your-Ground Laws	Prohibitions Associated with Mental Illness	Lost or Stolen Firearm Reporting Requirements	Licensing and Permitting Requirements	Firearm Sales Reporting and Recording Requirements	Child-Access Prevention Laws	Surrender of Firearms by Prohibited Possessors	Minimum Age Requirements		Concealed-Carry Laws		Waiting Periods	Gun-Free Zones
										Purchasing	Possessing	Shall Issue	Permitless Carry		
Suicide															
Total suicides	↓ L		I	↓ L		I		↓ L		I	I	I			
Firearm suicides	↓ M		I	↓ L		I		↓ M			I	I			
Firearm suicides among children										↓ L					
Firearm self-injuries (nonfatal)												I			
Firearm self-injuries (including suicides)								↓ S							
Violent crime	↓ L			↓ M				I	I			↑ L		I	
Total homicides	↓ L	I	↑ M	↓ L		I				I	I	I			
Firearm homicides	↓ M, I ^a	I	↑ L	I		I		I		I	I	I			
Intimate partner homicides									I					I	
Robberies												I			
Assaults												I			
Rapes												I			
Other violent crime			I												

Table S.1—Continued

	Background Checks	Bans on the Sale of Assault Weapons and High-Capacity Magazines	Stand-Your-Ground Laws	Prohibitions Associated with Mental Illness	Lost or Stolen Firearm Reporting Requirements	Licensing and Permitting Requirements	Firearm Sales Reporting and Recording Requirements	Child-Access Prevention Laws	Surrender of Firearms by Prohibited Possessors	Minimum Age Requirements		Concealed-Carry Laws		Waiting Periods	Gun-Free Zones
										Purchasing	Possessing	Shall Issue	Permitless Carry		
Unintentional injuries and deaths															
Unintentional firearm deaths											I				
Unintentional firearm injuries and deaths among adults								↓ L							
Unintentional firearm injuries and deaths among children								↓ S							
Unintentional firearm injuries among adults												↑ L			
Unintentional firearm injuries among children												I			
Mass shootings	I	I				I		I		I		I	I	I	
Officer-involved shootings															
Defensive gun use			I												
Hunting and recreation															

Table S.1—Continued

	Gun-Free Zones	Waiting Periods	Concealed-Carry Laws		Minimum Age Requirements		Surrender of Firearms by Prohibited Possessors	Child-Access Prevention Laws	Firearm Sales Reporting and Recording Requirements	Licensing and Permitting Requirements	Lost or Stolen Firearm Reporting Requirements	Prohibitions Associated with Mental Illness	Stand-Your-Ground Laws	Bans on the Sale of Assault Weapons and High-Capacity Magazines	Background Checks
			Permitless Carry	Shall Issue	Possessing	Purchasing									
Gun industry															
Gun ownership				I											
Prices of banned firearms in the short term														↑ L	

NOTE: I = inconclusive; L = limited; M = moderate; S = supportive. When we identified no studies meeting eligibility criteria, cells are blank. ↑ = the policy increases the outcome; ↓ = the policy decreases the outcome.

^a We concluded that there is moderate evidence that dealer background checks decrease firearm homicides, and there is inconclusive evidence for the effect of private-seller background checks on firearm homicides.

Rather than concerning how strong a policy's effects are, our findings concern the strength of the available scientific evidence examining those effects. Thus, even when the available evidence is limited, the actual effect of the policy may be strong. Presumably, every policy has some effect on a range of outcomes, however small or unintended. Until researchers design studies that can detect these effects, available evidence is likely to remain inconclusive or limited. But this fact should not be confused with the conclusion that the policies themselves have limited effects. They may or may not have the effects they were designed to produce; available scientific research cannot yet answer that question. Moreover, even a policy with a small effect may nevertheless be beneficial to society or worth its costs. For instance, a policy that reduces firearm deaths by just a few percentage points could save more than 1,000 lives per year. This kind of “small” effect might be very difficult to detect with existing study methods but could represent an important contribution to public health and safety.

Supplementary Essays

The 13 types of policies reviewed in this report and the scope of the systematic review for the research synthesis were selected a priori and represent the central focus of our research synthesis efforts. Nevertheless, in reviewing evidence on these policies, other important themes emerged that the research team believed provided useful context for the policies or that were frequently cited in gun policy debates. Thus, we also researched what rigorous studies reveal about

- the possible mechanisms by which laws may affect outcomes
- how taxes, access to health care, and media campaigns might affect gun violence
- the effectiveness of laws used to target domestic violence
- methodological challenges in defining and estimating the prevalence of mass shootings and defensive gun use
- how suicide, violence, and mass shootings were affected by Australia's implementation of the National Firearms Agreement.

Conclusions and Recommendations

Of more than 100 combinations of policies and outcomes, we found that surprisingly few were the subject of methodologically rigorous investigation. Notably, research into four of our outcomes was essentially unavailable, with three of these four outcomes—defensive gun use, hunting and recreation, and the gun industry—representing issues of particular concern to gun owners or gun industry stakeholders. Here, we summarize the key conclusions and recommendations that can be drawn from the policy-outcome

combinations with the strongest available evidence (conclusions 1 through 8). Thereafter, we draw conclusions and recommendations concerning how to improve evidence on the effects of gun policies (conclusions 9 through 13).

Conclusions and Recommendations Based on the Existing Evidence Base

Our first set of conclusions and recommendations describes the policy-outcome combinations with the strongest available evidence as identified through our review of the existing literature, as well as recommendations for policy based on this evidence.

Conclusion 1. Available evidence supports the conclusion that child-access prevention laws, or safe storage laws, reduce self-inflicted fatal or nonfatal firearm injuries among youth. There is moderate evidence that these laws reduce firearm suicides among youth and limited evidence that the laws reduce total (i.e., firearm and non-firearm) suicides among youth.

Conclusion 2. Available evidence supports the conclusion that child-access prevention laws, or safe storage laws, reduce unintentional firearm injuries or unintentional firearm deaths among children. In addition, there is limited evidence that these laws may reduce unintentional firearm injuries among adults.

Recommendation 1. States without child-access prevention laws should consider adopting them as a strategy to reduce firearm suicides and unintentional firearm injuries and deaths. We note, however, that scientific research cannot, at present, address whether these laws might increase or decrease crime or rates of legal defensive gun use.

Recommendation 2. When considering adopting or refining child-access prevention laws, states should consider making child access to firearms a felony; there is some evidence that felony laws may have the greatest effects on unintentional firearm deaths.

Conclusion 3. There is moderate evidence that background checks reduce firearm suicides and firearm homicides, as well as limited evidence that these policies can reduce overall suicide and violent crime rates.

Conclusion 4. There is moderate evidence that stand-your-ground laws may increase state homicide rates and limited evidence that the laws increase firearm homicides in particular.

Conclusion 5. There is moderate evidence that laws prohibiting the purchase or possession of guns by individuals with some forms of mental illness reduce violent crime, and there is limited evidence that such laws reduce homicides in particular. There is also limited evidence these laws may reduce total suicides and firearm suicides.

Recommendation 3. States that currently do not require a background check investigating all types of mental health histories that lead to federal prohibi-

tions on firearm purchase or possession should consider implementing robust mental illness checks, which appear to reduce rates of gun violence. The most robust procedures involve sharing data on all prohibited possessors with the National Instant Criminal Background Check System.

Conclusion 6. There is limited evidence that before implementation of a ban on the sale of assault weapons and high-capacity magazines, there is an increase in the sales and prices of the products that the ban will prohibit.

Conclusion 7. There is limited evidence that a minimum age of 21 for purchasing firearms may reduce firearm suicides among youth.

Conclusion 8. No studies meeting our inclusion criteria have examined required reporting of lost or stolen firearms, required reporting and recording of firearm sales, or gun-free zones.

Conclusions and Recommendations for Improving Gun Policy Research

Based on our review of the existing literature on the effects of firearm policy changes, we offer the following conclusions and recommendations for improving the evidence base on the effects of gun laws.

Conclusion 9. The modest growth in knowledge about the effects of gun policy over the past dozen years reflects, in part, the reluctance of the U.S. government to sponsor work in this area at levels comparable to its investment in other areas of public safety and health, such as transportation safety.

Recommendation 4. To improve understanding of the real effects of gun policies, Congress should consider whether to lift current restrictions in appropriations legislation, and the administration should invest in firearm research portfolios at the Centers for Disease Control and Prevention, the National Institutes of Health, and the National Institute of Justice at levels comparable to its current investment in other threats to public safety and health.

Recommendation 5. Given current limitations in the availability of federal support for gun policy research, private foundations should take further steps to help fill this funding gap by supporting efforts to improve and expand data collection and research on gun policies.

Conclusion 10. Research examining the effects of gun policies on officer-involved shootings, defensive gun use, hunting and recreation, and the gun industry is virtually nonexistent.

Recommendation 6. To improve understanding of outcomes of critical concern to many in gun policy debates, the U.S. government and private research sponsors should support research examining the effects of gun laws on a wider

set of outcomes, including crime, defensive gun use, hunting and sport shooting, officer-involved shootings, and the gun industry.

Conclusion 11. The lack of data on gun ownership and availability and on guns in legal and illegal markets severely limits the quality of existing research.

Recommendation 7. To make important advances in understanding the effects of gun laws, the Centers for Disease Control and Prevention or another federal agency should resume collecting voluntarily provided survey data on gun ownership and use.

Recommendation 8. To foster a more robust research program on gun policy, Congress should consider whether to eliminate the restrictions it has imposed on the use of gun trace data for research purposes.

Conclusion 12. Crime and victimization monitoring systems are incomplete and not yet fulfilling their promise of supporting high-quality gun policy research in the areas we investigated.

Recommendation 9. To improve the quality of evidence used to evaluate gun policies, the National Violent Death Reporting System should be expanded to include all states with rigorous quality control standards.

Recommendation 10. The Bureau of Justice Statistics should examine the cost and feasibility of expanding its existing programs to generate state-level crime data.

Recommendation 11. The Bureau of Justice Statistics should continue to pursue its efforts to generate state-level victimization estimates. The current goal of generating such estimates for 22 states is a reasonable compromise between cost and the public's need for more-detailed information. However, the bureau should continue to expand its development of model-based victimization rates for all states and for a wider set of victimization experiences (including, for instance, crimes involving firearm use by an assailant or victim).

Conclusion 13. The methodological quality of research on firearms can be significantly improved.

Recommendation 12. As part of the Gun Policy in America initiative, we have published a database containing a subset of state gun laws from 1979 to 2016 (Cherney, Morral, and Schell, 2018). We ask that others with expertise on

state gun laws help us improve the database by notifying us of its errors, proposing more-useful categorizations of laws, or submitting information on laws not yet incorporated into the database. With such help, we hope to make the database a resource beneficial to all analysts.

Recommendation 13. Researchers, reviewers, academics, and science reporters should expect new analyses of the effects of gun policies to improve on earlier studies by persuasively addressing the methodological limitations of earlier studies, including problems with statistical power, model overfitting, covariate selection, poorly calibrated standard errors, multiple testing, undisclosed state variation in law implementation, unjustified assumptions about the time course of each policy's effects, the use of spline and hybrid effect codings that do not reveal coherent causal effect estimates, and inadequate attention to threats of reciprocal causation and simultaneity bias.

In conclusion, with a few exceptions, there is a surprisingly limited base of rigorous scientific evidence concerning the effects of many commonly discussed gun policies. This does not mean that these policies are ineffective; they might well be quite effective. Instead, it reflects shortcomings in the contributions that scientific study can currently offer to policy debates in these areas. It also reflects, in part, the policies we chose to investigate, all of which have been implemented in some U.S. states and, therefore, have proven to be politically and legally feasible, at least in some states. This decision meant that none of the policies we examined would dramatically increase or decrease the stock of guns or gun ownership rates in ways that would produce more readily detectable effects on public safety, health, and industry outcomes. The United States has a large stock of privately owned guns in circulation—estimated in 2014 to be somewhere between 200 million and 300 million firearms (Cook and Goss, 2014). Laws designed to change who may buy new weapons, what weapons they may buy, or how gun sales occur will predictably have only a small effect on, for example, homicides or participation in sport shooting, which are affected much more by the existing stock of firearms. Although small effects are especially difficult to identify with the statistical methods common in this field, they may be important. Even a 1-percent reduction in homicides corresponds to more than 1,500 fewer deaths over a decade.

By highlighting where scientific evidence is accumulating, we hope to build consensus around a shared set of facts that have been established through a transparent, nonpartisan, and impartial review process. In so doing, we also mean to highlight areas where more and better information could make important contributions to establishing fair and effective gun policies.

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NRC—See National Research Council.

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Abbreviations

aOR	adjusted odds ratio
ARIMA	autoregressive integrated moving average
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BJS	Bureau of Justice Statistics
BRFSS	Behavioral Risk Factor Surveillance Survey
CAP	child-access prevention
CC	concealed carry
CDC	Centers for Disease Control and Prevention
CI	confidence interval
DGU	defensive gun use
FBI	Federal Bureau of Investigation
FS/S	proportion of suicides that are firearm suicides
GSS	General Social Survey
IPH	intimate partner homicide
IRR	incidence rate ratio
NCVS	National Crime Victimization Survey
NFA	(Australian) National Firearms Agreement
NIBRS	National Incident-Based Reporting System
NICS	National Instant Criminal Background Check System

NIS	Nationwide Inpatient Sample
NRC	National Research Council
NSDS	National Self Defense Survey
NSPOF	National Survey of Private Ownership of Firearms
NSSF	National Shooting Sports Foundation
NVDRS	National Violent Death Reporting System
OR	odds ratio
VA	U.S. Department of Veterans Affairs

PART A

Introduction and Methods

Introduction

Americans are deeply divided on gun policy (Parker et al., 2017). Many Americans cherish the traditions of hunting, sport shooting, and collecting guns and value the security and protection that guns can provide. Many regions rely on hunting as an important driver of the tourism economy (Nelson, 2001; BBC Research & Consulting, 2008; Hodur, Leistriz, and Wolfe, 2008), and the wider gun industry employs hundreds of thousands of Americans, including instructors; shooting range operators; hunting equipment suppliers; and manufacturers, distributors, and retailers of firearms and ammunition. At the same time, many Americans have suffered grievous injuries and lost friends and family members in incidents involving firearms.¹ More than 36,000 Americans die annually from deliberate and unintentional gun injuries, and two-thirds of these deaths are suicides (Centers for Disease Control and Prevention [CDC], 2017a). Another 90,000 Americans per year receive care in a hospital for a nonfatal gun injury (CDC, 2017c).

Few are satisfied with the levels of mortality and injury associated with firearms, but there is passionate disagreement about how policies could be shaped to create a better future. There is a quite limited base of science on which to build sound and effective gun policies. Instead, when the public or members of Congress consider proposals affecting gun policy, they encounter conflicting opinions and inconsistent evidence about the likely effects of new laws. Views on what is factual concerning gun policies, or what the facts imply for decisionmaking, frequently divide along political and partisan lines (Kahan, 2017).

Entrenched disagreements on gun policy are not surprising, given the number and variety of contested and contradictory studies, selective misuse of facts by some on all sides of the debate, and today's hyper-partisan political environment. Moving past such roadblocks will be impossible unless decisionmakers can draw on a common set of facts based on transparent, nonpartisan, and impartial research and analysis. Even when individuals disagree about the objectives of gun policies, empirical evidence can help determine the most likely benefits and harms associated with such policies.

¹ Although not all guns are firearms, in this report, we follow conventional use in U.S. policy discussions and treat the terms *gun* and *firearm* as interchangeable.

Gun Policy in America

To help fill the gap in impartial research and analysis, the RAND Corporation launched the Gun Policy in America initiative, which is premised on the idea that the real effects of policies can be objectively determined and that establishing these facts will help lead to sound policies. Our goal is to create a resource where policymakers and the general public can access unbiased information that informs and enables the development of fair and effective firearm policies.

This report synthesizes the available scientific data on the effects of various firearm policies on firearm deaths, violent crime, the gun industry, participation in hunting and sport shooting, and other outcomes. It builds and expands on earlier comprehensive reviews of scientific evidence on gun policy conducted more than a decade ago by the National Research Council (2004) and the Community Preventive Services Task Force (see Hahn et al., 2005). This report is one of several research products stemming from RAND's Gun Policy in America initiative (see www.rand.org/gunpolicy).

In the Gun Policy in America initiative, we have made no attempt to evaluate the merits of different values and principles that sometimes drive policy disagreements. We also have not evaluated the legality of any candidate laws or how they may infringe on Second Amendment rights. Instead, our focus is strictly on the empirical effects of policies on the eight outcomes specified in this report. However, all of the policies we investigate have been implemented in multiple states, and many have withstood Supreme Court review; therefore, we have selected policies that have previously been found not to violate the Constitution.

Laws are not the only interventions that have been used to shape how guns are used in the United States, and research is available on the effectiveness of other approaches, such as public information campaigns, safety and training programs, policing interventions, and school and community programs. In this report, however, our focus is on what scientific studies tell us about the probable effects of certain laws.

Research Focus

The primary focus of this report is our systematic review of 13 broad classes of gun policies that have been implemented in some states and the effects of those policies on eight outcomes. We selected the 13 classes from a larger set of more than 100 gun policies that have been advocated for; proposed; or passed into law by the federal government, states, or municipalities. Specifically, we restricted our attention to policies or laws that have already been implemented in some states so that researchers could examine the effects of each. In addition, we sought policies designed to have a direct effect on our selected outcomes. These policies, the presumed mechanisms whereby they produce intended (and possibly unintended) effects on our selected outcomes,

and the various ways that U.S. states have implemented them are discussed in detail in Chapters Three through Fifteen of this report. Although, in many cases, these policies have been implemented by local municipalities rather than states, we have not sought to review implementation at the local level.

The 13 classes of gun policies considered in this research are as follows:

1. background checks
2. bans on the sale of assault weapons and high-capacity magazines
3. stand-your-ground laws
4. prohibitions associated with mental illness
5. lost or stolen firearm reporting requirements
6. licensing and permitting requirements
7. firearm sales reporting and recording requirements
8. child-access prevention laws
9. surrender of firearms by prohibited possessors
10. minimum age requirements
11. concealed-carry laws
12. waiting periods
13. gun-free zones.

When deciding on the outcomes to examine in our research, we first included those related to public health and safety—suicide, violent crime, unintentional injuries and deaths, mass shootings, and officer-involved shootings. These are the outcomes most commonly examined in the research literature we were familiar with. However, we recognized that such outcomes omit many of the benefits of gun ownership that are attractive to gun owners and that may also be affected by laws designed to reduce the gun-related harms to public health and safety. Therefore, we also systematically searched the research literature for studies examining how gun laws affect defensive gun use, hunting and recreation, and the gun industry. Together, these eight outcomes cover many of the areas of concern frequently discussed in debates on gun policy. Here, we provide a short description of each outcome.

Suicide

Official statistics on suicide in the United States are compiled by the CDC. Recent data, from 2015, indicate that 44,193 suicides occurred that year, for a rate of 13.75 per 100,000 people. Of these, 22,018 (49.8 percent) were firearm suicides (CDC, 2017a). Researchers have often examined the effects of laws on total suicides (i.e., suicide deaths by any means, including those involving a firearm), firearm suicides, nonfirearm suicides, and suicide attempts. From a societal perspective, the most important of these outcomes is total suicide; that is, the goal is to reduce the total number of suicide deaths, regardless of how one goes about attempting to die. In many cases, however, we would expect the effects of gun laws to be more easily observed in rates of firearm

suicides, not total suicides. The consensus among public health experts is that reducing firearm suicides in contexts where more-lethal means of attempting suicide are unavailable will result in reductions in the total suicide rate (see, for example, Office of the Surgeon General and National Alliance for Suicide Prevention, 2012; World Health Organization, 2014; for review, see Azrael and Miller, 2016). Nevertheless, it is also clear that some people prevented from attempting suicide with a firearm will substitute another lethal means and successfully end their lives. The rate at which this substitution occurs is not known. Thus, for laws that increase or decrease firearm suicides, the effects on total suicides are likely smaller and harder to detect. For this reason, we examine the effects of policies on both total suicides and firearm suicides.

Suicide rates in the United States have increased 25 percent since 1999 (Curtin, Warner, and Hedegaard, 2016).² There is some degree of misclassification of suicide deaths, with some suicides likely classified as unintentional deaths (Kapusta et al., 2011) or overdose deaths (Bohnert et al., 2013). The CDC provides limited nationwide data on suicides for all states. More-expansive data are contained in the National Violent Death Reporting System, also maintained by the CDC, but because that system currently releases information on just a subset of U.S. states, we cannot use this data set to characterize suicides nationally.

Data on suicide attempts generally derive from two sources: hospital admission records and self-reports. In hospital data, suicides are generally categorized as “self-harm” with unspecified intent; although there is a field to code cause of injury, this field is completed inconsistently across states (Coben et al., 2001). In 2014, there were 469,096 self-harm, nonfatal hospital admissions to emergency departments in the United States, 3,320 (less than 1 percent) of which were caused by a firearm (CDC, 2017c). This may be because between 83 and 91 percent of those who attempt suicide with a firearm die, which is a higher rate than some other methods of suicide, such as drowning (66–84 percent) or hanging (61–83 percent) (Azrael and Miller, 2016).

Emergency room data contain only self-harm incidents that resulted in an emergency room visit; as a complementary data source, national data based on self-reports reveal that, in 2015, 1.4 million adults aged 18 or older (0.6 percent) attempted suicide in the past year (Piscopo et al., 2016).

Violent Crime

The Federal Bureau of Investigation (FBI) defines *violent crime* as including forcible rape, robbery, aggravated assault, and murder or nonnegligent manslaughter. The last category excludes deaths caused by suicide, negligence, or accident, as well as justifiable homicides (such as the killing of a felon by a peace officer in the line of duty) (FBI, 2016d).

² The 25-percent increase in suicides refers to the age-adjusted rate, although the crude rate and the absolute number of suicides have also increased.

One source of data on violent crime is the FBI's Uniform Crime Reporting program, which relies on voluntary reporting of crimes by city, university/college, county, state, tribal, and federal law enforcement agencies. Data from the program indicate that there were approximately 1.2 million violent crimes in the United States in 2015, including 764,449 aggravated assaults, 327,374 robberies, 124,047 rapes, and 15,696 instances of murder or nonnegligent manslaughter (FBI, 2016d). The overall violent crime rate was 372.6 per 100,000 people, with the highest rate for aggravated assault (237.8 per 100,000), followed by robbery (101.9 per 100,000), rape (38.6 per 100,000) and murder or nonnegligent manslaughter (4.9 per 100,000). Nationwide, firearms were used in 71.5 percent of all instances of murder or nonnegligent manslaughter, 40.8 percent of robberies, and 24.2 percent of aggravated assaults in 2015 (FBI, 2016d).

Death certificate data and emergency department admission data provide additional insights into the prevalence and consequences of violent crime. Based on mortality data, the CDC estimated that there were 17,793 homicides in the United States in 2015, for a rate of 5.54 per 100,000 people; of these, 12,979 (73 percent) were caused by a firearm (CDC, 2017a). Emergency department data show that in 2014 there were more than 1.5 million admissions to hospital emergency departments for assault; of these, 60,470 (3.8 percent) were firearm-related (CDC, 2017c).

Unintentional Injuries and Deaths

Like suicide, official statistics on unintentional injuries and deaths in the United States are compiled by the CDC. The most recent data, from 2015, indicate that 146,571 fatal unintentional injuries occurred that year, for a rate of 46.50 per 100,000 people (CDC, 2017a). Of these, 489 (less than 1 percent) were caused by a firearm. Some of these fatal unintentional injuries were likely misclassified and were actually suicides or homicides. Nevertheless, the true number of unintentional firearm deaths may be substantially greater than reported in the CDC's vital data. For example, inconsistent classification of child firearm deaths by local coroners may result in 35–45 percent of all unintentional firearm deaths being classified instead as suicides or homicides (Everytown for Gun Safety Support Fund, 2014; Hemenway and Solnick, 2015a). We also include research examining nonfatal unintentional injuries. There were close to 29 million unintentional injury discharges from emergency rooms in 2014, of which 15,928 (less than 1 percent) were caused by a firearm. These reports omit injuries that did not result in an emergency room visit.

Mass Shootings

Although only a small fraction of annual firearm deaths result from a mass shooting, these events attract enormous public, media, and social media attention in the country, and they frequently prompt discussions about legislative initiatives for how better to prevent gun violence. The U.S. government has never defined *mass shooting*, and there is no single universally accepted definition of the term. The FBI's definition of a *mass*

murderer requires at least four casualties, excluding the offender or offenders, in a single incident. Public law (the Investigative Assistance for Violent Crime Act of 2012; Pub. L. 112-265) defines a *mass killing* as a single incident in which three or more people were killed. Alternative definitions include two or more injured victims or four or more people injured or killed, including the shooter. Depending on which data source is referenced, and its definitions, there were seven, 65, 332, or 371 mass shootings in the United States in 2015 (see a discussion of these estimates in Chapter Twenty-Two).

Officer-Involved Shootings

Police shootings of civilians have triggered fierce debates locally and nationally about when use of lethal force is appropriate and whether it is being used disproportionately against minorities. Although the FBI has tried to collect information on police shootings from around 17,000 local law enforcement agencies, recent efforts by news organizations (such as the *Washington Post* and the *Guardian*) have demonstrated that the FBI's data collection misses many such cases. Whereas the FBI's count typically comes to around 400 killings by police per year, the *Washington Post* documented news stories on 963 individuals shot and killed by law enforcement in 2016, a number that could omit any individuals shot and killed by police about whom no news story was written. The FBI has announced plans to begin a new data collection effort that will reportedly track all incidents in which law enforcement seriously injure or kill citizens (Kindy, 2015).

Because reliable data on police shootings are often available only for individual police departments, prior studies using such data typically present information at the city level. For example, using police reports and other administrative data, Klinger et al. (2016) looked at 230 use-of-force shootings by police officers involving 373 suspects in St. Louis between 2003 and 2012. Similarly, medical records of shooting victims contain information on whether the shooter was a member of the law enforcement community. Using data from New York City's medical examiner, Gill and Pasquale-Styles (2009) looked at law enforcement shootings resulting in a fatality there between 2003 and 2006. The data included 42 cases for the four-year period. Like suicide attempts and unintentional injuries and deaths, this data source misses incidents in which the officer did not injure the suspect or the suspect did not seek medical attention.

Defensive Gun Use

Defensive gun use has typically been measured in the empirical literature using self-reports on surveys of gun owners, although some studies have used firearm deaths coded as justifiable homicides to investigate subsets of defensive gun use. Although there are some variations, *defensive gun use* has often been defined as incidents that involve (1) protection against humans (i.e., not animals); (2) gun use by civilians (not official use by military, police, or security personnel); (3) contact between persons (not, for instance, carrying a firearm to investigate a suspicious sound when no intruder is encountered); and (4) use of a gun, at least as a visual or verbal threat (not

incidents in which a gun may have simply been available for use). Definitions this broad would include defensive use of a gun by criminals during the commission of a crime, as well as use of a gun for personal defense by those who are prohibited by law from being in possession of a weapon (itself a crime). More-restrictive definitions specify that the defensive gun use be performed by the victim of certain crimes or by someone trying to protect the victim. These definitions may miss instances in which crimes were deterred or averted when a firearm was brandished.

Differences in the definitions of defensive gun use, and in the manner of collecting information about it, lead to wide differences in estimates of the annual incidence of defensive gun use. Low estimates (based on the experiences of crime victims) are a little more than 100,000 such incidents per year, and high estimates are 4.7 million per year (Cook and Ludwig, 1996, 1997, 1998; McDowall, Loftin, and Wiersema, 1998). This literature and the challenges of defining and measuring defensive gun use are reviewed in Chapter Twenty-Three.

Hunting and Recreation

Federal statistics on hunters largely come from the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation Survey, which is conducted every five years as a coordinated effort by the U.S. Fish and Wildlife Service and the U.S. Census Bureau. According to the most recent data, from 2011, approximately 13 million people used firearms for hunting, more than 50 percent of all hunters participated in target shooting, and 22 percent of hunters visited shooting ranges (U.S. Fish and Wildlife Service, U.S. Department of the Interior, and U.S. Department of Commerce, 2012). Estimates from the National Shooting Sports Foundation (NSSF) suggest that approximately 20 million individuals participate in target shooting annually (Southwick Associates, 2013). Data from the General Social Survey suggest that hunting has decreased significantly since 1977, when 31.6 percent of adults lived in households where they, their spouse, or both hunted. In 2014, households with a hunter was down to 15.4 percent (Smith and Son, 2015).

Gun Industry

Estimates produced by the NSSF suggest that there are 141,000 jobs in the United States involving the manufacture, distribution, or retailing of ammunition, firearms, and hunting supplies and potentially another 150,000 jobs in supplier and ancillary industries connected with the firearm market (NSSF, 2017). According to the U.S. Census Bureau, in 2014, more than 90,000 people were employed in U.S. firms coded as being involved in just the manufacture of firearms, ammunition, or ordnance (North American Industry Classification System [NAICS] codes 332992, 332993, and 332994; U.S. Census Bureau, 2016). The manufacturing industry alone is estimated to generate \$16 billion in revenue annually (IBISWorld, 2016). In 2011, hunters spent \$3 billion on firearms and \$1.2 billion on ammunition (U.S. Fish and Wildlife Ser-

vice, U.S. Department of the Interior, and U.S. Department of Commerce, 2012). More than 9 million firearms were manufactured in the United States in 2014, nearly triple the number manufactured one decade prior. An additional 3.6 million firearms were imported in 2014, while just more than 420,900 firearms were exported from the United States (Bureau of Alcohol, Tobacco, Firearms and Explosives, 2016b).

As of the end of fiscal year 2015, 139,840 federal firearms licensees had active licenses to sell firearms in the United States. Just more than 46 percent of these licenses were held by dealers or pawnbrokers, 43 percent were held by collectors, about 9 percent were held by manufacturers of ammunition or firearms, and less than 1 percent were held by importers (Bureau of Alcohol, Tobacco, Firearms and Explosives, 2016b).

Organization of This Report

The report is organized into five parts. Part A introduces the project scope and objectives in Chapter One and the methods used to conduct systematic reviews and syntheses of the literature in Chapter Two. In Part B, we present a research synthesis on each of the 13 state policies selected for review (Chapters Three through Fifteen). Each of these chapters defines the class of policies under review; presents and rates the available evidence; and describes what conclusions, if any, can be drawn about how each policy affects each outcome. Part B includes all of the research syntheses we selected a priori; however, in the course of developing these, several related themes frequently came up in the literature and in policy debates, and we believed that these themes warranted further discussion or review. Therefore, to augment and provide context for Part B's syntheses, Part C presents supplementary essays on what rigorous studies reveal about

- the possible mechanisms by which laws may affect outcomes (Chapters Sixteen and Seventeen on the effects of firearm prevalence on suicide and violent crime)
- how taxes, access to health care, and media campaigns might affect gun violence (Chapters Eighteen through Twenty)
- the effectiveness of laws used to target domestic violence (Chapter Twenty-One)
- methodological challenges in defining and estimating the prevalence of mass shootings and defensive gun use (Chapters Twenty-Two and Twenty-Three)
- how suicide, violent crime, and mass shootings were affected by Australia's implementation of the National Firearms Agreement (Chapter Twenty-Four).

In Part D, we draw general conclusions from the main policy analyses and offer recommendations for how to improve the state of evidence for the effects of state laws. Finally, in an appendix section, Appendix A describes common methodological shortcomings found in the existing scientific literature examining gun policy, and Appendix B describes the source data used to display study effect sizes and rate study methodologies.

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Methods

Our review of evidence concerning the effects of 13 policies on eight outcomes used Royal Society of Medicine (Khan et al., 2003) guidelines for conducting systematic reviews of a scientific literature. Those guidelines consist of a five-step protocol: framing questions for review, identifying relevant literature, assessing the quality of the literature, summarizing the evidence, and interpreting the findings. Our objective was to identify and assess the quality of evidence provided in research that estimated the causal effect of one of the selected gun policies (or the prevalence of firearm ownership) on any of our eight key outcomes.

Before undertaking the review, we knew that we would need to draw on primarily observational studies across a range of disciplines, including economics, psychology, public health, sociology, and criminology. The Royal Society of Medicine approach is suitable in this context because of its flexibility and applicability to social and policy interventions. Other approaches for systematic reviews (e.g., Institute of Medicine, 2011; Higgins and Green, 2011) are designed primarily for reviews specific to health care. We consulted guidelines from the Campbell Collaboration to ensure that our review criteria were based on relevant factors prescribed for reviews of social and policy interventions (e.g., determination of independent findings, statistical procedures; Campbell Collaboration, 2001). However, to more efficiently examine the range of outcomes and interventions we set out to review, and because of the wide range of methods researchers have used to examine these effects, we do not follow the Campbell Collaboration guidelines exactly, as detailed next.

Selecting Policies

RAND assembled a list of close to 100 distinct gun policies advocated by diverse organizations, including the White House and other U.S. government organizations, advocacy organizations focused on gun policy (such as the National Rifle Association and the Brady Campaign to Prevent Gun Violence), academic organizations focused on gun policy or gun policy research, and professional organizations that had made public recommendations related to gun policy (e.g., the International Association of Chiefs of

Police and the American Bar Association). Our objective was to evaluate state firearm laws because there is considerable variation that could be examined to understand the causal effects of such laws. Moreover, because the laws are applied statewide, observed effects may generalize to new jurisdictions better than the effects of local gun policies or programs that may be more tailored to the unique circumstances giving rise to them. We therefore eliminated policies that chiefly concerned local programs or interventions that are not mandated by state laws (e.g., gun buy-back programs or policing strategies that have been recommended on the basis of favorable research findings). For the same reason, we eliminated policies that either have never been passed into state laws or that have not yet had their intended effects (e.g., laws requiring new handguns to incorporate smart-gun technologies). We excluded policies that we concluded were likely to have only an indirect effect on any of the eight outcomes we were examining (e.g., policies concerning mental health coverage in group health insurance plans; the public availability of Bureau of Alcohol, Tobacco, Firearms and Explosives data on gun traces). We clustered some policy proposals that we regarded as sufficiently similar in concept to be included in the same general class of policies (e.g., policies of repealing the Safe Schools Act and the conceptually similar policy to prohibit gun-free zones).

This process resulted in 13 classes of firearm policies that we subsequently reviewed with multiple representatives of two advocacy organizations (one strongly aligned with enhanced gun regulation, and one strongly aligned with reduced gun regulation). The purpose of these consultations was to establish whether we had identified policies that are important, coherent, and relevant to current gun policy debates. This consultation resulted in substituting two of our original 13 classes of laws. As noted in Chapter One, the final set of policies, defined and explained in Chapters Three through Fifteen, is as follows:

1. background checks
2. bans on the sale of assault weapons and high-capacity magazines
3. stand-your-ground laws
4. prohibitions associated with mental illness
5. lost or stolen firearm reporting requirements
6. licensing and permitting requirements
7. firearm sales reporting and recording requirements
8. child-access prevention laws
9. surrender of firearms by prohibited possessors
10. minimum age requirements
11. concealed-carry laws
12. waiting periods
13. gun-free zones.

These classes of gun policies do not comprehensively account for all—or necessarily the most effective—laws or programs that have been implemented in the United States with the aim of reducing gun violence. For example, our set of policies does not include mandatory minimum sentencing guidelines for crimes with firearms. Further, by restricting our evaluation to state policies, we exclude local interventions (e.g., problem-oriented policing, focused deterrence strategies) that have been found to reduce overall crime in prior meta-analyses (Braga, Papachristos, and Hureau, 2014; Braga and Weisburd, 2012). However, we recognize the potential importance of these other interventions and believe a similar systematic review of their effects on outcomes relevant to the firearm policy debate merits future research.¹

While Part B of this report evaluates the existing literature on the effects of these 13 classes of firearm policies, Part C includes essays describing scientific research on possible mechanisms by which laws may affect firearm-related outcomes, such as by affecting the prevalence of gun ownership (see Chapters Sixteen and Seventeen).

Selecting and Reviewing Studies

Our selection and review of the identified literature involved the following steps:

1. Article retrieval: Across all outcomes, we identified a common set of search terms to capture articles relevant to firearm prevalence or firearm policies. We then identified search terms unique for each outcome.
2. Title and abstract review: We conducted separate title and abstract reviews for each outcome using DistillerSR to code criteria used to determine whether the article appeared to meet minimum inclusion criteria (described later).
3. Full-text review: All studies retained after abstract review received full-text review and coding using DistillerSR. The purpose of this review was to identify studies that examined the effects of one or more of our policies on any of our outcomes and that employed methods designed to clarify the causal effects of the policy.
4. Synthesis of evidence: Once we identified the subset of quasi-experimental studies for each outcome and policy,² members of the multidisciplinary methodology team met to discuss each study's strengths and limitations. Then, the group discussed each set of studies available for a policy-outcome pair to make a determination about the level of evidence supporting the effect of the policy on each outcome.

¹ For a recent review of the evidence on criminal justice interventions to reduce criminal access to firearms, see Braga, 2017.

² We identified no experimental studies.

Article Retrieval

In spring 2016, we queried all databases listed in Table 2.1 for English-language studies. Because the National Research Council (NRC) (2004) and the Community Preventive Services Task Force (Hahn et al., 2005) published comprehensive and high-quality research reviews in 2004 and 2005, we limited our search primarily to research published during or after 2003 (assuming a lag from the time the NRC review was complete and the final report was published). We supplemented this search with a review of all studies reviewed by NRC (2004) and Hahn et al. (2005). Finally, to ensure inclusion of the most-seminal studies, including those that may have been missed by NRC or Hahn et al., we conducted additional searches in the Web of Science and Scopus

Table 2.1
Databases Searched for Studies Examining the Effects of Firearm Policies

Database	Details
PubMed	National Library of Medicine's database of medical literature. <i>Not used for gun industry or hunting searches.</i>
PsycINFO	Journal articles, books, reports, and dissertations on psychology and related fields. <i>Not used for gun industry or hunting searches.</i>
Index to Legal Periodicals	Includes indexing of scholarly articles, symposia, jurisdictional surveys, court decisions, books, and book reviews.
Social Science Abstracts	Journal articles and book reviews on anthropology, crime, economics, law, political science, psychology, public administration, and sociology.
Web of Science	Includes the Book Citation Index, Science Citation, Social Science Citation, Arts & Humanities Citation Indexes, and Conference Proceedings Citation Indexes for Science, Social Science, and Humanities, which include all cited references from indexed articles.
Criminal Justice Abstracts	Abstracts related to criminal justice and criminology; includes current books, book chapters, journal articles, government reports, and dissertations published worldwide.
National Criminal Justice Reference Service	Contains summaries of the more than 185,000 criminal justice publications housed in the National Criminal Justice Reference Service Library collection.
Sociological Abstracts	Citations and abstracts of sociological literature, including journal articles, books, book chapters, dissertations, and conference papers.
EconLit	Journal articles, books, and working papers on economics.
Business Source Complete	Business and economics journal articles, country profiles, and industry reports.
WorldCat	Catalog of books, web resources, and other material worldwide.
Scopus	An abstract and citation database with links to full-text content, covering peer-reviewed research and web sources in scientific, technical, medical, and social science fields, as well as arts and humanities.
LawReviews (LexisNexis)	A database of legal reviews.

databases for any study that had been cited in the literature 70 or more times, regardless of its publication date. Finally, after completing our search, several relevant studies were published in summer and fall 2016. When we became aware of these, we included them in our review.

We conducted separate searches for each of the eight outcomes. The search strings that were applied universally across all outcomes included the following:

- gun or guns or firearm* or handgun* or shotgun* or rifle* or longgun* or machinegun* or pistol* OR automatic weapon OR assault weapon OR semi-automatic weapon OR automatic weapons OR assault weapons OR semi-automatic weapons
AND
- ownership OR own OR owns OR availab* OR access* OR possess* OR purchas* OR restrict* OR regulat* OR distribut* OR “weapon carrying” OR “weapon-carrying” OR legislation OR legislating OR legislative OR law OR laws OR legal* OR policy OR policies OR “ban” OR “bans” OR “banned.”

In addition, we searched for the following outcome-specific search terms:

- suicide: (suicide* OR self-harm* OR self-injur*);
– the following were the only terms used for “firearms” for this search: gun or guns or firearm* or handgun* or shotgun* or rifle* or longgun* or machine-gun* or pistol*
- violent crime: homicide* OR murder* OR manslaughter OR “domestic violence” OR “spousal abuse” OR “elder abuse” OR “child abuse” OR “family violence” OR “child maltreatment” OR “spousal maltreatment” OR “elder maltreatment” OR “intimate relationship violence” OR “intimate partner violence” OR “dating violence” OR (violen* AND [crime* OR criminal*]) OR rape OR rapes OR rapist* OR “personal crime” OR “personal crimes” OR robbery OR assault* OR stalk* OR terroris*
- unintentional injuries and deaths: accident* OR unintentional
- mass shootings: “mass shooting” OR “mass shootings”
- officer-involved shootings: “law enforcement” OR police* OR policing
- defensive gun use: self-defense OR “self defense” OR “personal defense” OR defens* OR self-protect* OR self protect* OR DGU OR SDGU
- hunting and recreation: hunt OR hunting OR “sport shooting” OR “shooting sports” OR recreation* (The terms “ammunition” and “bullets” were also included in the set containing the terms for “firearms.”)
- gun industry: industr* OR manufactur* OR produc* OR distribut* OR supply OR trade OR price* OR export* OR revenue* OR sales OR employ* OR profit* OR cost OR costs OR costing OR “gun show” OR tax OR taxes OR taxing OR taxation OR payroll OR “federal firearms license.”

We used a three-stage study review process and standardized review criteria (described next) to identify all studies with evidence for policy effects meeting minimum evidence standards. When possible, we calculated and graphed standardized effect sizes for reported effects included in our research syntheses (Chapters Three through Fifteen).

In addition to the planned research syntheses analyzing the effects of the 13 policies outlined in Chapter One, we summarized evidence on other topics when members of the research team believed that a topic provided important supplemental evidence or explanatory information (see Chapters Sixteen through Twenty-Four). For instance, we identified a substantial literature examining the effects of firearm prevalence on rates of suicide (Chapter Sixteen) and homicide (Chapter Seventeen). This literature did not evaluate the effects of a specific policy but nevertheless examined a key mechanism by which policies might affect the outcomes. For these discussions, we occasionally augmented the search strategy described earlier, as detailed in the individual chapters.

Title and Abstract Review

At this stage, we screened studies to determine whether they met our inclusion criteria. In all cases, a study was included if it met the following: *any empirical study that demonstrated a relationship between a firearm-related public policy and the relevant outcome* OR *any empirical study that demonstrated a relationship between firearm ownership and access and a relevant outcome (including proxy measures for gun ownership).*

Studies were excluded if they were case studies, systematic reviews, dissertations, commentaries or conceptual discussions, descriptive studies, studies in which key variables were assumed rather than measured (e.g., a region was assumed to have higher rates of gun ownership), studies that did not concern one of the eight outcomes we selected, studies that did not concern one of the 13 policies we selected (or gun ownership), or studies that duplicated the analyses and results of other included studies.

Full-Text Review

Next, we used full-text review to ensure that the studies included thus far did not meet any of the exclusion criteria and to exclude studies with no credible claim to having identified a causal effect of policies. In addition to coding all studies on the policy and outcome they examined and on their research design, we coded the country or countries in which the policy effects were evaluated. Because of the United States' unique legal, policy, and gun ownership context, we excluded studies examining the effects of policies on foreign populations. However, in the special-topic discussions (Chapters Sixteen through Twenty-Four), we include analysis of some studies in foreign countries (such as an analysis of the Australian experience with gun regulation) and various foreign studies of the effects of gun prevalence on suicide.

Our research syntheses (Chapters Three through Fifteen) focus exclusively on studies that used research methods designed to identify causal effects among observed

associations between policies and outcomes. Specifically, we required, at a minimum, that studies include time-series data and use such data to establish that policies preceded their apparent effects (a requirement for a causal effect) and that studies include a control group or comparison group (to demonstrate that the purported causal effect was not found among those who were not exposed to the policy). Experimental designs provide the gold standard for establishing causal effects, but we identified none in our literature reviews. On a case-by-case basis, we examined studies that made a credible claim to causal inference on the basis of data that did not include a time series. In practice, these discussions determined that some studies using instrumental-variable approaches to isolating causal effects satisfied our minimum standards for inclusion.

We refer to the studies that met our inclusion criteria as *quasi-experimental*. We distinguish these from simple *cross-sectional* studies that may show an association between states with a given policy and some outcome but that have no strategy for ensuring that it is the policy that caused the observed differences across states. For instance, there could be some other factor associated with both state policy differences and outcome differences or there could be reverse causality (that is, differences in the outcome across states could have caused states to adopt different policies). In excluding cross-sectional studies from this review, we have adopted a more stringent standard of evidence for causal effects than has often been used in systematic reviews of gun policy.

Although excluding cross-sectional research eliminates a large number of studies on gun policy, longitudinal data are much better for estimating the causal effect of a policy. Specifically, empirical demonstration of causation generally requires three types of evidence (Mill, 1843):

- The cause and effect regularly co-occur (i.e., association).
- The cause occurs before the effect (i.e., precedence).
- Alternative explanations for the association have been ruled out (i.e., elimination of confounds).

Cross-sectional research is largely limited to demonstrating association. Longitudinal studies that include people or regions that are exposed to a policy and those that are not exposed have the potential to provide all three types of evidence. Such a design can demonstrate that the policy preceded the change in the outcome of interest, and it can rule out a wider range of potential confounds, including historical time trends and the time-invariant characteristics of the jurisdictions in which the policies were implemented (Wooldridge, 2002).

We also excluded studies that offered no insight into the causal effects of individual policies. For instance, we excluded studies that evaluated the effects of an aggregate state score describing the totality of each state's gun policies or studies of the aggregate effects of legislation that included multiple gun policies. In rare cases, we excluded from consideration studies that provided insufficient information about their methodologies to evaluate whether they used a credible approach to isolating a causal

effect of policies. In one case (Kalesan et al., 2016), we excluded a study that examined the effects of many of our selected policies on firearm deaths. We did so because of significant methodological problems that we concluded made the findings uninformative, as documented in Schell and Morral (2016). In cases in which authors updated prior published analyses, we generally chose the updated study. However, in one case (Cook and Ludwig, 2003), we present the results from the earlier analysis (Ludwig and Cook, 2000), which was inclusive of more years of data, provided more detail, and included multiple model specifications (although findings were qualitatively the same). The identified studies included individual-level studies (i.e., studies comparing outcomes among people over time) and ecological studies (i.e., studies comparing outcomes in regions over time).

Finally, we excluded studies published prior to 2003 on one policy-outcome pair—concealed-carry laws and violent crime. Our discussion of this topic (see Chapter Thirteen) reviews much of the earlier literature in this area, but we do not count the earlier work in our evidence ratings for several reasons. For starters, this area of gun policy has received the greatest research attention since 2003, and considerable advances have been made in understanding the effects of these laws. In addition, researchers have uncovered serious problems with data sets that were frequently used before 2003. Indeed, Hahn et al. (2005) dismissed all the earlier work that had been done with county-level data (which meant most of the work) on grounds that it was too flawed to rely on for evidence. We do not take that position but do agree with NRC (2004) and Hahn et al. (2005) that the primary conclusion that can be drawn from this earlier literature is that estimates of the effects of concealed-carry laws are highly sensitive to model specification choices, meaning no conclusive evidence can be drawn from the estimates. Because many of the authors engaged in the pre-2003 concealed-carry research continued to publish improved models on improved data sets, we restrict our evidence ratings to just this later work. We do not exclude pre-2003 studies of concealed-carry laws for outcomes other than violent crime, because there are much fewer later studies on which to base evidence ratings for these other outcomes.

Using these inclusion and exclusion criteria, we identified the studies providing the highest-quality evidence of a causal relationship between a policy and an outcome. In judging the quality of studies, we always explicitly considered common methodological shortcomings found in the existing gun policy scientific literature (see Appendix A), especially the following:

- *Models that may have too many estimated parameters for the number of available observations.* We consistently note whenever estimates were based on models with a ratio of less than ten observations per estimated parameter. When the ratio of observations to estimated parameters dropped below five to one and no supplemental evidence of model fit was provided (such as the use of cross-validation or evidence from an analysis of the relative fit of different model specifications), we discount the study's results and do not calculate effect sizes for its estimates.

- *Models making no adjustment to standard errors for the serial correlation regularly found in panel data frequently used in gun policy studies.* We consistently note when studies did not report having made any such adjustment. When a study noted a correction for only heteroscedasticity, we consider that to be evidence of some correction, although this does not generally fully correct bias in the standard errors due to clustering (Aneja, Donohue, and Zhang, 2014).
- *Models for which the dependent variable appears to violate model assumptions, such as linear models of dichotomous outcomes or linear models of rate outcomes (many of which are close to zero).* We consistently note when the data appeared to violate modeling assumptions.
- *Effects with large changes in direction and magnitude across primary model specifications.* We consistently note when a study presented evidence that model results were highly sensitive to different model specifications.
- *Models that identify the effect of policies with too few cases.* We consistently note when the effects of policies were identified on the experiences of a single state or a small number of states. These analyses generally provide less persuasive evidence that observed differences between treated and control cases result from the effects of the policy as opposed to other contemporaneous influences on the outcome.

In Appendix A, we describe other common shortcomings in the existing literature that we do not explicitly discuss in our research syntheses. For instance, in the main chapters of the report, we do not note when papers provided no goodness-of-fit tests or other statistical evidence to justify their covariate selections. Neither do we focus on interpretational difficulties and confusion frequently present in studies using spline or hybrid models to estimate the effects of policies, although we discuss this problem in detail in Appendix A. These problems are so common in this literature that consistently commenting on them as shortcomings would become repetitive and cumbersome.

Synthesis of Evidence

Members of the research team summarized all available evidence from prioritized studies for each of the 13 policies on each of the eight outcomes. When at least one study met inclusion criteria, a multidisciplinary group of methodologists on the research team discussed each study to identify its strengths and weaknesses. The consensus judgments from these group discussions are summarized in the research syntheses. Then, the group discussed the set of available studies as a whole to make a determination about the level of evidence supporting the effect of the policy on each outcome.

When considering the evidence provided by each analysis in a study, we counted effects with p -values greater than 0.20 as providing *uncertain* evidence for the effect of a policy. We use this designation to avoid any suggestion that the failure to find a statistically significant effect means that the policy has no effect. We assume that every policy will have some effect, however small or unintended, so any failure to detect it is a shortcoming of the science, not the policy. When the identified effect has a p -value

less than 0.05, we refer to it as a *significant effect*. Finally, when the p -value is between 0.05 and 0.20, we refer to the effect as *suggestive*.

We include the suggestive category for several reasons. First, the literature we are reviewing is often underpowered. This means that the probability of rejecting the null hypothesis of no effect even when the policy has a true effect is often very low. As we argue in Appendix A, conducting analyses with low statistical power results in an uncomfortably high probability that effects found to be statistically significant at $p < 0.05$ are in the wrong direction and all effects have exaggerated effect sizes (Gelman and Carlin, 2014). If we had restricted our assessment of evidence to just statistically significant effects, we might base our judgments on an unreliable and biased set of estimates while ignoring the cumulative evidence available in studies reporting nonsignificant results. While the selection of $p < 0.20$ as the criterion for rating evidence as suggestive is arbitrary, this threshold corresponds to effects that are meaningfully more likely to be in the observed direction than in the opposite direction. For instance, if we assume that the policy has about as much chance of having a nonzero effect as having no effect, and the power of the test is 0.8, then $p < 0.20$ suggests that there is only a 20-percent probability of incorrectly rejecting the null hypothesis of no effect. For tests that are more weakly powered, as is common in models we review, a p -value less than 0.20 will result in false rejection less than half the time so long as the power of the test is above 0.2 (see, for example, Colquhoun, 2014).

In the final step, we rated the overall strength of the evidence in support of each possible effect of the policy. We approached these evidence ratings with the knowledge that research in this area is modest. Compared with the study of the effects of smoking on cancer, for instance, the study of gun policy effects is in its infancy, so it cannot hope to have anything like the strength of evidence that has accrued in many other areas of social science. Nevertheless, we believed that it would be useful to distinguish the gun policy effects that have relatively stronger or weaker evidence, given the limited evidence base currently available. We did this by establishing the following relativistic scale describing the strength of available evidence:

1. *No studies*. This designation was made when no studies meeting our inclusion criteria evaluated the policy's effect on the outcome.
2. *Inconclusive evidence*. This designation was made when studies with comparable methodological rigor identified inconsistent evidence for the policy's effect on an outcome or when a single study found only uncertain or suggestive effects.
3. *Limited evidence*. This designation was made when at least one study meeting our inclusion criteria and not otherwise compromised by serious methodological problems reported a significant effect of the policy on the outcome, even if other studies meeting our inclusion criteria identified only uncertain or suggestive evidence for the effect of the policy.

4. *Moderate evidence.* This designation was made when two or more studies found significant effects in the same direction and contradictory evidence was not found in other studies with equivalent or strong methods.
5. *Supportive evidence.* This designation was made when (1) at least three studies found suggestive or significant effects in the same direction using at least two independent data sets or (2) the effect was observed in a rigorous experimental study. Our requirement that the effect be found in distinct data sets reflects the fact that many gun policy studies use identical or overlapping data sets (e.g., state homicide rates over several years). Chance associations in these data sets are likely to be identified by all who analyze them. Therefore, our supportive evidence category requires that the effect be confirmed in a separate data set.

These rating criteria provided a framework for our assessments of where the weight of evidence currently lies for each of the policies, but they did not eliminate subjectivity from the review process. In particular, the studies we reviewed spanned a wide range of methodological rigor. When we judged a study to be particularly weak, we discounted its evidence in comparison with stronger studies, which sometimes led us to apply lower evidence rating labels than had the study been stronger.

Effects of the Inclusion and Exclusion Criteria on the Literature Reviewed

Table 2.2 presents the results of the literature search across all eight outcomes. The final column shows the number of studies meeting all inclusion criteria. No studies satisfying our inclusion criteria were found for two of the eight outcomes.

Table 2.2
Number of Studies Selected for Review at Each Stage of the Review Process

Outcome	Total Search Results	Included After Title and Abstract Review	Included After Full-Text Review
Suicide	1,274	183	11
Violent crime	2,656	373	47
Unintentional injuries and deaths	531	27	3
Mass shootings	77	11	8
Officer-involved shootings	187	34	0
Defensive gun use	1,435	115	1
Hunting and recreation	229	0	0
Gun industry	3,180	19	2

Of the studies that were published before 2003, all but Duwe, Kovandzic, and Moody (2002) were considered in the earlier reviews (Hahn et al., 2005; NRC, 2004). Table 2.3 lists the 63 studies meeting all inclusion criteria.

Table 2.3
Studies Meeting Inclusion Criteria

No.	Study	No.	Study
1	Aneja, Donohue, and Zhang (2011)	33	La Valle and Glover (2012)
2	Aneja, Donohue, and Zhang (2014)	34	Lott (2003)
3	Ayres and Donohue (2003a)	35	Lott (2010)
4	Ayres and Donohue (2003b)	36	Lott and Mustard (1997)
5	Ayres and Donohue (2009a)	37	Lott and Whitley (2001)
6	Ayres and Donohue (2009b)	38	Lott and Whitley (2003)
7	Cheng and Hoekstra (2013)	39	Lott and Whitley (2007)
8	Cook and Ludwig (2003)	40	Luca, Deepak, and Poliquin (2016)
9	Crifasi et al. (2015)	41	Ludwig and Cook (2000)
10	Cummings et al. (1997a)	42	Maltz and Targonski (2002)
11	DeSimone, Markowitz, and Xu (2013)	43	Manski and Pepper (2015)
12	Donohue (2003)	44	Martin and Legault (2005)
13	Donohue (2004)	45	Moody and Marvell (2008)
14	Duggan (2001)	46	Moody and Marvell (2009)
15	Duggan, Hjalmarsson, and Jacob (2011)	47	Moody et al. (2014)
16	Durlauf, Navarro, and Rivers (2016)	48	Plassman and Whitley (2003)
17	Duwe, Kovandzic, and Moody (2002)	49	Raissian (2016)
18	French and Heagerty (2008)	50	Roberts (2009)
19	Gius (2014)	51	Rosengart et al. (2005)
20	Gius (2015a)	52	Rudolph et al. (2015)
21	Gius (2015b)	53	Sen and Panjamapirom (2012)
22	Gius (2015c)	54	Strnad (2007)
23	Grambsch (2008)	55	Swanson et al. (2013)
24	Helland and Tabarrok (2004)	56	Swanson et al. (2016)
25	Hepburn et al. (2006)	57	Vigdor and Mercy (2003)
26	Humphreys, Gasparrini, and Wiebe (2017)	58	Vigdor and Mercy (2006)
27	Kendall and Tamura (2010)	59	Webster, Crifasi, and Vernick (2014)
28	Koper (2004)	60	Webster and Starnes (2000)
29	Kovandzic, Marvell, and Vieraitis (2005)	61	Webster et al. (2004)
30	La Valle (2007)	62	Wright, Wintemute, and Rivara (1999)
31	La Valle (2010)	63	Zeoli and Webster (2010)
32	La Valle (2013)		

In a few cases, some studies published updates to earlier works that expanded the time frame of the analysis, corrected errors, or applied more-advanced statistical methods to a nearly identical data set. In these cases, we do not treat both the earlier and later works as each contributing an equally valid estimate of the effects of a policy. Instead, we treat the latest version of the analysis as superseding the earlier versions, and we focus our reviews on the superseding analysis. In one case, we substituted an earlier study (Ludwig and Cook, 2000) for a later study (Cook and Ludwig, 2003). We did this because the earlier study included a longer data series, used a model with greater statistical power, and provided more-detailed results; in addition, the estimated effects of policies in the two papers were identical for the estimates of interest to us in this review. Table 2.4 lists the superseded studies and their superseding versions.

Table 2.5 describes the policies and outcomes evaluated by each study that was not superseded, and studies are indicated with their corresponding number in Table 2.3. These studies are discussed in detail in subsequent chapters.

Table 2.4
Superseded Studies

Superseded	Superseding
Aneja, Donohue, and Zhang (2011); Ayres and Donohue (2003a, 2003b, 2009a, 2009b); Donohue (2003, 2004)	Aneja, Donohue, and Zhang (2014)
La Valle (2007, 2010)	La Valle (2013), La Valle and Glover (2012)
Moody and Marvell (2008, 2009)	Moody et al. (2014)
Vigdor and Mercy (2003)	Vigdor and Mercy (2006)

Table 2.5
Included Studies, by Policy and Outcome

Policy	Suicide	Violent Crime	Unintentional Injuries and Deaths	Mass Shootings	Officer-Involved Shootings	Defensive Gun Use	Hunting and Recreation	Gun Industry	Total
Background checks	15, 41, 53	15, 20, 32, 35, 41, 53, 55, 56, 58, 62		40					11
Bans on the sale of assault weapons and high-capacity magazines		19, 35		22, 40				28	5
Stand-your-ground laws	26	7, 26, 59				7			3
Prohibitions associated with mental illness	53, 56	53, 55, 56							3
Lost or stolen firearm reporting requirements									0
Licensing and permitting requirements	9, 61	32, 52, 59		40					6
Firearm sales reporting and recording requirements									0
Child-access prevention laws	10, 11, 21, 37, 61	10, 37	10, 11, 21, 25, 37, 60, 61	34					8
Surrender of firearms by prohibited possessors		49, 58, 63							3
Minimum age requirements	21, 51, 61	51, 52	21	40					5
Concealed-carry laws	11, 51	2, 16, 18, 19, 23, 24, 27, 29, 32, 33, 38, 39, 42, 43, 44, 47, 48, 50, 51, 54, 59	11, 36	17, 34, 40				14	27
Waiting periods	41	41, 50		34, 40					4
Gun-free zones									0
Total	12	37	8	4	0	1	0	2	50

NOTE: Numbers refer to individual studies; see Table 2.3 to view which study corresponds to which number. Totals along the bottom row do not exactly match those in Table 2.2 because superseded studies are not counted in this table, and other studies were identified after the initial literature search.

Effect Size Estimates

To compare the magnitude of effects across studies, we calculated and present incidence rate ratios (IRRs) for most of the estimates of policy effects that we considered in reaching our consensus ratings. In rare cases noted in the text, we were unable to calculate IRRs from the information provided in the report. Studies reporting the results from a negative binomial or Poisson regression model are directly reported in our report figures as IRRs with their associated confidence intervals (CIs). Given the low probability of most of our outcomes, odds ratios were interpreted and reported as IRRs with their associated CIs.

Many studies used fixed-effects ordinary linear regression models. In these cases, an average base rate (usually taken from the study's paper itself) of the outcome of interest was determined. We then used the base rate to transform the regression estimate, β , to an IRR using the following formula:

$$IRR = \frac{(\text{average base rate} + \beta)}{\text{average base rate}}.$$

However, if the linear model used a logged dependent variable, we used the exponentiated estimate as its IRR. CIs for the IRRs derived from the linear regression models were transformed in a similar fashion.

When a study did not report a measure of variation, we performed back calculation from a test statistic to estimate the CIs. For Rudolph et al. (2015), we inferred approximate standard errors from the p -value associated with a permutation test presented to demonstrate the likely statistical significance of the reported finding. For Crifasi et al. (2015), we present the IRR and CI for a secondary specification that used a negative binomial model. For several other studies, we note that we could not extrapolate an IRR or its CIs from the data provided in the paper.

Models estimating linear or other trend effects for policies do not have a constant effect size over time. Even if we selected an arbitrary period over which to calculate an effect size, these papers do not provide sufficient information to estimate CIs for such effects. Therefore, we do not calculate or display IRR values that take into account trend effects or effects calculated as the combination of a trend and a step effect (*hybrid models*). Although we report the authors' interpretation of these effects, we do not count them as compelling evidence for the effects of a policy, for reasons discussed in Appendix A.

IRRs are calculated and graphed so that estimates of the effects of policies can be compared on a common metric. We do not use them to construct meta-analytic estimates of policy effects for two reasons. First, most studies we reviewed examining the effect of a policy on a particular outcome used nearly identical data sets, meaning the studies do not offer independent estimates of the effect. Second, there are usually only

two or three studies available on which to estimate the effect of the policy, and these studies often differ considerably in their methodological rigor. These limitations in the existing literature led us to pursue a more qualitative evaluation of the conclusions that available studies can support.

Chapter Two References

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Lost or Stolen Firearm Reporting Requirements

Federal law requires licensed firearm dealers to report lost or stolen guns to local authorities or the U.S. Attorney General within 48 hours (18 U.S.C. 923). There is no federal law requiring individuals to report lost or stolen firearms.

In 2015, federally licensed firearm dealers reported 14,800 firearms as lost or stolen (Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF], 2016a). Quantifying the number of firearms lost or stolen from private citizens is more challenging, but based on data from ATF, 173,675 firearms were reported lost or stolen from non-federal firearm licensee entities and private citizens in 2012 (ATF, 2013). Using an alternative data source, another study estimated that about 233,000 guns were stolen annually during household property crimes between 2005 and 2010, and about four out of five firearms stolen were not recovered (Langton, 2012). Data from police departments in 14 American cities suggest that the number of guns reported lost or stolen in 2014 varies from 17 in San Francisco to 364 in Las Vegas (Everytown for Gun Safety Support Fund, 2016). A recent national survey (Hemenway, Azrael, and Miller, 2017) estimates that 2.4 percent of American gun owners had at least one gun stolen in the past five years and that the average number of guns stolen per person was 1.5. The authors use these data to estimate that 380,000 guns were stolen per year.

Laws requiring gun owners to report lost or stolen firearms are intended to help prevent gun trafficking and straw purchases (in which a lawful buyer makes the purchase on the behalf of a prohibited buyer) and to help ensure that prohibited possessors are disarmed. Data collected from ATF trafficking investigations covering 1999 to 2002 showed that 6.6 percent (7,758 of 117,138) of diverted firearms were stolen from a residence or vehicle (Braga et al., 2012).

There are several plausible mechanisms through which these policies might reduce criminal use or trafficking of firearms. First, reporting requirements might encourage private gun owners to take steps that decrease the ease with which their firearms might be lost or stolen. Second, reporting requirements could deter some straw purchasers who are reluctant to report as stolen the guns they have diverted to prohibited possessors but who also fear that failure to report transferred guns as stolen could leave them accountable for explaining how their guns later turned up at crime scenes. Third, timelier reporting of gun losses or thefts may aid law enforce-

ment gun-tracing efforts and increase criminal prosecutions of illegal users or traffickers of stolen firearms, potentially reducing the stock of firearms among prohibited possessors. However, required reporting policies could have the unintended effect of discouraging individuals from reporting lost or stolen weapons in order to avoid legal penalties from failing to report loss or theft within a certain number of days. Thus, to estimate how requirements for reporting lost or stolen firearms affect such outcomes as violent crime, we might first examine to what extent such policies affect gun owners' reporting and storage behavior.

To assess whether required reporting of lost or stolen guns reduces violent crime by disrupting illegal firearm trafficking, causal inference could be strengthened by examining crime gun trace data,¹ as well as changes in homicide or violent crime rates. Specifically, if these laws restrict trafficking operations from in-state sources, one should observe a larger share of crime guns originating from out-of-state sources after law passage, as well as a reduction in guns with a short time-to-crime (Webster and Wintemute, 2015; Braga et al., 2012).² However, a series of provisions attached to ATF appropriations (commonly known as the Tiahrt Amendments) has denied most researchers access to firearm trace data since 2003, making it currently infeasible to conduct this type of analysis (Krouse, 2009).

Requiring gun owners to report lost or stolen firearms is unlikely to have measureable effects on such outcomes as suicide, unintentional injuries and death, defensive gun use, or hunting and recreation. If the requirements successfully discouraged straw purchases, it could have a small effect on firearm sales.

State Implementation of Lost or Stolen Firearm Reporting Requirements

A minority of states require firearm owners to report to law enforcement when their weapons are lost or stolen. California,³ Connecticut,⁴ Delaware,⁵ Illinois,⁶

¹ The Bureau of Alcohol, Tobacco, and Firearms (2002, p. A-3) defined *crime gun* as “any firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime. An abandoned firearm may also be categorized as a crime gun if it is suspected it was used in a crime or illegally possessed.”

² Per Webster and Wintemute (2015), the metric known as *time-to-crime* is the “unusually short interval—ranging from less than 1 year to less than 3 years—between a gun’s retail sale and its subsequent recovery by police from criminal suspects or crime scenes A short [time-to-crime] is considered an indicator of diversion, especially when the criminal possessor is someone different from the purchaser of record.”

³ Calif. Penal Code § 25250 (within five days).

⁴ Conn. Gen. Stat. § 53-202g (report within 72 hours).

⁵ Del. Code tit. 11 § 1461 (report within seven days).

⁶ 720 Ill. Comp. Stat. 5/24-4.1 (report within 72 hours).

Massachusetts,⁷ New Jersey,⁸ New York,⁹ Ohio,¹⁰ Rhode Island,¹¹ and the District of Columbia¹² require individuals to report the loss or theft of all firearms. Maryland requires the reporting of loss or theft of handguns and assault weapons,¹³ and Michigan requires the reporting of thefts, but not loss, of all firearms.¹⁴

Outcomes Without Studies Examining the Effects of Lost or Stolen Firearm Reporting Requirements

Neither the National Research Council (2004) nor Hahn et al. (2005) identified any research examining the relationship between required reporting of lost or stolen firearms and the following outcomes, and we identified no such studies that met our inclusion criteria:

- suicide
- violent crimes
- unintentional injuries and deaths
- mass shootings
- officer-involved shootings
- defensive gun use
- hunting and recreation
- gun industry.

⁷ Mass. Gen. Laws Ch. 140 § 129C.

⁸ N.J. Stat. Ann. § 2C:58-19 (within 36 hours).

⁹ N.Y. Penal Law § 400.10 (within 24 hours).

¹⁰ Ohio Rev. Code § 923.20.

¹¹ R.I. Gen. Laws § 11-47-48.1 (within 24 hours).

¹² D.C. Code Ann. § 7-2502.08.

¹³ Md. Ann. Code § 5-146 (within 72 hours).

¹⁴ Mich. Comp. Laws § 28.430 (within five days).

Chapter Seven References

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EXHIBIT MM



A HIGH PRICE TO PAY: THE ECONOMIC AND SOCIAL COSTS OF YOUTH GUN VIOLENCE IN SAN MATEO COUNTY

SEPTEMBER 2011



INTRODUCTION FROM SUPERVISOR ROSE JACOBS GIBSON

Dear Friends:

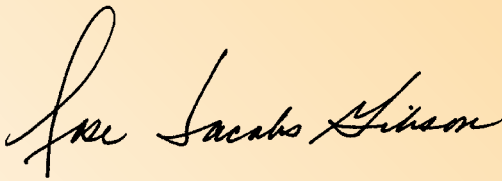
Safe streets and parks, schools free of violence, and communities where our children prosper are goals we all share. Yet each year, more than 20,000 children and young adults in the United States are killed or injured by guns in their own neighborhoods. Here in the Bay Area, youth firearm violence, often perpetrated by gang members, is on the rise, threatening the safety and security we all deserve. From the physical, economic, and social costs for the community to the psychological effects experienced by children and their families, firearm violence touches every segment of our society.

As a member of the San Mateo County Board of Supervisors, I have worked closely with law enforcement and community leaders to improve the safety of our residents through the establishment of programs like Operation Ceasefire and the East Palo Alto Crime Reduction Task Force. During my tenure as Association of Bay Area Government's (ABAG) President, we established a Youth Gun Violence Task Force charged with developing common sense approaches to keep guns out of the hands of young people and to curb youth firearm violence. During my twenty years in public service, I have come to understand that addressing youth gun violence through law enforcement efforts and community-driven prevention programs is the only way to ensure that all children in our community, regardless of their race or socio-economic background, have the opportunity to reach their full potential.

In 2010, the Silicon Valley Community Foundation provided funding to ABAG's Youth Gun Violence Task Force to conduct a youth firearm violence research project. This publication is the outcome of the concerted efforts of many government agencies, community-based organizations, and my office. I hope you find it compelling and that it inspires you to work with me to enhance our efforts to curb youth firearm violence locally and in the greater Bay Area.

My goal continues to be turning this eloquent sentiment recently expressed by a parent in one of our focus groups into reality: "How beautiful it would be, if instead of seeing a wall of graffiti, we saw a young person changed. Look, he's studying now, or going to church, or working. How great that would be..."

Sincerely,

A handwritten signature in black ink that reads "Rose Jacobs Gibson". The signature is fluid and cursive, with the first name "Rose" being particularly prominent.

Rose Jacobs Gibson
Supervisor
San Mateo County Board of Supervisors

A HIGH PRICE TO PAY: THE ECONOMIC AND SOCIAL COSTS OF YOUTH GUN VIOLENCE IN SAN MATEO COUNTY

San Mateo County governments and communities are committed to reducing and preventing youth firearm violence.^{1, 2, 3} In an effort to measure the true human and financial impact of youth firearm violence in San Mateo County, the county has analyzed crime, health, and cost data. With the help of community partners, the county also conducted qualitative interviews, focus groups, and surveys of residents and law enforcement in communities with pronounced rates of youth firearm violence, which include Daly City, East Palo Alto, Redwood City, and San Mateo. (See *Appendix for detailed methodology*.) This report summarizes this analysis, providing a reference for policymakers and service providers, as well as a benchmark that may be used to assess the effectiveness of future prevention efforts. The most compelling findings from our research are as follows:

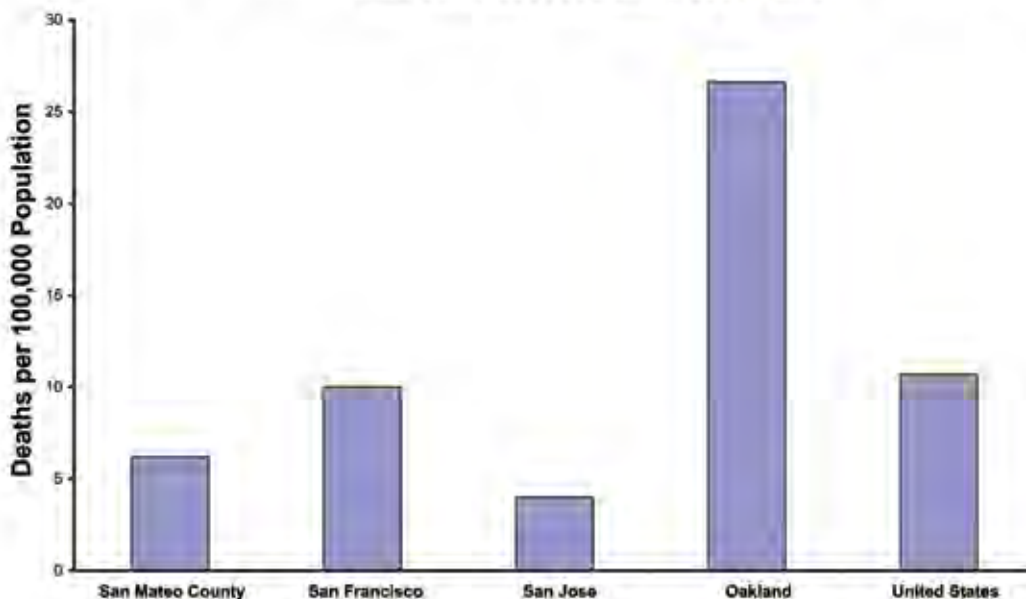
- The firearm violence mortality rate in San Mateo County is 42 percent lower than the United States, 39 percent lower than neighboring San Francisco, but 55 percent higher than San Jose.
- African American males aged 15 to 24 years are up to 18 times more likely than the overall county population and 3.5 times more likely than other San Mateo County youth to be shot and killed. The rate of non-fatal injuries among Latinos aged 15 to 24 years is 14 percent higher than that of other San Mateo County youth.
- The cities of East Palo Alto, Daly City, South San Francisco, and Redwood City comprise 38 percent of the total San Mateo County population, but disproportionately account for 57 percent of non-fatal firearm injuries and 74 percent of fatal firearm injuries.

- Nonfatal and fatal injuries of San Mateo County youth from 2005-2009 will cost society an estimated \$234 million in medical care, criminal proceedings, future lost wages, disability benefits, and lost quality of life
- Eighty-one percent of adults and 56 percent of youth incarcerated* for firearm crime in San Mateo County had been previously arrested.
- Nine out of 18 (50 percent) juveniles incarcerated* and 31 of 75 (41 percent) adults incarcerated* for firearm crime are gang-affiliated.
- The County Gang Intelligence Unit reports that gangs actively recruit disadvantaged San Mateo County youth, as young as 11 years of age, in schools and afterschool programs.
- San Mateo County local governments spend an estimated \$57,000-\$856,000 per crime—depending on crime severity—investigating, prosecuting, defending, punishing, and preventing youth firearm crime.

*These figures are based on the jail and juvenile hall population for a single day in 2011. It is conceivable that these figures vary considering the transient nature of the jail population.

Countywide statistics do not tell the whole story about youth firearm crime and violence. The firearm violence mortality rate in San Mateo County is 6.2 deaths per 100,000 residents per year, 42 percent lower than the United States, 39 percent lower than San Francisco, but 55 percent higher than San Jose (*Figure 1*).

Figure 1: Rate of Violent Firearm Mortality in San Mateo County, the United States and Other Bay Area Cities 2005 - 2009

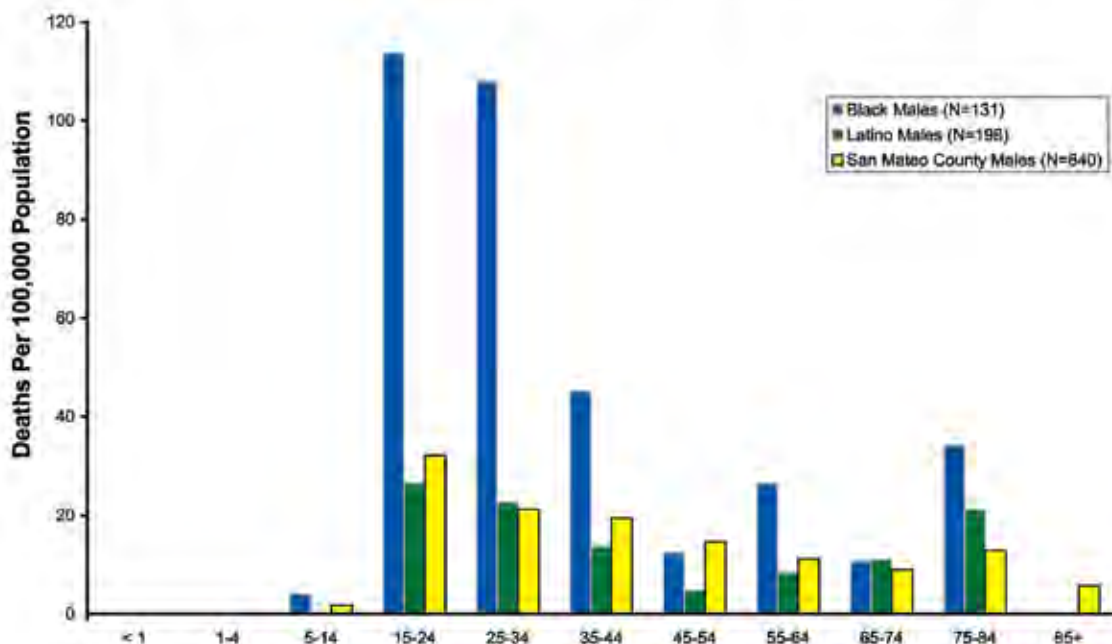




However, the countywide statistic masks the fact that certain communities and demographic groups within the county suffer a disproportionate impact from firearm crime and violence. For example, young African American males aged 15 to 24 years

are up to 18 times more likely to be shot and killed than the overall county population and up to 3.5 times more likely than other San Mateo County youth to be shot and killed (*Figure 2*).

Figure 2: Mortality Due to Firearms Among Black and Latino Males
Cumulative Unadjusted Data, San Mateo County 1990 - 2009 (N = 329)



Firearm violence in San Mateo County is concentrated in the four cities of East Palo Alto, Daly City, Redwood City, and South San Francisco. Combined, these cities account for 74 percent

of fatal injuries and 57 percent of non-fatal firearm injuries, but only 38 percent of the total San Mateo County population (*Table 1*).

Table 1: Percentage of Fatal and Non-Fatal Firearm Injury and Mortality and Total San Mateo County Population by City 2005-2009

City	Percent of SMC Firearm Homicides	Percent of SMC Non-Fatal Firearm Injuries	Percent of SMC Population	Ratio of Percent of Homicides to Percent of SMC Population
Daly City	21.2%	6.7%	14.2%	1.5
East Palo Alto	25.8%	21.0 %	4.7%	5.5
Redwood City	15.2%	18.1 %	10.4%	1.5
South San Francisco	12.1%	11.0%	8.7%	1.4
All other SMC cities	25.8%	43.2%	62.0%	0.4



Incarceration and recidivism for firearm crime is also high and concentrated in select communities and demographics.

A snapshot of the 75 adults held at the county's correctional facilities for any firearm crime (ranging from possession to homicide) on a single day in 2011 reveals that 45 percent were Latino, 28 percent were African American, and 96 percent were male. Of the 18 inmates held at the juvenile facility for firearm crime on a single day in 2011, 67 percent were Latino, 22 percent were African American, and 94 percent were male. Both adults and youth charged with firearm crimes had a high recidivism rate; 81 percent of incarcerated adults had been arrested before, as compared with 56 percent for youth. Seventy-eight percent of the 18 incarcerated juveniles were from the three communities of East Palo Alto, San Mateo, and the North Fair Oaks neighborhood of Redwood City. While the City of San Mateo has relatively low rates of fatal and non-fatal firearm injuries, it has high rates of incarceration for juveniles engaging in firearm crime.

Members of communities with pronounced rates of youth firearm violence live in an environment of fear, distrust, and diminished opportunities.

Youth firearm violence was perceived to occur in the context of a community environment that is unstable, unpredictable, and chaotic. The characteristics of an unsafe community that respondents mentioned included economic deprivation, vandalism and graffiti, drug dealing, frequent interpersonal and family conflict, and gang activity. Unsafe communities were described as "lonesome" places where neighbors don't know one another or watch out for one another. Youth may lack family support as well as educational and employment opportunities, causing service providers to lament that "in this population, kids don't see themselves after high school." When faced with a lack of optimism about the future, youth may become involved in gangs and criminal activity, leading a focus group participant to comment, "If youth don't value their own lives, how can we expect them to value ours?"

Youth firearm violence is driven by gang activity. Based on information provided by law enforcement and corrections personnel, as well as by community members, it is reasonable to conclude that gang activity is the main driver of youth firearm violence in San Mateo County. On a single day in 2011, 50 percent of juvenile inmates and 41 percent of adult inmates incarcerated and charged with a firearm crime in San Mateo County had a known gang affiliation. While gang members commit crimes in nearly all municipalities of the county and often cross city and county lines, in San Mateo County they are concentrated in the following cities: East Palo Alto, Daly City, Menlo Park, Millbrae, South San Francisco, Redwood City, San Mateo, San Bruno, Half Moon Bay, and in unincorporated areas such as the North Fair Oaks neighborhood of Redwood City. Gang culture glamorizes the use of firearms and encourages youth to gain respect and status through violence and criminal activity. Gang members "take their pictures with their guns and

text it to friends or post it on Facebook," where "kids as young as 14 years old are shown holding their guns with their 'rag and colors'." (Service Provider)

GANGS TARGET VULNERABLE YOUTH

Even youth who are reluctant to become involved with a gang may be forced to do so. According to Gang Intelligence Unit (GIU) officers, youth are often approached by gang members at school or at afterschool programs. "Youth as young as 11 years old are approached by their school friends to join the gang. Many of these youth come from broken homes, are being raised by a single parent, live in poverty, or face other family issues. Gangs capitalize on this lack of stability by offering the at-risk youth a place or group to belong. Recruiters further entice kids by offering them a chance to earn money and respect on the streets. Otherwise, gangs coerce youth. Refusing to join a gang could result in bullying, intimidation, embarrassing the youth in front of peers at school, or being accused of association with rival gangs, which can have drastic consequences." (GIU Officer).

Reprisals and revenge create a cycle of violence.

A service provider described how the typical cycle of violence plays out: "If someone is playing around with the idea of being in a gang and their friend gets shot, all of a sudden it becomes easier for them to retaliate and do harm to someone else...When the shooting happened in South San Francisco, that's something I heard a lot about at Juvenile Hall. Affected youth were declaring that 'we're going to load up on guns, our neighborhood needs more guns'." Youth described being given firearms by gang members, or even family members, and being asked to take part in reprisals. One young woman recounted a story of resisting pressure to take part in revenge and telling her grandmother, "No, it ain't happening" when she was handed a gun and asked to avenge her cousin's death. Bullying may also be a contributing factor to retaliatory violence in some cases; unfortunately "there is a lack of communication and awareness [about bullying] on the part of parents and staff at school," according to service providers. A pattern of retaliation against "snitching" may be a factor in the reluctance to report firearm crimes; both parents and youth reported that fears of reprisal may keep them from informing law enforcement about firearm crimes in their communities.

Youth firearm violence negatively impacts quality of life in multiple ways. The majority of youth and parents from affected communities who participated in surveys and focus groups believed that they or a loved one could be a victim of firearm violence in the near future. Similarly, 67 percent of youth and 57 percent of parents reported that youth firearm violence was a “very significant” or “somewhat significant” problem in their lives. Youth and parents described their sadness at losing friends and relatives to youth firearm violence, as well as being fearful when shootings happened near their homes. Others reported apathy, helplessness, and desensitization that can occur as a result of frequent exposure to violence. For example, one youth stated, “I’m immune to it now. I’ve gotten used to it. I’ve seen people die, friends die, brothers die, cousins die,” while another noted that firearm violence is “normal” in his community.

Fear of violence leads both youth and adults to lead their lives differently, especially with respect to outside play and walking around their neighborhoods. Sixty-three percent of youth and 38 percent of parents surveyed reported avoiding areas of their neighborhoods they would otherwise pass through, while parents participating in focus groups reported staying in at night and not allowing their children to walk to school or to play in local parks. The majority of youth and parents surveyed felt that youth firearm violence was an important factor in deciding where to live, though parents reported that economic considerations may force them to live in neighborhoods they consider to be unsafe.

Firearm violence has massive hidden financial costs that are difficult to measure. Researchers have attempted to estimate total costs for fatal and non-fatal injuries in the United States. These total costs include not only criminal proceedings, lost productivity and medical care, but also the suffering and decreased quality of life experienced by victims. Such dollar estimates are necessarily inexact, but nonetheless

can be useful for decision-makers as they weigh the cumulative costs of violence against the costs of preventive measures. Values are assigned to parameters such as suffering and decreased quality of life by using benchmarks such as “pain and suffering” jury damage awards and workers’ compensation payments, as well as “Willingness to Pay” methodology.⁴



Based on these methods, each fatal injury costs society an estimated \$6.4 million (range \$3.4 to \$9.1 million), and each non-fatal injury costs society an estimated \$46,000. Using these parameters, the cost of the 36 fatal and 133 non-fatal firearm injuries to youth in San Mateo County from 2005-2009 will total \$234 million over time.

We all pay for youth firearm crime. Although youth firearm violence is concentrated in a small number of San Mateo County communities, the cost of youth firearm crime is shared by all county residents. Local government institutions spend vast public funds responding to, investigating, prosecuting, defending, preventing, and punishing youth firearm crime. Because of the concentrated nature of youth firearm violence, affected police departments must also recruit and train additional officers to investigate gangs and interact with youth. *Table 2* describes these costs and programs.

EASE OF ACCESS TO FIREARMS

Sixty-three percent of youth surveyed felt it was “very easy” or “somewhat easy” to get access to firearms, and the majority of participants in a youth focus group felt that they could get a gun “with one phone call.” Youth most commonly obtained guns by stealing, by illegally purchasing them from an individual on the black market, or “from their homes.” Respondents reported that firearms could be purchased for “as little as \$80 to \$300—depending on the size of the gun.” An intergenerational pattern of gang involvement or criminal activity may lead to youth having access to guns from family members, and being able to borrow or informally barter for guns. Respondents pointed out that getting a gun is “as easy as access to drugs.” This climate of ready gun availability led a service provider to observe that “it seems harder for adults to get legal access to guns than for kids to get illegal access.” This surprising information regarding the ease of youth access to guns is supported by data from the 2007 California Healthy Kids Survey, in which 4.8 percent of San Mateo County 7th, 9th, and 11th graders reported having brought a gun to school, a rate similar to that for the Bay Area overall (5 percent).



Table 2

Estimated Costs to Local Police Departments to Prevent and Respond to Youth Firearm Crime in 2010

Police Department (n = total youth firearm crime investigations 2010)	Crime Investigation	Crime Prevention	Miscellaneous Overhead	Average Total Cost per Youth Firearm Crime Investigation ⁵
Daly City (n = 22)	\$117,900	\$435,801	\$88,425	36,935 (\$1,283- \$72,430)
East Palo Alto (n = 76)	\$6,556,200 ²	6	7	\$86,265
Redwood City (n = 23) ⁸	---	---	---	---
San Mateo (n = 17)	\$108,536	\$1,356,000	—	\$86,149

When police department estimates are combined with those from other County agencies, San Mateo County taxpayers spend from \$57,117 to \$856,323 for their County and City governments to respond to one youth firearm crime (*Table 3*).

Incarceration represents a significant proportion of these costs, because the average length of detention from pre-trial through completion of sentence for a firearm crime is 297 days for adults (at \$172 per day) and 610 days for juveniles (at \$428 per day).

Table 3

Estimated Range of Costs for one Firearm Crime to San Mateo County Taxpayers for Local Government Law Enforcement Response to Youth Firearm Crime in 2010

San Mateo County Local Government Agency	Juvenile	Adult
Youth Services Center Costs to detain a youth from pretrial to sentence for firearm crime (610 days)	\$261,080	NA
San Mateo County Jail Costs to detain an adult from pretrial to sentence (297 days)	NA	\$51,084
San Mateo County Coroner (homicide cases only) Transportation of the deceased, morgue, autopsy, etc	\$7,500	\$7,500
San Mateo County Superior Court* Costs to try suspects of firearm crime	(\$98-\$1,478)	(\$750-\$5,456)
San Mateo County District Attorney Legal costs to prosecute firearm crime	(\$2,000-\$250,000)	(\$2,000-\$250,000)
San Mateo County Private Defender Services Legal costs to defend firearm crime	(\$2,000-\$250,000)	(\$2,000-\$250,000)
Local Police Department (Response and Investigation, see Table 3)	(\$1,283-\$86,265)	(\$1,283-\$86,265)
Estimated cost range of one firearm crime based on severity (i.e. illegal firearm possession to homicide)	(\$266,461-\$856,323)	(\$57,117-\$650,305)

*Court costs are averages weighted by stage of court proceeding of firearm crime prosecuted by the District Attorney from 2009-July 2011 combined with cost estimates from the Superior Court.

These costs encompass the range of firearm crime severity from illegal possession to murder. Costs for State prison incarceration

are not included here, nor are costs averted because suspects posted bail. The District Attorney provided a range of legal prosecution costs; since we were unable to obtain cost estimates from the Chief of the County Private Defender Program, we assumed defense costs to be comparable to those of the prosecution.

As we have seen, youth firearm violence impacts safety and quality of life, and causes incalculable human suffering. Taxpayers bear the expense for incarceration, court costs, and law enforcement, and society as a whole is burdened by the hidden costs of the death and disability of gun violence victims. Furthermore, the existing law enforcement response mechanisms emphasize extraordinarily costly punitive measures, rather than preventive or rehabilitative ones. Cost effectiveness studies show that the fiscal benefits of youth violence prevention programs are significant, but not generally realized for 15 years or more.⁹ The benefits of prevention are real, but are often delayed and are impossible to link to an individual. While not optimal, fiscal pressures tend to influence policymakers to devote resources to immediate needs instead of a more systematic perspective, which includes wisely investing in critically necessary prevention programs.

Effective strategies to reduce youth violence include programs targeted at young children, their parents, the community, and school environment, and more intensive services for youth who have already committed crimes. In general, research shows that the most effective interventions focus on young children and their families, or youth who have already exhibited criminal behavior. For example, violent and delinquent youth have been found to benefit the most from programs that provide a wide array of support, such as skills and behavioral training, and family therapy. The following proposed solutions represent “best practices” drawn from our experience in San Mateo County and from success stories across the nation, as well as the opinions and recommendations of community members who participated in this study. These solutions should be included in, and strongly connected with, any funding decisions related to public safety.

Breaking the cycle of violence among vulnerable youth: Violence prevention interventions must be a part of a comprehensive effort to create a supportive family and community environment for all children and youth. In addition, however, intensive interventions, both preventive and rehabilitative, specifically directed at youth who are at-risk or already involved in criminal activity, are critical to saving lives and preventing firearm crime. Youth directly affected by firearm violence have the highest risk of becoming perpetrators. In the words of one service provider, the community needs to be there “as a support for those affected, because they are the ones that are more likely to take revenge.” CeaseFire Chicago¹⁰ utilizes prevention, intervention and community mobilization tactics to reduce street violence. The program offers at-risk individuals GED programs, anger management counseling, drug and alcohol treatment, and assistance with finding work and childcare. CeaseFire also hires “violence interrupters” as outreach workers to mediate conflict between gangs. After a shooting, they offer nonviolent conflict resolution alternatives to halt the cycle of retaliatory violence. As a direct result of the program, shootings decreased 16 to 28 percent in four of

the seven targeted areas. The decrease was “immediate and permanent” in three areas and “gradual and permanent” in one area.

This violence interruption program is very similar to the current activities of the Gang Intelligence Unit and Operation Ceasefire in San Mateo County. The San Mateo County Gang Intelligence Unit (GIU) consists of members of the Sheriff’s Office, San Mateo County Probation, and assigned detectives from the local municipalities. GIU’s primary responsibility is collecting and analyzing information and then distributing the developed intelligence to law enforcement agencies in and around San Mateo County, as well as patrolling the streets of all twenty municipalities in the county several days a week to counter gang activity. The GIU is highly effective in countering gang activity. In 2010, the GIU arrested more than 434 individuals engaging in gang activity. To maintain its success, San Mateo County must craft a sustainable funding plan to ensure that the Sheriff’s Department, which funds the GIU, has the resources it needs to continue its support of GIU’s critical efforts in curbing youth firearm violence.



Operation Ceasefire was established by the East Palo Alto Police Department in partnership with numerous law enforcement, government, community-based and faith organizations to implement a violence and drug market reduction strategy. Operation Ceasefire partners with law enforcement and the community to sit down with gang-affiliated individuals and offer them services that provide alternatives to their destructive behavior, and use strategic enforcement programs to hold accountable those who fail to take advantage of the services and continue to victimize the community. Operation Ceasefire is currently based in the City of East Palo Alto. To further enhance the program’s success, San Mateo County should explore Ceasefire’s methods to determine which are most effective and how to best apply them to reduce youth firearm violence in other cities in San Mateo County.

Law enforcement and communities working together: Law enforcement serves as the community’s primary response against armed violence, but can be most effective in the context of a community collaboration. A successful example of this collaboration in San Mateo County is the Violence Prevention Network that brings local police and the Sheriff together with



parents and students in the school setting. Some youth may be more open to addressing issues of violence at school, “because that’s where kids feel safe, and that’s where kids will speak up.” In general, more frequent positive interactions between youth and police in a setting where the power imbalance is reduced help youth become more comfortable with law enforcement and more open to their presence. Law enforcement can take on primary prevention of violence as a critical function. Another critical strategy to break the cycle of violence is law enforcement support to protect youth who make a good faith effort to leave gangs. San Mateo County law enforcement leadership should consider establishing debriefing units to help gang-affiliated youth safely leave gangs. In exchange for providing information about the gang, a youth would receive protection, skill-building, and educational services. The potential benefits of such a program could outweigh the financial costs over time; not only could it make the County’s streets safer, it would provide opportunities for the most at-risk youth to turn away from a life of violence. One young person transformed could result in multiple lives saved. Trust and cooperation generated by programs like these will increase the effectiveness of enforcement efforts in the larger community.

Youth empowerment in the community and educational context:

By valuing youth perspectives, prioritizing youth issues, and incorporating youth voices, communities will be able to reduce youth firearm violence more effectively. Empowering at-risk youth means helping them gain confidence, life skills, and hope for the future. This empowerment can come from active involvement in community service, afterschool programs, sports, creative activities (art, music, theater), dealing assertively with technological aggression (on-line bullying), and job skills training or part-time jobs. By providing youth with more options that promote the constructive use of time, communities keep youth off the streets, let youth know that the community cares, and give youth the opportunity to explore and discover their talents. In addition, many parents and service providers who participated in this study expressed a wish for more mentorship programs led by successful male role models, who originate from low-income communities. These male leaders, “who will fight for our kids,” serve as true-to-life examples that economic background does not necessarily dictate one’s future.

Not surprisingly, research shows that staying in school reduces the risk of violent behavior. The “School Transitional Environment Program” (STEP)¹¹ was developed at the University of Illinois to help schools create a supportive environment that promotes academic achievement and reduces behavioral problems and truancy. Students transitioning to middle school or high school are placed in small cohorts that remain together over time, and teachers partner with families to follow-up on school absences and behavior problems. Participants in the STEP program generally have fewer absences from school, lower drop-out rates, lower rates of delinquency, higher

SELF-CONTROL AND PROBLEM-SOLVING SKILLS CRITICAL FOR YOUTH

A strong emotional and behavioral foundation can help youth successfully avoid violence. In general, parents and schools can work together from early childhood to establish boundaries, rules, and expectations for children. Conflict resolution and communication skills in youth are paramount. Two successful programs for younger children at use in communities nationwide show the power of emotional awareness and problem-solving skills in promoting positive behaviors and discouraging violence. “Promoting Alternative Thinking Strategies” is aimed at elementary school kids through fifth grade. It trains children in self-expression, self-control, and interpersonal problem-solving skills. The program has yielded positive effects on risk factors associated with violence, including aggressive behavior, anxiety and depression, and conduct problems. The “I Can Problem Solve” program teaches interpersonal problem-solving skills to children of nursery school age through sixth grade. Studies have demonstrated that improvements in impulsivity and conflict resolution were sustained 3 to 4 years after the end of the program. This program has been generally most effective for at-risk children living in poor, urban areas. For youth who have already suffered the harsh effects of violence, there needs to be an increased and systematic use of alternative dispute resolution processes. Such methods include mediation among youth offenders, victims, and others impacted by violence in the community.

grade-point averages, more positive feelings about school, and a better self-image.

Asset building among parents and community members:

Educating parents, youth and community members is essential to curbing youth firearm violence. Several service providers participating in this study suggested that the County educate community members about how easy it is for youth to get guns. This increased awareness may lead community members to play a more active role in advocating for strategies

CONCLUSION

that prevent unlawful youth access to guns. Parents and service providers could also be taught how to look for signs of negative peer influence or gang affiliation. "Right now, parents are concerned about drug use or the way their children dress, and who they hang out with, but they're failing to make the link between the types of influences that can lead to gun use." (Service Provider) Holding community information sessions concerning recognition of these early signs could help parents and service providers better respond to at-risk youth. In addition, parents need to be made aware of the media's influence on children and youth. Subtle messages presented to youth through music and television too frequently promote and glorify guns and violence. Educating parents to assess the media their children come in contact with in order to decrease exposure to violent content could help lessen the appeal of guns and violence.

Just as an unsafe community environment promotes youth involvement in gangs and violence, a positive community environment will promote positive choices and behaviors. Supporting and empowering youth to make mature decisions is a complex task, which requires active contributions from families, schools, neighbors, community organizations, local

government, and law enforcement. More than ever, youth need caring adults to establish rules and boundaries and provide opportunities for education, employment, and healthy social outlets. By giving at-risk youth the support and guidance they need, we can help them lead violence-free lives and give them the confidence and skills to build successful futures.

Listed are the model ordinances and resolutions for cities and counties to pursue.

- Model Ordinance Regulating Firearms Dealers and Ammunition Sellers
- Model Ordinance Requiring Reporting of Lost or Stolen Firearms
- Model Ordinance Prohibiting the Possession of Large Capacity Ammunition Magazines
- Model Resolution Encouraging Law Enforcement to Send Letters to Prospective Handgun Purchasers
- Model Resolution Encouraging Law Enforcement to Obtain and Utilize Department of Justice Information About Prohibited Armed Persons

To view the full electronic version of this publication, please visit:

www.co.sanmateo.ca.us/rosejacobs-gibson and click "Youth Gun Violence publication"

or visit:

<http://www.abag.ca.gov/model-ordinances/>



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Maryam Headd, Epidemiologist, San Mateo County Health System
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Jennifer Bunn, Stanford Law School

APPENDIX: METHODS

Qualitative methods

Peninsula Conflict Resolution Center (PCRC), a community-based organization that provides problem solving expertise in San Mateo County through mediation, violence prevention, and family engagement, was contracted by the Office of Supervisor Rose Jacobs Gibson and the Association of Bay Area Governments to collect community input for this project. PCRC and the Office of Supervisor Rose Jacobs Gibson recruited a demographically diverse convenience sample of participants from local schools, service organizations, and other sites within the communities most affected by youth firearm violence. Surveys were completed by 84 youth, 275 parents, and 115 service providers, faith-based leaders, and law enforcement representatives. In addition, 37 youth, 23 parents, and 9 service providers participated in focus groups and 20 youth, parents, and service providers were interviewed individually or in small groups by PCRC staff. Gang Intelligence Unit personnel were interviewed by San Mateo County staff. Focus group summaries, video and audio interviews, and free text survey responses were analyzed for common themes and concerns. A convenience sample methodology is acceptable in this setting, because the goals of this qualitative analysis were to obtain a deeper understanding of the causes, motivations, and lived experiences underlying observed behaviors and outcomes.

Quantitative methods

Multiple data sources and analytic methods were used for the quantitative portion of this analysis. Countywide emergency room discharge data were obtained from the Office of Statewide Health Planning and Development and analyzed to determine the number of firearm injuries over the last 5 years, as well as the demographics of those affected. Firearm death statistics were obtained from death certificates. Demographic and other information such as gang affiliation and recidivism was obtained for inmates incarcerated for firearm crimes at the county's two detention facilities for single "snapshot" days. Local police departments supplied counts of firearm-related arrests, as well as operating budgets and (in the case of one department) costs of responding to individual firearm crimes. The District Attorney, Private Defender, County Superior Court, and County Coroner also contributed cost information. In addition, methodologies for calculating global societal costs for injuries and deaths were obtained from scholarly literature and applied to the San Mateo County youth firearm injury and death counts.

Police Department Notes

Four local police departments provided data on the number and costs of their youth firearm crime response and prevention activities in 2010. These responses attempt to account for all of the officers, detectives, specialized crime investigation and prevention units, school resource officers, and other staff involved in youth firearm crime investigations. Although these data are informal and not standardized, they are the best available considering the few resources available for their collection. Please see the appendix for further police department details.

Daly City Police Department: The Daly City Police Department was able to time survey and calculate the investigation, prevention-program, overhead, and employee benefit costs for the 22 youth firearm crime investigations in Daly City in 2010. The range of costs reflects the severity (i.e. from illegal possession to murder) of crime and the number of personnel hours involved in each. The Daly City prevention costs are lower than the other police department estimates because they only account for the time youth crime prevention staff spent working on the specific youth firearm crime investigations. Prevention programs include the Crime Suppression Unit and School Resource Officer, both of whom are involved in every youth firearm crime investigation.

East Palo Alto Police Department: The East Palo Alto Police Department estimates that as much as 60 percent of its total operating budget is spent on the law enforcement response, investigation and prevention of youth firearm crime.

As many of these enforcement intervention and prevention programs are interrelated, it is difficult to attribute exact costs to each component. Among the numerous firearm prevention and enforcement programs, the Police Department has identified Project Ceasefire (see pages 9-10) as one with significant promise.

Redwood City Police Department: The Redwood City Police Department has worked actively in youth firearm crime prevention. The Department's Juvenile Unit and Street Crime Suppression Team and School Resource Officer have been active in educating schools, at-risk youth and their parents about gangs and have incorporate preventing firearm violence in their presentations.

San Mateo City Police Department: The San Mateo City Police Department's Youth Service Bureau coordinates prevention and enforcement of youth crime. Through this agency, school resource officers, the Police Activities Leagues, the Juvenile detective, and schools work to identify at-risk youth who are candidates for diversion from the juvenile justice system. Through this program, youth are referred to activities in or after school designed to foster his or her positive development and relationships with law enforcement.



**Selected Demographics of Youth Service Provider Respondents to the
San Mateo County Youth Firearm Violence Impact Survey 2011
(n = 115)**

Race Ethnicity	Percent
Asian and Pacific Islander	2.6
African American	8.7
Latino	24.3
Native American	0.9
Other	18.3
White	45.2
Household Income	Percent
\$10,000-\$29,999	4.3
\$30,000-\$59,999	18.3
\$60,000-\$79,999	14.8
\$80,000-\$99,999	17.4
\$100,000 +	45.2

**Selected Demographics of Parent Respondents to the San Mateo
County Youth Firearm Violence Impact Survey 2011
(n = 275)**

Race Ethnicity	Percent
Asian and Pacific Islander	5.5
African American	2.9
Latino	46.5
Native American	1.5
Other	5.5
White	38.2

Household Income	Percent
0-\$9,999	13.5
\$10,000-\$19,999	9.5
\$20,000-\$29,999	10.5
\$30,000-\$59,999	13.1
\$60,000-\$79,999	9.8
\$80,000 +	43.6



Selected Demographics of East Palo Alto and Redwood City Youth Respondents to the San Mateo County Youth Firearm Violence Impact Survey 2011 (n = 85)	
Race Ethnicity	Percent
Asian and Pacific Islander	3.6
African American	3.6
Latino	89.3
Other	2.4
White	1.2
Household Income	Percent
0-\$9,999	23.8
\$10,000-\$19,999	20.2
\$20,000-\$29,999	29.8
\$30,000-\$59,999	13.1
\$60,000-\$79,999	8.3
\$80,000 +	4.8

¹ "Youth" is as youth and young adults from ages 12 - 25 years of age.

² The terms "Firearm" and "Gun" are used interchangeably in this report.

³ "Youth violence" is as violence involving a in which the perpetrator and/or the victim is a youth.

⁴ U.S. Department of Transportation of the Assistant Secretary for Transportation Policy. (2007) Treatment of the Economic Value of a Statistical Life in Departmental Analysis (Accessed July 5, 2011 from <http://ostpxweb.dot.gov/policy/reports/080205.htm>). Washington DC: Peter Belenky

⁵ Average was calculated by dividing the estimated crime investigation, prevention, and overhead costs spent on youth crime by the number of youth violent crimes investigated, except in Daly City. For Daly City, the average cost was weighted based on the frequency and severity of crime investigated.

⁶ Because crime investigation, enforcement, and prevention programs in the East Palo Alto Police Department are integrated, each program's cost contribution to a youth crime investigation could not be separated.

⁷ Ibid

⁸ See appendix for Redwood City information.

⁹ Greenwood, Peter W., Karyn Model, C. Peter Rydell and James Chiesa.

CA: RAND Corporation, 1998. http://www.rand.org/pubs/monograph_reports/MR699-1.

¹⁰ <http://www>

¹¹ <http://www.aypf.org/publications/compendium/C1S18.pdf>

¹² <http://www.surgeongeneral.gov/library/youthviolence/>

¹³ Ibid

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PROOF OF SERVICE

Case Name: *Kirk, et al. v. City of Morgan Hill, et al.*
Court of Appeal Case No.: H048745
Superior Court Case No.: 19CV346360

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

On August 25, 2021, I served a copy of the foregoing document(s) described as:
APPELLANTS' APPENDIX, VOLUME IX OF XI, as follows:

Anthony P. Schoenberg
tschoenberg@fbm.com
James Allison
jallison@fbm.com
Farella Braun + Martel, LLP
235 Montgomery St.,
17th Floor
San Francisco, CA 94104

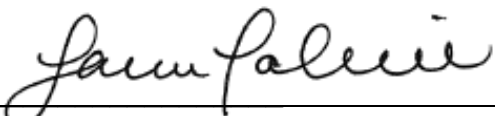
Hannah Shearer
hshearer@giffords.org
Giffords Law Center to Prevent
Gun Violence
262 Bush Street #555
San Francisco, CA 94104

Attorneys for Defendants and Respondents City of Morgan Hill, et al.

These parties were served as follows: I served a true and correct copy by electronic transmission through TrueFiling. Said transmission was reported and completed without error.

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

Executed on August 25, 2021, at Long Beach, California.



Laura Palmerin
Declarant