

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 V OF XI  
(Pages 908 to 1195 of 2813)**

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

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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 <sup>5</sup>
Daly City (n = 22)	\$117,900	\$435,801	\$88,425	36,935 (\$1,283- \$72,430)
East Palo Alto (n = 76)	\$6,556,200 <sup>2</sup>	6	7	\$86,265
Redwood City (n = 23) <sup>8</sup>	---	---	---	---
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)
<b>Estimated cost range of one firearm crime based on severity (i.e. illegal firearm possession to homicide)</b>	<b>(\$266,461-\$856,323)</b>	<b>(\$57,117-\$650,305)</b>

\*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 suspect 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.

## SOLUTIONS

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.<sup>9</sup> 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 Chicago<sup>10</sup> 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 c area.

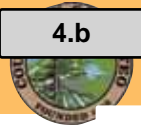
This violence interruption program is very similar to the current activities of the Gang Intelligence Unit and Operation Ceasefire in San Mateo County. The San Mateo County Gang Intelligence Unit (GIU) consists of members of the Sheriff’s Office, San Mateo County Probation, and assigned detectives from 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 effort 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)<sup>11</sup> 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

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 health 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](http://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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## 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.



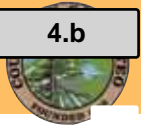
**Selected Demographics of Youth Service Provider Respondents to the  
San Mateo County Youth Firearm Violence Impact Survey 2011  
(n = 115)**

<b>Race Ethnicity</b>	<b>Percent</b>
Asian and Pacific Islander	2.6
African American	8.7
Latino	24.3
Native American	0.9
Other	18.3
White	45.2
<b>Household Income</b>	<b>Percent</b>
\$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)**

<b>Race Ethnicity</b>	<b>Percent</b>
Asian and Pacific Islander	5.5
African American	2.9
Latino	46.5
Native American	1.5
Other	5.5
White	38.2

<b>Household Income</b>	<b>Percent</b>
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



<b>Selected Demographics of East Palo Alto and Redwood City Youth Respondents to the San Mateo County Youth Firearm Violence Impact Survey 2011 (n = 85)</b>	
<b>Race Ethnicity</b>	<b>Percent</b>
<b>Asian and Pacific Islander</b>	3.6
<b>African American</b>	3.6
<b>Latino</b>	89.3
<b>Other</b>	2.4
<b>White</b>	1.2
<b>Household Income</b>	<b>Percent</b>
<b>0-\$9,999</b>	23.8
<b>\$10,000-\$19,999</b>	20.2
<b>\$20,000-\$29,999</b>	29.8
<b>\$30,000-\$59,999</b>	13.1
<b>\$60,000-\$79,999</b>	8.3
<b>\$80,000 +</b>	4.8

<sup>1</sup> "Youth" is defined as youth and young adults from ages 12 - 25 years of age.

<sup>2</sup> The terms "Firearm" and "Gun" are used interchangeably in this report.

<sup>3</sup> "Youth firearm violence" is defined as violence involving a firearm in which the perpetrator and/or the victim is a youth.

<sup>4</sup> U.S. Department of Transportation Office 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

<sup>5</sup> Average was calculated by dividing the estimated crime investigation, prevention, and overhead costs spent on youth firearm 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 firearm crime investigated.

<sup>6</sup> Because crime investigation, enforcement, and prevention programs in the East Palo Alto Police Department are significantly integrated, each program's cost contribution to a youth firearm crime investigation could not be separated.

<sup>7</sup> Ibid

<sup>8</sup> See appendix for Redwood City information.

<sup>9</sup> Greenwood, Peter W., Karyn Model, C. Peter Rydell and James Chiesa. *Diverting Children from a Life of Crime: Measuring Costs and Benefits*. Santa Monica, CA: RAND Corporation, 1998. [http://www.rand.org/pubs/monograph\\_reports/MR699-1](http://www.rand.org/pubs/monograph_reports/MR699-1).

<sup>10</sup> <http://www.nij.gov/journals/264/ceasefire.htm>

<sup>11</sup> <http://www.aypf.org/publications/compendium/C1S18.pdf>

<sup>12</sup> <http://www.surgeongeneral.gov/library/youthviolence/>

<sup>13</sup> Ibid

This project has been made possible in part by a grant from  
Silicon Valley Community Foundation.

**Suicide by Firearms in Santa Clara County:**

**Rates and Solutions**

Tiffany Shiu and Diego Martinez

District Two Fellowship and Internship Program

Office of Supervisor Cindy Chavez

Summer 2018

Attachment: FINAL Firearm Suicides Paper\_Sup. Chavez Aug18 (1993 : Gun Violence Ordinance)



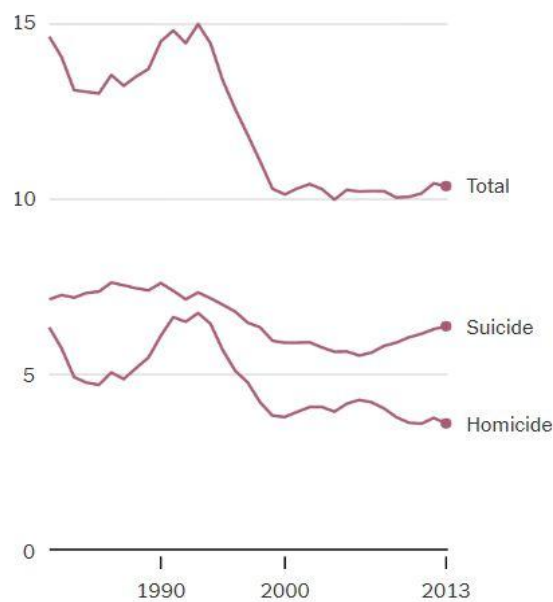
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## Introduction

Often times when Americans think about firearm deaths, they focus on mass shootings. However, suicide accounted for 61% of all firearm fatalities in the U.S. in 2014.<sup>1</sup> Firearm suicide rates have been consistently higher than firearm homicide rates, and firearm suicide rates have been increasing since 2006 (Figure 1). Unfortunately, suicide is more stigmatized and less discussed than homicide, which makes this issue more important than ever.

Figure 1: Gun Deaths in the U.S. per 100,000 people <sup>2</sup>



Death rates are age-adjusted. Some categories of gun deaths, such as those from accidents, are not shown.

<sup>1</sup> Grinberg, E. (2017, February 18). Gun violence not a mental health issue, experts say, pointing to 'anger,' suicides. Retrieved August 3, 2018, from <https://www.reviewjournal.com/life/health/gun-violence-not-a-mental-health-issue-experts-say-pointing-to-anger-suicides/>

<sup>2</sup> National Center for Health Statistics. (2017, March 17). Retrieved August 4, 2018, from <https://www.cdc.gov/nchs/fastats/suicide.htm>

One of the intended outcomes of this research was to fully understand the affected population: gender, ethnicities, age groups and cities of the firearm suicide decedents nationally and in Santa Clara County. Suicide by firearm is not merely a mental health or gun safety issue, but rather a combination of the two. The findings and the recommendations of this research are focused on how to reduce access to lethal means and how to give people with suicidal ideations the resources they need.



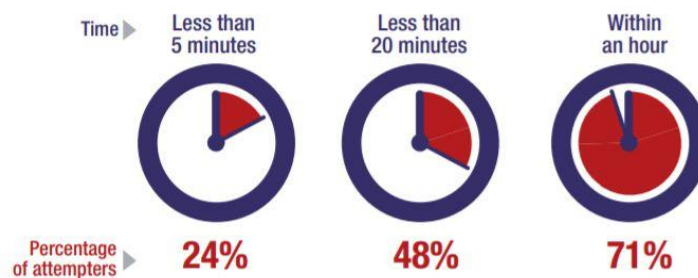
## Literature Review

### *National Statistics on Suicide Rates*

Suicides are the second-most common cause of death for Americans between 15 and 34 years old.<sup>3</sup> For all ages, it is the 10th most common cause of death.<sup>4</sup> Firearms are the most common method of suicide, accounting for 51% of all suicides in 2016.<sup>5</sup> Among American females, 32.1% of suicide deaths were by firearm and among American males, 56.6% of suicide deaths were by firearm in 2015.<sup>6</sup>

Often, suicide attempts occur shortly after people decide to end their lives (Figure 2). For instance, an investigation by the New Hampshire Medical Examiner's death investigation reports that among the 144 firearm suicides that occurred over a two-year period (ending June 30, 2009), nearly one in ten were committed with a gun that was purchased or rented within a week of the suicide (usually within hours).<sup>7</sup> The figure is likely an underestimate since two-thirds of the reports made no mention of when the gun was obtained.<sup>8</sup>

Figure 2: Time Elapsed between Decision and Suicide Attempt<sup>9</sup>



<sup>3</sup> Suicide. (n.d.). Retrieved July 26, 2018, from <https://www.nimh.nih.gov/health/statistics/suicide.shtml>

<sup>4</sup> National Center for Health Statistics. (2017, March 17). Retrieved July 26, 2018, from <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm>

<sup>5</sup> Suicide Statistics. (n.d.). Retrieved August 5, 2018, from <https://afsp.org/about-suicide/suicide-statistics/>

<sup>6</sup> Suicide. (n.d.). Retrieved August 5, 2018, from <https://www.nimh.nih.gov/health/statistics/suicide.shtml>

<sup>7</sup> Training in Suicide Prevention, Intervention and Postvention. (n.d.). Retrieved August 6, 2018, from <http://www.theconnectprogram.org/>

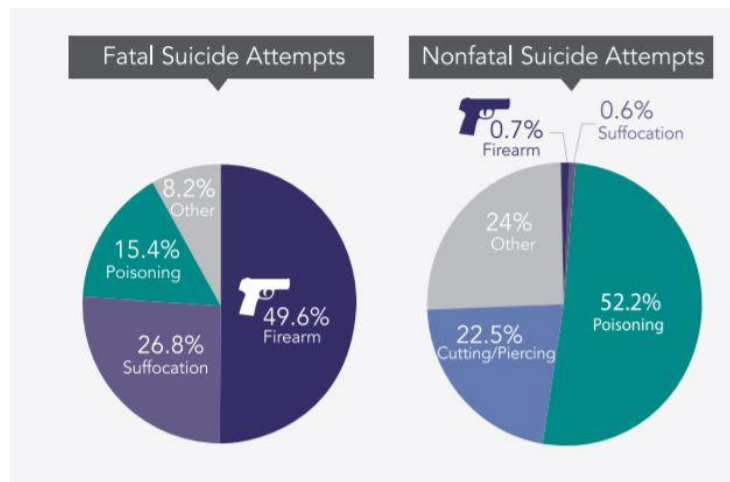
<sup>8</sup> Ibid.

<sup>9</sup> The Truth About Suicide & Guns. (n.d.). *Brady Campaign*. Retrieved August 4, 2018.

One of the most lethal means of suicide is the use of a firearm. Firearm usage is 95% fatal and is only exceeded by stepping in front of a train which is 98.5% lethal.<sup>10</sup> Unfortunately, those who attempt to kill themselves with a firearm rarely get a second chance as with other methods (Figure 3). Having a gun readily available in the home makes the likelihood of death significantly more likely. A growing body of research suggest that having guns in the home prior to the decision to commit suicide contributes to increased suicide risk beyond other risk factors such as substance abuse, a history of self-harm, hopelessness or depression.

11

Figure 3: Fatal and Nonfatal Suicide Attempts by Method (2015)<sup>12</sup>



When suicide attempts do fail, very few go on to die by suicide using an alternative method. If they do attempt suicide again, they will most likely use a less lethal method since firearm is one of the most lethal methods of suicide. A review of 90 studies of long term outcomes for people who survived a suicide attempt found that 89-95% did not go on to die by suicide, even when followed over a period of 9 years or more. Some 20-25% did make another nonfatal attempt;

<sup>10</sup> Lethality of Suicide Methods. (2017, January 06). Retrieved July 26, 2018, from <https://www.hsph.harvard.edu/means-matter/means-matter/case-fatality/>

<sup>11</sup> Grinberg, E. (2017, February 18). Gun violence not a mental health issue, experts say, pointing to 'anger,' suicides. Retrieved August 3, 2018, from <https://www.reviewjournal.com/life/health/gun-violence-not-a-mental-health-issue-experts-say-pointing-to-anger-suicides/>

<sup>12</sup> The Truth About Suicide & Guns. (n.d.). *Brady Campaign*. Retrieved August 4, 2018.

roughly 70% made no further fatal or nonfatal attempts. This is because acute suicidal feelings often lessen with time, changes in life circumstances, treatment or other support.<sup>13</sup>

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<sup>13</sup> Owens, D. (2002). Fatal and Non-Fatal Repetition of Self-Harm. *British Journal of Psychiatry*. Retrieved July 26, 2018.

*Analyzing Santa Clara County Firearm Suicides*

Fifty nine percent of firearm deaths are suicides in Santa Clara County from 2007-2016.<sup>14</sup> Firearm is the second most common method of suicide after hanging, and approximately 32% of suicide deaths are by firearms in the county in 2015.<sup>15</sup>

In 2016, the Center for Disease and Control (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA) conducted an investigation on youth suicide in the county. The purpose of this investigation was to utilize existing data to develop specific prevention and control recommendations on youth suicide prevention that can be used on the school, city, and county levels.<sup>16</sup> The investigation looked at trends in fatal and non-fatal behaviors among youth occurring from 2008 through 2015 in the county. It examined whether media coverage of youth suicides met safe reporting guidelines, compared youth suicide prevention policies, activities and protocols used in the community to evidence-based and national recommendations and made recommendations on youth suicide prevention strategies.<sup>17</sup> Some of the outcomes include:

- “Since 2003, the crude suicide rate for youth, ages 10–24, that died in California and were residents of Santa Clara County has remained stable, with no significant differences over time.
- The suicide rate for 10–24 year olds in Santa Clara County was 5.4 per 100,000, combining data from 2003 to 2014. This is similar to the California suicide rate of 5.3 per 100,000. The suicide rate for youth nationwide was higher than the county and state rates.
- A total of 229 suicide deaths occurred in 10–24 year olds residing in Santa Clara County from 2003 to 2015
  - Two-third of these were ages 20–24 (66%)
  - Three quarters were males (75%)

<sup>14</sup> Fact Sheets. (n.d.). Retrieved July 26, 2018, from <https://www.sccgov.org/sites/phd/hi/hd/Pages/fact-sheets.aspx>

<sup>15</sup> Ibid.

<sup>16</sup> Epi-Aid on Youth Suicide in Santa Clara County. (n.d.). Retrieved July 24, 2018, from <https://www.sccgov.org/sites/phd/hi/hd/epi-aid/Pages/epi-aid.aspx>

<sup>17</sup> Ibid.

- Nearly 2 in 5 were White, non-Hispanic (39%) followed by 27% Asian/Pacific Islander, 27% Hispanic and 4% African American.
- Findings shows that almost all youth deaths by suicide had factors that preceded the suicide. These factors include, for example, a recent crisis or a current mental health problem.
- In student surveys from 2005 to 2014, the percentage of high school students who reported that they had thoughts of suicide in the past 12 months ranged from 15% to 19% in Santa Clara County.
- From 2009 to 2015, Bay Area media reporting departed from the accepted safe suicide reporting guidelines. Common problems with reporting included describing the method of suicide and location of the injury or death in the story.”<sup>18</sup>

The Santa Clara County Office of the Medical Examiner/Coroner compiled a comprehensive database of firearm deaths from 2014-2017 in the county. This database includes the decedent’s name, age, gender, ethnicity, death location, zip code, location of death, date of death, cause of death, other significant conditions contributing to the cause of death, how the injury occurred, the manner of death, and the make, model and barrel length of firearm (if known) of the decedent (Appendix A). This information enabled analysis of the issues at the local level. Information regarding employment, income, mental and whether the firearm was obtained legally or illegally is not available to the public. However, generally, suicide victims are employed and come from all economic backgrounds.<sup>19</sup> In fact, higher income individuals are more likely to commit suicide rather than people of a lower economic class.<sup>20</sup> For men, divorced individuals are more likely to take their own lives rather than married individuals.<sup>21</sup> Among women, marital status

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<sup>18</sup> Ibid., p 10.

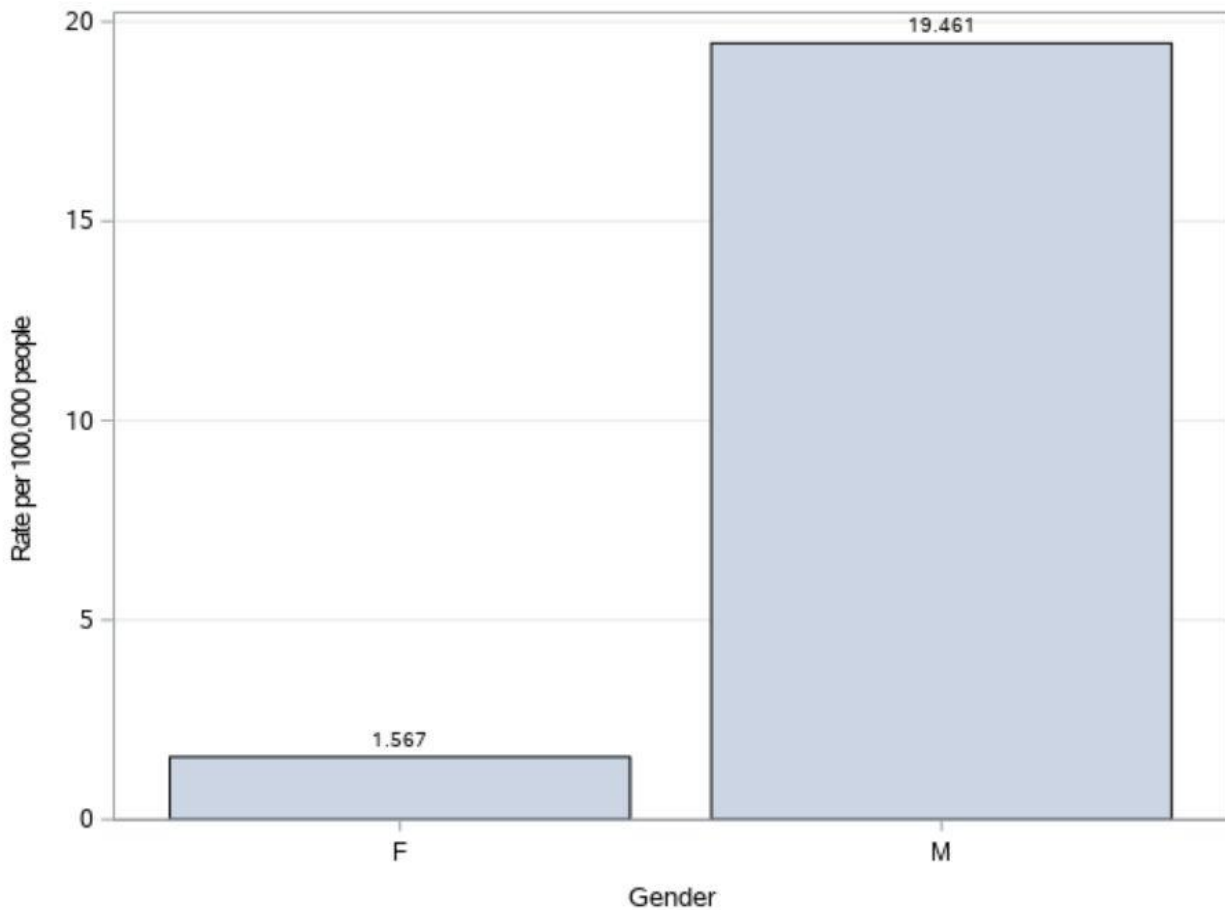
<sup>19</sup> Rehkopf, D. H., & Buka, S. L. (2006, February). The association between suicide and the socio-economic characteristics of geographical areas: A systematic review. Retrieved July 31, 2018, from <https://www.ncbi.nlm.nih.gov/pubmed/16420711>

<sup>20</sup> J. S. (2012, November 08). Why Suicides Are More Common in Richer Neighborhoods. Retrieved July 26, 2018, from <http://business.time.com/2012/11/08/why-suicides-are-more-common-in-richer-neighborhoods/>

<sup>21</sup> Kposowa, A. (2000, April). Retrieved July 31, 2018, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1731658/>

does not affect the risk of suicide. Firearms used in suicides are mostly obtained legally.<sup>22</sup> The trends found in the county correlate with the national trends.

Figure 4: Santa Clara County Firearm Suicide Death Rates by Gender  
(2014-2017)<sup>23</sup>



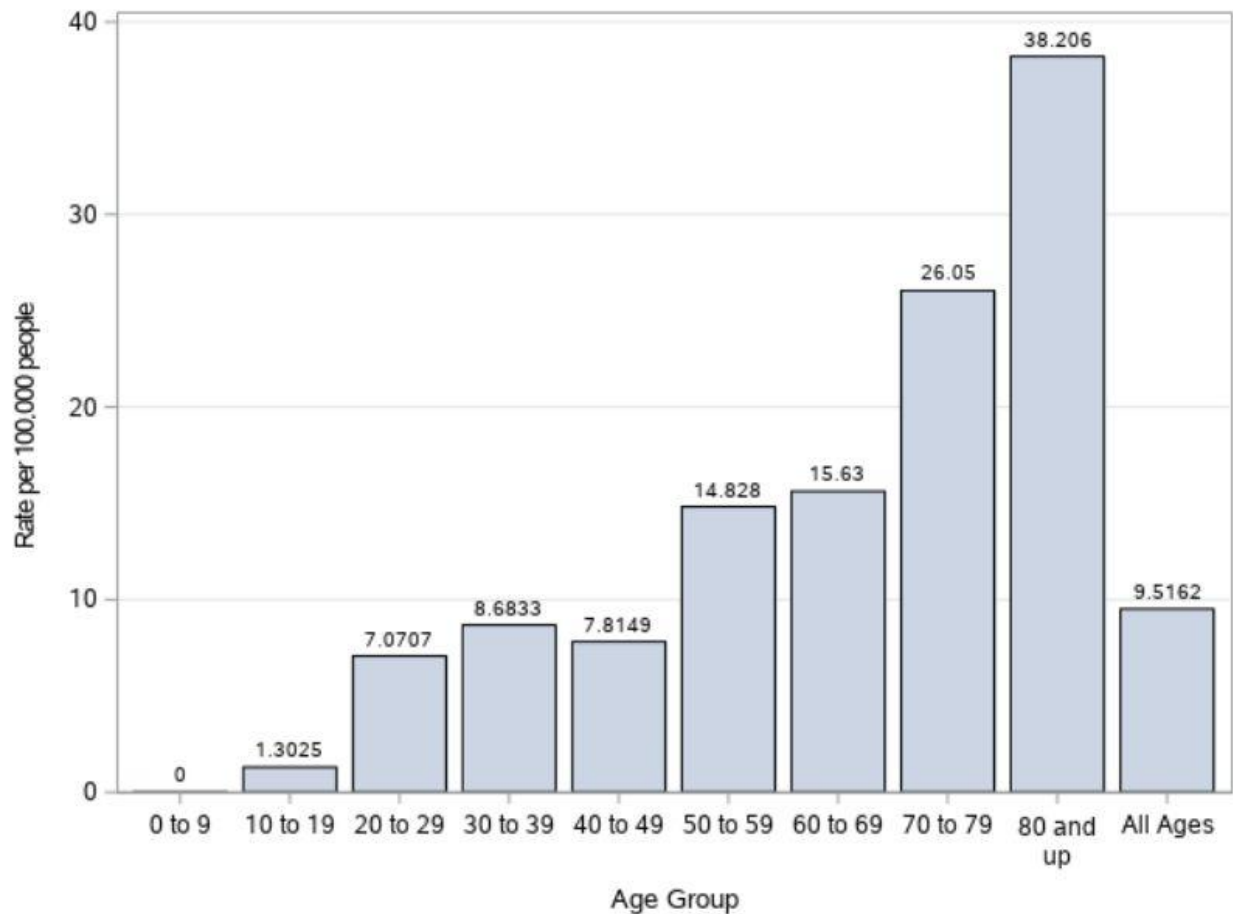
In this four year period there were 179 firearm suicides - 13 female and 166 male. As Figure 4 indicates, there was a female firearm suicide rate of 1.567 per 100,000 County residents and a male firearm suicide rate of 19.461 per 100,000 County residents. Both nationally and in the County, suicide by gun is particularly common among men, and in women, it is the second most prevalent method after

<sup>22</sup> Guns & Suicide. (2016, December 01). Retrieved from [https://www.hsph.harvard.edu/magazine/magazine\\_article/guns-suicide/](https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/)

<sup>23</sup> Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition

poisoning.<sup>24</sup> Male firearm suicides are much more common than female firearm suicides due to the use of more lethal means.

Figure 5: Santa Clara County Firearm Suicide Death Rates by Age  
(2014-2017)<sup>25</sup>



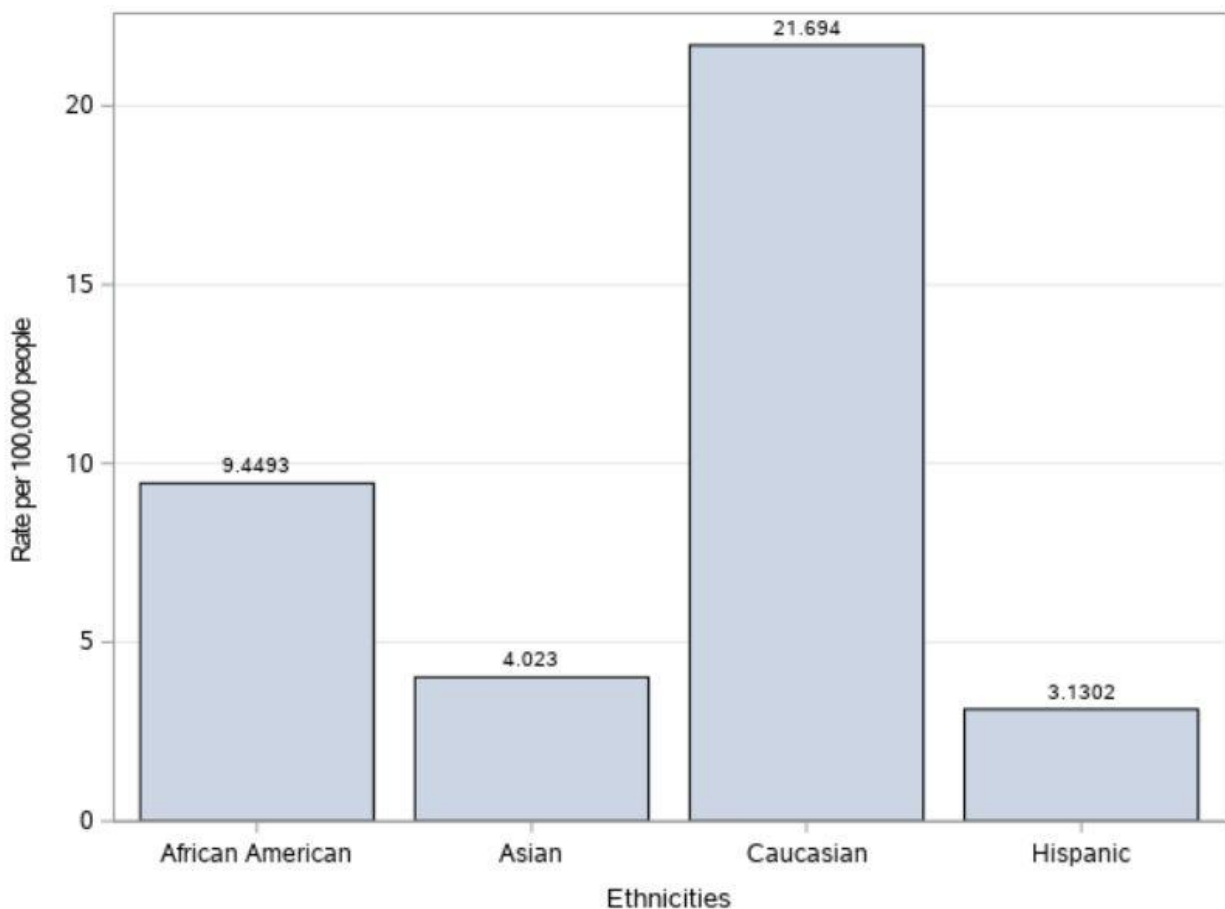
From Figure 5, the firearm suicide rate for the 80 and up age group was the highest: 38.206 per 100,000 County residents. The firearm suicide rates per 100,000 County residents were also high for ages 70 to 79, 60 to 69 and 50 to 59. Even though there appears to be a considerable difference between the rate for the 70 to 79 and the 80 and up age groups, this difference is not statistically

<sup>24</sup> Brady Campaign to Prevent Gun Violence. (n.d.). Retrieved July 26, 2018, from <http://www.bradiycampaign.org/the-truth-about-suicide-guns>

<sup>25</sup> Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition

significant. However, there is a statistically significant difference between the 80 and up age group and 60 to 69 age group, and the 80 and up and 50 to 59 age groups. Nationally, firearm suicide rates also increase significantly with age and are highest among adults 70 and older.<sup>26</sup>

Figure 6: Santa Clara County Firearm Suicide Death Rates by Ethnicity (2014-2017)<sup>27</sup>



From Figure 6, the firearm suicide death rates for Caucasians was highest: 21.694 per 100,000 County residents. Although there appears to be a large difference between the firearm suicide rates of Caucasians and African Americans, this difference is not statistically significant. However, there is a significant difference between the Caucasian and Asian firearm suicide rates. Nationally,

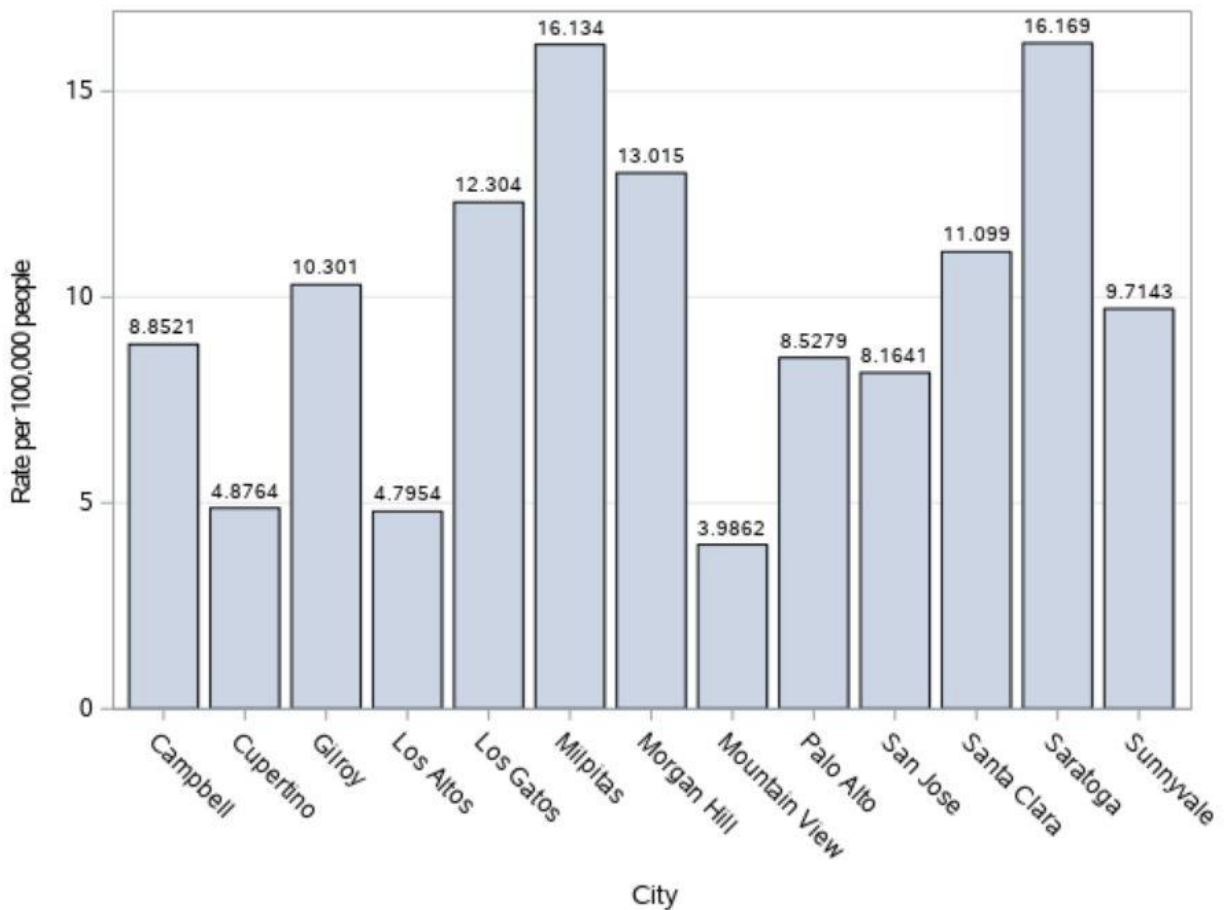
<sup>26</sup> Ibid., p 12.

<sup>27</sup> Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition



white men make up 79% of all firearm suicide victims in the U.S. while people of color account for less than 8% of firearm suicide victims.<sup>28</sup>

Figure 7: Santa Clara County Firearm Suicide Death Rates by City  
(2014-2017)<sup>29</sup>



As demonstrated by Figure 7, the firearm suicide death rates in Milpitas and Saratoga were highest: approximately 16 per 100,000 County residents. There only appears to be a significant difference between the firearm suicide rates of Milpitas and Mountain View. Nationally, states with high levels of firearm ownership tend to have high levels of suicide. For example, the five states with the highest rates of

<sup>28</sup> Brady Campaign to Prevent Gun Violence. (n.d.). Retrieved July 26, 2018, from <http://www.bradiycampaign.org/the-truth-about-suicide-guns>

<sup>29</sup> Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition

firearm suicide (Alaska, Wyoming, Montana, Idaho, Oklahoma) all have adult firearm ownership rates 12 to 30% higher than the national average (32.6%).

### *Suicide Risk Factors*

Suicide is a complex phenomenon. There are always multiple risk factors that converge in a person's life that create a culmination of acute risk. The behavioral threat assessment is used as a tool to identify and intervene with individuals who have communicated threats of violence or engaged in behavior that clearly indicates planning or preparation to commit a suicide.

The current method for predicting the level of suicide risk is not effective according to two meta-analyses of the last forty years of suicide risk research. In the first paper, author Matthew Large and his group in Australia looked at the last 40 years of suicide risk assessment research. They found that 95% of patients will not die by suicide at all and that 50% of patient suicide came from the lower risk categories.<sup>30</sup> They also found that predicting suicide by combining multiple risk factors was not much better than using a single risk factor.<sup>31</sup>

The second paper was a meta-analysis of suicide risk factors and risk assessment scales in people who had already harmed themselves. In this analysis, the four strongest risk factors were previous episodes of self-harm, suicidal intent, physical health problems and male gender. These risk factors are so common that they are of no help in assessing suicide risk. According to the National Institute of Mental Health, complex and deep-rooted problems such as depression and other mental disorders, drug and alcohol abuse, family violence, and a family history of suicide often shadow victims.<sup>32</sup>

Many studies have indicated that states with higher gun ownership rates also tend to have higher firearm suicide rates. A 2008 study by Miller and David Hemenway, authors of the book *Private Guns, Public Health*, found that rates of firearms suicides in states with the highest rates of gun ownership are 3.7 times

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<sup>30</sup> Murray, D. (2017, March 28). Suicide Risk Assessment Doesn't Work. Retrieved from <https://www.scientificamerican.com/article/suicide-risk-assessment-doesnt-work>

<sup>31</sup> Ibid.

<sup>32</sup> Guns & Suicide. (2016, December 01). Retrieved from [https://www.hsph.harvard.edu/magazine/magazine\\_article/guns-suicide/](https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/)

higher for men and 7.9 times higher for women, compared with states with the lowest gun ownership, though the rates of non-firearm suicides are about the same.

<sup>33</sup> Another study by the Harvard School of Public Health (HSPH) was conducted of all 50 U.S. states. Based on survey of American households conducted in 2002, HSPH Assistant Professor of Health Policy and Management Matthew Miller, Research Associate Deborah Azrael and colleagues at the School's Injury Control Research Center (ICRC) found that in states where gun were prevalent as in Wyoming, where 63 percent of households reported owning guns and rates of suicide were higher.<sup>34</sup> The inverse was also true: where gun ownership was less common, suicide rates were also lower.<sup>35</sup>

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<sup>33</sup> Ibid.

<sup>34</sup> E. (2017, July). *Data behind Extreme Risk Protective Order Policies: A look at Connecticut's Risk-Warrant Law*. Retrieved August 3, 2018.

<sup>35</sup> Ibid.

*California Gun Safety and Gun Violence Prevention Laws*

California has some of the strictest gun safety policies in the United States. According to Gifford's Law Center, California:

- “Requires all gun sales to be processed through a licensed dealer, requiring a background check;
- Requires gun dealers to obtain a state license;
- Bans most assault weapons and .50 caliber rifles, and restricts the sale, transfer, manufacture, and possession of large capacity ammunition magazines;
- Requires all firearms purchasers to obtain a Firearm Safety Certificate, after passing a written test;
- Regulates gun shows in a comprehensive manner;
- Limits purchases of new handguns to one per person per month;
- Prohibits the sale of unsafe handguns that do not incorporate mandatory design safety elements;
- Imposes a ten-day waiting period prior to the sale or transfer of a firearm;
- Maintains permanent records of firearm sales;
- Gives local law enforcement discretion to deny a license to carry a concealed weapon; and
- Gives local governments authority to regulate firearms and ammunition, although the state legislature has expressly removed this authority in certain areas.”<sup>36</sup>

In addition to the policies above, in California, purchase or possession of firearms is prohibited for people who have been admitted to a mental health facility, are receiving patient treatment, and have been determined to be a danger to self or others by the attending health professional.<sup>37</sup>

<sup>36</sup> California. (n.d.). Retrieved July 24, 2018, from <http://lawcenter.giffords.org/gun-laws/state-law/california/>

<sup>37</sup> Ibid.

In 2014, California established a Gun Violence Restraining Order (GVRO) law which allows family members to petition a court to temporarily remove firearms from a loved one who is found to pose a clear danger to the public or their own safety. There are three types of gun violence restraining orders. There is the temporary emergency order, which is for an immediate threat, and it is only for law enforcement.<sup>38</sup> Next, there is the temporary ex parte, which is a formal application made in court by law enforcement or family/housemates.<sup>39</sup> Lastly, there is the order after notice/hearing which is a one year order after a full hearing.<sup>40</sup> In California, a GVRO can be sought by spouses, parents, grandparents, siblings, children, stepparents, stepchildren, domestic partners or roommates and other household members who have lived with the individual of the petition within the last six months.

**The Temporary Emergency GVRO** last 21 days and may be requested by law enforcement at any time of day through a verbal or written request to a local Superior Court judicial officer. The officer must show through testimony or documented evidence that there is “reasonable cause” that the subject poses a danger to themselves or others. Once the GVRO is served, the subject must immediately surrender all firearms and ammunition in his or her possession.

**The Temporary Ex Parte Order** lasts up to 21 days and is available to law enforcement, immediate family members or a household member. The petition may only be filed during normal court hours, and it is filed with the Superior Court clerk in the county in which the subject resides. A judicial officer must find that the subject poses “a significant danger in the near future” of injury to self or others by having a firearm in his or her possession. The subject must relinquish all firearms to the officer, but if not the subject would then have 24 hours to turn their firearms and ammunition in to a local law enforcement agency. A hearing will be scheduled within 21 days from the date on the order and it will give the subject an opportunity to respond.

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<sup>38</sup> Gun Violence Restraining Orders. (n.d.). Retrieved July 26, 2018, from <http://www.courts.ca.gov/33961.htm>

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

**A One Year GVRO** may be obtained after the subject is served a notice of the ex parte order to determine if a one-year GVRO is necessary. During the hearing the restraining party has the opportunity to respond to the order and the court will review the same types of evidence it used when considering the ex parte order. The court may also review testimony from the petitioner and any witnesses which they produce. A one-year GVRO may be renewed up to three months before it expires.<sup>41</sup>

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<sup>41</sup> How to Get a GVRO. (n.d.). Retrieved August 5, 2018, from <https://speakforsafety.org/obtain-a-gvro-family-household/>

*Local Suicide Prevention Programs and Efforts*

Santa Clara County Office of the Medical Examiner/Coroner shared that after a person takes his or her life, immediate family members receive a brochure with the suicide and crisis hotline and places to go to for support including the Bill Wilson Center and Kara Grief Support. A family history of suicide is a significant suicide risk factor.<sup>42</sup> Therefore, it is essential that family members receive the services and support they need after a loved one dies by suicide.

One of the services provided by the Bill Wilson Center is the Center for Living with Dying, which provides emotional support to people dealing with grief and loss. The Center provides crisis intervention services as well as educational programs on grief and loss.<sup>43</sup> The Bill Wilson Center also provides mental health services for youth and their families. The Transition Age Youth Mental Health Services provides support for youth and young adults ages 16-24 residing in Santa Clara County who must have either MediCal insurance or no insurance at all to qualify. The Youth and Family Mental Health Services provides support for individuals up to age 21 and their families who have MediCal insurance as their primary insurance provider. There is also a 24-hour Young Adult Support Hotline that connects youth to mental health specialists who can respond in person. Kara Grief Support provides grief therapy for children, adolescents, adults, couples and families. In addition, Kara offers on-site crisis support services to schools, community organizations and businesses to help process their grief when a death has occurred.<sup>44</sup>

The Suicide Prevention Program also oversees the Santa Clara County Suicide & Crisis Hotline, which is available 24 hours and 7 days a week in both English and Spanish. Approximately 60 to 70% of calls from this hotline were female. This county hotline is also certified nationally, which means that if a Santa

<sup>42</sup> Violence Prevention. (2017, October 03). Retrieved July 20, 2018, from <https://www.cdc.gov/violenceprevention/suicide/riskprotectivefactors.html>

<sup>43</sup> Bill Wilson Center : Services : All Services : Centre for Living with Dying. (n.d.). Retrieved July 20, 2018, from <http://www.billwilsoncenter.org/services/all/living.html>

<sup>44</sup> Crisis Response. (n.d.). Retrieved July 20, 2018, from <https://kara-grief.org/services/crisis-response/>



Clara County resident calls the national hotline, his or her call will get rerouted back to the county hotline. The hotline is currently working to implement a crisis text line.

In addition to the resources for family members of descendants of suicide, there are numerous resources available to individuals who are contemplating suicide. For example, the Santa Clara County Suicide Prevention Program, which trains Suicide and Crisis Hotline volunteers, holds trainings to help those in crisis, conducts public education and awareness campaigns, works with schools and promotes safe and effective reporting on suicide.<sup>45</sup> One training that the program holds is the Question Persuade Refer (QPR) Online Suicide Prevention Training. This is a free online training available to anyone above the age of 18 who lives or works in Santa Clara County. QPR training teaches users about the warning signs of suicide, how to ask the suicide question, how to persuade someone in crisis to seek help, and how to refer them to resources. In addition to the online training, there is also the QPR Gatekeeper Training Class, which provides in person trainings of the same material. Other trainings include the QPRT Online Suicide Risk Assessment and Management Training for professionals responsible for the care and safety of patients at risk for suicidal behaviors, safeTALK Alertness Training for anyone over the age of 15 to become a suicide-alert helper, Suicide to Hope Training for participants working with people previously at risk and currently safe from suicide, Youth Mental Health First Aid Training designed for adults who regularly interact with youth and the Adult Mental Health First Aid Training.<sup>46</sup> Recently, the Suicide Prevention Program carried out a 10-month sports radio campaign encouraging adult men across the Bay Area to access mental health support. The Suicide Prevention Program is very passionate about preventing suicide in our community and to lead the way for other counties. They are focused on targeting community institutions such as churches and schools to build resilience and increase community support. They understand the difficulties of

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<sup>45</sup> Suicide Prevention & Crisis. (n.d.). Retrieved July 22, 2018, from <https://www.sccgov.org/sites/bhd/services/sp/pages/spc.aspx>

<sup>46</sup> Trainings. (n.d.). Retrieved July 22, 2018, from <https://www.sccgov.org/sites/bhd/Services/SP/Pages/SP-Trainings.aspx>

reducing access to lethal means at the city level, but they believe that providing data would convince advocates. The program is currently focused on training the local media to use safe terminology when covering suicide, which includes not using words such as “committing” because that would imply that suicide is a crime and therefore increase the stigma around mental health. Also, graphic descriptions, pictures or videos can lead to copycat suicides, which means people study the methods others have committed suicide and imitate that process.

NAMI (National Alliance on Mental Illness) Santa Clara County works to support, educate and advocate for the mentally ill and their families, and also to promote research, reduce stigma surrounding mental health, and to improve services by working with mental health professionals and families.<sup>47</sup> Some of its education programs include the Family-to-Family Education Program designed for families living with mental illness, NAMI Basics Program for parents and caregivers of minors with mental illness, Peer-to-Peer Program focusing on recovery, Provider Education Program for those whose job revolves around working with the mentally ill or their loved ones and the Peer PALS Program where a trained mentor is paired with someone needing support. NAMI also has support groups for individuals concerned about their loved ones. The staff members we talked to expressed the need to publicize the county hotline more. In the past, NAMI had a partnership with buses that would promote the hotline. However, it is costly to have these types of partnerships. The staff members indicated the need to emphasize gun safety not gun control in order to prevent controversy. They also informed us about the suicide prevention plans of five cities. NAMI staff were able to provide feedback on the suicide prevention hotline. The services that this organization offers are support, education and awareness.

The Santa Clara County Suicide Prevention Strategic Plan was adopted by the Board of Supervisors on August 24, 2010. The primary objective of this plan is to increase public awareness of suicide as a public health problem, promote policies and programs that prevent suicide at local, state, and federal level, and

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<sup>47</sup> About NAMI Santa Clara. (n.d.). Retrieved July 22, 2018, from <http://www.namisantaclara.org/about-nami/>

within different organizations, advocate for changes in legislation and policy and advocate prevention funding.<sup>48</sup>

Cities Palo Alto, Milpitas, Mountain View, Los Gatos, and Morgan Hill also have suicide prevention policies. The Palo Alto Suicide Prevention Policy, established on September 22, 2010, seeks to advance current strategies and best practices as designated by the Suicide Prevention Resource Center, a national agency promoting the national suicide prevention plan, and the California Suicide Prevention Plan. This policy promotes the planning, implementing and evaluating of suicide prevention and intervention strategies and encouraging mental health care. The Palo Alto policy will include training to identify those at risk and how to report suicide threats to the appropriate authorities. This policy seeks to advance current strategies, including parent education, youth outreach, mental health support of students, means reduction, youth mental health screenings, and grief support. The City Manager has a responsibility to establish a crisis intervention plan and procedures to ensure public safety and appropriate communications when a suicide occurs or an attempt is made in Palo Alto. The City Manager will also explore how this policy relates to the city's Emergency Crisis Plan.

The Milpitas Suicide Prevention Policy, adopted on June 19, 2018, advances the current strategies and best practices of the Santa Clara County Behavioral Health Services, National Council for Behavioral Health, NAMI, and World Health Organization. This policy will also educate employees and residents to better understand the causes of suicide, learn the appropriate methods for identifying those at risk and how to report threats of suicide or those showing signs of suicide to the appropriate family members or professional authorities. This policy will extend the strategies of public education, community outreach, mental health screenings, grief support, Mental Health First Aid classes, media response criteria, crisis response plan, mental health and suicide prevention resources. This policy will seek to develop and implement effective and relevant educational programs that promote health emotional and social

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<sup>48</sup> Policy. (n.d.). Retrieved July 26, 2018, from <https://www.sccgov.org/sites/bhd/Services/SP/Pages/SP-Policy.aspx>

development of residents that also addresses the understanding of coping skills, problem-solving skills and resilience as a means of suicide prevention. This policy calls for the development and implementation of a Crisis and Community Communication Plan to ensure public safety as well as the reporting of a suicide or attempted suicide to both the community and the media in a responsible way.

The Mountain View Suicide Prevention Policy, adopted December 7, 2010, provides for employee education, suicide prevention community education, and collaboration with schools and other local and regional organizations to prevent suicide. The anticipated outcomes of this policy include: training city staff to better understand the causes of suicide and learn appropriate methods for identifying those at risk and preventing suicide, promotion of suicide prevention and education concerning available mental health resources, collaboration to advance similar work promoted by local schools and other local and regional organizations, collaboration with Santa Clara County Mental Health Department, and standardizing public information sharing to align with suicide prevention recommended best practices.

The Los Gatos Suicide Prevention Policy, adopted on August 18, 2015, calls for employee education, and for all residents, institutions, businesses to work toward preventing suicides and creating a healthier and safer community.

The Morgan Hill Suicide Prevention Policy indicates that its city staff will work with Morgan Hill Unified School District employees and residents to gain a better understanding about the causes of suicide and to learn appropriate methods for identifying and preventing suicide. This will include training in identifying those at risk and how to report suicide threats to the appropriate familial and professional authorities. This policy advances current evidence-based strategies for public education, community outreach, mental health support, means restriction, mental health screenings, grief support safe messaging trainings with media, developing suicide crisis response plans, and periodic review of relevant data. Currently there is work to get policies from Gilroy, San Jose, and Sunnyvale.

*Local Gun Safety Programs and Efforts*

Within the Public Health Department, there is a Violence Prevention Program that initiated the East San Jose PEACE (Prevention Efforts Advance Community Equity) Partnership. This program consists of a group of residents and organizations working to prevent and address violence and trauma through comprehensive violence prevention efforts throughout three zip codes (95116, 95122, and 95127).<sup>49</sup> The goals of the program include decreasing violence and trauma that affects youth, families and the community, advancing relationships and influence equitable economic opportunities and investments. Currently, the PEACE partnership is working on gun safety and violence prevention.

On February 27, 2018 the Board of Supervisors voted 5-0 for a summit addressing gun violence proposed by Supervisor Cortese. The summit was held on April 28, 2018. The issues that were discussed included more extensive background checks for gun buyers, creating safer school campuses and addressing concerns about guns in the possession of people with mental health issues without stigmatizing those individuals. In this summit, firearm suicides were part of the discussion. However, the summit primarily revolved around de-stigmatizing the mentally ill.

On March 6, 2018 the Board of Supervisors voted 5-0 to ban the possession or sale of firearms on county property, including the fairgrounds, which typically hosts two gun shows a year, proposed by Supervisor Yeager.

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<sup>49</sup> Santa Clara County Community Summit on Firearms and Safety Booklet

## Methodology

Our research consisted mainly of data analysis, interviews, and online research. We used a data analysis software to examine the demographics of the county firearm suicide decedents. From this, we were able to better understand the demographics of the people who are most vulnerable to firearm suicides.

Our project covers two main issues: reducing access to firearms for individuals thinking of suicide and providing these individuals the resources they need. As a result, we conversed with staff members from various viewpoints. We talked to staff from the Office of the Medical Examiner/Coroner to understand the demographics of the individuals who committed suicide in the county and what occurs after a firearm suicide. We then spoke to the County Suicide Prevention Program and NAMI staff because these two programs are both focused on providing support to the mentally ill. We were able to identify the county resources that are available to the mentally ill. Furthermore, we talked to staff from the District Attorney's Office so we would get a legal perspective of gun safety. Lastly, we talked to staff from the Public Health Department to understand gun safety from a public health perspective.

During each conversation, we asked the interviewees what policies they would like to see implemented in our county. Based on the feedback and input, we then conducted our own research and followed up with additional questions.

## Findings

### *Absence of County Gun Safe Storage Policy*

Researchers have found that at least one-third of handguns are stored, loaded and unlocked and that most children know where their parents keep their guns—even if their parents think otherwise.<sup>50</sup> In a study by Baxley and Miller, among gun-owning parents who reported that their children had never handled their firearms at home, 22% of the children, questioned separately, said that they had. In addition, firearm suicides among youth ages 17 and under commonly involves using the firearms of family members, usually their parents. In 2010, 40% of youth between 15 and 19 years old who had committed suicide did so with a gun.<sup>51</sup>

Furthermore, a National Violent Injury Statistics System (NVISS) investigation studied firearm suicides among youths ages 17 and under occurring over a two-year period in four states and two counties found that 82% used a firearm belonging to a family member, usually a parent.<sup>52</sup> When storage status was noted, about two-thirds of the firearms had been stored unlocked. Among the remaining cases in which the firearms had been locked, the youth knew the combination or where the key was kept or broke into the cabinet.

Therefore, a firearm safe storage policy in the County is essential. This policy may help decrease the amount of youth firearm deaths. Current state law does not include any provisions requiring firearms be stored in the home in a manner that might deter or prevent theft. So far, only San Jose, Sunnyvale and San Francisco have safe storage policies.

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<sup>50</sup> Giffords Law Center's Annual Gun Law Scorecard. (n.d.). Retrieved August 5, 2018, from <http://lawcenter.giffords.org/scorecard/>

<sup>51</sup> Ibid.

<sup>52</sup> Youth Access to Firearms. (2013, January 09). Retrieved from <https://www.hsph.harvard.edu/means-matter/means-matter/youth-access/>



The San Jose ordinance requires gun owners to store firearms in a locked container or disabled with a trigger lock in their homes upon leaving their residences.

Ordinance no. 3027-13 from the city of Sunnyvale indicates that Sunnyvale has a slightly different version of a safe storage policy. Sunnyvale requires the firearm to be locked up or disabled with a trigger lock when not carried on the owner's person or in his or her immediate control and possession.

San Francisco's safe storage policy requires handguns to be either stored in a locked container or secured with a trigger lock when they are not carried by the owner. The National Rifle Association and individual plaintiffs sued in federal court to overturn San Francisco's safe storage law on Second Amendment grounds. The ordinance was upheld by both the district court and Ninth Circuit Court of Appeals because it does not prohibit a person from carrying an unlocked/loaded gun, and the safely stored gun can be accessed from a safe or enabled within a few seconds, therefore not placing a burden on the Second Amendment rights.

Out of these three safe storage policies, San Jose's policy seems to be the most reasonable. It can be difficult for the courts to determine whether a firearm is in the owner's "immediate control and possession," which is a part of Sunnyvale's policy. San Francisco's policy may increase the number of residents wearing weapons on their person when inside their homes, which poses a concern for the safety of police officers, firefighters, and others who might respond to the home during a public safety or medical emergency as well as other situations. Encouraging firearms owners to carry presumably loaded weapons on their persons at all times is likely to increase risks to county staff as well as neighboring residents and family members.<sup>53</sup>

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<sup>53</sup> San Jose Safe Firearm Safe Storage Ordinance

*Importance of Public Outreach in Gun Stores*

In 2011, the New Hampshire Firearm Safety Coalition (NHFSC) distributed posters and brochures to 67 retail gun shops in the state. In 2009 former gun shop owner Ralph Demicco was informed by NHFSC that three people in a space of six days purchased a gun and took their lives in his store. Therefore, Demicco decided to help with the Gun Shop Project. Demicco interviewed and asked gun shop owners if they were willing to participate in a program to hang posters in their shops and give out suicide awareness cards. The goal was to encourage customers to become alert to signs of crisis in friends or household members. About half (48%) of all New Hampshire gun shops are displaying suicide prevention materials, either brochures, posters, hotline cards or all three.<sup>54</sup>

Similarly, Vermont has a gun shop project that partners with the VT Department of Mental Health, the VT Suicide Prevention Center, a program of the Center for Health and Learning, the VT Suicide Prevention Coalition, leading organizations in the firearm owners' community, the Vermont Federation of Sportsmen Clubs, Inc., and Gun Owners of Vermont. They distribute materials to gun shops and ranges. Nearly half of all Vermont households have at least one gun.

Currently, Santa Clara County does not have a gun shop project where gun shops would be required to have posters and brochures about GVROs and resources available for people with suicidal ideations. The County Behavioral Health Department does distribute brochures and posters in local gun shops with these types of information. However, the Behavioral Health Department is having difficulty reaching many gun stores due to the lack of staff members in charge of distributing these resources, and so far they have reached out to five gun shops.

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<sup>54</sup> Training in Suicide Prevention, Intervention and Postvention. (n.d.). Retrieved August 6, 2018, from <http://www.theconnectprogram.org/>

*Insufficient Awareness of GVROs*

This year, the Santa Clara County District Attorney's Office began a campaign to increase the use of Gun Violence Restraining Orders (GVROs) in the County and beyond. Because the California GVRO law is new, there is very little data in California that tracks the correlation between GVROs and reduction in gun violence. However, there is data for Connecticut's risk-warrant law.

In the first 14 years of Connecticut's risk-warrant law (1999-2013) there were 762 risk-warrants issued, with an increasing frequency after the 2007 Virginia Tech shooting.<sup>55</sup> Police found firearms in 99% of cases and removed an average of seven guns per subject.<sup>56</sup> Research shows for every 10-20 risk-warrant issued, one life is saved.<sup>57</sup>

Fewer than 200 gun restraining orders were issued statewide and only 11 were issued in Santa Clara County throughout 2016 and 2017 (Figure 8). More people need to be aware of gun violence restraining orders because these can save lives. Even though GVROs were issued in the County, efficient tracking systems are not in place to determine if the GVROs are effective and if there is more that needs to be done to make them more effective and save lives.

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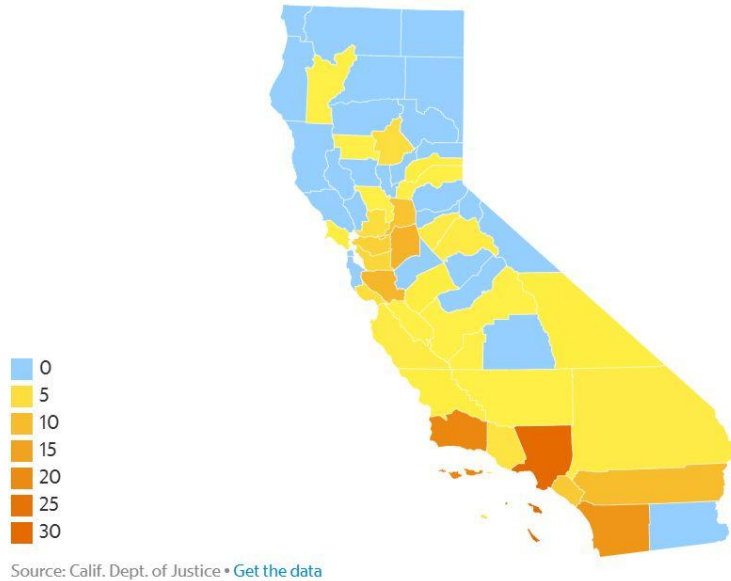
<sup>55</sup> Ibid., p 26.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

Figure 8: Gun Violence Restraining Orders Issued in 2016 and 2017 <sup>58</sup>

Gun violence restraining orders were issued in 32 counties in the first two years of their existence in California. Number issued by county in 2016 and 2017:



<sup>58</sup> Koseff, A. (n.d.). 'Best tool' to prevent gun violence is rarely used in California. Retrieved August 5, 2018, from <https://www.sacbee.com/latest-news/article206994229.html>

## Policy Recommendations

**County of Santa Clara Board of Supervisors should consider adopting a firearm safe storage policy.** Adopting a countywide safe storage policy would result in minimal added workload to officers since a violation of this ordinance would not be known unless law enforcement was called to a home on a report of a burglary, or officers recover a firearm after it has been used in a crime, or the firearm is owned by someone other than the owner and it becomes clear that the firearm had been stolen or lost. Santa Clara County Board of Supervisors can adopt a firearm safe storage policy similar to that of San Jose. Implementing a countywide safe storage policy can decrease the number of firearm theft, therefore decreasing the likelihood of children, teenagers, individuals who suffer from mental health issues, and persons subject to gun violence restraining orders from accessing firearms and ending their lives. Although implementing a countywide safe storage policy would only affect the people living in unincorporated areas, this policy can serve as a model to cities who do not already have a safe storage policy in place. Santa Clara County can even partner up with cities currently without safe storage policies to establish greater influence.

**Santa Clara County should implement a Gun Shop Project, requiring gun shops to have posters and brochures to gun stores.** These posters and brochures would provide websites, phone numbers such as the county suicide hotline, places to go to for people who are contemplating suicide and information on how to obtain a Gun Violence Restraining Order. People who go to a gun shop purchasing a gun with the intention of taking their lives may not know what resources are available to them, and the posters and brochures can inform them of the County resources.

**Santa Clara County should enhance targeted outreach to populations more vulnerable to suicide.** Since most of the people who end their lives are older Caucasian males, Santa Clara County can provide brochures or posters about Gun Violence Restraining Orders or provide trainings to help people observe warning

signs in senior facilities. This way, senior facility residents will be prepared to intervene if their friends, who may be around the same age, show signs of suicide.

**Santa Clara County should study the effects of GVROs in the county.**

The County of Santa Clara should collect data on whether a GVRO was obtained, the type of GVRO, how long it was in place, and if it was effective. From this data, the County would be able to determine whether GVROs were effective in preventing suicides and if additional efforts need to be employed to make the GVROs more effective.

## Conclusion

Firearm suicide is a serious issue within Santa Clara County, occurring across all ethnic, economic, social and age boundaries. Because suicide often occurs on impulse and firearm is a very lethal method of suicide, many firearm suicide attempters do not receive a second chance at life. Suicide should never be the only option for an individual, and more must be done to reduce access to lethal means and raise awareness about the resources available. Implementing a county wide safe storage policy, placing brochures or posters with resources in gun shops and senior facilities and providing trainings in gun shops may help curb this problem.



## Acknowledgements

In the ten weeks of research, we would like to thank all the county staff and partners who participated in our interviews and readily provided us with additional information. We would like to especially thank Supervisor Cindy Chavez for providing us with this wonderful opportunity to conduct and share our work. Below are specific individuals who aided our research:

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## ORDINANCE NO. 290, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL, ADDING CHAPTER 7 TO TITLE IV OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, WHICH CHAPTER REGULATES THE POSSESSION AND USE OF WEAPONS, AND PROVIDES PENALTIES FOR VIOLATIONS THEREOF.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES ENACT AS FOLLOWS:

SECTION A. ADDING A NEW CHAPTER REGULATING THE POSSESSION AND USE OF WEAPONS.

The following provisions hereby are enacted as new law and added as Chapter 7 of Title IV of the Municipal Code of the City of Morgan Hill and shall be numbered and read as follows:

Section 1 Unlawful to Discharge Guns and Other Devices

No person shall discharge in the City any instrument or device of any kind, character or description which throws, discharges, propels or hurls bullets or missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, or explosive force, without first having applied for and obtained a written permit therefor from the Chief of Police. Subject to review by and as specifically directed by the Council, the Chief of Police shall be the sole judge as to the desirability or necessity for issuing such permit which must be, in his judgment, for the protection of the applicant or in furtherance of the public welfare. The Chief of Police may also issue permits to hunt in sparsely populated areas within the City, when he is satisfied that in so doing it will not, in any way, endanger persons, animals or buildings and improvements. Such permits shall be issued upon payment of a fee of One Dollar (\$1.00) and shall be upon such conditions and for such length of time as the Chief of Police may determine.

Section 2 Notice of Sale of Weapons

Any person or business establishment engaged in the business of offering for sale any instrument or device described in Section 1 of this Chapter shall have posted in a conspicuous place in the place of sale a copy of this Chapter and shall deliver a copy of this Chapter to any purchaser of such instrument or device.

Section 3 Confiscation and Penalties

IV-7-3.01

Any instrument, device or article used or possessed in violation of the provisions of this Chapter is hereby 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 with-

Attachment: Ordinance No. 290 (1993 : Gun Violence Ordinance)



any conditions. If there is a conviction and 60 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 reasonable for the public welfare.

#### IV-7-3.02

Any person violating or causing or permitting to be violated the provisions of any section of this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding \$500.00 or by imprisonment in the County jail not exceeding six months or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and be punishable as such hereunder.

#### Section 4 Severability

Each of the Sections, Clauses and other provisions of this Chapter is hereby declared to be severable, and if any provisions shall be declared to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter which shall remain in full force and effect.

This Ordinance was re-introduced for first reading at a meeting of the City Council of the City of Morgan Hill held on the second day of December, 1970. It was finally adopted at a meeting of said City Council held on the 16th day of December, 1970, and said Ordinance was duly passed and adopted in accordance with law by the following vote:


AYES: COUNCILMEN: Castle, Days, Galvan, Leonetti & Yinger

NOES: COUNCILMEN: None

ABSENT COUNCILMEN: None APPROVED:

ATTEST

  
\_\_\_\_\_  
Mayor of the City of Morgan Hill

  
\_\_\_\_\_  
MADGE W. SOARES, City Clerk

#### CERTIFICATE OF THE CITY CLERK

I, MADGE W. SOARES, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 290, New Series, of the City Council of the City



**Michelle Bigelow**

---

**From:** MICHAEL BROOKMAN <mfbrookman@prodigy.net>  
**Sent:** Tuesday, October 2, 2018 9:53 AM  
**To:** Maureen Tobin  
**Subject:** Draft Anti Gun Ordinance

Hi, Maureen! Ordinance looks good, except that this will include Nerf guns, air soft guns, paintball guns, bows and arrows, crossbows. It might sound ridiculous, but the wording could be interpreted to include squirt guns like Super Soakers. It certainly includes automatic pitching and tennis ball machines! Was it the council's intention to be this vague? I can see it leading to reasonable challenge in court. I don't want to sound nitpicking, but this is codified law and should be more meticulous. My two cents worth. Thanks! Michael Brookman  
408.666.3231

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** Ben C <ben.c109@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 1:12 PM  
**To:** Maureen Tobin  
**Subject:** Draft Anti Gun Violence Ordinance

Dear Ms. Tobin and all city council members,

These new proposed ordinances, although sound good, that's just it that's all they do is sound good. If you're solely just trying to make a statement against gun violence, mission accomplished. These are all current laws of the state of California. How they stop or decrease "gun violence" is yet to be seen. Why waste time having meetings and sending emails about these already current laws imposed on us that do no good. Maybe instead we should be talking about how we will stop an active shooter situation at our children's schools. Are proper measures being put into place to protect the future generations? Banning guns and certain ammo amounts in magazines doesn't help but only makes us more susceptible to being attacked and becoming victims ourselves. How about community outreach for the troubled youth that are committing these atrocities. Or gun safety programs because as they say an armed society is a polite society. We are the only ones that can put a stop to violence and sometimes violence needs to be implemented to stop violence. But before we reach that point if we can all come together as a community and embrace the outcast the troubled or violent person and rehabilitate them into our community where they have a place and a purpose then and only then will we truly know peace. So in closing statement new laws that are currently in place really don't help progress. Instead let us be the forefront of something more innovative that will be a demonstration of ideas new and old coming together for the benefit of all.

Sincerely  
Ben Corpuz

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** John Hogan <jwhogan@charter.net>  
**Sent:** Tuesday, October 2, 2018 10:40 AM  
**To:** Maureen Tobin  
**Subject:** Draft Gun Violence Ordinance

Dear Ms. Tobin,

I would like to respectfully voice my disagreement with the proposed ordinance. I do not think there is a pressing gun violence issue within Morgan Hill and this ordinance appears to be a solution in search of a problem.

The discharge permit fee, especially the requirement for 1 million dollars of insurance, is an onerous requirement that will prevent citizens from lawfully discharging firearms on their property. For example, sometimes citizens with property damage due to wild pigs or other animals will get a depredation permit from the sheriff. This ordinance will prevent any property owner from reducing crop or property damage.

The ban of 30 round magazines was already covered by Proposition 63 from 2016. This ordinance only opens up Morgan Hill to expensive litigation as it has been proven in multiple courts of law that local municipalities cannot supersede state or federal law. Most likely this ordinance cannot stand on its own after Morgan Hill has wasted money in courts.

California already has some of the strictest gun purchase and ownership requirements in the United States. There is nothing that this ordinance will do to reduce crime in Morgan Hill. The only people who will follow it are those law-abiding citizens who would not commit a crime anyway. This does nothing to deter those with criminal intent or the mentally deranged.

A better ordinance would give concerned citizens the opportunity to report people who may be a threat to public safety. There could be a temporary restraining order on the possession of guns until a thorough investigation can be conducted. This is common sense reform and could have prevented a number of shootings including the Parkland shooting.

I hope that the city council can reject this ordinance and instead focus on fixing pressing issues for Morgan Hill.

Thank you for reading my letter.

John Hogan  
jwhogan@charter.net

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Ginger Burrell <ginger@rkg.com>  
**Sent:** Tuesday, October 2, 2018 10:39 AM  
**To:** Maureen Tobin  
**Subject:** Feedback on Draft Firearms Ordinance

Ms. Tobin,

Thank you for the opportunity to comment on Morgan Hill's Draft Firearms Ordinance. I am glad to see the many protections included in the Ordinance, but I am wondering why the storage of firearms by licensed dealers was removed? These seem like common sense requirements and seem fair to expect of a dealer if they wish to do business in our city. In my opinion the Storage of Firearms provision should be restored.

Thank you.

~Ginger Burrell

17380 Pineau Court  
Morgan Hill, CA 95037

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** JOHN KRACHT <krachtjohn@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 11:54 AM  
**To:** Maureen Tobin  
**Subject:** Firearms Ord.

Maureen,

What **municipal** statistics justify this adjustment? It really appears to be a kneejerk reaction to the national news cycles about the Vegas shooting a year ago. There are lots of state and county laws and regulations. If you are going to add more and more restrictions you should be able to cite the **local** misconduct, by case number preferably, that would support such a belt-tightening. Or is this some sort of 'resistance ' protest of the Trump administration?

John Kracht  
16460 Rustling Oak Court

[Sent from Yahoo Mail for iPad](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Angela White <awhite@apr.com>  
**Sent:** Tuesday, October 2, 2018 11:32 AM  
**To:** Maureen Tobin  
**Subject:** Gun Control Ordinance

Hello Ms. Tobin,

I will start with: I am not a gun owner myself personally, nor anyone in my family owns a gun to my knowledge.

I have concerns with this Gun Violence Ordinance on several issues.

9.04.010

A. This measure is not about gun violence, this includes words like propel, hurl, missiles, means of elastic force, air pressure, vacuum etc. I object to the scope of restriction as this comes across as very controlling of items that are not considered guns. This addresses penalties for those that experiment with elastic power and other scientific means and has no place in a gun violence ordinance. This is not common sense; this is public restrictive and I am not in favor of more restrictions of individuals rights because in this wacky leftist world I can see this being used against regular citizens. If you are trying to stop someone using a multi magazine weapon, then lets stay on target. This is far too broad and I am concerned that government authority overreach will be used against regular citizens just doing their thing.

C. Proof of Liability of \$1M is excessive. Once again, an overreach of government power.

9.04.050

This doesn't make sense. First, someone who is a criminal is not going to let you know they have large capacity magazines. It's just not going to happen. Any criminal, as evidenced with other cities that have strict gun control, does not follow laws to begin with. If the government discovers these large capacity magazines you are giving them 90 days to get rid of them.

Who is writing these ridiculous laws? Criminals do crimes, criminals do not follow laws. None of these items in the Gun Violence Ordinance will stop any of those illicit crimes.

I am not a gun owner. My 6 adult children do not own guns nor do they want to. A criminal is not going to follow your laws. Why not spend money on serving the psychological needs of children in middle school and high school instead of chasing superfluous laws. There is no evidence anywhere that enacting stricter gun control stops crime.

I am against you spending money and efforts in enacting laws that do nothing.

Sincerely,

Angela White

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Angela White, SRES

Alain Pinel Realtors Saratoga

408.821.6492

email: [awhite@apr.com](mailto:awhite@apr.com)

website: [www.apr.com/awhite](http://www.apr.com/awhite)

CalBRE# 01023792

When forwarding documents provided by others "I HAVE NOT AND WILL NOT VERIFY OR INVESTIGATE ANY INFORMATION SUPPLIED BY OTHERS".

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**Michelle Bigelow**

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**From:** Jim <jim@jnkrause.com>  
**Sent:** Tuesday, October 2, 2018 12:40 PM  
**To:** Maureen Tobin  
**Cc:** jim@jnkrause.com  
**Subject:** gun control ordinance

**Importance:** High

Hi Maureen.

Question, does Morgan Hill have a gun problem that requires this ordinance?. If so, what are the statistics?

I can understand an ordinance if we have a known problem, but I am unaware of one at this point. Also, how do you defend yourself if the weapon is locked up?

Looking forward to your response.

Thanks,

Jim Krause

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** ken klamm <klamm869@gmail.com>  
**Sent:** Tuesday, October 2, 2018 10:03 AM  
**To:** Maureen Tobin  
**Subject:** Gun Control

I think we can all agree the gun laws are subject to interpretation that is a long standing problem with an argument that is going nowhere.

Instead of fighting it, I suggest embracing guns and instead have a trained professional in gun safety teach how to use, disarm, and responsibility of guns to our children in schools.

I have 3 children in 3 different schools in Morgan Hill and heard about a voluntary class being taught in Michigan and it was so demanding they had to open multiple classes for students and parents a like to attend.

Sincerely

Ken Klamm  
317.440.5985  
[klamm869@gmail.com](mailto:klamm869@gmail.com)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** Anna Chase <gochaseanna@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 3:13 PM  
**To:** Maureen Tobin  
**Subject:** Gun law

So do I have this right ? A law abiding citizen like myself needs a permit and a million dollar insurance to have a gun in my home to protect my family and home? What about the criminals??? I doubt if they are going to get a permit to come in and harm my family and property!!!!!! This is ridiculous UnAmerican Anna Chase

Sent from my iPhone

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** Allen Picchi <allenpicchi@msn.com>  
**Sent:** Tuesday, October 2, 2018 12:44 PM  
**To:** Maureen Tobin  
**Subject:** Gun Violence Ordinance

To Whom It Concerns,

What specifically, are you trying to achieve with this ordinance update. What problem are you trying to solve...

I am not in favor, nor do I support the text surrounding Section 9.04.050 Section B, regarding high capacity magazines that are in peoples' possession prior to the passing of California gun laws. Specifically, I would like to see the removal of #1&2 text.

Additionally, I would like to see text surrounding forfeiture and prosecution of those in possession of theses magazines **removed** from the ordinance, regardless of whether smaller capacity magazines are available or not.

I am also not in favor of expecting residences who obtain a permit to also obtain liability insurance.

Allen Picchi

Sent from [Mail](#) for Windows 10

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** Leah Quenelle <lquenelle@hotmail.com>  
**Sent:** Tuesday, October 2, 2018 2:31 PM  
**To:** Maureen Tobin  
**Subject:** gun Violence ordinance

Hello Ms. Tobin,

I was just wondering why the precautions regarding the storage of guns at a gun dealership were struck from the ordinance? Were they deemed redundant? I always wonder about that issue when I go by Lokey Firearms!

Thanks for your time and for being open to public comment.

Leah Quenelle

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** pierce@twinforces.com  
**Sent:** Tuesday, October 2, 2018 12:09 PM  
**To:** Maureen Tobin  
**Subject:** IF common-sense were common...

We wouldn't need lawyers. The road to hell is paved with good intentions, and this nonsense of an ordinance has just made me a die hard opponent of this measure, despite the fact that I'm not a gun owner myself, just an engineer that dislikes stupid.

Ok, so 9.04.010 is going to make rubber bands and paint ball guns illegal because its so broad. Oh and nail guns. Good luck getting your roof fixed. Plus I suppose you would have to preemptively get the permit and pay your \$25 before discharging your rubber band, I'll get right on that. Oh and the cheif of police has to review each permit? well that's one way to boost those "Coffee with a Cop" things.

9.04.040 would basically make the gun inaccessible for home defense, i.e. you can't keep it in your dresser drawer.

The large capacity magazine ban is either redundant to the state ban, or unconstitutional depending on how the court decides, since the injunction against the state ban is in place, seems stupid to try to do it again at the municipal level.

Oh, and the cops can confiscate my rubber bands at any time?

I'm not a gun owner, but nonsense like this makes me think I should buy a bunch of them and move to Montana...

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

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**From:** Andy Francke <afrancke@gmail.com>  
**Sent:** Tuesday, October 2, 2018 3:29 PM  
**To:** Maureen Tobin  
**Subject:** Input on Draft Anti-Gun Violence Ordinance

At a high level, I disagree with all of the actions the city council wishes to take. Philosophically, the idea that "we must do something - so anything will do" is a terrible place from which to legislate, and it's to the detriment of the City (following the State's example) that it wastes its own and the public's time on measures that are already adequately addressed elsewhere in the law.

California law *already requires* individuals to report thefts to local law enforcement. This law may evolve over time. Let's not waste the city's time on trying to keep up with that - and if that law is deemed improper by some court, why then let's not expose the city to litigating the same matter. There is no evidence that Morgan Hill is a hotbed of straw purchasing activity that would warrant special local handling of this matter.

California *already makes it a crime* to leave guns in an operable state where children can access them. "Locked container" as used in state regulations is not a safe or other child-proof system - it can be as broad as a bag with a padlock on it (which children could easily cut through with scissors). Morgan Hill does not need an independent set of regulations in this area.

"Large capacity" magazine possession *is already banned* by the state. There is no need to re-ban them - unless it is a purely symbolic gesture (I don't believe you are proposing to go door-to-door collecting them, and historically such bans have not resulted in anything but modest turn-in rates). Mostly this is about the ability to confiscate magazines when found in the possession of someone the police are already investigating for some other crime, and I would suggest the police already do a great job of hanging onto nearly anything they want that they've collected at a crime scene.

Finally there's the issue of exemptions for "peace officers." Why would we exempt the police from "safe" storage requirements or gun theft reporting? Police have children in their households, too, and one might argue are at more risk for loss given their names and addresses are public information.

There are many other things the City might occupy itself with - re-legislating (and at the risk of litigating in future) that which has already been established at the state level makes nobody in Morgan Hill safer, and isn't that what the point of this work was to be about?

Andy Francke  
 Morgan Hill

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**Michelle Bigelow**

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**From:** Kirk Borovick <kirk\_borovick@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 10:52 AM  
**To:** Maureen Tobin  
**Subject:** Anti Gun Violence Ordinance

Am I reading this correctly that based on this ordinance that is not going to be illegal to fire a BB Gun or a bow an arrow without a permit and in order to get a permit I need a million dollars insurance policy per person on the premises.

Do I have this correct?

Please let me know when I also need to turn in my kitchen knives.

Please let me know how to partition against this. I believe in common sense gun laws like the 30 day wait period. I don't believe not letting my kid target practice with a BB gun or a bow and arrow is common sense but fear based laws.

Thanks for your time.

Kirk Borovick  
[kirk\\_borovick@yahoo.com](mailto:kirk_borovick@yahoo.com)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** Chris McKie <chris@safersecond.org>  
**Sent:** Tuesday, October 2, 2018 10:11 AM  
**To:** Maureen Tobin  
**Subject:** Anti Gun Violence Ordinance Support

Hi Maureen. I am the Executive Director of a new nonprofit, A Safer Second, whose mission is to support Second Amendment tenets balanced by much needed common sense initiatives that improve public safety and aid law enforcement.

Currently I'm in Washington D.C., but I live in Morgan Hill, and am very pleased to see the city move forward on an anti gun violence ordinance.

After reading the draft, which I like, especially the portion prohibiting large magazines, I'd like to see if there has been any interest or support in adding a section that also bans bump stocks - a modification that turns a gun into a machine gun like weapon of mass murder?

I will be back in Morgan Hill on Friday, Oct 5th and would be more than happy to help in any way to see this ordinance pass. If there is anything our organization can do, please let me know.

Sincerely,  
Chris McKie

Chris@SaferSecond.org  
www.SaferSecond.org  
408-630-9843

Get [Outlook for iOS](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

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**From:** Bill Moher <bmoher@sbcglobal.net>  
**Sent:** Tuesday, October 2, 2018 3:26 PM  
**To:** Maureen Tobin  
**Subject:** Anti Gun Violence Ordinance

Maureen,

This proposed ordinance sounds a lot like the proverb "The road to hell is paved with good intentions."

The motivation for this ordinance is good and well intended. It would make Morgan Hill a caring, good city. However, what is the budget cost of feeling good? Who will enforce this ordinance, the Police Department and how will it be accomplished? Also has the budget cost of defending this ordinance been evaluated? It will surely be challenged in the courts up to and including the federal court system.

Were the city council to pass this ordinance, however written, I feel the individual Council members could feel the heat, so to speak, at the polls at the next election.

My suggestion if the City intends to move forward on this issue would be to place this issue on the ballot during a general election with pre-election "for" and "against" statements communicated for voter review.

Consider that Morgan Hill has had an ordinance for some time prohibiting the placement of basketball and other sports equipment on city streets for personnel and driving safety purposes. While the Police Department can visibly observe sports equipment from police vehicles, this ordinance for all intent and purposes is enforced only when individual residents complains to the City.

My point is don't pass an ordinance you don't intend to fully enforce and/or cannot afford from a City budget standpoint to enforce.

Bill Moher

1635 Martinez Way  
 Morgan Hill

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** robertbobwolford@aol.com  
**Sent:** Tuesday, October 2, 2018 11:48 AM  
**To:** Maureen Tobin  
**Subject:** Anti-Gun Violence ordinance

I have read the purposed ordinance, and I didn't see any consequences, fines, jail time, or teeth in the ordinance to punish an offender.

If your thinking is that people will willingly go along with this ordinance without any penalty for disobedience, you are delusional.

Only law abiding citizens will obey this ordinance. Criminals will ignore this. That's why they are called criminals. Only stop and frisk will partially find criminals carrying weapons. This however, is not politically correct. So, we will pay the consequences.

Without any penalty or consequence, criminals will be repeat offenders.

This appears to be a "feel good" ordinance so the city council members and other city officials can say, " see, we are doing something", continue to vote for me.

Thank you for the opportunity to express myself.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

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**From:** Darcy Foster <fosterd@mhusd.org>  
**Sent:** Tuesday, October 2, 2018 11:11 AM  
**To:** Maureen Tobin  
**Subject:** Anti-Gun Violence

I support the draft ordinance to curtail potential threats through tighter provisions of the law. (Yes, I even read the whole thing!)

Darcy Foster  
 Spanish & World History Teacher [fosterd@mhusd.org](mailto:fosterd@mhusd.org)

Advisor to clubs: Key Club International; Reach Out and She's the First

CFT Safe & Non-Violent Schools Committee

Live Oak High School: **A California Gold Ribbon School**

1505 E. Main Street  
 Morgan Hill, CA 95037  
 1.408.201.6100 x 40238

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** Daniel Carlile <daniellcarlile@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 10:48 AM  
**To:** Maureen Tobin  
**Subject:** Anti-gun

I am in favor of anti-gun laws!!!

Sent from my iPhone

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** D. Muirhead <doug.muirhead@stanfordalumni.org>  
**Sent:** Tuesday, October 2, 2018 11:48 AM  
**To:** Maureen Tobin  
**Cc:** Rene Spring  
**Subject:** comment on draft projectile ordinance

This ordinance claims to deal with  
 FIREARMS STORAGE, REQUIRE THE REPORTING OF  
 FIREARMS THEFT, AND PROHIBIT LARGE CAPACITY MAGAZINES

It is actually government overreach, lacks due process protections, and denies a valid application through unreasonable requirements.

### 1) Government overreach

[Text] 9.04.010 - Discharge--Permit required--Fee.

A. ... any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge ...

[comment]

While ostensibly dealing with "firearms", this also includes devices that I played with as a child and as an adult: peashooter, slingshot, BB gun, and crossbow.

### 2) Lacks due process protections

[Text] 9.04.010 - Discharge--Permit required--Fee.

B. Subject to review by and as specifically directed by the council, the chief of police shall be the sole judge as to the desirability or necessity of such permit ...

[comment]

I see an arbitrary decision by an appointed City official with no documentation and no appeals process.

### 3) Denies a valid application through unreasonable requirements [Text] 9.04.010 - Discharge--Permit required--Fee.

C. Applicants for such permit shall provide the following:  
 2. Proof of liability insurance in the amount of one million dollars per occurrence

[comment] Justify that \$1M is not just another hurdle used to deny a valid application.

### 4) Wrong year

SECTION 3. Effective Date;

[text] 2017

[comment] 2018

City clerk certification

[text] 2016

[comment] 2018

**Michelle Bigelow**

---

**From:** Art Cohen <alouis7@gmail.com>  
**Sent:** Tuesday, October 2, 2018 2:54 PM  
**To:** Maureen Tobin  
**Subject:** re: Draft Anti Gun Violence Ordinance

Hi Maureen:

I'm writing to let you know that I support the Anti Gun Violence Ordinance being proposed.

Regards,

-Art

1090 W. Dunne. Ave.

Morgan Hill, CA 95037

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This message including its enclosures contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not the addressee, or the person responsible for delivering it to the addressee, you are hereby notified that reading, disseminating, distributing or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify us by replying to the message and delete the original message and its enclosures immediately thereafter. Thank you.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



## Michelle Bigelow

**From:** afroumis <afroumis@aol.com>  
**Sent:** Tuesday, October 2, 2018 12:57 PM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

I am strongly in favor of anti violence initiatives but also support the right to bear arms, as the constitution advocates. Being a Vietnam veteran, I support our rights to defend ourselves. There is no place for gun violence and senseless attacks. As long as criminals have guns, I want the ability to defend my family and loved ones!

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** City of Morgan Hill <maureen.tobin@morganhill.ca.gov>  
**Date:** 10/2/18 9:31 AM (GMT-08:00)  
**To:** afroumis@aol.com  
**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance



## Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

Two community meetings have been held to gather input on the language to be included in the ordinance. At this time it is anticipated that the draft ordinance will be taken back to the City Council for consideration of adoption on October 17th.

Prior to returning to the City Council, we would like to provide another opportunity for the community to share their input on the draft ordinance. It is available to view at the following link [Draft City of Morgan Hill Anti Gun Violence Ordinance](#). The regular type has been part of the draft ordinance from the beginning, the strikethrough is what is proposed to be deleted and language in the italics is what is currently proposed to be added.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.

Company Name | Phone | Address | Website



City of Morgan Hill | 17575 Peak Avenue, Morgan Hill, CA 95037

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Sent by maureen.tobin@morganhill.ca.gov in collaboration with



Try it free today

## Michelle Bigelow

---

**From:** fam.grzan@charter.net  
**Sent:** Tuesday, October 2, 2018 12:48 PM  
**To:** Maureen Tobin  
**Subject:** RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

I do not find the Ordinance sufficient. It is vague and ambiguous.

### Section

"9.04.010 - Discharge—Permit required—Fee. A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.

1. The term fire arm is not mentioned
2. Too ambiguous
  - a. The term discharge is not defined, and used twice with two different meanings in the same sentence.
  - b. According to this even a "nerf gun" would require a permit.
  - c. According to this even a "play bow and arrow" would require a permit.
  - d. A spit ball blown out of a straw would require a permit
  - e. A home made sling shot would require a permit?
  - f. What is a licensed shooting range? Who licensed?
3. It is only the Police Chief who can approve or can it be a designated official
4. How long does the police chief have to approve. Weeks, months, years?
5. What is the public's recourse if the chef does not approve or approve in a timely manner
6. Chief may approve a lifetime?
7. The permit is not subject to renewal?
8. Where is fire arm defined? Why is it not listed in section 9.04.010?
9. Why a million dollars per occurrence?
10. If my hand held potato discharge device is lost or stolen, I do not have to report it as it is not a fire arm?

Anything other than a firearm that can cause harm does not have to reported if lost or stolen.

Mark Grzan  
 680 Alamo Drive  
 Morgan Hill, CA 95037  
 408.778.7816  
[fam.grzan@charter.net](mailto:fam.grzan@charter.net)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**From:** City of Morgan Hill <maureen@mhcrc.ccsend.com> **On Behalf Of** City of Morgan Hill

**Sent:** Tuesday, October 2, 2018 9:31 AM

**To:** fam.grzan@charter.net

**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance



## Provide Your Input on the Draft Anti Gun Violence Ordinance

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**Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.**

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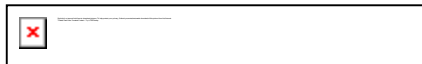


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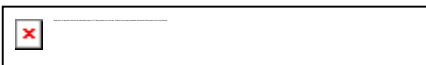
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

**From:** John Weberg <grizzlyau@gmail.com>  
**Sent:** Tuesday, October 2, 2018 12:24 PM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

This is an absolute idiotic ban - this will not stop any criminal from doing what they are going to do - The only people you are hurting is the community - Cities such as Chicago which have the toughest gun laws in the country have the most gun violence. this is not the answer. Enforce our current gun laws, especially the ones dealing with mental instability and get the medical community to do what they are supposed to in working with the FBI and the current back ground checking to ensure that these people do not have access to the guns. The Criminals are not going to abide by this. This is just another attack on our right to bear arms.

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)> wrote:



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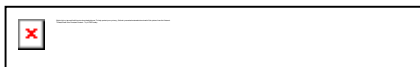


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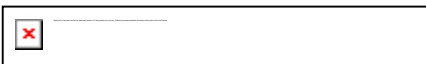


## Michelle Bigelow

**From:** Jim Sergi <jimsergi@gmail.com>  
**Sent:** Tuesday, October 2, 2018 12:04 PM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Stupid

On Tue, Oct 2, 2018, 9:31 AM City of Morgan Hill <[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)> wrote:



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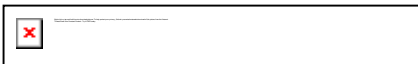
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## Michelle Bigelow

---

**From:** Aragon, Lisa <Lisa.Aragon@anritsu.com>  
**Sent:** Tuesday, October 2, 2018 11:59 AM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hi Maureen,  
 I'd like to submit a feedback to the proposed ordinance.

I appreciate the effort the City of Morgan Hill is attempting to help ensure a safe environment. However, I think the actions in this ordinance are somewhat misdirected. I believe an Ordinance as stated in the Title 9 "Public Peace, Morals and Welfare". Should have more specific actions towards People and their abuse (or lack of ) Morals and Welfare of others. Nothing in this ordinance related to holding the public responsible for their poor choices, bad behaviors, lack or morals that affect the welfare of the community. I think there is room for improvement.

If I understand the "Discharge Permit" section, a permit for purposely discharging a firearm would be required. How does this work in conjunction with the Santa Clara County Concealed Carry Weapons (CCW) Permit? If someone has a CCW, then it seems they should already have the proper documentation/permit to discharge. Is this statement indicating that anyone with CCW Permit also has to obtain a Morgan Hill Discharge Permit? The county permit for CCW should overrule and be the only permit necessary. Can this be clarified and if necessary, a statement to the exception be added. Exception statement being "E. Exception provided to Santa Clara Country Issued Concealed Carry Weapons (CCW) Permit holders". Otherwise, it's redundant and just added bureaucracy.

In addition, I'm not clear what the intended purpose of the section is – to keep farmers from shooting coyotes? To keep bad-guys from shooting a hand-gun during New Year's celebration? An ordinance like this is not going to have bad-guys obtain permits, but it will require the good-guys (people who need to discharge under normal circumstances) to get permits. This seems to be bureaucracy for bureaucracy sake.

Why does the City need the Ordinance on banning large-capacity ammunition magazines when it is already a State Law?

Senate Bill 1446, is one of several gun-related bills passed by the California Legislature and signed into law by Gov. Jerry Brown in 2016.

While lawmakers in 1999 prohibited the sale, manufacture or importation of high-capacity ammunition magazines – but let those who owned them before that point keep them – SB 1446 forced gun-owners with "grandfathered" magazines to turn them in for destruction by July 1, 2017, or face legal consequences. In November 2016, voters also passed the corresponding Proposition 63, which requires anyone who owns a large-capacity magazine to do one of three things: move it out of state, sell it to a licensed firearms dealer, or surrender it to a law enforcement agency to be destroyed. It seems like if there is a State Law, an Ordinance is not needed.

Thank you.

Kind Regards,

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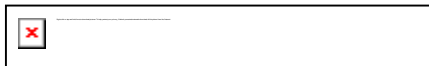
*Lisa Aragon*

**From:** City of Morgan Hill [mailto:maureen@mhcrc.ccsend.com] **On Behalf Of** City of Morgan Hill

**Sent:** Tuesday, October 2, 2018 9:31 AM

**To:** Aragon, Lisa <Lisa.Aragon@anritsu.com>

**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance



## Provide Your Input on the Draft Anti Gun Violence Ordinance

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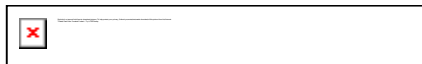
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**Michelle Bigelow**

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**From:** B. Kakunda <bkakunda@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 1:51 PM  
**To:** Maureen Tobin; Bassam Khoury; Andrew Kakunda  
**Subject:** Input on the Draft Anti Gun Violence Ordinance

Hi Maureen,

The following are my comments on the subject.

Although I have no need to have a pellet gun, sling shot, or anything like that I feel that the draft ordinance goes too far. For someone who has a problem with pests in his own backyard and wants to use any of these devices I think he should be free to do so without having to get a permit from the police and be required to have \$1000,000 of insurance per occurrence and pay a \$25 fee.

If someone uses a pellet gun for example and breaks his neighbor's window, there are laws that already remedy this and he will be financially responsible.

I am all for reasonable gun control but this measure goes too far!

Bishara Kakunda

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Michael Dean <mcdean123@gmail.com>  
**Sent:** Tuesday, October 2, 2018 11:20 AM  
**To:** Maureen Tobin  
**Subject:** Potential issues with anti gun violence ordinance

Hi Maureen,

Looking through the draft of the anti gun violence ordinance I see some issues that you may not be aware of.

9.04.010 (A) as worded makes Nerf guns and other toy dart guns illegal to use in the city.

9.04.010 (B) will open the door for criminal liability for a CA resident from another county who has a CCW issued from their county and visiting Morgan Hill if they discharge their firearm in self defense.

9.04.010 (C) (1) May not survive a court challenge. Is it Constitutionally permissive to require a person to carry insurance in order to exercise a protected right (2nd Amendment)?

9.04.050 is currently covered under state law (Proposition 63). Be advised that the Federal 9th Circuit Court of Appeals has applied a preliminary injunction to the magazine restriction portion of Prop. 63.

I would assume that any firearm regulations created by Morgan Hill will probably be challenged in court by a variety of pro-gun groups (NRA, CRPA, 2A Foundation, FPC, etc.). If the Supreme Court becomes more conservative under President Trump (and I assume it will), then restrictions placed on the 2nd Amendment via local law may be found unconstitutional by the Supreme Court and the law nulled. California has statutes providing the loser should pay the winner's attorneys' fees in some cases and Morgan Hill may end up having to pay a large amount of money in accrued legal fees.

You and the city's legal team should also ensure that no parts of the ordinance run afoul of State preemption.

I hope you find my response helpful.

-Michael Dean

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**Michelle Bigelow**

---

**From:** Guy Krevet <gkrevet@msn.com>  
**Sent:** Tuesday, October 2, 2018 10:24 AM  
**To:** Maureen Tobin  
**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance

Good morning Ms. Tobin,

Am I understanding that slingshot, BB guns and pellet guns would need a written permit from the Police Chief?  
I would appreciate your reply.

Regards,  
Guy Krevet

Sent from [Mail](#) for Windows 10

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Barbara Shehan <barbshehan@gmail.com>  
**Sent:** Tuesday, October 2, 2018 3:36 PM  
**To:** Maureen Tobin  
**Subject:** Providing My Input on the Draft Anti Gun Violence Ordinance

Dear Mrs Tobin-

There is much that I could say about these proposed Ordinances, none of which is positive or in favor of these proposed changes. Not only are they redundant to what is already law in the state, but they further extend the governments reach in to my home. These ordinances will continue to tighten the leash on law abiding citizens such as myself and the majority of the Morgan Hill population. I disagree with these changes wholeheartedly.

Regards,  
Barbara Shehan  
408.315.2334

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Sal Lucido <slucido@assurx.com>  
**Sent:** Tuesday, October 2, 2018 10:51 AM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hello Maureen,

Thank you for the notice.

There is an interesting loophole in the section that states: "No person shall leave a firearm (as defined in Penal Code Section 16520 or as amended) unattended in any residence owned or controlled by that person..."

This implies that they MAY leave the firearm unattended without securing or storing it properly - in a location that is NOT owned or controlled by that person.

Thanks Again - Sal

---

**From:** City of Morgan Hill <maureen@mhcrc.ccsend.com> on behalf of City of Morgan Hill  
 <maureen.tobin@morganhill.ca.gov>  
**Sent:** Tuesday, October 2, 2018 9:31 AM  
**To:** Sal Lucido  
**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance



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## Michelle Bigelow

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**From:** kangkeren@charter.net  
**Sent:** Tuesday, October 2, 2018 10:46 AM  
**To:** Maureen Tobin  
**Subject:** RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

Maureen,  
 A few thoughts.

It seems that the existing text (9.04.010) says that anyone lawfully possessing a firearm and who discharges it to defend himself or herself or family from home invaders or others (while within the City limits) and does so without a permit will violate the ordinance. To avoid violation, one would have to seek a permit in advance, (the permit being to "discharge" the weapon, not to possess it), but the criteria for applying (such as requiring that the problem necessitating the firearm discharge be stated and what other means have been unsuccessfully employed to abate the problem) seem difficult to meet (unless one is being threatened directly by another, for example).

It seems that getting a permit because of a desire to have a firearm for purposes of self-defense, in the unlikely event it is needed, (because, for example, of a breakin by an escaped convict, or someone less than mentally stable, etc.) would be hard to obtain. The "problem" for a person who simply wanted a firearm to protect his or her home or person, is no more than the real, albeit unlikely, possibility of being confronted by dangerous, threatening individuals; and other than locks on doors and possible alarm systems (which might not be helpful in all situations), how does one suggest what might have been done to "abate" such a problem?

On what basis would someone who applied on such a basis be denied a permit? Would all such applicants be granted permits unless otherwise shown to be mentally or emotionally unstable, or had a criminal record, or a restraining order against them?

Is there a Constitutional issue here?

Should there be a caveat here; such as: "A. No person shall discharge in the city, outside of 1) a licensed shooting range OR 2) IN LAWFUL SELF-DEFENSE, DEFENSE OF OTHERS, OR DEFENSE OF HOME, any instrument or device ..."

As for new text, 9.04.040 (Safe Storage of Firearms), I am unsure of what "unattended" means? Does that mean the firearm is not being held in someone's hands? or that no person who is aware of the firearm is in the house with it? Is the provision intended to reduce the incidence of accidental discharges? or is it intended for something else? Depending on how "unattended" is interpreted, it could be helpful in preventing accidental discharges by someone who shouldn't be handling the firearm (e.g. a child) - of course, there can always be accidental discharges by someone "attending" the firearm (including by dancing FBI agents if recent events are any indication.)

The provision wouldn't seem to be effective at preventing thefts of firearms if that is at all its intended purpose.

Ken Cochran

-----  
**From:** "City of Morgan Hill"  
**To:** kangkeren@charter.net  
**Cc:**  
**Sent:** Tuesday October 2 2018 11:45:35AM  
**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



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## Michelle Bigelow

**From:** Tracy Hutcheson <tracyhut@gmail.com>  
**Sent:** Tuesday, October 2, 2018 10:42 AM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hi Maureen, thank you for sharing. I have a couple questions/comments.

### Section 9.04.020. Storage of firearms by licensed dealers

I'm curious why this section is proposed to be mostly deleted? Most of the text that is to be deleted reads as a preventive safety measure. Seems like a reasonable up front way to prevent weapons from being stolen from a licensed vendor's establishment. Is the spirit of this section covered in another way somewhere else?

### 9.04.030. Duty to report theft or loss of firearms

This section is a proposed new add which is good. However, when you remove the safe storage section 9.04.020 and add section 030 it looks like a fix after the fact once a firearm is stolen. This 030 section without the 020 section reads like a purely reactive response once a firearm was stolen potentially due to lax storage (which is preventable). Unless the spirit of the storage section is captured in another way I would suggest that the 9.04.020 preventive safety measure be included (i.e., not deleted). I'm sure it's my lack of knowledge but I'm curious and would like to understand the reasoning for removal of section 9.04.020.

### Section 9.04.050 C7

What is considered a reasonable amount of time to transport a found large capacity magazine? I would think that specifying something like a matter of hours may be too restrictive but maybe there should be language in there that says something like "reasonably necessary to deliver to law enforcement **not to exceed 2 days.**"

#### 9.04.050

C7. Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

thanks Maureen,  
 Tracy Hutcheson

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)> wrote:



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## Michelle Bigelow

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**From:** Kevin S <kevinsmall@gmail.com>  
**Sent:** Tuesday, October 2, 2018 9:47 AM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hello,

Will there be a community meeting to discuss this proposal and changes?

Please let me know.

Thank you,  
 Kevin

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)> wrote:



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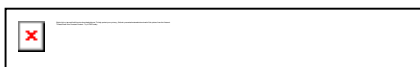


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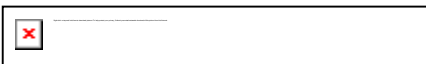
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## Michelle Bigelow

**From:** David Smith <dsmithcdc@gmail.com>  
**Sent:** Tuesday, October 2, 2018 1:39 PM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

How many criminals do you think will abide by this ordinance?

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)> wrote:



## Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

Two community meetings have been held to gather input on the language to be included in the ordinance. At this time it is anticipated that the draft ordinance will be taken back to the City Council for consideration of adoption on October 17th.

Prior to returning to the City Council, we would like to provide another opportunity for the community to share their input on the draft ordinance. It is available to view at the following link [Draft City of Morgan Hill Anti Gun Violence Ordinance](#). The regular type has been part of the draft ordinance from the beginning, the strikeout is what is proposed to be deleted and language in the italics is what is currently proposed to be added.

**Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.**

Company Name | Phone | Address | Website



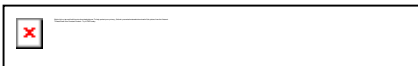
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

City of Morgan Hill | [17575 Peak Avenue, Morgan Hill, CA 95037](#)

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Sent by maureen.tobin@morganhill.ca.gov in collaboration with



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## Michelle Bigelow

---

**From:** Dr. Robert Kessler <drrobertkessler@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 10:29 AM  
**To:** Maureen Tobin  
**Subject:** weapons amendment.

To whom it may concern;

I received a city generated e-mail inviting comment with regard to an upcoming amendment on firearms in the city of Morgan Hill. My response is as follows:

In reading the proposal it seems clear that there are good intentions in mind for welfare and safety. However, I see the net effect as simply keeping a law abiding citizen from freedoms of firearm possession. This proposal becomes an avenue to limit the ability for someone to lawfully own very viable and available equipment. It is too controlling for grown law abiding citizens. This amendment will only limit normal people for whom the law is not needed. Those who would create issues will not respect the law.

Gun owners would obviously report stolen equipment. Its not a leap to assume if someone will steel a gun they will also either use or sell to someone who would use a gun illegally. Registration would fall back to the gun owner- a big problem. Also, I'll bet if someone buys a gun legally and therefore registers the gun they are already law abiding and would handle the responsibility of reporting stolen equipment on ethical and moral grounds; again, the problem is not with law abiding citizens...

Storage of firearms is already protocolled and part of gun ownership so here again- why this law?

I simply see this amendment as an at best feel good attempt to make a difference. At worst I see it as a step toward draconian control.

I do not fear a neighbor with guns, big magazines etc any more than I fear a neighbor that has a sports car that will do 150 MPH, or a neighbor that has a car and a house with a kegerator for beer parties etc. Responsible adults are responsible adults, not babies who dont know any better and need to be controlled by an elected official that thinks they know better... but dont get me started...

There is a time and place for good governance- this one would not work though.

Thank you for the opportunity to respond.

Respectfully,

Robert

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Tom Guinane <guinane@gmail.com>  
**Sent:** Tuesday, October 2, 2018 10:57 AM  
**To:** Maureen Tobin  
**Subject:** "Weapons" is not clearly defined in this ordinance

Hi Maureen,

The text in the ordinance states "*No person shall discharge in the city, outside of a licensed shooting range, any instrument or device **of any kind**, character or description which discharges, propels or hurls bullets, **missiles of any kind to any distance** from such instrument or device by means of **elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge**, without first having applied for and obtained a written permit therefore from the chief of police.*"

I am not exactly sure what that means. 'Missile' is defined as 'an object that is forcibly propelled at a target, either by hand or from a mechanical weapon.' This is very vague. 'Missile of any kind' could include BB rifles, pellet guns, slingshots, Nerf guns, water balloon cannons, and other toys that propel objects.

Is there a way to reword the ordinance so it captures the intent of requiring permits for 'firearms and other dangerous weapons' and could not be interpreted to include toys?

Maybe a sample list of what would be included in this ordinance and what would not might help.

Thanks.

--

Cheers,  
 Tom Guinane

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Kurt Hoffman <fishklr@verizon.net>  
**Sent:** Tuesday, October 2, 2018 7:21 PM  
**To:** Maureen Tobin  
**Subject:** Anti gun violence act

This is not an anti gun violence act it is an anti gun ownership act!

I oppose every portion of this act because it will do nothing, I repeat nothing to address the issue.

If you look at the statistics what little gun violence we have in Morgan Hill is committed by persons who are not lawfully possessing a gun in the first place!

You are attacking only lawful owners of firearms. If you want to stem gun violence I suggest you look at eliminating drug use and homelessness, but you will not because those are hard, and attacking lawful gun owners is easy.

At the very least admit that your goal is to confiscate all firearms, and disarm the entire population!

Kurt Hoffman

Sent from my iPad

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

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**From:** John Luce <jluce@outlook.com>  
**Sent:** Wednesday, October 3, 2018 6:42 AM  
**To:** Maureen Tobin  
**Subject:** Draft City of Morgan Hill Anti Gun Violence Ordinance

Wow I have seen some really horrible written laws but this takes the cake. So you want to make it so expensive and hard for honest people to protect them selves. Basically if someone is breaking into my house or trying to hurt my family, I have to have a million dollar insurance policy and get a permit from the Sheriff. Can you tell does this person need to have a insurance policy incase he causes any damage on my property? You really need to look at this "Ordinance" and realize that punishing honest people will only make crime go up. That will drive honest hard working people from your town. You will never stop crime but let's not make it easier. I know you probably will not read this but just needed to say how bad your "Common Sense Gun Law" will be.

Regards,

John Luce

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**Michelle Bigelow**

---

**From:** Richard Howell Jr. <rich\_howell@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 4:27 PM  
**To:** Maureen Tobin  
**Subject:** Draft Proposal against Gun Violence

This proposal is a violation of my 2nd Amendment rights. People who commit crimes do not follow laws. All you are doing is limiting the rights of law abiding citizens as guaranteed them by the U.S. Constitution / Bill of Rights. Additionally we have NEVER had an issue with gun violence in this City...there is ZERO precedent for any of this. Anyone supporting this will be voted out.

Again...if someone wants to commit an act of violence; they DO NOT CARE HOW MANY/WHICH LAWS THEY ARE BREAKING. Gun laws only affect people who follow the law...and those people are not seeking to harm anyone; myself included.

Please stop trying to take away my rights and the rights of others.

Thank You,

Rich Howell  
Morgan Hill resident since 1985.

[Sent from Yahoo Mail on Android](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Jason Shehan <jason\_shehan@att.net>  
**Sent:** Tuesday, October 2, 2018 8:56 PM  
**To:** Maureen Tobin  
**Subject:** Firearm Ordinance comment

Hi Maureen, I would like to voice my opinion in opposition to the Firearms Ordinance that the City of Morgan Hill is planning to put into place. I moved to Morgan Hill almost 5 years ago, mainly to get out of the big city feel that San Jose has become. I grew up in San Jose and had lived there my entire life minus the years I was in San Luis Obispo for college. I bought a house in MH with my wife and we have 2 young children. I am so happy with the move and thoroughly enjoy the smaller town atmosphere and the closer to "country living" vibe that this town brings. More specifically, I wanted to get away from San Jose and the far left policies that were being shoved down the throats of every citizen that lived there, no matter what my views were. I feel that Morgan Hill doesn't represent the same big city mindset, and this new ordinance is a step in the direction of implementing government will against law abiding citizens.

Nowhere in this draft ordinance does it make mention or prove that any of these laws will prevent firearm crime. It in fact, will only cause an increase in firearm crime for those who choose to break the law, and who are recurring criminals. I am a gun owner and a supporter of the 2nd Amendment, yes the same 2nd Amendment that is my right as an American citizen, which the state of California has already infringed upon. I'm not sure what your background in law, and moreso with firearms and firearm ownership is, or the background of the rest of the City Council, but nearly every bullet item mentioned is already state law.

- 1) Its already illegal to discharge a firearm within city limits, but now you want homeowners to apply for a permit in order to protect ourselves within our own homes, and purchase proof of liability insurance to do this?
- 2) It is already written into law that a gun owner is required to report loss or theft of a registered firearm
- 3) It is already required that firearms be stored properly, and did you know that you are not allowed to legally purchase a gun without providing the make and model of the gun safe that you already own?
- 4) it is already now illegal to possess a high capacity magazine

Do you and the council members realize that you are only punishing and putting limitations on law abiding gun owners? Those who wish to commit crimes with firearms are doing so through illegal back alley purchases where they can have an unregistered firearm so that they cannot be traced back to the owner, and those criminals who commit violent crimes with firearms will not and historically do not by definition, follow the law. Do you really think that a criminal will turn in their high capacity magazines, and purchase liability insurance before they strong arm rob the next person at gunpoint?

Please stop with this madness and quit trying to force these laws that only punish those law abiding citizens who have followed all legal methods of purchasing their firearms for sport (yes, we do not intend to harm other people when our guns are purchased). You can rest assured that those who have firearms in their homes keep them locked up safely and securely, and if the need arises to protect our home and our family in the middle of the night as someone is breaking in and plans to do harm, the last thing that we will consider is the fact that we forgot to purchase proof of liability.

Thank you,  
 Jason Shehan

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Dr.Jerome Sarmiento <jsarmd@yahoo.com>  
**Sent:** Wednesday, October 3, 2018 4:14 AM  
**To:** Maureen Tobin  
**Subject:** Gun Violence

Hello,

I would like to give my input regarding this matter. Historically gun violence in the US involves unhappy and mentally unstable gun owners or relatives who have access to guns & they have in majority done this violence in school campus-employing security guards and reducing the salary of school superintendents who obviously are not in the campus during disturbances. The guards should be armed; well trained and should also be courteous To students, parents, teachers and school employees. ID cards should be worn upon entry into schools. Security cameras with alarm systems when a perpetrator is identified and lock down procedures are underway. A safe lockdown area impenetrable to weapons of mass destruction is best

Thank you

Jerome

[Sent from Yahoo Mail for iPhone](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** B Thomas Stewart <toms711@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 9:32 PM  
**To:** Maureen Tobin  
**Subject:** proposed gun ordinance

Most of the proposed gun ordinance looks good, however I think the gun storage regulations should still be retained.

Tom Stewart  
4087791067

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Gregory Bailey <gbailey@airtronics.com>  
**Sent:** Wednesday, October 3, 2018 8:56 AM  
**To:** Maureen Tobin  
**Subject:** Anti Gun Violence Ordinance

Hi Maureen,

Other than not seeing anything about concealed or open carry in the permit section, I don't understand the provision on page 5 section 9 giving retired officers an exclusion when they are in fact retired by definition. Should not these weapons only be maintained at the police station for police use, even if for some reason an officer is recalled? Once an officer is retired, are they not then a private citizen? Even active/reserve officers large capacity magazines should be at the station or in their police vehicles, not at their private residence. If the need for such magazines is required, are they not in that assault vehicle that SWAT team has and are they not the only ones who would be authorized/trained in their use. While officers do respond from home, are not those actions coordinated? While I fully agree that officers should be able to defend themselves, these items should be looked at a little more closely.

Regards,  
Greg Bailey

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Rjbenich <rjbenich@yahoo.com>  
**Sent:** Wednesday, October 3, 2018 8:37 AM  
**To:** Maureen Tobin  
**Subject:** Draft Anti Gun Violence Ordinance

Hello Maureen. My comments regarding this draft ordinance are as follows:

1. It is too restrictive with respect to BB guns and pellet guns.
2. It is unreasonable to have to get a permit for a BB gun or pellet gun.
3. It is unreasonable to have to have a BB gun or pellet gun locked up.
4. It is unreasonable to have to have a trigger guard on a BB gun or pellet gun.
5. It is unreasonable to have to report the theft of a BB gun or pellet gun.
6. This ordinance is well written for guns that shoot cartridges of .22 Cal. or larger.

Robert Benich

Sent from my iPad

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Danielle DeRome <drderome@yahoo.es>  
**Sent:** Wednesday, October 3, 2018 11:04 AM  
**To:** Maureen Tobin  
**Subject:** Draft gun violence legislation

Dear Maureen,

Thank you for providing citizens the opportunity to review and comment on the draft gun violence legislation being considered by the City of Morgan Hill.

Are the parts that have been lined out being eliminated because they are already included in legislation that covers Morgan Hill?

A concern that comes to mind includes the legality of producing, selling/sharing, possession, and use of 3D printed guns.

Another concern is the potential presence of guns in our schools, in particular via the proposal/suggestion by Sec. DeVos et al. to arm teachers.

Perhaps my imagination is jumping the gun, so to speak, but I wonder if our City gun legislation should address such matters now so they cannot become an issue in the future.

Again, thank you very much for the opportunity to be a part of this important discussion.

Sincerely,  
Danielle DeRome  
164 Sanchez Drive  
Morgan Hill, CA 95037  
(408) 623-1205  
drderome@yahoo.es

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** mbhave@aol.com  
**Sent:** Wednesday, October 3, 2018 11:09 AM  
**To:** Maureen Tobin  
**Subject:** Gun ordinance.

Hi Maureen,

I reviewed the proposed gun ordinance. I don't believe there is any reason for the City of Morgan Hill to jump into the middle of this issue. State law covers most of the proposals. Morgan Hills proposal is more restrictive and not necessary in my opinion. No one is going to turn in magazines they have lawfully owned, as per the ordinance thus, making them criminals in the eyes of the City of Morgan Hill.

*Sent from my Verizon 4G LTE Smartphone*

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**Michelle Bigelow**

---

**From:** Johnny Colino <jcolino@kw.com>  
**Sent:** Thursday, October 4, 2018 9:25 AM  
**To:** Maureen Tobin  
**Subject:** Draft Anti Gun Violence Ordinance [edit]

Hi Maureen,

Section 9.04.010 A Requires a statement that the **only exception would strictly be within the structure of ones own home for the express and exclusive purpose of self defense where significant and obvious threat to ones life or significant risk of injury at the hand of another is eminent.**

Without that, there would be a significant and obvious gap in this ordinance which would prevent one from defending themselves during home invasion, attempted murder, rape and other violent crimes. While I support the remaining sections of the proposed ordinance, I fear that with this clause this ordinance would be deemed unconstitutional by many.

I welcome your thoughts on this.

**Thanks,  
Johnny Colino**

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Danielle DeRome <drderome@yahoo.es>  
**Sent:** Wednesday, October 3, 2018 11:04 AM  
**To:** Maureen Tobin  
**Subject:** Draft gun violence legislation

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Sincerely,  
Danielle DeRome  
164 Sanchez Drive  
Morgan Hill, CA 95037  
(408) 623-1205  
drderome@yahoo.es

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Nancy Benich <nebenich@yahoo.com>  
**Sent:** Wednesday, October 3, 2018 1:19 PM  
**To:** Maureen Tobin  
**Subject:** Gun Law

Dear Maureen,  
I like the gun law except do not include pellet guns or BB guns - too restrictive!  
Nancy Benich

Sent from my iPhone

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Elle Simon <ellesimon.consulting@gmail.com>  
**Sent:** Wednesday, October 3, 2018 6:26 PM  
**To:** Maureen Tobin  
**Subject:** Please ask the Council to consider changing the Draft Anti-Gun Ordinance as follows:

**9.04.040 Safe storage of firearms**

Line 3 ...container, (delete "or"; add "and") the firearm is disabled...

Thank you.

--

Elle Simon  
Resident of Morgan Hill since November 29, 2017  
Mailing Address: Post Office Box 2102; 95038  
Residence: 505 Barrett Ave. #228; 95037

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** richnmitz@charter.net  
**Sent:** Wednesday, October 3, 2018 5:10 PM  
**To:** Maureen Tobin  
**Subject:** Proposed Gun Violence Ordinance

Dear Maureen,

I am strongly opposed to the subject draft.

My opposition is based on:

1. Read literally the "Discharge" paragraph prevents my young grandchildren from firing toy "nerf" guns without authorization from the police chief. It also prevents me from using my air rifle from defending my garden from rats ( a ridiculous invasion into my privacy)!
2. Anyone driven to harm others with violence will pay no attention to such an ordinance.
3. Its just more red tape and cost burden on normal law abiding citizens as myself (and the police department too).

I don't know when our political leaders will learn that moral failings are rooted deeper and are more complicated than what might be provided by a "silly" ordinance such as this.

Richard Loutensock

2997 Holiday Ct

Morgan Hill

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Guy Krevet <gkrevet@msn.com>  
**Sent:** Wednesday, October 3, 2018 1:38 PM  
**To:** Maureen Tobin  
**Subject:** RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

Good afternoon Ms. Tobin,

Thank you for the reply.

Comments on Morgan Hill proposed Weapons Ordinance.

9.04.010 Discharge – Permit required Fee. - This section **Title 9 - PUBLIC PEACE, MORALS, AND WELFARE** already exist but needs to be modified per my previous email. It should be for discharging a firearm.

9.04.030 Duty to report theft or loss of firearms - California has an established law to cover this. It's five days, Morgan Hill wants two days. **Leave it five days**

9.04.040 Safe storage of firearms - California has an established law to cover this. It's the same.

9.04.050 Possession of large capacity ammunition magazines prohibited. California has an established law to cover this, but Morgan Hill wants to collect large capacity magazines prior to January 1, 2000. **Follow the same law as California.**

By Morgan Hill making a slight modification to the present California gun laws, it introduces conflict to the citizenship since people will have the natural tendencies to check the California website and not the Morgan Hill for gun laws. It certainly was my case when I started to look at the proposal and discovered that Morgan Hill had a separate ordinance. The other reason to use the California existing laws is that it would eliminate any legal challenges to the City.

In my opinion, the City has good intention but the proposed ordinance with the slight modifications will not have any impact to prevent gun violence in Morgan Hill. I would recommend just adding the present California gun Laws to the Morgan Hill ordinance.

Regards,

Guy Krevet

---

**From:** Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>  
**Sent:** Wednesday, October 3, 2018 11:55 AM  
**To:** Guy Krevet <gkrevet@msn.com>  
**Subject:** RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hello Mr. Krevet.

Thank you for your input.

That is certainly not the intent of the language in the draft ordinance, but it seems to be causing this interpretation. I have forwarded your comments to the City Attorney, Police Chief and the City Council.

Have a good day.

**Maureen Tobin**  
 Communications and Engagement Manager  
[Engage With Us!](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**City of Morgan Hill**

City Manager's Office

17575 Peak Avenue, Morgan Hill, CA 95037

**P:** 408.310.4706 **C:** 408.406.4076[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)[morgan-hill.ca.gov](http://morgan-hill.ca.gov) | [facebook](#) | [twitter](#)

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**From:** Guy Krevet <[gkrevet@msn.com](mailto:gkrevet@msn.com)>**Sent:** Tuesday, October 2, 2018 10:24 AM**To:** Maureen Tobin <[Maureen.Tobin@morganhill.ca.gov](mailto:Maureen.Tobin@morganhill.ca.gov)>**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance

Good morning Ms. Tobin,

Am I understanding that slingshot, BB guns and pellet guns would need a written permit from the Police Chief?  
I would appreciate your reply.

Regards,  
Guy Krevet

Sent from [Mail](#) for Windows 10

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** JOHN KRACHT <krachtjohn@yahoo.com>  
**Sent:** Tuesday, October 2, 2018 11:54 AM  
**To:** Maureen Tobin  
**Subject:** Firearms Ord.

Maureen,

What **municipal** statistics justify this adjustment? It really appears to be a kneejerk reaction to the national news cycles about the Vegas shooting a year ago. There are lots of state and county laws and regulations. If you are going to add more and more restrictions you should be able to cite the **local** misconduct, by case number preferably, that would support such a belt-tightening. Or is this some sort of 'resistance ' protest of the Trump administration?

John Kracht  
16460 Rustling Oak Court

[Sent from Yahoo Mail for iPad](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**Michelle Bigelow**

---

**From:** Jim <jim@jnkrause.com>  
**Sent:** Tuesday, October 2, 2018 12:40 PM  
**To:** Maureen Tobin  
**Cc:** jim@jnkrause.com  
**Subject:** gun control ordinance

**Importance:** High

Hi Maureen.

Question, does Morgan Hill have a gun problem that requires this ordinance?. If so, what are the statistics?

I can understand an ordinance if we have a known problem, but I am unaware of one at this point. Also, how do you defend yourself if the weapon is locked up?

Looking forward to your response.

Thanks,

Jim Krause

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Allen Picchi <allenpicchi@msn.com>  
**Sent:** Tuesday, October 2, 2018 12:44 PM  
**To:** Maureen Tobin  
**Subject:** Gun Violence Ordinance

To Whom It Concerns,

What specifically, are you trying to achieve with this ordinance update. What problem are you trying to solve...

I am not in favor, nor do I support the text surrounding Section 9.04.050 Section B, regarding high capacity magazines that are in peoples' possession prior to the passing of California gun laws. Specifically, I would like to see the removal of #1&2 text.

Additionally, I would like to see text surrounding forfeiture and prosecution of those in possession of theses magazines **removed** from the ordinance, regardless of whether smaller capacity magazines are available or not.

I am also not in favor of expecting residences who obtain a permit to also obtain liability insurance.

Allen Picchi

Sent from [Mail](#) for Windows 10

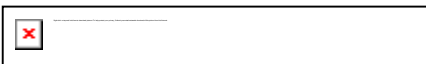
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

**From:** David Smith <dsmithcdc@gmail.com>  
**Sent:** Tuesday, October 2, 2018 1:39 PM  
**To:** Maureen Tobin  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

How many criminals do you think will abide by this ordinance?

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)> wrote:



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**Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.**

Company Name | Phone | Address | Website



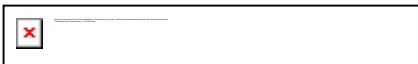
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## Michelle Bigelow

---

**From:** Oz M <joswaldomendoza@gmail.com>  
**Sent:** Thursday, October 4, 2018 9:18 AM  
**To:** Maureen Tobin  
**Subject:** Anti Gun Violence Ordinance

Mrs. Maureen Tobin,

I wanted to share my thoughts on the Anti Gun Violence Ordinance.

I just found out about this Ordinance through family that the city is planning on further restricting citizen's right to use any type of weapon to be discharged within city limits.

I am oppose to such ordinance due to the fact this Ordinance will remove due process to law abiding citizen's rights. Also, what happens if someone discharges a weapon of any kind accidentally. This would make any citizen a criminal immediately. No due process is applied.

This Ordinance is the type of things that abusive government does to protect it self from citizens and makes government law enforcers no better than Socialist guards.

They can take away any citizen's right to free use of any weapon to defend them selves from lethal aggression.

I recommend that if such ordinances are to be in effect it will extend to all citizen's in the city. Including law enforcement.

How could I trust government that does not trust me to have any right whatsoever to defend my family from threat until I have a permit from government to do so.

The other night, I called in a event, I heard what sounded like gun discharge going on at night. The 911 operator had not receive any other reports of such sounds reported and or could hear them. How can I get permission to defend my self when authorities or emergency responders are unaware of such events going on in the city. How long should I wait until I get a permit to defend my self from possible threat.

What insurance carrier would give me coverage to be able to defend my self based upon your permission to do so.

Just the fact that I have to ask permission to protect my self does not make me safe in my own community.

Based on you Ordinance, I and by extension, my family, has to get permission to use pellet guns in my backyard. I have to get permission to teach/learn Bow and arrow in my backyard. I have to get a permit to discharge rocks with a sling shot. I have to get a permit to practice with any weapon described. That is not OK to me.

The fact that I have to be submit to the Chief of Police for review to get approval or agreement to discharge a weapon makes me thing that I no longer have the right to protect my self unless permission is given.

Should I be concern of retaliation from the Police and City for my shared thoughts?

In closing, the fact that the city is considering such draconian strand on my rights to defend my self has started discussion to find another place to live among my family.

We would like to not have to move but the fact that we are considering it should give you some pause for review of your Ordinance.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Sincerely,

A Morgan Hill citizen of seven years

Jose Mendoza

**From:** [Michelle Bigelow](#)  
**To:** [Michelle Bigelow](#)  
**Subject:** FW: City of Morgan Hill Anti-Gun Violence Ordinance  
**Date:** Tuesday, October 9, 2018 9:07:57 AM

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**From:** Brian Faircloth <clawsbo@attglobal.net>  
**Sent:** Monday, October 8, 2018 3:15 AM  
**To:** Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>  
**Subject:** City of Morgan Hill Anti-Gun Violence Ordinance

Maureen, I have looked over the draft of the subject ordinance. What immediately comes to mind is that the ordinance is void of any substance that would deter any gun violence in Morgan Hill. What the ordinance does contain are provisions that seem to be an attack on gun ownership in Morgan Hill. In fact, the ordinance should be named 'anti-gun ownership'. It has been proven time and time again that having more gun laws has no effect on gun violence. If the City of Morgan Hill wants to reduce or eliminate gun violence in Morgan Hill, the focus should be on gun crimes and not on gun ownership. When I attended the initial meeting to discuss the draft ordinance it was obvious that the attendees representing the city had no intention on discussing the purpose or what gun violence problem needed to be addressed. In short, the ordinance as written is a political statement against guns and gun ownership, not a good faith effort to actually address gun violence.

My belief is that if you want to reduce gun crimes you write an ordinance to go after the perpetrators of the gun crimes, not write an ordinance that has the potential to make gun owners the criminals.

My recommendation to the City of Morgan Hill is that they write an ordinance that contains repercussions for committing ANY crime in Morgan Hill that includes a use of a gun. Specifically, if a perpetrator of a crime uses a gun they will be subject to a mandatory minimum sentence of 10 years in jail. If someone is injured in the crime the mandatory minimum sentence is 15 years. If someone is killed in the crime the mandatory minimum sentence is 30 years.

As a side note I want to leave you with this: Thousands of people are injured and killed every year as a result of car thefts and I do not ever recall the car owner being arrested for the crime because their garage was not locked or their car had too much horsepower.

If the City of Morgan Hill wants to have honest, open, and non-biased discussions in the future, I am willing to participate.

I thank you for your assistance.

Brian Faircloth

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Comments on

Draft Ordinance language to require safe firearms storage, require the reporting of firearms theft, and prohibit large capacity magazines.

First of all I disagree with the characterization of the notifying email that the council is in consideration of “common sense” measures. That is code by politicians that we are going to do what we damn well please without regard to any real standard of common sense. It is soothing rhetoric on their part to believe that they act on the moral high ground. I reject any notion that this language fulfills that in spirit and in the actual reading.

This ordinance will not prevent gun violence in Morgan Hill as that the law cannot influence the behavior of criminals who do not obey laws in the first place. The predominance of gun violence is done by people already prepared to break the law. This law is intended only to affect law abiding citizens who believe that law should be followed. This law potentially makes law abiding citizens into criminals and is based on coercion that can only lead to more problems.

Concerns:

1. The Ordinance is inappropriately named. It excludes two key provisions of the ordinance in the title. The ordinance requires a discharge permit and the ordinance has provisions for confiscation of guns. Neither of these appear in the title. If the public sees the title they will likely not understand the consequences of the ordinance. In fact, the California Rifle and Pistol Association listed the title of the ordinance with the current title in their action reports for September. This was done prior to the language of the ordinance being available to them. Those two provisions should be included in the title of the Ordinance to be totally transparent about intent.
2. The ordinance goes well beyond what Council said was their intent. The brief description of the board’s actions of March 7, 2018 indicates gun violence and measures to prevent gun violence. As mentioned this will not curb gun violence as I already said. In addition, the language of the ordinance goes way beyond guns. As written it the language includes other projectile devices. So again the title and the intent of this ordinance is clearly disingenuous.
3. The language of the ordinance excludes the right of an individual to provide for their own self-defense. This ordinance takes away that basic individual right to a great extent. Presumably because of your belief that police will fulfil that role. The ordinance states, “the chief of police shall be the sole judge as to the desirability or necessity of such permit, which must be, in his judgement, necessary for the protection of the applicant or his property. This is an incredible statement when considering that the Supreme Court has ruled that police do not have an obligation to protect people and the fact that government enjoys sovereign immunity for decisions made.

Additionally the ordinance adds more broad language to the permit process used by the police chief for approval, “in the furtherance of the public welfare, and with necessity cannot be reasonably abated by other means. What does, “public welfare” mean. The police chief could use this to deny any permit. It also replaces the judgement of the individual for a second guessing police chief. What does “reasonably” mean? Something done by a reasonably person?



I consider myself a reasonable person and lots in the ordinance does not seem reasonable to me.

Police enjoy a very broad expanse for judgment in situations where they are threatened. This ordinance likely conflicts with other law that grants individuals discretion in self-defense. Yet the police chief can use the permit process to deny an important component of an individual's options for self-defense. If the decision that is made results in an individual dying because of the inability to exercise all options for self-defense the City or the police chief cannot be held accountable.

4. Applicants for such permit shall provide the following:

An application in writing which states the purpose of such permit, nature of the problem to be abated which necessitates the protection of the applicant, his property or the furtherance of the public welfare, and lists all other means which have been unsuccessfully employed to abate the problem. **(Note: that as PC as most politicians are today using only "his" could be considered sexist on a number of levels. Perhaps the drafters did not believe women have property. Perhaps the drafters only consider it is a man's role to protect property. Perhaps it is a reflection of the misogynist nature of the drafters. At any rate that should be correct with at least his/her.)**

This language on the surface and in the simple reading is not common sense. In fact, it defies common sense. An application to discharge a weapon for self-defense applied for with details of need is almost impossible. I am sure that any law abiding citizen will never want to be have to discharge their weapon for self-defense. It would be hard to hypothetically state "the nature of the problem to be abated". All property owners have the potential of needing to protect their property. How are all the potentials for that stated and to the satisfaction of the Police Chief. Again what does, "public welfare", mean? As an individual it is impossible to decipher for that meaning. As for the "necessity...reasonably abated by other means", for something that has not occurred is impossible. Doesn't the phrasing lead to the conception of something like serious injury or death being proof that, "other means...unsuccessfully employed to abate the problem", seems somewhat not common sense because what would be the point then.

The insurance provisions also seem problematic. The \$1,000,000 is likely not the biggest problem. The actual use of guns in various ways that create some sort of liability is very small to the total amount of guns in circulation. That would make the actuarial payout very low. Criminal activity and suicides would be excluded from insurance payouts under normal insurance underwriting. So potential actuarial payouts would be very low. However, the ordinance uses language that might impede normal insurance underwriting standards. The insurance must be "in the form and with approved companies". The city then might reject normal and reasonable exclusions forcing companies to include all risks thus increasing the cost of the insurance. In addition the power of the city to act with approved insurance companies leaves great discretion with the city to limit carriers and thus increase costs. I believe it is not the intent of the city to cover liability or reduce gun violence. I believe the city's intent is simply to increase the cost of gun ownership.

The language provisions on the additional insured provisions and the hold harmless agreements may prove to be more difficult. It is all controlled by the form the city wants. Have those forms

been worked out. Is the city going to negotiate on the forms with insurers or is this going to be up to the applicant. This could be a sticky wicket for the applicant for something like that might have to go back and forth between legal departments, city and insurance companies. No one knows how long that will take. None of that seems reasonable or common sense to me. It leaves many people in a very uncertain place while no permits can be granted without those forms.

The \$25 fee. This might be reasonable, but the pattern for city fees is an ever growing amount to cover costs. No doubt the police chief is going to have greater costs in implementing this ordinance. That will require more and more fees and the city will easily justify an ever increasing fee to cover fees. What some would consider a modest fee at this time will quickly grow to something much higher. The chief can simply make the period every two weeks and with additional unspecified "conditions and limitations" based on the language. All under the guise of "common sense", but not what I would consider reasonable.

Finally, remember none of this will apply to the criminal wanting to do harm to law abiding citizens. They simply will not follow the law and it will put law abiding citizens in harm's way since the police have no constitutional obligation or legal accountability to protect property or persons. Criminals will be able to pick and choose their opportunities knowing their lowered risk for being accountable both practically and legally.

5. The sections under duty to report theft, Safe storage of firearms, and possession of large-capacity ammunition magazines prohibited are going to be implementation nightmares and costly for the Police. It creates a potential due diligence requirement on the police. That could lead to intrusive police activity for code enforcement.

Starting with those that applied for a discharge permit the police would, in my opinion, now be responsible for code enforcement. They could decide to go to gun owners on the permit list and now make home visits to verify insurance, safes, gun inventories, etc. Hold harmless agreements do not protect entities against negligence. In the remote likelihood that something occurred and the city did not do due diligence with a permit holder that might be considered negligent then the city might not avoid accountability based on hold harmless agreements. That possibility will require more processes related to code enforcement that will be more and more coercive. There is no way this will not eventually occur based on the language of the ordinance. The exemptions in the large capacity clip prohibition will likely lead to unequal implementation.

6. Finally the confiscation provisions. They have been left out of the title. As I said that is a serious breach of transparency. There is already a problem with property seizures in the system because of a clear conflict of interest for cities and police in regard to value of property seized. This ordinance will possibly just add to that problem that tends to undermine the confidence of some citizens.

The language in the section is vague: 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 instruments 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 public welfare.

This is a most confusing section. How does do the police confiscate the device with no complaint? What does the first part of the section mean? Is this due process? Does the second part mean that the Chief of Police has discretion in regard to a complaint filed for violation of this chapter, to determine no violation occurred, so he "may" return the weapon from whose possession it was taken as he deems desirable for the public welfare. Again what does public welfare mean? What about moving the complaint to court, how would this reconcile with evidence needed for court? If a conviction was achieved is sixty days absolute or is that changed by appeal? It also says "may" be destroyed at the discretion of the police chief, would that be the discretion of the judge. Would not the judge also determine to return the weapon over the discretion of the police chief in regard to a conviction? If it is the discretion of the police chief what will be done with the gun if not destroyed or returned? As I said this section is very confusing.

In closing because I have taken more time with this than I wanted to, I will complete my final thoughts. I was unaware of prior meetings on this mostly because we all have busy lives. I would have gladly given this input at that time. However with today's political climate I am sure that would have made me a target, as this input likely will also make me a target. That may not be considered an unreasonable concern by some, but I think it is a reasonable concern to me. As I said this ordinance does not meet my standard for either common sense or reasonableness. I am entitled to this opinion. I also believe that based on the way politics work the powers that be have already decided what they will do with this ordinance and it is likely it will not become anymore common sense or reasonable.

It will likely take additional actions like court to modify the direction. I will be encouraging organizations interested in this topic to pursue additional actions. I give these thoughts to you in good faith as my honest constructive criticism and some dry humor. I hope to be pleasantly surprised to not be some sort of target for some in this effort to enforce more rules that I do not believe will be helpful, but I will not hold my breath. I thank you in advance for considering my thoughts.

Mike Brusa

Mbrusa7676@gmail.com

**From:** [Michael Duval](#)  
**To:** [Maureen Tobin](#)  
**Cc:** [Michael Duval](#)  
**Subject:** RE: Provide Your Input on the Draft Anti Gun Violence Ordinance  
**Date:** Friday, October 5, 2018 3:29:08 PM

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M.H. City Council,

As a resident of Morgan Hill and having grown up in this town along with other generations of my family I am concerned with the safety of all residents.

But as a citizen of the United States of America I am upset with the constant useless knee jerk legislation that does nothing for which it is written. Bills and Ordinance's that end up eroding my rights, just to make the uninformed public Feel safe and politicians trying to protect their positions look sympathetic.

We cannot legislate against Evil people, evil people will do awful things by any means whether or not there's a law. And a person with issues that are due to mental capacity or trauma need to be dealt with directly through mental health programs.

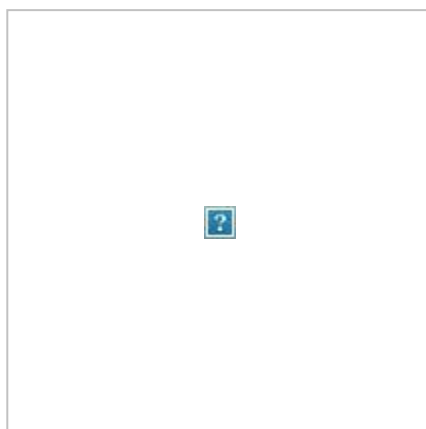
Deal with the real issues, criminals, mental health services, gangs, Kids programs, the breakdown of the family unit, education.

And stop creating Soft Targets by restricting the rights of the law abiding public to protect and defend them self's and their families.

Sincerely,  
 Mike Duval

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**From:** City of Morgan Hill <maureen@mhcrc.ccsend.com> **On Behalf Of** City of Morgan Hill  
**Sent:** Tuesday, October 2, 2018 9:31 AM  
**To:** Michael Duval <mduval@micro-mechanics.com>  
**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance



Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

Two community meetings have been held to gather input on the language to be included in the ordinance. At this time it is anticipated that the draft ordinance will be taken back to the City Council for consideration of adoption on October 17th.

Prior to returning to the City Council, we would like to provide another opportunity for the community to share their input on the draft ordinance. It is available to view at the following link [Draft City of Morgan Hill Anti Gun Violence Ordinance](#). The regular type has been part of the draft ordinance from the beginning, the strikeout is what is proposed to be deleted and language in the italics is what is currently proposed to be added.

**Comments can be submitted directly to [Maureen Tobin](#) through Friday, October 5, 2018.**

Company Name | Phone | Address | Website

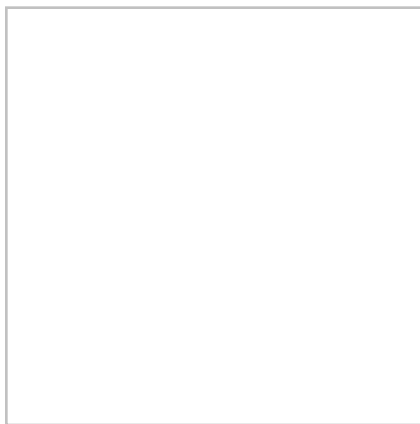


City of Morgan Hill | 17575 Peak Avenue, Morgan Hill, CA 95037

[Unsubscribe mduval@micro-mechanics.com](mailto:unsubscribe_mduval@micro-mechanics.com)

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Sent by [maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov) in collaboration with



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**From:** [jim](#)  
**To:** [Maureen Tobin](#)  
**Subject:** RE: gun control ordinance  
**Date:** Friday, October 5, 2018 3:07:09 PM

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Thank you for sending this report.

I must admit I am very disappointed at Parkland being the reason for this ordinance. That is a not a good reason. There were way to many other weaknesses in that event and it wasn't guns. You can forward this to Mr. CARR and tell him Jim is disappointed in his reasoning.

Thanks. Maureen

Jim Krause

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>

Date: 10/5/18 2:56 PM (GMT-07:00)

To: Jim <jim@jnkrause.com>

Subject: RE: gun control ordinance

Hi Jim,

It was great to see you at Kiwanis.

Thank you for your input.

At the February 21, 2018 City Council meeting, Council Members Spring and Carr issued statements of support for the Parkland community and Council Member Carr further asked the City Attorney to prepare a resolution condemning gun violence and calling for specific actions to prevent further senseless deaths. A copy of the staff report and the resolution can be found at the following link: [http://morganhillca.iqm2.com/Citizens/Detail\\_LegiFile.aspx?Frame=None&MeetingID=1720&MediaPosition=3273.490&ID=1667&CssClass=](http://morganhillca.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=None&MeetingID=1720&MediaPosition=3273.490&ID=1667&CssClass=)

After adopting the resolution the Council further directed staff to update the current ordinance to agree with the resolution. That is what is prompting this.

Your input has been forwarded to the City Council, the City Attorney and the Police Chief.

Have a great weekend ahead!

**Maureen Tobin**

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Communications and Engagement Manager

[Engage With Us!](#)

**City of Morgan Hill**

City Manager's Office

17575 Peak Avenue, Morgan Hill, CA 95037

**P:** 408.310.4706 **C:** 408.406.4076

[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)

[morgan-hill.ca.gov](http://morgan-hill.ca.gov) | [facebook](#) | [twitter](#)

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**From:** Jim <jim@jnkrause.com>  
**Sent:** Tuesday, October 2, 2018 12:40 PM  
**To:** Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>  
**Cc:** jim@jnkrause.com  
**Subject:** gun control ordinance  
**Importance:** High

Hi Maureen.

Question, does Morgan Hill have a gun problem that requires this ordinance?. If so, what are the statistics?

I can understand an ordinance if we have a known problem, but I am unaware of one at this point. Also, how do you defend yourself if the weapon is locked up?

Looking forward to your response.

Thanks,

Jim Krause

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**From:** [Dave Truslow](#)  
**To:** [Maureen Tobin](#)  
**Cc:** [Donald Larkin](#); [Christina Turner](#); [Rene Spring](#); [Rich Constantine](#)  
**Subject:** Re: Draft Firearms Ordinance  
**Date:** Friday, October 5, 2018 4:45:41 PM

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It's important to acknowledge worthwhile endeavors and contributions even when one may disagree with outcomes. I very much appreciate the participation of Morgan Hill employees and elected officials.

NetNet: The storage and loss reporting provisions don't appear to seriously jeopardize personal safety. But sadly none of the 3 items improve public safety.

As per our voice mail exchange, I'm unable to determine violation consequences. San Jose imposes up to a \$1,000 fine and/or up to 6 months in jail for a safe storage violation. Saratoga's pending safe storage ordinance imposes a \$150 fine. Both Saratoga and San Jose law enforcement assert a violation would be extremely difficult ("highly unlikely") to detect. I seem recall a survey that over 99% of lawful gun owners promptly report loss anyway. I believe insurance provisions also require it. Failure to promptly report could jeopardize insurance coverage.

I visited MHPD this afternoon to obtain a permit per the current code. My interpretation is that one needs a permit to shoot children's toys such as a Nerf gun, spud gun, or soda straw spitball blowgun. I don't find exceptions for emergency signaling, theatrical performances, t-shirt cannons, athletic event starter pistols or other pragmatic and safe uses. MHPD staff was baffled (I handed over a copy of the ordinance) when I asked for a permit application. I was directed to contact City Hall staff. Drove over and the City Clerk referred me back to MHPD. She contacted Chief Swing's admin and requested that I send an email request. I very much appreciate the extra effort.

It would appear that the City of Morgan Hill has significant improvement opportunities in the administration of the current ordinance. My sense is that the current one reiterated in the draft serves as a source of ridicule and contempt - not to improve public safety.

But my major heartburn is what's NOT in the proposal versus what's in it. Morgan Hill has an opportunity to propose meaningful measures to improve public safety. Many, such as promoting Laura's Law for Santa Clara County, have no financial impact to the city. I'll be following up on the list of 25 recommendations that I previously submitted.

Best,  
 -dave truslow  
 M: 408-828-1520

On Sep 26, 2018, at 12:32 PM, Maureen Tobin  
 <[Maureen.Tobin@morganhill.ca.gov](mailto:Maureen.Tobin@morganhill.ca.gov)> wrote:

Good afternoon.

You are receiving this email because you participated in one of our recent community

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

meetings to provide input on the draft Firearms Ordinance.

Attached please find the current draft version which includes input from the first meeting. The regular type is existing, the strikeout is what is proposed to be deleted, and the italics is what is proposed to be added.

Please feel free to provide further comment through October 5<sup>th</sup>.

We appreciate your interest and participation on this important topic.

**Maureen Tobin**

Communications and Engagement Manager

**Engage With Us!**

**City of Morgan Hill**

City Manager's Office

17575 Peak Avenue, Morgan Hill, CA 95037

**P:** 408.310.4706 **C:** 408.406.4076

maureen.tobin@morganhill.ca.gov

morgan-hill.ca.gov | facebook | twitter

<Draft Firearms Ordinance.docx>

## Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

The City of Morgan Hill (CMH) will be considering a gun control ordinance to modify Title 9 (Public Peace, Morals, and Welfare) of the municipal code. The original ordinance was enacted in 1970. Attached is the current ordinance with highlights.

In May, 2018, the Violation section (9.04.040) was stricken. It previously provided for a fine of up to \$1,000 and 6 months in jail. *There now appears to be no violation penalty other than confiscation by police.* Repeated inquiries to the City Manager's office have not identified any.

Interestingly, the penalties were eliminated after new gun control regulations were requested by the city council as a result of the Feb 14<sup>th</sup> Parkland FL shooting.

The attached Title 9 draft ordinance was submitted for comment to be addressed by Council in late October. Key aspects are:

### 1. Preserves 9.04.10 Discharge Permit language

Other than at a licensed shooting range, a \$25 permit is required to discharge an "instrument" and:

- a. \$1,000,000 liability insurance naming city as additional insured.
- b. Issued by chief of police. The chief has sole discretion over issuance.
- c. As defined, "instrument" includes a Nerf gun, rubber band slingshot, soda straw blow gun, ball toss dog toy, emergency signaling device, theatrical prop, paintball, Airsoft, compressed air rocket toy, party popper, corked carbonated beverages, radio controlled aircraft, nail gun tool, and similar benign devices.
- d. Presumably subjects violators to citizens arrest (PC 837) and as supported by the Supreme Court's "breach of peace" ruling in the 2001 *Atwater v. Lago Vista* case.
- e. MHPD counter staff were baffled when a discharge permit application was requested and the current ordinance was provided to them. Staff were unable to provide the permit application or provide any guidance other than to contact city hall.
- f. The ordinance renders activities such as historical reenactments, celebrations (e.g., July 4<sup>th</sup> and Veterans Day), and theatrical performances as violations unless a \$1,000,000 insurance policy and MHPD permit is obtained. Evidently, no discharge permits have been issued for these events.

### 2. 9.04.020 Posting of Regulations

- a. Sellers of such benign objects, in addition to those that sell firearms and BB guns, are required to post "in a conspicuous place in the place of sale, a copy of this chapter and shall deliver a copy of this chapter to any purchaser of such instrument or device."
- b. Dave Lokey (Lokey Firearms) asserts Morgan Hill officials fail to enforce, inform him, or otherwise provide guidance in the 6+ years of operating a gun store in Morgan Hill. No others have been identified where the City of Morgan Hill has notified sellers or otherwise enforced this provision.

## Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

- c. The ordinance effectively prohibits school JROTC air rifle programs. Such ranges are exempted from licensing since no explosive propellant is used. It would appear that a \$1,000,000 insurance policy and permit is required for each student.

### 3. Adds 9.04.030 Duty to Report

Crime victims are revictimized by this provision. Stolen guns must be reported to MHPD within 48 hours of loss or when the crime victim should have reasonably known of loss (however that is determined).

CA law provides for a 5 day reporting window. Federal law requires gun dealers to report within 48 hours of loss discovery. and omits the 'should have reasonably known' provision.

- a. ATF reports the average recovery time exceeds 11 years. Only about 11% are recovered.
- b. 1.9% of stolen gun were used in crime based on a 5 year study (Memphis, TN).
- c. Lawful gun owners promptly report loss: 99% according to one study. Most insurance policies require prompt notification.
- d. GAO concludes that none of the mandatory reporting windows has improved recovery or reduced recovery time.

The provision clarifies where to report (MHPD) – CA law specifies 'local law enforcement', but otherwise serves no useful purpose. It suggests that MHPD is not promptly notified by other law enforcement if reported elsewhere, but no supporting facts have been provided.

### 4. Adds 9.04.050 "Prohibition of Large Capacity [sic] Magazines

- a. Terminology: standard capacity for the popular Glock G17 9mm handgun is 17 rounds. Glock defines *large capacity* as greater than 17 rounds for a G17. CA limits magazine sales to 10 rounds.
- b. Owners must remove magazines larger than 10 rounds from Morgan Hill, surrender to MHPD, or sell / transfer within 90 days of the ordinance's effective date. Exempts law enforcement, military, gunsmiths, forensic personnel, those licensed by CA, and several other protected classes when operating within the scope of their duties.
- c. The 9<sup>th</sup> Circuit blocked enforcement of CA's magazine capacity restriction (*Duncan v. Becerra*) in July, 2018. Presumably this would likewise apply to Morgan Hill.
- d. There is no rational basis to limit magazine capacity nor is it practical to detect:

## Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

- Redundant given CA magazine capacity law.
- Parkland, FL shooter Nikolas Cruz used 10 round magazines “because larger ones were too big for my backpack”.
- At the May 2018 Firearms Summit organized by Supervisor Dave Cortese, several gun owners asserted their tactical reload time (swapping magazines) is well under 2 seconds. Like Mr. Cruz, one can simply carry more magazines to maintain a volume of fire.
- As mentioned at the input meeting attended by MHPD Chief Swing, city attorney Larkin, and council members Constantine and Spring, many magazines are easily converted from 10 round to larger capacities using a small screwdriver. The outward appearance doesn’t change, nor is readily detectable unless each is loaded to capacity.

### 5. Adds 9.04.040 “Safe Storage”

- a. Requires firearms (as defined in CA PC 16520) to be stored in a locked container or disabled with a CA approved firearms safety device when “unattended”. “Unattended” is not defined nor is an operational definition clear.

Does this mean the firearm is “not supervised or looked after” (dictionary definition)? The firearms owner lacks line of sight visibility to the firearm? In the immediate vicinity? Not under custody and control (which could also violate current CA law)? Must be carried on the owner? The residence is unoccupied (e.g., firearms must be secured before stepping outside to sweep the porch)? Beyond the curtilage (i.e., firearms must be secured beyond the immediate vicinity of the residence)? Or something else?

CA (PC 25100-32015) law uses the phrase “custody and control” – not “unattended”. The distinction is between the proposed ordinance language and existing CA law is unclear.

- b. The proposal would include cannons, display antiques, and bespoke firearms. There is no practical means to secure some residential cannons under the ordinance.

As mentioned at the input meeting, cable and trigger locks do not fit and would damage many antique firearms. Some firearms cannot be secured without rendering them unsuitable for self-protection. There does not appear to be a practical means to comply with the proposed language in some instances.

- d. Authorities claim “The average burglar takes less than a minute to break into your home and overall 8 to 12 minutes to get out again.” Tests confirm that only a few seconds are required to kick-in a typical residential door.

## Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

Under ideal conditions, the average time to free a cable locked semi-automatic handgun by experienced owners was measured at 86 seconds. Additional time is needed to insert a loaded magazine and 'make ready' for self-defense.

Unless "safe storage" allows rapid, unencumbered access, the provision prevents residential self-defense. Vulnerable elderly and physically impaired residents are at greater risk.

f. The ordinance unfairly targets only residential property – not commercial or other property.

g. From a practical standpoint, the storage ordinance is virtually unenforceable per testimony by SJPD Chief Garcia before the San Jose city council.

h. The RAND Corporation found that Child Access Prevention laws "reduce all firearms self-injuries (including suicide) among young people [ages 14-20]." "Evidence for the effect of child-access prevention laws on mass shootings is inconclusive." "Evidence for the effect of child-access prevention laws on violent crimes generally and on specific violent crimes is inconclusive." The proposed ordinance is not limited to households with those under 18 (per CA law), but to all households.

### 6. Adds 9.04.070 Confiscation

a. Fails to require that MHPD provide written notice of time-frames and procedures to recover confiscated property as courts have required elsewhere.

b. Fails to compensate owner for loss of property.

c. Unclear if consistent with 4<sup>th</sup> Amendment case law and therefore putting CMH at litigation risk.

### 7. Maintains 9.06 – Imitation Weapons

It shall be unlawful for any person to possess or display an imitation firearm on public property, in the public right of way, or in an area viewable from public property or the public right of way unless authorized in writing by the chief of police. An imitation firearm means a replica of a firearm that is so substantially similar in visual characteristics to an existing firearm as to lead a reasonable person to believe that the replica is a firearm that could be operational.

a. Fails to state that authorization shall not be unreasonably withheld.

b. Gratuitous since CA PC 20150-20180 delineates lawful use.

## Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

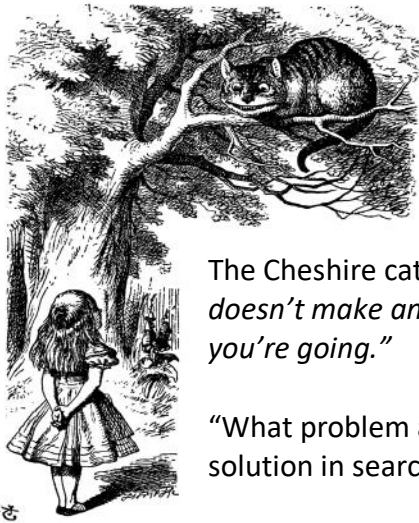
### SUMMARY

As MHPD Chief Swing asked at the input meeting, “What problem are we try to solve?”

- Other than “safe storage” in households with minor children, the alleged public safety benefit is purely speculative and unsubstantiated.
- The proposed ordinance omits an operational definition of “unattended” firearm. It prohibits self-defense and reduces public safety if firearms are to be in locked containers at all times. It burdens MHPD with vague, unenforceable ordinances while current ordinances are unenforced.
- The City of Morgan Hill does not appear to enforce or notify gun stores and others of the posting and literature distribution requirement that was enacted in 1970.
- MHPD was baffled and unable to provide a discharge permit when requested. This provision has been in the municipal code since at least 2004; perhaps since 1970.
- The scope of unpermitted and thus prohibited “instruments” is breathtaking. No reasonable person would expect that a \$1,000,000 insurance policy and \$25 permit is required to use a nail gun, a harmless toy, or participate in a historical reenactment or patriotic celebration. But as written, the ordinance includes such devices and activities.
- CA’s preemption laws would seem to apply to several provisions.

***The most glaring criticism is the failure to propose effective and sensible measures. There is a failed opportunity to clarify and rationalize the municipal code. Sensible and proven public safety improvement measures have not been included - see attached list of 25.***

Many pose no regulatory or financial burden on the city. Others may incur minor costs, but the startup and recurring costs can be offset by grants and donations. Unlike the draft proposal, strong evidence supports their consideration.



The Cheshire cat’s observation to Alice is an appropriate conclusion. *“It doesn’t make any difference how you get there if you don’t know where you’re going.”*

“What problem are we trying to solve?”\* The proposed ordinance is a solution in search of a problem.

\* MHPD Chief Swing



## Firearms Public Safety Proposals v1-2-7

(draft for discussion purposes – v1.2.7 – 8/30/18. Dave Truslow, E: dtruslow@sonic.net)

Consider ‘what works’ proposals that address:

- Education
- Detection
- Prevention
- Correction
- Casualty minimization

**Where to focus:** School shootings? Suicides? Terrorist shootings? Gang shootings? Gun theft? Other? As MHPD chief Swing asked at the input meeting, “What problem are we trying to solve?”

**Management By Objectives:** what timeframe to observe improvement, where, and how much?

**Cost / benefit:** what are the parameters? Example: Stanford has been reported to use \$9 million to estimate the value of life for patients awaiting transplants. What parameters should be used for risk assessment and threat mitigation? How do we know how much to invest and what’s sufficient?

No	Suggestion	Considerations
1	Identify Armed Prohibited Persons just as we do for registered sex offenders. Once determined to no longer possess firearms, then names should be promptly removed from the APP list.	Have legislature make APP list public. Use PD / SO to clear those on APP list. Unlike sex offenders, the APP list is confidential and only available to law enforcement. The most recent CA DOJ figures claim over 10,000 state residents on APP list. Very slow clearance rate by state. CA recidivism rate: 52%.
2	Ensure enforcement of court-ordered firearms possession bans from SCC Superior Court or other jurisdictions.	No enforcement or confirmation per claims at March 6 <sup>th</sup> Board of Supervisors meeting.
3	Audit reporting by LEO, mental health treatment, and other SCC communities consistent with ATF 4473 form.	Fed & CA DOJs claim inconsistent reporting allows gun purchases that should be prohibited.  Guns used in Charleston, SC and Sutherland Springs shootings could not have been legally purchased had correct reporting procedures been followed.
4	Support proposals to make firearms theft a felony.	Join with other SCC cities to urge CA legislature to reinstate gun theft as a felony. Currently any theft less than \$950 is a misdemeanor. Virtually all gun-related violent crime involves firearms costing less than \$950.  Misdemeanor offenders are not subject to deportation, nor reported to ICE under sanctuary policies.



4	Have LEO participate in free Project Child Safe gun lock giveaway program.	Helps to increase public awareness for safe storage and theft reduction.
5	Conduct public education program for safe storage.	Compliance increased from about 11% to about 65% when education was incorporated into a safe storage program. <u>No harm reduction benefit found in meta-analysis</u> (Epidemiological Reviews, Jan 2016)
6	Offer discount coupons for lockable gun storage containers.	Perhaps funded from buy-back auctions. GAO (2017) study cites “safe storage” compliance went from 5% to 65% when equipment provided.
7	Support community crime prevention education programs such Refuse to Be A Victim program.	Grants are available for instructional material. Instructors may donate their time. Partner with LEO.
8	Ensure the free Eddy Eagle gun or equivalent safety program is encouraged for young children.	Grants are available for instructional material. Instructors may donate their time. Partner with LEO.
9	Schools to have their safety programs reviewed and assessed.	Available from the free School Shield program. Grants are available to implement recommendations. Partner with LEO. SJPD conducts assessment for San Jose Unified School District.  NB. Some “active shooter” recommendations conflict with ‘best practices’ recommendations and can result in higher casualties.
10	Investigate arming school resource officers.	Abundant evidence that rapid armed responses save lives. SJPD provides armed school officers in contract with SJUSD.
11	Offer active shooter assessments and training to churches, temples, and other venues with sizeable attendance.	Several organizations offer free active shooter training.
12	Deploy education and means for gun and ammunition disposal.	Partner with LEO. Studies show gun buy-back programs don’t reduce crime, but important to make disposal convenient.  NB. SJPD accepts ‘no questions asked’ gun and ammo disposal. SCC SO has offered an annual program, but disposal not otherwise available.
13	Audit LEO firearms evidence inventory & procedures and compliance with new state vehicular transport law.	Mercury News reported Bay Area LEO as a primary source of lost guns – 944 based on an incomplete study.  Many guns stolen from law enforcement vehicles.

14	Provide gun lockers for LEO private vehicles such as implemented for SCC sheriff officers.	Many guns stolen from LEO private vehicles.  Important for armed off-duty officers to be able to promptly respond to crime. To avoid 'gift of public funds', organize charitable donations. \$35,000 raised to equip SCC SO private vehicles with gun lockers.
15	Review LEO firearms training, qualification procedures & preparedness for consistency with 'best practices' and 'worse case' scenarios.	NYPD reports less than 1 of 5 shots hit target resulting in 'spray and pray' accusations and liability for collateral damage. Note: Informal survey of 8 SCC LEO: not one knew their tactical reload time. Average gun fight distance: FBI says 10', PMA study says 20'.
14	Review adequacy and effectiveness of mutual aid agreements with adjacent LEOs.	Numerous problems identified in Parkland FL and elsewhere including incompatible communication equipment.
15	Review benefit of various untapped LEO grants.	Free training ammo is available for LEO.
16	Evidenced-based programs and data collection	Craft and emphasize initiatives that work. Support and adjust based on scientific management (monitoring and goal setting).
17	Implement criminal and civil penalties for school officials that fail to report as required under CA Education Code 48902 or Penal Code 245.  Verify school district policies and procedures to mandate reporting in conformance with CA Education Code of reporting misdemeanors and felonies to law enforcement.	Currently no consequences for failure to report. School shootings often preceded by "red flag" misdemeanor or felony acts that go unreported.
18	Enact Laura's Law in SCC to treat the dangerous mentally ill.  Implement behavioral health screening and reporting requirements.	CA's Education Code does not require screening or mental health assessment.  Health care providers have no duty to report individuals likely to harm themselves or others. Many homicides, including SJPd officer Johnson's could have been prevented (see SCC DA's report) had health care professionals acted.  SCC Behavioral Health Board could not identify published risk criteria for assessing harm to self or others.  Approximately 2/3rds (61%) of all gun deaths are suicides.
19	Monitor social media.	Shootings often preceded by "red flag" social media messages. LEO monitors sex trafficking. Unclear about suicide or homicide risk monitoring.

20	Verify hospital & EMS procedures for response to mass shooting.	Does not appear to be documented in County emergency procedures.  Identification and travel time to Level 1 trauma treatment?
21	Increase awareness and publish statistics for effectiveness of restraining orders.	CDC domestic violence report (July 2017). Studies indicate up to 80% of restraining orders are violated.
22	Issue CCWs	Saves substantially more lives than many other proposals. SCC Sheriff virtually never issues. Other LEO can issue. Domestic violence claims lives of unprotected . See CDC report (July 2017) and J. Am Acad Psychiatry Law 38:376–85, 2010.  FBI Active Shooter report (2016-17) cites advantages: <b><i>“Armed and unarmed citizens engaged the shooter in 10 [of 50] incidents. They safely and successfully ended the shootings in eight of these incidents. Their selfless actions likely saved many lives.”</i></b>  NB: In 6 incidents, armed citizens stopped additional casualties per FBI.
23	Important for law enforcement to be able to promptly respond to crime.	CA law prohibits armed response by off-duty officers to school incidents. Need to change state law.
24	Outreach to seniors and family members for selling or transferring unwanted firearms owned by those with low cognizant abilities or terminally ill.  Review effectiveness of suicide prevention and physician assisted suicide programs.	Encourage disarming those with low cognizant abilities. This seems a primary factor in the officer-involved-shooting of an armed 86 year old in Saratoga  Suicide is responsible for about 2/3 <sup>rd</sup> of gun deaths. Seniors (65+) rate is 34% higher than average.
25	Determine and assess public safety critical response capability.	What threat level and response level should public safety (PD/FD) achieve? What standards?

Legend: LEO – Law Enforcement Organization; PD/FD – police department / fire department;  
SCC – Santa Clara County; SO – sheriffs office

**From:** [Donald Harley](#)  
**To:** [Maureen Tobin](#)  
**Cc:** [MICHAEL BROOKMAN](#)  
**Subject:** Comments on Draft Anti Gun Violence Ordinance  
**Date:** Friday, October 5, 2018 6:49:26 PM

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Hello Maureen,

Thank you for the opportunity to review this document. My comments for the Draft Anti Gun Violence Ordinance pertain to the entire ordinance, not just the changes made for this draft, because I had not had an opportunity to review any previous versions of the Draft. As such I will get right to the point and focus on my most serious concerns.

9.04.010-A The scope of the ordinance as provided in the first paragraph is overly broad. Specifically, it identifies as applicable to the ordinance "...any instrument or device of any kind, character, or description which discharges, propels or hurls bullets, or missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the Chief of Police". This identification would cover a wide variety of devices that are not (and should not) illegal to own or use in the state of California. Some examples of toys that would fit this identification would include dart guns that shoot suction cup darts designed to stick to a target, Nerf guns that shoot harmless soft projectiles, paint guns that shoot harmless capsules of paint, and other harmless toys. More concerning, some construction tools would also fit the above identification, including nail guns, staple guns and paint sprayers. Common household items such as staplers and aerosol sprayers and squirt guns could even be construed to fit the description. It should be obvious that the scope identification in the ordinance is overly broad.

Also, many low power weapons are commonly available and are typically not illegal to use on a person's own property, including BB guns, pellet guns and bows and arrows. These potentially harmful items may be appropriate for regulation under circumstances that could inadvertently injure unsuspecting persons not on the private property where the items are being used by the owner of the property. For example, it should not be a violation to kill a poisonous snake using these items on your own property.

Finally, it should not be any kind of violation to use any legally owned weapon, including even firearms, for self defense within your own home. You should not need a license to save your own life or that of your family within your own residence. As such, there should be some exclusions in the ordinance that recognize that it is not illegal to use a firearm (shoot it legally) and even cause injury to your attacker under circumstances defined in existing law.

9.04.010-C.2 This paragraph could be considered an example of class discrimination. One million dollars of liability insurance would be very expensive for a low income family and should not be required for many, if not most of the items covered under 9.04.010-A above.

9.04.050-C.9 This paragraph appears to be, in part, redundant with CCW permit law which should identify when a CCW permit is needed to carry a firearm, and exclusions, if any, for retired peace officers. This paragraph should read "Any retired peace officer". If a retired officer is already required by law to have a CCW permit to carry a firearm, then if he doesn't have the CCW permit then he is by definition breaking a more severe law than this ordinance if he shoots his gun in a manner that violates that law. I suggest that you think seriously about whether it is a good idea in these times to discourage a retired peace officer from carrying a gun when he/she could be the only means to take down an active shooter in public.

**From:** [Tony Wilson](#)  
**To:** [Maureen Tobin](#)  
**Subject:** Comment of dissaproval  
**Date:** Saturday, October 6, 2018 8:53:28 AM

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Maureen,

I have read the proposed draft to The City of Morgan Hill Title 9 and find it to be in conflict with the The Constitution of The United States.

The questions I will ask:

- 1) How exactly will these amendments and bans stop gun violence?
- 2) What information was used by the City Council to determine no more than 10 rounds of ammunition would ever be needed for a citizen in self defense of ones life?
- 3) What is the legal penalty for a law abiding citizen in violation of this ordinance?

I have forwarded a copy of this Draft to the NRA, and legal counsel for the CRPA for review.

As a law abiding citizen of The City of Morgan Hill, I wish to voice my opposition to these amendments!

Respectfully,

Tony Wilson  
(408) 710-1114

Sent from my iPhone

**From:** [Brenden](#)  
**To:** [Maureen Tobin](#)  
**Subject:** Anti-Gun Violence Comments  
**Date:** Friday, October 5, 2018 4:35:41 PM

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Hi Maureen, here are my comments on the "Anti Gun Violence Ordinance".

My name is Brenden Azevedo and have been a Morgan Hill resident on and off for close to 15 years. For all intents and purposes I grew up on this community. I was a police cadet for the city for one year, shortly afterwards I moved to Idaho where I was correctional officer for close to four years and a parole agent for two. I have a bachelors degree in Criminal Justice.

The language included in "9.04.010" would require a permit for children to shoot B.B. Guns or air soft rifles in the backyards of their own homes. Do we really need citizens to have to get a permit in order to kill a rat on their property with an air gun? Does the city also want a permit for children to shoot model rockets into the sky? I don't see a necessity for this law. If the city is concerned with damage being caused by such activities it can be handled through California's laws on destruction of property or when you hurt another person. A permit process would simply add to an increase burden on police. I imagine that overall compliance with such an ordinance would be low to begin with, as would the priority of it during a police call for service. There are simply more important things to be concerned about that take up police time.

9.04.040

State law already requires that all firearms when purchased from a federal license gun dealer either are accompanied by a lock OR that the purchaser has access to a firearm safe for safe storing of the firearm. It is already against state law for others to have access to one's firearms outside of their immediate presence and it is also against the law for children to be able to have access as well. This ordinance would make it illegal for a gun owner to keep a gun on the nightstand and to then return it to the safe prior to leaving for work. Punishment should be reserved for those who steal firearms and those that leave them accessible to children.

9.04.050 and 9.04.060

"New" high capacity magazines have been illegal to purchase, import, etc since January 1st, 2000. I don't recall there being a large crime spree in Morgan Hill being committed that involved "high capacity magazines" and I don't see magazines that have been in the possession of Morgan Hill residents for 18 years are now suddenly deemed unsafe. If these magazines are unsafe for the regular citizens of the city to possess then surely they are just as dangerous to members of our police force. Does a confiscated magazine no longer become a public nuisance when in police hands?

We already have laws (felonies I might add) for people using firearms in the commission of a crime. We don't need to confiscate magazines that have been in the possession of Morgan Hill residents to remain safe. Magazines are simply pieces of spring and metal or plastic. We should be concerned with the reasons people use guns and combating actual crime, not what can be easily made with a CAD drawing and a trip to Home Depot.

Furthermore, there is currently an injunction against the State of California in the 9th Circuit

(Duncan v. Becerra) stopping the State California from banning High Capacity Magazines.  
See <http://www.sandiegouniontribune.com/news/courts/sd-me-magazine-ruling-20180717-story.html>

The city can send me a personal check instead of being added to the litigation process which would be the inevitable result if this ordinance is passed.

Thank you,

Brenden

**From:** [Tom Rigo](#)  
**To:** [Maureen Tobin](#)  
**Subject:** Re: Provide Your Input on the Draft Anti Gun Violence Ordinance  
**Date:** Friday, October 5, 2018 1:07:40 PM

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Hi Maureen,

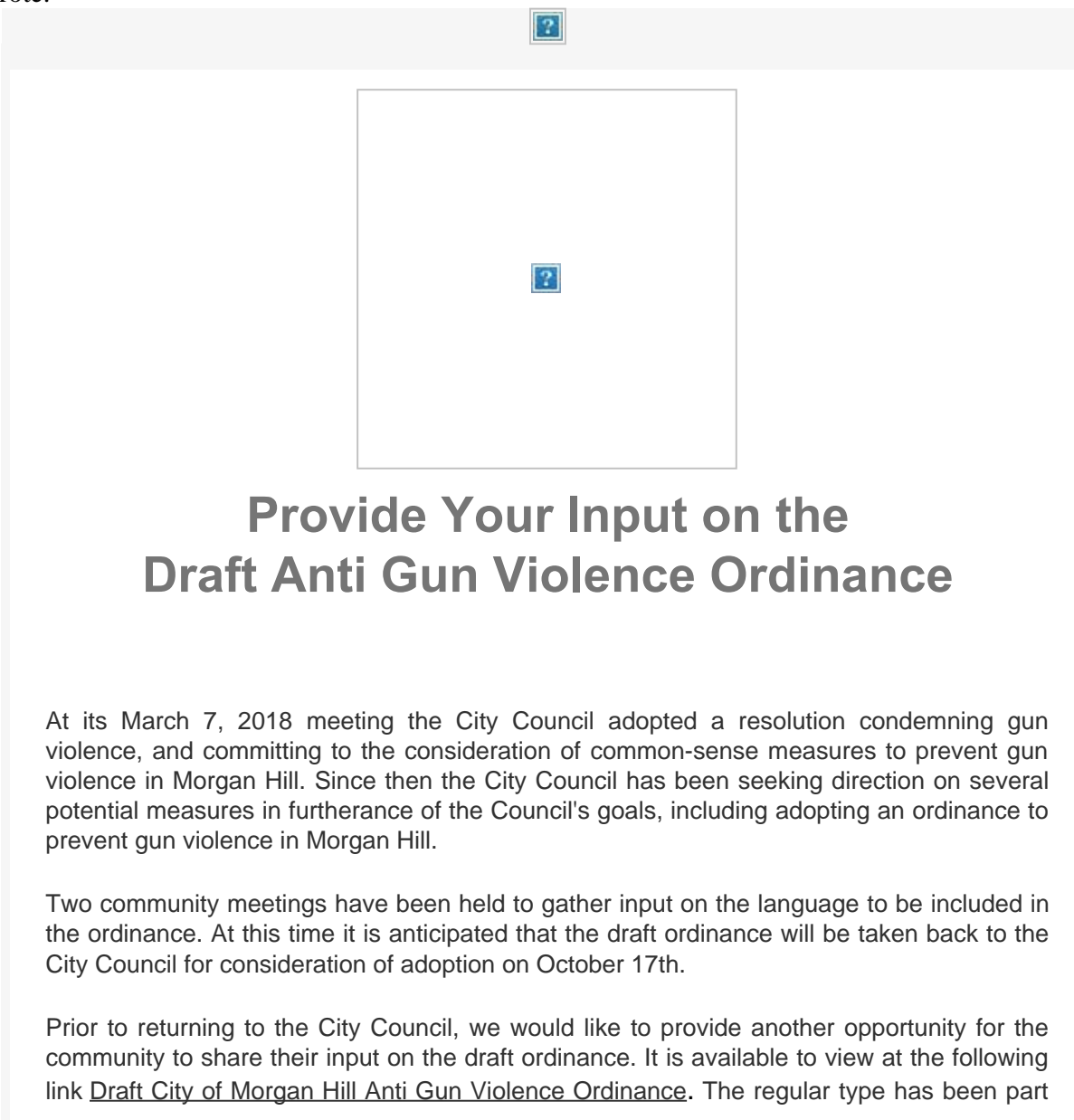
Here are my comments on the draft ordinance.

Paragraph 9.04.010

1. Paragraph A - Strike reference to air pressure from line 4.
2. Add paragraph E to add exclusion for protection of personal property.

thanks Tom Rigo

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <[maureen.tobin@morganhill.ca.gov](mailto:maureen.tobin@morganhill.ca.gov)> wrote:



The screenshot shows a web form for providing input on a draft ordinance. At the top, there is a header bar with a question mark icon. Below this is a large rectangular box, also containing a question mark icon, likely for a title or subject line. The main heading reads "Provide Your Input on the Draft Anti Gun Violence Ordinance". The text below explains that the City Council adopted a resolution condemning gun violence on March 7, 2018, and is seeking input on potential measures. It mentions two community meetings and that the draft ordinance will be taken back to the City Council for consideration on October 17th. Finally, it states that the community has another opportunity to provide input and provides a link to the draft ordinance: [Draft City of Morgan Hill Anti Gun Violence Ordinance](#). The text notes that the regular type has been part

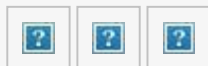
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



of the draft ordinance from the beginning, the ~~strikeout~~ is what is proposed to be deleted and language in the *italics* is what is currently proposed to be added.

**Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.**

Company Name | Phone | Address | Website

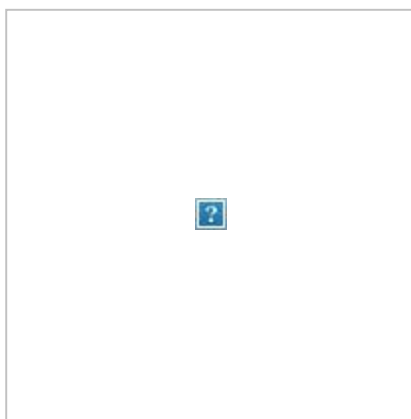


City of Morgan Hill | 17575 Peak Avenue, Morgan Hill, CA 95037

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Sent by maureen.tobin@morganhill.ca.gov in collaboration with



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**From:** [Rene Spring](#)  
**To:** [Christina Turner](#); [Donald Larkin](#); [Maureen Tobin](#)  
**Subject:** Fwd: Anti Gun Violence Ordinance  
**Date:** Friday, October 5, 2018 8:26:48 AM

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Sent from my iPhone

Begin forwarded message:

**From:** Oz M <[joswaldomendoza@gmail.com](mailto:joswaldomendoza@gmail.com)>  
**Date:** October 4, 2018 at 8:02:40 PM PDT  
**To:** [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)  
**Subject:** Anti Gun Violence Ordinance

Hello Mr. Spring,

I wanted to share that I do not approve of the Council and or Major considering the Anti Gun Violence Ordinance.

The Ordinance is very Intrusive to people's rights to defend themselves. It is also misleading as to what the City Police and laws do or can do to restrict self defense rights for law abiding citizens.

Laws are not for criminals, criminals don't care about laws; they are to restrict its citizens.

This Ordinance will make you a felon if you accidentally discharge a sling shot, pellet gun, bow, or gun.

I don't want to live in a city that can make my son a felon for playing in their yard.

Our country and State allows us the right to arm ourselves and protect our life and family from life attacks.

This Ordinance takes away any and all of those rights based on "Common Sense" and turns them into a permission driven local society. I believe this to be very totalitarian. It turns all law abiding citizen's into victims waiting to happen.

I have been in places with similar laws before, they were run by socialist and in countries South of here.

I urge you to vote against this "Common Sense" Anti Gun Ordinance.

Thank you,

Jose Mendoza

I live in the Capriano neighborhood

I would give you my address but I am a little afraid of the local government stand.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**From:** [Michelle Bigelow](#)  
**To:** [Michelle Bigelow](#)  
**Subject:** FW: Proposed "ORDINANCES TO PREVENT GUN VIOLENCE"  
**Date:** Monday, October 15, 2018 11:00:29 AM

**From:** Jerry Jeska <[vjeska@aol.com](mailto:vjeska@aol.com)>  
**Sent:** Friday, October 12, 2018 1:06 AM  
**To:** Steve Tate <[Steve.Tate@morganhill.ca.gov](mailto:Steve.Tate@morganhill.ca.gov)>; Caitlin Jachimowicz <[Caitlin.Jachimowicz@Morgan-Hill.ca.gov](mailto:Caitlin.Jachimowicz@Morgan-Hill.ca.gov)>; Rich Constantine <[Rich.Constantine@morganhill.ca.gov](mailto:Rich.Constantine@morganhill.ca.gov)>; Larry Carr <[Larry.Carr@morganhill.ca.gov](mailto:Larry.Carr@morganhill.ca.gov)>; Rene Spring <[Rene.Spring@morganhill.ca.gov](mailto:Rene.Spring@morganhill.ca.gov)>  
**Cc:** Irma Torrez <[Irma.Torrez@morganhill.ca.gov](mailto:Irma.Torrez@morganhill.ca.gov)>  
**Subject:** Proposed "ORDINANCES TO PREVENT GUN VIOLENCE"

Dear Morgan Hill City Council Member:

RE. -- "PROVIDE DIRECTION TO STAFF REGARDING ORDINANCES TO PREVENT GUN VIOLENCE" Direct the City Attorney to draft, for Council consideration, ordinances:  
 1. Creating a duty to report the theft or loss of firearms 2. Requiring the safe storage of firearms when not in use 3. Prohibiting the possession of large capacity magazines 4. Requiring a permit to conduct retail firearms sales

Why must an owner be required to keep relic and antique replica firearms locked up? If your concern is that burglars have access to them, in particular to commit crimes, rest assured that such firearms are almost useless for that purpose. Criminals want modern, particularly semiautomatic, handguns, not WWI and WWII vintage, bolt-action rifles, which many of your constituents collect. Criminal elements have no use for pre-twentieth-century firearms such as muzzle-loading rifles or Civil War cap & ball pistols, be they originals or replicas. Such pieces will not operate with modern ammunition and are often single shot weapons. Very few members of our twenty-first-century society would even know how to load some of them. I admit a bit of exaggeration when I suggest that the last murder committed with a WWII vintage rifle was committed from a famous book depository in Dallas, TX in Nov. of 1963.

Not only would this "safe storage" provision not deter theft of relics and antique replicas, it would fail to prevent suicides (by far the most common cause of firearm deaths). The adult male of a household, who statistics tell us commit the preponderance of suicides, would usually be the family member in possession of a safe combination or lock's key. The measures considered would prevent absolutely no suicides.

Please recognize that many of these relics and replicas are used as display pieces, the appearance of ruined by trigger locks. On muzzle-loading rifles and shotguns, the entire trigger guard can be removed with a common screwdriver, trigger lock included. (Please inspect the attached photo of items I built from kits to see how simply the trigger guard can be removed to take off a trigger lock. Also note how use of a trigger lock would compromise the appearance of a display.) Some late nineteenth-century revolvers do not even have trigger guards to hold the lock. Indeed, anything not welded can be disassembled. Moreover trigger locks can be removed from any firearm via use of an electric drill or other tools.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Theft of long guns and their subsequent use for criminal activity is not a problem and the city should not require that long guns, in be locked up. According to reports by former state Attorney General (now US Senator) Kamala Harris, long guns are used in only about 3% of gun crimes.

<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-15.pdf>  
<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-14.pdf>

Do realize that gun owners do not like being stolen from, particularly if the item is a family heirloom. Hence they commonly take reasonable precautions of their own volition—burglar alarms and locks and safes of their own volition and discretion. Rather than infringe upon a resident's constitutional rights, the city should look at the several alternate proposals offered by Mr. Dave Truslow. One is to make use of the Child-Safe program offering free locks, something the city has not availed itself of. Another is to work with other governmental agencies to establish firearm theft a felony, as opposed to a misdemeanor unless the value is over \$900. Please review the suggestions I understand Mr. Truslow has offered

Also please consider that, if someone commits a home invasion, unlocking a firearm or retrieving it from a safe takes time, critical time. The key to a locked box or trigger lock cannot be left with the firearm or there is no point in locking the firearm, except for legal compliance. Awakened drowsy from sleep further delays access to the firearm needed for safety's sake.

Does Morgan Hill even have a problem with firearms being stolen and used for criminal purposes? Certainly not antiquated or replica relics.  
 Why require a permit to sell relics and replicas?

Theft of any legally owned firearms will be divulged in a police report submitted even if only to secure insurance compensation. The state has already mandated a time limit in reporting. The proposal is redundant.

In summation, the city should not require the locking of antiquated firearms or long guns. Such items would not be a target for criminals and would be useless to them. Locking firearms would not prevent suicides, the preponderance of firearm deaths. While compromising a resident's safety and constitutional rights, doing so would serve no purpose. Each resident/family should be able to assess his/her own personal situation and make the appropriate decisions for familial safety, not the city. Neither should the city require licensing for the sale of constitutionally protected firearms or mandate a time stipulation on reporting firearm theft. The city should give due consideration to the alternate proposals suggested by Mr. Dave Truslow, proposals which would enhance firearms safety in Morgan Hill.



Be assured I appreciate your time and attention.

Regards,

Jerry P. Jeska  
MA, history











## Michelle Bigelow

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**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 11:04 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Gun Ordinance

**From:** Joe Koppi <[jtbone80@icloud.com](mailto:jtbone80@icloud.com)>  
**Date:** October 14, 2018 at 1:26:12 PM PDT  
**To:** [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)  
**Subject:** Gun Ordinance

Dear Mr. Spring

I am writing to you to voice my opposition to the gun control ordinance up for a vote by your council Oct 24th.

There is already a law on the books in California, forbidding the discharge of a firearm within 150 yards of an occupied residence. This law alone covers nearly all of residential Morgan Hill. The exception of course, is in cases of self-defense against home invasions. The Supreme Court has made it clear, the 2nd amendment gives an individual the right to defend life and property with a firearm.

This ordinance goes way too far. It requires, even to discharge a gas-powered device (like a BB gun, Nerf Gun, Paintball gun or spring-operated airsoft pellet gun), an expensive liability insurance policy which only the rich can afford. It also requires you ask from "The State" (in this case the chief of police) for permission to safely and responsibly do, what the US Constitution already gives you the right to do.

This is another case of government overreach. Converting our rights and responsibilities into "privileges". It is effectively a "Ban" on all guns and anything even "looking like" a gun. Please vote "No" on this ordinance, and let's come up with gun laws thoughts and will keep them in mind. Your last line sums up my goal pretty well, ...let's come up with gun laws that actually keep guns from criminals. (I would add: and children and the mentally ill.)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 11:04 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Gun Control Ordinance

**From:** Matt Wendt <[matthewwendt@msn.com](mailto:matthewwendt@msn.com)>  
**Date:** October 12, 2018 at 2:41:39 PM PDT  
**To:** [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov), [caitlin.jachimowicz@morganhill.ca.gov](mailto:caitlin.jachimowicz@morganhill.ca.gov), [steve.tate@morganhill.ca.gov](mailto:steve.tate@morganhill.ca.gov),  
[Rich.Constantine@morganhill.ca.gov](mailto:Rich.Constantine@morganhill.ca.gov), [larry.carr@morganhill.ca.gov](mailto:larry.carr@morganhill.ca.gov)  
**Subject:** Gun Control Ordinance

Mayor and Councilmembers,

I am writing to voice my objection to the proposed gun control ordinance on the agenda for the upcoming meeting.

While I share your concern for our residents' safety, gun control laws in CA are already one of the most restrictive in the nation. I haven't had a chance to do any legal research to see if this proposed ordinance even looks constitutional, but it reads like it is all-encompassing and is too subjective for me. More importantly, I believe this is a federal and state law issue.

Please do the right thing and vote against this proposed ordinance.

Matt Wendt

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 11:03 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Gun Control ordinance Oct 24th

**From:** "David Beasley" <[dbeasley@beasleydirect.com](mailto:dbeasley@beasleydirect.com)>  
**Date:** October 12, 2018 at 11:02:49 AM PDT  
**To:** <[rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)>  
**Subject:** Gun Control ordinance Oct 24th

Dear Mr. Spring,

I am writing to you to voice my opposition to the gun control ordinance up for a vote by your council Oct 24<sup>th</sup>.

There is already a law on the books in California, forbidding the discharge of a firearm within 150 yards of an occupied residence. This alaw alone covers nearly all of residential Morgan Hill. The exception of course, is in cases of self-defense against home invasions. The Supreme Court has made it clear, the 2nd amendment gives an individual the right to defend life and property with a firearm.

This ordinance goes way too far. It requires, even to discharge a gas-powered device (like a BB gun, Nerf Gun, Paintball gun or spring-operated airsoft pellet gun), an expensive liability insurance policy which only the rich can afford. It also requires you ask from "The State" (in this case the chief of police) for permission to safely and responsibly do, what the US Constitution already gives you the right to do.

This is another case of government overreach. Converting our rights and responsibilities into "privileges". It is effectively a "Ban" on all guns and anything even "looking like" a gun. Please vote "No" on this ordinance, and let's come up with gun laws that actually keep guns from criminals.

Sincerely,

David Beasley  
 Morgan Hill Resident

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 10:58 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Proposed Morgan Hill Gun ordinance

**From:** Mark Hinkle <[mark@garlic.com](mailto:mark@garlic.com)>  
**Sent:** Wednesday, October 10, 2018 7:30 PM  
**To:** Maureen Tobin <[Maureen.Tobin@morganhill.ca.gov](mailto:Maureen.Tobin@morganhill.ca.gov)>  
**Subject:** Proposed Morgan Hill Gun ordinance

Maureen Tobin,

RE: posting on NextDoor regarding proposed MH gun ordinance(s)

I live outside the city limits of Morgan Hill, but have a MH address.

Chicago is one of the most restrictive cities in which to own a gun and they have rampant gun deaths.

Gun laws restrict law abiding citizens, not criminals intent on rape, burglaries, or murder.

If the city of Morgan Hill were really serious about reducing crime, they'd emulate the city of Kennesaw, Georgia:

From WikiPedia: Kennesaw is noted for its unique firearms legislation in response to Morton Grove, Illinois' law mandating gun prohibition.

In 1982 the city passed an ordinance [Sec 34-21]:[21]

(a) In order to provide for the emergency management of the city, and further in order to provide for and protect the safety, security and general welfare of the city and its inhabitants, every head of household residing in the city limits is required to maintain a firearm, together with ammunition therefore.

(b) Exempt from the effect of this section are those heads of households who suffer a physical or mental disability which would prohibit them from using such a firearm. Further exempt from the effect of this section are those heads of households who are paupers or who conscientiously oppose maintaining firearms as a result of beliefs or religious doctrine, or persons convicted of a felony.

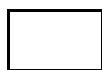
The results of this ordinance: a dramatic drop in crime!

FYI.....Mark Hinkle, 408-779-7922

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"It does not take a majority to prevail, but rather an irate, tireless minority, keen on setting brushfires of freedom in the minds of men." - Samuel Adams

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



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## Michelle Bigelow

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**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 10:59 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Proposed gun ordinance language (9.04.010 A) would apply to common construction tools, toys and more

**From:** John Horner <[jthorner@verizon.net](mailto:jthorner@verizon.net)>  
**Sent:** Saturday, October 13, 2018 9:07 AM  
**To:** Maureen Tobin <[Maureen.Tobin@morganhill.ca.gov](mailto:Maureen.Tobin@morganhill.ca.gov)>  
**Cc:** Christina Turner <[Christina.Turner@morganhill.ca.gov](mailto:Christina.Turner@morganhill.ca.gov)>  
**Subject:** Proposed gun ordinance language (9.04.010 A) would apply to common construction tools, toys and more

Hello Maureen,

I'm just now getting to reading the text of the proposed ordinance and as such have missed the October 5, 2018 deadline. I am writing in my personal capacity and as a business owner.

This language seems overly broad:

“No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.”

As written it would apply to the air powered nail guns commonly used in construction. There are probably thousands of these tools in Morgan Hill and probably hundreds of them in use on any given day. As a practical matter there is really no way the chief of police is going to be able to review and issue permits for them.

It would also apply to common toys such as “Nerf” guns, rubber band guns, water pistols and homemade spit ball shooters made with a straw and piece of paper. Popular and harmless children’s toys like Stomp Rockets (which use air pressure to launch of foam rubber toy rocket) would seem to be included as well. Industrial sand blasters, pressure washers and certain other machinery would also likely fall under the proposed definition. As such, the broad definition catches many types of devices and uses far beyond the common understanding of what a weapon is.

I sincerely hope the ordinance will not be enacted as drafted.

Thank you,  
 John Horner

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

## Michelle Bigelow

---

**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 11:03 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Morgan Hill Gun Control Ordinance

**From:** Chuck Dunn <[dunnc@garlic.com](mailto:dunnc@garlic.com)>  
**Date:** October 12, 2018 at 10:46:07 AM PDT  
**To:** <[rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)>  
**Subject:** **Morgan Hill Gun Control Ordinance**

My wife and I have been Morgan Hill residents over 25 years. As registered voter, who voted for you, we felt it appropriate to let you know that we are against the proposed gun control ordinance and ask that you vote against the measure.

We don't own any guns but have read the California Firearm Safety Certificate Study Guide and taken a hand gun safety class so we are knowledgeable about gun safety and the current California laws governing gun ownership and safety.

We don't believe that the Morgan Hill Gun Control Ordinance will have any measureable effect. It will not prevent bad people from doing bad things. The ordinance will add work / expense to the Council, Mayor and police chief and additional burden to the good citizens who choose to comply with the ordinance, all for no benefit.

Thank you for your time and assistance on this matter.

Charles and Mary Dunn  
 1740 Diana Ave,  
 Morgan Hill CA 95037



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Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



**Michelle Bigelow**

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**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 11:05 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Gun laws in Morgan Hill

**From:** Trudy Parks <[trudyp95037@gmail.com](mailto:trudyp95037@gmail.com)>  
**Date:** October 12, 2018 at 2:54:57 PM PDT  
**To:** [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)  
**Subject:** Gun laws in Morgan Hill

This is going too far. We already have many strict gun laws in place in California. The citizens of Morgan Hill should vote on this. The council should not make this decision.

Trudy Parks

Sent from my iPad

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**Michelle Bigelow**

---

**From:** Michelle Bigelow  
**Sent:** Monday, October 15, 2018 11:05 AM  
**To:** Michelle Bigelow  
**Subject:** FW: Gun Control Ordinance

**From:** Creagh Downing <[creaghdowning58@gmail.com](mailto:creaghdowning58@gmail.com)>  
**Date:** October 12, 2018 at 12:35:55 PM PDT  
**To:** [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)  
**Subject:** Gun Control Ordinance

Dear council member Spring,

I oppose this gun control ordinance.

Thanks,

Charles Downing  
15395 La Arboleda Way, MH 95037  
347-349-0908

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

**From:** [Donald Larkin](#)  
**To:** [Michelle Bigelow](#)  
**Subject:** FW: Gun Control Ordinance  
**Date:** Friday, October 19, 2018 3:43:31 PM

Begin forwarded message:

**From:** Michael Burchfield <[mikeb@westhills.org](mailto:mikeb@westhills.org)>  
**Date:** October 19, 2018 at 12:23:56 AM PDT  
**To:** [steve.tate@morganhill.ca.gov](mailto:steve.tate@morganhill.ca.gov), [rich.constantine@morganhill.ca.gov](mailto:rich.constantine@morganhill.ca.gov),  
[larry.carr@morganhill.ca.gov](mailto:larry.carr@morganhill.ca.gov), [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov),  
[caitlin.jachimowicz@morganhill.ca.gov](mailto:caitlin.jachimowicz@morganhill.ca.gov)  
**Subject:** Gun Control Ordinance

Dear Mayor Tate and City Council Members Mr. Constantine, Mr. Carr, Mr. Spring, and Mrs. Jachimowicz,

I am emailing you to communicate my concern regarding the gun control measure scheduled for discussion and vote by you, the city council, on October 24, 2018. I urge you NOT to approve this measure as it is written. Having read the ordinance (on line at <https://www.morgan-hill.ca.gov/DocumentCenter/View/23695/Draft-Firearms-Ordinance>), it is clear that it is so general in scope that even toys will be illegal within the city limits, unless an application is submitted to the chief of police for approval of said instrument; and I seriously doubt that you desire to be down as the city council who passed such a ridiculous ordinance.

Why do I call this a ridiculous ordinance? By way of example, the first section of the ordinance reads:

The **SECTION 1:** Chapter 9.04 (“Weapons”) of Title 9 (“Public Peace, Morals and Welfare”) is hereby amended to read as follows:

**“9.04.010 - Discharge—Permit required—Fee.**

A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police."

If I am interpreting this statement correctly, things such as nerf guns, nerf bow and arrows, slingshots or toy bow and arrows which shoot wooden arrows with rubber tips will be illegal to discharge within the Morgan Hill city limits without a permit from the police chief and a liability insurance policy. Put another way, if my grandson were to receive a TOY such as this mentioned above for his birthday, which utilizes compressed air or a strong under tension to propel a soft styrofoam or wooden projectile ‘any distance’, his doing so will constitute a violation of said ordinance, if done so without a permit.

Frankly, I cannot understand WHY an ordinance as broad as this is even up for consideration. Isn't it true that it is ALREADY illegal to discharge firearms within the city

limits? Aren't the setting off of explosive devices (called fireworks) already illegal within the city limits? Isn't it true that the use of air soft guns within the city limits is already illegal? Isn't it true that the discharge of paintball guns are illegal within the city limits unless used on designated fields of play?

If my assumptions regarding firearms, air soft guns and paintball guns are wrong, it seems this ordinance should specify that such instruments are what, specifically, are in view with in this ordinance. If my assumptions are correct, then why does Morgan Hill need this ordinance at all?

This seems like a 'feel good' ordinance which may gain certain members of the council favor in the eyes of some sub-group or other within the city, but which will do NO GOOD in protecting the citizenry of our good city any further than the ordinances already in place and enforced by the Morgan Hill Police Department. PLEASE, do NOT vote this ordinance into affect as written.

Thank you for your kind consideration; and thank you for your service to our community,

Michael Burchfield  
825 Encino Drive  
Morgan Hill, Ca, 95037

# PROPOSED FIREARMS ORDINANCE

## October 24, 2018

### Item 4

# Presentation Outline

- Background
  - Second Amendment
  - Local Police Power
  - Existing Firearms Regulations
- Proposed Ordinance
  - Duty to Report Loss or Theft
  - Safe Storage Requirements
  - Large Capacity Magazines
- Next Steps

# Second Amendment

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.



# Second Amendment

There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.

*District of Columbia v. Heller* (2008) 554 U.S. 570, 595

# Second Amendment

- “Of course the right [to keep and bear arms] was not unlimited, just as the First Amendment's right of free speech was not . . . Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*.” *District of Columbia v. Heller* (2008) 554 U.S. 570, 595

- “. . . [n]othing in [the Supreme Court's] recent opinions is intended to cast doubt on the constitutionality of longstanding prohibitions traditionally understood to be outside the scope of the Second Amendment.” *Fyok v. City of Sunnyvale*, (2015) 779 F. 3d 991, 996

- “. . . longstanding prohibitions on the possession of “dangerous and unusual weapons” have uniformly been recognized as falling outside the scope of the Second Amendment.” *Id. at 997*

# Police Powers

A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

Cal. Const., art. XI, § 7

# Existing “Weapons” Ordinance

- Adopted in 1970.
- Similar to restrictions in cities and states throughout the United States.
- 14 of 15 cities and towns in Santa Clara County have similar restrictions.
- Does not prohibit the use of children’s toys, nail guns, spit balls, paper airplanes, or other innocuous devices.

# Existing “Weapons” Ordinance

9.04.010 A

“No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls **bullets, missiles of any kind** to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.”

# Existing “Weapons” Ordinance

Missile = thing thrown or projected as a weapon.

Weapon = thing designed or used to cause bodily harm or damage.

Note: Some items that are otherwise not prohibited, could be if misused (e.g., older model nail guns with safety devices removed).

# Proposed Deletion

Current section 9.04.020 is a repeat of outdated state requirements. We propose to delete these requirements in favor of revised state law.

However, we will bring back the proposed permitting ordinance on November 28.

# Duty to Report Theft or Loss

- Assists law enforcement in detecting straw purchasers.
- Prevents prohibited persons from later claiming theft of owned firearms.
- Protects gun owners from false identification in crime investigation.
- Responsible gun owners will report with or without an ordinance.



# Duty to Report Theft or Loss

- California requires reporting to local “law enforcement” within 5 days.
  - Ordinance would clarify that reporting should be to Morgan Hill Police Department.
  - Requires reporting within 48 hours.

# Duty to Report Theft or Loss

- 48 Hours is the time for reporting by firearms dealers.
- Commonly used in other local ordinances.
  - San Jose requirement is 24 hours.

# Safe Storage Requirement

- Helps to prevent theft of firearms.
- Helps to restrict access to firearms by people who should not have access.
  - Safe storage prevents youth and adult suicide.
  - Identified by Project ChildSafe as No. 1 way to help prevent firearms accidents.

# Safe Storage Requirement

- Current state law provides criminal penalties for unsafe storage, but only if:
  - A firearm is kept loaded and unsecured; and
  - The owner knows (or should know) that a child is “likely to gain access” without permission.

# Safe Storage Requirement

- Sunnyvale requires firearms to be secured unless they are being carried or are within arms-reach.
- San Jose requires firearms to be secured when owner is not at home.

# Safe Storage Requirement

- Our proposed ordinance requires firearms to be secured when unattended.
  - A firearm is unattended when it is not being “watched or looked after.”

# Safe Storage Requirement

## Policy Question

Should there be an exception for antique and/or replica antique firearms?

# Large Capacity Magazine Ban

- A “magazine” is a storage device for ammunition, that feeds cartridges into a firearm’s chamber. The cartridge typically contains an ignition device, a propellant, and a bullet.
- There is no standard definition for “large capacity” magazine, but California law defines magazines that hold more than 10 rounds of ammunition as large capacity.



# Large Capacity Magazine Ban

A review of mass shootings between January 2009 and January 2013 by Mayors Against Illegal Guns found that incidents where assault weapons or large capacity ammunition magazines were used resulted in 135% more people shot and 57% more killed, compared to other mass shootings.

# Large Capacity Magazine Ban

California law prohibits the manufacture, sale or importation of large capacity magazines, but does not restrict possession of magazines that were acquired prior to January 1, 2000.

# Large Capacity Magazine Ban

- A Local ban on the possession of large capacity magazines has been upheld by the 9<sup>th</sup> Circuit Court of Appeals.
- A lower court blocked a statewide ban (Proposition 63).
  - The lower court ruling was on preliminary injunction.
  - The lower court distinguished Sunnyvale from remote counties.

# Large Capacity Magazine Ban

## Policy Question

Should subsection 9.04.050(C)(8) of the draft ordinance be changed to exempt all large capacity magazines that were included with a firearm that was purchased prior to January 1, 2000, if the person possesses the large capacity magazine solely for use with that firearm?

# Next Steps/Additional Direction

## Next Step

- Consider adoption of permit requirements for licensed firearms dealers and/or retailers.

## Request for Direction

- Should the City explore options to provide firearms education?
- Should the City explore other specific actions suggested by members of the public?

# Questions?



CITY OF MORGAN HILL

**From:** Michael Burchfield <[mikeb@westhills.org](mailto:mikeb@westhills.org)>  
**Date:** October 19, 2018 at 9:49:26 PM PDT  
**To:** [steve.tate@morganhill.ca.gov](mailto:steve.tate@morganhill.ca.gov), [rich.constantine@morganhill.ca.gov](mailto:rich.constantine@morganhill.ca.gov), [larry.carr@morganhill.ca.gov](mailto:larry.carr@morganhill.ca.gov),  
Rene Spring <[rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)>, [caitlin.jachimowicz@morganhill.ca.gov](mailto:caitlin.jachimowicz@morganhill.ca.gov)  
**Subject:** Follow-up email Re: Gun Control Ordinance

Dear Mayor and Council Members,

Since sending you the email below, I had the privilege of speaking with Chief David Swing about the ordinance in question and learned from him that the paragraph from the ordinance that I quoted has been in affect for quite some time. Further, he explained how the primary amendments to the ordinance appear in section 9.04.020 and not in 9.04.010 and involve gun storage regulations and high capacity magazines. Having learned this, I apologize for sending you such a 'ridiculous' email - one which was clearly uninformed.

That said, I do think the original ordinance could be written better, and with more specificity in regards to exactly what instruments are in view and which are not. If the ordinance has served it's purpose well up until this point however, adding in more specificity is probably not necessary.

I greatly appreciate your efforts to keep Morgan Hill ne of the safest cities in Santa Clara. Thank you for your service to all of us

Regards,  
Michael Burchfield

On Oct 19, 2018, at 12:23 AM, Michael Burchfield <[mikeb@westhills.org](mailto:mikeb@westhills.org)> wrote:

Dear Mayor Tate and City Council Members Mr. Constantine, Mr. Carr, Mr. Spring, and Mrs. Jachimowicz,

I am emailing you to communicate my concern regarding the gun control measure scheduled for discussion and vote by you, the city council, on October 24, 2018. I urge you NOT to approve this measure as it is written. Having read the ordinance (on line at <https://www.morganhill.ca.gov/DocumentCenter/View/23695/Draft-Firearms-Ordinance>), it is clear that it is so general in scope that even toys will be illegal within the city limits, unless an application is submitted to the chief of police for approval of said instrument; and I seriously doubt that you desire to be down as the city council who passed such a ridiculous ordinance.

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**"9.04.010 - Discharge—Permit required—Fee.**

Attachment: 04 Supplement 1 (1993 : Gun Violence Ordinance)

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Frankly, I cannot understand WHY an ordinance as broad as this is even up for consideration. Isn't it true that it is ALREADY illegal to discharge firearms within the city limits? Aren't the setting off of explosive devices (called fireworks) already illegal within the city limits? Isn't it true that the use of air soft guns within the city limits is already illegal? Isn't it true that the discharge of paintball guns are illegal within the city limits unless used on designated fields of play?

If my assumptions regarding firearms, air soft guns and paintball guns are wrong, it seems this ordinance should specify that such instruments are what, specifically, are in view with in this ordinance. If my assumptions are correct, then why does Morgan Hill need this ordinance at all?

This seems like a 'feel good' ordinance which may gain certain members of the council favor in the eyes of some sub-group or other within the city, but which will do NO GOOD in protecting the citizenry of our good city any further than the ordinances already in place and enforced by the Morgan Hill Police Department. PLEASE, do NOT vote this ordinance into affect as written.

Thank you for your kind consideration; and thank you for your service to our community,

Michael Burchfield  
825 Encino Drive  
Morgan Hill, Ca, 95037



**From:** Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>  
**Date:** October 19, 2018 at 3:22:06 PM PDT  
**To:** "[rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)" <[rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)>  
**Subject:** Proposed Ordinance Banning Firearm Magazine Possession [MA-Interwoven.FID27444]

Dear Council Member Spring,

Attached please find a letter regarding the City of Morgan Hill's proposed ordinance banning possession of certain firearm magazines.

Please feel free to contact our office with any questions or concerns.

Best regards,

**Laura Palmerin**  
Legal Secretary/Paralegal

Attachment: 04 Supplement 1 (1993 : Gun Violence Ordinance)

**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 19, 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: Proposed Ordinance Banning Possession of Certain Firearm Magazines**

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 members and supporters, many of whom live in the Morgan Hill area, to oppose the proposed ordinances that seeks to impose firearm related restrictions on residents of and visitors to the City of Morgan Hill ("City"). The City has held two public meetings regarding the proposed changes. Both supporters and opponents to the new regulations voiced their concerns at the meetings. We understand that the City now intends to place these ill-conceived ordinance changes on your October 24, 2018 agenda.<sup>1</sup>

Our clients continue to oppose the proposed ordinance.

**I. ANY ORDINANCE PROHIBITING POSSESSION OF SO-CALLED "LARGE CAPACITY MAGAZINES" IS PREEMPTED AND AMOUNTS TO AN UNCONSTITUTIONAL TAKING**

As noted in the City Council May 16, 2018 report, there are legal challenges currently underway and pending in the courts regarding the legality of banning the possession of magazines that can hold over 10 rounds. One such case, *Duncan v. Becerra*,<sup>2</sup> challenges state's ban against the possession of such magazines that was scheduled to take effect on July 1, 2017.<sup>3</sup> As stated by the court, "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." The Judge in

<sup>1</sup> The media reported that most of those in attendance at the community meetings were more interested in promoting education 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/>

<sup>2</sup> *Duncan v. Becerra*, 265 F.Supp.3d 1106 (2017).

<sup>3</sup> See Cal. Penal Code § 32310(c-d); See also *Duncan v. Becerra*, S.D. Cal. 2017, 2017 WL 2813727.

City of Morgan Hill- Letter of Opposition  
 October 19, 2018  
 Page 2 of 2

*Duncan* spoke of the “complexity” of the state law and how the state has continued to add layers to the laws.<sup>4</sup> It is therefore wholly improper for the City to adopt such an ordinance while *Duncan* is pending.

Any such ordinance will also be preempted under state law because it will duplicate, contradict, and enter an area of law that is fully occupied by state law. In 2015, our office filed a lawsuit against the City of Los Angeles on this very issue, who at the time had in effect an identical ordinance now being considered by the City of Morgan Hill.<sup>5</sup> In 2017, Los Angeles agreed to repeal their ordinance as a result of that lawsuit pursuant to a settlement agreement.<sup>6</sup>

Banning the possession of these magazines would also constitute a physical appropriation of property without just compensation, which is *per se* an unconstitutional taking.<sup>7</sup> A regulation that goes so far as to depriving a property owner of economically beneficial use or otherwise “interfering with legitimate property interest” requires just compensation from the government.<sup>8</sup>

If our client is forced to seek a judicial declaration that the Ordinance, if adopted, 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 the 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 proposed Ordinance, however, hopefully the City can avoid the legal action faced by other similarly situated cities and the Council will vote no on the proposed Ordinance.

Sincerely,  
**Michel & Associates, P.C.**



Tiffany D. Cheuvront

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

<sup>4</sup> *Id. Duncan v. Becerra*, Order Granting Preliminary Injunction (June 29, 2017).

<sup>5</sup> See *Bosenko v. City of Los Angeles*, Case No. BS158682, 2015 WL 6467648 (Cal. Super.).

<sup>6</sup> A copy of this settlement agreement can be viewed online at <http://michellawyers.com/wp-content/uploads/2017/07/Bosenko-Settlement-Agreement.pdf>.

<sup>7</sup> See *Horne v. Dep’t of Agric.*, -- U.S.--, 135 S. Ct. 2419, 2427 (2015).

<sup>8</sup> *Lingle v. Chevron*, 544 U.S. 528, 537-39 (2005).

**From:** Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>

**Date:** October 22, 2018 at 11:28:44 AM PDT

**To:** "[rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)" <[rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov)>

**Subject:** Proposed Ordinance re Firearm Theft Reporting & Locked Storage [MA-Interwoven.FID27444]

Dear Council Member Spring,

Attached please find a letter regarding the City of Morgan Hill's proposed ordinance regarding reporting the theft or loss of a firearm and mandatory locked storage.

Please feel free to contact our office with any questions or concerns.

Best regards,

**Laura Palmerin**  
Legal Secretary/Paralegal

Attachment: 04 Supplement 1 (1993 : Gun Violence Ordinance)

**SENIOR PARTNER**  
C. D. MICHEL\*

**MANAGING PARTNER**  
JOSHUA ROBERT DALE

**SPECIAL COUNSEL**  
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**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**

Attachment: 04 Supplement 1 (1993 : Gun Violence Ordinance)

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.<sup>1</sup> 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 63<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> The statute contains a comprehensive set of exceptions.<sup>6</sup> There are also several firearm storage requirements when one lives

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

<sup>2</sup> Cal. Penal Code § 25250.

<sup>3</sup> *Id.*

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

<sup>5</sup> Cal. Penal Code §§ 25100-25135, 25200-25225.

<sup>6</sup> 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.<sup>7</sup> California law also mandates that any firearm sold must include a firearm safety device.<sup>8</sup> Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.”<sup>12</sup> 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.”<sup>13</sup> 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.

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<sup>7</sup> *Id.* at § 25135.

<sup>8</sup> Cal. Penal Code § 23650(a).

<sup>9</sup> 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](https://oag.ca.gov/all/files/agweb/pdf/firearms/forms/bof_978.pdf)

<sup>10</sup> U.S. Const. amend IV.

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

<sup>12</sup> *Id.* at 635.

<sup>13</sup> 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.”).

City of Morgan Hill- Letter of Opposition-Theft Reporting and Locked Storage  
October 22, 2018  
Page 4 of 4

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.**



Tiffany D. Chevront

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

Attachment: 04 Supplement 1 (1993 : Gun Violence Ordinance)



**From:** "Jaime Tompkins" <[jaime@tigglesworth.com](mailto:jaime@tigglesworth.com)>

**Date:** October 20, 2018 at 11:43:03 AM PDT

**To:** [steve.tate@morganhill.ca.gov](mailto:steve.tate@morganhill.ca.gov), [rich.constantine@morganhill.ca.gov](mailto:rich.constantine@morganhill.ca.gov), [larry.carr@morganhill.ca.gov](mailto:larry.carr@morganhill.ca.gov), [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov), [caitlin.jachimowicz@morganhill.ca.gov](mailto:caitlin.jachimowicz@morganhill.ca.gov)

**Subject:** Re Firearms Ordinance

Good morning,

I wanted to write in support of the proposed Firearms Ordinance that is to be discussed in the upcoming meeting. I am glad that the CC is tackling this issue and appreciate the proposal.

I do think some clarification needs to be made as some Morgan Hill residents have taken to gas lighting and there are false narratives prominently presented on various social media platforms and discussions that this ordinance applies to nerf guns and such. Common sense gun reform is absolutely necessary and my school aged kids and I support the CC's willingness to start a conversation around this issue.

Thank you,  
Jaime Tompkins

Attachment: 04 Supplement 1 (1993 : Gun Violence Ordinance)

**From:** [Donald Larkin](#)  
**To:** [CityCouncil](#)  
**Cc:** [Christina Turner](#); [Michelle Bigelow](#); [Angie Gonzalez](#)  
**Subject:** City Attorney Supplement for Item 4  
**Date:** Wednesday, October 24, 2018 3:24:17 PM

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Dear Mayor and Council Members,

In response to a concern raised today by a member of the public, I will be recommending a slight modification to section 9.04.040 should the Council choose to move forward with the ordinance tonight. The recommended addition is highlighted below:

*No person shall leave a firearm (as defined in [Penal Code](#) Section 16520 or as amended) unattended in any residence owned or controlled by that person unless the firearm is stored in a locked container (as defined in [Penal Code](#) Section 16850 or as amended), or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.*

**Donald A. Larkin**  
City Attorney  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

Tel: (408) 778-3490  
Email: [donald.larkin@morganhill.ca.gov](mailto:donald.larkin@morganhill.ca.gov)

This e-mail may contain confidential and/or attorney-client privileged material. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

Attachment: 04 Supplement 2 (1993 : Gun Violence Ordinance)

**From:** [Michelle Bigelow](#)  
**To:** [Michelle Bigelow](#)  
**Subject:** FW: Consideration of an Item on your Agenda this evening  
**Date:** Wednesday, October 24, 2018 4:57:46 PM

---

**From:** Michael Parker <[sirmichaeldavidparker@gmail.com](mailto:sirmichaeldavidparker@gmail.com)>  
**Date:** October 24, 2018 at 2:02:10 PM PDT  
**To:** [steve.tate@morganhill.ca.gov](mailto:steve.tate@morganhill.ca.gov), [rich.constantine@morganhill.ca.gov](mailto:rich.constantine@morganhill.ca.gov),  
[larry.carr@morganhill.ca.gov](mailto:larry.carr@morganhill.ca.gov), [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov),  
[caitlin.jachimowicz@morganhill.ca.gov](mailto:caitlin.jachimowicz@morganhill.ca.gov)  
**Subject: Consideration of an Item on your Agenda this evening**

In your Public Hearing section (item #4) you have: "Adopt an ordinance requiring safe storage of firearms, reporting theft or loss of firearms, and prohibiting possession of large capacity magazines"

I'd like you to consider the Supreme Court of the United States case: District of Columbia vs Heller. Part of your ordinance has been decided by Heller already in regards to your Chapter 9.04.

Also, the Ninth Circuit Court of Appeals currently has upheld a lower court decision to suspend enforcement of California's restriction on the possession of magazines that hold 10 rounds or less.

I would encourage the City Council to research issues on gun safety and regulation, along with any other Constitutional rights that the people you represent enjoy. Believe it or not, the National Rifle Association has a ton of educational material on this topic. It's main goal is education and safety. (ref. following webpage)  
<https://www.nrafoundation.org/about-us/>

Sincerely, Michael Parker

**Item # 04**

**AGENDA DATE: 10/24/18**  
**SUPPLEMENT # 4**

**From:** Dieskau Reed <[dieskau3@gmail.com](mailto:dieskau3@gmail.com)>

**Date:** October 24, 2018 at 9:47:24 PM PDT

**To:** [steve.tate@morganhill.ca.gov](mailto:steve.tate@morganhill.ca.gov), [rich.constantine@morganhill.ca.gov](mailto:rich.constantine@morganhill.ca.gov),  
[caitlin.jachimowicz@morganhill.ca.gov](mailto:caitlin.jachimowicz@morganhill.ca.gov), [rene.spring@morganhill.ca.gov](mailto:rene.spring@morganhill.ca.gov), [larry.carr@morganhill.ca.gov](mailto:larry.carr@morganhill.ca.gov)

**Subject:** Morgan Hill City Council Proposed Firearm Ordinance

Good Evening,

I am Dieskau Reed, Morgan Hill resident for 6.5 years.

Thank you for allowing public comments on the proposed City Firearms Ordinance.

I stand before you tonight on behalf All the Legal Gun Owners & Enthusiasts within our community and country, in support of my legal & constitutional Gun ownership rights!

It is my understanding that part of the reasoning behind this revamped proposed ordinance is in response to the awful & devastating mass shootings that occurred in schools across America earlier this year.

While I am sympathetic to those terrible events, I do not feel that this ordinance addresses those issues specifically.

I'm not opposed to legal enforcement of existing laws on the books. I fully understand the need for safe & responsible ownership of firearms! I grew up in a home where my father was a career police officer for over 40 years in NYC. I was made to respect firearms and understand need for safety at all times. This was further ingrained in me during my time in the US Navy. Because of this background, I promote respect for firearms, responsible use, understanding of inherent dangers, and legal ownership in my own home now.

I am however opposed to the adoption of the proposed ordinance & further infringement upon citizen's constitutional firearms rights. Specifically it seems as you intend to duplicate laws already on the books, where the state has already spoken.

Some of the proposed ordinance actually lessen my legal firearm rights. In particular the reporting of a stolen/lost firearm. State laws provide for up to 5 days, the new law would limit compliance to 2 days.

Many firearms manufacturers typically sell their product with magazines that typically hold 15, 16, & 17 as standard magazines that ship with purchase.

Also, does the City have the legal authority or right to mandate that I purchase a \$1,000,000 liability insurance to protect my legal rights? I've looked into the additional insurance from our insurance company AAA. They Will Not authorize the City as an additional named insured.

Other points regarding the storage and constant lock down of my firearm put the lives of law abiding citizens in further harms way by limiting my access to my defense ready firearm in my own home. Given the amount of robberies, thefts, Break-Ins & even home invasions in our community, limiting my ability to readily defend my home, family & life is unacceptable. The intruders will not allow me the time to say

Attachment: 04 Supplement 4 (1993 : Gun Violence Ordinance)

“Hold on, let me go to my safe, load my firearm, then remove the trigger lock before you rob me or do bodily harm or worse to me, my wife, my daughter, other family members or guests” ...just doesn’t work like that!!

It is highly likely that should you choose to pass this ordinance, the City Of Morgan Hill will end up defending lawsuits similar to what has occurred in Los Angeles and other cities that have attempted similar ordinances which are now being litigated in the Ninth Circuit Court on the way to the US Supreme Court. Our City revenue has more productive ways to be spent than in needless court fees.

We would be better served to legally enforce existing laws, provide more education to the public & in particular the youth within our community regarding proper & safe use of firearms and the hold criminals accountable!

The enforcement of the proposed ordinance serves to further inconvenience & tread upon & limit our constitutional firearm rights of legal & law abiding responsible gun owners. It does nothing to educate, promote any further public safety or Reduce activity of Real Criminals!

If The Definition Of a Criminal Is Someone Who Breaks The Law.....  
How Does Making More Laws, Make Us Safer With Less Criminals?  
Particularly In Reference To Gun Violence & Street Crimes

I strongly urge you not to adopt this revised ordinance.

Thank you for your time!

Dieskau E Reed III



## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 24, 2018**

PREPARED BY: John Baty, Principal Planner/Development Services  
APPROVED BY: City Manager

#### **ZA2018-0005: CITY OF MORGAN HILL - AN AMENDMENT TO TITLE 18, DIVISION I ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER 18.28 - OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE**

#### **RECOMMENDATION(S)**

1. Open/close public hearing;
2. Waive the first and second reading of Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance; and
3. Introduce Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance.

#### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **GUIDING DOCUMENTS**

General Plan/Housing Element

#### **REPORT NARRATIVE:**

##### Background/Purpose

On November 5, 2014, the City Council adopted Resolution No. 7051 establishing the Sports Recreation and Leisure General Plan Land Use designation, which allows a wide range of private commercial, retail, and public/quasi-public sports-recreation leisure themed uses and supports local agriculture and sustainable economic development.

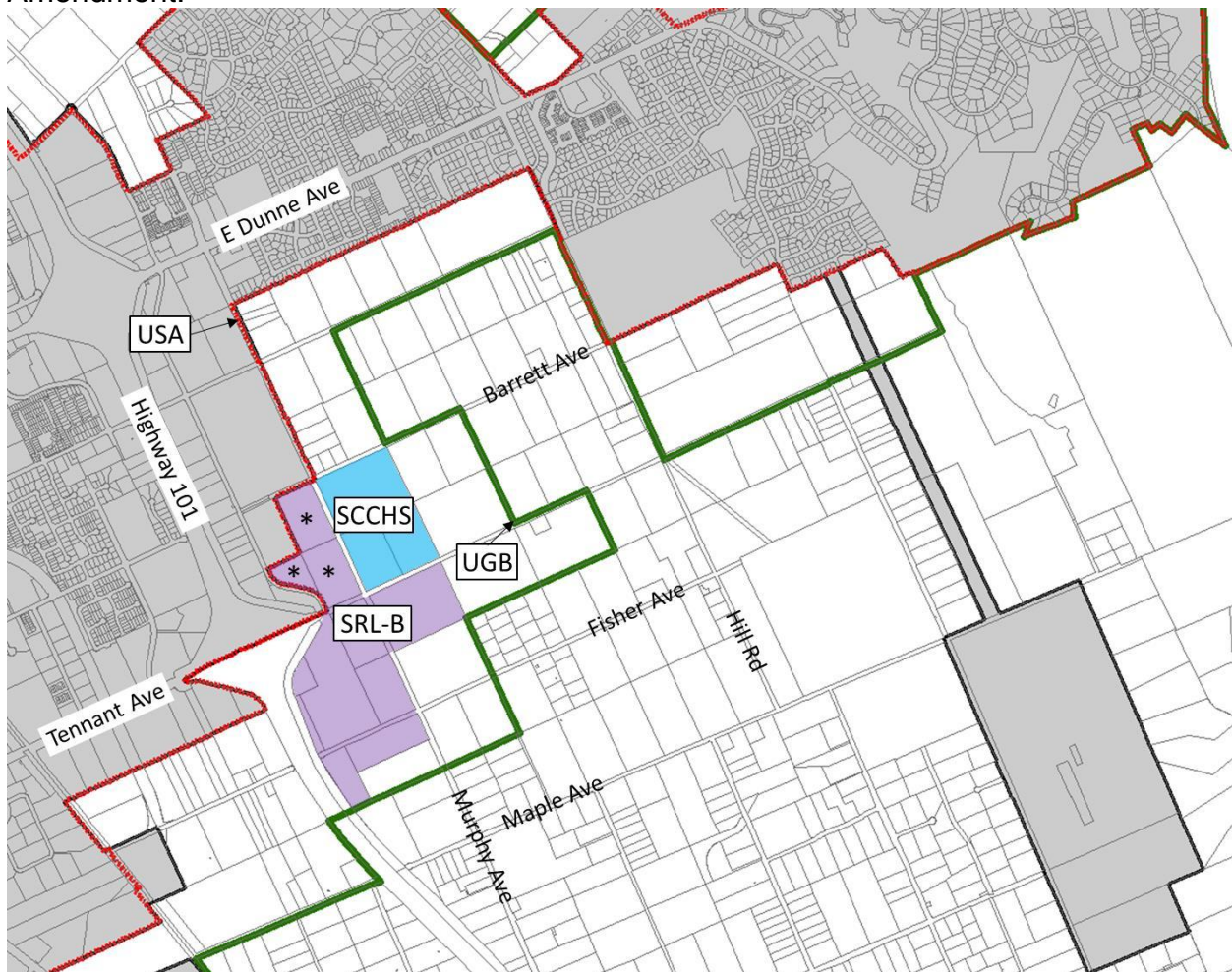
On August 5, 2015, the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B). These parcels, shown on the map below, remain pre-zoned SRL-B in anticipation of potential future annexation.

On September 5, 2018, during their review of an Urban Service Area (USA) expansion request for the South County Catholic High School (SCCHS) that includes three SRL-B pre-zoned parcels to the west of the proposed High School site, the City Council directed staff to return to the Council prior to November 7, 2018 with a new pre-zoning for Council consideration to replace the existing SRL-B pre-zoning on parcels (APNs:

817-13-008, -011, and -037) such that the new zoning would not allow housing, hotels, or commercial uses.

Rather than create a new zoning district (text amendment) and apply that new zoning district to the three specific parcels described above and shown on the map below (map amendment), staff recommends modifying the uses allowed in the existing SRL-B Zoning District (text amendment) that would then be applicable to all properties that are pre-zoned SRL-B. All properties, including the three specific parcels, that are pre-zoned SRL-B are currently located in the same general area (on both sides of Tennant Avenue east of Highway 101).

As described in the prior commission actions section below, at their October 9, 2018 meeting, the Planning Commission did not recommend approval of the proposed Zoning Amendment.



\* = APNs 817-13-008, -011, and -037 / UGB = Urban Growth Boundary / USA = Urban Service Area

### Project Description

The proposed Zoning Amendment consists of modifications to the uses allowed in the existing SRL-B Zoning District as shown in Exhibit A to the attached Draft Ordinance.



The following commercial uses would no longer be allowable:

- Drive-through establishments
- Gas and service stations
- Hotels and motels
- Restaurants
- Retail that is sports-themed or sports/recreation-serving
- Day spas, barbershops, and hair salons
- Health and fitness clubs and indoor recreation centers oriented to local residents
- Indoor swimming pools

The SRL-B district will continue to not allow new residential land uses with the exception that one single-family detached dwelling on a legal lot of record established in the County prior to August 1, 2014 remains a permitted use.

#### Analysis

The City may approve Zoning Amendments only after finding that the proposed amendment is: consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and is internally consistent with other applicable provisions of the Zoning Code.

The amendment is consistent with the City of Morgan Hill's General Plan in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses that are allowed within the SRL General Plan Land Use designation. The proposed change would not create any non-conforming uses on the parcels within the existing zoning district.

The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City.

The proposed changes to the uses allowed within the SRL-B District do not affect internal consistency with other provisions of the Zoning Code.

#### **COMMUNITY ENGAGEMENT: Inform**

Notice of this hearing and the prior Planning Commission hearing was published in the newspaper and mailed notices were sent to potentially affected property owners.

#### **ALTERNATIVE ACTIONS:**

Direct staff to return with a Zoning Text Amendment to establish a new SRL Sports Recreation and Leisure Sub-zone (e.g., SRL-C) and a Zoning Map Amendment to apply that pre-zoning to APNs 817-13-008, -011, and -037. Like the existing SRL-B District, the SRL-C District would allow a range of lower intensity sports, recreation, leisure, agricultural and natural resources uses, but would not allow certain intensive commercial uses including: drive-through establishments; gas and service stations; hotels and motels; restaurants; retail that is sports-themed or sports/recreation serving;



day spas, barbershops, and hair salons; health and fitness clubs and indoor recreation centers oriented to local residents; and, indoor swimming pools.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The proposed Zoning Amendment was considered by the Planning Commission at their regular meeting held on October 9, 2018. The Planning Commission, on a 5-2 vote, did not recommend City Council approval of the proposed Zoning Amendment with the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant (SEQ) should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district (or a Planned Development (PD) Combining District) that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.
- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area

**FISCAL AND RESOURCE IMPACT:**

Not applicable.

**CEQA (California Environmental Quality Act):**

An Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074), was prepared for the Zoning Code Update adopted on June 6, 2018 and serves as the environmental review for the proposed Zoning Code Text Amendment. The Addendum for the Zoning Code Update was prepared pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164.

**LINKS/ATTACHMENTS:**

1. DRAFT Ordinance
2. Exhibit A - Chapter 18.28 Public Open Space Recreation
3. 05 Presentation

**ORDINANCE NO. XXXX, NEW SERIES**

**AN ORDINANCE OF THE CITY OF MORGAN HILL  
APPROVING AN AMENDMENT TO TITLE 18, DIVISION I  
ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER  
18.28 - OPEN SPACE, PUBLIC, AND RECREATION  
ZONING DISTRICTS TO MODIFY THE USES ALLOWED  
IN THE SRL-B - SPORTS RECREATION AND LEISURE  
SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL  
MUNICIPAL CODE (FILE NO. ZA2018-0005: CITY OF  
MORGAN HILL)**

**WHEREAS**, on November 5, 2014 the City Council adopted Resolution No. 7051 establishing the Sports Recreation and Leisure General Plan Land Use designation, which allows a wide range of private commercial, retail, and public/quasi-public sports-recreation leisure themed uses and supports local agriculture and sustainable economic development; and

**WHEREAS**, on August 5, 2015 the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B); and

**WHEREAS**, these parcels remain pre-zoned SRL-B in anticipation of potential future annexation; and

**WHEREAS**, on September 5, 2018, during their review of an Urban Service Area (USA) expansion request for the South County Catholic High School (SCCHS) that includes three SRL-B pre-zoned parcels to the west of the proposed High School site, the City Council directed staff to return to the Council prior to November 7, 2018 with a new pre-zoning for Council consideration to replace the existing SRL-B pre-zoning on parcels (APNs: 817-13-008, -011, and -037) such that the new zoning would not allow housing, hotels, or commercial uses; and

**WHEREAS**, rather than create a new zoning district and apply that new zoning district to three specific existing SRL-B pre-zoned parcels, staff advised that the desired modifications to the uses allowed in the existing SRL-B Zoning District be applicable to all properties currently pre-zoned SRL-B, which all exist in the same general area as the three specific parcels; and

**WHEREAS**, with the proposed modifications to the SRL-B district as shown in Table 18.28-2 in Exhibit A – Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts, the following commercial uses would no longer be allowable: drive-through establishments, gas and service stations, hotels and motels, restaurants, retail that is sports-themed or sports/recreation-serving, day spas, barbershops, hair salons, health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools; and

**WHEREAS**, the SRL-B district will continue to not allow new residential land uses with the exception that one single-family detached dwelling on a legal lot of record established in the

Attachment: DRAFT Ordinance (2025 : ZA2018-0005: CITY OF MORGAN HILL)

County prior to August 1, 2014 remains a permitted use; and

**WHEREAS**, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074), was prepared for the Zoning Code Update adopted on June 6, 2018 and serves as the environmental review for the proposed Zoning Code Text Amendment. The Addendum for the Zoning Code Update was prepared pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164; and

**WHEREAS**, the City may approve Zoning Amendments only after finding that the proposed amendment is consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and, is internally consistent with other applicable provisions of the Zoning Code; and

**WHEREAS**, the Zoning Code Text Amendment complies with the City's Morgan Hill 2035 General Plan as required by Government Code Section 65860, in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses allowed within the SRL General Plan Land Use designation; and

**WHEREAS**, the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City; and

**WHEREAS**, the Zoning Amendment, was considered by the Planning Commission at their regular meeting of October 9, 2018 at which time the Planning Commission on a 5-2 vote did not recommended City Council approval of application ZA2018-0005: City of Morgan Hill for the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district or a Planned Development (PD) Combining District that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.
- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-

zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area.; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The Zoning Amendment is consistent with the Morgan Hill 2035 General Plan.

**SECTION 2.** The Zoning Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

**SECTION 3** The Zoning Amendment will be internally consistent with other applicable provisions of the Zoning Code as provided in Section 18.114.060.

**SECTION 4.** The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).

**SECTION 5.** The City Council hereby amends Title 18 – Zoning, Division I Zoning Code, Part 2 Zoning Districts, Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts to modify the uses allowed in the SRL-B – Sports Recreation and Leisure Sub-zone B Zoning District, of the Morgan Hill Municipal Code (File No. ZA2018-0005: City of Morgan Hill) as shown in the attached Exhibit A, incorporated herein by reference.

**SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 24<sup>th</sup> DAY OF OCTOBER 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE XX<sup>TH</sup> DAY OF NOVEMBER 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:**

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**          **COUNCIL MEMBERS:**  
**ABSTAIN:**      **COUNCIL MEMBERS:**  
**ABSENT:**       **COUNCIL MEMBERS:**

**APPROVED:**

\_\_\_\_\_  
**STEVE TATE, Mayor**

**ATTEST:**

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**DATE:** \_\_\_\_\_

Effective ~~December~~November XX, 2018

**⌘ CERTIFICATION ⌘**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the XX<sup>th</sup> day of November 2018.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

# EXHIBIT A

## Chapter 18.28 – OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS

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### Sections:

18.28.010 – Purpose of the Open Space, Public, and Recreation Zoning Districts

18.28.020 – Land Use Regulations

18.28.030 – Development Standards

### 18.28.010 – Purpose of the Open Space, Public, and Recreation Zoning Districts

- A. Open Space.** The purpose of the Open Space (OS) zoning district is to preserve and enhance open space lands as a limited and valuable resource in Morgan Hill. The OS zoning district is intended to permit limited but reasonable use of open space lands while reducing exposure to geologic hazards, to preserve agricultural land, and to preserve the topographic features that contribute to Morgan Hill's unique identity.
- B. Public Facilities.** The purpose of the Public Facilities (PF) zoning district is to provide a location for schools, governmental offices, parks and recreational facilities, fire and police stations, utilities, and other public and quasi-public facilities to serve the community.
- C. Sports Recreation and Leisure (SRL).** The purpose of the SRL zoning district is to provide a location for a variety of private ~~commercial, retail,~~ and public or quasi-public land sports, recreation, and leisure uses to serve the community. The SRL zoning district includes two sub-zones:
  - 1. The SRL-A sub-zone which supports lower intensity sports, recreation, and leisure uses that are compatible with nearby agricultural and open space activities; and
  - 2. The SRL-B sub-zone which supports lower and medium intensity sports, recreation, and leisure uses.

### 18.28.020 –Land Use Regulations

#### A. Open Space and Public Facility Zones.

- 1. **Permitted Land Uses – General.** Table 18.28-1 identifies land uses permitted in the Open Space (OS) and Public Facilities (PF) zoning districts.

**TABLE 18.28-1: PERMITTED LAND USES IN THE OPEN SPACE AND PUBLIC FACILITIES ZONING DISTRICTS**

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required - Use not allowed	Zoning District		Additional Regulations
	OS	PF	
<b>Residential Uses</b>			
Accessory Dwelling Units	P	-	Chapter 18.84
Agricultural Labor Accommodations	C	-	
Single-Family Detached Dwellings	P	-	
<b>Public and Quasi-Public Uses</b>		-	
Cemeteries	C	C	
Colleges and Trade Schools	-	C	
Community Assembly	-	C	
Cultural Institutions	-	P [1]	
Day Care Centers	-	C	
Emergency Shelters	-	P	
Government Offices	-	P	
Home Day Care, Small	P	-	
Hospitals	-	P	
Instructional Services	-	P [1]	
Parks and Recreational Facilities	P	P [1]	
Public Safety Facilities	C	P	
Schools, Public	-	P	
Schools, Private	-	C	
<b>Commercial Uses</b>			
Animal-Related Commercial Uses			
Animal Boarding	C	-	
Equestrian Centers	C	-	
Farmer's Markets	C	C	
Plant Nurseries	C [2]	-	
<b>Transportation, Communication, and Utility Uses</b>		-	
Parking Structures and Facilities	-	P [1]	
Utilities, Major	-	C	
Wireless Communications Facilities	See Chapter 18.96		
<b>Agriculture and Natural Resource Uses</b>			
Crop Cultivation	P	-	
Animal Raising and Production, Intensive	C	-	



Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	OS	PF	
Animal Raising and Production, Limited	P	-	
Wildlife Refuges	P	-	
<b>Other Uses</b>			
Accessory Uses	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

**Notes:**

[1] A Conditional Use Permit is required if not owned or operated by a governmental agency.

[2] Sales are limited to horticultural products grown on site.

**B. Design Permit for Residential Uses in the OS Zone.** In addition to projects requiring Design Permits pursuant to 18.108.040 (Design Permits), the construction of new residential uses requires a Design Permit to verify conformance with Section 18.28.030.B (Performance Standards in OS Zone) and all other applicable requirements.

**C. Sports Recreation and Leisure Zones.** Table 18.28-2 identifies land uses permitted in the SRL-A and SRL-B sub-zones.

**TABLE 18.28-2: PERMITTED LAND USES IN THE SPORTS RECREATION LEISURE ZONING DISTRICT**

Key P Permitted use C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	SRL-A	SRL-B	
<b>Residential Uses</b>			
Single-family detached dwellings	P [1]	P [1]	
All other new residential land uses	-	-	
<b>Commercial Uses</b>			
Drive-through establishments	-	<del>C [6]</del>	
Gas and service stations	-	<del>C</del>	
Hotel and motels	-	<del>C</del>	
Restaurants	-	<del>C</del>	
Retail that is sports-themed or sports/recreation-serving	-	<del>C</del>	
<b>Sports, Recreation, and Leisure Uses</b>			
Adventure sports facilities	P	P	
Arts and crafts studios	P	P	
Batting cages	P	P	
Bowling alleys	-	-	

Key P Permitted use C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	SRL-A	SRL-B	
Campgrounds	-	-	
Casinos, card clubs, and gambling facilities	-	-	
Cinemas and movie theaters	-	-	
Day spas, barbershops, and hair salons	C [2]	<del>C [2]</del>	
Equestrian centers	P	P	
Golf courses	P [3]	P [3]	
Health and fitness clubs and indoor recreation centers oriented to local residents	C [4]	<del>C [4]</del>	
<u>Indoor sports centers</u>	<u>P</u>	<u>-</u>	
<del>Indoor or outdoor</del> Outdoor sports centers	P	P	
Outdoor race tracks for cars, go-karts, or similar use;	-	-	
Pool and billiards halls	-	-	
Recreational vehicle parks	-	-	
Sports Fields	P	P	
Stadiums	-	-	
<u>Swimming pools, indoor</u>	<u>P [5]</u>	<u>-</u>	
Swimming pools, <del>indoor and</del> outdoor	P [5]	<del>P [5]</del>	
<b>Agriculture and Natural Resource Uses</b>			
Crop cultivation	P	P	
Farmer’s market	P	P	
Sales of agricultural products grown on site	P	P	
Wineries	P	P	
<b>Transportation, Communication, and Utility Uses</b>			
Wireless communications facilities	See Chapter 18.96		
<b>Other Uses</b>			
Accessory Uses and Structures	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

## Notes:

[1] Permitted only on a legal lot of record established in the unincorporated area prior to August 1, 2014.

[2] May be permitted with a Conditional Use Permit if ancillary to hotel or motel use.

[3] Golf courses in excess of three holes are prohibited.

[4] Fitness and exercise facilities ancillary to a primary destination-oriented sports/recreation/leisure use are allowed with a Conditional Use Permit.

[5] Permitted if ancillary to hotel or motel use.

~~[6] No more than two drive-through establishments are permitted in the SRL-B zone.~~

**D. Additional Permits.** In addition to permits identified in Tables ~~136~~18.28-1 and 18.28-2, development projects in the open space, public, and recreation zoning districts may

also require a Design Permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60. (Historic Resources).

- E. Hillside Combining District.** Development on site with an average slope of 10 percent or greater are subject to the requirements of Section 18.30.040 (Hillside Combining District).

### 18.28.030 Development Standards

- A. General.** Table 18.28-3 identifies development standards that apply in the public, open space, and recreation zoning districts.

**TABLE 18.28-3: PUBLIC, OPEN SPACE, AND RECREATION DEVELOPMENT STANDARDS**

	OS	PF	SRL-A	SRL-B	Additional Standards
<b>Site Requirements</b>					
Lot Area, Minimum	5 acres	None	1 acre	1 acre	
Lot Width, Minimum	100 feet		100 ft.	100 ft.	
Lot Depth, Minimum	None		150 ft.	150 ft.	
Impervious Coverage, Maximum	10% [1]	As required by review authority	None	None	
Building Coverage, Maximum	5% [2]		30%	50%	
<b>Structure Requirements</b>					
Setbacks, Minimum					18.56.030
Front	50 ft.	As required by review authority	30 ft.	20 ft.	
Rear	50 ft.		50 ft.	15 ft.	
Interior Side	50 ft.		20 ft.	15 ft.	
Street Side	25 ft.		30 ft.	20 ft.	
Height, Maximum	2 stories or 25 ft.		35 ft.	35 ft.	18.56.020

Notes:

[1] Planning Commission may allow greater impervious surface with a Conditional Use Permit.

[2] 30 percent for those existing lots less than 5 acres.

- B. Performance Standards in OS Zoning District.** The following standards apply to all development and land uses in the OS zoning district.

1. **Stormwater Runoff.** In addition to requirements in Chapter 18.140 (Post Construction Stormwater Pollution Prevention), development shall comply with the following standards:
  - a. Permanent vegetation and improvements capable of carrying stormwater runoff in a safe manner shall be installed to the extent possible before the vegetative cover is removed from the area.

- b. Sediment basins, including debris basins, desilting basins and silt traps, shall be installed and maintained to reserve sediment from runoff waters of land undergoing development.
- 2. **Public Services and Infrastructure.** Construction of dwellings for which Conditional Use Permits are required are permitted only if the proposed dwelling units are served by public sewers, public water, , and ingress/egress that comply with minimum fire department standards. The City may grant exceptions to the public sewer and public water requirements for:
  - a. Areas that were annexed into the city outside the urban service area with approved private water and septic systems; and
  - b. Secondary dwellings where a private septic tank disposal system has been approved for the primary dwelling on the same parcel of land.
- C. **Outdoor Storage in the PF Zone.** Areas used for outdoor storage in the PF zoning district shall meet the minimum design standards applicable to off-street parking facilities as specified in Section 18.72.060 (Parking Design and Development Standards).

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# ZA2018-0005: City of Morgan Hill



Attachment: 05 Presentation (2025 : ZA2018-0005: CITY OF MORGAN HILL)

1140

October 24, 2018 Item #5

Packet Pg. 449

# ZA2018-0005: City of Morgan Hill

5.c



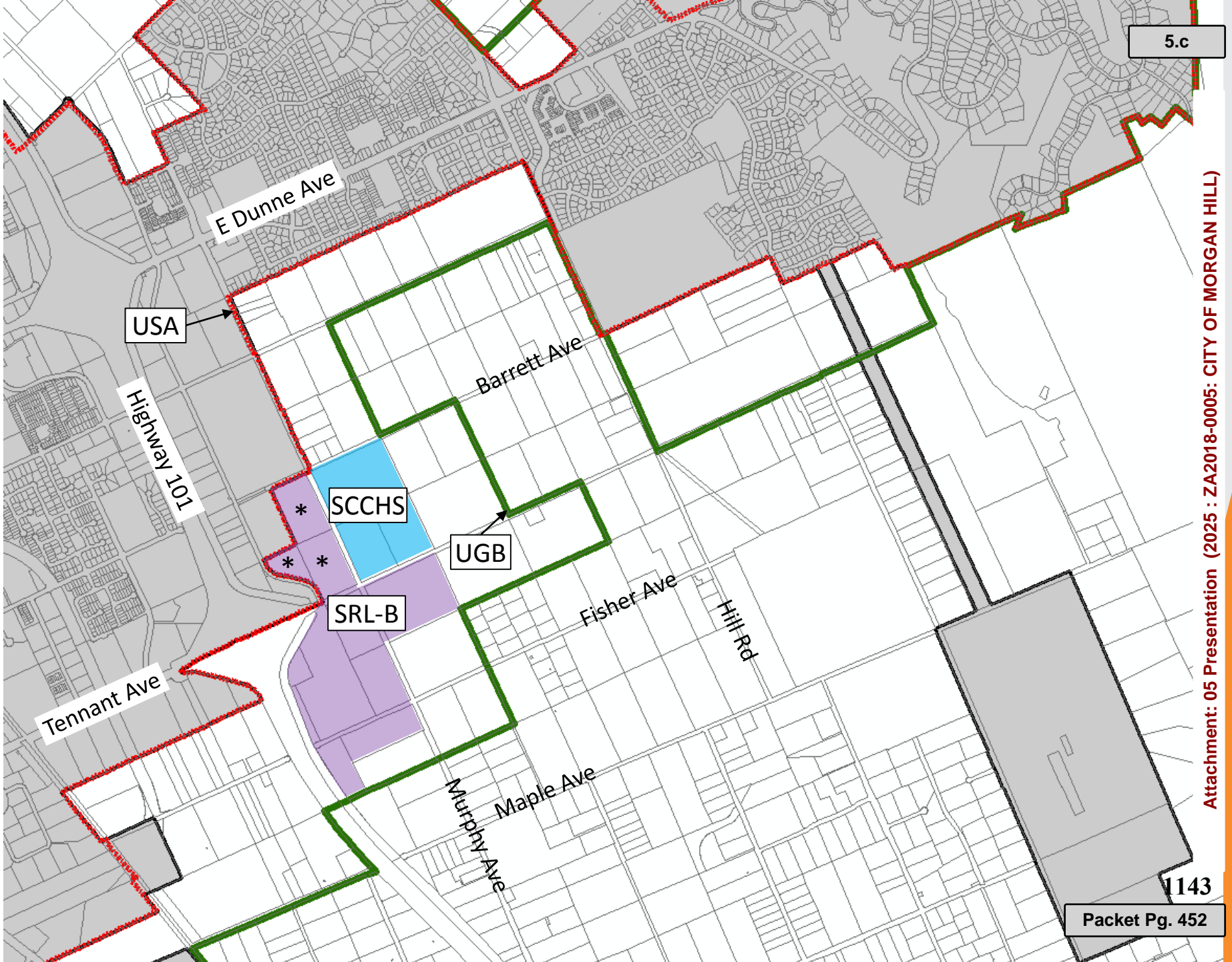
## Recommendation

1. Open/Close Public Hearing
2. Waive first and second reading
3. Introduce Ordinance ZA2018-0005: City of Morgan Hill, an Amendment to Zoning Code Chapter 18.28 to Modify uses allowed in the SRL-B District

# Background

- November 5, 2014 City Council established SRL General Plan Land Use designation
- August 5, 2015 City Council established SRL Zoning District and Pre-zoned parcels SRL-B
- September 5, 2018 City Council directed staff to return prior to November 7, 2018 with a new zoning that would not allow housing, hotels, or commercial uses.





# SRL-B Proposed Modifications

## Commercial Uses No Longer Allowable:

- Drive-through establishments
- Gas and service stations
- Hotels and motels
- Restaurants
- Retail that is sports-themed or sports/recreation serving
- Day spas, barbershops, and hair salons
- Health and fitness clubs and indoor recreation centers oriented to local residents
- Indoor swimming pools

# General Plan and Zoning Code Consistency Findings



5.c

The proposed amendment is:

- a. Consistent with the General Plan
- b. Will not be detrimental to the public interest, health, safety, convenience, or welfare of the City
- c. Internally consistent with other applicable provisions of the Zoning Code.

Attachment: 05 Presentation (2025 : ZA2018-0005: CITY OF MORGAN HILL)

# Planning Commission – October 9, 2018

## Did not support Zoning Amendment

- Should wait for LAFCO decision on USA Amendment application
- Could support creation of new zoning district that does not allow hotels and certain other commercial uses applied only to three SRL-B pre-zoned parcels, but concerned about eliminating too many commercial uses – negative impact on economic development
- Could apply SRL-A to three parcels

# Recommendation

1. Open/Close Public Hearing
2. Waive first and second reading
3. Introduce Ordinance ZA2018-0005: City of Morgan Hill, an Amendment to Zoning Code Chapter 18.28 to Modify uses allowed in the SRL-B District



# Thank You



**From:** [D. Muirhead](#)  
**To:** [Michelle Bigelow](#); [Angie Gonzalez](#)  
**Subject:** City Council Meeting October 24, 2018 Closed Session Item: City Manager Performance Evaluation  
**Date:** Sunday, October 21, 2018 10:18:37 AM

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Comments for the Public Record for:

Morgan Hill City Council  
Meeting October 24, 2018  
Closed Session Item: City Manager Performance Evaluation

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Dear Morgan Hill City Council,  
The following was submitted to the Morgan Hill Times  
as an Opinion Letter.  
Thank you for your consideration,  
Doug Muirhead, Morgan Hill

---

City Manager Performance Evaluation

Our City Council will hold some number of Closed Sessions to do a performance evaluation of our City Manager. If the Mayor holds true to form, at a future Council meeting, he will pat the Council on the back for making an outstanding selection for City Manager (I also endorsed the selection) and then the Council will throw money at her so that she will stay in the job. (Is it not enough that we dug a new water well just a few yards from her home?)

Missing from the Mayor's comments will be any specifics on where Ms. Turner should focus her efforts to improve our City government. I am not one to say that the status quo is good enough, although some Council members might.

There have been some improvements in transparency, such as details of the evaluation of firms for service contract awards. And we might soon see reports on use of delegation of authority (where the City Manager approves contracts without Council review or public notice).

But it seems to me that the transparency door still starts from a closed position, to be opened a little only in some cases. I asked why certain actions of the City's outside pest control contractor did not appear in the annual report; the answer was that they were not required to be reported and so were not.

My second example is the boilerplate in staff reports that list which council priorities are addressed by the item. There is never an explicit link to items in the report for the priorities. Only once, during a recent discussion on annexation, were staff asked how their recommendations met those council priorities; I thought the staff responses were weak at best.

On the other hand, the Urban Forest Task Force and the public meetings to discuss the Gun Control Ordinance are signs that the City is making more of an effort to Inform and Engage with our residents. To that end, elected and appointed leadership, in trying to improve our City government, should inform us as to where efforts will be focused. Or they can just surprise us every few weeks, as they did at the last Council meeting, with an item on possible shrinking of our Urban Growth Boundary as a way

to protect agricultural lands.



**From:** [Chris Ghione](#)  
**To:** [CityCouncil](#)  
**Cc:** [Christina Turner](#); [Michelle Bigelow](#)  
**Subject:** FW: City Council Meeting October 24, 2018 Closed Session Item: City Manager Performance Evaluation  
**Date:** Wednesday, October 24, 2018 1:50:38 PM

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Hello Councilmembers,  
I would like to respond to two details noted in Mr. Muirhead's communication to the Council that I believe need clarification.

Mr. Muirhead infers the well located on Main Avenue may provide an additional direct benefit to the City Manager. This well site location was identified and drilled prior to Christina Turner becoming City Manager. The well location was identified based on water supply planning for the City's water system and provides no direct benefit to the City Manager.

The second clarification is in response to Mr. Muirhead's request for improvements to the City's IPM and annual report. Although we did respond and let him know the reporting was not required, in the same email City staff committed to updating our IPM and annual report to be more comprehensive and transparent in future years. That is still the intent of City staff. These are both planned for early 2019.

Thank you,  
Chris

**Chris Ghione**  
Public Services Director  
[Engage With Us!](#)

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Community Services, Engineering and Utilities  
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Communication: Closed Session Supplement 2 (ADJOURN TO CLOSED SESSION)

## EXHIBIT 12

Research article

Open Access

## Homicide and geographic access to gun dealers in the United States

Douglas J Wiebe<sup>\*1</sup>, Robert T Krafty<sup>2</sup>, Christopher S Koper<sup>3</sup>,  
Michael L Nance<sup>4</sup>, Michael R Elliott<sup>5</sup> and Charles C Branas<sup>1</sup>

Address: <sup>1</sup>Department of Biostatistics and Epidemiology, University of Pennsylvania School of Medicine, Philadelphia PA, USA, <sup>2</sup>Department of Statistics, University of Pittsburgh, Pittsburgh PA, USA, <sup>3</sup>Police Executive Research Forum, Washington DC, USA, <sup>4</sup>Department of Surgery, The Children's Hospital of Philadelphia, Philadelphia PA, USA and <sup>5</sup>Department of Biostatistics, University of Michigan, Ann Arbor MI, USA

Email: Douglas J Wiebe<sup>\*</sup> - [dwiebe@exchange.upenn.edu](mailto:dwiebe@exchange.upenn.edu); Robert T Krafty - [krafty@pitt.edu](mailto:krafty@pitt.edu); Christopher S Koper - [ckoper@policeforum.org](mailto:ckoper@policeforum.org); Michael L Nance - [NANCE@email.chop.edu](mailto:NANCE@email.chop.edu); Michael R Elliott - [mrelliot@umich.edu](mailto:mrelliot@umich.edu); Charles C Branas - [cbranas@upenn.edu](mailto:cbranas@upenn.edu)

<sup>\*</sup> Corresponding author

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### Abstract

**Background:** Firearms are the most commonly used weapon to commit homicide in the U.S. Virtually all firearms enter the public marketplace through a federal firearms licensee (FFL): a store or individual licensed by the federal government to sell firearms. Whether FFLs contribute to gun-related homicide in areas where they are located, in which case FFLs may be a homicide risk factor that can be modified, is not known.

**Methods:** Annual county-level data (1993–1999) on gun homicide rates and rates of FFLs per capita were analyzed using negative binomial regression controlling for socio-demographic characteristics. Models were run to evaluate whether the relation between rates of FFLs and rates of gun homicide varied over the study period and across counties according to their level of urbanism (defined by four groupings, as below). Also, rates of FFLs were compared against FS/S – which is the proportion of suicides committed by firearm and is thought to be a good proxy for firearm availability in a region – to help evaluate how well the FFL variable is serving as a way to proxy firearm availability in each of the county types of interest.

**Results:** In major cities, gun homicide rates were higher where FFLs were more prevalent (rate ratio [RR] = 1.70, 95% CI 1.03–2.81). This association increased ( $p < 0.01$ ) from 1993 (RR = 1.69) to 1999 (RR = 12.72), due likely to federal reforms that eliminated low-volume dealers, making FFL prevalence a more accurate exposure measure over time. No association was found in small towns. In other cities and in suburbs, gun homicide rates were significantly lower where FFLs were more prevalent, with associations that did not change over the years of the study period. FFL prevalence was correlated strongly (positively) with FS/S in major cities only, suggesting that the findings for how FFL prevalence relates to gun homicide may be valid for the findings pertaining to major cities but not to counties of other types.

**Conclusion:** Modification of FFLs through federal, state, and local regulation may be a feasible intervention to reduce gun homicide in major cities.

## Background

Homicide is a major cause of death in the U.S. and the second leading cause of death among 15–34 year-olds.[1] During each year of the past quarter century (1980–2005), more homicides were committed with firearms than with all other weapon types combined.[2] Firearms accounted for 331,270 homicides over this period.[2]

A correspondingly large firearm manufacturing and dealer distribution system exists in the U.S. and is thought to contribute to the incidence of firearm homicide. [3–5] The number of federally-licensed firearm dealers (FFLs), which include gun stores and individuals that are licensed by the federal government to ship, transport, and receive firearms in interstate commerce and engage in retail sales, may play a major role. There were 104,840 FFLs in the U.S. in 2001.[6] No publicly available data report the number of guns sold by FFLs. However, data on gun purchases and on guns seized and guns recovered by police indicate that firearms flow through FFLs into U.S. communities at a rate that sums into the millions each year. [7–9] A state-level study, using self-reports of household firearm ownership as a proxy for gun availability, found that the states where guns were most common experienced the highest rates of gun homicide.[10] Similarly, it is possible that a greater number of FFLs is associated with greater gun availability and ultimately, increased gun homicide rates.

Although the federal government is responsible for regulating which individuals or businesses are issued an FFL, the decision about where an FFL can operate is a local matter. Therefore, it is helpful to adopt an urban planning perspective when considering the possibility that FFLs could be impacting local homicide rates.[11,12] Like other businesses, FFLs are subject to regulations including zoning laws which dictate how land parcels can be used. In addition to zoning laws, state-level legislation, although currently in place in only a minority of states, can mandate additional licensing requirements and periodic inspection of gun dealer records.[13] Therefore, if FFLs do act as a spigot through which firearms flow into a community and thereby contribute to homicide, it is possible that regulating the locations and activities of stores where firearms are sold is a way to curb homicide. With this in mind, we considered whether licensed gun dealers function as a proxy for gun availability in counties in the U.S., and studied whether having a disproportionately high number of FFLs in a county was associated an elevated rate of homicide committed with guns. Other studies examining mortality as a function of gun availability have used FS/S – the proportion of suicides that were committed with firearms as opposed to other methods – as a way to measure by proxy the extent of gun availability in a geographic area. Whereas FS/S appears to serve well as

a proxy for gun availability, FS/S is not a risk factor that is modifiable.[10,14,15] FFLs are modifiable, in contrast, in terms of their locations and retail practices, and thus in this way this analysis is investigating a public health issue with direct policy relevance.

## Methods

### Data and Variables

Our dataset consisted of seven separate, year-specific entries for 3,112 counties (including the District of Columbia and county equivalents such as boroughs and independent cities), totaling 21,784 observations of county-level data for the U.S. from 1993 to 1999. The outcome measure was annual firearm homicide rates per 100,000 population in U.S. counties for the years 1993 through 1999. The rates were calculated with firearm homicide data from the National Center for Health Statistics' (NCHS) Multiple Cause of Death files (defined as International Classification of Diseases-Ninth Revision [ICD-9] codes E965.0–E965.4 for 1993–1998 and ICD-10 codes X93–X95 for 1999) and population data from U.S. Census data. Permission to include counties with fewer than 100,000 persons was obtained from the NCHS Division of Vital Statistics. We calculated this outcome measure separately by year for each U.S. county. Our primary predictor measure was the annual per capita prevalence of "type one" (firearm dealer) and "type two" (pawnbroker) FFLs (per 1,000 population) in counties for the years 1993 through 1999. The FFL data were obtained from Basic Information Systems, Inc. (Wheaton, Maryland), which provided data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on the annual number and type of FFLs in the U.S. by county for the study period. FFL data were not available for counties in Alaska and therefore Alaska was not included in the analysis. FFL data for years after 1999 were not available.

Covariates were used to control for several county-level factors thought to be potential confounders of the association between FFL rates and homicide rates being studied (e.g., [10]): percent of population 15–29 years old, percent male, percent African American, percent Native American, percent Hispanic, percent married, percent living alone, percent female headed households, average per capita income, percent of persons below the poverty level, percent of the civilian labor force unemployed, percent over age 25 who were college educated, hospital beds per capita, and percent of arrests that were drug-related. Each of these variables was obtained from the U.S. Census Bureau and the Area Resource File[16] with the exception of drug-related arrests, which was obtained from the Federal Bureau of Investigation's county-level Uniform Crime Reports (UCR),[17] and was incorporated given evidence that drug arrests may be feasible as an indicator of drug activity.[18,19] Because the UCR arrest data are derived

from police jurisdictions, which do not correspond exactly with county boundaries, a second variable that adjusted for the discrepancy by distance-based weighting between police jurisdiction centroids and county centroids was included in the model. Also, the covariates included a variable for urbanization defined according to a modification of the rural-urban continuum classification (mRUC) scheme [20-22] designed by the U.S. Department of Agriculture.[23] This variable initially included 11 categories that were collapsed to four categories for parsimony during preliminary analyses: major cities (mRUC 1: central counties of one million population or more); other cities (mRUC 2: central counties of metropolitan areas of one million population or more); suburbs (mRUC 3-5: fringe counties of metropolitan areas of one million population or more, ranging to counties in metropolitan areas of fewer than 250,000 population); and small towns (mRUC 6-11: urban counties with a population of 20,000 or more adjacent to a metropolitan area, ranging to completely rural counties of less than 2,500 urban population not adjacent to a metro area). Each variable was measured annually except for urbanization, persons below the poverty level, female-headed households, persons living alone, persons married, and persons college-educated. These variables were based on data available either decennially and/or for certain intercensal years. Intercensal years without data were linearly interpolated or forecast based on known values. Additionally, a linear trend for year was included to account for temporal variability.

Given that the availability of firearms in one county may depend on how many FFLs exist in surrounding counties, a variable was included to reflect the prevalence of FFLs in counties surrounding the index county, weighted by the inverse of the squared rectilinear distance between county population-weighted centroids. The leniency of state firearm laws in each county was controlled for as well. This was done by coding each county according to a classification scheme published annually since 1997. [24-29] The scheme uses an integer scale ranging from 0 to 100, with 0 representing maximum restrictiveness and 100 representing maximum leniency, to reflect state laws pertaining to the acquisition, ownership, and transportation of firearms and ammunition. Leniency scores were assigned separately to each county for each year. The leniency scores used for 1997 through 1999 were taken directly from published information. We linearly extrapolated leniency scores for the years 1993 through 1996 based on the values published for the period 1997 through 2002. Finally, a variable containing county-level annual nongun homicide rates (defined as ICD-9 codes E960-E964 and E965.5-E967.9 for 1993-1998 and ICD-10 codes X85-X92 and X96-Y08 for 1999) was derived for inclusion in the final statistical model. This was done to explore the

possibility that such an adjustment could help control for a latent homicidal tendency at the county level and isolate the contribution of FFLs to gun homicide.

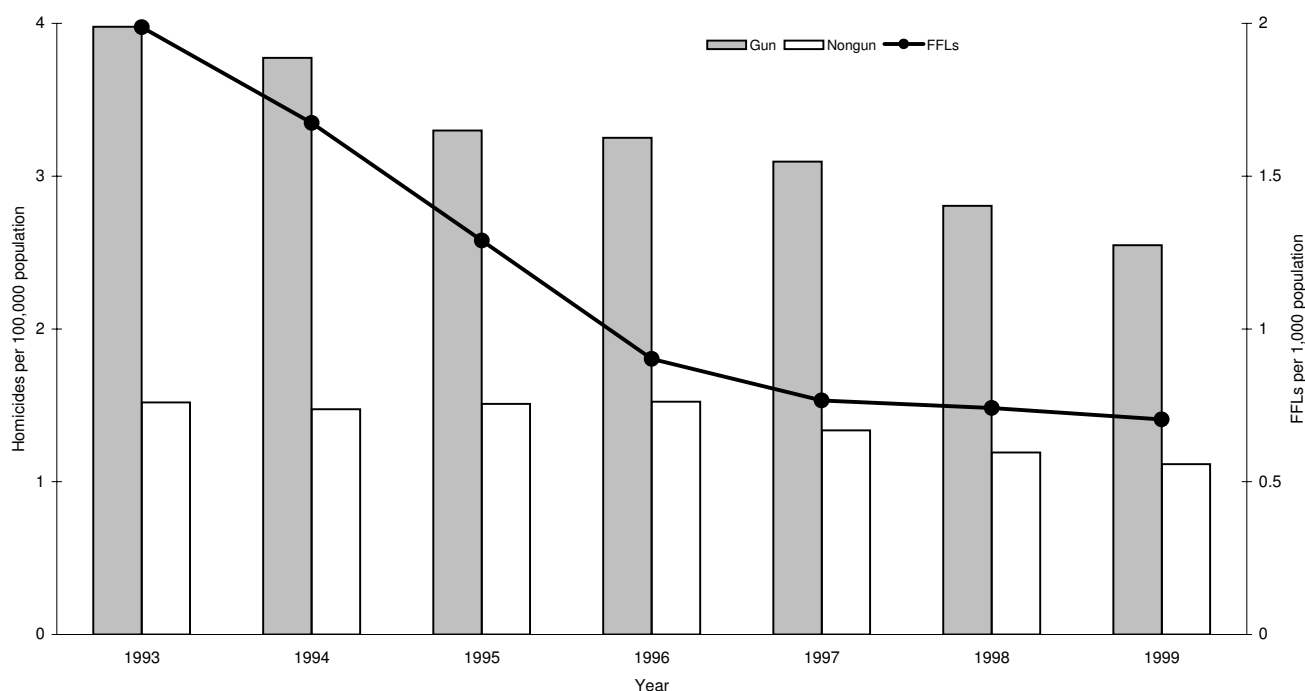
### Statistical Analysis

Plots were generated to assess annual prevalence rates of FFLs and rates of homicide in the U.S. Negative binomial generalized linear regression conducted at the county level was used to estimate the association between the prevalence of FFLs and rates of gun homicide in U.S. counties during the 1993-1999 study period. Model coefficients were converted into incidence rate ratios (RR), and the result of the final statistical model are presented. Correlation stemming from use of multiple data years was accounted for with generalized estimating equations under a working independence correlation matrix. Spearman correlation coefficients and variance inflation factors were used to identify multicollinearity and for diagnostic purposes. Also, variation by year and urbanization, for reasons discussed below, was then investigated by restricting analyses to individual data years and using interaction terms to permit the relation between the prevalence of FFLs and rates of gun homicide to vary across counties according to their size (i.e., on the rural-urban continuum). The variable used to represent a linear trend for year was excluded from the year-specific models. The adjusted RR estimates derived from these models are presented in a summary table.

To gain insight into how well the FFL prevalence variable may be serving as a way to proxy gun availability in counties of each grouping, the proportion of suicides committed with firearms (FS/S) – which is considered an accurate proxy for household gun availability and has been studied in state-level and region-level analyses [10,14,15] – was computed within each county by year and modeled in place of our FFL variable. Spearman correlation coefficients were also calculated to determine how well FS/S was correlated with the FFL prevalence rate within counties of each grouping.

### Results

In 1993, 17,984 gun homicides and 6,141 nongun homicides occurred in the U.S. At that time a total of 253,314 gun manufacturers, gun stores and individuals held active licenses to sell firearms (i.e., FFLs). The annual incidence rates of gun and nongun homicide and the annual prevalence rates of FFLs in the U.S. from 1993 to 1999 are shown in Figure 1. Rates of gun homicide dropped considerably over this period, ranging from 3.98 per 100,000 in 1993 to 2.55 per 100,000 in 1999. By contrast, rates of nongun homicide fluctuated little, ranging from a high in 1993 of 1.52 per 100,000 to a low in 1999 of 1.11 per 100,000. The prevalence of FFLs decreased even more dramatically than did gun homicide, ranging from 1.99 per



**Figure 1**  
Homicide incidence rate and federal firearms licensee (FFL) prevalence rate in the U.S., 1993–1999.

**Table 1: Characteristics of U.S. counties, 1993–1999**

	Mean	Standard deviation	Minimum	Maximum
Homicide rate (per 100,000)	4.63	7.87	0.00	187.27
Gun	3.25	6.53	0.00	187.27
Non-gun	1.38	3.54	0.00	97.75
Federal firearms licensees (FFL) (per 1,000)	1.15	1.10	0.001	30.93
% of population age 15–29 years	0.31	0.36	0.09	0.81
% male	49.32	1.95	43.86	82.20
% African American	9.20	15.00	0.00	86.76
% Native American	1.18	7.42	0.00	97.69
% Hispanic	5.21	11.81	0.00	99.41
% married	44.96	5.04	18.50	58.60
% living alone	24.67	3.83	7.91	77.51
% of female headed households	10.17	3.98	0.78	36.07
% of persons below poverty level	15.22	6.58	0.00	55.27
% of adult population college educated	24.23	7.06	8.41	64.36
% of arrests that were drug related	7.29	4.96	0.00	100.00
Average per capita income (%)	19347	4985	1185	75702
Unemployment rate	5.87	3.04	0.00	37.90
Hospital beds per 1,000 population	2.85	3.98	0.00	7.41
Urbanization (11-code mRUC)	8.00	2.74	1	11
Urbanization (collapsed mRUC)	3.67	0.61	1	4
Leniency of state gun laws	75.71	17.21	3	100

mRUC denotes modified rural-urban continuum codes. 11 codes were collapsed into 4 groups for analysis.  
Data exclude Alaska due to lack of FFL information.

1,000 in 1993 to 0.70 per 1,000 in 1999. The average amount by which gun homicide rates and FFL prevalence rates decreased over the seven-year period was approximately equal (23% and 22%, respectively).

Table 1 shows characteristics of U.S. counties. The rate of gun homicide ranged from 0.00 per 100,000 to 187.27 per 100,000 and the rate of nongun homicide ranged from 0.00 per 100,000 to 97.75 per 100,000, with average gun and nongun homicide rates of 3.25 per 100,000 and 1.38 per 100,000, respectively. The number of FFLs ranged from 0.001 per 1,000 to 30.93 per 1,000 with an average of 1.15 per 1,000. There were no counties without FFLs; each county had at least one FFL active during each study year.

Table 2 shows results of the overall statistical model, which adjusted for covariates using regression but did not permit for the possibility that the relation between the prevalence of FFLs and gun homicide rates could vary over the years of the study period and according to county type (i.e., urbanization). The variable for percent of female headed households was excluded during the model building process due to multicollinearity. The results based on this overall model suggested that the prevalence of FFLs in U.S. counties was not associated with the rate of gun homicide in the county (RR = 0.98, 95% confidence interval [CI] 0.93 to 1.04) (Table 2). However, inclusion of an

interaction term revealed that the relation between FFLs and gun homicide was found to vary significantly by urbanization ( $p < 0.01$ ). The subsequent modeling revealed that in major cities, a disproportionately high prevalence of FFLs was associated with significantly higher gun homicide rates (RR = 1.70, 95% CI 1.03 to 2.81) (Table 3). Additionally, the magnitude of this association increased significantly over the study period with an average increase of 90% per year ( $p < 0.001$ ) (Figure 2). By contrast, in other cities and in suburbs a disproportionately high prevalence of FFLs was associated with significantly lower gun homicide rates (RR = 0.73, 95% CI 0.57 to 0.93; RR = 0.87, 95% CI 0.77 to 0.97, respectively), and the magnitude of these associations did not change when tested for trend over the study period. The prevalence of FFLs was not associated with gun homicide rates in small towns. Inclusion of the covariate representing county-level rates of nongun homicide did not substantively change the results. Also, the results did not change substantively when the variable that was used to adjust for the impact of the prevalence of FFLs in surrounding counties was excluded from the models.

The results of the models run with FS/S used in place of the FFL prevalence variable (not presented) were generally consistent with our findings, although the link between gun availability and gun homicide appeared to be even stronger (positive) and more widespread than seen in the

**Table 2: Gun homicide rates as a function of the number of federal firearms licensees in U.S. counties**

	Incident rate ratio	SE	P-value	95% CI
FFLs	0.98	0.027	0.482	0.93, 1.04
FFLs in surrounding counties	1.03	0.009	0.001	1.01, 1.05
Year	0.96	0.009	0.000	0.95, 0.98
% poverty	1.05	0.004	0.000	1.05, 1.06
% married	1.04	0.005	0.000	1.03, 1.05
% college educated	1.00	0.003	0.699	0.99, 1.01
% African American	1.03	0.001	0.000	1.03, 1.03
% Native American	1.01	0.003	0.006	1.00, 1.01
% Hispanic	1.01	0.002	0.000	1.00, 1.01
% 15–24 years old	0.95	0.432	0.913	0.39, 2.32
% male	1.02	0.009	0.075	1.00, 1.03
% living alone	1.02	0.006	0.000	1.01, 1.04
% of arrests that were drug related	1.02	0.003	0.000	1.01, 1.02
Drug arrest jurisdiction adjustment	0.92	0.037	0.030	0.85, 0.99
Hospital beds	1.00	0.000	0.000	1.00, 1.00
Average per capita income	1.00	0.000	0.096	1.00, 1.00
Unemployment rate	1.01	0.006	0.331	0.99, 1.02
Leniency of state gun laws	1.01	0.001	0.000	1.01, 1.01
Major cities	1.97	0.226	0.000	1.57, 2.46
Other cities	1.39	0.117	0.000	1.17, 1.63
Suburbs	1.27	0.045	0.000	1.19, 1.37
Small towns (reference)	--			

Results of generalized linear negative binomial regression.

SE denotes standard error.

CI denotes confidence interval.

**Table 3: Gun homicide rates (per 100,000 population) as a function of the prevalence of federal firearms licensees (FFLs) (per 1,000 population) in U.S. counties, by county type and year, 1993–1999**

	Incident rate ratio (95% CI)		Incident rate ratio (95% CI)		
	All counties	Major cities	Other cities	Suburbs	Small towns
1993–1999	0.98 (0.93, 1.04)	1.70 (1.03, 2.81)	0.73 (0.57, 0.93)	0.87 (0.77, 0.97)	1.00 (0.95, 1.05)
1993	1.09 (1.02, 1.16)	1.69 (0.98, 2.90)	0.86 (0.67, 1.11)	0.99 (0.84, 1.18)	1.11 (1.04, 1.18)
1993	1.03 (0.91, 1.15)	1.65 (0.72, 3.77)	0.62 (0.42, 0.92)	0.78 (0.63, 0.96)	1.07 (0.96, 1.19)
1995	0.84 (0.73, 0.94)	2.16 (0.65, 7.20)	0.30 (0.17, 0.53)	0.65 (0.52, 0.82)	0.87 (0.77, 0.98)
1996	0.95 (0.80, 1.13)	2.58 (0.33, 19.99)	0.64 (0.08, 5.10)	0.71 (0.47, 1.08)	0.99 (0.83, 1.17)
1997	0.96 (0.80, 1.15)	3.12 (0.22, 44.78)	0.28 (0.08, 0.96)	0.48 (0.30, 0.76)	1.03 (0.87, 1.13)
1998	0.92 (0.73, 1.15)	11.24 (0.46, 277.38)	0.29 (0.10, 0.87)	0.48 (0.31, 0.72)	0.98 (0.79, 1.22)
1999	0.85 (0.67, 1.07)	12.72 (0.64, 253.19)	0.51 (0.13, 2.00)	0.62 (0.38, 1.01)	0.89 (0.70, 1.12)

Results of generalized linear negative binomial regression models adjusted for covariates.  
CI indicates confidence interval.

analysis presented here. Importantly though, FS/S was strongly (positively) correlated with FFL prevalence in major cities (Spearman correlation coefficient = 0.67) but was weakly correlated and not correlated with FS/S in other cities (0.32), suburbs (0.16), or small towns (0.07), respectively. From this evidence it appears that FFL prevalence is a good proxy for firearm availability in major cities only, suggesting that the findings for how FFL prevalence relates to gun homicide may be valid for the findings pertaining to major cities but not to counties of other types.

## Discussion

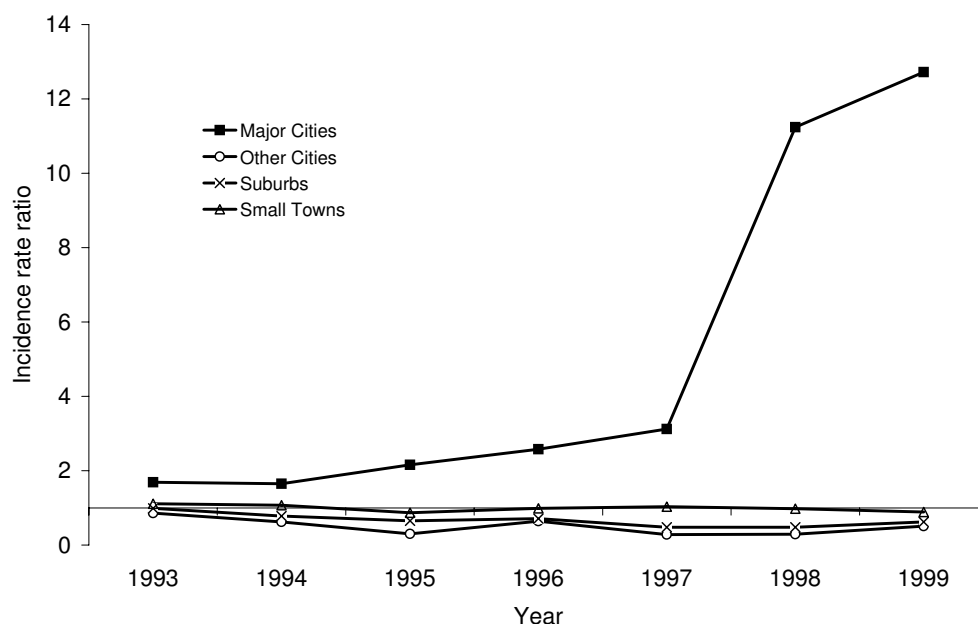
Our analyses provide evidence of an association between the per capita rate of licensed firearm dealers in a county and its rate of firearm homicide. In particular, we found that having a disproportionately high number FFLs was associated with significantly higher rates of firearm homicide in major cities. As such, FFLs may represent a risk factor for gun homicide that is modifiable. To the best of our knowledge, the association between licensed gun dealers and homicide rates has not previously been estimated. We also found more FFLs to be associated with significantly lower firearm homicide rates in other cities and in suburbs. Possible explanations for both findings are discussed below.

Our evaluation strategy followed the assumption that the number of FFLs in a county gives some indication of the prevalence of firearms (i.e., a proxy of gun availability). Although no available data report the number of guns

sold per dealer, the basic finding that major cities having the most FFLs per capita also have the highest rates of gun homicide is consistent with what is known about how FFLs and communities relate in terms of gun availability. Data from gun traces (a determination of the chain of ownership, usually conducted in connection with a criminal investigation) conducted by the ATF may provide the best insight. Between July 1996 and December 1998, the ATF conducted 1,530 trace investigations to determine whether guns used during crimes were trafficked from an FFL into the illegal gun market and to determine the point of first purchase.[8] FFLs accounted for less than 10 percent of the 1,530 trace investigations but for nearly half (40,000) of all firearms involved in these traces. The average number of firearms trafficked by the FFLs under investigation was 350, which far exceeds the average number of firearms trafficked by other means including gun shows (130 guns), unlicensed gun dealers (75 guns), and straw purchasers (37 guns). The large volume of firearms that can be obtained by FFLs is possibly what underlies this discrepancy and why FFLs may figure prominently as a risk factor. In addition, a study where researchers telephoned FFLs and posed as customers provides additional evidence of how FFLs can facilitate the flow of guns to criminals. Gun dealers were generally willing to sell a handgun even when the buyer indicated an intention to purchase the gun illegally on behalf of someone else.[30]

Other ATF data provide additional support for the possibility that gun homicide is a function of local FFLs. Guns are often found to have been used for criminal purposes





**Figure 2**  
**Annual gun homicide rates as a function of the prevalence of federal firearms licensees (FFLs) in U.S. counties, by county type, 1993–1999.**

not far from the gun dealer where they were first obtained. Approximately 62 percent of crime guns traced by the ATF were first purchased from FFLs in the state where they were recovered by police, one-quarter (25.9%) of crime guns were recovered in the county where they were purchased, and 10.5 percent were recovered in a county adjacent to the county of purchase, almost all of which were in the same state (9.5%).[6] Moreover, almost one-third (32.2%) of traced crime guns are recovered by police within 10 miles of the FFL where they were first purchased, and over one-third (34.3%) are recovered between 11 and 250 miles of the FFL where they were first purchased.[6,8] Thus, an FFL appears most likely to have an effect in the home or surrounding counties.

A recent study showing that gun dealers in or near major cities are at substantially elevated risk of selling guns used in crime may help to explain the strong positive association found here between FFL prevalence and gun homicide in major cities specifically.[31] Also, we found that the association between FFLs and gun homicides in major cities grew stronger from 1993 to 1999. This finding is consistent with what resulted when in the 1990s the federal government took steps to regulate FFLs more closely. Before this time, the process to obtain a license to sell firearms was appreciably simpler.[4] The Gun Control Act of 1968 required the ATF to issue a license to any applicant who was at least 21 years old, had premises from which they intended to conduct business, and who otherwise

was not prohibited by law from purchasing a firearm.[4] At the time, the fee to obtain or annually renew an FFL was \$10. The ATF received an average of 33,000 applications for FFLs each year over the decade that followed. Fully 169,052 FFLs were active by 1978. That number increased steadily thereafter and by 1992 reached a national peak of 284,117 FFLs. Not all FFLs were legitimate businesses, however. Any FFL enabled the holder to purchase large numbers of firearms, often at wholesale prices, and to buy from sellers in other states.[6] Many of these dealers made few if any registered sales, suggesting they were not truly engaged in the business of firearms dealing as required by federal law, and a substantial proportion of the extant FFLs were not in compliance with applicable federal, state, and local laws.[4]

With the system becoming increasingly difficult for the ATF to monitor, Congress acted and in 1993 and 1994 increased the FFL application fee 20-fold to \$200 and imposed new laws intended to shut down inactive or corrupt FFLs.[4] In the years that followed, the number of FFLs nationally dropped from about 260,000 in 1993 to 80,000 in 1999. Our effect estimates suggest that the association between FFL prevalence and homicide may have been weaker in the early 1990s than in later years because there existed a large number of low volume dealers who contributed less to the supply of firearms.[4] Hence, with FFLs over time becoming a better measure of the exposure under study, the actual magnitude of the association

between FFLs and gun homicide may be more accurately portrayed in the last few years of our study.

In contrast to what was observed for major cities, we found a negative association between gun homicide and FFL prevalence in other cities and suburbs. When considered in conjunction with the finding that FFL prevalence and FS/S are correlated strongly in major cities but correlated weakly in other cities and suburbs, this suggests that FFL prevalence is not a good proxy for gun availability in other cities and suburbs and hence the models based on those areas should not be interpreted as providing valid estimates of the relation between gun availability and gun homicide. We can consider these findings in light of our understanding of how the relation between FFLs and gun homicide may vary across counties of different urbanization types. In major city areas with higher crime rates, there will be greater criminal demand for guns and, hence, a larger illegal market for guns. It thus seems more likely that a weapon sold in a major city, as compared to one sold in another county type, will end up in the hands of a criminal user through theft, straw purchase, gun trafficking, or some other kind of transaction in the secondhand market. Also, it is possible that handguns rather than long guns account for a higher share of guns sold in major cities. Further, it would also stand to reason that an "average" gun possessor has a greater chance of using a gun criminally in an area with higher rates of gun violence. Also, gun culture and the roles of guns in peoples' lives vary dramatically across urban-rural continuum. Firearm ownership is more widespread in rural areas than urban areas, so the need to purchase a firearm from an FFL may be less necessary in rural than urban areas. The role of firearms certainly varies by county type in terms of firearm mortality, in that rates of firearm-related mortality in the U.S. are equally high in both the most urban and the most rural counties, with the nuance being that it is the gun homicide rate that is high in the most urban counties and it is the gun suicide rate that is high in the most rural counties.[20] Each of these points highlights the importance of stratifying analyses by county type and identifying variables that measure firearm availability accurately in the county type at the focus of a particular study, an important point that has been made previously.[32] The FS/S comparisons suggest that the FFL variable used here provides an adequate proxy in major city counties alone.

If the FFL variable is not a good proxy for gun availability in counties we have defined as other cities and suburbs, our analyses cannot inform the issue of how gun availability relates to gun homicide in counties of these types. It may be the case that the impact of guns on a community may vary by community type and may be protective in other cities and suburbs. In one study of 170 U.S. cities with a population of at least 100,000, however, rates of

homicide and of gun-related assault were found to be positively associated with the prevalence of firearms.[33] Even so, it is possible that the mixing in that study of what we have termed major cities, other cities and suburbs may have prevented the authors from detecting modification of this effect across area type. Another study of counties in Illinois initially found that the rate of firearm ownership was negatively associated with all measures of violent crime, including homicide, but had failed to control for urbanization.[34] Subsequent multivariate analyses with control for urbanization found no significant association between the rate of firearm ownership and homicide. A number of ecologic studies conducted at the state level [10,14] and individual-level studies [35-37] alike have found firearm availability to be a risk factor for homicide rather than a protective factor, yet other studies have not found clear effects of the relation between gun availability and homicide, e.g.,[34,38] and a recent National Academy of Sciences report concluded that the body of research on this topic is inconclusive.[39] Our findings highlight the need to account for urbanization in the studies that will follow.

Our analysis had several strengths. First, it was conducted at the county level to account for within-state variability in homicide rates and FFL prevalence. This also allowed us to control for the possibilities that the homicide rate in a county was influenced by FFLs in surrounding counties and by the leniency or permissiveness of neighboring state firearm laws. Second, our analysis examined the link between FFLs and homicide over county urbanization type. Third, the study years coincided with a period when changes to federal firearm licensing regulations produced a change in the composition of the pool of FFLs nationally. As FFLs became fewer the pool became more homogeneous, and hence may have provided an exposure variable that became a better measure of gun availability over time. The finding that the association between FFLs and gun homicide in major cities grew stronger over time adds support to our interpretation of the results, as does the finding based on our comparison with FS/S that FFL prevalence appears to be a good proxy for gun availability in counties defined as major cities but not in other county types.

Also, two aspects of the present study are unique and have implications for how firearm homicide is studied and how the incidence of firearm homicide may be reduced. First, because the link between gun homicide and gun availability (as measured by the prevalence of FFLs) was found to vary significantly within states according to the urbanization levels of counties, it appears that studies conducted using broader geographic units of analysis (states, census divisions, etc.) may fail to detect important nuances in the nature of gun availability.

Second, to the best of our knowledge, our study, in focusing on gun dealers as a potential risk factor for homicide, is the first to assess a tangible measure of gun availability that can be modified as part of prevention activities. Law enforcement, city planners, and legal strategists in cities with high gun homicide rates can concretely focus in on excessive or problem gun dealers as opposed to the more nebulous issue of "gun availability." Moreover, local efforts to close down illegal gun commerce have already shown the potential to be effective.[33,40,41] As one example, zoning laws, which control the location and operation of stores and individual dealers licensed to sell firearms, have been used to regulate locations of FFLs in several U.S. communities.[11,12,42] An attempt to launch a coordinated effort to identify and act on problematic gun dealers will surely face challenges, however. For one, a key component of such efforts will be the policing activities of the ATF which, in having inspected fewer than 10% of FFLs in each year since 1979 and fewer than 5% of FFLs in most of those years, may have resources insufficient for the task.[6]

Our analysis also had limitations. As discussed, we could not account for the actual volume of firearms introduced by each FFL into the community. Although gun sales data are not currently available for a more focused test, the recent National Academy of Sciences report called for better information on FFLs to be collected and made available for research.[39] Additionally, we did not explicitly accommodate spatial autocorrelation in the estimation of the FFL effect estimates. Refitting the models presented in Table 2 and Table 3 including a simultaneous autoregressive (SAR) structure,[43] assuming that correlation declined in proportion to the square of the distance between counties, generally changed coefficients by less than 5%. Also, data for FFLs for years after 1999 were not available. Thus we could not analyze a more recent period. Nevertheless, we do not anticipate that the relation observed here between FFLs and homicide would have changed since the study period and thus this characteristic of the data should not be interpreted as devaluing the findings. Finally, it may be that high rates of homicide may lead to increased demand for firearms and hence additional FFLs, in which case the results of the "FFL as risk factor" hypothesis that our models have been designed to test would be spurious. A stronger analytic approach would be to test whether within-county increases in FFL prevalence were followed by increases in the rate of gun homicide. We considered that approach, but found many instances in which a county experienced no gun homicides in certain years but some homicides in the subsequent year, which prevents an annual change in homicide rate from being calculated. Also, as discussed above, we found evidence that FFL prevalence became a better proxy for firearm availability over time, which led

to our preference for the 1999 models and our judgment to refrain from including change models in the current manuscript. An instrumental variable approach could be pursued as well, to attempt to remove from the models the influence of circularity that may exist. We hope this manuscript will inform how such design alternatives may be approached, and acknowledge their need given the cross-sectional nature of the present study.

## Conclusion

If locations of retailers licensed to sell firearms are indeed functioning as a spigot through which deadly firearms flow into criminal hands, then communities with greater geographic access to these dealers should ostensibly experience more firearm homicides. Our findings are consistent with the hypothesis that this is occurring in major U.S. cities. The modification of FFLs, as tangible entities that are tracked and overseen at the national level and, in some cases, at the state and local levels, may be a feasible intervention to reduce firearm homicide.

## Competing interests

The authors declare that they have no competing interests.

## Authors' contributions

CB, MN and ME conceived of the study and supervised all aspects of its implementation. ME and RK computed variables involved in the spatial component of the analysis and DW and ME conducted the statistical analysis. DW and CB drafted the manuscript. All authors helped to conceptualize ideas, interpret findings, and revise drafts of the manuscript.

## Acknowledgements

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## EXHIBIT 13

# State Preemption: A Significant and Quiet Threat to Public Health in the United States

Jennifer L. Pomeranz, JD, MPH, and Mark Pertschuk, JD

State and local governments traditionally protect the health and safety of their populations more strenuously than does the federal government. Preemption, when a higher level of government restricts or withdraws the authority of a lower level of government to act on a particular issue, was historically used as a point of negotiation in the legislative process.

More recently, however, 3 new preemption-related issues have emerged that have direct implications for public health. First, multiple industries are working on a 50-state strategy to enact state laws preempting local regulation. Second, legislators supporting preemptive state legislation often do not support adopting meaningful state health protections and enact preemptive legislation to weaken protections or halt progress. Third, states have begun adopting enhanced punishments for localities and individual local officials for acting outside the confines of preemption.

These actions have direct implications for health and cover such topics as increased minimum wages, paid family and sick leave, firearm safety, and nutrition policies. Stakeholders across public health fields and disciplines should join together in advocacy, action, research, and education to support and maintain local public health infrastructures and protections. (*Am J Public Health*. 2017;107:900–902. doi:10.2105/AJPH.2017.303756)

Over the past several years, there has been a dramatic increase in the number and variety of preemptive bills and amendments proposed in states across the country. Preemption occurs when a higher level of government restricts or withdraws the authority of a lower level of government to act on a particular issue. Preemption is of particular concern in the area of public health, wherein state and local governments have historically protected the health and safety of their populations more vigorously than has the federal government.<sup>1</sup> Furthermore, local successes often spur state and national action, as was the case with local smoke-free and menu-labeling laws.

The federal government's authority to preempt state and local law derives from the Supremacy Clause of the US Constitution. In certain cases, the federal government enacts minimum standards and allows states and localities to build upon these protections, such as the nutrition guidelines

under the National School Lunch Program. This aligns with the National Academy of Medicine recommendation that federal and state legislators “avoid framing preemptive legislation in a way that hinders public health action.”<sup>2</sup> States, however, more routinely enact preemptive laws without such protections. State authority to preempt local law is rooted in each state's constitution and statutes, which establish the local governments themselves and delineate the boundaries of local control. The majority of states retain the center of control at the state legislature.

Historically, preemption was used as a point of negotiation in the legislative

process. Supporters of business interests would agree to health and safety protections in exchange for preemption because it is easier to negotiate and comply with 1 federal or state standard rather than contending and complying with local standards across thousands of jurisdictions. In the 1980s and 1990s, the tobacco, firearm, and alcohol industries shifted their focus from using preemption as a negotiating tool to making it their priority with respect to the establishment of state policies.<sup>3</sup> As a result, for example, 43 states have varying degrees of comprehensive preemption of local firearm safety laws.<sup>4</sup>

More recently, however, 3 new preemption-related issues have emerged that have direct implications for health. First, multiple industries are working in concert on a 50-state strategy to preempt local regulation.<sup>5</sup> Second, legislators supporting preemptive legislation often do not support the adoption of meaningful state health protections and enact preemptive legislation to weaken protections or halt progress. Third, states have begun adopting enhanced punishments for localities and individual local officials for acting outside the confines of preemption.

Here we provide 3 brief examples of preemptive legislation recently enacted by state governments, discuss potential health ramifications in these contexts, and explain a radical new method to punish municipalities for exercising their traditional authority to protect public health and safety. We conclude by highlighting the need for concerted action to counteract this trend.

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## RECENT PREEMPTIVE LEGISLATION

States have begun to preempt local action as the sole purpose of the law on a wide array of topics with direct ramifications for public health, such as increased minimum wages, paid family leave, firearm safety, fracking, and fire sprinklers.<sup>5</sup>

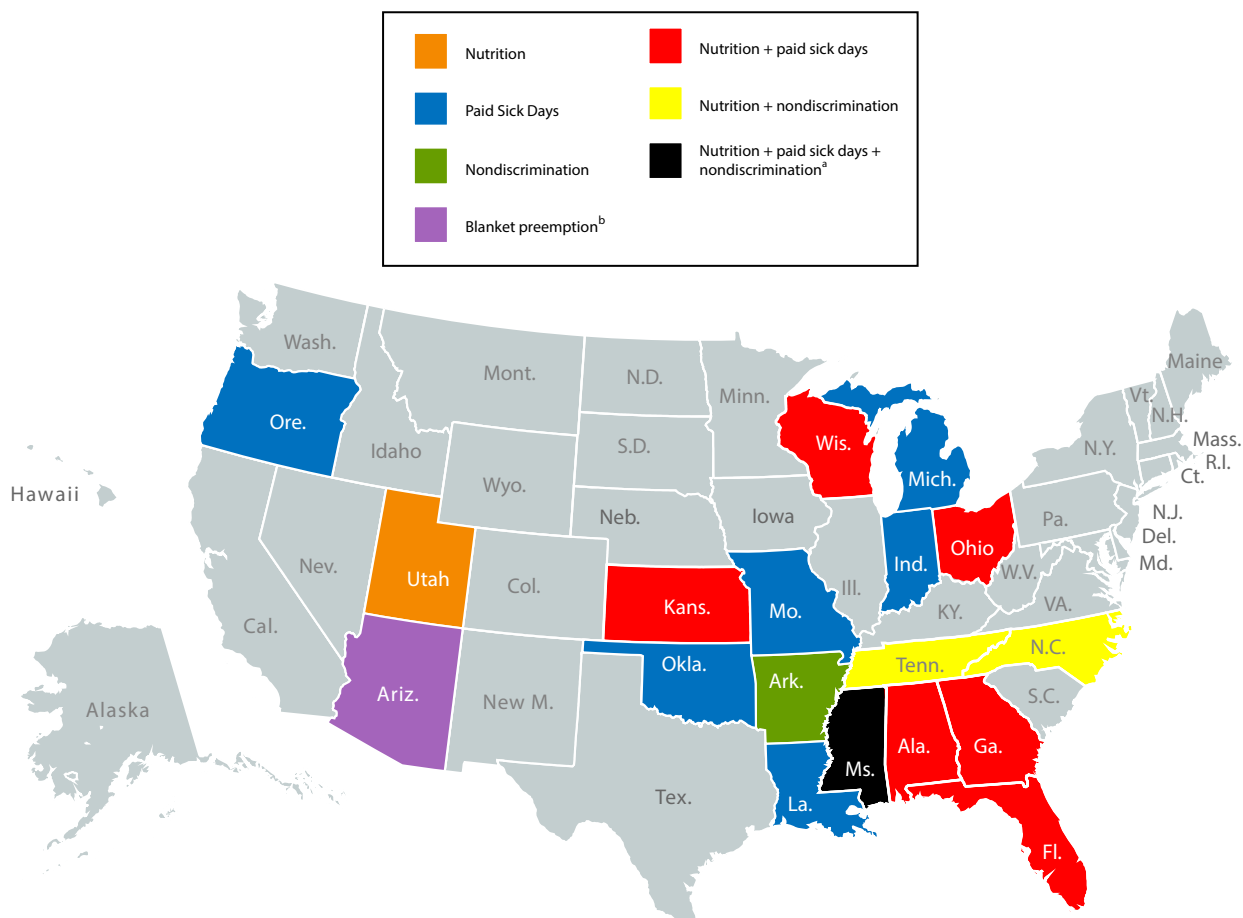
As of February 2017, 16 states preempt the ability of local jurisdictions to mandate earned sick days or other employee benefits (Figure 1). Michigan, for example, does not require employers to provide paid sick days to employees. In 2015, the state broadly prohibited local governments from adopting or enforcing any paid or unpaid family or sick leave policy.<sup>6</sup> Paid sick day policies, specifically,

allow workers to obtain medical care for themselves or their family through primary care settings, reduce the use of emergency rooms, and help prevent the spread of contagious illnesses.<sup>7</sup> Those without paid sick days often forgo medical care for themselves and their family, with the highest risk found among the lowest-income workers.<sup>7</sup>

Nine states preempt municipalities' ability to regulate food establishments and operations, and these preemptive statutes have become increasingly broad. In a 2016 statute, Kansas preempted local regulation of—and expressly stated that the state would not regulate—food nutrition information, consumer incentive items, food-based health disparities, the growing and raising of

livestock or crops, and the sale of foods or beverages.<sup>8</sup> Local governments have led the country in innovative food policies such as requiring sodium warning labels on menus, restricting the sale of energy drinks to minors, and conditioning grocery store licenses on provision of fruits and vegetables. Municipalities in states such as Kansas are now unable to enact similar policies or address a primary cause of chronic disease—poor diets—as it relates to known disparities based on race, ethnicity, education, and income.<sup>9</sup>

The third example stems from the lack of equal protection afforded to LGBTQ (lesbian, gay, bisexual, transgender, queer) people under federal law. The Civil Rights Act of 1964 (78 Stat 241) prohibits



<sup>a</sup>Mississippi adopted legislation in 2016 that grants special rights to citizens who hold 1 of 3 sincerely held religious beliefs or moral convictions reflecting disapproval of lesbian, gay, transgender, and unmarried persons. A Mississippi district court found the law to be unconstitutional and the case is on appeal to the 5th Circuit. If this law is upheld, inconsistent local ordinances protecting lesbian, gay, bisexual, transgender, and questioning persons from discrimination would be preempted.

<sup>b</sup>Arizona has a form of "blanket" preemption. By notifying the state attorney general, a single legislator can freeze the transfer of state revenue-sharing funds to localities that adopt laws that "violate state law or the state constitution." Arizona has also adopted individual laws preempting local paid sick days and nutrition ordinances.

FIGURE 1—State Preemption of Local Paid Sick Days and Nutrition and Nondiscrimination Laws: United States, February 2017



discrimination on the basis of race, color, religion, gender, or national origin. State and local governments are free to enact their own stronger civil rights laws.

When communities in Arkansas began considering a law extending protections to members of sexual minority groups, the state preempted local governments from adopting or enforcing any policy creating a protected classification or prohibiting discrimination beyond state protections (which are lacking for LGBTQ individuals). The legislature characterized its preemption provision as an “emergency,” stating that uniformity was “immediately necessary” to preserve the “public peace, health, and safety.”<sup>10</sup> However, the opposite is true. LGBTQ people are now the leading targets of hate crimes, and, in states that lack legal protection, LGBTQ individuals are at significantly increased risk of stress, mental health disturbances, risk-taking behavior, and substance use.<sup>11</sup>

In addition to enacting widespread preemption, one state adopted, and several have proposed, a radical strategy to quell local attempts at policymaking by punishing conflicts with state law. A 2016 Arizona law provides that any member of the state legislature may request the state attorney general to investigate local policies that might conflict with state law.<sup>12</sup> Upon notice to the attorney general, the state will withhold funds owed to that municipality. Should the attorney general find a conflict, the municipality will permanently lose those funds, which will be redistributed.

Tucson, Arizona, is the subject of the first such action for destroying handguns seized in criminal investigations, a threat that comes with the potential permanent loss of \$170 million a year in state aid for essential services such as fire, police, and public health services. Even if the attorney general or a court eventually finds that there is no conflict, the short-term revenue loss and fear of permanent loss have an enormous chilling effect on policymaking—de facto preemption—with severe consequences for communities. The withholding of state funds for public agencies and basic health and safety services poses an additional threat to public health.

## CONCLUSIONS

Many state legislatures have enacted or are considering legislation with the potential to reverse years of public health progress and halt local leadership and innovation for years to come. Municipalities around the country are increasingly unable to address acute public health issues that will have lasting consequences for the health of communities. With the new federal administration, concerns now exist that state legislation will be preempted by federal law, leaving a potential gap in public health regulation on a national level. Stakeholders across public health fields and disciplines should join together in advocacy, action, research, and education to support and maintain local public health infrastructures and protections. *AJPH*

## CONTRIBUTORS

Both of the authors conceptualized the article and contributed to its writing, reviewing, and editing.

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## HUMAN PARTICIPANT PROTECTION

No protocol approval was needed for this study because no human participants were involved.

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County of Santa Clara,  
on 5/11/2020 9:51 AM  
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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' NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT**

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

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

Action filed: April 15, 2019

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 2, 2020 at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard, in Department 19 of the Superior Court of California, County of Santa Clara  
4 located at 191 North First Street, San Jose, CA 95113, Plaintiffs G. Mitchell Kirk and California  
5 Rifle & Pistol Association, Incorporated will, and hereby do, move for summary judgment under  
6 California Code of Civil Procedure 437c.

7 Plaintiffs make this motion because the undisputed material facts, paired with the precedent  
8 case law on the preemption doctrine, conclusively demonstrate that Morgan Hill Municipal Code  
9 section 9.04.030, which requires gun owners to report the theft or loss of any firearm to the  
10 Morgan Hill Police Department within 48 hours if the gun owner resides in the City or if the theft  
11 or loss occurred with the City, is preempted by Penal Code section 25250, a statewide law adopted  
12 by the voters requiring theft- or loss-reporting to the local law enforcement agency where the theft  
13 or loss occurred within *five days*.

14 This motion is based on this notice and motion, as well as the memorandum of points and  
15 authorities in support, the separate statement of undisputed facts, the request for judicial notice, the  
16 declarations of Anna M. Barvir, G. Mitchell Kirk, and Michael Barranco, and all exhibits, filed  
17 simultaneously herewith. This motion is also based on all other matters of which the Court may  
18 take notice, the oral argument of counsel, pleadings already on file with the Court, and all other  
19 evidence that may be presented at the hearing on this matter.

20  
21 Dated: May 1, 2020

**MICHEL & ASSOCIATES, P.C.**

22  
23 s/ Anna M. Barvir  
24 Anna M. Barvir  
25 Attorneys for Plaintiffs  
26  
27  
28

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

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

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

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

on the interested parties in this action by placing

☐ the original  
☒ a true and correct copy

thereof by the following means, addressed as follows:

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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 May 1, 2020, at Long Beach, California.

s/ Laura Palmerin

Laura Palmerin

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA  
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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

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

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

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

Action filed: April 15, 2019

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

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

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

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

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

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

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

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

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

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

## 22 **II. THE PARTIES**

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

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

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

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

### 21 **III. PROCEDURAL POSTURE**

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

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

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

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

## **ARGUMENT**

### **I. LEGAL STANDARD FOR SUMMARY JUDGMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

Not only does state law establish a basic reporting requirement for stolen and lost firearms (Pls.’ SUMF Nos. 11-12; Pen. Code, § 25250, subd. (a)), it provides a statewide scheme aimed at addressing both state and local concerns and regulating all manner of conduct related to reporting firearm theft and loss (Pls.’ SUMF Nos. 10-18); Pen. Code, §§ 25250, subds. (b)-(c), 25255, 25260, 25265, 25270, 27275). 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 26250, subdivision (a), Proposition 63 also created about a dozen other sections and subsections related to firearm theft-reporting. (Pls.’ SUMF Nos. 12-18.) Penal Code section 25270, for instance, details what facts must be part of a section 25250

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

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

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

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

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

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

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

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

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

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

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

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

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

1 contradictory state law, preemption is clear.

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

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

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22  
23 <sup>6</sup> For more proof of just how arbitrary the theft-reporting periods are, one need only look to  
24 the varied laws in effect throughout the nation. States that have adopted reporting requirements  
25 demand compliance anywhere from "immediately" to seven days. Only *one* state, Virginia, has  
26 seen fit to adopt a 48-hour reporting requirement, suggesting there is no consensus that 48 hours is  
27 some "magic number" particularly related to serving the purposes the City cites for its ordinance.  
28 (Mass. Gen. Laws, ch. 140, § 129C (requiring gun owners to report theft or loss "forthwith"); Ohio  
Rev. Code Ann., § 2923.20, subd. (A)(5) (same); D.C. Code Ann., § 7-2502.08, subds. (a), (e)  
("immediately"); Haw. Rev. Stat. Ann., § 134-29 (24 hours); N.Y. Pen. Law, § 400.10 (24 hours),  
R.I. Gen. Laws, § 11-47-48.1 (24 hours); N.J. Stat. Ann., § 2C:58-19 (36 hours); Va. Code Ann., §  
18.2-287.5 (48 hours); Conn. Gen. Stat., § 53-202g. (72 hours); 720 Ill. Comp. Stat. 5/24-4.1 (72  
hours); Md. Code Ann., Pub. Safety, § 5-146 (72 hours); Mich. Comp. Laws, § 28.430 (5 days);  
Del. Code, tit. 11, § 1461 (7 days).)

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

**b. The City’s Purported Interests**

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

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

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



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

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

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

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

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

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

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

## 25 CONCLUSION

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

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

4  
5 Dated: May 1, 2020

**MICHEL & ASSOCIATES, P.C.**

6  
7 *s/ Anna M. Barvir*

Anna M. Barvir

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

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

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

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

on the interested parties in this action by placing

☐ the original  
☒ a true and correct copy

thereof by the following means, addressed as follows:

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

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

s/ Laura Palmerin

Laura Palmerin

## 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 V OF XI**, as follows:

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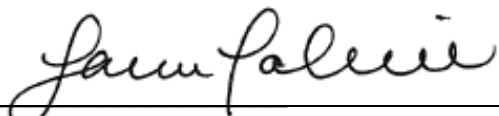
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*Attorneys for Defendants and Respondents City of Morgan Hill, et al.*

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