

FILED  
JUL 30 2020

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

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

Order Issued  
on Submitted Matter

G. MITCHELL KIRK, et al.,

Plaintiffs,

vs.

CITY OF MORGAN HILL, et al.,

Defendants,

Case No. 19-CV-346360

ORDER RE: MOTIONS FOR  
SUMMARY JUDGMENT

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

## **Factual and Procedural Background**

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

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

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

Duty to report theft or loss of firearms. Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Morgan Hill; or (2) the theft or loss of the firearm occurs in the city of Morgan Hill.

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

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

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

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

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

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

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

## 20 Discussion

### 21 I. Plaintiffs’ Motion for Summary Judgment

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

#### 25 A. Plaintiffs’ Request for Judicial Notice

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

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

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

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

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

#### 18 **B. Legal Standard**

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

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

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

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

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

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

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

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

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

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

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



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

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

10 **D. Analysis**

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

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

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

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

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

22           Penal Code section 25250 states:

23                   (a) Commencing July 1, 2017, every person shall report the loss or theft of  
24                   a firearm he or she owns or possesses to a local law enforcement agency in  
25                   the jurisdiction in which the theft or loss occurred within five days of the  
26                   time he or she knew or reasonably should have known that the firearm had  
27                   been stolen or lost.  
28

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

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

8 Municipal Code section 9.04.030 provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1 (Ds. RJN, Ex. A.)

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

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

6 [¶]

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

9 [¶]

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

11 (Ds. RJN, Ex. A.)

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

17 (Ds. RJN, Ex. B.)

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

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

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

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

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

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

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

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

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

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

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

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

#### 26 **E. Conclusion**

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

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

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

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

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

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

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

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

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

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

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

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

6           **C.     Plaintiffs' Evidentiary Objections**

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

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

15           **D.     Legal Standard**

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

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



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

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

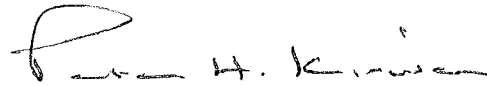
#### 19 E. Analysis

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

2           Accordingly, Defendants' motion for summary judgment is GRANTED.

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4  
5   July 30, 2020



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7           Peter H. Kirwan  
8           Judge of the Superior Court  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**  
DOWNTOWN COURTHOUSE  
191 NORTH FIRST STREET  
SAN JOSE, CALIFORNIA 95113  
CIVIL DIVISION

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

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

**PROOF OF SERVICE**

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

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

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

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