

Local Firearms Ordinance Upheld

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ATTORNEYS

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The authority of local governments to regulate firearms possession recently was reaffirmed by the California Court of Appeal. The court upheld the City of Morgan Hill's law requiring a person who owns, or who once possessed, a lost or stolen firearm to report the loss or theft within 48 hours. (*Kirk v. City of Morgan Hill* (September 30, 2022) Appeal No. H048745.)

A Morgan Hill resident, joined by the California Rifle & Pistol Association (CRPA), sued to invalidate the local law as preempted by California law. California requires gun owners and those who possess guns to report a loss or theft within five days. The resident and CRPA urged that Morgan Hill's 48-hour mandate conflicted with California's more lenient five-day requirement.

Both the trial court and the Court of Appeal summarily rejected their position, finding no conflict. First, Morgan Hill's law did not impermissibly duplicate California law because a person could violate the former without running afoul of the latter. A local regulation that covers some, but not all, of the same ground as State law by definition is not duplicative.

Second, no obstruction of California's five-day law occurs by enforcing the local 48-hour requirement. The shorter local requirement does not prohibit anything that California law commands; California law does not require reporting a loss or theft on the fifth day. Instead, it sets five days as the maximum and leaves room for local governments to require a shorter reporting period. For this same reason, the local 48-hour requirement does not command anything that California law prohibits.

Third, the space left open for local regulation shows that California law does not fully occupy the subject of reporting lost or stolen firearms. State law fails to clearly indicate any intention to foreclose local regulation of the issue. A locally mandated shorter reporting period indeed furthers California's policy of ensuring that local law enforcement is notified promptly of a lost or stolen gun.

The Court of Appeal's decision extends a line of cases recognizing that municipalities have significant interests in firearms law. The case embraces the well-settled principle that State law preempts only discrete areas of firearms regulation, generally leaving the field open to local governance.



If you have any questions or would like further information, please contact **Peter Pierce** or **Jennifer Petrusis**.