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2 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
3 FOR THE COUNTY OF LOS ANGELES

4 SOUTHEAST DISTRICT/NORWALK COURT

5 **FILED**  
6 Superior Court of California  
County of Los Angeles

7 MAY 31 2018 *af*

8 MARTIN WEISS,

9 Plaintiff,

10 vs.

11 CITY OF MAYWOOD,

12 Defendant

) Case No.: VC066407

) ORDER/RULING:

Sherri R. Carter, Executive Officer/Clerk of Court

By *Cris Ishiki* Deputy  
Cris Ishiki

13  
14 Plaintiff MARTIN WEISS's motion for summary adjudication is **GRANTED**. CCP 437c.

15  
16 Moving Party to give notice.

17  
18 Plaintiff's requests for judicial notice are **GRANTED** as to the existence of the documents, but  
19 not as to any hearsay statements contained therein. Cal. Ev. Code §452.

20  
21 This civil rights action was filed by Plaintiff MARTIN WEISS on July 7, 2017. It is undisputed  
22 that Plaintiff is a convicted and registered sex offender, who is not on parole. (Complaint ¶4.) In  
23 this action, Plaintiff challenges the validity of the City of Maywood's "blanket" sex offender  
24 housing restrictions because "the Maywood Residency Restrictions effectively banish Plaintiff  
25 and all Registrants from all affordable housing in Maywood." (Id. ¶22.) Plaintiff alleges, in  
26 pertinent part: "Plaintiff is in search of a residence within Los Angeles County, and would  
27 establish a residence in the City of Maywood, including by temporarily residing in a hotel or  
28

1 motel within that City, but is prohibited from doing so by the Ordinance because of its  
2 significant penalties which include incarceration and/or fines.” (Complaint ¶4.)  
3

4 Plaintiff’s Complaint asserts the following causes of action: (1) State Law Preemption; (2) 42  
5 U.S.C. §1983 (Fourteenth Amendment); (3) Declaratory Relief.  
6

7 Plaintiff moves for summary adjudication of the first cause of action for state law preemption  
8 arguing:  
9

- 10 • California state law preempts local governments such as Defendant City of Maywood  
11 from imposing restrictions on the daily lives of registered sex offenders (‘Registrants’),  
12 unless specifically authorized by state law.
- 13 • As confirmed by case law California Penal Code 3003.5(c), also known as Jessica’s Law,  
14 narrowly authorizes local governments to restrict the residences of Registrants who are  
15 on *parole*. However, the regulation of Registrants who are not on parole remains  
16 preempted by state law.
- 17
- 18 • The City of Maywood Ordinance challenged in this action regulates and restricts the  
19 residences of all Registrants, including those who are not on parole. The Ordinance is  
20 therefore preempted by state law to the extent that it purports to regulate non-parolees.

21 (Notice of Motion i:12-22.)  
22

23 Specifically, Plaintiff argues that Defendant CITY OF MAYWOOD’s blanket restrictions of  
24 registered sex offenders is unconstitutional. Therefore, the issue before the Court is whether Title  
25 5, Chapter 44 of the Maywood Municipal Code is preempted by California law.

26 “The Legislature expressly declared its intent to establish a comprehensive and standardized  
27 system for regulating sex offenders when it passed the Sex Offender Punishment, Control, and  
28 Containment Act of 2006 [Citation]. That act contains more than 60 sections and made numerous

1 changes to the statutes regulating sex offenders ...” (People v. Nguyen (2014) 222 Cal.App.4th  
2 1168, 1180.) “As part of the 2006 act, the Legislature enacted section 290.03, which states, “The  
3 Legislature finds and declares that a *comprehensive system* of risk assessment, supervision,  
4 monitoring and containment for registered sex offenders residing in California communities is  
5 necessary to enhance public safety and reduce the risk of recidivism posed by these offenders ...  
6 [¶] ... [¶] ... In enacting the Sex Offender Punishment, Control, and Containment Act of 2006, the  
7 Legislature hereby creates a *standardized, statewide* system to identify, assess, monitor and  
8 contain known sex offenders for the purpose of reducing the risk of recidivism posed by these  
9 offenders, thereby protecting victims and potential victims from future harm.’ [Citation].” (Id.  
10 at 1181.)

11  
12 Penal Code §3003.5 (“Jessica’s Law”) is a limited exception that authorizes local regulation for  
13 sex offenders released on parole. (See People v. Lynch (2016) 2 Cal.App.5th 524, 529.) Jessica’s  
14 Law states in pertinent part, “(b) Notwithstanding any other provision of law, it is unlawful for  
15 any person for whom registration is required pursuant to Section 290 to reside within 2000 feet  
16 of any public or private school, or park where children regularly gather. (c) Nothing in this  
17 section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict  
18 the residency of any person for whom registration is required pursuant to Section 290.” (Pen.  
19 Code § 3003.5(b)-(c).)

20  
21 Here, the Court finds that Title 5, Chapter 44 of the Maywood Municipal Code imposes  
22 residency restrictions that exceed the limitations articulated by Nguyen and Lynch. First, the  
23 Municipal Code applies to “sex offenders,” meaning “any person for whom registration is  
24 required pursuant to California Penal Code section 290, regardless of whether that person is on  
25 parole or probation.” (Bellucci Decl., Ex. A.) Second, the Municipal Code goes beyond the scope  
26 of Jessica’s Law by restricting Registrants from residing near public and private care centers.  
27 Consequently, Plaintiff’s motion for summary adjudication is granted as to the first cause of  
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1 action for Preemption. The City of Maywood's Ordinance is preempted by California State Law  
2 from regulating the residences of Registrants who are not on parole.

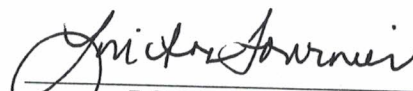
3  
4 Defendant's arguments in Opposition pertaining to Plaintiff's standing to assert his claims are  
5 rejected. In the Complaint, Plaintiff alleges that "Plaintiff is in search of a residence within Los  
6 Angeles County, and would establish a residence in the City of Maywood, including by  
7 temporarily residing in a hotel or motel within that City, but is prohibited from doing so by the  
8 Ordinance because of its significant penalties which include incarceration and/or fines."

9 (Complaint ¶4.) Plaintiff presents a valid facial challenge to the constitutionality of the City of  
10 Maywood's Municipal Code. "A facial challenge to the constitutional validity of a statute or  
11 ordinance considers only the text of the measure itself, not its application to the particular  
12 circumstances of an individual." (Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069, 1084.)

13 Where there is a clear conflict between California Law and the City of Maywood's Municipal  
14 Code, Plaintiff has established a successful facial challenge.

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20 **IT IS SO ORDERED.**

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23  
24 Dated:     MAY 31 2018    

25   
26 **LORI ANN FOURNIER**  
27 **JUDGE OF THE SUPERIOR COURT**



SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/31/18

DEPT. SE-C

HONORABLE LORI ANN FOURNIER

JUDGE C. ISHIKI

DEPUTY CLERK

HONORABLE #3

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

V. VENEGAS, CA

Deputy Sheriff NONE

Reporter

1:30 pm VC066407

Plaintiff JANICE M. BELLUCCI (X)  
Counsel

MARTIN WEISS  
VS  
CITY OF MAYWOOD

Defendant NO APPEARANCE  
Counsel

AO

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF, MARTIN WEISS, AN INDIVIDUAL FOR SUMMARY ADJUDICATION ON STATE LAW PREEMPTION CLAIM;

A TENTATIVE ORDER IS ISSUED.

THE MATTER IS CALLED FOR HEARING.

THE MOVING PARTY SUBMITS AND THERE BEING NO OPPOSITION THE COURT RULES AS FOLLOWS:

PLAINTIFF'S MARTIN WEISS'S MOTION FOR SUMMARY ADJUDICATION IS GRANTED.

MOVING PARTY TO GIVE NOTICE.

PLAINTIFF'S REQUESTS FOR JUDICIAL NOTICE ARE GRANTED AS TO THE EXISTENCE OF THE DOCUMENTS, BUT NOT AS TO ANY HEARSAY STATEMENTS CONTAINED THEREIN.

MINUTES ENTERED  
05/31/18  
COUNTY CLERK