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15 *Attorneys for Defendants*

16 **UNITED STATES DISTRICT COURT**
 17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN JOSE DIVISION**

19 **NATIONAL ASSOCIATION FOR GUN**
 20 **RIGHTS, INC.**, a non-profit corporation, and
 21 **MARK SIKES**, an individual,

22 Plaintiffs

23 v.

24 **CITY OF SAN JOSE**, a public entity,
 25 **JENNIFER MAGUIRE**, in her official
 26 capacity as City Manager of the City of San
 27 Jose, and the **CITY OF SAN JOSE CITY**
 28 **COUNCIL**,

Defendants.

Case No. 5:22-cv-00501-BLF

DECLARATION OF TONI TABER,
SAN JOSE CITY CLERK, IN
SUPPORT OF DEFENDANTS’
MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION

Date: June 2, 2022
 Time: 9:00 A.M.
 Courtroom: 3 – 5th Floor
 Judge: Hon. Beth Labson Freeman

Complaint Filed: January 25, 2022

1 I, Toni Taber, declare as follows:

2 1. I am the City Clerk for the City of San Jose. I submit this declaration in support of
3 Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction. Pursuant to the San Jose
4 City Charter art. VIII, § 804, the City Clerk is the San Jose official who, among other duties: attends
5 all regular and special meetings of the Council; keeps an accurate record of the proceedings of the
6 City Council; keeps a record of all ordinances of the City, and of all written resolutions adopted by
7 the Council, in such manner that the information contained therein will be readily accessible to the
8 public; keeps all other records of Council proceedings and of his or her office in such manner that
9 the information contained therein will be readily accessible to the public; is responsible for the
10 publication of all official advertising of the City; and performs such other duties consistent with the
11 San Jose City Charter as may be required of him or her by the Council. I have personal knowledge
12 of the matters stated herein and, if called upon, I could and would competently testify thereto.

13 2. On June 29, 2021, the San Jose City Council directed the San Jose City Attorney to
14 return to Council with a draft firearm ordinance seeking to mitigate gun harms and protect San Jose
15 residents' health and safety for Council consideration. Attached hereto as **Exhibit 1** is a true and
16 correct copy of the January 14, 2022, San Jose City Attorney's memorandum to the San Jose City
17 Council, which is publicly available.

18 3. On the evening of January 25, 2022, the San Jose City Council heard Agenda Item
19 4.1 – Gun Harm Reduction Ordinance No. 30716, which is a draft firearm ordinance. Attached
20 hereto as **Exhibit 2** is a true and correct copy of the finalized January 25, 2022, San Jose City Council
21 Agenda, which is publicly available.

22 4. On the evening of January 25, 2022, the San Jose City Council voted to publish the
23 draft firearm ordinance and lay it before the Council for later consideration. This was the first reading
24 of the draft ordinance. The City Council also directed the City Manager and City Attorney to amend
25 certain provisions of the draft ordinance for later consideration. At that time, the City Council did
26 not vote to enact the proposed ordinance into law; doing so would have been in violation of the San
27 Jose City Charter. A true and correct copy of the draft ordinance introduced at the San Jose City
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1 Council meeting on January 25, 2022, is attached to Plaintiffs' Complaint as Exhibit B of the
2 Complaint.

3 5. Article VI, Section 604 of the San Jose City Charter governs the procedure for
4 adoption of ordinances. Article VI, Section 604 states, "no ordinance shall be adopted unless (a) it
5 is first passed for publication of title, (b) the title of the ordinance is published as hereinafter provided
6 in this Section, and (c) at least six (6) days have elapsed between the date it was passed for
7 publication of title and the date it is adopted. The title of an ordinance shall be deemed to have been
8 'published', as said term is hereinabove used in this Section if such title is printed in a newspaper of
9 general circulation in the City no later than the third day immediately preceding the date of its
10 adoption." Attached hereto as **Exhibit 3** is a true and correct copy of Article VI, Section 604 of the
11 San Jose City Charter.

12 6. The City of San Jose's "Guide to Council Meetings" pamphlet provides a fair
13 overview of the procedure for adoption of ordinances. It states: "With the exception of emergency
14 ordinances and tax/appropriation ordinances, all ordinances must have two 'readings' at two separate
15 Council meetings. Those ordinances do not become effective until 30 days after Council adoption
16 at the second meeting." Attached hereto as **Exhibit 4** is a true and correct copy of the City of San
17 Jose's "Guide to Council Meetings" pamphlet, which is publicly available online on the City of San
18 Jose's website.

19 7. The draft ordinance was not adopted by the San Jose City Council on January 25,
20 2022, as it was merely introduced on first reading to the City Council, which voted that evening to
21 publish the proposed ordinance and to lay it before the City Council for future consideration.
22 Therefore, on January 25, 2022, the City Council did not enact the proposed ordinance into law. The
23 draft ordinance must undergo a second reading.

24 8. The second reading by the City Council of the draft ordinance is scheduled to take
25 place on February 8, 2022. Attached hereto as **Exhibit 5** is a true and correct copy of the February
26 8, 2022, San Jose City Council agenda. The City Council is governed by the rules of parliamentary
27 procedure set forth in the most current version of Robert's Rules of Order Newly Revised. Robert's
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1 Rules of Order Newly Revised allows the City Council, at second reading, to (among other things)
2 vote to amend, reject, or enact a version of the proposed ordinance into law.

3 9. Pursuant to the San Jose City Charter and the January 25, 2022, vote of the City
4 Council on the first reading of the proposed ordinance, the title of the proposed ordinance was duly
5 published in a newspaper of general circulation—*The San Jose Post-Record*—on January 31, 2022.
6 Attached hereto as **Exhibit 6** is a true and correct copy of the Proof of Publication.

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8 I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th
9 day of February, 2022, at San Jose, California.

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12 TONI TABER

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