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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 TAMARAH P.
PREVOST IN SUPPORT OF
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED UNDER CIVIL LOCAL
RULES 3-12 AND 7-11

1 I, Tamarah P. Prevost, hereby declare as follows:

2 1. I am an attorney duly admitted to practice in the State of California and before this Court.
3 I am a partner with the law firm Cotchett, Pitre & McCarthy, LLP, attorneys for Defendant City of San
4 Jose ("City") in *Howard Jarvis Taxpayers Association, et al. v. City of San Jose*, Case No. 5:22-cv-
5 02365-NC ("*HJTA*") (Notice of Removal filed April 15, 2022), and in *National Association for Gun*
6 *Rights, Inc., et al. v. City of San Jose, et al.* ("*NAGR*"), Case No. 5:22-cv-00501-BLF (Complaint filed
7 January 25, 2022). Pursuant to Civil Local Rule 7-11, I submit this declaration in support of the City's
8 Administrative Motion to Consider Whether Cases Should Be Related Under Civil Local Rules 3-12 and
9 7-11 ("Motion"). If called as a witness, I could and would testify competently to the matters stated herein.

10 2. Attached here as **Exhibit 1** is a true and correct copy of the operative First Amended
11 Complaint (excluding exhibits), filed on February 14, 2022, in the *NAGR* action. ECF 19.

12 3. Attached here as **Exhibit 2** is a true and correct copy of the Notice of Removal in the
13 *HJTA* action, filed on April 15, 2022, which includes a copy of the underlying complaint filed in Santa
14 Clara County Superior Court on March 7, 2022. ECF 1.

15 4. On April 18, 2022, I conferred by email with plaintiffs' counsel in the *NAGR* and *HJTA*
16 actions. Counsel in *NAGR* does not oppose relation. Counsel in *HJTA* did not agree to stipulate that the
17 *HJTA* and *NAGR* cases should be related.

18 I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day
19 of April 2022 at Burlingame, California.

20 /s/ Tamarah P. Prevost
21 TAMARAH P. PREVOST
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CERTIFICATE OF SERVICE

I am employed in San Mateo County, California, and I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, 840 Malcolm Road, Burlingame, California, 94010. On this day, I served the following document(s) in the manner described below:

DECLARATION OF TAMARAH P. PREVOST IN SUPPORT OF ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED UNDER CIVIL LOCAL RULES 3-12 AND 7-11

✓ **BY MAIL:** I am familiar with this firm’s practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

✓ **BY E-MAIL:** My e-mail address is kdelia@cpmlegal.com and service of this document(s) occurred on the date shown below. This document is being served electronically and the transmission was reported as complete and without error.

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Exhibit 1

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

18 **NATIONAL ASSOCIATION FOR GUN**
19 **RIGHTS, INC.**, a nonprofit corporation, and
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22 **CITY OF SAN JOSE, a public entity,**
23 **JENNIFER MAGUIRE**, in her official capacity
24 as City Manager of the City of San Jose, and the
CITY OF SAN JOSE CITY COUNCIL,

25
26 Defendants.
27
28

Case Number: 5:22-cv-00501-BLF

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF, DECLARATORY
JUDGMENT, AND NOMINAL DAMAGES**

Judge: Hon. Beth Labson Freeman

1 owners of lawfully owned guns, the Ordinance’s true impact is solely on guns kept in the home by
2 law-abiding citizens. If left intact, the City of San Jose’s Ordinance would strike at the very core of
3 the fundamental constitutional right to keep and bear arms and defend one’s home.

4 3. While threatening the seizure of firearms for failure to fund the city’s chosen
5 nonprofits in violation of the Second Amendment, the Ordinance does *nothing* to deter the scourge of
6 unlawful ownership and use of guns by criminals or to recoup from them compensation for the
7 extensive injuries and costs they cause. According to the City’s own statistics in support of the
8 Ordinance, “Injuries from unintentional shootings” nationally only comprise about a third of all gun-
9 related injuries, Ordinance §10.32.200.B.10, and in the period from 2010 to 2014, only “thirty-one
10 percent (31%) of emergency department visits and sixteen percent (16%) of hospitalizations from
11 firearms injuries were due to unintentional shootings.” *Id.* at §10.32.200.B.4. Consequently, this
12 Ordinance—largely directed as it is at gun safety and liability protection for *unintentional* acts—does
13 virtually *nothing* to impose its costs on the primary source of gun violence and its associated harms
14 in San Jose: criminals committing intentional acts of violence with guns.

15 4. Further, the Ordinance calculates the cost to San Jose “per-firearm owning household”
16 based on all of the costs (\$39.7M) arising from responses to “gun violence,” including “incident
17 investigation,” “perpetrator adjudication” and “judicial sanctioning”—i.e., responses to intentional
18 criminal activity. *Id.* at §10.32.200.B.8. And yet, the Ordinance does not impose these costs on
19 criminals but rather on lawfully gun-owning households. The Ordinance seeks to impose financial
20 pressure (“incentivizing” or “encouraging” in the words of the Ordinance at sections 10.32.200.B.11-
21 12) on gun owners. But the Ordinance applies its pressure to lawful gun owners exercising their
22 constitutional right to keep arms in the home for self-defense against the violent criminals who are
23 actually causing the harm and costs the Ordinance claims it is trying to reduce.

24 5. By compelling gun owners to directly pay and therefore subsidize the advocacy of an
25 unnamed government-chosen nonprofit for the purpose of preaching the harms of gun ownership
26 back at them, as appears to be the intent and function of the Gun Harm Reduction Fee, the Ordinance
27 also violates the First Amendment rights of gun owners.

28 //

INTRADISTRICT ASSIGNMENT

12. This action is properly assigned to the San Jose Division, pursuant to Civil L.R. 3-2(e). A substantial part of the events giving rise to the claims occurred in Santa Clara County, California.

PARTIES

13. Plaintiff NAGR is a non-stock, nonprofit corporation incorporated under the laws of the Commonwealth of Virginia and has its principal place of business in Loveland, Colorado. NAGR is a grassroots organization whose mission is to defend the right to keep and bear arms under the Second Amendment and advance the constitutional right by educating the American people and urging them to action in public policy. NAGR has members who would be subject to the Ordinance within the City of San Jose.

14. Plaintiff Mark Sikes resides in San Jose, California. Sikes legally owns a gun, is not a peace officer, does not have a concealed carry permit, and does not meet the qualifications of CAL. GOV. CODE § 68632 (a) and (b) and, therefore, would be subject to the Ordinance if it were to go into effect.

15. Defendant City of San Jose is a municipal corporation within the County of Santa Clara, California. A true and correct copy of the City of San Jose’s City Charter is attached as Exhibit “A.”

16. Defendant Jennifer Maguire (“Maguire”) is the current and active City Manager for the City of San Jose. San Jose’s Charter states that the City Manager is the “Chief Administrative Officer and head of the administrative branch of the City government.” San Jose City Charter §§ 502, 701. “The City Manager shall be responsible for the faithful execution of all laws, provisions of this Charter, and acts of the Council which are subject to enforcement by the City Manager or by the officers who are under the City Manager’s direction and supervision.” *Id.*, § 701(d). Additionally, the City Manager is directly identified with enforcement authority throughout the Ordinance. Ordinance §§ 10.32.205, 210, 215, 235, & 250.

17. Defendant San Jose City Council (the “City Council”) is vested with authority under Article IV of the City of San Jose’s City Charter (Ex. A). The Ordinance vests the City Council with authority to “set forth the schedule of fees and charges established by resolution of the City Council”

1 and to “set forth...the schedule of fines” for those who violate the ordinance. *Id.*, § 10.32.215;
2 10.32.250; 10.32.240.

3 **STATEMENT OF FACTS**

4 **Enactment of the Ordinance**

5 18. On June 29, 2021, the City Council directed San Jose City Attorney Nora Frimann “to
6 return to Council with an ordinance for Council consideration that would require every gun owner
7 residing in the City of San José, with certain exceptions, to obtain and maintain a City-issued
8 document evincing payment of an annual fee, and attestation of insurance coverage for unintentional
9 firearm-related death, injury, or property damage.” Frimann Mem. re Gun Harm Reduction Ord., Jan.
10 14, 2022, 1 (“City Attorney Mem.”) (a true and correct copy is attached as Exhibit “B”). Plaintiff
11 National Association for Gun Rights immediately sent the City a cease and desist letter warning that
12 the proposed ordinance was unconstitutional. Ltr. from H. Dhillon and D. Warrington to San Jose City
13 Council, July 14, 2021 (a true and correct copy is attached as Exhibit “C”).

14 19. On January 14, 2022, in advance of the City Council’s January 25 meeting, the City
15 Attorney issued a memorandum in compliance with the City Council’s directions that recommended
16 the Council “[c]onsider approving an ordinance amending Title 10 of the San José Municipal Code to
17 add Part 6 to Chapter 10.32 to reduce gun harm by: (a) requiring gun owners to obtain and maintain
18 liability insurance; and (b) authorizing a fee to apply to gun harm reduction programs.” City Attorney
19 Mem. at 1 (Ex. B). Under a section addressing penalties for noncompliance, the City Attorney stated
20 that “[f]ailure to comply shall constitute a civil violation subjecting the owner to the temporary or
21 permanent seizure of the gun, and under specified circumstances, a fine.” *Id.* at 2.

22 The City Attorney concluded:

23 *If approved*, the proposed ordinance will require, with certain exceptions, that San José
24 residents who own firearms: (a) obtain and maintain liability insurance; (b) pay an annual gun
25 harm reduction fee to a designated nonprofit organization that will use the fee proceeds to
26 provide gun harm reduction services to residents of the City who own or possess a gun or to
27 members of their household; and (c) pay any City cost recovery fees associated with program
28 implementation, including any associated third-party costs.

1 *Id.* at 2 (emphasis added).

2 20. In an op-ed published on January 19 in the Los Angeles Times, San Jose Mayor Sam
3 Liccardo wrote “[I]ast June our City Council unanimously approved my proposals that will mitigate
4 gun harm in our community — and *a final vote* on Jan. 25 should turn them into law.” Mayor Sam
5 Liccardo, *Op-Ed: My City’s New Gun Control Laws Will Help More Than Waiting On Congress To*
6 *Do Something*, LOS ANGELES TIMES, Jan. 19, 2022, [https://www.latimes.com/opinion/story/2022-01-](https://www.latimes.com/opinion/story/2022-01-19/op-ed-new-gun-control-laws-help-congress)
7 [19/op-ed-new-gun-control-laws-help-congress](https://www.latimes.com/opinion/story/2022-01-19/op-ed-new-gun-control-laws-help-congress) (emphasis added)(a true and correct copy is attached as
8 Exhibit “D”).

9 21. On January 21, 2022, Mayor Liccardo, Vice Mayor Jones, Councilmember Cohen, and
10 Councilmember Carrasco issued “Directions” to the City Council, including to “[a]pprove the
11 proposed ordinance,” with certain modifications. Mayor’s Mem. to City Council, Jan. 21, 2022, 2 (a
12 true and correct copy is attached as Exhibit “E”). The Mayor’s Memorandum also noted that
13 “Members of the California legislature are exploring bills to have law enforcement agencies seize
14 guns *as a sanction for violations of local gun regulations*, with subsequent restoration of ownership as
15 required by constitutional due process.” *Id.* at 4 (emphasis added).

16 22. The Agenda for the City Council’s January 25, 2022, meeting further stated that the
17 recommendation before the Council was to “[c]onsider approving” the Ordinance. Agenda for Jan.
18 25, 2022 City Council Meeting (a true and correct copy is attached as Exhibit “F”). The City’s
19 Synopsis for what occurred at its January 25, 2022, City Council Meeting also states that the action
20 before the Council was to “[c]onsider approving” the Ordinance and the Synopsis records that the
21 Ordinance was indeed “approved” through two votes regarding various changes. Tuesday, January
22 25, 2022 City Council Meeting Synopsis at 13 (a true and correct copy is attached as Exhibit “G”).

23 23. The Mayor immediately issued a press release the night of the vote, in which he
24 boasted that “Tonight San José *became* the first city in the United States *to enact* an ordinance to
25 require gun owners to purchase liability insurance, and to invest funds generated from fees paid by
26 gun owners into evidence-based initiatives to reduce gun violence and gun harm.” Liccardo Press
27 Release, Jan. 25, 2022 (emphasis added) (a true and correct copy is attached as Exhibit “H”).

28 24. Within 24 hours, articles were published about San Jose enacting an unprecedented

1 regulation of gun ownership, including in the San Francisco Chronicle and the Los Angeles Times.
2 See Lauren Hernández, *Gun Owners In San Jose Must Buy Liability Insurance Under Newly Passed*
3 *First-In-The-Nation Law*, SAN FRANCISCO CHRONICLE, Jan. 25, 2022 (updated Jan. 26, 2022)
4 [https://www.sfchronicle.com/bayarea/article/Gun-owners-in-San-Jose-must-buy-liability-](https://www.sfchronicle.com/bayarea/article/Gun-owners-in-San-Jose-must-buy-liability-16804951.php)
5 [16804951.php](https://www.sfchronicle.com/bayarea/article/Gun-owners-in-San-Jose-must-buy-liability-16804951.php) (a true and correct copy is attached as Exhibit “I”) (“The San Jose City Council
6 adopted a measure Tuesday night requiring gun owners in the South Bay city to buy liability
7 insurance for their firearms, city officials said.”); Olga R. Rodriguez and Juliet Williams, *San Jose*
8 *Approves First Law In U.S. Requiring Gun Owners To Have Insurance*, LOS ANGELES TIMES, Jan. 25,
9 2022, <https://www.latimes.com/california/story/2022-01-25/san-jose-gun-liability-insurance> (a true
10 and correct copy is attached as Exhibit “J”) (“The city of San Jose voted Tuesday night to require gun
11 owners to carry liability insurance in what’s believed to be the first measure of its kind in the United
12 States. The San Jose City Council overwhelmingly approved the measure despite opposition from
13 some gun owners who said it would violate their 2nd Amendment rights.”).

14 25. Consistent with the Mayor’s pre- and post-meeting statements, and the interpretations
15 of reputable journalists reporting on the Council’s action, Plaintiffs considered the City Council’s vote
16 to potentially constitute the “final approval” or enactment of the Ordinance and immediately filed suit
17 to protect their rights and those of the citizens of San Jose.

18 26. The City’s new position, first taken in this litigation, is that contrary to the Mayor’s and
19 City Council’s pronouncements before and after the January 25, 2022, City Council meeting, the City
20 Council did not actually “enact” or provide the “final approval” for the Ordinance on January 25
21 because it would have violated the City Charter for them to do so. The City now states the ordinance
22 could only have ever been truly enacted at the City Council’s February 8, 2022, meeting on its
23 “second reading,” (Mem. Supp. Mot. Dismiss 3), notwithstanding the Mayor’s statements to the
24 contrary before and after the January 25 Council meeting. The Ordinance was placed on the Council’s
25 consent calendar for its February 8, 2022, meeting and on that day the Council voted a second time to
26 approve the Ordinance.

27 27. In any event, regardless of whether the Mayor’s statements about the enactment of
28 the Ordinance or the City’s published records about its approval were incorrect or misleading, a

1 true and correct copy of the now-indisputably enacted Ordinance, as shown on the City’s website,
2 is attached as Exhibit “K.”

3 **The Burdens of the Ordinance**

4 28. The Ordinance will require an estimated 50,000-55,000 gun-owning San Jose Citizens,
5 minus a few exceptions, to obtain an insurance policy and pay annual fees simply to exercise the
6 same constitutional right to own a gun that existed prior to this ordinance. Liccardo Mem. re Gun
7 Harm Reduction Ord., Jan., 19, 2022 (a true and accurate copy is attached as Exhibit “L”).

8 29. The Ordinance states that “[t]o the extent allowed by law, the Firearm or Firearms of a
9 person that [*sic*] is not in compliance with [the Ordinance] may be impounded subject to a due
10 process hearing.” Ordinance § 10.32.245. Further, “[a]ny violation” of the Ordinance is “punishable
11 by an administrative citation,” “fines for violations,” and “all other civil and administrative remedies
12 available to the City.” *Id.*, § 10.32.240; *see also* Mayor’s Mem. to City Council, Jan. 21, 2022 (Ex. E)
13 (“Members of the California legislature are exploring bills to have law enforcement agencies seize
14 guns as a sanction for violations of local gun regulations . . .”); City Attorney Frimann Memo. at 2
15 (Ex. B)(“Failure to comply [with the Ordinance] shall constitute a civil violation subjecting the owner
16 to the temporary or permanent seizure of the gun, and under specified circumstances, a fine.”).

17 30. The Ordinance targets guns in the home. It does not apply to people who have a license
18 to carry a concealed weapon. *Id.*, § 10.32.225. Additionally, absent a concealed carry permit, there is
19 no other way to carry a firearm in San Jose. *See* CAL. PENAL CODE §§ 25850, 26150, 26155, 26350,
20 26400. The Ordinance thus would charge all law-abiding owners of guns for home and self-defense to
21 pay for the harms caused by criminals who use unregistered guns to commit acts of violence.
22 Ordinance § 10.32.200.B.8 (identifying costs the Ordinance seeks to recoup to include those arising
23 from homicides and all firearm-related injuries).

24 ***Insurance Requirement***

25 31. The Ordinance conditions the constitutional right to own a gun on the payment of an
26 unstated amount for insurance. It states that “A person who resides in the City of San Jose and owns
27 or possesses a Firearm in the City shall obtain and continuously maintain in full force and effect a
28 homeowner’s, renter’s or gun liability insurance policy...specifically covering losses or damages

1 resulting from any accidental use of the Firearm, including but not limited to death, injury, or property
2 damage.” Ordinance § 10.32.210.A.

3 32. This requirement does not contain any information about minimum insurance coverage
4 thresholds or premiums. Thus, the City of San Jose has conditioned the constitutional right of its law-
5 abiding citizens to own a gun on an unstated, unregulated price to be set by an industry of for-profit
6 private sector corporations.

7 33. Moreover, the City’s findings did not include any evidence that there are available
8 insurance policies “specifically covering losses or damages resulting from any accidental use of”
9 firearms, or what any such policy will cost. *See* Ordinance § 10.32.200.B.10 (“[i]njuries from
10 unintentional shootings . . . are *generally* insurable” (emphasis added)).

11 34. The Ordinance does nothing to ensure that insurance companies will provide policies
12 “specifically covering” losses arising from accidental firearm use for any and every citizen who is
13 subject to the Ordinance, which means the City’s insurance mandate would establish a precondition to
14 gun ownership that empowers for-profit insurance companies (with or without government pressure)
15 to prohibit persons from exercising their Second Amendment rights.

16 35. Further, the Ordinance does not indicate there is any way for taxpayers to file claims
17 against insurers to recover the city’s expenses. *See id.* §10.32.210 (stating only that policies must
18 cover “death, injury, or property damage”).

19 *Fee Requirement*

20 36. The second primary component of the Ordinance is the creation of a “fee” for owning a
21 gun. The Ordinance states that “A person who resides in the City and owns or possesses a Firearm in
22 the City shall pay an Annual Gun Harm Reduction Fee to the Designated Nonprofit Organization each
23 year.” Ordinance § 10.32.215. No fee amount is specified, nor is there criteria for how to calculate the
24 fee. *Id.* Rather, Defendant City Council reserved the right for itself to determine the fee amount at a
25 later date. *Id.*

26 37. The destination of the money is to an undetermined nonprofit. That determination is
27 delegated to Defendant Maguire. *Id.*, §§ 10.32.205.B; 10.32.220.

28 38. The nonprofit fee in the Ordinance is not to defray the City’s administrative costs.

1 Rather, “all monies...shall be expended by the Designated Nonprofit Organization...” *Id.*,
2 § 10.32.220.A.

3 39. The only selection criteria for the Designated Nonprofit Organization is that it
4 “provid[e] services to residents of the City that own or possess a Firearm in the City or to members of
5 their household, or to those with whom they have a close familial or intimate relationship.” These
6 services “include, *but are not necessarily limited to*” suicide prevention services or programs, violence
7 reduction or gender based violence services or programs, mental health services related to gun
8 violence, firearms safety education or training, or addiction intervention and substance abuse
9 treatment. *Id.*, § 10.32.220.A (emphasis added).

10 40. “[T]he City shall not specifically direct how the monies from the Gun Harm Reduction
11 Fee are expended” by the nonprofit. *Id.*, § 10.32.220.C.

12 41. The fee thus functions to compel gun owners to give their money to a government-
13 approved nonprofit to spend on unspecified programs at the nonprofit’s discretion, none of which are
14 services that the City is obligated to perform. This compelled donation by gun owners to one City-
15 favored nonprofit to advocate about the dangers of gun ownership with little to no municipal oversight
16 is not only obnoxious to the Constitution, it is an invitation to corruption and waste.

17 42. By its plain terms, this fee and insurance requirement do not compensate the City to
18 cover reasonable costs of governmental activity, because they are not for government activity. Further,
19 the manner in which those costs are allocated to gun owners do not bear a fair or reasonable
20 relationship to the gun owner’s burdens on, or benefits received from, the City’s governmental
21 activity.

22 43. Indeed, the Ordinance also authorizes a separate fee just to recoup the costs associated
23 in administering the Ordinance. *Id.* § 10.32.250.

24 44. Accordingly, as discussed further below, the “Annual Gun Harm Reduction Fee”—
25 unconnected to the cost of City services and for unspecified programs outside of the City’s control—
26 and the mandatory insurance requirement backed by the threat of fines and seizure are nothing more
27 than exactions, or *taxes* within the meaning of the California Constitution, that the City is imposing on
28 the exercise of a constitutional right.

The Second Amendment

1
2 45. The Second Amendment to the United States Constitution states that “[a] well
3 regulated Militia, being necessary to the security of a free State, the right of the people to keep and
4 bear Arms, shall not be infringed.” U.S. Const., amend. II.

5 46. “[I]t is clear that the Framers and ratifiers of the Fourteenth Amendment counted the
6 right to keep and bear arms among those fundamental rights necessary to our system of ordered
7 liberty.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 778 (2010).

8 47. Even in the face of “the problem of handgun violence in this country, . . . the
9 enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *Heller*,
10 554 U.S. at 636.

11 48. “The upshot of [*Heller* and *McDonald*] is that there now exists a clearly-defined
12 fundamental right to possess firearms for self-defense within the home.” *United States v.*
13 *Masciandaro*, 638 F.3d 458, 467 (4th Cir. 2011).

14 49. Local governments, including the City of San Jose, are bound by the Second
15 Amendment. *McDonald*, 561 U.S. at 790; *Nordyke v. King*, 681 F.3d 1041, 1044 (9th Cir. 2012).

16 50. Imposing an insurance mandate and fees (or taxes) on gun owners in the City of San
17 Jose burdens Plaintiff NAGR’s members and Plaintiff Sikes by creating an indefinite cost on their
18 ability to exercise their basic and fundamental right to possess a gun. “A tax that burdens rights
19 protected by the [Constitution] cannot stand unless the burden is necessary to achieve an overriding
20 governmental interest.” *Minneapolis Star and Tribune*, 460 U.S. at 582.

21 51. Both the insurance mandate and the fees created by the Ordinance are costs subject to
22 the whims of the City Council and private insurance companies and, thus, bear a significant risk of
23 making gun ownership far more expensive, if not cost prohibitive. As a form of fixed tax disconnected
24 from a person’s income or the monetary value of a person’s firearms, it is an especially regressive
25 one.

26 52. The Ordinance cites a number of statistics about gun violence, but provides no studies
27 or statistics that gun liability insurance will reduce gun violence. Rather, it in conclusory fashion
28 states that “Liability insurance can reduce the number of gun incidents by encouraging safer

1 behavior....” Ordinance § 10.32.200.B.12. It is not apparent how liability insurance will meaningfully
2 add to the extant incentives for safe behavior, such as the fear of potentially killing another human
3 being (intentionally or by accident), being prosecuted, or being sued.

4 53. The Ordinance does not include any studies or statistics showing that the yet-to-be-
5 determined nonprofit will accomplish the stated aim of reducing gun violence. Rather, in conclusory
6 fashion, it states that “Programs and services to gun owners and their households can also encourage
7 safer behavior, and provide education and resources to those residents.” *Id.*, § 10.32.200.B.13.

8 54. The Ordinance cites a figure that “San Jose taxpayers annually spend approximately
9 \$39.7 million, or approximately \$151 per firearm-owning household, to respond to gun violence with
10 such public services as emergency police and medical response, victim assistance, incident
11 investigation, acute and long-term care, and perpetrator adjudication and judicial sanctioning.” It cites
12 figure of \$442 million in gun-related costs if the calculation includes “private costs to individuals and
13 families.” *Id.*, § 10.32.200.B.8-9. But the Ordinance does not distinguish how much of these costs are
14 due to intentional violent criminal conduct that the Ordinance will hardly address as opposed to the
15 types of unintentional conduct it is largely focused on.

16 55. Despite the per-household fee being based on the City’s assessment of the overall cost
17 of guns to San Jose, the fee will not reimburse the City, taxpayers, or private individuals because the
18 fee will be distributed entirely to a nonprofit. Likewise, the insurance will not reimburse the City,
19 taxpayers, or private individuals for any intentional gun violence committed by criminals and most
20 costs incurred by the City/taxpayers, such as ambulance, police, and judicial costs, would not be the
21 type of costs covered by an insurance carrier.

22 56. Therefore, neither the insurance mandate nor the nonprofit fee fit any stated, or
23 unstated, government objective.

24 57. Additionally, governments “may not impose a charge for the enjoyment of a right
25 granted by the federal constitution.” *Murdock*, 319 U.S. at 113.

26 58. The only exception is to “meet the expense incident to the administration of the act and
27 to the maintenance of public order in the matter licensed.” *Cox v. New Hampshire*, 312 U.S. 569, 577
28 (1941). Applied to the Second Amendment, “imposing fees on the exercise of constitutional rights is

1 permissible when the fees are designed to defray (and do not exceed) the administrative costs of
2 regulating the protected activity.” *Kwong v. Bloomberg*, 723 F.3d 160, 165 (2nd Cir. 2013).

3 59. Neither the insurance premium nor the fee to be paid to the City’s chosen nonprofit are
4 designed to defray the City’s administrative costs and, therefore, they are unconstitutional.

5 **The First Amendment**

6 60. The First Amendment, applied to the states through the Fourteenth Amendment,
7 protects the freedom of speech, including both the right to speak freely and the right to refrain from
8 speaking at all, and to avoid associating with others for expressive purposes. The First Amendment
9 thus prohibits government officials from forcing individuals to support views that they find
10 objectionable.

11 61. Thomas Jefferson famously said that “to compel a man to furnish contributions of
12 money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.”
13 *Janus v. AFSCME*, 138 S.Ct. 2448, 2464 (2018) (quoting *A Bill for Establishing Religious Freedom*,
14 in 2 Papers of Thomas Jefferson 545 (J. Boyd ed. 1950)).

15 62. The Ordinance directs gun owners to subsidize one unidentified nonprofit by paying
16 the city’s fee directly to that organization. Ordinance § 10.32.215. The Ordinance even prohibits the
17 city from directing how the nonprofit would use the funds. *Id.* at § 10.32.220.C. The one thing that is
18 clear is that the organization will likely be dedicated to exclusively preaching the negative risks of
19 gun ownership, and the Ordinance does not prohibit the nonprofit from using the City’s fee revenues
20 for other messages and programs.

21 63. The Defendants may not force Plaintiffs to pay fees to nonprofits when those fees are
22 going to be used to fund activities of ideological or political nature with which Plaintiffs disagree, *see*
23 *Keller v. State Bar of California*, 496 U.S. 1, 13 (1990), or in fact are left unstated.

24 64. The Ordinance therefore unconstitutionally compels Plaintiffs to subsidize speech and
25 associate against their will and this Court should therefore preliminarily and permanently enjoin
26 Defendant from enforcing the Ordinance and award Plaintiffs nominal damages.

27 **California Constitution-Preemption**

28 65. Article XI, section 7 of the California Constitution states that “A county or city may

1 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not
2 in conflict with general laws.”

3 66. Article XI, section 7 of the California Constitution preempts any local law that
4 “duplicates, contradicts, or *enters an area fully occupied by general law*, either expressly or by
5 legislative implication.” *Fiscal v. City and County of San Francisco* 158 Cal.App.4th 895, 903 (Cal.
6 Ct. App. 2008)(quotation omitted)(emphasis added).

7 67. “[T]he Legislature intended to occupy the field of residential handgun possession to the
8 exclusion of local government entities.” *Id.* at 909.

9 68. Gun regulation is already fully occupied by the state of California. Indeed, California
10 already comprehensively regulates firearms, including firearm safety, CAL. PENAL CODE §§ 23500-
11 23520, the appearance of firearms, *id.*, §§ 23800-24790, storage of firearms, *id.*, §§ 25000-25225,
12 how to handle lost or stolen firearms, *id.*, §§ 25250-25225, carrying firearms, *id.*, §§ 25300-26406, the
13 sale, lease, or transfer of firearms, *id.*, §§ 26500-28490, the registration and assignment of firearms,
14 *id.*, §§ 28010-28024, how to transfer firearms between private persons, *id.*, §§ 28050-28070,
15 recordkeeping, background checks, and fees related to transfer, *id.*, §§ 28100-28490, the manufacture
16 of firearms, *id.*, §§ 29010-29184, who may not possess a firearm, *id.*, §§ 29610-30165, rules
17 pertaining to “firearm equipment,” *id.*, §§ 30150-30165, and, in some cases, firearm registration, *id.*,
18 §§ 30900-30965. This is but a sample of all of the separate statutes regulating firearms in California.
19 *See generally* CAL. PENAL CODE §§ 23500-34370.

20 69. Thus, the City of San Jose’s Ordinance violates the California Constitution because it
21 is preempted by California state law.

22 **California’s Local Tax Requirements**

23 70. All taxes imposed by local governments in California must be approved by voters of
24 the local government. CAL. CONST. art. XIII C. A “tax” in California, with exceptions that do not
25 apply here, is defined as “any levy, charge, or *exaction of any kind* imposed by a local government.”
26 Article XIII C, § 1(e) (emphasis added).

27 71. The Ordinance’s insurance mandate and Gun Harm Reduction Fee do not pay for City
28 services and do not correspond to any benefit received from City services by those who pay for them.

1 federal constitution.” *Murdock*, 319 U.S. at 113. For example, in 1973 the Minnesota legislature
2 passed a use tax on paper and ink. The Supreme Court struck down this special use tax because it
3 singled out the press for special treatment and the Court found that a “tax that burdens rights
4 protected by the [Constitution] cannot stand unless the burden is necessary to achieve an overriding
5 governmental interest.” *Minneapolis Star and Tribune Co.*, 460 U.S. at 581.

6 86. This is particularly true because the exercise of a constitutional right cannot be
7 conditioned upon a fee unless it is to defray an administrative expense. *Cox*, 312 U.S. at 577; *Kwong*,
8 723 F.3d at 165.

9 87. The Ninth Circuit has adopted the *Murdock/Cox* standards for Second Amendment fee
10 cases. *Bauer v. Becerra*, 858 F.3d 1216 (9th Cir. 2017).

11 ***The Ordinance Violates the Second Amendment***

12 88. Both the Ordinance’s Gun Harm Reduction Fee and insurance mandate impose costs
13 on gun owners in the City of San Jose just for exercising their Second Amendment rights.

14 89. If the City has the power to impose these arbitrary burdens on gun ownership, there
15 would be no limiting principle to the amount of the fees and costs the City could mandate and
16 nothing to prevent the City from extinguishing the Second Amendment within its borders entirely.

17 90. Though the Ordinance threatens the confiscation of guns and an unspecified fine for
18 noncompliance with its insurance and Gun Harm Reduction Fee, it does not specify a sum certain or
19 articulate standards that will determine the cost of the insurance requirement or either fee that the
20 Ordinance creates. Therefore, the as yet unknown financial burden of the Ordinance’s insurance
21 requirement will be left to the whims of for-profit insurance companies without a clear standard for
22 what their policies must cover. The City’s fees, too, are left unstated and deferred to future,
23 unscheduled determinations of the City Council in an exercise of unfettered discretion. Any
24 statement by the City now regarding a minimal cost or burden rings hollow because there are no
25 constraints on the City’s authority to increase the costs and burdens tomorrow.

26 91. The City’s dictate that the right to gun ownership will depend on citizens having an
27 unspecified insurance policy and payment of as-yet undetermined fee to a third party who has yet to
28 be chosen to fund unspecified programs beyond the City’s control will chill and infringe upon on

1 those citizens’ Second Amendment rights.

2 92. It is plausible, if not probable, that the Ordinance will discourage gun ownership, if not
3 make it cost prohibitive, for at least some San Jose residents, particularly in light of the view of gun
4 ownership reflected in the Ordinance’s findings.

5 93. Where, as here, taxes and fees are not anchored to value or income, they are also
6 inherently regressive; their burden on citizens’ rights will be inversely proportional to those citizens’
7 ability to pay the taxes and fees.

8 94. At the very least, any such a cost “infringe[s]” upon the constitutional right to keep and
9 bear arms.

10 ***The Ordinance Does Not Serve Its Claimed Purpose or Any Other Valid Purpose***

11 95. The Ordinance’s “Purpose and Findings” recites facts about homicide, suicide,
12 accidental injury and death, hospitalizations, probabilities of incidents as they correlate to gun
13 ownership, and statistics from automobile insurance. Ordinance § 10.32.200.B. Accordingly, the City
14 of San Jose appears to claim a stated objective of reducing gun violence.

15 96. However, requiring gun owners to purchase an insurance policy and pay an annual fee
16 to an unnamed nonprofit are not a reasonable fit to the asserted objective of reducing gun violence
17 insofar as the violence to be reduced is committed by persons who do not register their guns and use
18 their guns to commit crimes, or the injuries are inflicted by persons other than the guns’ owners.

19 97. The City makes no findings, other than conclusory statements, that insurance or
20 funding nonprofits will impact gun violence, particularly gun violence by those who lawfully possess
21 and register their firearms to be kept in the home as opposed to others who possess guns either
22 unlawfully or outside the home. *See generally id.*, § 10.32.200.B. That the Ordinance does not in fact
23 control how the chosen nonprofit would spend the City’s fees, and specifically forbids the City from
24 directing the spending of its own funds, further undermines the contention that payment of the fee
25 would achieve the Ordinance’s aims.

26 98. The Ordinance cites a figure that “San Jose taxpayers annually spend approximately
27 \$39.7 million, or approximately \$151 per firearm-owning household, to respond to gun violence with
28 such public services as emergency police and medical response, victim assistance, incident

1 investigation, acute and long-term care, and perpetrator adjudication and judicial sanctioning.”
2 Ordinance § 10.32.200.B.8. It includes a sum of \$442 million if the calculation includes “private costs
3 to individuals and families.” *Id.*, § 10.32.200.B.9. But more than \$328,355,500 (or 74%) of these
4 alleged costs are for the impact of guns on “quality of life” and a further \$78,272,000 (or 18%) of the
5 asserted \$442 million is for “lost work.” Liccardo Mem. re Gun Harm Reduction Ord., Jan., 19, 2022
6 (Ex. L).

7 99. However, the Gun Harm Reduction Fee will not reimburse the City, taxpayers, or
8 private individuals because the fee will be distributed entirely to a nonprofit. Likewise, the insurance
9 will not likely reimburse the City, taxpayers or private individuals for any intentional gun violence
10 committed by gun owners or injuries inflicted by uninsured persons or premises and, even if the gun
11 owner is insured, costs incurred by the City/taxpayers, such as ambulance, police, and judicial costs,
12 would not be reimbursed by an insurance carrier. Thus, the insurance and fee requirements do not fit
13 the government interest in reimbursing the costs incurred by the City/taxpayers or most private
14 individuals or their families who are injured through criminal gun violence (the majority of gun
15 injuries).

16 100. To the extent that Defendants will assert a separate government interest, said
17 government interest would not be significant, substantial, or important.

18 101. To the extent that Defendant will assert a separate government interest, requiring gun
19 owners to pay insurance and an annual fee to an unnamed nonprofit does not constitute a reasonable
20 fit for any other government interest.

21 102. Neither the insurance requirement nor the fee requirement is historically or
22 presumptively lawful, in that, the Ordinance is a first-of-its-kind regulation of firearms.

23 * * * *

24 103. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm
25 to their constitutional rights unless Defendants are enjoined from implementing and enforcing the
26 Ordinance.

27 104. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled preliminary and
28 permanent injunctive relief invalidating and restraining enforcement of the Ordinance as well as

1 declaratory relief.

2 105. Plaintiffs found it necessary to engage the services of private counsel to vindicate their
3 rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42
4 U.S.C. § 1988.

5 **SECOND CLAIM FOR RELIEF**

6 **Violation of the First and Fourteenth Amendments (42 U.S.C. § 1983)**
7 ***The payment of a fee to a nonprofit violates the free speech rights of gun owners by***
8 ***compelling them to subsidize private speech on matters of substantial public concern.***

9 106. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
10 above.

11 107. The First Amendment protects Plaintiffs' freedom of speech which includes both the
12 right to speak freely and the right to refrain from speaking at all.

13 108. The First Amendment protects the right of Plaintiffs to eschew association for
14 expressive purposes.

15 109. The First Amendment prohibits government officials from forcing individuals to
16 support views that they find objectionable.

17 110. Thomas Jefferson famously said that "to compel a man to furnish contributions of
18 money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical."
19 *Janus*, 138 S.Ct. at 2464 (quoting *A Bill for Establishing Religious Freedom*, in 2 Papers of Thomas
20 Jefferson 545 (J. Boyd ed. 1950)).

21 111. In *Janus*, the Supreme Court examined the case of compelled subsidization of private
22 speech. The Court never determined if the courts are to use strict scrutiny or exacting scrutiny
23 because in *Janus* the Court concluded that the "Illinois scheme cannot survive under even the more
24 permissive standard." *Id.* at 2465.

25 112. Furthermore, the Defendants may not require Plaintiffs to pay fees to nonprofits when
26 those fees are going to be used to fund activities of ideological or political nature, such as endorsing
27 gun control. *See Keller*, 496 U.S. at 13.

28 113. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm
to their constitutional rights unless Defendants are enjoined from implementing and enforcing the

1 Ordinance.

2 114. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled preliminary and
3 permanent injunctive relief invalidating and restraining enforcement of the Ordinance, as well as
4 declaratory relief.

5 115. Plaintiffs found it necessary to engage the services of private counsel to vindicate their
6 rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees pursuant to 42
7 U.S.C. § 1988.

8

9 **THIRD CLAIM FOR RELIEF**
10 **Violation of article XI, §7 of the California Constitution-Field Preemption**
11 ***The Ordinance occupies a field already occupied by California law.***

12 116. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
13 above.

14 117. Article XI, section 7 of the California Constitution states that “A county or city may
15 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not
16 in conflict with general laws.”

17 118. The State of California has voluminous statutes comprehensively regulating firearm
18 ownership in California. *See generally* CAL. PENAL CODE §§ 23500-34370. California courts have
19 already determined that “the Legislature intended to occupy the field of residential handgun
20 possession to the exclusion of local government entities.” *Fiscal*, 158 Cal.App.4th at 909 (citing Cal.
21 Penal Code § 12026).¹

22 119. Accordingly, because the state legislature has already occupied the field of regulating
23 residential handgun possession, as well as all conceivable fields of gun possession, local governments
24 are excluded from further regulation of guns, particularly guns in the home.

25 120. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm
26 to their constitutional rights unless Defendants are enjoined from implementing and enforcing the
27 Ordinance.

28

¹ The state laws cited in *Fiscal* have since been repealed. However, they have been continued into other statutes with no substantive change.

1 121. Plaintiffs have found it necessary to engage the services of private counsel to vindicate
2 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees and costs
3 pursuant to California Code of Civil Procedure Section 1021.5.

4
5 **FOURTH CLAIM FOR RELIEF**

6 **Violation of article XIII C, §1 of the California Constitution-Local Tax Elections**
7 ***The Ordinance imposes new taxes, but was not submitted to the electorate for vote.***

8 122. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
9 above.

10 123. The California Constitution requires that “No local government may impose, extend, or
11 increase any general tax unless and until that tax is submitted to the electorate and approved by a
12 majority vote.” Article XIII C, §2(b).

13 124. It also requires that “No local government may impose, extend, or increase any special
14 tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.” Article
15 XIII C, §2(d).

16 125. A “tax” is “any levy, charge, or exaction of any kind imposed by a local government,”
17 with exceptions that do not apply here. Article XIII C, §1(e).

18 126. Thus, both of the fees in the Ordinance and the insurance requirement constitute a
19 “tax.”

20 127. The Ordinance, whether it is a general or a special tax, was never submitted to the
21 electorate for a vote.

22 128. We note that, if the City disputes that the Ordinance is a tax, “the [City] bears the
23 burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a
24 tax, that the amount is no more than necessary to cover the reasonable costs of the governmental
25 activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable
26 relationship to the payor’s burdens on, or benefits received from, the governmental activity.” Article
27 XIII C, §1.

28 129. The City cannot meet this burden because the fees imposed are a levy, charge, or
exaction imposed by the city that does not meet any exception, and the amount of the fees are “more

1 than necessary to cover the reasonable costs of the governmental activity” because they are not for
2 government activity, and “the manner in which those costs are allocated to” gun owners do not “bear a
3 fair or reasonable relationship to the payor’s burdens on, or benefits received from” the City’s
4 “governmental activity.” Article XIII C, §1.

5 130. As stated previously, the insurance requirement and the fee allocated to a nonprofit do
6 not cover “costs of a governmental activity” as the insurance is allocated to for-profit corporations and
7 the fee is allocated to an unnamed nonprofit rather than the City.

8 131. Neither the insurance requirement nor the nonprofit fees bear a fair or reasonable
9 relationship to the payor’s burdens on, or benefits received from, a governmental activity.

10 132. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm
11 to their constitutional rights unless Defendants are enjoined from implementing and enforcing the
12 Ordinance.

13 133. Plaintiffs have found it necessary to engage the services of private counsel to vindicate
14 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees and costs
15 pursuant to California Code of Civil Procedure Section 1021.5.

16
17 **FIFTH CLAIM FOR RELIEF**

18 **San Jose City Charter, Art. IV, §§ 400, 502, 602, 701, 1204, 1206, 1207, 1211**

19 ***The Ordinance Violates the Separation of Powers Within the City of San Jose’s Government, its
20 Budget and Appropriations Procedures, and Controls on the City’s Receipts.***

21 134. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
22 above.

23 135. The San Jose City Charter (“Charter”) establishes the powers of the City of San Jose’s
24 government. San Jose City Charter § 200 (Ex. A).

25 136. The Charter divides the legislative power of the City’s government from its executive
26 power. “All powers of the City and the determination of all matters of policy shall be vested in the
27 Council, subject to the provisions of this Charter and the Constitution of the State of California.” *Id.*, §
28 400.

137. The Charter grants the City Council the power to impose taxes by ordinance. *Id.*, §

1 602(c).

2 138. Only the City Council has the power to establish a budget. *Id.* §§ 1204, 1206. The
3 Council also has the sole power to appropriate the expenditure of City funds. *Id.*, § 1207.

4 139. The City Manager is the “Chief Administrative Officer and head of the administrative
5 branch of the City government.” *Id.*, § 502; *see also id.*, § 701.

6 140. Finally, “[a]ll revenues and receipts which are not required by [the] Charter, State law
7 or ordinances to be placed in special funds shall be credited to the [City’s] General Fund.” *Id.*, § 1211.
8 The General Fund is “a medium of control and accounting for all City activities excepting activities
9 for which special funds are established and maintained.” *Id.* CAL. GOV’T. CODE § 43400 also requires
10 monies received “from licenses, street poll taxes, fines, penalties, and forfeitures” to be put into the
11 general fund.

12 141. Here, the Ordinance states that “[t]he City shall not specifically direct how the monies
13 from the Gun Harm Reduction Fee are expended” by its chosen nonprofit. Ordinance, § 10.32.220.C.

14 142. The Ordinance, by prohibiting the City from directing how “monies from the Gun
15 Harm Reduction Fee are expended” violates the San Jose City Charter’s reservation of budgeting and
16 appropriation power to the City Council.

17 143. The Ordinance also violates the City Charter’s delegation of executive functions to the
18 “administrative” branch of the City Government under the leadership and control of the City Manager
19 because the Ordinance says “the City shall not specifically direct how the monies from the Gun Harm
20 Reduction Fee are expended” other than a vague directions to the nonprofit to “reduce the risk” of
21 harm from using firearms, “mitigate the risk” of harm or liability from possessing firearms, and to
22 spend the city’s funds in ways including, *but not limited to*, various services. *Id.*, § 10.32.220.A, C.

23 144. The Ordinance states that gun owners must pay the City-required, City-determined fee
24 directly to a nonprofit organization. *Id.*, § 10.32.215. By diverting the payment of the City’s
25 mandatory fee directly to a nonprofit rather than the City’s General Fund, the Ordinance violates the
26 City Charter’s requirement that all City revenues and receipts be deposited into City accounts as an
27 essential means of City “control and accounting.”

28 145. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm

1 to their constitutional rights unless Defendants are enjoined from implementing and enforcing the
2 Ordinance.

3 146. Plaintiffs have found it necessary to engage the services of private counsel to vindicate
4 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees and costs
5 pursuant to California Code of Civil Procedure Section 1021.5.

6 **SIXTH CLAIM FOR RELIEF**
7 **Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202**
8 *Plaintiffs are entitled to declaratory relief.*

9 147. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
10 above.

11 148. To the extent that each of the claims above have not already established a remedy,
12 Plaintiffs are entitled to declaratory relief holding that the Ordinance violates Plaintiffs' individual
13 rights under the United States and California constitutions and San Jose's City Charter, and is
14 otherwise invalid, are entitled to preliminary and permanent injunctions preventing the enforcement of
15 the Ordinance, nominal damages, and further relief that this Court deems necessary or proper.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray, on behalf of themselves and all of NAGR's members, for the
18 following:

- 19 A. Preliminary and permanent injunctions enjoining Defendants and all successors in
20 office from enforcing the Ordinance, including those authorized by 42 U.S.C. § 1983
21 and Cal. Civil Code §52.1;
- 22 B. A declaratory judgment that the Ordinance violates the First, Second, and Fourteenth
23 Amendments of the United States Constitution and article XI, section 7 and article XIII
24 C of the California Constitution, San Jose's City Charter, and granting the necessary
25 and proper relief this Court deems appropriate, including relief authorized by 28 U.S.C.
26 §§ 2201, 2202;
- 27 C. Nominal damages;
- 28 D. Costs and attorneys' fees, including those authorized by 42 U.S.C. § 1988 and
California Code of Civil Procedure Section 1021.5; and

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E. Any other relief as this Court, in its discretion, deems just and appropriate.

Dated: February 14, 2022

DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon

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Exhibit 2

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15 *Attorneys for Defendant City of San Jose*

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

19 **Howard Jarvis Taxpayers Association;**
20 Silicon Valley Taxpayers Association, Inc.;;
21 Silicon Valley Public Accountability Foundation;
22 James Barry; and George Arrington,

23 Plaintiffs,

24 v.

25 **City of San Jose**, and all persons interested in the
26 matter of San Jose Ordinance No. 30716,
27 establishing an Annual Gun Harm Reduction Fee,

Defendants.

Case No. _____

NOTICE OF REMOVAL

[28 U.S.C. §§ 1331, 1367, 1441, 1446]

Complaint filed: March 7, 2022
Complaint served: March 16, 2022
Removal date: April 15, 2022

1 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C §§ 1331, 1367, 1441, and 1446, Defendant
2 City of San Jose (“City”) hereby removes the above-captioned action from the Santa Clara County
3 Superior Court to the United States District Court for the Northern District of California. In support of
4 this Notice of Removal, the City states as follows.

5 **I. INTRODUCTION**

6 1. On March 7, 2022, Plaintiffs Howard Jarvis Taxpayers Association, Silicon Valley
7 Taxpayers Association, Silicon Valley Public Accountability Foundation, James Barry, and George
8 Arrington (collectively, “Plaintiffs”) commenced this action against the City in the Santa Clara County
9 Superior Court, assigned Case No. 22CV395596, with the filing of a complaint titled “Complaint to
10 Invalidate §§ 10.32.215 and 10.32.230(B) of Chapter 10.32 of the Title 10 of the San Jose Municipal
11 Code” (“Complaint”), a copy of which is attached here as **Exhibit A**.

12 2. A copy of the state court docket sheet for this action, downloaded from the Santa Clara
13 County Superior Court within 24 hours of the date and time this Notice of Removal is being filed, is
14 attached here as **Exhibit B**.

15 3. The Complaint brings four causes of action: **(1)** “Violation of Constitutional Rights of
16 Speech and Association” (under the First and Fourteenth Amendments to the U.S. Constitution and
17 Article I, Sections 2 and 3 of the California Constitution, *see* Compl. ¶ 17); **(2)** “Unconstitutional
18 Condition” (under the Second Amendment to the U.S. Constitution and Article I, Section 1 of the
19 California Constitution, *see id.* ¶ 21); **(3)** “Special Tax Lacking Voter Approval” (under Article XIII C,
20 Sections 1 and 2 of the California Constitution, *see id.* ¶¶ 27, 29-30); and **(4)** “Unconstitutional
21 Delegation of Power to Tax” (under Article XI, Section 11, and Article XIII, Section 31 of the
22 California Constitution, *see id.* ¶ 36).

23 **II. JURISDICTION AND BASIS FOR REMOVAL**

24 4. Removal jurisdiction exists in this matter under 28 U.S.C. §§ 1441(a) and 1446(a)
25 because this case is a “civil action brought in a State court of which the district courts of the United
26 States have original jurisdiction.” 28 U.S.C. § 1441(a).

1 5. This Court has original jurisdiction under 28 U.S.C. § 1331 with respect to Plaintiffs’
2 claims that certain provisions of a City Ordinance violate their rights arising under federal law—
3 namely, the First and Second Amendments to the U.S. Constitution, as applied to the City through the
4 Fourteenth Amendment. *See* Compl. ¶¶ 17, 19, 21.

5 6. This Court has supplemental jurisdiction under 28 U.S.C § 1367 with respect to
6 Plaintiffs’ other claims, which arise under California state law, because those other claims regard the
7 same provisions of the same City Ordinance and are otherwise “so related to claims in the action within
8 [the Court’s] original jurisdiction that they form part of the same case or controversy under Article III
9 of the United States Constitution.” 28 U.S.C. § 1367.

10 **III. VENUE AND INTRADISTRICT ASSIGNMENT**

11 7. Removal to this Court is proper under 28 U.S.C. §§ 84(a), 1441(a), and 1446(a) because
12 Santa Clara County Superior Court, where the Complaint was filed, is a state court within the Northern
13 District of California.

14 8. Pursuant to Northern District of California Civil Local Civil Rule 3-2(c) and (e), this
15 case should be assigned to the San Jose Division, as the alleged events giving rise to the action
16 occurred in San Jose and concern the City of San Jose and its residents. *See* Compl. ¶¶ 4-6, 9, 19.

17 **IV. PROCEDURAL REQUIREMENTS**

18 9. Plaintiffs served the City on March 16, 2022. *See* **Exhibit C** (Proof of Service). This
19 Notice of Removal is being filed within 30 days of service, in accordance with 28 U.S.C § 1446(b).

20 10. “[A] copy of all process, pleadings, and orders” served upon the removing defendant
21 (i.e., the City) in this action are attached here as **Exhibit D**, in accordance with 28 U.S.C § 1446(a).

22 11. A copy of this Notice of Removal is being filed with the Clerk of the Santa Clara
23 County Superior Court and is being served on all adverse parties, through their counsel of record, in
24 accordance with 28 U.S.C. § 1446(d).

25 12. “[A]ll defendants who have been properly joined and served” have joined or consented
26 to the removal of this action, in accordance with 28 U.S.C. § 1446(b)(2)(A). The City is the only
27 defendant that has been “properly joined and served” in this action for purposes of Section

1 1446(b)(2)(A). While the Complaint also names as defendants “all persons interested in the matter of
2 San Jose Ordinance No. 30716” (Compl. ¶ 7), all such persons are nominal or unknown, and none of
3 them are “defendants who have been properly joined and served” for purposes of the federal removal
4 statute. *See Baker v. Wells Fargo Bank, N.A.*, No. 1:16-cv-01943, 2017 WL 931879, at *3 (E.D. Cal.
5 Mar. 9, 2017) (“the general requirement of consent does not apply to ‘nominal, unknown, or
6 fraudulently joined parties’”).

7 **V. CONCLUSION**

8 WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant City of San
9 Jose hereby removes this action from the Santa Clara County Superior Court to the United States
10 District Court for the Northern District of California.

11
12 Respectfully submitted,

13 Dated: April 15, 2022

COTCHETT, PITRE & McCARTHY, LLP

14
15 By: /s/ Tamarah P. Prevost
16 Joseph W. Cotchett
17 Tamarah P. Prevost
18 Andrew F. Kirtley
19 Melissa Montenegro

Attorneys for Defendant City of San Jose

Exhibit A

JONATHAN M. COUPAL, State Bar No. 107815
TIMOTHY A. BITTLE, State Bar No. 112300
LAURA E. DOUGHERTY, State Bar No. 255855
Howard Jarvis Taxpayers Foundation
921 Eleventh Street, Suite 1201
Sacramento, CA 95814
(916) 444-9950
Email: tim@hjta.org

E-FILED
3/7/2022 4:00 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV395596
Reviewed By: A. Villanueva

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

22CV395596

HOWARD JARVIS TAXPAYERS ASSN.,
SILICON VALLEY TAXPAYERS ASSN.,
SILICON VALLEY PUBLIC ACCOUNTA-
BILITY FOUNDATION, JAMES BARRY,
and GEORGE ARRINGTON,

No.

Plaintiffs

**COMPLAINT TO INVALIDATE
§§ 10.32.215 AND 10.32.230(B) OF
CHAPTER 10.32 OF TITLE 10 OF THE
SAN JOSE MUNICIPAL CODE**

v.

CITY OF SAN JOSE, and ALL PERSONS
INTERESTED in the matter of San Jose
Ordinance No. 30716, establishing an
Annual Gun Harm Reduction Fee,

Calendar preference per CCP § 867

Defendants

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PARTIES

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2 1. Plaintiff Howard Jarvis Taxpayers Association (“HJTA”) is a nonprofit public
3 benefit corporation, comprised of over 200,000 California members, organized and
4 existing under the laws of California for the purpose, among others, of engaging in civil
5 litigation on behalf of its members and all California taxpayers to ensure constitutionality
6 in taxation. HJTA has members who reside in the City of San Jose, who legally own
7 firearms, and who are subject to the Annual Gun Harm Reduction Fee that is the
8 subject of this action.

9 2. Plaintiff Silicon Valley Taxpayers Association, Inc. (“SVTA”) is a nonprofit
10 public benefit corporation, comprised of members who reside in Santa Clara County,
11 organized and existing under the laws of California for the purpose of advocating the
12 reduction of taxes and acting on behalf of its members to achieve its tax reduction
13 goals. SVTA has members who reside in the City of San Jose, who legally own
14 firearms, and who are subject to the Annual Gun Harm Reduction Fee that is the
15 subject of this action.

16 3. Plaintiff Silicon Valley Public Accountability Foundation (“SVPAF”) is a
17 nonprofit public benefit corporation, comprised of members who reside in Santa Clara
18 County, organized and existing under the laws of California for the purpose of
19 monitoring the policies and political actions of public officials in Santa Clara County to
20 keep voters informed and residents represented in local decision-making. SVPAF has
21 members who reside in the City of San Jose, who legally own firearms, and who are
22 subject to the Annual Gun Harm Reduction Fee that is the subject of this action.

23 4. Plaintiff James Barry is a resident of San Jose who legally owns a firearm
24 and is subject to the Annual Gun Harm Reduction Fee that is the subject of this action.

25 5. Plaintiff George Arrington is a resident of San Jose who legally owns a
26 firearm and is subject to the Annual Gun Harm Reduction Fee that is the subject of this
27 action.

1 requirement of the Ordinance is not challenged herein.

2 11. The Ordinance also requires San Jose gun owners to pay an “Annual Gun
3 Harm Reduction Fee” to a “Designated Nonprofit Organization” that the City Manager
4 will designate from time to time. The amount of the annual fee “will be set forth in the
5 schedule of fees and charges established by resolution of the City Council.” (Muni.
6 Code § 10.32.215.) It is this fee that plaintiffs challenge herein.

7 12. “Designated Nonprofit Organization” is defined in the Ordinance as “an
8 entity that qualifies as a nonprofit corporation under the federal internal revenue code
9 and is designated pursuant to the City Manager’s authority under Section 10.32.235,”
10 provided that “[n]o City official or employee shall sit on the board of directors of the
11 Designated Nonprofit Organization.” (Muni. Code § 10.32.205(B).) Section 10.32.235,
12 in subdivision (A)(2), delegates authority to the City Manager for “[d]esignation of the
13 nonprofit organization that will receive the Gun Harm Reduction Fee.”

14 13. The Ordinance provides basic guidelines for expenditure of the fee by the
15 nonprofit organization. It says, “expenditures may include, but are not necessarily
16 limited to the following: (1) Suicide prevention services or programs; (2) Violence
17 reduction or gender based violence services or programs; (3) Addiction intervention and
18 substance abuse treatment; (4) Mental health services related to gun violence; or (5)
19 Firearms safety education or training.” (Muni. Code § 10.32.220(A).)

20 14. The Ordinance further states, “The Designated Nonprofit Organization shall
21 spend every dollar generated from the Gun Harm Reduction Fee, minus administrative
22 expenses, exclusively for programs and initiatives designed to (a) reduce the risk or
23 likelihood of harm from the use of firearms in the City of San Jose, and (b) mitigate the
24 risk of physical harm or financial, civil, or criminal liability that a San Jose firearm owner
25 or her family will incur through her possession of firearms.” (Muni. Code §
26 10.32.220(C).)

27 15. Except for these basic guidelines, the Ordinance provides that “the City

1 shall not specifically direct how the monies from the Gun Harm Reduction Fee are
2 expended.” (Muni. Code § 10.32.220(C).)

3 16. A gun owner’s failure to pay the required fee to the designated private
4 organization is punishable by a fine (Muni. Code § 10.32.240(A)) and confiscation of
5 the owner’s firearms (Muni. Code § 10.32.245).

6 17. The First Amendment of the United States Constitution, made applicable to
7 the states through the Fourteenth Amendment, provides, “Congress shall make no law
8 ... abridging the freedom of speech ... or the right of the people peaceably to
9 assemble.” Article I, sections 2 and 3 of the California Constitution provide, “A law may
10 not restrain or abridge liberty of speech,” and “The people have the right to ... assemble
11 freely to consult for the common good.”

12 18. Liberty of speech includes the right to not speak and the right to not be
13 forced by the government to support someone else’s speech, particularly when you
14 disagree with their message. The right to assemble freely includes the right to
15 associate with others around a common cause and the right to not be forced by the
16 government to associate with or support someone else’s organization, particularly a
17 group with which you would not voluntarily assemble.

18 19. By requiring San Jose gun owners to pay an Annual Gun Harm Reduction
19 Fee to a private nonprofit organization that the City Manager will designate, the
20 Ordinance forces San Jose gun owners to associate with or support that private group
21 and to fund their message, in violation of the gun owners’ rights of free speech and
22 association under the United States and California constitutions.

23 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

24 **SECOND CAUSE OF ACTION**

25 **(Unconstitutional Condition)**

26 20. Plaintiffs repeat the allegations contained in Paragraphs 1 through 19
27 above as though fully set forth herein.

1 tax imposed for specific purposes.” (Cal. Const., art. XIII C, § 1(d).) The Annual Gun
2 Harm Reduction Fee is imposed ostensibly for the purpose of reducing gun harm.
3 Therefore, it is a special tax.

4 30. Article XIII C, section 2(d) of the California Constitution provides, “No local
5 government may impose, extend, or increase any special tax unless and until that tax is
6 submitted to the electorate and approved by a two-thirds vote.”

7 31. The Annual Gun Harm Reduction Fee was not submitted to the electorate
8 or approved by a two-thirds vote.

9 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

10 **FOURTH CAUSE OF ACTION**

11 **(Unconstitutional Delegation of Power to Tax)**

12 32. Plaintiffs repeat the allegations contained in Paragraphs 1 through 31
13 above as though fully set forth herein.

14 33. Only the government possesses the power to tax.

15 34. The power to tax includes the power to collect taxes and appropriate tax
16 revenues.

17 35. Under the Ordinance, the Annual Gun Harm Reduction Fee will be collected
18 by the private nonprofit organization that the City Manager will designate. That revenue
19 will not be remitted to the City, but will be appropriated by the private organization. San
20 Jose Municipal Code section 10.32.220(C) states, “The Designated Nonprofit
21 Organization shall spend every dollar generated from the Gun Harm Reduction Fee,”
22 and “the City shall not specifically direct how the monies from the Gun Harm Reduction
23 Fee are expended.”

24 36. Under article XIII, section 31 of the California Constitution, the power to tax
25 may not be granted to a private entity. It provides, “The power to tax may not be
26 surrendered or suspended by grant or contract.” Similarly, article XI, section 11
27 prohibits the delegation of local powers to private entities. It prohibits “delegat[ing] to a

1 private person or body power to make, control, appropriate, supervise, or interfere with
2 county or municipal corporation improvements, money, or property, or to levy taxes or
3 assessments, or perform municipal functions."

4 37. The Ordinance unconstitutionally delegates some of the City's power to tax
5 and appropriate tax revenues to a private organization, not answerable to the voters,
6 that the City Manager will designate.

7 WHEREFORE, plaintiffs pray for judgment as set forth below:

8 **PRAYER**

9 Based on the foregoing allegations, plaintiffs pray for judgment against
10 defendants as follows:

- 11 1. For an Order invalidating sections 10.32.215 and 10.32.230(B) of chapter
- 12 10.32 of title 10 of the San Jose Municipal Code;
- 13 2. For costs of suit including reasonable attorney fees; and
- 14 3. For such other or further relief as the Court deems just and proper.

15 DATED: March 7, 2022.

16 Respectfully submitted,

17 JONATHAN M. COUPAL
18 TIMOTHY A. BITTLE
19 LAURA E. DOUGHERTY

20 
21 TIMOTHY A. BITTLE
22 Attorneys for Plaintiffs
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VERIFICATION

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I, Timothy A. Bittle, am the Director of Legal Affairs for the Howard Jarvis Taxpayers Association, one of the plaintiffs in this action, and authorized to sign this Verification on the Association’s behalf. The other plaintiffs are absent from the County of Sacramento where I have my office, and I make this verification for that reason as well.

I have read the attached complaint. Except as to matters stated on information and belief, the allegations contained in the complaint are true of my own knowledge and, with regard to those matters stated on information and belief, I believe them to be true.

I declare, upon penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Sacramento, California.

DATED: March 7, 2022.


TIMOTHY A. BITTLE

Exhibit B

22CV395596

[Print](#)

Howard Jarvis Taxpayers Association et al vs All Persons Interested in the matter of San Jose Ordinance No. 30716, et al

Case Information

Case Type: Other Complaint (Not Spec)
 Unlimited (42)
Case Number: 22CV395596
Filing Date: 3/7/2022
Case Status: Active
Court Location: Civil

PARTIES

EVENTS

HEARINGS

Show All entriesSearch:

Type	First Name	Middle Name	Last Name
Defendant			All Persons Interested in the matter of San Jose Ordinance No. 30716,
Defendant			City of San Jose
Plaintiff			Howard Jarvis Taxpayers Association
Plaintiff	James		Barry
Plaintiff	George		Arrington
Plaintiff			Silicon Valley Taxpayers Association
Plaintiff			Silicon Valley Public Accountability Foundation

Showing 1 to 7 of 7 entries

[Previous](#) [1](#) [Next](#)

Attorneys








Show All entriesSearch:

Representing	First Name	Middle Name	Last Name
Howard Jarvis Taxpayers Association	Timothy	Arthur	Bittle
Silicon Valley Public Accountability Foundation	Timothy	Arthur	Bittle
Silicon Valley Taxpayers Association	Timothy	Arthur	Bittle
George Arrington	Timothy	Arthur	Bittle
James Barry	Timothy	Arthur	Bittle

Showing 1 to 5 of 5 entries

[Previous](#) [1](#) [Next](#)Show All entriesSearch:

File Date	File Type	Filed By	Comment	Documents
4/14/2022	Proof of Service: Summons DLR (Civil)	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Proof of Published Service of Summons on "All Persons Interested"	
3/25/2022	Order: Ex Parte	Timothy Bittle, Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	GRANTED Order Approving Publication of Summons	
3/24/2022	Proof of Service	Timothy Bittle, Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,		

File Date	File Type	Filed By	Comment	Documents
3/24/2022	Ex Parte Application - Notice Required	Timothy Bittle, Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	for Order Approving Publication of Summons; Declaration of Timothy Bittle; Memorandum of Points and Authorities	
3/22/2022	Opposition/Objections	City of San Jose,	to Ex Parte Application for Order Approving Publication of Summons	
3/22/2022	Request: Judicial Notice	City of San Jose,	In Support of Opposition to Ex Parte Application for Order Approving Publication of Summons	
3/18/2022	Proof of Service: Summons DLR (Civil)	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Proof of Service of Summons	
3/7/2022	New Filed Case			
3/7/2022	Complaint (Unlimited) (Fee Applies)	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Complaint to Invalidate Sections 10.32.215 and 10.32.230(B) of Chapter 10.32 of Title 10 of the San Jose Municipal Code	
3/7/2022	Civil Case Cover Sheet	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Civil Case Cover Sheet	
3/7/2022	Summons: Issued/Filed	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Summons	

Showing 1 to 11 of 11 entries

Show All entries

Search:

Department	Type	Date	Time	Result
Department 20	Conference: Case Management	8/2/2022	3:00PM	

Showing 1 to 1 of 1 entries

Exhibit C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy Bittle, 112300 Howard Jarvis Taxpayers Foundation 921 11th Street, Suite 1201 Sacramento, CA 95814 TELEPHONE NO.: (916) 444-9950 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY R. Fleming Electronically Filed by Superior Court of CA, County of Santa Clara, on 3/18/2022 11:25 AM
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Santa Clara County 191 N. First Street San Jose, CA 95113-1090	Reviewed By: R. Fleming Case #22CV395596 Envelope: 8543660
PLAINTIFF/PETITIONER: Howard Jarvis Taxpayers Assn., et al. DEFENDANT/RESPONDENT: City of San Jose, et al.	CASE NUMBER: 22CV395596
<p style="text-align: center;">PROOF OF SERVICE OF SUMMONS</p>	Ref. No. or File No.:

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons, Complaint, Alternative Dispute Information Sheet
3. a. Party served: City of San Jose
 - b. Person Served: Office of the City Clerk - Person Authorized to Accept Service of Process
4. Address where the party was served: 200 E Santa Clara St, Tower 14th Floor
San Jose, CA 95113
5. I served the party
 - b. **by substituted service.** On (date): 03/16/2022 at (time): 1:58PM I left the documents listed in item 2 with or in the presence of: Toni Taber - Deputy City Clerk - Person In Charge Of Office
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (4) A declaration of mailing is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 - d. on behalf of:
City of San Jose
 - under: CCP 416.50 (public entity)
7. **Person who served papers**
 - a. Name: Joseph Hussey
 - b. Address: One Legal - P-000618-Sonoma
1400 North McDowell Blvd, Ste 300
Petaluma, CA 94954
 - c. Telephone number: 415-491-0606
 - d. The fee for service was: \$ 153.00
 - e. I am:
 - (3) registered California process server.
 - (i) Employee or independent contractor.
 - (ii) Registration No.: ps1611
 - (iii) County Santa Clara
8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 03/16/2022

Joseph Hussey

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Timothy Bittle, 112300 Howard Jarvis Taxpayers Foundation 921 11th Street, Suite 1201 Sacramento, CA 95814 ATTORNEY FOR (Name): Plaintiff		TELEPHONE NO.: (916) 444-9950	FOR COURT USE ONLY
Insert name of court, judicial district or branch court, if any: Santa Clara - First Street 191 N. First Street San Jose, CA 95113-1090		Ref. No. or File No.	
PLAINTIFF: Howard Jarvis Taxpayers Assn., et al.			
DEFENDANT: City of San Jose, et al.			
PROOF OF SERVICE BY MAIL			CASE NUMBER: 22CV395596

I am a citizen of the United States, over the age of 18 and not a party to the within action. My business address is 1400 N. McDowell Blvd, Petaluma, CA 94954.

On 03/17/2022, after substituted service under section CCP 415.20(a) or 415.20(b) or FRCP 4(e)(2)(B) or FRCP 4(h)(1)(B) was made (if applicable), I mailed copies of the:

Summons, Complaint, Alternative Dispute Information Sheet

to the person to be served at the place where the copies were left by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at Petaluma, California, addressed as follows:

City of San Jose

Office of the City Clerk (or authorized staff)

200 E Santa Clara St, Tower 14th Floor

San Jose, CA 95113

I am readily familiar with the firm's practice for collection and processing of documents for mailing. Under that practice, it would be deposited within the United States Postal Service, on that same day, with postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

Fee for Service: \$ 153.00

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on 03/17/2022 at Petaluma, California.

One Legal - P-000618-Sonoma
1400 North McDowell Blvd, Ste 300
Petaluma, CA 94954

MBerry

Melissa Berry

OL# 17868464

Exhibit D

1 JONATHAN M. COUPAL, State Bar No. 107815
2 TIMOTHY A. BITTLE, State Bar No. 112300
3 LAURA E. DOUGHERTY, State Bar No. 255855
4 Howard Jarvis Taxpayers Foundation
5 921 Eleventh Street, Suite 1201
6 Sacramento, CA 95814
7 (916) 444-9950
8 Email: tim@hjta.org

9 Attorneys for Plaintiffs

FILED
MAR 23 2022

Clerk of the Court
Superior Court of CA County of Santa Clara
BY R. Sandover DEPUTY

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 HOWARD JARVIS TAXPAYERS ASSN.,)
13 SILICON VALLEY TAXPAYERS ASSN.,)
14 SILICON VALLEY PUBLIC ACCOUNTA-)
15 BILITY FOUNDATION, JIM BARRY, and)
16 GEORGE ARRINGTON,)

17 Plaintiffs

18 v.

19 CITY OF SAN JOSE, and ALL PERSONS)
20 INTERESTED in the matter of San Jose)
21 Ordinance No. 30716, establishing an)
22 Annual Gun Harm Reduction Fee,)

23 Defendants

No. 22CV395596

**EX PARTE APPLICATION FOR ORDER
APPROVING PUBLICATION OF
SUMMONS; DECLARATION OF
TIMOTHY BITTLE; MEMORANDUM OF
POINTS AND AUTHORITIES**

Department: 20
Case Filed: March 7, 2022
Trial Date: Not Set

Calendar preference per CCP § 867

TELEPHONE APPEARANCE

EX PARTE APPLICATION

1
2 Plaintiffs Howard Jarvis Taxpayers Association *et al.* hereby apply *ex parte* for
3 an Order approving the form of, and the publication of, summons upon all persons
4 interested in the matter of City of San Jose Ordinance No. 30716, establishing an
5 Annual Gun Harm Reduction Fee.

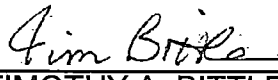
6 Plaintiffs have sued the City of San Jose (“City”) to invalidate the new gun fee on
7 the grounds that it violates their constitutional rights of free speech and association,
8 places an unconstitutional condition on their right to bear arms, is a special tax which
9 needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private
10 organization, and for these reasons is invalid.

11 This application is made on the grounds that Government Code sections
12 50077.5 and 53511 require plaintiffs’ lawsuit to be brought as a reverse-validation
13 action against “all persons” under Code of Civil Procedure sections 860 *et seq.*
14 Pursuant to Code of Civil Procedure sections 861, 861.1, and 863, all persons
15 interested must be specially notified through published summons. The proposed form
16 of published summons is attached to the accompanying proposed Order as Exhibit 1.
17 Supporting this Application are the attached (1) Declaration of Timothy Bittle and (2)
18 Memorandum of Points and Authorities.

19 DATED: March 17, 2022.

20 Respectfully submitted,

21 JONATHAN M. COUPAL
22 TIMOTHY A. BITTLE
23 LAURA E. DOUGHERTY

24 
25 TIMOTHY A. BITTLE
26 Attorneys for Plaintiffs
27

1 subscribers in the City of San Jose.

2 I declare upon penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct and that this declaration was executed this 17th day of
4 March, 2022, in Sacramento, California.

5 
6 TIMOTHY A. BITTLE

7
8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **STATEMENT OF FACTS**

10 This is a “reverse-validation action” brought under the validation statutes (Code
11 of Civ. Proc. §§ 860, *et seq.*), which authorize an action to validate or invalidate acts of
12 local governments. Plaintiffs assert that certain sections of Ordinance No. 30716,
13 recently enacted by the San Jose City Council, are invalid.

14 The ordinance imposes a new Gun Harm Reduction Fee that all San Jose gun
15 owners must pay annually to a private nonprofit organization to be designated by the
16 City Manager. Plaintiffs’ complaint alleges that the new fee violates their constitutional
17 rights of free speech and association, places an unconstitutional condition on the right
18 to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates
19 governmental taxing power to a private organization, and for these reasons is invalid.

20 Because this action is brought under the validation statutes, plaintiffs’ complaint
21 names as defendants: (1) the City of San Jose, and (2) “all persons interested in the matter
22 of San Jose Ordinance No. 30716, establishing an Annual Gun Harm Reduction Fee.”

23 Plaintiffs submitted their complaint for filing on March 7, 2022. It was processed
24 for filing and given a case number on March 15, 2022, at which time the clerk also
25 issued summons for the City.

26 Plaintiffs personally served the complaint and summons on the City via process
27 server on March 16, 2022. This application to publish summons applies only to

1 unknown potential defendants named as “all persons interested.”

2 Code of Civil Procedure section 861 requires “all persons interested” to be
3 served via summons published once a week for three weeks in the Legal Notices
4 section of a newspaper of general circulation in the City of San Jose. Before plaintiffs
5 can publish summons, however, this Court must approve the form and wording of the
6 summons, and the proposed newspaper in which it will be published.

7 Because CRC Rule 3-110(b) and Code of Civil Procedure section 863 require
8 plaintiffs to serve all defendants “within 60 days after the filing of the complaint,” time is
9 of the essence.

10 ARGUMENT

11 A. Seeking This Order Ex Parte is Appropriate

12 Government Code section 50077.5 provides that the validation statutes apply “to
13 any judicial action or proceeding to validate, attack, review, set aside, void, or annul an
14 ordinance or resolution ... that levies a special tax.” Since plaintiffs’ complaint alleges
15 that the Annual Gun Harm Reduction Fee constitutes a special tax (albeit not approved
16 by the voters), Code of Civil Procedure sections 860 *et seq.* apply to this action.

17 Moreover, Government Code section 53511 provides that the validation statutes
18 apply “to determine the validity of [an agency’s] bonds, warrants, contracts, obligations
19 or evidences of indebtedness.” The City’s ordinance directs the City Manager to
20 designate a private nonprofit organization to collect and spend the Annual Gun Harm
21 Reduction Fee. Because plaintiffs are informed and believe that the City may have
22 already entered into a contract with a nonprofit organization for this purpose, Code of
23 Civil Procedure sections 860 *et seq.* apply to this action.

24 Section 861 provides that, “[j]urisdiction of all interested parties may be had by
25 publication of summons pursuant to Section 6063 of the Government Code in a
26 newspaper of general circulation designated by the court, published in the county where
27 the action is pending and whenever possible within the boundaries of the public

1 agency.” Section 861.1 requires that “[t]he summons shall be directed to ‘all persons
2 interested in the matter of [specifying the matter].’” Government Code section 6063
3 requires publication once a week for three weeks.

4 Section 863 provides that, “[i]n any such action the summons shall be in the form
5 prescribed in Section 861.1 except that in addition to being directed to ‘all persons
6 interested in the matter of [specifying the matter],’ it shall also be directed to the public
7 agency. *If the interested person bringing such action fails to complete the publication
8 and such other notice as may be prescribed by the court in accordance with Section
9 861 and to file proof thereof in the action within 60 days from the filing of his complaint,
10 the action shall be forthwith dismissed.*”

11 By statute, then, there is insufficient time to request approval of the form of
12 summons and place of publication using a regular noticed motion. Plaintiffs must have
13 time to schedule publication of the summons in the “legal notices” section of the
14 newspaper, allow three weeks for publication, then obtain from the newspaper a “proof
15 of publication” and file it with this court, all within the 60-day time limitation. Otherwise,
16 absent an extension of time, the case will be dismissed.

17 **B. The Proposed Form of Publication Satisfies the Statute**

18 Code of Civil Procedure section 861 requires publication in “a newspaper of
19 general circulation ... published in the county where the action is pending and whenever
20 possible within the boundaries of the public agency.”

21 In this case, the Mercury News has been adjudicated as a newspaper of general
22 circulation within the boundaries of the City of San Jose and is also the newspaper with
23 the largest number of online and print subscribers.

24 Section 861.1 requires that, “the summons shall be in the form prescribed in Section
25 412.20.” In a nutshell, section 412.20 requires the summons to include the following:

- 26 (1) The title of the court in which the action is pending.
27 (2) The names of the parties to the action.

1 (3) A direction that, to be heard, the defendant must file a written response to the
2 complaint within the time specified. (Section 861.1, in turn, provides that the time to
3 respond "shall be 10 or more days after the completion of publication of the summons.")

4 (4) A notice that, unless the defendant so responds, plaintiff may apply for entry
5 of default and the relief sought by the complaint.

6 (5) The following statement in boldface type: "You may seek the advice of an
7 attorney in any matter connected with the complaint or this summons. Such attorney
8 should be consulted promptly so that your pleading may be filed or entered within the
9 time required by this summons."

10 (6) The following introductory legend at the top of the summons above all other
11 matter, in boldface type, in English and Spanish: "Notice! You have been sued. The
12 court may decide against you without your being heard unless you respond within [the
13 time specified]. Read the information below."

14 The proposed form of summons attached as Exhibit 1 to the proposed Order
15 contains all of the information required by section 412.20.


16 CONCLUSION

17 Due to the time constraints associated with a reverse-validation action, this ex
18 parte application is appropriate. The proposed form of summons (attached to the
19 proposed Order filed herewith), and the proposed newspaper (Mercury News) comply
20 with the requirements of the applicable statutes. For these reasons, plaintiffs' ex parte
21 application for approval should be granted.

22 DATED: March 17, 2022

Respectfully submitted,

23 JONATHAN M. COUPAL
24 TIMOTHY A. BITTLE
LAURA E. DOUGHERTY

25 
26 TIMOTHY A. BITTLE
27 Attorneys for Plaintiffs

1 JONATHAN M. COUPAL, State Bar No. 107815
TIMOTHY A. BITTLE, State Bar No. 112300
2 LAURA E. DOUGHERTY, State Bar No. 255855
Howard Jarvis Taxpayers Foundation
3 921 Eleventh Street, Suite 1201
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5 Email: tim@hjta.org
Attorneys for Plaintiffs
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF SANTA CLARA
9

10 HOWARD JARVIS TAXPAYERS ASSN.,) No. 22CV395596
SILICON VALLEY TAXPAYERS ASSN.,)
11 SILICON VALLEY PUBLIC ACCOUNTA-)
BILITY FOUNDATION, JIM BARRY, and)
12 GEORGE ARRINGTON,)

13 Plaintiffs)

14 v.)

15 CITY OF SAN JOSE, and ALL PERSONS)
INTERESTED in the matter of San Jose)
16 Ordinance No. 30716, establishing an)
Annual Gun Harm Reduction Fee,)

17 Defendants)

**[PROPOSED] ORDER APPROVING
PUBLICATION OF SUMMONS**

Department: 20
Case Filed: March 7, 2022
Trial Date: Not Set

18 Calendar preference per CCP § 867
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ORDER

On the application of plaintiffs, which was considered _____, 2022, in Department 20 with notice to counsel for defendant City of San Jose, the Court having considered the authorities cited and good cause appearing therefor:

IT IS HEREBY ORDERED that plaintiffs’ application for approval to publish summons as to All Persons Interested in the matter of San Jose Ordinance No. 30716 is GRANTED AS FOLLOWS:

1. Plaintiffs shall use the form of Summons attached hereto as Exhibit 1.
2. Plaintiffs shall cause the Summons to be published once a week for three consecutive weeks, with at least five days intervening between publication dates, in the Legal Notices section of the San Jose Mercury News.
3. Plaintiffs shall obtain Proof of Publication from said newspaper and file it with this Court immediately thereafter, or show good cause for their failure to do so.

DATED: _____, 2022.

HON. _____
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND NOT LATER THAN [A date to be determined that is 10 or more days after the completion of publication of the summons in the newspaper]. READ THE INFORMATION BELOW.

AVISO! USTED HA SIDO DEMANDADO. EL TRIBUNAL PUEDE DECIDIR CONTRA USTED SIN AUDIENCIA A MENOS QUE USTED RESPONDA NO MÁS TARDE QUE EL DÍA [The date from above that is 10 or more days after the completion of publication of the summons in the newspaper]. LEA LA INFORMACIÓN QUE SIGUE.

TO ALL PERSONS INTERESTED IN THE MATTER OF CITY OF SAN JOSE ORDINANCE NO. 30716, ESTABLISHING AN ANNUAL GUN HARM REDUCTION FEE.

A civil complaint has been filed in California Superior Court for the County of Santa Clara by Howard Jarvis Taxpayers Association and other plaintiffs against defendant City of San Jose for the purpose of determining the validity of the City’s Annual Gun Harm Reduction Fee.

Plaintiffs allege that the new fee violates their constitutional rights of free speech and association, places an unconstitutional condition on the right to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private organization, and for these reasons is invalid.

To be heard regarding this matter, you must file with the court a written response

1 to the complaint by [the date from above that is 10 or more days after the completion of
2 publication of the summons in all newspapers]. If you do not file a timely written response
3 with the court, plaintiffs may apply for entry of default and the relief sought by their
4 complaint. You may obtain a copy of the complaint by contacting plaintiffs' counsel using
5 the address or telephone number shown below. If you respond to defend the legality or
6 validity of the matter, you will not be subject to punitive action such as wage garnishment
7 or seizure of real or personal property.

8
9 **YOU MAY SEEK THE ADVICE OF AN ATTORNEY IN ANY MATTER**
10 **CONNECTED WITH THE COMPLAINT OR THIS SUMMONS. SUCH ATTORNEY**
11 **SHOULD BE CONSULTED PROMPTLY SO THAT YOUR PLEADING MAY BE FILED**
12 **OR ENTERED WITHIN THE TIME REQUIRED BY THIS SUMMONS.**

13
14 **PUEDE SOLICITAR EL CONSEJO DE UN ABOGADO EN CUALQUIER ASUNTO**
15 **RELACIONADO CON LA DENUNCIA O CON ESTA CITACIÓN. DICHO ABOGADO**
16 **DEBERÁ CONSULTARSE INMEDIATAMENTE PARA QUE SU ALEGATO PUEDA SER**
17 **PRESENTADO O ENTRADO EN EL MOMENTO REQUERIDO POR ESTA CITACIÓN**
18 **JUDICIAL.**

19
20 The name and address of the Court is (El nombre y dirección del Tribunal es):

21
22 Superior Court, County of Santa Clara

23 191 North First Street

24 San Jose, CA 95113

25 CASE NUMBER (Numero del Caso): 22CV395596

26

27

1 The name, address, and telephone number of plaintiffs' attorney is (El nombre, dirección
2 y número de teléfono de los abogados del demandante es):

3

4 Timothy A. Bittle

5 Howard Jarvis Taxpayers Foundation

6 921 11th Street, Ste. 1201

7 Sacramento, CA 95814

8 Tel: 916-444-9950

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FILED
MAR 23 2022

Clerk of the Court
Superior Court of CA County of Santa Clara
BY R. Bandoval DEPUTY

1 JONATHAN M. COUPAL, State Bar No. 107815
2 TIMOTHY A. BITTLE, State Bar No. 112300
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7 (916) 444-9950
8 Email: tim@hjta.org

Attorneys for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

10 HOWARD JARVIS TAXPAYERS ASSN.,)
11 SILICON VALLEY TAXPAYERS ASSN.,)
12 SILICON VALLEY PUBLIC ACCOUNTA-)
13 BILITY FOUNDATION, JIM BARRY, and)
14 GEORGE ARRINGTON,)

Plaintiffs

v.

15 CITY OF SAN JOSE, and ALL PERSONS)
16 INTERESTED in the matter of San Jose)
17 Ordinance No. 30716, establishing an)
18 Annual Gun Harm Reduction Fee,)

Defendants

No. 22CV395596

PROOF OF SERVICE

Department: 20
Case Filed: March 7, 2022
Trial Date: Not Set

Calendar preference per CCP § 867

PROOF OF SERVICE

I, Kiaya Algea, declare:

I am employed in the County of Sacramento, California. I am over the age of 18 years, and not a party to the within action. My business address is: 921 11th Street, Suite 1201, Sacramento, California 95814. On March 17, 2022, I served:

● **EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS; DECLARATION OF TIMOTHY BITTLE; MEMORANDUM OF POINTS AND AUTHORITIES**

- **[PROPOSED] ORDER APPROVING PUBLICATION OF SUMMONS**
- **PROOF OF SERVICE**

on the interested parties below, using the following means:

SEE ATTACHED SERVICE LIST

X **BY U.S. MAIL** On the date listed above, I enclosed the documents in a sealed envelope or package addressed to the interested parties at their respective addresses listed below and deposited the sealed envelopes with the United States Postal Service, with the postage fully prepaid. The envelope or package was placed in the mail at Vacaville, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 17, 2022, at Vacaville, California.


Kiaya R. Algea

SERVICE LIST

Nora Frimann
Office of the City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113
Phone: (408) 535-1900

Attorneys for Defendant City of San Jose

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1 Joseph W. Cotchett (SBN 36324)
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13 Attorneys for CITY OF SAN JOSE

FILED
MAR 22 2022

Clerk of the Court
Superior Court of CA County of Santa Clara
BY R. Samboval DEPUTY

10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**
12 **UNLIMITED JURISDICTION**

13 HOWARD JARVIS TAXPAYERS ASSN.,
14 SILICON VALLEY TAXPAYERS ASSN.,
15 SILICON VALLEY PUBLIC
16 ACCOUNTABILTY FOUNDATION, JIM
17 BARRY, and GEORGE ARRINGTON,

18 Plaintiff(s),

19 v.

20 CITY OF SAN JOSE, and ALL PERSONS
21 INTERESTED in the matter of San Jose
22 Ordinance No. 30716, establishing an Annual
23 Gun Har Reduction Fee,

24 Defendant(s).

Case Number: 22CV395596

**CITY OF SAN JOSE'S OPPOSITION
TO EX PARTE APPLICATION FOR
ORDER APPROVING PUBLICATION
OF SUMMONS**

Date: TBD

Time: TBD

Dept. 20

Judge: Hon. Socrates P. Manoukian

Trial Date: Not Assigned

TELEPHONE APPEARANCE

I. INTRODUCTION

Defendant CITY OF SAN JOSE ("City") opposes Plaintiffs' Ex Parte Application for an Order Approving Publication of Summons and requests a hearing. The City's request is made on the basis that Plaintiffs' application fails to make the necessary affirmative factual showing of a statutory basis of granting relief ex parte under California Rule of Court 3.1202(c). Plaintiffs fail to articulate the necessary statutory basis for the court's invocation of in rem jurisdiction, an obligatory precursor to the court ordering service by publication under California Code of Civil Procedure section 860. That is because Ordinance No. 30716, the San Jose Gun Harm Reduction Ordinance ("Ordinance"), is not the appropriate subject of a reverse validation action. Plaintiff's citations to Government Code sections 50077.5 and 53511 are inapposite as the Ordinance contains no "special tax" as approved by the voters as required by section 50077.5, nor a "bond, warrant, contract, obligation or evidence of indebtedness" as enumerated in section 53511. For these reasons, and for those set out in further detail below, Plaintiff's ex parte application must be denied.

II. FACTUAL HISTORY

On February 8, 2022, the San Jose City Council adopted a first in the nation law requiring gun owners to purchase liability insurance and to invest funds generated from fees paid by owners into evidence-based initiatives to reduce gun violence and gun harm. (City of San Jose's Request for Judicial Notice ("RJN"), Ex. 1.)

The Ordinance was based on findings of the impact of firearm injuries on the community. These findings included but were not limited to the following: that firearm injuries have a significant adverse public health and safety impact nationally; in the State of California, and locally, that between 2010-2014 in Santa Clara County, thirty-one percent of emergency department visits and sixteen percent of hospitalizations from firearms injuries were due to unintentional shootings; that access to firearms within the home doubles the risk that family members will become a victim of homicide, and triples the risk of suicide, and more. (RJN, Ex. 1, pp. 5-7, § 10.32.200.)

1 The Ordinance requires that gun owners who reside in the City or possess a firearm in the City
2 purchase and maintain a renter's or homeowners' gun liability insurance policy. (See *Id.* at p. 7.) The
3 Ordinance contains an Annual Gun Harm Reduction Fee ("Fee"). (*Id.* at p. 8.) The Fee requires that gun
4 owners who reside or possess a firearm in the City pay an annual Fee to a to-be-designated nonprofit
5 each year which will be used by the nonprofit to provide services to residents of the City that own or
6 possess a firearm in the City or to members of their household. (*Id.* at pp. 8-9.) These expenditures may
7 include suicide prevention programs, violence reduction or domestic violence services or programs,
8 mental health services related to gun violence, or firearms safety education and training. (*Id.* at p. 9.) The
9 Fee will be set forth in the schedule of fees and charges established by resolution of the City Council.
10 (*Id.* at p. 8.) Neither the amount of the annual Fee nor the date by which payment will be required has
11 been set. (*Id.*)

12 The Ordinance additionally grants the City Manager the authority to promulgate all regulations
13 necessary to implement the requirements of the Ordinance, including but not limited to, the eventual
14 designation of the nonprofit organization that will receive the Fee. (*Id.* at p. 11, § 10.32.235.) The
15 Ordinance shall become effective at the expiration of one hundred eighty days after its adoption. (*Id.* at
16 p. 13.) The Ordinance also contains a severability clause. (*Id.*)

17 **III. LEGAL STANDARD**

18 A validation action is a lawsuit filed and prosecuted for the purpose of securing a judgment
19 determining the validity of a particular government action or act. (See *Blue v. City of Los Angeles* (2006)
20 137 Cal. App. 4th 1131, 1135, fn. 4.) California Code of Civil Procedure sections 860 through 870.5
21 govern validation actions. Section 860 states the following:

22 A public agency may upon the existence of any matter which under any other laws
23 authorized to be determined pursuant to this chapter, and for 60 days thereafter, bring
24 an action in the superior court of the county in which the principal office of the public
25 agency is located to determine the validity of such matter. The action shall be in the
26 nature of a proceeding in rem. (Cal. Proc. Code § 860.)

1 Section 863 authorizes “interested parties”, in a so called “reverse validation action”, to determine
2 the validity of a particular agency decision or action. (Cal. Proc. Code § 863.) The validation statutes
3 require an interested party to bring a reverse validation action within 60-days of the particular agency
4 decision or action. (See *Id.*; see also Cal. Proc. Code § 860.) A central theme in the validation procedures
5 is the speedy determination of the validity of the public agency’s decision or act in a single dispositive
6 final judgment, to promptly settle all questions about the validity of the agency’s decision or act. (See
7 *Davis v. Fresno Unified School District* (2020), 57 Cal. App. 5th 911, 928.)

8 However, not all acts or transactions of a public agency are subject to validation. (*Id.*) Section 860
9 does not specifically enumerate the actions which are subject to the validation process. Rather, courts
10 must examine other statutes, and cases examining those statutes, to determine the scope of agency
11 decisions and acts that are subject to validation under the validation statute. (*Id.*) California has over 200
12 statutes that provide validation proceedings, most of which are found in the Government Code and the
13 Water Code. (See *Kaatz v. City of Seaside* (2006), 143 Cal. App. 4th 13, 19.) As such, an interested party
14 in a reverse validation suit is required to articulate the specific statutory provision authorizing the use of
15 validation proceedings over the agency decision or action.

16 **IV. ARGUMENT**

17 **A. PLAINTIFFS’ *EX PARTE* APPLICATION FOR PUBLICATION FAILS TO ESTABLISH**
18 **THE NECESSARY STATUTORY BASIS FOR THE COURT’S INVOCATION OF *IN***
19 *REM* JURISDICTION OVER THE ORDINANCE

20 Validation actions are in rem proceedings. (See Cal. Proc. Code § 860). The California Supreme
21 Court has held that *in rem* jurisdiction only attaches if: (1) the court “has the authority to determine the
22 subject matter of the controversy”; and (2) the court “has jurisdiction over the thing proceeding against
23 as a defendant.” (*Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency*
24 (2016), 1 Cal. App. 5th 1084, 1100-1101 citing *Kearney v. Kearney* (1887) 72 Cal. 591, 594 (emphasis
25 added).) This framework applies to validation actions as well. (See *Id.*) As such, there is subject matter
26 jurisdiction to entertain a validation proceeding only if there is a statutory basis for that jurisdiction and
if the party seeking to invoke the validation procedures subsequently perfects that jurisdiction by

1 providing the proper type of constructive notice. (See *Id.*, citing *San Diegans for Open Government v.*
2 *City of San Diego* (2015) 242 Cal. App. 4th 416, 428 [failure to publish summons in accordance with
3 statutory procedures deprives the court of jurisdiction, which deprives the court of the power to rule upon
4 the matter.])

5 Constructive notice alone is not enough to confer subject matter jurisdiction. (See *Id.* at 1101.)
6 As the appeals court stated in *Santa Clarita Org. for Planning & Environment*:

7 If [constructive notice alone] were [enough], a party could compel a court to issue
8 validation ruling merely by giving constructive notice of its complaint, even if its
9 complaint fell outside of any validation statute; such rogue validation actions would
10 eviscerate the legislature’s careful effort to specifically delimit when these proceedings
11 are applicable.

12 (See *Id.*)¹

13 **B. GOVERNMENT CODE SECTION 50077.5 DOES NOT APPLY**

14 Plaintiff cites to Government Code section 50077.5 in support of their argument that the ordinance
15 contains a “special tax” requiring the Plaintiffs to bring their action via the validation statute. (See
16 Plaintiffs’ *Ex Parte* Application and Memorandum of Points and Authorities (hereinafter “Plaintiffs’ *Ex*
17 *Parte* MPA”), p. 5, ln. 12-16). Disturbingly, in citing the statute, Plaintiffs omit key language. The
18 language of section 50077.5 subsection (a) is reproduced here in full without recourse to misleading
19 ellipses. It states the following:

20 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil
21 Procedure applies to any judicial action or proceeding to validate, attack, review,
22 set aside, void, or annul an ordinance or resolution **approved by the voters**

24 ¹ That is exactly what Plaintiffs attempt to do here. Plaintiffs’ articulation of Government Code sections
25 53511 and 50077.5 fails to confer subject matter jurisdiction on this Court as the Ordinance does not
26 contain a “special tax” under section 50077.5 nor a “contract” as required under section 53511. As
27 such, this Court has no authority to rule on this matter subject to the validation procedures, nor the
authority to order service by publication under section 863.

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pursuant to this article on or after January 1, 1986, that leaves a special tax, or modifies or amends an existing ordinance or resolution that levies a special tax.

(Gov't Code § 50077.5(a)).

Section 50077.5 requires further context. This section is a provision in Article 3.5 of Chapter 1, Part 1, Division 1, Title 5 of the Government Code. Article 3.5 is comprised of Government Code sections 50075 through 50077.5, *i.e.*, the provision cited by Plaintiffs. Section 50077 addresses the content of the special tax ordinance to be put to voters envisioned by Article 3.5.

Section 50077(a) states the following:

“[T]he legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax.”

(Cal. Gov. Code § 50077(a); (b); (c) addressing the collection of the special tax and incorporation, formation and reorganization issues related to special taxes).

It is within this statutory context that section 50077.5 addresses the Validation Statute. For section 50077.5 to apply, the “special tax” must have been adopted pursuant to Government Code sections 50075 through 50077.5. Here, as Plaintiffs concede in a parenthetical aside, the Ordinance’s proposed fee was not undertaken, adopted, or implemented pursuant to those sections. Accordingly, section 50077.5 cannot confer subject matter jurisdiction for validation proceedings over the Ordinance on this court. (See *generally* RFJN, Exhibit 1.)

C. GOVERNMENT CODE SECTION 53511 DOES NOT APPLY

Section 53511 specifically enumerates the actions subject to validation: “bonds, warrants, contracts, obligations or evidences of indebtedness.” (See Gov’t Code § 53511). Plaintiffs claim that the Ordinance’s direction that the City Manager designate a private nonprofit organization to collect and

1 spend the Annual Gun Harm Reduction Fee falls under the terms of section 53511, thus requiring
2 validation. (See Plaintiffs' *Ex Parte* MPA, p. 5, ln. 17-23).

3 The Ordinance, only recently adopted on February 8, 2022, directs the City Manager to
4 promulgate regulations to *designate* a nonprofit to perform these tasks. This direction is in plain contrast
5 to Plaintiffs' baseless belief that a nonprofit has already been designated to perform these tasks.

6 Nevertheless, even were that not the case, the contract itself would not fall under the terms of the
7 statute. Section 53511's enumerated list is construed narrowly by the courts (*e.g.*, only contracts
8 involving an agency's financing and financial obligations fall within the statute). (See *Davis v. Fresno*
9 *Unified School Dist.* (2020) 57 Cal. App. 5th 911.)

10 *Davis* is instructive. *Davis* involved, in part, construction contracts between Fresno Unified and
11 a contractor to build new school facilities. (*Id.* at 918.) In these contracts, the school district paid for the
12 construction of buildings as they were completed (as opposed to progress payments, etc.), an alternate
13 approach which the court held could not be characterized as a method of financing the construction of
14 new school facilities. (*Id.* at 940-41). The court explained that an "ordinary construction contract" did
15 not fall under the terms of section 53511 as it did not provide the school district with any financing nor
16 spread the district's obligation to pay for the new construction over a significant period of time. (*Id.* at
17 941.) Even though the school district would pay the contractor with proceeds obtained from the sale of
18 bonds, the Contractor was not a source of financing for the project. (*Id.*) As such, the use of bond funds
19 did not support the plaintiff's conclusion that the contracts were in the nature or directly related to a
20 public agency's bonds or other evidences of indebtedness. (*Id.*)

21 Accordingly, for section 53511 to apply to confer subject matter jurisdiction for a validation
22 action, the statute requires that the contracts be more than just simple service agreements. Rather, they
23 must be "directly related to a public agency's bonds or other evidences of indebtedness" for the statute
24 to apply. (See generally, *Id.*)

25 Here, the Ordinance authorizes the City Manager to promulgate regulations necessary to
26 implement the "designation of the nonprofit organization that will receive the Gun Harm Reduction Fee,

27

1 any processes and procedures related to the payment of thee fee, and any additional guidelines or auditing
2 the use of the monies from the fee.” (RFJN, Exhibit 1, § 10.32.235(A)(2).) There is no indication in the
3 language of the Ordinance, nor have Plaintiffs advanced any argument thereon, that this designation
4 constitutes a contract directly related to a public agency’s bonds or other evidences of indebtedness.
5 Consequently, section 53511 cannot confer subject matter jurisdiction for validation proceedings over
6 the Ordinance on this court.

7 **V. CONCLUSION**

8 Plaintiffs fail to make the necessary showing under California Rule of Court 3.1202(c) of an initial
9 statutory basis for invoking the validation procedures entitling them to proceed with service by
10 publication. Consequently, this court has no authority to rule on the Ordinance under the validation
11 procedures, nor the authority to order service by publication. Since the necessary initial statutory basis to
12 confer *in rem* jurisdiction upon this court does not exist Plaintiff’s *ex parte* request for service by
13 publication must be denied.

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Dated: March 21, 2022

Respectfully submitted,

COTCHETT, PITRE & McCARTHY, LLP

By: 

Joseph W. Cotchett
Tamarah P. Prevost
Melissa Montenegro

Attorneys for CITY OF SAN JOSE

CITY OF SAN JOSE’S OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS	Case Number: 22CV395596
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PROOF OF SERVICE

CASE NAME: HOWARD JARVIS TAXPAYERS ASSN., et al.,v. CITY OF SAN JOSE

CASE NO.: 22CV395596

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

On March 21, 2022, I caused to be served the within:

CITY OF SAN JOSE'S OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS

by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

by PERSONAL DELIVERY, with a copy of this declaration, by causing to be personally delivered a true copy thereof to the person at the address set forth below.

by FACSIMILE TRANSMISSION, with a copy of this declaration, to a facsimile machine at the facsimile machine telephone number listed below.

The above-described transmission was reported as complete without error by a transmission report issued by the facsimile machine immediately following the transmission.

by ELECTRONIC SERVICE listed below, transmitted using the One Legal Process Service electronic filing system. The document(s) listed above was/were electronically served to the electronic address(s) below

by ELECTRONIC TRANSMISSION, with a copy of this declaration, to an electronic address listed below.

I further declare that the electronic transmission was sent on March 21, 2022, before 5:30 p.m., and that the City of San Jose, City Attorney's electronic address is CAO.Main@sanjoseca.gov.

The above-described transmission was reported as sent by a transmission report available for printing from the computer.

by EXPRESS MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

CITY OF SAN JOSE'S OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS	Case Number: 22CV395596
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I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

by OVERNIGHT DELIVERY, with a copy of this declaration, by depositing them into a sealed envelope/package, with delivery fees fully prepaid/provided for, and

causing the envelope/package to be deposited for collection
 causing the envelope/package to be delivered to an authorized courier or driver to receive the envelope/package

designated by the express service carrier for next day delivery.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for overnight delivery by an express courier service. Such correspondence would be deposited with the express service or delivered to the authorized express service courier/driver to receive an envelope/package for the express service that same day in the ordinary course of business.

Addressed as follows:

Jonathan M. Coupal Timothy A. Bittle Laura A. Dougherty Howard Jarvis Taxpayers Foundation 921 Eleventh Street, Suite 1201 Sacramento, CA 95814 Tel: (916) 444-9950 Email: tim@hjta.org	
<i>Attorneys for Plaintiffs Howard Jarvis Taxpers Assn., Silicon Valley Taxpayers Assn., Silicon Valley Public Accountability Foundation, Jim Barry, and George Arrington</i>	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 21, 2022, at San Jose, California.

Brian Ward
Brian Ward

1 Joseph W. Cotchett (SBN 36324)
 2 Tamarah P. Prevost (SBN 313422)
 3 Melissa Montenegro (SBN 329099)
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 tprevost@cpmlegal.com
 mmontenegro@cpmlegal.com
 7
 Attorneys for CITY OF SAN JOSE
 8

FILED
 MAR 22 2022

Clerk of the Court
 Superior Court of CA County of Santa Clara
 BY R. Sandoval DEPUTY

9
 10 **SUPERIOR COURT OF CALIFORNIA**
 11 **IN AND FOR THE COUNTY OF SANTA CLARA**
 12 **UNLIMITED JURISDICTION**

13 HOWARD JARVIS TAXPAYERS ASSN.,
 14 SILICON VALLEY TAXPAYERS ASSN.,
 SILICON VALLEY PUBLIC
 15 ACCOUNTABILTY FOUNDATION, JIM
 BARRY, and GEORGE ARRINGTON,

16 Plaintiff(s),

17 v.

18 CITY OF SAN JOSE, and ALL PERSONS
 19 INTERESTED in the matter of San Jose
 Ordinance No. 30716, establishing an Annual
 20 Gun Har Reduction Fee,

21 Defendant(s).

Case Number: 22CV395596

**CITY OF SAN JOSE'S REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT OF
 OPPOSITION TO EX PARTE
 APPLICATION FOR ORDER
 APPROVING PUBLICATION OF
 SUMMONS**

Date: TBD
 Time: TBD
 Dept. 20
 Judge: Hon. Socrates P. Manoukian

Trial Date: Not Assigned

TELEPHONE APPEARANCE

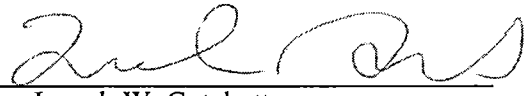
22 23 24 25 26 27 CITY OF SAN JOSE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS	1 Case Number: 22CV395596
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Pursuant to California Evidence Code sections 452, and 453, and California Rules of Court 3.1306(c), Defendant City of San Jose (“City”) respectfully requests that the Court take judicial notice of the following documents attached hereto.

1. Ordinance No. 30716, “An Ordinance of the City of San Jose Adding Part 6 to Chapter 10.32 of Title 10 of the San Jose Municipal Code To reduce Gun Harm By Requiring Gun Owners to Obtain and Maintain Liability Insurance and Establishment of Annual Gun Harm Reduction Fee.” A true and correct copy of this certified document is attached hereto as Exhibit 1. The Ordinance is the proper subject of judicial notice under Evidence Code section 452(b), which provides that the Court may take judicial notice of legislative enactments issued by any public entity in the United States.

Dated: March 21, 2022

Respectfully submitted,
COTCHETT, PITRE & McCARTHY, LLP
By: 
Joseph W. Cotchett
Tamarah P. Prevost
Melissa Montenegro
Attorneys for CITY OF SAN JOSE

<p>CITY OF SAN JOSE’S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS</p>	<p>2.</p> <p>Case Number: 22CV395596</p>
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CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 30716**", the original copy of which is attached hereto, was passed for publication of title on the **25th day of January, 2022**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **8th day of February, 2022, with a bifurcated vote as follows:**

Including Insurance Requirements; Excluding Sections 10.32.215, 10.32.220, and 10.32.230(b)

AYES: ARENAS, CARRASCO, ESPARZA, COHEN, FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ, LICCARDO.

NOES: DAVIS.

ABSENT: NONE.

DISQUALIFIED: NONE.

Excluding Insurance Requirements; Sections 10.32.215, 10.32.220, and 10.32.230(b) only:

AYES: ARENAS, CARRASCO, COHEN, ESPARZA, JONES, JIMENEZ, PERALEZ, LICCARDO.

NOES: DAVIS, FOLEY, MAHAN.

ABSENT: NONE.

DISQUALIFIED: NONE.

Said Ordinance is effective as of the **11th day of March, 2022.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **8th Day of February, 2022.**

(SEAL)

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

NVF:TLC:KML
2/3/2022

ORD. NO. 30716

ORDINANCE NO. 30716

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING PART 6 TO CHAPTER 10.32 OF TITLE 10 OF THE SAN JOSE MUNICIPAL CODE TO REDUCE GUN HARM BY REQUIRING GUN OWNERS TO OBTAIN AND MAINTAIN LIABILITY INSURANCE AND ESTABLISHMENT OF ANNUAL GUN HARM REDUCTION FEE

WHEREAS, the Constitution of the United States of America affords certain protections to the ownership of firearms; and

WHEREAS, the United States Supreme Court has recognized that the Constitutional protections related to firearms ownership are not unlimited, and can be subject to certain types of governmental regulations; and

WHEREAS, a city's police power includes the power to regulate firearms and many courts throughout the nation have upheld local regulations related to the ownership or possession of firearms; and

WHEREAS, firearm injuries have a significant adverse public health and safety impact nationally, in the State of California, and locally; and

WHEREAS, each year more than 23,000 United States residents die by firearm suicide, 14,000 die by firearm homicide, and nearly 500 die from unintentional firearm injuries; and

WHEREAS, in California, between 2005 and 2015, nearly 4,000 children and teenagers were killed or injured with firearms, and 533 children and teenagers committed suicide with firearms, according to data from the Center for Disease Control and Prevention; and

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2/3/2022

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WHEREAS, the Santa Clara County Public Health Department issued a report on firearm injuries in April 2018. In 2016, 11% of injury deaths were due to firearms injuries. During the period 2007-2016, there were an average of 46 deaths per year due to self-inflicted/suicide from firearms injuries, and an average of 28 deaths per year due to assault/homicide from firearms injuries. Self-inflicted/suicide accounted for the highest percentage of deaths (59%) from firearms injuries, with assault/homicide accounting for 36% of deaths from firearm injuries; and

WHEREAS, the April 2018 Santa Clara County Public Health Department report on firearm injuries reported that during the period from 2010-2014, there were an annual average of 28 emergency department visits and 12 hospitalizations due to unintentional firearms injuries. During 2010-2014, 31% of emergency department visits and 16% of hospitalizations from firearms injuries were due to unintentional shootings; and

WHEREAS, research published in the American Journal of Epidemiology in 2004 found that regardless of storage practice, type of gun, or number of firearms in the home, having a gun in the home was associated with an increased risk of firearm homicide and firearm suicide in the home; and

WHEREAS, a 2014 review in the Annals of Internal Medicine suggests that access to firearms within the home doubles the risk that family members will become a victim of homicide, and triples the risk of suicide; and

WHEREAS, a study in the New England Journal of Medicine in 2020 found that handgun ownership is associated with eight times greater likelihood for firearm suicide among men, and 35 times greater likelihood of firearm suicide among women; and

WHEREAS, according to the American Academy of Pediatrics, in homes with guns, suicide rates in children and adolescents and the likelihood of accidental death by shooting are each four times higher than in homes without guns; and

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WHEREAS, in the past decade, 40% of the suicides committed by children and teens involved guns, and 90% of these suicides were with guns that the victims accessed at their own homes or from a relative's home; and

WHEREAS, 58% of shooting deaths in children and teens are homicides, and the risk of homicide is three times higher when there are guns in the home; and

WHEREAS, a June 2014 report published by Everytown for Gun Safety and Moms Demand Action which analyzed publicly reported gun deaths nation-wide over a one-year period from December 15, 2012 to December 12, 2013, showed that at least 100 children were killed in unintentional shootings, amounting to nearly two each week; and

WHEREAS, according to research published in Social Science and Medicine in 2007 based on data over a three-year study period from 2001 to 2003, states with higher rates of household firearm ownership had higher rates of firearm homicide but not of non-firearm homicide, and this relationship held across gender, age, income and multiple other variables; and

WHEREAS, a study in the Journal of Urban Health conducted in 2015 estimated there are as many as 4.6 million children in the United States living in homes with loaded unsecured guns; and

WHEREAS, injuries from unintentional shootings, which are generally insurable, comprise more than a third of all gun-related injuries nationally; and

WHEREAS, in some instances, gun owners have been successfully sued for harm resulting from the use of the owner's firearm by themselves or a third party; and

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WHEREAS, auto insurers have used risk-adjusted premiums to reward good driving and incentivize use of airbags and other safety features, and by using a comprehensive public health approach to car safety the United States reduced per-mile auto fatalities by nearly 80% from 1967 to 2017; and

WHEREAS, similarly, insurance-based mechanisms can encourage firearm owners to take safety classes, use gun safes, install trigger locks, or utilize chamber-load indicators, and according to 2018 research published in The Actuary there is evidence that some actuaries and insurance companies are recognizing firearm-related risk through their product offerings, pricing and underwriting decisions; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 10.32 of Title 10 of the San José Municipal Code is hereby amended by adding a Part to be numbered, entitled and to read as follows:

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2/3/2022

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Part 6

REDUCTION OF GUN HARM – LIABILITY INSURANCE REQUIREMENT AND GUN HARM REDUCTION FEE

10.32.200 Purpose and Findings

- A. This Part is passed and adopted in the exercise of the police power of the City, and for the protection of the welfare, peace and comfort of the residents of the City of San José. Specifically, it is the intent of this Ordinance to reduce gun harm.
- B. Findings:
1. Firearm injuries have a significant adverse public health and safety impact nationally, in the State of California, and locally; and
 2. Each year more than twenty-three thousand (23,000) United States residents die by firearm suicide, fourteen thousand (14,000) die by firearm homicide, and nearly five hundred (500) die from unintentional firearm injuries; and
 3. In California, between 2005 and 2015, nearly four thousand (4,000) children and teenagers were killed or injured with firearms, and five hundred thirty-three (533) children and teenagers committed suicide with firearms, according to data from the Center for Disease Control and Prevention; and
 4. During 2010-2014 in Santa Clara County, thirty-one percent (31%) of emergency department visits and sixteen percent (16%) of

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hospitalizations from firearms injuries were due to unintentional shootings; and

5. A 2014 review in the Annals of Internal Medicine suggests that access to firearms within the home doubles the risk that family members will become a victim of homicide, and triples the risk of suicide; and
6. A study in the New England Journal of Medicine in 2020 found that handgun ownership is associated with eight (8) times greater likelihood for firearm suicide among men, and thirty-five (35) times greater likelihood of firearm suicide among women; and
7. Based upon a November 2021 analysis by Dr. Ted Miller, Ph.D. and the Pacific for Institute Research and Evaluation (PIRE), on average, 206 people suffer death or serious injury from gunshots each year in the City of San José; and
8. Conservatively, San José taxpayers annually spend approximately \$39.7 million, or approximately \$151 per firearm-owning household, to respond to gun violence with such public services as emergency police and medical response, victim assistance, incident investigation, acute and long-term health care, and perpetrator adjudication and judicial sanctioning; and
9. Including private costs to individuals and families in the calculation, San José residents incur an annual financial burden of \$442 million per year for gun deaths and injuries; and
10. Injuries from unintentional shootings, which are generally insurable, comprise more than a third of all gun-related injuries nationally; and

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11. Auto insurers have used risk-adjusted premiums to reward good driving and incentivize use of airbags and other safety features, and by using a comprehensive public health approach to car safety the United States reduced per-mile auto fatalities by nearly eighty percent (80%) from 1967 to 2017; and
12. Liability insurance can reduce the number of gun incidents by encouraging safer behavior and it can also provide coverage for losses and damages related to gun incidents; and
13. Programs and services to gun owners and their households can also encourage safer behavior, and provide education and resources to those residents.

10.32.205 Definitions

As used in this Part, the following terms have the following meaning:

- A. "Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. Firearm does not include antique firearms as defined by 18 U.S.C. Section 921(a).
- B. "Designated Nonprofit Organization" means an entity that qualifies as a nonprofit corporation under the federal internal revenue code and is designated pursuant to the City Manager's authority under Section 10.32.235. No City official or employee shall sit on the board of directors of the Designated Nonprofit Organization.

10.32.210 Liability Insurance Required

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- A. Insurance required. A person who resides in the City and owns or possesses a Firearm in the City shall obtain and continuously maintain in full force and effect a homeowner's, renter's or gun liability insurance policy from an admitted insurer or insurer as defined by the California Insurance Code, specifically covering losses or damages resulting from any accidental use of the Firearm, including but not limited to death, injury or property damage.
- B. For purposes of this Section, a person shall be deemed to be the owner of a Firearm if such Firearm is lost or stolen until such loss or theft is reported to the police department or sheriff which has jurisdiction in which such Firearm owner resides.
- C. Any person who owns a Firearm on the effective date of this Section shall obtain the insurance required by this Section within thirty (30) days of the effective date of this Ordinance, or by a later date certain established in the regulations promulgated by City Manager pursuant to Section 10.32.235.

10.32.215 Annual Gun Harm Reduction Fee

A person who resides in the City and owns or possesses a Firearm in the City shall pay an Annual Gun Harm Reduction Fee to the Designated Nonprofit Organization each year. The date by which payment shall be made annually shall be established in the regulations promulgated by City Manager pursuant to Section 10.32.235. The annual fee will be set forth in the schedule of fees and charges established by resolution of the City Council.

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10.32.220 Expenditure of Gun Harm Reduction Fee

- A. All monies from the Gun Harm Reduction Fee shall be expended by the Designated Nonprofit Organization on providing services to residents of the City that own or possess a Firearm in the City, to members of their household, or to those with whom they have a close familial or intimate relationship. Such expenditures may include, but are not necessarily limited to the following:
1. Suicide prevention services or programs;
 2. Violence reduction or gender based violence services or programs;
 3. Addiction intervention and substance abuse treatment;
 4. Mental health services related to gun violence; or
 5. Firearms safety education or training.
- B. No portion of the monies from the Gun Harm Reduction Fee shall be used for litigation, political advocacy, or lobbying activities.
- C. The Designated Nonprofit Organization shall spend every dollar generated from the Gun Harm Reduction Fee, minus administrative expenses, exclusively for programs and initiatives designed to (a) reduce the risk or likelihood of harm from the use of firearms in the City of San José, and (b) mitigate the risk of physical harm or financial, civil, or criminal liability that a San José firearm owner or her family will incur through her possession of firearms. Otherwise, the City shall not specifically direct how the monies from the Gun Harm Reduction Fee are expended.

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- D. The designated non-profit shall provide a biannual report to an appropriate council committee and the report may also be provided to the City Council, as directed by the council committee.

10.32.225 Exceptions

The provisions of this Part shall not apply to any of the following:

- A. Those persons designated as peace officers pursuant to Chapter 4.5 of Title 3 of Part 2 of the California Penal Code (§830 et seq.), including sworn peace officers, active reserve peace officers and retired peace officers.
- B. Those persons who have a license to carry a concealed weapon issued pursuant to California Penal Code § 26150 or § 26155, for as long as these statutes are legally enforceable.
- C. Those persons for which compliance with this Part would create a financial hardship.

10.32.230 Compliance

- A. Insurance requirement. Each person required to obtain and maintain insurance under Section 10.32.210 shall demonstrate compliance with the insurance requirement by completing and executing a City-designated attestation form. Each such person shall state both the name of the insurance company issuing the policy and the number of the insurance policy on the attestation form, sign the form under penalty of perjury and keep the attestation form with the Firearms where they are being stored or transported. Each person shall complete and sign a new attestation form under penalty of perjury in the event any of the information on the form changes. Each person shall present the form when

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lawfully requested to do so by a peace officer who knows or has reason to believe that a person possesses a firearm.

- B. Fee provisions. Each person shall affix proof of payment of the annual Gun Harm Reduction Fee to the attestation form and keep it with the Firearm or Firearms where they are being stored or transported.

10.32.235 Authority of the City Manager

- A. The City Manager is authorized to promulgate all regulations necessary to implement the requirements and fulfill the policies of this Part relating to the reduction of gun harm, including, but not limited, to the following subjects:
 - 1. Processes and procedures related to the implementation of the liability insurance requirement, and forms necessary thereto.
 - 2. Designation of the nonprofit organization that will receive the Gun Harm Reduction Fee, any processes and procedures related to the payment of the fee, and any additional guidelines or auditing of the use of the monies from the fee.
 - 3. Designation of any third-party agency and/or organization that will aid in the implementation of the noticing of the requirements of this Part or any other administrative tasks related to the requirements of this Part.
 - 4. The criteria by which a person can claim a financial hardship exemption from this Part pursuant to Section 10.32.225.C.
- B. Regulations shall be published on the City's website.

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- C. Regulations promulgated by the City Manager shall have the same force and effect of law. Unless a later date is specified in a regulation, a regulation shall become effective upon date of publication.

10.32.240 Enforcement

- A. Any violation of this Part shall be punishable by an administrative citation in accordance with the procedures set forth in Chapter 1.15 of Title 1 of this Code relating to the issuance of administrative citations, imposing of administrative fines, right to appeal, and the right to an administrative hearing.
- B. The amounts of the fines for violations imposed pursuant to this Part shall be set forth in the schedule of fines established by resolution of the City Council.
- C. A violation of this Part is also enforceable through all other civil and administrative remedies available to the City.

10.32.245 Impoundment

To the extent allowed by law, the Firearm or Firearms of a person that is not in compliance with this Part may be impounded subject to a due process hearing.

10.32.250 Fees and Charges

The City Manager is hereby authorized to charge and collect any and all cost recovery fees associated with fulfilling the policies of this Part relating to the reduction of gun harm, including any associated third-party costs. All fees shall be as set forth in the schedule of fees and charges established by resolution of the City Council.

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SECTION 2. This Ordinance shall become effective at the expiration of one hundred eighty (180) days after its adoption.

SECTION 3. Consistent with Section 1.04.160 of the San José Municipal Code, should any provision of this Ordinance or its application to any person or circumstance be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 4. The City Council of the City of San José takes action on this Ordinance based upon the totality of the administrative record including the facts stated above, the facts stated in the memorandums to the City Council for the January 25, 2022 City Council Meeting, as well as any oral or written testimony at the January 25, 2022 City Council meeting.

NVF:TLC:KML
2/3/2022

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PASSED FOR PUBLICATION of title this 25th day of January, 2022, by the following bifurcated vote:

Including Insurance Requirements; Excluding Sections 10.32.215, 10.32.220, and 10.32.230(b)

AYES:	ARENAS, CARRASCO, COHEN, ESPARZA, FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ, LICCARDO.
NOES:	DAVIS.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

PASSED FOR PUBLICATION of title this 25th day of January, 2022, by the following bifurcated vote:

Excluding Insurance Requirements; Sections 10.32.215, 10.32.220, and 10.32.230(b) only:

AYES:	ARENAS, CARRASCO, COHEN, ESPARZA, JONES, JIMENEZ, PERALEZ, LICCARDO.
NOES:	DAVIS, FOLEY, MAHAN.
ABSENT:	NONE.
DISQUALIFIED:	NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

PROOF OF SERVICE

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CASE NAME: HOWARD JARVIS TAXPAYERS ASSN., et al.,v. CITY OF SAN JOSE

CASE NO.: 22CV395596

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

On March 21, 2022, I caused to be served the within:

CITY OF SAN JOSE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS

by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

by PERSONAL DELIVERY, with a copy of this declaration, by causing to be personally delivered a true copy thereof to the person at the address set forth below.

by FACSIMILE TRANSMISSION, with a copy of this declaration, to a facsimile machine at the facsimile machine telephone number listed below.

The above-described transmission was reported as complete without error by a transmission report issued by the facsimile machine immediately following the transmission.

by ELECTRONIC SERVICE listed below, transmitted using the One Legal Process Service electronic filing system. The document(s) listed above was/were electronically served to the electronic address(s) below

by ELECTRONIC TRANSMISSION, with a copy of this declaration, to an electronic address listed below.

I further declare that the electronic transmission was sent on March 21, 2022, before 5:30 p.m., and that the City of San Jose, City Attorney's electronic address is CAO.Main@sanjoseca.gov.

The above-described transmission was reported as sent by a transmission report available for printing from the computer.

CITY OF SAN JOSE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS	Case Number: 22CV395596
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by EXPRESS MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

by OVERNIGHT DELIVERY, with a copy of this declaration, by depositing them into a sealed envelope/package, with delivery fees fully prepaid/provided for, and

causing the envelope/package to be deposited for collection
 causing the envelope/package to be delivered to an authorized courier or driver to receive the envelope/package

designated by the express service carrier for next day delivery.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for overnight delivery by an express courier service. Such correspondence would be deposited with the express service or delivered to the authorized express service courier/driver to receive an envelope/package for the express service that same day in the ordinary course of business.

Addressed as follows:

Jonathan M. Coupal Timothy A. Bittle Laura A. Dougherty Howard Jarvis Taxpayers Foundation 921 Eleventh Street, Suite 1201 Sacramento, CA 95814 Tel: (916) 444-9950 Email: tim@hjta.org	
<i>Attorneys for Plaintiffs Howard Jarvis Taxpers Assn., Silicon Valley Taxpayers Assn., Silicon Valley Public Accountability Foundation, Jim Barry, and George Arrington</i>	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 21, 2022, at San Jose, California.

Brian Ward
Brian Ward

MAR 23 2022

1 JONATHAN M. COUPAL, State Bar No. 107815
TIMOTHY A. BITTLE, State Bar No. 112300
2 LAURA E. DOUGHERTY, State Bar No. 255855
Howard Jarvis Taxpayers Foundation
3 921 Eleventh Street, Suite 1201
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4 Tel: (916) 444-9950
Fax: (916) 444-9823
5 Email: tim@hjta.org
Attorneys for Plaintiffs

Filed
March 25, 2022
Clerk of the Court
Superior Court of CA
County of Santa Clara
22CV395596
By: rsandoval

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA

10 HOWARD JARVIS TAXPAYERS ASSN.,)
SILICON VALLEY TAXPAYERS ASSN.,)
11 SILICON VALLEY PUBLIC ACCOUNTA-)
BILITY FOUNDATION, JIM BARRY, and)
12 GEORGE ARRINGTON,)

No. 22CV395596

13 Plaintiffs)

~~PROPOSED~~ ORDER APPROVING
PUBLICATION OF SUMMONS

14 v.)

15 CITY OF SAN JOSE, and ALL PERSONS)
INTERESTED in the matter of San Jose)
16 Ordinance No. 30716, establishing an)
Annual Gun Harm Reduction Fee,)

Department: 20
Case Filed: March 7, 2022
Trial Date: Not Set

17 Defendants)

18 Calendar preference per CCP § 867

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ORDER

On the application of plaintiffs, which was considered 24 March, 2022, in Department 20 with notice to counsel for defendant City of San Jose, the Court having considered the authorities cited and good cause appearing therefor:

IT IS HEREBY ORDERED that plaintiffs' application for approval to publish summons as to All Persons Interested in the matter of San Jose Ordinance No. 30716 is GRANTED AS FOLLOWS:

1. Plaintiffs shall use the form of Summons attached hereto as Exhibit 1.
2. Plaintiffs shall cause the Summons to be published once a week for three consecutive weeks, with at least five days intervening between publication dates, in the Legal Notices section of the San Jose Mercury News.
3. Plaintiffs shall obtain Proof of Publication from said newspaper and file it with this Court immediately thereafter, or show good cause for their failure to do so.

DATED: 24 March, 2022.

Signed: 3/24/2022 12:38 PM



HON. Socrates Peter Manoukian
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND NOT LATER THAN [A date to be determined that is 10 or more days after the completion of publication of the summons in the newspaper]. READ THE INFORMATION BELOW.

AVISO! USTED HA SIDO DEMANDADO. EL TRIBUNAL PUEDE DECIDIR CONTRA USTED SIN AUDIENCIA A MENOS QUE USTED RESPONDA NO MÁS TARDE QUE EL DÍA [The date from above that is 10 or more days after the completion of publication of the summons in the newspaper]. LEA LA INFORMACIÓN QUE SIGUE.

TO ALL PERSONS INTERESTED IN THE MATTER OF CITY OF SAN JOSE ORDINANCE NO. 30716, ESTABLISHING AN ANNUAL GUN HARM REDUCTION FEE.

A civil complaint has been filed in California Superior Court for the County of Santa Clara by Howard Jarvis Taxpayers Association and other plaintiffs against defendant City of San Jose for the purpose of determining the validity of the City's Annual Gun Harm Reduction Fee.

Plaintiffs allege that the new fee violates their constitutional rights of free speech and association, places an unconstitutional condition on the right to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private organization, and for these reasons is invalid.

To be heard regarding this matter, you must file with the court a written response

1 to the complaint by [the date from above that is 10 or more days after the completion of
2 publication of the summons in all newspapers]. If you do not file a timely written response
3 with the court, plaintiffs may apply for entry of default and the relief sought by their
4 complaint. You may obtain a copy of the complaint by contacting plaintiffs' counsel using
5 the address or telephone number shown below. If you respond to defend the legality or
6 validity of the matter, you will not be subject to punitive action such as wage garnishment
7 or seizure of real or personal property.

8
9 **YOU MAY SEEK THE ADVICE OF AN ATTORNEY IN ANY MATTER**
10 **CONNECTED WITH THE COMPLAINT OR THIS SUMMONS. SUCH ATTORNEY**
11 **SHOULD BE CONSULTED PROMPTLY SO THAT YOUR PLEADING MAY BE FILED**
12 **OR ENTERED WITHIN THE TIME REQUIRED BY THIS SUMMONS.**

13
14 **PUEDE SOLICITAR EL CONSEJO DE UN ABOGADO EN CUALQUIER ASUNTO**
15 **RELACIONADO CON LA DENUNCIA O CON ESTA CITACIÓN. DICHO ABOGADO**
16 **DEBERÁ CONSULTARSE INMEDIATAMENTE PARA QUE SU ALEGATO PUEDA SER**
17 **PRESENTADO O ENTRADO EN EL MOMENTO REQUERIDO POR ESTA CITACIÓN**
18 **JUDICIAL.**

19
20 The name and address of the Court is (El nombre y dirección del Tribunal es):

21
22 Superior Court, County of Santa Clara

23 191 North First Street

24 San Jose, CA 95113

25 CASE NUMBER (Numero del Caso): 22CV395596
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27

1 The name, address, and telephone number of plaintiffs' attorney is (El nombre, dirección
2 y número de teléfono de los abogados del demandante es):

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Timothy A. Bittle
Howard Jarvis Taxpayers Foundation
921 11th Street, Ste. 1201
Sacramento, CA 95814
Tel: 916-444-9950

