

1 Joseph W. Cotchett (SBN 36324)
2 jcotchett@cpmlegal.com
3 Tamarah P. Prevost (SBN 313422)
4 tprevost@cpmlegal.com
5 Andrew F. Kirtley (SBN 328023)
6 akirtley@cpmlegal.com
7 Melissa Montenegro (SBN 329099)
8 mmontenegro@cpmlegal.com
9 **COTCHETT, PITRE & McCARTHY, LLP**
10 San Francisco Airport Office Center
11 840 Malcolm Road, Suite 200
12 Burlingame, CA 94010
13 Telephone: (650) 697-6000
14 Facsimile: (650) 697-0577

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; Silicon**
21 **Valley Public Accountability Foundation; James**
22 **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,**

28 Defendants.

Case No. 5:22-cv-02365-BLF

[PROPOSED] ORDER GRANTING
DEFENDANT CITY OF SAN JOSE’S
MOTION TO DISMISS UNDER RULES
12(b)(1) AND 12(b)(6)

Date: _____, 2022

Time: 9:00 a.m.

Courtroom: Via Zoom Webinar

Judge: Hon. Beth Labson Freeman

1 The Court, having fully considered the papers and arguments presented by the parties and
2 the filings in the case, and good cause having been shown, hereby GRANTS Defendant City of San
3 Jose’s (“City”) Motion to Dismiss Plaintiffs’ Complaint under Federal Rules of Civil Procedure
4 (“Rule”) 12(b)(1) on the grounds that it lacks ripeness and improperly seeks an advisory opinion, as
5 the City of San Jose’s Gun Harm Reduction Ordinance was not yet in effect as of the date Plaintiffs
6 initiated this action. *See e.g., Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th
7 Cir. 2000).

8 Alternatively, the Court, having fully considered the papers and arguments presented by the
9 parties and the filings in the case, and good cause having been shown, hereby GRANTS Defendant
10 City of San Jose’s Motion to Dismiss Plaintiffs’ Complaint on the grounds that Plaintiffs fail to state
11 a claim for relief under Rule 12(b)(6) for each of their following four causes of action:

- 12 1. **First Cause of Action** (Violation of Constitutional Rights of Speech and Association);
- 13 2. **Second Cause of Action** (Unconstitutional Condition);
- 14 3. **Third Cause of Action** (Special Tax Lacking Voter Approval); and
- 15 4. **Fourth Cause of Action** (Unconstitutional Delegation of Power to Tax).

16 IT IS SO ORDERED.

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18 DATED: _____, 2022

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20 _____
21 HON. BETH LABSON FREEMAN
22 UNITED STATES DISTRICT COURT JUDGE
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