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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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NATIONAL ASSOCIATION FOR GUN RIGHTS, INC., a nonprofit corporation, and **MARK SIKES**, an individual,

Plaintiffs,

And

HOWARD JARVIS TAXPAYERS ASSN., a nonprofit corporation, **SILICON VALLEY TAXPAYERS ASSN.**, a nonprofit corporation, **SILICON VALLEY PUBLIC ACCOUNTABILITY FOUNDATION**, a nonprofit corporation, **JIM BARRY**, an individual, and **GEORGE ARRINGTON**, an individual,

Plaintiffs,

v.

CITY OF SAN JOSE, a public entity, **JENNIFER MAGUIRE**, in her official capacity as City Manager of the City of San Jose, the **CITY OF SAN JOSE CITY COUNCIL**, and **ALL PERSONS INTERESTED in the matter of San Jose Ordinance No. 30716, establishing an Annual Gun Harm Reduction Fee**,

Defendants.

Case Number: 5:22-cv-00501-BLF
Case Number: 5:22-cv-02365-BLF

CONSOLIDATED SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, INVALIDATION OF §§ 10.32.215 AND 10.32.230(B) OF CHAPTER 10.32 OF TITLE 10 OF THE SAN JOSE MUNICIPAL CODE, AND NOMINAL DAMAGES

Judge: Hon. Beth Labson Freeman



1 Plaintiffs by and through the undersigned counsel, hereby bring this consolidated action for
2 injunctive relief, a declaratory judgment, invalidation of the fee provisions, and nominal damages as a
3 result of the City of San Jose’s unconstitutional and unlawful ordinance, specifically Part 6 of Chapter
4 10.32 of Title 10 of the San Jose Municipal Code (the “Ordinance”).

5 In support of these requests, Plaintiffs state as follows:

6 INTRODUCTION

7 1. The Second Amendment provides an “unqualified command”: “the right of the people
8 to keep and bear Arms, shall not be infringed.” *See New York State Rifle and Pistol Association, Inc.*
9 *v. Bruen*, 142 S.Ct. 2111, 2126 (2022) (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.
10 10 (1981); U.S. Const., Amend. 2).

11 2. “The constitutional right to bear arms in public for self-defense is not ‘a second-class
12 right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *New*
13 *York State Rifle and Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2156 (2022) (quoting
14 *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion)).

15 3. The Second Amendment (incorporated through the Fourteenth Amendment)
16 “guarantee[s] the individual right to possess and carry weapons in case of confrontation,” *District of*
17 *Columbia v. Heller*, 554 U.S. 570, 592 (2008). This right is particularly acute at home, “where the
18 need for defense of self, family, and property is most acute.” *Heller*, 554 U.S. at 628. Thus, the
19 conduct at issue in this case falls within the plain text of the Second Amendment and is
20 “presumptively protect[ed]” by the Constitution. *Bruen*, 142 S.Ct. at 2130.

21 4. The City of San Jose’s insurance mandate is utterly inconsistent with “the Nation’s
22 historical tradition of firearm regulation.” *Bruen*, 142 S.Ct. at 2130. To the contrary, as the City’s
23 Mayor highlighted in his own press release, the City of San Jose is “the *first* city in the United States
24 to enact an ordinance to require gun owners to purchase liability insurance.” *San Jose Mayor*
25 *Statement on Historic Passage of First in the Nation Gun Violence Reduction Ordinance* (Jan. 25,
26 2022) (“Liccardo Press Release”) (attached as Exhibit A) (emphasis added)

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 National Association of Gun Rights (“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. Plaintiffs NAGR and Mark Sikes are referred to collectively herein as “NAGR Plaintiffs.”

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

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

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

7 19. Plaintiff Jim Barry is a resident of San Jose who legally owns a firearm and is subject to
8 the Annual Gun Harm Reduction Fee that is the subject of this action.

9 20. Plaintiff George Arrington is a resident of San Jose who legally owns a firearm and is
10 subject to the Annual Gun Harm Reduction Fee that is the subject of this action.

11 21. Plaintiffs HVTA, SVTA, SVPAF, Jim Barry and George Arrington are collectively
12 referred to herein as “Howard Jarvis Plaintiffs.”

13 22. Defendant City of San Jose is a municipal corporation within the County of Santa
14 Clara, California.¹

15 23. Defendant Jennifer Maguire (“Maguire”) is the current and active City Manager for the
16 City of San Jose. San Jose’s Charter states that the City Manager is the “Chief Administrative Officer
17 and head of the administrative branch of the City government.” San Jose City Charter §§ 502, 701.
18 “The City Manager shall be responsible for the faithful execution of all laws, provisions of this
19 Charter, and acts of the Council which are subject to enforcement by the City Manager or by the
20 officers who are under the City Manager’s direction and supervision.” *Id.*, § 701(d). Additionally, the
21 City Manager is directly identified with enforcement authority throughout the Ordinance. Ordinance
22 §§ 10.32.205, 210, 215, 235, & 250.

23 24. Defendant San Jose City Council (the “City Council”) is vested with authority under
24 Article IV of the City of San Jose’s City Charter (Ex. A). The Ordinance vests the City Council with
25 authority to “set forth the schedule of fees and charges established by resolution of the City Council”
26 and to “set forth...the schedule of fines” for those who violate the ordinance. *Id.*, § 10.32.215;

27
28 ¹ See *City of San Jose City Charter, as amended* (Feb. 2021),
<https://www.sanjoseca.gov/home/showpublisheddocument/13907/638058439112030000>

1 10.32.250; 10.32.240.

2 25. Defendants All Persons Interested in the matter of San Jose Ordinance No. 30716,
3 establishing an Annual Gun Harm Reduction Fee will be bound by any validation judgment issued in
4 this case pursuant to California Code of Civil Procedure section 870. Jurisdiction by the California
5 court over All Persons was obtained by published summons pursuant to Code of Civil Procedure
6 sections 861 and 862.

7 STATEMENT OF FACTS

8 Enactment of the Ordinance

9 26. On June 29, 2021, the City Council directed San Jose City Attorney Nora Frimann “to
10 return to Council with an ordinance for Council consideration that would require every gun owner
11 residing in the City of San José, with certain exceptions, to obtain and maintain a City-issued
12 document evincing payment of an annual fee, and attestation of insurance coverage for unintentional
13 firearm-related death, injury, or property damage.” Frimann Mem. re Gun Harm Reduction Ord. at 1
14 (Jan. 14, 202, 1 (“City Attorney Mem.”) (a true and correct copy is attached as Exhibit B). Plaintiff
15 NAGR immediately sent the City a cease and desist letter warning that the proposed ordinance was
16 unconstitutional. *Ltr. from H. Dhillon and D. Warrington to San Jose City Council*, (July 14, 2021) (a
17 true and correct copy is attached as Exhibit C).

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

26 28. On January 21, 2022, Mayor Liccardo, Vice Mayor Jones, Councilmember Cohen, and
27 Councilmember Carrasco issued “Directions” to the City Council, including to “[a]pprove the
28 proposed ordinance,” with certain modifications. *Mayor’s Mem. to City Council* at 2 (Jan. 21, 2022) (a

1 true and correct copy is attached as Exhibit D). The Mayor’s Memorandum also noted that “Members
2 of the California legislature are exploring bills to have law enforcement agencies seize guns as a
3 sanction for violations of local gun regulations, with subsequent restoration of ownership as required
4 by constitutional due process.” *Id.* at 4 (emphasis added).

5 29. On January 25, 2022, the City Council approved the ordinance through two votes
6 regarding various changes. *Tuesday, January 25, 2022 City Council Meeting Synopsis* at 13 (a true
7 and correct copy is attached as Exhibit E).

8 30. The Ordinance requires any San Jose resident who owns a firearm to “obtain and
9 continuously maintain in full force and effect a homeowner’s, renter’s or gun liability insurance policy
10 ... specifically covering losses or damages resulting from any accidental use of the Firearm.” (San Jose
11 Muni. Code § 10.32.210(A).)

12 31. The Ordinance also requires San Jose gun owners to pay an “Annual Gun Harm
13 Reduction Fee” to a “Designated Nonprofit Organization” that the City Manager will designate from
14 time to time. The amount of the annual fee “will be set forth in the schedule of fees and charges
15 established by resolution of the City Council.” (Muni. Code § 10.32.215.) In the 2022/2023 schedule of
16 fees, the Gun Harm Reduction Fee is set at \$25 per year.

17 32. “Designated Nonprofit Organization” is defined in the Ordinance as “an entity that
18 qualifies as a nonprofit corporation under the federal internal revenue code and is designated pursuant
19 to the City Manager’s authority under Section 10.32.235,” provided that “[n]o City official or
20 employee shall sit on the board of directors of the Designated Nonprofit Organization.” (Muni. Code §
21 10.32.205(B).) Section 10.32.235, in subdivision (A)(2), delegates authority to the City Manager for
22 “[d]esignation of the nonprofit organization that will receive the Gun Harm Reduction Fee.”

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

28 34. The Ordinance further states, “The Designated Nonprofit Organization shall spend

1 every dollar generated from the Gun Harm Reduction Fee, minus administrative expenses, exclusively
2 for programs and initiatives designed to (a) reduce the risk or likelihood of harm from the use of
3 firearms in the City of San Jose, and (b) mitigate the risk of physical harm or financial, civil, or
4 criminal liability that a San Jose firearm owner or her family will incur through her possession of
5 firearms.” (Muni. Code § 10.32.220(C).). Except for these basic guidelines, the Ordinance provides
6 that “the City shall not specifically direct how the monies from the Gun Harm Reduction Fee are
7 expended.” (Muni. Code § 10.32.220(C).)

8 35. A gun owner’s failure to pay the required fee to the designated private organization is
9 punishable by a fine (Muni. Code § 10.32.240(A)) and confiscation of the owner’s firearms (Muni.
10 Code § 10.32.245).

11 36. The Mayor immediately issued a press release the night of the vote, in which he
12 boasted that “Tonight San José became *the first city in the United States* to enact an ordinance to
13 require gun owners to purchase liability insurance, and to invest funds generated from fees paid by
14 gun owners into evidence-based initiatives to reduce gun violence and gun harm.” Liccardo Press
15 (emphasis added).

16 37. Within 24 hours, articles were published about San Jose enacting an unprecedented
17 regulation of gun ownership, including in the San Francisco Chronicle and the Los Angeles Times.
18 *See* Lauren Hernández, *Gun Owners In San Jose Must Buy Liability Insurance Under Newly Passed*
19 *First-In-The-Nation Law*, SAN FRANCISCO CHRONICLE (Jan. 26, 2022)
20 [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)
21 [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 F) (“The San Jose City Council adopted
22 a measure Tuesday night requiring gun owners in the South Bay city to buy liability insurance for
23 their firearms, city officials said. The ordinance – which city officials said marks *the first such law*
24 *for a city, state, or other jurisdiction in the country . . .*” (emphasis added)); Olga R. Rodriguez and
25 Juliet Williams, *San Jose Approves First Law In U.S. Requiring Gun Owners To Have Insurance*, LOS
26 ANGELES TIMES (Jan. 25, 2022), [https://www.latimes.com/california/story/2022-01-25/san-jose-gun-](https://www.latimes.com/california/story/2022-01-25/san-jose-gun-liability-insurance)
27 [liability-insurance](https://www.latimes.com/california/story/2022-01-25/san-jose-gun-liability-insurance) (a true and correct copy is attached as Exhibit G) (“The city of San Jose voted
28 Tuesday night to require gun owners to carry liability insurance *in what’s believed to be the first*

1 *measure of its kind in the United States.* The San Jose City Council overwhelmingly approved the
2 measure despite opposition from some gun owners who said it would violate their 2nd Amendment
3 rights.” (emphasis added)).

4 38. On February 8, 2022, the City Council voted a second time to approve the Ordinance.

5 39. On October 21, 2022, City Manager Regulations for the Ordinance went into effect
6 (attached as Exhibit H).

7 40. Section 2.1 of the City Manager Regulations provides “Firearm owners residing in San
8 Jose who are required by SJMC section 10.32.210 to obtain liability insurance shall obtain such
9 insurance by January 1, 2023.”

10 41. Fines for violations of the Ordinance begin at \$250 for a first offense and increase to
11 \$500 for a second offense and \$1000 for a third offense within a year.

12 42. Section 2.2 of the Regulations state “[t]his version of the City Manager Regulations for
13 the Reduction of Gun Harm Ordinance does not set a payment date; a payment date will be
14 established in an amended version of these regulations to be issued in the future. Individuals covered
15 by the Gun Harm Reduction Fee are not required to pay the fee until a payment date is set through the
16 amended regulations.

17 43. With respect to the purported Gun Harm Reduction Fee, the City provided to the
18 District Court an Implementation Timeline. Per the Timeline, “issu[ing] a Request for Proposals to
19 procure the designated nonprofit” would not occur until September 2022. The Timeline projected
20 “December 2022” as the date by which the City Manager would “finalize contract with designated
21 nonprofit.”

22 44. The District Court granted the City’s motion to dismiss plaintiffs’ claims as unripe,
23 with leave to amend the complaint by February 2, 2023, based on the Timeline showing that the City
24 Manager would issue a Request for Proposals in September, then select a nonprofit from among the
25 proposals received and finalize a contract by the end of December.

26 45. On January 6, 2023, the City filed a Status Report in which it represented that the City
27 Manager “has now completed all relevant tasks in the Implementation Timeline, except for the task
28 listed as ‘Finalize contract with designated nonprofit’ with an estimated completion date of December

1 2022.” (01/06/23 Status Report, ECF #85 at 3:6).

2 46. Yet the City Manager had not “issu[ed] a Request for Proposals to procure the
3 designated nonprofit” which, according to the Timeline, was supposed to be done in September.
4 Instead, the City Manager issued something else – a “Request for Information.” The Status Report
5 explained the difference: “RFIs are used by the City to solicit information about potential solutions
6 and *do not typically result in a contract award*, whereas RFPs are used by the City to gather responses
7 and pricing from potential contractors to deliver a specific City defined scope of work, with the
8 purpose of awarding one or more contracts at the end of the RFP process.” (ECF #85 at 3:25.).

9 47. The Status Report informed the Court that no qualified organizations responded to the
10 City Manager's Request for Information (*id.* at 3:13.) so the City Manager “has decided that the best
11 approach to progress implementation at this point is to ... publish a full Request for Proposals
12 Unfortunately, the lack of satisfactory RFI responses and the upcoming RFP process will delay the
13 steps necessary for full implementation.” (*Id.* at 3:20.) The Status Report offered no date by which
14 these overdue “steps necessary for full implementation” might be completed.

15 48. Despite the City’s delay in designating a nonprofit, and its equivocation on the ultimate
16 amount of the fee, this controversy is ripe because a fee of \$25 has been imposed for the 2022/2023
17 fiscal year and, although the City is not currently enforcing proof of payment (because there is no
18 nonprofit to accept payment), the City has *not* waived the fee. The the 2022/2023 fee apparently will
19 be due and payable once a nonprofit has been designated.

20 49. This controversy is ripe because, regardless of the ultimate identity of the nonprofit
21 organization, the City’s Ordinance requires the nonprofit to expend the fee providing services such as
22 suicide prevention, gender based violence prevention, addiction intervention and substance abuse
23 treatment, and mental health counseling for victims of gun violence, which services will be available
24 to the general public, not just gun owners, and which gun owners are not required to, and may not
25 choose to, utilize. Because its revenue will fund public services, not services requested by each payer,
26 the “fee” is a tax under California law.

27 **The Burdens of the Ordinance**

28 50. The Ordinance will require an estimated 50,000-55,000 gun-owning San Jose Citizens,

1 minus a few exceptions, to obtain an insurance policy and pay annual fees simply to exercise the
2 same constitutional right to own a gun that existed prior to this ordinance. *Liccardo Mem. re Gun*
3 *Harm Reduction Ord.* (Jan., 19, 2022) (a true and accurate copy is attached as Exhibit I).

4 51. The Ordinance states that “[t]o the extent allowed by law, the Firearm or Firearms of a
5 person that [*sic*] is not in compliance with [the Ordinance] may be impounded subject to a due
6 process hearing.” Ordinance § 10.32.245. Further, “[a]ny violation” of the Ordinance is “punishable
7 by an administrative citation,” “fines for violations,” and “all other civil and administrative remedies
8 available to the City.” *Id.*, § 10.32.240; *see also* City Attorney Mem. at 2 (“Failure to comply [with
9 the Ordinance] shall constitute a civil violation subjecting the owner to the temporary or permanent
10 seizure of the gun, and under specified circumstances, a fine.”). At present, the City has no authority
11 to seize a person’s gun for violating the Ordinance, but “[m]embers of the California legislature are
12 exploring bills to have law enforcement agencies seize guns as a sanction for violations of local gun
13 regulations . . .” Mayor’s Mem. to City Council, Jan. 21, 2022.

14 52. The Ordinance targets guns in the home. It does not apply to people who have a license
15 to carry a concealed weapon. *Id.*, § 10.32.225. Additionally, absent a concealed carry permit, there is
16 no other way to carry a firearm in San Jose. *See* CAL. PENAL CODE §§ 25850, 26150, 26155, 26350,
17 26400.

18 ***Insurance Requirement***

19 53. The Ordinance conditions the constitutional right to own a gun on the payment of an
20 unstated amount for insurance. It states that “A person who resides in the City of San Jose and owns
21 or possesses a Firearm in the City shall obtain and continuously maintain in full force and effect a
22 homeowner’s, renter’s or gun liability insurance policy...specifically covering losses or damages
23 resulting from any accidental use of the Firearm, including but not limited to death, injury, or property
24 damage.” Ordinance § 10.32.210.A.

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

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

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

9 62. The fee thus functions to compel gun owners to give their money to a government
10 approved nonprofit to spend on vaguely specified and/or unspecified programs at the nonprofit’s
11 discretion, none of which are services that the City is obligated to perform. While the nonprofit must
12 make these services available to “residents of the City that own or possess a Firearm,” it must also
13 make those services available to non-gun owning “members of their household,” and is nowhere
14 precluded from making those services available to the general public. Indeed, the nature of many of
15 the services listed in the Ordinance (suicide prevention, gender based violence prevention, addiction
16 intervention and substance abuse treatment, mental health counseling for victims of gun violence, and
17 gun safety “education”) covers a much wider population than just gun owners. This compelled
18 donation by gun owners to one City favored nonprofit to provide public “education,” which may
19 include advocating about the dangers of gun ownership, and other services with little to no connection
20 to the payer’s ownership of a gun and little or no municipal oversight is not only obnoxious to the
21 Constitution, it is an invitation to corruption and waste.

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

27 64. Indeed, the Ordinance also authorizes a separate fee just to recoup the costs associated
28

1 in administering the Ordinance. *Id.* § 10.32.250.

2 65. Accordingly, as discussed further below, the “Annual Gun Harm Reduction Fee”—
3 unconnected to the cost of City services and for unspecified programs outside of the City’s control—
4 and the mandatory insurance requirement backed by the threat of fines are nothing more than costs
5 that the City is imposing on the exercise of a constitutional right.

6 **The Second Amendment**

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

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

13 68. Consistent with this protection, in *Bruen* the Supreme Court held “when the Second
14 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that
15 conduct.” *Bruen*, 142 S.Ct. at 2126.

16 69. “As [the Supreme Court] explained in *Heller*, the ‘textual elements’ of the Second
17 Amendment’s operative clause . . . ‘guarantee the individual right to possess and carry weapons in
18 case of confrontation.’” *Bruen*, 142 S.Ct. at 2134 (quoting *Heller*, 554 U.S. at 592). Thus, in *Heller*
19 and *McDonald*, the Supreme Court “recognized that the Second and Fourteenth Amendments protect
20 the right of an ordinary law-abiding citizen to possess a handgun in the home for self-defense.”
21 *Bruen*, 142 S.Ct. at 2122.

22 70. “[T]he need for armed self-defense is perhaps ‘most acute’ in the home,” *Bruen*, 142
23 S.Ct. at 2135 (quoting *Heller*, 544 U.S. at 628) but also extends to “a right to ‘bear’ arms in public for
24 self-defence.” *Id.*

25 71. Thus, NAGR Plaintiffs assert that the Ordinance burdens an activity that falls within
26 the plain text of the Second Amendment: the right to keep and bear arms in the home for self-defense
27 and the right to bear arms in public for self-defense, including when transporting firearms from one
28 location to another.

1 72. As the Supreme Court has noted, “*Heller* and *McDonald* expressly rejected the
2 application of any ‘judge-empowering interest-balancing inquiry that asks whether the statute burdens
3 a protected interest in a way or to an extent that is out of proportion to the statute’s salutary effects
4 upon other important governmental interests.” *Bruen*, 142 S.Ct. at 2129 (quoting *Heller*, 554 U.S. at
5 634) (other citations omitted). Thus, “[t]he Second Amendment ‘is the very *product* of an interest
6 balancing by the people’ and it ‘surely elevates above all other interests the right of law-abiding,
7 responsible citizens to use arms’ for self-defense.” *Bruen*, 142 S.Ct. at 2131 (quoting *Heller*, 544 U.S.
8 at 635).

9 73. Accordingly, government may not justify regulations that infringe upon the Second
10 Amendment by reference to some “important interest” or balancing test; “[o]nly if a firearm regulation
11 is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct
12 falls outside of the Second Amendment’s ‘unqualified command.’” *Bruen*, 142 S.Ct. at 2126 (quoting
13 *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

14 74. The problem of gun violence in densely populated communities is not new. Adopting
15 an insurance requirement and/or fee for all gun owners is a solution “that the Founders themselves
16 could have adopted to confront that problem,” *Bruen*, 142 S.Ct. at 2131, but in fact did not adopt.

17 75. To the contrary, the City and its leaders have emphasized the novelty of the City’s
18 insurance and fee requirements.

19 76. Local governments, including the City of San Jose, are bound by the Second
20 Amendment because of the Fourteenth Amendment. *See Bruen*, 142 S.Ct. 2137 (“Strictly speaking,
21 New York is bound to respect the right to keep and bear arms because of the Fourteenth
22 Amendment.”); *McDonald*, 561 U.S. at 790; *Nordyke v. King*, 681 F.3d 1041, 1044 (9th Cir. 2012).

23 77. Second Amendment rights are not subject to a free floating balancing test or judged
24 against the “important interests” identified by the government.

25 78. The Ordinance cites a number of statistics about gun violence, but provides no
26 examples of how it is consistent with this Nation’s historical tradition of firearms ownership. To the
27 contrary, the Mayor and other sources, apparently relying on city officials, have emphasized the
28 unique, “first of its kind” nature of the insurance requirement.

1 79. Although the Supreme Court in *Bruen* noted that there were past laws that required
2 individuals “reasonably accused of intending to injure another or breach the peace” or “threatening to
3 do harm” to obtain a bond in order to carry a gun *in public*, *see Bruen* at 2120, 2148, there is no
4 historical tradition of requiring every gun owner to purchase insurance for the mere ownership of
5 guns, even if the guns stay locked within the home and are never carried in public.

6 80. Moreover, while state actors may collect a fee to “meet the expense incident to the
7 administration of the act and to the maintenance of public order in the matter licensed,” *Cox v. New*
8 *Hampshire*, 312 U.S. 569 (1941), they “may not impose a charge for the enjoyment of a right granted
9 by the federal constitution.” *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943). In the Second
10 Amendment context, at least one Court of Appeals has stated “imposing fees on the exercise of
11 constitutional rights is permissible when the fees are designed to defray (and do not exceed) the
12 administrative costs of regulating the protected activity.” *Kwong v. Bloomberg*, 723 F.3d 160, 165
13 (2nd Cir. 2013).

14 81. Neither the insurance premium nor the fee to be paid to the City’s chosen nonprofit are
15 designed to defray the City’s administrative costs. Instead, they impose a charge simply for the
16 enjoyment of a right guaranteed by the federal constitution.

17 82. In sum, the NAGR Plaintiffs assert that the insurance requirement in the Ordinance
18 violates the Second Amendment, as incorporated by the Fourteenth Amendment, by placing a burden
19 on the right to keep and bear arms that is inconsistent with this Nation’s history and tradition of
20 firearms regulation.

21 83. Accordingly, the Plaintiffs request that this court issue preliminary and permanent
22 injunctions preventing Defendants from enforcing the insurance mandate, fee requirement, and their
23 associated enforcement provisions of Ordinance pursuant to 42 U.S.C. § 1983, declare the insurance
24 mandate, fee provisions, and associated enforcement provisions of the Ordinance unconstitutional
25 under the Constitution of the United States, issue nominal damages, and order any other relief this
26 Court deems necessary and proper.

27
28

FIRST CLAIM FOR RELIEF (NAGR PLAINTIFFS ONLY)

Violation of the Second and Fourteenth Amendments (42 U.S.C. § 1983)

The Ordinance requiring owners of guns to purchase insurance and pay a fee violates the Second and Fourteenth Amendments to the United States Constitution.

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4 84. NAGR Plaintiffs incorporate by reference and re-allege each of the Paragraphs set forth
5 above.

6 85. The Second Amendment of the United States Constitution guarantees “the right of the
7 people to keep and bear arms” and that right “shall not be infringed.” U.S. CONST., amend. II.

8 86. In a Second Amendment inquiry, a Court asks whether the “Second Amendment’s
9 plain text covers an individual’s conduct.” *Bruen*, 142 S.Ct. at 2126. If so, “government must
10 demonstrate that the regulation is consistent with this Nation’s historical tradition of firearms
11 regulation.” *Id.*

12 87. The Ordinance’s insurance and/or fee requirements imposes a cost on Plaintiffs and all
13 gun owners merely for choosing to keep and bear arms in the home. Thus, the Ordinance places a
14 burden on conduct central to the plain text of the Second Amendment.

15 88. The City has not (and cannot) demonstrated that the Ordinance is consistent with this
16 Nation’s historical tradition of firearms regulation. To the contrary, the City has emphasized the new
17 and unique nature of the insurance and fee provisions.

18 89. Thus, the insurance and fee provisions of the Ordinance violate the Second and
19 Fourteenth Amendments to the Constitution of the United States.

20 90. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm
21 to their constitutional rights unless Defendants are enjoined from implementing and enforcing the
22 Ordinance.

23 91. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to preliminary and
24 permanent injunctive relief invalidating and restraining enforcement of the Ordinance as well as
25 declaratory relief.

26 92. Plaintiffs found it necessary to engage the services of private counsel to vindicate their
27 rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees pursuant to 42
28

1 U.S.C. § 1988.

2 **SECOND CLAIM FOR RELIEF (ALL PLAINTIFFS)**

3 **Violation of the First and Fourteenth Amendments (42 U.S.C. § 1983)**

4 ***The Ordinance requiring owners to pay a fee to a nonprofit organization to exercise their***
5 ***constitutional rights violates the First and Fourteenth Amendments to the United States***
6 ***Constitution.***

7 93. Plaintiffs repeat the allegations above as though fully set forth herein.

8 94. The First Amendment of the United States Constitution, made applicable to the states
9 through the Fourteenth Amendment, provides, “Congress shall make no law ... abridging the
10 freedom of speech ... or the right of the people peaceably to assemble.”

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

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

20 97. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm
21 to their constitutional rights unless Defendants are enjoined from implementing and enforcing the fee
22 provisions of the Ordinance.

23 98. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to preliminary and
24 permanent injunctive relief invalidating and restraining enforcement of the Ordinance as well as
25 declaratory relief.

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

1 **THIRD CLAIM FOR RELIEF (ALL PLAINTIFFS AS DESCRIBED BELOW)**
2 **Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202**
3 ***Plaintiffs are entitled to declaratory relief.***

4 100. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
5 above.

6 101. To the extent that each of the claims above have not already established a remedy,
7 Plaintiffs are entitled to declaratory relief holding that the Ordinance violates Plaintiffs' individual
8 rights under the Constitution of the United States and is otherwise invalid, are entitled to preliminary
9 and permanent injunctions preventing the enforcement of the Ordinance, nominal damages, and
10 further relief that this Court deems necessary or proper.

11 102. NAGR Plaintiffs are entitled to declaratory relief with respect to both the insurance
12 mandate and the fee. Based on their claims above, Howard Jarvis Plaintiffs are entitled to declaratory
13 relief based on the First Amendment with respect to the fee provision of the Ordinance.
14

15 **FOURTH CLAIM FOR RELIEF (HOWARD JARVIS PLAINTIFFS ONLY)**
16 **Violation of California Rights of Speech and Association**

17 103. Except as specified above, the Howard Jarvis Plaintiffs repeat the allegations contained
18 in the Paragraphs above as though fully set forth herein.

19 104. Article I, sections 2 and 3 of the California Constitution provide, "A law may not
20 restrain or abridge liberty of speech," and "The people have the right to ... assemble freely to consult
21 for the common good."
22

23 105. Liberty of speech includes the right to not speak and the right to not be forced by the
24 government to support someone else's speech, particularly when you disagree with their message. The
25 right to assemble freely includes the right to associate with others around a common cause and the
26 right to not be forced by the government to associate with or support someone else's organization,
27 particularly a group with which you would not voluntarily assemble.
28

1 106. By requiring San Jose gun owners to pay an Annual Gun Harm Reduction Fee to a
2 private nonprofit organization that the City Manager will designate, the Ordinance forces San Jose
3 gun owners to associate with or support that private group and to fund their message, in violation of
4 the gun owners’ rights of free speech and association under the California Constitution.

5 **FIFTH CLAIM FOR RELIEF (HOWARD JARVIS PLAINTIFFS ONLY)**
6 **Violation of Doctrine of Unconstitutional Conditions**

7 107. Except as set forth above, the Howard Jarvis Plaintiffs repeat the allegations contained
8 in the Paragraphs above as though fully set forth herein.

9 108. The Second Amendment of the United States Constitution provides, “the right of the
10 people to keep and bear arms, shall not be infringed.”

11 109. Howard Jarvis Plaintiffs gun owners wish to continue exercising their rights under the
12 United States and California constitutions to protect their property and personal safety by keeping and
13 bearing arms. However, the Ordinance has placed a condition on the continued exercise of those rights:
14 any gun owner who fails to pay the required fee to the designated private organization may be forced to
15 surrender his firearms to the City. (Muni. Code § 10.32.245.)

16 110. The City has represented to the District Court that section 10.32.245 does not currently
17 threaten gun owners with confiscation of their firearms because it reads, “*To the extent allowed by*
18 *law, the Firearm or Firearms of a person that is not in compliance with this Part may be impounded*
19 *subject to a due process hearing*” and, according to the City, the law does not currently authorize city
20 police to confiscate a firearm with or without a due process hearing.

21 111. The Howard Jarvis Plaintiffs believe that representation is incorrect. City police are
22 authorized by law to, and often do, confiscate firearms when carried or used in violation of the law. If
23 a student brings a firearm to school, if someone is carrying a firearm in public without a CCW permit,
24 if someone with a CCW permit is carrying a firearm while intoxicated, if someone purchases a firearm
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1 on the street without going through a federally licensed dealer, if someone discharges a firearm in the
2 air on New Year’s Eve, and for a host of other reasons, city police are authorized to, and often do,
3 confiscate firearms when carried or used in violation of the law.

4 112. The City’s Ordinance makes it a violation of the law to own a gun in the City of San
5 Jose unless you timely pay the annual Gun Harm Reduction Fee. San Jose Municipal Code section
6 1.08.010 provides, “No person shall violate any provision or fail to comply with any of the
7 requirements of this Code or of any other ordinance of the city. Any person violating any of the
8 provisions or failing to comply with any of the mandatory requirements of this Code or of any city
9 ordinance, other than administrative provisions thereof, shall be guilty of a misdemeanor, unless the
10 violation of such provision is designated as an infraction or is a parking violation. The Code provisions
11 for which a violation is an infraction are set forth in Section 1.08.020. The Code provisions for which a
12 violation is a parking violation are set forth in Section 1.08.025.” Possessing a gun without paying the
13 fee is not an infraction. It is a misdemeanor violation of the law, and city police can confiscate a gun
14 that is kept or carried in violation of the law.
15
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18 113. Howard Jarvis Plaintiffs gun owners’ right to keep a gun in their home for protection is
19 “inalienable.” It is not a right granted by the City of San Jose that can be withheld or revoked by the
20 City if gun owners do not comply with conditions contrived by the City. Under the doctrine of
21 unconstitutional conditions, the City can no more charge a fee to own a gun than it could charge a fee
22 to own a Bible.
23

24 **SIXTH CLAIM FOR RELIEF (HOWARD JARVIS PLAINTIFFS ONLY)**
25 **Special Tax Lacking Voter Approval**

26 114. Except as set forth above, the Howard Jarvis Plaintiffs repeat the allegations contained
27 in the Paragraphs above as though fully set forth herein.

28 115. The Annual Gun Harm Reduction Fee is imposed by the City of San Jose.

1 116. The Annual Gun Harm Reduction Fee is a compulsory exaction.

2 117. Article XIII C, section 1(e) of the California Constitution defines a “tax” as “any levy,
3 charge, or exaction of any kind imposed by a local government” unless it fits one of seven limited
4 exceptions.

5 118. Although labeled a “fee” by the City, the Annual Gun Harm Reduction Fee does not
6 qualify for any exception from the definition of a “tax” enumerated in article XIII C, section 1(e).
7 Therefore it is a tax.

8 119. Taxes are either “general taxes” or “special taxes.” A “special tax” is “any tax imposed
9 for specific purposes.” (Cal. Const., art. XIII C, § 1(d).) The Annual Gun Harm Reduction Fee is
10 imposed ostensibly for the purpose of reducing gun harm. Therefore, it is a special tax.
11

12 120. Article XIII C, section 2(d) of the California Constitution provides, “No local
13 government may impose, extend, or increase any special tax unless and until that tax is submitted to
14 the electorate and approved by a two-thirds vote.”
15

16 121. The Annual Gun Harm Reduction Fee was not submitted to the electorate
17 or approved by a two-thirds vote. The fes is therefore invalid.
18

19 **SEVENTH CLAIM FOR RELIEF**
20 **Unconstitutional Delegation of Power to Tax**

21 122. Except as set forth above, the Howard Jarvis Plaintiffs repeat the allegations contained
22 in the Paragraphs above as though fully set forth herein.

23 123. Only the government possesses the power to tax.

24 124. The power to tax includes the power to collect taxes and appropriate tax revenues.

25 125. Under the Ordinance, the Annual Gun Harm Reduction Fee will be collected by the
26 private nonprofit organization that the City Manager will designate. That revenue will not be remitted
27 to the City, but will be appropriated by the private organization. San Jose Municipal Code section
28 10.32.220(C) states, “The Designated Nonprofit Organization shall spend every dollar generated from

1 the Gun Harm Reduction Fee,” and “the City shall not specifically direct how the monies from the
2 Gun Harm Reduction Fee are expended.”

3 126. Under article XIII, section 31 of the California Constitution, the power to tax may not
4 be granted to a private entity. It provides, “The power to tax may not be surrendered or suspended by
5 grant or contract.” Similarly, article XI, section 11 prohibits the delegation of local powers to private
6 entities. It prohibits “delegat[ing] to a private person or body power to make, control, appropriate,
7 supervise, or interfere with county or municipal corporation improvements, money, or property, or to
8 levy taxes or assessments, or perform municipal functions.”

9 127. The Ordinance unconstitutionally delegates some of the City’s power to tax
10 and appropriate tax revenues to a private organization, not answerable to the voters,
11 that the City Manager will designate.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray, on behalf of themselves and their members where applicable,
14 for the following:

- 15 A. Preliminary and permanent injunctions enjoining Defendants and all successors in
16 office from enforcing the insurance mandate, fee requirement, and related enforcement
17 provisions in the Ordinance;
- 18 B. A declaratory judgment that the insurance mandate, fee requirement, and related
19 enforcement provisions in the Ordinance violate the First, Second, and Fourteenth
20 Amendments of the United States Constitution;
- 21 C. An Order invalidating sections 10.32.215 and 10.32.230(B) of chapter 10.32 of title 10
22 of the San Jose Municipal Code;
- 23 D. Nominal damages;
- 24 E. Costs and attorneys’ fees, including those authorized by 42 U.S.C. § 1988; and
25 F. Any other relief as this Court, in its discretion, deems just and appropriate.
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Dated: February 2, 2023

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