

1 HARMEET K. DHILLON (SBN: 207873)
harmeet@dhillonlaw.com
2 MICHAEL A. COLUMBO (SBN: 271283)
mcolumbo@dhillonlaw.com
3 MARK P. MEUSER (SBN: 231335)
4 mmeuser@dhillonlaw.com
DHILLON LAW GROUP INC.
5 177 Post Street, Suite 700
6 San Francisco, California 94108
Telephone: (415) 433-1700
7

8 DAVID A. WARRINGTON*
dwarrington@dhillonlaw.com
9 CURTIS M. SCHUBE*
cschube@dhillonlaw.com
10 DHILLON LAW GROUP INC.
11 2121 Eisenhower Avenue, Suite 402
Alexandria, VA 22314
12 Telephone: (571) 400-2121

13 *Admission *Pro Hac Vice* forthcoming

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 non-profit corporation, and
MARK SIKES, an individual,

20 Plaintiffs,

21 v.

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 Defendants.
26
27
28

Case Number: _____

COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY JUDGMENT, AND
NOMINAL DAMAGES

1 it exceedingly difficult to lawfully carry a weapon outside the home, and the Ordinance only affects
2 owners of lawfully owned guns, the Ordinance’s true impact is solely on guns kept in the home by
3 law-abiding citizens. It does *nothing* to deter the scourge of unlawful ownership and use of guns by
4 criminals or to recoup from them compensation for the injuries and damage they cause. If left intact,
5 the City of San Jose’s Ordinance would strike at the very core of the fundamental constitutional right
6 to keep and bear arms and defend one’s home.

7 3. By compelling gun owners to subsidize the advocacy of an unnamed government-
8 chosen and anti-gun ownership non-profit, as appears to be the intent and function of the Ordinance,
9 the Ordinance also violates the First Amendment rights of gun owners.

10 4. Additionally, the Ordinance violates Article XXIII of the California Constitution
11 because it imposes taxes that were not approved by the voters, or in the alternative, imposes a fee that
12 is unrelated to the costs borne by the City of San Jose. Finally, the Ordinance violates the San Jose
13 City Charter because, by commanding gun owners to directly pay one non-profit for unspecified
14 programs not controlled by the City Council, it unlawfully deprives the City Council of its budget
15 and appropriations powers, and violates a requirement that City receipts be deposited into City
16 accounts.

17 5. To preserve the safety and core rights under the Constitution of the law-abiding
18 citizens of the City of San Jose, as well as their rights under the California Constitution and the City
19 Charter, this Court must prevent Defendants from enforcing the unconstitutional and unlawful
20 Ordinance.

21 **JURISDICTION AND VENUE**

22 6. This Court has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331
23 because it arises under the First, Second, Fifth, and Fourteenth Amendments to the U.S. Constitution
24 and 42 U.S.C § 1983. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant
25 declaratory relief and other relief, including preliminary and permanent injunctive relief, pursuant to
26 Rule 65 of the Federal Rules of Civil Procedure.

27 7. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the state
28 law claims regarding (the City of) San Jose’s lack of authority to pass the Ordinance because the

1 federal claims and this state claim are so related that they form part of the same case or controversy.

2 8. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b)(1)
3 because Defendants are officials of the City of San Jose, which is within the geographical boundaries
4 of the Northern District of California. Defendants are also residents of this State within the meaning
5 of 28 U.S.C. § 1391(c).

6 9. The Court has personal jurisdiction over the Defendants because Defendant, an official
7 with the City of San Jose, is within the State of California.

8 **INTRADISTRICT ASSIGNMENT**

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

11 **PARTIES**

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

18 12. Plaintiff Mark Sikes resides in San Jose, California. Sikes legally owns a gun, is not a
19 peace officer, does not have a concealed carry permit, and does not meet the qualifications of CAL.
20 GOV. CODE § 68632 (a) and (b) and, therefore, would be subject to the Ordinance if it were to go into
21 effect on July 23, 2022.

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

25 14. Defendant Jennifer Maguire (“Maguire”) is the current and active City Manager for the
26 City of San Jose. San Jose’s Charter states that “The City Manager shall be responsible for the faithful
27 execution of all laws, provisions of this Charter, and acts of the Council which are subject to
28 enforcement by the City Manager or by the officers who are under the City Manager’s direction and

1 supervision.” San Jose City Charter, § 701(d) (Exhibit “A”). Additionally, the City Manager is
2 directly identified with enforcement authority throughout the Ordinance. Ordinance §§ 10.32.205,
3 210, 215, 235, & 250.

4 15. Defendant San Jose City Council (the “City Council”) is vested with authority under
5 Article IV of the City of San Jose’s City Charter (see Exhibit “A”). The Ordinance vests the City
6 Council with authority to “set forth the schedule of fees and charges established by resolution of the
7 City Council.” *Id.*, § 10.32.215; 10.32.250.

8 **STATEMENT OF FACTS**

9 **The Ordinance**

10 16. On January 25, 2022, the City Council adopted bill number 22-045, which will become
11 law on July 25, 2022, one hundred eighty (180) days from the date of its passing. This law is to be
12 codified as Chapter 10.32 of Title 10 of the San Jose Municipal Code (collectively referred to as the
13 “Ordinance”). A true and correct copy of bill number 22-045 is attached as Exhibit “B.” A copy of a
14 January 21, 2022 memo with passed amendments is attached as “Exhibit C.”

15 17. According to a memorandum from Mayor Sam Liccardo, the Ordinance will require an
16 estimated 50,000-55,000 gun-owning San Jose Citizens, minus a few exceptions, to obtain an
17 insurance policy and pay annual fees simply to exercise the same constitutional right to own a gun that
18 existed prior to this ordinance. Liccardo Mem. re Gun Harm Reduction Ord., Jan., 19, 2022 (attached
19 as Exhibit “D”).

20 18. The City of San Jose’s City Attorney’s summary of the law states
21 that:

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

Frimann Mem. re Gun Harm Reduction Ord., Jan. 14, 2022, (attached hereto as Exhibit “E”).

1 19. “Failure to comply [with the Ordinance] shall constitute a civil violation subjecting the
2 owner to the temporary or permanent seizure of the gun, and under specified circumstances, a fine.”
3 *Id.* at 2; *see also* Ordinance § 10.32.245 (seizure of guns for noncompliance); § 10.32.240 (fines).

4 20. The Ordinance targets guns in the home. It does not apply to people who have a license
5 to carry a concealed weapon. *Id.*, § 10.32.225. Additionally, absent a concealed carry permit, there is
6 no other way to carry a firearm in San Jose. CAL. PENAL CODE §§ 25850, 26150, 26155, 26350,
7 26400. The Ordinance thus would charge all law-abiding owners of guns for home and self-defense to
8 pay for the harms caused by criminals who use unregistered guns to commit acts of violence.
9 Ordinance § 10.32.200 (identifying costs the Ordinance seeks to recoup to include those arising from
10 homicides and all firearm-related injuries).

11 ***Insurance Requirement***

12 21. The Ordinance conditions the constitutional right to own a gun on the payment of an
13 unstated amount for insurance. It states that “A person who resides in the City of San Jose and owns
14 or possesses a Firearm in the City shall obtain and continuously maintain in full force and effect a
15 homeowner’s, renter’s or gun liability insurance policy...specifically covering losses or damages
16 resulting from any negligent or accidental use of the Firearm, including but not limited to death,
17 injury, or property damage.” Ordinance § 10.32.210.A; *see also* § 10.32.200.B.9.

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

22 ***Fee Requirement***

23 23. The second primary component of the Ordinance is the creation of a “fee” for owning a
24 gun. The Ordinance states that “A person who resides in the City and owns or possesses a Firearm in
25 the City shall pay an Annual Gun Harm Reduction Fee to the Designated Nonprofit Organization each
26 year.” Ordinance § 10.32.215. No fee amount is specified, nor is there a criteria on how to calculate
27 the fee. *Id.* Rather, Defendant City Council reserved the right for itself to determine the fee amount at
28

1 a later date. *Id.*

2 24. The destination of the money is to an undetermined non-profit. That determination is
3 delegated to Defendant Maguire. *Id.*, § 10.32.220.

4 25. The non-profit fee in the Ordinance is not to defray the City’s administrative costs.
5 Rather, “all monies...shall be expended by the Designated Nonprofit Organization...” *Id.*,
6 § 10.32.220.A.

7 26. The only criteria for said non-profit is that it “provid[e] services to residents of the City
8 that own or possess a Firearm in the City or to members of their household, or to those with whom
9 they have a close familial or intimate relationship.” These services “include, *but are not necessarily*
10 *limited to*” suicide prevention services or programs, violence reduction or domestic violence services
11 or programs, mental health services related to gun violence, firearms safety education or training, or
12 addiction intervention and substance abuse treatment. *Id.*, § 10.32.220.A (emphasis added).

13 27. “The City shall not specifically direct how the monies from the Gun Harm Reduction
14 Fee are expended” by the non-profit. *Id.*, § 10.32.220.C

15 28. The fee thus functions to compel gun owners to give their money to government-
16 approved non-profits to spend on either wholly unspecified programs at the non-profit’s discretion,
17 the non-profit staff’s salaries and benefits, or a handful of specified services that the City is not
18 obligated to perform. This redistribution of wealth from gun owners to one City-favored non-profit
19 and its staff is not only obnoxious to the Constitution, it is an invitation to corruption and waste.

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

25 30. Indeed, the Ordinance also authorizes a separate fee just to recoup the costs associated
26 in enforcing the Ordinance. *Id.*, § 10.32.250.

27 31. Accordingly, as discussed further below, the “Annual Gun Harm Reduction Fee” —
28 unconnected to the cost of City services and for unspecified programs outside of the City’s control—is

1 nothing more than a *tax* the City is imposing on the exercise of a constitutional right.

2 **The Second Amendment**

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

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

9 34. Even in the face of “the problem of handgun violence in this country,...the
10 enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *Heller*,
11 554 U.S. at 636.

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

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

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

22 38. Specific to insurance, in theory, when crime increases in a community, insurance
23 premiums will increase, just as premiums for car insurance increase in geographical locations that
24 have more car accidents.

25 39. Thus, in times of increased need for self-protection and defense, which is one of the
26 very purposes of the Second Amendment, exercising that right will become increasingly expensive
27 and burdensome.

28 40. Specific to both the insurance mandate and the fees created by the Ordinance, these

1 costs are subject to the whims of the City Council and private insurance companies and, thus, bear a
2 significant risk of making gun ownership cost prohibitive.

3 41. The Ordinance cites a number of statistics about gun violence, but provides no studies
4 or statistics that liability insurance will reduce the stated aim of reducing gun violence. Rather, it in
5 conclusory fashion states that “Liability insurance can reduce the number of gun incidents by
6 encouraging safer behavior...” Ordinance § 10.32.200.B.9.

7 42. The Ordinance cites a number of statistics about gun violence, but provides no studies
8 or statistics that the yet-to-be-determined non-profit will accomplish the stated aim of reducing gun
9 violence. Rather, in conclusory fashion, it states that “Programs and services to gun owners and their
10 households can also encourage safer behavior, and provide education and resources to those
11 residents.” *Id.*, § 10.32.200.B.10.

12 43. Neither the insurance mandate nor the non-profit fee “fit” any stated government
13 objective.

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

16 45. The only exception is to “meet the expense incident to the administration of the act and
17 to the maintenance of public order in the matter licensed.” *Cox v. New Hampshire*, 312 U.S. 569, 577
18 (1941). Applied to the Second Amendment, “imposing fees on the exercise of constitutional rights is
19 permissible when the fees are designed to defray (and do not exceed) the administrative costs of
20 regulating the protected activity.” *Kwong v. Bloomberg*, 723 F.3d 160, 165 (2nd Cir. 2013).

21 46. Neither the insurance premium nor the fee to be paid to the City’s chosen non-profit
22 are designed to defray the City’s administrative costs.

23 **The Ordinance’s Uncertainties**

24 47. The Ordinance’s insurance mandate does not specify any standards for insurance,
25 including a minimum coverage threshold, and requires coverage for certain liabilities “*including but*
26 *not limited to*” death, injury or property damage. Ordinance § 10.32.210. Thus, the scope of coverage
27 is not sufficiently defined so as to determine what liabilities must be covered.

28 48. The Ordinance does not specify how much either fee will cost gun owners. *Id.* §§

1 10.32.215; 10.32.250. Rather, “The annual fee will be set forth in the schedule of fees and charges
2 established by resolution of the City Council.” *Id.*, § 10.32.215. And, “The City Manager is hereby
3 authorized to charge and collect any and all cost recovery fees...established by resolution of the City
4 Council.” *Id.*, § 10.32.250.

5 49. The non-profit fee schedule is also undetermined. The Ordinance delegates that
6 responsibility to Defendant Maguire. “The date by which payment shall be made annually shall be
7 established in the regulations promulgated by City Manager.” *Id.*, § 10.32.215.

8 50. The Ordinance does not create any criteria for the fee amount to be distributed to the
9 non-profit. *Id.*, § 10.32.215.

10 51. No assurances are made that the non-profit will use the money for any of the stated
11 purposes. To the contrary, “The City shall not specifically direct how the monies from the Gun Harm
12 Reduction Fee are expended.” *Id.*, § 10.32.220.C.

13 52. The Ordinance does not identify the recipient of the non-profit fee money. Rather, it
14 only sets out criteria that “include, but are not necessarily limited to” suicide prevention or programs,
15 violence reduction, mental health services, firearms safety education or training, or addiction
16 intervention and substance abuse treatment. *Id.*, § 10.32.220. Thus, the criteria for who receives the
17 proceeds of the fee described in section 10.32.220 is open ended.

18 **The First Amendment**

19 53. The First Amendment, applied to the states through the Fourteenth Amendment,
20 protects the freedom of speech, including both the right to speak freely and the right to refrain from
21 speaking at all, and to avoid associating with others for expressive purposes. The First Amendment
22 thus prohibits government officials from forcing individuals to support views that they find
23 objectionable.

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

28 55. The Ordinance directs gun owners to subsidize one unidentified non-profit by paying

1 the city's fee directly to that organization. The Ordinance even prohibits the city from directing how
2 the non-profit would use the funds. The one thing that is clear is that the organization will likely be
3 dedicated to exclusively preaching the negative risks of gun ownership.

4 56. The Defendants may not require Plaintiffs to pay fees to non-profits when those fees
5 are going to be used to fund activities of ideological or political nature with which Plaintiffs disagree.
6 *See Keller v. State Bar of California*, 496 U.S. 1, 13 (1990).

7 57. The Ordinance therefore compels Plaintiffs' speech and this Court should preliminarily
8 and permanently enjoin Defendant from enforcing the Ordinance and award Plaintiffs' nominal
9 damages.

10 California Constitution-Preemption

11 58. Article XI, section 7 of the California Constitution states that "A county or city may
12 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not
13 in conflict with general laws."

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

18 60. "[T]he Legislature intended to occupy the field of residential handgun possession to the
19 exclusion of local government entities." *Fiscal*, 158 Cal.App.4th at 909.

20 61. Gun regulation is already fully occupied by the state of California. Indeed, California
21 already comprehensively regulates firearms, including firearm safety, CAL. PENAL CODE §§ 23500-
22 23520, the appearance of firearms, *id.*, §§ 23800-24790, storage of firearms, *id.*, §§ 25000-25225,
23 how to handle lost or stolen firearms, *id.*, §§ 25250-25225, carrying firearms, *id.*, §§ 25300-26406, the
24 sale, lease, or transfer of firearms, *id.*, §§ 26500-28490, the registration and assignment of firearms,
25 *id.*, §§ 28010-28024, how to transfer firearms between private persons, *id.*, §§ 28050-28070,
26 recordkeeping, background checks, and fees related to transfer, *id.*, §§ 28100-28490, the manufacture
27 of firearms, *id.*, §§ 29010-29184, who may not possess a firearm, *id.*, §§ 29610-30165, rules
28 pertaining to "firearm equipment," *id.*, §§ 30150-30165, and, in some cases, firearm registration, *id.*,

1 §§ 30900-30965. This is but a sample of all of the separate statutes regulating firearms in California.
2 *See generally* CAL. PENAL CODE §§ 23500-34370.

3 62. Thus, firearm regulation is not within the purview of the City of San Jose pursuant to
4 the California Constitution because the Ordinance is preempted by California law.

5 **California’s Local Tax Requirements**

6 63. All taxes imposed by local governments in California must be approved by voters of
7 the local government. CAL. CONST. art. XIII C. A “tax” in California, with exceptions that do not
8 apply here, is defined as “any levy, charge, or exaction of any kind imposed by a local government.”
9 Article XIII C, § 1.

10 64. The Ordinance, which contains three separate “taxes” (that is, the insurance mandate,
11 the non-profit fee, and the administrative fee), was not submitted to the electorate for approval and,
12 therefore, violates the California Constitution.

13 **The San Jose City Charter**

14 65. The San Jose City Charter vests in the City Council “[a]ll powers of the City and the
15 determination of all matters of policy.” San Jose City Charter § 400. These powers include the
16 exclusive authority to impose taxes. *Id.*, § 602(c). With regard to the expenditure of City funds, only
17 the City Council has the power to establish a budget. *Id.* §§ 1204, 1206. The Council also has the sole
18 power to appropriate the expenditure of City funds. *Id.*, § 1207.

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

21 67. “All revenues and receipts which are not required by [the] Charter, State law or
22 ordinances to be placed in special funds shall be credited to the [City’s] General Fund.” *Id.*, § 1211.
23 The General Fund is “a medium of control and accounting for all City activities excepting activities
24 for which special funds are established and maintained.” *Id.*

25 68. The Ordinance, by prohibiting the City from directing how “monies from the Gun
26 Harm Reduction fee are expended” by the chosen non-profit, Ordinance § 10.32.220.C, violates the
27 San Jose City Charter’s reservation of budgeting and appropriation power to the City Council.

28 69. The Ordinance, to the extent it empowers the City Manager to determine how the

1 Ordinance’s cost recovery fee is spent, violates the separation of powers within the City Charter,
2 which reserve budgeting and the appropriation of funds to the City Council.

3 70. The Ordinance, by requiring gun owners to pay the City-required, City-determined fee
4 directly to a non-profit organization, *id.*, § 10.32.215, thereby diverts a City fee to a non-profit rather
5 than the City’s General Fund, and thus violates the City Charter’s requirement that all City revenues
6 and receipts be deposited into City accounts as an essential means of City “control and accounting.”
7 This too is an invitation to corruption, waste, and fraud.

8 71. The Ordinance also violates California Government Code § 43400 which requires that
9 all “money received from licenses, street poll taxes, fines, penalties, and forfeitures shall be paid into
10 the general fund.”

11 * * * *

12 72. In sum, the Ordinance violates the Second Amendment by infringing upon the right to
13 bear arms, violates the First Amendment by forcing gun owners to subsidize a non-governmental non-
14 profit organization’s advocacy against gun ownership, violates the Fifth and Fourteenth Amendment
15 rights to due process by being unconstitutionally vague, violates article XI, §7 of the California
16 Constitution by preempting a field thoroughly occupied by state law, violates article XIII C of the
17 California Constitution by failing to submit a local tax to the voters for approval, violates the San Jose
18 City Charter’s budget and appropriations provisions, and violates controls on the handling of city
19 receipts under the City Charter and the California Government Code. Accordingly, Plaintiffs request
20 this court to issue preliminary and permanent injunctions preventing Defendants from enforcing the
21 Ordinance in its entirety pursuant to 42 U.S.C. § 1983, declare the Ordinance unconstitutional in its
22 entirety under both the United States and California Constitutions, declare that the Ordinance violates
23 the San Jose City Charter and the California Government Code, issue nominal damages, and order any
24 other relief this Court deems necessary and proper.

25 **FIRST CLAIM FOR RELIEF**

26 **Violation of the Second and Fourteenth Amendments (42 U.S.C. § 1983)**
27 ***The Ordinance requiring owners of guns to purchase insurance and pay an annual fee***
28 ***violates the Second and Fourteenth Amendments to the United States Constitution.***

73. Plaintiffs incorporate by reference and re-allege each of the Paragraphs set forth above.

1 82. The City’s dictate that the right to gun ownership will depend on citizens having an
2 unspecified insurance policy and payment of as-yet undetermined fees to the City and a third party
3 who has yet to be chosen will chill and infringe upon on those citizens’ Second Amendment rights.

4 83. It is plausible, if not probable, that the City would make gun ownership cost prohibitive
5 for at least some San Jose residents, particularly in light of the view of gun ownership reflected in the
6 Ordinance’s findings.

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

10 85. At the very least, any such a cost “infringe[s]” upon the constitutional right to bear
11 arms.

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

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

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

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

28 89. To the extent that Defendants will assert a separate government interest, said

1 government interest would not be significant, substantial, or important.

2 90. To the extent that Defendant will assert a separate government interest, requiring gun
3 owners to pay insurance and an annual fee to an unnamed non-profit does not constitute a
4 “reasonable fit” for any other government interest.

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

7 * * * *

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

11 93. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and
12 temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of
13 the Ordinance.

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

17 **SECOND CLAIM FOR RELIEF**

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

19 ***The payment of a fee to a non-profit violates the free speech rights of gun owners by***
20 ***compelling them to subsidize private speech on matters of substantial public concern.***

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

23 96. The First Amendment protects Plaintiffs’ freedom of speech which includes both the
24 right to speak freely and the right to refrain from speaking at all.

25 97. The First Amendment protects the right of Plaintiffs to eschew association for
26 expressive purposes.

27 98. The First Amendment prohibits government officials from forcing individuals to
28 support views that they find objectionable.

99. Thomas Jefferson famously said that “to compel a man to furnish contributions of

1 money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.”
2 *Janus*, 138 S.Ct. at 2464 (quoting *A Bill for Establishing Religious Freedom*, in 2 Papers of Thomas
3 Jefferson 545 (J. Boyd ed. 1950)).

4 100. In *Janus v. AFSCME*, the Supreme Court examined the case of compelled
5 subsidization of private speech. The Court never determined if the courts are to use strict scrutiny or
6 exacting scrutiny because in *Janus* the Court concluded that the “Illinois scheme cannot survive
7 under even the more permissive standard.” *Id.* at 2465.

8 101. Furthermore, the Defendants may not require Plaintiffs to pay fees to non-profits when
9 those fees are going to be used to fund activities of ideological or political nature, such as endorsing
10 gun control. *See Keller*, 496 U.S. at 13.

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

14 103. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and
15 temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of
16 the Ordinance.

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

20 **THIRD CLAIM FOR RELIEF**

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

22 ***The insurance requirements and annual fee are unconstitutionally vague,
23 in violation of the Fifth and Fourteenth Amendments.***

24 105. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
25 above.

26 106. A law is unconstitutionally vague when “obedience to a rule or standard was so vague
27 and indefinite as really to be no rule or standard at all.” *Boutilier v. INS*, 387 U.S. 118, 123 (1967).

28 107. The Ordinance is vague, in that, it does not specify any standards for insurance,
including a minimum coverage threshold, and requires coverage for certain liabilities “*including but*

1 *not limited to*” death, injury or property damage. Ordinance § 10.32.210.

2 108. The Ordinance is vague, in that, it does not identify any particular standards by which
3 the non-profit fee is calculated, or a specific fee amount, and leaves open the possibility of prohibitive
4 fees and future fee increases. *Id.*, § 10.32.220.

5 109. The Ordinance is vague, in that, it does not identify the recipient of the fee that must be
6 paid to a non-profit in order to avoid gun confiscation and fines.

7 110. Further, the Ordinance does not specify how the chosen non-profits must spend the
8 City’s fee revenues, but rather only sets out a criterion that “include, but are not necessarily limited
9 to” suicide prevention or programs, violence reduction, mental health services, firearms safety
10 education or training, or addiction intervention and substance abuse treatment. *Id.*, § 10.32.220.

11 111. No assurances are made that these non-profits will use the money for any of the stated
12 purposes. To the contrary, “The City shall not specifically direct how the monies from the Gun Harm
13 Reduction Fee are expended.” *Id.*, § 10.32.220.C.

14 112. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm
15 to their constitutional rights unless Defendants are enjoined from implementing and enforcing the
16 Ordinance.

17 113. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and
18 temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of
19 the Ordinance.

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

23 **FOURTH CLAIM FOR RELIEF**
24 **Violation of article XI, §7 of the California Constitution-Field Preemption**
The Ordinance occupies a field already occupied by California law.

25 115. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
26 above.

27 116. Article XI, section 7 of the California Constitution states that “A county or city may
28 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not

1 in conflict with general laws.”

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

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

10 119. 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.

13 120. 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 attorney fees and costs
15 pursuant to California Code of Civil Procedure Section 1021.5.

16 **FIFTH CLAIM FOR RELIEF**

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

19 121. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
20 above.

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

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

27 124. A “tax” is “any levy, charge, or exaction of any kind imposed by a local government,”

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 with exceptions that do not apply here. Article XIII C, §1(e).

2 125. Thus, both of the fees in the Ordinance and the insurance requirement constitute a
3 “tax.”

4 126. The Ordinance, whether it is a general or a special tax, was never submitted to the
5 electorate for a vote.

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

12 128. The City cannot meet this burden because the fees imposed are a levy, charge, or
13 exaction imposed by the city that does not meet any exception, and the amount of the fees are “more
14 than necessary to cover the reasonable costs of the governmental activity” because they are not for
15 government activity, and “the manner in which those costs are allocated to” gun owners do not “bear a
16 fair or reasonable relationship to the payor’s burdens on, or benefits received from” the City’s
17 “governmental activity.” Article XIII C, §1.

18 129. As stated previously, the insurance requirement and the fee allocated to a non-profit do
19 not cover “costs of a governmental activity” as the insurance is allocated to for-profit corporations and
20 the fee is allocated to an unnamed non-profit rather than the City.

21 130. Neither the insurance requirement nor the non-profit fees bear a fair or reasonable
22 relationship to the payor’s burdens on, or benefits received from, a governmental activity.

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

26 132. Plaintiffs have found it necessary to engage the services of private counsel to vindicate
27 their rights under the law. Plaintiffs are therefore entitled to an award of attorney fees and costs
28 pursuant to California Code of Civil Procedure Section 1021.5.

1 //
2 //
3 //

SIXTH CLAIM FOR RELIEF

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

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

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

9 134. The San Jose City Charter (“Charter”) establishes the powers of the City of San Jose’s
10 government. San Jose City Charter § 200.

11 135. The Charter divides the legislative power of the City’s government from its executive
12 power. “All powers of the City and the determination of all matters of policy shall be vested in the
13 Council, subject to the provisions of this Charter and the Constitution of the State of California.” *Id.*, §
14 400.

15 136. The Charter grants the City Council the power to impose taxes by ordinance. *Id.*, §
16 602(c).

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

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

25 139. Here, the Ordinance states that “[t]he City shall not specifically direct how the monies
26 from the Gun Harm Reduction fee are expended” by its chosen non-profit. Ordinance, § 10.32.220.C.

27 140. The Ordinance, by prohibiting the City from directing how “monies from the Gun
28 Harm Reduction fee are expended” violates the San Jose City Charter’s reservation of budgeting and

1 appropriation power to the City Council.

2 141. The Ordinance, to the extent it empowers the City Manager to determine how the
3 Ordinance’s cost recovery fee is spent, violates the separation of powers within the City Charter,
4 which reserves budgeting and the appropriation of funds to the City Council.

5 142. The Ordinance states that gun owners must pay the City-required, City-determined fee
6 directly to a non-profit organization. *Id.*, § 10.32.215.

7 143. By diverting a City fee to a non-profit rather than the City’s General Fund, the
8 Ordinance violates the City Charter’s requirement that all City revenues and receipts be deposited into
9 City accounts as an essential means of City “control and accounting.”

10 144. 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.

13 145. 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 attorney fees and costs
15 pursuant to California Code of Civil Procedure Section 1021.5.

16 **SEVENTH CLAIM FOR RELIEF**
17 **Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202**
18 *Plaintiffs are entitled to declaratory relief.*

19 146. Plaintiffs incorporate by reference and re-allege herein each of the Paragraphs set forth
20 above.

21 147. To the extent that each of the claims above have not already established a remedy,
22 Plaintiffs are entitled to declaratory relief holding that the Ordinance violates Plaintiffs’ individual
23 rights under the United States and California constitutions and San Jose’s City Charter, and is
24 otherwise invalid, are entitled to preliminary and permanent injunctions preventing the enforcement of
25 the Ordinance, nominal damages, and further relief that this Court deems necessary or proper.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray, on behalf of themselves and all of NAGR’s members, for the
28 following:

A. Preliminary and permanent injunctions enjoining Defendants and all successors in

1 office from enforcing the Ordinance, including those authorized by 42 U.S.C. § 1983
2 and Cal. Civil Code §52.1;

3 B. A declaratory judgment that the Ordinance violates the First, Second, Fifth, and
4 Fourteenth Amendments of the United States Constitution and article XI, section 7 and
5 article XIII C of the California Constitution, San Jose’s City Charter, and granting the
6 necessary and proper relief this Court deems appropriate, including relief authorized by
7 28 U.S.C. §§ 2201, 2202;

8 C. Nominal damages;

9 D. Costs and attorney fees, including those authorized by 42 U.S.C. § 1988 and California
10 Code of Civil Procedure Section 1021.5; and

11 E. Any other relief as this Court, in its discretion, deems just and appropriate.
12

13 Dated: January 25, 2022

DHILLON LAW GROUP INC.

14
15 By: /s/ Harmeet K. Dhillon

16 Harmeet K. Dhillon
17 Michael A. Columbo
18 Mark P. Meuser
19 DHILLON LAW GROUP INC.
20 177 Post Street, Suite 700
21 San Francisco, California 94108
22 (415) 433-1700

23 David A. Warrington*
24 Curtis M. Schube*
25 DHILLON LAW GROUP INC.
26 2121 Eisenhower Avenue, Suite 402
27 Alexandria, VA 22314
28 (571) 400-2121

*Admission *pro hac vice* forthcoming

Attorneys for Plaintiffs