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Attorneys for Plaintiffs CHRISTOPHER GLASS
and FIREARMS POLICY COALITION, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHRISTOPHER GLASS and FIREARMS
POLICY COALITION, INC.,

Plaintiffs,

vs.

CITY OF SAN JOSE; ANTHONY
MATA, in his official capacity as Chief of
Police of the City of San Jose; and
JENNIFER MAGUIRE, in her official
capacity as City Manager of the City of
San Jose,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
DAMAGES**

1 INTRODUCTION

2 1. The City of San Jose has enacted an ordinance requiring law-abiding residents to pay
3 two separate charges merely for exercising their fundamental right to keep and bear arms. First is an
4 annual fee assessed on firearm owners and only firearm owners. Second is the cost of maintaining now-
5 mandatory firearm insurance (“insurance provision”). See SAN JOSE, CAL. ORDINANCE No. 30716
6 §§ 10.32.210, .215 (“ORD.”).¹

7 2. City officials have promoted the Ordinance as the first of its kind. See Mem. from Mayor
8 Liccardo, et al., at 3 (Jan. 21, 2022) (Ex. A). They have also made clear that a main reason for the
9 Ordinance is to limit the exercise of Second Amendment rights by creating an “opportunity” for police
10 to “remove” firearms from otherwise law-abiding citizens who lack a form attesting to their compliance
11 with the Ordinance. Mary Harris, *San Jose’s New Gun Law Is the First of Its Kind*, SLATE (Feb. 3,
12 2022), <https://bit.ly/3sIaCbB> (Ex. B); see also Ex. A at 4; ORD. § 10.32.245 (providing for
13 impoundment).

14 3. The Ordinance is facially unconstitutional in several ways.

15 4. The fee and insurance provisions violate the Second Amendment. The government may
16 not impose a fee on the choice to exercise a constitutional right. But that is exactly what the Ordinance
17 does. The government also may not restrict firearm ownership in ways that are wholly unknown to the
18 Nation’s history and that fail entirely to advance the government’s asserted goals. Novelty is not a
19 virtue here, and neither are restrictions for restriction’s sake. But the Ordinance is concededly novel,
20 and it will neither improve public safety nor reduce the costs of gun violence. It will only burden those
21 who already follow all firearm laws. Even City officials admit that, “[o]f course, *criminals won’t obey*
22 *insurance or fee mandates.*” Ex. A at 4 (emphasis added).

23 5. The fee provision also violates the First Amendment. The Ordinance directs the City
24 Manager to designate a nonprofit organization that will spend firearm owners’ money on “programs
25 and initiatives” to “mitigate” the supposed “risk” of the “possession of firearms.” ORD. § 10.32.220(C).
26 The fee provision thus forces firearm owners to associate with an organization of the City’s choosing

27 _____
28 ¹ For ease of reference, this Complaint refers to sections of the Ordinance according to the
section numbers now codified in Part 6 of Chapter 10.32 in the San Jose Municipal Code.

1 and subsidize expressive activities of the organization’s choosing, in violation of the U.S. Supreme
2 Court’s ruling in *Janus v. American Federation of State, County & Municipal Employees*, 138 S. Ct.
3 2448 (2018).

4 6. Plaintiffs therefore request a judgment declaring the Ordinance unconstitutional on its
5 face, permanently enjoining Defendants and their agents from enforcing the Ordinance, and awarding
6 nominal damages, damages for any loss attributable to the Ordinance incurred before final judgment,
7 attorney’s fees, and any other relief that the Court deems just and proper.

8 **JURISDICTION AND VENUE**

9 7. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331.

10 8. Plaintiffs seek relief under 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

11 9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (b)(2).

12 **DIVISIONAL AGREEMENT**

13 10. Pursuant to Local Civil Rule 3-2(e), this case is properly assigned to the San Jose
14 Division because it arises from the City of San Jose in Santa Clara County.

15 **PARTIES**

16 11. Plaintiff Christopher Glass is a law-abiding firearm owner and resident of San Jose. He
17 does not hold a concealed-carry permit and, though he does hold a renter’s insurance policy, the policy
18 documents in his possession do not specifically address loss or damage resulting from a firearm.
19 Although he has no history of criminal offenses or mental-health issues, under the Ordinance he will
20 be unable to continue possessing firearms unless he pays the annual fee and maintains compliant
21 firearm insurance.

22 12. Plaintiff Firearms Policy Coalition, Inc. (“FPC”) is a non-profit organization
23 incorporated under the laws of Delaware with a place of business in Sacramento, California. The
24 purposes of FPC include defending and promoting fundamental rights, especially, but not limited to,
25 the Second Amendment right to keep and bear arms. FPC serves its members and the public through
26 legislative advocacy, grassroots advocacy, research, education, outreach, and other programs. FPC
27 brings this action on behalf of its members in San Jose, including Plaintiff Glass.

1 19. In the intervening period, the City Council received several memoranda containing the
2 purported empirical bases for the Ordinance. The first, sent by Mayor Liccardo on January 19, attached
3 a report commissioned from the Pacific Institute for Research and Evaluation (PIRE) on the “Incidence
4 and Cost of Firearm Injuries in San Jose, CA.” *See* Mem. from Mayor Liccardo (Jan. 19, 2022) (Ex. E).

5 20. This report attempts to measure the “public cost of firearm injury” in San Jose, including
6 the annual cost of responding to firearm deaths and injuries, which the report sets at \$151 per gun-
7 owning household. *See id.*, attach. at 4 (“PIRE Report”).

8 a. The report estimates that 206 people are killed or injured by firearms in the City per
9 year, yielding an estimated \$7.9 million in police and fire-department response costs.
10 *See id.* at 1–2. Based on background-check data from firearm sales between 2002 and
11 2015, the report also estimates that firearms are present in 50,000 to 55,000 San Jose
12 households, while acknowledging that these numbers likely undercount the lawfully
13 owned firearms in the City. *See id.* at 2–3. The report apparently splits the difference,
14 dividing \$7.9 million by 52,500 to reach \$151.

15 b. The report also estimates the “societal cost” of firearm injury, including, *e.g.*, healthcare
16 costs. According to the report, “[h]omicide and assault cause most (57%) of the firearm
17 costs,” while unintentional shootings account for only 6%. *Id.* at 5.

18 21. The PIRE Report offers nothing to suggest that either an annual fee or an insurance
19 requirement would reduce these estimated costs.

20 a. Among other issues, the report does not state what proportion of its estimated costs
21 result from firearms held by criminals—who, as City officials admit, will not comply
22 with the fee or insurance provisions.

23 b. Conversely, the report does not attempt to measure the proportion of response costs
24 caused by law-abiding gun owners, and thus cannot explain how their compliance with
25 the Ordinance would deter or defray such costs. It is self-evident, however, that the vast
26 majority of the 55,000 households included in the report play no part in the estimated
27 206 annual firearm incidents resulting in injury or death. The report’s claim that the City
28

1 “spends an average of \$151” per each of those households is therefore misleading
2 at best.

3 c. Even assuming widespread compliance, the report also does not attempt to explain how
4 the fee provision would reduce any costs estimated in the report. In fact, the report
5 recognizes that enforcing firearm regulations itself entails police costs. *See id.* at 2
6 (noting that the cost estimate omits “police costs of weapons violations and gun thefts”).
7 And the insurance requirement would apparently *contribute* to the report’s estimate of
8 so-called societal costs, which “includes costs paid by,” among others, “insurers.” *Id.*
9 at 4.

10 d. Moreover, the PIRE Report reached its estimated 206 firearm incidents by including
11 “Legal Intervention,” which the report groups with “Assault” and “Homicide”—the
12 largest category of incidents. *Id.* at 1. The report does not explain whether these legal
13 interventions include use of firearms by “peace officers,” who are not subject to the
14 Ordinance, *see* ORD. § 10.32.225, and/or in self-defense. Either way, these types of
15 incidents will occur with or without the Ordinance, and the report makes no attempt to
16 discount the costs associated with such incidents.

17 22. On January 21, the City Attorney sent another memorandum, listing the “sources used
18 in the recitals of the proposed ordinance.” *See* Supp. Mem. from City Att’y Frimann at 1 (Jan. 21, 2022)
19 (Ex. F). Along with the PIRE Report, these sources are the basis for the list of recitals and findings at
20 the beginning of the Ordinance as enacted.

21 a. Of the seventeen sources cited, most (fourteen) provide no data specific to San Jose,
22 instead ranging from studies of nationwide or statewide data to news stories about
23 events in other states. Two others are CDC datasets that can be queried for data about
24 San Jose, but they provide only census data about death totals.

25 b. None of these sources offer evidence that an annual fee or insurance requirement would
26 reduce the incidents or costs of firearm injury in San Jose, or for that matter anywhere
27 else. They do not calculate the municipal costs of firearm injury, propose an annual fee
28 or insurance requirement as solutions, or assess the efficacy of those supposed solutions.

1 Only one of these sources touches on any of these relevant subjects: an article that offers
 2 guidance to insurance actuaries for quantifying firearm risk. Kristen Moore & Craig
 3 Reynolds, *Firearm Insurance: An Insurance Perspective*, THE ACTUARY (June/July
 4 2018) (Ex. G). But this article makes no argument that firearm insurance should be
 5 required; the authors “deliberately do not take a stand on policy issues related to
 6 firearms.” *Id.*

- 7 c. That leaves the one source with some relation to San Jose: a 2018 study of firearm
 8 ownership and firearm injuries in Santa Clara County. *See* SANTA CLARA CTY. PUB.
 9 HEALTH, *Firearms in Santa Clara County* (Apr. 2018) (Ex. H). Although this study
 10 provides an estimate of medical and work-loss costs, it again offers no evidence that
 11 those or other costs would be reduced by imposing an annual fee or insurance
 12 requirement on law-abiding firearm owners.

13 23. In a separate memorandum sent the same day, the Mayor, joined by the Vice Mayor and
 14 two other councilmembers, offered further arguments in favor of the Ordinance. *See* Ex. A. Starting
 15 with the insurance provision, the memorandum asserts that “[r]isk-adjusted premiums can—and in
 16 some cases, do—reduce the risk of gun harm, by encouraging” firearm-safety measures. *Id.* at 3.

- 17 a. The memorandum cites no firearm-insurance policies with risk-adjusted premiums or
 18 any case where such a policy has affected behavior in this way. Instead, it links to a
 19 public health advocacy piece purportedly finding that “reducing premiums on
 20 policyholders who drive more safely . . . helped to reduce per-mile auto fatalities by
 21 80% over the past five decades.” *Id.* The advocacy piece, however, does not mention
 22 car insurance.²

- 23 b. The memorandum also states that “[r]equiring every gun owner in [the] city to carry
 24 liability insurance will better compensate unintentional shooting victims and their
 25 families.” *Id.* But the memorandum does not indicate how many San Jose victims are
 26 currently going uncompensated or how that gap would be filled with insurance for
 27

28 ² The memorandum and its hyperlinks are available at <https://bit.ly/37LECLR> (last visited Apr. 26, 2022).

1 accidental shootings by law-abiding citizens—who, the memorandum admits, are the
2 only citizens who would obtain insurance. *See id.* at 4. And insurance would not cover
3 criminal shootings or the municipal costs estimated in the PIRE Report.

4 24. As support for the fee provision, the memorandum relies primarily on sources already
5 listed in the City Attorney’s memorandum—*i.e.*, sources that do not suggest that a fee on law-abiding
6 firearm owners would reduce firearm injuries in San Jose. The memorandum also links to sources
7 purporting to show that “the public [is] subsidiz[ing] gun ownership” at a cost of “\$1.4 billion for all
8 Californians.” *Id.* at 4. But again, these sources do not show that the fee provision would defray the
9 public costs of responding to firearm violence rather than simply impose an additional cost on law-
10 abiding firearm owners.

11 a. Indeed, the memorandum argues that the City may simply charge citizens for the lawful
12 exercise of a constitutional right because “courts have long upheld the imposition of
13 taxes on the purchase of guns and ammunition ever since Congress imposed the federal
14 gun tax in 1919.” *Id.* In apparent support, the memorandum provides a hyperlink to an
15 article on a wholly unrelated topic that mentions neither this tax nor the Second
16 Amendment.

17 b. The memorandum further asserts that courts have permitted fees on the exercise of other
18 constitutional rights, yet it links to a landmark case where the U.S. Supreme
19 unanimously held that a tax on newspapers was unconstitutional. *See Grosjean v. Am.*
20 *Press Co.*, 297 U.S. 233, 251 (1936). The memorandum also makes no effort to explain
21 how any holdings under other constitutional provisions would comport with the original
22 meaning of the Second Amendment.

23 25. In the end, the memorandum is forced to admit that, “[o]f course, criminals won’t obey
24 insurance or fee mandates,” and thus that the Ordinance will do nothing to deter criminal gun violence.
25 Ex. A at 4.

26 26. “Yet,” the memorandum argues, “given the legally frail status of concealed-carry
27 regulations before the current U.S. Supreme Court” in *New York State Rifle & Pistol Association v.*
28 *Bruen*, No. 20-843 (2021), the City “will likely see many more guns out on the street”—guns that the

1 Ordinance empowers police officers to confiscate. Ex. A at 4. In other words, the Ordinance is a
2 prophylactic attempt to limit a constitutional right that the Supreme Court might soon recognize.

3 27. The Ordinance passed its first reading on January 25, 2022, and it was adopted on
4 second reading on February 8, 2022. *See* CITY OF SAN JOSE, GUIDE TO COUNCIL MEETINGS,
5 <https://bit.ly/3vN1K66> (last visited Apr. 22, 2022) (Ex. I). The Ordinance takes effect 180 days after
6 its adoption. *See* ORD. at 13 (Section 2).

7 **II. Text of the Ordinance**

8 28. The Ordinance defines a “firearm” to include “a device, designed to be used as a
9 weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form
10 of combustion. Firearm does not include antique firearms as defined by 18 U.S.C. [§] 921(a).” ORD.
11 § 10.32.205(A).

12 29. Under the insurance provision, “[a] person who resides in the City and owns or
13 possesses a Firearm in the City shall obtain and continuously maintain in full force and effect a
14 homeowner’s, renter’s or gun liability insurance policy from an admitted insurer or insurer as defined
15 by the California Insurance Code, specifically covering losses or damages resulting from any accidental
16 use of the Firearm, including but not limited to death, injury or property damage.” *Id.* § 10.32.210(A).

- 17 a. Unless the City Manager provides otherwise, any San Jose resident who owns a firearm
18 on the Ordinance’s effective date must obtain qualifying insurance within thirty days.
19 *See id.* § 10.32.210(C). A person is deemed to own a firearm even “if such Firearm is
20 lost or stolen” until he reports the loss or theft to his local police department or sheriff.
21 *Id.* § 10.32.210(B).

22 30. Under the fee provision, “[a] person who resides in the City and owns or possesses a
23 Firearm in the City shall pay an Annual Gun Harm Reduction Fee to the Designated Nonprofit
24 Organization each year.” *Id.* § 10.32.215.

- 25 a. The Ordinance authorizes the City Council to set the fee amount, which the Ordinance
26 does not cap. *See id.*
27 b. The Ordinance authorizes the City Manger to choose the “Designated Nonprofit
28 Organization.” *Id.* § 10.32.205(B). The only limit on this choice is that “[n]o City

1 official or employee shall sit on the board of directors of the Designated Nonprofit
2 Organization.” *Id.*

3 c. The proceeds of the annual fee “shall be expended by the Designated Nonprofit
4 Organization on providing services to residents of the City that own or possess a Firearm
5 in the City, to members of their household, or to those with whom they have a close
6 familial or intimate relationship.” *Id.* § 10.32.220(A). These “services” include:
7 “Suicide prevention services or programs; Violence reduction or gender based violence
8 services or programs; Addiction intervention and substance abuse treatment; Mental
9 health services related to gun violence; or Firearms safety education or training.” *Id.*
10 § 10.32.220(A)(1)–(5).

11 d. The Ordinance further directs the designated nonprofit to spend all fee proceeds, “minus
12 administrative expenses, exclusively for programs and initiatives designed to (a) reduce
13 the risk or likelihood of harm from the use of firearms in the City of San José, and (b)
14 mitigate the risk of physical harm or financial, civil, or criminal liability that a San José
15 firearm owner or her family will incur through her possession of firearms.” *Id.*
16 § 10.32.220(C). But “[o]therwise, the City shall not specifically direct how the monies
17 from the Gun Harm Reduction Fee are expended,” *id.*, and those expenditures “are not
18 necessarily limited to” the above categories, *id.* § 10.32.220(A).

19 31. The Ordinance also authorizes the City Manager “to charge and collect any and all cost
20 recovery fees associated with fulfilling the policies of this [Ordinance] relating to the reduction of gun
21 harm” at rates established by the City Council. ORD. § 10.32.250. Since the Ordinance applies only to
22 firearm owners, these are additional charges that the Ordinance creates specifically for firearm owners.

23 32. Firearm owners are exempt from these provisions if they serve or have served as peace
24 officers, if they hold a California concealed-carry license, or if “compliance . . . would create a financial
25 hardship” according to criteria established by the City Manager. *Id.* § 10.32.225(A)–(C). Plaintiff Glass
26 does not qualify for the first two exemptions and, though the annual fee imposes an undue financial
27 burden, does not expect to qualify for the third.

1 a. The exemption for concealed-carry license holders lasts only “for as long as these
2 statutes [California’s concealed-carry licensing statutes] are legally enforceable.” ORD.
3 § 10.32.225(B). In other words, if the Supreme Court’s *Bruen* decision renders
4 unenforceable California’s restrictions on concealed-carry licenses, the exemption will
5 expire.

6 33. In addition to maintaining insurance and paying the annual fee, non-exempt firearm
7 owners must execute a form and keep it wherever they keep their firearms.

8 a. Firearm owners must “demonstrate compliance with the insurance requirement by
9 completing and executing a City-designated attestation form,” listing their insurer and
10 policy number and signing under penalty of perjury. *Id.* § 10.32.230(A). They must
11 execute a new form if any information changes, *see id.*, “affix proof of payment of the
12 annual Gun Harm Reduction Fee” to the form, *id.* § 10.32.230(B), and keep the form
13 “with the Firearms where they are being stored or transported,” *id.* § 10.32.230(A).

14 b. To comply with the last requirement, owners of multiple firearms apparently must
15 execute separate attestation forms, with separate proofs of fee payment, in order to travel
16 with one firearm while leaving others at home.

17 34. As the Mayor and other legislators emphasized when supporting the Ordinance,
18 enforcement is accomplished through random document checks: “Each person shall present the form
19 when lawfully requested to do so by a peace officer who knows or has reason to believe that a person
20 possesses a firearm.” *Id.* § 10.32.230(A).

21 35. Penalties for noncompliance are severe.

22 a. “Any violation” of the insurance or fee provisions “shall be punishable by an
23 administration citation,” including “administrative fines” set by the City Council, and
24 “all other civil and administrative remedies available to the City.” *Id.* § 10.32.240(A)–
25 (C).

26 b. Lacking or merely forgetting an attestation form can also lead to a complete loss of
27 Second Amendment rights: “the Firearm or Firearms of a person that is not in
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1 compliance with this Part may be impounded subject to a due process hearing.” *Id.*
2 § 10.32.245.

3 **III. Impact on Plaintiffs**

4 36. Several members of Plaintiff FPC, including Plaintiff Glass, possess firearms in San
5 Jose. Under the Ordinance, they cannot continue to do so unless they pay the annual fee according to
6 the schedule established by the City Manager. *See* ORD. § 10.32.215. They thus face the imminent
7 choice between suffering a burden on their Second Amendment rights or exercising those rights and
8 facing the legal consequences of not paying the fee.

9 37. This fee will in turn fund an organization free to impose “programs and initiatives” that
10 Plaintiffs have no need or desire to participate in, *id.* § 10.32.220(C), and to convey messages about
11 firearm ownership, *see id.* § 10.32.220(A).

12 38. The Ordinance also prohibits San Jose firearm owners from continuing to exercise their
13 Second Amendment right to possess firearms without obtaining compliant firearm insurance. Although
14 Plaintiff Glass holds a renter’s insurance policy, the policy documents in his possession do not indicate
15 that it specifically covers loss or damage from the accidental use of a firearm. On information and
16 belief, not all homeowner’s and renter’s insurance policies provide such coverage, and insurers do not
17 offer standalone “gun-liability” policies. At a minimum, therefore, Plaintiff Glass will need to
18 undertake the burden of ensuring that his existing policy complies with the Ordinance’s vague
19 requirements.

20 39. The burdens do not end with obtaining insurance.

- 21 a. San Jose firearm owners must *maintain* compliant insurance, and pay the annual firearm
22 fee, for as long as they possess firearms. They do not have the freedom both to possess
23 firearms and to forgo renter’s insurance or switch to a more affordable homeowner’s
24 insurance policy without firearm coverage.
- 25 b. San Jose firearm owners must also keep an attestation form and current proof of fee
26 payment wherever their firearms are located and must submit to inspection by law-
27 enforcement officers.

1 48. Neither provision is based in any “historical tradition” of firearm regulation. *Heller*, 554
2 U.S. at 626–28. City officials have themselves touted the Ordinance as the first of its kind. *See* Ex. A
3 at 3. As such, the Ordinance is categorically invalid under *Heller*.

4 49. Even if the Ordinance were instead subject to means-ends scrutiny, it still violates the
5 Second Amendment. The fee and insurance provisions directly and substantially burden the core
6 Second Amendment right to possess firearms for self-defense and other lawful purposes. The
7 Ordinance should therefore be subjected to strict scrutiny. In any event, it is at least subject to
8 heightened scrutiny under the standard currently operative in the Ninth Circuit. *See, e.g., United States*
9 *v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013). And the Ordinance fails any level of heightened
10 scrutiny.

11 50. Neither the fee nor the insurance provision is tailored, narrowly or otherwise, to the
12 City’s apparent goal of reducing gun violence and its associated costs. As seen above, none of the
13 evidence before the City, and incorporated in the Ordinance’s recitals and findings, suggested that
14 Ordinance would have that effect. Among other issues:

- 15 a. The Ordinance imposes no restrictions on the criminals who commit gun violence, who
16 are responsible for the majority of the estimated municipal costs of gun violence, *see*
17 PIRE Report tbl. 2, and who, as the Mayor admitted, will not comply with the
18 Ordinance.
- 19 b. The annual fee will not even be used to defray any of the municipal costs estimated in
20 the PIRE Report. Instead, the Ordinance singles out already law-abiding citizens to pay
21 for anticipated services that they do not need, that are largely unrelated to safe firearm
22 ownership, and that are thus unlikely to reduce such costs.
- 23 c. The required insurance also will not reimburse any purported municipal costs of firearm
24 injuries or any costs resulting from criminal violence.

25 51. The fee and insurance provisions thus fail to serve their purported purpose. This failure
26 confirms what City officials have already implied: that the Ordinance’s actual purpose is to reduce
27 firearm ownership by increasing deterrent costs, creating a pretext for confiscating firearms, *see* Ex. A
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1 at 4, and outsourcing firearm regulation to private insurers, *see id.* at 3, apparently in the hope that they
2 will regulate firearm owners in ways that the City is unwilling or constitutionally unable to do itself.

3 52. The City plainly has alternative means to address gun violence that would be less
4 restrictive of Second Amendment rights. Indeed, no other government in the country has addressed gun
5 violence by creating a pretext for firearm confiscation. San Jose itself already has measures, such as
6 the Gang Prevention Task Force and Gun Violence Restraining Orders, aimed at reducing gun violence,
7 as the Mayor acknowledged in one memorandum. *See Ex. D* at 3–4. The City could have considered
8 whether enhancing those measures would have accomplished the same goals as the Ordinance, a
9 question the Mayor’s memorandum does not confront. *See id.* And the City could have considered
10 increasing the funding for such measures through a general tax.

11 53. These alternatives are by no means exhaustive, and Plaintiffs need not prove that any
12 alternatives would be constitutional. But the City must show that it cannot achieve its goals without
13 restricting protected activity as the Ordinance does. And the City cannot do so.

14 **COUNT TWO**

15 **VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS**

16 **(42 U.S.C. § 1983)**

17 54. The foregoing paragraphs are incorporated as if alleged herein.

18 55. The First Amendment provides in relevant part: “Congress shall make no law . . .
19 abridging the freedom of speech.” U.S. CONST. amend. I.

20 56. The First Amendment applies against state and local officials, *see Gitlow v. New York*,
21 268 U.S. 652, 666 (1925); *Nordyke v. Santa Clara Cty.*, 110 F.3d 707, 710 (9th Cir. 1997).

22 57. The freedom of speech “includes both the right to speak freely and the right to refrain
23 from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). “Forcing free and independent
24 individuals to endorse ideas they find objectionable is always demeaning,” no less so when one is
25 compelled to “subsidize” another’s speech. *Janus v. Am. Fed’n of State, Cty., & Mun. Emps.*, 138 S.
26 Ct. 2448, 2464 (2018) (internal quotation marks omitted; emphasis in original).

27 58. A law compelling citizens to subsidize speech by, and thereby to associate with, other
28 speakers should therefore be subjected to strict scrutiny. *See Riley v. Nat’l Fed’n of the Blind of*

1 *N. Carolina, Inc.*, 487 U.S. 781, 796–97 (1988). But at the very least, the law must satisfy “exacting
2 scrutiny,” meaning that it must “serve a compelling state interest that cannot be achieved through means
3 significantly less restrictive of associational freedoms.” *Janus*, 138 S. Ct. at 2465 (internal quotation
4 marks omitted).

5 59. The Ordinance requires the Designated Nonprofit Organization to “spend every dollar
6 generated from the Gun Harm Reduction Fee” on “programs and initiatives” about the supposed “risk”
7 of “possession of firearms.” ORD. § 10.32.220(C).

8 60. Plaintiffs disagree with the Ordinance’s assumption that exercising a constitutional right
9 is an inherently dangerous activity. Yet the fee provision requires all San Jose firearm owners to
10 subsidize the organization’s speech on this “matter of great public concern” and on any other related
11 issues that the organization chooses to address through its programs and initiatives. *Janus*, 138 S. Ct.
12 at 2475 (internal quotation marks omitted).

13 61. As shown above, the City could accomplish the Ordinance’s objectives “through means
14 significantly less restrictive of” firearm owners’ “associational freedoms.” *Id.* at 2465. The fee
15 provision thus fails even “exacting” scrutiny.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray that the Court:

- 18 A. Enter judgment declaring the Ordinance unconstitutional.
- 19 B. Permanently enjoin Defendants and their agents from enforcing the Ordinance.
- 20 C. Award nominal damages and/or damages for any loss attributable to the Ordinance
21 incurred before final judgment.
- 22 D. Award attorney’s fees under 42 U.S.C. § 1988.
- 23 E. Award any other relief that the Court deems just and proper.

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1 Dated: April 26, 2022

Respectfully submitted,

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22 *Counsel for Plaintiffs*

23 **Motion to Appear Pro Hac Vice*
24 *Forthcoming*