

JOSEPH W. COTCHETT (SBN 36324)
 jcotchett@cpmlegal.com
 TAMARAH P. PREVOST (SBN 313422)
 tprevost@cpmlegal.com
 ANDREW F. KIRTLEY (SBN 328023)
 akirtley@cpmlegal.com
 MELISSA MONTENEGRO (SBN 329099)
 mmontenegro@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
 San Francisco Airport Office Center
 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 Telephone: (650) 697-6000
 Facsimile: (650) 697-0577

Attorneys for Defendants

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

**NATIONAL ASSOCIATION FOR GUN
 RIGHTS, INC.**, a non-profit corporation, and
MARK SIKES, 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, and the
CITY OF SAN JOSE CITY COUNCIL,

Defendants.

Case No. 5:22-cv-00501-BLF

**DEFENDANTS' CORRECTED STATUS
 REPORT ON IMPLEMENTATION OF
 THE GUN HARM REDUCTION
 ORDINANCE**

[Replacing Version of Status Report Inadvertently
 Filed on August 16, 2022, at ECF 77]

**HOWARD JARVIS TAXPAYERS
 ASSOCIATION**; Silicon Valley Taxpayers
 Association; Silicon Valley Public Accountability
 Foundation; James Barry; and George Arrington,

Plaintiffs,

v.

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

[Replacing Version of Status Report Inadvertently
 Filed on August 16, 2022, at ECF 24]

CITY OF SAN JOSE, and all persons interested
in the matter of San Jose Ordinance No. 30716,
establishing an Annual Gun Harm Reduction Fee,

Defendants.

CHRISTOPHER GLASS and
FIREARMS POLICY COALITION, INC.,

Plaintiffs,

v.

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. 5:22-cv-02533-BLF

[Replacing Version of Status Report Inadvertently
Filed on August 16, 2022, at ECF 35]

1 Defendants City of San Jose, City Manager Jennifer Maguire, and the City of San Jose City
 2 Council (collectively, the “City”) provide the following Status Report to the Court and the parties in
 3 these three related actions, concerning the City’s ongoing efforts to implement the San Jose Gun Harm
 4 Reduction Ordinance (“Ordinance”) at issue in these cases.

5 Since the Ordinance was approved by the City Council on February 8, 2022, the City has been
 6 working diligently to develop regulations and administrative procedures, and take other actions
 7 necessary to ensure the Ordinance, when fully implemented, will have the administrative infrastructure
 8 it needs to function effectively. On July 8, 2022, the City updated the Court that, notwithstanding the
 9 Ordinance’s effective date of August 8, 2022, the City Manager’s Office (“CMO”) announced it was
 10 delaying implementation of the Ordinance’s insurance and fee requirements while it continued to work
 11 diligently to effectuate the Ordinance’s terms. *See NAGR Action*, ECF 64, at 7. In that update, the City
 12 referred the Court to the *Memorandum from Sarah Zárate to San Jose Mayor and City Council Re:*
 13 *Gun Harm Reduction Ordinance Update* (July 1, 2022), available at [https://www.sanjoseca.gov/home](https://www.sanjoseca.gov/home/showpublisheddocument/87508)
 14 [/showpublisheddocument/87508](https://www.sanjoseca.gov/home/showpublisheddocument/87508) (“July Memorandum”). *NAGR Action*, ECF 64, at 7. The July
 15 Memorandum contains a table titled “Implementation Timeline,” which lists the tasks the City needs to
 16 complete to implement the Ordinance, notes which tasks have already been completed, and provides
 17 estimated completion dates for those yet to be accomplished. July Memorandum at 3-5.

18 The July Memorandum continues to provide an accurate list of the anticipated work the City
 19 will, or has, undertaken to implement the Ordinance. Defendants now provide an update on the City’s
 20 progress in completing each relevant task.

21 The Gun Harm Reduction Fee

22 As the City has previously informed the Court, the City has not set a date for when enforcement
 23 of the Fee requirement will begin, nor has it designated the nonprofit organization to which the Fee
 24 must be paid. *See July Memorandum* at 2; Ordinance § 10.32.215. The CMO estimates that the contract
 25 with the yet-to-be-designated nonprofit organization will be finalized in December 2022, which is a
 26 prerequisite to the City beginning to enforce the Fee requirement. *See July Memorandum* at 2, 5.

27 On June 14, 2022, however, the City Council did take an initial step toward establishing the
 28 Fee, as noted in the July Memorandum. *Id.* at 1 (¶ 2), 3, 5. The Ordinance requires the Fee “be set forth

1 in the schedule of fees and charges established by resolution of the City Council.” § 10.32.215. By way
 2 of the City’s customary annual budget process, the schedule of fees and charges is presented to the City
 3 Council for approval in June, immediately prior to the beginning of the City’s fiscal year on July 1.
 4 Each of those fees and charges must be associated with the budget of a particular City department in
 5 order to properly pass through the City’s budgetary process and be approved.

6 With these requirements in mind, the City Council, after a public hearing, voted in June 2022 to
 7 approve the City’s “Fee and Charges Report” for the 2022-2023 fiscal year, which included the Fee as
 8 part of the City Police Department’s annual budget and set a placeholder Fee amount of \$25 per gun-
 9 owning household, along with the express caveat that the \$25 Fee would not be enforced at this time.
 10 *See* July Memorandum at 1, 3, 6; San Jose City Council Resolution No. 80571 § 29 (June 14, 2022),
 11 *available at* <https://records.sanjoseca.gov/Resolutions/RES80571.pdf>; San Jose Office of the City
 12 Manager, *Proposed 2022-2023 Fees & Charges Report*, at pp. xiv, C-26, 119 (May 2022), *available at*
 13 <https://www.sanjoseca.gov/home/showpublisheddocument/85569/637877133876630000>; *see also*
 14 *Memorandum from Jim Shannon to San Jose Mayor and City Council Re: 2022-2023 Adopted Fees*
 15 *and Charges* (July 7, 2022), *available at* [https://www.sanjoseca.gov/home/showpublisheddocument](https://www.sanjoseca.gov/home/showpublisheddocument/87810/637932316704370000)
 16 [/87810/637932316704370000](https://www.sanjoseca.gov/home/showpublisheddocument/87810/637932316704370000) (indicating the Proposed 2022-2023 Fees & Charges Report was
 17 approved by the City Council). This action was undertaken as a first step for the City to retain the
 18 possibility of enforcing the Fee requirement at any time during the City’s 2022-2023 fiscal year. The
 19 \$25 amount was chosen because it is consistent with the Mayor’s public direction, made before the
 20 Ordinance was adopted and before any litigation was initiated, that the City Council establish the Fee at
 21 “\$25 per gun-owning household.” *See Memorandum from Mayor Licardo to San Jose City Council*
 22 (Jan. 21, 2022), *available at* [https://sanjose.legistar.com/View.ashx?M=F&ID=10421783&GUID](https://sanjose.legistar.com/View.ashx?M=F&ID=10421783&GUID=133AE89A-69E1-45E9-BE91-145F9DD29089)
 23 [=133AE89A-69E1-45E9-BE91-145F9DD29089](https://sanjose.legistar.com/View.ashx?M=F&ID=10421783&GUID=133AE89A-69E1-45E9-BE91-145F9DD29089). The Police Department was selected as the most
 24 logical City Department to assign the Fee to for budgetary purposes because that is the Department that
 25 will ultimately be responsible for enforcing the Ordinance via administrative citation. *See* Ordinance
 26 § 10.32.240.

27 However, this action by the City Council did not permanently set the Fee; it merely completed
 28 the first of two steps necessary to enforce the Fee requirement by ensuring the Fee is listed on the

City's Fee and Charges Report. The second step required to set the Fee is that the CMO, after it has completed all necessary prerequisites to enforcing the Fee (i.e., after the nonprofit organization has been designated and the City has secured a contract with the nonprofit), will have to re-appear before the City Council and ask it to vote on and approve the CMO's authority to begin requiring payment of the Fee. As part of this same process and vote, the City Council has the power to change the Fee to whatever amount it deems appropriate. In other words, when this second vote on the Fee occurs, the City Council may choose to keep the Fee at the current \$25 placeholder amount, or it may set another amount.¹

In sum, while a placeholder Fee amount of \$25 was used for the first step of including the Fee in the City's annual budgetary process, the nonprofit organization to which the Fee must be paid has not yet been designated, additional City Council action is required before the CMO can begin enforcing the Fee requirement, and the amount of the Fee is still subject to change. Because of this, the fact that the City included the Fee on the 2022-2023 Fee and Charges Report with a placeholder amount of \$25 does not materially affect the ripeness analysis, or indeed any other issue that has been briefed by the parties in these related actions. Indeed, it is the evolving nature of the implementation process and underdeveloped factual record that makes judicial review of the Ordinance difficult and inappropriate at this time.

The Liability Insurance Mandate

As noted in the July Memorandum, the CMO has issued regulations suspending implementation of the Ordinance's liability insurance mandate, while it finalizes the procedures and attestation form necessary to implement it, including regulations necessary to flesh out the criteria for the Ordinance's "financial hardship" exemption. July Memorandum at 3. The City is also developing a robust outreach

¹ The City's undersigned counsel did not become aware that the Fee was listed on the City's Fees and Charges Report and was voted on by the City Council in June until after the most recent hearing in these matters, on August 4, 2022. Counsel regrets and apologizes to the Court for not being able to inform it of this update earlier and will ensure any future material development in the implementation of the Ordinance will be promptly brought to the Court's attention.

1 plan to ensure gunowners understand their responsibilities and have sufficient time to connect with
 2 their current and (if necessary) potential new insurance providers. Enforcement of the insurance
 3 mandate is estimated to begin in January 2023 at the earliest. *Id.* at 2.

4 The City's Ongoing Implementation Activities

5 The City is actively working to complete additional tasks necessary to implement the
 6 Ordinance. By way of non-exhaustive examples, the City still must prepare a self-attestation form for
 7 gunowners to certify compliance with the Ordinance's insurance requirement, revise the CMO's
 8 regulations to establish the form and procedure necessary to implement the insurance requirement
 9 (including criteria and procedures for implementing the financial hardship exemption), return to the
 10 City Council with proposed fine amounts for violation of the Ordinance, and finalize the enforcement
 11 and appeal procedure for administrative citations for violations of the Ordinance. *See, e.g.*, July
 12 Memorandum at 3-5. The City must also designate the nonprofit organization that will collect the Fee
 13 and, to that end, will engage in outreach and a Request For Information process, to solicit proposals
 14 from any appropriate organizations qualified to effectuate the Ordinance's purposes. *Id.*²

15 On July 1, 2022, in an effort to be fully transparent with the public about the work it is doing to
 16 implement the Ordinance and the anticipated schedule, the City launched a website to provide ready
 17 access to the CMO's implementing regulations and provide information on the current implementation

18
 19 ² References in the July Memorandum to "implementation delays due to litigation" and "[a]ssess[ing]
 20 litigation status" (July Memorandum at 2, 4) referred only to awaiting the outcome of the preliminary
 21 injunction motion in the *NAGR* Action, which has now been decided by the Court. *See NAGR* Action,
 22 ECF 72, Order Denying Mot. for Prelim. Inj. (Aug. 3, 2022). The City is not slowing or pausing its
 23 implementation activities pending any further proceedings in this Court. *See Memorandum from Sarah*
 24 *Zárate to San Jose Mayor and City Council Re: Gun Violence Study Session* at 4 (Aug. 11, 2022),
 25 available at [https://sanjose.legistar.com/View.ashx?M=F&ID=11130885&GUID=60097F28-A405-](https://sanjose.legistar.com/View.ashx?M=F&ID=11130885&GUID=60097F28-A405-4B25-BBF3-4829035BE295)
 26 [4B25-BBF3-4829035BE295](https://sanjose.legistar.com/View.ashx?M=F&ID=11130885&GUID=60097F28-A405-4B25-BBF3-4829035BE295) ("Legal challenges against the ordinance are still pending, but with the
 27 recent denial of preliminary injunctions in those cases, staff will proceed to implement the ordinance as
 28 outlined in the work plan.").

status of the Ordinance. This information can be found on the City of San Jose Police Department's website under Documents & Policies: Gun Ordinances FAQ. *See* <https://www.sjpd.org/records/documents-policies/gun-ordinances-faq>. The City Council also held a public Gun Violence Prevention Study Session on August 15, 2022, for which the CMO provided a memorandum with further updates about the anticipated schedule for implementing the Ordinance. *See Memorandum from Sarah Zárate to San Jose City Council Re: Gun Violence Prevention Study Session* (Aug. 11, 2022), available at <https://sanjose.legistar.com/View.ashx?M=F&ID=11130885&GUID=60097F28-A405-4B25-BBF3-4829035BE295>.

The City will provide additional updates to the Court as appropriate, within ten days of any further material development in the City's ongoing effort to implement the Ordinance.

Dated: August 17, 2022

Respectfully submitted,

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ Tamarah P. Prevost

Joseph W. Cotchett

Tamarah P. Prevost

Andrew F. Kirtley

Melissa Montenegro

Attorneys for Defendants City of San Jose, et al.