

JONATHAN M. COUPAL, State Bar No. 107815  
TIMOTHY A. BITTLE, State Bar No. 112300  
LAURA E. DOUGHERTY, State Bar No. 255855  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814  
(916) 444-9950  
Email: tim@hjta.org

Attorneys for Plaintiffs

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22CV395596  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

22CV395596

HOWARD JARVIS TAXPAYERS ASSN.,  
SILICON VALLEY TAXPAYERS ASSN.,  
SILICON VALLEY PUBLIC ACCOUNTA-  
BILITY FOUNDATION, JAMES BARRY,  
and GEORGE ARRINGTON,

Plaintiffs

v.

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

No.

**COMPLAINT TO INVALIDATE  
§§ 10.32.215 AND 10.32.230(B) OF  
CHAPTER 10.32 OF TITLE 10 OF THE  
SAN JOSE MUNICIPAL CODE**

**Calendar preference per CCP § 867**

**PARTIES**

1. 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.

2. 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.

3. Plaintiff Silicon Valley Public Accountability Foundation (“SVPAF”) 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 monitoring the policies and political actions of public officials in Santa Clara County to keep voters informed and residents represented in local decision-making. SVPAF 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.

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

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

1           6. Defendant City of San Jose (“City”) is a charter city located in Santa Clara  
2 County. The Annual Gun Harm Reduction Fee that is the subject of this action is a law  
3 of the City, which the City is responsible for enforcing. The City can sue and be sued  
4 under Government Code § 34501.

5           7. The remaining defendants are all persons interested in the matter of San  
6 Jose Ordinance No. 30716, establishing an Annual Gun Harm Reduction Fee.

### 7                                   **JURISDICTION AND CALENDAR PREFERENCE**

8           8. Plaintiffs bring this action under the validation statutes (Code of Civ. Proc.  
9 §§ 860, et seq.) because plaintiffs allege that the challenged Gun Harm Reduction Fee  
10 is a special tax, albeit not voter approved (see Gov. Code § 50077.5), and because  
11 defendant City may have already entered into a contract with a designated nonprofit  
12 organization (see Gov. Code § 53511). Jurisdiction will be established by personal  
13 service upon the City’s representative and publication of the summons in a newspaper  
14 of general circulation within the City of San Jose as required by the validation statutes.  
15 The action is entitled to calendar preference over all other civil matters under Code of  
16 Civil Procedure section 867.

### 17                                   **FIRST CAUSE OF ACTION**

#### 18                                   **(Violation of Constitutional Rights of Speech and Association)**

19           9. Ordinance No. 30716 was passed into law by the City Council of the City of  
20 San Jose on or about February 8, 2022. Ordinance No. 30716 added Part 6 to Chapter  
21 10.32 of Title 10 of the San Jose Municipal Code, entitled “Reduction of Gun Harm –  
22 Liability Insurance Requirement and Gun Harm Reduction Fee” (hereafter “the  
23 Ordinance”).

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

1 requirement of the Ordinance is not challenged herein.

2 11. The Ordinance also requires San Jose gun owners to pay an “Annual Gun  
3 Harm Reduction Fee” to a “Designated Nonprofit Organization” that the City Manager  
4 will designate from time to time. The amount of the annual fee “will be set forth in the  
5 schedule of fees and charges established by resolution of the City Council.” (Muni.  
6 Code § 10.32.215.) It is this fee that plaintiffs challenge herein.

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

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

20 14. The Ordinance further states, “The Designated Nonprofit Organization shall  
21 spend every dollar generated from the Gun Harm Reduction Fee, minus administrative  
22 expenses, exclusively for programs and initiatives designed to (a) reduce the risk or  
23 likelihood of harm from the use of firearms in the City of San Jose, and (b) mitigate the  
24 risk of physical harm or financial, civil, or criminal liability that a San Jose firearm owner  
25 or her family will incur through her possession of firearms.” (Muni. Code §  
26 10.32.220(C).)

27 15. Except for these basic guidelines, the Ordinance provides that “the City

1 shall not specifically direct how the monies from the Gun Harm Reduction Fee are  
2 expended.” (Muni. Code § 10.32.220(C).)

3 16. A gun owner’s failure to pay the required fee to the designated private  
4 organization is punishable by a fine (Muni. Code § 10.32.240(A)) and confiscation of  
5 the owner’s firearms (Muni. Code § 10.32.245).

6 17. The First Amendment of the United States Constitution, made applicable to  
7 the states through the Fourteenth Amendment, provides, “Congress shall make no law  
8 ... abridging the freedom of speech ... or the right of the people peaceably to  
9 assemble.” Article I, sections 2 and 3 of the California Constitution provide, “A law may  
10 not restrain or abridge liberty of speech,” and “The people have the right to ... assemble  
11 freely to consult for the common good.”

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

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

23 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

24 **SECOND CAUSE OF ACTION**

25 **(Unconstitutional Condition)**

26 20. Plaintiffs repeat the allegations contained in Paragraphs 1 through 19  
27 above as though fully set forth herein.

21. The Second Amendment of the United States Constitution provides, “the right of the people to keep and bear arms, shall not be infringed.” Article I, section 1 of the California Constitution provides that “All people ... have inalienable rights” among which are the rights of “protecting property, and pursuing and obtaining safety.”

23. Plaintiff gun owners' constitutional rights are "inalienable." They are not rights granted by the City of San Jose that can be withheld or revoked by the City if gun owners do not comply with conditions contrived by the City.

### THIRD CAUSE OF ACTION

24. Plaintiffs repeat the allegations contained in Paragraphs 1 through 23 above as though fully set forth herein.

26. The Annual Gun Harm Reduction Fee is a compulsory exaction.

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

1 tax imposed for specific purposes.” (Cal. Const., art. XIII C, § 1(d).) The Annual Gun  
2 Harm Reduction Fee is imposed ostensibly for the purpose of reducing gun harm.  
3 Therefore, it is a special tax.

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

7 31. The Annual Gun Harm Reduction Fee was not submitted to the electorate  
8 or approved by a two-thirds vote.

9 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

#### 10 **FOURTH CAUSE OF ACTION**

##### 11 **(Unconstitutional Delegation of Power to Tax)**

12 32. Plaintiffs repeat the allegations contained in Paragraphs 1 through 31  
13 above as though fully set forth herein.

14 33. Only the government possesses the power to tax.

15 34. The power to tax includes the power to collect taxes and appropriate tax  
16 revenues.

17 35. Under the Ordinance, the Annual Gun Harm Reduction Fee will be collected  
18 by the private nonprofit organization that the City Manager will designate. That revenue  
19 will not be remitted to the City, but will be appropriated by the private organization. San  
20 Jose Municipal Code section 10.32.220(C) states, “The Designated Nonprofit  
21 Organization shall spend every dollar generated from the Gun Harm Reduction Fee,”  
22 and “the City shall not specifically direct how the monies from the Gun Harm Reduction  
23 Fee are expended.”

24 36. Under article XIII, section 31 of the California Constitution, the power to tax  
25 may not be granted to a private entity. It provides, “The power to tax may not be  
26 surrendered or suspended by grant or contract.” Similarly, article XI, section 11  
27 prohibits the delegation of local powers to private entities. It prohibits “delegat[ing] to a

1 private person or body power to make, control, appropriate, supervise, or interfere with  
2 county or municipal corporation improvements, money, or property, or to levy taxes or  
3 assessments, or perform municipal functions."

4 37. The Ordinance unconstitutionally delegates some of the City's power to tax  
5 and appropriate tax revenues to a private organization, not answerable to the voters,  
6 that the City Manager will designate.

7 WHEREFORE, plaintiffs pray for judgment as set forth below:

8 **PRAYER**


9 Based on the foregoing allegations, plaintiffs pray for judgment against  
10 defendants as follows:

- 11 1. For an Order invalidating sections 10.32.215 and 10.32.230(B) of chapter  
12 10.32 of title 10 of the San Jose Municipal Code;  
13 2. For costs of suit including reasonable attorney fees; and  
14 3. For such other or further relief as the Court deems just and proper.

15 DATED: March 7, 2022.

16 Respectfully submitted,

17 JONATHAN M. COUPAL  
18 TIMOTHY A. BITTLE  
19 LAURA E. DOUGHERTY

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21 TIMOTHY A. BITTLE  
22 Attorneys for Plaintiffs  
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1 **VERIFICATION**

2 I, Timothy A. Bittle, am the Director of Legal Affairs for the Howard Jarvis  
3 Taxpayers Association, one of the plaintiffs in this action, and authorized to sign this  
4 Verification on the Association's behalf. The other plaintiffs are absent from the County  
5 of Sacramento where I have my office, and I make this verification for that reason as  
6 well.

7 I have read the attached complaint. Except as to matters stated on information  
8 and belief, the allegations contained in the complaint are true of my own knowledge  
9 and, with regard to those matters stated on information and belief, I believe them to be  
10 true.

11 I declare, upon penalty of perjury under the laws of the State of California, that  
12 the foregoing is true and correct and that this verification was executed on the date  
13 shown below in the City of Sacramento, California.

14 DATED: March 7, 2022.

15   
16 TIMOTHY A. BITTLE