



# Memorandum

**TO:** PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE  
**FROM:** Sarah Zárate  
**SUBJECT:** GUN HARM REDUCTION ORDINANCE UPDATE  
**DATE:** June 2, 2022

Approved

Date 6/6/2022

## **RECOMMENDATION**

Accept the report on the implementation timeline, work plan, and implementation considerations for the Gun Harm Reduction Ordinance.

## **BACKGROUND**

At the June 29, 2021 City Council meeting, through its approval of a memorandum from Mayor Liccardo, Vice Mayor Jones, and Councilmembers Carrasco, Peralez and Cohen, the City Council directed the City Attorney to return with an ordinance that would require gun owners residing in the City of San José to obtain and maintain a City-issued document evincing payment of an annual fee, and attestation of insurance coverage for unintentional firearm-related death, injury, or property damage.

At the January 25, 2022 City Council meeting, the City Attorney brought forward and the City Council approved the Gun Harm Reduction Ordinance. The ordinance establishes two requirements for gun owners in San José:

- **Insurance Requirement:** Gun owners in San José must maintain homeowner's, renter's or gun liability insurance policy that covers losses or damages resulting from any accidental use of their firearm, including death, injury, or property damage.
- **Gun Harm Reduction Fee:** Gun owners must also pay an annual Gun Harm Reduction Fee each year to a nonprofit organization designated by the City. Pursuant to City Council direction from the January 25, 2022 meeting, the fee is set at \$25 in the 2022-2023 Proposed Fees and Charges Report. Revenue from this fee may be spent by the designated nonprofit on providing services to residents of San José who own a firearm, or to members of their household or those with whom they have a close familial or intimate relationship.

Concurrent with its approval of the ordinance, the City Council also approved a memorandum from Councilmember Peralez directing staff to return to the Public Safety, Finance and Strategic Support (PSFSS) Committee to provide a timeline and work plan for designating a nonprofit to

administer the Gun Harm Reduction Fee before the ordinance takes effect, and to answer a set of seven questions related to ordinance implementation. This report to the PSFSS Committee responds to that direction.

## **ANALYSIS**

### **Implementation Timeline and Work Plan**

Since its passage, three lawsuits have been filed in United States District Court challenging the Gun Harm Reduction Ordinance. This pending litigation has caused uncertainty as to when the City will be able to begin implementation of the ordinance. Staff has developed a timeline and work plan for this project that will prepare the City to implement the ordinance when permissible while accounting for the uncertain timeline.

The effective date of the Gun Harm Reduction Ordinance is August 8, 2022; however, the insurance requirement and the Gun Harm Reduction Fee do not immediately come into effect on that date. The ordinance provides that the City Manager may promulgate regulations necessary to implement the ordinance. As part of these regulations, the City Manager may set the date on which gun owners will need to comply with the insurance requirement and the date on which they will be required to pay the Gun Harm Reduction Fee. Because these implementation dates can be set administratively by the City Manager, the City Council does not need to amend the effective date of the ordinance to account for implementation delays due to litigation.

The City Manager's Office has prepared draft regulations that would suspend implementation of both the insurance requirement and the Gun Harm Reduction Fee. These regulations will be promulgated by June 30, 2022 to ensure they are in place in advance of the ordinance's effective date. The City Council will be notified that these regulations have been promulgated via an informational memorandum. With these regulations in place, gun owners in San José will not be required to comply with either requirement until the City Manager promulgates a revised version of the regulations that establish implementation dates.

The anticipated implementation timeline for each requirement varies based on the applicable legal considerations. With respect to the insurance requirement, staff is currently taking steps necessary to prepare for implementation. Staff anticipates setting a firm implementation timeline by August 2022, when the immediate effect of litigation on implementation may be clarified. If litigation is not an obstacle to implementation at that time, staff anticipates that a revised version of the City Manager regulations could be issued which sets the insurance requirement to be effective on January 1, 2023. Staff would implement a public outreach campaign in advance of that date to inform gun owners in San José of the requirement. It is important to note that the January 1, 2023 date is tentative and could change based on the status of litigation in August 2022 or later in the fall.

With respect to the Gun Harm Reduction Fee, the City Council directed at the January 25, 2022 meeting that no fees shall be collected nor required of any gun owner until pending legal

challenges to the ordinance have been resolved. Staff cannot estimate an implementation date at this point given that the timeline for full resolution of the litigation is uncertain.

That said, work is proceeding to prepare implementation of the fee. As noted in the Background section, the 2022-2023 Proposed Fees and Charges Report sets the fee at \$25, consistent with City Council direction. The ordinance requires that the fee be collected by a designated nonprofit organization. Staff understands that a group of community members is working to form a nonprofit that could fill this roll; they anticipate that the nonprofit will be incorporated by August 2022. Staff recommends a procurement process open to any interested organizations be used to select the designated nonprofit. In August 2022, based on an evaluation of the status of litigation, staff will decide whether to initiate a procurement process. The procurement process would begin with a Request for Information (RFI).

A more detailed implementation work plan is included as an attachment to this memorandum. Also note that per City Council direction, staff is preparing a City Council study session on gun violence prevention for August 2022. Staff will provide an update on implementation of the Gun Harm Reduction Ordinance at that meeting.

### **Implementation Considerations**

Consistent with City Council direction from January 25, 2022, staff has prepared answers to the below questions regarding implementation of the Gun Harm Reduction Fee.

**a. Who will be delivering the services outlined in numbers 1-4 per San José Municipal Code section 10.32.220 in the draft Gun Harm Reduction Ordinance?**

As provided in Municipal Code section 10.32.220, the nonprofit organization designated by the City to administer the Gun harm Reduction Fee shall expend fee revenues to provide services to firearm owners, members of their household, or individuals with whom they have a close familial or intimate relationship, in the following areas:

1. Suicide prevention services or programs;
2. Violence reduction or gender-based violence services or programs;
3. Addiction intervention and substance abuse treatment;
4. Mental health services related to gun violence; or
5. Firearms safety education or training.

Within the parameters established in the ordinance, it is up to the designated nonprofit to decide how these services will be provided. Section 10.32.220 (c) of the ordinance provides that “the City shall not specifically direct how the monies from the Gun Harm Reduction Fee are expended.” Consequently, we will only know who will provide the services once a designated nonprofit begins collecting the fee making decisions on how to expend fee revenue. Section 10.32.220 (d) of the ordinance provides that “the designated non-profit shall provide a biannual report to an appropriate council committee” on ordinance implementation. The City would expect the designated nonprofit to communicate what services are being provided and who is providing them as part of this report and any related contract requirements.

Pursuant to City Council direction, implementation of the fee will not begin until pending legal challenges have been resolved. As such, it is not possible to provide an estimated timeline as to when a designated nonprofit would begin implementing the ordinance and making biannual reports.

**b. Assuming providers are existing local organizations, do they have the bandwidth to effectively carry out these services?**

As discussed in the response to question (a) above, the designated nonprofit would make decisions on how to expend fee revenues, as provided in the ordinance. Consequently, it would be the responsibility of the designated nonprofit to make determinations as to the capacity of any organizations it funds to provide services; however, the City would be able to establish general performance expectations through its contract with the designated nonprofit. As part of that contract, the City can establish a standard that any organizations funded to provide services have the necessary capacity to carry them out.

**c. How will there be coordination with the County's Behavioral Health Services Department and other relevant county departments?**

Given the overlap between County service areas and the types of services that the designated nonprofit would provide, ongoing communication and coordination between the designated nonprofit and the County may be beneficial. The City could require through its contract with the designated nonprofit that appropriate coordination with the County is carried out. City staff would also be available to help facilitate this coordination.

**d. What metrics will be put in place to measure efficacy of the services and whether there is a correlation to reduced gun violence?**

The City will establish performance metrics for the designated nonprofit through the contract with the nonprofit. Staff has not yet drafted these performance metrics but will develop them through the procurement process and contract negotiation. The City can also provide that overall trends in gun violence be tracked alongside the performance metrics to identify relevant trends; however, a correlation analysis based only on these inputs would be vulnerable to omitted variable bias as there are many confounding factors contributing to gun violence.

**e. What is the contingency in the event that the designated nonprofit is no longer financially viable?**

If the designated nonprofit is no longer financially viable, the City would have the option to terminate its contract with the organization and work to identify an alternative organization that could administer the fee successfully.

**f. What is the expected rate of registration by gun owners? Compared to other fee-required registration programs such as animal licensing.**

As part of the Gun Harm Reduction Ordinance item at the January 25, 2022 City Council meeting, Mayor Liccardo transmitted a study entitled “Incidence and Cost of Firearm Injuries in San Jose, CA” prepared by the Pacific Institute of Research and Evaluation. This study estimates that 50,000 to 55,000 households in San José own guns. These numbers can serve as a very rough estimate of the total number of individuals who would be subject to the fee. As noted in the question, the City requires that cats and dogs be licensed with the City. While the total number of animals requiring animal licensing in the City is unknown, in the 2020-2021 fiscal year, a total of 59,300 animals were licensed in San José.

The proportion of subject gun owners who comply with the fee would be determined in part by the number of gun owners who are aware of the requirement. If the pending litigation is resolved in the City’s favor and an implementation date is set for the fee, staff would work with the designated nonprofit to implement a public outreach campaign to make gun owners aware of the fee requirement. The campaign would seek to educate both existing gun owners and individuals who purchase guns through general outreach, as well as targeted outreach to gun ranges, gun retailers, and similar establishments.

One key limitation of this effort is that the City does not have access to a complete list of gun owners in San José that can be used to facilitate targeted outreach. The City is preempted by the State from maintaining a list of gun owners; only the State is allowed to maintain a gun registry. One of the most effective means of outreach would be for the City to contract with the State to send notices of the fee requirement to individuals in the State’s gun registry who live in San José. The State is not able to provide such a service under current law, but Assemblymember Ting introduced a bill in February 2022 to allow San José to contract for this service. This bill, AB2883, would require the California Department of Justice, upon request from the City of San José, to mail notifications to all firearm owners of record within the City of San José, to inform them of any city code or ordinance imposing any new requirement upon firearm owners within the City. The bill would require the City to pay the cost to the Department for the processing and mailing of the notifications. The bill has not advanced in the current legislative session, but the intergovernmental relations team will continue to advocate for such legislation in future years.

**g. Per section 10.32.240 of the draft ordinance, elaborate on what the enforcement process will be.**

Both the insurance requirement and the fee requirement will be enforced through the issuance of an administrative citation. Administrative citations are issued by the City for violations of the Municipal Code and come with a fine on the cited individual. Fine amounts are established by the City Council through a resolution amending the administrative citation schedule of fines. As noted in the attached work plan, staff will bring forward an item to the City Council in August 2022 to set fine amounts for

violation of the insurance requirement and fee requirement.

To comply with the insurance requirement, gun owners in San José must fill out an attestation form provided by the City, attesting that they possess insurance as required by the ordinance, and keep the form with their guns at all times. To comply with the fee requirement, gun owners must pay the fee to the designated nonprofit and keep proof of payment with their guns at all times, along with the attestation form.

The San José Police Department will issue citations for violation of the ordinance. When an officer encounters an individual who does not have a required attestation form or proof of payment in violations of the ordinance, they will write a report documenting the violation and send it to the San José Police Department Permits Unit. The Permits Unit will review the report and mail the administrative citation to the cited individual.

Once they receive the citation, the individual has two options: they can pay the associated fine without appealing, or they can choose to file an appeal. Appeals are heard by a hearing officer in a process managed by the Finance Department. In order to file an appeal, the cited individual must either pay the fine in advance of appealing or apply for and receive a financial hardship waiver that allows an appeal to be filed before the fine is paid. If the cited individual disagrees with the decision of the hearing officer, they also have the option of appealing the citation in Santa Clara County Superior Court.

## **COORDINATION**

This memorandum has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

/s/  
SARAH ZÁRATE  
Director, Office of Administration  
Policy and Intergovernmental Relations

For questions, please contact Peter Hamilton, Assistant to the City Manager, at (408) 535-7998.

Attachment: Gun Harm Reduction Ordinance Work Plan

**Attachment**  
**Gun Harm Reduction Ordinance Work Plan**

<b>Task</b>	<b>Completion Date</b>	<b>Notes</b>
Set Gun Harm Reduction Fee Amount at \$25	June 2022	Completion of this task is pending City Council approval of the Fees and Charges Report.
Promulgate City Manager regulations that suspend implementation of the insurance requirement and fee.	June 2022	As discussed in the Analysis section, these regulations would suspend implementation of the ordinance after the ordinance's effective date of August 8, 2022.
Inform the City Council that City Manager regulations have been promulgated via an informational memorandum.	June 2022	
Establish a website to host City Manager regulations and information on current implementation status of the ordinance.	June 2022	
Prepare self-attestation form that the public will use to certify compliance with the insurance requirement.	August 2022	
Draft revised version of the City Manager regulations that establishes the form and procedure necessary for implementation of the insurance requirement and specifies a financial hardship exemption from the ordinance requirements.	August 2022	Additions to the City Manager regulations will be necessary to provide for implementation of the insurance requirement. Also, the ordinance provides that a financial hardship exemption to the ordinance shall be established in the City Manager regulations.
Bring forward an item to City Council to set fine amounts for violation of the insurance and fee requirements of the Gun Harm Reduction Ordinance.	August 2022	Enforcement of the Gun Harm Reduction Ordinance will occur through issuance of an administrative citation and associated fine. The City Council will need to approve a resolution amending the City's administrative citation schedule of fines to set fine amounts for violations of the ordinance that are greater than the default fine amount of \$25.

<b>Task</b>	<b>Completion Date</b>	<b>Notes</b>
Finalize enforcement and appeal procedure for administrative citations issued for violations of the ordinance.	August 2022	The Police Department will be responsible for issuing administrative citations for violation of the ordinance and the Finance Department will be responsible for administering the appeal process for the administrative citations. Under this task, staff will complete all of the internal preparations necessary to begin issuing administrative citations for violations of the ordinance; however, enforcement of the ordinance would not commence until an implementation date is set in the City Manager regulations, as discussed below.
Assess litigation status and make a decision on whether to set an implementation date for the insurance requirement and commence a procurement process for a designated nonprofit.	August 2022	As discussed in the analysis section, staff will make a decision on implementation timeline for the insurance requirement pending clarification of the effect of litigation on implementation. Staff will also make a decision on whether to commence a procurement process for the designated nonprofit at this time. The tasks with tentative dates shown in red below will proceed based on this decision point.
Provide the City Council with an update on implementation status at the gun violence prevention study session.	August 2022	
Promulgate revised City Manager regulations that set an implementation date for the insurance requirement.	September 2022 (Tentative)	Pending assessment of litigation status as described above, these regulations would set a January 1, 2023 implementation date for the insurance requirement.
Issue RFI for designated nonprofit to administer the Gun Harm Reduction Fee.	September 2022 (Tentative)	Additional procurement actions may be required depending on responses to the RFI.
Conduct outreach campaign to inform gun owners and prospective gun owners of the insurance requirement.	November 2022 (Tentative)	
Finalize contract with designated nonprofit.	December 2022 (Tentative)	
Insurance requirement takes effect and enforcement of insurance requirement begins.	January 2022 (Tentative)	