

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Sarah Zárate

**SUBJECT: GUN HARM REDUCTION
ORDINANCE UPDATE**

DATE: July 1, 2022

Approved



Date

07/01/22

INFORMATION

The purpose of this memorandum is to update the City Council on the implementation timeline, work plan, and implementation considerations for the Gun Harm Reduction Ordinance.

BACKGROUND

On January 25, 2022, the City Council approved the Gun Harm Reduction Ordinance. This ordinance:

1. Requires that gun owners living in San José maintain a homeowner's, renters', or gun liability insurance policy covering losses or damages resulting from any accidental use of their firearm, including death, injury, or property damage; and
2. Establishes a Gun Harm Reduction Fee in which gun owners must pay an annual Gun Harm Reduction Fee to a nonprofit designated by the City. The City Council approved the fee, set at \$25 per year in the 2022-2023 Schedule of Fees and Charges, on June 14, 2022.

On June 16, 2022, staff presented to the Public Safety, Finance, and Strategic Support 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 respond to a set of questions related to ordinance implementation. Staff provided the Committee with [a detailed written report](#) outlining staff's plan for implementing the ordinance.

ANALYSIS

Three lawsuits have been filed in the United States District Court challenging the Gun Harm Reduction Ordinance since its passage. 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 full implementation timeline can be found in Attachment A.

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.

On July 1, 2022 the City Manager's Office issued regulations that suspend implementation of both the insurance requirement and the Gun Harm Reduction Fee. Those regulations are included as Attachment C and can also be found on the San José Police Department's website under [Documents & Policies: Gun Ordinances](#) FAQ. When the legal situation has been clarified and firm implementation dates for each requirement can be set, staff will issue a revised version of the regulations setting those implementation dates. Pending clarification of legal considerations in early fall, staff believes it may be possible to implement the insurance requirement as early as January 2023, although that timeline is still tentative. Per Council direction, implementation of the Gun Harm Reduction Fee can only begin after the legal challenges have been fully resolved. Due to uncertainty as to when that will happen, no tentative implementation timeline has been established for the fee.

Staff will provide the City Council an update on implementation of this ordinance, including any update on implementation dates for the two ordinance requirements, at the Gun Violence Prevention Study Session that has been scheduled for August 15, 2022.

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

For additional information, please contact Nora Chin, Assistant to the City Manager, at nora.chin@sanjoseca.gov.

Attachment A – Implementation Timeline

Attachment B – Definitions

Attachment C – City Manager Regulations for the Reduction of Gun Harm Ordinance

Attachment A – Implementation Timeline

For definitions of key terms, please see Attachment B. Definitions.

Task	Completion Date	Notes
Set Gun Harm Reduction Fee Amount at \$25	June 2022 (Complete)	The City Council approved the Schedule of Fees and Charges on June 14, 2022.
Promulgate City Manager regulations that suspend implementation of the insurance requirement and fee.	June 2022 (Complete)	As discussed in the Analysis section, these regulations 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 (Complete)	This information memorandum completes this task.
Establish a website to host City Manager’s regulations and information on the current implementation status of the ordinance.	June 2022 (Complete)	This information is contained on the San José Police Department’s website under Documents & Policies: Gun Ordinances FAQ
Prepare a self-attestation form that the public will use to certify compliance with the insurance requirement.	August 2022	
Revise the City Manager regulations to establish the form and procedure necessary to implement the insurance requirement, as well as provide criteria and procedures for implementing the financial hardship exemption.	August 2022	Additions to the City Manager regulations will be necessary to implement the insurance requirement. Also, the ordinance provides that a financial hardship exemption to the ordinance shall be established in the City Manager’ regulations.
Return to 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 the issuance of an administrative citation and associated fine. The City Council will need to adopt a resolution amending the City’s Schedule of Fines to set fine amounts for violations of the ordinance that are greater than the default fine amount (currently \$25).

Task	Completion Date	Notes
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 violations 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 feasibility of setting an implementation date for the insurance requirement. Assess timing for holding a procurement process to find and designate a nonprofit to implement the Gun Harm Reduction Fee.	August 2022	As discussed in the analysis section, the Administration will decide on the implementation timeline for the insurance requirement pending clarification of the effect of litigation on implementation. The Administration will also determine 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 the implementation status of the Gun Harm Reduction Ordinance at the Gun Violence Prevention Study Session.	August 15, 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 January 1, 2023, as the implementation date for the insurance requirement.
Issue a Request for Proposals to procure the designated nonprofit to administer the Gun Harm Reduction Fee.	September 2022 (Tentative)	Additional procurement actions may be required depending on responses.
Conduct outreach campaigns to inform gun owners and prospective gun owners of the insurance requirement.	November 2022 (Tentative)	

Task	Completion Date	Notes
Finalize contract with designated nonprofit.	December 2022 (Tentative)	
Insurance requirement takes effect and enforcement of insurance requirement begins.	January 2022 (Tentative)	

Attachment B – Definitions

Terms	Definitions
Administrative Citation	Whenever an enforcement officer determines that a violation of the Municipal Code provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.
Administrative Fine	Whenever an enforcement officer issues an administrative citation, the citation comes with an administrative fine. The amount of the fine for a Municipal Code violation is set forth in the schedule of fines established through a process by the city council.
Attestation Form	An attestation form is legal acknowledgment of the authenticity of a document and a verification that proper processes were followed.
Gun Harm Reduction Fee (Requirement)	Gun owners must pay an annual Gun Harm Reduction Fee to a nonprofit designated by the City. The City Council approved the fee, set at \$25 per year in the 2022-2023 Schedule of Fees and Charges, on June 14, 2022.
Liability Insurance Policy	For the purposes of this Gun Harm Reduction Ordinance, liability insurance pertains to homeowners', renters', or gun liability insurance policy covering losses or damages resulting from any accidental use of their firearm, including death, injury, or property damage.



**CITY MANAGER REGULATIONS
FOR
THE REDUCTION OF GUN HARM ORDINANCE**

Issued by the City Manager

Sarah Zarate

Sarah Zarate
Director of Administration, Policy, and Intergovernmental Relations
Office of the City Manager

EFFECTIVE: July 1, 2022

PART I - GENERAL PROVISIONS

SECTION 1-1. PURPOSE AND AUTHORITY

The Reduction of Gun Harm Ordinance, set forth in Title 10, Chapter 10.32, Part 6 of the San José Municipal Code (“SJMC” or “Code”), provides that individuals who own or possess firearms and reside in the City of San José (“City”) must maintain liability insurance covering losses or damages resulting from any accidental use of their firearm and pay an annual gun harm reduction fee. These regulations implement the provisions of SJMC Chapter 10.32, Part 6 and are issued by the City Manager under the authorization granted pursuant to SJMC Section 10.32.235. These regulations are not intended to be exhaustive and can be amended at any time by the City Manager. These regulations shall be referred to as the “City Manager Regulations for the Reduction of Gun Harm Ordinance.”

SECTION 1-2. DEFINITIONS AND CONSTRUCTION

The definitions set forth in SJMC Chapter 10.32 Part 6, and herein, shall govern the application and interpretation of these regulations. Any reference to federal, state or local statutes and ordinances includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute, ordinance or regulatory provision.

PART II – IMPLEMENTATION TIMELINE

SECTION 2-1. EFFECTIVE DATE

The effective date of the Reduction of Gun Harm Ordinance is August 8, 2022 (after 180 days following the adoption of the ordinance on February 8, 2022.)

SECTION 2-2. LIABILITY INSURANCE REQUIREMENT OPERATIVE DATE

SJMC Section 10.32.210 provides that any person who owns a firearm shall obtain the liability insurance required by the Reduction of Gun Harm Ordinance by thirty days after the effective date of the ordinance (September 7, 2022) or by a later date set in regulations promulgated by the City Manager. This version of the City Manager Regulations for the Reduction of Gun Harm Ordinance delays the insurance requirement to an indeterminate date. A compliance date will be established in an amended version of these regulations to be issued in the future. Individuals covered by the insurance requirement are not required to comply with it until a date for compliance is set through the amended regulations.

SECTION 2-3. ANNUAL GUN HARM REDUCTION FEE PAYMENT DATE

SJMC section 10.32.215 provides that the date by which payment of the Gun Harm Reduction Fee shall be made annually will be set by regulations promulgated by the City Manager. This version of the City Manager Regulations for the Reduction of Gun Harm Ordinance does not set a payment date; a payment date will be established in an amended version of these regulations to be issued in the future. Individuals covered by the Gun Harm Reduction Fee are not required to pay the fee until a payment date is set through the amended regulations.