

October 4, 2013

City Clerk
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Re: City Initiative

Dear Sir or Madam:

The undersigned are the proponents of a proposed initiative in the City of San Jose. Enclosed are the following documents required to be filed prior to circulating the initiative:

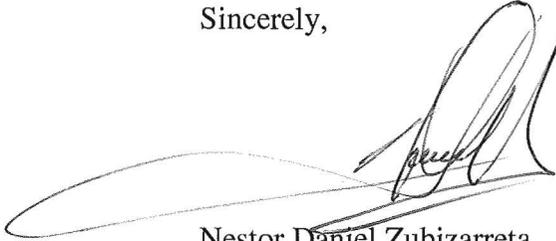
1. Notice of intent to circulate petition
2. Statement of reasons
3. Full text of proposed initiative
4. A check payable to the City of San Jose in the amount not to exceed \$200

Pursuant to Elections Code §9203, we hereby request that a ballot title and summary be prepared. The address of the persons proposing the measure is:

2550 Clarebank Way San Jose, CA 95121 ✖
4834 Plainfield Dr. San Jose, CA 95111

Thank you for your assistance in this matter. If you have any questions, please contact Jade Vo immediately at (408) 532-3837.

Sincerely,



Nestor Daniel Zubizarreta

Jade Vo



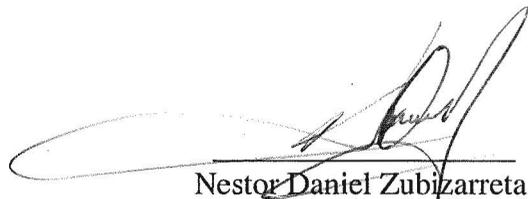
NOTICE OF INTENT TO CIRCULATE PETITION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of San Jose for the purpose of adopting the San Jose Residential Curbside Zero Waste Recycling Initiative. A statement of reasons of the proposed action as contemplated in the petition is as follows:

The City of San Jose Residential Curbside Zero Waste Recycling Initiative enhances the City of San Jose's progress toward reaching a Zero Waste goal. Through modernization and expansion of residential curbside recycling, the City's Zero Waste Strategic Plan seeks to achieve zero waste and sustainability through "new technology and innovation." It also seeks to "improve downstream reuse and recycling of end-of-life products and materials to ensure their highest and best use." Currently, the San Jose Municipal Code identifies only three examples of recyclable waste material; newspapers, glass and metal cans. Yet, through technological advances, cities throughout California recycle a host of other materials including paper, plastics, and expanded polystyrene. The Envision San Jose 2040 General Plan recognizes that source reduction and recycling are appropriate means to regulate different materials. Focusing exclusively on source reduction is appropriate for some materials that cannot be recycled. However, to better meet the City's Zero Waste goals, recycling programs must be modernized to reflect current technologies and best practices utilized in other municipalities. Therefore, the City of San Jose Residential Curbside Zero Waste Recycling Initiative provides the framework for the City to expand curbside recycling to include products that can and currently are being recycled in cities throughout California without increasing taxes.



Jade Vo



Nestor Daniel Zubizarreta

**CITY OF SAN JOSE RESIDENTIAL CURBSIDE ZERO WASTE RECYCLING
INITIATIVE**

WHEREAS, the City's residential recycling program is one of the largest privatized systems in the United States and provides collection services to approximately 205,000 single-family units citywide.

WHEREAS, the residential sector accounts for 32 percent of the City's total disposed waste stream; with 24 percent from single-family households and 8 percent from multi-family complexes.

WHEREAS, the current single-family Recycle Plus program was implemented over a decade ago in 2002.

WHEREAS, the City's Zero Waste Strategic Plan was released in 2008 and states:
"Zero Waste is a perception change. It requires rethinking what we have traditionally regarded as garbage and treating all materials as valued resources instead of items to discard."

WHEREAS, the City's Zero Waste Strategic Plan describes that the City unveiled its Green Vision in 2007 "to achieve sustainability through new technology and innovation."
This sustainability will enhance the quality of life for our community.

WHEREAS, in adopting its Green Vision, the City Council approved and established 10 Green Vision goals to achieve within fifteen years and the Zero Waste Strategic Plan states that “the primary focus of the Plan is to identify the path to achieve zero waste, as articulated in Goal 5.”

WHEREAS, the Green Vision Goal 5 includes the objective of diverting 100% of waste from landfills.

WHEREAS, the City’s Zero Waste Resolution established objectives and actions including to “[e]stablish a policy to achieve zero waste going to landfills and incinerators by 2040” and “[i]mplement ‘user friendly’ recycling and composting programs to reduce per capita solid waste sent to landfill and incineration by 20 percent in seven years.”

WHEREAS, the Zero Waste Strategic Plan of 2008 states that “zero waste contributes to achieving a greener community. In order to reach true sustainability, Plan strategies must address People, Planet, and Profit as ‘triple bottom line,’ achieving social, environmental, and economic sustainability.”

WHEREAS, the Zero Waste Strategic Plan identifies a goal to “improve downstream reuse and recycling of end-of-life products and materials to ensure their highest and best use.”

WHEREAS, the Zero Waste Strategic Plan states that “[e]ncouraging sustainable local markets for the post-consumer materials that end up in landfills is essential to any recycling program.”

WHEREAS, the Zero Waste Strategic Plan, in evaluating Zero Waste, seeks to “[i]mprove Quality of Service” and “[i]mprove customer convenience such as offering a broader range of collection programs and container options; improving the recycling program for residents; improving call center responsiveness; and enhanced and targeted customer outreach.”

WHEREAS, as stated in the Zero Waste Strategic Plan, residents throughout the City should have equal access to curbside recycle programs that seek to “[e]nsure equity for all customers” and “[e]nsure that program initiatives are convenient, accessible, and appropriate.” Moreover, the Zero Waste Strategic Plan calls for the City to “implement user-friendly recycling and composting programs.”

WHEREAS, the only three examples of recyclable waste material for residential recycling identified in the San Jose Municipal Code are: “newspapers, glass, and metal cans, which are separated from other garbage or refuse for the purpose of recycling.”

WHEREAS, through technological advances, certain materials have become recyclable and are currently being recycled by other charter cities and municipalities within the state through feasible and affordable means. Such materials include but are not limited

to: paper products such as, magazines, catalogs, office and computer paper, cardboard, egg cartons; plastic containers such as milk, juice, and water bottles; Polyvinyl chloride (PVC) pipes, such as plastic landscaping and irrigation pipes; hard plastic toys; plastic bottles, such as shampoos, conditioners and mouthwash; expanded polystyrene, such as computer packaging and food containers; squeezable bottles, such as ketchup and mustard; other food and beverage materials, such as cans of soup, beans, and fish; and glass bottles and jars, such as wine bottles, salad dressings, jams and jellies. It is the intent of this Initiative to promote the recycling of all of these materials.

WHEREAS, promoting recycling is an environmentally responsible way to manage certain products. Polystyrene foam should no longer be considered difficult to recycle, but, aside from packing peanuts, is a recyclable material. Technology has improved and secondary markets have developed: this material is recyclable, and dozens of California cities successfully are recycling polystyrene foam, including polystyrene foam food service ware. The Envision San Jose 2040 General Plan recognizes that both source reduction and recycling can be appropriate means to regulate different materials. Focusing exclusively on source reduction is appropriate for some materials. As polystyrene foam food service ware has superior life-cycle benefits (low energy use, low water use, and low greenhouse gas emissions) and is recyclable, source reduction should not be the principal approach. Banning this product could result in its being replaced by products that do not have these environmental benefits and that may not be recyclable. Thus, focusing on source reduction for polystyrene foam disposable food service ware may not help the City meet its goal of sending zero waste to landfills.

This Initiative recognizes that polystyrene foam disposable food service ware can be recycled and encourages the responsible recycling of such materials to promote the City's zero waste goal.

The people of the City of San Jose do ordain as follows:

Adopting the San Jose Residential Curbside Zero Waste Recycling Initiative

PREAMBLE:

Section 1. Title 9 of the San Jose Municipal Code is amended to read as follows:

9.08.185 Recyclable waste material; recycling.

A. "Recyclable waste material," as used in this chapter, means discarded materials such as, but not limited to, paper products, such as newspapers, plastics (including expanded polystyrene food service ware and protective packaging), glass (including bottles and jars), and metal cans (including beverage and food cans), which are separated from other garbage or refuse for the purpose of recycling.

B. "Recycling," as used in this chapter, means the process of collecting and turning used products into new products by reprocessing or remanufacturing them.

9.10.200 Recyclable material.

"Recyclable material" means materials which are segregated from other waste material for the purpose of recycling and includes, but is not limited to, paper, glass,

metals, wood, plastics (including expanded polystyrene disposable food service ware and protective packaging), yard wastes, bulky goods and waste oil.

9.10.770 No Impact on Existing Agreements.

No person shall be required to collect any recyclable waste material or recyclable material pursuant to a contract, franchise, or other agreement in effect as of the effective date of this ordinance unless such contract, franchise, or other agreement required such collection prior to the effective date of this ordinance.

9.10.3110 ~~Polystyrene Foam Disposable Food Service Ware Prohibited~~ Zero Waste Recycling Equity and Accessibility in Curbside Recycling

A. Residential curbside recycling programs shall be consistent with the definitions of “recyclable material” as defined in Section 9.10.200, and “recyclable waste material” as defined in Section 9.08.185. Sections 9.08.185 and 9.10.200 shall inform the City’s decision making and contracting practices with regard to solid waste management and recycling.

B. The City shall develop and maintain a website regarding products and materials that can be recycled. The website shall include a list of materials that can be recycled within the City, consistent with the definition of “recyclable material” in Section 9.10.200 and the definition of “recyclable waste material” in Section 9.08.185. Hard copies of this list shall also be made available to the public.

~~A. No national food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2014.~~

~~B. No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2015.~~

9.10.3120 Exemptions to the Polystyrene Foam Disposable Food Service Ware Prohibition

~~A. A national food vendor or food vendor may seek an exemption from the prohibition under Section 9.10.3110 due to a “unique packaging hardship” under Subsection B of this Section or a “financial hardship” under Subsection C of this Section.~~

~~B. The national food vendor or food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a “unique packaging hardship” exemption.~~

~~C. The national food vendor or food vendor must demonstrate both of the following to qualify for a “financial hardship” exemption: (1) a gross income under \$300,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.~~

~~D. The national food vendor or food vendor may submit a written application for an exemption on a form provided by the Department of Environmental Services. The Director of Environmental Services or designee (“Director”) may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The national food vendor or food vendor must apply for a new~~

~~exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director shall be final and is not subject to appeal.~~

Section 2. This ordinance shall not be amended except by initiative adopted pursuant to Section 1603(a) of the San Jose City Charter and other law applicable to such initiatives. To the fullest extent allowed by law, this ordinance shall be the exclusive means for regulating the disposal of expanded polystyrene (except packing peanuts) in the City.

Section 3. In addition to any other persons, the proponents of this measure shall have standing in California and Federal Courts to defend this measure from all challenges to its validity or enforceability.

Section 4. If any portion of this Initiative is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Initiative that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or adopted this Initiative and each portion thereof regardless of the fact that any portion of the Initiative may be subsequently deemed invalid.

Section 5. This ordinance shall be effective immediately upon adoption by the voters.

Section 6. Priority

To the fullest extent allowed by law, the provisions of this Initiative shall prevail over and supersede all provisions of the municipal code, ordinances, resolutions, and administrative policies of the City of San Jose which are in conflict with any provisions of this measure.