

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney
David Sykes
City Manager

SUBJECT: AN ORDINANCE TO ADD TITLE
26 TO THE SAN JOSÉ
MUNICIPAL CODE

DATE: 11/2/2017

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

This supplemental memorandum describes revisions made to the proposed ordinance adding Title 26 to the San José Municipal Code subsequent to its posting on October 20, 2017.

BACKGROUND

Subsequent to posting the draft Title 26 ordinance on October 20, 2017, the City retained outside counsel to assist with power procurement. The City Attorney's Office requested outside counsel review the ordinance to ensure that the provisions enable the City to purchase the power, capacity, resource adequacy and other products necessary to supply San José Clean Energy customers with electricity and to comply with regulatory changes.

ANALYSIS

Most of the revisions to the proposed ordinance are minor language changes and clarifications. Those include the definition of Power Products so that the language is consistent throughout Title 26, modifications to a few other definitions to be more comprehensive, and clarifying language to section 26.50.040 respecting Short Term Trading Authority and delegation of authority to the Director of Community Energy to enter into Short Term Transactions. Overall these changes clarify the language and are not substantive.

There is, however, a more substantive change that was made to section 26.50.060. The section as originally written requires all Counterparties to provide a guarantee or security equal to "the entire amount of their unperformed and unpaid transactions." As

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written, the section could have the unintended consequence of limiting the number of sellers that transact with the San José Clean Energy and raising the cost of energy to its customers.

Power suppliers that have an investment grade credit rating are generally not required to post collateral below a predetermined collateral threshold. Certain suppliers may not be willing to transact if required to provide collateral for all transactions.

Additionally, power suppliers typically only collateralize the net exposure, not the full value of the contract. Thus requiring power suppliers to collateralize for total value will increase the cost of the energy purchases. Accordingly, this section was modified to allow a more flexible approach under which the Director of Finance would make a determination about the collateral required consistent with the guidelines in the Risk Management Policy, for each Counterparty. The Director of Finance will determine whether collateral is required or not, and if so, in what form.

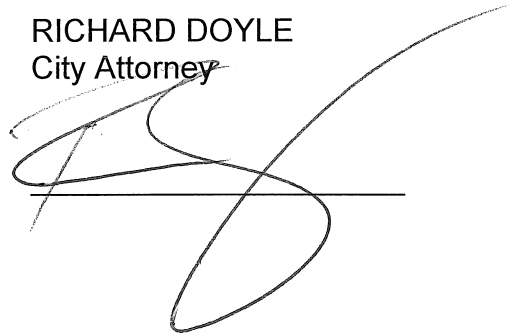
COORDINATION

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

DAVID D. SYKES
City Manager

Handwritten signature of David D. Sykes in black ink, consisting of stylized initials 'D.D.SyL'.

RICHARD DOYLE
City Attorney

Handwritten signature of Richard Doyle in black ink, featuring a large, looping initial 'R' and 'D'.

For questions please contact Leah Goldberg at 408-535-1901 or Kelli Parmley at 408-535-3843.