

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
THE SAN JOSE MUNICIPAL CODE TO ADD TITLE 26  
FOR COMMUNITY ENERGY**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

The San José Municipal Code is hereby amended to add Title 26 to be numbered,  
entitled and to read as follows:

**TITLE 26**  
**COMMUNITY ENERGY**

**CHAPTER 26.01**  
**FINDINGS AND PURPOSE**

**26.01.010 Findings**

The City Council finds and declares as follows:

- A. California Public Utilities Code Section 331.1 authorizes any city or county in California, upon approval of its governing board, to combine the electricity loads of its municipal needs, residents and businesses into a community-wide electricity program known as Community Choice Aggregation.

- B. Community Choice Aggregation is a method by which the City of San José can help to ensure the provision of clean, reasonably priced and reliable electricity to residents and businesses in San José.
- C. Community Choice Aggregation is a voluntary program enabling residents and businesses to opt out and continue to receive electricity from PG&E.
- D. In March, 2017, the City Council accepted a business plan prepared by EES Consulting, Inc. that concluded that the establishment of Community Choice Aggregation in the City is financially prudent and may yield considerable benefits for residents and businesses in the City.

**26.01.020 Purpose**

The purpose of this Title is to enhance the public welfare by establishing Community Choice Aggregation in the City to be called “San José Clean Energy” and to give its residents and businesses local control over electricity prices, resources and quality of service.

**CHAPTER 26.10  
DEFINITIONS**

**26.10.100 Definitions**

The definitions set forth in this Part shall govern the application and interpretation of this Title.

**26.10.101 Bilateral Agreement**

“Bilateral agreement” means a Transaction executed directly between two parties without financial participation in the Transaction by a broker, exchange or other intermediary.

**26.10.102 CAISO**

“CAISO” means the California Independent System Operator Corporation or successor entity responsible for the operation of the electric grid.

**26.10.103 Community Energy**

“Community Energy” means the San José Clean Energy program.

**26.10.104 Counterparty**

“Counterparty” means the other party, whether a buyer or a seller to a Transaction with San José Clean Energy.

**26.10.105 CPUC**

“CPUC” means the California Public Utilities Commission or successor agency.

**26.10.106 Director**

“Director” means the Director of the Community Energy Department.

**26.10.107 Eligible IOU End User**

“Eligible IOU End User” means a resident or business who would buy energy from the IOU.

**26.10.108 Feed-in-Tariff**

“Feed-in tariff” means that program available to customers whereby energy and capacity can be sold to San José Clean Energy under standard terms, conditions and pricing as may be developed by San José Clean Energy from time to time.

**26.10.109 Greenhouse Gas**

“Greenhouse Gas” or “GHG” refers to gases such as carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydro fluorocarbons, perfluorocarbons and other fluorinated gases that have been determined to contribute to climate change.

**26.10.110 Greenhouse Gas Free**

“Greenhouse Gas Free” means energy sources that produce electricity without emitting Greenhouse Gases.

**26.10.111 Investor Owned Utility**

“Investor Owned Utility” or “IOU” means a public utility electrical corporation under the jurisdiction of the California Public Utilities Commission, but excludes utility operations by cooperatives or publicly-owned utilities.

### **26.10.112 Long Term Transaction**

“Long Term Transaction” means a contract to acquire power with a term of more than one and up to 25 years.

### **26.10.113 Net Energy Metering Tariffs**

“Net energy metering tariffs” (or “NEM tariffs”) means that program available to customers whereby energy production at the premises in excess of onsite consumption receives compensation. Such program may be implemented in conjunction with PG&E’s tariffs adopted pursuant to state law.

### **26.10.114 PG&E**

“PG&E” refers to Pacific Gas & Electric Company which is the IOU in the City’s electric service area.

### **26.10.115 Power Products**

“Power Products” means energy, renewable energy, capacity, ancillary services, energy efficiency, demand respond, energy storage, and any products related to the foregoing.

### **26.10.11~~6~~<sup>5</sup> Power Purchase Agreement**

“Power Purchase Agreement” or “PPA” means a contract between two entities under which the parties agree to sell and buy ~~energy, capacity, or other P~~power ~~P~~products to and from one another.

**26.10.11~~76~~ Renewables Portfolio Standard**

“Renewables Portfolio Standard” or “RPS” means the state mandate for load serving entities to procure energy from eligible renewable energy resources as codified at California Public Utilities Code section 399.11 *et seq.* and California Public Resources Code sections 25740 through 25751, as such codes are amended and supplemented from time to time, and as implemented by the California Public Utilities Commission and the California Energy Commission.

**26.10.11~~87~~ San Jose Clean Energy**

“San Jose Clean Energy” means the Community Choice Aggregation program created by this Title.

**26.10.11~~98~~ Short Term Transaction**

“Short Term Transaction” means a contract to acquire one or more Power Products with a term of one year or less.

**26.10.1~~2019~~ Speculative Buying and Selling**

“Speculative Buying and Selling” is defined as buying energy, capacity or associated product not reasonably anticipated to be used for meeting forecasted retail loads, commercial commitments or regulatory requirements at the time of the Transaction. ~~or the selling energy or capacity and related product that are not owned at the time of delivery.~~

**26.10.12~~10~~ Transaction**

“Transaction” means a binding contract between the City and a Counterparty for the purchase and sale of one or more ~~the provision of a specific quantity of energy or the commitment of a specific amount of generating capacity or related Ppower Pproducts~~ for a specific period of time, ~~from a wholesale seller of electricity or a broker to the City for resale to San José Clean Energy customers, the CAISO or a Counterparty.~~

## CHAPTER 26.20 GENERAL PROVISIONS

### **26.20.010 San José Clean Energy**

The Community Energy Department administers and manages San José Clean Energy.

### **26.20.020 Power Source Options**

San José Clean Energy shall provide options to its customers about the percentage of renewable energy in their power mix, but in no event shall San José Clean Energy offer a power mix option lower than the Renewables Portfolio Standard procurement level associated with a particular year. The City Council shall establish the power mix options that will be available to San José Clean Energy customers by resolution.

### **26.20.030 Quantity of Electricity Usage**

All electricity supplied to customers shall be measured by means of electricity meters controlled by the IOU pursuant to applicable regulations by the CPUC or CAISO.

### **26.20.040 Option to Opt Out of San José Clean Energy**

No resident or business shall be obligated to participate as a customer in the San José Clean Energy program. All new customers shall be provided the opportunity to opt out of San José Clean Energy and shall receive notice of the option to opt out in accordance with California Public Utilities Code section 366.2 (c), at a minimum. Eligible IOU end users that do not affirmatively opt out will become customers of San José Clean Energy.

### **26.20.050 Standards of Service**

San José Clean Energy will ~~endeavor to supply reliable~~ power in a safe manner consistent with industry standards ~~and in quantities intended to meet the reasonable needs and requirements of customers by causing the Power Products it purchases to be made available for transmission and distribution by lines that are maintained by PG&E. PG&E will continue to be responsible for providing safe and reliable electricity delivery to customers.~~ San José Clean Energy cannot guarantee all services will be without disruption.

## **CHAPTER 26.30 REGULATORY COMPLIANCE**

### **26.30.010 Purpose**

The purpose of this Chapter is to assure timely compliance with regulatory mandates applicable to San José Clean Energy.



**26.30.020 Reporting Authority**

The Director shall submit all reports, plans and data required to comply with San Jose Clean Energy’s regulatory requirements. On a quarterly basis, the Director shall provide reports to the City Council listing the plans and reports submitted in the past quarter to the various regulatory agencies. Each quarterly report shall be submitted no later than 45 days following the end of the previous quarter. The quarterly report required in this Section may be combined with the quarterly reporting required in Section 26.50.040.

**CHAPTER 26.40  
RATES AND CHARGES FOR ELECTRICITY**

**26.40.010 Purpose of Rates and Charges**

The purpose of the provisions of this Chapter 26.40 is to establish a process for setting electricity rates that will generate sufficient revenue to meet the anticipated expenditures required under Section 4.80 of this Code and to generate additional revenues to maintain adequate reserves and to fund energy efficiency and other energy programs and pilots as may be established by the City Council. The rates shall be set so as to provide sufficient revenue to recover all expenses, including payment to Counterparties for Power Products, debt service, credit requirements, other expenditure requirements and to build prudent reserves for San José Clean Energy.

**26.40.020 Establishment of Electricity Rates and Charges**

- A. Rates and charges for electricity, including any meter charges, demand charges, non-bypassable charges or other regulatory charges, and volumetric rates, shall be established from time to time by resolution of the City Council.
- B. Rates shall not be adjusted more than twice in any fiscal year absent a finding of extraordinary circumstances by the City Council.
- C. Rates may vary based on the customer's choice of electricity supply options and associated resource costs, providing that all customer options shall meet or exceed the Renewables Portfolio Standard set by State of California as applies for a specific compliance period.
- D. Written notice of any proposed change in rates for electricity shall be provided in advance of approval of any rate change as follows:
  - 1. Notice shall be published in a newspaper of general circulation at least fifteen days in advance of the City Council consideration of such changes.
  - 2. No more than 45 days, but no less than 30 days prior to the City Council's consideration of a rate changes, notice shall be sent directly to the customer with the customer's regular bills if possible, or by separate letter or by other means intended to provide timely notice to the customer.

**26.40.030 Payment**

- A. The IOU shall bill customers for electricity charges.

- B. Any bill for electricity that is not paid by the due date specified in the bill shall be deemed delinquent.
- C. If any bill for electricity becomes delinquent, a late charge in an amount established by resolution shall be added to the bill. The late charge shall be in addition to any other administrative charges or IOU charges imposed.
- D. Customers that fail to bring their accounts current within 30 days after receiving a delinquent notice will be deemed to have opted out of electricity service provided by San José Clean Energy and will be promptly returned to IOU service. In addition to any late fees and administrative charges, customers returning to electricity service provided by the incumbent IOU shall remain responsible to pay all delinquent charges.

**26.40.040 Special Rates and Charges**

- A. San José Clean Energy shall provide customers information and assistance to qualifying households that may be eligible for discounts on their energy bills, such as through the California Alternate Rates for Energy Program or any similar IOU offered programs. San José Clean Energy may develop additional rate assistance programs that supplement IOU programs for qualifying customers, subject to approval by the City Council.
- B. San José Clean Energy may provide other rate designs or programs as approved by the City Council.
- C. San José Clean Energy may charge a termination fee in an amount established by resolution to a customer who opts to be served by the IOU after expiration of

the initial 60-day post enrollment opt-out period for the purpose of recovering administrative and other costs related to returning customers to IOU service.

## **CHAPTER 26.50 ENERGY PROCUREMENT**

### **26.50.010 Purpose and Policy**

The purpose of this chapter is to establish power procurement processes that will allow San José Clean Energy to procure energy, capacity and related services, including procurement to meet or exceed the Renewables Portfolio Standard and to best meet the needs of its customers in a timely manner.

### **26.50.020 Long Term Transactions**

Based on forecasted needs, the Ccity may enter into contracts to procure ~~power~~Power Products for a term ~~greater than one year, but no longer than~~up to 25 years, ~~through a competitive bidding process, under~~ bilateral agreements, net energy metering, ~~or~~ Feed-in-Tariffs or through a competitive bidding process.

### **26.50.030 Bilateral Transactions, Net Energy Metering Tariffs and Feed-in Tariffs**

Except as provided in Chapter 4.04, the City Council reserves the authority to approve all bilateral agreements for or related to net energy metering or Feed-in-Tariffs applicable to San José Clean Energy.

**26.50.040 Short Term Trading Authority and Transaction Limits**

- A. The City Council recognizes that meeting the energy needs of its customers from time to time will ~~supplying power to San José Clean Energy customers will~~ require ~~individual~~ Short Term Transactions to balance the load and secure ~~energy or capacity~~ Power Products necessary to meet certain regulatory requirements. To allow for these Short Term Transactions, the City Council hereby authorizes the Director or his/her designee to enter into Short Term Transactions consistent with this section. The Director shall have authority to enter into Short Term Transactions not to exceed Five Hundred Thousand Dollars (\$500,000) each day ~~in the case of emergencies or where time is of the essence, including~~ for the following:
1. ~~When the need arises to cover short positions or liquidate long positions in order to avoid excessive financial losses. Where necessary to match the~~ forecasted load to the existing energy supply portfolio;
  2. ~~To avert a default of power delivery or receipt.~~
  23. To comply with regulatory obligations; or,
  3. Any other commercially reasonable purpose for the benefit of San José Clean Energy and its customers.
- B. The Director shall submit quarterly reports to the City Council summarizing the number of Short Term Transactions and the total cost of those transactions during the previous quarter. Each quarterly report shall be submitted no later than 45 days following the end of the quarter. The quarterly report required in

this Section may be combined with the quarterly reporting required under Section 26.30.020.

**26.50.050 Risk Management**

- A. The Director shall submit a Risk Management Policy to the City Council for approval. The Risk Management Policy shall be reviewed annually, or as directed by City Council, and any changes shall be approved by the City Council.
- B. All contracts for any Transactions shall contain appropriate risk management provisions consistent with the Risk Management Policy.
- C. The Risk Management Policy shall provide for appropriate reserves to mitigate operational risks.

**26.50.060 Counterparties**

- A. Wholesale trading shall be carried out only with Counterparties meeting minimum standards of creditworthiness established by the Director of Finance. The City shall endeavor to work with All counterparties ~~must that~~ conduct their business in a prudent and ethical manner.
- B. Counterparties ~~shall~~ may be required to post a guarantee or security in an amount and appropriate to cover the entire amount of their unperformed and unpaid Transactions with instruments approved by the Director of Finance in conformance with the Risk Management Policy, in a form that is approved by the City Attorney.

**26.50.070 No Speculative Buying and Selling**

Speculative Buying and Selling of ~~energy Power P~~ products on behalf of San José Clean Energy shall be prohibited.

**CHAPTER 26.60**

**26.60.010 Report to Council.**

At least once each calendar year, the city manager, or designee, shall file with the City Council a report that lists all actions and transactions that have occurred with regard to this Title.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk