

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLES 2, 4, AND 26 AND ADDING TITLE 28 TO THE SAN
JOSE MUNICIPAL CODE TO ESTABLISH A MUNICIPAL
UTILITY FOR ELECTRIC SERVICE**

WHEREAS, Article XI, Section 9 of the Constitution of the State of California provides that a municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with electricity; and

WHEREAS, Section 39732 of the California Government Code provides that a city's legislative body may acquire, own, construct, maintain, and operate works for light and power, among others; and

WHEREAS, Section 200 of Article II of the San José City Charter ("Charter") authorizes the City of San José ("City") to exercise all rights, powers, and privileges granted or prescribed by any law of California or which a municipal corporation might or could exercise under the Constitution and laws of California; and

WHEREAS, Section 800 of Article VIII of the Charter provides that the City Council has the power to establish departments and prescribe the functions, powers, and duties of those departments, as well as add to or change those functions, powers, and duties at any time; and

WHEREAS, the City desires to change the name of the Community Energy Department to the Energy Department; and

WHEREAS, the City desires to establish a municipal electric utility named San José Power; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970 ("CEQA"), together with related CEQA Guidelines and Title 21 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council is the decision-making body for this Ordinance; and

WHEREAS, the City Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 2.04.4220 of Chapter 2.04 of Title 2 of the San José Municipal Code is amended to read as follows:

2.04.4220 Functions, Powers and Duties

In addition to those general functions, powers and duties given to the department head by this chapter and other provisions of this Code, the director shall:

- A. Act as the ex officio superintendent of streets for purposes of those functions falling under the jurisdiction of the department of public works.
- B. Administer the construction, installation, alteration, or improvement of any public works or other public improvements, except to the extent those public works projects have been otherwise delegated by the city council or the city manager.

- C. Possess those powers, duties and functions consistent with the charter and with all ordinances and other acts of the council which are given to a city engineer, a director of public works, or to a superintendent of streets of a municipal corporation by the laws of the State of California applicable to a charter city, except to the extent those powers, duties and functions have been otherwise delegated by the city council or the city manager.
- D. Administer the processing, approval, and construction of public improvements and private infrastructure.
- E. Administer all city policies of the city council pertaining to equal opportunity for contracting and contract compliance; and represent the city administration with, and provide liaison services for, federal and state labor standards and contract compliance agencies.
- F. Perform engineering and geologic functions and services.
- G. Plan and administer animal services programs.
- H. Perform such other programs or functions related to public works, public improvements, private development, maintenance and general services that the city council or the city manager may, from time to time, authorize or request.
- I. In coordination with the City Manager's Office, the City Attorney's Office, and the Energy Department, promulgate, develop, maintain, and update administrative rules and procedures, standardized procurement documents, contract documents, plans and specifications for San José Power electric utility system consistent with Title 27.
- J. Supervise and manage the design and construction of all work or improvements of the San José Power electric utility system as approved by the City Council.

K. Develop and negotiate agreements and obtain any permits and licenses as necessary to design and construct the San José Power electric utility system.

L. Direct the engineering and construction of San José Power's electric utility system.

SECTION 2. Part 46 of Chapter 2.04 of Title 2 of the San José Municipal Code is amended to read as follows:

Part 46

~~Community~~ Energy Department

2.04.4600 Establishment

The ~~community~~ Energy Department is hereby established ~~and includes the community energy division for the administration of the San José Clean Energy program and the electric utility division for the administration of San José Power.~~

2.04.4610 Department Head Designated

The ~~D~~irector of ~~community~~ Energy ~~shall~~ will be the head of the ~~community~~ Energy Department.

2.04.4620 Functions, Powers, and Duties

In addition to those general functions, powers, and duties given to the ~~department head~~ Director by this Chapter and other provisions of this Code, the Director shall:

A. Manage the City's energy portfolio.

- B. Manage energy procurement in compliance with Title 26, Title 28, City Council policies, and applicable state and federal law.
- C. Oversee financial accounting of the community energy and the electric utility divisions, in coordination with the Finance Department, Public Works, and risk management ~~of the Community Energy Department~~.
- D. Oversee regulatory compliance of the ~~Community~~ Energy Department ~~and San José Clean Energy~~.
- E. Develop and implement local energy efficiency, renewable energy, and other energy programs, in compliance with Title 26, Title 28, City Council policies, and applicable state and federal law.
- F. Develop and implement resource plans that meet supply objectives and balance cost, risk, and environmental considerations.
- G. Administer rate setting and optional rates to encourage policy goals.
- H. Supervise customer service, marketing, communications, and any other programs needed to support the ~~Community~~ Energy Department.
- I. Manage service providers, account management, including customer account data, billing, and revenue.
- J. Oversee staff, consultants, and contract management.
- K. Perform all functions, powers, and duties delegated to the Director of ~~Community~~ Energy under any agreement relating to energy.

- L. Take all appropriate actions to comply with documentation required by regulatory agencies.
- M. Perform such other services or functions relating to ~~community~~ energy that the City Council or the City Manager may, from time to time, authorize or request.
- N. Supervise and administer San José Power in accordance with this Code and the rules and regulations approved by City Council.
- O. Direct the operations of San José Power's electric utility system and power acquisition activities.
- P. Supervise, plan, and manage the maintenance and operation of all work or improvements of the San José Power electric utility system as approved by the City Council.
- Q. Develop and negotiate agreements and obtain the necessary federal and state approvals to operate the electric utility system.
- R. Enforce all orders, rules, and regulations adopted by the City Council for the operation of San José Power.

SECTION 3. A new Part is added to Chapter 4.80 of Title 4 of the San José Municipal Code, to be numbered, entitled and to read as follows:

Part 83

San José Power Operating Fund

4.80.4850 San José Power Operating Fund Established

There is hereby created and established the "San José Power Operating Fund."

4.80.4860 Sources of Monies

All monies derived from the operation of San José Power, including but not limited to revenues from sale and delivery of electricity, payments from other entities, and any financing proceeds associated with San José Power will be deposited in the San José Power Operating Fund. The City Council may also transfer to this fund monies from the general fund or from any other unrestricted funds for the purpose set forth in Section 4.80.4880.

4.80.4870 Interest

Interest that accrues from monies in the San José Power Fund will be credited to this fund.

4.80.4880 Expenditures

- A. Monies in the San José Power Fund will only be expended for costs of operating San José Power, including but not limited to, energy procurement; on-going capital improvements and maintenance of the electric utility system in the utility service area; payment of required debt service; staffing and administration costs; purchase of supplies, materials, and equipment attributable to or necessary for the operation, improvement, and maintenance of the electric utility system in the utility service area; and transfers to the general fund to compensate the City as permitted by applicable law.
- B. Monies in the San José Power Fund will be appropriated, and appropriate reserves within the San José Power Fund will be established and maintained, as determined by the City Council on an annual basis through the budget process.

SECTION 4. Section 26.10.110 of Chapter 26.10 of Title 26 is amended to read as follows:

26.10.110 Community Energy Department

"Community Energy Department" means the department established under Part 46 of Chapter 2.04 of Title 2 of this Code.

SECTION 5. Section 26.10.125 of Chapter 26.10 of Title 26 is amended to read as follows:

26.10.125 Director

"Director" means the Director of the Community Energy Department.

SECTION 6. A new Title is added to the San José Municipal Code, to be numbered, entitled and to read as follows:

TITLE 28
SAN JOSE POWER

CHAPTER 28.10
FINDINGS AND PURPOSE

28.10.010 Findings

The City Council finds and declares as follows:

- A. Article XI, section 9 of the California Constitution provides that a municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with electricity.

- B. Section 39732 of the California Government Code provides that a city's legislative body may acquire, own, construct, maintain, and operate light, power, and heat works among others.

- C. Section 200 of Article II of the San José Charter authorizes the City to exercise all rights, powers, and privileges granted or prescribed by any law of the State.

- D. Section 800 of Article VIII of the Charter provides that the City Council has the power to establish departments and prescribe the functions, powers, and duties of those departments, as well as add to or change those functions, powers, and duties at any time.

- E. On September 16, 2022, the City Council accepted a report analyzing the benefits and risks of providing electric service to new developments in the City.

- F. The City desires to establish a municipal electric utility named San José Power, which will be administered as a division of the Energy Department.

28.10.020 Purpose

The purpose of this Title is to provide resilient, reliable, efficient, and cost-effective electric service to portions of the City by establishing the framework to own and operate an electric utility to provide electric power generation, transmission, and distribution services to its electric utility customers through the Energy Department's electric utility division, doing business as San José Power.

CHAPTER 28.20
DEFINITIONS

28.20.100 Definitions

The definitions set forth in this Chapter will govern the application and interpretation of this Title.

28.20.105 Energy Department

"Energy Department" means the department of the City established under Title 2, Chapter 2.04, Part 46 of this Code responsible for administration of San José Power.

28.20.110 Director

"Director" means the Director of the Energy Department.

28.20.115 Electric Utility System

"Electric Utility System" means the network of components owned and operated by San José Power to provide electric service to customers, including but not limited to generation, transmission, and distribution infrastructure.

28.20.120 Power Products

"Power Products" means energy, renewable energy, clean power attributes, capacity, resource adequacy, energy efficiency, demand response, energy load shaping, energy storage, transmission, import capability, fuel related to energy purchases, ancillary services in support of interconnected operations (as defined in the California Independent System Operator Corporation, Fifth Replacement Electronic Tariff or its

successor tariff), and similar energy market products required to serve load and comply with regulatory obligations.

28.20.130 San José Clean Energy

“San José Clean Energy” means the program defined in Section 26.10.170 of this Code.

28.20.135 San José Power

“San José Power” means the municipal electric utility created by this Title.

28.20.140 Utility Risk Management Policy

“Utility Risk Management Policy” means the policy approved by a resolution of the City Council under Chapter 28.30.050 of this Code.

CHAPTER 28.30 **GENERAL PROVISIONS**

28.30.010 Rules and Regulations

The City Council may by resolution approve rules and regulations governing the electric utility; the electric utility service; and the tariffs, rates, fees, and charges.

28.30.020 Authority

Pursuant to the rules and regulations approved by resolution of the City Council, the City’s electric utility may:

- A. Acquire and/or generate electric power;
- B. Arrange for the transmission and distribution of such power;
- C. Construct, operate, and maintain equipment and facilities necessary to provide electric services;
- D. Recover all costs associated with its investment in electric generation, transmission and distribution facilities, operation and maintenance costs and all other expenses related to the operation of the electric utility; and
- E. Bill for and collect electric fees, rates and charges related to the electric services provided to its electric utility customers as it deems appropriate in the ordinary course of business for the benefit of its citizens and electric utility customers.

28.30.030 Service Areas

The service areas of the electric utility consist of areas situated within the boundaries of the City and will be established by resolution of the City Council.

28.30.040 Ownership, Design, and Construction of the Electric Utility System

The Electric Utility System installed or operated by San José Power will be the sole property of the City. The Electric Utility System will meet the design and construction standards consistent with Title 27 of the Code and will be installed to the satisfaction of the Director of Public Works.

28.30.050 Risk Management

- A. The Director will submit a Utility Risk Management Policy to the City Council for approval.
- B. The Risk Management Policy will be reviewed annually, or as directed by the City Council, and any proposed changes will be approved by resolution of the City Council.
- C. The Risk Management Policy will provide for appropriate reserves to mitigate operational risks.
- D. All agreements for Power Products will contain appropriate risk management provisions consistent with the Risk Management Policy.

CHAPTER 28.40 **RATES AND CHARGES**

28.40.010 Purpose of Rates and Charges

The purpose of the provisions of this Chapter is to establish a process for setting rates for San José Power electric service that will generate sufficient revenue to meet the anticipated expenditures required under Section 4.80.4880 of this Code and to generate additional revenues to maintain adequate reserves as may be established by resolution of the City Council. Any rate increase for the express purpose of increasing transfers to the general fund is prohibited.

28.40.020 Establishment of Electricity Rates and Charges

- A. Rates and charges for San José Power electric service will be established from time to time by resolution of the City Council.
- B. Rates and charges for San José Power electric service may vary by electric service area.
- C. Written notice of any proposed change in rates and charges for San José Power electric service will be provided as follows:
1. Notice will be published in a newspaper of general circulation at least fifteen days in advance of City Council consideration of such increase.
 2. Notice will be sent directly to the customer with the customer's regular electric service bill if a bill is due to be sent to the customer between the time an increase is proposed and the increase is scheduled to be considered by the City Council.

28.40.030 Payment for Service

- A. Any bill for San José electric service not paid by the due date specified in the bill will be deemed delinquent.
- B. If a bill for San José electric service becomes delinquent, a late charge in an amount set forth in the Schedule of Fees established by resolution of the City Council will be added to the bill. The late charge will be in addition to any administrative charges imposed for reconnection of service in the event of service shut-off due to non-payment.

CHAPTER 28.50

REGULATORY COMPLIANCE AND REPORTS TO COUNCIL

28.50.010 Regulatory Compliance

- A. The Director or designee will submit, file, verify and sign, as applicable, all documents including reports, plans and data required to comply with San José Power's regulatory requirements.
- B. On a quarterly basis, the Director will provide reports to the City Council listing the documents submitted in the past quarter to the various regulatory agencies. Each quarterly report will be submitted no later than forty-five (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 28.50.020.

28.50.020 Reports to City Council

- A. The Director will submit quarterly informational reports to the City Council summarizing the number of agreements and the total cost of those agreements during the previous quarter. Each quarterly report will be submitted no later than forty-five (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 28.50.010.
- B. At least once each calendar year, the City Manager, or designee, will file with the City Council an informational report that lists all actions and agreements that have occurred pursuant to this Title.

NVF:BCK:CLS
7/26/2023

PASSED FOR PUBLICATION of title this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk