

# 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:** October 26, 2017

**COUNCIL DISTRICT:** ALL

## **RECOMMENDATION**

Approve an ordinance to add Title 26 to the San José Municipal Code to provide procedures for operation and management of San José Clean Energy.

## **OUTCOME**

Approval of this ordinance will allow San José Clean Energy to prepare various policies/regulations for operation of San José Clean Energy, to commence procuring electric power and to set rates for electricity.

## **EXECUTIVE SUMMARY**

The City Council has taken a number of actions to establish San José Clean Energy and to provide the necessary framework for its operation and success. Title 26 is proposed to be added to the San José Municipal Code. This new Title would establish operational parameters for San José Clean Energy, which will be managed by the Community Energy Department.

Title 26 delegates regulatory compliance to the Director of the Community Energy Department and establishes procedures for rate setting and power procurement. The Title also includes robust reporting requirements to the City Council as well as the obligation to prepare a Risk Management Policy for City Council review and approval. Title 26 further allows for rate assistance programs and prohibits speculative energy transactions.

## **BACKGROUND**

Over the past nine months, the City Council has taken a number of steps towards offering community choice energy, referred to as San José Clean Energy, in the City of San José.

In March 2017, the City Council accepted a business plan prepared by EES Consulting, Inc. that concluded that community choice energy in the City is financially prudent and may yield considerable benefits for residents and businesses in the City. On May 16, 2017, the City Council voted to form San José Clean Energy.

On August 8, 2017, the City Council formally adopted an ordinance establishing San José Clean Energy and amended Title 2 of the San José Municipal Code to add a new department within the City of San José, the Community Energy Department. The City Council also approved the San José Clean Energy Implementation Plan and directed that it be filed with the California Public Utilities Commission.

Subsequently, on August 29, 2017 the City Council took a number of actions including: 1) adding Chapter 4.80 to the San José Municipal Code establishing the San José Clean Energy Operating Fund; 2) approving the San José Clean Energy Staffing Plan; and 3) approving a budget and the adopting the associated appropriations ordinance.

In mid-September after the effective date of the ordinance establishing San José Clean Energy, the City Manager submitted the Implementation Plan to the California Public Utilities Commission for approval. The Implementation Plan contemplates phasing in various customer classes commencing with municipal customers in April of 2018, followed by residential and small commercial customers in September 2018, and commercial, industrial and agricultural customers by February of 2019.

In early October, the City Council adopted an ordinance establishing the Clean Energy Community Advisory Commission.

Additionally, at the direction of the City Council, the Department of Environmental Services has shepherded several Requests for Proposals including one for Data Management Services and Marketing Services.

One of the final actions necessary before San José Clean Energy can commence purchasing power and setting rates is to set the parameters for such actions. These parameters are included in the proposed Title 26.

## **ANALYSIS**

As proposed, Title 26 of the San José Municipal Code will establish operational parameters for San José Clean Energy. Title 26 couples delegation of authority to the Director of Community Energy necessary to operate community choice energy with robust safeguards and reporting requirements.

Title 26 contains six chapters. Chapter 26.10 lays out definitions.

Chapter 26.20 includes general provisions that tie Title 26 to the Community Energy Department added to Title 2 in August of 2017. Additional provisions in chapter 26.20 require San José Clean Energy to offer the opportunity to opt-out consistent with State law and states that San José Clean Energy will endeavor to supply reliable power that will be measured by electricity meters. The final provision in chapter 26.20 obligates the City Council to establish by resolution the power mix options that will be available to San José Clean Energy customers. Establishing power mix options by resolution ensures that the public will have the opportunity to participate in the power mix discussion and to help shape San José as a sustainable community.

Chapter 26.30 authorizes the Director of Community Energy to submit all required regulatory submittals—primarily to the California Energy Commission, the California Public Utilities Commission (CPUC) and the California Independent Systems Operator. To ensure that the City Council is fully informed, Chapter 26.30 obligates the Director to submit quarterly reports to the City Council containing information about the regulatory submittals during the previous quarter.

Chapter 26.40 addresses rate setting, collection and return of delinquent customers to PG&E service. Rates may not be adjusted more than twice in any fiscal year absent the City Council finding that there are extraordinary circumstances that compel more frequent rate adjustments. Other rates set by the City such as sanitary sewer rates and solid waste service rates, are approved at the beginning of the fiscal year; however, PG&E submits rate adjustments to the CPUC for approval in January. Allowing San José Clean Energy two rate adjustments per year, if necessary, provides the necessary flexibility to stay competitive given that PG&E's rate adjustments occur on a different schedule.

Rates may vary based on the customer's choice of power mix. But in no event will San José Clean Energy's power mix fall below the Renewables Portfolio Standard set by the State. Additionally, the City Council may offer qualifying households discounts on their energy bills or may establish other rate designs or programs.

Chapter 26.40 provides that San José Clean Energy give notice in advance of City Council consideration of rate adjustments. This is another opportunity for public participation.

Chapter 26.50 addresses power procurement and authorizes both short term and long term energy transactions. Short term transactions are those with terms less than one year. Long term transactions are those with terms between one and 25 years. Because energy load forecasting is not an exact science, this Chapter delegates authority to the Director of Community Energy to enter into short term transactions up to \$500,000 per day as necessary to balance the load, in case of emergencies, to avert the default of power delivery or receipt, or to comply with regulatory obligations. The Director of Community Energy must submit quarterly reports to the City Council

summarizing the number and total cost of all short term transactions during the previous quarter. All long term transactions must be approved by the City Council.

San José Clean Energy may not enter into speculative transactions. And all counterparties must meet the creditworthy standards established by the Director of Finance. Counterparties must also post a guarantee or security appropriate to cover the entire amount of their unperformed and unpaid transactions with instruments approved by Director of Finance and in a form approved by the City Attorney.

Finally, but of utmost importance, Chapter 26.50 requires the Director of Community Energy to prepare and submit a Risk Management Policy to the City Council for approval. The Risk Management Policy must address necessary reserves. All contracts for power transactions must contain appropriate risk management provisions consistent with the Risk Management Policy.

Chapter 26.60 obligates the City Manger to submit an annual report to the City Council listing all actions and transactions undertaken by San José Clean Energy consistent with Title 26.

### **POLICY ALTERNATIVES**

1. The City Council can choose not to promulgate all or part of Title 26.

**Pros:** Without Title 26, San José Clean Energy can set up administrative policies related to the rate setting, power procurement, and risk management. Operating under administrative policies and procedures may result in more nimble decision-making.

**Cons:** Title 26 secures substantial City Council oversight into the management and operation of San José Clean Energy, and thus promotes an open and transparent process that invites pubic participation. Title 26 ensures that there are ample opportunities for the public to weigh in on the power mix, rate setting and long term power procurement.

**Reason for not recommending:** When authorizing Community Choice Aggregation, the California Legislature intended to give communities the opportunity to control the cost and power mix associated with their electrical loads. Operating under administrative policies only could have the effect of excluding the public from participating in these decisions. Likewise, the City Council expressed a desire to provide for an open, transparent and participatory process with respect to formation and operation of San José Clean Energy.

### **PUBLIC OUTREACH**

This memorandum, along with the proposed Title 26, will be posted on the City's Council Agenda website for the November 7, 2017 Council Meeting.

### **COORDINATION**

Title 26 was vetted with a number of City Departments including the Environmental Services Department, the Finance Department, the Budget Office, the City Manager's Office and the City Attorney's Office. The City Attorney's Office and the City Manager's Office participated in preparation of this Council Memorandum.

### **COMMISSION RECOMMENDATION**

There is no commission recommendation or input associated with this action.

### **FISCAL/POLICY ALIGNMENT**

The recommended actions support the City's 2017 Green Vision (Goals 2 and 3) and the Envision San José 2040 General Plan (Goal MS-2 and Appendix 8: GHG Reduction Strategy).

### **COST SUMMARY/IMPLICATIONS**

There are no cost implications associated with the recommendation in this memorandum. It should be noted, however, that Title 26 establishes procedures for setting electricity rates that will generate sufficient revenue to cover all expenses, debt service, credit requirements, to generate additional revenues to maintain adequate reserves and to fund energy efficient and other energy programs and pilots as may be established by the City Council.

HONORABLE MAYOR AND CITY COUNCIL

October 26, 2017

**AN ORDINANCE TO ADD TITLE 26 TO THE SAN JOSÉ MUNICIPAL CODE**

Page 6

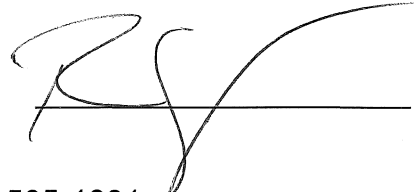
**CEQA**

General Procedure & Policy Making resulting in no changes to the physical environment. Public Project number PP17-008.

DAVID D. SYKES  
City Manager

Handwritten signature of David D. Sykes in black ink, consisting of stylized initials 'D.D.S.' followed by a long horizontal line.

RICHARD DOYLE  
City Attorney

Handwritten signature of Richard Doyle in black ink, featuring a large, stylized 'R' and 'D' followed by a long horizontal line.

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