



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle

SUBJECT: SEE BELOW

DATE: June 7, 2018

Approved

Date

COUNCIL DISTRICT: ALL

**SUBJECT: AMENDMENT TO TITLE 4 OF THE SAN JOSE MUNICIPAL CODE
RELATED TO SAN JOSE CLEAN ENERGY**

RECOMMENDATION

Approve an ordinance adding a new Chapter 4.40 to Title 4 of the San José Municipal Code to establish procedures for securing credit facilities for San José Clean Energy.

OUTCOME

City Council approval of the recommended ordinance will enable the City to secure one or more credit facilities to support San José Clean Energy.

BACKGROUND

Over the past several months, the City Council has taken a number of steps towards offering San José Clean Energy (SJCE) as the community choice energy program in the City of San José. These actions include enactment of ordinances establishing the Community Energy Department and the procedures for the management and operation of SJCE in Title 2 and Title 26, respectively, of the San José Municipal Code.

On August 29, 2017, the City Council approved the San José Clean Energy Implementation Plan and directed that it be filed with the California Public Utilities Commission (CPUC). The Implementation Plan detailed the organization, governance and operation of the Community Choice Energy (CCE) Program. It was approved by the CPUC on December 19, 2017.

San José will be the largest single jurisdiction in California to operate a CCE. As highlighted in the Implementation Plan, the goal is for SJCE to provide residents and businesses the same electricity service they have now but with more renewable energy options at competitive rates.

SJCE is a partnership with PG&E. SJCE will purchase cleaner power, set rates, and retain revenue. PG&E will maintain the grid, deliver the energy, and bill customers.

It is currently anticipated that SJCE will roll out its service to customers in two phases:

Phase 1. The City of San José municipal accounts and early adopters
(September 2018)

Phase 2. Residential, commercial, and all remaining accounts
(March 2019)

In order to support the implementation of SJCE's business plan, on May 16, 2018, the City's Department of Finance issued a Request for Proposal (RFP) seeking proposals from qualified lenders and/or financial institutions to provide either one or both of the following:

- \$50 million bank credit facility (repaid from SJCE Revenues) required to secure initial power contracts and to support longer-term operations (i.e., working capital);
- Lock-Box Services consisting of limited banking services for a lockbox account, if needed.¹

The responses to the RFP are due on June 13, 2018, and the selected providers will be notified in late June. The credit facility and/or lockbox agreements will be negotiated in July – August and brought forward to the City Council for approval in late September.

If approved, the proposed ordinance will go into effect before August 1, 2018 and will establish the financing procedures to enter into the agreement in order to secure one or more credit facilities for SJCE.

ANALYSIS

Enabling Authority

The City has procedures for various types of financings in its Municipal Code, such as procedures for the issuance of Airport Revenue Bonds (Chapter 4.38), and General Obligation Bonds (Chapter 14.28). Where no such procedures currently exist, the City typically defaults to State law. However, no financing procedures for securing credit facilities by Community Choice Energy providers like SJCE currently exist in State law.

¹ "Lock-Box Services" in this context refers to an arrangement for providing collateral to SJCE's energy suppliers by establishing a bank account (the "Lock-Box"), administered by a collateral agent, into which revenues from SJCE's retail customers are deposited, and from which payments are made directly to energy suppliers by the collateral agent prior to distribution to SJCE

As a Charter City, San José has the authority to enact its own ordinance establishing procedures for securing a credit facility for SJCE. The only legal restriction is that the proposed ordinance must conform to the State Constitution and the City Charter, which it does.

Overview of Proposed Ordinance

The proposed ordinance adds Chapter 4.40 to the Municipal Code and will enable the City, with the approval of the City Council, to secure one or more credit facilities to support SJCE operations. The term “Credit Facility” is broadly defined to include a loan, revolving line of credit, non-revolving line of credit, letter of credit, or any other similar credit facility or arrangement made or issued by a Credit Provider, together with any and all agreements related or ancillary thereto.² Similarly, “Credit Provider” is also broadly defined to include a bank, corporation, public entity, agency, instrumentality, political subdivision or any similar entity or organization permitted under the laws of the United States to make or issue a Credit Facility.

The source of repayment for any Credit Facility must be payable from SJCE income, rents, rates, fees, charges and other moneys (the “Revenues”) that the City derives from SJCE. Additionally, the City Council may, in its discretion, designate other legally available funds as Revenues in the documents governing the Credit Facility.

Under the proposed ordinance, the City has the authority to establish the terms of the Credit Facilities in accordance with this Chapter; contract for legal, feasibility, financial and other consultant services in connection with securing a Credit Facility; and do all the things necessary to carry out the purposes of Chapter 4.40.

The provisions of the proposed ordinance are not exclusive which means the procedures provided in Chapter 4.40 are alternative to any other procedures provided in the Municipal Code or under State law and would control in the event of a conflict with State law, should the State Legislature decide to adopt its own procedures for securing credit facilities in the future.

EVALUATION AND FOLLOW-UP

If approved, the second reading of the proposed ordinance will occur on June 26, 2018 and it will take effect on July 27, 2018. Staff anticipates bringing forward for City Council consideration and approval one or more credit facilities in late September 2018.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the June 19, 2018 Council Meeting.

² The term “Credit Facility” excludes revenue bonds. Section 1221 of the City Charter specifically states that no revenue bonds for public utilities shall be issued by the City unless authorized by the affirmative vote of a majority of the electors.

COORDINATION

This memorandum has been coordinated with the Department of Finance and the Department of Clean Energy.

COMMISSION RECOMMENDATION/INPUT

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).

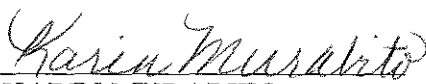
COST SUMMARY/IMPLICATIONS

There are no anticipated General Fund cost implications associated with the recommendation in this memorandum. Proposed Chapter 4.40 establishes financing procedures for securing Credit Facilities for SJCE, the repayment of which will be from Revenues of SJCE or such other legally available funds specifically authorized by the City Council. City staff anticipates that SJCE will generate sufficient Revenues to cover all expenses of the Credit Facilities discussed herein.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

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By 
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For questions, please contact Karin Murabito, Senior Deputy City Attorney, at (408) 535-1928.