RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A NEW COUNCIL POLICY 6-39, ENTITLED "LARGE ENERGY PROJECTS UNIFORM DEVELOPMENT STANDARDS"

WHEREAS, as communities across the country grapple with the rapid expansion of data center development, cities are being forced to confront a new generation of infrastructure challenges tied to the digital economy, and the explosive growth of cloud computing, artificial intelligence, and digital services has dramatically increased demand for large-scale data centers that store, process, and transmit the data powering modern life; and

WHEREAS, San José, as the Capital of Silicon Valley and one of the world's leading technology hubs, is uniquely positioned to shape the planning and integration of the next generation of digital infrastructure into urban communities and these facilities can provide substantial economic benefits, including significant general fund revenue, while also supporting digital services that residents and businesses rely on daily; however, San José residents have raised legitimate concerns about their operations, including energy demand on the electrical grid, water consumption, air-quality and backup generators, and noise; and

WHEREAS, on May 27, 2026, the Rules and Open Government Committee approved a memorandum directing the City Manager to return to the City Council for consideration of uniform standards and best practices for data center projects addressing energy consumption and sourcing, water usage, air quality and backup generators, noise, water quality, and community notification, building upon Council Policy 6-30; and

WHEREAS, on August 12, 2026, the Rules and Open Government Committee approved a follow-up memorandum directing the City Manager to further evaluate community benefits, tax revenue reinvestment mechanisms, and architectural and site design

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standards associated with data center and large energy projects for City Council consideration; and

WHEREAS, together, the two memoranda directed staff to return with a proposed policy that addresses: energy consumption and energy sourcing, including greenhouse gas emissions; water usage and water quality protection; air quality and the use of backup power generators; noise and other environmental factors; a clear and consistent process for community notification and engagement; options for requiring community benefits associated with these projects; a possible mechanism for reinvesting a portion of the tax revenue these projects generate; and architectural and site design standards; and

WHEREAS, an interdepartmental team led by the City Manager's Office, including the Departments of Planning, Building and Code Enforcement, Environmental Services, Energy, and City Attorney's Office, researched best practices, coordinated with partner regulatory agencies, and developed standards through an iterative community engagement process to ensure that Large Energy Projects, which are data centers and research and development facilities with a power demand of 20 megawatts or greater, are reviewed through a predictable discretionary process with enhanced community outreach, minimize impacts on the City's water supply and wastewater infrastructure, support the City's clean energy and carbon-neutrality goals, limit air quality and noise impacts with transparent reporting, contribute fairly to affordable housing, infrastructure, and clean energy programs, and meet the City's standards for high-quality design; and

WHEREAS, concurrently with this Resolution, the City Council is considering Ordinance No. _____, which amends Title 20 of the San José Municipal Code to define Large Energy Projects as Large Load Data Centers and Large Load Research and Development Facilities with a Power Demand of 20 megawatts or greater; and

WHEREAS, on November 18, 2026, the Planning Commission held a duly noticed public hearing on Council Policy 6-39 and recommended that the City Council approve the Policy; and

WHEREAS, the City Council has considered the CEQA determination for Council Policy 6-39, and determined it is Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment; and

WHEREAS, independently and in the alternative, approval of this Council Policy is exempt from CEQA under:

(a) CEQA Guidelines Section 15061(b)(3) (common sense exemption), because it can be seen with certainty that there is no possibility that the Policy and related actions may have a significant effect on the environment;

(b) CEQA Guidelines Section 15307 (Class 7, Actions by Regulatory Agencies for Protection of Natural Resources), because the Policy and related actions establish standards to protect water supply and water quality; and

(c) CEQA Guidelines Section 15308 (Class 8, Actions by Regulatory Agencies for Protection of the Environment), because the Policy and related actions establish standards to protect air quality, reduce noise, and limit energy and water use, and does not relax any existing environmental standard; and none of the exceptions in CEQA Guidelines Section 15300.2 applies; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Resolution; and

WHEREAS, this Council has reviewed and considered the determination under CEQA prior to taking any approval actions on this Resolution;

WHEREAS, the City Council desires to approve a new Council Policy No. 6-39, entitled "Large Energy Projects Uniform Development Standards", to establish uniform development standards and best practices for Large Energy Projects;

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

SECTION 1. Council Policy 6-39, entitled "Large Energy Projects Uniform Development Standards", attached hereto as **Exhibit A** and incorporated herein by this reference as though fully set forth herein, is hereby approved.

SECTION 2. Council Policy 6-39 takes effect on February 14, 2027.

ADOPTED this _____ day of _____, 2026, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk

EXHIBIT A
City of San José, California
COUNCIL POLICY

TITLE: LARGE ENERGY PROJECTS UNIFORM DEVELOPMENT STANDARDS	**PAGE** 1 of 18	**POLICY NUMBER** 6-39
EFFECTIVE DATE February 14, 2027	**REVISED DATE**	
APPROVED BY COUNCIL ACTION December 8, 2026		

BACKGROUND

As communities across the country grapple with the rapid expansion of data center development, cities are being forced to confront a new generation of infrastructure challenges tied to the digital economy. The explosive growth of cloud computing, artificial intelligence (AI), and digital services has dramatically increased demand for large-scale data centers that store, process, and transmit the data powering modern life.

San José, as the Capital of Silicon Valley and one of the world's leading technology hubs, is uniquely positioned to shape the planning and integration of the next generation of digital infrastructure into urban communities. These facilities can provide substantial economic benefits, including significant General Fund revenue, while also supporting digital services that residents and businesses rely on daily. At the same time, San José residents have raised concerns about their operations including energy demand on the electrical grid, water consumption, air quality and the use of backup generators, and noise.

In May and August 2026, the Rules and Open Government Committee directed the City Manager to return to the City Council for consideration of uniform standards and best practices for data center projects addressing energy consumption and sourcing, water usage, air quality and backup generators, noise, water quality, and community notification, building upon Council Policy 6-30; and to further evaluate community benefits, tax revenue reinvestment mechanisms, and architectural and site design standards associated with Data Center and Large Energy Projects.

This Policy establishes the City's uniform development standards for Large Energy Projects, which are Data Centers and Research Development Facilities with Power Demand of 20 megawatts or more, and implements the direction provided by the Rules and Open Government Committee.

PURPOSE

The purpose of this Policy is to establish uniform development standards for Large Energy Projects to ensure that such projects:

1. Are reviewed through a predictable, appropriately scaled discretionary process with enhanced community outreach;

2. Minimize impacts on the City's water supply and wastewater infrastructure;

3. Support the City's clean energy and carbon-neutrality goals;

4. Limit air quality and noise impacts on surrounding neighborhoods, with transparent public reporting;

5. Contribute fairly to the City's affordable housing, infrastructure, and clean energy programs; and

6. Meet the City's design and architectural standards for high-quality development.

This Policy supplements, and does not supersede, applicable local, state, and federal laws including the California Environmental Quality Act ("CEQA"), the California Public Utilities Code, and Title 20 of the San José Municipal Code. Large Energy Projects must comply with Title 20 of the San José Municipal Code, and all other applicable provisions of the San José Municipal Code, as may be amended. Where this Policy and federal law, state law, Municipal Code, Council Policy, or other applicable standards address the same requirements, the more stringent requirement applies on a provision-by-provision basis.

DEFINITIONS

The following definitions are set forth in Chapter 20.200 of the San José Municipal Code and are restated here for convenience. If there is any inconsistency, the San José Municipal Code controls.

Power Demand. The maximum electrical load of a project, in megawatts, as shown in the project's electrical utility service request or interconnection agreement, whichever is greater. Power Demand includes all buildings and phases of a project on the same site or on contiguous sites.

Data Center. A facility used primarily to house networked computer servers for the remote storage, remote computing, or distribution of data. Examples include facilities that provide cloud services, store customer data, provide internet services, or serve as enterprise computing infrastructure. A Data Center with a Power Demand of twenty (20) megawatts or greater is a "Large Load Data Center." A Research and Development Facility meeting the definition of San José Municipal Code Section 20.200.1000(B) is defined as a "Large Load Data Center".

Research and Development. An establishment or facility engaged in industrial or scientific research, product design, development and testing, and limited manufacturing necessary for the production of prototypes. Research and Development facilities may include networked computer servers that support the owner's or operator's own industrial, research, design, engineering, or product development activities, such as chip design, hardware development, and prototype testing, and that are not used to sell computing, storage, or data services to others.

A. A research and development facility that includes networked computer servers that support the owner's or operator's own industrial, research, design, engineering, or product development activities, with a Power Demand of twenty (20) megawatts or greater, and has no backup power generation or a backup generation capacity, excluding battery energy storage systems, less than 40% of the Power Demand is defined as a "Large Load Research and Development Facility".

B. A research and development facility that includes networked computer servers that support the owner's or operator's own industrial, research, design, engineering, or product development activities, with a Power Demand of twenty (20) megawatts or greater, and has a backup generation capacity, excluding battery energy storage systems, of 40% or more of the Power Demand is defined as a "Large Load Data Center" as provided for in Section 20.200.265 of the San José Municipal Code and is not a Research and Development Facility.

C. A use that meets the definition of manufacturing in Sections 20.200.710, 20.200.720, or 20.200.730 of the San José Municipal Code is classified as manufacturing and not as a Large Load Research and Development Facility.

Large Energy Project. A Large Load (20 Megawatts or greater) Data Center or a Large Load (20 Megawatts or greater) Research and Development Facility, as defined in Sections 20.200.265 and 20.200.1000 of the San José Municipal Code.

Director. The Director of Planning, Building and Code Enforcement, or designee.

Sensitive Receptor. A residence, school, child-care facility, hospital, senior care facility, park, or similar use where people who are sensitive to air pollution or noise live or regularly gather.

POLICY

A. Effective Date and Applicability

1. **Effective Date.** This Policy is effective on February 14, 2027.

2. **Conditions of Approval.** The requirements of this Policy must be included as conditions of approval in the planning permit or other City approval for each project subject to this Policy.

3. **Pending Applications.** This Policy applies to any application for a planning permit or other City approval for a Large Energy Project that the initial decision-making body has not approved as of the effective date. For purposes of this section, a project that is appealed is considered approved on the date of the initial decision-making body's approval.

4. **Approved But Not Constructed.** This Policy applies to the entire project if:

   (a) the project was approved before the effective date (regardless of the use classification under which it was approved);

   (b) no building permit for vertical construction of any building or structure has been issued for the project as of the effective date; and

   (c) an amendment to the approval would:
      (i) allow a project approved with a Power Demand of less than 20 megawatts to become a Large Energy Project; or
      (ii) increase the Power Demand of a project approved with a Power Demand of 20 megawatts or greater.

5. **Existing Facilities.** This section applies to any amendment, modification, expansion, or change of use of a facility for which a building permit for vertical construction of any building or structure was issued before the effective date. This Policy applies when:

   (a) the amendment, modification, expansion, or change of use increases the facility's Power Demand by the lesser of:
      (i) 20 megawatts; or
      (ii) 25 percent of the facility's Existing Power Demand; and

   (b) the facility's Power Demand after the change is 20 megawatts or greater.

   When this section applies, this Policy governs only the incremental change: the new or modified buildings, structures, equipment, and site improvements proposed as part of the amendment, and the additional Power Demand. "Existing Power Demand" means the Power Demand of a facility as approved as of the effective date.

6. **Cumulative Increases.** Increases in Power Demand under Section A.5 are measured cumulatively, starting from the effective date. When the cumulative increase meets the threshold in Section A.5(a), and the facility's Power Demand meets Section A.5(b), this Policy applies to the increase that causes the threshold to be met and to every later increase. Earlier increases are counted toward the threshold, but this Policy does not apply to them.

B. Discretionary Review and Appeal Process

1. Large Energy Projects must be reviewed under Title 20 of the San José Municipal Code, including Table 20-260 (Appeal Hearing Body) in Section 20.100.220. Except where Title 20 requires the City Council to act as the initial decision-making body, the Director is the initial decision-making body, and the City Council is the appeal decision-making body, for:

   (a) Special Use Permits for Large Energy Projects; and
   (b) Site Development Permits for Large Energy Projects.

2. Appeals of the Director's decision are heard directly by the City Council, following the appeal procedures and timeframes in Chapter 20.100 of the San José Municipal Code.[1]

3. This Section B of the Policy applies to Large Energy Projects that require a Special Use Permit or Site Development Permit under Title 20 of the San José Municipal Code. If a Large Energy Project also requires other approvals, such as a General Plan Amendment, rezoning, development agreement, or encroachment permit, those approvals must be reviewed and decided under the separate requirements of the San José Municipal Code and other applicable City requirements.

C. Architecture and Design Standards

Large Energy Projects must comply with the San José Citywide Design Standards and Guidelines and with the following supplemental architecture and design standards:

1. **Primary Structure Facades.** Each façade of a primary structure that faces a public street must include at least two of the following design elements to avoid large undifferentiated surfaces: changes in structure height; structure step-backs or recesses; fenestration; changes in structure material, pattern, texture, or color;

[1] The City Council is the initial decision making body for a project that requires certification of an environmental impact report for environmental clearance unless the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level.

or use of accent materials. All facades of a primary structure must use consistent design, materials, details, and treatment.

2. **Exterior Lighting.** Exterior lighting for Large Energy Projects must comply with the standards set forth in Section 20.50.250 of the San José Municipal Code (Lighting Standards for Industrial Zoning Districts) and Section 2.3.7 of the Citywide Design Standards. Projects located within 300 feet of a riparian corridor are also subject to the lighting provisions of Council Policy 6-34 (Riparian Corridor Protection and Bird-Safe Design). All exterior lighting must use full cutoff, fully shielded fixtures that direct light downward and into the interior of the property and away from adjacent roads and properties.

3. **Structural Noise Reduction Measures.** Large Energy Projects must include structural noise reduction measures, such as baffles or acoustic louvers, for exterior cooling fans and other exterior mechanical equipment, as approved by the Director. These measures are required even if the project would otherwise meet the applicable noise thresholds under CEQA, the San José Municipal Code, and the General Plan.

4. **Back Up Generator Location**. Backup generators must be located on the site as far from Sensitive Receptors as feasible, as determined by the Director.

5. **Other Design Standards**. The Director may apply other design standards consistent with the purposes of this Section C, as needed to address the unique development requirements of each Large Energy Project including security, fire access and utility location.

D. Labor Standards

1. State Law Requirement

On September 21, 2026, the California Governor signed Senate Bill 886 (Padilla) and Assembly Bill 2383 (Zbur). These bills added Article 14.7 (Sections 945 through 945.9) to the California Public Utilities Code, titled the California Technology Innovation and Ratepayer Protection Act (the “Act”), which requires certain data center project developers that submit an application for interconnection of a data center to an electrical corporation regulated by the California Public Utilities Commission (“Commission”) to certify to the Commission that the data center meets the prevailing wage and skilled and trained workforce requirements of Public Resources Code Sections 25545.3.3 and 25545.3.5, notwithstanding the definition of “covered project” in Section 25545.3 of the Public Resources Code. The Act takes effect January 1, 2027. It requires the Commission to adopt new tariffs or update existing rules governing interconnection of, and retail electric service to, data centers.

The Governor also signed Senate Bill 887 (Padilla) requiring certain data center projects that elect to be certified as environmental leadership development projects ("ELDPs") under CEQA to comply with the same workforce standards above and enter into a community benefits agreement.

A Large Energy Project that is a data center project subject to the Act or that elects to qualify as an ELDP must provide to the City, with its development application, or if the certification has not yet been made, before issuance of the first building permit, a copy of its certification of compliance with Sections 25545.3.3 and 25545.3.5 of the Public Resources Code. In addition, a Large Energy Project that is a data center project that elects to qualify as an ELDP shall provide to the City a copy of its community benefits agreement pursuant to Section 21180 of the Public Resources Code when the development application submittal is made, or if the community benefits agreement has not been completed, before issuance of the first building permit, whichever is earlier.

2. Prevailing Wage and Skilled and Trained Workforce Requirements

Large Energy Projects are highly specialized industrial facilities requiring substantial construction and integration of sophisticated electrical, mechanical, communications, control, and civil infrastructure. A Large Energy Project may include electrical substations; medium and high voltage electrical equipment; generators; uninterruptible power supply and battery systems; large-scale cooling plants; specialized mechanical systems; and fiber, communications, and control infrastructure, among other sophisticated components.

The City recognizes that the construction and integration of these systems require substantial participation by skilled workers in the building and construction trades. Large Energy Projects differ materially from typical development because the facility's core function depends upon the coordinated installation, testing, commissioning, and integration of these systems. These systems are not merely ancillary building amenities; they constitute critical infrastructure necessary for the facility to operate safely and reliably as an integrated industrial facility.

Accordingly, an application for a Large Energy Project that is not otherwise required to submit a certification of compliance with Sections 25545.3.3 and 25545.3.5 of the Public Resources Code, shall include the applicant's enforceable commitment that it will comply with the prevailing wage and Skilled and Trained Workforce requirements for such Large Energy Projects, and the City shall make the requirements a condition of approval. The prevailing wage and Skilled and Trained Workforce requirements must be interpreted and administered consistent with Public Resources Code Sections 25545.3.3 and 25545.3.5, including, but not limited to, the construction and workforce definitions, apprenticeship requirements, enforceable commitment

requirements, reporting requirements, and applicable exceptions. A Project Labor Agreement would also satisfy this requirement.

For purposes of this requirement:

a. **Construction. "**Construction" means construction, alteration, demolition, or installation work that requires a building permit and is performed by a contractor or subcontractor in the construction industry for:
(1) the initial development of a Large Energy Project; or
(2) an amendment, modification, expansion, or change of use to which this Policy applies under Section A.

Construction does not include repair, routine maintenance, tenant improvements, or the installation or replacement of servers or other equipment, whether or not a building permit is required, unless the work is part of the initial development under Section 2.a(1) or a change described in Section 2.a(2) of this Policy.

b. **Project Labor Agreement.** "Project Labor Agreement" means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects, consistent with Public Contract Code Section 2500(b)(1). A Project Labor Agreement that is binding upon all contractors and subcontractors performing work subject to the prevailing wage and Skilled and Trained Workforce requirements may be used to satisfy the City's prevailing wage and Skilled and Trained Workforce requirements if the agreement requires compliance with the applicable requirements of Public Contract Code Sections 2600 through 2603 and Public Resources Code Sections 25545.3.3 and 25545.3.5 .

c. **Skilled and Trained Workforce.** "Skilled and Trained Workforce" has the same meaning as set forth in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. The Large Energy Project must comply with the requirements of Section 2601 applicable to workers performing work in apprenticeable occupations in the building and construction trades, including the requirements concerning skilled journeypersons, registered apprentices, and apprenticeship graduates.

d. **Enforceable Commitment.** Before commencement of construction work subject to the requirement, the project must provide the City with an enforceable commitment that the project and all applicable contractors and subcontractors will comply with the prevailing wage and Skilled and Trained Workforce requirement.

e. **Failure to Comply.** Failure to provide required commitments or reports, or failure to comply with the prevailing wage and Skilled and Trained Workforce

requirements, is a violation of the conditions of approval and is subject to Section R (Enforcement).

f. **Compliance Reporting.** During construction, the project must provide the City with periodic reports demonstrating compliance with the prevailing wage and Skilled and Trained Workforce requirements. Reports must be submitted at the times and in the form prescribed by the City and must include information reasonably necessary to establish compliance with Public Contract Code Section 2601 and Public Resources Code Sections 25545.3.3 and 25545.3.5.

E. Recycled Water and Low-Water Cooling Technology

Recycled water is wastewater that has been processed and treated to a suitable quality for non-drinking use, such as irrigating golf courses, parks, schools, business parks, and agricultural land. South Bay Water Recycling ("SBWR") is the regional permit holder for recycled water in San José, Santa Clara and Milpitas, ensuring compliance with State regulations for recycled water quality and use. Chapter 15.11 of the San José Municipal Code governs the use for irrigation purposes only.

Large Energy Projects must use one or both of the following for all cooling systems: (i) recycled water supplied by SBWR for one hundred percent (100%) of cooling water demand; or (ii) low-water cooling technology, such as closed-loop or air-cooled systems.

A project using recycled water must pay for all improvements necessary to connect to the SBWR system.

A project using low-water cooling technology must limit annual water loss from the cooling system, excluding unexpected maintenance and emergency repairs, to no more than ten percent (10%) of the total annual cooling system water use, as measured and reported under the conditions of approval.

Open-loop cooling systems that use potable water are prohibited.

F. Clean Energy

San José Clean Energy ("SJCE") is the default electric generation service provider in the City of San José. Accounts within SJCE's service area are automatically enrolled in SJCE's GreenSource electricity generation service. Customers can opt out of SJCE.

Large Energy Projects are encouraged to remain enrolled with SJCE.

All Large Energy Projects in San José, whether or not they are SJCE customer, must be supplied with electricity that is one hundred percent (100%) renewable, measured

annually. Large Energy Projects enrolled with SJCE must receive SJCE's one hundred percent (100%) renewable energy TotalGreen service, which satisfies this requirement.

A project not enrolled with SJCE may meet this 100% renewable requirement by receiving electricity from another provider and obtaining Portfolio Content Category 1 renewable energy credits, as defined in Public Utilities Code Section 399.16(b)(1) or equivalent as determined by the Director of SJCE or any State law. Renewable energy credits must be retired on behalf of the project and may not be counted toward any other entity's requirement.

A Large Energy Project not enrolled with SJCE must submit an annual report to the City by September 30 of each year. The report must document the project's electricity sources and any renewable energy credits retired for the prior calendar year, with verification acceptable to the City. The first report is due for the first full calendar year after occupancy (i.e. issuance of the first temporary certificate of occupancy).

G. Backup Generator Restrictions and Air Quality

Diesel backup generators are permitted and regulated by the Bay Area Air District ("BAAQMD"). The BAAQMD enforces federal standards, including New Source Performance Standards (NSPS, 40 CFR Part 60, Subpart IIII) and National Emission Standards for Hazardous Air Pollutants (NESHAP, 40 CFR Part 63, Subpart ZZZZ). It also enforces state standards, including California Air Resources Board's Airborne Toxic Control Measure. BAAQMD permits require operating logs that track engine hours by use. Violations may result in BAAQMD fines, cease-and-desist orders, or revocation of the Permit to Operate.

Diesel backup generators at Large Energy Projects must comply with all current and future requirements of their BAAQMD permit and this Policy. Generators must utilize advanced emissions aftertreatment technologies to meet standard limits for regulated pollutants, including but not limited Particulate Matter, Nitrogen Oxides, Carbon Monoxide, and Non-Methane Hydrocarbons (NMHC).

If a BAAQMD requirement and a requirement of this section conflict, the more stringent requirement applies.

Large Energy Project must comply with the following requirements:

1. Generators must be U.S. Environmental Protection Agency Tier 4 Certified.

2. Each generator must operate no more than twenty-five (25) hours per calendar year for reliability-testing activities (maintenance and testing), excluding initial commissioning, emissions, testing and repairs. This limit is more restrictive than

the current 50-hour annual limit that otherwise applies under the BAAQMD and state rules.

3. Large Energy Projects must request that the BAAQMD include the 25-hour limit in the project's BAAQMD permit. The 25-hour limit applies as a condition of the City's planning permit regardless of the BAAQMD permit.

4. Emergency Use: Generators may be operated for emergency use only during an emergency as defined in BAAQMD Regulation 9-8, an "unforeseeable failure of regular electric power supply," meaning generators permitted exclusively for emergency standby may run only during unplanned power failures.

5. Testing and maintenance must occur only Monday through Friday, between 8:00 a.m. and 5:00 p.m. The Director may approve testing at other times if required by the BAAQMD or the manufacturer.

6. Large Energy Projects must submit to the Director:

    a. Prior to any occupancy (i.e. issuance of any temporary or final Certificate of Occupancy), a written certification that the generators meet all the requirements in this Section, with a copy of the BAAQMD permit;
    b. A copy of any BAAQMD notice of violation within thirty (30) days of receiving it, and documentation of its resolution within thirty (30) days of resolution; and
    c. A copy of any monitoring or reporting submitted to the BAAQMD within thirty (30) days of its submittal; and
    d. Any operating or testing records submitted to BAAQMD, within fifteen (15) days of the Director's request.

H. Sanitary Sewer Discharge Monitoring

Cooling towers commonly use chemicals such as scale inhibitors, corrosion inhibitors, biocides, and pH adjusters to prevent the scale buildup, control corrosion, and control the growth of algae and harmful bacteria.

The San José-Santa Clara Regional Wastewater Facility must meet concentration limits on the effluent it discharges to the San Francisco Bay. To meet these limits, the City sets local limits on industrial discharges to the sanitary sewer system (i.e. Antimony, Arsenic, Beryllium, Cadmium, Chromium, total Copper, Cyanides, Lead, Mercury, Nickel, Phenol, pH & derivatives Selenium, Silver, and Zinc).

Sewer use is governed by Chapter 15.14 of the San José Municipal Code. Local discharge limits are set forth in Section 15.14.585. Large Energy Projects must comply with all requirements of Chapter 15.14.

The absence of a specific chemical from the list of numerical limits in Section 15.14.585 does not mean that the chemical or discharge is unregulated. Chapter 15.14 establishes a broader regulatory framework that addresses discharges based on their characteristics and potential impacts on the sanitary sewer system and the Regional Wastewater Facility. Under this framework, the City may require information about wastewater characteristics and treatment processes, impose permit or reporting requirements, and take action when a discharge could interfere with treatment operations, cause a violation of applicable requirements, or otherwise adversely affect the wastewater system. This performance-based approach allows the City to regulate emerging technologies and changing chemical treatment practices without listing every chemical a Large Energy Project uses in the Municipal Code.

Large Energy Projects must monitor the quality of the project's sanitary sewer discharge and submit an annual monitoring report to the Environmental Services Department, as specified by that Department. If a Large Energy Project discharges more than 25,000 gallons per day of wastewater or has a Biochemical Oxygen Demand concentration exceeding 300 mg/L, it will be placed in the City's Monitored Industry Program and be monitored more frequently. The City may conduct its own monitoring at any time.

Closed-loop cooling systems must not be connected to the Sanitary Sewer system. Closed-loop cooling systems must meet the following requirements:

1. Physical Plumbing Isolation: Closed-loop cooling systems must be engineered with no connection to the sanitary sewer system.
2. City Certification and Zero Discharge Compliance: Large Energy Project must designate all closed-loop cooling systems as non-discharging waste streams under San José Municipal Code Chapter 15.14, submitting a Zero Discharge Certification (Supplemental Section H) to the City's Environmental Services Department during building permit application.
3. Mandatory Off-Site Manifested Disposal: Any liquid waste generated from closed-loop maintenance, system flushes, or decommissioning must be held in code-compliant secondary containment and transported off-site by a licensed waste hauler in accordance with Santa Clara County CUPA requirements

After five (5) consecutive annual reports showing no exceedances, and no verified complaints during that period, the Director of Environmental Services may reduce the frequency of the monitoring and reporting. If a later report shows an exceedance, or the City receives a verified complaint, the Director of Environmental Services may restore annual monitoring and reporting.

I. Noise Monitoring

Noise is regulated by the performance standards of Title 20 of the San José Municipal Code and the General Plan, which may vary by land use.

If residential uses are located within 1,000 feet of the project site boundary (measured from the property line), the Large Energy Project must conduct noise monitoring at least annually at the project site boundary nearest to the residential use, through measurements, modeling, or a combination of them, as approved by the Director. Noise levels at the project site boundary must not exceed the noise thresholds established in the project's approved environmental documents or conditions of approval.

Large Energy Projects must submit a noise monitoring report for review by the Director annually, and within thirty (30) days of a written request from the Director following a complaint. If monitoring shows an exceedance of the noise threshold at the property line, the project must implement additional noise reduction measures, as approved by the Director. Any such additional measure must be implemented within the time frame approved by the Director.

After five (5) consecutive annual reports showing no exceedances, and no verified complaints during that period, the Director may reduce the frequency of the monitoring and reporting. If a later report shows exceedance, or the City receives a verified complaint, the Director may restore annual monitoring and reporting.

J. Energy and Water Audits — Building Performance Ordinance Expansion

On December 11, 2018, the City of San José adopted the Energy and Water Building Performance Ordinance (“BPO”). This ordinance builds on existing state law (CA Assembly Bill 802) and will help the City reach the greenhouse gas emission reduction and water conservation goals of Climate Smart San José. The BPO requires owners of nonresidential and multifamily buildings that are 20,000 square feet or larger in size to annually track their energy and water use with the EPA ENERGY STAR Portfolio Manager® platform and share it with the City of San José.

Beginning in 2023, buildings are also required to meet energy and water efficiency standards on a rolling five-year basis, or perform improvements if standards are not met. Buildings in certain industrial zoning districts were exempt.

Chapter 17.85 of the San José Municipal Code was amended concurrently with the adoption of this Policy to:

1. Remove the exemptions for Large Energy Projects in the HI, LI, TEC, CIC zoning districts; and
2. Require third-party verification every five (5) years of the project’s energy and water use compared to the levels assumed in the project environmental clearance.

If actual use exceeds those levels by ten percent (10%) or more, the project must complete an energy or water audit, as applicable, and make all required improvements to bring use within the levels assumed in the environmental clearance.

Large Energy Projects must comply with the BPO.

K. Community Engagement

Council Policy 6-30 (Public Outreach Policy for Pending Land Use and Development Proposals) establishes the requirement for community notification and engagement for review of development applications. Its core requirements and guidelines are summarized below for reference only (Council Policy 6-30 controls):

1. On-Site Signage: Developers are generally required to post public notification signs directly on the project frontage or site to inform passersby and local residents of a pending proposal.
2. Neighborhood Notification: Written notices of public hearings and community meetings are typically mailed or distributed to property owners, tenants, and residents living within a certain radius of the project site, though larger or smaller radii may apply depending on the scale or impact of the development.
3. Public Meetings: For significant proposals or projects requiring an Environmental Impact Report (EIR), scoping and community meetings are hosted to describe the plans and gather public input before final actions.
4. Online Transparency: Agendas, staff reports, and public hearing notices are posted on the City's website to ensure accessibility.

Large Energy Projects must comply with Council Policy 6-30, except that the notification radius for all notices required under Council Policy 6-30 must be 1,500 feet.

The City is currently reviewing and updating Policy 6-30, which is expected to be completed in mid-2027.

L. Affordable Housing Fee — Commercial Linkage Fee Expansion

The Commercial Linkage Fee is an impact fee under the Mitigation Fee Act levied on commercial development for the provision of affordable housing. The San José City Council approved an ordinance on September 1, 2020 to begin charging commercial developers fees to fund affordable housing. At the time, the Commercial Linkage Fee Nexus Analysis (dated July 2020) stated that Data Centers are "not addressed in the nexus study." An addendum to the nexus study has been completed. Based on the addendum, Large Load Data Center must pay the commercial linkage fee in the amount set by City Council resolution.

Large Load Research and Development Facilities are subject to the existing Commercial Linkage Fee for research and development uses, and any future updates. This Policy does not affect this existing fee.

The Commercial Linkage Fee requirements are codified in Chapter 5.11 of the San José Municipal Code and implementing resolutions and guidelines. Large Energy Projects must comply with all such requirements.

M. Energy Reliability Fee

All electricity providers in California, including SJCE, must secure enough electricity generation capacity to meet their customers' peak demand, with a safety margin, to keep the grid reliable and prevent blackouts. This requirement is called Resource Adequacy. The State sets each provider's Resource Adequacy obligation based on forecasts of customer demand. Expected growth in load from data centers and other Large Energy Projects increases SJCE's obligations, and SJCE must buy that capacity before those customers begin paying SJCE rates.

The City has conducted a fee study that evaluates the Resource Adequacy obligations attributable to Large Energy Projects and the cost of meeting them. Based on that study, Large Energy Projects must pay the Energy Reliability Fee established by Ordinance No. _____, in the amount set by City Council resolution, as updated. Fee revenue will fund measures that help meet or reduce SJCE’s Resource Adequacy obligation and may include the installation of distributed energy resources that SJCE can dispatch to reduce peak demand, including but not limited to such measures as residential batteries, smart thermostats, heat pumps, vehicle-to-grid charging infrastructure, and similar resources, as well as power purchase agreements and traditional Resource Adequacy tolling agreements.

Fifty percent (50%) of the fee is due before issuance of the first building permit, and the remaining fifty percent (50%) is due before occupancy (i.e., issuance of the first temporary certificate of occupancy).

Thirty-five percent (35%) of the fee revenue from each project will be reserved for eligible distributed energy resources in the Council District where the project is located. Reserved revenue not committed to specific projects within three (3) years of receipt will be available citywide.

N. Additional Community Benefits

This Policy sets the requirements that apply to every Large Energy Project. The City recognizes that additional community benefits may be provided through:

1. **Voluntary commitments.** Large Energy Projects may offer community benefits, or enter into community benefits agreements with the City, community organizations, labor organizations, or others.

2. **Development agreements and City property transactions.** Where a Large Energy Project seeks a development agreement, or a sale, lease, easement, or other interest in City property, the City may negotiate community benefits as part of that agreement or transaction, consistent with applicable local and state law.

3. **Legislative approvals.** Where a Large Energy Project also requires a General Plan Amendment, Rezoning, or other legislative approval, the City Council may consider the project's overall benefits to the community in exercising its discretion, consistent with City, state and federal law.

4. **State certification programs.** A Large Energy Project seeking certification as an environmental leadership development project under Public Resources Code Section 21180(b)(5) must enter into one or more legally binding and enforceable community benefits agreements as required by that section. These agreements must include engagement with the City and nearby affected communities to identify and address community priorities. The project must provide the City with a copy of each agreement as required by Section D.1.

Community benefits may include workforce development and training, community investments, environmental improvements, or other benefits identified through community engagement.

O. Use Tax Attribution

Large Energy Projects purchase and install large amounts of taxable equipment, such as servers, cooling systems, generators, and electrical equipment. Much of this equipment, especially servers, may be replaced over time. Depending on how and where these purchases are made, the local share of sales and use tax may go into a countywide pool or to other jurisdictions instead of to San José, where the equipment is purchased or used. Attributing this tax to San José as the place of use could generate significant ongoing General Fund revenue. That revenue could support City services and reinvestment in the neighborhoods around Large Energy Projects.

The Office of Economic Development and Cultural Affairs is directed to evaluate options and work with each project to allow sales and use tax on equipment and materials purchased for Large Energy Projects to be attributed to San José, including working with applicants on how purchases are structured and reported.

P. Support for Ratepayer Protection

The City advocates for legislation, regulations, and policies that lower costs and improve energy affordability for ratepayers. For example, the City formally supports the Pacific Gas and Electric Company (PG&E) and California Public Utilities Commission (CPUC) Electric Rule 30 framework (Application A.24-11-007). This rule would provide the energy that Large Energy Projects need while making them responsible for the costs and risks of the infrastructure.

In addition, to safeguard local utility customers, the City aligns with California's new laws. These include Assembly Bill 2383 and Senate Bill 886, which ultimately protect ratepayers by requiring data center operators including Large Energy Projects to cover their infrastructure, transmission, and distribution costs.

The City partners with the California Legislature and state agencies and oversight bodies to ensure that state laws and regulations align with the City's policy goals for energy reliability, environmental sustainability, and ratepayer protection. The City continues to pursue solutions to minimize cost-shifts to ratepayers, extend cost-recovery timelines, and drive comprehensive grid-planning standards for San José and across California.

Q. Administration

1. **Fees.** Large Energy Projects must pay all applicable fees in the City's Schedule of Fees and Charges including fees to recover the City's reasonable costs of reviewing applications and reports, monitoring, inspection, and enforcement under this Policy.

2. **Administrative Authority.** The City Manager, or the department directors designated by the City Manager, may implement this Policy, including by adopting application forms, reporting forms, monitoring methods, deadlines, and administrative guidelines consistent with this Policy. Any determination by the Director, or other department director, under this Policy should be made in writing and must be consistent with purpose of this Policy and any administrative guidelines adopted under this Section.

3. **Amendments and Updates.** The City may amend this Policy and the ordinances, resolutions, fees, policies, regulations, and/or guidelines that implement it or are referenced herein. Except to the extent a project has a vested right under a development agreement or state law:

   (i) A Large Energy Project must comply with the requirements of this Policy in effect when its planning permit, or applicable amendment, is approved;
   (ii) Fees must be paid at the rates in effect when each payment is due; and

(iii) Requirements imposed directly by ordinance, Council policy, resolutions, guidelines, or otherwise, including the Zoning Ordinance, Commercial Linkage Fee Ordinance, Building Performance Ordinance, Energy Fee Ordinance, design guidelines, public outreach policy, and sewer use regulations, apply as provided in that ordinance, policy, or regulation, as may be amended from time to time.

R. Enforcement

The City retains all rights and remedies available under the San José Municipal Code, state law, or any other law to enforce the conditions of approval and requirements of this Policy. These include administrative, civil, and criminal remedies, and modification or revocation of the planning permit under Chapter 20.100. The City may inspect the site, review records, and conduct its own monitoring to verify compliance. The project, including the owner or operator, must reimburse the City's reasonable costs of enforcing a violation, to the extent allowed by law. These rights and remedies are cumulative. The City's delay or failure to enforce any condition or requirement is not a waiver of its right to enforce it later. Compliance with another agency's permit or requirements does not excuse compliance with this Policy.