

FILE NO. 070777

ORDINANCE NO.

1 [Adopting Community Choice Aggregation Draft Statement of Intent and Governance
2 Structure.]

3 **Ordinance Adopting a Community Choice Aggregation Draft Statement of Intent and**
4 **Governance Structure.**

5 Note: Additions are *single-underline italics Times New Roman*;
6 deletions are ~~*strikethrough italics Times New Roman*~~.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings

11 (a) Pursuant to Section 9.107(8) of the Charter the Board of Supervisors may, without
12 further voter approval and without limit, provide for the issuance of revenue bonds to “finance
13 or refinance the acquisition, construction, installation, equipping, improvement or rehabilitation
14 of equipment or facilities for renewable energy and energy conservation.”

15 (b) Pursuant to California Public Utilities Code Section 366.2, a city may become a
16 Community Choice Aggregator to provide electric power and related services to the electric
17 customers located within its jurisdiction. As a Community Choice Aggregator, the City and
18 County of San Francisco (San Francisco or City) would aggregate the electric power loads of
19 its citizens and businesses in accordance with state law. San Francisco would provide
20 electric generation and related services to electric customers while responsibility for
21 transmission, distribution, meter-reading, and billing for those customers would remain with
22 Pacific Gas and Electric Company (PG&E).

23 (c) In Ordinance -07 the Board of Supervisors adopted a Community Choice
24 Aggregation (CCA) Draft Implementation Plan (IP), which this Draft Statement of Intent

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1 follows. This Draft Statement of Intent will be modified as required to be consistent with the
2 modifications to the Draft Implementation Plan. When the Board of Supervisors approves a
3 Final Implementation Plan for filing with the CPUC, it will also approve a Final Statement of
4 Intent.

5 (d) Pursuant to Section 366.2(c)(4) of the California Public Utilities Code, San
6 Francisco is required to prepare a Statement of Intent with the Implementation Plan. In this
7 document San Francisco outlines its intent to establish a CCA program that shall provide for
8 the following:

9 1. Universal access.

10 2. Reliability.

11 3. Equitable treatment of all classes of customers.

12 4. Any requirements established by state or local law or by the California Public Utilities
13 Commission (CPUC) concerning aggregated service.

14 (e) In Ordinance 86-04 the Board of Supervisors established a Community Choice
15 Aggregation (CCA) program pursuant to Public Utilities Code Section 366.2 and directed City
16 departments to investigate the use of revenue bonds under Charter section 9.107(8) to
17 augment CCA. The Board of Supervisors found that CCA provides a means by which the City
18 may help ensure the provision of clean, reasonably priced, and reliable electricity to San
19 Francisco customers. Ordinance 86-04 further found that a CCA Program could provide a
20 means for the City to increase the scale and cost-effectiveness of conservation, energy-
21 efficiency and renewable energy in San Francisco. Energy efficiency, conservation and
22 renewable resource development are the core of the City's CCA program, including municipal
23 financing of renewable energy and conservation facilities, to the extent feasible. Ordinance

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1 86-04 required the selection of a consultant to design, build, operate and maintain a 360
2 Megawatt rollout, meeting the state's Renewable Portfolio Standard. CCA supplier proposals
3 must include the cost of this portfolio requirement in their proposed multiyear rate schedules.

4 (f) The San Francisco Local Agency Formation Commission (LAFCO) reviewed
5 Charter Section 9.107(8) and commissioned an analysis by Nixon Peabody, LLC on the use
6 of these revenue bonds to augment CCA in San Francisco. The resulting analysis was
7 referred by LAFCO to the Board of Supervisors by resolution in February 2006, and was
8 subsequently endorsed by the CCA Task Force.

9 Section 2. Draft Statement of Intent

10 The Board of Supervisors adopts this CCA Draft Statement of Intent to accompany the
11 City's future filing of an Implementation Plan with the CPUC in order to aggregate the electric
12 power loads of its citizens and businesses, in accordance with state and municipal law,
13 including the Board of Supervisors revenue bond authority and Community Choice
14 Aggregation Ordinance 86-04, Public Utilities Code Section 366.2(c)(3) and (4), and Draft
15 Implementation Plan Ordinance -07.

16 San Francisco's CCA is an ambitious effort to provide the citizens and businesses of
17 San Francisco with a number of significant improvements in their electric power service, not
18 the least of which are possibilities for reduced energy costs, reduced exposure to increasing
19 power plant fuel cost volatility, improved environmental quality, and the physical development
20 of significant renewable energy sources both within and near to San Francisco, and benefiting
21 all San Francisco residents and businesses for decades into the future.

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1 Section 3. Start-Up Implementation Process

2 The City will develop a Request for Proposals (RFP) as described in the Draft
3 Implementation Plan for a competitive selection process among interested suppliers. As a
4 part of that process, the City will release a preliminary Request for Information (RFI) to solicit
5 comments on the CCA process and identify interested competitive electricity suppliers. The
6 successful CCA respondent must be approved by ordinance and registered with the CPUC.

7 Specifically, an RFI/RFP process will seek respondents to provide electric power for
8 San Francisco residents and businesses that includes a rollout of 31 MW of solar photovoltaic
9 cells and 72 MW of distributed generation, such as fuel cells, throughout the City; a 150 MW
10 wind turbine farm, and 107 MW of efficiency and conservation measures throughout the City.
11 All responses must include rate schedules.

12 The Board of Supervisors is preparing to issue revenue bonds under Charter Section
13 9.107(8) within one year, to the extent feasible, to finance the 360 Megawatt rollout on a tax-
14 exempt basis in accordance with the Federal Tax Code and without further voter approval as
15 authorized under state law and the Charter.

16 The RFP will solicit CCA suppliers who must bid electric generation rates with a 51%
17 Renewable Portfolio Standard by 2017 that will “meet or beat” current PG&E generation rates
18 for each rate class during the initial opt-out followed by structured rates that are intended to
19 meet or beat PG&E’s rates into the future. These electric generation rates charged to CCA
20 customers are intended to account not only for the costs of the CCA supplier’s power
21 contracts, but also the administrative costs and profit of the supplier, the repayment of
22 revenue bond or other funding of the 360 MW roll-out, and all other City CCA related costs,
23 e.g. staffing and expense costs. Thereafter the CCA supplier should commit to a structured

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1 long-term rate intended to meet or beat PG&E's electric rates, with a performance adjustment
2 rewarding/penalizing the new provider for compliance or non-compliance with its promised
3 360 MW rollout schedule, with the reward and penalty to be determined in a CCA Request for
4 Proposals, as outlined in this Implementation Plan, which is on file with the Clerk of the Board
5 of Supervisors.

6 Rates will be established as specified in Charter Section 8B.125. The City will award a
7 contract to the chosen CCA supplier containing fixed or structured rates over a multiyear basis
8 to facilitate repayment of bonds within the term of the CCA contract. The contract will be
9 approved by ordinance. The existing SFPUC Rate Fairness Board, in addition to its duties
10 specified in the Charter, will hear any customer complaints and provide reports and make
11 recommendations to the Board of Supervisors.

12 The CCA supplier will provide all required services at its own risk, and may hire
13 subcontractors to perform components of its portfolio.

14 The CCA supplier contract and bond repayment term is not set a priori by the plan;
15 prospective suppliers shall propose contract durations in response to the Request for
16 Proposals. The repayment term is likely limited to 15 or 20 years, such that each SF CCA
17 bidder must calculate bond repayment obligations within its proposed multi-year rate
18 structure.

19 Section 4. Universal Access

20 The San Francisco CCA Program is committed to universal access; therefore all the
21 electric customers within the City of San Francisco will have an opportunity to become CCA
22 customers except customers locked into contracts with Direct Access suppliers. The City does
23 not intend to phase-in enrollment of customers, and will design the CCA Program's four

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1 required customer notifications to allow a simple, apple-to-apple comparison of the City's
2 offered rate schedule and energy resource portfolio. Pursuant to 366.2(a)(2) of the Public
3 Utilities Code, the City will give all customers an opportunity to opt out of the CCA. Any
4 customers who opt out will continue to be served by PG&E. The procedures the City will use
5 to inform all customers of their right to opt out will comply with the requirements of the Public
6 Utilities Code, and are described in detail in the supporting Draft Implementation Plan, which
7 is on file with the Clerk of the Board of Supervisors.

8 Section 5. Reliability

9 The San Francisco CCA is committed to reliably serving its generation customers. This
10 will occur in four ways. First the emphasis on in-city generation as a major element of this
11 plan may provide opportunities to decrease the impacts of blackouts at the individual
12 customer level, and potentially the neighborhood level. Second the CCA supplier will be
13 required under CPUC regulation to meet Resource Adequacy Requirements (RAR). However
14 the San Francisco CCA cannot directly react or respond to the vast majority of interruptions of
15 electric power that occur due to distribution or transmission level problems, which under state
16 law and regulation shall remain the responsibility of PG&E. Third, the renewable generation
17 facilities will broaden the City's power generation resource mix, which will provide improved
18 power generation capacity resilience. Fourth, the efficiency and conservation measures will
19 reduce demand levels.

20 The CCA supplier contract provisions will require a commitment to providing certain
21 levels of reliability in all power supplied by the CCA supplier.

22 The San Francisco CCA is committed to meeting or in some cases exceeding any
23 State of California requirements established by the CPUC for Load Serving Entities for

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1 Renewable Portfolio Standards (RPS), RAR, and Greenhouse Gas Emissions. At a minimum,
2 the Draft Implementation Plan establishes a 51% RPS by 2017, including solar photovoltaics,
3 distributed renewable generation, and energy efficiency measures.

4 The CCA program will implement a number of benefits to San Francisco residents and
5 businesses, from a better environment to a more stable secure electric service. Higher cost,
6 more secure technologies will be blended with conventional power supplies and lower cost
7 renewables and energy efficiency measures to make solar more available and ubiquitous
8 throughout San Francisco. Energy security has many forms. A ubiquitous, distributed solar
9 infrastructure throughout the City could potentially deliver significant opportunities for
10 improved reliability and blackout protection services to customers who are prepared to pay a
11 premium for this service. More in-City distributed generation may also offer the potential,
12 depending upon interconnection arrangements, to provide some degree of electric service
13 during grid failures and other emergencies, improving public safety in a natural disaster,
14 rolling blackout or other grid failures.

15 By installing 360 MW of new clean energy technologies in a community that demands
16 between 650 and 850 MW of power every afternoon, the CCA Program will seek to
17 dramatically reduce San Franciscans' dependence upon natural gas-fired generation and
18 exposure to increasingly volatile gas-fired power costs. PG&E's power portfolio currently
19 consists of 42% natural gas generation, making its customers particularly exposed to
20 increasingly high, and even more volatile natural gas prices. While PG&E power costs are
21 expected to rise, and PG&E retains the right to request further rate increases from its
22 remaining customers when this occurs, San Francisco's CCA program will circumscribe

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1 ratepayer exposure to PG&E's procurement activities, and reduce procurement risk
2 substantially by building a 51% green portfolio for San Francisco by 2017.

3 The CCA Program will prioritize new in-City renewable generation development to
4 increase reliability by broadening the City's resource portfolio mix. The efficiency and
5 conservation measures will reduce demand, which has the collateral benefit of further
6 enhancing the reliability of the City's power supply and reducing the environmental impacts
7 from overdependence on conventional generation resources. As electricity causes 25% of the
8 greenhouse gases emitted by the San Francisco community, the 360 Megawatt network will
9 achieve an unprecedented greenhouse gas reduction for the City.

10 Section 6. Equitable Treatment of Customers

11 The City is committed to providing equitable treatment of all classes of CCA customers.
12 There will be no discrimination among customer classes in setting CCA rates. However the
13 CCA and its supplier will seek opportunities in siting renewable generation facilities at optimal
14 sites and offering particular customers at those sites customized CCA rates for those facilities
15 – where such opportunities are of benefit to the entire CCA program and therefore all CCA
16 customers.

17 A qualifying CCA supplier's bid shall contain a rate schedule comparable to PG&E's
18 rate schedule, but shall meet or beat each PG&E ratepayer class charge in an equitable
19 manner. Furthermore, as a potential administrator of Energy Efficiency Public Goods Charge
20 funds, the City declares its intent to ensure an equitable allocation of these funds among all
21 ratepayer classes

22 The City's mission is for San Francisco residents and businesses to enjoy the option of
23 a cleaner, local, and economically more secure power system - without having to pay higher

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1 energy prices first – and with the intention of long-term reduction of San Francisco ratepayers’
2 power prices

3 Ordinance 86-04 calls for the City to issue revenue bonds under Charter Section
4 9.107.8, which empowers the Board of Supervisors to authorize the issuance of bonds to
5 finance renewable energy and energy conservation without further voter approval. The Draft
6 Implementation Plan calls for San Francisco’s revenue bonds to be issued to finance the
7 City’s chosen CCA supplier’s 360 MW rollout during the early years of its contract with the
8 City, such that annual power sales over the remaining years can fully repay the bonds, within
9 the supplier’s rate schedule over the remainder of its CCA contract period. It is the City’s
10 intent, to the extent feasible, to offer taxable bond financing for solar photovoltaic systems to
11 residential and business ratepayers to eliminate the high upfront cost of solar that makes it
12 unaffordable to many ratepayers.

13 The CCA program will prioritize achieving lower ratepayer risk than PG&E bundled
14 service. The CCA Program is designed to offer San Franciscans a lower-risk electricity
15 service and build a physically more secure energy system for the local community. By
16 replacing a significant portion of San Francisco’s power use from remote, fossil fuel and
17 nuclear power with local renewable resources, San Franciscans will enjoy more stable power
18 prices, and less exposure to increasingly volatile natural gas-fired power plants, while also
19 minimizing contracting, liability and financial risks to the City.

20 The CCA Program will seek to administer California Public Goods Charge funds that
21 are paid by San Francisco ratepayers for energy efficiency programs. These funds are
22 currently administered by PG&E through the CPUC. The City intends to administer these
23 funds for to ensure an equitable treatment of ratepayer classes.

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1 The CCA Program will work to mitigate rate risk to CCA customers by requiring
2 suppliers to offer a long-term structured rate. The CCA supplier's structured rates must meet
3 or beat PG&E's rates during the initial opt-out period of the contract for all classes of
4 customers taking service through the program, and must commit to future rates through fixed
5 or indexed prices intended to meet or beat PG&E's future rates.

6 Apart from rate risk protection for customers, San Francisco's CCA Draft
7 Implementation Plan calls for the program to minimize municipal and ratepayer exposure to
8 energy market risk. The Draft Implementation Plan requires two bonding requirements to
9 cover supplier failure risk. First, the City's supplier is required to post a bond or demonstrate
10 insurance to pay for any costs that might be incurred in returning customers to PG&E service
11 in the event that the supplier cannot perform according to its contract or goes bankrupt,
12 including the difference between spot and regulated rates for customers for a six month
13 period, and any fees PG&E charges for involuntary return of customers. Thus, ratepayers will
14 not be charged for any transaction costs in such a worst-case scenario. Second, the Draft
15 Implementation Plan requires the supplier to obtain a performance bond, letter of credit or
16 other acceptable financial assurance instrument to cover any of its performance failures
17 (including its subcontractors' failures) in the 360 Megawatt construction process, as is done in
18 most major public works projects. This "double bonding" approach protects both the City and
19 its ratepayers against worst-case scenarios in addition to protecting against cost-based rate
20 increases.

21 Section 7 Requirements

22 The City will abide by all requirements applicable to its CCA Program, whether under
23 state or local law or under regulations established by the CPUC, with specific reference to the

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1 CPUC's Phase I and II Community Choice Decisions, D.04-12-046 and D. 0512041 and
2 proceeding R.03-10-003.

3 The San Francisco CCA is committed to meeting or in some cases exceeding any
4 State of California requirements established by the CPUC for Load Serving Entities (LSE's)
5 for Renewable Portfolio Standards (RPS), RAR, and Greenhouse Gas Emissions. During the
6 preliminary phases of the CCA implementation effort, the CCA Program staff will conduct an
7 analysis of all existing law and regulations that would apply to the CCA, in order to ensure that
8 its approach to the implementation and operation of its CCA are conducted in full compliance
9 with all applicable laws.

10 The Board of Supervisors intends to adopt a requirement that the City's chosen power
11 supplier shall demonstrate a reserve requirement consistent with the requirements that apply
12 to all Load Serving Entities (LSE) operating in California, consistent with the January 22, 2004
13 Electric Utility Procurement decision of the CPUC in R.01-10-024 and the December 16, 2004
14 decision of the CPUC in R.04-04-003.

15 In the January 22, 2004 decision, the CPUC (1) directed that each LSE within the
16 utility's service territory has an obligation to acquire sufficient reserves for its customer's load;
17 (2) adopted a reserve margin for LSEs of 15-17%; and (3) directed the LSEs to meet this 15-
18 17% reserve requirement by no later than January 1, 2008, through a gradual phase-in
19 including the establishment of interim benchmarks to become effective in 2005. An adequate
20 demonstration of these levels of resource adequacy shall be included as a bidding
21 requirement in the Request for Proposals ordered by Ordinance 86-04.

22 Ordinance 86-04 requires that a qualifying ESP, not the City or participating ratepayers,
23 shall post a bond or demonstrate insurance to cover the cost of an involuntary return of

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1 participating San Francisco customers to PG&E bundled service. Accordingly, the City will
2 require a satisfactory demonstration of resource adequacy in accordance with adopted CPUC
3 policy.

4 Section 8. Governance of the CCA Program

5 (a) Management and control of the CCA Program will be undertaken by the SFPUC,
6 pursuant to its responsibilities and authority under the Charter.

7 (b) The Board of Supervisors intends to ask the LAFCO to monitor the implementation
8 process and advise the SFPUC and the Board of Supervisors regarding the progress of CCA
9 development and implementation. To the extent the LAFCO agrees, the LAFCO will assist
10 with the startup of the CCA Program and advise the Board of Supervisors, SFPUC and other
11 agencies regarding all aspects of development, implementation, operation and management
12 of the CCA Program, as established by Ordinance 86-04, this Ordinance and any subsequent
13 ordinances. Such advice may address the following:

14 1. Complying with applicable requirements established by the Public Utilities Code,
15 decisions of the CPUC, and the Charter and Municipal Codes, as well as other applicable
16 laws.

17 2. Reviewing the RFI and the RFP as well as responses and proposals received in
18 response to the RFI and RFP.

19 3. Considering potential modifications to the Draft Implementation Plan in light of
20 additional information and further progress in development of the CCA Program.

21 4. Applying for and accepting grants, fees and other allocations from federal, state,
22 and local agencies and private entities that may be available for the advancement or benefit of
23 the CCA Program.

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1 5. Acquiring any real property or property rights necessary or convenient for the
2 development, implementation, operation and management of the CCA Program.

3 6. Issuing revenue bonds or approving other debt necessary to fund elements of the
4 CCA Program.

5 7. Negotiating and contracting with energy suppliers and other entities for services
6 necessary to develop, implement, operate, and manage the CCA Program as described in the
7 IP.

8 8. Recommending for or against acceptance of an RFP respondent's proposed rates
9 for the CCA Program.

10 9. Entering into cooperative or joint development agreements with other public or
11 private entities for any purpose necessary or convenient for the development, implementation,
12 operation, and management of the CCA Program.

13 10. Presenting and promoting the CCA Program to the public, the media, and
14 governmental and regulatory entities.

15 11. Adopting policies and procedures to govern the development, implementation,
16 operation and management of the CCA program, including the following:

17 (A) Measures necessary to protect the confidential data of each customer;

18 (B) Procedures for handling and responding to customer complaints;

19 (C) Financial management protocols;

20 (D) Budgetary requirements;

21 (E) Procedures for reporting to the Board of Supervisors on a regular basis.

22 12. Collection of electrical load data, including, but not limited to data detailing
23 electricity needs and patterns of usage, as determined by the CPUC.

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1 Section 9. Future Steps

2 Before making a final commitment to proceed with offering CCA service to San
3 Francisco customers, the Board of Supervisors will consider projected costs, risks and
4 benefits of this program to CCA customers, SFPUC and other city agencies, and the City's
5 general fund. In addition, the Board of Supervisors must ensure that the provision of CCA
6 service to San Francisco customers can be reasonably expected to deliver significant benefits
7 at a reasonable cost.

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9 APPROVED AS TO FORM:

10 DENNIS J. HERRERA
11 City Attorney

12 By: _____
13 Deputy City Attorney

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