CITY OF
HAYWARD
HEART OF THE BAY

Council Sustainability Committee

January 4, 2012

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CITY OF HAYWARD
HEART OF THE BAY

CITY COUNCIL SUSTAINABILITY COMMITTEE MEETING
Wednesday, January 04, 2012
Conference Room 2A
4:30 PM

CALL TO ORDER

ROLL CALL

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council Committee on items not listed on the agenda. The Committee welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Committee is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

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1. Approval of Minutes of October 5, 2011
   Minutes

2. Presentation of Plaque from PG&E to the City of Hayward regarding the Climate Smart Program
   (Oral Report)

3. Countywide Single-Use Bag Reduction: StopWaste's Proposed Revised Ordinance
   Staff Report
   Attachment 1 Draft Single Use Bag Ban Ordinance

4. Countywide Mandatory Recycling: StopWaste's Proposed Revised Ordinance
   Staff Report
   Attachment 1 Mandatory Recycling Ordinance

5. Climate Action Management Team Update (continuation of July 6 meeting discussion)
   Staff Report

6. Commercial Energy Conservation Innovator Pilot Study
   Staff Report
   Attachment I Summary of Energy Audits, Benchmarking, and Disclosure Policies
   Attachment II Letter from StopWaste.Org dated December 16, 2011

7. CSC Meeting Topics for 2012
   Meeting Topics for 2012

COMMITTEE MEMBER ANNOUNCEMENTS AND REFERRALS

ADJOURNMENT

NEXT REGULAR MEETING – 4:30 PM, WEDNEDAY, APRIL 4, 2012

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website.*

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the Assistant City Manager at (510) 583-4300 or TDD (510) 247-3340.

HAYWARD CITY COUNCIL, 777 B STREET, HAYWARD, CA 94541
HTTP://WWW.HAYWARD-CA.GOV

Showing of a movie entitled "Bag It" regarding single use plastic bags, from 6:30 – 8:00 pm in Room 2A

CITY COUNCIL SUSTAINABILITY COMMITTEE MEETING
Hayward City Hall – Council Chambers
777 B Street, Hayward, CA 94541-5007

October 5, 2011
4:30 p.m.

MEETING MINUTES

CALL TO ORDER: Meeting called to order at 4:39 p.m. by Mayor Sweeney.

ROLL CALL:

Members:
- Michael Sweeney, Mayor
- Olden Henson, Council Member
- Bill Quirk, Council Member (Absent)
- Dianne McDermott, Planning Commissioner (Absent)
- Sara Lamnin, Planning Commissioner
- Al Mendall, Planning Commissioner
- Laura Oliva, Keep Hayward Clean and Green Task Force (Absent)

Staff:
- Kelly Morariu, Assistant City Manager
- David Rizk, Development Services Director
- Erik Pearson, Senior Planner
- Marc McDonald, Sustainability Coordinator
- Bob Bauman, Public Works Director
- Alex Ameri, Deputy Director of Public Works
- Vera Dahle-Lacaze, Solid Waste Manager
- Katy Ramirez, Administrative Secretary (Recorder)

Others:
- Blytha Bowers, Chair, Keep Hayward Clean and Green Task Force

PUBLIC COMMENTS:

Blytha Bowers, Chair, Keep Hayward Clean and Green Task Force, said that she is here on behalf of Laura Oliva, Sustainability Committee Member, to take notes of the meeting.

I. Approval of Minutes of July 6, 2011 - minutes approved.

Mayor Sweeney said there was a request from staff to move agenda item III before the other items on the agenda. There being no objections from the Committee, the meeting moved forward with item III.

III. Mandatory Recycling Provisions: Stopwaste's Proposed Ordinance; City Recycling Programs Update

Bob Bauman, Public Works Director, said that they were originally scheduled to update the Committee on the various recycling programs that are planned. Stopwaste.org is moving forward with two very significant ordinances and, unfortunately, at this time they do not have everything in order. Mr. Bauman noted that the staff report is based on the draft environmental document and not the actual ordinances because the ordinances were just received yesterday, October 4th; however, staff will be highlighting some of the items from of the actual ordinances.

Alex Ameri, Deputy Director of Public Works, provided a PowerPoint presentation and overview of the staff report regarding the Mandatory Recycling Ordinance. Mr. Ameri summarized the proposed State Regulations and Stopwaste.org's Proposed Mandatory Recycling Ordinance. Mr. Ameri noted the timeline for the readings of the Ordinances are scheduled for the November and December Stopwaste.org Board meetings. However, given that staff has not had sufficient time to do a good analysis for the Committee, staff is asking the Committee to consider having a Special Sustainability Committee meeting in November, if needed, to allow City staff to review the Ordinances and bring the item back for review by the Committee.

Mayor Sweeney said that Council Member Henson has an appointment and has to leave the meeting early; therefore, due to the time constraint, he would like to ask the Committee to move forward and provide staff with feedback on this item and on Item 4 of the agenda.

Olden Henson, Council Member, said that staff's approach is reasonable and he will convey the concerns to Stopwaste.org and ask them to scale back on their schedule to allow City of Hayward staff and staff from other jurisdictions an opportunity to speak on the Ordinances and talk with their elected officials.

After a few more comments and questions from the Committee, Mayor Sweeney said that it appears the consensus of the Committee is to have a Special Sustainability Committee meeting in November, if needed, and pending Stopwaste.org's schedule of readings of the Ordinance; the Committee Members responded positively.

IV. Single-Use Bag Reduction Ordinance: Stopwaste.org's Proposed Ordinances

Mr. Ameri provided a PowerPoint presentation and overview of the staff report regarding the Single-Use Bag Reduction Ordinance. Mr. Ameri summarized the plastic bag recycling in current State law, Stopwaste.org's Single-Use Bag Reduction Ordinance proposed options and provisions, the current schedule, and next steps.

There was brief discussion and comments amongst staff and the Committee Members. Mayor Sweeney indicated that it appears that the draft Ordinance still needs a little more

DRAFT

research by staff and clarification on the requirements before it is brought back to the Sustainability Committee for review.

Mayor Sweeney thanked staff for their presentations and overview of the staff reports. He said if there are no objections from the Committee, the remaining items on the agenda will be brought back to the next regular meeting. There being no objections from the Committee, the meeting was adjourned.

II. Climate Action Team (continuation of July 6 meeting discussion) – will be carried over to the next regular meeting of the Sustainability Committee.

COMMITTEE MEMBER ANNOUNCEMENTS AND REFERRALS

None.

ADJOURNMENT: Meeting adjourned at 5:26 p.m.

DRAFT

CITY OF
HAYWARD
HEART OF THE BAY

DATE: January 4, 2012

TO: City Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Single-Use Bag Ban: StopWaste's Proposed Ordinance

RECOMMENDATION

That the Committee reviews this report and recommends approval to City Council that the City participate in the single-use bag ban ordinance proposed by StopWaste.

BACKGROUND

At the October5, 2011 Council Sustainability Committee (CSC) meeting, staff summarized various aspects of StopWaste's Draft EIR (DEIR)[1], which evaluated a countywide single-use bag ordinance. The October 5 report also described current state law requiring large grocery and drug stores to provide reusable bags for purchase and plastic carryout bag recycling bins accessible to consumers. The law will sunset on January 1, 2013, unless extended. The October 5 CSC report[2] summarized the adverse environmental impacts of plastic bags and key provisions of other municipalities' ordinances banning single-use carryout bags, several of which have been challenged by the plastic bag industry. The Final StopWaste EIR was completed in November 2011.[3]

The City of Hayward's adopted Climate Action Plan has policies related to waste reduction, reuse, and recycling. Applicable policies include *Action 6.4 – Ban certain materials from landfill*, and *Action 6.6 – Encourage waste reduction*. These policies are applicable to efforts to reduce the use of plastic bags and other single-use bags. This report summarizes StopWaste's proposed ordinance (Attachment 1), the estimated costs, and proposed timeline for implementation.

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[1] Draft Environmental Impact Report: Mandatory Recycling and Single-Use Bag Reduction Ordinances; August 2011; http://www.stopwaste.org/docs/deir_bags.pdf

[2] City Council Sustainability Committee Report; October 5, 2011; http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2011/CSC-CCSC100511.pdf

[3] Amendment to the Final Environmental Impact Report: Mandatory Recycling and Single-Use Bag Reduction Ordinances, November 2011; http://www.stopwaste.org/docs/final_eir_bags_mandatory.pdf

DISCUSSION

StopWaste's Proposed County-wide *Single-Use Bag Ordinance* – StopWaste's proposed ordinance would regulate the distribution of single-use carryout bags at the point of sale, i.e., at check-out. The proposed ordinance indicates that, after January 1, 2013, retail stores that sell milk, bread, soda, and snack foods would be prohibited from distributing free, single-use carryout paper or plastic bags at checkout. Some examples of businesses that would be subject to the ordinance include supermarkets, grocery stores, convenience food stores, drug stores, pharmacies, and other convenience stores. StopWaste has estimated about 1,900 businesses would be subject to the ordinance. Reusable carryout bags would be allowed if the bags have a minimum volume of fifteen liters, have handles, are machine washable, do not contain lead or any other heavy metals in toxic amounts, and, if made of plastic, are a minimum of 2.25 mils thick. Bags that would comply with the proposed ordinance are currently sold at major supermarkets; this includes, for example, bags made of non-woven polypropylene that appear to resemble canvas. Such reusable bags are sold (for about $1.00 each) at those stores in order to comply with state law.

The ordinance would require a store charge of at least ten cents ($0.10) (the average cost to a retail establishment to provide a paper carryout bag) on each paper bag, which is consistent with the ordinances already adopted by the cities of San José and Santa Monica, Marin County and unincorporated Santa Clara and Los Angeles counties. The retail establishment would be required to list the paper carryout bag on the receipt as a sale. The $0.10 per bag charge will increase to $0.25 per bag on January 1, 2015, unless the Authority Board finds, before that date, the current charge of $0.10 successfully reduced the use of single-use bags.

A minimum charge of $0.10 would also be assessed by the store on each reusable bag sold. A charge for the reusable bags is proposed to: (1) encourage people to use reusable bags for a nominal fee that will establish a value for those bags; and (2) allow people to choose whether to pay the cost of the bag or bring their own bag. The charge for reusable bags will help prevent the shift from thin single-use bags to thicker reusable bags that may still be considered "single-use" by consumers and used only one time. According to San Francisco staff, this shift became one of the unintended consequences of their ordinance and they recommend charging for reusable bags. The affected retail associations, including the California Grocers Association, have indicated acceptance of this provision. StopWaste staff acknowledges that it is difficult to project with accuracy the exact types of behavioral changes that would result from charging for all types of bags. However, Washington, D.C. instituted a charge for paper and single-use plastic bags and reduced its single-use bags by 50-80% after the first month.[4]

Paper bags distributed at the point of sale must contain at least 40% recycled content. Excluded from the ordinance are plastic or paper bags used by customers or the retail establishment to protect or contain meat, fresh produce, food prepared at the establishment, or other goods that must be

[4] Amended Agenda for the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, November 10, 2011;http://www.stopwaste.org/docs/11-10-11-pa-packet.pdf(Report begins on page 15 of the pdf document)

protected from moisture, damage, or contamination, and that are typically placed inside a carryout bag at the point of sale. Restaurants or take-out food establishments that receive revenue primarily from the sale of food, cooked or otherwise, prepared at the establishment would be exempt. Such establishments are excluded because they frequently use bags to hold hot food which may be needed for public safety. In recognition of the potential financial hardship for certain customers, retail establishments may continue to provide recycled content paper bags at no cost for food purchases paid for by the federal grant programs, including Women, Infants and Children Nutrition Program and Supplemental Nutrition Assistance Program. Nonprofit charitable reuse organizations would also be exempt because many already use donated bags for their sales, and their work supports the County's efforts to promote reuse and recycling of donated items.

The ordinance proposes that StopWaste will assume enforcement responsibilities, though the agency is seeking funding assistance from member agencies or the Countywide Stormwater Program to cover on-going costs. Decisions regarding on-going funding will be made later. Estimated costs for outreach, implementation and enforcement of the ordinance countywide total $518,000 and about $200,000 in on-going costs. StopWaste has prepared documents summarizing its estimated costs to comply with the ordinance.[4]

The proposed ordinance has been revised in response to comments received, primarily from jurisdictions within Alameda County. The ordinance has been discussed at meetings of the Waste Management Authority (WMA) and the Recycling Board held in November and December. The public hearing for the draft ordinance and the DEIR was conducted at the November 16, 2011 WMA Board meeting. Approval of the DEIR and first reading of the ordinance occurred during the December 14 WMA Board meeting. The second reading is scheduled for the January 25, 2012 WMA Board meeting. The ordinance would become effective 30 days after the ordinance is approved.

Jurisdictions may choose not to participate in the ordinance by March 2, 2012. The California Grocers' Association supports the proposed ordinance because StopWaste staff has met with Association representatives to discuss the ordinance's provisions, which are similar to the ordinances adopted by San José, Los Angeles County, Santa Monica, Long Beach, and Santa Clara County. Association representatives spoke at the November 16 public hearing to confirm their support for the ordinance and to indicate their support for similar ordinances adopted by the municipalities listed. At this time, staff has confirmed with the cities of Fremont, Oakland,and San Leandro that each will participate in this ordinance.

No significant environmental impacts were identified in the DEIR. However, the Save the Plastic Bag Coalition, a group of plastic bag manufacturers and distributors, has indicated in its written comments on the DEIR the intent to litigate if the ordinance is approved, because the report does not acknowledge that the ordinance would result in a substantial increase in the use of single-use paper bags after the ordinance becomes effective. The report indicates that no documented study illustrating such an increase was identified and that the amount of any such increase is not known. The report proposes that Alameda County residents would change behavior quickly with sufficient information about the superiority of reusable bags and the adverse impacts of single use bags, combined with a store charge.

FISCAL AND ECONOMIC IMPACTS

The economic impacts to customers as a result of a potential single-use carryout bag ordinance include: (1) the additional store charge required for paper and reusable bags in order to deter requests for paper and encourage use of reusable bags; and (2) the additional costs to purchase reusable bags.

Staff will submit a report to the City Council in February summarizing the ordinance's provisions and citing the jurisdictions that will participate. Fiscal impacts to the City would include staff costs to convene meetings with stakeholders, and to prepare and disseminate informational literature describing the ordinance. The ordinance would help the City meet storm water permit requirements to reduce trash in storm drains and creeks. Solid Waste Program staff would be responsible for implementing the ordinance using available Recycling Fund monies. No impact to the General Fund is anticipated.

PUBLIC CONTACT

StopWaste solicited comments regarding the ordinance from a variety of groups, including the Alameda County City Managers' Association, the Chambers of Commerce, the Mayor's Conference participants, organizations representing large businesses and municipal technical staff. Staff recommends convening a community meeting in June for businesses to allow owners to discuss questions regarding the ordinance's provisions. Staff will continue to coordinate outreach efforts with the Chamber of Commerce and include information on the City's website in the 'News and Announcements' with additional information under the link to the Public Works Department.

Also, City staff will meet with StopWaste to review the outreach plans and to confirm the various language translations required for the informational literature that will be disseminated by StopWaste. City staff will supplement the outreach efforts through brief presentations to the Latino Business Roundtable, for example, similar to previous presentations during which staff summarized the business recycling services available under the City's contract with Waste Management of Alameda County.

SCHEDULE

Submit Report to the City Council for Approval of Ordinance	February 2012
Effective Date of the Ordinance	March 2012
Initiate Outreach to Affected Businesses	May 2012
Convene Meeting with Businesses and Business Groups, e.g. Chamber of Commerce to Discuss the Ordinance's Provisions	June 2012

Prepared by: Alex Ameri, Deputy Director of Public Works

Recommended by: Robert A. Bauman, Director of Public Works

Approved by:

_____

Fran David, City Manager

Attachments:

Attachment I: Single-Use Bag Reduction Ordinance

ORDINANCE 2012-___

AN ORDINANCE TO REGULATE THE USE OF CARRYOUT BAGS AND PROMOTE THE USE OF REUSABLE BAGS

The Board of the Alameda County Waste Management Authority ("Authority") ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section 11.

SECTION 2 (Findings)

(a) The purpose of this Ordinance is to reduce the use of single use carryout bags and promote the use of reusable bags at the point of sale in Alameda County.

(b) The Authority has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management ("JPA"). The JPA grants the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan ("CoIWMP"), and pursuant to Section 5.m of the CoIWMP, the power to adopt ordinances necessary to carry out the purposes of the JPA.

(c) Reducing single use bag use is reasonably necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and policies.

(d) Goal 1 of the CoIWMP is to promote environmental quality, ensure protection of public health and safety, and to minimize environmental impacts in all aspects of solid waste management. Policy 1.4.1 includes reduction of hard to recycle materials.

(e) Goal 2 of the CoIWMP calls on the Authority and its member agencies to "achieve maximum feasible waste reduction" and to "reduce the amount of waste disposed at landfills through improved management and conservation of resources."

(f) Policy 2.1.1 adopts a waste management hierarchy that ranks management of waste through source reduction and then recycling and composting above landfill disposal.

(g) Goal 7 of the CoIMWP is to "Promote Inter-jurisdictional Cooperation." Policy 7.1.3 states that the Authority shall coordinate with other organizations as needed to fulfill its countywide role including coordinating on related issues such as water and litter. Objective 7.8 states that the Authority will coordinate and facilitate program implementation by individual or subregional groupings of member agencies.

(h) Numerous studies have documented the prevalence of plastic carry-out bags littering the environment, blocking storm drains and fouling beaches.

(i) Plastic bags are a substantial source of marine debris.

(j) Plastic bags cause operational problems at County landfills and transfer stations and contribute to litter countywide.

(k) The Authority has participated in a campaign with The Bay Area Recycling Outreach Coalition to promote reusable bags countywide for several years. Despite these efforts, plastic bags comprise 9.6% of litter collected during coastal cleanup days (based on 2008 data) in Alameda County. Additionally, plastic bags continue to cause processing equipment problems at County transfer stations.

(l) There are several alternatives to single-use carry-out bags readily available.

(m) Studies document that banning single use plastic bags and charging for single use paper bags will dramatically reduce the single use of both types of bags.

(n) The Authority prepared~~, considered, and certified~~ the Mandatory Recycling and Single Use Bag Reduction Ordinances Environmental Impact Report, which considered two separate projects and included the environmental review required by the California Environmental Quality Act for this Ordinance. The Authority certified those portions of the EIR relevant to this Ordinance.

SECTION 3 (Definitions)

The definitions set forth in this Section shall govern the application and interpretation of this ordinance.

(a) "Alameda County" means all of the territory located within the incorporated and unincorporated areas of Alameda County.

(b) "Authority" means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).

(c) "Authority Representative" means any agent of the Authority designated by the Enforcement Official to implement this Ordinance, including Member Agency employees, or private contractors hired for purposes of monitoring and enforcement.

(d) "Covered Jurisdiction" means a Member Agency of the JPA that has not opted out of coverage under this Ordinance pursuant to Section 9 of this Ordinance.

(e) "Customer" means any Person obtaining goods from a Store.

(f) "Enforcement Official" means the Executive Director of the Authority or his or her authorized designee.

(g) "Executive Director" means the individual appointed by the Authority Board to

act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.

(h) "Member Agency" means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas ~~of each Member Agency~~ for the purpose of Section 9 of this Ordinance are:

(1) The legal boundaries of ~~each of~~ the Castro Valley ~~and Oro Loma~~ Sanitary District~~s~~ .

(2) The legal boundaries of each of the 14 incorporated municipalities within Alameda County., ~~except those portions of the Cities of Hayward and San Leandro that are within the boundaries of the Oro Loma Sanitary District.~~

(3) The unincorporated sections of the County not included within the above.

(i) “Nonprofit Charitable Reuse Organization" means a charitable organization recognized as having Section 501 (c)(3) status by the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

(j) “Person” means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.

(k) “Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(l) “Primary Enforcement Representative” is the chief executive of a Covered Jurisdiction or a qualified designee who will coordinate with the Authority regarding implementation of the Ordinance. A qualified designee shall have at least two years of municipal code enforcement experience or have undergone at least the level one municipal code compliance training program of the California Association of Code Enforcement Officers, or equivalent training program approved by the Enforcement Official.

(m) “Public Eating Establishment” means a restaurant, take-out food establishment or other business that receives 90% or more of its revenue from the sale of foods and/or drinks prepared on the premises.

(n) "Recycled Paper Bag” means a paper bag provided by a Store to a Customer at the check stand, cash register, point of sale, or other location for the purpose of

transporting food or merchandise out of the Store and that contains no old growth fiber and a minimum of forty percent (40%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words “Recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.

(o) "Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: 1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; 2) has a minimum volume of 15 liters; 3) is machine washable or is made from a material that can be cleaned or disinfected; 4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; 5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and 6) if made of plastic, is a minimum of at least 2.25 mils thick.

(p) “Single-Use Carryout Bag” means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store. Single-Use Carryout Bags do not include bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale, (ii) to hold prescription medication dispensed from a pharmacy, or (iii) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.

(q) "Store" means any of the following stores located within Covered Jurisdictions:

(1) A full-line, self-service retail store with gross annual sales of two million dollars ($2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;

(2) A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or

(3) A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage

Control.

SECTION 4 (Carryout Bag Restrictions)

(a) No Store shall provide a Single-Use Carryout Bag or Reusable Bag to a Customer at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store after January 1, 2013 except as provided in this Section.

(b) On or before January 1, 2015, a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of ten cents ($0.10).

(c) On or after January 1, 2015, a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of twenty-five cents ($0.25). This restriction, however, shall not apply if the Authority finds, after January 1, 2014, that the Ordinance has achieved its goal to substantially reduce the environmental impacts of the use of Single Use Carryout Bags, in which case the minimum ten cents ($0.10) per bag price provided in Section 4(b) shall apply.

(d) No Store may make available for sale a Recycled Paper Bag or Reusable Bag unless the amount of the sale of the Recycled Paper Bag and Reusable Bag is separately itemized on the sales receipt.

(e) A Store may provide a Reusable Bag at no charge if it is distributed as part of an infrequent and limited time promotion. An infrequent and limited time promotion shall not exceed a total of 90 days in any consecutive 12 month period.

(f) A Store may provide free Reusable Bags or free Recycled Paper Bags at the point of sale to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, as necessary to carry the items purchased at the Store by each such Customer.

SECTION 5 (Permitted Bags)

Nothing in this Ordinance prohibits Customers from using bags of any type that they bring to the Store themselves or from carrying away goods that are not placed in a bag.

SECTION 6 (Exemptions)

This Ordinance does not apply to:

(a) Single-Use Carryout Bags or Reusable Bags distributed to Customers by food providers for the purpose of safeguarding public health and safety during the

transportation of take-out foods and drinks prepared on the food provider's premises but intended for consumption at or away from the food provider's premises.

(b) Single-Use Carryout Bags or Reusable Bags used by Public Eating Establishments or Nonprofit Charitable Reuse Organizations

SECTION 7 (Recordkeeping and Inspection**)**

(a) Every Store shall keep complete and accurate records of the number of Recycled Paper Bags and the number of Reusable Bags purchased and sold each month at the Store during the period commencing July 1, 2012 and ending December 31, 2013. The store shall also keep complete and accurate records of the days on which free Reusable Bags are distributed pursuant to section 4(e) of this Ordinance. All records required by this Ordinance shall be available for inspection within 7 days of the Authority's request at no cost to the Authority during regular business hours by any Authority Representative authorized to enforce this Ordinance. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store address.

(b) The provision of false information including incomplete records or documents to the Authority shall be a violation of this Ordinance.

(c) Authority Representatives are authorized to conduct any other inspections reasonably necessary to further the goals of this Ordinance, subject to applicable laws.

SECTION 8 (Enforcement and Phasing)

(a) An enforcement action shall not be taken in any Covered Jurisdiction without written approval from the Primary Enforcement Representative of that Covered Jurisdiction. The Primary Enforcement Representative shall provide approval or disapproval of a proposed enforcement action in a timely manner.

(b) Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. Where an enforcement action is necessary to enforce this Ordinance, the Enforcement Official will typically issue a notice of violation as authorized in this subsection prior to taking the actions authorized pursuant to sections 8(c) or 8(d) of this Ordinance. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed for misdemeanors in Section 8(d) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine must be paid within 30 days of the notice of violation and must be deposited prior to any requested hearing. A hearing, by an external hearing officer, will be held only if it is requested within 30 days of the notice of

violation. Evidence may be presented at the hearing. If it is determined that no violation occurred, the amount of the fine shall be refunded within 30 days. The Authority shall serve the final order on the Person subject to the notice of violation by first class, overnight or certified mail.

(c) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.

(d) Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed $500 for the first violation, a fine not to exceed $750 for the second violation within one year and a fine not to exceed $1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed $100 for the first violation, a fine not to exceed $200 for the second violation within one year and a fine not to exceed $500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.

(e) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Executive Director, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance.

(f) Enforcement of this ordinance shall be phased on the following schedule. Prior to January 1, 2013, Stores will be notified and public education and outreach activities will take place. Warnings and enforcement actions will be taken as needed after January 1, 2013.

SECTION 9 (Local Regulation and Opt-Out and Opt-In Provisions)

(a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the distribution of Single-Use Carryout Bags and Reusable Bags, including more stringent requirements than those in this Ordinance.

(b) Opt-Out Provision. Any Member Agency by a resolution of its governing body prior to March 2, 2012 may choose to exclude its service area from this Ordinance.

(c) Opt-In Provision. Any Member Agency that chooses to exclude its service area may request of the Authority by a resolution of its governing board to be re-included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.

(d) Dispute Resolution. In the event of a dispute between the Authority and a Covered Jurisdiction regarding the implementation of this Ordinance, either party may request a meeting, in which case the Enforcement Official and the Primary

Enforcement Representative for the Covered Jurisdiction (or other designee of the chief executive of the Covered Jurisdiction) shall meet to discuss implementation of the Ordinance. After such meeting, the parties may agree to enter into mediation to resolve any disputes between the parties related to implementation of the Ordinance. In addition, after meeting to seek to resolve any disputes between the parties and possible mediation, the Authority Board or the governing body of the Covered Jurisdiction, with at least 30 days public notice, may by resolution choose to exclude the service area of the Covered Jurisdiction from this Ordinance.

SECTION 10 (Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 11 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2012-___

_____
GARY WOLFF
EXECUTIVE DIRECTOR

CITY OF
HAYWARD
HEART OF THE BAY

DATE: January 4, 2012

TO: City Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Mandatory Recycling Provisions: StopWaste's Proposed Ordinance

RECOMMENDATION

That the Committee reviews this report and recommends approval to City Council that the City participate in Phase 1 of the mandatory recycling ordinance proposed by StopWaste.

BACKGROUND

At the October 5, 2011 Council Sustainability Committee (CSC) meeting, staff summarized various aspects of StopWaste's Draft EIR (DEIR)[1],whichevaluated a countywide mandatory recycling ordinance. The October 5 report also described proposed state legislation regarding mandatory recycling provisions for businesses and multi-family dwellings. The Final EIR, including changes associated with air quality impact mitigations,was completed in November 2011.[2]

This staff report summarizes:

- State legislation (AB 341) relative to mandatory recycling, which was approved by the Governor in early October; and
- StopWaste's proposed ordinance, the estimated costs and proposed timeline for implementation.

The City of Hayward's adopted Climate Action Plan has policies related to waste reduction and recycling for each of the topics addressed in this report. Applicable policies include:

- *Action 6.1 – Increase participation in the recycling services offered businesses through the City's contract with its franchisee;*
- *Action 6.2 – Increase participation in the recycling services offered single-family homes through the City's contract with its franchisee;*

[1] Draft Environmental Impact Report: Mandatory Recycling and Single Use Bag Reduction Ordinances, August 2011; http://www.stopwaste.org/docs/deir_bags.pdf

[2] Final Environmental Impact Report: Mandatory Recycling and Single Use Bag Reduction Ordinances, November 2011; http://www.stopwaste.org/docs/final_eir_bags_mandatory.pdf

- *Action 6.5 – Evaluate the viability of requiring that residents and/or businesses participate in the recycling programs offered through the City's franchisee;*
- *Action 6.6 – Develop a program that encourages overall reduction of solid waste in residential and commercial sectors. This would include increasing participation in recycling services at multi-family properties and to eventually make recycling by commercial businesses mandatory.*

DISCUSSION

Mandatory Recycling Ordinance: Approved State Legislation–AB 341 (Jobs & Recycling – Chesbro), which was signed into law by the Governor, requires businesses generating four cubic-yards or more of trash each week to arrange for recycling services by July 2012. All owners of multi-family complexes are similarly required to arrange for recycling services.In lieu of separate collection of recyclables, businesses and multi-family complexes may arrange for collection of their garbage to be sorted for recycling at a mixed waste processing facility. Other elements of the legislation include outreach to businesses to educate them about the law and notification to non-compliant businesses. Specific materials targeted for collection are left to the jurisdiction to determine, as is enforcement.

Staff estimates about 55% of all businesses currently participate in the mixed recyclables and/or organics collection programs, and about 50% of all multi-family dwelling units have access tomixed recyclables collection service. Businesses that have declined to participate cite as reasons the limited time available for staff to source separate their recyclables; businesses and multi-family property managers also cite space constraints and scavengers who leave uncollected materials outside the containers.

Mandatory Recycling Ordinance: StopWaste's Proposed Countywide Ordinance–StopWaste's proposed ordinance (Attachment 1) is broader than the State legislation in that it specifies which materials are targeted for collection, establishes compliance provisions for regulated haulers, transfer stations and landfills and includes enforcement protocols. Following is a summary of those provisions:

- Effective July 1, 2012 (Phase 1): Businesseswith four cubic-yards or more of weekly garbage collection service and all multi-family property owners would be required to have recycling services. All self-haulers would also be required to comply. Recyclablestargeted for collection would include a variety of paper types, as well as food and beverage containers made of glass, metal and plastic.

- Effective July 1, 2014 (Phase 2): All businesses and multi-family owners would be required to have recycling service regardless of the garbage service level. Materials required for collection would include all of the above-listed recyclables, as well as food and compostable paper.

Required informational materials would be disseminated by haulers or franchisees under contract with participating jurisdictions. StopWaste staff has indicated that its focus over the next several years will be to educate businesses about the ordinance, rather than to assess fines and penalties. Inspections at businesses would be performed by ACWMA staff, its agents or staff from

participating jurisdictions. Enforcement will similarly be performed by the same designated staff. Notices of violation may only be issued beginning January 2013, and only after a warning has been issued and assistance to implement a recycling program has been offered. In addition, such notices may only be issued by ACWMA with written approval by staff fromparticipating jurisdictions. Waivers may be issued for, among other reasons: space constraints; to allow more time to comply; or if only minimal amounts of the targeted recyclables are generated. Transfer stations and landfills would also be required to develop and submit compliance plans to StopWaste describing their efforts to keep recyclables and compostables separate from garbage. Multi-family property owners are required to have the service, but compliance will not be enforced by StopWastedue to the number of residences countywide.

StopWaste has proposed a countywide ordinance to achieve the goal already approved by the Waste Management Authority Board to landfill no more than 10% by weight of all solid waste generated in Alameda County by 2020. The materials targeted for collection beginning in July 2012 are generally higher-value commodities, whereas food scraps and food-soiled paper have alowervalue. Establishing a later date for food scraps collection is useful to allow collection and processing systems for organic materials to mature and because there are no permitted composting facilities located in Alameda County.

StopWaste has prepared documents evaluating the economic impacts to comply with the ordinance (see Attachments E, F and G listed at the end of the November 3, 2011 Report titled 'Mandatory Recycling Ordinance').[3] StopWaste also estimates its expenses for outreach, implementation and enforcement of the ordinance countywide to be $1,005,000 in FY2012-2013, increasing to $1,470,000 in FY2014-2015, due to the addition of organics collection and requirements for all businesses to comply (see Attachment H to the November 3 report).[2] To reduce projected expenses, StopWaste has offered a possible option whereby smaller businesses would not be required to comply with the ordinance because their total waste disposed comprises about 20% of the commercial waste generated countywide but represents about 13,000 additional accounts to monitor.

Jurisdictions may choose not to participate in Phase 1 of the ordinance by March 2, 2012, and by January 1, 2014 for Phase 2. Jurisdictions may also alter the implementation schedule on behalf of businesses or property owners to request more time to implement a compliant program.

City staff recommends participation in Phase I and returning to the Committee in October 2013 with its evaluation of compliance and a recommendation regarding participation in Phase 2. At this time, staff has confirmed with the cities of Fremont, Oakland and San Leandro that each will participate in Phase 1 of the ordinance.

The proposed ordinance has been revised in response to comments received from jurisdictions, franchised haulers and operators of transfer stations and landfills. The ordinance has been discussed at meetings of the WMA and the Recycling Board held in November and December.The public hearing for the draft ordinance and the EIR was conducted at the

[3]Agenda of the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, November 10, 2011; http://www.stopwaste.org/docs/11-10-11-pa-packet.pdf(see page 15 of 22 of the pdf document)

November 16, 2011 Waste Management Authority Board meeting.Approval of the DEIR and first reading of the mandatory recycling ordinance occurred at the December 14 WMA Board meeting. The second reading is scheduled for theJanuary 25, 2012 WMA Board meeting.

ECONOMIC IMPACT

The City's Franchise Agreement with Waste Management of Alameda County (WMAC) establishes provisions for a rate increase due to enactment of new laws during the term of the contract. City staff has met with WMAC representatives to discuss the ordinance's provisions and to determine preliminarily what sort of a rate increase might be warranted to compensate WMAC for the additional costs to comply with the ordinance. WMAC has only recently looked at what those costs might be, and while it has not identified specifically at this time what those costs may be, it has indicated there will be some added costs. However, staff's preliminary estimate is that the added cost would be in a range of low, single-digit percentage increases. City staff will continue to meet with WMAC to evaluate their added costs. Staff will submit a report to the City Council in February summarizing the ordinance's provisions, citing the amount of the rate increase and listing all of the jurisdictions that will participate in Phase 1.

FISCAL IMPACT

The City's Solid Waste Program staff will work with StopWaste to coordinate implementation and enforcement of the ordinance. These costs are not anticipated to be extensive beyond normal program requirements, and Recycling Fund monies will be used to fund these activities; there will be no impact to the General Fund.

PUBLIC CONTACT

StopWaste solicited comments regarding the ordinance from a variety of groups, including the Alameda County City Managers' Association, the Chambers of Commerce, the Mayor's Conference, franchised haulers, organizations representing large businesses, and municipal technical staff. Staff recommends convening a community meeting sometime in the spring of 2012 to allow business owners an opportunity to discuss questions regarding the ordinance's provisions and to emphasize the focus on assistance to implement effective recycling programs. Staff will continue to coordinate outreach efforts with the Chamber of Commerce and include information on the City's website.

Staff will convene a meeting with WMAC and Tri-CED in February 2012 to prepare a timeline that will be used to contact the property owners of multi-family complexes who have declined in the past to participate in the recycling service, but who would be required to participate as part of the proposed StopWaste ordinance. Staff will also invite the Rental Housing Association to this meeting.The lists generated at this meeting will be used to schedule on-site evaluations to identify appropriate locations for the outdoor carts provided by Tri-CED, to answer questions posed by managers or owners and to schedule presentations to residents.

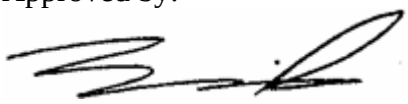
SCHEDULE

Submit Report to the City Council for Approval of Ordinance	February 2012
Initiate Outreach to Property Owners/Managers of Multi-Family Complexes who have Declined the Service	March 2012
Convene Meeting with Businesses to Discuss the Ordinance's Provisionsand Costs	Spring 2012
Effective Date of Phase 1 of the Ordinance	July 1, 2012
Submit Status Report to the Committee regarding Phase I Compliance and a Recommendation regarding Phase 2 Participation	October 2013

Prepared by: Alex Ameri, Deputy Director of Public Works

Recommended by: Robert A. Bauman, Director of Public Works

Approved by:



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Fran David, City Manager

Attachment:

Attachment I: Mandatory Recycling Ordinance

ORDINANCE 2012-__

AN ORDINANCE REQUIRING ACTIONS TO REDUCE LANDFILLING OF RECYCLABLE AND ORGANIC SOLID WASTES FROM BUSINESSES, MULTI-FAMILY RESIDENCES, AND SELF HAULERS

The Board of the Alameda County Waste Management Authority ("Authority") ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section 15.

SECTION 2 (Findings)

(a) The purpose of this Ordinance is to reduce the amount of recyclable and organic solid wastes deposited in landfills from businesses, multi-family residences, and self haulers.

(b) The Authority has the power to adopt ordinances necessary to carry out the purposes of the Joint Exercise of Powers Agreement for Waste Management ("JPA"). The JPA provides the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan ("CoIWMP"), and Section 5.m of the JPA specifically enumerates the power to adopt ordinances necessary to carry out the purposes of the JPA.

(c) The prohibition of certain recyclable and compostable materials at Alameda County landfills is necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and policies. Goal 2 of the CoIWMP calls on the Authority and its member agencies to "achieve maximum feasible waste reduction" and to "reduce the amount of waste disposed at landfills through improved management and conservation of resources." Objective 2.1 is to "achieve countywide waste reduction of 75 percent by 2010." Objective 2.4 is to reduce the amount of readily recyclable and compostable materials originating in Alameda County and deposited in landfills to no more than 10% of total materials originating in Alameda County and landfilled by 2020.

(d) The State of California through its Integrated Waste Management Act of 1989, Assembly Bill 939 (AB 939), required that each local jurisdiction significantly increase its diversion of discarded materials from landfills to 50% by December 31, 2000, and thereafter maintain or exceed that diversion rate.

(e) The Waste Reduction and Recycling Act of 1990 (Measure D), a charter amendment passed by the voters of Alameda County, established the Alameda County Source Reduction and Recycling Board and the policy goal of reducing

the total tonnage of landfilled materials generated in Alameda County by 75% by a date to be chosen by the Recycling Board and to thereafter establish a date (or dates) to reduce, recycle, and compost further quantities of discarded materials. In 2003, the Recycling Board and Authority approved 2010 as the date by which 75% diversion was to be obtained. In July 2010 the Recycling Board and Authority approved a year 2020 objective to reduce the amount of readily recyclable and compostable materials originating in Alameda County and deposited in landfills to no more than 10% of total materials originating in Alameda County and landfilled.

(f) The California Department of Resources Recycling and Recovery was developing a mandatory commercial and multifamily recycling regulation as part of implementing statewide efforts to reduce greenhouse gas (GHG) emissions pursuant to AB 32. The steps required to supply recycled materials to industry (i.e., collection, processing and transportation) use less energy than the steps to supply virgin materials (i.e., extraction, refining, processing, and transportation). These energy savings reduce GHG emissions.

(g) The use of composted organics (plant debris, food and compostable paper) reduces the need for chemical fertilizers and pesticides, which are energy intensive to manufacture and transport. The use of compost also conserves water in landscapes, and can help mitigate the decline in soil quality in California and Alameda County expected to result from climate change.

(h) The State of California has adopted legislation (AB 341) that requires multi-family property owners and businesses that generate more than 4 cubic yards of solid waste service per week to provide recycling collection service unless physical space to do so does not exist.

(i) The Countywide Waste Characterization Study conducted in 2008 found that about 60% of solid waste originating in Alameda County and disposed in landfills was readily recyclable or compostable. Significant quantities of recyclable and compostable materials continue to be landfilled (around 700,000 tons in 2008). Recycling or composting this material will aid the Cities in Alameda County and the County in achieving the GHG reduction goals contained within their Climate Action Plans, create jobs at processing facilities, and implement the CoIWMP, AB 939, AB 32, and Measure D.

(j) There are permitted facilities available that can effectively recycle cans, bottles and all recyclable paper grades discarded in Alameda County, or compost food and food-soiled paper, thereby achieving the goals and objectives cited above. Facilities that can also extract energy from organic waste through anaerobic digestion prior to composting are being developed or investigated by numerous parties.

(k) The Authority prepared~~, considered, and certified~~ the Mandatory Recycling and Single Use Bag Reduction Ordinances Environmental Impact Report, which

considered two separate projects and included the environmental review required by the California Environmental Quality Act for this Ordinance. The Authority certified those portions of the EIR relevant to this Ordinance.

SECTION 3 (Definitions)

The following definitions govern the use of terms in this Ordinance:

(a) "Alameda County" means all of the territory located within the incorporated and unincorporated areas of Alameda County.

(b) "Authority" means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).

(c) "Authority Representative" means any agent of the Authority designated by the Authority or the Enforcement Official to implement this Ordinance, including Member Agency employees, the County Local Enforcement Agency or private contractors hired for purposes of monitoring and enforcement.

(d) "Business" means any commercial or public entity, including but not limited to: proprietorship, firm, partnership, association, venture, trust, or corporation that is organized as a for-profit or nonprofit entity. Business includes, but is not limited to, industrial or manufacturing, restaurant, retail, office, hotels, shopping centers, theaters and government entities, but for purposes of this Ordinance, does not include Multi-Family Buildings.

(e) "Compliance Plan" means the plan required pursuant to Section 7 of this Ordinance.

(f) "Composting" means the controlled biological decomposition of organic Solid Waste that is kept separate from the Refuse stream, or that is separated at a centralized facility.

(g) "Covered Jurisdiction" means a Member Agency of the JPA that has not opted out of coverage under this Ordinance pursuant to Section 12 of this Ordinance.

(h) "Covered Material" means corrugated cardboard, newspaper, white paper, mixed recyclable paper, recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE (high density polyethylene) bottles and PET (polyethylene ter~~ea~~phthalate) bottles~~food and beverage containers~~, and discarded food and compostable paper, that are Recyclable. Per the definition of Recyclables in Section 3(u) of this Ordinance, unmarketable processing residuals are not Covered Materials. A particular Covered Material becomes subject to this Ordinance pursuant to the Implementation Schedule in Section 13 of this Ordinance.

(i) "Deposit in Landfill(s)" or "Deposited in Landfill(s)" means final deposition of Solid Waste, in landfills permitted by the State of California, above liners (or

above the permitted base of the landfill if a liner is not required) and below final cover within the permitted fill area. Any Solid Waste used to create a foundation layer for final cover in excess of three (3) feet on average shall be considered "Deposited in Landfill(s)" unless a greater thickness of foundation layer is specifically required by the Regional Water Quality Control Board.

(j) "Enforcement Official" means the Executive Director of the Authority or his or her authorized designee.

(k) "Executive Director" means the individual appointed by the Authority Board to act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.

(l) "High Diversion Mixed Waste Processing Facility" is a Mixed Waste Processing Facility that: (i) Recycles Covered Materials except as provided in Subsection (l)(ii) of this Section; (ii) results in Solid Waste Deposited in Landfills containing no more than ten percent (10%) by weight of the Covered Materials from Solid Waste Originating in Alameda County Covered Jurisdictions from collection locations that do not have Source Separated Recycling service; and (iii) has complied with Section 8(g) of this Ordinance.

(m) "Landfill" means a state and locally permitted facility in California that accepts Solid Waste for burial.

(n) "Member Agency" means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas of each Member Agency for the purpose of Section 12 of this Ordinance are:

(1) The legal boundaries of each of the Castro Valley and Oro Loma Sanitary Districts

(2) The legal boundaries of each of the 14 incorporated municipalities within Alameda County, except those portions of the Cities of Hayward and San Leandro that are within the boundaries of the Oro Loma Sanitary District.

(3) The unincorporated sections of the County not included within the above.

(o) "Mixed Waste Processing Facility" means a processing facility that separates Covered Materials from Solid Waste.

(p) "Multi-Family Building" means a structure with five or more residential dwelling units.

(q) "Operator" means a Person that has received approval from the State of California and local government agencies with applicable land use authority or health regulatory authority to operate a Landfill or Transfer Station.

(r) "Person" includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(s) "Primary Enforcement Representative" is the chief executive of a Covered Jurisdiction or a qualified designee who will coordinate with the Authority regarding implementation of the Ordinance. A qualified designee shall have at least two years of municipal code enforcement experience or have undergone at least the level one municipal code compliance training program of the California Association of Code Enforcement Officers, or equivalent training program approved by the Enforcement Official.

(t) "Property Owner" means the Person or Persons that hold title to a property as shown on the most recent assessment roll.

(u) "Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting Solid Wastes and returning them to the economic mainstream in the form of raw materials that can be sold in competitive markets and satisfy all applicable Federal, State and local standards for such materials. Recycling includes Composting so long as the compost or soil amendment created by Composting can be sold in competitive markets and satisfies all applicable Federal, State and local standards for such materials. "Recyclables" are materials than can undergo Recycling. A "Recycled" material is one that has undergone Recycling.

(v) "Refuse" means Solid Waste that is neither Covered Materials, nor Recyclable materials that are acceptable to a Member Agency for co-placement in containers for Covered Materials within its service area.

(w) "Regulated Hauler" means a Person that collects Solid Waste (other than Solid Waste generated by a permitted building project) originating in Alameda County for Deposit in Landfill(s) or Recycling facilities and does so under a contract, franchise agreement or permit with a Covered Jurisdiction or the Authority.

(x) "Self Hauler" means a Person who delivers Solid Waste to a Landfill or a Transfer Station, but is not a Regulated Hauler or a Transfer Station Operator.

(y) "Solid Waste" means all materials of any kind or nature as defined in Public Resources Code section 40191.

(z) "Solid Waste Originating in Alameda County" means all Solid Waste discarded within Alameda County unless it was brought into the County for Recycling. To have "originated" within a particular jurisdiction means the Solid Waste was

discarded in that jurisdiction unless it was brought into that jurisdiction for Recycling.

(aa) "Source Separated" means to have undergone the process of ~~Waste Generators~~ removing Recyclable materials from other Solid Waste, by or for the Waste Generator on the premises at which the Recyclable materials were generated, for the purpose of Recycling.

(bb) "Transfer Station" means a facility~~ies~~ in California that is~~are~~ permitted by the State of California as a transfer station~~s~~ and considered as a transfer station~~s~~ under 14 Code of Regulations section 17402, or as that section may be amended.

(cc) "Waste Generator" means a Person who produces Solid Waste.

SECTION 4 (Restrictions on Waste Generators in Covered Jurisdictions)

(a) Businesses that are Waste Generators in Covered Jurisdictions shall not discard Covered Materials such that they will be Deposited in Landfill(s). They shall comply with this requirement by either: (i) separating Covered Materials from other Solid Wastes for collection in separate Recycling containers, or (ii) providing for all Solid Waste to be taken to and processed through a High Diversion Mixed Waste Processing Facility.

(b) Businesses that are Waste Generators in Covered Jurisdictions shall not place Refuse in containers designated for Covered Materials.

(c) Waivers of these restrictions may apply pursuant to Section 10 of this Ordinance.

(d) These restrictions are implemented in phases pursuant to Section 13 of this Ordinance.

SECTION 5 (Restrictions on Property Owners and their Agents in Covered Jurisdictions)

Each Property Owner of a Business or Multi-Family Building shall be responsible for the following:

(a) Provide container(s) for Source Separated Covered Materials and other Source Separated Recyclable materials at the same location as the Property Owner provides container(s) for Solid Waste collection, unless all Solid Waste from the property is taken to and processed through a High Diversion Mixed Waste Processing Facility. The container(s) shall:

(1) Be of sufficient number and size to hold the Recyclable and Refuse quantities reasonably anticipated to be generated at the location;

(2) Bear prominent signage on or near the containers clearly describing the proper segregation and storage of Recyclable and Refuse materials.

(b) Provide for Solid Waste removal service that ensures that Source Separated Covered Materials generated at its property are collected and transported to facilities that Recycle the Covered Materials or that all Solid Wastes are taken to and processed through High Diversion Mixed Waste Processing Facilities.

(c) Provide information at least annually for tenants, employees and contractors of Waste Generator obligations under this Ordinance (if any) to keep Covered Materials separate from Refuse (when applicable) and the location of containers and the rules governing their use at each property. This same information shall also be provided to new tenants no later than 14 days after such tenants move in and no less than 14 days before tenants move out, unless a tenant does not provide 14 or more days notice to the Property Owner before leaving.

(d) Notwithstanding the foregoing, if a Property Owner enters into a written agreement with another party (such as a property manager, tenant, or other party that contracts for Solid Waste removal), to manage or obtain Solid Waste collection services, then that party as well as the Property Owner shall be responsible for compliance with this Ordinance.

(e) Waivers of these restrictions may apply pursuant to Section 10 of this Ordinance.

(f) These restrictions are implemented in phases pursuant to Section 13 of this Ordinance.

SECTION 6 (Restrictions on Self Haulers of Solid Waste originating in Alameda County)

(a) No Self Hauler shall Deposit in Landfill(s) Covered Materials originating from within Alameda County or deliver such materials to Landfills or Transfer Stations such that such Covered Materials will eventually be Deposited in Landfill(s), unless the Covered Materials are deposited in Landfills or Transfer Stations that are in compliance with Section 7 of this Ordinance, or in the case of Landfills or Transfer stations outside Alameda County but within California, unless the Landfills or Transfer Stations voluntarily comply with Section 7 of this Ordinance.

SECTION 7 (Requirements for Landfills and Transfer Stations in Alameda County)

(a) Owners and Operators at Landfills and Transfer Stations in Alameda County shall require any Self Hauler who brings a load of Solid Waste containing Covered Materials originating from within Alameda County to a Landfill or Transfer Station in Alameda County to: (1) separate Covered Materials from Refuse or (2) deposit that load such that it will be processed through a High Diversion Mixed Waste Processing Facility or (3) ensure the Self-Hauler pays a price at least 10% over the usual tipping fee that would normally apply to that Self-Hauler. Owners and Operators at Landfills and Transfer Stations in Alameda County shall provide quarterly reports to Authority that list the dates and volumes or weights of every

load of Solid Waste containing Covered Materials charged the higher price described in item (3).

(b) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit a Compliance Plan to the Authority that describes the actions to be taken to comply with this Ordinance and help prevent Deposit in Landfill(s) of Covered Materials from Self Haulers. Previously approved Compliance Plans under Authority Ordinance 2008-01 may be amended to address the requirements of this Section.

(c) The Compliance Plan shall include the following:

(1) Methods for discouraging Covered Materials from Self Haulers from being Deposited in Landfills.

(2) Methods for assisting the Authority in identifying Waste Generators that violate this Ordinance, including recording practices to be followed when noncompliance is observed.

(3) Procedures for complying with the requirements of Section 7(a) of this Ordinance, including posted pricelists.

(4) Load checking programs to prevent the acceptance of Covered Materials from Self Haulers. This program shall at a minimum provide for:

(1) the number of random load checks to be performed;

(2) recording of load checks; and

(3) training of personnel in the recognition, proper handling, and disposition of Covered Material.

(5) Description of efforts the facility will take to install informative signage regarding the Covered Material ban at facility entrances and at waste receiving areas. The signage shall consist of permanent visible signs, prominently displayed, clearly indicating that Covered Material is prohibited from being Deposited in Landfills or delivered such that it will be Deposited in Landfills. These signs shall be in place within 30 days of approval of the Compliance Plan.

(6) Description of employee training efforts to comply with this Ordinance.

(7) Additional information reasonably requested by the Authority as necessary to determine compliance with the Ordinance and how best to achieve compliance with the Ordinance.

(8) Identification of any impediments to and suggestions relating to the ongoing implementation of this Ordinance.

(d) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit its proposed Compliance Plan to the Enforcement Official no later than 60 days after adoption of this Ordinance.

(e) The Enforcement Official will review the Compliance Plan for adequacy and make a determination as to its adequacy within 30 days of receiving the Compliance Plan. Adequacy determinations shall be based on the inclusion of all elements required in Section 7(c) of this Ordinance and on the inclusion of all reasonable measures to effectively discourage Covered Materials from Self Haulers from being Deposited in Landfill(s). Proposed Compliance Plans shall be revised and resubmitted within 30 days after notice by the Enforcement Official that a proposed Plan is inadequate in one or more specific ways.

(f) Each Landfill and Transfer Station in Alameda County shall have an approved Compliance Plan in place no later than 60 days after approval of its Compliance Plan by Authority, but in no event later than January 1, 2013.

(g) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit an annual report detailing the steps taken during the course of the prior year to comply with its Compliance Plan. Each annual report shall be due by the end of July for the previous 12 month period between July 1 and June 30th.

(h) Owners or Operators of Landfills and Transfer Stations in Alameda County shall update or revise the existing Compliance Plan if the Enforcement Official determines that revision is necessary to achieve compliance with this Ordinance.

(i) Failure to comply with an approved Compliance Plan shall constitute a violation of this Ordinance.

SECTION 8 (Requirements for Regulated Haulers and Mixed Waste Processing Facilities)

(a) Regulated Haulers collecting Solid Waste, Refuse, or Source Separated Recyclables from within Covered Jurisdictions shall comply with either Section 8(b) or 8(c) below. Section 8(b) shall apply to any Regulated Hauler that notifies Authority in writing that it has elected to comply with subsection (b) of Section 8 of this Ordinance. Section 8(c) shall apply in the absence of such written notification. All Regulated Haulers shall submit the information set forth in either Section 8(b) or 8(c), and the information set forth in Section 8(d) of this Ordinance to the Covered Jurisdiction and to the Authority no less frequently than once per year and more frequently if requested by the Covered Jurisdiction, unless otherwise specified in Sections 8(b) through 8(d) of this Ordinance.

(b) This subsection applies to Regulated Haulers who elect to integrate customer outreach and education about this Ordinance, and identification of possible violators, into their customer service procedures. Such Regulated Haulers shall:

(1) Include in bill inserts or other regular customer service communications with customers written materials provided by Authority (after approval of such material by the Primary Enforcement Representative from the relevant Covered Jurisdiction or other designee of the chief executive of the Covered Jurisdiction) with respect to this Ordinance, and shall send such information in a manner specified by Authority (e.g., certified mail, return receipt requested; regular mail; overnight mail, etc.). Authority shall reimburse Regulated Haulers for the reasonable incremental cost of handling and postage for such written communications.

(2) Require that customer service staff of the Regulated Hauler participates in training provided by Authority with respect to compliance with Sections 4 and 5 of this Ordinance. Require customer service staff of the Regulated Hauler to attempt to assist customers with compliance with Sections 4 and 5 of this Ordinance. If after initial good faith efforts to assist customers, additional assistance is still required, the Regulated Hauler may refer customers to Authority or Covered Jurisdiction staff.

(3) Provide names, addresses, and customer contact information for accounts serviced that the Regulated Hauler has reason to believe may be in violation of Section 4 or 5 of this Ordinance on a quarterly basis commencing January 1, 2013.

(c) This subsection applies to Regulated Haulers who elect not to integrate customer outreach and education about this Ordinance, and identification of possible violators, into their customer service procedures pursuant to Section 8(b) of this Ordinance. Such Regulated Haulers shall:

(1) Provide a list of all Business and Multi-Family Building accounts in Covered Jurisdictions that will become subject to Phase 1 of this Ordinance by April 1, 2012, and a list of all Business and Multi-Family Buildings accounts in Covered Jurisdictions subject to Phase 2 by February 1, 2014.

(2) For each account on the lists, provide the name of the account, contact, phone number, service address, billing address, Solid Waste (including Recyclables) service information, including number, type and size of containers and days of service, and the name and location where Recyclables are delivered for processing. Specify which accounts, if any, are being served by High Diversion Mixed Waste Processing Facilities.

(d) Regulated Haulers shall provide the name of, location of, and total quantities of Solid Waste (including Recyclables) delivered to each Mixed Waste Processing Facilities (if any) in California used by the Regulated Hauler to assist Waste Generators and Property Owners in complying with this Ordinance.

(e) Regulated Haulers shall not transport Solid Waste from collection locations

(within Covered Jurisdictions) that do not have Source Separated Recycling service to Mixed Waste Processing Facilities that are not High Diversion Mixed Waste Processing Facilities unless the Authority has granted a waiver pursuant to Section 10 of this Ordinance or a Mixed Waste Processing Facility is making an effort satisfactory to the Enforcement Official to qualify as a High Diversion Mixed Waste Processing Facility per Section 8 (g). .

(f) If the Regulated Hauler believes any information required in this Section is confidential, it may submit such information with a request that it be maintained as confidential under the Public Records Act (Government Code section 6250 et al.), specifically identifying the information that it considers confidential and the legal basis for such conclusion.

(g) Mixed Waste Processing Facilities that want to qualify as High Diversion Mixed Waste Processing Facilities under this Ordinance shall comply with the following:

(1) Submit to the Authority a proposal for the protocol it will use to determine whether it is satisfying the performance standards in Ordinance Section 3(l)'s definition of High Diversion Mixed Waste Processing Facilities for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service.

(2) The Enforcement Official, after consultation with the Primary Enforcement Representatives (or other designee of the chief executive of each of the Covered Jurisdictions) from the Covered Jurisdictions that have Solid Waste processed at the Mixed Waste Processing Facility, will review and respond to the proposed protocol within 30 days of receiving the proposal, and shall approve the protocol if found that the protocol will effectively determine whether the facility satisfies the performance standards set out in Section 3(l) of the Ordinance for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service. Proposed protocol shall be revised and resubmitted within 30 days after notice by the Enforcement Official that a proposed protocol will not effectively determine whether the facility satisfies the performance standards set out in Section 3(l) of the Ordinance.

(3) Once the Authority has approved the proposed protocol, the Mixed Waste Processing Facility shall submit initial documentation, as well as documentation annually, demonstrating that, in accordance with the approved protocol, it meets the performance standards in 3(l) of this Ordinance for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service.

SECTION 9 (Inspections by Authority Representatives within Covered Jurisdictions)

(a) Authority Representatives are authorized to conduct inspections of loads of Solid Waste originating in Covered Jurisdictions and brought to Landfills, Transfer Stations, Mixed Waste Processing Facilities, or any other facility receiving Solid Waste or Refuse located in Alameda County, subject to the following: (i) inspections cannot reasonably interfere with operations of the facility, (ii) inspector must wear appropriate safety equipment acceptable to the operator of the facility, and (iii) inspector may not conduct inspections in areas deemed to be unsafe by safety regulations or regulators or in locations where the facility operator prohibits walking or standing by its employees.

(b) Authority Representatives are authorized to conduct inspections, without notice, for compliance with this Ordinance by Waste Generators and Property Owners located in Covered Jurisdictions, subject to applicable laws.

(c) Authority Representatives are authorized to conduct inspections, at random or otherwise, of all Solid Waste at the point of collection or transfer or Deposit in Landfill(s), subject to the following: (i) inspections cannot reasonably interfere with operations of the facility, (ii) inspector must wear appropriate safety equipment acceptable to the operator of the facility, and (iii) inspector may not conduct inspections in areas deemed to be unsafe by safety regulations or regulators or in locations where the facility operator prohibits walking or standing by its employees.

(d) Authority Representatives are authorized to conduct any other inspections or investigations as reasonably necessary to further the goals of this Ordinance, subject to applicable laws.

SECTION 10 (Waivers)

(a) The Enforcement Official shall consult with the Primary Enforcement Representative from the jurisdiction of the waiver applicant prior to making any decision regarding a request for a waiver under this Ordinance.

(b) Emergency Waiver. If the Enforcement Official determines that any type of Covered Material cannot feasibly be Recycled for a limited time period due to emergency conditions, then the Enforcement Official may permit that component of Covered Materials to be Deposited in Landfill(s) for that limited time period.

(c) De Minimus Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, at a collection location if documentation satisfactory to the Enforcement Official is provided that Covered Materials comprise, on an on-going and typical basis, less than 10% by weight of Solid Waste taken to Landfill(s) from that collection location.

(d) Physical Space Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to

the Enforcement Official is provided that physical space limitations prevent full compliance with these Sections. A Waste Generator or Property Owner seeking this waiver must provide documentation from service providers, licensed architects or engineers, or building officials from a Covered Jurisdiction that demonstrates that the Waste Generator or Property Owner does not have adequate space for containers for Covered Material and cannot obtain collection services that direct Solid Waste to High Diversion Mixed Waste Processing Facilities.

(e) Financial Hardship Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that compliance with the Ordinance would create a financial hardship for a Property Owner. Hardship exists when implementation of this Ordinance will increase Solid Waste collection service bills for a particular collection location by more than 30% per typical billing period as compared with the cost of Solid Waste collection services in the absence of this Ordinance and State laws requiring recycling services at Businesses and Multi-Family Buildings. Hardship also exists when the sum of the change in billing described in the previous sentence plus the amortized costs of Solid Waste enclosures or other physical modifications necessary to house additional containers collected by truck, if such construction is required by Federal, State, or Local laws or regulations, exceeds 30% of the cost of Solid Waste collection services in the absence of this Ordinance and State laws requiring recycling services at Businesses and Multi-Family Buildings. Eligible construction costs shall be amortized over an appropriate period for such costs based on Internal Revenue Service or alternative authoritative guidance or standards. The financial hardship calculation shall take into consideration the cost savings potential of decreasing Refuse or Solid Waste service levels, and opportunities to reduce Solid Waste bills through changes in service providers, when that is legal within the relevant Covered Jurisdiction(s). The Enforcement Official may require compliance with some, but not all, requirements of this Ordinance if necessary to limit the increase in eligible costs to less than 30%.

(f) Unavailable Service Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that neither separate collection for Covered Materials nor the service of a High Diversion Mixed Waste Processing Facility is available.

(g) Compliance Schedule Waiver. Any Waste Generator or Property Owner (or Covered Jurisdiction on behalf of Waste Generators or Property Owners in its service area) may seek a waiver from the Enforcement Official by presenting evidence that more time is needed to fully implement a compliant program, and by providing a complete written proposal stating when full compliance will be achieved. If a compliance schedule waiver is granted, the Waste Generator or Property Owner or Covered Jurisdiction shall demonstrate on an on-going basis its good faith efforts to comply by the compliance date(s) stated in the approved waiver.

(h) Covered Materials in public litter containers (e.g., on streets or in parks), street sweepings, or in Solid Waste collected when illegal dumping is cleaned up, are not subject to this Ordinance.

SECTION 11 (Enforcement)

(a) An enforcement action under Sections 4, 5, or 8 of this Ordinance shall not be taken in any Covered Jurisdiction without written approval from the Primary Enforcement Representative of that Covered Jurisdiction. The Primary Enforcement Representative shall provide approval or disapproval of a proposed enforcement action in a timely manner.

(b) Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. Where an enforcement action is necessary to enforce this Ordinance, the Enforcement Official will typically issue a notice of violation as authorized in this subsection prior to taking the actions authorized pursuant to section 11(c) or 11(d) of this Ordinance. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed for misdemeanors in Section 11(d~~e~~) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine shall be paid within 30 days of the notice of violation and shall be deposited prior to any requested hearing. A hearing, held by an external hearing officer, will be held only if it is requested within 30 days of the notice of violation. Evidence may be presented at the hearing. The Executive Director, or its designee, shall conduct the hearing and issue a final written order. If it is determined that no violation occurred, the amount of the fine shall be refunded within 30 days. The Authority shall serve the final order on the Person subject to the notice of violation by overnight, certified or first class mail.

(c) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.

(d) Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed $500 for the first violation, a fine not to exceed $750 for the second violation within one year and a fine not to exceed $1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed $100 for the first violation, a fine not to exceed $200 for the second violation within one year and a fine not to exceed $500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.

(e) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Enforcement Official, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance.

(f) Enforcement of Phase 1 of this Ordinance (as set forth in Section 13 of this Ordinance) shall not occur before July 1, 2012. Enforcement of Phase 2 of this Ordinance shall not occur before July 1, 2014. Prior to those dates, the Authority will conduct outreach and educational efforts regarding the requirements of the Ordinance. From July 1, 2012 to December 31, 2012 for Phase 1, and from July 1, 2014 to December 31, 2014 for Phase 2, enforcement will consist of warnings rather than enforcement action. Enforcement action will be taken, as needed, after January 1, 2013 for Phase 1 and after January 1, 2015 for Phase 2.

(g) Property Owners will not be held responsible for violations of this Ordinance by Waste Generators, and Waste Generators shall not be held responsible for violations of this Ordinance by Property Owners, unless they are the same person, and so long as they cooperate with the Enforcement Official and Authority Representatives as necessary to clarify responsibility for violations. Failure to cooperate in determining responsibility as described above is a violation of this Ordinance.

(h) Regulated Haulers will not be held responsible for violations of this Ordinance by High Diversion Mixed Waste Processing Facilities, and High Diversion Mixed Waste Processing Facilities shall not be held responsible for violations of this Ordinance by Regulated Haulers, unless they are the same person, and so long as they cooperate with the Enforcement Official and Authority Representatives as necessary to clarify responsibility for violations.

SECTION 12 (Local Regulation and Opt-Out and Opt-In Provisions)

(a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the collection, transport, storage, processing, and Deposit in Landfill(s) of Solid Waste within its jurisdiction, including more stringent requirements than those in this Ordinance.

(b) Opt-Out Provision. Any Member Agency by a resolution of its governing body may, prior to March 2, 2012, choose to exclude its service area from Sections 4, 5, and 8, Phase 1 of this Ordinance. Any Member Agency by a resolution of its governing board may, prior to January 1, 2014, choose to exclude its service area from Sections 4, 5, and 8, Phase 2 of this Ordinance.

(c) Opt-In Provision. Any Member Agency that chooses to exclude its service area from either Phase 1 or Phase 2 may request of the Authority by a resolution of its governing board to be re-included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is

accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.

(d) Dispute Resolution. In the event of a dispute between the Authority and a Covered Jurisdiction regarding the implementation of this Ordinance, either party may request a meeting, in which case the Enforcement Official and the Primary Enforcement Representative for the Covered Jurisdiction (or other designee of the chief executive of the Covered Jurisdiction) shall meet to discuss implementation of the Ordinance's provisions. After such meeting, the parties may agree to enter into mediation to resolve any disputes between the parties related to implementation of the Ordinance. In addition, after meeting to seek to resolve any disputes between the parties and possible mediation, the Authority Board or the governing body of the Covered Jurisdiction, with at least 30 days public notice, may by resolution choose to exclude the service area of the Covered Jurisdiction from Sections 4, 5, and 8 of this Ordinance.

SECTION 13 (Implementation Schedule)

(a)

Phase Number: Effective Date	**Entities Subject to Ordinance**	**Covered Materials**
Phase 1: July 1, 2012	Business Property Owners and Business Waste Generators within Covered Jurisdictions with 4 cubic yards or more of Solid Waste (excluding Recyclables and Solid Waste generated under a permitted building project) collection service per week on an average basis as of November 1, 2011 or any later date. Multi-Family Building Property Owners within Covered Jurisdictions. Self-Haulers transporting Solid Waste originating in Alameda County. Regulated Haulers operating within Covered Jurisdictions.	Corrugated cardboard, newspaper, white paper, mixed recyclable paper, recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE ~~bottles~~ and PET bottles~~food and beverage containers~~
Phase 2: July 1, 2014	All Business and Multi-Family Building Property Owners and Business Waste Generators within Covered Jurisdictions. Self-Haulers transporting Solid Waste originating in Alameda County. Regulated Haulers operating within Covered Jurisdictions.	Covered Materials in Phase 1, plus discarded food and Compostable paper.

(b) A Covered Jurisdiction may add discarded food and Compostable -paper, or other Recyclable materials, to the list of Covered Materials for all or a subset of the entities subject to the Ordinance at any time if requested by three or more Covered Jurisdictions. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.

SECTION 14 (Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 15 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this _____ day of _____ by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO._____.

_____
GARY WOLFF
EXECUTIVE DIRECTOR

CITY OF
HAYWARD
HEART OF THE BAY

DATE: January 4, 2012

TO: City Council Sustainability Committee

FROM: Development Services Director

SUBJECT: Climate Action Management Team - Update

RECOMMENDATION

Staff recommends that action on revitalization of the Climate Action Management Team be deferred until after hiring of a permanent Sustainability Coordinator.

SUMMARY

On October 5, 2011, staff was prepared to recommend revitalization of the Climate Action Management Team (CAM Team) to provide technical and non-technical advice on Climate Action Plan initiatives to the Council Sustainability Committee, and to engage in community outreach and education for initiatives that affect the Climate Action Plan (CAP).

After a review of CAM Team activities, staff has concluded that staff resources devoted to management of the CAM Team did not yield sufficient CAP implementation activities relative to staff efforts. Staff recommends that action to re-establish the CAM Team should be deferred until sufficient long-term staff resources are developed to implement the CAP and to effectively manage the CAM Team.

BACKGROUND

The City Council adopted the Hayward Climate Action Plan (CAP) on July 28, 2009. The CAP includes goals to reduce greenhouse gas emissions by 12.5% below 2005 levels by 2020 and by 82.5% below 2005 levels by 2050. One of the actions recommended by the CAP is the formation of a Climate Action Management Team. According to the CAP, the primary responsibility of the CAM Team would be to support and guide the City's efforts to reduce emissions in Hayward.

At the June 1, 2011 meeting of the Sustainability Committee, the Committee asked staff to determine whether the CAM Team should be dropped, reworked or reconstituted due to the limited interest and activity on the part CAM Team members[1].

In support of the intent of the CAP to encourage citizen participation in implementation of the CAP, staff was prepared to deliver a presentation to the Sustainability Committee at the October 5, 2011 meeting to recommend establishment of a reorganized Climate Action Team (CAT) as a successor to the disbanded Climate Action Management Team[2]; however, discussion on this item was deferred to the January meeting.

DISCUSSION

Staff experience indicates that current and future resources are inadequate to provide support and oversight of a CAM Team. This is based on a review of activities associated with management of the CAM Team over the last fifteen months. Activities included preparation of briefing materials for the CAM Team (especially related to discussions associated with a Residential Energy Conservation Ordinance), responding to information requests from the CAM Team, and developing briefing materials for the Sustainability Committee regarding CAM Team activities. These activities demanded substantial staff resources. On the other hand, actual CAM Team participation in advisory and outreach activities was limited. On balance, staff concludes that resources devoted to managing the CAM Team reduced staff time available to implement the strategies in the CAP.

The primary responsibility of a successor to the Climate Action Management Team would likely be community outreach. Based on public responses to staff-managed events over the past quarter, adequate staff resources remain in-house to conduct successful public outreach on existing initiatives. While there is value to a volunteer organization that can support the City in its climate action initiatives, development of a volunteer organization to effectively address the interrelated technical and communications issues and complexities associated with implementation of the CAP will require significant time and resources. Given the limited resources to develop and manage an advisory and outreach committee devoted to climate action issues, staff recommends that efforts to reconstitute such a volunteer group be deferred to such time that a permanent Sustainability Coordinator is hired by the City.

As noted above, staff was prepared to propose establishment of a volunteer organization composed of citizen climate activists who would advise staff and the Committee on governmental climate initiatives, raise community-wide awareness of climate issues, and increase community-wide awareness of the City's climate action initiatives at the October 2011 meeting. The new organization would have been initially organized around three functional groups: a Steering Committee; a Technical Advisory Group; and a Communications Group. Based on a review of recent activities, staff has determined that there are adequate resources to perform these activities on an as-needed, project or activity-specific basis without re establishment of a CAM Team.

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[1] Minutes of the June 1, 2011 City Council Sustainability Committee Meeting. http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2011/CSC-CCSC070611.pdf

[2] City Council Sustainability Committee Meeting of October 5, 2011, Agenda Item II. http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2011/CSC-CCSC100511.pdf

Outreach/Communications and Education Group – Over the past two quarters, with support from PG&E and the Chamber of Commerce, staff held two commercial benchmarking workshops. Also, staff met with city leaders as well as the Chamber of Commerce to discuss potential benchmarking initiatives. The industry leaders who would be affected by the potential initiatives have been very communicative and forthcoming with input. Their feedback has been integrated into development of staff analyses and recommendations. Additionally, with support from the Energy Upgrade California program, staff held two homeowner workshops and a contest to publicize the benefits of energy efficiency upgrades. As evidenced by the strong community turnout at a workshop held on November 29 and follow up calls from the members of the community interested in learning more about energy efficiency upgrades, adequate resources to raise public awareness about current Sustainability Committee initiatives are available in-house.

Staff will continue to work through networks of community activists and concerned citizens to solicit volunteer community participation in climate action initiatives on a project-by-project basis. This approach was successful in building a volunteer force that canvassed neighborhoods to inform the community about available residential energy efficiency incentives. It should be noted that only one member of the Climate Action Management Team participated in the planning and implementation of the canvassing program. Recent experience indicates that staff and the Sustainability Coordinator can mobilize the resources to reach targeted communities without the participation of a standing outreach/communications group.

Technical Advisory Group - Based on a survey of resources used to date, staff has determined that the current method of identifying and soliciting experts to provide technical advice to City staff is adequate. In the development of initiatives to date, staff has been able to draw on the expertise of utility experts at PG&E, non-profits like StopWaste.Org, the experience of government staff throughout the Bay Area and the nation and the technical expertise of consultants. The conclusion is that access to sufficient information on which to make initial recommendations is available without devoting staff resources to recruitment and management of a standing body of community members.

Steering Committee – Lacking a CAT, there would be no need to establish a Steering Committee.

ECONOMIC IMPACTS

A Sustainability Committee decision to not establish a CAT will have no economic impact on the City of Hayward.

FISCAL IMPACTS

The fiscal impact to not establish a CAT will be beneficial as existing staff resources and the City's Sustainability Coordinator will not be needed for coordination and oversight of a new committee, but better utilized in implementing some of the specific strategies of the Climate Action Plan. The staff report of October 5, 2011 noted that initial organization of the CAT could be supported by the City's Sustainability Coordinator, who is on contract through the end of

2012 and anticipated to be finished with assigned projects by the fall of 2012. While such an effort could successfully create a CAT, ongoing, future coordination of CAT initiatives with staff and the Sustainability Committee would require staff time and resources that would be the responsibility of a person with long-term responsibilities as Sustainability Coordinator. If the City is not able to secure funding to hire a permanent in-house Sustainability Coordinator position with the responsibility, in part, to help form and manage a CAT as part of implementing the City's Climate Action Plan, then it is unlikely that staff resources would be sufficient to support development and oversight of a formal CAT.

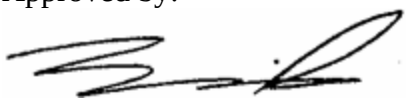
NEXT STEPS

Staff anticipates presenting possible funding strategies for a permanent Sustainability Coordinator to Council in early 2012. Staff recommends that the Sustainability Committee reconsider establishment of a Climate Action Team if or when a permanent Sustainability Coordinator is hired by the City.

Prepared by: Marc McDonald, Sustainability Coordinator

Recommended by: David Rizk, Development Services Director

Approved by:



Fran David, City Manager

CITY OF HAYWARD
HEART OF THE BAY

6

DATE: January 4, 201

TO: City Council Sustainability Committee

FROM: Development Services Director

SUBJECT: Commercial Energy Conservation Innovator Pilot Study

RECOMMENDATION

That the Committee provides direction on whether:

1. Hayward should pursue development of an ordinance requiring commercial building owners to submit annual energy use data to the City, or
2. Hayward should defer action until completion of a StopWaste.Org Innovator Pilot study, which may result in a countywide building energy labeling program.

SUMMARY

Given the costs and limited capacity of staff to develop and administer a commercial energy use disclosure ordinance, staff recommends that Hayward participate with Stopwaste.org in its grant-supported Innovator Pilot study and work to develop a countywide ordinance/program. Such ordinance or program would only require commercial building owners to report energy use and could be the first phase of developing a commercial energy conservation ordinance that would require energy efficiency improvements for certain buildings, in line with the ordinance and greenhouse gas emission reductions identified in the City's Climate Action Plan.

BACKGROUND

Hayward's Climate Action Plan - The City Council adopted the CAP on July 28, 2009. The CAP includes goals to reduce greenhouse gas (GHG) emissions by 12.5 percent below 2005 levels by 2020 and by 82.5 percent below 2005 levels by 2050[1]. The CAP identifies nine strategies to accomplish reductions in GHG emissions.

The goal of Strategy 3, *Improve Energy Performance of Existing Buildings*, is to reduce GHG emissions in existing buildings using regulations, incentives and education programs. The long term goals of Strategy 3 are to reduce electricity consumption by 2050 to sixty-five percent below business-as usual projections and to reduce natural gas consumption by 2050 to fifty percent below business as usual projections[2].

[1] CAP, http://www.hayward-ca.gov/CAP08/pdfs/2009/CAP_Final/Hayward_CAP_FINAL_11-6-09%20-%20full%20document.pdf, page 27
[2] CAP, page 158

Within Strategy 3, Action 3.3 of the CAP recommends that the City: (1) Develop a Commercial Energy Conservation Ordinance (CECO) that would require improved energy efficiency and energy conservation in commercial buildings; and (2) continuously update the CECO to ensure buildings become more energy efficient over time[3].

CAP Strategy 3 – Action 3.3					
Action Number	Full Description	Estimated Annual Emissions Reductions (metric tons CO2e)		Percent contribution to target reductions	
		2020	2050	2020	2050
Total community-wide actions Strategy 3 actions implemented and long-term Strategy 3 goals achieved		8,723	205,890	5.6%	10.2%
Action 3.3	Develop a Commercial Energy Conservation Ordinance which would require improved energy efficiency and energy conservation in commercial buildings.	5,164	105,152	3.3%	9.8%

In light of the fact that Action 3.3 is targeted to contribute close to ten percent of community-wide GHG reductions by 2050, the success of this action is significant towards overall achievement of CAP goals.

The City is engaged in activities to encourage the commercial sector to reduce GHG emissions, which include:

A. Using Federal American Recovery and Reinvestment Act funds to provide the City's commercial large energy users financial incentives to reduce their GHG emissions through energy efficiency improvements. This successful program is projected to reduce annual GHG emissions by close to 1,000 metric tonnes annually.
B. Encouraging the City's commercial building sector to use the U.S. EPA's ENERGY STAR® Portfolio Manager benchmarking tools to measure the performance of their buildings against the building owner's metrics. Staff is letting building owners know that the EPA Portfolio Manager Tool can provide owners up-to-date comparison of the energy performance of their building against that of similar buildings. Staff is also pointing out that building owners who use more energy than their peers are spending more money to operate their buildings. Staff anticipates that the resulting awareness of their building's relative energy performance and energy costs will encourage building owners to make energy efficiency upgrades, if for no other reason than to stay competitive.

While there are benefits from staff's efforts to date, the lack of data to measure the benefits compared with a baseline energy use level through continuous improvement is an impediment to meeting the goals of the CAP. The baseline and annual inventories for the City's commercial sector are provided by PG&E in a report that aggregates all commercial sector energy

[3] Climate Action Plan, page 70

consumption, including consumption by buildings, non-building processes (like manufacturing) and non-building activities (like lights for used car lots). Energy consumption information is not categorized by whether the energy is used by a building or some other activity, much less building type, building age, activity or other important factors. As a result, the data to help the City identify and target opportunities to reduce energy consumption and GHG production in the commercial building sector is not available. Additionally, it is unlikely that PG&E will provide detailed data in the future due to PG&E privacy policies regarding disclosure of utility data.

Achievement of the CAP's goal of securing significant GHG reductions from the commercial building sector requires:

1. Measurement of the commercial building sector's performance in reducing GHG emissions. The data for the commercial building sector must be distinct from the data for the other commercial sectors in the City. Additionally, measurements and data should take into account important factors like building age, building type, building size and the activity taking place in the building.
2. Analysis of measurements and data generated by the commercial building sector will inform the development of a possible CECO that requires improved building energy performance with prescriptive and/or performance measures that are unique to the City's climate, economy and CAP goals.
3. Analysis of data generated by buildings that make CECO-driven improvements can be used to measure the effectiveness of a CECO toward achieving the CAP goals of reducing the commercial building sector's GHG emissions.
4. Amendments to the City's CECO to support continuous improvement in the energy performance of the City's commercial building sector.

Current Trends in Addressing Commercial Energy Use - Communities across the U.S. are developing disclosure ordinances that require building owners to disclose data regarding the energy performance of their buildings to their counterparts in real estate transactions, government, and sometimes, the public. In most instances, the information that must be disclosed is information provided by the U.S. EPA's ENERGY STAR® Portfolio Manager. Designated recipients of the disclosure information range from government to private parties in real estate transactions to the public.

Some governmental agencies, like the State of Massachusetts, plan to use the information disclosed by building owners to develop an asset rating program based on the reported building energy performance. Others, like Seattle and New York City, plan to use the information to develop CECOs that may include prescriptive as well as performance requirements. A summary of commercial energy disclosure and conservation laws and ordinances is included in Attachment I.

California Assembly Bill "AB 1103" – In 2007, the State of California passed AB 1103, which requires all commercial building owners to enroll their buildings in the U.S. EPA's Portfolio Manager database. The bill also requires building owners to disclose the US EPA Portfolio Manager energy performance report as a mandated disclosure to the parties in "major

transactions" [4] affecting the building. The parties to the transaction can use the information to measure the performance of the building against metrics established by the parties to the transaction, the market or government. AB 1103 does not require building owners to have their buildings audited or assessed for energy performance. The energy information required to be produced in compliance with AB 1103 will be available only to the parties to the transaction, and will not be required to be available to either the public or local government.

According to proposed regulations to implement AB 1103, all commercial property buildings, regardless of size, would have to be enrolled in the U.S. EPA's ENERGY STAR® Portfolio Manager (Portfolio Manager)[5] tool within three years of implementation. Larger buildings (50,000 square feet and larger) would have to be enrolled in year one. Buildings between 10,000 square feet and 50,000 square feet would have to be enrolled by the end of year two. Buildings under 10,000 square feet would have to be enrolled by the end of year three. State regulations and a schedule to implement AB 1103 are anticipated to be published in mid-2012.

Previous Sustainability Committee Discussions - At the Sustainability Committee meeting of June 1, 2011, staff recommended development of an ordinance to: 1) require owners to benchmark commercial buildings in Hayward using the U.S. EPA's ENERGY STAR® Portfolio Manager benchmarking tools; 2) require building owners to update the information on an annual basis; and 3) require disclosure of each building's Energy Star Portfolio Manager Statement of Energy Performance to the City on an annual basis[6]. The intent was to use information disclosed by building owners to measure the performance of the City's commercial sector against the goals of the Climate Action Plan (CAP) and to develop data-driven ordinances to require building owners to make improvements to meet the goals of the CAP.

Since the meeting of June 1, 2011, staff has had discussions with various entities related to the recent experiences associated with disclosure ordinances, and has determined that the costs and requirements to develop and administer such an ordinance would likely exceed the current resources of the City of Hayward. Also, staff has had discussions since June with StopWaste.Org, which anticipates receiving a PG&E Innovator Pilot grant to support development of an energy labeling program for residential as well as commercial buildings throughout Alameda County. Success in development and implementation of an energy labeling program could result in disclosure of the energy performance of not only commercial buildings, but residential buildings as well. In such an event, the City could use the disclosed information to measure the energy performance of the City's residential and commercial sectors against the goals of the CAP. Such tracking could be used to develop a data-driven ordinance to require commercial building owners to make improvements to meet the goals of the CAP. Working with StopWaste.Org to develop and implement a countywide ordinance could result in significant cost savings to the City in terms of preparing the ordinance, as well as administration, data management, and enforcement of it.

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[4] AB 1103 defines "Major Transactions" as a full building lease, building financing or sale of the building. California Assembly Bill AB 1103 http://www.energy.ca.gov/ab1103/documents/ab_1103_bill_20071012_chaptered.pdf

[5] Portfolio Manager. http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager

[6] City Council Sustainability Committee Meeting, June 1, 2011. http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2011/CSC-CCSC060111.pdf

DISCUSSION

At the Sustainability Committee meeting of June 1, 2011, staff proposed development of an energy performance disclosure ordinance that would require building owners to disclose to the City their building energy performance. In response to the presentation, the Committee asked staff to determine the City's roles and responsibilities with respect to AB 1103, the State's benchmarking law. The Committee also directed staff to determine the costs associated with implementing and enforcing the ordinance and conducting outreach to the business community.

On August 30, 2011, with the active support of the Hayward Chamber of Commerce, staff produced a workshop to introduce local building owners to AB 1103 and to train them in how to benchmark their buildings. PG&E provided the speaker, Mark Jewell, a national expert in building energy analysis. Over twenty of the City's major building owners and operators attended the training. The results were positive, with at least one major property owner reporting back that he had benchmarked his building.

On November 3, 2011, City staff met with the Government Relations Council of the Hayward Chamber of Commerce. Staff described AB 1103 and stated that there is a likelihood that State laws mandating benchmarking will likely go into effect in July of 2012. Staff also requested the support of the Chamber Government Relations Council for a proposal that would request that all buildings that obtain an Energy Star designation to voluntarily report their designation to the City for recognition as a leadership building. The Chamber's Government Relations Council members supported the proposal. They also stated that they will not support an effort by the City to impose upgrade requirements on their properties.

In response to the concerns expressed by members of the Chamber's Government Relations Council, staff considers a program that requires building owners to disclose energy performance data to government to be a best "first-step" to gathering the data to craft an effective CECO. Energy performance information disclosed to the City would be in the form of the building's Portfolio Manager benchmarking information and would allow staff to measure the performance of the commercial building sector relative to the GHG reduction goals of the CAP. Also, data collected could be analyzed to identify cost-effective opportunities for the City to incentivize owners to improve their building's energy performance. Finally, data collected from information provided by building owners would be analyzed to identify cost-effective measures, technologies, and performance standards to incorporate into a future CECO if such an ordinance is needed to meet the goals of the CAP.

StopWaste.Org is also in the process of developing a building energy performance disclosure program that would address both the residential and commercial building sectors. The program will be developed using PG&E Innovator Pilot Grant funds. As indicated in Attachment II, which describes in general terms the purpose and goals of the grant program, Stopwaste.Org staff recommends that the City of Hayward participate in such program. PG&E and StopWaste.Org are still negotiating the terms of the Innovator Pilot Grant. StopWaste.Org anticipates finishing negotiations in the first quarter of 2012. StopWaste.Org staff indicates that one aspect of the program could be development of energy labeling tools based on energy performance disclosures through the U.S. EPA's Energy Star Portfolio Manager. If StopWaste.Org is able to develop the

anticipated energy labeling tools, the resulting data could include the same data the City would collect through its own disclosure ordinance.

The opportunity to work with StopWaste.org on a countywide energy performance disclosure initiative could have benefits as well as drawbacks. Staff has developed the following matrix describing those potential benefits and drawbacks.

	City of Hayward Benchmarking Disclosure Ordinance	**StopWaste.Org Innovator Pilot Program**
Pros	• Leverages AB 1103 requirement to benchmark and collect data • Maintains City's status as a Leader in Innovative Climate Initiatives • Data would support effective implementation of the CAP policies • Program design would directly address Hayward CAP policies and objectives • Would support quicker development of a data-driven CECO	• Unified effort with other municipalities may be less controversial • Administrative burden of a countywide program would be shared • Consistent regulatory environment for building owners countywide (no economic disincentive for locating businesses in Hayward) • Encompasses residential as well as commercial buildings. • Pilot resources would test effectiveness of disclosure in collecting useful data • As a Pilot participant, Hayward could help frame the program to meet local objectives. • Less City resources needed for initial research and development phase
Cons	• Possible resistance from commercial building owners and the Chamber • Resistance from StopWaste.Org • Annual reporting would be a burden on building owners above the minimal effort to comply with AB 1103 • Administrative burden for Hayward to manage program would be significant • No residential component	• Lack of control of program design • Resulting program may not meet Hayward's needs • If the countywide program does not meet Hayward's specific needs, additional development and staff resources would be required, although some benefit would be realized by participating in such program • Unclear schedule could delay City's collection of data and development of a CECO

On balance, staff considers the opportunity to work with StopWaste.org and other cities in a countywide effort to be valuable. A countywide energy labeling or energy disclosure program for existing as well as new buildings would help cities identify building types and uses that are in greatest need of government assistance in managing their energy consumption. An energy labeling or disclosure program that collects and assembles building energy data will help the City develop data-driven performance or prescriptive energy conservation ordinances and to actually quantify the energy conservation impact of those ordinances.

Staff recommends that the City of Hayward participate in StopWaste.Org's building energy labeling project and work collaboratively with other Alameda County jurisdictions. If the result of the StopWaste.Org Innovator Pilot study is development of an energy labeling or disclosure ordinance, the rules of the ordinance could require each building owner to enroll their commercial buildings in the EPA Energy Star Portfolio Manager and provide the local city a copy of each building's Portfolio Manager Statement of Energy Performance on an annual basis. Information collected in this manner could be used to analyze the performance of commercial buildings by categories to be determined.

ECONOMIC IMPACT

Given that AB 1103 will already require energy use data disclosure associated with commercial buildings to parties involved in transactions, etc., the additional requirement contemplated in a local or countywide ordinance to disclose or report such data to the City and/or Stopwaste.Org would have minimal impacts. While the AB 1103 requirement to disclose energy use and efficiency to prospective buyers of commercial properties may enhance the value of some buildings and impair the value of others statewide, it should have no unique impact on Hayward relative to other communities in the State of California. Employment opportunities in Hayward cannot be identified at this time. There is a likelihood that there will be more employment opportunities for benchmarking, energy auditing and energy upgrade professionals Statewide as AB 1103 and local ordinances are implemented.

FISCAL IMPACT

Based on information recently provided by City of San Francisco staff, fiscal impacts associated with implementing and managing a local benchmarking program could be substantial. The City of San Francisco has invested significant resources in public outreach/education, as well as development of administrative rules, procedures and information technology systems. More than one full time equivalent (FTE) was required during the start-up period. Currently, one FTE is required to meet daily administrative and outreach demands. San Francisco staff anticipates that the demand may taper off after the program and systems become routine. Given that Hayward is a smaller city that contains roughly 2,400 commercial properties, many of which contain multiple buildings, on-going administrative costs would be lower than those in San Francisco, but would still be significant.

Fiscal impacts associated with deferring action and participating in a study to develop a countywide approach are likely to be minimal to moderate, though it is unknown at this time

what those specific costs would be, since the program details have not been developed. If the StopWaste.Org Innovator Pilot is able to successfully develop a countywide building energy labeling program, public outreach and educations resources devoted to informing building owners about the program will be shared countywide. This will reduce the public outreach/education burden on the City. One goal of the StopWaste.Org Innovator Pilot would be the development of tools and web-based systems to manage the data which creates and tracks the energy labels.

NEXT STEPS

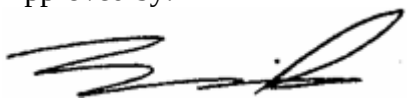
Staff recommends that the City defer taking legislative action on developing a commercial energy disclosure ordinance and instead work to participate in StopWaste.org's pilot program. The City can use this opportunity to learn from the experience of other municipalities, like San Francisco, work with other Alameda County jurisdictions to find common legislative and information-based approaches to reduce local GHG production, and participate in the StopWaste.Org building energy labeling project to identify ways a countywide initiative could benefit the City.

Staff also recommends that the City continue to encourage building owners to voluntarily submit notification to the City of their status as Energy Star buildings. This information can be used by the City to market the community's status as a leader in energy efficient practices. StopWaste.Org is currently developing timelines and a detailed work program with PG&E. They anticipate completing these discussions in March of 2012. Staff plans to report back to the Committee in June of 2012 on the status of the PG&E Innovator Pilot grant.

Prepared by: Marc McDonald, Sustainability Coordinator

Recommended by: David Rizk, Development Services Director

Approved by:



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Fran David, City Manager

Attachments:

Attachment I	Summary of Energy Audits, Benchmarking, and Disclosure Policies Nationwide
Attachment II	Letter from StopWaste.Org dated December 16, 2011

Summary of Energy Audits, Benchmarking, and Disclosure Policies Nationwide [1]

Location: California
Law: Assembly Bill 1103
Enacted: 2009
Summary: This bill involves Energy Star benchmarking for commercial buildings at time of sale, lease, or financing of the whole building. It requires disclosure to transactional counterparties. The California Energy Commission is in rulemaking. Assembly Bill 1103 requires utility data support.

Location: California, Berkeley
Law: Green Building Requirements
Enacted: 2009
Summary: All commercial buildings over 10,000 square feet must complete an energy analysis. The City of Berkeley is considering making amendments to its existing commercial energy conservation ordinance.

Location: Maine
Law: Resolve, Regarding Building Energy Efficiency and Carbon Performance Ratings
Enacted: 2009
Summary: The Maine Public Utilities Commission developed voluntary rules on Energy Star benchmarking.

Location: Maryland
Law: Senate Bill 261
Enacted: In legislature
Summary: This legislation requires Energy Star benchmarking for commercial buildings at time of sale or lease and disclosure to transactional counterparties. It also requires utility data support.

Location: Massachusetts
Law: Department of Energy Resources (DOER) asset label pilot proposal 2011
Enacted: TBD
Summary: May include: Energy Star benchmarking or other operational rating to complement asset rating and ASHRAE level II audits to generate operational ratings and gather modeling inputs for asset ratings. This proposal is from the Massachusetts Dept. of Energy Resources.

[1] **US Department of Energy. http://www.energycodes.gov/status/policy/energy_audits.stm**

Location: Michigan, Ann Arbor
Law: Ordinance No. 66-87, § 1 8:524
Enacted: 1987
Summary: Estimated costs of utilities must be disclosed to tenants in the form of a "budget plan" by rental properties.

Location: New Mexico
Law: TBD
Enacted: In legislature
Summary: This legislation requires Energy Star benchmarking for commercial buildings at time of sale or lease and disclosure to transactional counterparties. It also requires utility data support.

Location: Oregon
Law: TBD
Enacted: In legislature
Summary: This legislation requires Energy Star benchmarking for commercial buildings at time of sale or lease and disclosure to transactional counterparties.

Location: Oregon
Law: House Bill 3535
Enacted: In legislation- first reading
Summary: Landlords and sellers must disclose the energy performance of buildings to renters/buyers. Commercial buildings must also disclose energy usage data to the EPA and department. Violations are subject to civil penalties. Additionally, buildings and homes meeting energy efficiency criteria may be eligible for property tax exemption.

Location: Oregon, Portland
Law: High Performance Green Building Policy
Enacted: Proposed
Summary: Ordinance proposed on Energy Star benchmarking for commercial and multifamily buildings 20,000 square feet and greater.

Location: Rhode Island
Law: Regulation SBC-8
Enacted: 2010
Summary: All buildings must comply with state energy and building codes and must prove compliance through either prescriptive, performance, or Res-Check methods. An energy certificate must be attached to an electrical board in the building.

Location: Texas, Austin
Law: "Energy Conservation Audit and Disclosure (ECAD) Ordinance"
Enacted: 2008
Summary: This ordinance requires Energy Star benchmarking for commercial buildings by mid-2011 in addition to disclosure to the city and ongoing disclosure upon building sale to transactional counterparties.

Location: Virginia, Virginia Beach
Law: Pursuant to 56-592
Enacted: 2008
Summary: This consumer education plan proposes a benchmark assessment of energy use in both residential and commercial buildings, partnership with Energy Star, and education for customers, students, and the general public.

Location: Virginia, Virginia Beach
Law: Mayor's Alternative Energy Task Force Final Report
Enacted: 2010
Summary: Virginia Beach is creating an Energy Improvement Plan, which will include a "Green Fleet" program that requires all new buildings be LEED certified. Energy audits will be performed on selected buildings. Net metering and energy audits are encouraged for residential structures as well.

Location: Washington
Law: Senate Bill 5854
Enacted: 2009
Summary: This bill requires Energy Star benchmarking for commercial buildings at time of sale, lease or financing as well as disclosure to transactional counterparties. It will be phased in over 2 years beginning in 2011. It also requires utility data support.

Location: Washington, DC
Law: Clean and Affordable Energy Act
Enacted: 2008
Summary: The Clean and Affordable Energy Act covers annual Energy Star benchmarking for commercial and multi-family buildings 50,000 square feet and greater. Annual disclosure to a public website is required. It will be phased in over 4 years by building size. District Department of the Environment is in rulemaking.

Location: Washington, Seattle
Law: Council Bill 116731
Enacted: 2010
Summary: This bill requires annual Energy Star benchmarking for commercial and multi-family buildings, and disclosure to the city. It phases in over 2 years beginning in 2011. It also requires utility data support. The Dept. of Planning is in rulemaking.

Location: New York City
Law: Greener, Greater Buildings Plan.
Enacted: 2009

Released in 2007, PlaNYC [2]was developed by the City of New York to, among other things, combat climate change, and enhance the quality of life for New Yorkers. The building element of the plan was designated the *Greener, Greater Buildings Plan*. Like San Francisco and the State of California, New York City's laws require building owners to benchmark the energy performance of their buildings using the EPA Portfolio Manager tool. Like San Francisco, but unlike the State of California, the energy performance of buildings subject to the law will be disclosed to the public. Unlike both San Francisco and the State of California, the New York City law includes a requirement for building owners to make either improvements prescribed by the City of New York or energy efficiency upgrades recommended as a result of a required energy efficiency audit.

The laws focus primarily on 16,000 of the city's largest properties (buildings 50,000 square feet and larger), which constitute roughly half of citywide building square footage and 45 percent of citywide greenhouse gas emissions.

Benchmarking information for all buildings over 50,000 square feet was required to be submitted to the City of New York Buildings Department by December 31, 2011. Buildings that failed to submit benchmark data by that date are subject to a penalty of $500. Beginning September 1, 2012, each building's benchmark information will be posted on a city-controlled website for public viewing. There are no exemptions from the requirements of this law. [3]

Similar to the City of San Francisco EPO, disclosure of energy data to tenants and the public will help tenants who are concerned about energy bills or GHG production decide which potential landlord will best satisfy their concerns. Data disclosed to staff will be used to determine whether prescriptive or performance commercial energy conservation ordinances will be needed in the future to help the city meet its PlaNYC goals.

Location: San Francisco, Ca.
Law: Energy Performance Ordinance (EPO) [4]
Enacted: 2009

In 1989, San Francisco was the first city in the nation to enact a Commercial Energy Conservation Ordinance. Similar to the Berkeley Commercial Energy Conservation Ordinance, the 1989 San Francisco Commercial Energy Conservation Ordinance was a prescriptive ordinance that required the building owner to make specific energy efficiency retrofits to the building at the time of sale of the building. The ordinance was repealed in 1995 because it was unpopular and unenforceable.

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[2] Full Text of PlaNYC. http://www.nyc.gov/html/planyc2030/html/theplan/the-plan.shtml
[3] Full text of the bills and synopses of the NYC Green Buildings Laws are available at the Greener, Greater Buildings Plan website. http://www.nyc.gov/html/planyc2030/html/about/ggbp.shtml
[4] An in-depth discussion of the San Francisco EPO is available in the Sustainability Committee Report of June 1, 2010. http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2011/CSC-CCSC060111.pdf

Based on this experience, San Francisco developed a new Commercial Energy Conservation Ordinance, the Existing Commercial Buildings Energy Performance Ordinance[5] ("EPO"). EPO. Similar to AB 1103, the San Francisco EPO is a disclosure ordinance which requires commercial building owners to benchmark whole building energy performance using the U.S. Energy Star Portfolio Manager. However, the EPO takes disclosure further than AB1103. EPO requires building owners to conduct a standardized energy audit of the building based on ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) standards[6], and to disclose energy performance data to the City. Building owners are also required to disclose the building's energy performance to tenants. Finally, the energy performance of San Francisco's commercial buildings will be disclosed to the public.

Building owners face modest penalties for not complying with EPO requirements. The fine for large buildings is capped at $2,500 per year. Small building fines are capped at $1,250 per year.

City of San Francisco staff states that EPO will serve three purposes: First, disclosure of energy data to tenants and the public will help tenants who are concerned about energy bills or GHG production decide which potential landlord will best satisfy their concerns. Second, data disclosed to staff will be used to determine whether prescriptive or performance commercial energy conservation ordinances will be needed in the future to help the city meet its CAP goals. Third, if prescriptive or performance commercial energy conservation ordinances are needed, the data collected could be used to help staff develop appropriate and effective ordinances.

Staff talked with City of San Francisco staff about resources required to implement the EPO and found that significant staff resources were used during the development and initial marketing of the EPO. According to the City of San Francisco development staffing requirements ranged from one to five full-time employees. Resources to develop the program were paid in part through grant funds as well as City of San Francisco general funds. During the development phase resources were used to develop administrative rules and procedures to capture and manage information. Activities included program design and review, legal analysis, systems analysis, database design and IT programming. Implementation staffing requirements have been significantly lower with responsibilities for informing the large, diverse and sophisticated San Francisco building community about the ordinance and its requirements as well as administering the program requiring a full-time employee.

City of Hayward staff can leverage the experience of the City of San Francisco to reduce the administrative burdens associated with development of the program. Additionally, since the City of Hayward commercial real estate inventory is significantly smaller and less complex than that of the City of San Francisco, Hayward resources to manage such a program should be smaller.

[5] San Francisco Environment Code – Chapter 20. http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances11/o0017-11.pdf

[6] Buildings between 10,000 sf and 49,999 square feet are required to secure an ASHRAE Level 1 audit. The ASHREA Level 1 audit focuses on low-cost/no-cost energy conservation measures, and provides a list of higher cost energy conservation measures. Buildings 50,000 sf and larger are required to secure an ASHRAE Level 2 audit. The ASHRAE Level 2 audit identifies all appropriate energy conservation measures for a facility, and includes a financial analysis of recommended measures based on implementation costs, operating costs, attainable savings, and pay-back periods. Also included are recommendations for changes to operations and maintenance procedures.

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STOPWASTE.ORG
Reducing the Waste Stream for Alameda County

December 16, 2011

StopWaste.Org is the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board operating as one public agency.

Member Agencies
Alameda County
Alameda
Albany
Berkeley
Dublin
Emeryville
Fremont
Hayward
Livermore
Newark
Oakland
Piedmont
Pleasanton
San Leandro
Union City
Castro Valley Sanitary District
Oro Loma Sanitary District

Agency Programs
Bay Friendly Gardening & Landscaping
Green Building in Alameda County
StopWaste Business Partnership
iRecycle@School
Environmentally Preferable Purchasing
Food Scrap Recycling
Grants to Non-Profits
Household Hazardous Waste Recycling
Multifamily Recycling
Recycling Information Hotline

Marc MacDonald
City of Hayward - Development Services Department
777 B Street
Hayward, CA 94501-5007

Dear Mr. MacDonald,

I am providing an update on a new countywide initiative that will help commercial buildings improve their energy efficiency over time.

StopWaste.Org has been selected as the recipient of a PG&E Innovator Pilot Grant for a project entitled *Residential and Commercial Energy Labeling Tools for Local Government*. The contract is still under negotiation, so the scope of work is not yet finalized. However, we anticipate creating tools such as:

- web-based tracking system for commercial buildings that leverages the U.S. EPA's ENERGY STAR® Portfolio Manager
- education and outreach materials for commercial property owners and associations
- public website to showcase commercial buildings that have voluntarily pursued third-party labels such as Energy Star and LEED
- assisting municipalities in quantifying their progress in achieving GHG reductions through local programs

As a joint-powers agency we encourage consistency among policies and programs in Alameda County. The Energy Labeling project will lead to common tools and resources that benefit jurisdictions and property owners. We look forward to working with the City of Hayward on this initiative.

Sincerely,

Karen Kho

Karen Kho
Senior Program Manager

Suggested Sustainability Committee Quarterly Meeting Topics for 2012

Presenting Department	**Date**	**Topics**	**Climate Action Plan Action Number** (Priorities are per Appendix D in the Climate Action Plan)
PW	January 2012	Countywide Single-Use Bag Reduction: StopWaste's Proposed Revised Ordinance	6.4 (40)
PW		Countywide Mandatory Recycling: StopWaste's Proposed Revised Ordinance	6.1 (28), 6.3 (14), 6.6 (34), 6.7 (11), 6.8 (16*)
DS		Climate Action Team (continuation of July 6 meeting discussion)	
DS		Possible Benchmarking Requirements for Commercial Buildings	3.3 (3)
DS	April 2012	Require Solar for New Construction	5.3 (19)
DS		Annual Update on Climate Action Plan Implementation	
DS		Status of Benchmarking Municipal Buildings	3.12 (2*)
DS	July 2012	Require Solar for New Construction – Revisions to the City's Green Building Ordinance	5.3 (19)
DS		Benchmarking Commercial Buildings (Commercial Energy Conservation Ordinance - CECO)	3.3 (3)
DS		Maximize Renewable Generation on Municipal Property	5.5 (4*), 5.6(5*)
DS	October 2012	Annual Update on City Sustainability Progress	
PW		Waste Reduction Report – Annual Update on Recycling Programs (food scraps, construction & demolition debris, multi-family recycling, recycling and organics collection in City facilities and waste to energy)	6.1 (28), 6.2 (26), 6.3 (14), 6.6 (34), 6.7 (11), 6.8 (16*), 6.9 (13*)
Standing Committee	January 2013	Environmentally Preferred Purchasing Policy Annual Report	

*Municipal Actions Priority per Appendix D in the Climate Action Plan.