DATE: March 9, 2026

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Building Performance Standard Model Ordinance

RECOMMENDATION

That the Council Sustainability Committee (CSC) receives this report on Building Performance Standards (BPS) and provides direction and feedback to staff on further exploration of a local BPS ordinance.

SUMMARY

Building Performance Standards (BPS) require existing buildings to meet minimum targets for energy efficiency, water use, and/or greenhouse gas (GHG) emissions over time. Unlike traditional building codes that focus on new construction, BPS policies target existing buildings—particularly larger commercial and multifamily properties that account for a disproportionate share of energy use and emissions. Benchmarking and the exploration of Building Performance Standards are also identified as building electrification actions in Hayward's Climate Action Plan (CAP).

The State of California has already laid the groundwork for BPS through AB 802[1], which since 2016 has required buildings over 50,000 square feet to annually report on energy use using the EPA's ENERGY STAR Portfolio Manager. The reporting program is known as the Building Energy Benchmarking Program and is managed by the California Energy Commission. Building on the reporting requirements of AB 802, SB 48[2] (passed in 2023) directs the State to develop the framework and enforcement mechanisms for a statewide BPS that would include performance targets for buildings over 50,000 square feet. A draft strategy report is expected in early 2026.

To support local BPS programs that seek to go beyond the state requirements, the U.S. Green Building Council's *California Building Performance Standards Coalition* (CalBPS) has developed a model ordinance for buildings with 20,000 square feet or more. The model ordinance emphasizes benchmarking, public reporting, equity, phased compliance, and flexibility.

[1] https://legiscan.com/CA/text/AB802/id/1250891
[2] https://legiscan.com/CA/text/SB48/id/2832294

This staff report examines how a BPS ordinance could be implemented in Hayward and identifies key considerations for future policy development. Staff is seeking Committee Member feedback on two options for next steps:

1) Continue to actively explore a Hayward-specific ordinance for buildings of 20,000 square feet or more, including engaging building owners and managers in the near term, or

2) Wait for the State's Building Energy Performance Strategy to be released and revisit local action in the fall of 2026.

FISCAL IMPACT

This item does not impact the General Fund or Measure C. If the City were to pursue a BPS ordinance, potential fiscal considerations would include staff time for program administration, benchmarking oversight, compliance tracking, and technical assistance, as well as costs associated with data management systems, outreach, and education for property owners. These expenses could be offset through cost-recovery fees or enterprise-style funding mechanisms, depending on program design, and would not impact the General Fund or Measure C.

Peer cities have shown that BPS and benchmarking programs can be implemented with limited or no ongoing reliance on the General Fund. For example, the City of San José funds one full-time equivalent (1.0 FTE) position and program software through an annual fee of approximately $150 per covered property, while the City of Berkeley supports its benchmarking and building electrification programs through a combination of processing fees and General Fund support, with approximately 0.5 FTE dedicated to benchmarking administration. Based on the estimated 919 buildings in Hayward that are 20,000 square feet and above, an annual fee in the range of $100 to $200 per building could support approximately 0.5 for BPS administration.

BACKGROUND

California has set ambitious climate goals, including achieving carbon neutrality by 2045, and reducing emissions from existing buildings is critical to meeting these targets. Buildings account for a significant share of statewide energy use and GHG emissions, largely due to ongoing reliance on fossil fuels for space and water heating. Addressing emissions from the existing building stock is therefore essential to advancing both climate and public health objectives.

Since 2016, AB 802 has required buildings larger than 50,000 square feet to report annual energy use to the California Energy Commission through a process known as energy benchmarking. Benchmarking is conducted using ENERGY STAR Portfolio Manager, a free online tool that allows building owners to track and compare their energy use against similar buildings, creating a data foundation for identifying efficiency opportunities and tracking progress over time.[3] Building on this framework, SB 48 directs the State to develop a strategy for a statewide BPS program for buildings over 50,000 square feet, with

[3] https://www.energy.ca.gov/programs-and-topics/programs/building-energy-benchmarking-program

a draft policy plan expected in early 2026 and finalization by July 1, 2026.[4] It is anticipated that a statewide BPS could be implemented beginning in 2030.

While the State's forthcoming BPS program will focus on larger commercial and multifamily buildings, many energy- and emissions-intensive buildings fall below the 50,000-square-foot threshold and would remain unregulated. As a result, cities across California are exploring local BPS ordinances to complement state action, address gaps in coverage, and apply lessons learned from other U.S. jurisdictions that have already implemented BPS programs.

Climate Action Plan – In Hayward, buildings accounted for approximately 32% of total community-wide GHG emissions in 2023.[5] As in many California cities, achieving Hayward's CAP targets for 2030 and 2045 will require meaningful reductions in emissions from existing commercial and multifamily buildings. To address this challenge, the CAP includes Measure BE-3, which calls for decarbonizing existing buildings (eliminating the use of natural gas) through the implementation of several actions. The actions include:

- BE 3.4 – Conduct feasibility studies to identify commercial and multi-family building decarbonization barriers and develop a commercial and multi-family building decarbonization strategy with analysis supporting future adoption of a commercial and multi-family building decarbonization ordinance.
- BE 3.1 – Based on the results of the feasibility studies (BE- 3.4) adopt a decarbonization ordinance for existing commercial buildings by 2026…
- BE 3.2 – Based on the results of the feasibility studies (BE- 3.4) adopt a decarbonization ordinance for existing multi-family buildings by 2026…
- BE 3.3 – Adopt a Commercial Energy Performance Assessment and Disclosure Ordinance for commercial and multi-family buildings, which requires energy use disclosure consistent with State law (AB 1103 [now AB 802]) and the use of the ENERGY STAR Portfolio Manager benchmarking tool.

Cities with BPS – There are 13 U.S. cities implementing and enforcing a BPS for commercial and multi-family buildings, including four in California: Santa Monica, San Jose, West Hollywood, and Chula Vista (see Table 1). Additional jurisdictions—including San Francisco, Berkeley, and Los Angeles County—are actively developing BPS ordinances.[6]

[4] https://calmatters.digitaldemocracy.org/bills/ca_202320240sb48
[5] https://www.hayward-ca.gov/sites/default/files/documents/2025-03-18-GHG-Inventory-Council-Rpt.pdf
[6] https://public.tableau.com/app/profile/doebecp/viz/BuildingPerformanceStandards/BuildingPerformanceStandardsnonweb

Table 1. Cities with BPS Requirements

City/County	Size Threshold for Covered Buildings	Year in Effect
Chula Vista[7]	≥ 20,000 sq. ft.	2022
San Jose[8] (addresses energy & water)	≥ 50,000 sq. ft. first phase ≥ 20,000 sq. ft. in later phases	2023
Santa Monica[9]	≥ 50,000 sq. ft. first phase ≥ 20,000 sq. ft. in later phases	2026
West Hollywood[10]	≥ 20,000 sq. ft. (residential condos exempt)	2026

Cities with Benchmarking – There are seven cities in California that have a benchmarking program, with four in the Bay Area: Berkeley, Brisbane, San Francisco, and San Jose (see Table 2). Benchmarking requires building owners to annually report their energy and water use, typically through ENERGY STAR Portfolio Manager, allowing them to track performance over time and compare their buildings to similar properties.

Table 2. Bay Area Cities with Benchmarking Requirements

City	Size Threshold for Covered Buildings	Year in Effect
Berkeley[11]	≥ 15,000 sq. ft.	2018
Brisbane[12]	≥ 10,000 sq. ft.	2020
San Francisco[13]	≥ 10,000 sq. ft.	2011
San Jose[14]	≥ 20,000 sq. ft.	2019

Previous CSC Meetings – Staff has provided the CSC with a few updates on BPS over the past two years as part of ongoing discussions about reducing building-related GHG emissions. These presentations have explored funding opportunities, policy considerations, and how BPS could complement other local climate strategies. Staff presented reports to CSC at the following meetings:

- March 11, 2024 – Potential Grant Funding for Development of Performance Standards for Existing Buildings: Staff presented the opportunity for Hayward to be part of a DOE grant to develop and implement zero energy building codes led by the City and County of San Francisco.[15]
- March 10, 2025 – City of Richmond's Agreement with Chevron: Staff recommended that BPS would be an effective way to address large users of fossil gas.[16]

[7] https://www.chulavistaca.gov/home/showpublisheddocument/27700/638469742513630000
[8] https://www.sanjoseca.gov/your-government/departments-offices/energy/climate-smart-san-jose/energy-and-water-building-performance-ordinance/beyond-benchmarking
[9] https://santamonicacityca.iqm2.com/Citizens/Detail_LegiFile.aspx?MeetingID=1452&ID=6228
[10] https://weho.granicus.com/MetaViewer.php?meta_id=309850
[11] https://berkeleyca.gov/construction-development/green-building/building-emissions-saving-ordinance-beso
[12] https://www.brisbaneca.org/bbep
[13] https://www.sfenvironment.org/existing-buildings-energy-performance-ordinance
[14] https://www.sanjoseca.gov/your-government/departments-offices/energy/climate-smart-san-jose/energy-and-water-building-performance-ordinance
[15] https://hayward.legistar.com/LegislationDetail.aspx?ID=6569389&GUID=81BCA5CD-E26F-49F3-AD66-AED51B08A211&Options=&Search=
[16] https://hayward.legistar.com/LegislationDetail.aspx?ID=7254297&GUID=4734E28B-2790-4549-9E3E-6B0EDAF80F28&Options=&Search=

- September 8, 2025 – Reach Code for the 2025 Building Code: Staff mentioned that a Reach Code for existing commercial buildings would not be proposed because a BPS may be pursued.[17]

DISCUSSION

Staff has been involved in the U.S. Green Building Council (USGBC)'s CalBPS Peer Learning Collaborative where approximately 50 California jurisdictions share ideas and create alignment to accelerate and streamline the path to building decarbonization in California. The collaborative recently released a model BPS ordinance that incorporates technical experience from building professionals and jurisdictions across the country that have adopted BPS policies as well as the priorities of California jurisdictions involved in the collaborative. The CalBPS model ordinance provides a framework for establishing a BPS that improves the energy and emissions performance of existing buildings over time. At its core, the model ordinance requires covered buildings to meet performance targets based on energy use intensity or GHG emissions levels by specified future dates.

The model ordinance developed by USGBC has two parts or phases:

1. annual benchmarking requirements starting in year 1, and
2. performance targets that increase in stringency and are enforced every year after an initial benchmarking-only period.

The model ordinance includes the following categories: (1) covered buildings, (2) performance metrics, (3) targets and compliance cycles, (4) compliance pathways, (5) enforcement, and (6) exemptions.

1. Covered Buildings

The CEC's BPS program would address buildings over 50,000 square feet, so the CalBPS model ordinance focuses on buildings between 20,000 to 50,000 square feet. The CEC's program would cover 12.8% of Hayward's commercial and multifamily buildings. If the model BPS ordinance were adopted in Hayward, an additional 18% of Hayward's commercial and multifamily buildings would be covered. Together, these buildings account for approximately 69% of Hayward's total building-related emissions (see Table 2).

Table 2. Hayward's Commercial and Multi-Family Buildings Exceeding 20,000 Sq. Ft.

Bldg Category (sq. ft.)	# of Bldgs	% of Total Bldgs	Total Sq. Ft.	% of Total Sq. Ft	% of Total Emissions
>100,000	237	7.9%	34,300,000	44.7%	32%
50,000 - 100,000	146	4.9%	11,000,000	14.3%	17%
Subtotal	**383**	**12.8%**	**45,300,000**	**59%**	**49%**
20,000 - 50,000	536	18%	17,000,000	22%	20%
Total	**919**	**30.8%**	**62,300,000**	**81%**	**69%**

[17] https://hayward.legistar.com/LegislationDetail.aspx?ID=7648208&GUID=4FA3826C-061D-4A52-962C-F6CFC48B3508&Options=&Search=

The building types most affected by a combined state and local BPS framework would include multifamily residential buildings, warehouses, offices, and retail properties (see Table 3).[18]

Table 3. Hayward Data by Building Type

Building Type	>100,000 sq. ft.		50,000 – 100,000 sq. ft.		20,000 – 50,000 sq. ft.	
	# of Bldgs.	Floor Area (in 1,000s)	# of Bldgs.	Floor Area (in 1,000s)	# of Bldgs.	Floor Area (in 1,000s)
Apartments	57	9,730	35	2,770	119	3,820
Hospital	2	553.7	0	0	1	33
Hotel	1	110.9	1	66.4	12	364.5
Office	5	785.1	12	824.9	29	874.9
Other	14	2,460	50	3,770	109	3,550
Outpatient	1	237.5	1	79.7	5	133
Restaurant	0	0	0	0	0	0
Retail	6	1,470	11	840	31	1,010
School	0	0	0	0	0	0
Strip Mall	1	127	1	65.2	3	83.1
Warehouse	150	18,900	35	2,600	227	7,150

2. Performance Metrics

The CalBPS model ordinance establishes annual energy benchmarking as the foundation for setting and tracking building performance targets. Under the model ordinance, covered buildings between 20,000 and 50,000 square feet are required to report annual energy-use data through ENERGY STAR Portfolio Manager or a comparable no-cost platform. Benchmarking data enables jurisdictions and property owners to establish baselines, track progress over time, and support transparent, data-driven compliance. To ensure accuracy and data integrity, the model ordinance recommends periodic third-party verification—typically every five years—along with audit authority and recordkeeping requirements. Third-party verification would cost on average $1,500 and audits on average $3,500 to $5,700 with specific costs depending on the building's size and type. However, staff does not recommend requiring third-party verification in the benchmarking phase of BPS.

The ordinance uses two complementary performance metrics: Greenhouse Gas Emissions Intensity (GHGI) and Site Energy Use Intensity (Site EUI). GHGI measures annual GHG emissions per square foot and directly supports decarbonization and electrification goals, while Site EUI measures total energy consumption per square foot and promotes overall energy efficiency. Targets are differentiated by building type to account for varying operational characteristics and to focus attention on the most energy-intensive buildings.

A BPS could also include water as a metric, similar to City of San Jose's Beyond Benchmarking program. San Jose uses Water Use Intensity[19] and US EPA Water Score[20] for

[18] https://explorer.localenergycodes.com/jurisdiction/hayward-city/building-estimates?only_building_type=non-residental-buildings
[19] https://www.sanjoseca.gov/home/showpublisheddocument/126902/638997663849430000
[20] https://www.epa.gov/watersense/water-score-multifamily-housing

multi-family units as metrics. Water Use Intensity measures water consumed per square foot of a building per year and US EPA Water Score is a 1–100 rating generated by ENERGY STAR Portfolio Manager, comparing a building's water use to similar properties nationwide.

3. Targets and Compliance Cycles

The model ordinance includes a phased compliance structure that balances predictability for property owners with steady emissions reductions over time. An initial pre-performance period—typically the first five years after adoption—requires benchmarking and reporting but does not impose performance targets. The first phase allows owners to understand their buildings' energy and emissions profiles, plan upgrades, and align improvements with capital cycles. Jurisdictions may further phase requirements for certain building types or ownership structures to account for operational or financial constraints.

After the pre-performance period, interim performance targets are introduced at regular five-year milestones and enforced annually. Targets are established through rulemaking and are based on building type and normalization factors. Each building follows a trajectory-based approach, requiring incremental reductions from baseline performance toward a final target of net-zero emissions by 2050, or another year set by the jurisdiction. Buildings must demonstrate compliance with both GHGI and Site EUI targets and maintain performance once achieved, promoting long-term accountability while preserving flexibility in how reductions are met.

4. Compliance Pathways

Recognizing wide variation in building age, condition, and financial structure, the model ordinance allows flexible compliance pathways. In addition to direct performance compliance, jurisdictions may permit alternative compliance plans that outline a customized sequence of improvements over time, subject to City approval. These may include phased electrification strategies, comprehensive energy management plans, or participation in approved retrofit or incentive programs, provided they achieve equivalent or greater emissions reductions.

Special consideration is recommended for affordable housing and other constrained properties. Other jurisdictions have simplified requirements, extended timelines, offered tailored action plans, and prioritized technical assistance and funding for these buildings. Pairing BPS implementation with utility rebates, state incentives, and financing options can further reduce cost burdens and support equitable participation.

5. Enforcement

The enforcement framework in the model ordinance is designed to prioritize compliance through transparency, education, and technical assistance before penalties are applied. Initial enforcement efforts focus on ensuring accurate benchmarking and reporting, which establishes the data foundation needed for effective implementation. Peer jurisdictions have found that providing clear guidance, proactive outreach, and early support significantly improves compliance rates and reduces the need for enforcement actions.

When penalties are assessed, they are structured to be proportional, predictable, and directly tied to performance shortfalls. Linking non-compliance fees to excess emissions or

energy use reinforces the ordinance's environmental objectives while encouraging timely corrective action. To further support compliance, the model ordinance typically includes grace periods, warning notices, and cure provisions that allow building owners an opportunity to resolve issues before fines are imposed. Consistent with equity principles, the model ordinance recommends that revenues generated through enforcement be reinvested into technical assistance, audits, incentives, and targeted support for affordable housing and disadvantaged communities, ensuring enforcement strengthens—rather than undermines—equitable outcomes.

6. Exemptions

Exemptions in the model ordinance address legitimate hardships while preserving the overall effectiveness of the policy. Permanent exemptions are limited to building types where performance standards would be infeasible or inconsistent with public interest objectives, such as state- and federally owned buildings, manufacturing and industrial facilities, and scientific laboratories requiring controlled environments; some jurisdictions also exempt residential condominiums and co-ops due to ownership structure, all-electric buildings due to low emissions, smaller multi-family buildings not sub metered for water, or universities and colleges whose capital improvement timelines do not align with local compliance schedules. Buildings that do not qualify for permanent exemptions may still be eligible for temporary exemptions based on defined circumstances, such as having an approved demolition permit, experiencing financial distress or hardship, or having less than 50 percent occupancy in the prior year, as seen in Santa Monica's approach. Temporary exemptions are granted on a case-by-case basis and require annual renewal with updated documentation, ensuring flexibility without creating permanent exclusions from compliance.

Seeking Committee Member Feedback

Staff is seeking feedback on two options for next steps:

1) Continue to actively explore a Hayward-specific ordinance for buildings with 20,000 square feet or more. This would include:

   - Conduct significant outreach to building owners and business associations regarding the first phase of a possible BPS program
   - Explore implementation of a first phase that would require benchmarking only for at least five years.
   - Consider benchmarking metrics including GHGI, Site EUI, Water Use Intensity, and US EPA Water Score.
   - After at least five years of collection of benchmarking data, evaluate expansion of the ordinance to include performance targets.

2) Alternatively, the City could wait for the State's Building Energy Performance Strategy to be released and revisit local action in the fall of 2026.

ECONOMIC IMPACTS

Tracking and reporting utility usage may be a new activity for property owners and managers, which takes time to set up. Benchmarking, in particular, takes at least a few hours to do for each building each year, though property owners may find it harder to report energy and water usage when there is more than one tenant in the building or if tenants are non-responsive. If the Committee wants staff to actively pursue a local ordinance, staff will engage with stakeholders to better understand this impact.

Although some buildings may face short-term costs related to benchmarking, reporting, or upgrades, these can be offset by long-term utility savings, available incentives, and reduced future compliance risk. A BPS program, paired with efforts by building management to improve efficiency, can lower operating costs for building owners over time, improve asset value, and support local clean energy and construction jobs. By promoting incremental improvements in energy efficiency and emissions performance, BPS policies help property owners better manage energy expenses, reduce exposure to fuel price volatility, and plan capital investments more strategically. At the same time, BPS programs stimulate local economic activity by increasing demand for skilled labor in energy auditing, electrification, HVAC installation, and building retrofits, helping build a workforce aligned with California's clean energy transition while improving tenant comfort and overall building resilience. For case studies evaluating the cost-effectiveness of building retrofits, see Attachment II.

STRATEGIC ROADMAP

This agenda item does not relate to a specific project in the Strategic Roadmap, but supports the Strategic Priority to *Champion Climate Resilience & Environmental Justice*.

SUSTAINABILITY FEATURES

Building Performance Standards support long-term reductions in greenhouse gas emissions, improved indoor air quality, and lower energy consumption, directly advancing the City's climate and sustainability goals.

PUBLIC CONTACT

Staff spoke with cities with a BPS or benchmarking ordinance such as San Francisco, San Jose, Berkeley, Brisbane, San Diego, and Portland to learn about their experiences and resources. Staff also had discussions about benchmarking and BPS with property owner Prologis, affordable housing property developer/operator Eden Housing, and non-profit San Joaquin Valley Clean Energy Organization. Some key takeaways from these conversations include:

- Building owners expressed a desire to see standardized requirements across jurisdictions as well as flexibility with meeting compliance targets.
- Benchmarking takes on average about 5 hours per building the first year of reporting and one hour or less per building in subsequent years.
- Building owners agree that 3 to 5 years of benchmarking data is needed for developing performance targets.

- Building owners appreciate technical assistance from cities during reporting seasons.

NEXT STEPS

If the Committee provides feedback to continue to pursue a Hayward-specific ordinance, staff will further investigate what a BPS policy could look like for Hayward and conduct significant outreach to building owners and business associations regarding the first phase of a possible BPS program.

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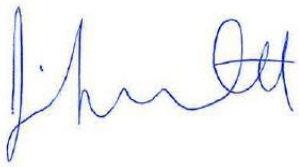

Jennifer Ott, City Manager