

CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Monday, September 11, 2023

5:30 PM

Conference Room 2A/Hybrid

Council Sustainability Committee

NOTICE: The Council Sustainability Committee will hold a hybrid meeting in Conference Room 2A and virtually via Zoom

How to submit written Public Comment:

Send an email to erik.pearson@hayward-ca.gov by 1:00 p.m. the day of the meeting. Please identify the Agenda Item Number in the subject line of your email. Emails will be compiled into one file, distributed to the Council Sustainability Committee and City staff, and published on the City's Meeting and Agenda Center under Documents Received After Published Agenda.

There are three ways you can provide live public comments during the meeting:

1. Attend in person in Conference Room 2A in Hayward City Hall
2. Please click the link below to join the webinar:

<https://hayward.zoom.us/j/82696809798?pwd=cGMxbTIUUIRvNnpCdGRwVDFVVTQvUT09>

Webinar ID: 826 9680 9798

Password: CSCSEP23@

3. Or join by phone:

US: +1 669 900 6833 or +1 646 931 3860

Webinar ID: 826 9680 9798

Password: 027320389

International numbers available: <https://hayward.zoom.us/j/82696809798?pwd=cGMxbTIUUIRvNnpCdGRwVDFVVTQvUT09>

CALL TO ORDER

ROLL CALL

PUBLIC COMMENTS:

APPROVAL OF MINUTES

1. [MIN 23-089](#) Approval of Meeting Minutes from the Council Sustainability Committee (CSC) Meeting Held on June 26, 2023

Attachments: [Attachment I Minutes](#)

REPORTS/ACTION ITEMS

2. [ACT 23-069](#) Single-Use Disposable Food Ware Ordinance - Information and Discussion

Attachments: [Attachment I Staff Report](#)
 [Attachment II Disposable Packaging Reduction and Reusable Foodware Model Ordinance for ALCO](#)

3. [RPT 23-085](#) 2021 Greenhouse Gas Emissions Inventory

Attachments: [Attachment I Staff Report](#)

4. [RPT 23-084](#) Advanced Metering Infrastructure (AMI) Water Customer Portal - Information and Discussion

Attachments: [Attachment I Staff Report](#)

FUTURE AGENDA ITEMS

5. [ACT 23-071](#) Proposed 2023/2024 Agenda Planning Calendar: Review and Comment

Attachments: [Attachment I Staff Report](#)

COMMITTEE MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS

ADJOURNMENT

Next Scheduled Meeting: Monday, November 13, 2023



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777 B Street
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File #: MIN 23-089

DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT

Approval of Meeting Minutes from the Council Sustainability Committee (CSC) Meeting Held on June 26, 2023

RECOMMENDATION

That the CSC reviews and approves the June 26, 2023 meeting minutes.

ATTACHMENTS

Attachment I Council Sustainability Meeting Minutes from June 26, 2023

CITY COUNCIL SUSTAINABILITY COMMITTEE MEETING
Hybrid Meeting
June 26, 2023
5:30 p.m.
MEETING MINUTES

CALL TO ORDER: Meeting called to order at 5:30 p.m. by Council Member Julie Roche.

ROLL CALL:

Members:

Present

- Julie Roche, City Council Member/CSC Chair
- Angela Andrews, City Council Member
- Francisco Zermeño, City Council Member (*Excused at 6:23 p.m.*)

Staff:

- Alex Ameri, Director of Public Works
- Nicole Grucky, Sustainability Specialist
- Linda Ko, Senior Secretary (Meeting Recorder)
- Erik Pearson, Environmental Services Manager
- Taylor Richard, Associate Planner

Others:

- Cait Cady, Public Engagement Coordinator - East Bay Community Energy (EBCE)
- JP Ross, Vice President, Local Development, Electrification and Innovation - EBCE

PUBLIC COMMENTS

There were no public comments.

1. Approval of Minutes of the Council Sustainability Committee (CSC) Meeting Held on May 8, 2023

The item was moved by Council Member Andrews, seconded by Council Member Zermeño, and approved unanimously.

2. East Bay Community Energy Update: Local Programs and Customer Bill Savings – Information and Discussion

Cait Cady and JP Ross from EBCE presented the informational report on the EBCE Community update on local programs, partnerships, and customer bill savings.

Public Comments

There were no public comments.

Committee Comments

Council Member Francisco Zermeño shared that Alameda County Transit had received a \$25 million grant for zero emission buses.

Council Member Andrews asked if staff could look into the demographics of the 5.8% of people who opted out of EBCE electricity products to provide educational opportunities. She also stated that she preferred to see electric vehicle (EV) charging stations developed in areas with high visibility, preferably on open lots instead of garages. Council Member Andrews asked EBCE how they would work with Hayward for the E-bike program. Mr. JP Ross stated that EBCE was currently in the process of signing the contract for the program, but they intend to work with local bike shops to run the program. For example, a customer would have the option to order a bike online, but the bike would be delivered to a local Hayward bike shop for pick-up.

Council Member Roche advocated for an e-bike event, possibly at the Southland Mall parking lot, where people could come try out e-bikes and learn more about them as part of the E-bike program. Council Member Roche also asked EBCE staff if there was a plan to make the Bright Choice product cleaner since the content was now dirtier in terms of CO₂ emissions than PG&E products. EBCE staff responded that EBCE's goal was to get to 100% renewable by 2030.

Director Alex Ameri commented that when looking at the mix of energy for all of Hayward residents, on average 70% of the energy was 100% renewable and 30% was 65% renewable – resulting in an average energy that had more emissions than PG&E. If customers would have stayed with PG&E energy, they would be getting between 94% to 96% clean energy. Director Ameri asked EBCE staff if the revenues that were being used to give an additional 2% discount to Bright Choice users could instead be used to clean up the energy products to bring the clean energy level to PG&E's level.

Council Member Roche asked if EBCE staff could follow up with the Council Sustainability Committee to provide actual value comparisons in terms of Hayward's overall clean energy averages compared to PG&E's clean energy averages. Ms. Cait Cady confirmed that EBCE could provide the 2022 data to the CSC this fall.

Council Member Francisco Zermeño was excused from the meeting due to another City business appointment.

3. Hayward Area Shoreline Planning Agency (HASPA) – Overview and Update – Information and Discussion

Taylor Richard, Associate Planner, and Erik Pearson, Environmental Services Manager, presented the informational report on the Hayward Regional Shoreline Planning Agency and implementation of the Hayward Regional Shoreline Adaptation Master Plan.

Public Comments

There were no public comments.

Committee Comments

Council Member Andrews stated that she was glad to see two full new members join the JPA after outreach.

Council Member Roche asked where the funding for the project would come from. Ms. Taylor Richard stated that most of the funding opportunities were through large grants.

She stated that currently there were state and federal grants, and also that the San Francisco Bay Conservation and Development Commission (BCDC) was looking to identify additional permanent funding opportunities.

FUTURE AGENDA ITEMS:

4. Proposed 2023 Agenda Planning Calendar: Review and Comment

Mr. Pearson shared the proposed 2023 agenda planning calendar with the Committee.

Public Comments

There were no public comments.

Committee Comments

Council Member Roche stated she would be interested in seeing a report on options for a potential tax on large CO₂ emitters to potentially use the money toward sustainability projects.

COMMITTEE MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS:

There were no Committee Member or Staff announcements and referrals.

ADJOURNMENT: 6:58 p.m.

Attendance	MEETINGS			
	Present 6/26/23 Meeting	Present to Date This Year	Excused to Date This Year	Absent to Date This Year
Julie Roche	✓	3	0	0
Angela Andrews	✓	3	0	0
Francisco Zermeño	✓	2	0	0



CITY OF HAYWARD

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File #: ACT 23-069

DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT

Single-Use Disposable Food Ware Ordinance - Information and Discussion

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report and provides direction to staff on the potential implementation of a Single-Use Disposable Food Ware Ordinance in Hayward.

SUMMARY

Replacing single-use food ware items such as plastic and paper cups, plates, and utensils with reusable alternatives for dine-in can dramatically reduce the amount of litter in Hayward, and drastically decrease the waste Hayward sends to landfill. The Alameda County Waste Management Authority (ACWMA), also known as StopWaste, drafted a model Disposable Single-Use Food Ware Reduction and Reuse Ordinance in March of 2023. This model ordinance is designed for Alameda County jurisdictions to tailor to meet their specific circumstances to reduce single-use food ware items and transition to reusable food ware. City staff have reviewed the ACWMA model ordinance and presents suggestions for Hayward for the CSC to review and provide direction.

ATTACHMENTS

Attachment I Staff Report
Attachment II Disposable Packaging Reduction and Reusable Foodware Model Ordinance for
ALCO



DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Single-Use Disposable Food Ware Ordinance – Information and Discussion

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SUMMARY

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BACKGROUND

Single-use disposable (SUD) food ware and packaging, including plates, cutlery, cups, lids, straws, clamshells, and other containers significantly contribute to street litter and often contaminates feedstock for composting and recycling programs. The production, consumption and disposal of SUDs depletes natural resources and is a major component of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up about 25% of all waste produced in California¹
- Bay Area studies have found that food and beverage packaging make up the majority of street litter, half of which comes from fast food and take-out food establishments²

¹ <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

² Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011)
http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf

- Hayward's 2022 Litterati Study, presented to the CSC on May 8, 2023³, found straws, cups, and lids to be some of the top 10 littered items within the City.

Prepared food service operators often provide customers handfuls of accessory items, like plastic utensils and single-serve condiment packets, in the interest of greater customer satisfaction. The result is customers often receive large quantities of disposable items they don't need. Most people have condiments, napkins and utensils at home or at the office. This wasteful practice of distributing SUDs was exacerbated by COVID-19, which brought a 28% increase in take-out and delivery orders that partially contributed to the 10-million-ton increase in plastic waste associated with COVID-19 in the U.S.⁴

Reducing the use of SUD items in Hayward can not only save natural resources but can also play a role in achieving the City's diversion, litter reduction, and climate action goals. Hayward previously took steps to reduce problematic single-use items by banning polystyrene foam in 2010⁵ and joining the Alameda County plastic bag ban that became effective in Hayward in January 2013.

The Strategic Roadmap adopted by Council in June 2021, listed under the priority of *Confront Climate Crisis & Champion Environmental Justice*, Project #5: *Work with StopWaste to promote a Circular Economy and Explore Regulation of Single Use Products*. This goal was partially achieved in 2021 when the state enacted AB1276, however, SUDs remain problematic in Hayward. AB1276 is a state law that requires all retail food facilities (for onsite dining), and food delivery platforms provide disposable food ware accessories and condiments upon request only. Food ware items covered by the law include all single-use utensils, straws, chopsticks, stirrers, and condiment cups and packets, including those made from bioplastics, compostable plastic, bamboo, and paper. The law requires that disposable utensils cannot be bundled together; single-use food ware accessories and condiments can only be provided upon request (with the exception of airport and drive-through customers); and food facilities using third-party delivery platforms can only provide condiments and disposable utensils that have been requested by a customer during the online ordering process.

Hayward has been enforcing AB1276 on a complaint-driven basis. To achieve more significant reduction in SUD usage, StopWaste recommends enacting requirements for takeout food and policies that go beyond "on-request" requirements.

In addition to the litter and disposal problems caused by SUDs, the manufacturing of SUDs also cause significant greenhouse gas emissions. Hayward's current draft update to the Climate Action Plan (CAP) specifically calls out reducing single-use food ware and lists developing a zero-waste plan and increasing bans on problematic materials as key implementation programs. Adopting an ordinance to reduce single-use food ware can help Hayward address each of these climate action goals.

³ <https://hayward.legistar.com/LegislationDetail.aspx?ID=6197739&GUID=5BDCCA63-0F7A-46A8-9600-A65B634FEB21&Options=&Search=>

⁴ Mesirow(2022) *How COVID-19 Changed Packaging Forever*, pp. 5-6- citing McKinsey & Co. from 2020

⁵ <https://portal.laserfiche.com/Portal/DocView.aspx?id=139072&repo=r-b6d2994c>

Managing single-use disposable food ware is a challenge faced not only by Hayward. Other Alameda County jurisdictions that include measures in their CAPs related to reducing food service ware waste are listed in Table 1 below.

Table 1 - Alameda County Jurisdictions with a Food ware Measure in CAP⁶

Jurisdiction	Disposable Food ware-Related Measure in CAP
Albany <i>Climate Action and Adaptation Plan (2019)</i>	Section 3.2.1 – Partner with Stopwaste to develop and adopt an ordinance requiring reusables for dine-in restaurants and sustainable take-out food ware.
Livermore <i>Climate Action Plan (2022)</i>	Section W-1.4 – (includes examples of targeting food and hospitality industries: “efforts may include adopting ordinances for compostables food ware, a ban on single-use individual toiletry bottles in hotels/motels, grant/discount programs for switching to reusables, and working with home meal delivery services (e.g., Blue Apron) , etc. to reduce single-use packaging and encourage reuse” (p.80of PDF)
Oakland <i>2030 Equitable Climate Action Plan (2022)</i>	Section MCW-3 Eliminate single-use plastics & prioritize reuse in food preparation, distribution, and sale
Pleasanton <i>Climate Action Plan 2.0 (2022)</i>	Page 12 – Single use plastic reduction (one of 16 “primary actions” and the only one on material and consumption)
San Leandro <i>Climate Action Plan (2021)</i>	WR-5 Styrofoam and single-use plastics reduction - “Work with regional partners to reduce the prevalence of single-use plastic and ensure that reusable food service ware is the default in din-in, delivery, and takeout dining...Mandate that any single-use food service ware (plates, bowls, cups) and accessories (straws, utensils, condiment cups) are BPI-certified compostable fiber, except in cases where certain materials may be deemed medically necessary or necessary to ensure equal access for persons with disabilities.” (Page 85, page 104 of the PDF)
Union City <i>Climate action Plan (2010)</i>	WR-1.1 - Increase Waste Diversion Target - Section D. Develop ordinances to ban use/sales of unrecyclable plastics and disposable bags/containers Section F. Develop an ordinance that requires take-out food containers to be compostable or recyclable within Union City’s Recycling and Composting System.

⁶ Stopwaste - Explanatory Notes of Disposable Packaging Reduction Ordinance - <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

In addition to the Alameda County jurisdictions listed in Table 1, as of February, 2023, several jurisdictions in California have enacted policies that go beyond “on-request” requirements for SUDs, and mandate reusable food ware for on-site dining. These include Arcata, Berkeley, Culver City, Cupertino, Fairfax, Goleta, County of Los Angeles, Palm Springs, San Anselmo, Santa Rosa, Sebastopol, Tiburon, and Truckee.⁷

DISCUSSION

The primary objective of the ACWMA Model Disposable Single-Use reduction and Reuse Food ware Ordinance (see Attachment II) is to reduce the demand for and consumption of certain problematic, single-use food ware items, such as plastic and paper cups, plates, and utensils. These items serve a very short useful lifespan of just minutes, but can impact the environment for hundreds of years, if not longer.

The model ordinance incorporates concepts and lessons learned from policies enacted in Alameda County as well as other jurisdictions and introduces some new approaches designed to further incentivize reuse and address the environmental impacts and costs associated with the use and disposal of single-use food ware and packaging. The model ordinance includes a wide range of methods to reduce SUD-generated waste and is designed for jurisdictions to only enact those methods that align with the jurisdiction’s unique goals and circumstances. Some key provisions of the model ordinance are listed below and followed by a brief overview of Hayward’s current approach to the provision.

- **Reusable food ware required for on-site dine-in establishments.**

Hayward currently has no requirements for reusable food ware for on-site dining. This provision holds the potential to significantly reduce the amount of SUDs in Hayward and should be seriously considered for adoption. However, this provision also holds the potential to significantly disrupt certain businesses’ method of operating, particularly for businesses with no dishwashing capabilities, and therefore staff suggests this provision should only be considered after the City conducts appropriate outreach to and receives feedback from the food service community.

- **Requirements to accept customer-provided reusables.**

Hayward currently has no requirements for businesses to accept customer-provided reusable food ware. This measure should also be considered after conducting outreach and receiving feedback from the food service community.

- **Charges to disincentivize disposable food ware and discounts for reusables.**

Hayward currently has no requirements for businesses to charge customers for disposable food ware. The model ordinance includes provisions to charge customers for disposables. Studies in San Francisco and Berkeley have shown that charging 25

⁷ StopWaste Guide to the Stopwaste Model Ordinance, page 21: <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

cents per cup is the lowest level likely to influence people's behavior and incentivize them to bring a reusable cup. Charging for disposables makes customers aware of their consumption and has been proven effective in the case of plastic bags to persuade customers to choose reusables over SUDs.⁸ While this type of provision has proven effective with plastic bags, some communities have expressed concern that charges on SUDs could disproportionately impact low-income customers. An exemption to charges could be offered for customers enrolled in WIC or EBT programs. However, not all low-income customers enroll in these programs and there can be a stigma associated with needing to show proof of participation in these programs.

- **Defined criteria for compliant disposable food ware.**

Hayward defines compliant disposable food ware in the Section 5, Article 11⁹ of the Hayward Municipal Code. The definition says "...disposable food service ware means a product used by a Food Vendor and is commonly disposed of after a single use, and includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils or hot cup lids." Since Section 5 Article 11 was adopted in 2010, some portions of the ordinance have been superseded by state law and can be updated and clarified. For example, the Section 5-11 definition of disposable food ware calls out that straws are not considered disposable food ware.

The model ordinance also includes options to address toxicity in food ware products. Many existing local ordinances in California now require that food service ware is recyclable or compostable and some also require that the items be PFAS free. However, none address the broad array of other health threatening chemicals commonly used in the manufacture of food service ware products and are known to migrate out of the packaging into food and beverages prior to and during consumption.¹⁰ The model ordinance contains a provision that can set a precedent for safe exposure by requiring that food service ware be certified by a third party. The model ordinance recommends using Green Screen(™) Certification, as this certification can ensure that over 600 chemicals are not present in the products. Using a third party to ensure food ware is free from toxicity avoids the need for local governments or food service providers to check into the chemical constituents used in food service ware.

- **Reusable cup requirements for large events and venues.**

Hayward has no large venues or recurring events that meet the State definition of 2000 or more attendees. However, Hayward encourages and can require reusable cups as a condition of approval for events requiring a permit.

- **Reusables requirements for City facilities.**

Hayward currently encourages the use of reusables and offers a set of reusable dishware at City Hall for staff to borrow. Hayward can develop an internal policy for reusables without the need for an ordinance. The City could lead by example by only

⁸ StopWaste Guide to the Stopwaste Model Ordinance, pages 24-25 : <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

⁹https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH5SAHE_ART11POFODIFOSEWAPRECOFOSEWARE

¹⁰ StopWaste Guide to the Stopwaste Model Ordinance, page 34 : <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

using reusables at City events, staff meetings, etc.

- **Restricting sale of certain items such as packaged water and polystyrene foam.**
Hayward currently discourages the use of packaged water and offers a set of refillable water stations at City Hall and the main library. Hayward has an internal policy adopted in 2010 (Resolution 10-016) that bans the purchase of bottled water for City operations and events. However, the policy was not strictly followed initially, and was particularly not enforced after the COVID-19 outbreak in 2020. Staff intends to restart efforts to promote the policy now that COVID has waned. Hayward banned polystyrene foam food ware in 2010 with the passage of Section 5, Article 11 of the municipal code.
- **Helium Ballons**
In addition to SUD food ware, Hayward could consider adding the banning of helium balloons at City facilities and City-sponsored events to this ordinance. These balloons are single-use, disposable and harmful to the environment.

The ACWMA model food ware ordinance offers comprehensive vetted policy language and maintains flexibility for a jurisdiction to implement a customized version. Specific modules can be customized or removed. ACWMA has provided a guidance document to help jurisdictions draft their unique ordinance. The guidance document includes a prioritized list of recommended policies and suggested timelines for implementation. These recommended policies are presented in four tiers ranked from the most important (Essential) to suggested policies that can enhance SUD reduction efforts. The tiers are defined below, and the ranked policies with ACWMA's suggested implementation timelines are shown in Table 2.

1. **Essential** - policies considered to be bare-minimum first steps in transitioning foodservice to reuse and coming into compliance with the major reduction of disposables state law (AB1276) that requires Accessories Only Upon Customer Request.
2. **Advised** - policies help move the needle from reuse in food service to other sectors, including events, large venues, government facilities and take a step towards replacing disposable beverage bottles with refillable ones.
3. **Worth Considering** - policies would be the first of their kind in the U.S. While there is some early precedent in Europe, jurisdictions that adopt these policies would be taking a leadership role in the U.S.
4. **Other Food ware Policies** - policies specify what Food Service Ware will be acceptable for use in food service and for sale and distribution within the City. These policies should be enacted as companions to Reduce and Reuse policies as on their own, they do not serve to reduce environmental impacts such as litter, waste, or greenhouse gasses. However, these policy measures will help to protect public health because they will reduce exposure to high priority toxic chemicals in Food Service Ware.

Table 2 - ACWMA Ranked Recommendations for Model Ordinance Policy Implementation

Essential	Suggested Start Date
Reusable food ware required for dining on premises	12 months after adoption
Customer-provided reusable cups and food containers for take-out	Immediately
Accessories only upon request	Immediately
Advised	
Reusable Cups at Events	12 months after adoption
Reusable Cups at Large Venues	12 months after adoption
Reusable Cups at City Facilities	12 months after adoption
Disposable Cup and Container Charge	12 months after adoption
Accessible Water Bottle Refill Stations	12 months after adoption
Worth Considering	
City Purchase, Sale or Distribution of Packaged Water Prohibited	12 months after adoption
Other Food ware Policies	
Compliant Disposable Food ware for Food Service	12 months after adoption
Sale or distribution of Non-Compliant Food Service Ware Prohibited	12 months after adoption
Polystyrene Foam and Related Products	12 months after adoption

Although following the ACWMA suggested implementation timeline for “Essential” and other policies at this time could result in significant reduction of litter and SUD waste generated in Hayward, staff recommends considering a longer timeline for implementation. There are several Hayward businesses still recovering from the effects of the COVID-19 pandemic and implementing a disruptive ordinance could increase pressure on these already-strained businesses. A longer timeline will allow staff to implement reusables for internal operations and conduct outreach to food service businesses and better understand the potential impacts of a food ware ordinance on Hayward businesses. Staff can also explore potential opportunities for a mini-grant program, technical assistance program, and reusable take-out food ware program should those appear necessary. Staff recommends starting an outreach campaign to Hayward food service businesses in the fall of 2023 and returning to the CSC in 2024 to suggest the best means to address reducing SUDs in Hayward.

FISCAL AND ECONOMIC IMPACT

Studies have shown that the vast majority of businesses that switch from SUDs to reusable dishware save money from not purchasing single-use items as well as from decreased disposal costs. However, the economic impacts for businesses can vary, especially

depending on dishwashing capability. Implementing a surcharge that customers pay on SUDs and allowing the business to keep the money could benefit Hayward businesses.

SUDs often become litter. Therefore, minimizing their use will assist the City in achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in storm drains. Adopting an ordinance will entail increased enforcement efforts by the City which could increase staff time.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priorities of *Confront Climate Crisis & Champion Environmental Justice*, including the subcategory of *Reduce waste by promoting a circular economy*, and *Support Quality of Life*, including the subcategory of *Invest in Cleanliness and Blight Reduction*. This item does not relate to a specific project identified in the Roadmap.

SUSTAINABILITY FEATURES

Solid waste management involves the safe and responsible management of discarded material from generation through processing to disposal. Reducing waste landfilled by maximizing the reuse, recycling, and composting of materials increases diversion, conserves natural resources, and plays an important role in making a community sustainable.

PUBLIC CONTACT

Staff is still in the research stages of drafting this potential ordinance and has not conducted any public outreach.

NEXT STEPS

At the direction of the Committee, staff will initiate an outreach campaign to Hayward food service businesses in the fall of 2023 regarding a potential food ware ordinance that minimally requires reusable food ware for dine-in service and potentially requires other requirements outlined in Table 2. Staff would return to the CSC in 2024 to share results of the outreach and suggest the best means to reduce SUDs in Hayward.

Prepared by: Jeff Krump, Solid Waste Program Manager
Erik Pearson, Environmental Services Manager

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager

STOPWASTE MODEL FOOD SERVICE WARE ORDINANCE FOR ALAMEDA COUNTY

CUSTOMIZATION CONSIDERATIONS

The Model Ordinance is designed to be customizable for a diverse range of jurisdictions, providing flexibility for each jurisdiction to reflect its needs. Each jurisdiction will want to develop an approach to managing food service ware and related items that addresses its priorities.

Guidance notes are integrated into the Model Ordinance to explain how specific sections and provisions of the Model can be customized for a jurisdiction's needs:

General guidance notes are highlighted green.

Notes highlighted in blue identify options or areas where specific information is to be inserted or selected.

The Model Ordinance addresses common variations and options; however, addressing all scenarios is not practical. As such, jurisdictions may choose to customize some sections of the Model to reflect their policy goals and local conditions. Additional tips for using the Model include:

- a) **Modify Language.** Adjust the Model language to fit the jurisdiction's specific needs. For example, a jurisdiction that already has a Polystyrene foam ordinance in place can remove sections related to Polystyrene foam or modify them to refer to the existing ordinance.
- b) **Change Jurisdiction Title.** The terms "City" and "City Council" are used throughout this Model Ordinance; however, the entity responsible for adopting this Ordinance will need to change "City" throughout the document to the appropriate term, which may be a City, County, or Special District that provides solid waste handling services, etc.
- c) **Blend Existing Code Provisions with Model Provisions.** When using the Model Ordinance, an entity may want to select provisions from both the Model Ordinance and its existing ordinance(s) to create an ordinance that best suits its needs.
- d) **Delete Guidance Notes and Unused Options.** Be sure to delete highlighted text that is not a part of the ordinance your entity will be adopting. As noted above, green highlighting identifies guidance notes presented in the Model for reference only, which the user should remove when preparing a final Ordinance. In cases where the Model offers multiple options, blue highlighting identifies these options and areas where customization is advised. Users should delete options and customization items that are not selected and modify section numbers accordingly.
- e) **Style and Design.** The final document style is at each jurisdiction's discretion. The use of colors and highlighting to differentiate content is not required in any final document produced, and the final document should be made consistent with the entity's standard document styles.

STOPWASTE MODEL FOOD SERVICE WARE ORDINANCE FOR ALAMEDA COUNTY

AN ORDINANCE OF THE CITY OF _____ ADDING CHAPTER _____ OF THE _____ CITY CODE RELATED TO FOODWARE

The City Council of The City of _____ does hereby ordain as follows:

CHAPTER _____

DISPOSABLE FOOD SERVICE WARE REDUCTION AND REUSE

Guidance: It is not essential for the Ordinance to have a table of contents. One is included here to make it easier to use the model.

GENERAL PROVISIONS

1. Findings and Purpose.
2. Definitions.

FOOD SERVICE WARE REDUCTION AND REUSE

3. Reusable Food Service Ware Required for Dining on Premises.
4. Customer-Provided Reusable Beverage Cups and Food Containers for Take-Out.
5. Disposable Beverage Cup and Food Container Charge.
6. Accessories Only Upon Customer Request.
7. Reusable Beverage Cups at City Facilities.
8. Reusable Beverage Cups at Large Venues.
9. Reusable Beverage Cups at Events.

DISPOSABLE PACKAGED WATER REDUCTION AND REUSE

10. City Purchase, Sale, or Distribution of Packaged Water Prohibited.
11. Accessible Water Bottle Refill Stations.

COMPLIANT DISPOSABLE FOODWARE

12. Compliant Disposable Food Service Ware for Food Service.
13. Sale or Distribution of Non-Compliant Food Service Ware Prohibited.
14. Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products.

ENFORCEMENT

15. Process to Obtain Waivers.
16. Enforcement.

IMPLEMENTATION

17. Severability.
18. Chapter Supersedes Existing Laws and Regulations.
19. California Environmental Quality Act.

GENERAL PROVISIONS

Section 1. Findings and Purpose.

- a) The production, consumption and end of life management of Disposable Food Service Ware, typically used for only a few minutes before being discarded, have significant environmental impacts including substantial greenhouse gas emissions, litter, marine pollution, environmental contamination, harm to wildlife, the depletion of precious natural resources, decrease of biodiversity, and the generation of hard-to-manage waste.
- b) Prior to the COVID-19 pandemic, nearly 1 trillion individual pieces of Disposable Food Service Ware and packaging were used annually by U.S. food service operators: 21% for on-site dining and 79% for takeout and delivery. The use of Disposable Food Service Ware increased dramatically during the pandemic as takeout and delivery became the most common forms of prepared food service.
- c) Pre-pandemic, restaurants and foodservice businesses in the U.S. spent \$24 billion on disposables each year. Local businesses and city governments spend nearly \$6 billion per year on solid waste management costs attributable to disposable food packaging. Roughly 20 billion pieces of litter per year are from disposable food-service packaging.
- d) Disposable Food Service Ware substantially contributes to hard-to-recycle wastes. Packaging comprises 27% of California's disposed waste stream annually. The generation of municipal solid waste in 1960 was just 2.68 pounds per person per day in California and reached 4.9 pounds per person per day in 2018, the last time EPA reported generation rates. In 2018, 28% of municipal solid waste disposed of in the U.S. was packaging.
- e) Each year in California and globally, during International Coastal Cleanup Day, seven of the top ten littered items collected on beaches and shorelines are Disposable food and beverage packaging. Almost all of them are plastic.
- f) Plastic beverage bottles are number one of the top ten most commonly found plastic items on beaches when measured by weight. Every hour, Americans use 3 million plastic water bottles. Californians used more than 12 billion plastic beverage bottles in 2017, of which about 70% were not recycled. *Guidance: This finding applies to sections 10 (City Purchase, Sale, or Distribution of Packaged Water Prohibited) and 11 (Accessible Water Bottle Refill Stations). Remove this finding if the Sections are not included.*
- g) Every year, about 8 million tons of plastic waste escape into the oceans from coastal nations. That's the equivalent of dumping the contents of one garbage truck into the ocean every minute. Research indicates that as of 2015, there were over 150 million tons of plastics in the ocean. If plastic inputs are not significantly curtailed, the ocean will contain 3 times more plastic by weight than fish by 2025. Over 900 species of marine wildlife have been impacted by plastic ingestion and entanglement.

- h) Plastic may last for hundreds and even thousands of years, and has broad, long-lasting negative impacts. Plastics are persistent and accumulating dramatically in oceans worldwide. Scientists document a complex toxicology of plastic micro- and nano-particles in marine life that transfers up the food chain, including to people.
- i) Polystyrene is a petroleum-based, lightweight plastic material commonly used as Disposable Food service ware by retail food vendors. It is made from Styrene, a human carcinogen known to migrate from food service ware into food and beverages. Products made from expanded polystyrene foam are not biodegradable, returnable or readily recyclable. Polystyrene foam easily breaks up into smaller pieces and, because it is lightweight, is easily dispersed in the environment. It has been found to comprise 70% of the plastic debris in California rivers and on beaches. *Guidance: This finding applies to Sections 12 (Compliant Disposable Food Service Ware for Food Service) and 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this finding if the Sections are not included.*
- j) Packaging, including Food Service Ware, is a primary user of virgin materials and resources. 55% of paper produced each year is used for packaging. Paper production is responsible for 3 billion trees logged in the U.S. each year, which causes loss of habitat and biodiversity, results in sedimentation of streams, and reduces the availability of trees to capture CO₂ from the atmosphere.
- k) The growth of plastics production in the past 65 years has substantially outpaced any other manufactured material. 42% of non-fiber plastics produced are used for packaging and 60% of all plastics produced between 1950 and 2015 were landfilled or entered the environment. Half of all global plastic production is for single-use applications.
- l) Cheap fracked natural gas is driving a ramp-up in plastics production world-wide. The production capacity for plastic is poised to grow by 33% or more in less than a decade and is causing the plastics industry to identify or create new markets – primarily packaging – for an ever-growing flow of cheap plastic.
- m) Reducing the production and disposal of plastic is essential to reducing greenhouse gas emissions. It is estimated that in 2019 alone the global production and incineration of plastic produced more than 850 million metric tons of greenhouse gasses—equal to the emissions from 189 five-hundred-megawatt coal power plants.
- n) Disposable Food Service Ware poses numerous threats to human health. Over 12,000 chemicals are used in food packaging and other materials that contact food. Many are known to cause cancer, endocrine disruption, chronic diseases and other illnesses in people, and to harm aquatic and terrestrial ecosystems. Many of the most toxic chemicals used in Disposable Food Service Ware migrate into food and beverages.
- o) Disadvantaged and low-income communities are disproportionately impacted by the human health and environmental impacts of toxic chemicals in Disposable Food Service Ware, plastic pollution, and fossil fuel extraction.

- p) Micro- and nano- plastics are released from Disposable Food Service Ware, including polypropylene food containers and PET beverage bottles (Polyethylene terephthalate, commonly recognized in single-use water bottles and labeled with the #1 recycling code). People inhale microplastics through the air, consume them through food and water, and even absorb them through the skin. Microplastics have been found within human lungs, livers, spleens, and kidneys, in the placentas of newborn babies, and in breast milk.
- q) Prioritizing reduction and reuse of packaging can provide significant economic, environmental, and social benefits and is consistent with the Integrated Waste Management hierarchy that places “Reduce” and “Reuse” above “Recycling” and disposal.
- r) The availability of innovative services, systems, and businesses that deliver products in unpackaged or Reusable formats is increasingly creating new opportunities for local business entrepreneurship and economic development. Recycling and reusing create between 9 and 30 times more jobs than disposing of waste in landfills and incinerators.
- s) Requiring the use of 100% Reusable Food Service Ware for onsite dining and take-out food service in urban cities in the U.S. is estimated to achieve an 86% reduction in Disposable Food Service Ware, equal to 841 billion Food Service Ware items eliminated, 7.5 million tons of waste avoided, \$5 billion in net savings for the food service industry for food service operations, \$5.1 billion saved by business and local government in solid waste management costs, and 17 billion pieces of litter prevented. Meanwhile 193,000 local community-based jobs would be created.
- t) Public access to water refill stations supports personal efforts to avoid Disposable plastic bottles by using Reusable bottles, and helps people save money. A 20% increase in the use of Reusable bottles worldwide could reduce marine plastic pollution by 39%, keeping 8.1 to 13.5 billion PET bottles out of the ocean every year, based on 2018 data. Switching to Reusable bottles can save 8 billion metric tons of CO₂, 2% of the remaining carbon budget. Reusable glass beverage bottles are 85% more climate friendly than Disposable plastic beverage bottles. *Guidance: This finding applies to Sections 10 (City Purchase, Sale, or Distribution of Packaged Water Prohibited) and 11 (Accessible Water Bottle Refill Stations). Remove this finding if the Sections are not included.*
- u) Stainless steel and polypropylene cups for beverages at major events dramatically outperform disposable plastic and paper cups across all environmental metrics if they are washed and used more than six times. Reusable polypropylene cups can be washed hundreds of times and stainless-steel Reusable cups can be washed and reused thousands of times. *Guidance: This finding applies to Section 9 (Reusable Beverage Cups at Events). Remove this finding if the Section is not included.*
- v) In 2021, Governor Newsom signed into law California Assembly Bill (AB) 1276 (codified at Pub. Res. Code, Sections 42270 et seq.) which prohibits food facilities from providing any single-use Food Service Ware Accessories or condiment packages unless requested

by the customer. *Guidance: This finding applies to Section 6 (Accessories Only Upon Customer Request). Remove this finding if the Section is not included.*

- w) State law allows customers to provide their own Reusable Beverage Cups and Reusable Food Containers for service, and, consistent with the Centers for Disease Control and Prevention, the Alameda County Department of Environmental Health allows the use of Reusable Food Service Ware when properly washed, rinsed, and sanitized.
- x) [Additional Findings to be Added by City]
Guidance: This finding is a placeholder for the jurisdiction to add additional findings about local conditions, such as its progress toward its AB 939 goals, how Disposable Food Service Ware affects the jurisdiction's hauler (handling plastics and compostable Food Service Ware), and local data on plastic pollution in parks and waterways.
- y) The City Council does, accordingly, find and declare that it should restrict the use of Disposable Food Service Ware and Accessories by Prepared Food Vendors, promote customer-provided Reusable Beverage Cups and Food Service Ware for take-out, establish a Disposable Beverage Cup and Container charge, require that certain Foodware Accessories be provided only upon customer request, require use of Reusable Beverage Cups at City facilities and Returnable Reusable Beverage Cups at Large Venues and Events, prohibit the purchase, sale, or distribution of water in Disposable bottles by the City, require Accessible Water Bottle Refill Stations, set standards for Disposable Food Service Ware for food service and prohibit the sale or distribution of Polystyrene foam and certain non-recyclable non-compostable products. The City has a substantial interest in protecting its residents and the environment from negative impacts of Disposable Food Service Ware, Packaged Water, Polystyrene Foam and certain non-recyclable non-compostable products and in realizing the benefits of alternative products. This Chapter is consistent with relevant City plans including [list]. *Guidance: Revise this finding as needed if not adopting all provisions of the Model Ordinance.*

Section 2. Definitions.

Unless otherwise expressly stated, whenever used in this Chapter, the following terms shall have the meanings set forth below:

- a) "Accessible Water Bottle Refill Station" means a bottle filler that dispenses potable drinking water downward that complies with Section 116875 of the California Health and Safety Code standards and applicable standards under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and accessibility requirements applicable to drinking fountains under the California Building Standards Code. *Guidance: This definition applies to Section 11 (Accessible Water Bottle Refill Stations). Remove this definition if the Section is not included.*
- b) "ASTM Standard Specification" means Standard Specification for Compostable Plastics D6400 or Standard Specification for Biodegradable Plastics D6868 as certified by the

Biodegradable Products Institute (BPI), as adopted or subsequently amended by the American Society for Testing and Materials (ASTM).

- c) "Beverage Cup" means any cup, vessel, glass, container, or any other items in which a beverage (including water) is placed or packaged at a Prepared Food Vendor's premises.
- d) "Biodegradable Products Institute" or "BPI" is a multi-stakeholder association of key individuals and groups from government, industry, and academia, which promotes the use and recycling of biodegradable polymeric materials (via composting). BPI maintains and certifies a list of products that demonstrate that they meet the requirements of ASTM D6400 or D6868, based on testing in an approved laboratory.
- e) "Bulk" means material that is stored as unpackaged liquid or dry goods capable of being conveyed to a Reusable container in methods conforming to the California Retail Food Code, Health and Safety Code, Sections 113700 et seq. or packaging for a large amount of product, thereby offsetting the need for multiple smaller packaging units for the same amount of product. *Guidance: This definition applies to Section 6 (Accessories Only Upon Customer Request). Remove this definition if the Section is not included.*
- f) "City" means the City of _____.
- g) "City Property" means any City-owned properties or facilities, including but not limited to, indoor and outdoor recreation fields, parks and golf courses, gardens, open space and boulevards, buildings and rooms. *Guidance: Consider whether to add any exclusions here for city property where this ordinance should not apply.*
- h) "Compost Manufacturing Alliance" is a national certifier of compostable products for compost facilities.
- i) *[Guidance: This subsection offers three definitions of compostable, while ensuring that local governments' definitions align with the State's definition. Entities should select the option that best achieves their policy goals.]*

"Compostable" means an item or material that the State deems to be compostable pursuant to Public Resources Code Chapter 5.7 (commencing with Section 42355) AND that satisfies the following:

OPTION A: "Compostable" means an item or material is accepted in the City's available organics collection program as fully compostable, as determined by the City's _____ Department, and is listed, described, or referenced on the Department's website as compostable. The City shall list only items or materials that are Fiber-based and will break down into, or otherwise become a part of, usable compost (e.g., soil conditioning material, mulch) in a safe and timely manner. Products or packages made with plastics, either petroleum or biological based, and made with fluorinated chemicals shall not be considered compostable. Only items and materials certified to meet these standards by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third party recognized by the City shall be considered compostable. As used in this

definition, “Fiber-based” means a plant- or animal-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. Fiber-based items do not include or contain petroleum-based or biologically-based polymers of any kind. *Guidance: Select this option to disallow all plastics, including “compostable plastics” from the organics collection system.*

OPTION B: “Compostable” means an item or material is accepted in the City’s available organics collection program as fully compostable, as determined by the City’s Department, and is listed, described, or referenced on the Department’s website as compostable. The City shall list only items or materials that are certified to be compostable by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third-party certification program recognized by the City. *Guidance: Select this option to limit acceptable products to those that have been certified as compostable by a third-party certification program.*

OPTION C: “Compostable” means an item or material is accepted in the City’s available organics collection program. *Guidance: Select this option to limit acceptable products to those that are accepted in the City’s organics collection system without reference to a third-party certification program.*

- j) “Convenient drop-off” means customers returning Reusable products in a Reuse System can return to the retail location where the product was originally obtained, in curbside kiosks near the original retail location, or at nearby grocery stores or other retail locations, or the Reuse System provides frequent home pick-up services.
- k) “Dishwashing Capacity” means adequate onsite or offsite services, including those provided to a Prepared Food Vendor through a contracted service, to wash, rinse, and sanitize, in compliance with the California Health and Safety Code Division 104- Environmental Health, Part 7, California Retail Code, the necessary quantity of Reusable Food Service Ware items for all food and beverages prepared on the premises of the Prepared Food Vendor.
- l) “Disposable” means an item or product that is not Reusable, including Food Service Ware and products that are intended for single or a limited number of uses, regardless of the method of disposal, including whether, after use, the item or product is landfilled, treated with heat by conversion technologies, incinerated, recycled, or composted.
- m) “Egg Carton” means a carton for raw eggs sold to customers from a refrigerator case or similar retail appliance. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- n) “Event” means any indoor or outdoor event within the City that is subject to a City permit and expected to have more than 500 attendees or participants. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included. The number of attendees can be adjusted to a number that*

seems appropriate for the types of events in the City.

- o) “Event Producer” means a person or entity, or their agent, who contracts with or obtains a permit from the City or a City agent, to hold an Event or Events within the City at a location other than a Large Venue. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included.*
- p) “Food Container” means any hinged or lidded container (clamshell, box, bowl), plate, tray or other vessel used to hold Prepared Food.
- q) “Food Service Ware” means any products used for serving, consuming, or packaging Prepared Food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), utensils (forks, knives, spoons, sporks, and chopsticks), condiment cups, and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Vendor’s premises.
- r) “Food Service Ware Accessory” means any item or accessory that typically accompanies Food Service Ware, such as straws, stirrers, splash sticks, cocktail sticks, toothpicks, napkins and utensils (forks, knives, spoons, sporks, and chopsticks); condiment cups and packets; cup sleeves, tops, lids and spill plugs; and other similar accessory or accompanying items used as part of Prepared Food or beverage service or packaging. *Guidance: This definition applies to Section 6 (Accessories Only Upon Customer Request). Remove this definition if the Section is not included. Local jurisdictions may regulate Food Service Ware Accessories that are not already covered in AB 1276 - Single-Use Food Service Ware Accessories and Condiments. Napkins (perhaps the most heavily used and wasted accessory item), cup sleeves, tops, lids and spill plugs are not covered in AB 1276 but have been included in this definition.*
- s) “High Priority Toxic Food Packaging Chemical” means any Perfluoroalkyl or Polyfluoroalkyl Substances (PFAS) or any of the chemicals listed in California's Proposition 65 (Health & Safety Code § 25249.8; list set forth at 22 CCR § 69502.2(a)(1)(A)), the European Union's Substances of Very High Concern Candidate List (set forth at 22 CCR § 69502.2(a)(1)(C), (G)), and the International Agency for Research on Cancer lists Group 1 and Group 2a (set forth at 22 CCR § 69502.2(a)(1)(J)). *Guidance: These lists represent a prioritized subset of lists that inform the California Candidate Chemicals List for the California Safer Consumer Products Act. See 22 CCR § 69502.2(a)(1). Together, these lists address a wide array of food packaging chemicals that are listed by authoritative agencies as carcinogenic, mutagenic, endocrine disrupting, or cause developmental or reproductive toxicity.*
- t) “High Priority Toxic Material” means any kind of polyvinyl chloride (PVC), polystyrene, polycarbonate, or melamine material, or bamboo or any other material that uses a resin binding agent.
- u) “ISO 17025 Accredited Lab” means a laboratory accredited by the International

Organization for Standardization and International Electrochemical Commission to perform product testing, sampling, and calibration.

- v) "Large Venue" means a permanent facility that seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation over a typical calendar year. For purposes of this definition, a "facility" includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this Chapter, a site under common ownership or control that includes more than one Large Venue, where each Large Venue is contiguous with other Large Venue(s) in the site, is a single Large Venue. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included. The size of the venue can be adjusted to a number that seems appropriate for the types of venues and events in the City.*
- w) "Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to customers from a refrigerator case or from a similar retail appliance. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- x) "Packaged Beverage" or "Packaged Water" means a drinking beverage, including water, in a sealed container, including a box, bag, can, glass bottle, Rigid Plastic #2 Bottle or other sealed container intended primarily for single-service use.
- y) "Packing Material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- z) "Person" means an individual, firm, limited liability company, association, partnership, corporation, or any other legal entity other than a governmental entity that is not specifically referenced in this ordinance.
- aa) "Perfluoroalkyl and Polyfluoroalkyl Substances" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- bb) "Polystyrene Foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding and extrusion-blow molding (extruded foam polystyrene). "Polystyrene Foam" does not include clear or solid polystyrene (oriented polystyrene). *Guidance: This definition applies to Sections 12 (Compliant Disposable Food Service Ware for Food Service) and 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if these Sections are not included.*

- cc) "Prepared Food" means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises of a Prepared Food Vendor for consumption, including, but not limited to, ready-to-eat, dine-in, take-out, or complimentary food or beverage. "Prepared Food" does not include: (1) raw eggs and raw, butchered meat, fish, or poultry that is sold from a refrigerator case or from a similar retail appliance; or (2) prepackaged food that is delivered to a Prepared Food Vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the Prepared Food Vendor to the customer in the same container or packaging.
- dd) "Prepared Food Vendor" means any Person that that sells Prepared Food to be consumed on or off a premises located or operated within the City including, but not limited to, a restaurant, café, bar, nightclub, grocery store, convenience store, delicatessen, bakery, food service establishment (including carry out, quick service, and full-service), cafeteria, food court, food truck or mobile unit-based vendor, hotel, motel, bed and breakfast, inn, special event space, movie house, theater, itinerant restaurant, pushcart, farmers market, or other similar establishments, directly or indirectly under contract and including, but not limited to sales on City Property, Large Venues, and commercial office buildings. Notwithstanding the foregoing, the following are not considered Prepared Food Vendors: hospitals, public agencies other than the City, public and private schools, prisons and jails. *Guidance: Revise the list of exceptions to fit the circumstances of your city.*
- ee) "Produce Tray" means any tray or carton for raw vegetables or fruit sold to customers from a refrigerator case or from a similar retail appliance. *Guidance: This definition applies to Subsection 14(b). Remove this definition if the Subsection is not included.*
- ff) "Recyclable" means an item or material is accepted in the City's recycling collection program as fully recyclable, as determined by the City's _____ Department, and is listed, described, or referenced on the Department's website as recyclable. The City shall not list items or materials that will be burned, incinerated, or converted through gasification, pyrolysis, enzymatic breakdown or a similar chemical conversion process used to transform materials into plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, energy, diesel, gasoline, or home heating oil. *Guidance: This definition applies if Option B of Section 12(b) is used - Compliant Disposable Food Service Ware for Food Service. Remove this definition if Option B is not included.*
- gg) "Reusable" means Food Service Ware that is manufactured of ceramic, porcelain, glass, or non-foil metal, or other durable materials that are specifically designed and manufactured to be washed and sanitized for at least 780 commercial wash cycles as warranted by the manufacturer, based on testing performed by an ISO 17025 Accredited Lab, are safe for washing and sanitizing according to California Health & Safety Code, Sections 114101 and 114099.7, respectively and all other applicable regulations, and are used in a system that enables repeated collection, washing, and return of Food Service Ware, thereby ensuring that the product is actually used repeatedly over an extended

period of time. Reusable products shall not be manufactured from a High Priority Toxic Material.

- hh) "Returnable" means an item for which a Reuse System is available.
- ii) "Reuse System" means a system in which (1) convenient drop-off of an item is available to the customer, and (2) there are suitable incentive systems to encourage customers to return the product, such as a deposit or charge for failure to return, or discounts, rewards, or other positive incentives.
- jj) "Standard Condiment" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar and sugar substitutes.
- kk) "Take-Out Consumption" means consumption of food or beverages requiring no further preparation off the premises or away from the facilities of the Prepared Food Vendor.
- ll) "Take-Out Food Ordering Platform" means a Person engaged in the service of taking orders from customers for food or related items for pickup or delivery from a Prepared Food Vendor, and includes orders made by phone, on the Prepared Food Vendor website, or on a third-party site, any of which may also include delivery by a third-party. *Guidance: This definition applies to web-based and phone-based ordering systems on which customers order directly from a Prepared Food Vendor (like Square or Menufy) or indirectly from a third-party prepared food delivery company (like Doordash or GrubHub).*

FOOD SERVICE WARE WASTE REDUCTION AND REUSE

Guidance: Sections 3, 4, and 6 address top priorities to include in a Reusable Food Service Ware ordinance.

Section 3. Reusable Food Service Ware Required for Dining on Premises.

Beginning [specify date - 12 months after ordinance adoption suggested]:

- a) Prepared Food served for consumption on the premises of a Prepared Food Vendor shall be served using Reusable Food Service Ware, except that (1) Disposable paper food wrappers, bags, foil wrappers, and paper tray- and plate-liners shall be allowed provided they meet the requirements in Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service), and (2) Disposable Standard Condiment packets may be provided upon customer request in accordance with subsection b of this Section.
- b) Standard Condiments provided for on-site consumption on the premises of a Prepared Food Vendor must be served from Reusable containers or a Bulk dispenser. A supply of single-use Standard Condiment packets may be maintained and provided to customers upon request, based on medical necessity.

- c) Consumption is considered on-premises if it takes place at tables and/or dining areas, including non-seated picnic areas provided by the Prepared Food Vendor either on its own or in conjunction with one or more other Prepared Food Vendor(s) or pursuant to an agreement between the Prepared Food Vendor and a third party.
- d) This Section does not prohibit a Prepared Food Vendor from providing, upon a customer's request, Disposable Food Service Ware compliant with the requirements in Section 5 of this Chapter (Disposable Beverage Cup and Food Container Charge), and Section 12 of this Chapter (Disposable Food Service Ware for Food Service), to take away leftover Prepared Food after dining on the premises. *Guidance: If the City does not include a cup and container charge in the Ordinance, the reference to Section 5 (Disposable Beverage Cup and Food Container Charge) should be removed.*
- e) Business licenses for Prepared Food Vendors, applied for or renewed after [specify date – at least 30 but not more than 180 days after adoption recommended] shall only be granted to Prepared Food Vendors that can demonstrate ability to comply with Subsection (a) by demonstrating that adequate Dishwashing Capacity will be provided on the premises or that dishwashing services will be provided by a third party. *Guidance: Along with encouraging reuse for existing businesses, future businesses should be designed to enable reuse. Including this Subsection will reduce future waiver requests and compliance issues. Consider adding a similar requirement to the City's building code and zoning code in a future update.*
- f) The requirements of Subsection (a) of this section shall not apply to Mobile Food Facilities or Temporary Food Facilities as defined by California Health and Safety Code Sections 113831 and 113930.
- g) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this Section. All leases, contracts, funding agreements, and sponsorships entered by the City shall require compliance with this Section for all activities in the City. *Guidance: Sample language is included in the Model Ordinance Toolkit.*
- h) Prepared Food Vendors that do not have Dishwashing Capacity may request a waiver or partial waiver of Subsections (a) and (e) of this Section. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship, and/or other insurmountable circumstances. Any waiver shall expire automatically in the event of a significant remodel, renovation, or other alteration of the premises with a construction valuation that exceeds \$60,000, or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted. *Guidance: See Section 15 (Process to Obtain Waivers) for more information on the waiver process. The \$60,000 figure is based on existing ordinances (e.g., City of Berkeley). The City may wish to adjust this number to suit local conditions.*

Section 4. Customer-Provided Reusable Beverage Cups and Food Containers for Take-Out.

- a) Customers shall be allowed to provide their own empty Reusable Beverage Cups and Reusable Food Containers for Take-Out Consumption by Prepared Food Vendors in accordance with California Retail Food Code, Health and Safety Code, Sections 113700 et seq.
- b) Prepared Food Vendors subject to this section may refuse, at their sole discretion, any customer-provided Reusable Beverage Cup or Reusable Food Container that is cracked, chipped, or corroded, or appears inappropriate in size, material, or condition for the intended beverage or food, or that appears to be excessively soiled or unsanitary.
- c) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this section for all activities in the City.
- d) Large Venues and Events are not subject to this Section.

Section 5. Disposable Beverage Cup and Food Container Charge.

Guidance: Throughout this Section, the City may opt to focus on cups only, or to apply charges to food containers as well. If the City does not plan to include a charge for food containers, the term should be removed throughout the Section.

Beginning *[specify date – 12 months after ordinance adoption suggested]*:

- a) **OPTION A.** Prepared Food Vendors shall charge customers twenty-five cents (\$0.25) for each Disposable Beverage Cup and Disposable Food Container provided for Take-Out Consumption. The maximum charge per order for all Disposable Beverage Cups and Food Containers shall be one dollar (\$1.00). Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) shall not be charged for additional Disposable Beverage Cups or Disposable Food Containers needed. *Guidance: Select this option to charge \$.25 per disposable cup/container, up to a maximum of \$1/meal.*
OPTION B. Prepared Food Vendors shall charge customers twenty-five cents (\$0.25) for each order in which Disposable Beverage Cup(s) and/or Disposable Food Container(s) are provided. Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) shall not be charged for additional Disposable Beverage Cups or Disposable Food Containers needed. *Guidance: Select this option to charge \$.25 per order that includes disposables, regardless of the number of cups/containers used.*
- b) Prepared Food Vendors shall provide a minimum twenty-five cent (\$0.25) discount for customers who use their own Reusable Beverage Cup(s) or Reusable Food Container(s). Prepared Food Vendors may provide a larger discount at their own discretion. *Guidance:*

Include this option to require that Food Vendors offer a \$.25 discount to customers that bring their own cup or container. This discount provides an additional incentive for customers to bring their own reusables but should not be used in lieu of the charge in Subsection (a) because discounts alone are not sufficient to drive the desired behavior change. The discount reduces some of the income the business receives from the charges for disposables. The discount would not apply if customer-provided reusables are rejected for some reason under Subsection 4(b); if the jurisdiction wishes to have the discount apply even if the reusables are not used then change the word "use" to "bring."

- c) Income from the Disposable Beverage Cup and Food Container charge shall be retained by the Prepared Food Vendor. *Guidance: These charges can help to offset the increased costs of compliant Disposable Beverage Cups or Food Containers and the costs to Prepared Food Vendors of offering Reusable Beverage Cups and Reusable Food Containers for Takeout Consumption, and these charges can also encourage customers to choose to use Reusable Beverage Cups and Reusable Food Containers to avoid the costs. In some cases, the income from the Disposable Beverage Cup and Food Container charges has led some businesses to promote Disposable options over Reusable ones. Therefore, the City may wish to add a requirement that Prepared Food Vendors who offer Disposable Beverage Cups and Food Containers for takeout consumption must provide a less expensive Returnable Reusable Beverage Cup and Returnable Reusable Takeout Container option to customers.*
- d) Take-Out Food Ordering Platforms that collect payment on behalf of Prepared Food Vendors shall remit the Disposable Beverage Cup and Food Container charges to the Prepared Food Vendor.
- e) Prepared Food Vendors shall not waive or otherwise fail to collect the Disposable Beverage Cup and Food Container charge(s) except for:
 - 1. Customers who use their own Reusable Beverage Cup(s) and/or Reusable Food Container(s);
 - 2. Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) but are not allowed to use them because they are rejected in accordance with Subsection 4(b); or *Guidance: Omit this Subsection if the jurisdiction wishes to impose the charge on those who bring, but are not able to use, their own cups or containers.*
 - 3. Customers demonstrating economic hardship by providing at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, or a Medi-Cal benefits identification card (BIC) issued pursuant to Section 14017.7 of the California Welfare and Institutions Code.

- f) The Disposable Beverage Cup and Food Container charge(s) shall be identified to the customer before purchase separately as a stand-alone charge, on menus, menu boards, and prior to entering payment on Take-Out Food Ordering Platforms. Customers shall be informed of the charge(s) verbally by their server, at the cash register, and when placing orders by phone. Charges shall be reflected separately on any post-sale receipt whether provided in-person or online.
- g) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this Section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this Section for all activities in the City.
- h) Large Venues and Events are not subject to this Section.

Section 6. Accessories Only Upon Customer Request.

Guidance: AB 1276 requires food facilities to meet its requirements at a minimum and allows local jurisdictions to add additional requirements. Provisions that exceed the requirements of AB 1276 are noted below. Additionally, the definition of Food Service Ware Accessory in the model ordinance includes napkins, cup sleeves, tops, lids and spill plugs – none which are covered in AB 1276.

- a) Prepared Food Vendors shall provide Disposable Food Service Ware Accessories or Disposable Standard Condiments to customers for takeout and delivery orders only when specifically requested by the customer. No Disposable Food Service Ware Accessories shall be provided for dining on-premises, except Disposable napkins, cocktail sticks, toothpicks, and stir sticks may be provided for on-premises dining when specifically requested by the customer. Takeout and delivery orders include orders made directly with the Prepared Food Vendor and orders made using Take-Out Food Ordering Platforms. *Guidance: AB 1276 only applies to on-premises dining and online orders. This provision goes beyond AB 1276 by requiring that vendors utilize reusable accessories on-premises (with a few noted exceptions for accessories that do not have a readily available reusable alternative), and only provide disposable accessories or condiments by request for takeout and delivery situations.*
- b) Standard Condiments provided for consumption on the premises of a Prepared Food Vendor must be served from Reusable containers or a Bulk dispenser. A supply of single-use Standard Condiment packets may be maintained and provided to customers upon request, based on medical necessity. *Guidance: this is not required in AB 1276. It eliminates the need for individual portions of Standard Condiments for on-premises dining. But a business can keep single-portion condiments on hand for when a customer specifically requests them.*
- c) Disposable Food Service Ware Accessories and Standard Condiments shall not be bundled or packaged in a manner that prohibits a take-out customer from taking only the specific Disposable Food Service Ware Accessory and/or Standard Condiment desired without also having to take a different Disposable Food Service Ware Accessory

and/or Standard Condiment.

- d) Disposable Food Service Ware Accessories shall not be individually wrapped and may be provided to customers using refillable dispensers that dispense items one at a time.

Guidance: AB 1276 states that nothing shall prevent a food facility from providing unwrapped accessories in a refillable dispenser. This goes further in that it requires Disposable Foodware Accessories to be unwrapped.

- e) (1) A Take-Out Food Ordering Platform shall provide Prepared Food Vendors with a method to customize their menus to include the specific Disposable Food Service Ware Accessories and Standard Condiments that they offer for take-out and delivery orders. The Prepared Food Ordering Platform shall provide customers with the option to request the specific Single-use Food Service Ware Accessories or Standard Condiments they want included in their order from a Prepared Food Vendor.

(2) If a Prepared Food Vendor uses a Take-Out Food Ordering Platform, the Prepared Food Vendor shall customize its menu with a list of available Disposable Food Service Ware Accessories and Standard Condiments they offer, and only those Disposable Food Service Ware Accessories or Standard Condiments selected by the customer shall be provided by the Prepared Food Vendor. If a customer does not select any Single-use Food Service Ware Accessories or Standard Condiments, no Single-use Food Service Ware Accessory or Standard Condiment shall be provided by the Prepared Food Vendor. *Guidance: AB 1276 applies only to third party delivery platforms (like Doordash or Grub Hub) while this model ordinance applies to all ordering platforms, which means it extends also to web-based and phone-based ordering systems where customers order directly from a Prepared Food Vendor (like Square or Menufy). This language is more clear than AB 1276 about ordering platforms needing to provide the Prepared Food Vendor a way to customize its menu and about the platform making it possible for customers to order the specific accessory and condiment items they want.*

- f) Notwithstanding any other requirements of this Section, a Prepared Food Vendor that is (1) located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, or (2) a drive-through food service, may ask a customer if the customer wants a Disposable Food Service Ware Accessory if needed to consume or transport ready-to-eat food, or to prevent it from spilling. *Guidance: This is consistent with AB 1276.*

- g) Nothing in this Chapter shall restrict, or be construed to restrict, the ability of Prepared Food Vendors from providing Disposable plastic straws to individuals who may require and request them due to disability or other medical or physical conditions or circumstances. *Guidance: Straw exemptions are commonplace in many local ordinances.*

- h) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this Section for all activities in the City. *Guidance: This is not included in AB 1276.*

Section 7. Reusable Beverage Cups at City Facilities.

Guidance: This Section has the City establish a reuse system for its facilities and bans the sale or use of Disposable Beverage Cups on City properties, including by concessionaires, lessees, and contractors. This includes the City's purchasing supplies for its own events. Food containers could optionally be added to this Section.

Beginning [specify effective date – 12 months after ordinance adoption suggested]:

- a) Notwithstanding any other provision of this Code, the City shall establish a Reusable Beverage Cup Reuse System and all beverages served in City offices, City-owned buildings, or indoor facilities on City Property shall be served in Returnable Reusable Beverage Cups or a user's personal Reusable Beverage Cup.
- b) No person may distribute (for sale or otherwise) beverages in Disposable Beverage Cups at or on City Property, including a City office, office building, or food concession located indoors or outdoors on City Property.
- c) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing any person to use indoor City Property, for purposes that contemplate or would allow the sale or distribution of non-packaged beverages (collectively, "use agreements") shall specifically require that the user comply with Subsections (a) and (b) of this Section. This requirement shall also apply to any such use agreement renewed, extended, or materially amended after implementation of this provision.

Section 8. Reusable Beverage Cups at Large Venues.

Guidance: This Section requires the use of Reusable Cups at large venues, initially at a low threshold, with the potential to ramp up over time. Food containers could optionally be added to this Section.

Beginning [specify date – 18 months after ordinance adoption suggested]:

- a) Any person operating a Large Venue that allows the sale of Prepared Food on premises shall establish a Reusable Beverage Cup Reuse System and ensure that all non-packaged beverages, not including drinking water from drinking water fountains and Accessible Water Refill Stations, are available for purchase in Returnable Reusable Beverage Cups.
- b) To meet the requirements of this Section, Large Venue operators may provide, lend, or rent Reusable Beverage Cups to attendees.
- c) Large Venue operators' contracts with Prepared Food Vendors for on-site services shall ensure compliance with this Section.
- d) Use, handling, and sanitation of Reusable Beverage Cups at Large Venues by venue staff and third-party contractors must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable health regulations.

- e) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Large Venues to operate within the jurisdiction shall specifically require that the permittee or contractor comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- f) Any Large Venue operator may petition for a full or partial waiver of the requirements of this Section if the operator can demonstrate that the application of this section would create undue hardship or practical difficulty for the Large Venue that is not generally applicable to other Large Venues in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

Section 9. Reusable Beverage Cups at Events.

Guidance: This Section requires the use of Returnable Reusable cups at events, initially at a low threshold, with the potential to ramp up over time. Events are often not closed venues and lack fixed infrastructure onsite, so requiring reusables can be more challenging. Food containers could optionally be added to this Section.

Beginning [specify date – 18 months after ordinance adoption suggested]

- a) Event Producers that allow the sale of Prepared Food at an Event must establish a Reuse System and make Returnable Reusable Cups available for the purchase of non-packaged beverages. Event producers must demonstrate that at least twenty-five percent (25%) of all non-packaged beverages served to attendees are in Reusable Beverage Cups. This requirement shall increase to one hundred percent (100%) beginning [select date – 36 months after ordinance adoption suggested]. To meet this requirement, Event Producers may cause Returnable Reusable Beverage Cups to be provided, lent, or rented to Event attendees. *Guidance: The City may choose to amend the ordinance in the future in order to provide incremental goals or to change the required threshold.*
- b) The permit application for each Event must indicate how the requirements of this Section will be met and describe the tracking system that will be used to document the total number of beverages sold or otherwise provided and the number provided, lent, or rented in Reusable Beverage Cups. The Event Producer's selected method for meeting the requirements of this Section must be included in any contract, agreement or permit for the Event related to or otherwise including beverage service. Event Producers shall report the percentage of beverages sold in Reusable Beverage Cups to the City within 3 months of the Event to the City _____ Department and prior to the return of any deposit collected by the City in connection with the Event.
- c) Use, handling, and sanitation of Reusable Beverage Cups at Events by Persons serving non-packaged beverages must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable state and local laws, regulations, and guidelines.

- d) Event Producers' contracts with Prepared Food Vendors for on-site services shall ensure compliance with this Section.
- e) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Events to operate within the jurisdiction shall specifically require that the Event Producer comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- f) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any Event Producer may petition for a full or partial waiver of the requirements of this Section as they apply to a particular Event, if the Event Producer can demonstrate that the application of this Section would create undue hardship or practical difficulty for the Event Producer that is not generally applicable to other Event Producers in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

DISPOSABLE PACKAGED WATER REDUCTION AND REUSE

Section 10 City Purchase, Sale, or Distribution of Disposable Packaged Water Prohibited.

Guidance: This Section prohibits the City from purchasing, selling, or otherwise distributing water in disposable packaging.

- a) No City funds shall be used to purchase Packaged Water.
- b) No person may distribute (for sale or otherwise) Packaged Water on City property or at any event or activity for which the City has issued a permit allowing the activity to be held on or in City property.

Section 11. Accessible Water Bottle Refill Stations.

Guidance: This Section requires the installation and maintenance of refill stations for reusable water bottles. This is critical infrastructure to support the use of reusable cup and water bottles.

Beginning [specify date- 18 months after ordinance adoption suggested]:

- a) All facilities used for Events, facilities on City Property other than office buildings, and Large Venues that have access to drinking water shall install and maintain at least one, or maintain at least one existing, Accessible Water Bottle Refill Station on-site per every 500 daily visitors, located to ensure maximum access by all visitors.
- b) An office building owned by the City or on City Property shall have at least one Accessible Water Bottle Refill Station per 500 occupants authorized under the building's maximum occupancy.

- c) All facilities used for Events, facilities on City Property, and Large Venues shall allow visitors to bring their own Reusable beverage bottle for use at an Accessible Water Bottle Refill Station.
- d) If any existing Water Bottle Refill Station in a facility used for Events, on City Property, or in a Large Venue, is not Accessible, the owner or operator of the facility or Large Venue shall upgrade the water bottle refill station to an Accessible Water Bottle Refill Station by January 1, 2025.
- e) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any person subject to this section may petition for a full or partial waiver of the requirements of this Section, if the person can demonstrate that the application of this Section would create undue hardship or practical difficulty for the that is not generally applicable to others in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

COMPLIANT DISPOSABLE FOOD SERVICE WARE

Section 12. Compliant Disposable Food Service Ware for Food Service.

Guidance: This section defines what disposable food service ware items are acceptable for use in the City. This section only applies to Food Service Ware; it does not apply to Food Service Ware Accessories, as certain accessories (e.g., cup lids, condiment packets) are not always available in a readily compostable format and are not currently certified by third-party certification programs.

Beginning [specify date – 18 months after ordinance adoption suggested]:

- a) When Disposable Food Service Ware is authorized for use by this Chapter, Prepared Food Vendors may provide Prepared Food in Disposable Food Service Ware only if that Disposable Food Service Ware is:
 - 1. Free of High Priority Toxic Food Packaging Chemicals as determined by a third-party certification program for Disposable Food Service Ware that requires full disclosure of intentionally added chemicals as a condition of certification. If the City determines that there is no certified version of a particular type of Disposable Food Service Ware, this section does not apply to that type of Disposable Food Service Ware. *Guidance: The City will need to issue a list of certified versions and items for which there is no certified version and update the list periodically or refer to a list published by a third-party certification program. There are currently two certification programs for Disposable Food Service Ware that address the scope of chemicals covered in the definition of High Priority Food Packaging Chemicals – Green Screen (™) Certified and Cradle to Cradle Certified™. At this time, Green Screen (™) Certified has a more robust list of certified Food Service Ware products. The reason for the 18-month phase-in period before this requirement becomes mandatory is to give more manufacturers time to get their products certified. Jurisdictions may choose to*

eliminate the 6-month phase-in period and make it mandatory at the 18 months milestone when the rest of this Section becomes effective.

2. Not made of Polystyrene Foam. *Guidance: Include this Subsection if the City wants to prohibit the use of Polystyrene Foam Food Service Ware by Food Vendors and does not have an existing ordinance doing so.*
3. **OPTION A.** Compostable, provided, however, that non-Compostable foil wrappers that are Recyclable may be used for burritos, wraps, and other items that require foil to contain and form the food item. *Guidance: Select this option to allow Disposable Food Service Ware and Food Service Ware Accessories that are accepted in the City's collection program. It does not allow recyclable food service ware other than foil wrappers.*

OPTION B. Compostable or Recyclable. *Guidance: Select this option to allow disposable food service ware and accessories that are accepted in the City's organics or recycling collection programs.*

- b) Neither the City nor its contractors or lessees shall purchase Disposable Food Service Ware for use in the City that is not compliant with the requirements of this Section.
- c) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), a Prepared Food Vendor may petition for a full or partial waiver of the requirements of this Section if the Prepared Food Vendor can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 1. Notwithstanding the foregoing, once the City has determined that there is a version of a Disposable Food Service Ware that is certified as being Free of High Priority Toxic Food Packaging Chemicals, no waiver may be granted for (1) the use of that Disposable Food Service Ware that contain any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials, or (2) use of Polystyrene Foam Food Service Ware.

Section 13. Sale or Distribution of Non-Compliant Food Service Ware Prohibited.

Guidance: This Section applies to retailers selling food service ware, such as supermarkets, restaurant suppliers and big box stores. It prohibits the sale of food service ware that do not comply with the requirements of this ordinance.

Beginning [specify date – 12 months after ordinance adoption suggested]:

- a) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no Person may distribute (for sale or otherwise) within the City any Disposable Food Service Ware that are not compliant with Section 12 of this Chapter.

- b) It shall not be a violation of this Section to provide (for sale or otherwise) Prepared Food in Disposable Food Service Ware otherwise prohibited by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) if the Prepared Food is packaged outside the City and is sold or otherwise provided to the customer in the same Disposable Food Service Ware in which it originally was packaged.
- c) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any Person may petition for a full or partial waiver of the requirements of this Section if that Person can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 - 1. Notwithstanding the foregoing, once the City has determined that there is a version of a Disposable Food Service Ware that is certified as being Free of High Priority Toxic Food Packaging Chemicals, no waiver may be granted for (1) the distribution of that Disposable Food Service Ware that contains any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials or (2) the distribution of Polystyrene Foam Food Service Ware.

Section 14. Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products.

Guidance: This Section restricts the sale of many types of Polystyrene Foam products and other packaging, especially if they are not wholly encapsulated in a more durable material.

Beginning [specify date – 12 months after ordinance adoption suggested]

- a) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no person shall sell, offer for sale, or otherwise distribute for compensation within the City any of the following items if made in whole or in part from Polystyrene Foam:
 - 1) Packing Materials, including shipping boxes and packing peanuts;
 - 2) Coolers, ice chests, or similar containers;
 - 3) Pool or beach toys made from Polystyrene foam that is not wholly encapsulated and encased within a more durable material; or
 - 4) Dock floats, mooring buoys, anchors or navigation markers made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.
- b) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service), no person shall sell, offer for sale, or otherwise distribute for compensation within the City, Meat and Fish Trays, Produce Trays, and Egg Cartons that are not Compostable or Recyclable either as separate items or as part of the sale of raw meat, fish, poultry, vegetables, fruit, or eggs sold to customers from a refrigerator case or similar retail appliance. *Guidance: Specifies that meat, fish, produce*

trays, and egg cartons must be compostable or recyclable. Modify the language above to indicate whether only compostable packaging is accepted, or if recyclable packaging is also accepted. When considering whether to accept recyclable packaging, consider that the items listed in this Subsection may be more likely to include food residue and introduce contamination to the recycling.

- c) No Person shall sell, offer for sale, or otherwise distribute (for compensation or otherwise) within the City any Packing Materials that are not Compostable or Recyclable.
- d) No Person shall use within the City any Packing Materials that are not Compostable or Recyclable. This includes using such materials to hold, cushion, or protect items to be packed in a container for shipping, transport, or storage, for compensation, where the packing takes place within the City. *Guidance: Void fill, packing peanuts, and other packing materials must be compostable or recyclable if packed in the City. See next Subsection for exceptions.*
- e) For purposes of this Section, distribution and use of Packing Materials shall not include:
 - 1) Receiving within the City shipments from outside the City that include Packing Material;
 - 2) Reusing Packing Materials within the City for shipping, transport, or storage within the same distribution system, where the Packing Materials are not sent to a customer or end user;
 - 3) Donating used Packing Materials within the City to another person, where the donor receives nothing of value in exchange for the donated Packing Materials; or
 - 4) Using Packing Materials donated under Subsection (e)(3) for shipping, transport, or storage, where the person using the Packing Materials receives nothing of value for the donated materials.

ENFORCEMENT

Section 15. Process to Obtain Waivers.

Guidance: Additional information on waivers is included in the Model Ordinance Toolkit.

- a) The City Manager or their designee shall prescribe and adopt rules, regulations, and forms to obtain full or partial waivers from any requirement of this Ordinance that is explicitly subject to waiver. Waivers may be granted based upon documentation provided by the applicant for the waiver and, at the City Manager's discretion, independent verification that may include

site visits and documentation.

- b) To obtain a waiver, the applicant must demonstrate inability to comply due to factors specified in the provision authorizing the waiver.
- c) The City Manager or their designee shall issue a written decision to grant or deny a waiver for up to two years from the date of the decision. The written decision shall be final and is not subject to appeal. *Guidance: The City may choose to include an appeal process.*
- d) During the waiver term, the waiver recipient shall make diligent efforts to become compliant.
- e) In circumstances existing prior to *[specify date on or after adoption of this ordinance]*, where the waiver applicant demonstrates diligent efforts to comply but, due to insurmountable space or economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term at the end of the initial waiver term, upon application from the waiver recipient for an additional waiver.
- f) Nothing in this Chapter shall be construed to limit the ability of the City Manager to suspend this ordinance in a state of emergency in accordance with applicable laws.

Section 16. Enforcement.

Guidance: The City may wish to adjust this provision to track its existing code enforcement process.

- a) Any Person may provide notice to the City of any observed lack of compliance with the requirements of this Chapter. The City shall provide a publicly available online option to provide such notice.
- b) Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter or charged with an infraction as set forth in Chapter of the City Municipal Code; however, no administrative citation may be issued, or infraction charged for violation of a requirement of this Chapter until one year after the effective date of such requirement. *Guidance: Note that this Section defers enforcement until one year after a particular requirement takes effect.*
- c) Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 15 of this Chapter (Process to Obtain Waivers).
- d) If, after issuing a written notice of noncompliance, the City finds that the person continues to violate the provisions of this Chapter, the City may impose a fine of not more than \$100 for a first violation; not more than \$200 for a second violation in the same 12-month period; and not more than \$500 for each subsequent violation in the same 12-month period.
- e) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- f) If continued violations occur, the City reserves the right to suspend the vendor's business license.

- g) The remedies and penalties provided in this Section are cumulative and not exclusive.

IMPLEMENTATION

Section 17. Severability.

If any provision of this Chapter is declared invalid or unconstitutional as applied by a court of competent jurisdiction, such decision shall not affect the remaining portions of the Chapter, which can be given effect without the invalid provisions or application. It is the intent of the City Council that such invalid provision be severed from the remaining provisions of the ordinance.

Section 18. Chapter Supersedes Existing Laws and Regulations.

- a) The provisions of this Chapter shall supersede any conflicting law or regulations.
- b) This Chapter is intended to be a proper exercise of the City's police power and role as a market participant, to operate only upon its own officers, agents, employees, and facilities, and other persons acting within the City's boundaries. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 19. California Environmental Quality Act.

This Chapter is exempt from the California Environmental Quality Act ("CEQA") pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(2) because it is exempt pursuant to a categorical exemption and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2. This Chapter is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources. In addition, this Chapter is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the provisions of this Chapter would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: RPT 23-085

DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT

2021 Greenhouse Gas Emissions Inventory

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report.

SUMMARY

The Council-adopted General Plan includes greenhouse gas (GHG) emission reduction targets for the community. This report provides the results of the calendar year 2021 inventory and compares it to the previous seven inventories. Table 1 summarizes the emissions totals for six sectors - electricity, natural gas, transportation (includes public transit), off-road vehicles, waste, and water and wastewater. Emissions are displayed in metric tons of carbon dioxide equivalent (MTC02e). The table shows that, in 2021, emissions were reduced by 37.4% since 2005.

Table 1: GHG Emissions by Sector (MT C02e)

	2005	2010	2015	2017	2018	2019	2020	2021	% Change from 2005
Electricity	185,536	165,172	141,814	74,919	47,452	12,467	23,038	35,844	-80.7%
Natural Gas	189,995	191,526	176,803	186,111	187,991	176,649	166,334	168,917	-11.1%
Transportation	529,317	458,988	450,925	445,769	440,914	420,995	309,168	345,905	-34.6%
Off-Road Vehicles	14,889	17,004	27,267	27,019	21,830	24,287	31,352	25,040	68.2%
Waste	50,924	38,338	38,148	47,555	52,209	46,187	34,628	32,011	-37.1%
Water and wastewater	4,718	4,314	3,471	2,742	2,730	2,706	2,516	2,201	-53.3%
Total	975,379	884,079	838,428	784,115	753,126	683,291	567,036	609,918	-37.4%
Hayward Population	140,530	143,921	155,753	159,623	159,603	160,197	162,954	163,404	16.3%

File #: RPT 23-085

Total Emissions/ Capita	6.9	6.1	5.4	4.9	4.7	4.3	3.5	3.8	-46.7%
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ATTACHMENTS

Attachment I Staff Report



DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT 2021 Greenhouse Gas Emissions Inventory

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report.

SUMMARY

The Council-adopted General Plan includes greenhouse gas (GHG) emission reduction targets for the community. This report provides the results of the calendar year 2021 inventory and compares it to the previous seven inventories. Table 1 summarizes the emissions totals for six sectors – electricity, natural gas, transportation (includes public transit), off-road vehicles, waste, and water and wastewater. Emissions are displayed in metric tons of carbon dioxide equivalent (MTCO₂e). The table shows that, in 2021, emissions were reduced by 37.4% since 2005.

Table 1: GHG Emissions by Sector (MT CO₂e)

	2005	2010	2015	2017	2018	2019	2020	2021	% Change from 2005
Electricity	185,536	165,172	141,814	74,919	47,452	12,467	23,038	35,844	-80.7%
Natural Gas	189,995	191,526	176,803	186,111	187,991	176,649	166,334	168,917	-11.1%
Transportation	529,317	458,988	450,925	445,769	440,914	420,995	309,168	345,905	-34.6%
Off-Road Vehicles	14,889	17,004	27,267	27,019	21,830	24,287	31,352	25,040	68.2%
Waste	50,924	38,338	38,148	47,555	52,209	46,187	34,628	32,011	-37.1%
Water and wastewater	4,718	4,314	3,471	2,742	2,730	2,706	2,516	2,201	-53.3%
Total	975,379	884,079	838,428	784,115	753,126	683,291	567,036	609,918	-37.4%
Hayward Population	140,530	143,921	155,753	159,623	159,603	160,197	162,954	163,404	16.3%
Total Emissions/ Capita	6.9	6.1	5.4	4.9	4.7	4.3	3.5	3.8	-46.7%

BACKGROUND

The last report on the City's GHG emissions, presented to the CSC on October 6, 2022,¹ showed that Hayward's emissions were reduced by 41.8% from 2005 to 2020, a temporary reduction attributed to the COVID-19 pandemic. This report presents the 2021 inventory results, which shows a 37.4% reduction. This report and previous reports are available on the City's Climate Action Plan page.² The City's General Plan Policy NR-2.4 sets the following GHG emissions reduction targets.

NR-2.4: Community GHG Reduction

The City shall reduce community-based GHG emissions by 20 percent below 2005 baseline levels by 2020, 30 percent below 2005 baseline emissions levels by 2025, 55 percent below 2005 baseline emissions levels by 2030, and work with the community to develop a plan that may result in the reduction of community-based GHG emissions to achieve carbon neutrality by 2045.

To track compliance with these targets, the City began conducting community GHG emissions inventories every five years, starting with 2005 as the baseline year. Starting with the 2017 inventory, the City has conducted inventories annually. All seven inventories use the U.S. Community Protocol methodology to calculate GHG emissions. The U.S. Community Protocol methodology is an industry-standard used by local governments to account for and report on GHG emissions in a standardized method.

Over the past fifteen years, organizations have continuously refined and updated the models that are used to estimate emissions to provide more accurate information. In response, staff recalculates emissions with the new modeling across all the inventories. As a result, the emissions totals in this report may not match the numbers from previous reports.

DISCUSSION

As shown in Table 2, Hayward met its goal of 20% below 2005 levels by 2020 two years early by achieving a reduction of 21.6% in 2018. In 2020, Hayward surpassed its 2025 emission reduction goal of 30% below the 2005 baseline when it achieved a 41.8% emission reduction. However, the major reduction in emissions from 2019 to 2020 were attributed to the impacts of the COVID-19 pandemic on community-wide activities, and staff predicted that emissions would likely increase in 2021 as pandemic-related restrictions eased. From 2020 to 2021, community-wide emissions increased by 7%, with an overall reduction of 37.4% from the 2005 baseline. Staff predicts that emissions will continue to rise over the next few years as transportation activity increases post-pandemic.

¹ <https://hayward.legistar.com/MeetingDetail.aspx?ID=999218&GUID=2B77D6CD-6AFB-49FC-B7BA-7E7F414EC524&Options=info|&Search=>

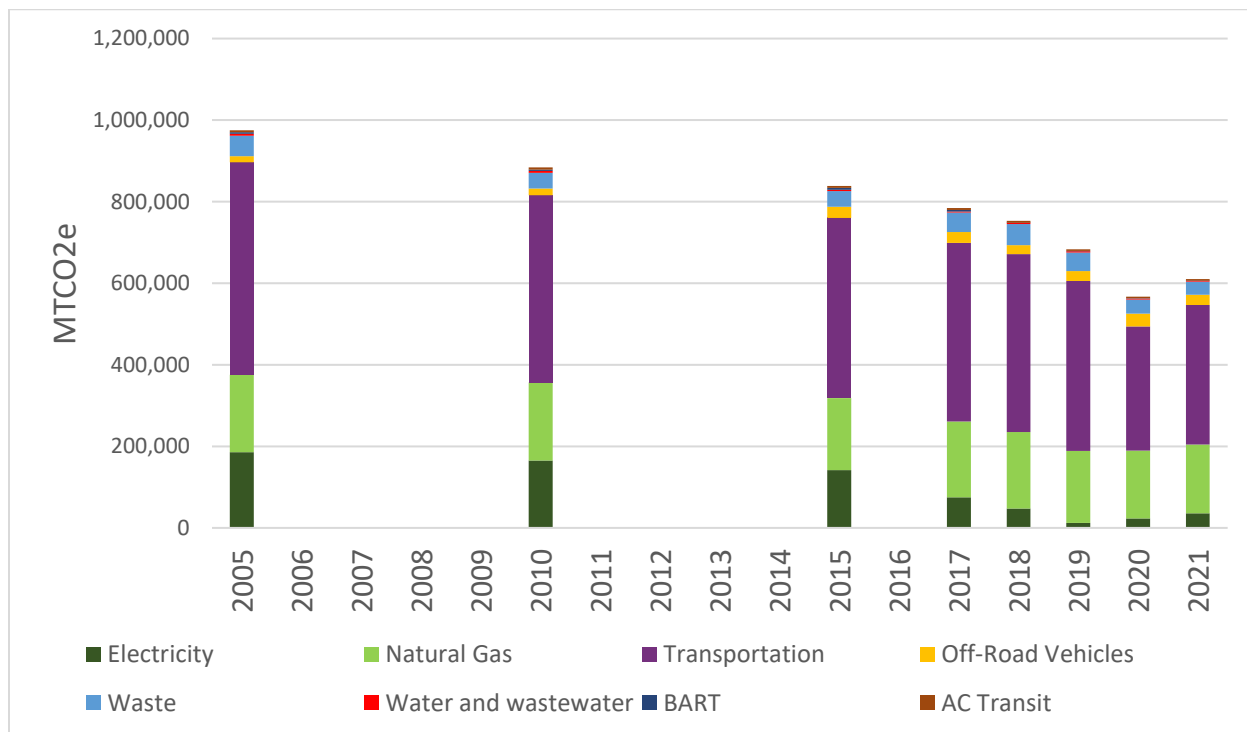
² <https://www.hayward-ca.gov/services/city-services/climate-action>

Table 2: GHG Emission Reduction Goals and Actual Emission Reductions

Year	Goal	Actual Reduction
2005	Baseline	
2018		21.6%
2019		25.7%
2020	20%	41.8%
2021		37.4%
2025	30%	
2030	55%	
2045	Carbon neutrality	

The City's GHG inventory is comprised of eight sectors: electricity, natural gas, transportation, public buses (AC Transit), BART, off-road vehicles, solid waste, and water and wastewater. Figure 1 below shows the subsector breakdown for each year and the percent of each subsector for that year. Transportation, shown in purple, remains the largest sector and over the years accounts for 52-61% of the total. BART, AC Transit, and water and wastewater all account for less than 1% of all emissions, off-road vehicles account for 1-6% of emissions, and solid waste makes up 4-7% of emissions. Electricity, shown in dark green, makes up 2-19% of emissions and natural gas, shown in light green, makes up 20-30% of emissions.

Figure 1: GHG Emissions by Subsector (MT CO₂e²)



Energy Sector (Electricity and Natural Gas)

Overall energy emissions in 2021 were 45.5% below 2005 levels, with an 80.7% decrease in electricity emissions and an 11.1% decrease in natural gas emissions from 2005 to 2021 (see Table 3). Residential electricity emissions have decreased by 57.5% and nonresidential electricity emissions have decreased by 90.2% since 2005. The primary reason that electricity emissions have decreased is the City's customers, starting in mid-2018, were transitioned to electricity provided by East Bay Community Energy (EBCE). As a result, electricity emissions decreased significantly from 2018 to 2019. The default product for the majority of Hayward customers has been a carbon-free electricity product (Brilliant 100 from 2018-2021, Renewable 100 from 2022 on). However, customers not on the default product have seen an increase in electricity emissions as EBCE's cheaper Bright Choice product has become increasingly dirtier. Overall, residential electricity emissions have increased 262% since 2019, despite only a 2.3% increase in kWh, and non-residential electricity emissions have increased 110%, despite a 19.7% decrease in kWh.

Residential and nonresidential natural gas emissions have decreased from 2005 to 2021, with a reduction of 9.5% and 13.1%, respectively. From 2020 to 2021, there was a 1.1% decrease in residential gas emissions. Residential natural gas emissions have continued to decrease since 2019 and may be related to the adoption of the 2019 and 2022 California Building Codes and Hayward's 2020 and 2022 reach codes, requiring some all-electric pathways in new buildings and increased energy efficiency, as well as a decrease in heating degree days (HDD) (see Figure 3 below).

Table 3: Energy Sector GHG Emissions

		2005	2010	2015	2017	2018	2019	2020	2021	% Change
Residential electricity	GHG Emissions	53,939	51,166	44,807	23,440	20,548	6,326	17,547	22,930	-57.5%
	MWh	242,161	252,327	242,783	243,910	239,735	239,006	215,828	244,416	+0.9%
Nonresidential electricity	GHG Emissions	131,597	114,006	97,007	51,479	26,904	6,140	5,491	12,914	-90.2%
	MWh	590,811	562,228	525,628	535,682	514,657	511,639	381,744	410,516	-30.5%
Residential natural gas	GHG Emissions	103,502	103,027	86,736	91,719	93,019	95,291	94,811	93,713	-9.5%
	Therms (in millions)	19.489	19.400	16.332	17.271	17.516	17.943	17.853	17.646	-9.5%
Nonresidential natural gas	GHG Emissions	86,493	88,499	90,066	94,392	94,972	81,358	71,523	75,204	-13.1%
	Therms (in millions)	16.287	16.664	16.960	17.774	17.883	15.320	13.468	14.161	-13.1%
Total GHG Emissions		375,531	356,699	318,617	261,030	235,442	189,116	189,373	204,761	-45.5%

Figure 2: Energy Sector GHG Emissions (MT CO2e)

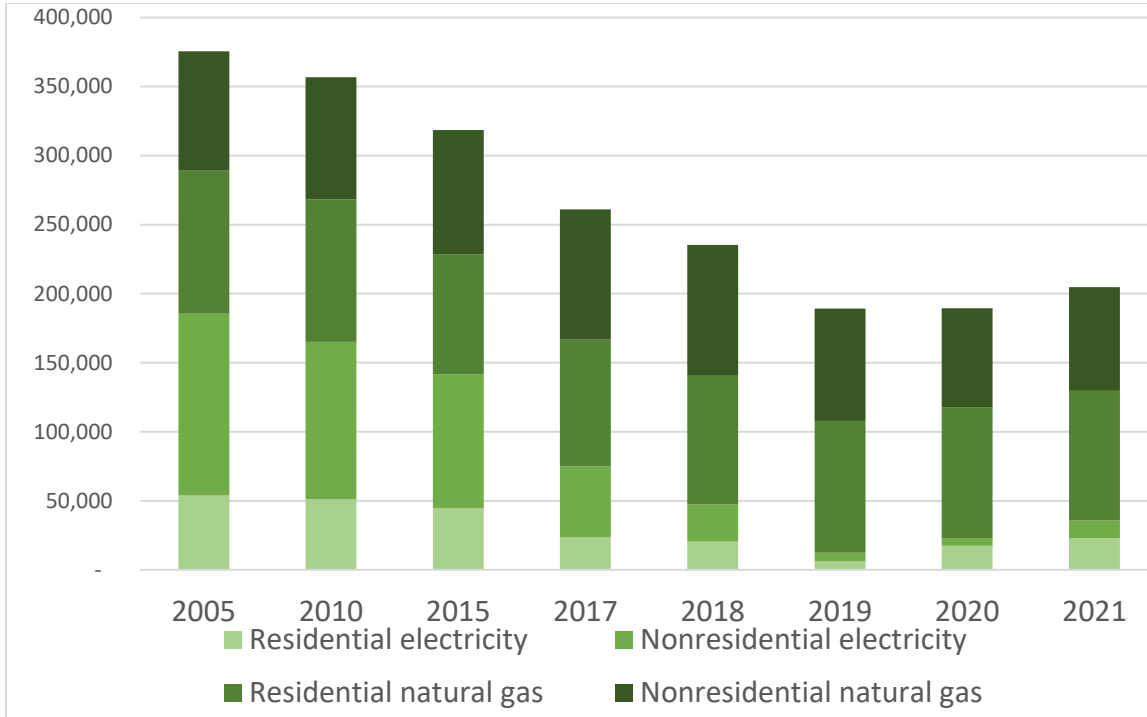
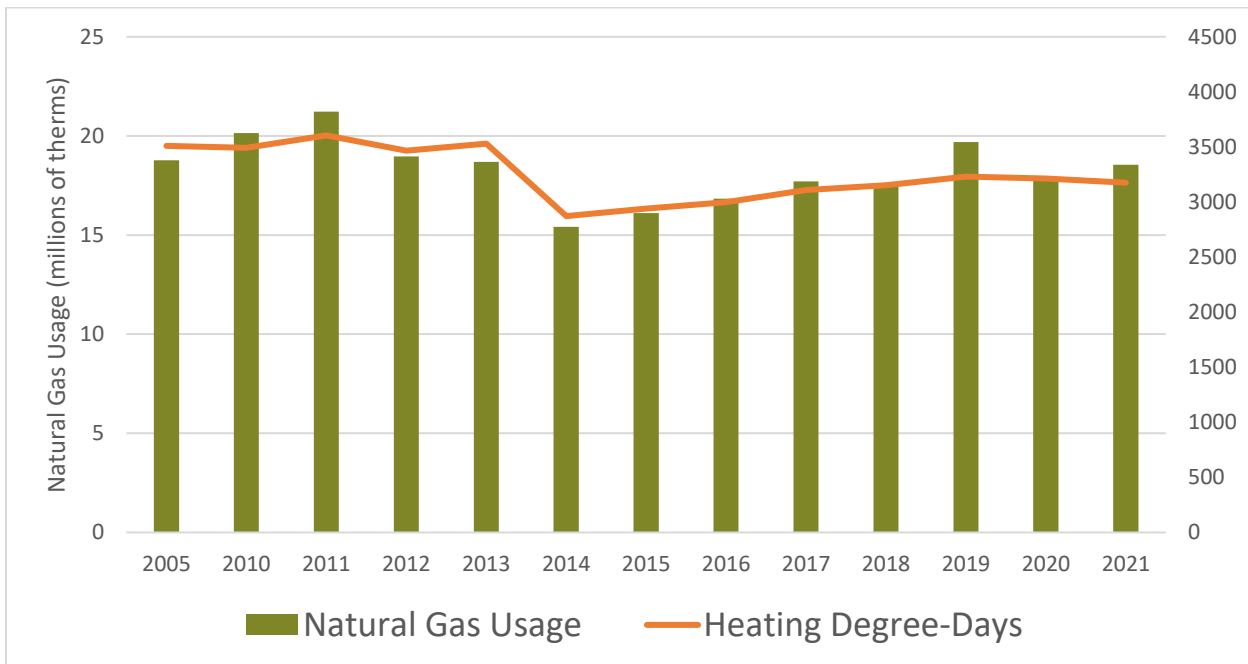


Figure 3: Residential Natural Gas Usage & Heating Degree Days in Hayward



Transportation Sector

As shown in Table 4, from 2005 to 2021 transportation emissions decreased by 34.7% and total vehicle miles traveled (VMT) decreased by 20.3%. The total VMT decreased between 2005 and 2010 and was followed by sustained increases from 2015 to 2018. This was likely related to the economic recession and recovery. From 2019 to 2020, there were significant changes in on-road transportation due to the COVID-19 pandemic, with a 31% decrease in VMT and a 41.6% decrease in total transportation emissions from 2005 levels.

As transportation patterns began to return to pre-pandemic levels in 2021, Hayward experienced an 15.5% increase in VMT and a 11.9% increase in transportation emissions from 2020 to 2021 (see Figure 4 below).

Starting in 2020, staff was able to capture the impact of the pandemic and obtain a more complete scope of transportation emissions through a new data source from Google called Environmental Insights Explorer (EIE). Previous inventories have included on-road transportation activity data from the Metropolitan Transportation Commission (MTC) which uses a model that relies on surveys of transportation patterns, land use and population metrics to calculate VMT for passenger and commercial vehicles completing trips entirely within the city, ending or starting within the city, and those that pass through the city.

Staff supplemented the MTC data with data from the California Air Resources Board on motorcycles, motor homes, and buses to account for the full scope of on-road transportation in Hayward. The new dataset from Google EIE accounts for all vehicle types that start or end within the city. This data is advantageous because it uses anonymized aggregated location history data from mobile devices that is a real time reflection of local changes in transportation use. Therefore, it better captures the impact of the pandemic on residents' transportation habits than the previously used transportation model. In order to make accurate comparisons to the 2005 baseline, staff re-calculated transportation emissions in inventory years that were not available from Google EIE (2005-2017).

Overall emissions factors have decreased in all categories over the last sixteen years as vehicles have become cleaner. For example, Table 5 shows the increase in electric vehicle (EV) adoption in Hayward from 2005 to 2021, with VMT from EV's accounting for 4% of the total VMT in 2021. The decrease in emission factor value is why we have seen an overall decrease in emissions of 34.7% while seeing a smaller decrease of 20.3% in VMT. With recent legislation banning the sale of gas-powered cars beginning in 2035 and the recent push to incentivize EV purchases, it is likely this trend will continue as more people replace their cars with electric vehicles.

Table 4: Transportation Sector GHG Emissions

		2005	2010	2015	2017	2018	2019	2020	2021	% Change
Passenger	GHG Emissions	377,446	338,117	326,365	315,183	314,781	298,789	211,039	238,817	-36.7%
	VMT (in millions)	892.306	816.707	865.690	873.083	889.212	861.063	617.072	717.166	-19.6%
Commercial	GHG Emissions	136,630	114,193	109,561	115,973	114,937	111,528	88,826	98,220	-28.1%
	VMT (in millions)	92.131	78.000	74.683	80.313	79.873	77.611	61.090	69.266	-24.8%
Buses*	GHG Emissions	11,801	11,990	10,722	10,619	10,629	10,131	8,757	8,770	-25.7%
	VMT (in millions)	5.577	5.475	5.428	5.905	5.831	5.641	4.833	2.505	-55.1%
BART	GHG Emissions	3,440	3,425	4,276	3,994	566	547	546	98	-97.2%
	Passenger Miles (in millions)	37.081	36.927	46.098	43.063	42.723	41.311	41.185	7.402	-80.0%
Total GHG Emissions		529,317	467,725	450,924	445,769	440,913	420,995	309,168	345,905	-34.7%
Total VMT (in millions)		990.015	900.184	945.803	959.302	974.916	944.316	682.996	788.938	-20.3%

[OBJ]

*Buses include public (AC Transit) and private (Google EIE)

**Total VMT excludes BART passenger miles

Figure 4: Transportation Sector GHG Emissions (MT CO₂e)

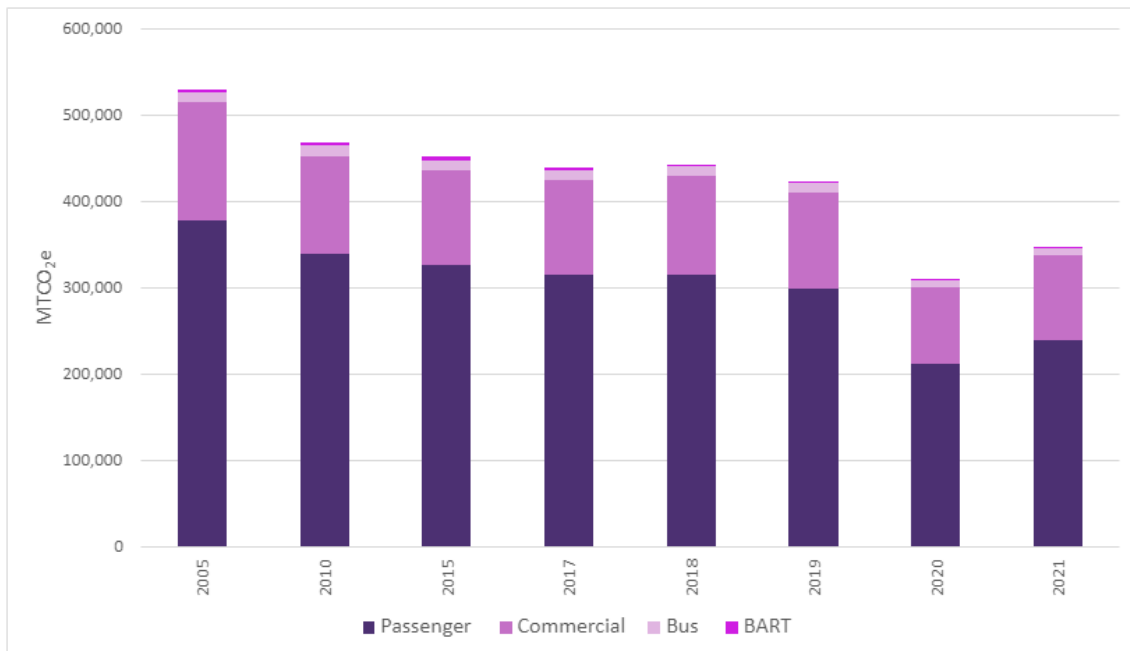


Table 5: Electric Vehicle Adoption (VMT)

	2005	2015	2018	2019	2020	2021	% Change
Electric Vehicle VMT	193,790	7,149,352	18,125,136	22,892,120	29,820,720	33,696,832	17,288%
Total VMT	990,015,264	945,803,206	974,916,441	944,316,441	682,996,441	788,938,493	-15.4%
% EV of Total	0.02%	0.76%	1.86%	2.42%	4.37%	4.27%	21720%

Off-road Vehicles Sector

The off-road vehicle sector includes emissions from equipment used in construction, commercial, and industrial activities. Emissions from this sector have increased by 68.2% from 2005 to 2021 as a result of increased construction and industrial activity. Note that the change in emissions is particularly large due to a lack of data for some equipment categories in 2005.

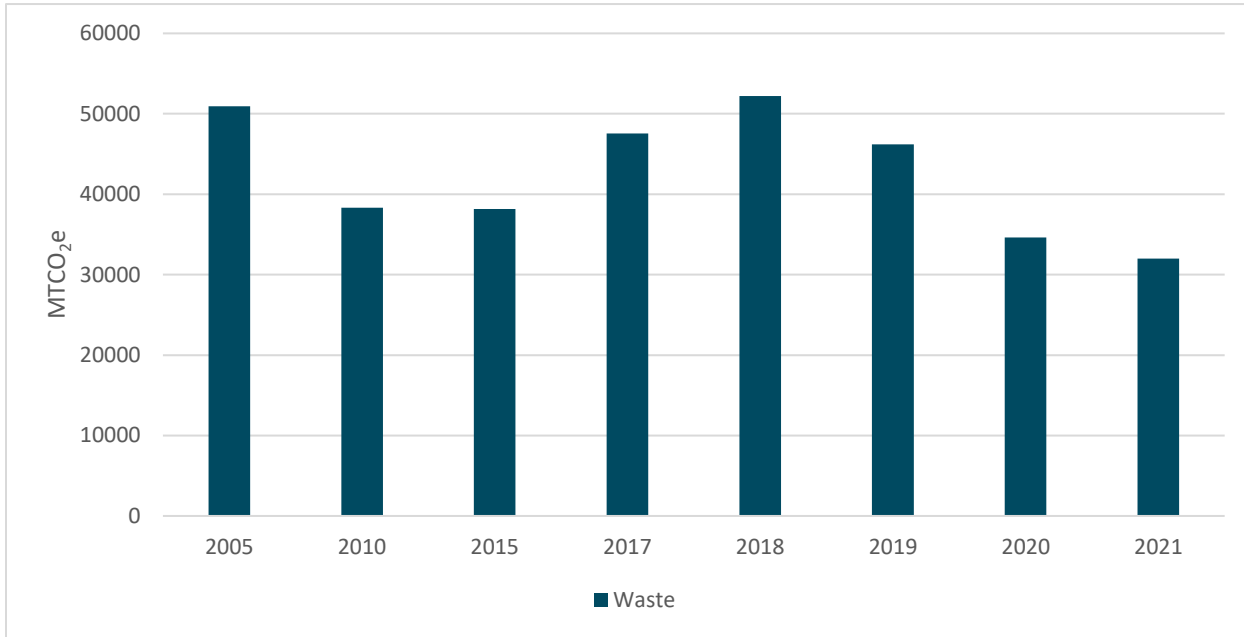
Solid Waste Sector

Solid waste emissions in 2021 were 37% below 2005 levels. As shown in Table 6, after several years of emissions increasing, which was likely due to an increase in economic activity, emissions began to decrease in 2019 and has followed the same trend through 2021. The peak in 2018 is likely due to disruptions in recycling markets caused by China's "National Sword" policies. The decline in waste tonnage starting in 2020 can be attributed to reduced economic activity during the pandemic. SB1383 went into effect early 2022, requiring residences and businesses to sort and separately collect food scraps, yard debris, and food-soiled paper from trash and recycling, and subscribe to an organic waste collection service. As a result, staff expects to see reductions in the tons of waste sent to landfill and associated emissions reductions starting with the upcoming 2022 inventory.

Table 6: Solid Waste Sector GHG Emissions

		2005	2015	2018	2019	2020	2021	% Change
Waste Sent to Landfill	GHG Emissions	50,924	38,148	52,209	46,187	34,628	32,011	-37.1%
	Tons of waste	173,908	136,261	185,432	163,196	122,375	113,038	-35.0%

Figure 5: Solid Waste Sector GHG Emissions



Water and Wastewater Sector

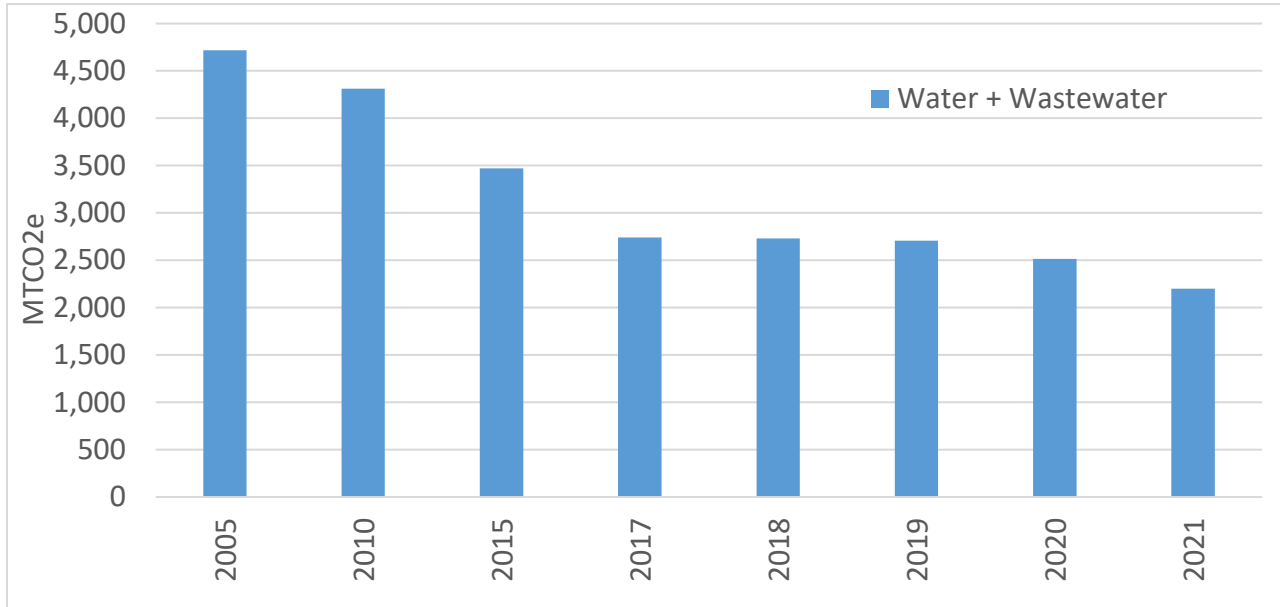
Water and wastewater emissions in 2021 were 53.3% below 2005 levels. As shown in Table 7, water consumption declined significantly from 2010 to 2015, and has hovered around 5 billion gallons per year through 2021. The total decrease in water consumption from 2005 to 2021 was 30.5%. In general, the decrease in water consumption can be attributed to drought periods, use reduction requests from the State and the San Francisco Public Utilities Commission, COVID-19, public awareness, and the City's water conservation programs.

Table 7: Water and Wastewater Sector GHG Emissions

	2005	2010	2015	2017	2018	2019	2020	2021	% Change
Water Consumption (B gal)	7.335	7.120	4.697	5.083	5.314	5.018	5.227	5.095	-30.5%
Wastewater Processed (B gal)	5.009	4.539	3.824	4.407	4.081	4.218	3.850	3.819	-23.8%
Total Emissions (MTCO₂e)	4,718	4,314	3,471	2,742	2,730	2,706	2,516	2,201	-53.3%
Residential Water Consumption* (B gal)	3.534	3.180	2.963	2.679	2.824	2.692	2.897	2.779	-21.4%
Hayward Population	140,530	143,921	155,753	159,623	159,603	160,197	162,954	163,404	16.3%
Per Capita Residential Water Consumption (gal)/day	69	61	52	46	48	46	48	47	-32.4%

*2005 residential consumption water data unavailable, used 2008 data

Figure 6: Water and Wastewater Sector GHG Emissions



Limitations of this Inventory

The GHG inventory method that the City's uses, along with most cities worldwide, was originally designed by ICLEI and its partners in the early 2000s. The focus then and now is on measuring emissions from the data sources that are most readily available, such as utility data. This approach is practical, but comes with its limitations.

The inventories completed omit large sources of emissions over which the City may have some influence. Specifically, the inventory does not include the upstream emissions of the goods consumed in the City. For example, emission reductions from green purchasing policies would not be reflected in the current inventory. Additionally, one of the biggest contributors of GHG emissions worldwide, food, is not reflected in Hayward's inventory.

The reason upstream emissions are not included is that it is difficult to obtain data on consumer consumption patterns in Hayward. Current guidance states that a consumption-based emissions inventory should not be a substitute for citywide inventories, rather the two should be used together.³ Staff will continue to monitor the latest science on consumption-based emission inventories and as data and modeling becomes more readily available, explore creating a consumption-based inventory for Hayward.

As was previously mentioned in the report, the COVID-19 pandemic had a significant impact on community-wide GHG emissions in 2020 and 2021. The emission reductions from the 2021 inventory may not be sustainable and it is possible that we continue to see a rise in emissions in the 2022 inventory as Hayward and the rest of the country return to full pre-

³ <https://sustainableconsumption.usdn.org/climate/cbei-guidebook/cbei-basics>

pandemic activities. With that said, the pandemic has provided insight into how impactful reducing transportation emissions can be in reaching long-term emission reduction targets.

ECONOMIC IMPACT

There is no economic impact associated with the completed inventory. However, the information acquired from the inventory provides staff with insight on what needs to be done to meet the City's GHG reduction goals. Meeting the City's ambitious GHG reduction goals will require significant investment throughout the community and has the potential to create new local jobs, however some necessary improvements are not currently cost-effective.

FISCAL IMPACT

The 2021 GHG inventory was prepared by City staff and resulted in no cost to the City beyond budgeted staff positions.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of *Confront Climate Crisis & Champion Environmental Justice*. This item is not specifically related to a project identified in the Strategic Roadmap. However, this agenda item does help track progress of projects identified in the Strategic Roadmap, such as:

Reduce Greenhouse Gases and Dependency on Fossil Fuels

- Project C1: Implement Year 1 Programs from the adopted GHG Roadmap (Climate Action Plan)

- Project C4: Continue to transition City facilities from natural gas to electric, with a focus on HVAC systems

Mitigate climate crisis impacts through resilient design and community engagement

- Project C10: Plant 1,500 trees annually, directly and in partnership with community groups

- Project C14: Continue to pursue water conservation measures like increased recycled water supplies

SUSTAINABILITY FEATURES

Meeting GHG reduction goals is the primary objective of the City's Climate Action Plan. Meeting the goals will require reducing emissions in every sector and will entail improving energy efficiency in buildings, decarbonizing buildings, increasing the use of renewable energy, and reducing vehicle-related emissions. All these actions will result in cleaner air for Hayward residents and for the region.

NEXT STEPS

Staff will continue to work with EBCE, StopWaste and regional agencies to identify potential opportunities to streamline GHG inventories on a county or regional level, with the goal of maintaining annual reporting.

Prepared by: Nicole Grucky, Sustainability Specialist
Erik Pearson, Environmental Services Manager

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: RPT 23-084

DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT

Advanced Metering Infrastructure (AMI) Water Customer Portal - Information and Discussion

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report.

SUMMARY

This informational report summarizes the first year of city-wide implementation of the online water customer portal. Staff will also provide a video demonstration highlighting the features of the online customer portal at the CSC meeting.

ATTACHMENTS

Attachment I Staff Report



DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Advanced Metering Infrastructure (AMI) Water Customer Portal – Information and Discussion

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report.

SUMMARY

This informational report summarizes the first year of city-wide implementation of the online water customer portal. Staff will also provide a video demonstration highlighting the features of the online customer portal at the CSC meeting.

BACKGROUND

Advanced Metering Infrastructure (AMI) technology, which was installed at every water meter location in the City, transmits periodic meter reads to a Utility over a fixed network, enabling the Utility to view and manage its City-wide consumption data from an internal-facing software provided by the AMI vendor. In 2020, the City initiated a pilot program to test two online customer portal options that allow Hayward Water customers to view hourly water use, receive automated notifications of leak patterns, and pay bills. Based on participant's feedback, Council selected WaterSmart Software, Inc., as the vendor¹ and staff implemented the online portal to expand access to all Hayward Water System customers in June 2022.

DISCUSSION

Within the first two months of launching the online customer portal, 25% of over 36,000 eligible customers registered. As of August 2023, 48% of all eligible customers have registered for the online portal (17,764 customers). Instructions for registration are included in several places on each water bill.

¹ <https://hayward.legistar.com/LegislationDetail.aspx?From=RSS&ID=4955269&GUID=10EF9795-0805-4832-BAFC-666221A843E9>

The online customer portal allows three core functions:

1. Usage reports: Registered customers can view hourly water usage, compare their current usage to past usage, and compare their usage to other similar customers. They can also customize their account profile to receive personalized water- and bill-saving recommendations based on their usage history, and sign up to be notified when their consumption is on trend to exceed personal budget thresholds.
2. Automatic leak notifications: Customers also automatically receive notifications for water use patterns associated with potential leaks such as continuous water usage, spikes in water usage, and unusually high water usage. Over 11,700 automatic notifications have been sent to customers to date by email, phone, text, and mail. Of the customers who received notifications, 11% responded and reported the results of their leak investigations. An estimated 131 million gallons of water savings have been realized as a result of customer response to receiving a leak notification. Additionally, almost 100 customers who have not received notifications have used the Leak Diagnosis and Investigation tool within WaterSmart to initiate leak checks.
3. Fee-free bill payment options: Water customers can view their current balance on WaterSmart and pay their bills using the Invoice Cloud online bill payment system at no extra cost. Online payment options include credit/debit card, electronic funds transfer (EFT), online bank payments, PayPal, or Venmo. The Invoice Cloud online bill payment system processes an average of \$3.9 million in transactions per month.² The majority of online payments are completed using credit/debit card (54%) or EFT check (34%).

ECONOMIC IMPACT

The online customer portal introduces new opportunities for customer engagement to help conserve water and save money. The portal receives hourly data and prompts customers to investigate any unusual water usage patterns and resolve leaks in a timely manner. Additionally, the online portal eliminates the \$3.95 per transaction credit card convenience fee and increases options for customers to pay bills online without additional fees. As registration rates increase, the City will have greater reach to promote water conservation as a way of life and achieve increased water savings over time.

FISCAL IMPACT

The initial setup and implementation costs for the water customer portal were funded by the Advanced Metering Infrastructure Conversion Project No. 07025, part of the Capital Improvement Program (Water Replacement Fund 603). Beginning in FY24, the annual software maintenance fees will be included in the Operating Budget (Water Operating Fund 605). In FY24, the WaterSmart Annual Fees total approximately \$78,000.

² The Invoice Cloud bill payment system processed \$23.3 million in payments for Hayward water customers for the period January 1 through June 30, 2023.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of *Confront Climate Crisis & Champion Environmental Justice*. Specifically, this item relates to the following Project:

Mitigate climate crisis impacts through resilient design and community engagement
Project C14: Continue to pursue water conservation measures like increasing recycled water supplies

SUSTAINABILITY FEATURES

The online customer portal provides Hayward Water System customers with customized water use efficiency data to understand their usage patterns and the tools to proactively respond to irregular usage and leak patterns. Water consumption data provided by AMI technology aids in the City's efforts to measure the overall effectiveness of targeted conservation initiatives and inform customers about potential leaks or high consumption.

PUBLIC CONTACT

No public contact was made for this agenda item.

NEXT STEPS

Staff will receive feedback and provide periodic updates to CSC.

Prepared by: Sharon Hu, Management Analyst

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager



CITY OF HAYWARD

Hayward City Hall
777 B Street
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www.Hayward-CA.gov

File #: ACT 23-071

DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT

Proposed 2023/2024 Agenda Planning Calendar: Review and Comment

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report.

SUMMARY

The proposed 2023/2024 agenda planning calendar contains planned agenda topics for the Committee meetings for the CIC's consideration. This agenda item is included in every Council Infrastructure Committee agenda and reflects any modifications to the planning calendar, including additions, rescheduled items, and/or cancelled items.

ATTACHMENTS

Attachment I Staff Report



DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Proposed 2023/2024 Agenda Planning Calendar: Review and Comment

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report.

SUMMARY

The proposed 2023 agenda planning calendar contains planned agenda topics for the CSC meetings for the Committee's consideration. This agenda item is included in every CSC agenda and reflects any modifications to the planning calendar, including additions, rescheduled items, and/or cancelled items.

DISCUSSION

For the Committee's consideration, staff suggests the following tentative agenda topics for 2023/2024.

Underlined – Staff recommends item to be added to Approved Agenda Planning Calendar.

November 13, 2023
Draft Climate Action Plan – Discussion and Recommendation to Council
Energy Resilient Public Facility Program - Discussion and Recommendation to Council
City Fleet Electrification & Electric Vehicle Charging – Information and Discussion
January 8, 2024
City Compliance with MRP Trash Reduction Requirements
<u>Potential Regulation of Large Natural Gas Users</u>
March 11, 2024
<u>Disposable Food Service Ware Reduction and Reuse – Outreach Results</u>

Compost Hub at Hayward Community Garden – Information and Discussion
May 13, 2024
Tree Canopy Coverage Assessment
Unscheduled Items
Pilot Program for Reusable Dishware
EV Charging Requirements for Existing Multifamily Properties (Staff recommends removing this item.)
Recycled Water Phase 2 Project (This item will be presented to the Council Infrastructure Committee.)

NEXT STEPS

Upon direction from the Committee, staff will revise the above list as necessary and schedule items accordingly for upcoming meetings.

Prepared by: Erik Pearson, Environmental Services Manager

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager