DATE: March 11, 2024

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT Potential Grant Funding for Development of Performance Standards for Existing Buildings – Discussion and Direction to Staff

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews this report and provides direction to staff regarding Hayward's participation in a grant application that would fund a regional effort to develop performance standards for existing buildings.

SUMMARY

Hayward's Climate Action Plan (CAP), adopted by Council on January 30, 2024, includes 180 actions – all of which need to be implemented for Hayward to meet the City's ambitious goal of reducing greenhouse gas (GHG) emissions by 55% by 2030. Hayward has an opportunity to collaborate with other Bay Area cities to implement several actions called for in the CAP. The actions are related to exploring the feasibility of, conducting community engagement around, and adopting decarbonization ordinances for existing buildings.

Such ordinances can be in the form of a benchmarking requirement and/or a building performance standard. Benchmarking is the tracking of a building's energy performance against a standard. A building performance standard (BPS) is a policy that requires building owners to meet performance targets by actively improving their buildings over time. Bay Area cities are pursuing grant funding to develop, implement, and enforce local BPS that can be used across the Bay Area. This would include designing a model BPS policy with input from communities and stakeholders throughout Alameda County and the Bay Area.

BACKGROUND

The California Energy Commission (CEC) has a Building Energy Benchmarking Program[1] that took effect in 2018. The program was established per the requirements of two state laws – AB 1103 and AB 802. Under the Building Energy Benchmarking Program, building owners are required to disclose energy use intensity, which is calculated by dividing the energy use by the square footage of the building. The program currently applies to buildings

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

with more than 50,000 square feet of gross floor area and either no residential units or 17+ residential units. Some California cities, including San Jose[2], San Francisco[3], Berkeley[4] and Brisbane[5] have had their own benchmarking requirements in place for several years.

In October 2023, Governor Newsom signed Senate Bill 48 (SB 48), the Building Energy Savings Act[6]. The Act requires the CEC to use the data from the Building Energy Benchmarking Program to develop a BPS to decarbonize California's large existing buildings. One example of a BPS is a law in New York City[7] that establishes enforceable emissions limits for buildings that exceed 25,000 square feet. Boston, Denver, St. Louis, Washington, D.C., and the state of Washington, also have building performance standards in place.

SB 48 requires that by July 1, 2026, the CEC develop a strategy using benchmarking data to track and manage the energy usage and GHG emissions of covered buildings in order to achieve the state's goals related to energy usage and GHG emissions. SB 48 also requires that CEC consult with affected stakeholders starting with "community-based organizations representing tenant advocacy, equity, and environmental justice concerns." And requires that the CEC "Avoid increasing utility and rental cost burdens for, or causing evictions, harassment, or displacement of, tenants of covered buildings."

Hayward's recently adopted CAP includes the following actions related to benchmarking and/or building performance:

- BE 3.1 – Based on the results of the feasibility studies (BE- 3.4) adopt a decarbonization ordinance for existing commercial buildings by 2026 that, based on legislative feasibility, establishes mandatory requirements that eliminates expansion of natural gas infrastructure and requires appliances, upon replacement, to be decarbonized where technologically feasible and cost effective. As part of this ordinance, implement the following steps:
    1. Develop requirements that satisfy the federal Energy Policy and Conservation Act (EPCA) seven criteria for an exemption from preemption;
    2. Establish specific metrics for standard benchmarking;
    3. Identify a regulatory mechanism for eliminating natural gas use in existing commercial buildings that addresses legal and feasibility considerations; and
    4. Enforce requirement compliance through the same permitting compliance program as for residential building electrification.
- BE 3.2 – Based on the results of the feasibility studies (BE- 3.4) adopt a decarbonization ordinance for existing multi-family buildings by 2026 that, based on legislative feasibility, establishes mandatory requirements that eliminates expansion of natural gas infrastructure and requires appliances, upon replacement, to be decarbonized where technologically feasible and cost effective. As part of this ordinance, implement the following steps:

[2] https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/climate-smart-san-jos/energy-and-water-building-performance-ordinance
[3] https://www.sfenvironment.org/existing-buildings-energy-performance-ordinance
[4] https://berkeleyca.gov/construction-development/green-building/building-emissions-saving-ordinance-beso/annual-energy
[5] https://www.brisbaneca.org/bbep/page/annual-benchmarking
[6] https://www.imt.org/news/with-new-law-california-moves-towards-statewide-building-performance-standard/
[7] https://www.nyc.gov/site/buildings/codes/greenhouse-gas-emission-reporting.page

1. Develop requirements that satisfy the federal Energy Policy and Conservation Act (EPCA) seven criteria for an exemption from preemption;
2. Establish specific metrics for standard benchmarking;
3. Identify a regulatory mechanism for eliminating natural gas use in existing commercial buildings that addresses legal and feasibility considerations; and
4. Enforce requirement compliance through the same permitting compliance program as for residential building electrification.

- BE 3.3 – Adopt a Commercial Energy Performance Assessment and Disclosure Ordinance for commercial and multi-family buildings, which requires energy use disclosure consistent with State law (AB 1103) and the use of the ENERGY STAR Portfolio Manager benchmarking tool.
- BE 3.4 – Conduct feasibility studies to identify commercial and multi-family building decarbonization barriers and develop a commercial and multi-family building decarbonization strategy with analysis supporting future adoption of a commercial and multi-family building decarbonization ordinance.
- BE 3.5 – Partner with an electrification/efficiency expert to provide guidance to commercial buildings covered by the building performance standard.
- BE 3.6 – Develop an education campaign to promote commercial electrification and include items in the program such as:
    - Continue to engage with local business and business organizations (e.g., Chamber of Commerce, the Alameda County Green Business Program) to inform and facilitate electrification for commercial business owners.
    - Continue to promote the use of the Energy Star Portfolio Manager program and energy benchmarking training programs for nonresidential building owners.
    - Advertise via utility bill inserts the incentive programs or grants available and the cost benefits of electric appliances.
    - Targeted outreach to builders, developers, local contractors, and property managers with an informational brochure describing the financial benefits of replacing natural gas appliances with all electric appliances when they apply for permits.
    - Provide informational webinars and an updated website to advertise and promote All-Electric Building Initiative rebates and incentives.
- BE 3.7 – Conduct outreach to small businesses and minority-owned businesses to understand potential equity impacts of a decarbonization policy as part of the existing building decarbonization study.
- BE 5.4 – Continue to promote the use of the Energy Star Portfolio Manager program and energy benchmarking training programs for nonresidential building owners.

DISCUSSION

The United States Department of Energy (DOE) has issued a funding opportunity announcement funded by the Inflation Reduction Act of 2022 (IRA) for "Assistance for the Adoption of the Latest and Zero Building Energy Codes". The IRA will provide up to $1 billion for States and local governments to adopt and implement the latest building energy codes, zero energy building codes, or equivalent codes or standards. The DOE is particularly interested in supporting local capacity building, multi-year investments in workforce and

education, and long-term improvements in building energy codes through multi-cycle adoption and building performance standards (BPS).

The City and County of San Francisco submitted a two-page concept paper to the DOE and included City of Berkeley and the Bay Area Regional Energy Network (BayREN) as partners. If the proposal is selected and San Francisco is invited to submit a full application, it will be due April 30, 2024. The concept proposal is to:

1. jointly develop a model building performance standard (BPS) for the Bay Area;
2. adopt, implement, and enforce BPS in San Francisco and Berkeley;
3. coordinate with BayREN to support additional cities (may include Oakland and Hayward) with BPS adoption; and
4. work with community partners to deliver proactive technical support that ensures equitable and just outcomes from these new regulations.

Technical support would include outreach, assistance planning retrofits for compliance of existing buildings, accessing incentives, financing, and other resources and more. Grant funds would support inclusive adoption, consistent enforcement, equitable outcomes for under-resourced communities, and the opportunity to share data, content, technical insight, and best practices. This work could help shape the statewide BPS that is required by SB 48.

To make a BPS program accessible to smaller jurisdictions where enforcement will require less than 1 FTE, BayREN will evaluate the potential to allow for economies of scale such as shared staff for Alameda County participants. The grant would not directly fund retrofits of existing buildings.

Following a robust community and stakeholder engagement, a model ordinance would be developed that will build upon existing region-wide technical assistance and incentive programs to support equitable compliance, including:

- Help building owners in comply with the Bay Area Air Quality Management District's upcoming ban on NOx emitting appliances.
- Proactively engage underserved buildings with building needs assessments and decarbonization retrofit planning aligned with key cycles such as tenant turnover.
- Provide a template for owners and engineers to inventory energy systems and prioritize projects.
- Establish enforcement mechanisms for non-compliance based on a cost per ton equal to the average cost of mitigating a ton of emissions in local affordable housing.
- Provide technical support to access funding opportunities such as BayREN, TECH Clean CA, SGIP, upcoming state & federal programs, and 0% interest On-Bill Financing.
- Support tenants in low to moderate income buildings with awareness of benefits and avoid housing cost pass throughs or displacement as a result of retrofits.
- Partner with BayREN to ensure owners, operators, and tenants have access to rebate, incentive, and financing programs available to support building decarbonization.
- Coordinate regional workforce development offerings and work with groups such as the Bay Area High Road Training Partnership to set labor standards and determine contractor qualifications to ensure good quality jobs and installations.

FISCAL IMPACT

Collaboration with Bay Area jurisdictions on the development of a BPS would require significant staff time. Staff has requested the addition of a new position, beginning in FY25, to support CAP implementation. The additional staff would enable the Environmental Services Division to take on this work. Also, if Hayward adopts an ordinance and depending on the structure of the requirements and enforcement, it is possible that monitoring and enforcement could be handled at the regional level. If it is not, it is possible that long term enforcement would require additional Hayward staff.

ECONOMIC IMPACT

The adoption of a building performance standard ordinance is still in the exploratory phase. Specific economic impacts would be evaluated and addressed during the public engagement and policy development phases. As noted above, one of the goals of the program would be to avoid housing cost pass throughs to tenants and avoid tenant displacement as a result of retrofits. It should be noted that Hayward's current ordinance allows property owners to pass up to 50 percent of capital improvement costs on to tenants. This is something that could be addressed during development of an ordinance. Also, staff will seek to avoid tenant displacements – even temporary displacements during renovations.

Rules recently adopted by the Bay Area Air Quality Management District (BAAQMD) will require zero emission appliances in the coming years. Beginning in 2031, when a water heater in a large commercial building is replaced, a zero-emission model will be required. The State of California is currently considering similar requirements. A BPS program could offer technical assistance and provide access to funding opportunities to help building owners comply with regulations. If an ordinance is developed for adoption in Hayward, it could include fines for non-compliance, but only if deemed appropriate for the Hayward community.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority to *Confront Climate Crisis & Champion Environmental Justice*, and specifically relates to implementation of the following Projects:

<u>Reduce Greenhouse Gases and Dependency on Fossil Fuels:</u>
Project C1: Implement Year 1 Programs from the adopted GHG Roadmap (Climate Action Plan).

SUSTAINABILITY FEATURES

The development of building performance standards would implement several actions called for in the recently adopted CAP and would support emissions reductions to help meet the City's long term GHG reduction goals, which include:

- 30% below 2005 levels by 2025
- 55% below 2005 levels by 2030

- 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

PUBLIC CONTACT

No public contact has been made for this item.

NEXT STEPS

Upon direction from the Committee, if San Francisco's concept proposal is selected by the DOE, staff will partner with Bay Area jurisdictions to help prepare a detailed full grant proposal. If the grant is awarded, staff would return to the CSC to provide more information before commencing community engagement.

Prepared by: Erik Pearson, Environmental Services Manager

Recommended by: Alex Ameri, Director of Public Works

Approved by:

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Kelly McAdoo, City Manager