

DATE: June 23, 2015

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: *Green Hayward PAYS[®]* (Pay-As-You-Save) On-Bill Conservation and Efficiency Financing Program – Request for Direction for City Participation in and Self-Funding of Program and Authorization for City Manager to Amend Current Agreements with Certification Agent, Contractors and Suppliers to Implement the Program

RECOMMENDATION

On January 12, 2015, the Council Sustainability Committee directed staff to seek Council authorization to participate in and self-fund the PAYS[®] program. Staff recommends that:

1. That the City Council determines if it wishes to participate in the PAYS[®] program by self-funding the program; and if so,
2. That the City Council determines if it is inclined to use Water Fund monies to fund the program, including lighting retrofits; and if so,
3. That the City Council adopts the attached resolution (Attachment I):
 - a) authorizing the Green Hayward PAYS[®] program to be funded internally;
 - b) authorizing the City Manager to execute an extension to the agreement between the City and Bevilacqua Knight, Inc. (BK_i) to serve as the Certification Agent for Green Hayward PAYS[®] program; and
 - c) authorizing the City Manager to amend contracts with contractor and suppliers to provide products and installation services.

SUMMARY

This report presents proposed changes to the Green Hayward “Pay As You Save[®]” (PAYS[®]) pilot program. The program was approved by Council with the understanding that it would be funded by an outside bank. Due to unanticipated challenges associated with securing outside funding, (i.e. refusal of the bank to provide funding without a City guarantee of repayment), the Council Sustainability Committee has recommended that the program be modified to be internally funded.

BACKGROUND

General Plan Policies – Hayward’s General Plan, adopted on July 1, 2014, includes the following policies and implementation programs that support the PAYS[®] program:

Natural Resources Element, Policy 4.14: Energy Efficiency Retrofits – The City shall collaborate with regional entities and others to promote incentive programs for energy efficiency retrofits such as the Energy Upgrade California program for residential properties.

Natural Resources Element, Program 9: Financing Program for Residential Energy Efficiency Retrofits – The City shall work with regional agencies and organizations to develop a residential energy efficiency retrofit financing program for single-family and multi-family homes.

Public Facilities and Services, Policy 3.15: Water Conservation Programs – The City shall implement cost effective conservation strategies and programs that increase water use efficiency, including providing incentives for adoption of water efficiency measures. Water conservation strategies may include a combination of financial incentives, legislative actions, and public education.

Public Facilities and Services Program 2: Water Conservation Programs – The City shall regularly develop cost effective conservation programs that decrease water use.

Program Overview – The City was awarded a grant of technical support by the Regional Climate Protection Authority (RCPA) in May 2013. The RCPA hired BKi, a consulting firm with expertise in energy efficiency, water conservation, and building retrofit incentive programs, to help design Hayward’s PAYS[®] program. The Green Hayward PAYS[®] pilot program is designed to be an on-bill financing program that allows eligible multi-family property owners to install water and energy-saving measures with no up-front cost. Typical projects are likely to include replacements of toilets, showerheads and aerators and may also include retrofits to common area lighting and hot water distribution systems (pumps, etc.) for multi-family properties.

Participants repay program costs over ten years through a surcharge on their water bills, with their estimated water, sewer, and energy savings exceeding the surcharge. The surcharge on the customer’s bill will not exceed 80% of the customer’s estimated bill savings so that the customer will experience an immediate net reduction in their bill. Following a competitive process, a preferred contractor and suppliers were selected to perform the installations and supply water conservation products on behalf of the City. A goal of this pilot program is to serve 2,000 dwelling units. If implemented, Hayward would be the second city in California to have agreed to provide this financing program to its water customers.

The only other city to have implemented PAYS[®] is the Town of Windsor in Sonoma County. Windsor is an affluent community with a population of less than 27,000 and a median household income of about \$90,000. Windsor did so by transferring funds from a General Fund Capital Fund to its Water Fund in order to pay for the program’s water efficiency and lighting retrofit costs, which included a total of six multi-family properties.

Program Funding – On February 18, 2014¹, Council approved the establishment of the Green Hayward PAYS[®] program with the understanding that the program would be funded by private financing in the form of a bank loan. The Program Design for Green Hayward PAYS[®] envisioned a pilot program that would serve up to 2,000 multi-family dwelling units and that initial funding of \$1 million would be needed for these projects. During development of the Program Design in 2013, staff began discussions with New Resource Bank and reached preliminary terms for a guidance line of credit. Following a recommendation by the Sustainability Committee on January 29, 2014, the Program Design and authorization to proceed with the bank terms were approved by Council on February 18, 2014. On February 25, 2014, staff provided New Resource Bank with a signed expression of interest letter, which began the bank’s due diligence and formal credit underwriting process. In the spring of 2014, staff worked with New Resource Bank to prepare draft documents for the guidance line of credit.

During an internal review of the draft New Resource Bank documents, staff consulted with the City’s outside financial advisor and it was determined that the guidance line of credit would violate municipal debt limitations set forth in the California Constitution. Because the loan would not be secured, the Constitution would require voter approval prior to the City taking on such a loan. As noted in the January 12, 2015 report to the Sustainability Committee, the Association of Bay Area Governments (ABAG), the administrators of the BayREN program, are very interested in enabling cities and water districts to run successful PAYS[®] programs. ABAG staff, RCPA, and others are working directly with Jones Hall, a law firm that specializes in public finance, to find a way that cities can secure outside funding that is necessary to make PAYS[®] programs work. RCPA has indicated that there may be an effort to address the limitations of the State Constitution via state legislation in the future.

After several internal discussions to determine the best way to proceed, as well as discussions with RCPA and their consultants, staff continued to pursue other financing opportunities for the Green Hayward PAYS[®] program. As noted above, the Town of Windsor self-funded their program using internal general fund reserves and a loan guarantee from the Sonoma County Water Agency. Windsor is the only water agency out of 416 in California that has established a PAYS[®] program.

One option considered for Hayward’s program included the possibility of self-funding the program with an internal loan from the City’s Wastewater Operating Fund. As noted in the January 12, 2015 report to the Sustainability Committee², after careful consideration, staff determined it would not be prudent to commit \$1 million to the Green Hayward PAYS[®] program, given the ten-year customer repayment term, and the fact that operating fund balances are maintained so that the City has the capacity to handle nondiscretionary, unanticipated expenses and emergency repairs. While staff expressed a continued preference to pursue outside funding, the Committee directed staff to seek authorization from the full City Council to self-fund the pilot program in order to expedite implementation. The Committee advised that if the project continues beyond the initial pilot, then long term funding should be sought from the private sector.

¹ See Item 3 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca021814full.pdf>

² See Item 6 at <http://www.ci.hayward.ca.us/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2015/CSC-CCSC011215full.pdf>

DISCUSSION

If Council decides to fund the pilot program internally, the Water Improvement Capital Fund would be used. The Water Improvement Capital Fund's primary revenue is the Water Facilities Fee (also referred to as a "connection fee"), which is a fee that is assessed on new water service connections. The FY 2016 - 2025 Capital Improvement Program, also scheduled to be adopted on June 23, includes the Green Hayward PAYS[®] program as a placeholder project in this fund, budgeted for \$1,000,000 in FY 2016, with projected annual revenue shown to be approximately \$140,000 beginning in FY 2016 through FY 2026. The revenue reflects the funds that will be repaid by the participating customers through a surcharge on their water bills, and assumes a return of 6.95%, established as the Green Hayward PAYS[®] program activity charge, which matches the interest rate offered by New Resource Bank.

The customer surcharge related to the Green Hayward PAYS[®] program is not a property related fee subject to Proposition 218 since collection of the surcharge is dependent on the property owner or tenant's voluntary decision to utilize the services of the PAYS[®] program and is not merely an incident of property ownership. Additionally, the surcharge is not subject to Proposition 26 since participation in the program is voluntary and the participants enter into contractual arrangements with the City to pay the surcharge.

Certification Agent – Administration of the PAYS[®] program requires marketing, reviewing proposed projects to ensure cost-effectiveness, ensuring all purchase agreements and related forms are completed, performing pre- and post-installation inspections, and providing customer service by fielding all customer inquiries and resolving issues. The program was designed such that these tasks could be performed by City staff or by an outside Certification Agent. In March 2014, staff entered into a professional services agreement with BKi to serve as the Certification Agent for a limited term, including a not-to-exceed contract amount of \$24,500, to assess BKi's capabilities on a pilot basis. In April and May of 2014, BKi marketed the program and performed project screening services until it became apparent that private financing would not be secured.

If Council is inclined to approve the program, the agreement with BKi will need to be extended to June 30, 2016. Staff requests Council authorization to extend the agreement with a not-to-exceed amount of \$100,000. When the program launches, staff expects that monthly billing will average \$8,000 per month. The initial pilot, approved for up to 2,000 units, may be completed prior to June 2016. If the PAYS[®] program is extended beyond the pilot, then the City will assess staffing needs and may continue to have BKi serve as the Certification Agent.

Contractor & Suppliers – In February 2014, after Council initially approved the PAYS[®] program based on private funding, the City entered into contracts with the following companies:

- Bottom Line Utility Solutions (BLUS), to install basic, energy, and landscaping measures and to supply the products for basic and landscaping measures;
- Niagara Conservation to supply toilets and showerheads;
- HD Supply to supply anti-scald shower valves (not an energy efficiency or water conservation measure, but originally included as a safety feature); and
- Accurate WeatherSet to supply weather-based irrigation controllers.

Following are staff's recommended changes in the contracts with the program contractor and suppliers:

- Niagara Conservation's price for toilets has increased by 10% since their proposal was originally submitted to the City. Also, Niagara is no longer able to supply showerheads, so BLUS will supply showerheads at a price that is competitive with the firms that responded to the RFP. These changes will be reflected in an amended agreement with Niagara.
- HD Supply was to supply anti-scald shower valves; however the City's consultants have completed additional research, reviewing all the California water utilities that provide free 1.5 gallon-per-minute showerheads, and was not able to find any that provide or recommend use of a temperature-actuated-flow-reduction (TAFR) valve or comparable device. Staff recommends elimination of the TAFR from the program, which eliminates the need for a contract with HD Supply.
- Accurate WeatherSet was to supply weather-based irrigation controllers. New information has led staff to question Accurate WeatherSet's ability to reliably supply irrigation controllers in a timely manner. Staff recommends sourcing the controllers through BLUS. BLUS has significant experience installing weather-based irrigation controllers and will match the prices initially offered by Accurate WeatherSet.

The above changes will help with effective program implementation and will also reduce the number of contracts to be managed by staff from four to two.

ECONOMIC IMPACT

A Green Hayward PAYS[®] program would benefit residents and property owners who are able to take advantage of the opportunity to improve energy and water efficiency in their homes with no up-front costs and no increases in their overall utility bills. If or when BLUS needs additional staff to complete projects, they will first look to the local workforce. If the program continues beyond the initial pilot, local contractors may also benefit from the increased demand for efficiency measure installations.

FISCAL IMPACT

Development of the Green Hayward PAYS[®] program has been funded by a grant from the Regional Climate Protection Authority (RCPA), which received funding from the Bay Area Regional Energy Network (BayREN). Per direction from the Sustainability Committee, staff has identified and requested an expenditure of \$1,000,000 from the Water Improvement Capital Fund in the FY 2016 - 2025 Capital Improvement Program. The funds in this reserve are utilized for emergency replacements and contingencies. This funding would be used to cover the upfront costs associated with installing conservation and efficiency measures and will be paid back over time with a surcharge on each participating customer's water bill. The allocation and use of this amount would lower the FY 2016 reserves in this Capital Fund to just \$350,000, assuming that the anticipated annual repayment of \$142,000 is fully realized in the first year. The Fund will ultimately be paid back over ten years with a rate of return of 6.95%.

An administrative fee will be charged to each participating customer to cover the staff costs associated with managing the program and will provide a substantial portion of the funds to pay

costs associated with the agreement with BKi. The agreement will have a not-to-exceed amount of \$100,000. The BayREN grant will cover most of the costs associated with design of the PAYS[®] system for implementation.

The program is designed to utilize the City's toilet rebate program, but the project's proponents maintain that the rebates are not necessary for most projects to be considered cost effective and to meet the 80% rule. If the average participating dwelling unit has 1.5 toilets, the pilot program would replace 3,000 toilets, which would draw \$300,000 from the Water System Replacement Fund. Sufficient funds are available to cover this.

PUBLIC CONTACT

The Green Hayward PAYS[®] program has been discussed during public meetings of the City Council Sustainability Committee on July 10, 2013, October 2, 2013, January 29, 2014, and January 12, 2015. The program was presented to the City Council on October 15, 2013 and February 18, 2014. The contractor selected by the City, Bottom Line Utility Solutions, has marketed the program to owners of multi-family properties in Hayward and has reported that these initial contacts and site visits indicate strong interest in the program.

ABAG and StopWaste have submitted letters supporting Council's approval of the PAYS[®] program (see Attachments II and III).

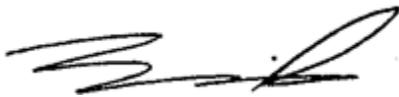
NEXT STEPS

If Council adopts the attached resolution, staff will execute extensions to the agreements with BKi, BLUS and Niagara Conservation. Staff will then take steps to finalize loan documents and launch the program.

Staff will continue to investigate the possibility of outside funding for the program for future implementations.

Prepared by: Erik Pearson, AICP, Environmental Services Manager
Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution
- Attachment II: Letter from the Association of Bay Area Governments dated May 11, 2015
- Attachment III: Letter from StopWaste dated May 13, 2015

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN EXTENSION TO THE PROFESSIONAL SERVICES AGREEMENT WITH BEVILACQUA KNIGHT, INC. (BKⁱ) TO PROVIDE CERTIFICATION AGENT SERVICES FOR THE GREEN HAYWARD PAYS[®] PROGRAM AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE CONTRACT AMENDMENTS WITH BOTTOM LINE UTILITY SOLUTIONS AND NIAGARA CONSERVATION

WHEREAS, the City of Hayward City Council approved the Green Hayward PAYS[®] (Pay As You Save) pilot program on February 18, 2014; and

WHEREAS, the Environmental Services Division does not currently have staff to administer the Green Hayward PAYS[®] program; and

WHEREAS, BKⁱ is well-qualified to serve as the Certification Agent for the Green Hayward PAYS[®] program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an extension to the professional services agreement with Bevilacqua Knight, Inc. (BKⁱ) to provide certification agent services for the Green Hayward PAYS[®] program through June 30, 2016, in an amount not to exceed \$100,000, in a form to be approved by the City Attorney; and

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute, on behalf of the City of Hayward, amended contracts with Bottom Line Utility Solutions as the Certified Contractor and a Certified Supplier and with Niagara Conservation as a Certified Supplier to implement the Green Hayward PAYS program, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



May 11, 2015

Hayward City Council
777 B Street
Hayward, CA 94541

Council:

On behalf of the Association of Bay Area Governments (“ABAG”)¹ and the San Francisco Bay Area Regional Energy Network (“BayREN”), I would like to thank the Hayward City Council, the City of Hayward, and its Utilities & Environmental Services staff for the leadership you have shown in developing the Green Hayward PAYS pilot. This program comes at a critical time for water conservation as the State’s drought pressures continue to worsen. The City’s commitment to Green Hayward PAYS has potential to further demonstrate a sustainable and scalable program model to help protect our water supply.

The Green Hayward PAYS pilot is poised to accomplish the established goals:

- ❖ Over 1,200 multifamily units at 6 multifamily properties in Hayward were pre-qualified for the pilot in initial outreach efforts.
- ❖ The eligible Green Hayward PAYS projects at these properties will save water, energy, and natural gas with plumbing, water heating, lighting, and irrigation upgrades.
- ❖ These projects could be implemented with immediate customer bill savings and no upfront customer co-payment, making it possible for these properties to make improvements that would otherwise require significant out-of-pocket cost.
- ❖ Similar projects at multifamily properties participating in Windsor Efficiency PAYS, another BayREN PAYS pilot, are helping Windsor residents achieve 33% water savings.

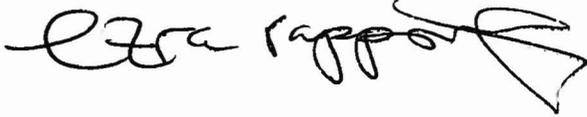
BayREN’s partnership with the City to pilot Green Hayward PAYS was initiated in the summer of 2013. As Green Hayward PAYS begins to deliver projects, BayREN hopes to continue this partnership and work with the City to evaluate program achievements. Working together to understand pilot water savings, energy savings, and financial performance will help BayREN and the City evolve the PAYS model to best serve the City and the larger Bay Area. Our vision is to create a model that enables third party capital to serve the full market potential for water and energy efficiency in the City of Hayward and other partner communities.

¹ ABAG is the Council of Governments for the nine counties and 101 cities and towns of the San Francisco Bay region.

BayREN is excited to help Hayward capitalize on the interest of this pilot by both contractors and multifamily property owners. We are also looking forward to helping Hayward multifamily residents save water and energy, and reduce greenhouse gas emissions.

Thank you again for your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Ezra Rapport", with a stylized flourish at the end.

Ezra Rapport
Executive Director
Association of Bay Area Governments



May 13, 2015

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

Mr. Erik Pearson
Environmental Services Manager
City of Hayward
777 B Street, Hayward CA 94541

Dear Mr. Pearson:

StopWaste: Energy Council would like to commend the City of Hayward and its Utilities & Environmental Services staff for paving the way for an innovative water and energy efficiency program and financing mechanism. We support the Green Hayward PAYS pilot and look forward to continuing our assistance to city staff as the city moves forward toward implementation.

The Green Hayward PAYS pilot addresses several critical issues of joint concern to the City of Hayward and to StopWaste: Energy Council:

Member Agencies:

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

- **Water Conservation:** This pilot comes at a critical time for water conservation as the State's drought pressures continue to worsen. The PAYS model has the potential to deliver significant water savings; similar projects at multifamily properties participating in Windsor Efficiency PAYS have achieved 33% water savings.
- **Sustainable Landscaping:** As Hayward continues to develop and implement the PAYS program, landscaping measures can be incorporated and PAYS financing can be used to promote sustainable landscaping and lawn conversions. These measures support water conservation, GHG reduction and the use of local recycled compost and mulch.
- **Energy Efficiency and GHG Reduction:** By targeting hot water measures and energy-efficient updates, the Green Hayward PAYS pilot will save energy directly and through the embedded energy of water use, which will lower GHG reductions and help meet Hayward's climate action plan goals.
- **Residential Cost Savings:** These environmental benefits provide significant cost savings to Hayward residents, especially to the multifamily tenants in the pilot buildings.

The City's commitment to Green Hayward PAYS has potential to further a sustainable and scalable program model to help protect our water supply and address climate change. Hayward is positioning itself as a leader and helping to develop a model that we hope will become a regional standard.

Thank you again for your leadership.

Sincerely,

Wendy Sommer
Deputy Director

1537 Webster Street
Oakland, CA 94612

p 510-891-6500
f 510-893-2308
www.stopwaste.org

CC: Fran David, Hayward City Manager; Alex Ameri, Public Works Director; Greg Jones, Energy Council Board Member