

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 15-1362 FOR THE PURPOSE OF AMENDING METRO CODE TITLE V, SOLID WASTE, TO REVISE CHAPTERS 5.00, 5.01, AND 5.05

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Adoption of Ordinance No. 15-1362 will amend Title V of Metro Code (Solid Waste) to revise Chapters 5.00 (Definitions), 5.01 (Solid Waste Regulation), and 5.05 (Flow Control). The proposed revisions include: adding and updating defined terms, clarifying and narrowing certain licensing exemptions, removing certain licensing and franchising requirements, adding administrative procedure provisions, and various other technical corrections that will help make the Metro Code more accessible and easier to use.

As the agency tasked with management of the region's solid waste system, Metro has an obligation to the public to ensure the materials intended for reuse, recycling and other purposes are handled properly and sent to the appropriate markets. Over the years, certain facilities have been exempted from Metro's licensing and oversight responsibilities, creating different rules for similar types of facilities and preventing Metro from fulfilling its responsibilities to ensure that discarded materials are handled properly

The purpose of these proposed changes is to further achieve the public benefits of: 1) protecting human health and the environment, 2) providing good value in the solid waste system, and 3) being adaptive and responsive to a dynamic solid waste system. In addition, these changes further the objectives of making the Code more relevant and simpler to use so that all similarly situated classes of solid waste facilities are subject to the same rules. The proposed changes also help Metro become more resilient and flexible when addressing new solid waste technologies and practices.

BACKGROUND

The regional solid waste system is dynamic and changing. Industry consolidation, technological innovation, improved efficiency, and the public's desire to see more sustainable solid waste practices all contribute to this dynamism. Metro continues to play a major role in shaping the region's solid waste system through implementation of its solid waste contracts (operations, transport, and disposal)¹ and its various other efforts to plan and provide direction for the future. In an effort to shape the future solid waste system to better attain public benefits and improved sustainability, Metro has undertaken a major planning effort (known as the "Solid Waste Roadmap") to set the future of the regional solid waste system for the next several years. In 2016, Metro will begin to consider its decennial plan, known as the Regional Solid Waste Management Plan, which will address material management strategies and waste prevention, reuse, and recycling opportunities for the region. In addition to the above-mentioned planning efforts, staff seeks to provide a clearer, more concise, and more equitable regulatory framework for the regional solid waste system.

The Chief Operating Officer (COO) recommends that the Metro Council approve various changes to Metro Code Chapters 5.00, 5.01, and 5.05 which are described in more detail in this staff report. This ordinance is intended as a companion to Ordinance No. 15-1363, which proposes additional revisions to certain sections of Chapters 5.02 (Disposal Charges and User Fees) and 7.01 (Excise Taxes) to further

¹ Metro's transfer station operations contracts expire in March 2017. Metro's transport and disposal contracts expire at the end of 2019.

improve the consistency, access, and usability of the Code. In addition to this action, the Council will consider Ordinance No. 15-1363 at its meetings on October 1 and 8, 2015.

I. Changes to Chapter 5.01 (Solid Waste Regulation)

Metro Code Chapter 5.01 (Solid Waste Facility Regulation) governs the regulation of solid waste facilities and disposal sites within the region. The COO recommends the proposed changes to Chapter 5.01 as described below (Exhibit A to Ordinance No. 15-1362).

1. Purpose language (Section 5.01.020):

The COO recommends changes to this section of Code to align it with the public benefits that Metro seeks to achieve through the Solid Waste Roadmap. Most of the purpose statements from that planning effort are already contained within the chapter; however, the proposed modifications make the Code more clear and explicit on those purpose points. Additionally, the following new purpose statements will be added to this section as public benefits to guide the Code:

- A. Protect and preserve the environment and livability of the region, and
- B. Adapt and respond to changes in the solid waste system.

2. License Exemptions (Section 5.01.040):

The proposed changes to this section of the Code would eliminate certain historically-based licensing exemptions. As a way to ensure that similarly situated facilities are regulated in an equitable manner, the COO recommends that Council remove the licensing exemptions for the following types of facilities:

- A. *Material recovery facilities.* Under current Code,² certain material recovery facilities (MRFs) that exclusively accept and process source-separated recyclable materials are not required to obtain a Metro solid waste facility license and are not subject to routine inspections by Metro. For example, a facility that processes curbside recyclables is generally exempt from Metro's licensing requirement.

In the past, due to previous material management practices, such facilities generally received "cleaner," source-sorted loads of curbside recyclables that typically had little if any contamination and could be readily delivered to commodity markets with minimal processing. However, the system in place for the last decade is much different. Customers are no longer required to separate their recyclables by material type when placed in bins at the curbside. Rather, customers place mixed recyclables in roll carts or containers to be sorted and otherwise processed at MRFs. These facilities also have the potential to generate the same types of nuisance impacts on nearby households and businesses as do other regulated solid waste facilities. These impacts include litter, dust, noise,² contaminated storm water run-off and vectors.

The COO recommends that the Council remove the exemption for such operations and require facilities that accept and process multiple types of source-separated recyclable materials (i.e., operations processing residential or commercial curbside recyclables) to obtain a Metro solid waste facility license and be subject to inspections as that of other MRFs and solid waste facilities. However, the COO recommends that those facilities that exclusively receive a single

² Metro Code Section 5.01.040(a)(3) (Exemptions)

type of non-putrescible source-separated recyclable material (such as operations that exclusively receive and process paper, glass, etc.) continue to remain exempt from licensing requirements at this time.

The COO will establish and issue administrative procedures that define the types of MRFs that will be subject to the licensing requirements in Code.³ Upon adoption of these Code changes, the COO plans to initiate a stakeholder process to develop expanded administrative procedures for newly regulated facilities similar to the process that was used in 2007 to develop standards for MRFs that receive and process mixed non-putrescible waste.⁴ These administrative procedures will also include performance, design, and operating requirements that meet the general performance goals provided in Code.⁵ The COO will develop such procedures with input from industry, local governments, the public and other stakeholders.

- B. *Wood waste processing facilities.* Under current Code,⁶ facilities that exclusively process (i.e., chip or grind) wood waste for hog fuel production are exempt from licensing. However, a Metro license is required if the same type of facility processes the same type of wood waste for use as composting feedstock. The COO recommends that the Council remove the exemption for such operations that process wood waste and require that those facilities obtain a Metro solid waste facility license and be subject to inspections.
- C. *Putrescible waste reload facilities.* Under current Code,⁷ certain facilities that accept putrescible (“wet”) waste from their own hauling activities within a contiguous franchised collection area and deliver such waste to a transfer station are not required to obtain Metro authorization. However, Metro authorization is required if the same type of facility were to accept wet waste from a third-party hauler or deliver its waste directly to a landfill. With the exception of who uses the facility and where its waste is ultimately delivered, exempt wet waste reload facilities typically accept the same types of waste and operate in a similar manner to that of a franchised transfer station.

The COO recommends that the Council remove the exemption for such operations and require all facilities that receive wet waste to obtain Metro authorization. As such, adoption of this proposed ordinance would amend the Code to require facilities that receive wet waste for delivery to another solid waste facility to obtain a Metro license. Whereas, those facilities that deliver wet waste to a disposal site would be required to obtain a Metro franchise as currently stipulated in Code.

3. License/Franchise Requirements and Fees (Section 5.01.050 and 5.01.070):

The proposed changes to these sections of Code provide clarification that certain types of facilities, including those processing wood waste, yard debris, and yard debris mixed with residential food waste are required to obtain a Metro solid waste facility license issued by the COO.

³ Metro Code Section 5.01.050 (License Requirements and Fees)

⁴ Administrative Procedures AP No. 501 Section 7 (Standards for Non-Putrescible Mixed Waste Material Recovery Facilities and Non-Putrescible Mixed Waste Reload Facilities)

⁵ Metro Code Section 5.01.053(i) (Issuance and Contents of Licenses)

⁶ Metro Code Section 5.01.040(a)(5)(D) (Exemptions)

⁷ Metro Code Section 5.01.040(a)(7) (Exemptions)

4. Applications for Licenses or Franchises (Sections 5.01.052 and 5.01.072):

The proposed changes to this section of Code will clarify application requirements and eliminate unnecessary financial assurance requirements for licensed and franchised facilities. Specifically, the COO recommends the following changes for all license and franchise applications:

- A. Applicants must provide copies of their existing Oregon Department of Environmental Quality (DEQ) permits as part of their Metro applications;
- B. Applicants must provide copies of any documents demonstrating financial assurance for the costs of closure if required by the DEQ; and
- C. Elimination of Metro's requirement for applicants to obtain financial assurance unless it is already required by the DEQ.

5. Issuance and Contents of Licenses or Franchises (Sections 5.01.053 and 5.01.073):

Under current Code,⁸ the COO must provide written notice to the Council President at least ten days before the COO approves an application for a new solid waste facility license that will have a "substantial effect on any adjacent residential neighborhood." In addition, the COO must provide the same type of notice before approving any substantial changes to an existing license. The above-mentioned provision was initially included in Code to provide the Council with an opportunity to consider highly contentious or controversial license applications. However, the COO recommends that the explicit "call-up" process currently detailed in Code be deleted because it is unnecessary. Staff routinely meets with the Council's solid waste liaisons and informs the Council of pending solid waste authorizations and other pertinent issues, especially when facilities are likely to raise local concern. Staff also issues notice of facility applications and provides an opportunity for public comment on pending authorizations. Adoption of this ordinance would amend the Code to remove the explicit call-up process, but the Council would still retain its authority to involve itself in any application review at any point. Staff will continue to ensure that the Council is notified of pending authorizations and any potentially controversial issues associated with those facilities.

In addition, Code currently stipulates that Metro must act on all new license and franchise applications within 120 days of receipt, otherwise they will be automatically granted.⁹ Notwithstanding that all Metro solid waste authorizations have been issued in a timely fashion for the past 15 years, staff recommends that this current requirement be changed to stipulate that if Metro does not act on an application within 120, then the applicant may request that the Council President direct the COO to act rather than have the authorization automatically issued.

The other proposed changes to these sections of Code authorize the COO to grant up to one-year term extensions for all solid waste facility licenses and franchises. Occasionally, circumstances beyond Metro's control (e.g. extension of DEQ's permitting process, expanded public outreach activities, etc.) can interfere with the timing of the authorization renewal process. This new provision would allow the COO discretion to extend the term of a license or franchise by up to one year in order to accommodate any unforeseen circumstances that may impact the timely renewal of the authorization.

⁸ Metro Code Section 5.01.053(e) (Issuance and Contents of Licenses)

⁹ Metro Code Section 5.01.053(f) (Issuance and Contents of Licenses) and 5.01.073(g) (Issuance and Contents of Franchise)

6. Record-keeping and Reporting for Licenses or Franchises (Sections 5.01.054 and 5.01.074):

The proposed changes are technical amendments to account for the removal of certain financial assurance and reporting requirements.

7. Transfer of Ownership or Control of Licenses or Franchises (Sections 5.01.056 and 5.01.076):

Metro requires applicants to submit complete and accurate ownership information when seeking solid waste facility authorizations. Such information is necessary for establishing the party that is responsible for and subject to the regulatory instrument. Code currently stipulates that licensees and franchisees must apply for and obtain Metro's approval prior to making any changes in ownership or control of their facilities.¹⁰ However, this prior notification requirement is unnecessary and may potentially disrupt a pending business transaction.

The COO recommends that the Council require all facilities to provide Metro with timely notice after any change of ownership has occurred. As such, adoption of this proposed ordinance would amend the Code to remove this prior approval requirement and instead require that licensees and franchisees notify Metro of any changes of ownership within 10 business days of the transfer.

8. Obligations and Limits for Selected Types of Activities (Section 5.01.125):

The COO recommends changes to Metro's Enhanced Dry Waste Recovery Program (EDWRP) procedures to provide some relief to those facilities subject to residual sampling requirements.¹¹ Specifically, the proposed changes would allow facilities that have been in compliance with EDWRP requirements for at least three years to perform annual residual sampling instead of quarterly sampling (four times per year).

Staff has also developed administrative procedures for EDWRP to provide a process for the COO to grant exceptions to material recovery requirements under certain circumstances such as collapsed commodity markets. In addition, the COO recommends removing certain EDWRP sampling and reporting requirements from Chapter 5.01 for the purpose of relocating and including such information in the above-mentioned administrative procedures. Adoption of this proposed ordinance would establish administrative procedures as provided in Exhibit D.

9. Penalties (Section 5.01.200):

The proposed change is a technical amendment that reduces the maximum penalty amount for a license or franchise violation from \$1,000 to \$500 per violation per day. This change is necessary in order to make the Code consistent with state requirements.¹²

II. Changes to Chapter 5.05 (Solid Waste Flow Control)

Chapter 5.05 (Solid Waste Flow Control) governs the transportation, transfer, disposal, and other processing of all solid waste generated within the Metro region. Metro-area waste that is transported outside of the region must be delivered to a designated facility or hauled under authority of a non-system license. The COO recommends the proposed changes to Chapter 5.05 as described below (Exhibit B to Ordinance No. 15-1362).

¹⁰ Metro Code Sections 5.01.056 (Transfer of Ownership or Control of Licenses) and 5.01.076 (Transfer of Ownership or Control of Franchises)

¹¹ Metro Code Section 5.01.125(c)(2) (Obligations and Limits for Selected Types of Activities)

¹² ORS 268.360

1. Purpose language (Section 5.05.012):

The COO recommends changes to this section of Code to align it with the public benefits that Metro seeks to achieve through the Solid Waste Roadmap. Most of the purpose statements were already contained within a different section of the chapter.¹³ However, the proposed modifications make the Code more clear and explicit on those purpose points. These public benefits now encompass the solid waste system inside the Metro regional boundary and extends to communities where solid waste emanating from Metro is delivered outside the regional boundary.

2. Exemptions (Section 5.05.027):

The proposed change is a technical amendment that moves a paragraph in one section¹⁴ of the Chapter 5.05 to another section.¹⁵ There is no substantive change.

3. Deletions from and amendments to the list of designated facilities (Section 5.05.032):

The proposed change provides that Metro may consider “any significant change in any circumstances” when reviewing the list of designated solid waste facilities.

4. Non-system license to use non-system facility (Section 5.05.040):

The proposed changes to this section include a technical amendment and the two substantive changes described below:

- A. *Residential food waste.* The proposed changes would authorize the COO to issue non-system licenses (rather than the Council) for the delivery of yard debris containing *residential* food waste, and other source-separated *residential* food waste, outside of the Metro region. Residential food waste, unlike commercial food waste, is collected in small quantities and typically comprises a small portion of the overall yard debris load. There is generally a lower likelihood of nuisance conditions resulting from the delivery of yard debris mixed with residential food waste than that of commercial food waste. Therefore, to expedite the review and decision process on these types of licenses, staff recommends that such licenses be reviewed and issued by the COO.
- B. *Source separated recyclable material.* Typically non-system licenses are not required for delivery of source-separated recyclable materials when delivered to markets outside of the Metro region. However, staff has recently discovered that such materials are occasionally delivered to locations that simply stockpile the material and do not take the steps necessary to recover or recycle it. Recent examples include construction waste such as roofing shingles and dry wall. The proposed changes would authorize the COO to require non-system licenses for certain source-separated materials if the COO determines that such material is causing or likely to cause harm to human health or the environment or is unlikely to be recycled. This proposed change would provide staff with an opportunity to better determine whether materials leaving the region are being delivered to legitimate recovery and recycling outlets.

¹³ Metro Code Section 5.05.015 Special Findings for Solid Waste Flow Control.

¹⁴ Metro Code Section 5.05.020 Authority, Jurisdiction and Application.

¹⁵ Metro Code Section 5.05.027 Exemptions.

5. Non-system license application fees (Section 5.05.042):

Code currently provides an elaborate and confusing description of the application fees required for non-system licenses (determined by the license type, waste amount, and waste type).¹⁶ It also provides a process for the applicant to request a refund if the application is denied. The COO recommends that this section be changed to simplify the application fee information and delete the allowance of a refund for application denials. The current application fees are modest and refunds are rarely ever necessary. This proposed change is intended to simplify these provisions and make the Code more clear.

6. Issuance of non-system licenses (Section 5.05.045):

The proposed changes would authorize the COO to extend the term of any non-system license for up to six months. Occasionally, circumstances beyond Metro's control (e.g. new information that requires additional evaluation, slow response from an out-of-region government, difficulty in scheduling a licensing decision with the Council, etc.) can interfere with the license renewal process. This new provision would allow the COO discretion to provide up to a six-month term extension in order to accommodate any unforeseen circumstances that may impact the timely renewal of non-system licenses.

7. Requirements to be met by non-system license holders (Section 5.05.046):

The proposed changes would simplify the monthly reporting and payment requirements section and improve the accessibility of the Code. These changes include the deletion of current Code language¹⁷ that allows non-system licensees to report tonnage using alternative tracking methods as opposed to certified scale weights. The COO recommends that the Council require the consistent use of certified scale weights for reporting as it is the most reliable and objective way to track tonnage and determine the proper payment amounts.

8. Failure to comply with non-system license (Section 5.05.047):

This section provides a very elaborate and unnecessary process for providing written notice and dealing with the failure to correct a licensing violation. Much of the current language is unnecessary and may bind Metro and a licensee to a protracted procedure that may not result in a satisfactory outcome. Therefore, the COO recommends that this Code section be streamlined and the unnecessary language be removed. If additional procedural detail is necessary in the future, then the COO will develop and implement administrative procedures.

9. Solid waste tracking system (Section 5.05.070):

The proposed change in this section is a technical amendment that removes unnecessary language referring to the establishment of a solid waste tracking system. Metro has already established such a tracking system and the current language is no longer necessary. There are no substantive changes to this section.

¹⁶ Metro Code Section 5.05.042 License Application Fees

¹⁷ Metro Code Section 5.05.046(4) Requirements to be met by License Holder

10. Solid waste flow control (Section 5.05.080):

The proposed change would delete unnecessary language and streamline the section that specifies how Metro calculates penalties associated with regional system fee and excise tax payments. There are no substantive changes to this section.

11. Adoption of administrative procedures (Section 5.05.090):

The proposed change clarifies that the COO may adopt and issue administrative procedures and performance standards to implement all provisions of Chapter 5.05. In addition, the proposed change requires that the COO provide public notice and the opportunity to comment on any substantial amendments to such administrative procedures.

III. Changes to Chapter 5.00 (Solid Waste Definitions)

In 2014, the Council adopted changes to the Code that consolidated all of the solid waste-related definitions from Title V (Solid Waste Facility Regulation) into a new chapter. At that time, there were various redundant and duplicative defined terms. The number of definitions was subsequently reduced from 155 to 95 upon the adoption of Chapter 5.00. This ordinance proposes a number of additional changes to Chapter 5.00 which include term additions, deletions, and amendments as detailed in Exhibit C. This is a further effort to ensure that Title V definitions provide appropriate clarity and purpose.

A. The COO recommends various non-substantive technical corrections and revisions to the following terms:

1. Act
2. Agronomic application rate
3. Enhancement fees (changed to “community enhancement fees”)
4. Disposal fee
5. Disposal site
6. Energy recovery
7. Material recovery
8. Metro disposal system
9. Non-putrescible waste
10. Petroleum contaminated soil
11. Process, processing or processed
12. Processing residual
13. Recycling drop center
14. Reload
15. Solid waste
16. Solid waste facility
17. Source separate, source separated or source separation
18. Special waste
19. System
20. Transfer
21. Unacceptable waste
22. Waste hauler
23. Waste reduction hierarchy (changed to “waste hierarchy”)
24. Yard debris

B. The COO recommends that the following terms be deleted from Chapter 5.00 because they are no longer used or needed:

1. Compostable organic waste
2. Direct haul disposal charge
3. Director
4. Enhancement fees (changed to “community enhancement fees”)
5. Metro waste management system
6. Processing facility
7. Resource recovery facility
8. Standard recyclable materials
9. Yard debris facility
10. Yard debris reload facility

C. The COO recommends the following substantive changes to these terms:

1. **Cleanup material contaminated by hazardous substances.** This term has been shortened to “cleanup material” and is broadened to include excavated material as well as cleanup material. Additional materials are proposed to be included in the definition, such as street sweepings, non-hazardous contaminated soils not qualifying as clean fill, and contaminated debris resulting from cleanup or releases of chemical spills. Further clarification is made by adding a definition for “clean fill.”
2. **Material recovery.** Adds the use of manual methods of resource recovery to the methods covered by the definition.
3. **Recycling drop center.** Clarifies that this term is not intended to include facilities that process source-separated recyclable materials.
4. **Solid waste.** Definition is clarified by adding new definitions for “hazardous waste” and “radioactive waste” to the Code.
5. **Source-separated recyclable material.** This definition is shortened considerably and refers to administrative procedures for the details.
6. **Useful material.** The definition is edited to account for other amended and new definitions.
7. **Yard debris.** The definition is broadened to include branches, sod, and scrapings, but does not include dirt, soil or construction and demolition waste.

D. The COO recommends that the following terms be added to Chapter 5.00 as specified below:

1. **Alternative daily cover.** This term is used frequently but has never been defined. This definition is modeled on the DEQ term used in its “Guidelines for ADC Material Application” guidance document but is not defined in DEQs rules.
2. **Anaerobic digestion.** New term defines new type of technology. Same as DEQs definition in OAR 340-093-0030(7).

3. **Automotive shredder residual.** This is a new term to describe the processing residual that remains after recyclable metals have been removed from shredded automobiles and household appliances. This material has commonly been referred to as “auto fluff” in the past.
4. **Beneficial use.** This definition for establishing exemptions from solid waste fees and taxes. Same as DEQs definition in OAR 340-093-0030(13).
5. **Biogas.** Term used frequently. Same as DEQ’s definition in OAR 340-093-0030(15).
6. **Clean fill.** Provides further clarification of cleanup material definition. Same as DEQ’s definition in OAR 340-0093-0030(18).
7. **Commercial.** Frequently used term. Similar to DEQ’s definition of “commercial solid waste” in OAR 340-0093-0030(21).
8. **Construction and demolition waste.** Similar to DEQ’s definition in OAR 340-0093-0030(26) but is more inclusive to cover renovation, remodeling and deconstruction. This definition includes the new term “urban wood waste” which the COO proposes to add to Chapter 5.00 as part of this ordinance.
9. **Conversion technology.** Frequently used term and necessary as a waste activity subject to a Metro a solid waste license. Similar to DEQ’s definition of “conversion technology facility” in OAR 340-0093-0030(28).
10. **Deconstruction.** Frequently used term. Not defined by DEQ.
11. **Demolition.** Frequently used term. Not defined by DEQ.
12. **Digestate.** Frequently used term associated with anaerobic digestion. Similar to DEQ’s term but does not further delineate solid and liquid digestate as in DEQ’s definition.
13. **Dismantler.** Clarifies reference used in proposed “used material” definition. Based on ORS 822.100. DEQ does not define.
14. **Facility.** Frequently used term. Intended to provide clarity by matching numerous waste activity types to facility.
15. **Generator.** Frequently used term but never defined.
16. **Hazardous substance.** Provides clarification to definition of “solid waste.” Same as DEQ’s definition in OAR-0093-0030(48).
17. **Infectious waste.** Same as DEQ’s definition in OAR 340-0093-0030(54).
18. **Medical waste.** Same as DEQ’s definition in OAR 340-0093-0030(66).
19. **Mixed non-putrescible source-separated recyclable material.** Used throughout Code but never defined.
20. **Mixed non-putrescible waste.** Used throughout Code but never defined.

21. **Radioactive waste.** Provides clarification to definition of “solid waste.” Same as the Oregon statutory definition in ORS 469.300.
22. **Residential.** Clarifies distinction between sources of food waste. Not defined by DEQ.
23. **Substantial effect.** This term is currently used and defined in Metro Code Section 5.01.053(e). Adoption of this ordinance would remove the definition of this term from Chapter 5.01 and relocate it to Chapter 5.00.
24. **Urban wood waste.** Establishes definition specifically wood from urban sources. Not defined by DEQ.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed Code modifications.

2. Legal Antecedents

Any change to the Metro Code requires a legislative action of the Metro Council. Metro Code Section 2.01.070 stipulates that the legislative action of Metro shall be by ordinance.

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Chapters 5.00, 5.01, and 5.05 as provided in Exhibits A, B, and C. In addition, approval of this ordinance would establish administrative procedures for EDWRP as provided in Exhibit D and direct the COO to develop and implement administrative procedure for MRFs that accept and process multiple types of source-separated recyclable materials.

4. Budget Impacts

There are no expected budget impacts associated with the adoption of this ordinance.

Recommended Action:

The COO recommends adoption of Ordinance No. 15-1362.

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