

ORDINANCE 2017-2

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE MALAGA COUNTY WATER DISTRICT
REPEALING AND REENACTING CHAPTER 5.01 OF THE
MALAGA COUNTY WATER DISTRICT CODE
RELATED TO SANITATION SERVICE**

WHEREAS, the Malaga County Water District (“District”) has adopted and amends, from time to time, an Ordinance Code referred hereto herein as the “Malaga County Water District Ordinance Code,” the “Malaga Code” or the “Code”; and

WHEREAS, the Board of Directors of the Malaga County Water District has determined that it is in the best interests of the District, its Residents and Businesses that the District provide exclusive roll-off solid waste collection services within the District, through an Agreement with a solid waste enterprise to provide such solid waste collection and disposal services, in order to protect the environment by insuring compliance with the California Integrated Waste Management Act of 1989, to provide uniform levels of service and charges for service, and to combine billing for solid waste collection services with existing District billing for water and sewer services; and

WHEREAS, the Board of Directors of the Malaga County Water District desires to repeal and reenact Chapter 1 of Title 5 of the Malaga County Water District Code.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE MALAGA COUNTY WATER DISTRICT as follows:

SECTION 1: RECITALS

The forgoing recitals are true and correct and incorporated herein by this reference.

SECTION 2:

Chapter 1 of Title 5 of the Malaga County Water District Code is hereby repealed and reenacted to read as follows:

"Chapter 5.01. Sanitation Service.

Section 5.01.010 Authority.

Pursuant to Article 9 of Part 5 of Division 12 beginning at section 31135 of the California Water Code, the Malaga County Water District is authorized to construct, and

operate facilities for, or make contract for others for, the collection and disposal of garbage, waste and trash of the District and its inhabitants.

Section 5.01.020 Definitions.

The following words and phrases, wherever used in this Chapter, shall be construed and defined in this Section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases or the definition set forth herein conflict with definition of the same word or phrase(s) in an applicable Federal or State law, Code or Regulation, such Federal, State law and/or Regulation shall control.

“CIWMA” means the California Integrated Waste Management Act of 1989 (Public Resources Code §40000 et. seq.) as it exists now or may be amended.

“Contract Agent” or “District’s Contractor” or “Franchisee” or “Licensee” means an Agent or Employee of the District, or any person with whom the District shall have dully contracted, under the terms set out in the provisions of this Chapter and under the provisions of the laws of the State, with amendments thereto, to collect, transport through the District, and dispose of and/or recycle organics, solid waste, and/or dry recyclables produced within the boundaries of the District as they exist now or in the future.

“Solid Waste” shall have the same meaning as Public Resources Code §40191 as it is now or as it may be amended.

“Construction/Demolition Debris” means used or discarded construction materials removed from a Premises during the construction during the construction, renovation, or raising of a structure.

“Container” means any and all types of Solid Waste receptacles.

“Debris Box” or “Drop Box” or “Roll-Off Box” means a container for the placement of large volumes of Solid Waste that may or may not have a Compactor attached. Within the meaning of this definition “Bin” shall have the same meaning as “Box.”

“Compactor” means a mechanical apparatus that compresses Solid Waste.

“Collect/Collection” means to take physical possession, transport, and remove Solid Waste within and from the District.

“Recycle” or “Recycling” shall have the same meaning as California Public Resources Code §40180 as it is now or as it may be amended.

Section 5.01.030 Mandatory Service.

A. The accumulation, collection, removal and disposal of solid waste, organics and recyclable materials shall be controlled by the District for the protection of the public safety and health. The Board of Directors finds that a comprehensive system for the periodic collection, removal and disposal of solid waste, the recycling of recyclable materials, and the collection, removal, disposal and/ or composting of organics, from all premises within the District is essential and benefits all occupants of premises in the District and everyone within the District.

B. Every person owning or occupying a Residence or Commercial establishment or Premises shall subscribe to solid waste collection service from the District or the District's contract agent.

C. Exclusion. Nothing set forth in this section prohibits the District from excluding an area or customer or type of waste pursuant to Water Code §§31138 & 31139.

Section 5.01.040 Contract/ Exclusive Provider

A. Contract. The District may, pursuant to Water Code §31140, contract with other parties for the supplying of exclusive or non-exclusive sanitation service.

B. Existing Contractor. If the District authorizes, by Franchise, Contract, License, or Permit, with a solid waste enterprise to provide exclusive solid waste handling services and the District has authorized another solid waste enterprise to provide those services by franchise, contract, license, or permit, then, pursuant to Public Resources Code §49520, the existing solid waste enterprise may continue to provide said services pursuant to Article 3 of Part 8 of Division 30 of the Public Resources Code beginning at §49520 subject to the following conditions:

1. The services of the solid waste enterprise shall be in substantial compliance with the terms and conditions of the franchise, contract, license or permit, and meet the quality and frequency of services required by the District in other areas not served by the solid waste enterprise; and
2. Solid waste handling services provided by the solid waste enterprise shall be done at the rates set by the District for comparable solid waste handling services.

C. Solicitation of New Customers Prohibited. Any solid waste enterprise continuing services pursuant to Public Resources Code §49520 may only continue to provide such services to existing customers and may not solicit or acquire any new customers within the District.

Section 5.01.050 Fees, Rates, and Charges.

A. The District may set fees, rates, and charges for the services set forth in this Chapter pursuant to Water Code §31136 and the Malaga Code. The rates, fees and charges shall be included on the Master Schedule of Fees.

B. Billing for services. The District may collect fees, rates, and charges for sanitation services along with the charges for water and/or sewer rates.

C. Deposits. Deposits for service may be required and may be included in the deposits as required for water service in Chapter 2.02 of the Malaga Code or may be required separately or in addition to any other deposit as determined by the General Manager or his or her designee.

D. Application. Application for service shall be made by the property owner or the property owner's agent including non-residents property manager with a consent of the owner in writing, on a form provided by the District along with a non-refundable application fee, if required. Applications may be made in conjunction with an application for water and/or sewer service. The District may require any other application process as set forth in this Code or as determined by the District.

E. Collection. Collection of fees, rates, and charges may be done in any manner allowed/available at law including the assessment of any unpaid charges being added to the Property Tax Bill of the Owner of the Property.

F. Discontinuation of Service. Service may be discontinued due to failure to pay rates, fees, or charges or for the violation of any Ordinance, rule, or regulation of the District pertaining to the District's sanitation service, as determined by the District.

Section 5.01.060 Rules and Regulations

A. Except as provided for and in conjunction with a community clean-up day, no person shall throw or deposit or cause to be thrown or deposited any solid waste or recyclables in or upon any vacant lot, street, ally, gutter, highway, park or other public place or keep any residential rubbish, solid waste, or recyclables in any manner except as provided for in this Chapter.

B. No persons shall deposit solid waste in the container of another person, or set out solid waste for collection in another person's service location except as may be permitted by the District.

C. No person shall permit or consent to another person depositing solid waste or recyclables in his or her container(s) or setting out solid waste for collection at his or her residence or premises except as may be permitted by the District.

D. No persons shall burn solid waste in any residential or commercial heating furnace, fireplace, woodstove, except that non-plasticized waste paper may be used for kindling of fires in wood-burning appliances, as permitted by the District or any other agency having jurisdiction, except for those commercial enterprises licensed to burn solid waste or green-waste, by any agency having jurisdiction to issue such permit.

E. All residential and commercial premises shall obtain and use containers provided by the District or the District's authorized contractor for the disposal of solid waste and/or recyclables, unless a different container is approved by the District and/or its contract provider. No persons shall dispose of any solid waste or recyclables in any container except those provided by the District or the District's authorized contractor, unless authorized by the District and/or the District's authorized contractor.

F. Addition Rules and Regulations. The Board of Directors may, by Resolution, prescribe new or additional rules and regulations consistent with and to implement this Chapter or the provisions of the CIWMA. Any violation of those rules adopted by Resolution of the Board of Directors shall be deemed a violation of this Section of the Malaga Code.

G. Procedures. The General Manager may adopt or promulgate procedures necessary for the implementation of this Chapter.

Section 5.01.070 Construction/Demolition Debris

A. The District's Authorized Contractor shall be the exclusive provider for Construction and Demolition Debris within the District's boundaries except as provided for in Section 5.01.070(B).

B. Exception. For Construction and Demolition Debris generated during the construction, renovation or raising of structures may be removed by the Property Owner or his or her construction contractor, but not a sub-contractor, provided that the construction contractor is not a hauling service or a solid waste enterprise and does not separately or additionally charge for the service of removing, transporting, recycling or otherwise disposing of Construction/Demolition Debris and utilizes only his or her own employees and equipment to collect, transport, and recycle or dispose of the same. Under this exception, any Owner or generator of Construction and Demolition Debris must comply with all applicable County of Fresno regulations related to the Collection, transport, recycling and/or disposal of Construction and Demolition Debris.

Section 5.01.070 Violation.

Any violation of this Chapter shall be subject to any remedy set forth in the Malaga Code or available at law.”

SECTION 2. California Environmental Quality Act: The Directors having considered the Staff Report and all public comments, has determined that the amendment is not a project under the California Environmental Quality Act because the amendment has no potential for resulting in a physical change in the environment. Since the amendment is not a project, no environmental documentation is required.

SECTION 3. Severability: If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Ordinance. The Directors hereby declare that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases have been declared invalid or unconstitutional.

SECTION 4. Effective Date and Posting of Ordinance: This Ordinance shall be effective immediately upon adoption. The District's Secretary shall publish a summary of the Ordinance within fifteen (15) days after adoption with the names of the Directors voting for and against this Ordinance. Additionally, the Secretary shall post a certified copy of the full text of this Ordinance with the names of the Directors voting for and against this Ordinance in the office of the District. (Water Code Section 31141.)

* * * * *

WHEREFORE, this Ordinance was passed and adopted by the Board of Directors of the Malaga County Water District this _____ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSENT:

CERTIFICATION

I, James Anderson, duly qualified, appointed, and acting Secretary of the Malaga County Water District do hereby certify that the foregoing is a true statement of the action taken by the Board of Directors of the District at a regular meeting of the Board held on _____ 2017.

MALAGA COUNTY WATER DISTRICT

Dated: _____, 2017

By: _____
Jim Anderson, Secretary of the
Malaga County Water District