

Ordinance No. 198-2017

AN ORDINANCE AMENDING SECTION 4 OF CHAPTER XI OF THE CLEARLAKE MUNICIPAL CODE ESTABLISHING UNIVERSAL GARBAGE SERVICE, PROVIDING RULES AND REGULATIONS GOVERNING THE COLLECTION, HANDLING AND DISPOSAL OF SOLID WASTE AND OTHER OPERATING REGULATIONS

The City Council of the City of Clearlake does hereby ordain as follows:

- A. That, pursuant to the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 et seq.), the Legislature has mandated that local agencies make adequate provisions for Solid Waste handling within their jurisdictions;

- B. That to protect the health, safety and welfare of the City's constituency, it is in the public's best interest to establish exclusive franchises for the universal collection, disposal and processing of solid waste and recyclable materials in the city;

- C. That, pursuant to state law, the City is authorized to execute its powers for the purpose of the collection or disposal of garbage or refuse matter and may contract for the collection and disposal of garbage or refuse matter.

Chapter XI of the Clearlake Municipal Code is hereby amended to add a new Section 11-4 as follows:

Section 11-4 UNIVERSAL COLLECTION.

11-4.1 Universal Service. Universal service shall be required for all residential properties in all areas within the boundaries of the City. Residential properties include single family homes, mobile home parks and multiple unit residential properties. City may require universal service for commercial properties that have garbage-related code violations, and any such commercial properties shall then be treated as multiple unit residential properties hereunder (except for purposes of Section 11-4.3 below).

11-4.2 Required Use of Authorized Franchisee. The owner of each residential property in the City is required to contract (subscribe) with the City's exclusive franchisee ("Contractor") for collection of all solid waste accumulated on such property, and shall pay for such removal at the rates and terms established in the applicable franchise agreement as approved by City. Unless written permission has been provided to Contractor as set forth in this Article, it shall be the responsibility of the owner of the residential property to make arrangement with Contractor for solid waste collection services. Such arrangement shall specify the location of the property, solid waste container type and sizes, and frequency of collection which shall not be less than once each week. Collection services made available to those properties required to receive such service shall be considered as services utilized.

11-4.3 General Exemptions.

a. The following are exemptions to the collection requirement set forth in Subsection 11-4.2 available upon grant by City, for each of which conclusive evidence must be established to the satisfaction of City:

(1) Upon satisfactory evidence submitted on an annual basis (or such other time as may be reasonably requested by City), by the residential property owner that no food is prepared or consumed on the property by the current occupant(s);

(2) Upon satisfactory evidence submitted on an annual basis (or such other time as may be reasonably requested by City), by the residential property owner that no solid waste of any kind is being generated on the property by the current occupant(s);

(3) Upon satisfactory evidence submitted on an annual basis (or such other time as may be reasonably requested by City), by the residential property owner that the property is not connected to water and electrical power and that water and electrical power cannot be provided to such property without action by a public utility or mutual water company; provided that such exemption shall terminate upon occupancy of such property; or

(4) Upon satisfactory evidence submitted on an annual basis (or such other time as may be reasonably requested by City), by the residential property owner that the property is a vacation home (not primary home) used exclusively by the property owner and the property is not rented at any point during the year for use by other than the property owner. Listing the home as any kind of rental will be cause for denial or termination of the exemption.

b. The application for an exemption or renewal of an already authorized exemption must be initiated by the property owner even if the property owner does not occupy the property. Any property owner claiming an exemption shall file a statement under oath or under penalty of perjury with City stating the facts upon which exemption is claimed and, in the absence of such statement substantiating the claim, such person shall be liable for the payment of the solid waste collection fees required by this Article.

c. Applications for exemption or renewal of an already authorized exemption may require an on-site inspection by Contractor or City staff.

d. In the event an exemption is granted by City, it may be reviewed as needed to determine whether the exemption still applies.

e. Any citation for a garbage-related code violation will be cause for termination of an approved exemption and universal service will immediately be required.

f. City, after giving notice of not less than ten (10) days and a reasonable opportunity for hearing to any person claiming an exemption pursuant to this Subsection 11-4.3, may revoke any exemption granted upon information that the person is not entitled to the exemption as provided herein.

g. Approved exemptions are not transferrable.

11-4.4 Notification; Failure to Subscribe. If required by Proposition 218 and Article XIID of the California Constitution, the City will mail notices to affected owners and a public hearing shall be held upon the universal service requirement. The notice shall provide in writing the amount to be charged to each owner, the basis upon which the amount or fee was calculated, together with the date, time and location of a public hearing on the proposed change. At the hearing, if written protests against implementing universal service are presented by a majority of the affected

owners, City shall not institute the provisions of this Section 11-4. If written protests by a majority of the affected owners are not presented at the hearing, the universal service requirement will take effect. Owners of residential property in the city shall be required to subscribe within fifteen (15) days of the effective date of such requirement. Owners of such property who purchase after the effective date of such requirement shall be required to subscribe within fifteen (15) days of the effective date of their ownership. If the City Manager has reason to believe that an eligible property owner has failed to subscribe, Contractor shall cause written notice to be mailed to the owner(s) of the real property so affected directing the owner to subscribe for service with fifteen (15) days after the date of the notice or show cause why such person should not be required to subscribe. If service or cause is not established within such fifteen-day period, then City may require Contractor to initiate service. In such instance, collection service fees in an amount set forth in the franchise agreement will be assessed beginning on the day that collection service is first provided by Contractor. Additionally, owner(s) may be subject to penalties as provided hereinafter.

11-4.5 Obligation for Payment. The owner of any residential property in a universal service area will be liable for the payment of said service irrespective of the actual use of the service or failure to subscribe for such service.

11-4.6 Failure to Pay.

a. Residential Customers. If the owner of a single-unit residential property fails to pay its bill within the time period established in the franchise agreement, the account shall be deemed past-due. If the bill remains past-due for ninety (90) days or more, Contractor may reduce the customer's solid waste collection service to the minimum non-recyclable solid waste service offered under the franchise agreement and may discontinue the collection of recyclables and green waste.

b. Multiple Residential Unit Customers. If the owner of a multiple-unit residential property fails to pay its bill to Contractor within ninety (90) days after it is due, Contractor may discontinue all services to such customer until such time as the customer's past due amount is paid to the satisfaction of Contractor.

11-4.7 Bad Debt Collection. Contractor shall make reasonable and material efforts to obtain payment of all delinquent accounts described in Subsection 11-4.6 a. and b. above. The fees levied for service to residential customers that are required to subscribe from Contractor for solid waste collection services shall constitute a civil debt and liability owing to City from the person using or chargeable for such services and shall be collectible in the same manner provided by law, subject to the following limitations:

a. Collection Efforts. Contractor shall undertake collection of the debt (including penalties and expenses of collection) as described in Subsection 11-4.7 above for a period of one hundred eighty (180) days from the invoice date or until the debt is assigned to City for collection pursuant to this Subsection, whichever event first occurs.

b. Assignment of Debt. If Contractor's collection efforts fail and Contractor can demonstrate to the City that it made reasonable and material efforts (such as (i) issuance of late payment notices, (ii) telephone requests for payment, (iii) reduction in the customer's service level as

provided herein, and (iv) assistance from collection agencies if warranted and feasible), then Contractor may assign to the City its rights to collect any delinquent account (including penalties and expenses of collection) that remains unpaid for a period of sixty (60) or more days after the close of the period for which it was billed (Government Code Section 25828) and that have a delinquent amount (exclusive of interest and fees) in excess of \$50. The procedure for making such assignment shall be as follows:

(1) To initiate assignment to City, Contractor shall file with City Manager a verified statement which shall contain the specific facts of the delinquent account, including, but not limited to: name or names and address of the owner(s), the address of the service, the period of service that is delinquent, the amounts due, accrued interest, the steps taken to secure payment, and such other information as the City Manager may reasonably require.

(2) Said statement shall be submitted to City quarterly by the end of each calendar quarter.

(3) Upon acceptance of such assignment, City shall compensate Contractor within thirty (30) days for the delinquent amount, exclusive of interest and fees.

(4) Upon acceptance of such assignment, City shall then initiate any collection procedures authorized by law, including those special assessment procedures authorized by Government Code Sections 38790.1 and 25831. Any amount collected pursuant to these procedures shall be retained by City.

(5) City shall not be responsible for any bad debt incurred by Contractor prior to the actual implementation date of universal garbage service by Contractor.

11-4.8 Lien for Sixty (60) Day Delinquencies. Universal service fees authorized pursuant to this Section 11-4 which remain unpaid for a period of sixty (60) or more days after the date upon which they were billed may be collected thereafter by City as follows:

a. Once a year, City shall cause the City Council of the City of Clearlake (the "City Council") to prepare a report of delinquent universal service fees. The City Council shall fix a time, date and place for hearing the report and any objections or protests thereto.

b. The City Council shall cause notice of the hearing to be mailed to the landowners listed on the report not less than ten (10) days prior to the date of the hearing.

c. At the hearing, the City Council shall hear any objections or protests of landowners liable to be assessed for delinquent fees. The City Council may make such revisions or corrections to the report as it deems just, after which by resolution, the report shall be confirmed.

d. The delinquent fees set forth in the report as confirmed shall constitute special assessments against the respective parcels of land and are a lien on the property for the amount of such delinquent fees. A certified copy of the confirmed report shall be filed with the County auditor, on or before August 10, for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the County Recorder of the County, of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and in the same manner as ordinary County ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection and enforcement of County ad valorem property taxes shall be applicable to such assessment, except that if any real property to which such lien would attach has

been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the delinquency fees, as confirmed, relating to such property shall be transferred to the unsecured roll for collection.

11-4.9 Complaint Procedures. The City Manager or his designee shall adopt an administrative complaint procedure whereby customers may file complaints regarding service or any other matter arising out of the services provided under this Chapter. Appeals from any determinations made pursuant to such administrative procedures may be made to the City Council in accordance with the Clearlake Municipal Code.

11-4.10 Violations – Penalties. It shall constitute an infraction for an owner of residential property to fail to sign up for solid waste collection services within the applicable time set forth in Subsection 11-4.4 or to timely pay for such services as required in Subsection 11-4.6 and upon conviction of such violation, shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, Two Hundred Dollars (\$200.00) for the second violation within one year, and Five Hundred Dollars (\$500.00) for each additional violation within one year. Such person, firm, partnership, association, corporation or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.

CONFLICTS AND SEVERABILITY

All ordinances or parts of ordinances or resolutions in conflict herewith are hereby repealed to the extent of such conflicts and no further.

EFFECTIVE DATE:

The effective date of this Ordinance is thirty (30) days after its adoption by the City Council.

Passed and Adopted this _____ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake