ORDINANCE NO. 2022-10-02

ORDINANCE OF THE BOARD OF DIRECTORS OF THE SANTA MARGARITA WATER DISTRICT, ORANGE COUNTY, CALIFORNIA, PROHIBITING UNAUTHORIZED WORK ON OR WITHIN DISTRICT PROPERTY AND ESTABLISHING PENALTIES FOR SUCH UNAUTHORIZED ACTIVITIES

WHEREAS, the Santa Margarita Water District ("District") is a water district organized under the California Water District Law (Section 34000 et seq., of the California Water Code);

WHEREAS, the District provides safe, reliable drinking water, recycled water, and wastewater services to over 200,000 residents in Orange County, including within nine unique communities, including: cities of Mission Viejo, Rancho Santa Margarita, San Juan Capistrano, and the communities of Coto de Caza, Las Flores, Ladera Ranch, Village of Sendero, Esencia and Rienda, and Talega in San Clemente (collectively, the "Service Area");

WHEREAS, the District maintains water and sewer facilities throughout its Service Area, including on District-owned property and within easements granted to the District (collectively "District Property");

WHEREAS, the District requires third-parties to obtain an encroachment permit for any work that impacts—or has the potential to impact—any public water and/or sewer facilities within District Property. Such work includes, but is not limited to, paving and resurfacing projects within the District's water and sewer pipeline easements;

WHEREAS, the encroachment permit requirement is intended to help ensure that all work within District Property is consistent with established District standards and design criteria. Ensuring work is consistent with District standards and design criteria serves numerous benefits including, but not limited to: (1) protecting, maintaining, and enhancing public water and sewer systems during and after the work; (2) verifying that the permittee ensures the safety of the public and public facilities during the course of the work; and (3) ensuring the proposed work is compatible with the ongoing and future use and maintenance of the District's facilities;

WHEREAS, from time to time, individuals and entities perform work within District Property without first obtaining an encroachment permit. Unauthorized work within District Property can lead to numerous adverse health and safety impacts, including water contamination, unintentional sewer discharges and/or damage or disruption to the District's water and sewer facilities;

WHEREAS, California Water Code section 35400 authorizes California Water Districts to perform all acts necessary or proper to carry out their functions;

WHEREAS, section 5411 of the California Health and Safety Code prohibits, among other things, the discharge of waste in any manner which will result in contamination, pollution, or a nuisance.

WHEREAS, California Penal Code section 624 prohibits every person from willfully damaging, tampering with, or digging up water pipes or water works;

WHEREAS, pursuant to California Government Code section 53069.4, the District may, by ordinance, make the violation of any ordinance enacted by its Board of Directors subject to a civil administrative fine or penalty; and

WHEREAS, given the foregoing, the District has determined that it is appropriate to regulate work on or within District Property and impose penalties in connection with unauthorized work in such areas.

BE IT ORDAINED BY THE Board of Directors of the Santa Margarita Water District as follows:

SECTION 1. Title. This ordinance shall be known as the Santa Margarita Water District Unauthorized Work Ordinance ("Ordinance").

SECTION 2. Recitals. The District hereby finds and determines that the above recitals are true and correct and are incorporated herein.

SECTION 3. Prohibition on Unauthorized Work; Remedies.

A. **Definitions**. The following words shall have the meaning indicated when used in this Ordinance:

"*District*" means the Santa Margarita Water District.

"*District Facilities*" means water and sewer facilities owned, operated, or controlled by the District.

"*District Property*" means both of the following: (i) any easement or license granted to the District; or (ii) any real property owned by the District.

"*Encroachment Permit*" means a permit issued by the District authorizing Work on or within District Property.

"*Work*" means any activity on or within District Property that impacts or has the potential to impact District Facilities.

B. **Unauthorized Work.**

1. Subject to subsection (C) below, it is a misdemeanor for any person or entity to perform Work on or within District Property without first obtaining an Encroachment Permit.

2. Subject to subsection (C) below, it is a misdemeanor for any person or entity to perform Work on or within District Property in violation of any terms or conditions imposed by an Encroachment Permit issued for the Work.

C. **Exceptions**. Subsections (B)(1) and (B)(2) shall not apply to any of the following:

1. Activities by any District employee conducted in the course of his or her employment.

2. Activities authorized by the District in writing.

3. Actions by first responders and/or members of the public to render assistance or medical care to another person at the scene of an emergency.

D. **Penalties**. In addition to any other remedies available at law or equity or provided under any other District ordinance, upon discovering a violation of subsection (B)(1) or (B)(2) above, the District may:

1. Require the immediate stoppage and removal of any Work-related equipment, connections, or tools from District Property;

2. After notice in accordance with District standards, terminate water and/or sewer service of any individual or entity responsible for the Work; and

3. Charge the customer or perpetrator an administrative penalty of:

   a. Maximum of $1,000 for the first violation;

   b. Maximum of $2,500 for the second violation; and

   c. Maximum of $5,000 for each violation thereafter within a two-year period.

E. **Payment and Appeal Procedures**. The payment and appeal procedures for violations of this Ordinance shall be as set forth in Section 5 of Santa Margarita Water District Ordinance No. 2020-06-02 (Unauthorized Use of Water), as applicable. Notwithstanding the foregoing, for purposes of this Ordinance, any appeal-related procedures under Ordinance No. 2020-06-02 to be performed by the Assistant General Manager – Finance shall instead be performed by the District's Chief Engineer.

SECTION 4. Conflicting Provisions. If the provisions of this Ordinance are in conflict with each other, other provisions of the District's regulations or policies, any other resolution or ordinance of the District, or any State law or regulation, the more restrictive provision shall apply.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase in this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, the validity of the remainder of the Ordinance will not be affected. The District's Board of Directors hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases thereof is declared invalid.

SECTION 6. **Effective Date**. This Ordinance shall become effective as of the date of adoption and shall be published in a newspaper of general circulation within 10 days of its adoption.

ADOPTED, SIGNED AND APPROVED this 5th day of October 2022.

Frank Ury
Vice President of the Board of Directors
Santa Margarita Water District

ATTEST:

Kelly Radvansky
Secretary to the Board of Directors
Santa Margarita Water District

STATE OF CALIFORNIA)

COUNTY OF ORANGE)

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I, Kelly Radvansky, Secretary of the Board of Directors of the Santa Margarita Water District, do hereby certify that the foregoing Ordinance was duly adopted by the Board of Directors said District at a regular meeting held on the 5th day of October 2022.

AYES: 3	DIRECTORS: Ury, Jacobs, Olson
NOES:	DIRECTORS:
ABSENT: 2	DIRECTORS: McCusker, Gibson
ABSTAIN:	DIRECTORS:

Kelly Radvansky

Kelly Radvansky
Secretary to the Board of Directors
Santa Margarita Water District

I, Kelly Radvansky, Secretary of the Board of Directors of the Santa Margarita Water District, do hereby certify that the above and forgoing is a full, true, and correct copy of Ordinance No. 2022-10-02 of said Board, and that the same has not been amended or repealed.

DATED: October 5, 2022

Kelly Radvansky

Kelly Radvansky
Secretary to the Board of Directors
Santa Margarita Water District

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