

ORD-FY-19-
**AN ORDINANCE AMENDING CHAPTER 9.1 ENTITLED SOLID WASTE
OF THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA
BY ADDING ARTICLE VI, ENTITLED SOLID WASTE FLOW CONTROL,
SECTIONS 9.1-80 THROUGH 9.1-82 RESPECTIVELY ESTABLISHING
AN OBLIGATION TO OBTAIN A SOLID WASTE COLLECTION AND
DISPOSAL PERMIT AND THE REQUIREMENT THAT ALL GARBAGE, TRASH, OR
REFUSE GENERATED OR COLLECTED WITHIN THE COUNTY OF
MONTGOMERY SHALL BE ONLY DELIVERED TO FACILITIES OF THE
MONTGOMERY COUNTY REGIONAL SOLID WASTE AUTHORITY**

It is hereby ordained by the Montgomery County Board of Supervisors as follows:

Sec. I Purpose; findings.

The Board of Supervisors (the "Board of Supervisors") of Montgomery County, Virginia (the "County") makes the following findings:

1. The Virginia General Assembly has provided in Virginia Code Section 15.2-931 that in furtherance of the policy of the Commonwealth of Virginia the County is authorized to provide for the health and safety of its citizens and promote the general health and welfare by providing for adequate garbage, trash and refuse disposal services (the "County's Solid Waste Duties"), and the Virginia Supreme Court in Concerned Residents of Gloucester County v. Gloucester County Board of Supervisors, 248 Va. 488, 449 S.E.2d 787 (1994) has stated that action taken by a locality such as the County under this statutory authority is a legislative act in furtherance of the County's police powers.
2. The Virginia General Assembly has provided in Virginia Code Section 15.2-931 that the Board of Supervisors is directed and authorized to exercise all powers regarding garbage, trash and refuse disposal notwithstanding any anti-competitive effect.
3. The Virginia General Assembly has provided in Virginia Code Section 15.2-930 that the Board of Supervisors may by ordinance license and regulate the services rendered in the County by any business engaged in the pickup and disposal of garbage, trash or refuse.
4. The safe, economical, and environmentally sound disposal of solid waste, including recycling of recyclable materials, is an essential public service carried out by the County for the common good and the public health, safety, and welfare.
5. In 1994, the County, the Town of Blacksburg, Virginia, the Town of Christiansburg, Virginia and Virginia Polytechnic Institute and State University (together, the "Member Jurisdictions") created the Montgomery Regional Solid Waste Authority ("MRSWA"), which is an authority created and existing under the Virginia Water and Waste Authorities Act (Virginia Code Title 15.2, Chapter 51) (the "Act") for the purposes of operating and maintaining regional solid waste disposal and recycling facilities for the use and benefit of

the Member Jurisdictions and citizens of the Member Jurisdictions, including operating and maintaining solid waste disposal and recycling facilities for the use and benefit of the County and citizens of the County in accordance with the public policy of the Commonwealth of Virginia and in furtherance of the County's Solid Waste Duties, as directed and authorized by Virginia Code Section 15.2-931.

6. In 1995, the County entered into a User Agreement with MRSWA (the "MRSWA User Agreement") in which the County agreed to utilize MRSWA solid waste disposal services and recycling services and MRSWA agreed to provide such services to the County, and the term of the MRSWA User Agreement, as amended, expires June 30, 2040.
7. In 1995, the MRSWA received title to and assumed responsibilities for operating Montgomery County's landfill (known as the "Mid-County Landfill") until closure of the Mid-County Landfill, at which time the MRSWA assumed responsibility for the costs of landfill closure and post-closure care of the Mid-County Landfill.
8. In 1997 MRSWA joined another regional solid waste authority created under the Act, the New River Resource Authority ("NRRA") under an Agreement for Expansion of New River Resource Authority and Form of Agreement Between New River Resource Authority and Montgomery Regional Solid Waste Authority (the "NRRA Expansion Agreement") and MRSWA also entered into a user agreement with NRRA (the "NRRA User Agreement") and thereby gained access to use NRRA's landfill located in Pulaski County (the "NRRA Facility"), with MRSWA's use of the NRRA Facility replacing use of the Mid-County Landfill due to the impending closure of the Mid-County Landfill resulting from the Mid-County Landfill reaching its permitted capacity, and the term of the NRRA User Agreement, as amended, expires July 1, 2028.
9. The NRRA Expansion Agreement stated that the purposes of the NRRA were to remain the same except that the "geographical scope of its purposes and activities shall be deemed to contemplate their exercise within the City of Radford, Pulaski County and Montgomery County (including the Towns, Government owned facilities, and State Educational Institution located in Montgomery County, Pulaski County and the City of Radford)."
10. The Virginia General Assembly has provided in Virginia Code Section 10.1-1411(A) for the Virginia Waste Management Board to promulgate regulations specifying requirements for regional solid waste management plans, to include all aspects of solid waste management including waste reduction, recycling and reuse, storage, treatment and disposal.
11. The Virginia Waste Management Board has promulgated regulation 9 VAC20-130-180 providing for regional solid waste planning units to be designated by the Director of the Department of Environmental Quality, and the Member Jurisdictions have been so designated as a regional solid waste planning unit (the "MRSWA Regional Unit").

12. The Virginia Waste Management Board has promulgated regulation 9VAC20-130-125 requiring each solid a solid waste planning unit such as the MRSWA Regional Unit to maintain a 25% recycling rate for municipal solid waste generated within such unit.
13. The following MRSWA actions serve to fulfill the County's Solid Waste Duties:
 - a. MRSWA processes and disposes of solid waste generated within the County at MRSWA's regional solid waste transfer station (the "MSWA Transfer Station") located in Montgomery County, at the Authority's facility (the "Authority Facility") having a street address of 555 Authority Drive, Christiansburg, Virginia, 24073.
 - b. MRSWA operates a regional solid waste recycling and materials recovery facility (the "MRF") at the Authority Facility to process solid waste generated within the County.
 - c. MRSWA provides the following special waste recycling services to the County (at no additional charge to the County) – recycling of white goods (appliances), metals, household hazardous waste (paint, waste oil, antifreeze, etc.), universal waste (lamps, batteries, etc.) and electronic waste (computers, television sets, etc.).
 - d. MRSWA transports solid waste generated within the County from the MRSWA Transfer Station to the NRRRA facility.
 - e. MRSWA transports a portion of solid waste generated within the County and recovered as sole source recyclables at the MRF from the MRF to a privately owned facility in Salem, Virginia (the "Salem Facility") for additional processing and recycling.
 - f. MRSWA causes the County to comply with regulatory requirements of the Virginia Waste Management Board by producing and administering a solid waste management plan on behalf of all Member Jurisdictions.
 - g. MRSWA causes the County to comply with regulatory requirements of the Virginia Waste Management Board by submitting an annual report to the Virginia Waste Management Board certifying that the MRSWA region (including the County) has met or exceeded the required 25% recycling rate in order to comply with regulatory requirements of the Virginia Waste Management Board.
14. The MRSWA Transfer Station is a solid waste processing and disposal facility located in the County and the County has contracted for capacity at or service from the MRSWA Transfer Station.
15. The MRSWA Transfer Station and the NRRRA Facility are each a facility that the County is contractually required to utilize through the County's membership in and contractual relationship with the MRSWA and the MRSWA's membership in and contractual relationship with NRRRA.
16. The NRRRA continues to have significant unused capacity at the NRRRA Facility, with an estimated useful life, under existing permits, until the year 2043.

17. The NRRRA provides a discounted tipping fee rate to MRSWA for County solid waste disposed of at the NRRRA Facility which allows MRSWA to charge lower fees to the County for waste disposal services.
18. MRSWA has incurred significant capital expenses since it was formed, including costs resulting from the closure of the Mid-County Landfill, post-closure care of the Mid-County Landfill, construction and renovation of MRSWA offices, construction, redesign and renovation of the MSWA Transfer Station, construction of the MRF facility, construction of groundwater wells, construction of a landfill gas collection system, and acquisition of numerous vehicles and industrial equipment, as well as significant ongoing incidental and related costs including costs of transporting solid waste from the MRSWA Transfer Station to the NRRRA Facility, transporting recyclable materials from the MRF to the Salem Facility, monitoring groundwater wells, monitoring the landfill gas collection system, monitoring leachate pretreatment facilities, leachate system sampling and analysis, employee salaries and benefits and utilizing professionals such as engineers and attorneys.
19. MRSWA has contingent liabilities from potential violation of regulations governing allowable levels of groundwater and landfill gas contamination on and near the Mid-County Landfill, such liabilities not resulting from any violation by MRSWA of applicable rules and regulations in the disposal of solid waste but due to the strict liability nature of such regulations.
20. MSWA's audited financial statements for the most recently completed fiscal year state that as of June 30, 2018 the MRSWA had \$3,443,988 invested in capital assets (net of accumulated depreciation) including land, buildings and equipment and that MRSWA paid NRRRA \$1,585,300 during the fiscal year for use of the NRRRA Facility.
21. NRRRA has incurred significant capital expenses since it was formed, including construction of landfill cells at the NRRRA Facility, construction and renovation of NRRRA offices, construction of groundwater wells, construction of a landfill gas collection system, and acquisition of numerous vehicles and industrial equipment, as well as significant ongoing incidental and related costs including costs of monitoring groundwater wells, operating and monitoring the landfill gas collection system, leachate pretreatment facilities, leachate system sampling and analysis, employee salaries and benefits and outside professionals such as engineers and attorneys.
22. NRRRA's audited financial statements for the most recently completed fiscal year ended state that as of June 30, 2018 the NRRRA had \$19,278,552 invested in capital assets (net of accumulated depreciation) including land, landfill development, buildings and equipment, that NRRRA had long term obligations of \$8,526,105 (consisting of landfill closure and post-closure care liability, employee compensated absences and employee pension benefit obligations) and that NRRRA plans to seek major permit amendment from the Virginia Department of Environmental Quality to allow for construction of landfill expansion.
23. The MRSWA Transfer Station is a County solid waste facility because the County has contracted for capacity at or service from the MRSWA Transfer Station, the County utilizes

the MRSWA Transfer Station to process and dispose of solid waste generated in the County and County taxpayer funds are paid to MRSWA for use of the MRSWA Transfer Station.

24. The NRRRA Facility is a County solid waste facility located outside of the County and solid waste generated in the County is transported by MRSWA to the NRRRA and MRSWA utilizes the County taxpayer funds it receives to pay for ultimate disposal of County solid waste at the NRRRA Facility and the County has contracted for capacity at or service from, and receives services from, the NRRRA Facility through the MRSWA User Agreement and the NRRRA User Agreement.
25. Waste processing and disposal facilities other than the MRSWA Transfer Station, including publicly- and privately-owned facilities are unavailable to meet the current and anticipated needs of the County for waste disposal capacity due to the County's contractual commitment to utilize the MRSWA Transfer Station until June 30, 2040.
26. Waste disposal facilities other than the MRSWA Transfer Station, including publicly- and privately-owned facilities are inadequate to meet the current and anticipated needs of the County for waste disposal capacity because they do not provide a long-term alternative to disposal of such solid waste, unlike the County's use of both the MRSWA Transfer Station (with contractual rights to use the MRSWA Transfer Station until June 30, 2040) and the NRRRA Facility (with MRSWA contractual rights to use the NRRRA Facility until June 30, 2028), which NRRRA facility has estimated capacity to serve the growing needs of its current users until the year 2043.
27. Waste disposal facilities other than the MRSWA Transfer Station, including publicly- and privately-owned facilities are, not economically feasible to meet the current and anticipated needs of the County for waste disposal capacity because (a) the MRSWA Transfer Station is the only DEQ permitted municipal solid waste transfer station located in Montgomery County, (b) use of publicly- and privately-owned solid waste facilities other than the MRSWA Transfer Station and the NRRRA Facility by the County would involve increased transportation costs making use of those facilities economically unfeasible for the County, (c) the County's use of the MRSWA Transfer Station includes use of the NRRRA Facility at discounted rates and (d) the County has contractual rights to use the MRSWA Transfer Station for disposal of solid waste until June 30, 2040.
28. The assurance of a supply to MRSWA of all or substantially all of the solid waste generated within the County through the adoption of an ordinance as authorized by Va. Code Section 15.2-931 is necessary to ensure (a) the availability of adequate revenue to fulfill the County's Solid Waste Duties through its membership and participation in MRSWA as described above and (b) the availability of adequate financing for the construction, expansion and closing of County facilities which are facilities utilized by the County for solid waste disposal, including the MRSWA Transfer Station and the Mid-County Landfill, and costs incidental or related to such facilities, including MRSWA capital costs and operating costs described above and payment to NRRRA of solid waste tipping fees to pay for operational and capital costs of NRRRA resulting from the County's use of the NRRRA facility, as well as to maintain MRSWA reserve funds and avoid burdensome rate increases

to the County that would result from use of facilities other than the MRSWA Transfer station that are not economically feasible for the County, and such an ordinance is necessary and in the best interests of the County and its residents, notwithstanding any anti-competitive effects.

29. To the extent that this ordinance results in prohibiting in the future a private company from providing solid waste disposal services that it is providing on the date of adoption of this ordinance, such displacement is necessary to provide for the development and operation of a regional system of refuse collection and disposal for two or more localities, including the Member Jurisdictions.
30. A private company engaged in the provision of pickup and disposal of garbage, trash or refuse within the County on the date of adoption of this ordinance shall not be prohibited from providing the same level of service it is providing on the date of adoption of this ordinance until five years after the date of adoption of this ordinance so that the County will not be required under Va. Code Section 15.2-930(B) to pay such company an amount equal to the company's preceding twelve months' gross receipts for such service provided by the company within the County.

Sec. II County Code Amendment.

Chapter 9.1 of the Montgomery County Code is amended by the addition of Article VI entitled SOLID WASTE FLOW CONTROL as follows:

Sec. 9.1-80. Solid Waste Collection and Disposal Permit

- (a) No person shall operate a business engaged in the pickup and disposal of garbage, trash or refuse wherein service is provided to residents of the County without first obtaining a solid waste collection and disposal permit (a "Permit") from the Director of General services or his/her designee on an annual basis. The annual fee for such permit shall be \$10.00, payable to the County.
- (b) An applicant for a Permit required by subsection (a) shall furnish the following information in writing to the Director of General Services or his/her designee:
 - (1) Name, address and telephone number of applicant and applicant's designated representative for purposes of receiving notice from the County regarding any Permit held by the applicant;
 - (2) The type of legal entity of applicant;
 - (3) The location of vehicles and other equipment to be used;
 - (4) The names of other localities in Virginia in which the applicant operates;
 - (5) A statement that the applicant has received a copy of and read Article VI of Chapter 9.1 of the Montgomery County Code and will not dispose of solid waste at a facility other than the Designated Facility in amounts greater than allowed by Section 9.1-81.

Sec. 9.1-81. Waste to be deposited only at designated sites.

- (a) All garbage, trash or refuse generated or collected within the County shall be only be delivered to the facilities of the Montgomery Regional Solid Waste Authority with a street address of 555 Authority Drive, Christiansburg, Virginia, 24073 (the "Designated Facility"). A private company engaged in the provision of pickup and disposal of garbage, trash or refuse within the County on the date of adoption of this ordinance (a "Private Waste Disposal Company") shall not be prohibited from providing the same level of service it is providing on the date of adoption of this ordinance until five years after the date of adoption of this ordinance, and if such level of service includes the delivery of garbage, trash or refuse generated or collected within the County at a facility other than the Designated Facility then such Private Waste Disposal Company may continue to deliver the same amount of garbage, trash or refuse generated or collected within the County, as measured by weight disposed of on an annual basis (the "Base Amount"), at a facility other than the Designated Facility for a period of five years from the date of adoption of this ordinance and during such five year period such Private Waste Disposal Company shall be required to be disposed of only the amount of solid waste generated or collected within the County as measured by weight in excess of the Base Amount at the Designated Facility. At the

end of such five year period, such Private Waste Disposal Company shall deliver all garbage, trash or refuse generated or collected within the County to the Designated Facility.

(b) Subsection (a) shall not apply to:

- (1) Disposal of household waste by occupants of single-family residences or family farms disposing of their own garbage, trash or refuse in licensed sanitary landfills if such occupants have paid the fees, rates and charges of other single-family residences and family farms in the same service area.
- (2) Disposal of solid waste generated, purchased or utilized by an entity engaged in the business of manufacturing, mining, processing, refining or conversion except for an entity engaged in the production of energy or refuse-derived fuels for sale to a person other than any entity controlling, controlled by or under the same control as the manufacturer, miner, processor, refiner or converter.
- (3) Disposal of recyclable materials, which are those materials that have been source separated by any person or materials that have been separated from garbage, trash and refuse by any person for utilization in both cases as a raw material to be manufactured into a product other than fuel or energy.
- (4) Disposal of construction debris to be disposed of in a licensed sanitary landfill.
- (5) Waste oil.
- (6) Disposal of garbage, trash or refuse at any facility (i) which has been issued a solid waste management facility permit by an agency of the Commonwealth on or before July 1, 1991; or (ii) for which a Part A permit application for a new solid waste management facility permit, including local governing body certification, was submitted to the Department of Waste Management in accordance with Code of Virginia §10.1-1408.1(B) on or before December 31, 1991.
- (7) Any garbage, trash or refuse not accepted at the Designated Facility.

(c) It shall be unlawful for any person, firm, company or corporation to dispose of solid waste generated or collected within the County at any place other than those designated pursuant to subsection (a).

(d) If the Director of General Services determines by reasonable information that a person, firm, company or corporation has failed to dispose of solid waste generated or collected within the County at any place other than those designated pursuant to subsection (a) or otherwise violated any provision of this Article, then the Director of General Services shall provide written notice of such violation to such person, firm, company or corporation and offer the alleged violator an opportunity for a hearing, to be held by the Director of General Services or his/her designee within ten working days of the alleged violator's receipt of such request or at a time otherwise mutually agreeable by the parties. It shall be the burden of the alleged violator to offer proof by a preponderance of the evidence that a violation did not occur or that that a violation occurred by a mistake and offer sufficient assurances that a violation will not occur again. If the Director of General Services determines that the holder of the Permit did not meet this burden of proof then the Director of General Services shall revoke the Permit.

- (e) If the Director of General Services determines by reasonable information that a violation of subsection (a) occurred, then the Director of General Services or his/her designee may proceed to seek an injunction on behalf of the County in a court of competent jurisdiction prohibiting further violations of subsection (a) without show of irreparable harm to the County.

Sec. 9.1-82. Miscellaneous

- (a) To the extent that any provision of this Article VI is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Article VI shall not be affected thereby and shall be valid and enforced to the fullest extent permitted by applicable law.
- (b) To the extent that any provision of this Article VI is deemed inconsistent with any other provision of Chapter 9.1 of the County Code, the provisions of Article VI shall be controlling.

Sec. III Effective date.

This ordinance shall become effective _____, 20__.