

DISCUSSION DRAFT

**PROPOSED ORDINANCE/RESOLUTION FOR ADOPTION
BY THE MEMBERS OF THE
SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**

BE IT ORDAINED/RESOLVED by the Council/Board of Supervisors of the City/County of _____:

1. That the [City/County] of _____ (the “City”/”County”) has found and determined and does hereby declare that:

(a) The cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk and Virginia Beach, and the counties of Isle of Wight and Southampton have created the Southeastern Public Service Authority of Virginia (“SPSA”) pursuant to the Virginia Water and Waste Authorities Act (the “Act”) in order to carry out for their common good and the common good of their citizens, the essential public service of providing for the management and disposal of solid waste in a safe, economical, and environmentally sound manner, which service is typically and traditionally a core function of local government;

(b) SPSA has constructed and is operating an integrated solid waste management and disposal system for the benefit of its members including landfill operations, management of yard wastes, disposal of special wastes, the production and burning of refuse-derived fuel for energy recovery, recycling programs, and public environmental education, which system has been recognized as a model of quality within the solid waste industry and among local governments;

(c) The [City/County], like each of the other cities and counties which are members of SPSA, has contracted with SPSA for long-term waste disposal services, for the payment of disposal fees in an amount sufficient to provide for the financing and operation of the regional system, and to provide for the delivery to SPSA of all or substantially all of the solid waste generated or collected by or within the [City/County], and the form of that contract has been reviewed and declared by order of a Virginia Circuit Court to be valid, binding, and enforceable in accordance with its terms;

(d) In reliance upon its contracts with the [City/County] and other members and upon the delivery of the solid waste generated within the member jurisdictions, SPSA has issued bonds in a substantial amount to finance and construct facilities and has entered into contracts with third parties to assure the safe and environmentally sound management and disposal of the solid waste, all for the benefit of the [City/County] and other SPSA members;

(e) SPSA has been designated and is acting on behalf of the [City/County] and its other member jurisdictions to implement and operate programs in order to meet levels of solid waste recycling required by the laws of the Commonwealth of Virginia, and the common management and control of the region's waste is critical to the success of those programs and to the ability of the [City/County] to meet the requirements of Virginia law;

(f) The assurance of the continued supply of all or substantially all of the solid waste generated within the [City/County] and the other SPSA member localities is necessary to generate revenue for the successful fulfillment of SPSA's public mission and is necessary to and in the best interest of the [City/County] and its citizens, notwithstanding any anticompetitive effects;

(g) The City/County reaffirms its commitment to support and participate in SPSA's operation of an integrated regional solid waste disposal system to provide for the benefit of the [City/County] and its citizens a safe, environmentally sound, reliable and economical program capable of meeting long-term disposal needs, complying with state recycling requirements and carrying out the public's desire for recycling services;

(h) It is both necessary and appropriate that the [City/County] comply with the conditions and commitments of its existing contract with SPSA to deliver or cause to be delivered to SPSA all or substantially all of the solid waste generated or collected by or within the [City/County];

(i) Other waste disposal facilities, including privately owned facilities and regional facilities are (i) unavailable; (ii) inadequate; (iii) unreliable; or (iv) not economically feasible, to meet the current and anticipated needs of the [City/County] for waste disposal capacity;

(j) This ordinance is necessary to ensure the availability of adequate financing for the construction, expansion or closing of the [City's/County's] facilities, including facilities owned and/or operated by SPSA, of which the [City/County] is a member, and the costs incidental or related thereto, and to provide to the [City/County] and other members of SPSA a convenient and effective way to finance SPSA's integrated package of waste disposal services;

(k) The adoption of an [ordinance/resolution] to require the disposal of solid waste collected or generated within the [City/County] at facilities designated by it is in the best interests of its citizens, and is necessary to the provision of an essential public service;

(l) The power of the City/County to adopt this ordinance/resolution is granted by Section 15.2-931 of the Virginia Code, and alternatively was and is granted as an express or necessarily implied power under the Act, specifically by Section 15.1-1269 of the Virginia Code and its successor Section 15.2-5147;

(m) The [City/County], relying on and exercising the powers granted to the [City/County] to contract for disposal of, and to designate in its discretion disposal facilities for, all of the solid waste generated or collected by or within the jurisdiction of the [City/County] or under the control of the [City/County], entered into its contract with SPSA for long-term disposal services, creating contractual obligations that under Virginia law cannot be impaired by subsequent action of the General Assembly; and

(n) The City/County affirms and reserves its power under the Act to contract with SPSA for the disposal of solid waste, and to grant to SPSA the right to dispose of all of the solid waste generated or collected by or within the jurisdiction of the City/County or under the control of the City/County, and the express and/or necessarily implied power to adopt ordinances

necessary to give effect to such power to contract, without having to make specific findings after a public hearing.

2. There shall be added to the [Code/statutes] of the [City/County] the following:

Section ____.

(a) No person shall operate a private solid waste collection business within the [City/County] without first obtaining a permit from the [director of public works] or his designee.

(b) All solid waste generated or collected within the [City/County] shall be disposed of only at the facilities of the Southeastern Public Service Authority of Virginia or such other publicly owned and operated facilities designated by the [director of public works] or his designee.

- (c) Subsection (b) shall not apply to:

(1) 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 solid waste-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.

(2) Recyclable materials, which are those materials that have been source-separated by any person or materials separated from solid waste by any person for utilization in both cases as a raw material to be manufactured into a product other than fuel or energy.

(3) Construction debris to be disposed of in a landfill.

(4) Waste oil.

(d) Subsection (b) shall not prevent or prohibit disposal of solid waste at any facility which was issued a solid waste management facility permit by an agency of the Commonwealth on or before July 1, 1991, or for which a Part A permit application for a new solid waste management facility permit, including local governing body certification, was submitted to the Virginia Department of Environmental Quality in accordance with Section 10.1-1408.1 B of the Virginia Code on or before December 31, 1991.

(e) It shall be unlawful for any person to dispose of solid waste generated or collected within the [City/County] at any place other than those designated pursuant to subsection (b). The [director of public works] or his designee following a hearing may revoke a permit to operate a private solid waste collection business obtained under subsection (a) for failure to comply with this Section, and shall have the power to seek and obtain injunctive relief from a court of competent jurisdiction to prevent violations of this Section, without a showing of irreparable harm. Operating a private solid waste collection business without a permit as

required herein shall be a misdemeanor, punishable by a fine of [\$500], with each day in violation constituting a separate offense.

3. This ordinance/resolution shall be effective on and after January 1, 2008.