AN ORDINANCE TO AMEND CHAPTER 20 OF THE BLACKSBURG TOWN CODE GOVERNING SOLID WASTE BY ADDING NEW ARTICLE V ENTITLED "SOLID WASTE FLOW CONTROL"

WHEREAS, in consideration of adopting an amendment to the Blacksburg Town Code to establish a “flow control” solid waste ordinance, the Town Council (the "Town Council") of the Town of Blacksburg, Virginia (the "Town") makes the following findings:

1. The Virginia General Assembly has provided in Virginia Code § 15.2-931 that in furtherance of the policy of the Commonwealth of Virginia the Town 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 "Town’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 Town under this statutory authority is a legislative act in furtherance of the Town’s police powers.

2. The Virginia General Assembly has provided in Virginia Code § 15.2-931 that the Town Council 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 § 15.2-930 that the Town Council may by ordinance license and regulate the services rendered in the Town 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 Town for the common good and the public health, safety, and welfare.

5. In 1994, the Town, Montgomery County, 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 Town and citizens of the Town in accordance with the public policy of the Commonwealth of Virginia and in furtherance of the Town’s Solid Waste Duties, as directed and authorized by Virginia Code § 15.2-931.
6. In 1995, the Town entered into a User Agreement with MRSWA (the "MRSWA User Agreement") in which the Town agreed to utilize MRSWA solid waste disposal services and recycling services and MRSWA agreed to provide such services to the Town; 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 the 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"). Through the NRRA User Agreement, MRSWA 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. 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 § 10.1-1411(A) for the Virginia Waste Management Board to promulgate regulations specifying the 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 VAC 20-130-180, which provides 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 9 VAC 20-130-125, which requires 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 Town's Solid Waste Duties:

a. MRSWA processes and disposes of solid waste generated within the Town at MRSWA's regional solid waste transfer station (the "MSWA Transfer Station") located in Montgomery County, at the Authority's facility (the "Authority Facility"), which has 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 Town.

c. MRSWA provides the following special waste recycling services to the Town (at no additional charge to the Town): 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 Town from the MRSWA Transfer Station to the NRRA facility.

e. MRSWA transports a portion of solid waste generated within the Town and recovered as sole source recyclables at the MRF to a privately owned facility in Salem, Virginia (the "Salem Facility") for additional processing and recycling.

f. MRSWA causes the Town 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 Town 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 Town) has met or exceeded the required 25% recycling rate 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 outside of the Town and the Town has contracted for capacity at or service from the MRSWA Transfer Station.

15. The MRSWA Transfer Station and the NRRA Facility are each a facility that the Town is contractually required to utilize through the Town’s membership in and contractual relationship with the MRSWA and the MRSWA’s membership in and contractual relationship with NRRA.

16. The NRRA continues to have significant unused capacity at the NRRA Facility, with an estimated useful life, under existing permits, until the year 2043.
17. The NRRA provides a discounted tipping fee rate to MRSWA for Town solid waste disposed of at the NRRA Facility, which allows MRSWA to charge lower fees to the Town 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. There are also significant ongoing incidental and related costs, including costs of transporting solid waste from the MRSWA Transfer Station to the NRRA 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, paying employee salaries and benefits, and utilizing professionals such as engineers and attorneys.

19. MRSWA has contingent liabilities from potential violations 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, 2019, the MRSWA had $3,464,350 invested in capital assets (net of accumulated depreciation) including land, buildings and equipment and that MRSWA paid NRRA $1,474,674 during the fiscal year for use of the NRRA Facility.

21. NRRA has incurred significant capital expenses since it was formed, including construction of landfill cells at the NRRA Facility, construction and renovation of NRRA 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. NRRA’s audited financial statements for the most recently completed fiscal year ended state that as of June 30, 2019 the NRRA had $20,698,368 invested in capital assets (net of accumulated depreciation) including land, landfill development, buildings and equipment, that NRRA had long term obligations of $8,217,777 (consisting of landfill closure and post-closure care liability, employee compensated absences and employee pension benefit obligations) and that NRRA has started construction of landfill expansion.
23. The MRSWA Transfer Station is a Town solid waste facility because the Town has contracted for capacity at or service from the MRSWA Transfer Station, the Town utilizes the MRSWA Transfer Station to process and dispose of solid waste generated in the Town, and Town taxpayer funds are paid to MRSWA for use of the MRSWA Transfer Station.

24. The NRRA Facility is a Town solid waste facility located outside of the Town because solid waste generated in the Town is transported by MRSWA to the NRRA and MRSWA utilizes the Town taxpayer funds it receives to pay for ultimate disposal of Town solid waste at the NRRA Facility; furthermore, the Town has contracted for capacity at or service from, and receives services from, the NRRA Facility through the MRSWA User Agreement and the NRRA 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 Town for waste disposal capacity due to the Town’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 Town for waste disposal capacity because their location makes them impractical to use and because they do not provide a long-term alternative to disposal of such solid waste, unlike the Town’s use of both the MRSWA Transfer Station (with contractual rights to use the MRSWA Transfer Station until June 30, 2040) and the NRRA Facility (with MRSWA contractual rights to use the NRRA Facility until June 30, 2028), which NRRA 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 unreliable to meet the current and anticipated needs of the County for waste disposal capacity because they are not subject to duties such as the County’s Solid Waste duties but rather are subject to market forces, the economic viability of the owner and operator of such facilities and the possibility of closure of such facilities for financial reasons.

28. 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 Town 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 NRRA Facility by the Town would involve increased transportation costs making use of those facilities economically unfeasible for the Town, (c) the Town’s use of the MRSWA Transfer Station includes use of the NRRA Facility at discounted rates and (d) the Town has
contractual rights to use the MRSWA Transfer Station for disposal of solid waste until June 30, 2040.

29. The assurance of a supply to MRSWA of all or substantially all of the solid waste generated within the Town (with exceptions as provided by law) through the adoption of an ordinance as authorized by Virginia Code § 15.2-931 is necessary to ensure (a) the availability of adequate revenue to fulfill the Town’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 Town facilities that are facilities utilized by the Town 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 NRRA of solid waste tipping fees to pay for operational and capital costs of NRRA resulting from the Town’s use of the NRRA facility, as well as to maintain MRSWA reserve funds and avoid burdensome rate increases to the Town that would result from use of facilities other than the MRSWA Transfer station that are not economically feasible for the Town. For these reasons such an ordinance is necessary and in the best interests of the Town and its residents, notwithstanding any anti-competitive effects.

30. 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.

31. A private company engaged in the provision of pickup and disposal of garbage, trash or refuse within the Town 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 Town will not be required under Virginia Code § 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 Town.

32. These findings are supported by documents that are public records and have been presented to the County Board of Supervisors and identified in the County’s records as Documents Supporting findings of the Ordinance Amending Montgomery County Code Governing Solid Waste (Flow Control).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BLACKSBURG:

1. That the preceding findings are ratified and adopted.

2. That Chapter 20 of the Blacksburg Town Code is amended by the addition of Article V, entitled “Solid Waste Flow Control” as follows:
Sec. 20-500. 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 Town without first obtaining a solid waste collection and disposal permit ("Permit") from the director of public works or his or her designee on an annual basis. The annual fee for such permit shall be $10.00, payable to the Town.

(b) An applicant for a Permit required by subsection (a) shall furnish the following information in writing to the director of public works or his or her designee:

(1) Name, address and telephone number of applicant and applicant's designated representative for purposes of receiving notice from the Town 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 V of Chapter 20 of the Town of Blacksburg Code and will not dispose of solid waste at a facility other than the Designated Facility in amounts greater than allowed by Section 20-501.

Sec. 20-501. Waste to be deposited only at designated sites.

(a) All garbage, trash or refuse generated or collected within the Town 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 Town 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 Town 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 Town, 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. During such five year period such Private Waste Disposal Company shall be required to dispose of only the amount of solid waste generated or collected within the Town 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 Town 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 Town at any place other than those designated pursuant to subsection (a).

(d) If the director of public works determines by reasonable information that a person, firm, company or corporation has failed to dispose of solid waste generated or collected within the Town at any place other than those designated pursuant to subsection (a) or otherwise violated any provision of this Article, then the director of public works 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 public works, or his or her designee, within ten working days of the alleged violator’s receipt of such request. 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 a violation occurred by a mistake and offer sufficient assurances that a violation will not occur again. If the director of public works determines that the holder of the Permit did not meet this burden of proof then the director of public works shall revoke the Permit.

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

Sec. 20-502. Miscellaneous

(a) To the extent that any provision of this Article V is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Article V 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 V is deemed inconsistent with any other provision of Chapter 20 of the Town Code, the provisions of Article V shall be controlling.

3. That this ordinance shall be effective on and after the date of its adoption.

__________________________________________ Mayor

ATTEST:

__________________________________________ Town Clerk

Introduction: ______________________________

Public Hearing & Action: _________________

APPROVED AS TO CONTENT:

__________________________________________ Director of Public Works

APPROVED AS TO LEGAL SUFFICIENCY:

__________________________________________ Town Attorney