

CITY OF THORNE BAY, ALASKA

ORDINANCE 09-09-15-1

AN ORDINANCE OF THE CITY OF THORNE BAY, ALASKA, AUTHORIZING THE CREATION OF A REGIONAL SOLID WASTE MANAGEMENT AUTHORITY UNDER AS 29.35.800 – 29.35.925, WHICH AUTHORITY SHALL BE KNOWN AS THE SOUTHEAST ALASKA SOLID WASTE AUTHORITY, AND WHICH SHALL HAVE THE PURPOSE, POWERS, AND OTHER ATTRIBUTES AS SET FORTH IN THIS ORDINANCE; CALLING A REFERENDUM ON THE PROPOSITION OF CREATING THE AUTHORITY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA;

Section 1. Classification. This is a non-code ordinance.

Section 2. Purpose of Ordinance. The purpose of this ordinance is to authorize the creation of a Regional Solid Waste Management Authority.

Section 3. Effective Date. This ordinance shall not go into effect until and unless the creation of the Authority is first approved by a majority of the qualified voters voting on the question at a municipal election to be held on October 6, 2009


James Gould, Mayor

ATTEST:



Teri Hammons, City Clerk

[Introduction: September 1, 2009]

[Public Hearing: September 15, 2009]

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WHEREAS, the development of environmentally sound and cost-effective management of solid waste, including storage, collection, transportation, separation, processing, recycling, and disposal to protect the public health, safety, and welfare, to strive to improve the environment of the region, to recover resources and energy as practical, and to reduce pollution is vital to the present and future economic well-being of the residents of Thorne Bay; and

WHEREAS, a regional solid waste management authority represents an effort at an efficient and effective means to develop and provide such solid waste management facilities and services, thereby facilitating local and regional health, safety, and economic growth and development; and

WHEREAS, the Regional Solid Waste Management Authority Act (AS 29.35.800 – 29.35.925) more specifically allows one or more municipalities to establish a regional solid waste management authority with express powers, including the power to issue revenue bonds and to acquire, construct, and operate solid waste-related facilities and services; and

WHEREAS, in furtherance of that purpose, the City of Thorne Bay desires to establish a regional solid waste management authority to be known as the “Southeast Alaska Solid Waste Authority.”

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNE BAY, ALASKA, AS FOLLOWS:

Section 1. Creation: (a) The City Council of the City of Thorne Bay hereby authorizes the creation of a regional solid waste management authority pursuant to the Regional Solid Waste Management Authority Act (AS 29.35.800 – 29.35.925), which authority shall be known as the Southeast Alaska Solid Waste Authority (“Authority”). The Authority shall be a public corporation of the City of Thorne Bay any Other Participating Municipalities, if any, identified in this ordinance.

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(b) The City of Thorne Bay intends, subject to voter approval of this ordinance to create the Authority irrespective of whether one or more Other Participating Municipalities identified in Section 2(b) below join the Authority.

Section 2. Participating Municipalities. (a) The City of Thorne Bay shall be known as "Participating Municipality."

(b) Subject to the approval of substantially similar ordinances as provided in AS 29.35.805, one or more municipalities located within the boundaries of the Authority may join with the City of Thorne Bay as "Other Participating Municipalities" authorizing and creating the Authority.

(c) The City of Thorne Bay and any of the Other Participating Municipalities shall be known individually as a "Participating Municipality" and shall be known collectively as the "Participating Municipalities."

Section 3. Purpose: (a) The Authority is authorized and created to provide environmentally sound and cost-effective management of solid waste, including storage, collection, transportation, separation, processing, recycling and disposal to protect the public health, safety, and welfare, to strive to improve the environment within its boundaries, to recover resources and energy as practical, and to reduce pollution.

Section 4. Boundaries: The boundaries of the Authority shall include all the land, the tidelands and the submerged lands in the territory bounded on the north by the northern boundary of the City and Borough of Yakutat as such is described in the Certificate of Boundaries, which the State of Alaska issued on April 2, 1997, and which may be amended from time to time, which, if amended, shall be incorporated by the Authority without further action by the Participating Municipalities, on the east by the International Boundary of the United States and Canada, on the south by the International Boundary of the United States and Canada, and on the west by the United States territorial limits. With respect to the boundaries of the Authority that extend into Dixon Entrance or the Gulf of Alaska, notwithstanding the foregoing description, the jurisdictional limits of the Authority extend only to the limits of the State of Alaska's jurisdiction under AS 44.03.010.

Section 5. Powers: (a) The Authority may

- (1) sue and be sued;
- (2) have a seal and alter it;
- (3) acquire an interest in a project as necessary or appropriate to provide financing for the project, whether by purchase, gift, or lease;
- (4) lease to others a project acquired by the Authority on the terms and conditions the authority may consider advisable, including, without limitation, provisions for purchase or renewal;
- (5) sell, by installment sale or otherwise, exchange, donate, convey, or encumber in any manner by mortgage or by creation of another security interest, real or personal property owned by it or in which it has an interest, including a project, when, in the judgment of the Authority, the action is in furtherance of the Authority's purposes;
- (6) accept gifts, grants, or loans, under the terms and conditions imposed under the gift, grant, or loan, and enter into contracts, conveyances, or other transactions with a federal agency or an agency or instrumentality of the state, a municipality, a federally-recognized tribe, a Section 8(a) minority business, a non-profit 501(c)(3) foundation, a private organization, or another person;
- (7) deposit or invest its funds, subject to agreements with bondholders;
- (8) purchase or insure loans to finance the costs of projects;
- (9) provide physical security as to any project of the Authority within the boundaries of the Authority;
- (10) enter into loan agreements for one or more projects on the terms and conditions the Authority considers advisable;
- (11) acquire, manage, and operate projects the Authority considers necessary or appropriate to serve the Authority's purposes;

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(12) assist private lenders to make loans to finance the costs of projects through loan commitments, short-term financing, or otherwise;

(13) charge fees or other forms of remuneration for the use or possession of projects under the agreements described in this subsection; other agreements relating to the projects, covenants, or representations made in bond documents relating to the projects; or regulations of the Authority relating to the projects;

(14) regulate land use within the area of any project of the Authority in a manner not prohibited by the planning and zoning ordinances of any participating municipalities of the Authority;

(15) defend and indemnify a current or former member of the Board, employee, or agent of the authority against all costs, expenses, judgments, and liabilities, including attorney fees, incurred by or imposed on that person in connection with a civil or criminal action in which the person is involved because of the person's affiliation with the Authority if the person acted in good faith on behalf of the Authority and within the scope of the person's official duties and powers;

(16) purchase insurance to protect and hold harmless its employees, agents, and board members from an action, claim, or proceeding arising out of the performance of, purported performance of, or failure to perform in good faith, duties for the Authority or arising out of employment with the Authority and to hold them harmless from expenses connected with the defense, settlement, or monetary judgments from that action, claim, or proceeding; the purchase of insurance is subject to the discretion of the board; insurance purchased under this paragraph is not compensation to the insured person; and

(17) protect its assets, services, and employees by purchasing insurance or providing for certain self-insurance retentions.

(b) The Authority shall maintain casualty, property, business interruption, marine, boiler and machinery, pollution liability, and other insurance in amounts reasonably calculated to cover potential claims against the Authority or a municipality for bodily injury, death or

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disability, and property damage that arise from or are related to Authority operations and activities.

Section 6. Limitations: The Authority is not limited except as expressly set forth herein or in statute.

Section 7. Debt: Subject to the provisions of AS 29.35.825 – 29.35.850, as amended, the Authority may borrow money and may issue bonds on which the principal and interest are payable

(a) exclusively from the income and receipts of, or other money derived from, the project financed with the proceeds of the bonds

(b) exclusively from the income and receipts of, or other money derived from, designated projects or other sources, whether they are financed, insured, or guaranteed in whole or in part with the proceeds of the bonds; or

(c) from its income and receipts or a designated part or parts of them.

Section 8. Administration: (a) The Authority shall be governed by a Board of Directors ("Board"), which shall exercise the powers of the Authority.

(b) The Board shall hire a chief executive officer of the Authority who shall be an at-will employee and serve at the pleasure of the Board.

Section 9. Board of Directors: (a) Number and apportionment. The Board shall be comprised of members designated as Participating Municipality Directors and At-Large Directors whose number and apportionment shall be as follows:

(1) In the event that the Authority is comprised of a single Participating Municipality, the Board shall be comprised of three Directors as follows: one Participating Municipality Director who shall be appointed to represent the appointing Participating Municipality, and two At-large Directors.

(2) In the event that the Authority is comprised of two Participating Municipalities, the Board shall be comprised of three Directors as follows: two Participating Municipality

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Directors with each Participating Municipality Director appointed to represent the appointing Participating Municipality, and one At-large Director.

(3) In the event that the Authority is comprised of three or more Participating Municipalities, the Board shall be comprised entirely of Participating Municipality Directors whose total number shall equal the number of the Authority's Participating Municipalities, with each Participating Municipality Director appointed to represent the appointing Participating Municipality.

(b) Qualifications.

(1) Participating Municipality Directors shall be a resident of and shall meet the minimum qualifications for election to the governing body of the Participating Municipality they are appointed to represent.

(2) At-large Directors may reside in any community within the boundaries of the Authority and shall meet the minimum qualifications for election to the governing body of the community within which they reside.

(c) Appointment; Filling Vacancies.

(1) Participating Municipality Directors. To first appoint Participating Municipality Directors to the Board upon creation of the Authority or upon receipt of Board notification of its determination and declaration of vacancy, the governing body of the Participating Municipality shall, not later than sixty calendar days following the date of the notice of vacancy appoint Participating Municipality Directors of the Authority by an affirmative vote of its members at a regular or special meeting.

(2) At-large Directors. To first appoint At-large Directors, if any, to the Board upon creation of the Authority or upon receipt of Board notification of its determination and declaration of an At-large Director vacancy, the governing bodies of the Participating Municipalities shall appoint individuals to fill At-large Director vacancies as provided in this section.

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(a) In the event that the Authority is comprised of a single Participating Municipality, the governing body of the Participating Municipality shall, not later than sixty calendar days following the date of the notice of vacancy, appoint At-large Directors by an affirmative vote of its members at a regular or special meeting.

(b) In the event that the Authority is comprised of two Participating Municipalities, each Participating Municipality shall nominate at least one qualified individual to fill the At-large Director position. The Board shall appoint the At-large Director from nominations submitted by the Participating Municipalities. In the event that the Board cannot reach a decision with regard to the appointment of an At-large Director, the Board shall select the individual for appointment to the At-large Director position by coin toss.

(d) Terms.

(1) Participating Municipality Directors shall serve three-year terms; provided, however, that Participating Municipality Directors first appointed after the creation of the Authority shall be randomly assigned to one of three groups, each group to be as nearly equal in number as possible. The Directors assigned to one such group shall serve one-year terms; the Directors assigned to the second such group shall serve two-year terms; and the Directors assigned to the third such group shall serve three-year terms.

(2) At-large Directors shall serve three-year terms; provided, however, that In the event that the Authority is comprised of a single Participating Municipality, one At-large Director shall be randomly designated as the At-large Director to serve a full Director term or until the second Participating Municipality, if any, appoints its Participating Municipality Director, and the other At-large Director shall be randomly designated to serve a full Director term or until the third Participating Municipality, if any, appoints its Participating Municipality Director; and provided further that In the event that the Authority is comprised of two Participating Municipalities, the At-large Director shall serve a full Director term or until the third Participating Municipality, if any, appoints its Participating Municipality Director.

(e) Each Director shall hold office for the term of appointment and until a successor has been qualified and appointed.

(f) If otherwise qualified, a Director is eligible to be appointed to the Board for more than one term.

(g) Determination and Declaration of Vacancy. The Board shall declare a Director position vacant when the Director in question

(1) Fails to qualify or take office within thirty days after appointment;

(2) Is physically absent from the Participating Municipality for one hundred eighty consecutive days unless excused by the Board of Directors;

(3) Resigns and the resignation is accepted

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(4) Is physically or mentally unable to perform the duties of office as determined by two-thirds vote of the Board of Directors;

(5) Is convicted of a felony or of an offense involving a violation of the oath of office;

(6) No longer physically resides in the Participating Municipality; or

(7) Misses three consecutive regular meetings and is not excused.

(h) Notice of Vacancy. Upon determination that a Board position is vacant, the Board shall promptly furnish written notice of its determination and declaration of vacancy in the Board to the governing body of the Participating Municipality in the event of a Participating Municipality Director vacancy, or to the governing bodies of all Participating Municipalities in the event of an At-large Director vacancy.

Section 10. Bylaws and Regulations: (a) The Board shall adopt bylaws to carry out the purposes and functions of the Authority as soon after the establishment of the Authority as possible and may, from time to time, amend those bylaws. The bylaws may contain any provision not in conflict with Alaska statutes for the management of the business of the Authority and for the conduct of the affairs of the Authority, including the

(1) time, place, and manner of calling, conducting, and giving notice of meetings of the board and committees of the Board, if any;

(2) compensation of the Board of Directors, if any;

(3) allowance for per diem and for travel and other necessary and reasonable expenses incurred by Directors in the conduct of the business of the Authority, if any;

(4) appointment and authority of committees of the Board, if any;

(5) appointment, duties, compensation, and tenure of officers, directors, chief executive officer, and other employees, if any;

(6) procedures for adopting regulations;

(7) procedures for adopting bylaws;

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- (8) procedures for making annual reports and financial statements; and
- (9) other matters for the conduct of business by the Board.

(b) The Board shall adopt regulations to carry out the purposes of the Authority and to facilitate the day-to-day administration, operation and other functions of the Authority. The Board may amend those regulations from time to time.

Section 11. Meetings: (a) Quorum. A majority of the total membership of the Board constitutes a quorum. A Director disqualified by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum any Director may recess or adjourn the meeting to a later date.

(b) Actions. Actions of the Board are adopted by a majority of the total membership of the Board. Each Director shall vote on every question, unless required to abstain from voting on a question by law. The final vote of each member on each ordinance, resolution, or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it may be recorded "unanimous".

(c) Journal. The Board shall maintain at its main office or any other office as designated by the Board a journal of its official proceedings. The journal shall be a public record.

Section 12. Subject to Public Records and Open Meetings Laws: The Authority is subject to AS 40.25.110 – 40.25.220 and to AS 44.62.310 and 44.62.312, as amended.

Section 13. Development Plan: (a) The Authority shall prepare, and shall maintain and keep current by amendment from time to time as necessary or appropriate, an Authority Project Development Plan ("Development Plan").

(b) The Development Plan shall contain, for each proposed project,

(1) a general project description which shall identify the need for the project, identify development phases, if any, describe any existing improvements in the project area to be affected by the project, describe real and personal property, including municipal real and personal property, proposed to be conveyed or leased to or from the Authority, discuss environmental issues associated with the project, list permits likely to be

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required to proceed with the project, and provide any other information necessary to adequately describe the project's purpose and scope;

- (2) a development schedule including phases, if any;
- (3) the estimated development cost, including the estimated development cost of project phases, if any;
- (4) the estimated cost of operation;
- (5) the proposed method of financing the improvements;
- (6) identification of anticipated revenues from use fees, leases or other contractual arrangements with respect to each project; and
- (7) any other information which the Board deems necessary to adequately describe the intent, purpose, schedule, and cost.

(c) The Authority shall submit the Development Plan and any subsequent amendments to that Development Plan to the governing bodies of the Participating Municipalities for review and for approval by resolution. Before the Authority may consider its Development Plan approved for purposes of this section, all Participating Municipalities must have first approved the Development Plan, including any amendments to that Development Plan, by resolution.

(d) The Authority shall not undertake any project unless the Board formally determines by resolution that the proposed project is consistent with the approved Development Plan, including any amendments to that Development Plan.

Section 14. Annual Report: Within ninety days following the end of the fiscal year of the Authority, the Board shall distribute to the governing body of each Participating Municipality a report describing the operations and financial condition of the Authority during the preceding fiscal year. The financial report must itemize the cost of providing each category of service offered by the Authority and the income generated by each category. The financial report may include suggestions for legislation relating to the structure, powers, or duties of the Authority or operation of facilities of the Authority.

Section 15. Audits: (a) The Board shall have the financial records of the Authority audited at least once annually by an independent certified public accountant.

(b) To make the audits the Board shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the Authority. The Board may retain a public accountant who also serves as an accountant or auditor for any Participating Municipality upon a vote of two-thirds of the Board.

(c) Copies of the annual and any additional audits shall be available to the public upon request.

(d) The Authority shall make all of its financial records available to auditors appointed by the Participating Municipality for examination.

Section 16. Fidelity Bond: The Authority shall obtain a fidelity bond in an amount determined by the Board for Board members and each executive officer responsible for accounts and finances of the Authority. A fidelity bond must be in effect during the entire tenure in office of the bonded person.

Section 17. Taxation: (a) Because the Authority, exercising the powers granted by this enabling ordinance under AS 29.35.800 – 29.35.925 as amended, is in all respects for the benefit of the people of the Participating Municipality and the people of the state in general, for their well-being and prosperity, and for the improvement of their social and economic condition, the real and personal property of the Authority and its assets, income, and receipts are exempt from all taxes and special assessments of the state, or a political subdivision of the state, including but not limited to the Participating Municipality.

(b) Bonds issued by the authority under AS 29.35.825 are issued for an essential public and governmental purpose; therefore, the bonds, the interest and income from them, and all fees, charges, funds, revenue, income, and other money pledged or available to pay or secure the payment of the bonds or interest on them are exempt from taxation except for inheritance, transfer, and estate taxes.

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(c) Notwithstanding the provisions of (a) of this Section, the Authority may in its sole discretion enter into agreements under which the Authority shall agree to pay to the Participating Municipality payments in lieu of taxes and special assessments on real and personal property of the Authority within the taxing jurisdiction of that municipality.

(d) Nothing in this Section creates a tax exemption with respect to the interests of a business enterprise or other person, other than the Authority, in property, assets, income, or receipts of that business enterprise or other person, whether or not financed under the provisions of AS 29.35.800 – 29.35.925 as amended.

Section 18. Withdrawal: (a) If the Participating Municipality is participating with one or more other municipalities, it may withdraw from participation without dissolving the Authority by repealing the enabling ordinance adopted under AS 29.35.805 (a)(2) or (b); provided that

(1) The Participating Municipality intending to withdraw from the Authority shall first provide not less than sixty calendar days written notice to all Participating Municipalities of its intent to introduce in first reading an ordinance repealing the enabling ordinance adopted under AS 29.35.805 (a)(2) or (b); and provided further that

(2) The ordinance repealing the enabling ordinance adopted under AS 29.35.805 (a)(2) or (b) shall be approved by an affirmative vote of at least two-thirds of the members of the governing body of the withdrawing Participating Municipality, and be approved by a majority of the qualified voters of that Participating Municipality voting on the question of withdrawing from the Authority.

(b) The Participating Municipality's contributions to the Authority, if any, shall remain the property of the Authority, and the Participating Municipality remains liable for obligations under any agreement with the Authority or other participating Municipalities, if any, unless the agreement is changed by the contractual parties.

Section 19. Dissolution: (a) The Participating Municipality or the last remaining Participating Municipality in the event the Authority had once included two or more Participating Municipalities may dissolve the Authority. Dissolution of the Authority

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requires an affirmative vote of at least two-thirds of the members of the governing body of the single or last remaining Participating Municipality on a dissolution ordinance and approval of that dissolution ordinance by a majority of the qualified voters of that Participating Municipality; provided, however, that

- (1) all holders of any revenue bonds issued by the Authority and then outstanding are fully repaid including interest, or payment has been fully provided for; and
- (2) all creditors of the Authority, including but not limited to lenders and trade creditors are fully paid including interest, if any, or other provision has been made for that payment; and
- (3) all other obligations, agreements and commitments of the Authority, including but not limited to agreements with customers of the Authority, have been satisfied, or other provisions have been made for that satisfaction.

(b) The dissolution ordinance shall include, but is not limited to,

- (1) schedules and procedures for terminating the Authority's functions and services;
- (2) schedules and procedures for disposing of all the Authority's assets, including distributing those assets of the Authority which must be re-conveyed in accordance with the provisions of AS 29.35.810(b) as amended to the Participating Municipality; and
- (3) schedules and procedures for satisfying all other obligations, agreements and commitments of the Authority as set forth in (a) of this Section; and
- (4) provisions for those other matters deemed necessary and prudent by the Board for the proper dissolution of the Authority.

Section 20. Further Acts: The Mayor of the City of Thorne Bay, or the Mayor's designee is authorized to execute those documents and take those actions necessary to establish the Authority as set out in this ordinance, and to otherwise enter into agreements with the Authority and others within the scope and the purpose of the Authority.

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Section 21. Referendum and Effective Date: This ordinance shall not go into effect until and unless the creation of the Authority is first approved by a majority of the qualified voters voting on the question at a municipal election to be held on October 6, 2009. The ballot proposition shall be substantially in the following form:

PROPOSITION NO. 1

CREATION OF THE SOUTHEAST ALASKA SOLID WASTE AUTHORITY

“Shall the City of Thorne Bay, in accordance with the Regional Solid Waste Management Authority Act (AS 29.35.800 – 29.35.925), create a regional solid waste management authority to be known as the Southeast Alaska Solid Waste Authority having the purposes, powers, and other attributes as set forth in City of Thorne Bay Ordinance No. 09-09-15-01?”

Yes -----

No-----