

#### 4.78.010 General provision.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 24133.)

#### 4.78.020 Cover material.

"Cover material" means any of the following materials that the facility operator uses on-site for purposes of covering compacted solid wastes in a solid waste disposal facility:

A. Earthen material (including contaminated soil as defined in Section 17361 of Title 14 of the Code of California Regulations but excluding soil with contaminants other than petroleum hydrocarbons) that is not required by state or federal law to be disposed of in a permitted solid waste facility; and

B. Dewatered, treated or chemically fixed sewage sludge that is not hazardous and has been approved by the California integrated waste management board as meeting performance standards for landfill cover materials or landfill cover extenders; and

C. Contaminated sediment, dewatered dredge spoils and foundry sands, provided that such materials are approved for use as landfill daily cover at the disposal facility by the regional water quality control board and any other governmental agencies from which approval is required, and provided that the use of such materials as cover material does not exceed the maximum compacted thickness prescribed by regulations of the California integrated waste management board.

D. The first thirty-three thousand five hundred tons of construction and demolition materials used at the site in each fiscal year (July 1 - June 30), provided that the materials have been approved by the California integrated waste management board as meeting performance standards for landfill cover materials or landfill cover extenders and the construction and demolition materials have been weighed and reported after processing. For the purposes of this paragraph, "construction and demolition materials" means waste building materials and rubble generated in the construction, remodel, repair or demolition of residential or commercial buildings and other structures.

(Ords. 24133, 26667, 26743, 27512.)

#### 4.78.030 Inert construction material.

"Inert construction material" means inert material such as rock, concrete, asphalt and dirt which is used for onsite construction purposes such as internal roads and tipping or dumping pads.

(Ord. 24133.)

#### 4.78.040 Materials recovery facility.

"Materials recovery facility" means a facility whose principal function is to receive and process solid wastes to separate and recover materials for reuse or recycling.

(Ord. 24133.)

#### 4.78.050 Recycling facility.

"Recycling facility" means a facility whose principal function is to receive, store, convert or otherwise process solid wastes which have already been separated for reuse by the producer and are not intended for disposal.

(Ord. 24133.)

4.78.060 Salvaging.

"Salvaging" means the controlled removal of waste material from the solid waste taken to the disposal area of the facility where such removal is for the purpose of recycling the removed waste material.

(Ord. 24133.)

4.78.070 Small load.

"Small load" means a delivery of not more than eight cubic yards of solid waste.

(Ord. 24133.)

4.78.080 Solid waste.

"Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, sewage sludge that has been dewatered or chemically fixed, manure and vegetable or animal wastes.

(Ord. 24133.)

4.78.090 Solid waste disposal facility.

"Solid waste disposal facility" means any facility or location where disposal or transformation of solid waste occurs and includes any facility which composts or processes for transformation more than one metric ton (one thousand kilograms) of solid wastes per month. "Solid waste disposal facility" does not include a materials recovery facility, transfer station, or recycling facility where final deposition of solid waste does not occur.

(Ord. 24133.)

4.78.100 Transfer station.

"Transfer station" means a facility utilized to receive solid waste for the purpose of transferring the solid waste directly from smaller to larger vehicles for transport.

(Ord. 24133.)

4.78.110 Transformation.

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

(Ord. 24133.)

Part 2 TAX IMPOSED

Sections:

[4.78.200 Disposal facility tax.](#)

[4.78.210 Weighing required.](#)

[4.78.220 Tax on small loads.](#)

[4.78.230 Payment of tax.](#)

[4.78.240 Payments made by mail or wire transfer.](#)

[4.78.250 Notice not required by city.](#)

[4.78.260 Penalties and interest for delinquent taxes.](#)

[4.78.270 Debt to city.](#)

[4.78.280 Determination of director.](#)

[4.78.290 Refunds and procedures.](#)

[4.78.290 Refunds of taxes overpaid or erroneously collected.](#)

4.78.200 Disposal facility tax.

Beginning July 1, 1992, every person engaged in the business of operating a solid waste disposal facility shall pay a monthly disposal facility tax in the amount of thirteen dollars for each ton of solid waste accepted at the facility site during the month.

(Ord. 24133.)

4.78.210 Weighing required.

A. Except as provided in subsection C. below, the solid waste disposal facility operator shall weigh all solid waste accepted at the solid waste disposal facility, including solid wastes which are recyclable.

B. The solid waste disposal facility operator shall separately weigh all cover material and all inert construction material from any offsite location that is accepted at the solid waste disposal facility for use on site.

C. Wastes which are brought to the solid waste disposal facility in small loads are exempt from the weighing requirement of subsection A. above if the weighing of such wastes would impede or interfere with the efficient operation of the solid waste disposal facility and if the receipt of such loads is recorded by the facility operator in a manner approved by the director of the office of environmental management.

D. All wastes required to be weighed shall be weighed at a scale which is certified annually by the Santa Clara County Agricultural Commissioner/Sealer of Weights and Measures.

(Ord. 24133.)

4.78.220 Tax on small loads.

Solid wastes accepted at the solid waste disposal facility in small loads shall be included in the calculation of the disposal facility tax by converting the volume of such wastes to tons using a conversion factor (pounds per cubic yard), as set forth in regulations promulgated by the director of the office of environmental management, and multiplying the resulting tonnage by the tax rate imposed in Section 4.78.200.

(Ord. 24133.)

4.78.230 Payment of tax.

A. The operator of the solid waste disposal facility shall pay the disposal facility tax monthly to the director of finance.

B. The disposal facility tax shall be due on the last day of the month immediately following the month in which the solid waste is accepted at the disposal facility. If such last day of the month falls on Saturday, Sunday, or a holiday, the due date for receipt of the disposal facility tax shall be the next regular business day on which city hall is open to the public. Any tax which is not paid on or before the due date shall be deemed delinquent.

(Ord. 24133.)

4.78.240 Payments made by mail or wire transfer.

A. The operator of the solid waste disposal facility may pay the disposal facility tax by depositing the tax in the United States mail, postage prepaid, addressed to the director of finance. The tax shall be deemed timely paid if:

1. The envelope in which the tax is mailed bears a postage cancellation stamp showing cancellation at or before twelve o'clock midnight on the due date; or
2. The director of finance determines, based upon the evidence presented to the director, that the tax was in fact deposited in the United States mail prior to the time prescribed by this chapter for receipt of the tax.

B. The operator of the solid waste disposal facility may pay the disposal facility tax by wire transfer if payment by wire transfer is approved in advance by the director of finance. (Ord. 24133.)

#### 4.78.250 Notice not required by city.

The director of finance is not required to send notice or bill to any person subject to the provisions of this chapter, and failure to send such notice or bill shall not affect the validity of any tax, penalty, or interest due under the provisions of this chapter.

(Ord. 24133.)

#### 4.78.260 Penalties and interest for delinquent taxes.

A. Any solid waste disposal facility operator who fails to pay the disposal facility tax on or before its due date shall pay a first penalty of ten percent (10%) of the amount of the delinquent tax in addition to the delinquent tax.

B. Any solid waste disposal facility operator who fails to pay the disposal facility tax on or before thirty (30) days after its due date shall pay a second penalty of ten (10%) of the amount of the delinquent tax in addition to the delinquent tax and the first penalty.

C. If the director determines that the failure to pay any tax on or before the due date set forth in this chapter is because of an intentional, material misrepresentation or omission, or fraud, the director shall impose an additional penalty in the amount of twenty-five (25%) of the delinquent tax.

D. Any solid waste disposal facility operator who fails to pay on or before its due date any tax imposed pursuant to this chapter shall pay interest on the delinquent tax and on any assessed penalty or penalties as set forth in Chapter 1.17 of Title 1.

E. The director shall waive the first penalty of ten percent (10%) imposed upon any solid waste disposal facility operator if:

1. The solid waste disposal facility operator applies to the director for such a waiver no later than thirty (30) days from the date the remittance was due to the city; and
2. The solid waste disposal facility operator has made timely payments for: (a) the five (5) years immediately prior to the date the remittance was due to the city; or (b) the two (2) years immediately prior to the date the remittance was due to the city if it has operated the solid waste disposal facility for fewer than five (5) years; and
3. The solid waste disposal facility operator provides evidence satisfactory to the director that:
  - (i) payment of the delinquent remittance was postmarked or received by the city no more than three (3) days after its due date; or
  - (ii) the solid waste disposal facility operator mistakenly made payment to a party other than the city on or prior to the date that payment was due to the city, and paid the delinquent remittance and accrued interest owed the city prior to applying to the director for a waiver; or

(iii) failure to pay timely was due to circumstances beyond the control of the solid waste disposal facility operator and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the solid waste disposal facility operator paid the delinquent remittance and accrued interest owed the city prior to applying to the director for a waiver.

F. The waiver provisions specified in Subsection E. shall not apply to interest accrued on the delinquent payments.

(Ords. [24133](#), 26171, 27863.)

#### 4.78.270 Debt to city.

The amount of any disposal facility tax, penalty and/or interest imposed by this chapter shall be deemed a debt to the city. Any person who fails to remit to the city such amount when due shall be liable to an action brought in the name of the City of San José for recovery of such amount.

(Ord. [24133](#).)

#### 4.78.280 Determination of director.

Any question as to whether any site or location is a solid waste disposal facility subject to the tax imposed by Section 4.78.200 shall be resolved by the director of the office of environmental management. Such director's determination shall be final.

(Ord. [24133](#).)

#### 4.78.290 Refunds and procedures.

A. The director of finance may refund any disposal facility tax, penalty or interest which has been overpaid or erroneously or illegally collected, provided that a written claim for refund is filed with the director of finance, and the provisions of Chapter 4.82 are satisfied.

B. The director of finance, the city auditor, the director of environmental services, or the authorized representative of any of them shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the director to do so.

C. In the event that the disposal facility tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain fifteen dollars (\$15.00) from the amount to be refunded to cover expenses.

D. The director of finance shall initiate a refund of any disposal facility tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a city audit of disposal facility tax receipts. In the event that the disposal facility tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain fifteen dollars (\$15.00) from the amount to be refunded to cover expenses.

(Ords. [24133](#), 27787.)

### Part 3 EXEMPTIONS FROM TAX

Sections:

[4.78.350 Nontaxable materials.](#)

[4.78.360 Recyclables exemption.](#)

[4.78.370 Salvaged material exemption.](#)

[4.78.380 Cover material exemption.](#)

[4.78.390 Inert construction material exemption.](#)

[4.78.400 Transition provisions.](#)

4.78.350 Nontaxable materials.

The solid waste facility operator may subtract from the tonnage used in the calculation of the tax imposed by Section 4.78.200 the materials described in this Part 3, and no tax shall be payable on such materials. The exemption of such materials from the calculation of the tax does not relieve the operator from the requirement to weigh such materials under Section 4.78.210 and does not relieve the operator from the reporting requirements of Part 4 of this chapter.

(Ord. 24133.)

4.78.360 Recyclables exemption.

A. A solid waste facility operator who performs recycling of solid waste at the facility may, in accordance with this section, subtract from the quantity of solid waste subject to the disposal facility tax the number of tons of solid waste that have been accepted at the facility during the month for recycling, reuse, composting, or processing for transformation, if all of the following requirements are satisfied:

1. The solid waste facility includes a certified recycling processing area separate from the solid waste disposal area and separate from all other operational areas of the facility.
2. The solid wastes are separated from other wastes prior to delivery to the facility.
3. The solid wastes are taken directly to the certified recycling processing area and are not commingled with any other wastes accepted at the facility.
4. Except for small loads, the solid wastes are weighed separately from other materials upon delivery to the facility and the facility operator maintains weight records for the materials.
5. The facility operator maintains volume records for materials that are delivered in small loads and are not weighed.

B. Residues from a recycling processing operation shall be weighed prior to disposal at the disposal area and the quantity of residues disposed of shall be subject to the tax.

C. No solid wastes shall be exempt from the disposal facility tax unless the processing area has been certified as a recycling processing area by the director of the office of environmental management pursuant to rules and regulations promulgated by said director.

D. The certification of a recycling processing area pursuant to this chapter is solely for the purposes of implementation of the tax exemptions authorized by this Part 3, and for no other purpose.

(Ord. 24133.)

4.78.370 Salvaged material exemption.

Where the operation of the solid waste disposal facility includes salvaging recyclable material from the solid wastes taken to the disposal area of the facility, the solid waste disposal facility operator may subtract the quantity of salvaged materials that are shipped off site from the quantity of solid waste subject to the disposal facility tax if the facility operator weighs all such materials and maintains weight receipts satisfactory to the director of the office of environmental management.

(Ord. 24133.)

#### 4.78.380 Cover material exemption.

The solid waste disposal facility operator may subtract from the quantity of solid waste subject to the disposal facility tax the number of tons of cover material that originates from any offsite location if the facility operator separately weighs such material upon its delivery to the solid waste disposal facility and maintains weight receipts satisfactory to the director of the office of environmental management. The facility operator may not subtract any tonnage of cover material that exceeds the tonnage of cover material allowed in any permit applicable to the facility. (Ord. 24133.)

#### 4.78.390 Inert construction material exemption.

The solid waste disposal facility operator may subtract from the quantity of solid waste subject to the disposal facility tax the number of tons of inert construction material that originates from any offsite location if the facility operator separately weighs such material upon its delivery to the solid waste disposal facility and maintains weight receipts satisfactory to the director of the office of environmental management. (Ord. 24133.)

#### 4.78.400 Transition provisions.

In order to provide for an equitable calculation of the disposal facility tax in the case of any solid waste disposal facility which has stockpiled materials, the following provisions shall apply:

A. The director of the office of environmental management shall determine the quantity of materials stockpiled at the solid waste disposal facility as of July 1, 1992, including raw and processed materials at a certified recycling processing area, cover material, inert construction material, separated recyclable materials, salvaged materials, and solid waste.

B. The facility operator shall provide the director of the office of environmental management with access to the solid waste disposal facility for the purpose of making the determination described in subsection A. above.

C. If there are stockpiled materials on site at the solid waste disposal facility for which the business tax imposed by Section 4.76.490 was not paid, the tonnage of such materials shall not be subtracted from the tonnage subject to the tax imposed by Section 4.78.200 and no exemption provided under Part 3 of this chapter shall apply to such materials.

D. The tonnage of stockpiled materials at the solid waste disposal facility shall be subject to a special exemption from the tax imposed by Section 4.78.200 if all of the following requirements are satisfied:

1. The disposal facility operator has paid the business tax imposed by Section 4.76.490 of this Code on such materials.

2. The tonnage of such materials has been certified by the director of the office of environmental management.

3. The tonnage of such materials is separately accounted for in the calculation of the tax imposed by Section 4.78.200.

E. The rate of the exemption permitted under subsection D. of this section shall be the rate of the business tax applicable to the solid waste disposal facility as of July 1, 1991. The disposal facility operator may apply this special exemption in the month in which the stockpiled materials are shipped off site or, in the case of cover material and inert construction material, in the month such materials are used on site. For the purposes of this special exemption, the exemption taken

for any materials shall be deemed to be taken for stockpiled materials in the same category (e.g., cover material, inert construction material, salvaged recyclables) until the exhaustion of the tonnage certified by the director of the office of environmental management pursuant to this section.

F. No exemption from the tax imposed by Section 4.78.200 shall be taken for stockpiled materials except in accordance with this section.  
(Ord. [24133](#).)

#### Part 4 REPORTING REQUIREMENTS

Sections:

[4.78.450 Monthly reports.](#)

[4.78.460 Annual certification.](#)

[4.78.470 Records.](#)

##### 4.78.450 Monthly reports.

A. The solid waste disposal facility operator shall submit to the director of finance a monthly report, together with supporting documentation, containing all of the following information:

1. The month covered by the report.
2. The total tonnage of solid waste accepted at the facility during the month.
3. The total tonnage of recyclable material accepted at the facility and taken directly to a certified recycling processing area during the month.
4. The total tonnage of residues generated during the month from the recycling processing.
5. The total tonnage of material salvaged from the solid wastes accepted at the facility and shipped offsite during the month.
6. The total tonnage of recycled materials shipped offsite during the month.
7. The total tonnage of cover material that originated from any offsite location and was accepted at the facility during the month.
8. The total tonnage of inert construction material that originated from any offsite location and was accepted at the facility during the month.
9. The number of small loads accepted at the facility during the month, the number of cubic yards of solid wastes accepted from small loads during the month, and the tonnage of wastes accepted from small loads during the month.

B. The due date for the monthly report is the due date for the remittance of the disposal facility tax described in Section 4.78.230. The monthly report shall be deemed timely submitted if it is submitted to the office of the director of finance on or before the due date or if it is mailed in accordance with subsection A. of Section 4.78.240.

(Ord. [24133](#).)

##### 4.78.460 Annual certification.

The solid waste facility operator shall cause all scales used to weigh solid wastes accepted at the facility to be certified annually during the month of July, and on or before August 15 of each year, shall submit to the director of the office of environmental management proof of such certification.

(Ord. [24133](#).)

##### 4.78.470 Records.

A. The solid waste disposal facility operator shall keep and maintain at the local office of the solid waste facility all records relating to any and all wastes received at or disposed of on the facility site including, but not limited to, weight receipts for solid wastes accepted at the facility and weight receipts for recycled materials shipped offsite.

B. Such records shall be kept and maintained for not less than three years from the date such wastes were received or disposed of.

C. All records pertaining to the tonnages of solid wastes accepted at the facility site, tonnages of recycled materials shipped offsite, and tonnages of cover and inert construction material used onsite shall be available for inspection by the director of finance, the director of the office of environmental management, the director of neighborhood preservation, the city auditor, the city attorney and their designees, upon written notice to the solid waste disposal facility operator.

(Ord. 24133.)