

1 REGULATION FOR ISSUANCE OF REFUSE COLLECTION PERMITS FOR FEDERAL
2 FACILITIES

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4 I. APPLICABILITY OF REGULATION

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6 A. Authorization

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8 The Health Commission issues this Regulation pursuant to Sections 4.104 and 4.110
9 of the Charter of the City and County of San Francisco. The Refuse Collection and
10 Disposal Ordinance of 1932 (as amended and recodified, in part -- San Francisco
11 Health Code Article 6) ("Initiative Ordinance") authorizes the Director of Department of
12 Public Health to implement this Regulation. The Director of the Department of Public
13 Health has delegated that authority to the Director of the Environmental Health
14 Management Section. Pursuant to Resolution 259-92 of the San Francisco Board of
15 Supervisors on April 7, 1992, the Bureau of Environmental Health Services, now known
16 as the Environmental Health Management Section, is the designated Local
17 Enforcement Agency under the California Integrated Waste Management Act of 1989,
18 California Public Resources Code Section 40000 *et seq.*, and its implementing
19 regulations.

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21 B. Policy

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23 Section 4 of the Initiative Ordinance authorizes the Director of Public Health to issue
24 refuse collection permits under specific conditions. Federal facilities are subject to the
25 requirements of the Initiative Ordinance pursuant to Section 6001 of the Resource

1 Conservation and Recovery Act (RCRA). However, large federal enclaves present
2 special problems for the City's refuse collection permit program. These facilities were
3 previously exempt from local solid waste regulations and historically may not have
4 been serviced by permitted and licensed refuse collectors. These facilities are also
5 subject to federal procurement regulations that specify the requirements and process
6 for award of contracts by each federal agency. In order to ensure that these potentially
7 conflicting regulatory requirements do not prevent the efficient, continuous refuse
8 collection, the Health Commission adopted the Federal Facilities Refuse Collection
9 Permit Regulation in 1992. This Regulation is being amended pursuant to the
10 requirement of Section 6001 of RCRA, 42 U.S.C. Section 6961(a), to update the
11 program to reflect changes in circumstances and to harmonize the Federal Facilities
12 Refuse Collection Permit Regulation with the recently adopted Refuse Collection
13 Permit Regulations for Non-Federal Facilities at Treasure Island and Yerba Buena
14 Island. This policy serves to carry out City responsibilities under federal, state, and
15 local law. It also protects the public health and welfare by regulating and selecting the
16 companies that transfer refuse over City streets.

17 18 C. Scope

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20 This Regulation applies to Applicants for federal facility refuse collection permits under
21 the Initiative Ordinance. This Regulation provides procedures and substantive
22 requirements for issuance of refuse collection permits for federal facilities within the
23 boundaries of the City and County of San Francisco. This regulation is applicable to
24 six federal facilities at Hunters Point Naval Shipyard, Veteran's Hospital - Fort Miley,
25 Treasure Island, Yerba Buena Island, the Presidio of San Francisco, and the Golden

1 Gate National Recreation Area. Federal facilities are subject to this ordinance to the
2 extent required by Section 6001 of RCRA, 42 U.S.C. Section 6961.

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4 D. Other Requirements

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6 In addition to complying with this Regulation and the Initiative Ordinance, all Permittees
7 must comply with California Public Resource Code Section 40000 *et seq.* and the
8 requirements of Title 14 of the California Code of Regulations, Division 7, Chapter 3,
9 beginning at Section 17200 and all other applicable federal, state, and local laws.

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11 II. APPLICATION PROCEDURES

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13 A. Filing Requirements

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15 Any person proposing to perform refuse collection for an applicable federal facility, or
16 proposing to significantly modify an existing federal facility refuse collection permit,
17 shall file a complete permit application with the Director of the Environmental Health
18 Management Section ("Director") containing information specified in Subsection II.C of
19 this Regulation. An application filing fee as approved by the Board of Supervisors
20 made payable to the Department of Public Health must accompany the application. An
21 Applicant's failure to submit the required filing fee shall render the application
22 incomplete. Application review time exceeding two hours will be billed at a rate as
23 approved by the Board of Supervisors.

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1 B. Showing of Need

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3 For an Applicant applying for a new refuse collection permit, the application shall
4 contain a demonstration of the need for a new permit based on one or more of the
5 following reasons:

- 6
- 7 1. There is no permitted collector providing service at the federal facilities,
8 or;
 - 9
 - 10 2. The currently permitted collector is providing inadequate service as
11 defined in Section 4 of the Initiative Ordinance, or;
 - 12
 - 13 3. The issuance of a permit is in the public's interest and protects the public
14 health and welfare; or,
 - 15
 - 16 4. The Applicant is a bona fide bidder for a refuse collection service contract
17 for federal facilities within the City.
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19 Upon satisfactory compliance with all requirements set forth in this Regulation, the
20 Director:

- 21 i. May issue a Permit if the Applicant demonstrates a need pursuant to
22 subparagraphs 1 or 2 of this subsection;
 - 23 ii. May issue a Permit or a Conditional Permit if Applicant demonstrates a
24 need pursuant to subparagraph 3 of this subsection or;
- 25

1 iii May issue a Conditional Permit conditioning its validity on the award of
2 the refuse collection contract to Applicant, if Applicant demonstrates a
3 need pursuant to subparagraph 4 of this subsection. Each bona fide
4 bidder that satisfies the requirements of this Regulation may be issued a
5 Conditional Permit.

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7 C. Qualifications of Applicant

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9 Prior to deeming an application complete, the Director shall verify that the Applicant
10 has submitted the required filing fee and has provided the following information:

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12 1. General

- 13
- 14 a. Name and address of person(s) or organization applying for permit
 - 15 or permit modification.
 - 16 b. Name and phone number of contact person.
 - 17 c. Date of submission of application.
 - 18 d. Type of organization (partnership, corporation, etc.)
 - 19 e. Name and address of each partner or major stockholder with
 - 20 holdings of over 5% of stock and of each key manager.
 - 21 f. Five letters of recommendation or reference regarding Applicant's
 - 22 capability as a refuse collection contractor. Such recommendations
 - 23 or references must be made within the last 3 years.

- 1 g. History, description, and outcome of all the Applicant's (including
- 2 the key managers) criminal, civil, and administrative violations in
- 3 the past 10 years.
- 4 h. History and description of ongoing related party transactions (e.g.,
- 5 leases of trucks and equipment, subcontractors).
- 6 i. Description of area(s) or route(s) to be serviced.
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8 2. Financial Responsibility

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- 10 a. Audited financial statements, including Profit & Loss Statements,
- 11 Balance Sheets, and all required notes to the financial statements
- 12 for past five (5) years. Such financial statements shall be certified
- 13 by a Certified Public Accountant.
- 14 b. Evidence of ability to secure a performance bond or equivalent
- 15 security equal to the contract amount for up to six (6) months of
- 16 service or in an amount satisfactory to the Director.
- 17 c. Certificates of insurance in the amounts required by the contract,
- 18 or \$1 million per occurrence/\$2 million aggregate, whichever is
- 19 greater.
- 20 d. Description of any previous bankruptcies.
- 21 e. Other significant existing financial obligations (e.g., leases,
- 22 pending lawsuits).

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1 3. Operational Competency

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- 3 a. Statement of industry experience that is comparable to the level of
- 4 service required by the contract and/or required at the federal
- 5 facilities served.
- 6 b. Resumes of key managers.
- 7 c. List of equipment to be utilized to collect and haul refuse under the
- 8 permit.
- 9 d. Location and description of office/maintenance facilities.
- 10 e. Description of Applicant's maintenance procedures.
- 11 f. Proposed service collection schedule.
- 12 g. DMV records of all drivers and years of commercial driving
- 13 experience.
- 14 h. Description of major accidents in past five (5) years.
- 15 i. Worker's compensation experience modification factor for past five
- 16 (5) years.
- 17 j. Description of safety procedures.

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19 4. Program Compliance

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- 21 a. Description of Applicant's proposed Waste Acceptance Control
- 22 Program to exclude hazardous and designated wastes.
- 23 b. Description of Applicant's complaint resolution procedures.
- 24 c. Copy of customer complaint log from a comparable refuse
- 25 collection operation for the previous five (5) years.

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5. Attestation

The Applicant or its authorized representative shall declare under the penalty of perjury that the information provided in the application are true and correct.

6. Confidential Information

If the Applicant requests that any part of the application remain confidential, a statement of legal justification regarding the City's right to uphold the request.

III. PERMIT PROCESS

A. Determination of Completeness and Adequacy

Applicant may request a meeting with the Director to review the application for completeness and adequacy within five (5) days from the filing of the application. If requested by the Applicant, the Director shall meet with the Applicant within five (5) days of the request.

The Director shall notify the Applicant within fifteen (15) days from the filing date whether the application has been accepted as complete and adequate. If the Director finds that the application is incomplete or inadequate, the Director shall notify the Applicant in writing that the application is incomplete and inadequate and is not accepted for filing. The Director shall identify all deficiencies in the application. The

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1 Director shall have the discretion to either allow the Applicant up to a maximum of five
2 (5) days to cure all deficiencies cited or to reject the application.

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4 B. Notice of Completed Application

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6 The Director shall provide a notice of completed application to interested parties,
7 including, but not limited to, all existing refuse collection permittees for the specific
8 federal facilities and other permit Applicants. The Director shall publish the notice of
9 completed application in a newspaper of general circulation within the City and County
10 of San Francisco for at least two (2) days and not less than five (5) days prior to the
11 expiration of the time period to request a public hearing. The published notice shall
12 state that the Applicant has applied for a refuse collection permit at the applicable
13 facility(ies) and that a public hearing will be held only if requested by an interested
14 party or the public within fourteen (14) days of the first publication of the notice of
15 completed application. The published notice shall specify the date at which the time
16 period to request a public hearing expires. The notice shall specifically state that a
17 Permit or a Conditional Permit may be issued without a public hearing unless a timely
18 request for hearing is made. The notice shall indicate that those requesting a hearing
19 shall submit a nominal fee in an amount approved by the Board of Supervisors made
20 payable to the Department of Public Health.

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22 C. Notice of Hearing

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24 If the Director receive a request for hearing within the time period set forth in
25 subsection III.B or in her or his discretion deems that a public hearing is in the public

1 interest, the Director shall set a public hearing on the application to occur within thirty
2 (30) days from the expiration of the time period for requesting a hearing. Notice of a
3 public hearing shall also be given by publication in a newspaper of general circulation
4 in the City for at least two (2) days and not less than 15 days prior to the date of such
5 hearing. If more than one application is received for the same federal facility(ies), the
6 Director may postpone the hearing date to set a joint hearing for all completed
7 applications. Where multiple applicants are seeking a refuse collection permit for the
8 same facility(ies), a public hearing shall be held on all pending completed applications
9 if a request for hearing is made for any of the pending completed applications.
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11 D. Conduct of Public Hearing

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13 The Director or her or his designee shall preside over the public hearing on the permit
14 application(s). Testimony shall be taken from the Applicant(s), City staff, and
15 interested members of the public. The Director shall accept written and oral testimony
16 at the hearing, and all oral testimony will be recorded by an electronic recording
17 instrument. All oral testimonies shall be accompanied by written comments. All public
18 comment on the application(s) must be presented by the close of the hearing, unless
19 otherwise specified by the Director.
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21 E. Final Action on Permit Application

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23 Within thirty (30) days of the public hearing, if any, or the notice of completed
24 application, the Director shall take final action on a completed permit application by
25 sending a copy of the Permit, a Conditional Permit, a Modified Permit, or a permit

1 denial, to the Applicant. The decision on the completed permit application shall be
2 accompanied by a statement explaining the reasons for the Director's action, including
3 a response to any testimony presented at a public hearing (if any). The Director shall
4 send a copy of the decision and the statement to any person requesting a copy; and to
5 all persons who presented testimony at the public hearing (if any). The Director's
6 action shall be final at the close of business on the fifteenth (15th) day following the
7 issuance of the Permit or denial, unless an appeal is filed with the Board of Permit
8 Appeals.

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10 F. Due Date

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12 Where the deadline specified in this Regulation falls on a weekend or a holiday, the
13 deadline shall be extended to the close of business on the following business day.

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15 IV. PERMIT PROVISIONS

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17 A. Standards for Permit Issuance

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19 The Director shall not issue a Permit or a Conditional Permit unless the Applicant
20 demonstrates:

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22 1. A sufficient showing of need as required by Section II.B;
23 2. Sufficient financial ability;
24 3. Operational competence and experience;
25 4. Program compliance ability; and

- 1 5. The ability to provide high quality, professional collection and disposal
2 services in light of prevailing industry standards and applicable laws.
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4 B. Required Provisions
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6 A Permit or Conditional Permit shall be issued in accordance with the following terms
7 and conditions whether explicitly stated in the Permit or Conditional Permit or not:
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- 9 1. The Permit shall be limited to the area(s) within the federal facility for
10 which the permittee has a contract or is bidding on a contract;
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- 12 2. The Permit or Conditional Permit is non-transferable;
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- 14 3. The permittee shall comply with all applicable local, state, and federal
15 laws;
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- 17 4. The permittee shall conduct operations in a safe, reliable, and
18 professional manner;
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- 20 5. The permittee shall indemnify, defend, and hold harmless the City from
21 financial loss, damages, or claims (collectively or individually as "Claim"),
22 directly or indirectly, in whole or in part, arising out of or resulting from,
23 any act or omission that is related to the subject matter of the Permit.
24 Permittee shall indemnify the City for the reasonable fees of attorneys,
25 consultants, and experts and related costs and the City's costs of

1 investigating any Claim. Permittee has an immediate and independent
2 obligation to defend the City from any Claim which actually or potentially
3 falls within the subject matter of the permit even if such allegation is or
4 may be groundless, fraudulent or false, which obligation arises at the time
5 such Claim is tendered to the Permittee by the City and continues at all
6 times thereafter. Permittee's obligation to indemnify, defend, and hold
7 harmless the City shall survive the expiration of the Permit;

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9 6. The permittee shall comply with the City's solid waste program goals and
10 requirements, including compliance with the San Francisco Integrated
11 Waste Management Plan and the San Francisco Waste Acceptance
12 Control Program, as they may be amended from time to time;

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14 7. The permittee shall maintain the disposal arrangements that conform to
15 Section 5 of the Initiative Ordinance, to the extent allowable by law;

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17 8. The Permit or Conditional Permit shall be non-exclusive;

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19 9. The Permit shall automatically terminate in the event the area served
20 ceases to be a federal facility or at the expiration of the refuse collection
21 contract unless the contracting parties agree to extend the contract
22 without significant changes to other terms of the contract;

23 10. The permittee shall maintain evidence of financial responsibility such as a
24 performance bond or equivalent security, in a form and manner
25 acceptable to the Director.

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2 11. The permittee shall use only vehicles licensed pursuant to the Initiative
3 Ordinance.
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5 C. Permit Modifications
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7 The Director may make minor modification (e.g., change of vehicles, pickup locations
8 or times, extension of the refuse collection contract without significant substantive
9 changes to the contract, or name of company) to a permit upon request of the
10 permittee without holding a public hearing.
11

12 Modifications deemed major by the Director shall require submittal of a complete permit
13 application and a public hearing under Sections II and III. The Director may issue a
14 Modified Permit due to significant modification of the relevant contract if the Applicant
15 demonstrates:
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- 17 1. The requested permit modification is required by the modified contract;
- 18 2. Sufficient financial ability, operational competence and experience to fulfill
19 its obligations under the modified contract; and
- 20 3. Program compliance ability under the modified contract.

21 Requests to expand an area for refuse collection shall require a new permit. The
22 Director may reopen an existing permit at any time to require a minor or major
23 modification.
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1 D. Permit Revocation

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3 The Director may revoke the permit of any permittee subjected to license revocation
4 under Section 9 of the Initiative Ordinance. The Director may revoke any permit, after
5 notice and a hearing held pursuant to Section III, upon a determination that the
6 permittee has filed a false application, has failed to comply with the permit or other
7 requirements of law, or has provided inadequate service as provided in Section 4 of the
8 Initiative Ordinance. Notwithstanding the requirement of a request for public hearing in
9 Section III, a public hearing shall be held before the revocation of the permit.
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11 E. Emergency Permits

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13 Upon the submittal of a written request, the Director may issue temporary emergency
14 permits without a hearing when necessary for the protection of public health and to
15 ensure the continuity in refuse collection service. An Applicant for an emergency
16 permit shall submit a request for the emergency permit and a statement describing the
17 cause and nature of the emergency. The Director, in her or his discretion may assess
18 an emergency permit fee of up to an amount approved by the Board of Supervisors. In
19 assessing the emergency permit fee, the Director shall consider the Applicant's degree
20 of culpability in causing the emergency. Emergency permits shall expire upon
21 issuance of a permit under Sections II and III of this Regulation or 120 days, whichever
22 is sooner.

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