Let's Keep it Clean: California's New Recycling Regulations Take Effect Soon

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In 2016 the California legislature enacted Senate Bill 1383. That Bill directed the California Department of Resources Recycling and Recovery ("CalRecycle") to adopt regulations regarding the recycling of organic wastes. Acting with lightning speed, CalRecycle produced those regulations – four years later. They take effect January 1, 2022, so now cities, counties, waste collection companies and small businesses throughout California are scrambling to put into place the local ordinances and recycling programs required by those regulations.

No matter where you fall within the "waste stream" hierarchy, you will be impacted in one way or another, whether that means drafting new ordinances, complying with food recovery programs, or simply standing at the curb in front of your house, trying to decide whether the compostable plastic bottle you're holding should go into the green organic waste container or the blue non-organic waste container (here's a clue: it depends). Here are some of the many things that are going to happen once those regulations are implemented:

One container, two container, three container, more.

Gone are the days of a simple trash can at the curb. While cities can opt for a single-container system (where all sorting is done by the hauler at transfer stations), they can also choose systems involving two containers, three containers, or more. All such multiple-container systems require the residential and commercial "waste generators" (that is, people who throw stuff away) to "source separate" (self-sort) their wastes. Two-container systems can have one container for organic waste and one container for all other waste, or, in the alternative, one container for non-organic recyclables and one container for all other waste. Three-container systems will have one container for organic waste, one container for non-organic recyclables, and one container for non-organic waste.

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Cities have the option to provide even more specialized containers. And cities can use different systems for different parts of the city, or one system for residents and another for businesses.

The government is going to monitor your trash. Seriously.

Don't think you can avoid the source separation requirements by ignoring the color-coded container system and just throwing stuff away willy-nilly. Your city isn't going to fall for that, and will be establishing monitoring programs to make sure residents and businesses are following the rules. The regulations go into excruciating detail about the two different types of monitoring systems that cities may implement. Imagine the fascinating debates we can look forward to at City Hall, as our city council members compare and contrast the relative merits of "route reviews" versus "waste evaluations".

Participation is mandatory.

You can't escape the new rules. Cities must require residents and businesses to either participate in the 1-, 2- or 3- (or more) container programs mandated by the city, or else "self-haul" their organic wastes in a manner authorized by the city.

You could qualify for an exemption.

If your residence or business generates only "*de minimus*" amounts of organic waste, doesn't have sufficient space for the necessary containers, or doesn't need frequent collection services, you can apply for an exemption.

Your city could also qualify for an exemption.

Some cities can qualify for exemptions from these rules. Generally, these are cities in rural areas, or at high altitudes, or with low populations. Cities who think they qualify can apply to CalRecycle for the exemptions. In addition, cities can apply for temporary waivers in the case of certain equipment failures, disasters, and emergencies, and for operational restrictions imposed by regulatory agencies.

And the homeless camp qualifies for an exemption?

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Well, sort of. Cities are allowed to clean out homeless encampments and illegal dumpsites without separating organic recyclables from non-organic recyclables from other waste.

Regulation of haulers and self-haulers.

Want to avoid the middleman and take your trash straight to the dump? You'll need to comply with many of the regulations applicable to commercial waste haulers. Primarily these pertain to where your organic waste must be taken and what records you must keep.

Edible food recovery programs.

Some people and businesses throw food away. Other people don't have enough to eat. The regulations aim to address that by requiring cities to implement edible food recovery programs. Cities must develop a list of "food recovery organizations" and must annually make that and other information available to "edible food generators". The programs must meet specified education, access, monitoring, and capacity goals.

Commercial edible food generators.

In keeping with those food recovery programs, cities will impose requirements on supermarkets, large grocery stores, food service providers, food distributors, wholesale food vendors, large restaurants, certain hotels and health facilities, and other specified "large venues" and "large events". Entities that are outside the control of counties and cities, such as school districts and state agencies, will be subjected to similar requirements under the CalRecycle regulations.

I have to buy *WHAT*?

Under the regulations, cities must practice what they preach, by buying and using specified quantities of recycled/recovered organic waste products. These include paper, compost, renewable gas, electricity from biomass conversions, and mulch.

Nosy neighbors get a "hot-line" (sort of) to City Hall.

Each city must provide a procedure for the receipt and investigation of written complaints of alleged violations of the

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regulations. Cities must commence an investigation within 90 days of receiving a complaint.

Inspection and enforcement.

Not later than January 1, 2022, cities must adopt inspection and enforcement programs designed to ensure overall compliance with the regulations. You'll have a couple of years to get the hang of all this, and can expect to receive only warnings at first. But starting January 1, 2024, cities must begin taking specified enforcement actions in response to violations. These will include fines in amounts specified by the regulations.

It wouldn't be a government program without paperwork.

Ironically, any given city could generate a mountain of paper complying with all of the recordkeeping and reporting requirements required by the regulations. Luckily it can all be done electronically.

Sounds like a lot of rules. How will we know everything we're supposed to do?

You'll get plenty of guidance. Under the "education and outreach" provisions of the regulations, cities must provide seven categories of information to generators of organic waste. The amount and types of information differ depending on what collection method(s) the city has chosen, but the information must be provided no later than February 1, 2022, and annually thereafter.

Finally, if you read this article online, kudos to you. If you printed it, please recycle it.

These new regulations will affect almost every California business and local government agency in California. If you would like to know exactly how your business will be impacted and how to avoid fines, or if you want to be sure your local agency is taking the proper steps to comply, please contact real estate attorney, Craig Hardwick.

A responsive and detail-oriented advocate, Craig Hardwick helps clients successfully meet a broad range of real estate needs. The Chairman of AlvaradoSmith's Real Estate and Land Use Transactions Department, he has managed and led a

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variety of real estate transactions over the course of his career: from acquisition to sale, and everything in between, including procurement of real estate development entitlements, construction, financing, and leasing.

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