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## **CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED INFORMATION**

**DATE:** October 11, 2016

**TO:** Hotel Association of New York City, Inc.  
Labor Relations Members  
General Managers, Human Resources Directors and Controllers

**FROM:** Kane Kessler, P.C.  
Labor and Employment Law Practice Group

**RE:** New York City Department of Sanitation New Business Recycling and Organic Waste Rules

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### **Overview**

This past summer, two (2) new rules adopted by the New York City Department of Sanitation (hereinafter “Department”) went into effect; new business recycling rules and new business organic waste rules. Complete copies of these rules can be found at the following link - <http://www1.nyc.gov/assets/dsny/about/laws/proposed-rules.shtml>. This memorandum serves to summarize these rules for Employers and further serves to advise on potential labor implications for HANYC Labor Hotels. Each Hotel should coordinate with the appropriate property operations/sustainability personnel to orchestrate compliance.

### **I. Definitions**

For the purposes of communicating these laws in a way that is sufficiently clear, we are including a definitions section<sup>1</sup>:

- A. Authorized Private Carter** – every commercial business in New York City is required to dispose of its waste, including recyclable materials, through a private carter (unless the business is licensed to dispose of waste on its own). Carters must be licensed by the NYC Business Integrity Commission.

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<sup>1</sup> These defined terms are intended to simplify the information disseminated in this memorandum and are not to be construed as conveying the actual legal definitions of these terms contained in various New York City rules and regulations.

- B. Solid Waste – non-recyclable materials that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection.
- C. Recyclable Materials – materials deemed recyclable by the NYC Sanitation Commissioner.
- D. Designated Recyclable Metal, Glass, and Plastic – metal cans, metal items, aluminum foil, aluminum foil products, metal components of bulk waste, bulk metal, containers made of glass, beverage cartons, rigid plastics and bulk plastic.
- E. Designated Recyclable Paper – newspaper, magazines, corrugated cardboard, high grade office paper, catalogs, phone books, and mixed paper.
- F. Organic Waste – food scraps<sup>2</sup>, plant trimmings, food-soiled paper, and certified compostable products.
- G. Source Separation – separation of Solid Waste, Recyclable Materials, and Organic Waste at the point such materials are generated.

## **II. New Business Recycling Rules**<sup>3</sup>

On August 1, 2016, new recycling rules for New York City businesses took effect. The new rules were the result of efforts to have more uniform and easier to understand recycling rules for all business types, including Hotels, and to promote sustainability.

Previously, businesses recycled different materials based on their business type. By eliminating the distinction between business types and applying the same rules, the City believes greater recycling participation and easier recycling will occur. According to the Department of Sanitation (and as explained more fully below), the rules allow for co-collection of Recyclable Materials in a single recycling stream by authorized private carters, which will help make commercial recycling easier to manage and can significantly increase diversion of recyclables from landfills.

Through these new rules, the Department has designated a standard set of Recyclable Materials that all businesses that receive Authorized Private Carter collection are required to recycle. **The comingling of Recyclable Materials with Solid Waste is prohibited.** Property owners and building management must notify tenants about recycling and waste management policies annually. Notice must include information about what materials must be recycled and how to Source Separate such materials.

All business that generate Solid Waste or Recyclable Material that is collected by an Authorized Private Carter (hereinafter “Employers”) are now required by law to utilize one (1) of

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<sup>2</sup> Materials sold to farmers or rendering companies and food that is donated are not considered “food scraps”.

<sup>3</sup> The following link provides a helpful illustration: <https://www1.nyc.gov/assets/dsny/docs/commercial-recycling-notice-english.pdf>.

three (3) collection methods – Source Separation, Co-Collection, or Single-Stream (described below).

Regardless of the collection method used, the Department advises Employers to place separately labelled recycling bins wherever there is a garbage bin. When the bags and/or bins are emptied and set out to be collected by an Authorized Private Carter, Recyclable Materials must remain separated from Solid Waste at all times. We advise that Employers contact their Authorized Private Carters to discuss arrangements as soon as practicable.

In addition to the information provided below, we recommend that Hotels participate in the free training provided by the Department. A link to the training schedule can be found here: <http://www.eventbrite.com/o/dsny-commercial-recycling-programs-8751186478>.

### **A. Source Separation**

An Employer who utilizes this method of collection must dispose of and set out Recyclable Metal, Glass, and Plastic together for collection in transparent or translucent bags or labelled bins<sup>4</sup>. Designated Recyclable Paper must be disposed of and set out for collection in separate transparent or translucent bags or labelled bins. Solid Waste must be separated from Recyclable Materials completely. These three (3) separate streams would then be collected in three (3) separate trucks by the Authorized Private Carter. **For Hotels, this means that three (3) separate receptacles must be placed in each guest room: one (1) for Recyclable Metal, Glass, and Plastic; one (1) for Recyclable Paper; and one (1) for Solid Waste.**

### **B. Co-Collection**

If the Authorized Private Carter utilized by the Employer has furnished to the New York City Business Integrity Commission information on its ability to engage in co-collection of Recyclable Materials, the Employer can utilize the co-collection method.

The co-collection method is the same as the source separation method except that the Authorized Private Carter may collect source separated Recyclable Materials in one (1) truck, thereby reducing the number of trucks the Employer must schedule from three (3) to two (2).

### **C. Single-Stream**

If the Authorized Private Carter utilized by the Employer has furnished to the New York City Business Integrity Commission information on its ability to engage in single-stream collection of Recyclable Materials, the Employer can utilize the single-stream method.

Under the single-stream method, all Recyclable Materials (metal, glass, plastic, and paper) may be disposed of and set out in the same bags or bins together. **For Hotels, this means**

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<sup>4</sup> Bulk metal and bulk plastic items that do not fit into bags or bins may be placed out separately.

**that two (2) separate receptacles must be placed in each guest room: one (1) for Recyclable Materials and one (1) for Solid Waste.** Like co-collection, this method also requires the scheduling of only two (2) trucks; one (1) for collection and transport of designated Recyclable Materials and one (1) for collection and transport of Solid Waste.

#### **D. Signage**

The Department's new rules require Employers to post a sign identifying the Authorized Private Carter(s) it utilizes to collect Recyclable Materials and Solid Waste. The sign must also indicate, by type, each Recyclable Material that will be collected by each Authorized Private Carter together with notification of the type of recyclable collection method each private carter uses (i.e., source-separated, co-collection, or single stream). The Authorized Private Carter's telephone number and address should be displayed as well, as should the scheduled day(s) and time(s) of pickup.

The signs must use lettering of a conspicuous size and must be prominently displayed by attachment to a window near the principal or service entrance of the Employer's premises so as to be easily visible from the outside of the premises.

Lastly, Employers should also post and maintain signs 1) in public and staff areas, and 2) in maintenance or waste storage areas, describing how Recyclable Materials and Solid Waste should be separated.

### **III. Organic Waste Rules for Food Service Establishments in Hotels with One Hundred Fifty (150) or More Rooms<sup>5</sup>**

On July 19, 2016, new organic waste rules for certain New York City businesses took effect. Under the new rules, the following establishments are required to Source Separate Organic Waste from Recyclable Materials and Solid Waste and arrange for proper processing of Organic Waste with an Authorized Private Carter (unless the business is licensed to transport Organic Waste on its own):

- Any arena or stadium that has a seating capacity of at least 15,000
- Any food service establishment that is located in a hotel with at least 150 sleeping rooms, is under common control with such hotel, and receives waste collection from the same private carter as such hotel
- Any food manufacturer that has a floor area of at least 25,000 square feet
- Any food wholesaler that has a floor area of at least 20,000 square feet

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<sup>5</sup> The following link provides a helpful illustration: <https://www1.nyc.gov/assets/dsny/docs/commercial-organics-notice-english.pdf>.

As mentioned earlier in this memorandum, “Organic Waste” includes food scraps, plant trimmings, food-soiled paper, and certified compostable products. Organic Waste must be Source Separated from both Recyclable Materials and Solid Waste at all times. Employers are required to provide labelled containers for the disposal of Organic Waste in any area where Organic Waste is generated by employees during the preparation of food. Further, when such waste is stored and set out for collection, it must be placed in containers that have a lid and latch and that is resistant to tampering by rodents and other wildlife. The lid and latch must be closed when the container is set out. Employers must arrange with their Authorized Private Carter to ensure that the containers meet the carter’s disposal needs and is compatible with the carter’s hauling collection practices.

Similar to the new recycling rules, Employers must post signs identifying the Authorized Private Carter that will collect the Source Separated Organic Waste<sup>6</sup>. Signs must be prominently displayed by attachment to a window near the principal entrance of the Employer’s premises so as to be visible outside of the building, or if this is not possible, inside the building near the principle entrance. If posting a sign at the entrance is not practicable, the business must retain a copy of the sign on its premises and furnish a copy to the Department upon request.

The sign must contain the name, address, and telephone number of the Authorized Private Carter along with day(s) and time(s) of pickup. The sign must also state that the Employer transports its Organic Waste to an entity that provides for beneficial Organic Waste reuse<sup>7</sup>. Employers are further required to post instructions for employees on how to properly Source Separate Organic Waste in areas where staff handles organics.

### **III. Violations**

The new business recycling rules shall not be enforced until August 1, 2017. The new business organic was rules shall not be enforced until January 19, 2017. Civil penalties for violation of the rules include a \$100 fine for a first violation, \$200 for a second violation within twelve (12) months, and \$400 for a third violation within twelve (12) months.

### **IV. Labor Implications under the Industry Wide Agreement (“IWA”)**

We anticipate there may be claims by employees, supported by the Union, for additional compensation or, in the case of Room Attendants, a reduction in quota due to the allegation that these new rules require additional work or time by the affected classifications.

It is our intent to discuss this issue in depth at the upcoming Human Resources Directors Meeting scheduled for **Monday, October 17, 2016** at the DoubleTree by Hilton Metropolitan located at 569 Lexington Avenue (between 50<sup>th</sup> and 51<sup>st</sup> Streets) on the Penthouse Level, 20<sup>th</sup> floor.

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<sup>6</sup> Employers may also choose to process organic waste on-site. For more information, please visit the following link: <http://www1.nyc.gov/assets/dsny/zerowaste/businesses/food-scraps-and-yard-waste.shtml>.

<sup>7</sup> If the Employer engages in on-site processing, the sign must say so.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Lois M. Traub, Alexander Soric, Jaclyn Ruocco, Robert L. Sacks, Jennifer Schmalz, or Michael C. Lydak.

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*This memo is provided for informational purposes only.*

*It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.*

cc: Joseph E. Spinnato, Esq.  
Vijay Dandapani, Chairman