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de la Guerra, Sheila **Public Comment**

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**From:** C. Dave G <cdg55@earthlink.net>  
**Sent:** Monday, January 31, 2022 4:58 PM  
**To:** sbcob  
**Cc:** Dave G; bgaughenmu@aol.com  
**Subject:** Concerns Regarding Agenda Item 2), Public Works Department, File # 22-00033, Title "HEARING - Consider recommendations regarding an amendment of Chapter 17 of the County Code etc.," meeting date 2/01/22.  
**Attachments:** Concerns Regarding Agenda Item 2, Public Works Department, File # 22-00033 meeting date 2 01 22.pdf



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Dear Clerk of the Board – I respectfully request distribution to the Board of Supervisors the attached written response with respect to my Concerns Regarding Agenda Item 2), Public Works Department, File # 22-00033, Title "HEARING - Consider recommendations regarding an amendment of Chapter 17 of the County Code to Comply with State Law SB 1383 Regarding the Diversion and Recycling of Organic Waste," meeting date February 01, 2022.

My name is C. Dave Gaughen, email address of [cdg55@earthlink.net](mailto:cdg55@earthlink.net), and phone number of (805) 275-6457.

At present, I do not plan on speaking on this Agenda Item.

Thank you,

C. Dave Gaughen

C. DAVE GAUGHEN  
c/o BARBARA GAUGHEN-MULLER  
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Santa Barbara, CA 93110  
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January 31, 2022

To: The Board of Supervisors  
105 E. Anapamu St.  
Santa Barbara, CA 93101

Subj: Concerns Regarding Agenda Item 2, Public Works Department, File # 22-00033, Title  
“HEARING - Consider recommendations regarding an amendment of Chapter 17 of the County  
Code to Comply with State Law SB 1383 Regarding the Diversion and Recycling of Organic  
Waste,” meeting date February 01, 2022 (hereinafter “Agenda Item 2”).

Ref. (1) Attachment A, Agenda Item 2, Chapter 17 Main Body With SB 1383 Ordinance Clean Copy  
of “ORDINANCE NO. \_\_\_ AN ORDINANCE AMENDING CHAPTER 17, SOLID WASTE  
SERVICES, OF THE SANTA BARBARA COUNTY CODE.”

Dear Board of Supervisors:

### **RECOMMENDATION**

Please amend the subject ordinance to be significantly less punitive for residential customers.

### **BACKGROUND AND DISCUSSION**

#### Privacy & Security Concerns – Unannounced Inspections of Exterior Refuse Containers on Private Property

Reference 1, Page 48 reads in relevant part,

“Sec. 17-95. Inspections and investigations by County.

(a) County representatives and/or its designated entity, including Designees are authorized to conduct Inspections and investigations, at random or otherwise, of any Collection Container, Collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the County to enter the interior of a private Residential property for Inspection. Regulated entity shall provide or arrange for access during all Inspections (with the exception of Residential property interiors) and shall cooperate with the County’s employee or its designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity’s premises or (ii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties described.”

In short, this section is problematic especially for: 1) Single and Multi-Family Residential Dwellings that keep their exterior refuse containers on private property behind fenced areas with locked gates (i.e., in an attempt to prevent theft of tangible personal property and vandalism – plus, don't forget about pet owners with pets such as large dogs behind locked gates), and 2) Failure to provide or arrange for: (i) access to an entity's premises or .... is a violation of this ordinance and may result in penalties described. Furthermore, most Marborg residential customers have no desire to authorize any County representatives and/or its designated entity to randomly show up at their residential dwelling, trespass onto their private property, and inspect their refuse containers for the incorrect sorting of banana peels and other forms of organic waste. As such, scheduled inspections are preferred over at-random inspections, and curbside inspection on the day of refuse pick-up is even more preferable for residential customs amidst the highly likely event that County-wide compliance (i.e., 75 % reduction of 2014 levels by 2025) may in fact occur simply by voluntary participation by residential customers.

Residential Organic Waste Recycling should be Fun and Voluntary and Not a Civil or Criminal Offense:  
Article VI. Enforcement and Penalties

Reference 1, Page 12 presents the following two definitions.

“Organic Waste Generator” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

"Person" means every natural person, firm, partnership, association or corporation.

Reference 1, Page 35 reads in relevant part.

“Sec. 17-81. Civil remedies and penalties.

(a) Any person, whether acting as principal, agent, employee, or otherwise who willfully violates any provision of this chapter, shall be liable for civil penalties **not to exceed twenty-five thousand dollars for each day the violation continues to exist.**

(b) Any person, whether as principal agent, employee, or otherwise, who willfully violates any provision of this chapter, shall further be liable to the County of Santa Barbara for the cost incurred and the damages suffered by the County, its agents and agencies as a result of such violations.

(c) In determining the amount of the civil penalties to impose, the court shall consider all relevant circumstances, including but not limited to revenue or other monetary expenses or losses suffered by the County, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and the net worth of the violator, whether corporate or individual, and any corrective action taken by the defendant.”

Reference 1, Page 36 reads in relevant part as follows:

“Sec. 17-82. Criminal actions and penalties.

(a) Any person, firm or corporation, whether as principal, agent, employee or otherwise, who violates any provision of this chapter, shall be guilty of an infraction and upon conviction thereof, **shall be punished by (1) a fine not exceeding one hundred dollars for a first violation; (2) a fine not exceeding two hundred dollars for a second violation of the same provision within one year; and (3) a fine not exceeding five hundred dollars for each additional violation of the same provision within one year.**

(b) Any such infraction may, at the discretion of the district attorney, be filed as a misdemeanor if the defendant has been convicted of two or more violations of any of the provisions of this chapter within the twelvemonth period immediately preceding the commission of the offense, or has been convicted of three or more violations of any of the provisions of this chapter within the twenty-four-month period immediately preceding the commission of the offense. **Upon conviction of a misdemeanor, the punishment shall be a fine of not less than five hundred dollars, nor more than twenty-five thousand dollars, or imprisonment in the County jail for a period not to exceed sixty days, or by both such fine and imprisonment,** except that where such prior convictions are alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, or by the court where guilt is established by pleas of guilty, or nolo contendere, or by trial by the court sitting without a jury, the punishment shall be a fine of no less than one thousand dollars, nor more than twenty-five thousand dollars, or by imprisonment in the County jail for a period not to exceed six months, or by both such fine and imprisonment.”

In short, the above penalties and fines defy all forms of common sense and appear to apply to residential customers. As a minimum regarding residential customers, compliance should begin and continue as “voluntary” without fines or penalties until the County has determine if it has met the organic waste diverted requirements of SB 1383 which are “75 % reduction of 2014 levels by 2025.”

#### Thresholds for Residential Non-Compliance

Due to time constraints, I was unable to determine if a weight percent threshold (or a minimum weight) was established and presented in Reference 1 for residential customers. For example, a minimum residential threshold for non-compliance could simply be the weight of a ten pound bag of potatoes. As such, the ordinance could read “residential compliance occurs when less than ten pounds of organic wastes is improperly sorted.”

#### Respondent’s Bio – Infrastructure Work & Testing of Environmentally Preferred Materials

16 years Civil Service, Research Chemist, Naval Facilities Engineering Service Center (NFESC) with more than 35 Navy Publications covering topics from “Survey of the Use of Ozone Depleting Substances (ODS) on the San Diego Naval Station (TM-2000-ENV), “Environmentally sound Alternatives to Hazardous Waste Disposal of Expired Shelf Life Paints (TM-2243-ENV), and others, with proposals and projects funded by such organizations as the Office of the Secretary of Defense and the Environmental Security Technology Certification Program (i.e., DoD’s environmental technology demonstration and validation program).

Thank you for your time and consideration.

Respectfully, C. Dave Gaughen