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SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

COMMUNITY VENTURES PARTNERS, INC., Petitioner/Plaintiff, *vs.* COUNTY OF MARIN, Respondent/Defendant.	Case No.: CV 1404718 **NOTICE OF MOTION AND MOTION TO ISSUE PEREMPTORY WRIT OF MANDATE AND FOR DECLARATORY RELIEF** Hearing Date: December 9, 2015 Time: 8:30 am Dept.: B Honorable Roy O. Chernus

TO RESPONDENT/DEFENDANT COUNTY OF MARIN AND ITS ATTORNEYS OF RECORD:

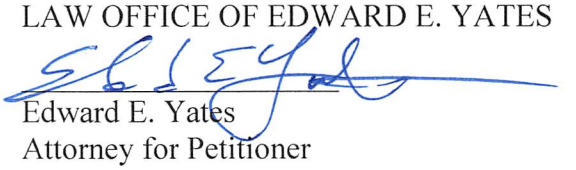
PLEASE TAKE NOTICE that on December 9, 2015, at 8:30 A.M. or as soon thereafter as counsel may be heard, in Department B of the above-entitled court located at 3501 Civic Center Drive, San Rafael, CA 94903, Petitioner Community Ventures Partners, Inc. will and hereby does move the court to issue a Writ of Peremptory Mandate ordering Respondent to conform to the requirements of the Ralph M. Brown Act, and for a Declaration that the COUNTY OF MARIN BOARD OF SUPERVISORS, has violated the Ralph M. Brown Act by engaging in discussion on matters outside a properly posted meeting and for not placing the discussion items on an agenda and for not providing public notice of the discussion.

This Motion will be made pursuant to Code of Civil Procedure sections 1005 and Government Code section 54950 *et seq.* on the grounds that Respondent/Defendant has continued to maintain that its actions did not violate the Brown Act.

This Motion will be based on this Notice, the Verified Petition for Writ of Mandate, an Injunction and Declaratory Relief filed December 16, 2014, Petitioner's Memorandum of Points and Authorities filed herewith, other documents in the court's files, and upon such evidence and argument, oral or documentary, as may be introduced at or before the hearing on this Motion.

DATED: September 7, 2015

LAW OFFICE OF EDWARD E. YATES



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SUPERIOR COURT OF CALIFORNIA,

COUNTY OF MARIN

COMMUNITY VENTURES PARTNERS, INC. Petitioner/Plaintiff, v. COUNTY OF MARIN, Respondent/Defendant.	Case No.: CV 1404718 **PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ISSUE PEREMPTORY WRIT OF MANDATE AND DECLARATORY RELIEF FOR VIOLATIONS OF THE RALPH M. BROWN ACT; DECLARATION OF EDWARD E. YATES WITH EXHIBITS A-G** [Cal. Gov. Code Section 54950, et seq.; Code of Civ. Pro. Sections 1005, 1085] Date: December 9, 2015 Time: 8:30 a.m. Dept: B Honorable Roy O. Chernus

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I. INTRODUCTION AND SUMMARY

This is an action to determine whether the Brown Act prohibits a local agency's governing body from receiving a formal presentation and engaging in a 26-minute question and answer session without placing the discussion item on the agenda or providing notice of the discussion to the public.

During its August 19, 2014 Board of Supervisors ("Board") meeting, Respondent County of Marin ("County") made a surprise announcement that it would be conducting a discussion of the Draft 2015-2021 Housing Element an item that was not on the August 19, 2014 Agenda ("Agenda"). The Discussion included lengthy dialogs by two Board members, a previously prepared, written presentation by the Community Development Director, Brian Crawford, and a question and answer period that included the County's Housing Element Senior Planner, LeeLee Thomas.

The Board had previously considered the Housing Element at its March 18, 2014 meeting. The Housing Element discussion was properly agendized, and the public was provided with notice and a staff report and was able to attend and participate in that meeting. On August 12, 2014, after Petitioner and the public had participated in other Housing Element meetings, Petitioner submitted a letter to the County raising concerns about the Housing Element. Much of the non-agendized August 19 presentation focused on disputing points raised in Petitioners August 12 letter. However, because nothing about the Housing Element appeared on the August 19 Agenda, Petitioner and other interested members of the public did not attend. Therefore, they were unable to participate in this important issue of great public concern.

This violates the public's right to participate in the discussions, deliberations and decision-making process of local agencies, a right guaranteed by the Ralph M. Brown Act (Government Code Sections 54950, et seq.[1]), and the California Constitution.

To attempt to resolve the situation without the need for judicial intervention, Petitioner submitted a letter demanding that the County cease and desist such actions ("Demand Letter"). Such recourse is specifically permitted under the Brown Act, section 54960.2. But the County completely ignored the Demand and Petitioner was forced to filed this Action, asking this Court to declare that the Board's actions violated the Brown Act and for an order requiring it to cease and desist from similar future actions.

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[1] All further statutory references are to the California Government Code, unless otherwise indicated.

The Brown Act provides clear directive on this subject: "No action or discussion shall be undertaken on any item not appearing on the posted agenda ...." (§ 54954.2(a)(2); emphasis added.) Yet, the County unequivocally maintains that its actions are authorized under the limited exceptions provided for in that section. The exceptions, which must be narrowly construed (Cal. Const., Art. 1, Section 3(b)) are limited to:

> (1) "members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3."
>
> (2) "on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities."
>
> (3) "a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda."

(§ 54954.2(a)(2).)

Yet, under the narrow construction required by the Constitution, the formal, pre-planned presentation and lengthy discussion on substantive topics which were pending for approval by the Board, do not fall under these very limited exceptions to the Brown Act's broadly construed prohibition to not discuss any item not listed on the posted agenda.

First, 26 minutes of discussion, question and answer and a formal presentation as "brief" defies any basic definition of the term and is inconsistent with the Brown Act and the state Constitution's requirements that open meetings law be interpreted in favor of disclosure and access. In fact, such an interpretation – that 26 minutes of discussions regarding the amendment of the County's General Plan qualify for this limited exception - would swallow the rule and eviscerate the notice requirements in the Brown Act.

Second, throughout this case, the County has continually misrepresented the wording of the Brown Act by cutting off the limiting portion of the phrase in dispute: "a brief report *on his or her own activities*." (§ 54954.2(a)(2); emphasis added.) Instead, the County has maintained that the Brown Act provides an exception to receive "brief reports." By essentially hiding the term *his or her own activities* the County

is essentially urging this court to ignore the letter and intent of the Brown Act, which is to limit the reports to those which cover personal activities.

Adopting the County's arguments is contrary to both logic and rules of statutory interpretation. Since the County's presentation, discussion, and question and answer period do not fit into narrow exceptions to the Brown Act public notice requirements, this Court should declare that the County has violated the Brown Act and issue an order preventing them from doing so again in the future.

II. STATEMENT OF FACTS

The County is required by State law to adopt the County Housing Element for the eight year period from 2015 to 2023 by Section 65583. The decision maker for such adoption is the County's Board of Supervisors ("Board"). Due to the long-term significance of County decisions regarding its Housing Element, on August 12, 2014, Petitioner sent a letter to the County regarding the Draft 2015 - 2023 Housing Element. Petitioner's letter addressed issues such as the number of units required under Housing Element law and the timeline required for adoption of the Housing Element by the County. (Exhibit A.)

Board Meeting Timeline. On or about August 13, 2015, the County published the Agenda for the Board's August 19, 2014 meeting ("Agenda"; Exhibit B). The Agenda did not include any item related to the Housing Element. Yet, at the August 19, 2014 Meeting, the Board discussed Housing Element issues with County Staff for approximately 26 minutes, including receiving a formal presentation by County Community Development Director, Brian Crawford, engaging in lengthy discussion with Mr. Crawford and County's Principal Planner, LeeLee Thomas, and discussing and opining on Housing Element issues that were under consideration by the County. (Exhibits C, D, D-2.)[2]

At Minutes 4:00-9:17, during the Board of Supervisors' Matters item, agenda item #2, Supervisors Rice and Arnold described the need to educate the public on the subject of the HE.

At Minute 4:17, Supervisor Rice stated: "I am glad to see Mr. Crawford here to speak about the Housing Element process." At Minute 5:18, Supervisor Rice stated: "I just wanted to make one more comment on this *item*." (Emphasis added.)

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[2] Exhibit D-2 is the video recording of the August 19, 2015 Board of Supervisors Meeting; two copies of a flash drive were submitted to the Court with the Petition in this Action. One copy of the flash drive was served on the Respondent.)

At Minute 14:40, County Administrator and Clerk of the Board of Supervisors, Matthew Hymel, introduced Mr. Crawford, stating, "Supervisor Rice has asked the Community Development Director Brian Crawford to discuss the Housing Element."

At Minutes 14:33-25:40, Community Development Director, Brian Crawford, opened a folder, read directly off prepared, written text and discussed specific timelines, policies and legal issues regarding the Housing Element. Ten minutes later, at Minute 14:50, Mr. Crawford stated: "Thank you members of the Board for the opportunity to address your Board on the status of the Housing Element."

At Minute 18:50, Mr. Crawford referenced a meeting with County Counsel wherein he received advice regarding issues brought up by Petitioner in recent letters (referencing Petitioner's letter at Exhibit A). At Minute 25:30, Mr. Crawford stated, "With that I'll complete my comments."

At Minutes 25:50 - 30:00, the Board engaged in a question and answer period regarding the 2015-2023 Housing Element with Mr. Crawford and County Principal Planner for the Housing Element, LeeLee Thomas. County Supervisors also discussed Mr. Crawford's presentation of the Housing Element and provided opinions about the County's compliance with Housing Element legal requirements, timeline, policy preferences, and public participation process.

At no point in the discussion, did any of the supervisors describe any of their own activities as their own, such as: a report from a subcommittee; personal constituent interaction; or attendance at a ceremonial event. Nor was the discussion "a brief response" to any statements made or questions posed by persons exercising their public testimony rights. In fact, it was not until well after the 26-minute discussion, at Agenda Item 6, that public comment even occurred.

The Minutes for the August 19, 2014 meeting (Exhibit C) confirm the events, stating that: "Mr. Hymel introduced Community Development Agency Director Brian Crawford, who provided an update on the status of the Draft Housing Element. Mr. Crawford and Ms. Thomas responded to questions from Board members regarding various components of the Draft Housing Element."

Post-Board Meeting Events and Case History. On September 18, 2014, Petitioner, through its legal counsel, sent a letter to the County, which included a Demand to Cease and Desist (Demand Letter) pursuant to Section 54960.2 (the "Demand"; Exhibit E.) In the Demand Letter, Petitioner requested that the Board "cease and desist" from these types of violations of the Ralph M. Brown Act in the future. The

Demand is a requirement specifically set forth in Section 54960.2, which gives a public agency the opportunity to avoid a judicial order requiring compliance with the Brown Act after a violation by making a formal commitment to refrain from such conduct in the future.

County Counsel, Stephen Woodside, was reported by the Marin Independent Journal in a newspaper article of September 24, 2014 saying "Yates' Brown Act complaint is all bark and no bite, asserted nothing illegal or otherwise inappropriate was done regarding the board's "off agenda" exchange." The article quoted Mr. Woodside: "I looked at the tape of the meeting," Woodside said. "Nothing illegal was done." (Exhibit F.)

The County did not respond to Petitioner's Cease and Desist Demand. (Exhibit G.) Therefore, on December 16, 2014, Petitioner commenced this action seeking a declaration that the County's presentation and extensive discussion regarding the Housing Element at its August 19 meeting, violated the Brown Act, and for a peremptory writ of mandate ordering the County to discuss and take action on matters within its subject matter jurisdiction only after those items have been properly noticed on a posted agenda.

On February 17, 2014, before Petitioner had even started its discovery in this matter, the County filed a Motion for Judgment on the Writ of Mandate ("MFJ"), which this Court denied on March 25, 2014. This Court ruled that Petitioner could state a cause of action regarding (1) a discussion occurring in the past because Section 54954.2(a)(a) "permits an interested person to file a mandamus petition 'to determine the applicability of this chapter to past actions for the legislative body;'" and (2) that actions included "'discussions' conducted in violation of the agenda notice requirement."[3] On July 22, 2015 this court denied Petitioner's Motion to Compel Attendance at Depositions and Produce Documents.

III. ARGUMENT

A. THE BROWN ACT AND THE CONSTITUTION PROVIDE FOR THE PUBLIC TO BE INVOLVED IN COUNTY'S DECISION-MAKING AND THAT RIGHT MUST BE BROADLY CONSTRUED

When the Legislature enacted the Brown Act, it made clear the intent behind the open meetings law in its very first section, Section 54950, which hasn't changed over the last 57 years:

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[3] Because this court has denied the County's arguments, the arguments made in Opposition to the MFJ will not be restated here; however, those arguments are specifically incorporated by reference herein.

> The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

When the Brown Act was first introduced, in 1953, it was "intended to ensure the public's right to attend the meetings of public agencies.....The Act thus serves to facilitate public participation in all phases of local government decisionmaking and to curb misuse of the democratic process by secret legislation of public bodies." McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (2005) 134 Cal.App.4th 354, 358 [citations omitted.] That purpose, "complete faithful, and uninterrupted compliance with the Ralph M. Brown Act...is a matter of overriding public importance. McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310, 1316-17 [citing § 54954.4(c).]

When interpreting the Brown Act, the California Supreme Court has held that the Court's task is to "select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results." Commission on Peace Officer Standards & Training v. Superior Court (Los Angeles Times Communications LLC) (2007) 42 Cal.4th 278, 290 [citations omitted.] Moreover, the California Constitution, Article 1, Section 3(b)(2), requires that "[a] statute...shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

To these ends, the Brown Act requires that any local agency body subject to its requirements, must post an agenda "containing a brief general description of each item of business to be transacted and that "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda...." (§54954.2(a)-(b).) Courts have vigorously enforced this requirement. See International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287; Cohan v. City of Thousand Oaks (1994) 30 Cal.App.4th 547, 555. In addition to these notice requirements, the Brown Act, Section 54954.3(a), also guarantees the public's right to participate in items before any legislative body:

> Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, *before or during the legislative body's consideration of the item*, that is within the subject matter jurisdiction of the

> legislative body, provided that no action shall be taken on any item not appearing on the agenda.... (Emphasis added.)

See also, McKee v. Orange Unified School District, supra, 110 Cal.App.4th at 1316-17 ["[t]he Act thus serves to facilitate public participation in all phases of local government decisionmaking."]

When an agency fails to comply with the Brown Act's requirements, it provides for civil enforcements of these very important rights. Section 54960(a) provides that:

> The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2,....

Section 54960.2(a) provides that "any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960...." Section 54960(a) exists to remedy a broader scope of behavior and to insure that future conduct of the agency is in line with the requirements of the Brown Act. It also provides for declaratory relief to define the rights of the public and the duties of the agency when there is a controversy over what the Brown Act requires. Section 54960.2(a) allows for redress of past actions.

B. THE COUNTY'S AUGUST 19 DISCUSSION OF THE HOUSING ELEMENT DID NOT COMPLY WITH THE BROWN ACT'S NOTICE AND AGENDA REQUIREMENTS, THEREBY DEPRIVING THE PUBLIC FROM PARTICPATING IN THAT ISSUE

The Marin County Board of Supervisors, requested, in advance, and received a formal presentation on the County's Housing Element, but failed to place the planned discussion item on the agenda. That failure clearly violates the notice requirements of Section 54954.2, and deprives the public and interested parties from participating in that discussion, as guaranteed by Section 54954.3(a).

The video recording of the meeting and affidavits by the Board of Supervisors themselves demonstrate that that this issue was highly controversial. (Exhibit D-2.) This particular discussion was part of the larger 2015-2023 Housing Element certification process. In fact, the County had received

notice that the public was very interested in the amendment of the County's Housing Element and General Plan. (See Declarations of Supervisors Rice and Arnold.[4])

Additionally, the facts show that the decision to discuss the Housing Element was planned well before the start of the Board meeting. The County concedes in Supervisors Arnold and Rice's sworn affidavits state that because of emails in prior weeks that *at the meeting* Supervisor Rice asked Mr. Crawford asked to speak about the Housing Element because it was "anticipated" that community members would speak to the issue in open time. (Rice and Arnold Decl., Page 2.) But the video recording shows no such request at the meeting. Instead, Supervisor Rice, after discussing Housing Element timelines and public participation, stated, "I am glad to see Mr. Crawford here to speak about the process." (Minute 4:1, Exhibit D, D-2.) Therefore, if Supervisor Rice's sworn statement is true, since Supervisor Rice did not ask Mr. Crawford to speak during the meeting, she must have asked him to speak prior to the meeting. This is confirmed by Mr. Hymel's statement recorded on the video: "Supervisor Rice has asked the Community Development Director Brian Crawford to discuss the Housing Element." (Minute 14:40, Exhibit D, D-2.)

Further, Supervisor Rice's contention that she just happened to see Mr. Crawford in the audience is not credible. (Rice Declaration Page 2, Line 25.) Mr. Crawford had a business item at the Board but it was over one hour after Ms. Rice spoke. (Exhibit C.). Also, Mr. Crawford sat down at the speaker's table at Minute 14:30 without being directed by Mr. Hymel or the Board Chair and Mr. Crawford proceeded to very routinely place his written presentation on the table. (Exhibit D-2.) Further, Ms. Thomas had no reason at all to be at the Board meeting that day. Their presence at that time further demonstrates that the August 19 Brown Act discussion was prepared for prior to the meeting.

Also, at minutes 4:00 - 6:55, and 6:55 - 9:17 Supervisors Rice and Arnold made prepared comments about the Housing Element. (Exhibit D.) Most tellingly, from minutes 14:50 to 25:40, Mr. Crawford read a written, prepared, formal presentation regarding the Housing Element for over ten minutes. (Exhibit D.)

[4] The Rice and Arnold Declarations are attached to the MFJ, previously filed by the County in this case.

Given the admissions that this lengthy discussion of the Housing Element was purportedly to respond to the public interest, not noticing the discussion was even more egregious. If the County was so concerned about providing information to the public, it could have easily docketed an agenda item for two weeks later, at its next regular board meeting. But the County chose not to do so. Since Mr. Crawford, Mr. Hymel and at least two Supervisors were aware of their intention to discuss the Housing Element at the August 19 meeting well before the meeting, the County should have put the discussion item on a Board agenda just like any other topic.

Additionally, there is no requirement to show intent to violate the Brown Act's requirements. Therefore, even if the issue arose spontaneously, as the Board argues, (which is contradicted by the evidence), the Supervisors did not previously plan to extensively discuss the Housing Element, and Mr. Crawford just happened to be at the meeting with a prepared, formal presentation, accompanied by his Housing Element staff, the County still clearly violated the Brown Act's agenda and notice requirements by discussing the issue at such length and depth.

The only remaining question is whether the Board's discussion falls into one of the very limited exceptions to the broad notice and agenda requirements. However, when each provision is analyzed, with care paid to the particular limiting language in each, the answer becomes clear: none of the exceptions claimed by the County apply.

C. THE LIMITED EXCEPTIONS TO THE BROWN ACT'S NOTICE AND AGENDA REQUIREMENTS DO NO APPLY HERE

The County has argued repeatedly in previous pleadings that: (1) the decision to discuss the Housing Element was made during the August 19 meeting and thus somehow exempt from notice and agenda requirements; (2) that the Brown Act allows municipalities to discuss items of law, policy and countywide interest during the County Administrator's agenda item without noticing those discussions; and (3) that the Brown Act exempts the discussions and presentations at issue because they were "brief reports on his or her own activities." (MFJ, Page 2, Lines 8-22, Page 4, Lines 22-26; Page 9, Lines 1-11; Arnold and Rice Decls, Paragraph 9.) As discussed below, none of these arguments have merit.

1. The Decision to Discuss the Housing Element Occurred Prior to the Board Meeting and Should Have Been Placed on the Agenda

The County has argued that the Board should be excused from noticing requirements because the Board had good intentions in immediately addressing a controversial issue. (See MFJ , Page 2, Lines 8-21; and Declarations of Supervisors Rice and Arnold. Page 2, Line 15 to Page 3, Line 2.) But the County's eagerness to discuss the Housing Element does not excuse the County from Brown Act notice requirements. There is no support for this argument in law. In fact, the Brown Act already provides a way to address non-agendized items in urgent situations. Section 54954.2(b)(2) allows an legislative body, by a two thirds vote, to determine "that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision(a)." But this situation could not have been invoked because the issue was known well in advance (as early as August 12, the date of Petitioner's letter) and there was absolutely no real need to take immediate action (the Housing Element was not adopted until December 9, 2014, four months later.)

2. There is No Exception to Agenda and Notice Requirements in the Brown Act for Discussion of Non-Noticed items in Administrator's Agenda Item

The County has argued that the Brown Act allows municipalities to discuss items of law, policy and countywide interest during the County Administrator's (Administrator) agenda items without noticing those discussions. (MFJ, Page 2, Lines 8-22; Page 9, Lines 1-11; Arnold and Rice Decls, Paragraphs 8-9.) However, there is no exception contained in the Brown Act or in any case interpreting the Brown Act that would allow for such an inferred exception. Much of the discussion occurred during the Administrator's Agenda Item, yet Mr. Hymel has little involvement, nor did he make one comment on the Housing Element. In fact, allowing this alleged exception would permit an agency to substantively discuss any other topic at length during the Administrator's time, which would eviscerate the notice provision of the Brown Act.

As the Court in Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968) 263 Cal.App.2d 41, 50, specifically noted regarding the Brown Act, "[i]n this area of regulation, as well as others, a statute may push beyond debatable limits in order to block evasive techniques." The County's scheme to use the Administrator's agenda item for non-noticed items is indeed such an evasion. If the County is allowed to shoehorn a lengthy discussion of amending its own General Plan into a Supervisor's

or Administrator's reports on his/her own activities, what subject matter would not be eligible for such a non-noticed discussion?

3. The Housing Element Discussion Was Not A Brief Response To A Statement Or Question During Public Testimony, Nor Was It A Brief Report On A Supervisor's Own Activities, Nor Was it a Request to Staff for Future Information or Action

The Brown Act provides three limited exceptions to its mandate that all items must be agenized before they are discussed. First, "members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3." (§54954.2(a)(2).) Second, "on their own initiative or in response to questions posed by the public... a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities." Id. Third, "a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda." Id.

Brief Response. The County has argued previously with absolute certainty that: "there is no question that a brief report for a matter not on the agenda is allowed, especially a report responding to statements made or question posed by persons exercising their public testimony rights." (MFJ, page 6, line 21-25.) However, this incorrect statement of the exemption could not apply to the County's extensive discussion of the Housing Element. First, the Brown Act does not allow for a brief "report" to respond to public testimony rights; it allows for a brief "response." Regarding brief" response," there was no public testimony to respond to *because public testimony had not yet occurred* when Ms. Rice, Ms. Arnold, Mr. Crawford and Ms. Thomas discussed the Housing Element.

Brief Report on His or Her Own Activities. The County characterizes the August 19, 2014 Housing Element discussion, presentation and question and answer as a "brief report." First, it is an enormous stretch by the County to define 26 minutes of formal presentation, question and answer and discussion as "brief." The common definition of brief includes; "short in duration or extent or length; concise." (Webster's New Collegiate Dictionary (1974).) The 26 minute session was neither short in duration nor concise. This is especially apparent when comparing the Housing Element update and discussion to the

only other topic discussed in the Administrator's Item. Mr. Hymel addressed the MERA topic, and "commented briefly." (Exhibit C, Page 1.) This brief comment on MERA was only one minute and ten seconds, followed by approximately 50 seconds of questions and answers on the topic. (See Minutes 12:29 to 13:39, Exhibit D-2.) If two minutes is brief, 26 minutes is the opposite of brief.

In fact, the discussion of the Housing Element lasted much longer in duration than any of the noticed agenda items at the August 19 meeting. Most discussion of the five regular agenda items lasted less than 3 minutes, with the longest being only 12 minutes, which included approximately 6 minutes of public comment time. (See Minutes 1:09:52 to 1:35:53, Exhibit D-2.) Thus, the non noticed Housing Element presentation and staff discussion was *20 minutes longer* than the staff discussion for the next longest *noticed* item.

Further, the discussion on the Housing Element was not a report on anyone's "own activities", which typically include items such as reports from a subcommittee, personal constituent interaction, or attendance at a ceremonial event. Which is only logical; any contention that amending the County's General Plan is one or several County Supervisor or employees' "own activities" is absurd.

Instead, the Housing Element is part of the County's General Plan (§65300 et seq.). General Plans are considered the "Constitution for future development" for cities and counties. Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 540. Therefore, policy, legal, and HCD submittal and certification issues related to the Housing Element by definition are not one's "own activities."

There is no legal or grammatical ambiguity in the phrase at issue and thus, there is no rule of statutory construction that allows the County to excise "on his or her own activities" from the statute. In fact, the California Constitution mandates broad construction in favor of transparency and the people's right of access. [See Art. I, Sect. 3(b)(2), "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."] The phrase "on his or her own activities" clearly narrows the scope of the exception. By ignoring those five words, the County is exponentially expanding the exception, which is not permitted under any cannon of analysis or statutory construction rules.

In addition, the 26 minutes of prepared reports and discussion addressing legal and policy issues on the Housing Element are obviously not brief "clarifications or announcements." This is contrasted

with Mr. Hymel's "clarifications" on two other items, each of which was a minute or less. (See Minutes 11:48 – 12:48, Exhibit D-2.)

Request for Future Information or Action. Finally, the last exception, which would have allowed the Supervisors to direct staff to either report back at a subsequent meeting or to place a matter of business on a future agenda, was exactly the opposite of what happened here. Instead of directing staff to report on the Housing Element at a future meeting, or put it on the agenda for future consideration, the Board decided to address it fully at the meeting, regardless of the fact that it was not agendized.

The Housing Element discussion violated the Brown Act and any other interpretation would allow for the exceptions to swallow the rule.

D. THE COUNTY'S DENIALS OF BROWN ACT VIOLATIONS INDICATE SUCH VIOLATIONS WILL LIKELY CONTINUE

It has been well established that when a local agency continues to deny its Brown Act violations, it can be properly assumed these violations are likely to continue. In Common Cause v. Stirling (1983) 147 Cal.App.3rd 518, the court considered facts similar to those at bar. When members of the public requested an investigation into the council majority's use of a letter to instruct the city manager, the city attorney stated there had been no Brown Act violation, because, he said, the use of circulated letter decisions is not uncommon. The Fourth District agreed with the trial court and found that the City had violated the Brown Act, and ordered that Common Cause be awarded costs and fees. The court concluded that:

> The lawsuit could have been avoided had the city attorney responded to the Common Cause letter ... by agreeing to advise the city council members not to take future action by means of circulated letter and/or acknowledging the previous action did violate the Brown Act. The city attorney refused to do either of these and, in fact, emphasized his belief the procedure was perfectly proper. Thus, there was reason to believe there would be continuing use of circulated letter agreements without judicial intervention."

Common Cause at 524.

Other courts have agreed that it may be assumed that a local agency is likely to continue similar practices when it refuses to admit a violation.

> City's belief as to the propriety of its action may be found ... in city's failure to concede that the facts alleged by plaintiffs constitute a violation of the Brown Act .... On that basis alone plaintiffs are entitled to declaratory relief resolving the controversy. [Citation.]

CAUSE v. City of San Diego (1997) 56 Cal.App.4th 1024, 1030. (See also Shapiro v. San Diego City Council (2002) 96 Cal.App.4th 904, 916 ["courts may presume that municipality will continue similar practices in light of city attorney's refusal to admit violation"] and Environmental Defense Project of Sierra County v. County of Sierra (2008) 158 Cal.App.4th 877, 886 ["There was and is an "actual controversy" between the parties ... given their different interpretations of the Government Code."])

On September 24, 2014, County Counsel, Stephen Woodside, was reported by the Marin Independent Journal in a newspaper article of September 24, 2014 saying "Yates' Brown Act complaint is all bark and no bite, asserted nothing illegal or otherwise inappropriate was done regarding the board's "off agenda" exchange." The article quoted Mr. Woodside: "I looked at the tape of the meeting," Woodside said. "Nothing illegal was done." (Exhibit F.) Mr. Woodside's two communications, like those of the City Attorney in Common Cause, indicate that such violations will likely continue.

Further, Supervisors Rice and Arnold both declared that they understood the Brown Act to allow the Board of Supervisors make brief reports and comments during the Administrator's time. In the statements by Mr. Woodside, Ms. Rice and Ms. Arnold, the County has confirmed that it considers the Administrator's Item open game for any topic that the Board chooses not to put on the Agenda. Thus, it is clear that the Board will continue this practice of shoe horning any detailed policy issue into the Administrator's item, regardless if it has anything to do with the Administrator.

IV. CONCLUSION

Petitioner and other members of the public were not provided notice of the extensive discussion of the Housing Element item on August 19, 2014 and thus, did not have the opportunity to attend or comment on the subject matter of this presentation and discussion item. Without a ruling from this Court, the County will continue to violate the Brown Act by discussing and deliberating on substantive issues of important public policy, without noticing those items on the agenda. This violates the public's right to participate in the discussion of these issues and in the County's decision-making process, a right guaranteed by the Brown Act and the California Constitution.

The County's view of the Brown Act is contrary to both the plain language and intent of the Brown Act, and ignores our State's Constitution's broad mandate of statutory construction. Petitioner asks that

this Court consider the California Constitution and Brown Act's unqualified language and intent, and not the abbreviated, distorted version the County urges.

Therefore, Petitioner respectfully requests that this Court declare that the Board's actions violated the Ralph M. Brown Act, and issue an order requiring the Board to cease and desist in such future actions. Additionally, Petitioner respectfully requests that the court order Respondent to reimburse Petitioner for its costs and attorney fees incurred in this action. Courts have held the litigants "should be encouraged to enforce the Brown Act for the public's benefit with full assurance that, absent special circumstances, they, too, will recover their attorney's fees." Los Angeles Times v. L.A. Co. Bd. of Sup'rs (2003) 112 Cal.App.4th 1313, 1334.

Dated: September 7, 2015

Respectfully Submitted,

Edward E. Yates
Attorney for Petitioner
Community Ventures Partners

Declaration
(C.C.P. §§ 446 and 2015.5)
Petitioner, Community Ventures Partners

COMMUNITY VENTURES PARTNERS, INC., Petitioner, v. COUNTY OF MARIN, Petitioner

1. I, Edward Yates am an attorney at law duly admitted to practice before all the courts of the State of California and the attorney of record herein for Petitioner/Plaintiff, Community Ventures Partners, in the action described above.

2. I certify that the facts stated in this Motion to Issue Peremptory Writ of Mandate in the above named case are true and correct of my own knowledge, except as to those matters which are therein stated upon my information and belief, and as to those matters I believe it to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 7 day of September, 2015, Larkspur, California.

Edward E. Yates

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Cal Bar # 135138
Edward E. Yates
Law Office of Edward E. Yates
1000 Fourth St., Suite 800, San Rafael, CA 94901
TELEPHONE NO.: 415-990-4805 FAX NO. (Optional):
E-MAIL ADDRESS (Optional): eyates@marinlandlaw.com
ATTORNEY FOR (Name): Community Ventures Partners, Inc.

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Marin
STREET ADDRESS: 3501 Civic Center Drive, C10
MAILING ADDRESS:
CITY AND ZIP CODE: San Rafael 94903
BRANCH NAME:

PLAINTIFF/PETITIONER: Community Ventures Partners, Inc.

DEFENDANT/RESPONDENT: County of Marin

CASE NUMBER: CV 1404718

JUDGE:

DEPT.:

PROOF OF SERVICE—CIVIL

Check method of service *(only one):*

- [✓] **By Personal Service**
- [ ] **By Mail**
- [ ] **By Overnight Delivery**
- [ ] **By Messenger Service**
- [ ] **By Fax**
- [ ] **By Electronic Service**

(Do not use this proof of service to show service of a Summons and complaint.)

1. At the time of service I was over 18 years of age and **not a party to this action.**
2. My residence or business address is:
   1000 Fourth St., Suite 800, San Rafael, CA 94901
3. [ ] The fax number or electronic service address from which I served the documents is *(complete if service was by fax or electronic service):*
4. On *(date):* I served the following **documents** *(specify):*
   Notice of Motion and Motion to Issue Peremptory Writ of Mandate and for Declaratory Relief, Memorandum of Points and Authorities to Support Motion, Declaration of Edward E. Yates
   [ ] The documents are listed in the *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
   a. Name of person served: David Zaltsman, County Counsel's Office, Civic Center
   b. [✓] *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
      Business or residential address where person was served:
      County Counsel's Office, 3501 Civic Center Drive, San Rafael, CA
   c. [ ] *(Complete if service was by fax or electronic service.)*
      (1) Fax number or electronic service address where person was served:
      (2) Time of service:
   [ ] The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means *(specify):*
   a. [✓] **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

Form Approved for Optional Use
Judicial Council of California
POS-040 [Rev. July 1, 2011]

Code of Civil Procedure, §§ 1010.6, 1011, 1013, 1013a, 2015.5; Cal. Rules of Court, rules 2.260, 2.306
www.courts.ca.gov

CASE NAME:	CASE NUMBER:
Community Ventures Partners, Inc. vs. County of Marin	CV 1404718

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one):*

(1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state):*

c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 9-7-15

Edward F. Yates
(TYPE OR PRINT NAME OF DECLARANT)

▶ [signature]
(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____
(NAME OF DECLARANT)

▶ _____
(SIGNATURE OF DECLARANT)