

## Law Office of Edward E. Yates

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September 18, 2014

Matthew Hymel, County Administrator/Clerk of the Board  
Marin County Board of Supervisors  
3501 Civic Center Drive, Suite 329  
San Rafael, CA 94903

Dear Mr. Hymel and Members of the Board,

I represent Community Venture Partners, Inc., (CVP) in regard to the 2015-2023 Marin County General Plan Housing Element amendment (Housing Element) and related matters.

This letter is to call your attention to what was a substantial violation of central provisions of the Ralph M. Brown Act by the Marin County Board of Supervisors (Board). This letter also demands that you cease and desist such violations. The nature of the violation is as follows: in its meeting of August 19, 2014, the Board planned for and engaged in extensive discussions of an item that was not on the agenda and for which no public notice was given. The item was the 2015-2023 Housing Element.

Government Code Section 54954.2(a) (2) states that "No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that 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." The actions taken by the Board were not in compliance with Section 54954.2(a)(2) because there was no notice to the public on the posted agenda or any other place for such an agenda item.<sup>1</sup> Further, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon. Government Code § 54954.2(a)(1). No such description was provided to the public.

Both Brown Act obligations were violated on August 19 because the Board made no such notice or description and yet proceeded to: 1) discuss Housing Element issues at length; 2) request and listen to a formal presentation by the Community Development Director Brian Crawford; 3) engage in lengthy discussion with and questions for Mr. Crawford and staff member LeeLee Thomas; and 4) discuss and opine on Housing Element issues that are currently under consideration by the County. (See Attachment.) In all, the Board spent approximately 26 minutes discussing and opining on Housing Element issues. The lengthy, formal presentation requested by a Board member and the lengthy opinions and responses by the Board clearly do not qualify as making "a brief announcement, or "a brief report on his or her own activities," or asking "a question for clarification" as allowed for under Government Code Section 54954.2(a)(1-2).

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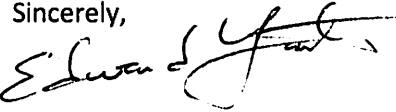
<sup>1</sup> Also, there was no finding made by the Board that urgent action was necessary on a matter unforeseen at the time the agenda was posted. Government Code § 54954.2(b)."

In addition, the video of the August 19<sup>th</sup> meeting shows a clear *intent* to have an unnoticed, lengthy, formal agenda item on the subject of the Housing Element. During the Supervisors Report agenda item, Supervisors Rice and Arnold described the need to educate the public on the subject of the Housing Element and Ms. Rice stated that Mr. Crawford “is here to discuss the Housing Element process.” County Administrator Mathew Hymel introduced Mr. Crawford by stating that “*Supervisor Rice had asked* the Community Development Director, Brian Crawford to discuss the Housing Element.” (Emphasis added.) Neither Mr. Crawford nor Ms. Thomas had any reason to be at the Board meeting (no non-consent agenda items) and Mr. Crawford and Ms. Lee only appeared at the meeting during this discussion item.

The formal and prepared nature of the presentation was made clear by Mr. Crawford reading a prepared, written presentation on the topic of the Housing Element. Mr. Crawford spent over 11 minutes reading off prepared notes regarding the Housing Element. This was in essence a staff report that the Brown Act requires be distributed to the public 72 hours before the meeting or made available at the meeting. Government Code § 54957.5(b). This was not done. Mr. Crawford ended his discussion by thanking the members of the Board “for the opportunity to address your Board on the status of the Housing Element.”

Further demonstration of intent to evade the Brown Act is the fact that much of the topic of Mr. Crawford’s presentation was a point by point response to comments made by my client in a previous letter to the County regarding the Housing Element. (See Letter from Bob Silvestri, Community Ventures Partners, to Marin County Planning Commission, August 12, 2014.) In particular, given that the intent of Supervisor Rice and Mr. Crawford was to discuss my client’s letter, it is even more egregious that my client, a representative of my client or any other member of the public were not given the required notice.

I request written notice that your Board and other County bodies will cease, desist from, and not repeat the past actions that violate the Brown Act.

Sincerely,  
  
Edward E. Yates

Cc: Steven Woodside, County Counsel

ATTACHMENT TO E YATES SEPTEMBER 17 LETTER TO MARIN COUNTY BOARD OF SUPERVISORS

**Summary of Certain Comments Made at August 19, 2014 Board of Supervisors Hearing Regarding 2015-2023 Housing Element**

Minutes 4:00-6:55

Supervisor Rice: speaks about the Housing Element. This is not a report from a subcommittee or personal interaction or Board assignment.

Minute 4:17

Supervisor Rice: "I am glad to see Mr. Crawford here to speak about the process."

Minute 5:18

Supervisor Rice: "I just wanted to make one more comment on this item."

Minutes 6:55- 9:17

Supervisor Arnold: speaks about the Housing Element. This is not a report from a subcommittee or personal interaction or Board assignment.

Minute 14:40

County Administrator Hymel: Supervisor Rice has asked the Community Development Director Brian Crawford to discuss the housing element.

Minutes 14:50-25:40

Community Development Director Brian Crawford reads off prepared notes and discusses specific timelines, policies and legal issues regarding the housing element. Mr. Crawford also referenced a meeting with County Counsel (Minute 18:50) where he received advice regarding issues brought up by Community Ventures Partners in recent letters.

Minute 14:50

Community Development Director Brian Crawford: "Thank you members for the Board for the opportunity to address your Board on the status of the housing element."

Minute 25:30

Community Development Director Brian Crawford: "With that I'll complete my comments."

Minutes 25:50-30:00

Question and Answer by Board Members to Community Development Director Brian Crawford and staff member LeeLee Thomas.

Minutes 1:07-1:12:30

Comments by all Supervisors regarding Mr. Crawford's discussion of housing element and opinions regarding appropriateness of current housing element process and proposal.