

## Minutes for the Gathering of the Co-ops Event

Feb 6<sup>th</sup>, 2016, at Atchison Village Mutual Homes, Richmond

Topic: **Your Co-op By-Laws: Are they up to Date and in Compliance with State Law?**

Rick Lewis gave a brief introduction and mentioned that Bay Area Community Land Trust has been organizing these events every three to six months for the past six years, and that this is the 15<sup>th</sup> Gathering of the Co-ops event. He thanked Atchison Village for so sponsoring the event and allowing us to use their beautiful community hall.

We went around the room to ask each person to give their name and where they live, and there were approximately sixty people in attendance representing the following cooperative living communities:

Walnut House Co-op, Temescal Commons Cohousing, Mariposa Grove Cohousing, Parker Street Co-op, Oregon Park Senior Co-op, Savo Island Cooperative, Berkeley Town House Senior Cooperative, Ninth Street Co-op, Oakland Law Cooperative, Ignacio Home Owners Cooperative, Toad Hall, Prudence Crandall House, Phoenix Commons, Brown Shingle Collective, Berkeley Cohousing, and Atchison Village Mutual Homes. Atchison Village residents were by far the largest contingent present at the event and we were very excited that so many residents turned out for the event and participated in the discussion.

Next, Gretchen Blais gave a presentation about the history of Atchison Village. The co-op has 450 individual homes in a beautiful setting with yards, a park, and a community building. The housing was built in 1941 to house workers in the World War II war industries, primarily administrative and supervisory workers for the shipyards building the Liberty Ships at the Richmond shipyards nearby. Atchison Village was recently officially named as part of the Rosie the Riveter Home Front National Historic Park.

There were twenty other housing projects built by the federal government for war industry workers during WWII, but after the war, the government was planning to demolish them. The residents at Atchison organized and raised the money to buy the houses from the government for a total of \$1.5 million in 1956, and organized as a co-op. Most of the other war housing was demolished except for two others, Nystrom Village and Liberty Village, that survive to this day.

Gretchen explained that Atchison has an 11-member Board of Directors that governs the co-op, as well as five maintenance workers who provide repairs and maintenance, three part-time staff people, an office manager, and a general manager.

There has been controversy over whether Atchison is a common-interest development like other co-ops and condo associations, which are governed by the Davis-Stirling Act. Ron Kane, the Board

President, explained that a lawsuit was brought against Atchison by a resident claiming that the Board was not following the provisions of the Davis-Stirling Act in running the co-op, but a judge ruled that Atchison was not covered by Davis-Stirling and was not a common-interest development. Since then, however, Atchison's lawyers have advised that the co-op must comply with all aspects of Divis-Stirling and that apparently the judge was incorrect.

The next speaker was Hazmik Geghamyan, an attorney with Oakland Law Cooperative. She asked for a show of hands of co-ops that are currently in the process of amending their By-Laws, and many people present raised their hands, and a few said they had not revised their By-Laws in decades and it was long overdue. Hazmik explained that By-Laws must be in compliance with state law, but that the law has changed quite a bit over the years, so many co-ops are finding that their By-Laws have not kept up with these changes and they are now out of compliance and need to update them. She also explained that a different Civil Code governs Non-Profit Corporations than governs Public Benefit Corporations, so your attorney can advise you which code applies to you. She advised that you should limit what you include in your By-Laws to the most essential items that belong there. She advised that co-ops put everything else in your Operations Manual or Policy Manual. This is because By-Laws are difficult to amend, the process is cumbersome, so only include the key things in By-Laws that are likely to remain true over time. Other co-op documents, such as your Policy Manual, are much easier to amend, so put things in that Manual that are likely to change or need revisions.

Hazmik has developed a checklist of the things that should or must be included in your By-Laws. For instance, Indemnification and Liability provisions are a must, this is a section written into the By-Laws that protects individual Board members from liability when acting on behalf of the co-op in their role as Board members. While the co-op may be sued, no one would be willing to serve on the Board if each Board member was also at risk of being sued. The By-laws should also specify clearly that the Board cannot allow any voting by proxy, and that there can be no non-voting Board members, as these are state law and all co-ops must comply. Another important section in the By-Laws should clarify the co-op's decision making process, and whether a majority rule is needed or a two-thirds vote, or some form of consensus or modified consensus, as well as who has voting rights. By-Laws also should define the process for amending the By-Laws, and she suggested using Robert's Rules of Order for this process, since Robert's Rules is more straightforward and transparent. This process involves a written proposal stating any proposed amendment and the rationale for that amendment and why it is needed, which will be mailed to all co-op members in advance. The amendment can be voted on by mail or by a vote at a meeting of the members. There was some confusion about what is considered a quorum.

[Note: The following was added after the meeting: Hazmik clarified that she feels it's best to require two-thirds of the members to vote in favor of an amendment for it to pass. However,

research showed that under California Corp. Code Section 5034, if it is not otherwise stated in your bylaws, members may approve an amendment if a majority of the votes are in favor at a duly held meeting at which a quorum is present. It is therefore especially important that the bylaws state what percentage of votes will be required to pass an bylaws amendment. It is also important to note that the Davis Stirling Act (5100(a)) requires amendments to all governing documents to be voted on under their rules, which includes mailing out ballots 30 days before the vote.]

Rick Lewis gave a presentation about the co-op's Policy Manual. He explained that all of your co-op's day to day policies and rules should be in the Policy Manual. By-Laws are meant to be hard to amend and likely to remain consistent over time. However, other things that may change should go in the Policy Manual. For instance, he said that the By-Laws should say something like "The Board may convene any and all Committees as needed." But the Policy Manual might list all the Committees that currently exist, and can amend the Manual if one Committee is disbanded or if a new Committee is created. Rick explained that a "Rules Change" is different than a "By-Laws amendment," because a Rules Change modifies the policies laid out in the Policy Manual, but a By-Laws amendment makes a permanent change in the By-Laws. The procedure for a "Rule Change" is specified in the Davis-Stirling Act and must be followed by all co-ops: the members must be given the proposed Rule change at least 30 days in advance in writing and members may attend the Board meeting to speak for or against the proposed Rule Change, but ultimately the Board will vote on it rather than the members.

All Rules Changes should be added into the Policy Manual as soon as possible, to make sure they are incorporated rather than just recorded in the Board Minutes, otherwise they will be lost and the Board will have to discuss it and vote on it all over again.

Rick then made a short presentation on how co-ops can get started on the process of amending their By-Laws. He recommended a process that includes the following elements:

- 1) Appoint a By-Laws Committee, made up of members as well as a few Board members.
- 2) The Committee will meet regularly, read through the By-Laws carefully and do research. They will determine what sections work well, which are out of compliance with State law or are not working, and which are inconsistent with current practices in your co-op.
- 3) The Committee should conduct meetings to explain the process and get member input, and prepare a survey to be distributed to the members not able to attend meetings.
- 4) Based on the By-Laws Committee's research and the member's input, the Committee will write up proposals to revise the By-Laws through amendments.
- 5) The Committee will consult with the co-op's attorney or an attorney with expertise in this subject, to make sure that proposed By-Laws amendments comply with state law.
- 6) Under the Davis Stirling Act, a ballot is mailed to each co-op member 30 days in advance, listing all the proposed amendments to the By-Laws. The members will vote the whole package up or down, rather than voting on each amendment separately.

He said that many co-ops feel intimidated by the idea of even looking at the By-Laws, it seems like such a big process that they don't even want to get started on it and so they put it off. He suggests: don't delay, just get started and take it slowly and you'll get through it eventually.

To give us all a real-life example, Gretchen told the group about the process that Atchison Village has been engaged in for the past few months. The Board appointed a By-Laws Committee of four Board members and four volunteer co-op members. They have been meeting twice a month. They have also been soliciting input from the members through meetings as well as a dialogue in the Atchison Village newsletter, which has grown from five pages long to fifteen pages long now that the By-Laws are being discussed. It has been a challenging process because the By-Laws were written in 1957, so many sections are obsolete. They are seeking an attorney to assist in the process, as the co-op's own attorney has already told them that there are several sections that are out of compliance with current state law.

At this point, the floor was opened to discussion, and here are some of the issues raised.

A few Atchison residents spoke up and described some By-Laws changes that they believe have been made by the Board without the members voting on them, such as changing the quorum required for meetings, and some voting procedures. One member said that the Board has talked about changing the Articles of Incorporation, which defines the mission of the co-op, and some members are alarmed by this.

Betsy Morris and Mary Carleton from Berkeley Cohousing explained that they read one short section of the By-Laws aloud at each of their membership meetings, and discuss it briefly and answer questions about it to make sure people understood that section. This has helped identify what amendments may be necessary. They talk about each proposed amendment and try to reach consensus on each one. This has made the process much less overwhelming.

Jonathan Pool from Berkeley Town House pointed out that after you amend your By-Laws, you may have to amend your Occupancy Agreement, Operations Manual, and CCR's, because now they may say something different than your By-Laws. Rick Lewis mentioned that the By-Laws legally trump most other documents, but agreed it is important to make sure all documents are internally consistent.

Tim Huet from Mariposa Grove mentioned they had just finished rewriting their By-Laws. He also mentioned that Arizmendi Cooperatives has started a new worker co-op that is a **Construction and Maintenance Co-op**. This worker-owned co-op is available to do repairs, maintenance, and construction projects for housing cooperatives as well as worker co-ops.