

ADVISORY BODY TRAINING

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CITY OF ALBANY
FEBRUARY 25, 2019

SERVING ON CITY ADVISORY BODIES

- ADVISORY BODY ORIGINS
 - City Charter (adopted April 1927)
 - Planning & Zoning Commission, Board of Police & Fire Pension Fund Commissioners
 - City Council Action:
 - Arts Committee, Parks, Recreation & Open Space Commission, Library Board, Social & Economic Justice Commission, Community Media Access Committee, Charter Review Committee, Climate Action Committee, Economic Development Committee, Traffic & Safety Commission

SERVING ON CITY ADVISORY BODIES

- ADVISORY BODY ROLE & FUNCTION
 - Advisory (all)
 - Provide decision-making information including pro/con analysis to the City Council regarding City policies and programs within the Advisory Body's scope of responsibility usually based on Council's direction and/or approved work plan

SERVING ON CITY ADVISORY BODIES

- ADVISORY BODY ROLE & FUNCTION
 - Quasi-judicial:
 - Planning & Zoning Commission
 - Traffic & Safety Commission
 - Parks, Recreation & Open Space Commission
 - Trustee:
 - Police & Fire Pension Board administer the pension fund, orders payments and reports.

SERVING ON CITY ADVISORY BODIES

- TERM

- Usually 2 years in length, with appointee serving through December 31st (45 days interim)
- Appointees needing to resign before the end of a term shall forward a resignation to the City Clerk
- Appointees are automatically removed if the member fails to maintain a residence in Albany or for conviction of a felony
- Vacancies are filled by appointment of the Council

SERVING ON CITY ADVISORY BODIES

- CONDUCT & ADMINISTRATION - ATTENDANCE
 - Attend all meetings
 - Notify staff liaison/Chair of absence a minimum of 24 hours in advance of meeting
 - Excessive Absenteeism shall be cause for removal from an Advisory body:
 - Unexcused absence from three consecutive regular meetings.
 - For bodies that meet monthly or less: absence from four meetings in any twelve month period.
 - For bodies that meet more than once per month: absence from six meetings in any twelve month period.

SERVING ON CITY ADVISORY BODIES

- CONDUCT & ADMINISTRATION - ATTENDANCE
 - Participating Remotely – Teleconference
 - Publicly Accessible
 - Agenda posted on site
 - Meeting End Time
 - Rotation of Chair
 - Contact Info including Emails

SERVING ON CITY ADVISORY BODIES

- CONDUCT & ADMINISTRATION – WORK PLAN
 - Develop Work Plan annual for presentation to the City Council
 - Changes to Work Plan require Council Approval

PUBLIC MEETINGS

- BACKGROUND
 - How staff prepares agendas
 - Public notice
- PUBLIC COMMENT
 - Decorum
 - Emotional audiences
- ROLE OF CHAIR

REPRESENTING THE ADVISORY BODY

- Members should represent the view of the whole group when commenting on matters relating to the Advisory Body.
- Defer any media inquiries to City staff for assistance.
- Be cautious about posting advisory body business on social media

CONFLICT OF INTEREST & ETHICS

– Political Reform Act of 1974:

- Prohibits financial conflicts of interest on the part of advisory body members.
- Recuse within 500 radius of feet of real estate interest.
- Illegal to participate in a decision that will have a material financial effect on advisory body members.

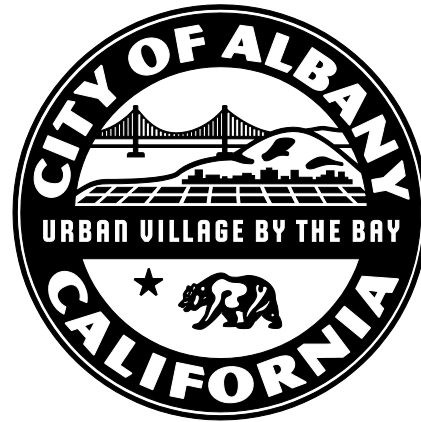
– Code of Ethics

- The City Council has adopted a Code of Ethics intended to guide conduct, to sustain respectful, effective leadership and communication. All Advisory Bodies are to conduct business in an ethical manner.

5 GOLDEN RULES OF AN EFFECTIVE ADVISORY BODY MEMBER

1. Represent the whole City
2. Keep the lines of communication open
3. Do your homework and be thorough in making recommendations
4. Be conscious of the relationship with City Council and City staff
5. Establish a good working relationship with other members

ADVISORY BODIES



The Ralph M. Brown Act

“Life in a Glass House”



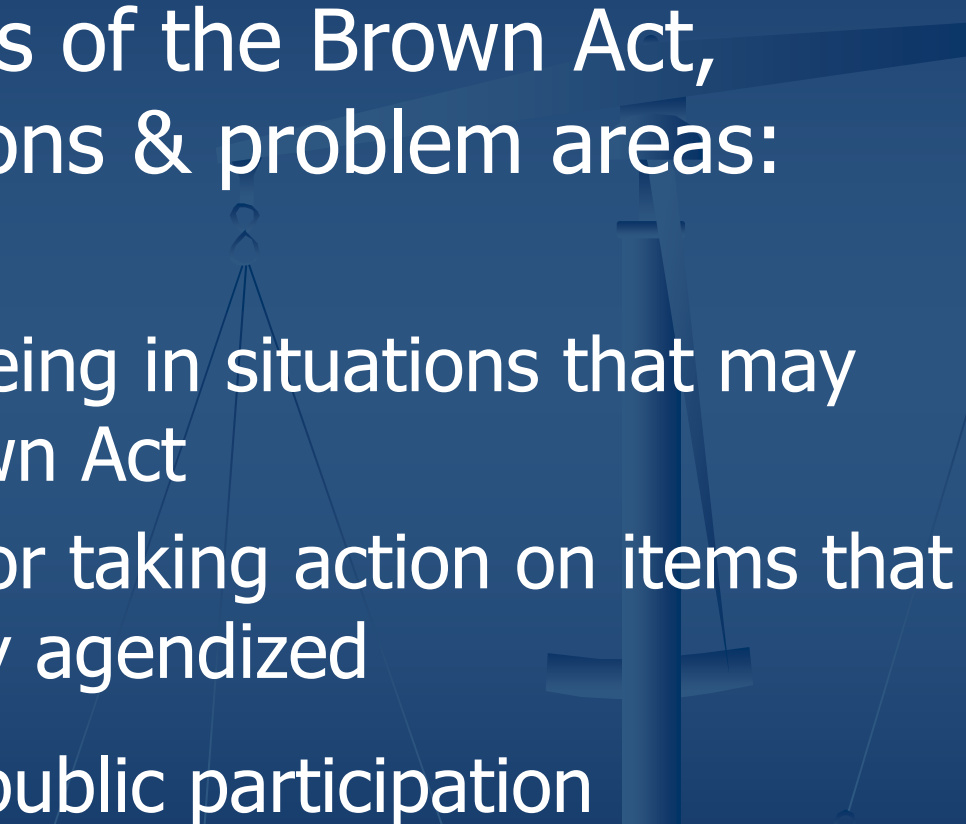


Presented for the City of Albany:

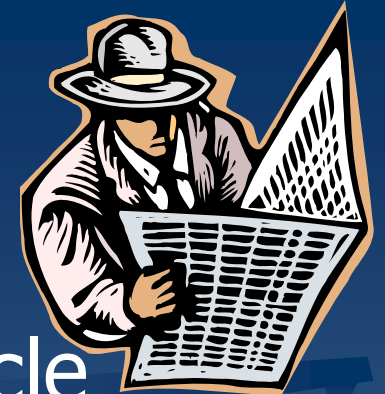
Kat Wellman
Attorney

February 25, 2019

Purpose of Training

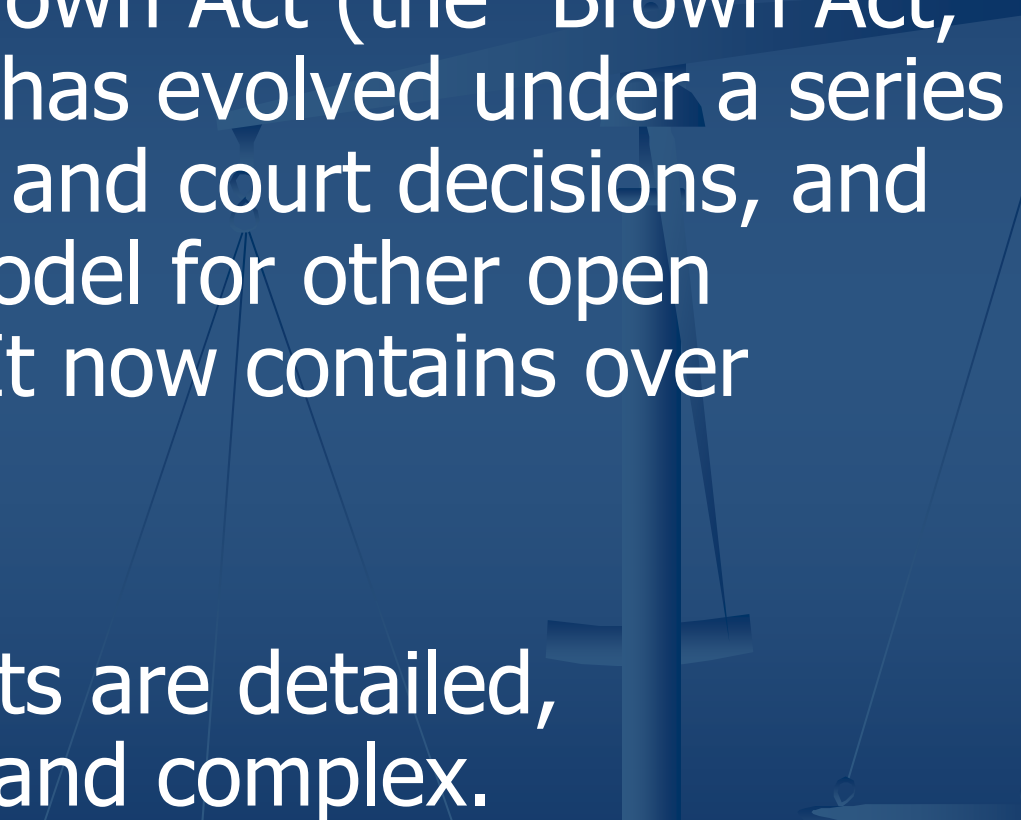
- Explain elements of the Brown Act, potential violations & problem areas:
 - How to avoid being in situations that may violate the Brown Act
 - Not discussing or taking action on items that are not properly agendaized
 - Importance of public participation
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Introduction



- In late 1951, San Francisco Chronicle reporter Mike Harris wrote a 10-part series on “Your Secret Government”.
- Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted a bill; and Modesto Assemblyman Ralph M. Brown carried it to the Legislature; and it was signed into law in 1953 (Government Code §§ 54950 et seq.).

Introduction

- The Ralph M. Brown Act (the “Brown Act,” as it is known), has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws. It now contains over 15,000 words.
 - The requirements are detailed, comprehensive and complex.
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Intent of Brown Act

- “In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

Intent of Brown Act



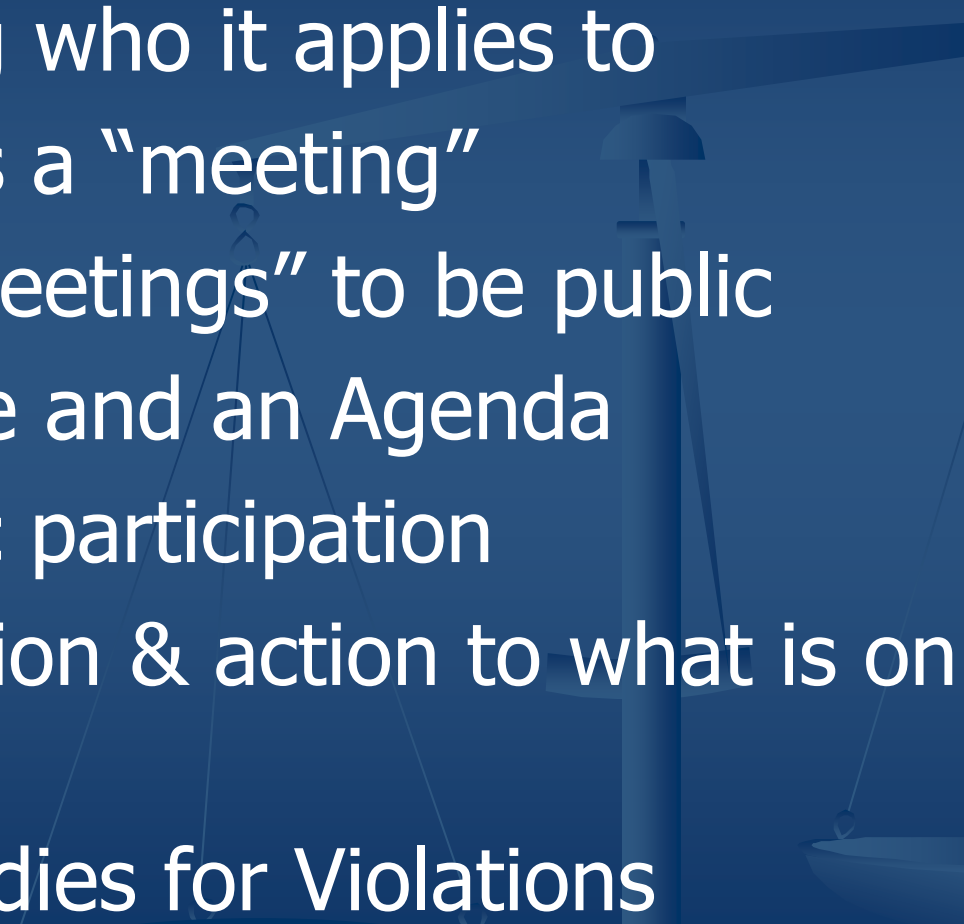
The Soul of the Brown Act:

- The People

The Heart of the Brown Act:

- Government should be open and public

How Does Brown Act Achieve this Goal?

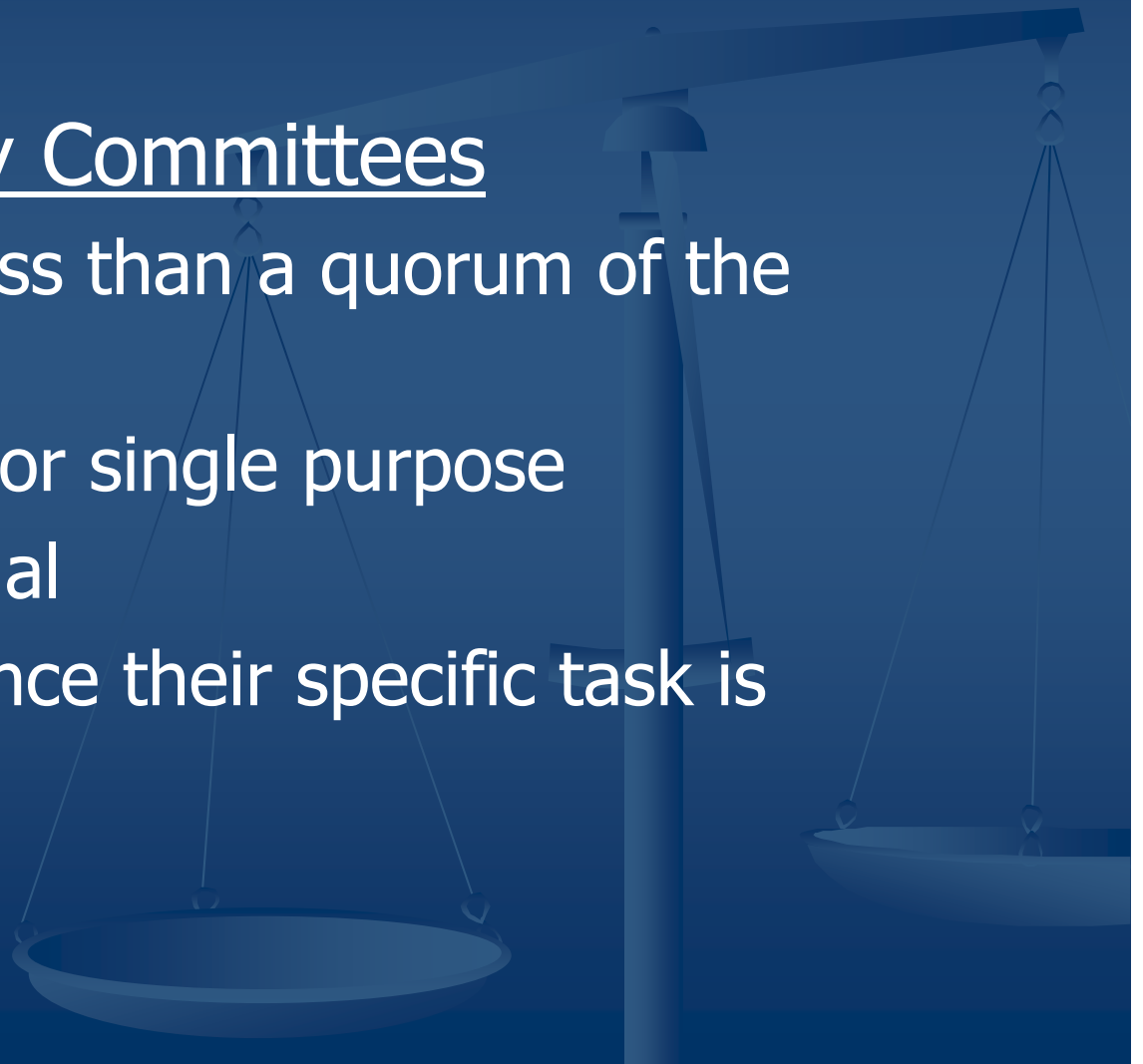
- Broadly defining who it applies to
 - Defining what is a “meeting”
 - Requiring all “meetings” to be public
 - Requiring Notice and an Agenda
 - Requiring public participation
 - Limiting discussion & action to what is on the Agenda
 - Providing Remedies for Violations
- 

Who Does It Apply To?

- Broad Definition of Legislative Bodies:
 - Governing Body
 - Advisory Committees
 - Standing Committees
 - Private Organization created by City
 - Newly Elected or Appointed Officials
- 

Does Not Apply To:

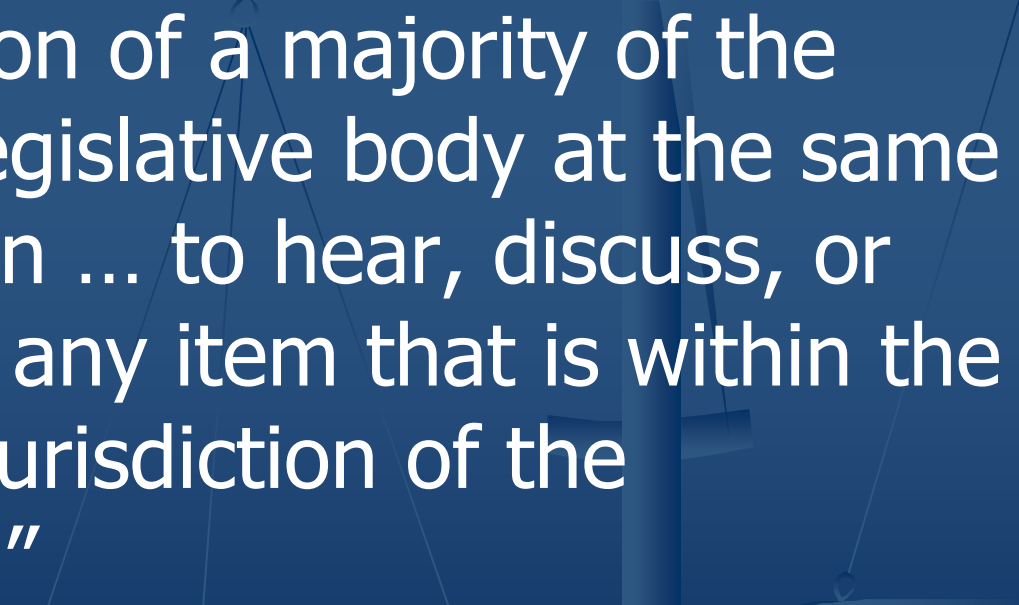
- Ad Hoc Advisory Committees
 - Composed of less than a quorum of the legislative body
 - Serve a limited or single purpose
 - Are not perpetual
 - Are dissolved once their specific task is completed



Definition of a Meeting

Definition is Key:

“...any congregation of a majority of the members of a legislative body at the same time and location ... to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body.”

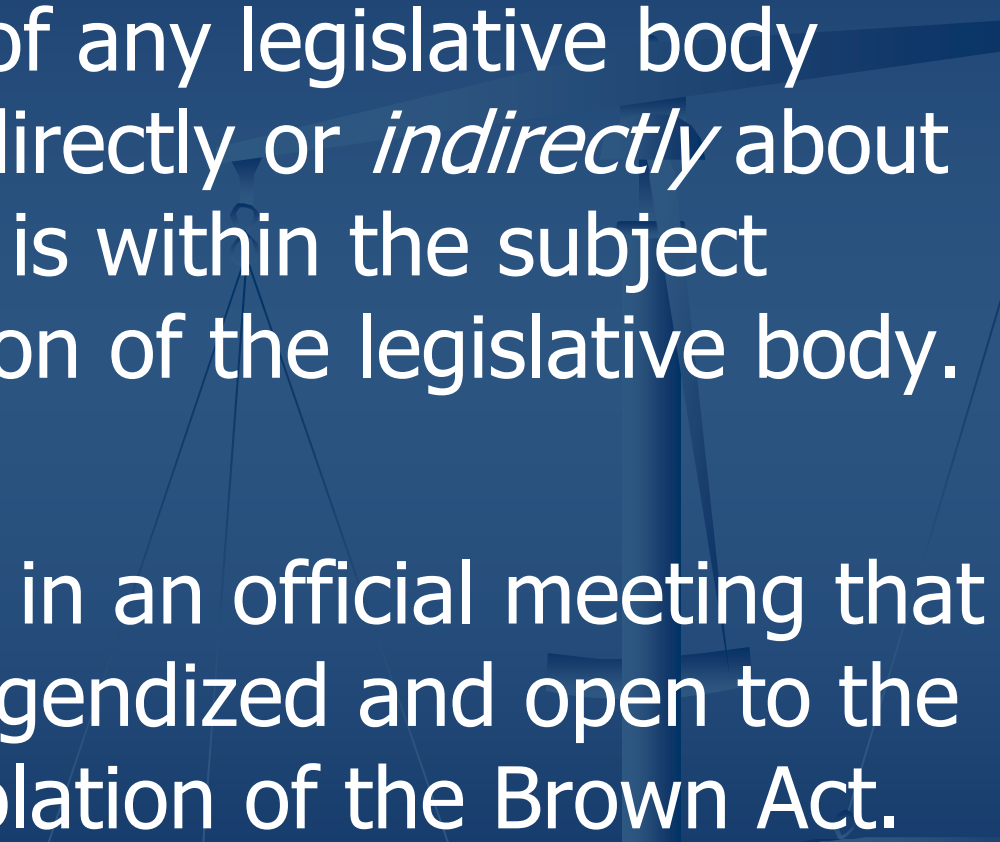


Types of Meetings

- Regular Meetings
- Special Meetings
- Emergency Meetings
- Standing Committee Meetings
- Meetings that Violate the Brown Act



Broad Application of Meeting

- When majority of any legislative body communicates directly or *indirectly* about any matter that is within the subject matter jurisdiction of the legislative body.
 - If not discussed in an official meeting that is noticed and agendized and open to the public, it is a violation of the Brown Act.
- 

Brown Act Exceptions

- Individual Contacts
- Conferences, Training, Workshops
- Community Forums or Meetings
- Meetings of other Legislative Bodies
- Ad Hoc (vs. Standing) Committees
- Social or Ceremonial Events

**But no discussion of issues related to business*

Prohibited Meetings

- The Brown Act provides that a “majority of the members of a legislative body shall not, outside a meeting...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

Meetings that Violate the Brown Act

- Informal Gatherings
- Serial Meetings
 - Daisy-Chain
 - Hub-and-Spoke
- Email or Text Messages Among Members



Application #1: Informal Gathering

- Two newly elected but not yet sworn in City Council members meet for a celebratory breakfast with an incumbent.
- Is this a violation of the Brown Act?
- Yes _____ No _____ Maybe _____

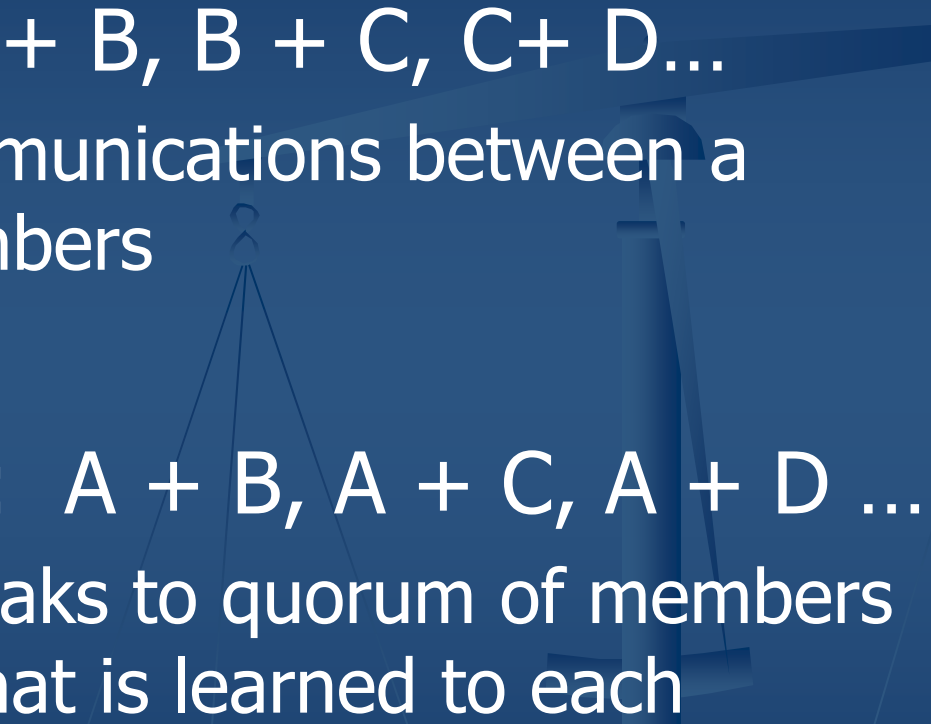
Application #1 Informal Gatherings

Maybe....

....If the discussion turns to any issue involving City business.

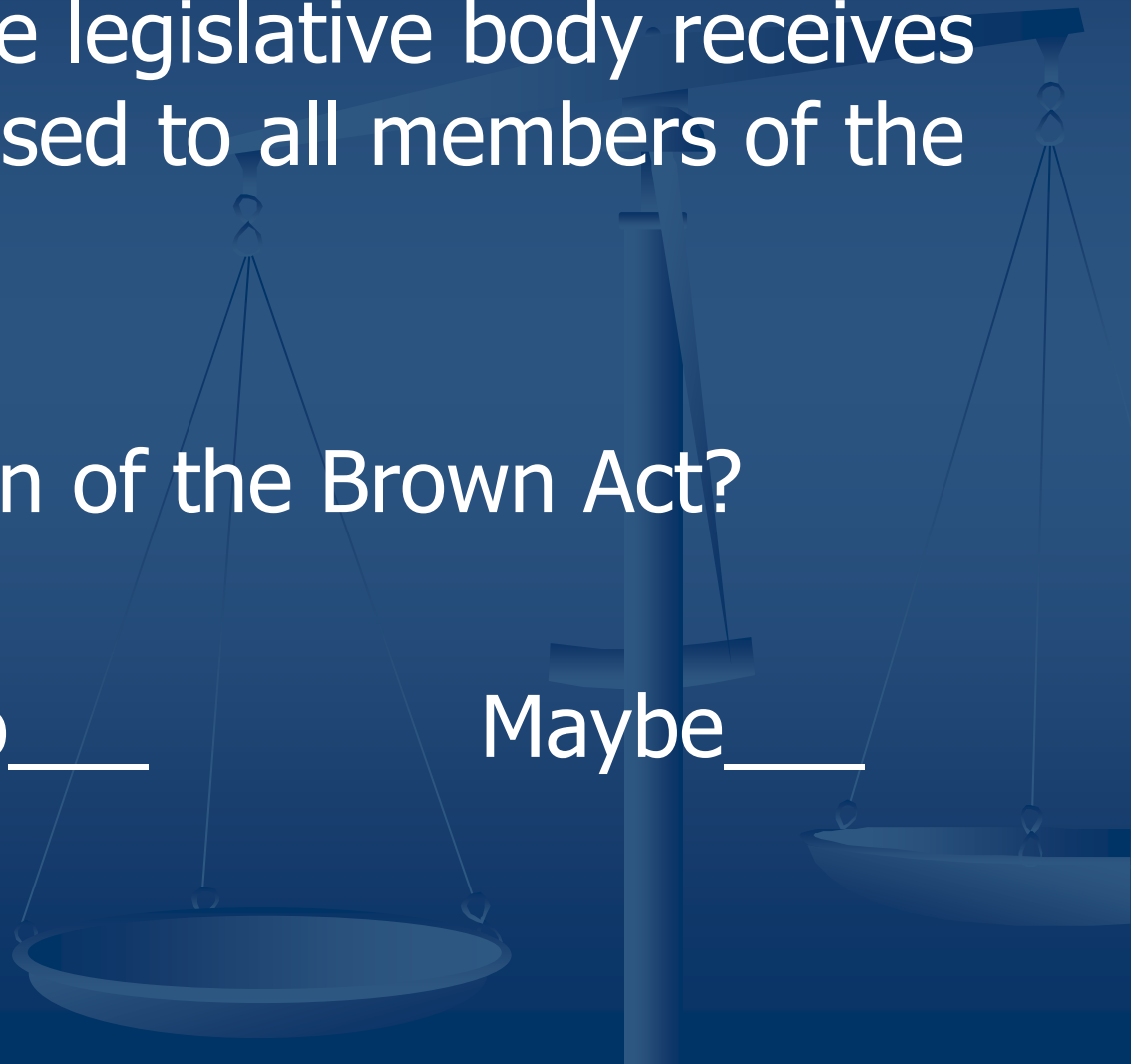


Serial Meetings

- Daisy Chain: $A + B, B + C, C + D \dots$
 - A series of communications between a quorum of members
 - Hub-and-Spoke: $A + B, A + C, A + D \dots$
 - One person speaks to quorum of members and conveys what is learned to each
- 

Application #2 - Emails

- A member of the legislative body receives an email addressed to all members of the legislative body.
- Is this a violation of the Brown Act?
Yes _____ No _____ Maybe _____



Application #2 - Emails

No....If the content of the email pertains only to scheduling of special meetings or training and not other City business.

No...As long as the members do not "reply to all" or reply to a quorum of the legislative body –(counting member replying to email).

TIP: *Email using bcc to legislative bodies*

Situations to Avoid

- Social Media can create problems
 - Blogs
 - Twitter/Facebook
 - Third Party discussion of upcoming vote
 - Discussion between members after or outside of meetings – even less than a quorum can give the appearance of impropriety
- 


Application #3 – Social Media

- The City's web-site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative bodies participate regularly.
- Is this a violation of the Brown Act?
- Yes____ No____ Maybe____

Application #3 – Social Media

Yes....

....because it is a technological device that may serve to allow for the development of a collective concurrence as to action to be taken.

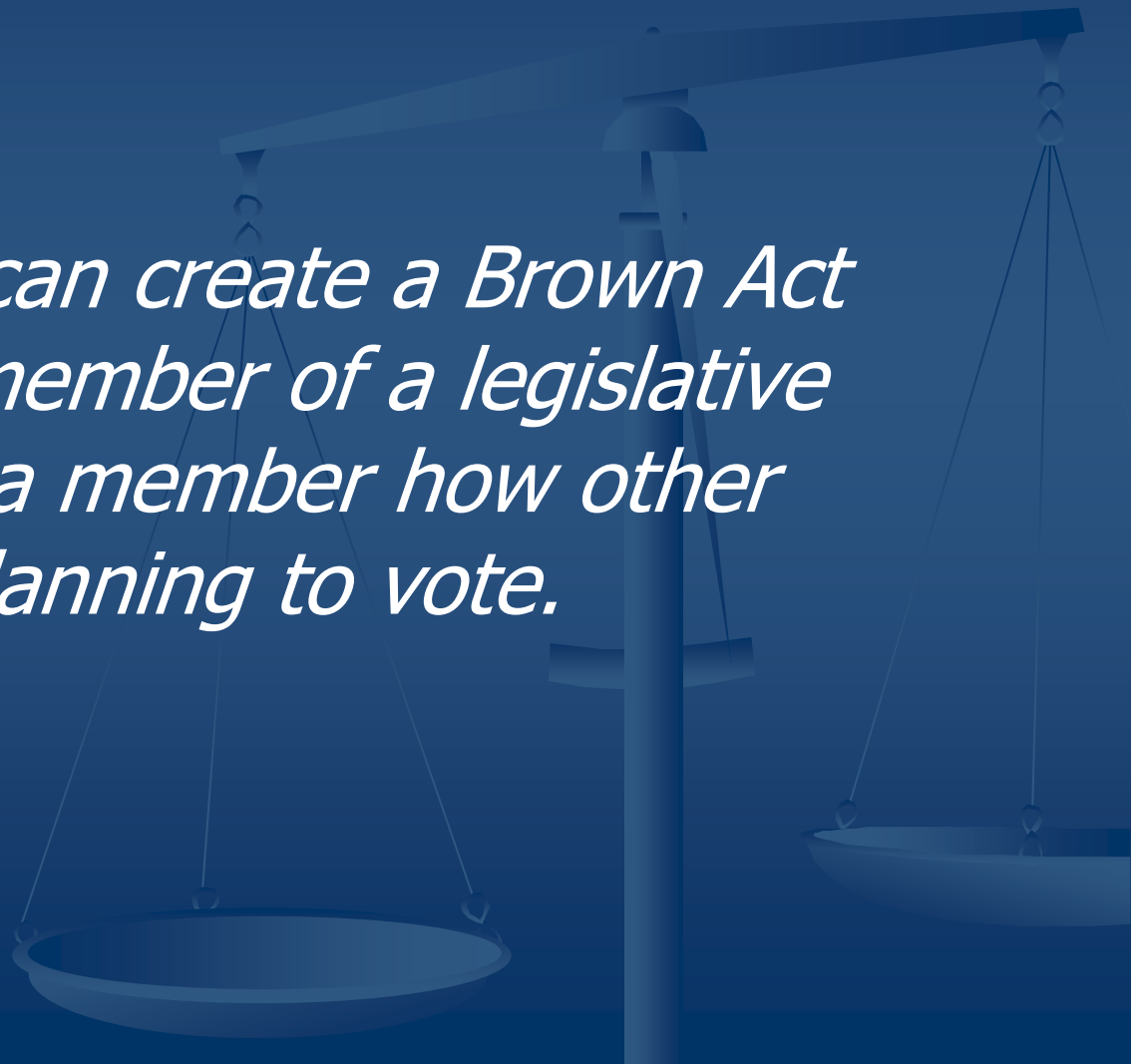


Application #4 - Third Party

- A developer approaches a Planning Commission member and tells her and they need her vote on an upcoming project that that other named members have already said they will vote to approve it.
- Is this a violation of the Brown Act?
- Yes____ No____ Maybe____

Application #4 - Third Party

- *Yes...*
- *...A third party can create a Brown Act violation for a member of a legislative body by telling a member how other members are planning to vote.*



Location of Meetings

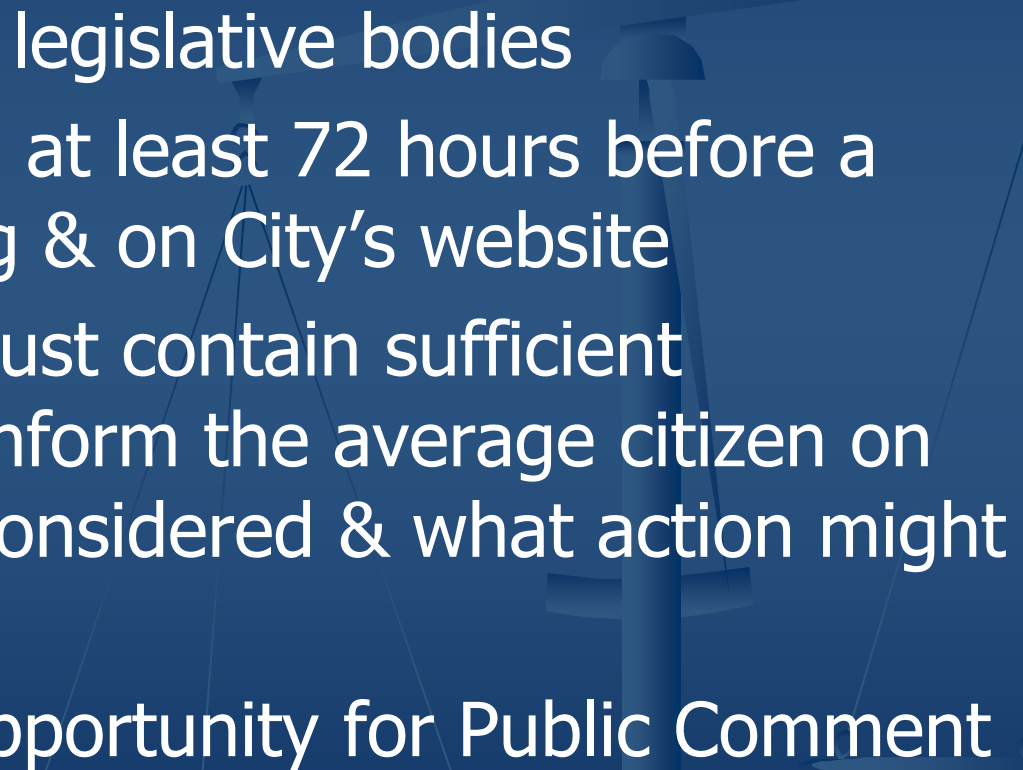
- The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.
- If a member participates by teleconferencing, the location that the member is calling from must be Noticed, Agenda must be posted at the location and be accessible to the public.

Meetings Outside of Boundaries

- An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is to:
 - Inspect real or personal property.
 - Participate in multi-agency meetings or discussions.
 - Meet with elected or appointed officials.
 - Meet in or nearby a facility owned by the agency.
 - Visit the office of its legal counsel.

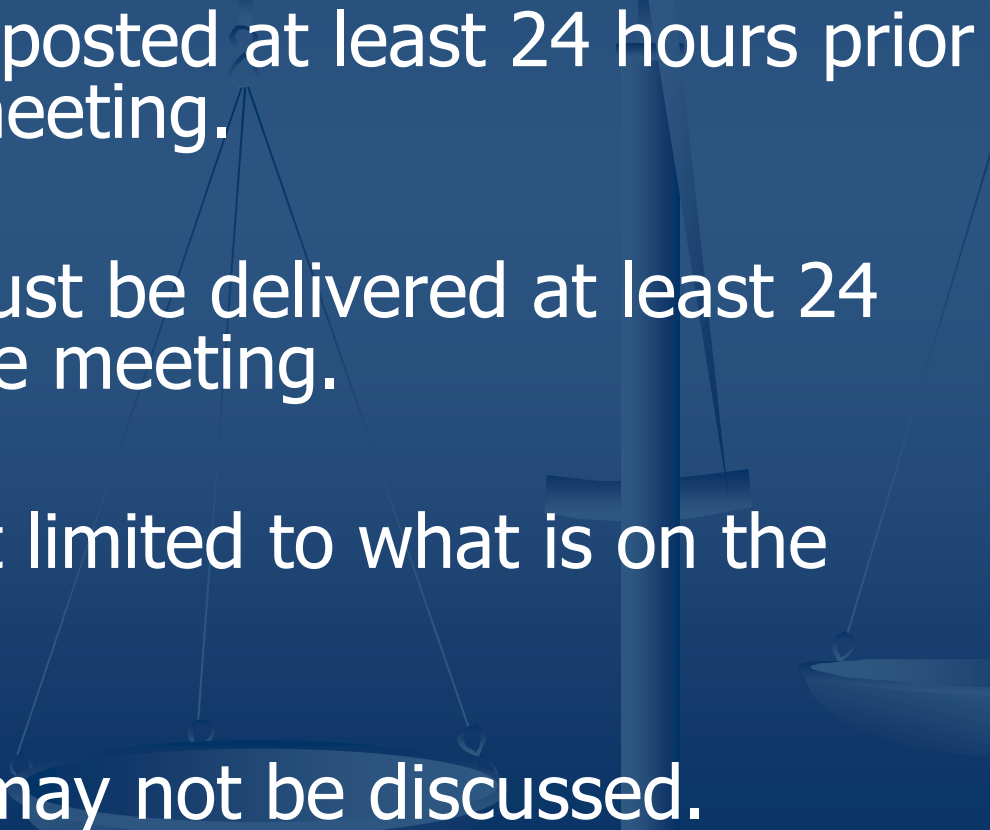
Notices and Agendas

■ Regular Meetings:

- Required by all legislative bodies
 - Must be posted at least 72 hours before a regular meeting & on City's website
 - Agenda item must contain sufficient description to inform the average citizen on what is being considered & what action might be taken
 - Must contain opportunity for Public Comment
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Notices and Agendas

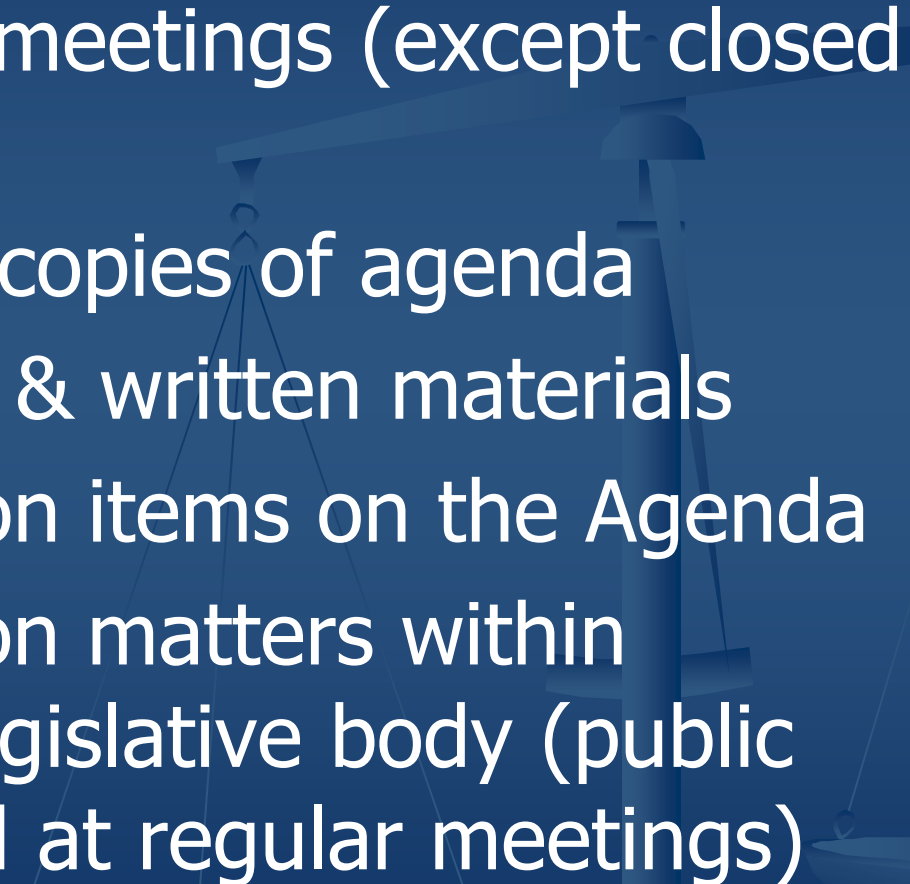
■ Special Meetings:

- Notice must be posted at least 24 hours prior to the special meeting.
 - Media notice must be delivered at least 24 hours before the meeting.
 - Public comment limited to what is on the agenda.
 - Compensation may not be discussed.
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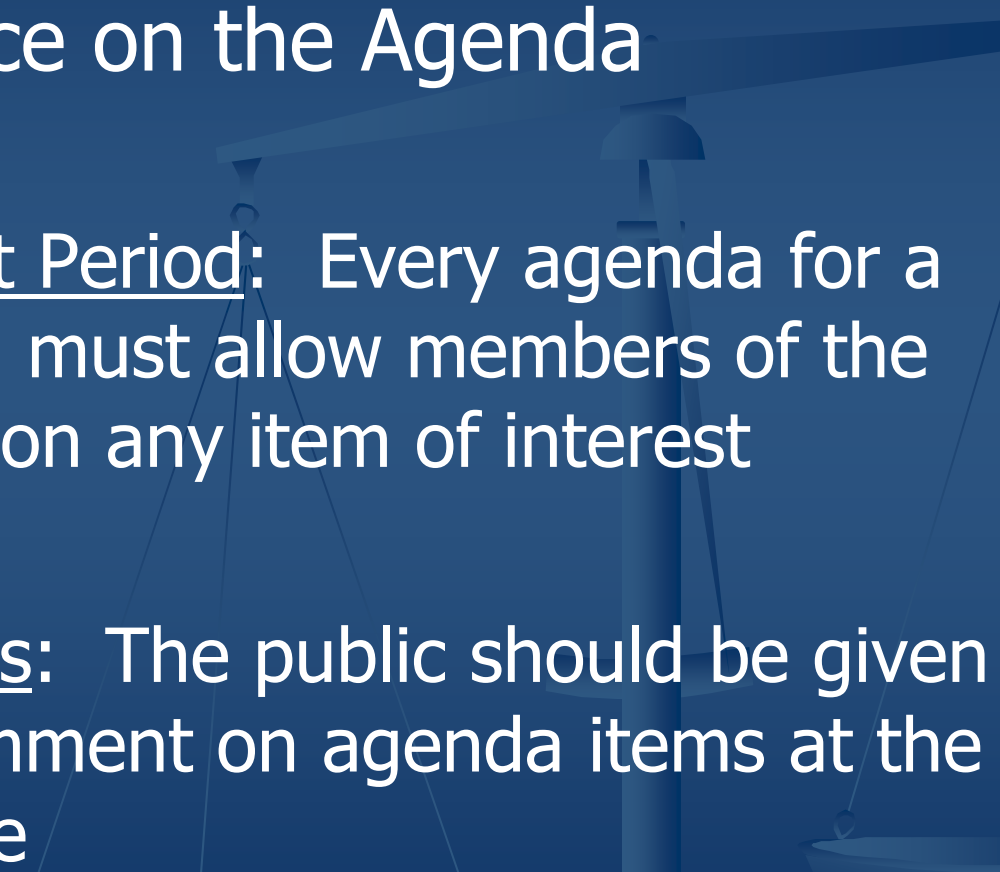
Discussion Limited to Agenda

- No Discussion, Deliberation or Action can be taken on any item that is NOT on the agenda (with limited exception)
- Agenda needs to inform public if item will be acted on or just discussed
- All actions need to be by roll call vote

Public Participation

- Right to attend meetings (except closed session)
 - Right to mailed copies of agenda
 - Right to reports & written materials
 - Right to speak on items on the Agenda
 - Right to speak on matters within jurisdiction of legislative body (public comment period at regular meetings)
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Public Participation

- The Public's Place on the Agenda
 - Public Comment Period: Every agenda for a regular meeting must allow members of the public to speak on any item of interest
 - Agendized Items: The public should be given a chance to comment on agenda items at the appropriate time
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All Persons Shall Be Permitted to Attend

- Information:

- Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise “fulfill any condition precedent” to attending a meeting.
- If such information is relevant and necessary to the subject matter of a public hearing or evidentiary proceeding, it probably can be required.

Response to Public Comment

The public can talk about anything of concern, but the legislative body cannot act on or discuss an item not on the agenda:

- May respond briefly
- Refer the matter to staff
- Direct staff to place item on future agenda

Reports Provided to Public

- Written Reports or Documents relied on by legislative body must be made public
 - At the meeting if prepared by the local agency or a member of its legislative body, or
 - Very soon after the meeting if distributed during the meeting by some other person
 - Posted on City Website

Mailed Agendas & Materials

- Mailed Agenda Upon Written Request:
 - To any person who has filed a written request for such materials.
 - A request for notice is valid for one calendar year and renewal requests must be filed January 1 of each year.



Public May Record Meeting

- The public is expressly allowed to use audio or video tape recorders at a meeting.



Application #5 Public Comment

- During the Public Comment period, an irate member of the public begins criticizing the City Manager, the Police Chief & the City Council, calling them corrupt. May the Mayor interrupt the speaker and have the irate individual escorted from Council Chambers?

■ Yes _____ No _____ Maybe _____

Application #5 Public Comment


- *No....*
- *...The Brown Act protects the right of the public to address any issue pertaining to city business during the public comment period, including criticism of how local business is being conducted.*
 - *Can only remove persons who willfully interrupt and disrupt proceedings.*

Closed Sessions



- In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees.
- The Brown Act prohibits disclosure of confidential information acquired in closed session.

Examples of Closed Session Items

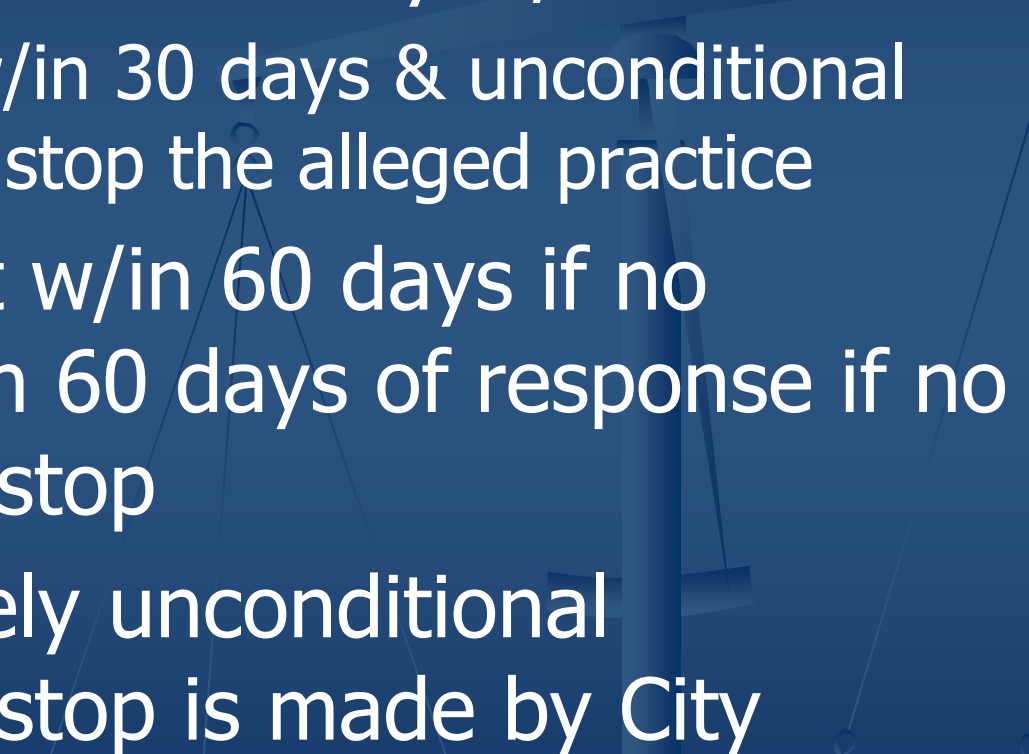
- Litigation – Consult with Attorney
 - Real Estate Negotiations
 - Employment Issues involving Appointed Positions (City Attorney, City Manager...)
 - Conference with Labor Negotiators
 - Public Security
- 

Remedies for Violations



- Invalidation of Previous Action
 - Any person, including the district attorney, may seek to invalidate a legislative body's actions that violate the Brown Act.
- Civil Action
- Criminal Complaints
- Informal Resolution

Remedies

- Cease & desist letter to City w/in 9 months
 - City response w/in 30 days & unconditional commitment to stop the alleged practice
 - Must file lawsuit w/in 60 days if no response or w/in 60 days of response if no commitment to stop
 - No action if timely unconditional commitment to stop is made by City
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Remedies

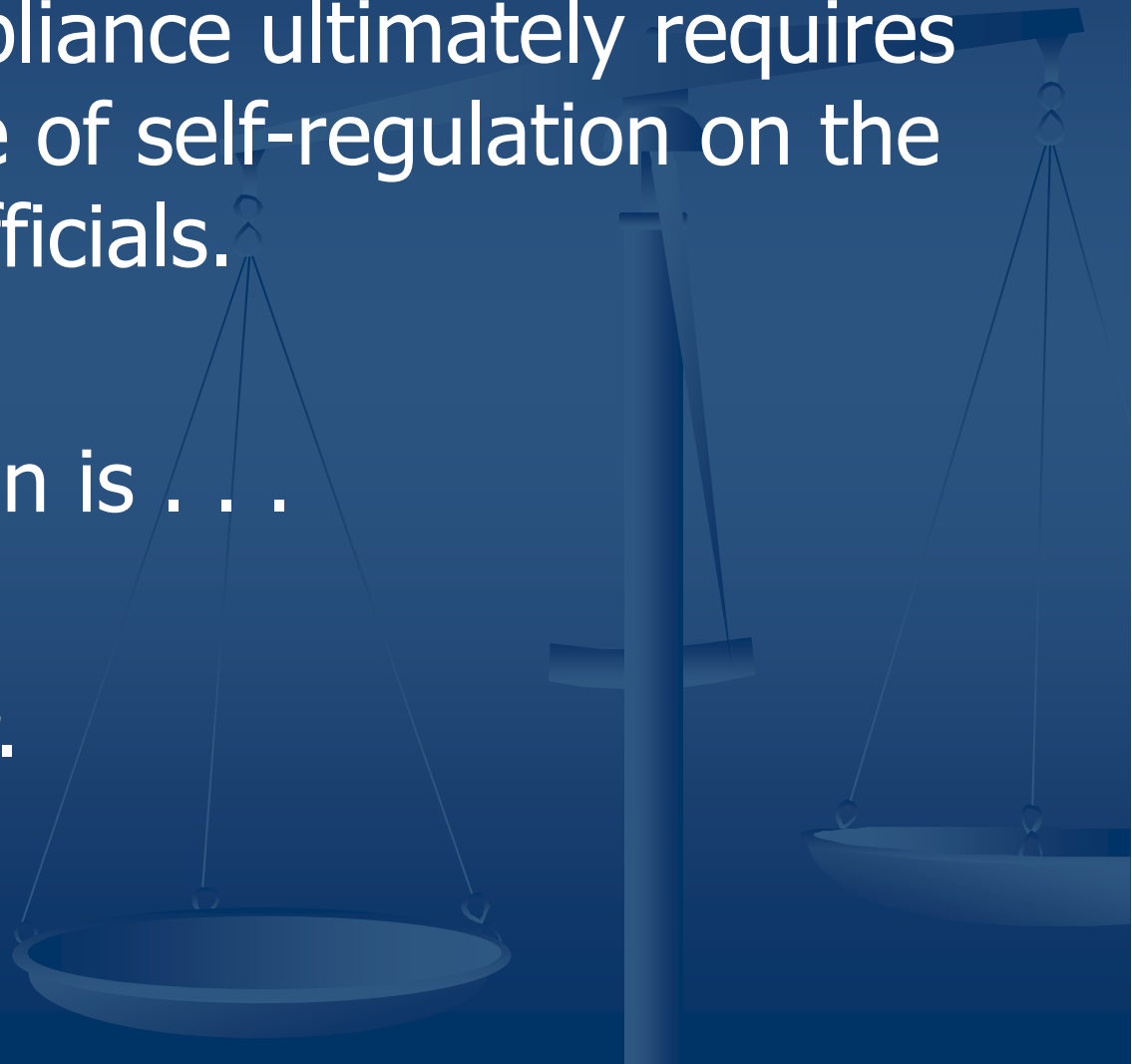


Attorneys fees and costs if City is late in responding or does not provide unconditional commitment to stop alleged practice.


Attorneys fees and costs to City if action is clearly frivolous and totally lacking in merit.

Remedies

- Brown Act compliance ultimately requires a good measure of self-regulation on the part of public officials.
- The best solution is . . .
 . . . prevention.



Conclusion

- Avoid being in situations that may violate the Brown Act outside of regular meetings
 - Be careful to only discuss & take action on items that are properly agendaized
 - Make sure you allow public participation –
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QUESTIONS?

