

Public Meetings: From Brown Act Basics to New Legislation

THURSDAY, OCT 3, 2024 | 12:00 PM – 1:00 PM

**THANK YOU
FOR JOINING US!**



Host & Moderator

MELISSA KUEHNE
Senior Program Manager
Institute for Local Government



WEBINAR OVERVIEW

Welcome & Introductions

Presentation on Open Meeting Laws

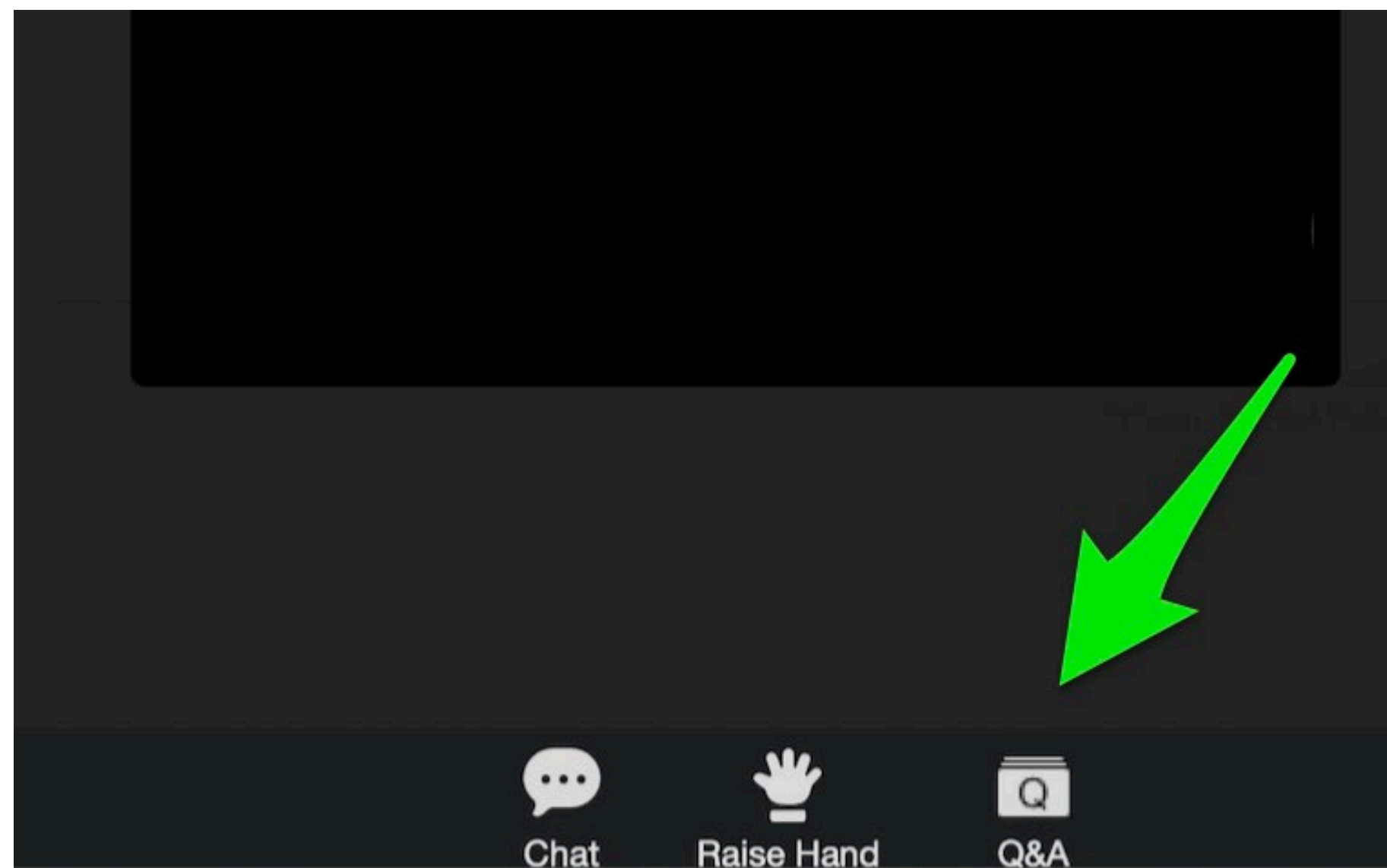
Audience Q&A

Wrap Up & Adjourn

We welcome your written questions and comments in the Q&A throughout the webinar

TECH OVERVIEW & HOUSEKEEPING

- All webinar participants will be on **MUTE** for the duration of the event.
- Please type any questions for into the **Q&A BOX** at any time during the session.



- A recording of the session will be available shortly after the webinar.

ABOUT ILG

NON-PROFIT, NON-PARTISAN AND HERE TO HELP

- The Institute for Local Government is the non-profit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



**California Special
Districts Association**
Districts Stronger Together

ILG'S PROGRAMS AND SERVICES



Our mission is to help local government leaders **navigate complexity, increase capacity & build trust** in their communities

TODAY'S PRESENTER

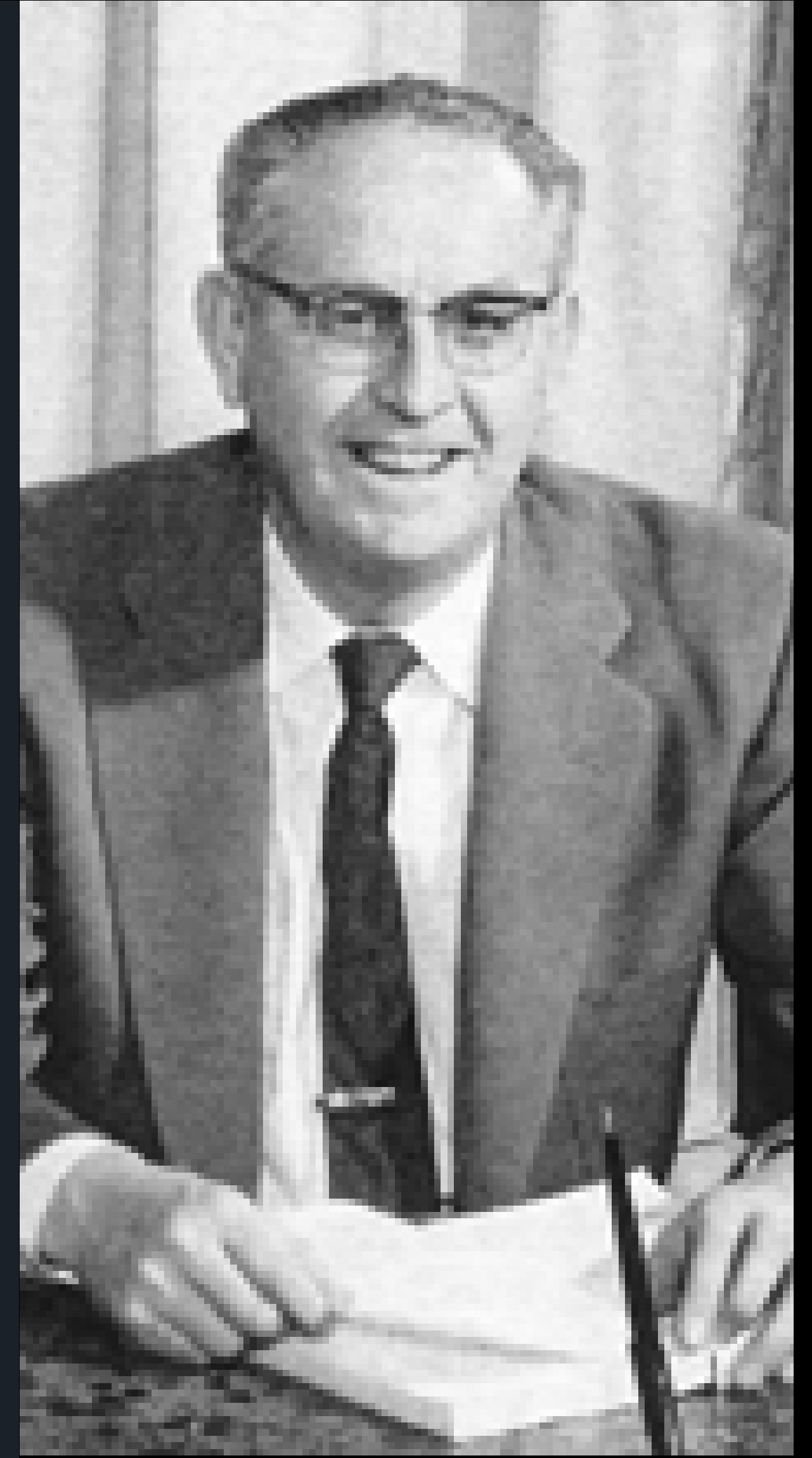


ALEKS R. GIRIGOSIAN
Senior Counsel
Colantuono, Highsmith, & Whatley, PC



Ralph M. Brown Act: Historical Background

“The people of this State do not yield their sovereignty to the agencies which serve them. 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.”



Heart of the Brown Act

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as provided in this chapter.”



What is a “Legislative Body”?

- Governing body of a local agency
- Any commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, that is created by a legislative body

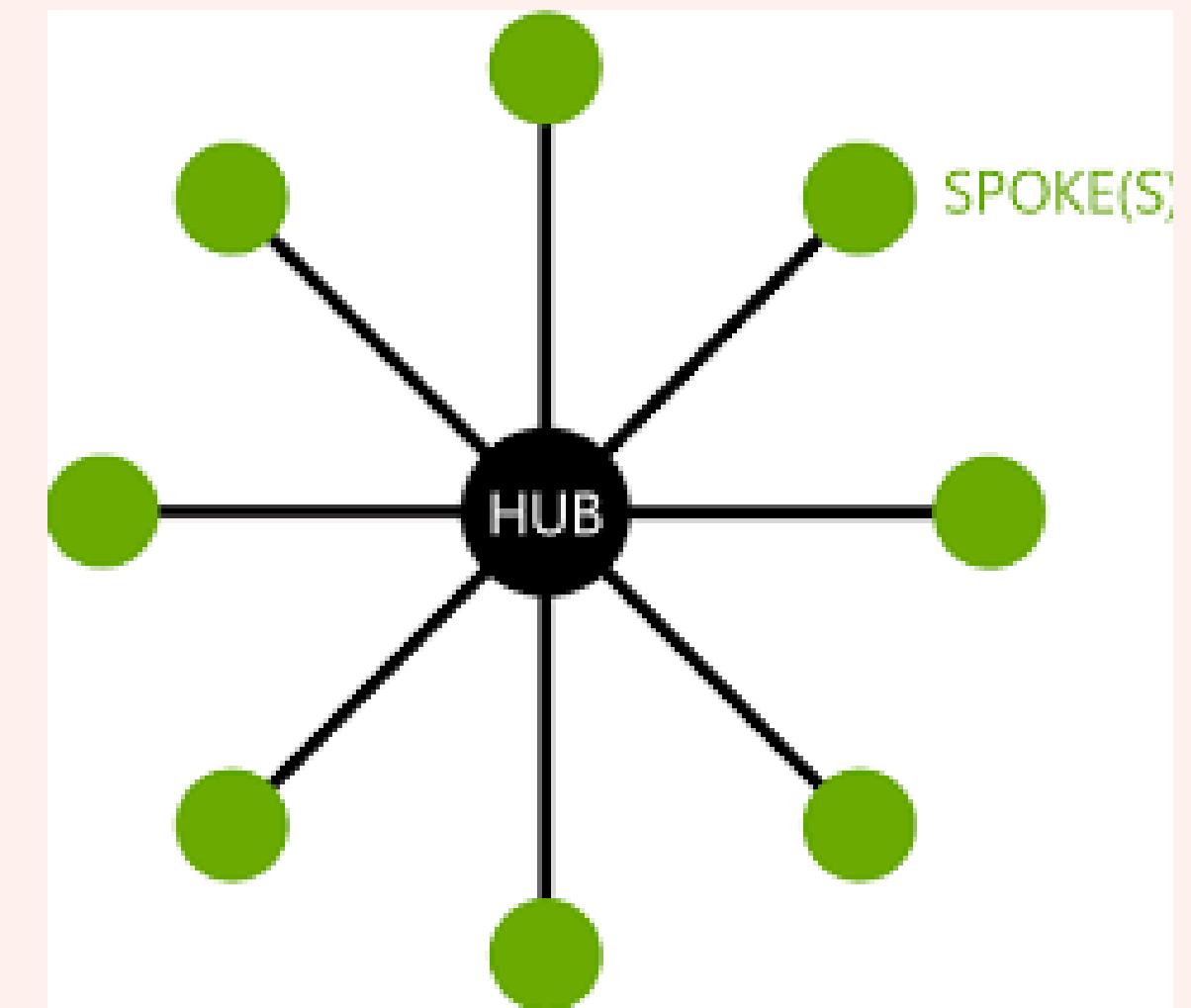
Legislative Body: Exception

- Ad Hoc Committee:
 - Advisory to legislative body
 - Temporary
 - Limited Purpose
 - Composed of less than quorum legislative body's members
- Special advisory groups
 - Created by staff or a single member of the legislative body
 - Advisory to staff or the single member
- Public employees

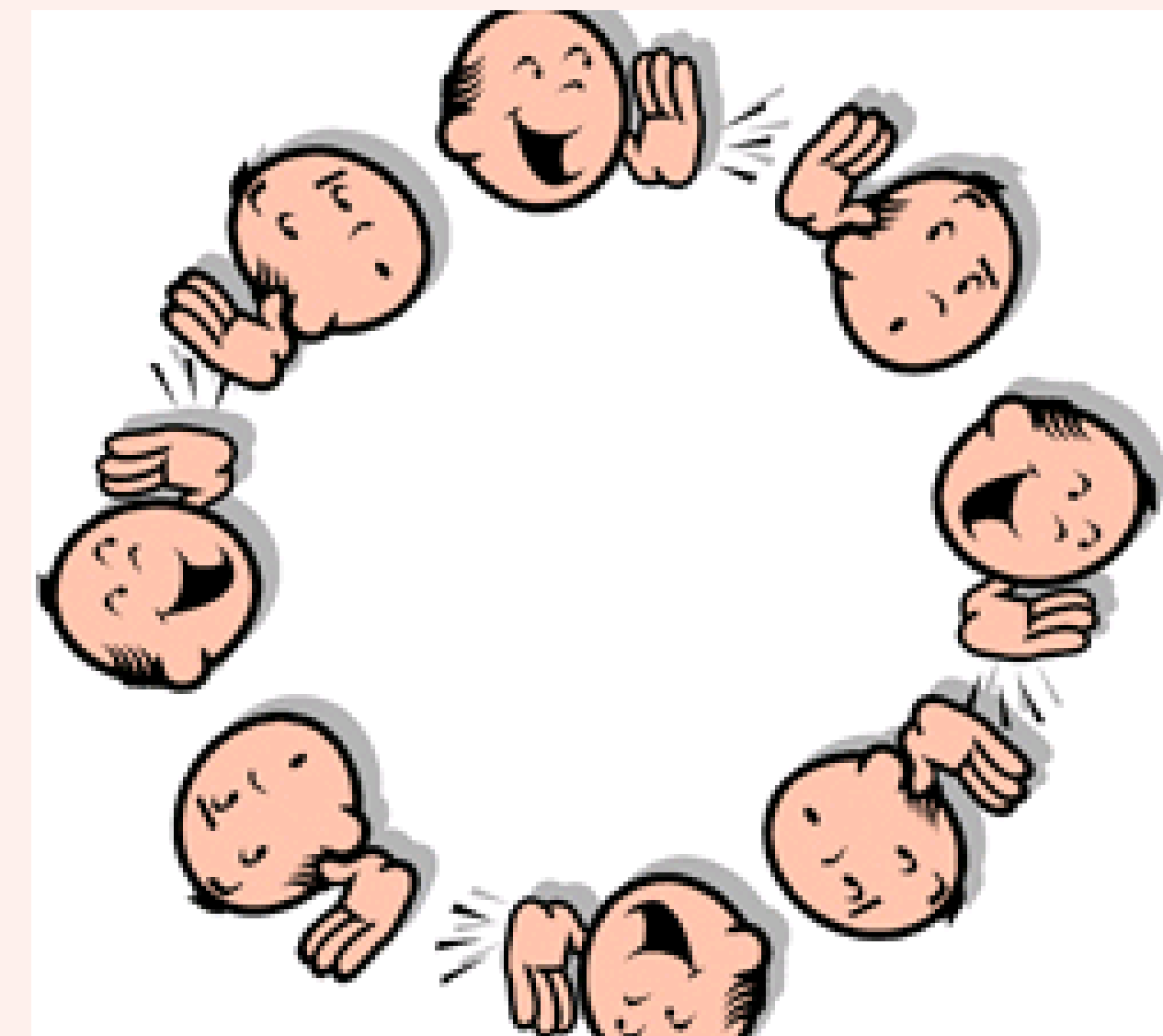
What is a
“Meeting”?

“Any congregation of a majority of the members of a legislative body at the same time and place, to **hear, discuss, or deliberate** upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.”

Serial Meetings



- Hub and Spoke
- Daisy Chain



Examples of Serial Meetings



Serial Briefings



Email



Social Media

Serial Briefings: When does the Brown Act Violation first occur?

1) Planning Director meets with Commissioner A to discuss her concern regarding agenda item #1

2) Planning Director meets with staff and City Attorney to discuss Councilmember A's concerns

3) Planning Director meets with Commissioner B to discuss Commissioner A's concerns

4) Planning Director emails the entire Commission regarding Commissioner A's concerns

5) Planning Director meets with Commissioner C to discuss Commissioner A's concerns

Email: When does the Brown Act Violation first occur?

1) Planning Director emails the agenda to the entire Commission, placing their names in the "To" field of email

2) Commissioner A "Replies All" and asks whether the other Commissioner saw the Laker game

3) Commissioner B "Replies All" and asks whether the Commission can schedule a special meeting

4) Commissioner C "Replies All" and asks whether the Chair can move an agenda item to the next meeting

5) Commissioner D "Replies All" and presents her arguments in support of agenda item #3

Social Media: When does the Brown Act Violation first occur?

1) Commissioner A posts “Happy Birthday” on Commissioner C’s Facebook page

2) Commissioner B likes Commissioner A’s post

3) Commissioner B tags all the Commissioners in Commissioner A’s post

4) Commissioner C appreciates all the birthday love and likes an informative article that Commissioner B shared about a pair of handsome presenters who discuss the Brown Act

5) Commissioner A comments on Commissioner B’s article saying, “We should discuss this article at our next meeting!”

Can I post about City business on social media?

Yes,

- but members of a board cannot use social media to discuss among themselves “business of a specific nature that is within the subject matter jurisdiction of the legislative body.”
- CAN use social media to communicate with constituents
- CANNOT have one member post on discussions by other members
- CANNOT weigh in with “likes” or emoji’s; This counts as discussion.



Exceptions to the Definition of a Meeting

- Engaging individually with other officials
- Attending conferences
- Participating in community meetings organized by third parties
- Attending meetings of another legislative body
- Participating in social or ceremonial occasions
- Attending as an observer a meeting of a standing committee

Is it a City Council meeting?

A town hall organized and led by City staff intended to educate residents about a ballot measure

A councilmember participates as a member of the public and provides public comment at a meeting of a standing committee of the city council

All councilmembers are part of a Facebook group open to all residents and one of them makes a comment on wildlife in the group chat

Meeting Location

Must occur within boundaries of the agency, except to:

- comply with a court order or attend a judicial proceeding;
- inspect real or personal property;
- attend a meeting with another legislative body;
- Meet when the agency does not have a meeting facility within its jurisdiction;
- meet with a state or federal representative to discuss legislative or regulatory issues;
- meet in a facility outside of, but owned by, the local agency if the topic relates to the facility;
- visit independent legal counsel's office for a closed session.

Different Meetings and Requirements

Meeting Type	Publishing Agenda	Setting Meeting Date, Time, and Place	Public Comment for Items Not on Agenda
Regular	72 Hours Before Meeting	Set by resolution or ordinance of the majority during a meeting	Yes
Special	24 Hours Before Meeting	Set by presiding officer or majority vote during or outside of a meeting	No
Emergency	As soon as possible	Set by majority vote during or outside of a meeting	No
Adjourned	No agenda posted if meeting is adjourned for less than 5 days	Set by an order of adjournment adopted by any members present at a prior regular or special meeting	Depends on whether it is a regular or special meeting

Four Types of Teleconferenced Meetings

Traditional Teleconferencing
(added in 1988)

State of Emergency Teleconferencing
(added in 2021)

Just Cause Teleconferencing
(added in 2023)

Emergency Circumstance Teleconferencing
(added in 2023)

State of Emergency Teleconferencing

- The legislative body holds a meeting during a proclaimed state of emergency:
 - for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to health and safety of attendees; or
 - And has determined by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Just Cause v. Emergency Circumstance

- “Just cause” means any of the following:
 - A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely;
 - A contagious illness that prevents a member from attending in person;
 - A need related to a physical or mental disability; or
 - Travel while on official business of the City or another state or local agency.
- “Emergency circumstance” means a physical or family medical emergency that prevents a Councilmember from attending in person.

Teleconferencing Methods Compared

	Traditional	State of Emergency	Just Cause	Emergency Circumstance
Reason for Meeting	No Reason Required	State of Emergency	Just Cause	Emergency Circumstances
Quorum of Members	Within jurisdiction	Not Required to be Within Jurisdiction	In Single Location	In Single Location
Method of Member's Participation in Teleconferenced Meeting	Audio or Audio-Visual	Audio or Audio-Visual	Audio-Visual Only	Audio-Visual Only
Required Opportunities for Public Participation	Only In-Person Required	Call-In or Internet-Based	Call-In or Internet-Based & In-Person	Call-In or Internet-Based & In-Person

Teleconferencing Methods Compared

	Traditional	State of Emergency	Just Cause	Emergency Circumstance
Reason Must be Approved by City Council	No	Yes	No	Yes
Votes Must be Taken by Roll Call	Yes	Yes	Yes	Yes
Teleconference Location Included on Agenda	Yes	No	No	No
Required Course of Action if Disruption Prevents Broadcast of Meeting or Public's Ability to Comment	Meeting Proceeds	No Further Action Taken	No Further Action Taken	No Further Action Taken

Annual Limits on Teleconferencing

	Traditional	State of Emergency	Just Cause	Emergency Circumstance
Current Rule	None	None	No more than 2 meetings per calendar year	
			3 consecutive months; 20% of the regular meetings; or 2 meetings per year if body meets less than 10 times per year	
On January 1, 2025	None	None	No more than 2 meetings per calendar year	
			2 meetings per year (if body meets once per month); 5 meetings per year (if body meets twice month); 7 meetings per year (if body meets three or more times per month)	

Content of Agenda

- Must contain:
 - Public Comment for all items on agenda + Items not on the agenda
 - Brief general description of each item (need not exceed 20 words)
 - Time and location of meeting
 - How to request disability-related modification or accommodation
 - Information regarding remote participation, as necessary
 - CEQA information, as necessary*
- Must be posted in accessible location on City website

Staff Reports and Presentations

- **Default Rule**
 - Documents other than the agenda (e.g. staff reports, presentations, agreements) do not need to be posted 72 hours in advance
 - But if public records are shared with the City Council less than 72 hours before the meeting, those public records needs to be made available for public inspection at a place designated by the City
- **AB 2647 Exception**
 - An initial staff report or similar document containing (1) an executive summary and (2) a staff recommendation is made available at least 72 hours before the meeting
 - City posts the public record that is distributed to the City Council on its website as soon as it is distributed
 - The website is listed on the City's agenda
 - Physical copies are available for inspection "beginning the next regular business hours for the local agency"

Never
Discuss
Items Not
on the
Agenda,
Except:

- Emergencies, such as floods, fires, strikes (majority vote);
- Immediate action is required, and the need arose after posting the agenda (2/3rds/unanimous vote);
- Item was properly posted to an agenda not more than 5 days ago, and the item was continued; and
- To consider a request from a member to participate in a meeting remotely due to emergency circumstances

Right to Public Comment

- Speaker should not be interrupted, unless speech is not protected by First Amendment (e.g., threats, incitement of violence, extreme obscenity)
- When should we cut this individual off?
 - When he gets loud?
 - When the Mayor feels insulted?
 - When he gives a silent nazi salute?
 - When he shows up in a KKK costume?
 - When he uses profanity?
 - When his 3 minutes are up?
 - When he causes a disruption at the meeting?



Public Comment: Do's & Don'ts

- Do adopt reasonable regulations, including time limits;
- Do provide twice the allotted time to those requiring a translator;
- Do not require speakers to provide their name or address before public comment;
- Do not adopt a time limit less than 2 minutes;
- Do not discuss the public comment with the body or the public commenter

Orderly Conduct at Meetings: SB 1100

- Existing Law:
 - Authorized the presiding officer of a meeting to order the removal of an individual disrupting the meeting
 - Individual must be provided with a warning prior to removal
- SB 1100 defines “disrupting” and provides two examples:
 - Failing to comply with reasonable and lawful regulations adopted by a legislative body related to public comment or any other law; and
 - Engaging in behavior that constitutes use of force or a true threat of force.

Closed Sessions

- License/Permit Determination
- Conference with Real Property Negotiators
- Conference with Legal Counsel-Existing Litigation
- Conference with Legal Counsel-Anticipated Litigation
- Liability Claims
- Charge or Complaint Involving Information protected by Federal Law
- Audit by California State Auditor's Office
- Threat to Public Services or Facilities
- Public Employee Appointment
- Public Employment
- Public Employee Performance Evaluation
- Public Employee Discipline/Dismissal/Release
- Conference with Labor Negotiators
- Case Review/Planning
- Report Involving Trade Secrets
- Hearings
- Conference Involving a Joint Powers Agency

Closed Sessions: Do's and Don'ts

- Do agendaize reason for closed session
- Don't allow anyone other than legislative body and necessary staff
- Don't go into closed session without legal assistance
- Don't disclose closed session confidences
- Don't discuss items not specifically agendaized



The City Council called a closed session to negotiate a settlement agreement to resolve a lawsuit. Who shouldn't be in the closed session?

1) City Attorney

2) City Manager

3) Opposing Party's Attorney

4) Councilmember opposed to the settlement agreement

5) Miniature horse (service animal) of the Councilmember opposed to the settlement agreement

Violation of the Brown Act

- What happens when the City violates the Brown Act?
 - Person alleging violation must send a letter within 30/90 days
 - City will have up to 30 days to cure alleged violation
 - Lawsuit must be filed within 15 days after the City's 30 days expires
- What happens when a court determines a Brown Act violation occurred?
 - Violative action is nullified
 - City pays plaintiff's attorneys' fees
 - Civil penalties
 - Criminal penalties

AUDIENCE Q&A

What questions or comments do you have for us?



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RECORDING AVAILABLE SOON



The recorded presentation and materials will be shared electronically with all attendees a few days after the webinar.



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