

BROWN ACT

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AGENDA

Brown Act Basics

- Who Does it Cover?
- When Does it Apply?
- Notice & Agenda Requirements
- Public Participation


What's New in the Brown Act

- Teleconferencing
- Reasonable Accommodations
- Senate Bill 1100 & Meeting Disruptions

Closed Session



BROWN ACT BASICS



WHAT ENTITIES ARE SUBJECT TO THE BROWN ACT?

- The Brown Act covers the “legislative bodies” of “local agencies and certain specified state agencies
- Local Agency means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency
- A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state
- The California Attorney General has opined that air pollution control districts and regional open space districts are also covered



- Entities created pursuant to joint powers agreements are local agencies within the meaning of the Brown Act
- Any board, commission, committee, or other body of a local agency created by formal action of the legislative body
 - Standing committees that have continuing jurisdiction over a particular subject matter (e.g., budget advisory committee, policy committee, etc.)
 - *Ad hoc* advisory committees comprised of less than a quorum are exempt

THE BROWN ACT APPLIES TO ANY MEETING OF THE LEGISLATIVE BODY



A "MEETING" IS ANY GATHERING OF A MAJORITY OF THE MEMBERS OF A LEGISLATIVE BODY AT THE SAME TIME AND LOCATION TO HEAR, DISCUSS, DELIBERATE, OR TAKE ACTION ON ANY ITEM THAT IS WITHIN THE SUBJECT MATTER JURISDICTION OF THE LEGISLATIVE BODY



A "SPECIAL MEETING" MAY BE CALLED BY THE PRESIDING OFFICER OR A MAJORITY OF THE LEGISLATIVE BODY TO ALLOW BOARDS TO DELIBERATE OR ACT PRIOR TO THE NEXT REGULAR BOARD MEETING



AN "EMERGENCY MEETING" MAY BE CALLED BY A MAJORITY OF THE BOARD TO ADDRESS A WORK STOPPAGE, CRIPPLING ACTIVITY, OR OTHER ACTIVITY THAT SEVERELY IMPAIRS PUBLIC HEALTH AND/OR SAFETY



WHAT IS NOT A MEETING?

General conferences open to the public involving a discussion of broad issues and attended by a broad spectrum of officials from a variety of governmental agencies



WHAT IS NOT A MEETING?

Open and publicized
meetings of other local
agencies



WHAT IS NOT A MEETING?

Social or ceremonial
events



BEWARE OF SERIAL MEETINGS

- A serial meeting is a “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action” on business within the subject matter jurisdiction of the legislative body
- Members should not communicate their position or make a commitment on a pending matter to a majority of the body
- Members should not solicit responses from other members when forward information or emails
- Members should not REPLY ALL or use social media platforms to discuss or comment on agency business



NOTICE & AGENDA REQUIREMENTS

- Notice of the meeting must be posted at a location that is freely accessible to the public and on the agency's website if it has one
 - Regular Meetings – 72 hours
 - Special Meetings – 24 hours
 - Emergency Meetings – Alert local media 1 hour in advance
- Each member must receive written notice of the meeting
- The agenda include information regarding how, when, and to whom a request for a disability-related accommodation or modification may be made
- Agendas must contain a “brief general description” of both open and closed session items

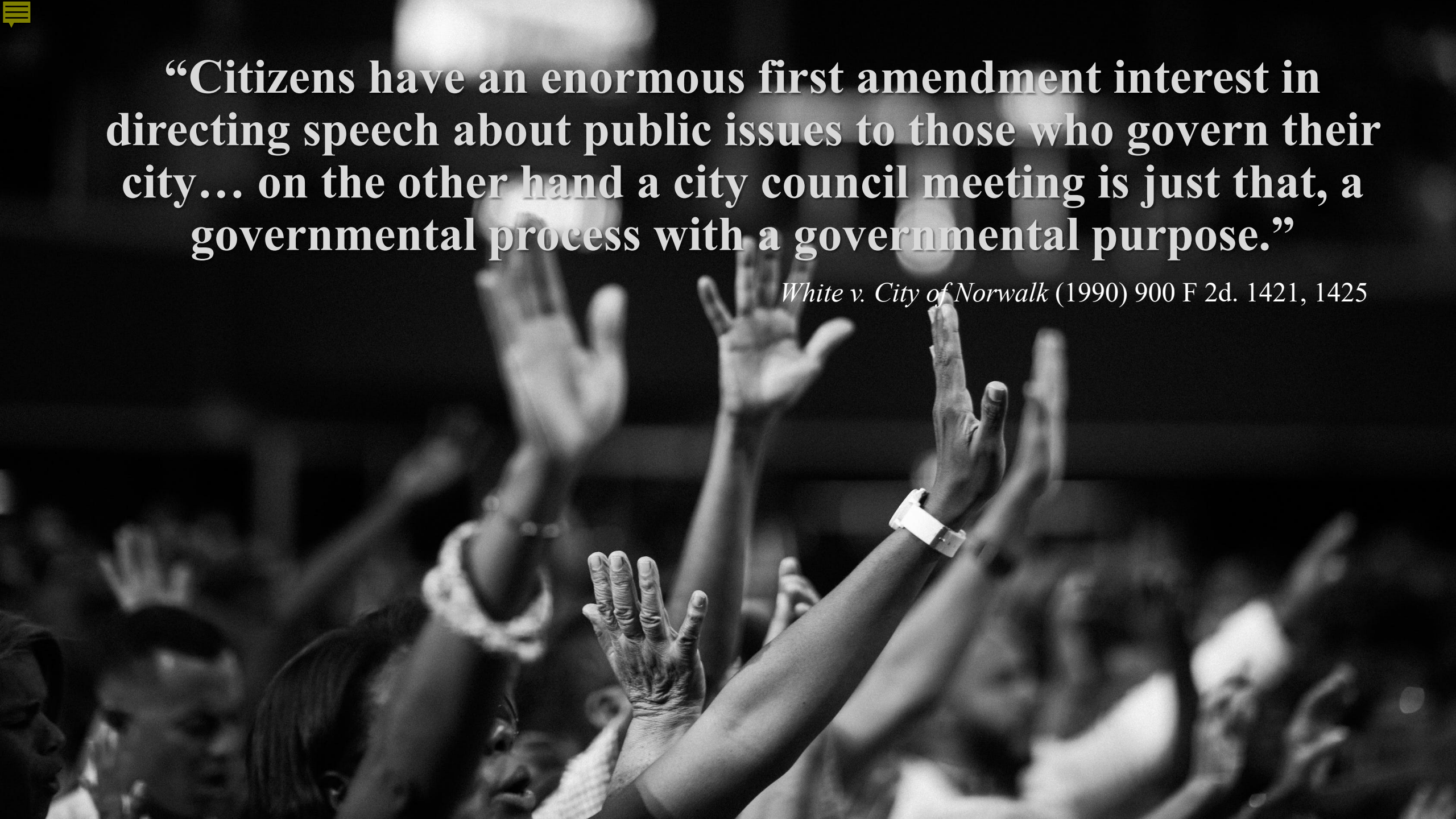


NOTICE & AGENDA REQUIREMENTS

- Any person may request a copy of the agenda or all the materials constituting the agenda packet to be mailed to them
- Writings that are public records, if first distributed at a public meeting by the district, the county office of education or a board member, must be made available for public inspection at the meeting, or after the meeting if prepared by another person
- The Must specify where members of the public can inspect documents distributed to the board less than 72 hours before the meeting

PUBLIC PARTICIPATION





“Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city... on the other hand a city council meeting is just that, a governmental process with a governmental purpose.”

White v. City of Norwalk (1990) 900 F 2d. 1421, 1425



PUBLIC PARTICIPATION

- Must allow for public participation and comment on items with the jurisdiction of the board
 - Public comment at special meetings is limited to items on the agenda
 - Board does not have to allow the public to speak on any item that has already been considered by a committee composed exclusively of board members at a public meeting where the public had the opportunity to address the committee on that item, unless the board determines that the item has been substantially changed since the public had an opportunity to speak
- Allowed to create reasonable rules for participation (speaker time limits, etc.)
- Employees have the same rights as members of the public to address the board, even on employment-related issues

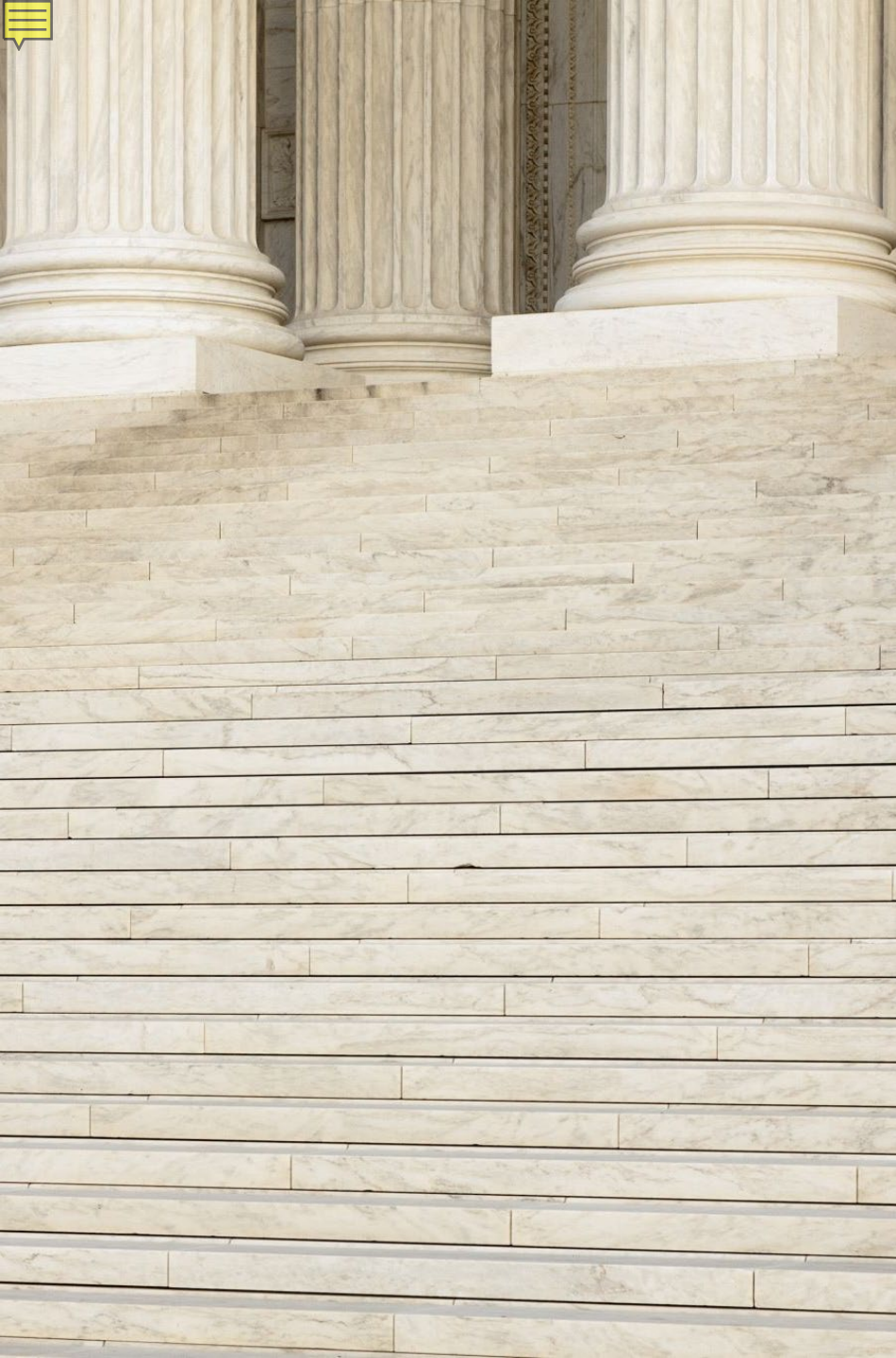


PUBLIC PARTICIPATION

- Anyone attending an open meeting may record it with an audio or video recorder or a still or motion picture camera unless the board makes a reasonable finding that the recording cannot continue without noise, illumination, or obstruction of view that would persistently disrupt the meeting
- Any recording made by the agency must be kept for 30 days and is subject to Public Records Act requests

A photograph of the Texas State Capitol building, a large white neoclassical structure with a prominent dome and a portico supported by tall columns. The building is set against a clear blue sky. The text "TELECONFERENCING OPTIONS" is overlaid in the center in a bold, white, serif font with a slight drop shadow. In the top left corner, there is a small yellow icon of a speech bubble with three horizontal lines inside.

TELECONFERENCING OPTIONS



TRADITIONAL TELECONFERENCING

GOV. CODE 54953(B)(1)-(2)

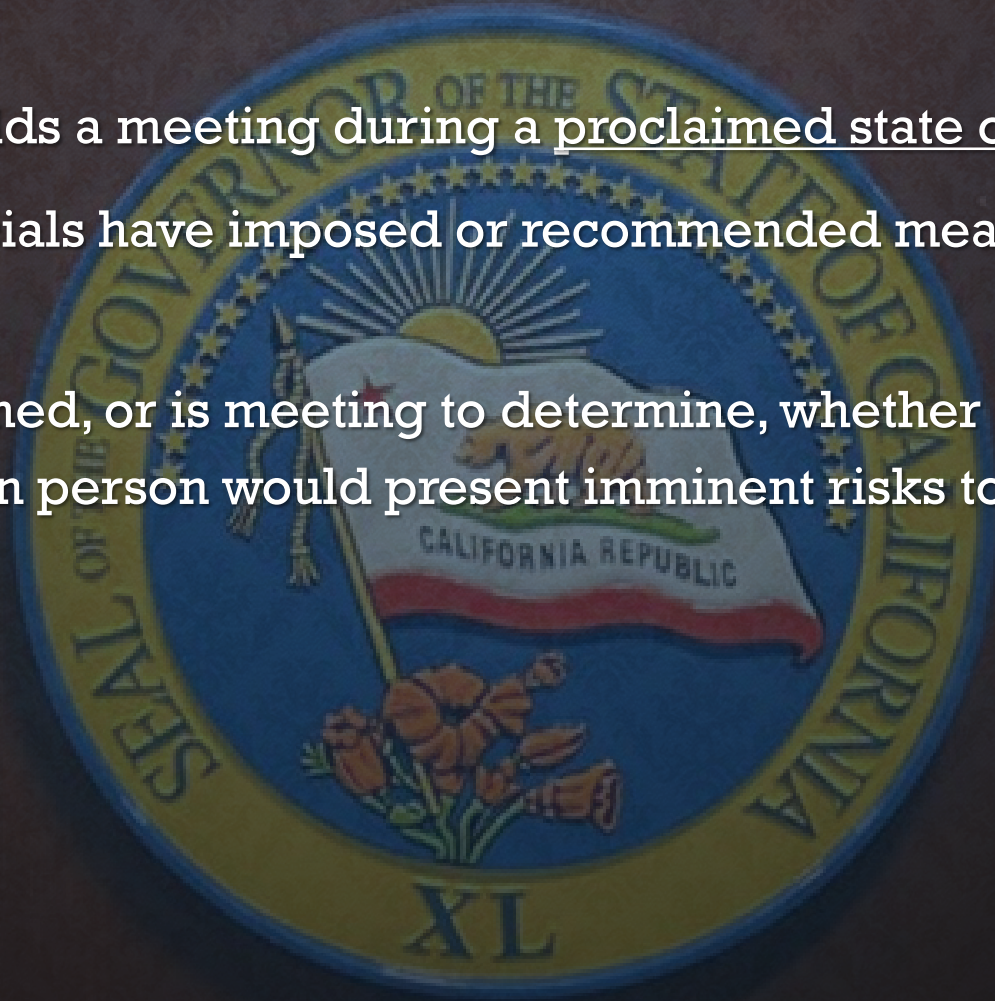
“The legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law.”

- Meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body
- Notice and agendas must identify each teleconference location
- Agendas must be posted at all teleconference locations (72 hours in advance)
- Each teleconference location must be accessible to the public.
- At least a quorum of the members of the legislative body must participate from locations within the jurisdictional boundaries
- All votes shall be by rollcall

TELECONFERENCING DURING A DECLARED STATE OF EMERGENCY

The legislative body holds a meeting during a proclaimed state of emergency...

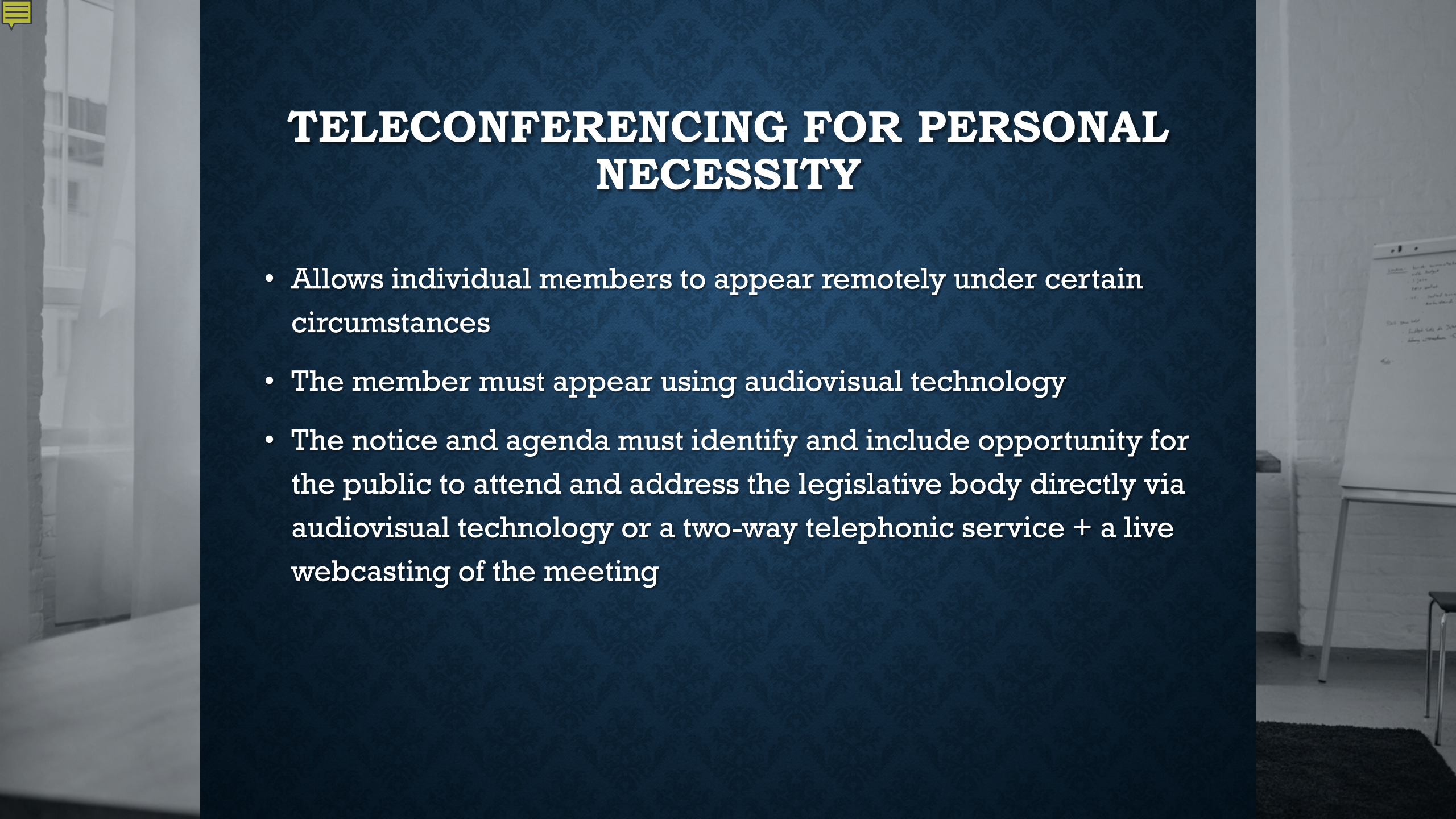
- and state or local officials have imposed or recommended measures to promote social distancing, or
- the body has determined, or is meeting to determine, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.



- Notice and agenda must identify the means by which members of the public may access the meeting and offer public comment in real time via a call-in option or an internet-based service option
- The legislative body shall not require public comments to be submitted in advance of the meeting
- All votes shall be by roll call
- If access to the meeting is disrupted (e.g., the internet or phone lines go down), the legislative body must refrain from taking any further action on agenda items until public access is restored
- The legislative body must make findings every 45 days that meeting in person would present imminent risks to the health and safety of attendees



TELECONFERENCING FOR PERSONAL NECESSITY

- Allows individual members to appear remotely under certain circumstances
 - The member must appear using audiovisual technology
 - The notice and agenda must identify and include opportunity for the public to attend and address the legislative body directly via audiovisual technology or a two-way telephonic service + a live webcasting of the meeting
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DISRUPTIONS IN SERVICE

- In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored
- Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1
- Cannot be used for more than 3 consecutive months or 20 percent of the regular meetings within a calendar year (or for more than 2 meetings if the legislative body regularly meets fewer than 10 times per calendar year)



“JUST CAUSE” TELECONFERENCING

Can be used up to 2 times per year for an individual board member who either:

- (1) Has a dependent caregiving need requiring them to appear remotely
- (2) Has a contagious illness preventing them from attending in person
- (3) Has needs related to a physical or mental disability that cannot otherwise be accommodated, or
- (4) Is traveling on official business of the board or another state or local agency

The member must notify the legislative body at the earliest opportunity possible and provide a general description of the circumstances relating to their need to appear remotely



“EMERGENCIES”

- Can be use by an individual member when a physical or family medical emergency prevents the member from attending a board meeting in person
- The member must, at the earliest opportunity possible, make a separate request to appear remotely for each meeting and provide a general description (20 words or less) of the circumstances relating to their need to appear remotely
- Legislative body must vote to approve the request



REASONABLE ACCOMMODATIONS

- The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility
- In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation



DISRUPTIONS IN THE BOARD ROOM

The presiding member of a legislative body may remove or cause the removal of an individual for disrupting a meeting



PROCESS FOR REMOVAL

- The presiding member of a legislative body may remove or cause the removal of an individual for disrupting a meeting
- Prior to removing an individual, the presiding member shall warn the individual that their behavior is disrupting the meeting and that their failure to cease the disruptive behavior may result in their removal.
- If the individual does not “promptly cease” their disruptive behavior, the presiding member may remove the individual
- No warning is required before removal if the individual has engaged in behavior that constitutes use of force or a true threat of force



SESSION



CLOSED SESSION

- May only be attended by the members and other individuals who have an official role in advising the board (82 Ops. Cal. Atty. Gen. 29 (1999))
- Recording closed session is not required (or recommended) unless ordered by the court after the finding of a closed session violation
- The board may, by resolution, designate someone to take minutes during closed session. Such minutes are not considered public records and only available to members of the board or the court if a violation is alleged
- Actions must be reported out in open session

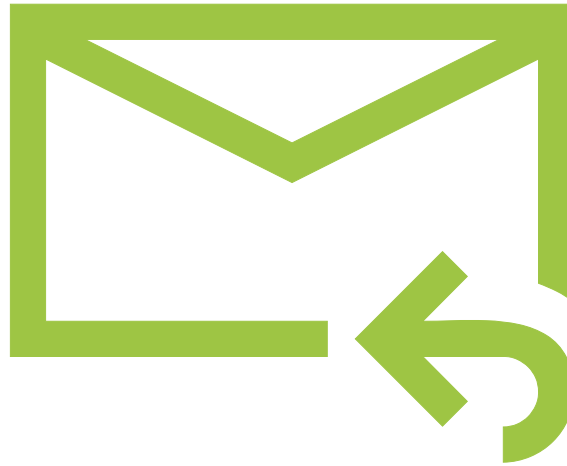
CLOSED SESSION

- License or permit determination (§ 54956.7)
- Conference with real property negotiators (§ 54956.8)
- **Conference with legal counsel regarding existing or anticipated litigation (§ 54956.9)**
- Liability claims (§ 54956.95)
- **Threat to public services or facilities (§ 54957(a))**
- **Public employee appointment, employment, performance evaluation, discipline, dismissal or release (§ 54957(b))**
- Conference with labor negotiators (§ 54957.6)
- Case review or planning (§ 54957.8)
- Report involving trade secret or hearings (§ 54956.87, California Health and Safety code §§1461,32106 and 32155; or California Government Code §§ 37606 and 37624.3)
- Charge or complaint involving information protected by federal law (§ 54956.86)



SCHA CLOSED SESSION

- **For the SCHA, the exceptions are outlined in Welfare and Institution Code section 14087.38:**
- The governing board of the health authority may meet in closed session to consider and take action on matters pertaining to:
- Contracts, and to contract negotiations by health authority staff with providers of health care services concerning all matters related to rates of payment.
- The governing board of the health authority may meet in closed session for the purpose of discussion of, or taking action on matters involving, health authority trade secrets.
- Any peer review body formed pursuant to the powers granted to the health authority authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners, pursuant to the powers granted to the health authority. The peer review body and its members shall receive, to the fullest extent, all immunities, privileges, and protections available to those peer review bodies, their individual members, and persons or entities assisting in the peer review process, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.



THANK YOU!

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