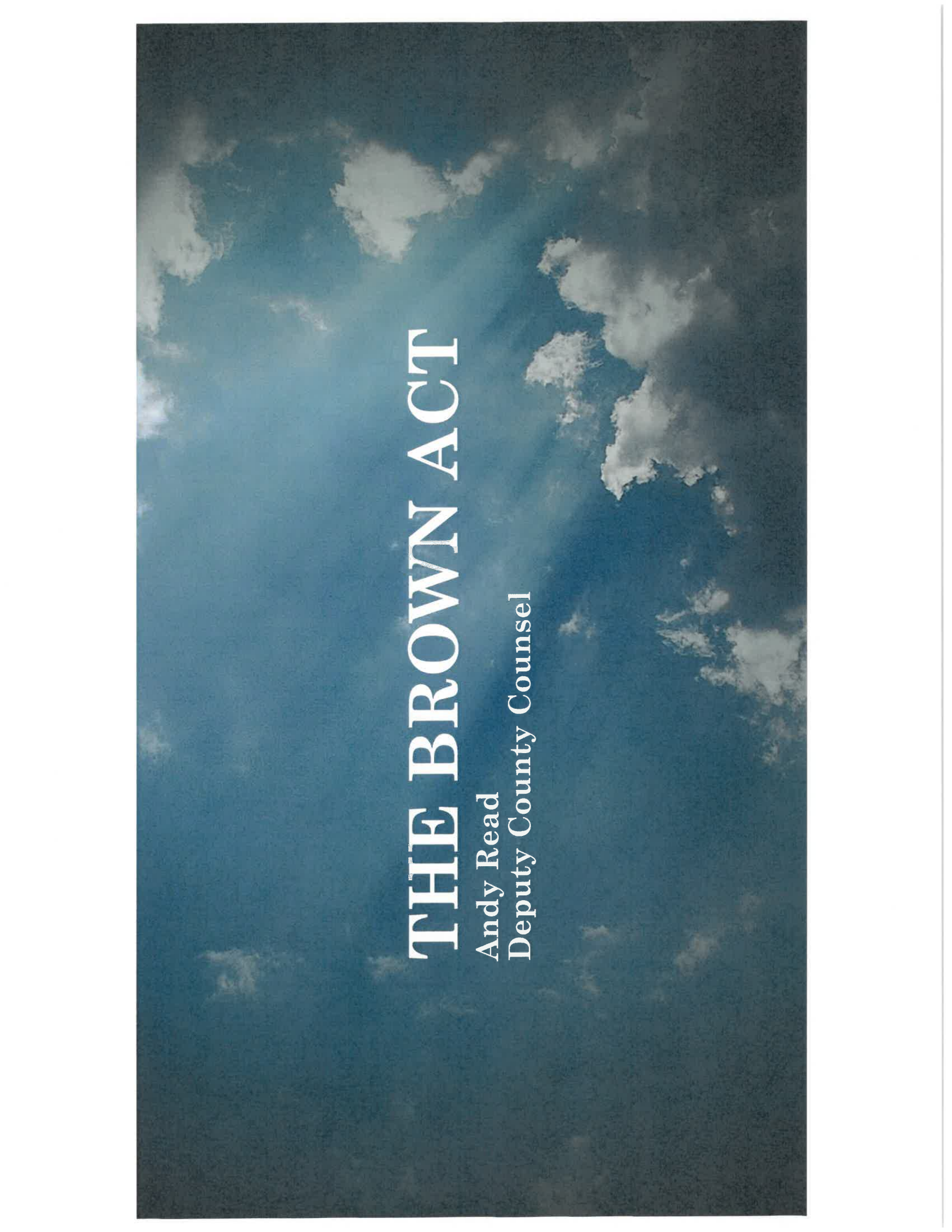




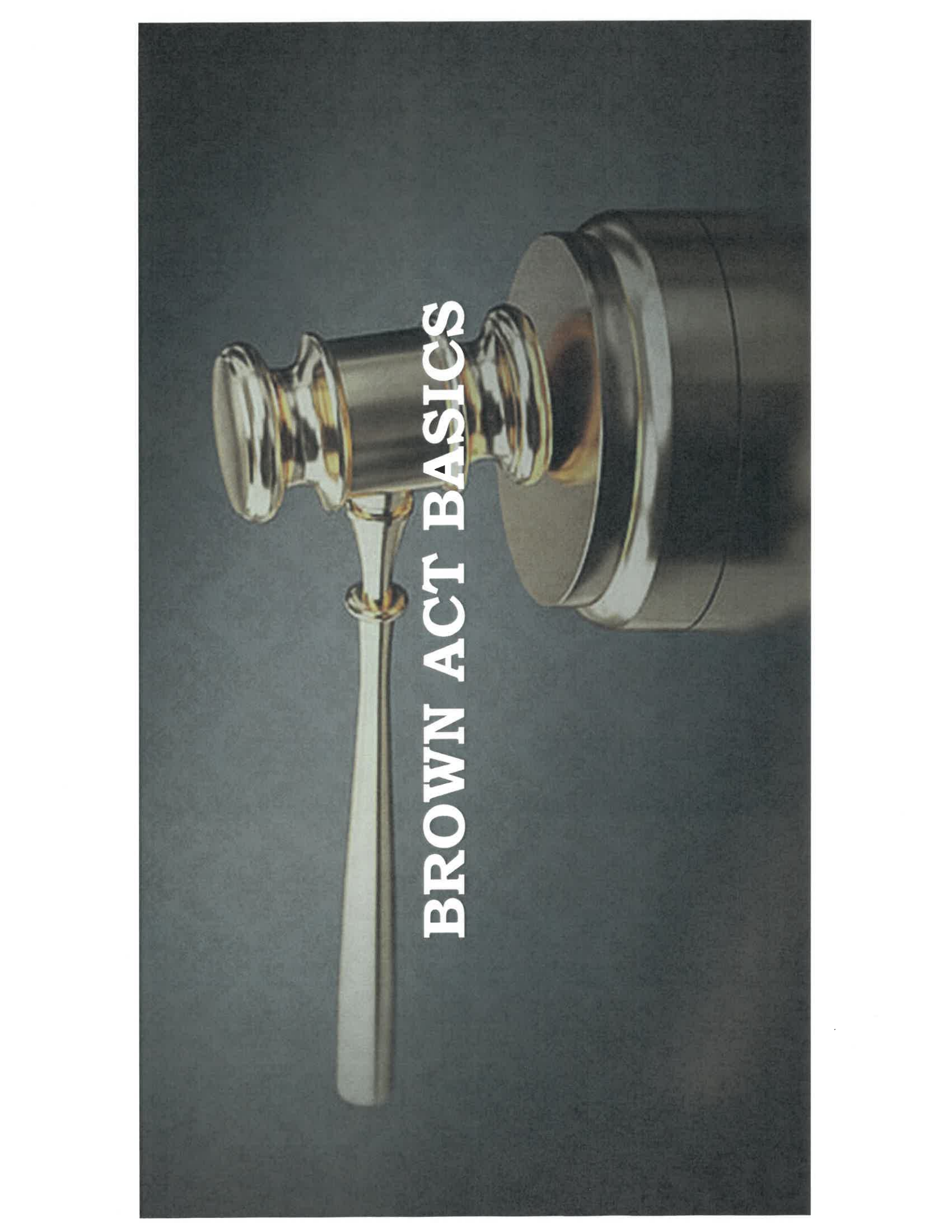
THE BROWN ACT

Andy Read
Deputy County Counsel

AGENDA

Brown Act Basics

- Who Does it Cover?
- When Does it Apply?
- Notice & Agenda Requirements
- Public Participation
- Teleconferencing
- Reasonable Accommodations
- Meeting Disruptions
- Closed Session

A photograph of a wooden gavel and a glass jar with a metal lid, set against a dark, textured background. The gavel is positioned vertically on the left, and the jar is on the right. The text "BROWN ACT BASICS" is written vertically in white, bold, sans-serif capital letters across the center of the image, overlapping both the gavel and the jar.

BROWN ACT BASICS

WHAT ENTITIES ARE SUBJECT TO THE BROWN ACT?

- The Brown Act covers the “legislative bodies” of local governmental agencies and certain specified state agencies
- Local Agency means a county, city, whether general law or chartered, 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 (indefinite existence) over a particular subject matter (e.g., budget advisory committee, policy committee, etc.); meeting schedule fixed by charter, ordinance, resolution, or formal action by legislative body.
 - *Ad hoc advisory committees* comprised of less than a quorum of the body which creates it are exempt (usually finite duration and subject matter to be investigated/reported back to parent body.) Dissolved once task accomplished.

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. DOES NOT REQUIRE ANY ACTION TO BE TAKEN.



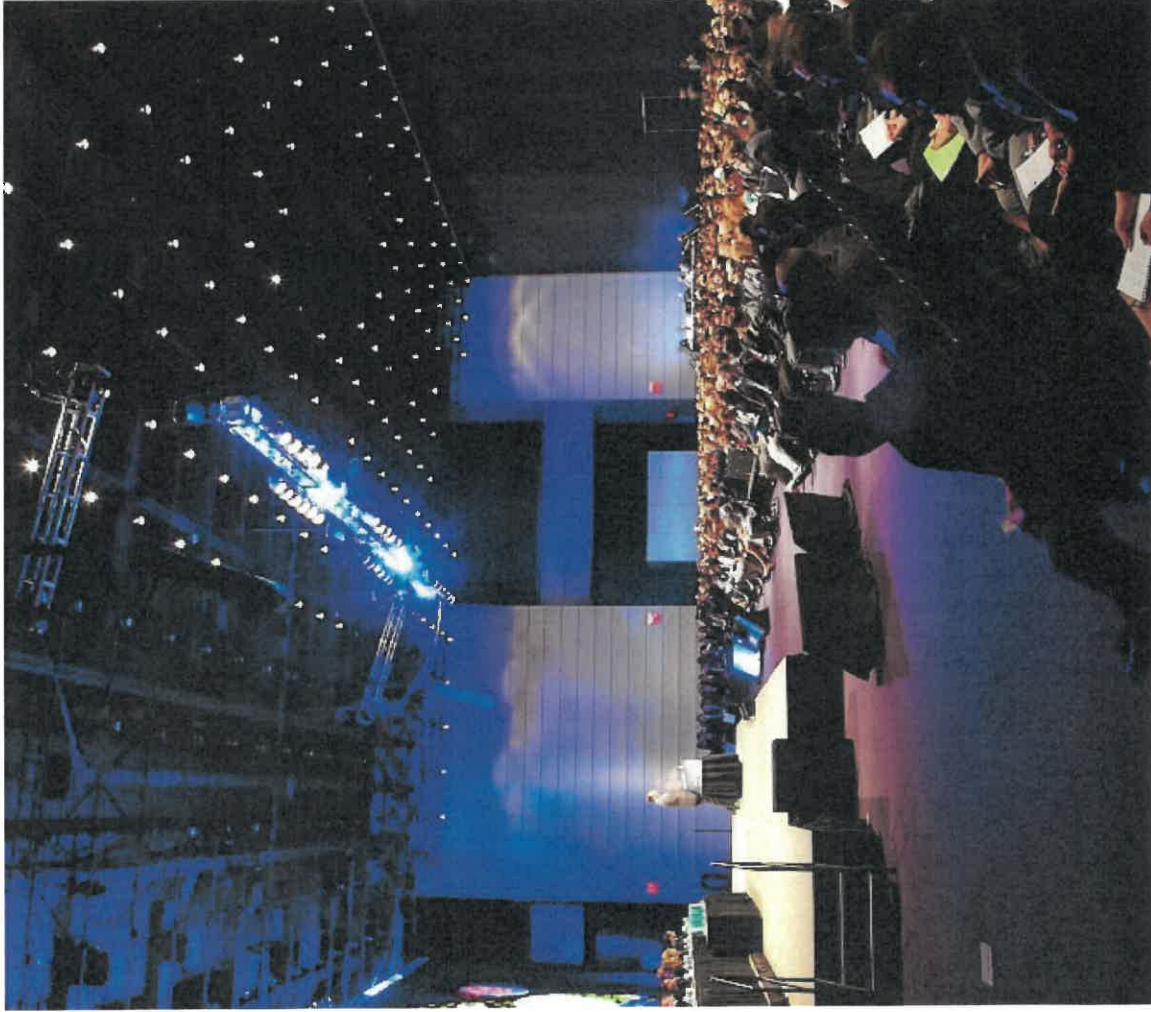
A "SPECIAL MEETING" MAY BE CALLED BY THE PRESIDING OFFICER OR A MAJORITY OF THE LEGISLATIVE BODY TO ALLOW BOARDS TO DELIBERATE OR ACT PRIOR TO THE NEXT REGULAR BOARD MEETING



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: ok if a majority of
the governing body does
not discuss business at
the event.



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 forwarding information or emails
- Members should not REPLY ALL or use social media platforms to discuss or comment on agency business

CAUTION!



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. What is the essential nature of the agenda item? Must indicate whether there will be action taken on the agenda item or simply a discussion.
- Adding items after agenda posted: 2/3 vote of members present **and** need for immediate action **and** need arose after agenda posted

NOTICE & AGENDA REQUIREMENTS

- Cannot deviate from the agenda by discussing or acting upon a non-agenda item.
- If there is a question from the public, you can briefly respond. If you need to have further discussion/action, schedule it for a future meeting and comply with notice/agenda requirements.
- If a quorum isn't present then you can't simply "discuss" agenda items. Adjourn the meeting and post the adjournment on the door w/in 24 hours. If it is adjourned more than five days, must post a new agenda.
- Record votes or abstentions in the minutes of the meeting.

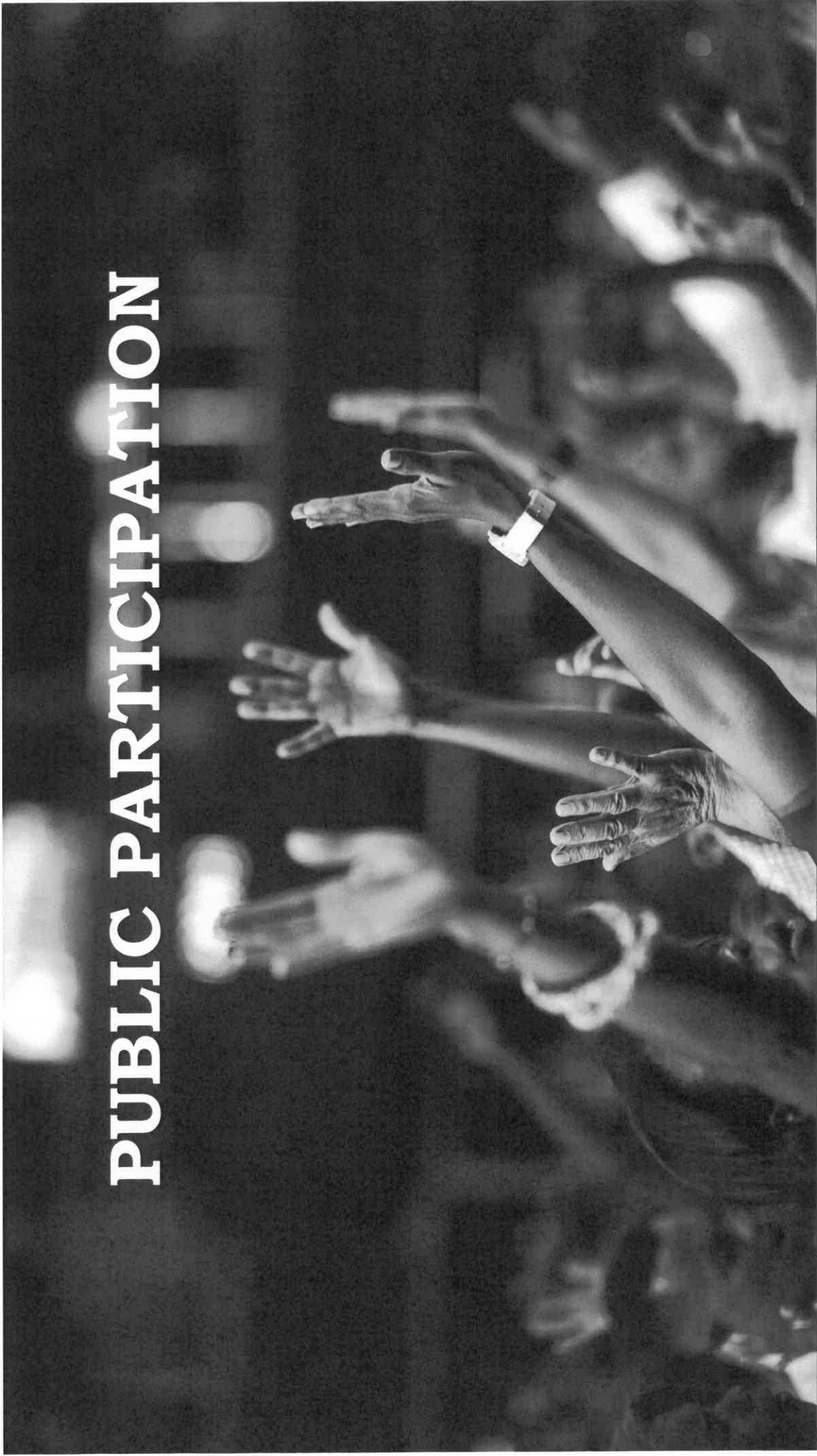


NOTICE & AGENDA REQUIREMENTS

- 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 Notice and Agenda 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



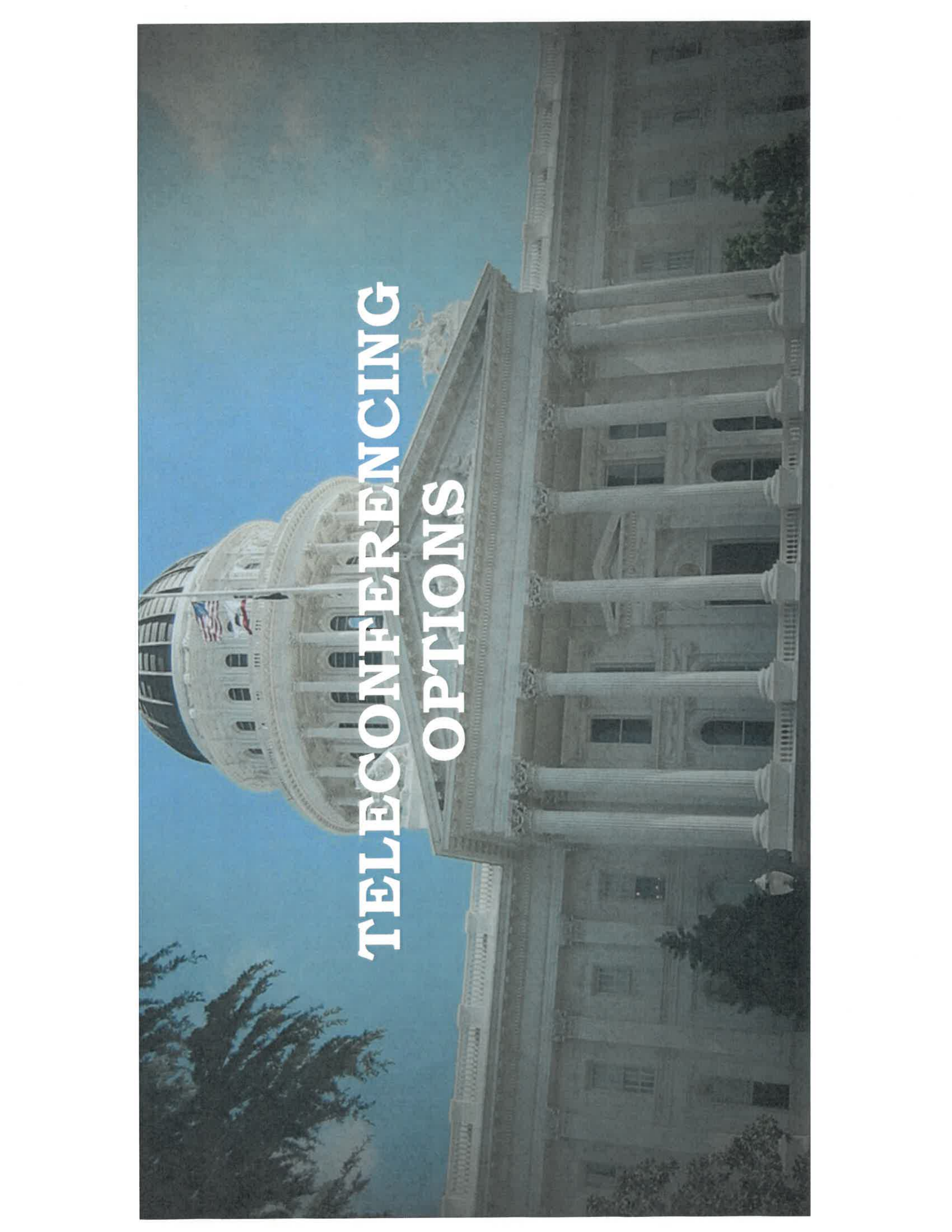
PUBLIC PARTICIPATION

- 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
- Must include time for public comment before or during agenda item

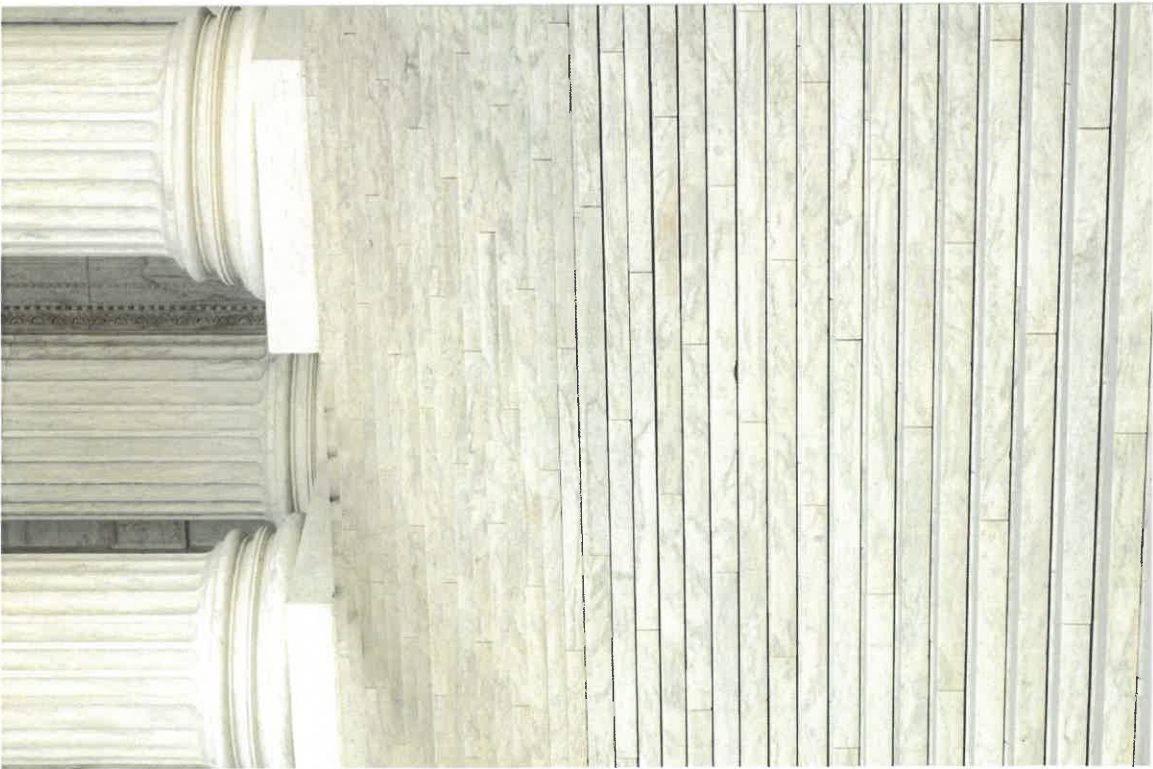
PUBLIC PARTICIPATION

- 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 United States Capitol building in Washington, D.C. The image shows the iconic white dome and the neoclassical facade with its columns. The sky is a clear, pale blue. The text 'TELECONFERENCING OPTIONS' is overlaid in white, bold, sans-serif capital letters, rotated 90 degrees counter-clockwise, and positioned in the center of the image.

TELECONFERENCING OPTIONS



TRADITIONAL TELECONFERENCING

GOV. CODE 54953

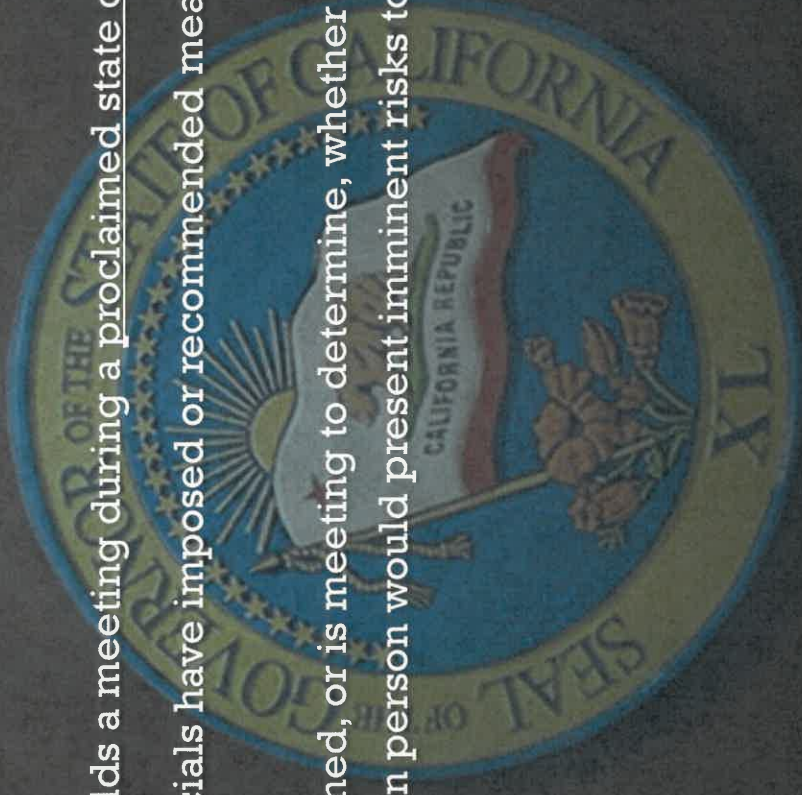
“The legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law.”

- 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 be located within the territory of the district.
- 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.



TELECONFERENCING FOR PERSONAL NECESSITY

GOV. CODE 54953

- Allows individual members to appear remotely if there is “just cause” or “emergency circumstances”
- Suspends posting requirements for teleconference locations
- Sunsets Jan. 1, 2026; however, there is a pending Bill to remove the sunset language.

LIMITS TO APPEARANCES FOR PERSONAL NECESSITY

- Effective January 1, 2025.
- Two times per year if the body regularly meets once per month or less.
- Five times per year if the body regularly meets twice per month.
- Seven times per year if the body regularly meets three or more times per month.

“JUST CAUSE” TELECONFERENCING

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

- (1) Has a family member in need of caregiving thus 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

EMERGENCY CIRCUMSTANCES

- Can be used 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 in a 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 at the earliest opportunity. If no time to post proposed action on agenda, majority vote at start of meeting.



ADDITIONAL REQUIREMENTS FOR INDIVIDUAL MEMBER REMOTE PARTICIPATION

- Remember, no need to post location of where member appearing from.
- A quorum must participate in person from a singular physical location identified in the agenda, that is open to the public, and within the boundaries of the jurisdiction.
- The agenda must provide notice of how the public can access the meeting and provide comments. The agenda shall identify and include an opportunity for all persons to attend via a call in option, an internet-based option, and an in-person option. The board may not require a member of the public to submit comments prior to the meeting.
- Teleconferencing members must participate with both audio and visual, i.e. only via videoconference.
- Must disclose whether there is any individual 18 years or older present in the same room and the nature of the relationship.
- The legislative body must provide the public with a two-way audio-visual platform or a two-way telephonic service with live webcasting.
- The legislative body must provide a way for the public to remotely hear, visually observe, and remotely address the legislative body in real time.

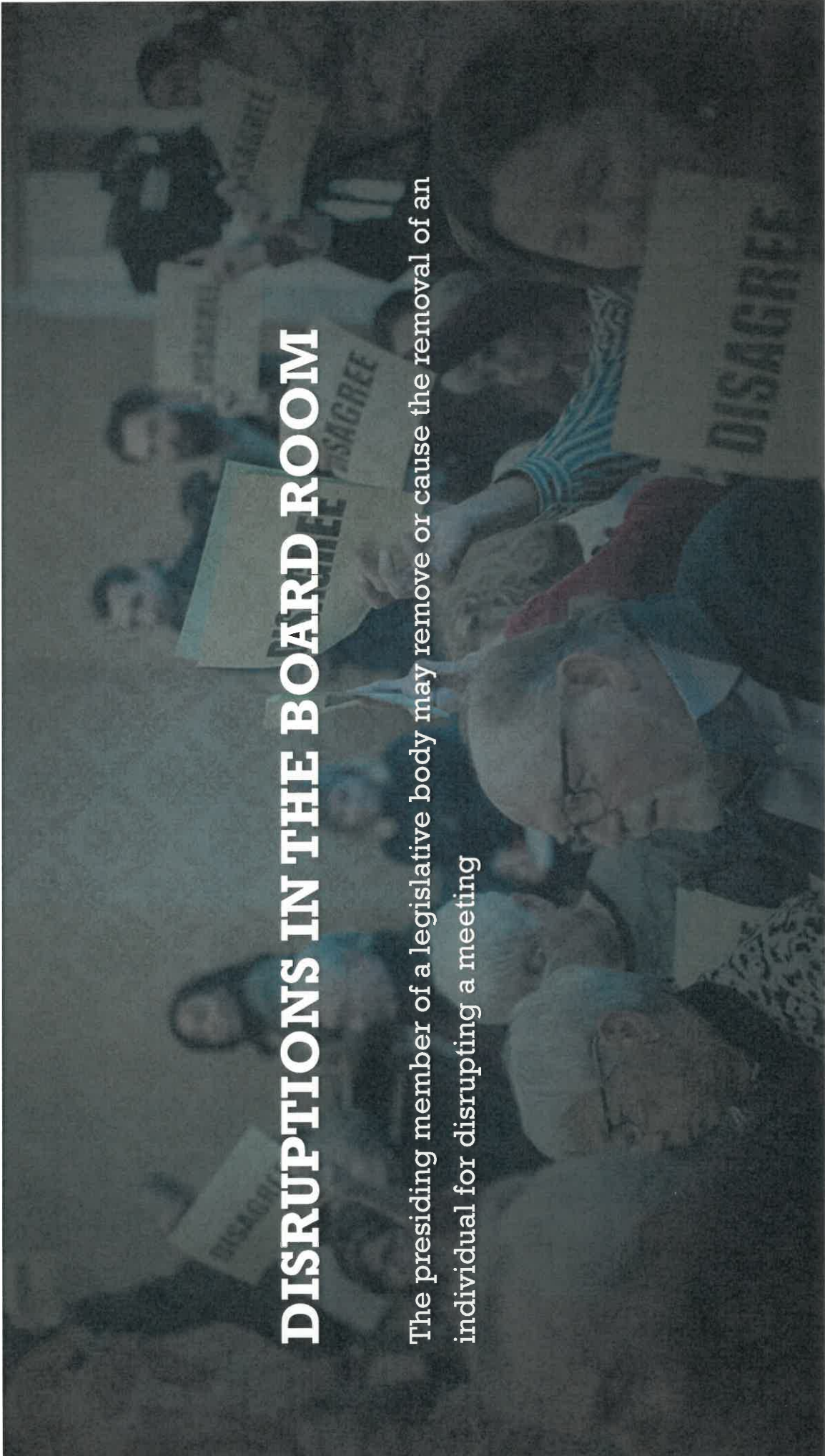
DISRUPTIONS IN TELECONFERENCE SERVICE

- 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

REASONABLE ACCOMMODATIONS

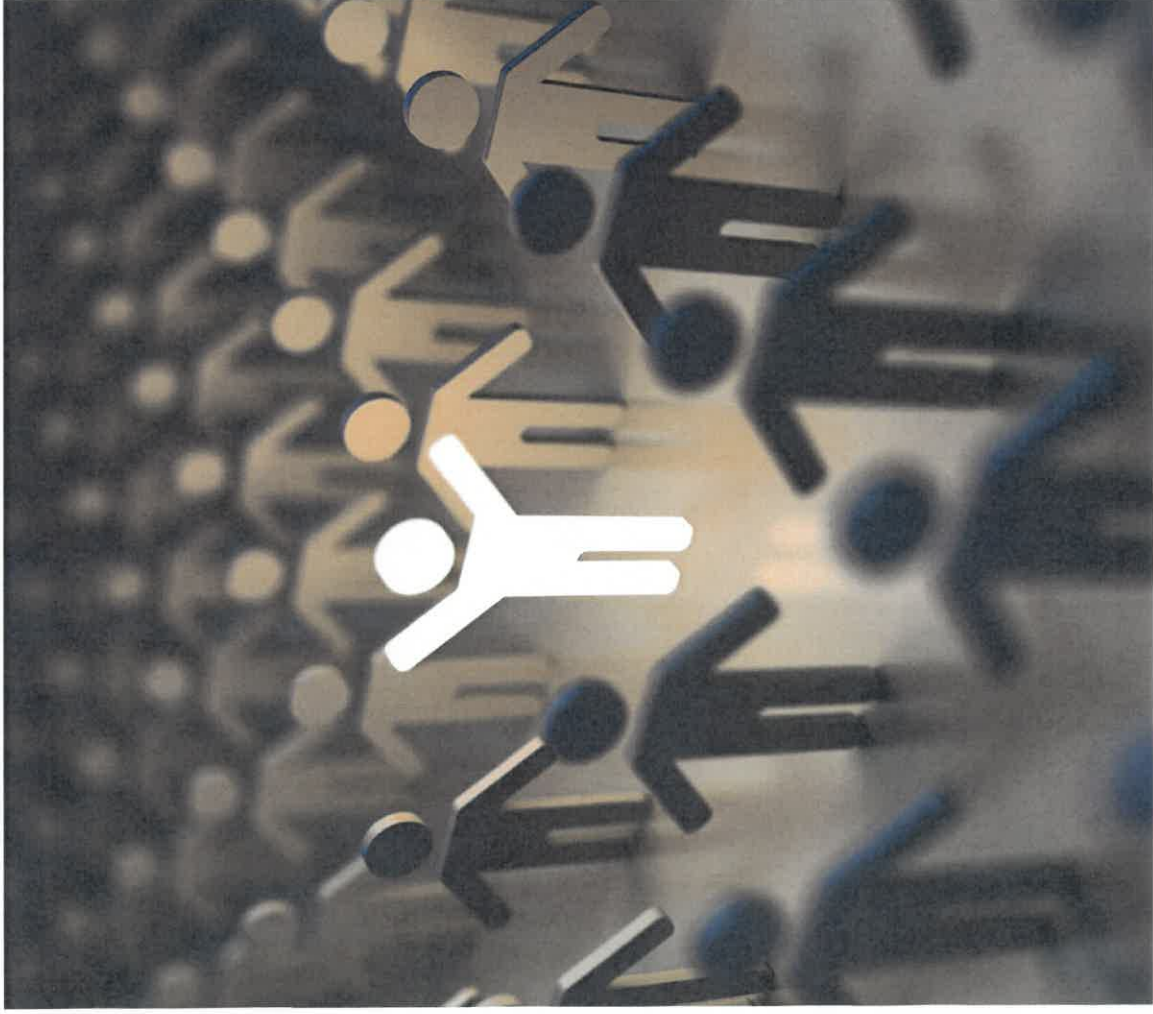
- The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility
- 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



A dark, grainy photograph of a crowd of people. Many individuals are holding up signs that say "DISAGREE" in bold, capital letters. The scene appears to be a protest or a public demonstration. The lighting is low, and the overall tone is somber and chaotic.

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

closed

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
- Some Actions must be reported out in open session

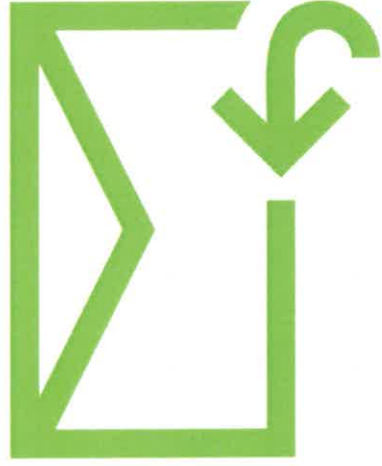
CLOSED SESSION

- 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)

SAFE HARBOR LANGUAGE

- Government Code section 54954.2 requires that brief agenda descriptions be provided regarding matters to be heard in closed session
- Government Code section 54954.5 provides sample formats for agenda descriptions for closed session items
- The law does not require use of these particular formats, but, when used, these formats exempt the agency from liability based on a challenge to the adequacy of the written agenda item





THANK YOU!

Andy Read

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