



MINUTES

HARBOR COMMISSION

**Thursday, March 28, 2019
Room B7, Lower Level
2000 Main Street
Huntington Beach, CA 92648**

WILLIAM LARKIN, Chair
MICHAEL VAN VOORHIS, Vice Chair
ALFRED BALITZER, Board Member
RENEE HUNTER, Board Member
KIMBERLEY MILLIGAN, Board Member
JOHN OCHS, Board Member
CRAIG SCHAUPPNER, Board Member

STAFF

ERIK PETERSON, Councilmember Liaison
LYN SEMETA Councilmember Liaison
CHRIS SLAMA, Community Services Manager
CARRIE GONZALES, Administrative Assistant

MEETING ASSISTANCE NOTICE: In accordance with the Americans with Disabilities Act, services are available to members of our community who require special assistance to participate in public meetings. If you require special assistance, 48-hour prior notification will enable the City to make reasonable arrangements for an assisted listening device (ALD) for the hearing impaired, American Sign Language interpreters, a reader during the meeting and/or large print agendas. Please contact the City Clerk's Office at (714) 536-5227 for more information, or request assistance from the staff or Sergeant-at-Arms at the meeting.

PUBLIC COMMENTS: To address the legislative body on items of interest not scheduled for public hearing, *Request to Speak* forms will be made available at the meeting and are collected by the staff or Sergeant at Arms. Some legislative bodies may provide different *Request to Speak* forms for public hearing items.

AUDIO/VIDEO ACCESS TO BROADCASTED MEETINGS: City Council and Planning Commission meetings are televised live on HBTB-3 Channel 3, and can be viewed via live or archived website at <https://huntingtonbeach.legistar.com>.

CALLED TO ORDER – 5:00 PM**ROLL CALL**

Present: Balitzer, Hunter, Larkin, Milligan, Ochs, Schauppner, Van Voorhis
Absent: None

Staff Present: Peterson, Semeta, Slama, Gonzales

PUBLIC COMMENTS (3-Minute Time Limit) – None**ADMINISTRATIVE ITEMS****A) Administer Oaths of Office**

Gonzales administered the Oaths of Office to the Members and collected their signed Oath or Affirmation of Allegiance for Public Officers and Employees.

B) Brown Act

Michael Vigliotta, City Attorney's Office, distributed a handout titled "Brown Act" and gave a brief summary of the Brown Act as it applies to a board or commission. He informed members they should attend a more in depth workshop that will be given by the City Attorney's Office.

C) Introduction of Council Liaisons, Members & Staff

Members gave a brief introduction and background of themselves. Liaisons Peterson and Semeta thanked the Members for their service.

Mike Baumgartner, Marine Safety, David McBride, Fire Department, and Tom Herbel, Public Works Department introduced themselves.

D) HBMC Chapter 2.65 Harbor Commission

Slama gave a brief PowerPoint on the history, roles and responsibilities of the commission. A copy of the PowerPoint was distributed to the members.

Slama asked if there were any questions of the Commission.

- Van Voorhis asked to discuss paddleboard and kayak safety.
- Hunter asked how to add items to an agenda, should it be in asked in a meeting? Slama responded that it should be asked in a meeting to add to the following meeting agenda.
- Milligan asked if Lighting on the buoy markers in the harbor be added the next meeting agenda.

E) Nomination and Election of Chair & Vice Chair

Slama discussed the Chair and Vice Chair responsibilities. He opened the nominations for Chair.

- Van Voorhis self-nominated. He discussed his qualifications.
- Larkin self-nominated. He also discussed his qualifications.

Slama asked for a vote, by way of raising their hands, on Van Voorhis for Chair. AYES, Hunter. Before the NOES were asked, Van Voorhis removed his self-nomination for the Chair.

Slama asked for a vote, by way of raising their hands, on Larkin for Chair.

Larkin was approved by the following vote:

AYES: Balitzer, Hunter, Larkin, Milligan, Ochs, Schauppner, Van Voorhis

NOES: None

Slama opened the nominations for Vice Chair. Larkin nominated Van Voorhis for Vice Chair. There were no other nominations.

A motion was made by Larkin, second by Balitzer to approve Van Voorhis as Vice Chair.

The motion carried by the following vote:

AYES: Balitzer, Hunter, Larkin, Milligan, Ochs, Schauppner, Van Voorhis

NOES: None

F) Future Agenda Items

Slama discussed possible future guest speakers for upcoming meetings:

- April – Tom Herbel, Public Works Department will present information on Water Quality, Infrastructure and working with the County and State.
- May – State Lands Commission will discuss their operation.
- June – Fire Department, Marine Safety and Orange County Sheriff will discuss safety and enforcement in the Harbor.
- July – Municipal Code 2.65 – Harbor Commission discussion.

The following members asked if items can be placed of future agendas.

- Ochs added there may be grant opportunities, what is the authority of the Commission
- Balitzer asked what is the risk analyst factors as part of the commission authority
- Balitzer asked if the City would provide a copy of the Small Craft and Harbor laws for each of the members
- Schauppner asked how does the Commission receive funds for projects
- Larkin asked for an overview of the Commission, State, County and Seal Beach
- Tom Herbel spoke on the Capital Improvement Projects (CIP) and their funding

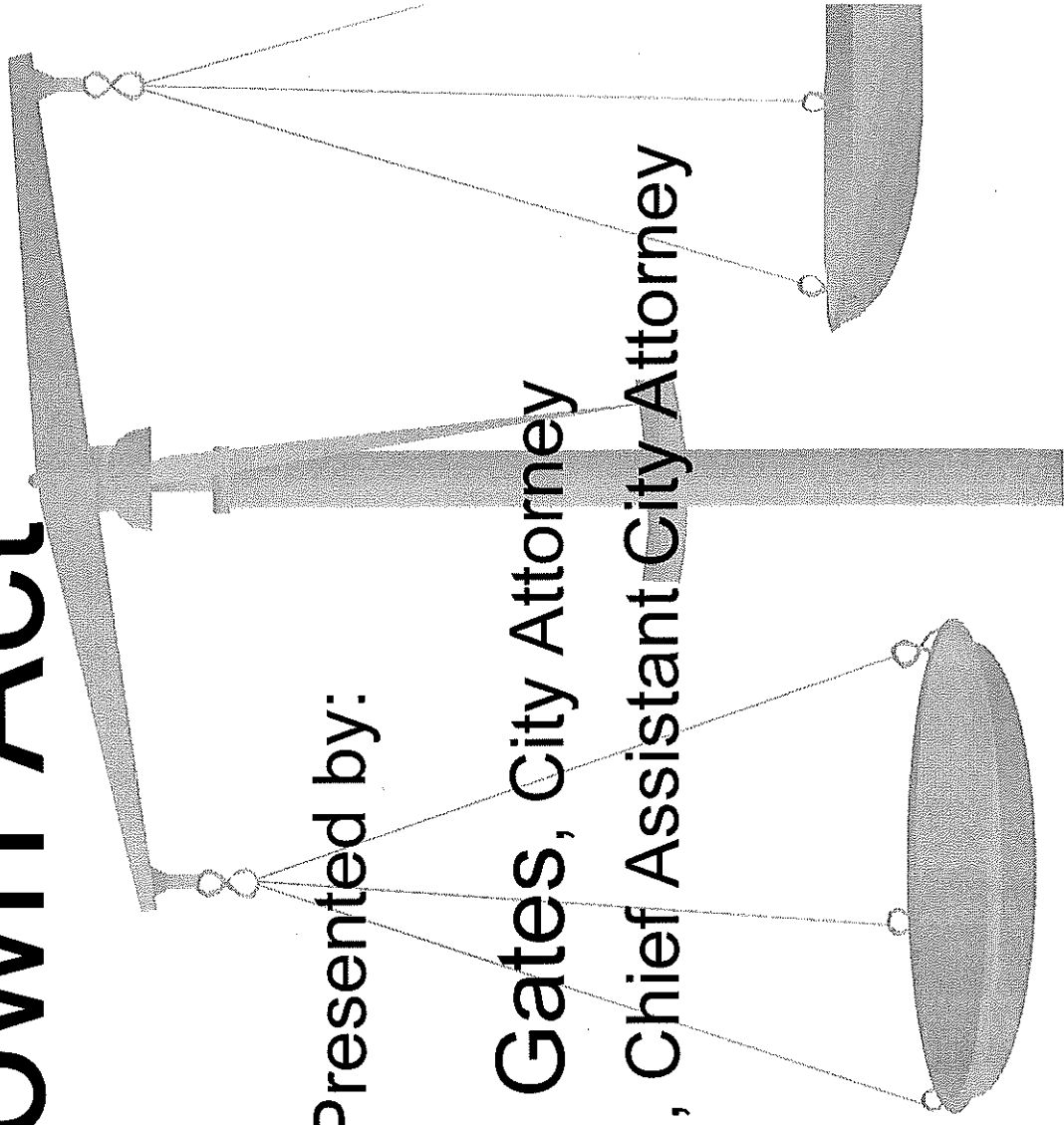
ADJOURNMENT – At 6:04 PM to the next regularly scheduled meeting of the Harbor Commission on Thursday, April 25, at 5:00 PM in meeting room B-7, lower lever of the Civic Center, Huntington Beach, California.

Brown Act

Presented by:

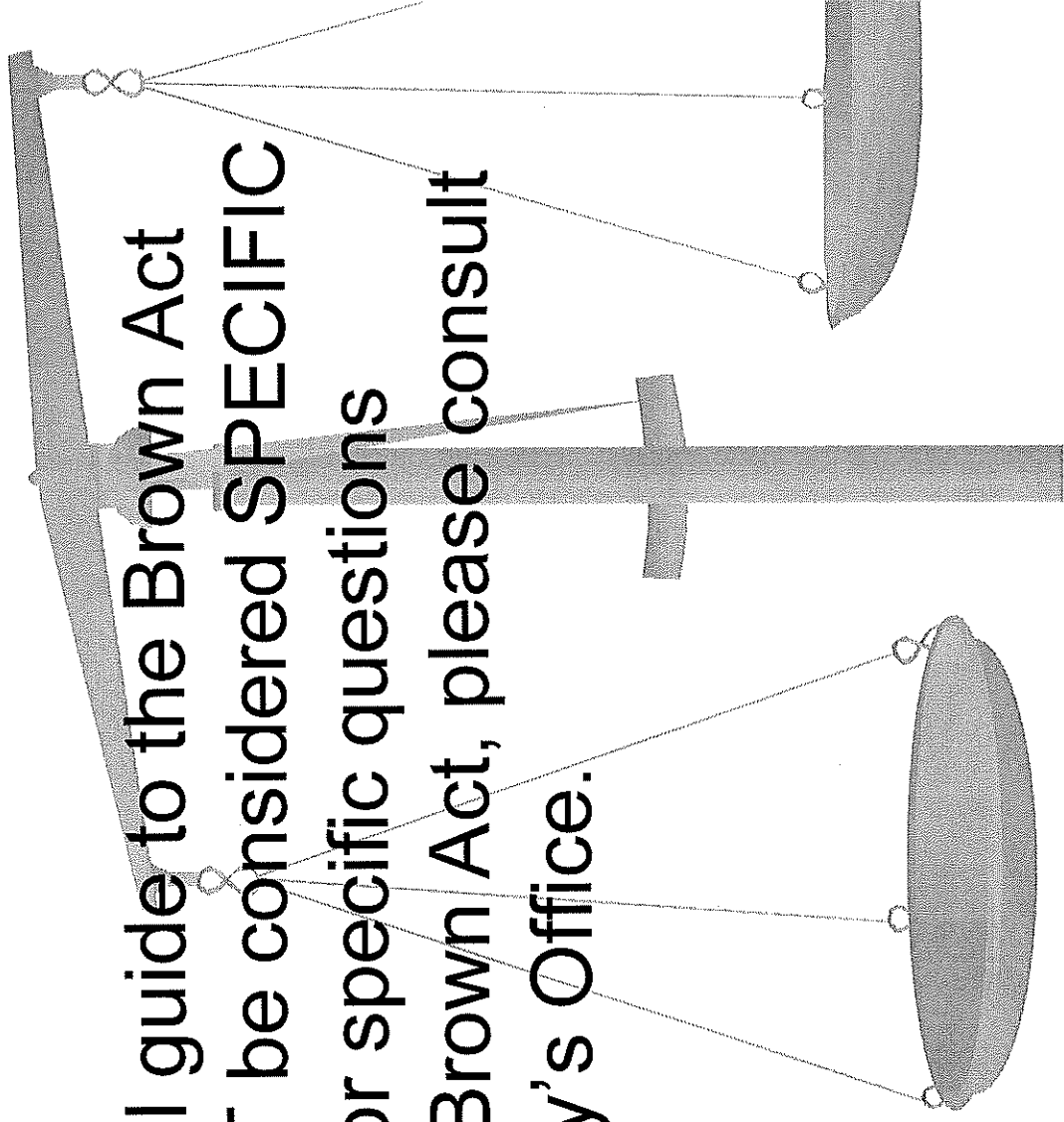
Michael Gates, City Attorney

Mike Vigliotta, Chief Assistant City Attorney



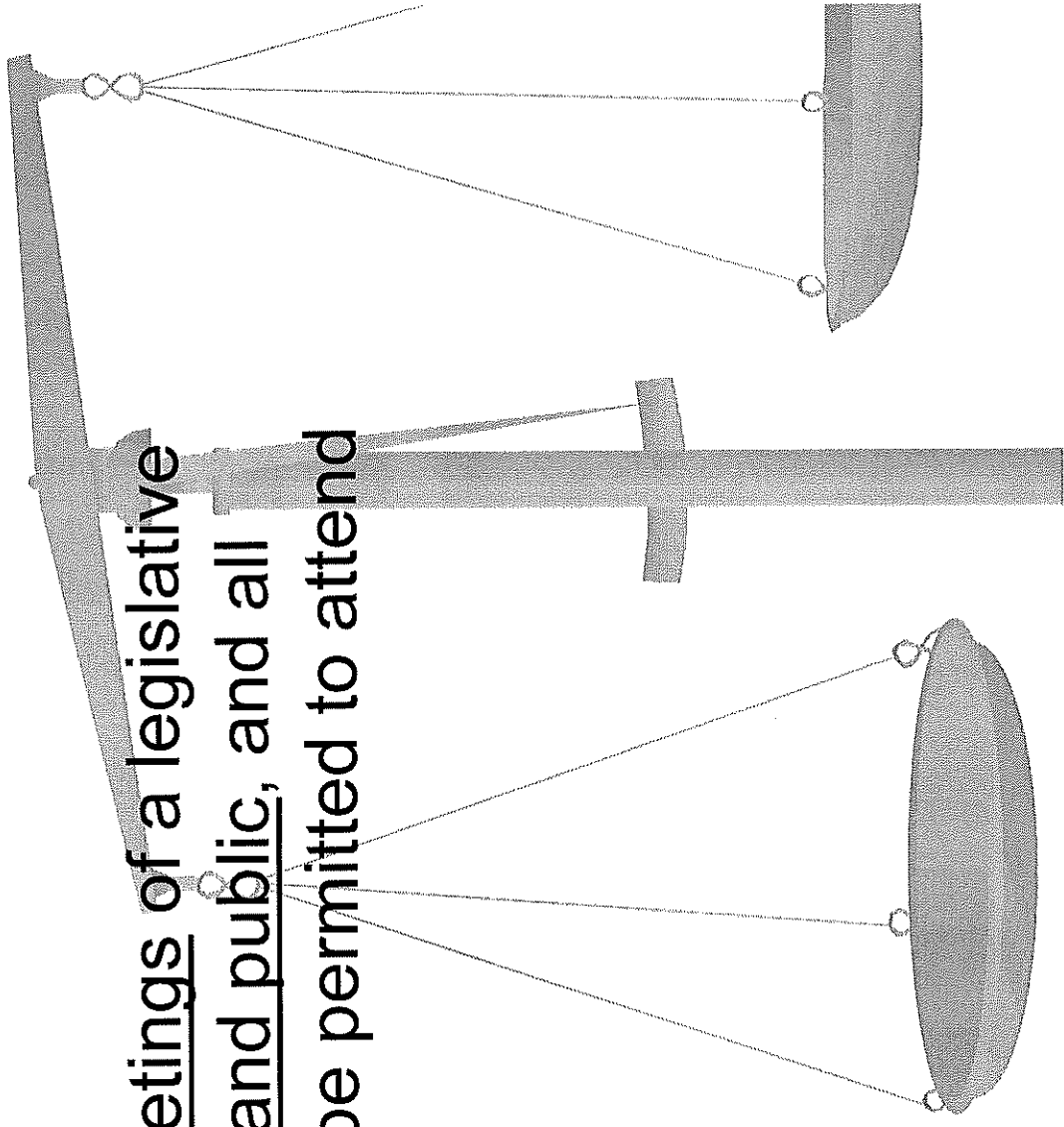
Disclaimer

This is a general guide to the Brown Act and should NOT be considered SPECIFIC legal advice. For specific questions concerning the Brown Act, please consult the City Attorney's Office.



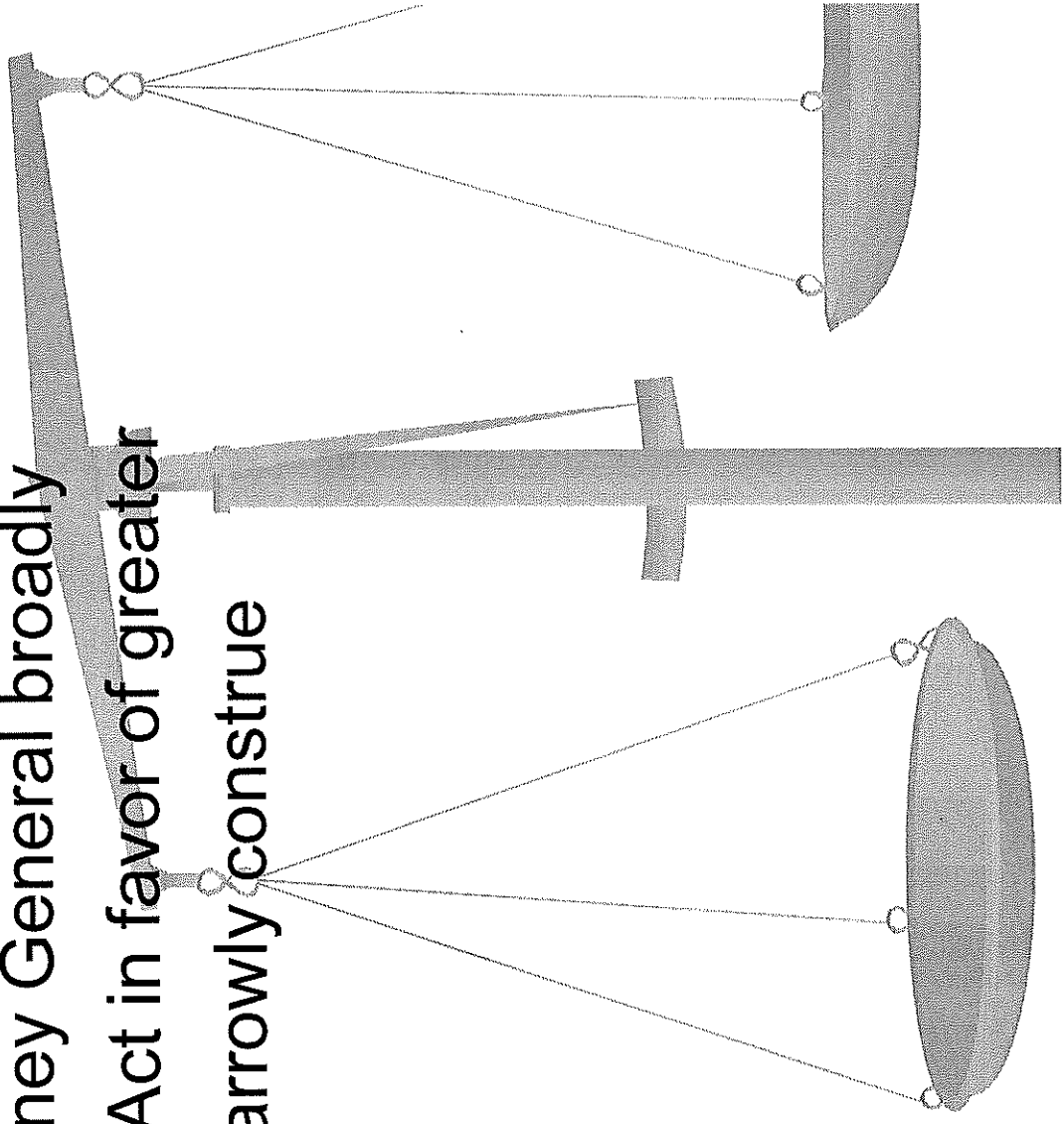
Summary of the Brown Act

In general, meetings of a legislative body be open and public, and all persons shall be permitted to attend and speak.



Narrow Exemptions

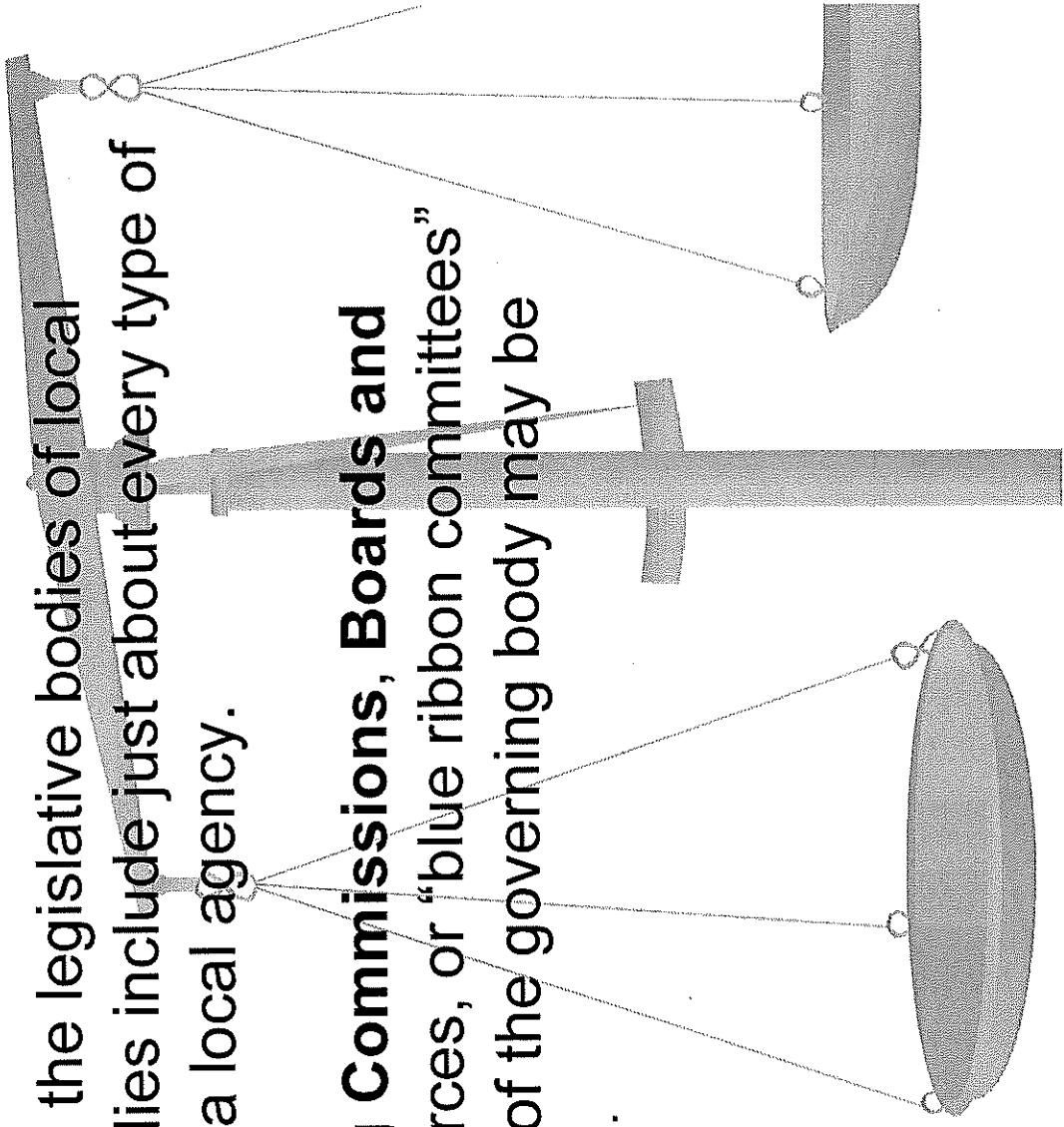
Courts and the Attorney General broadly
construe the Brown Act in favor of greater
public access and narrowly construe
exemptions.



Who is subject to the Brown Act?

The Brown Act applies to the legislative bodies of local agencies. Legislative bodies include just about every type of decision-making body of a local agency.

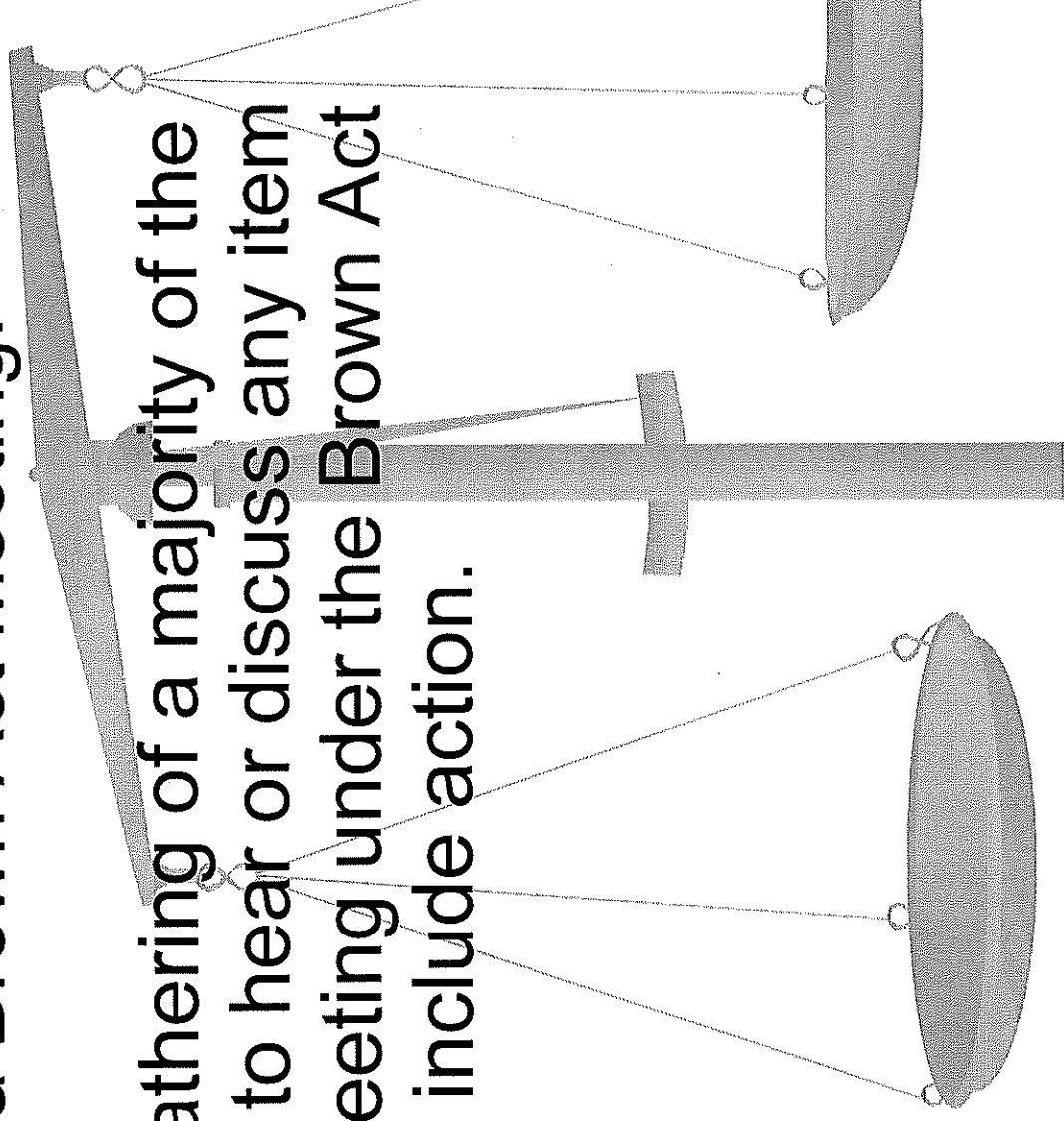
City Councils, Planning Commissions, Boards and Commissions or task forces, or “blue ribbon committees” created by formal action of the governing body may be subject to the Brown Act .



Meetings

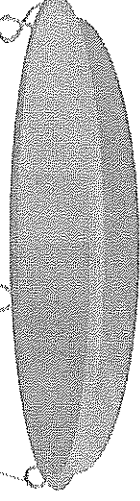
Definition of a Brown Act Meeting:

A meeting is a gathering of a majority of the Legislative Body to hear or discuss any item of business. A meeting under the Brown Act does not have to include action.



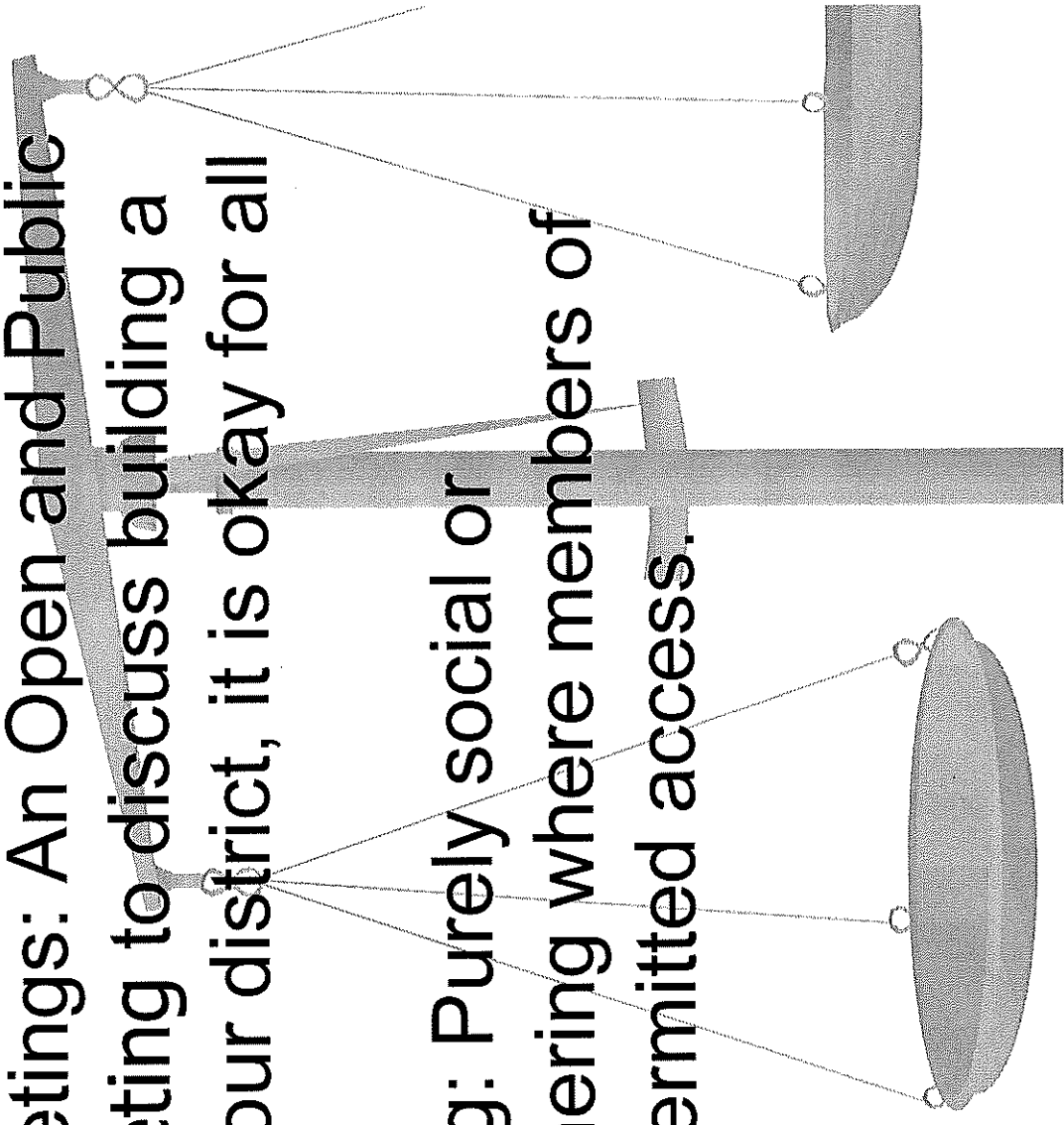
Exceptions

- **Individual Contacts.** Individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff or a colleague
- **Conferences:** It is okay to attend a conference together provided you do not discuss business.
- **Standing Committees:** The attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting.)



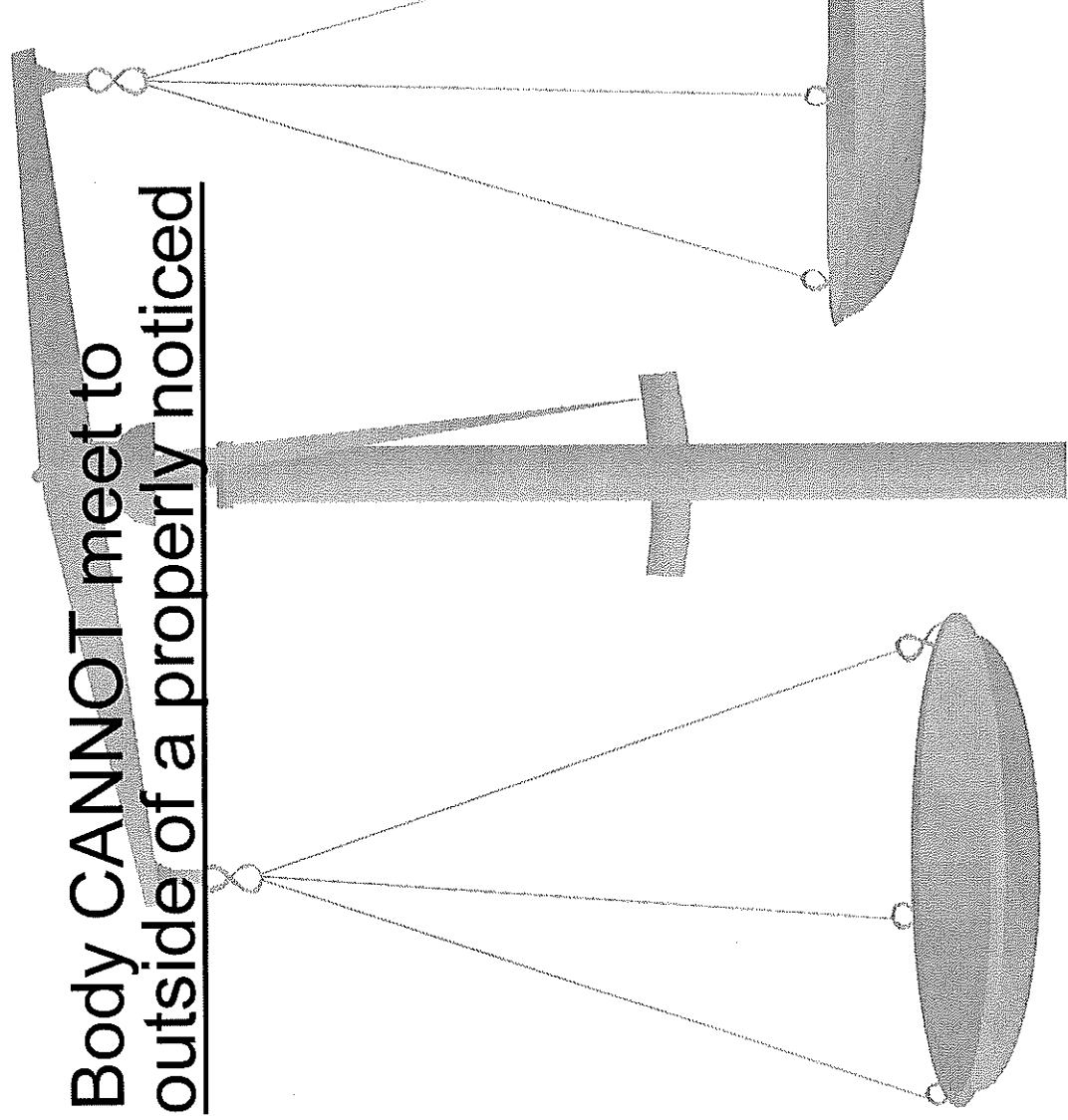
Exceptions

- Community Meetings: An Open and Public Community Meeting to discuss building a new school in your district, it is okay for all to attend.
- Social Gathering: Purely social or ceremonial gathering where members of the public are permitted access.



Meetings

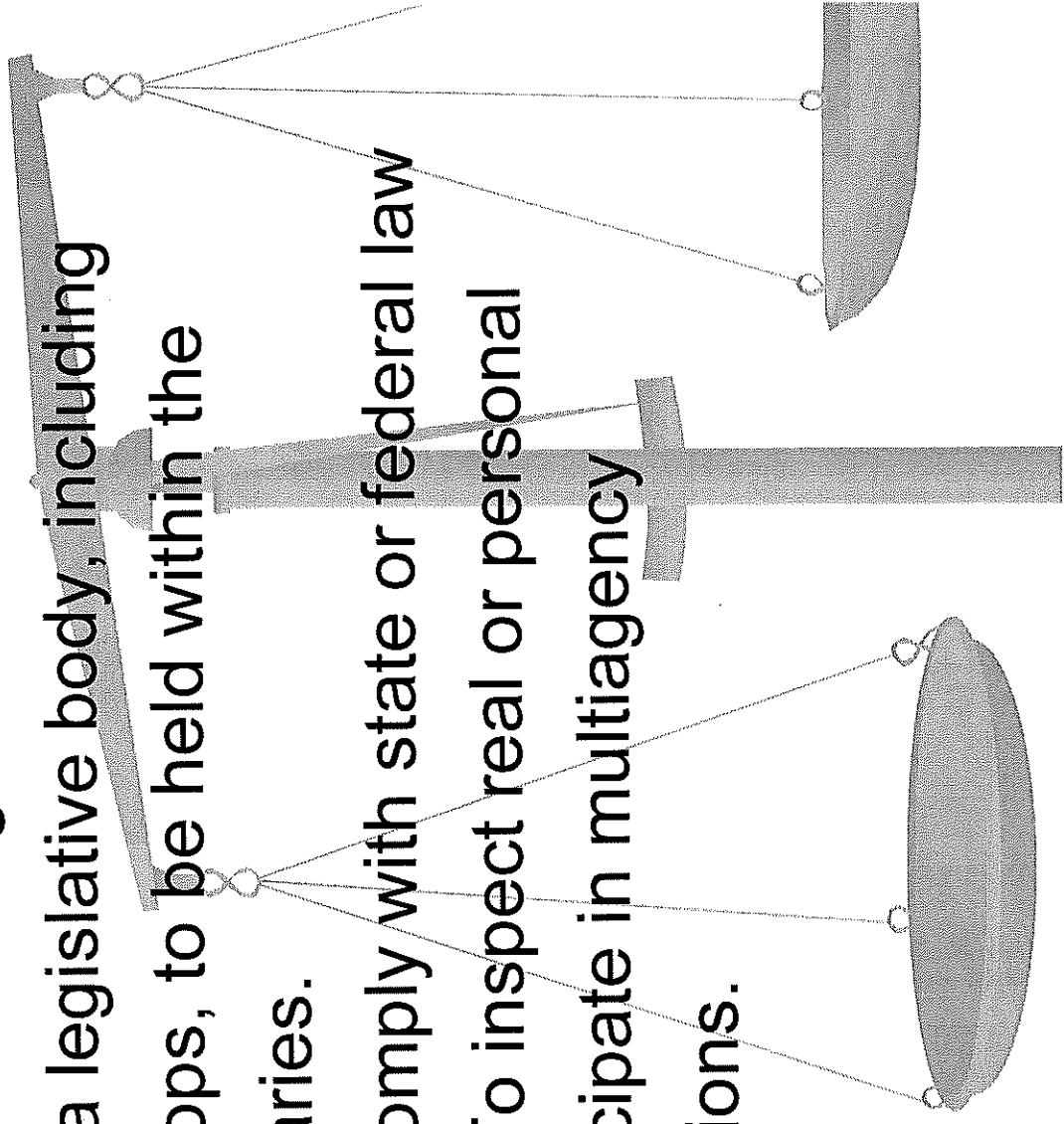
- Bottom Line: The Body **CANNOT** meet to discuss business outside of a properly noticed meeting.



Location of Meetings

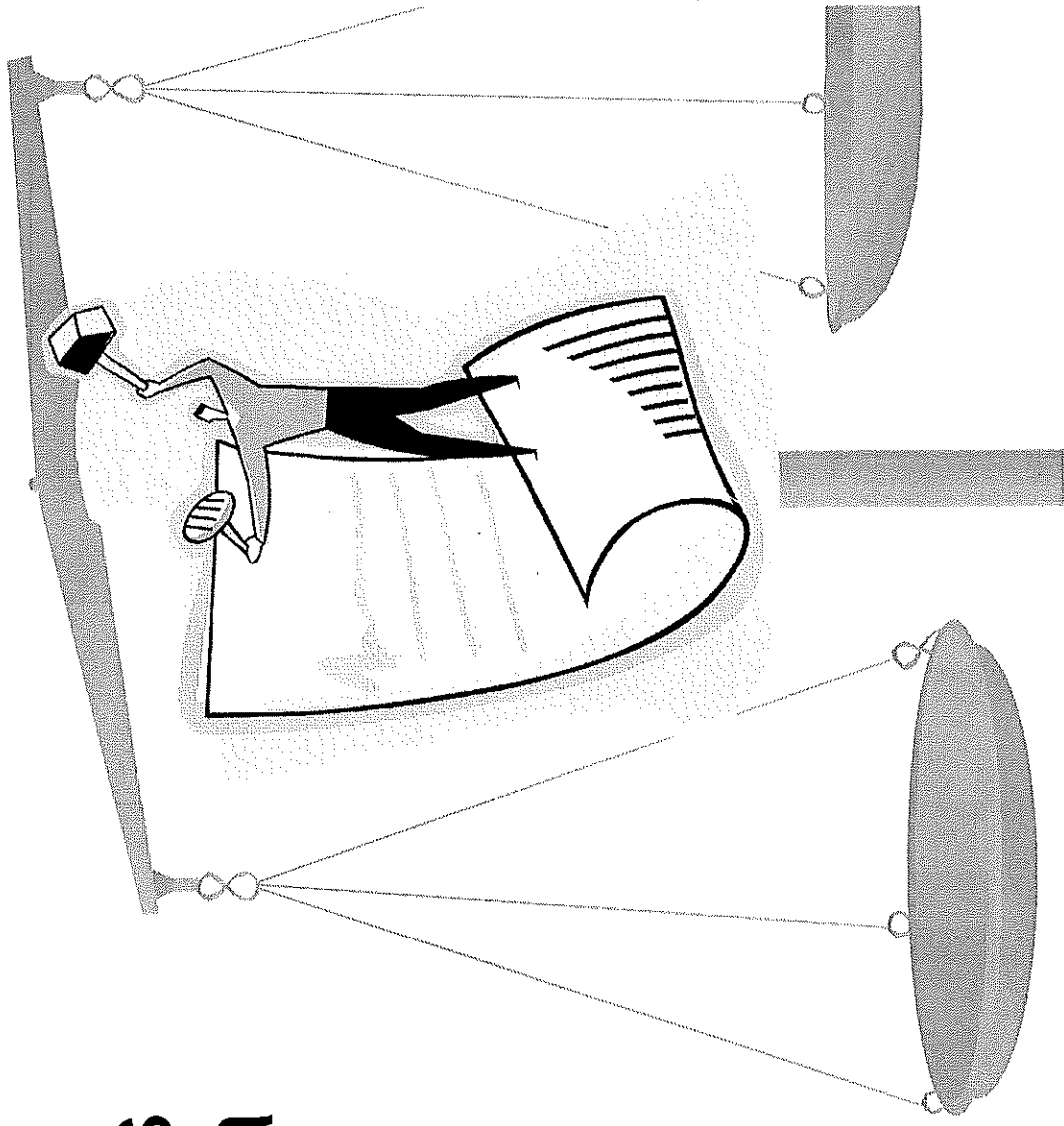
The Brown Act requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the local agency boundaries.

Exceptions: 1. To comply with state or federal law or a court order; 2. To inspect real or personal property; 3. To participate in multiagency meetings or discussions.



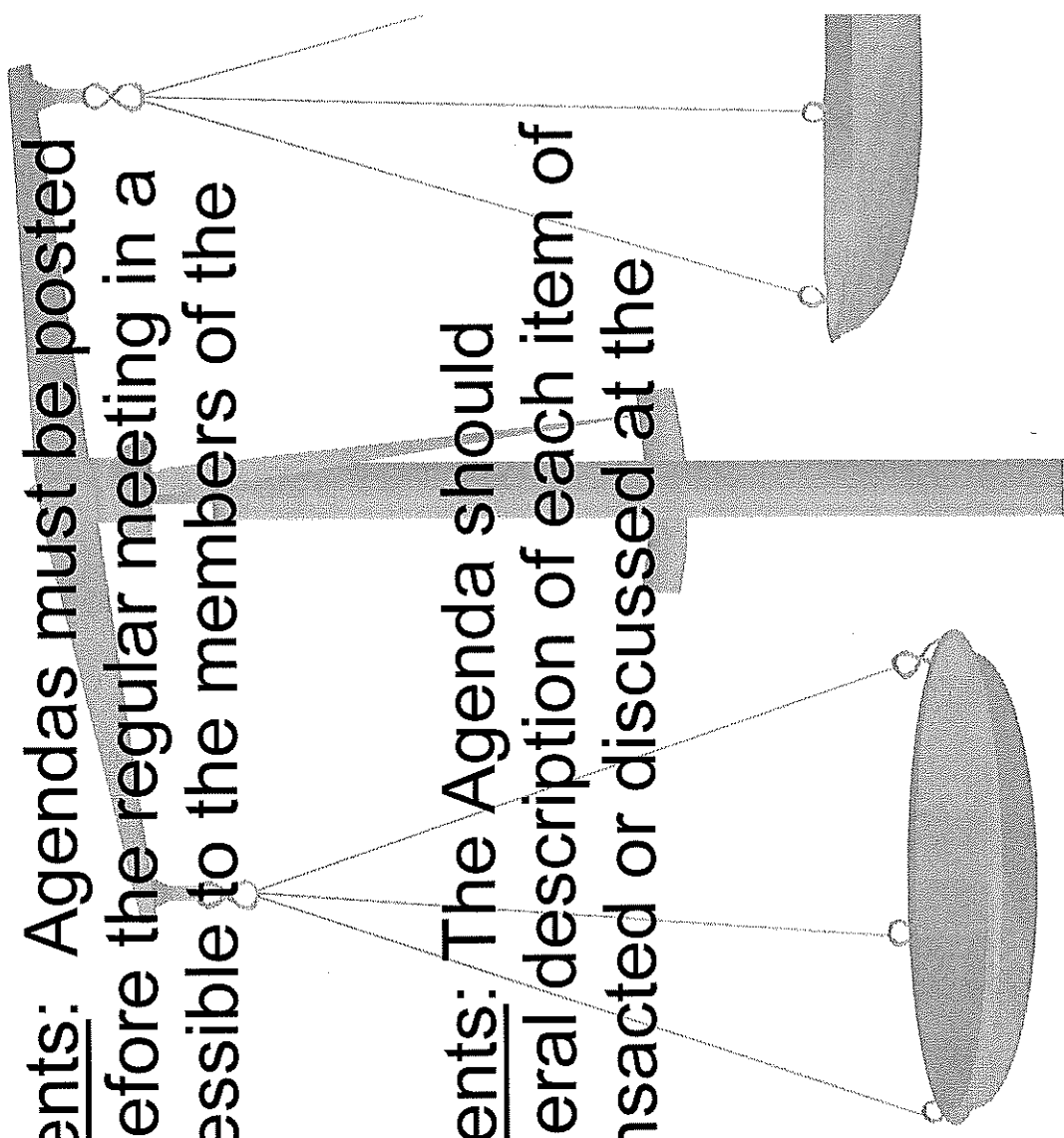
Meeting Agendas

All meetings must have a properly noticed and posted agenda.



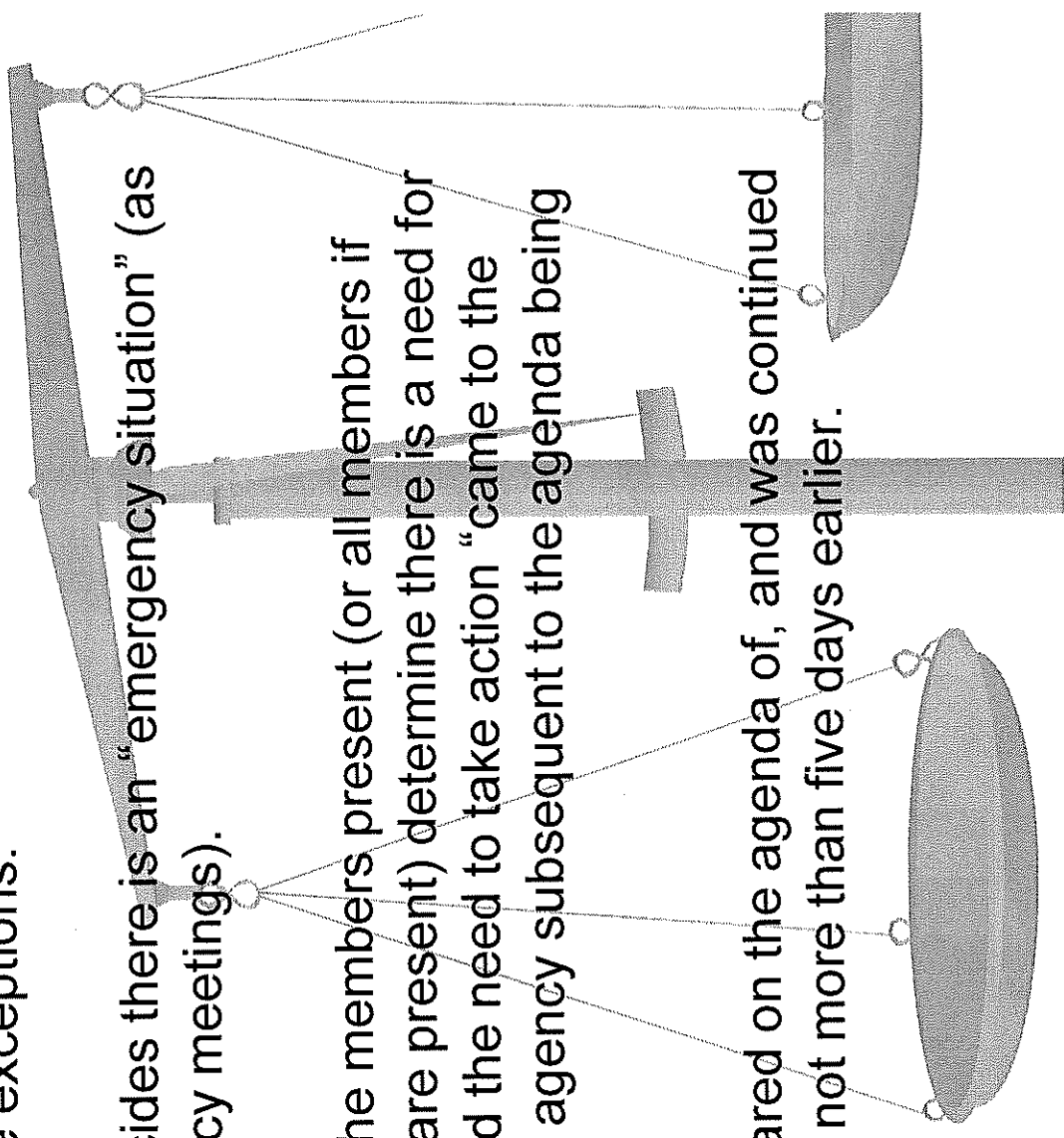
Agendas

- Posting Requirements: Agendas must be posted at least 72 hours before the regular meeting in a location freely accessible to the members of the public.
- Content Requirements: The Agenda should contain a brief general description of each item of business to be transacted or discussed at the meeting.



Items not on the Agenda

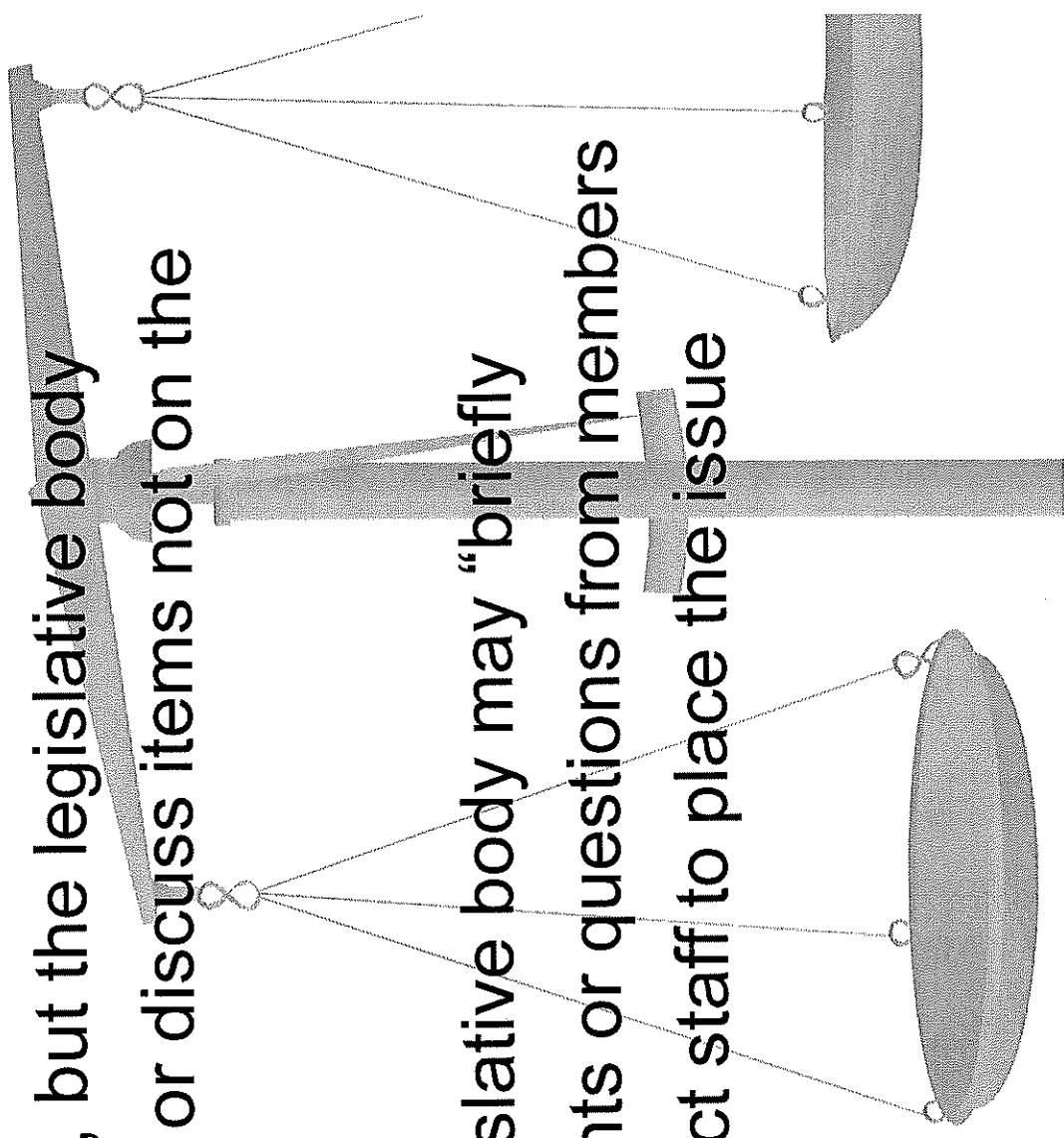
- The Brown Act prohibits any action or discussion of items not on the posted agenda. There are exceptions:
 1. When a majority decides there is an “emergency situation” (as defined for emergency meetings).
 2. When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action “came to the attention of the local agency subsequent to the agenda being posted.”
 3. When an item appeared on the agenda of, and was continued from a meeting held not more than five days earlier.



Response to Public

Generally, the public can talk about anything even if not on the agenda, but the legislative body cannot act, respond or discuss items not on the agenda.

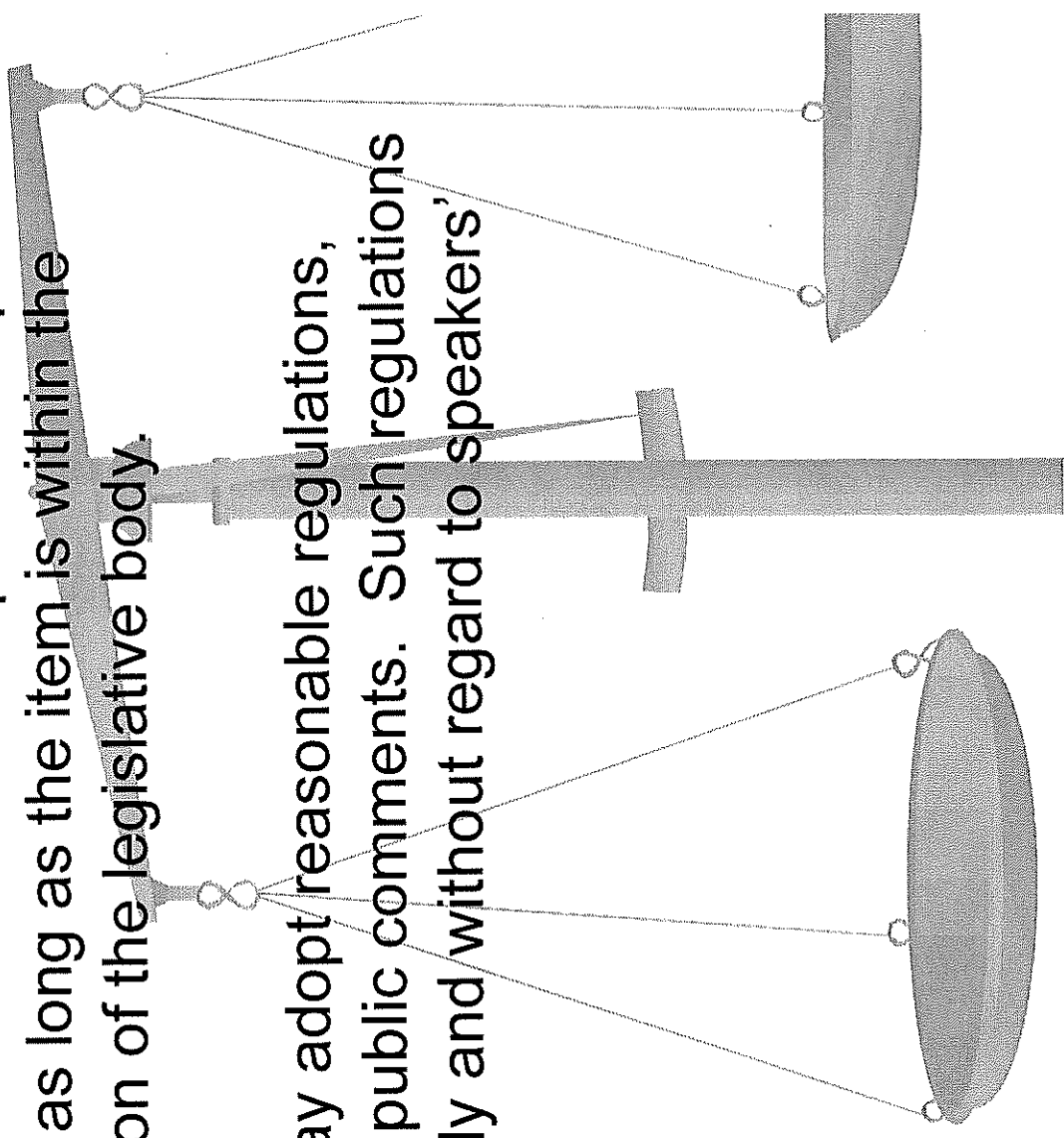
Exception: The legislative body may “briefly respond” to comments or questions from members of the public, or direct staff to place the issue on a future agenda.



The Public's Place on the Agenda

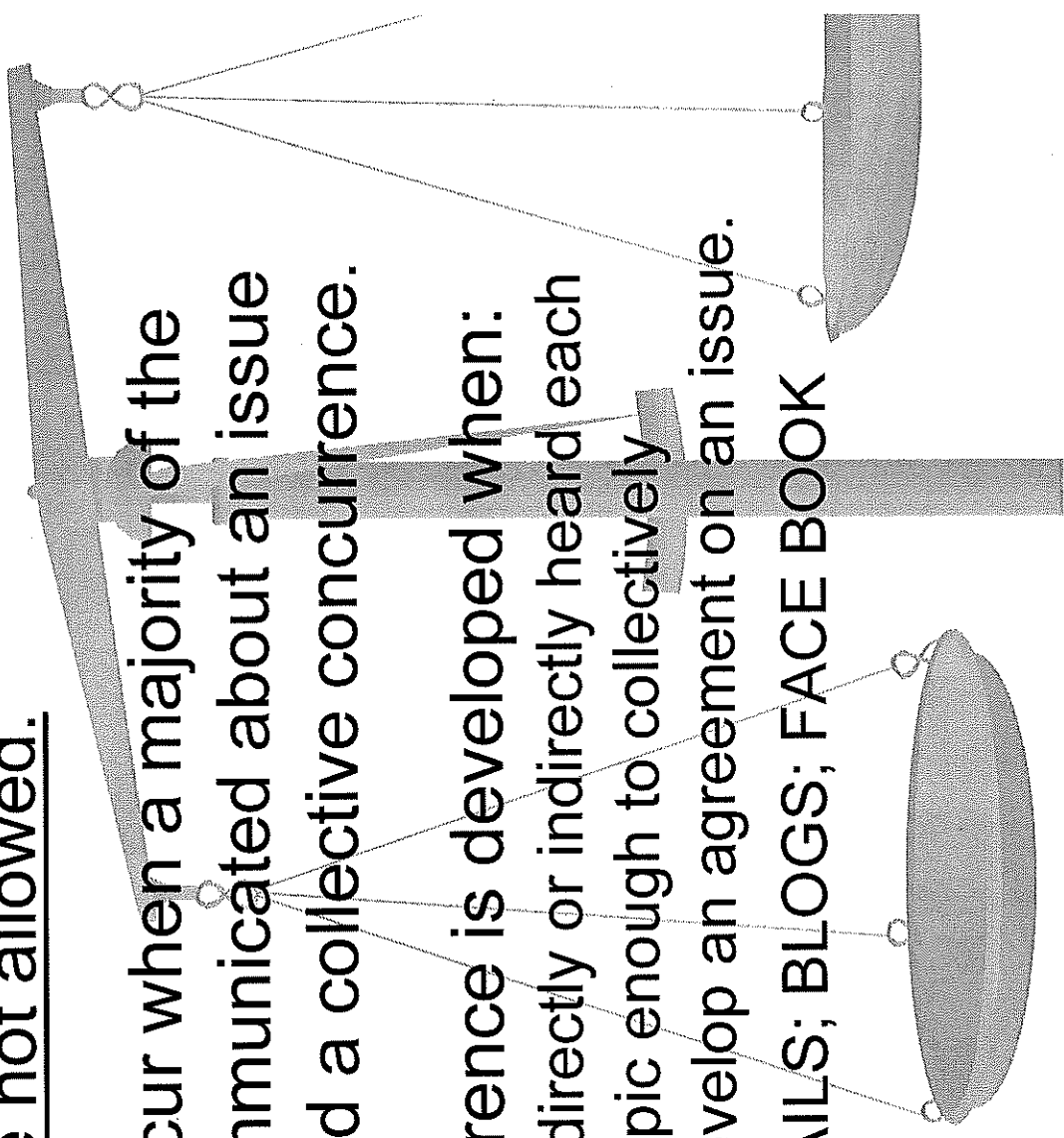
Every agenda must allow members of the public to speak on any item of interest, as long as the item is within the subject matter jurisdiction of the legislative body.

The legislative body may adopt reasonable regulations, including time limits on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints.



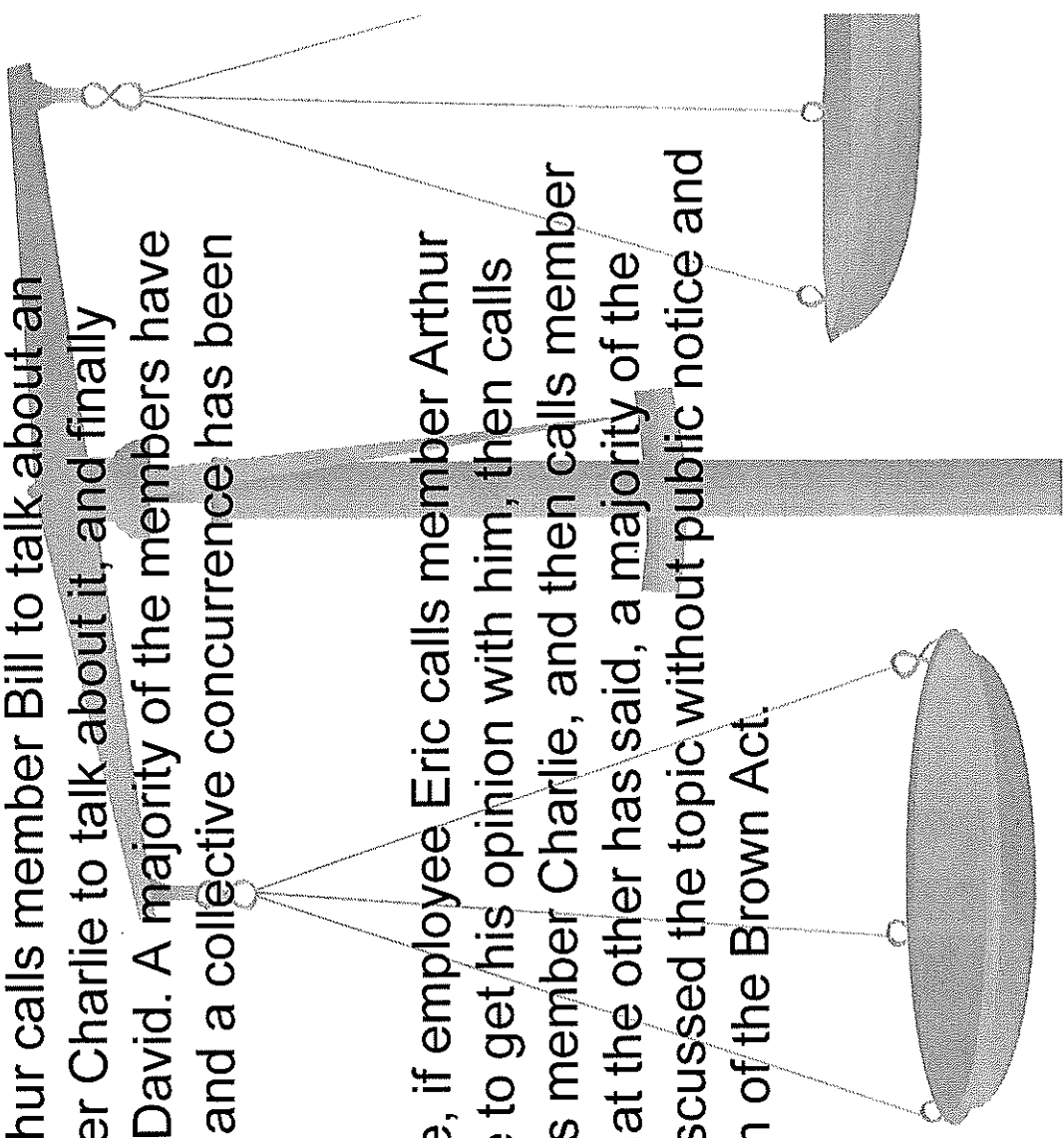
PROBLEM: Serial Meetings

- Serial meetings are not allowed.
- Serial meetings occur when a majority of the members have communicated about an issue and have developed a collective concurrence.
- A collective concurrence is developed when:
Members have either directly or indirectly heard each other's opinion on a topic enough to collectively develop or begin to develop an agreement on an issue.
 - ✓ BE WARY OF EMAILS; BLOGS; FACE BOOK PAGES!!!!



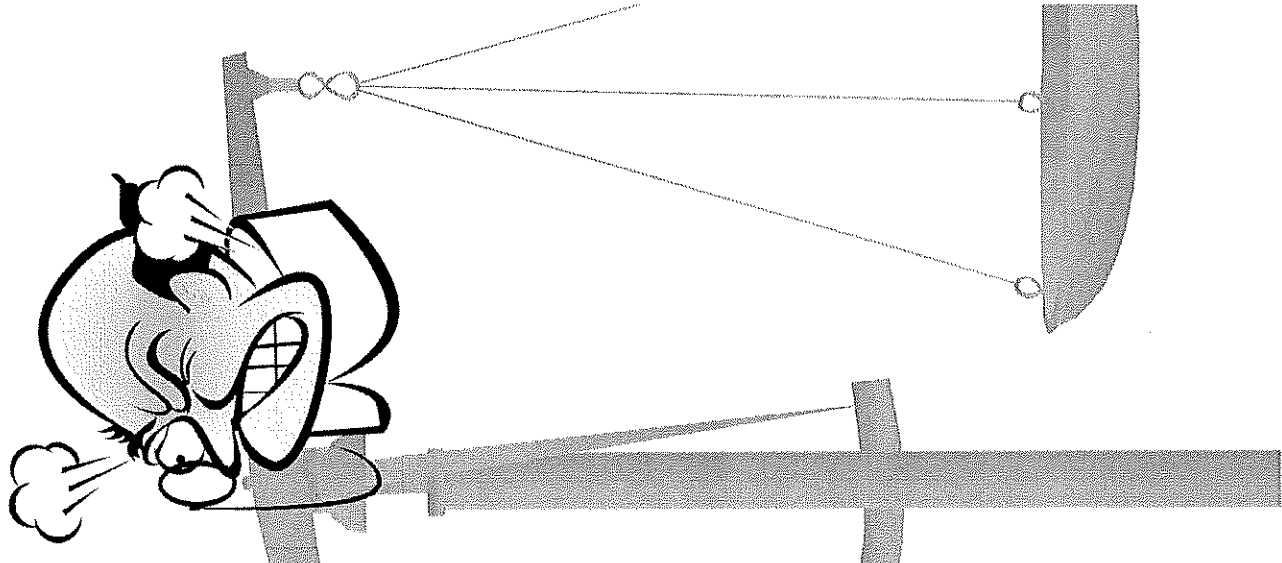
Types of Serial Meetings

- Daisy chain meeting:
 - Example: Member Arthur calls member Bill to talk about an issue, Bill calls member Charlie to talk about it, and finally Charlie calls member David. A majority of the members have talked about the topic and a collective concurrence has been established.
- Hub and spoke meeting:
 - Example: For instance, if employee Eric calls member Arthur and discusses a issue to get his opinion with him, then calls member Bill, then calls member Charlie, and then calls member David, telling each what the other has said, a majority of the Body has indirectly discussed the topic without public notice and is therefore in violation of the Brown Act.



Disruptive Attendees

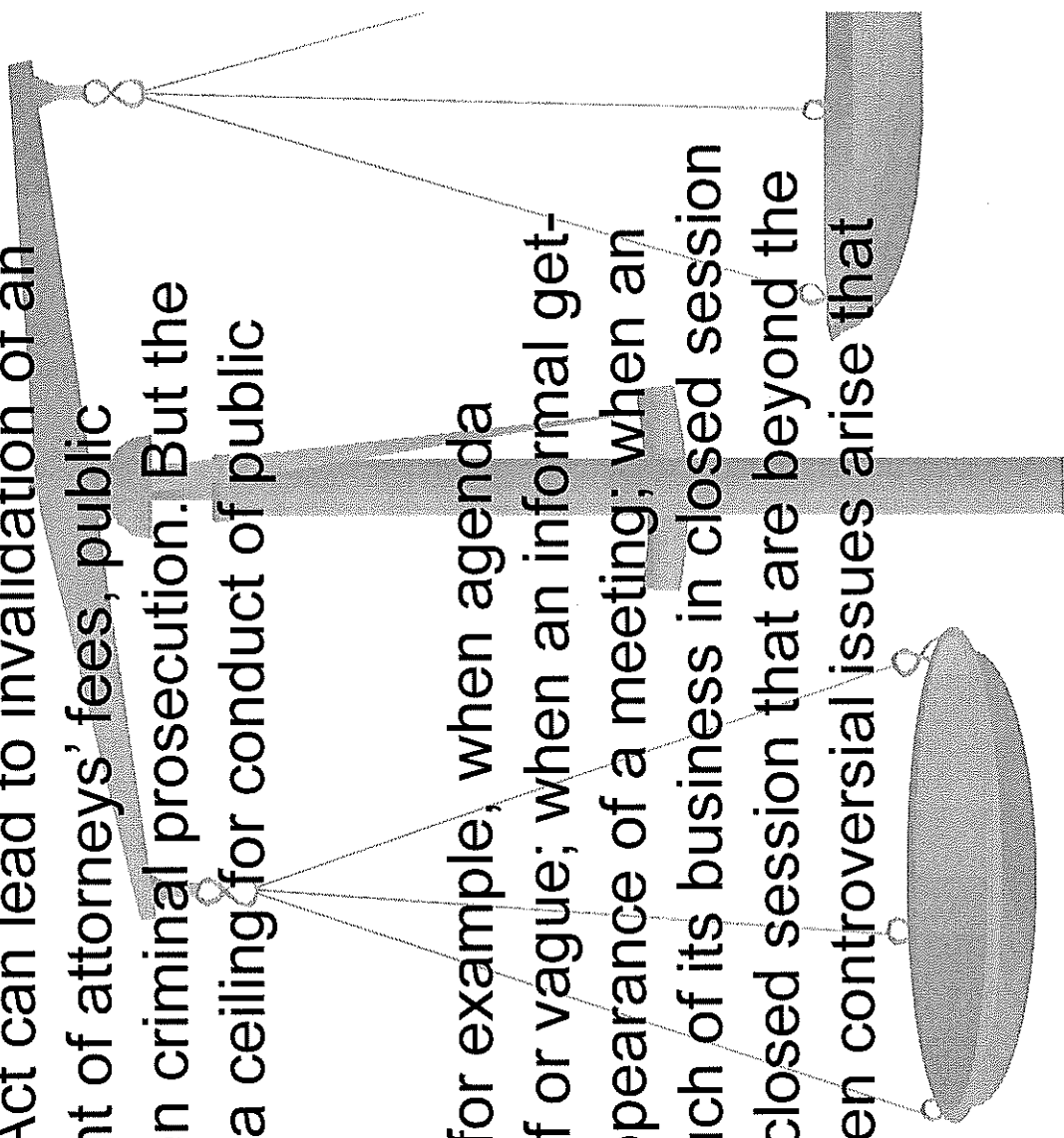
- The Body must allow for negative public comment however, willful interruptions of meetings may be addressed.
- One way is for the legislative body to clear the room and continue the meeting. However, all press and other members of the public who were not part of the interruption must be allowed to stay.



Violations

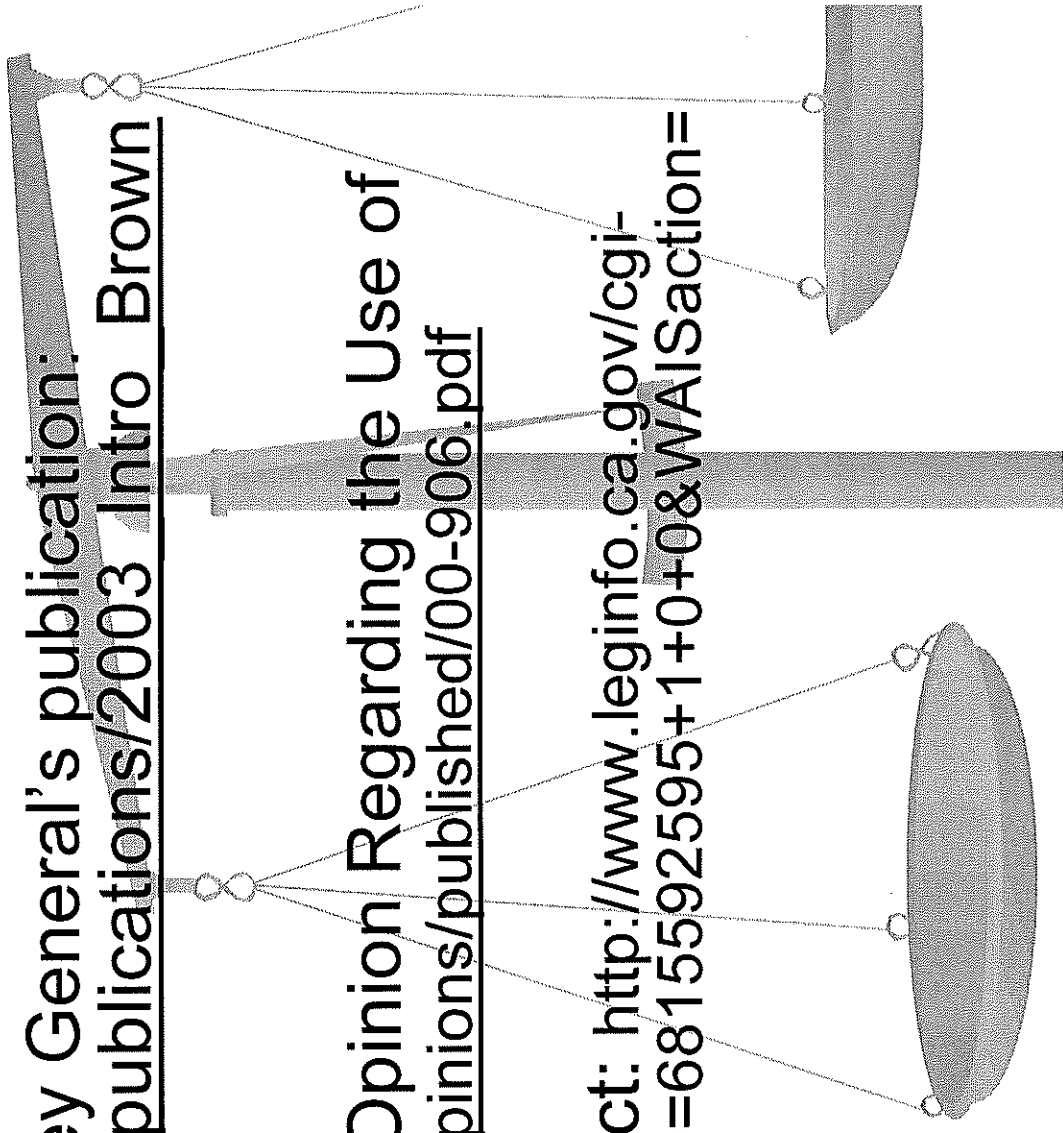
Violations of the Brown Act can lead to invalidation of an agency's action, payment of attorneys' fees, public embarrassment and even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials.

Problems may crop up, for example, when agenda descriptions are too brief or vague; when an informal get-together takes on the appearance of a meeting; when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope; or when controversial issues arise that are not on the agenda.



For more information

- View the CA Attorney General's publication:
http://www.ag.ca.gov/publications/2003_Intro_Brown_Act.pdf
- Attorney General's Opinion Regarding the Use of
email: <http://ag.ca.gov/opinions/published/00-906.pdf>
- Text of the Brown Act: <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=6815592595+1+0+0&WALSaction=retrieve>
- Ask your attorney!




HARBOR COMMISSION

MARCH 28, 2019

HISTORY

- ▶ ON MAY 7, 2018, MAYOR PRO TEM ERIK PETERSON AND COUNCIL MEMBER LYN SEMETA BROUGHT FORTH AN ITEM TO CREATE AN AD HOC COMMITTEE TO WORK WITH STAFF TO REVIEW BEST PRACTICES FOR THE OPERATION OF A HARBOR COMMISSION, INCLUDING THE MAKE-UP OF COMMISSION MEMBERSHIP, AUTHORITY OF THE COMMISSION, AND PROPOSED AMENDMENTS TO THE MUNICIPAL CODE, FOR THE CREATION AND OPERATION OF A HARBOR COMMISSION.
- ▶ ON DECEMBER 17, 2018, CITY COUNCIL ADDED MC 2.65 CREATING THE HARBOR COMMISSION.
- ▶ ON MARCH 4, 2019, CITY COUNCIL APPOINTED SEVEN MEMBERS TO THE COMMISSION.

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- ▶ NO ADVISORY BODY EXISTED WITHIN THE CITY OF HUNTINGTON BEACH CHARGED WITH ENSURING THE WELFARE OF HUNTINGTON HARBOR FOR RESIDENTIAL, RECREATIONAL AND COMMERCIAL USERS OF THE WATERWAYS, AND RELATED INFRASTRUCTURE.
 - ▶ NEED TO FACILITATE A HOLISTIC MANAGEMENT OF THE HARBOR AND COULD SERVE AS AN ADVISORY BODY TO CITY COUNCIL ON CERTAIN MATTERS PERTAINING TO THE HARBOR.

RESEARCH

- ▶ CITY STAFF REVIEWED EVERY HARBOR/ PORT COMMISSION IN THE STATE TO UNDERSTAND THEIR OPERATIONS, ROLES AND RESPONSIBILITIES, AND GOVERNANCE
- ▶ THROUGH THIS RESEARCH, STAFF DISCOVERED THAT MOST OF THE HARBORS/ PORTS HAD A REVENUE SOURCE THAT GENERATED OPERATIONAL AND MAINTENANCE FUNDS
- ▶ OUR HARBOR DOES NOT HAVE ANY ASSOCIATED REVENUE TO OFFSET OPERATIONS AND MAINTENANCE. THERE WERE ONLY A FEW HARBORS IN THE STATE THAT COULD BE CLOSELY COMPARED TO OURS IN EITHER SIZE, FEATURES AND/ OR FUNCTION

HARBOR COMMISSION COMPOSITION

- ▶ THE COMMISSION IS COMPRISED OF SEVEN (7) MEMBERS, WITH STAGGERED TERMS.
- ▶ THESE COMMISSIONERS MUST BE RESIDENTS IN THE HARBOR OR HAVE A BUSINESS INTEREST IN THE HARBOR.
- ▶ THE TWO CITY COUNCIL LIAISONS WORKED WITH STAFF ON SELECTION CRITERIA AND INTERVIEWED APPLICANTS BASED DESIRED EXPERTISE.

HARBOR COMMISSION ROLE

THE COMMISSION IS AN ADVISORY BOARD TO THE CITY COUNCIL ON THE FOLLOWING MAIN TOPICS:

- ▶ WATERWAY SAFETY
- ▶ GENERAL INFRASTRUCTURE (E. G. SEAWALLS, PIER HEAD LINES, ETC.)
- ▶ WATER QUALITY
- ▶ MUNICIPAL CODE AMENDMENTS

HARBOR COMMISSION RESPONSIBILITIES

- ▶ ADVISE THE CITY COUNCIL ON ANY MATTERS CONCERNING THE HARBOR WHEN SO REQUESTED BY COUNCIL
- ▶ HOLD HEARINGS ON ANY MATTERS CONCERNING THE COMMERCIAL AND RECREATIONAL DEVELOPMENT OF THE HARBOR
- ▶ ADVISE THE CITY COUNCIL ON PROPOSED HARBOR RELATED IMPROVEMENTS
- ▶ MAKE RECOMMENDATIONS TO CITY COUNCIL FOR ADOPTION OF REGULATIONS AND PROGRAMS NECESSARY FOR THE ONGOING IMPLEMENTATION OF THE GOALS, OBJECTIVES, AND POLICIES OF THE HARBOR

HARBOR COMMISSION RESPONSIBILITIES

- ▶ ADVISE THE CITY COUNCIL ON IMPLEMENTATION OF DREDGING PRIORITIES
- ▶ RECOMMEND AND ADVISE TO CITY COUNCIL IN ALL MATTERS PERTAINING TO THE USE, CONTROL, OPERATION, PROMOTION, AND REGULATION OF VESSELS AND WATERCRAFT WITHIN THE HARBOR
- ▶ MAKE RECOMMENDATIONS TO CITY COUNCIL CONCERNING THE ACQUISITION, DISPOSITION, OR REPAIR OF EQUIPMENT, FACILITIES, MATERIALS, AND SUPPLIES RELATING THE HARBOR

QUESTIONS?