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A Professional Law Corporation

***Bay Area Urban Areas  
Security Initiative  
2019 Brown Act Presentation***

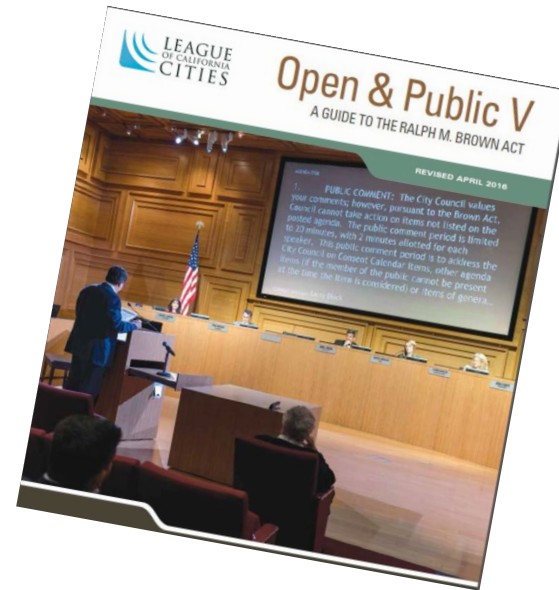
Eric S. Casher, Principal

August 8, 2019

# III. Government Transparency Laws

## Ralph M. Brown Act

*Government Code sections 54950 et seq.*



# III. Government Transparency Laws

## B. Brown Act

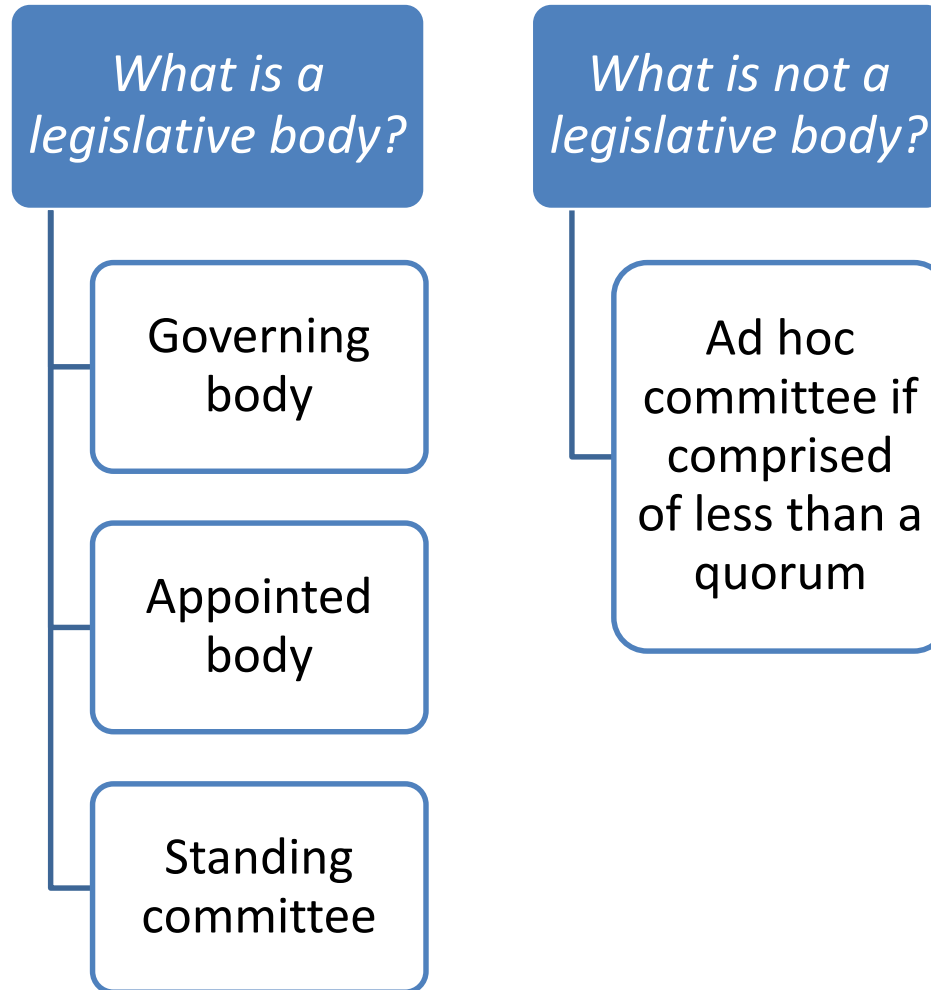
### *Open Meeting Requirements*

- Meetings...
- Of Legislative Bodies...
- *Shall be open and public*



# III. Government Transparency Laws

## Legislative Bodies



# III. Government Transparency Laws

## B. Brown Act Definition of “Meetings”

- A congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on an item of business within the agency’s subject matter jurisdiction
- Exceptions:
  - Conferences
  - Community meetings
  - Social or ceremonial occasions
  - Individual contacts
  - Ad Hoc committees
  - Meetings of other legislative bodies
  - Individual deliberation and decision-making

# III. Government Transparency Laws

## B. Brown Act— Avoiding “Serial Meetings”

- Majority may not, outside a meeting, use a series of communications to discuss, deliberate, or take action on any item of business
- Does not prevent employees and officials from engaging in separate conversations outside of a meeting provided that the comments or positions of other members are not communicated



# III. Government Transparency Laws

## B. Brown Act—Avoiding “Serial Meetings”

### *Examples*

- Hub and spoke
  - A staff member (the hub) communicates with members of a legislative body (the spokes) one-by-one for input on a proposed action and in the process reveals members’ positions to other members in advance of the meeting.
- Daisy chain
  - In the daisy-chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated or taken action on an item within the legislative body’s subject matter jurisdiction.
- Emails
  - Informal nature of email communication is ripe for inadvertent Brown Act violations



# III. Government Transparency Laws

## B. Brown Act

### *Closed Sessions*

- Closed session discussions are confidential
- Required to publicly report certain actions taken in closed session

#### **Permissible Closed Session Topics:**

- Real estate negotiations
- Pending or threatened litigation
- Initiation of litigation
- Personnel
- Labor negotiations
- Public security





# III. Government Transparency Laws

## B. Brown Act

*May take action only  
on items on posted agenda*

- Posting requirements:
  - **Regular meetings** must be posted **72** hours before meeting
  - **Special meetings** must be posted **24** hours before meeting



- **Exceptions**
  - Emergency
  - Urgency → need for immediate action came to agency's attention after posting the agenda

# III. Government Transparency Laws

## B. Brown Act

- AB 2257: **New rule for 2019!**
- By 2019, agenda must be available through a prominent, direct link on agency's homepage.
- Alternatively, agency can provide a link to an integrated agenda management platform, with the current agenda at the top.

# III. Government Transparency Laws

## B. Brown Act

### *Public Participation Rights*

- Regular meetings must provide an opportunity for the public to speak regarding on any matter within the body's jurisdiction
  - Legislative body may briefly discuss these items and refer matters to staff, ***but cannot take action***
- Public can address the legislative body on matters on the agenda before or during consideration of the item



# III. Government Transparency Laws

## B. Brown Act

### *Public Participation Rights*

- Legislative body may adopt reasonable regulations limiting total amount of time for public testimony and for each speaker
- **New Rule for 2019!**
- If a legislative body does this, it must provide at least twice the allotted time to a member of the public who uses a translator



# III. Government Transparency Laws

## B. Brown Act

### *Public Participation Rights*



# III. Government Transparency Laws

## B. Brown Act

- SB 1436
- Requires an oral report in open session summarizing the recommendation to adjust the compensation of any “local agency executive” before action is taken.