

SHUTE  
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LLP



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# BROWN ACT MEETINGS NOW: NAVIGATING TODAY'S COMPLEX & EVOLVING RULES

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# FORMAT

- 1 hour total
- Interactive session
- Questions:
  - Ask any time
  - 10-15 minutes @ end



Heidi Garner Studio

# TRAINING TAKEAWAYS



Basics &  
beyond

- Review major Brown Act rules
- Highlight “Tricky Issues” most relevant to your Districts

# THE BROWN ACT: ONE OF CALIFORNIA'S KEY TRANSPARENCY LAWS

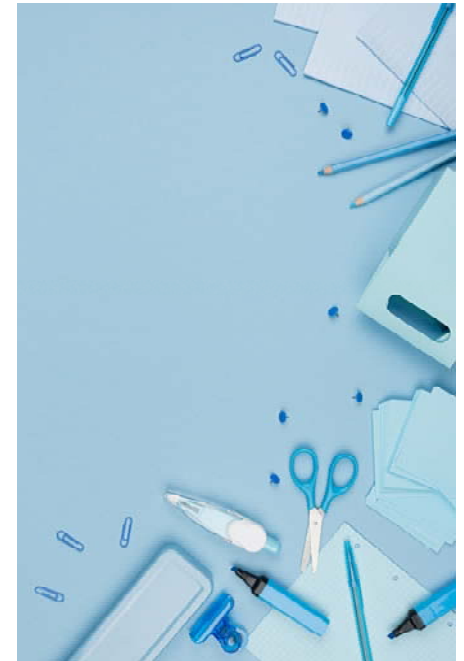


# POSTING NOTICE OF BROWN ACT MEETINGS

Regular	Special	Emergency (rare)
72 hours notice	24 hours notice	Little (or no) notice if consequences are so immediate and significant that providing more notice would endanger public health/safety. Special notice required after.

# TRICKY ISSUE: AGENDA TEMPLATES

“The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency’s internet website, if the local agency has one.”



# PUBLIC COMMENT

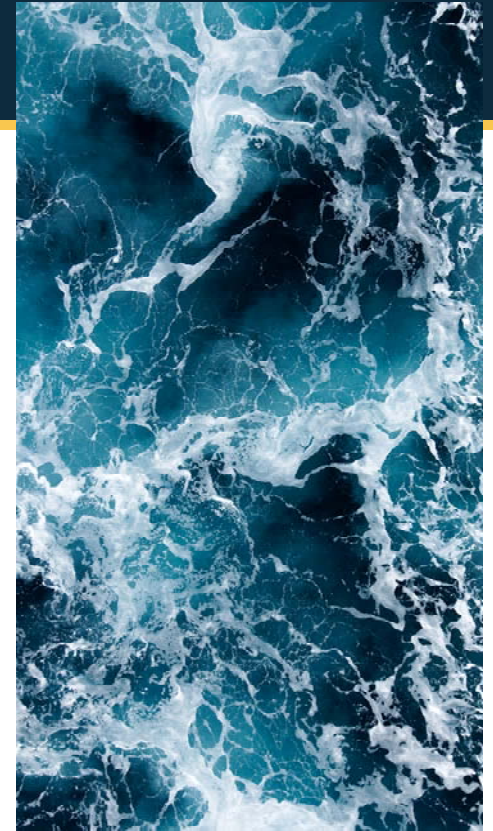
Public comment opportunity for:

- All agenda items: prior to action
- Public forum:
  - Required for regular meetings
  - Good practice for special meetings
- Non-action items (e.g., roll call, ceremonial items & manager's report)
- Be clear about time limits & enforce uniformly



# TRICKY ISSUE: PUBLIC COMMENT

1. Commenter speaks on every item
2. Commenter exceeds time limit (e.g., 3 minutes)
3. Commenter disrupts meeting/interrupts others
4. Commenter is repetitive
5. Commenter uses profanity and/or racial slurs
6. Commenter criticizes Staff and/or Council/Board



# CLOSED SESSION

- Allowed only for limited purposes (e.g., labor, litigation, real estate)
- Agenda notice is critical and tricky (consult with agency counsel)
- Public comment allowed before closed session
- Public report sometimes required after closed session

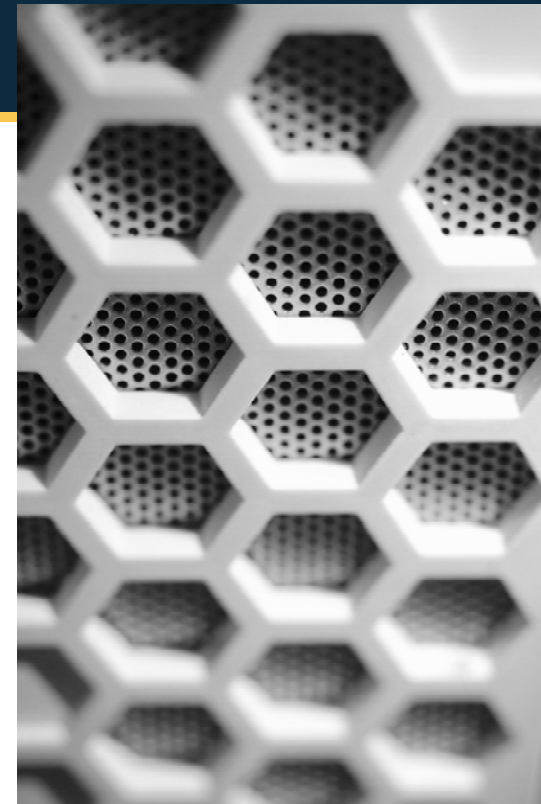


# TRICKY ISSUE: CLOSED SESSION

Question: Who is allowed in the room?

Answer: It depends

- Litigation
- Labor negotiations
- Real estate negotiations
- Performance evaluation for GM
- Etc.



# “UNINTENDED MEETINGS”

Brown Act “meetings” not limited to official, in-person discussions.

Improper meetings (not noticed per Brown Act) can occur via:

- Phone, email & text
- Social media posts
- Hub-and-spoke communications
- Daisy chain communications

Staff and Board Members should avoid:

- Communicating one Member’s comments/opinion to other Member(s), especially a quorum
- Developing collective concurrence outside noticed meetings



# TRICKY ISSUE: “UNINTENDED MEETINGS”



Can these meetings happen without being noticed per the Brown Act?

1. District-sponsored Brown Act training for the full Board.
2. Board Chair holds monthly meeting at District office that is open to the public & publicized on District’s website.
3. Two other Board Members decide to attend Chair’s monthly meeting.
4. League of Women Voters hosts a candidates forum open to the public. All Board Members and candidates participate in the program, but sit separately.
5. City staff host workshop to gather public input about a proposed Facilities Master Plan. All Board Members attend and participate in the program, but sit separately.
6. CARPD hosts a conference, and all Board Members attend.

# AGENDA DESCRIPTIONS

“The agenda shall contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.”



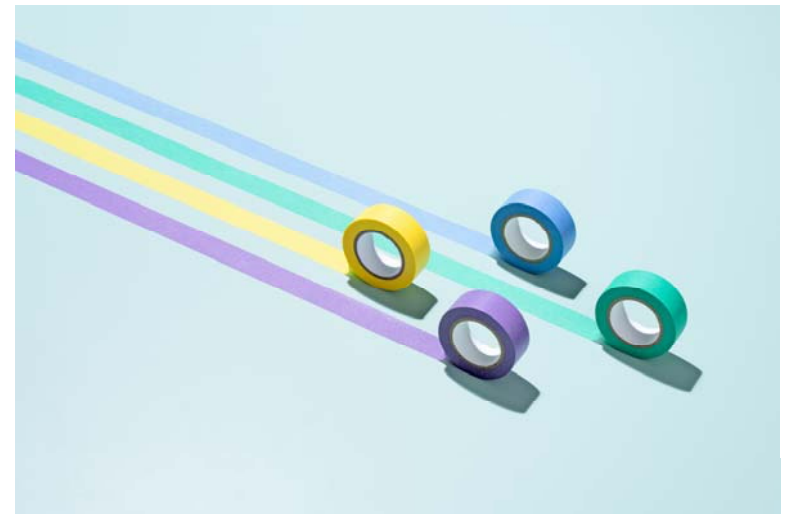
## Description makeover:

*Before: “Proposed contract with ABC Consulting”*

*After: “Proposed contract with ABC Consulting in the amount of \$50,000 for playground design services for Main Park at 123 Main Street.”*

# TRICKY ISSUE: STICKING TO THE AGENDA

“a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.”



# HYPO: STICK TO THE AGENDA

During public forum at a Board meeting, a member of the public says her dog was recently hit by a car near the District's dog park and she wants the District to put up a fence to prevent this in the future. She is very upset and says this is urgent. May Board Members:

1. Ask the speaker to clarify exactly where this happened?
2. Suggest the speaker talk with the General Manager about her ideas?
3. Describe similar experiences they have had at this park?
4. Create an ad hoc committee to bring back a recommended solution to the Board?
5. Vote to put this issue on a future Board agenda?



# TRICKY ISSUE: GM'S REPORT



“In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body... may ask a question for clarification...”

# TRICKY ISSUE: DIRECTORS' REPORTS



“member of a legislative body...may... make a brief announcement, or make a brief report on their own activities.”

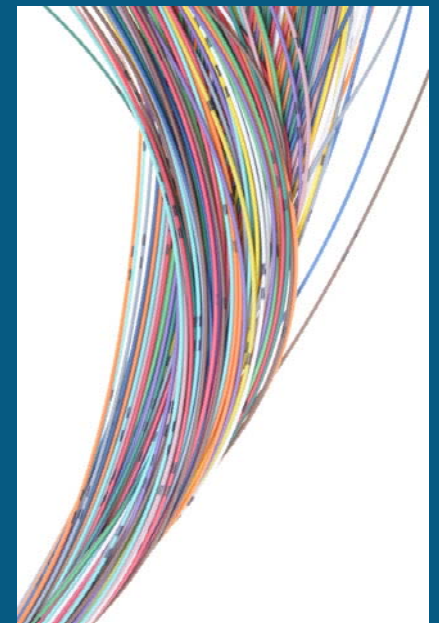
# BROWN ACT'S UPDATED "ZOOM RULES" AND MORE

SB707 (2025): major Brown Act changes for remote meeting attendance & more

- Expanded "Zoom attendance" options available for some elected & appointed officials
- Public "Zoom participation" technology required for some jurisdictions effective July 1, 2026

New rules: reporting executive staff compensation

New rules: public outreach



# ELIGIBLE LEGISLATIVE BODY

- (A) A city council of a city with a population of 30,000 or more.
- (B) A county board of supervisors of a county, or city and county, with a population of 30,000 or more.
- (C) A city council of a city located in a county with a population of 600,000 or more.
- (D) The board of directors of a special district that has an internet website and meets any of the following conditions:
  - (i) The boundaries of the special district include the entirety of a county with a population of 600,000 or more, and the special district has over 200 full-time equivalent employees.
  - (ii) The special district has over 1,000 full-time equivalent employees.
  - (iii) The special district has annual revenues, based on the most recent Financial Transaction Report data published by the California State Controller, that exceed four hundred million dollars (\$400,000,000), adjusted annually for inflation commencing January 1, 2027, as measured by the percentage change in the California Consumer Price Index from January 1 of the prior year to January 1 of the current year, and the special district employs over 200 full-time equivalent employees.

# TRICKY ISSUE: DIFFERENT RULES FOR DISTRICTS

Eligible Legislative Body (Cities & Counties):

(A) A city council of a city with a population of 30,000 or more.

(B) A county board of supervisors of a county, or city and county, with a population of 30,000 or more.

(C) A city council of a city located in a county with a population of 600,000 or more.

...



# VIRTUAL ATTENDANCE: PRIMARY OPTIONS

“Traditional” Option	“Just Cause” Option
<ul style="list-style-type: none"><li>• Notice &amp; post remote location</li><li>• Allow public to physically attend meeting at remote location</li><li>• Locations include home, office, hotel, etc.</li><li>• Roll call votes</li><li>• Quorum within jurisdiction</li></ul>	<ul style="list-style-type: none"><li>• Childcare, caregiving, contagious illness, etc.</li><li>• Remote location <u>not</u> noticed &amp; open to public</li><li>• Public Zoom option required</li><li>• Quorum at physical meeting room</li><li>• Remote attendee audio &amp; video on</li><li>• Identify adults at remote location</li><li>• Numerical caps (e.g., twice annually)</li><li>• Roll call votes</li></ul>

## VIRTUAL ATTENDANCE: SOME OF THE OTHER OPTIONS

“Eligible Multijurisdictional Body” Option	“Eligible Subsidiary Body” Option
<ul style="list-style-type: none"><li>• Representatives from more than one county, city, special district (e.g., JPA)</li><li>• Remote locations <u>not</u> noticed &amp; open</li><li>• Quorum at physical meeting room</li><li>• Significant distances to meetings (20+ miles)</li><li>• Compensation limitations</li><li>• Numerical caps (e.g., twice annually)</li></ul>	<ul style="list-style-type: none"><li>• Advisory only, findings required</li><li>• Only appointed officials eligible</li><li>• Remote locations <u>not</u> noticed &amp; open to public (up to 100% remote)</li><li>• Staffed physical meeting room</li><li>• Exclusion for elections, budgets, privacy, taxes, etc.</li></ul>

# TRICKY ISSUE: BROWN ACT & THE ADA

## **Board Members virtual attendance as ADA accommodation:**

- participate through both audio and visual technology” but just audio ok “if a physical condition related to their disability results in a need to participate off camera.”
- disclose “whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member’s relationship with any of those individuals.”
- participation “shall be treated as in-person attendance at the physical meeting location for all purposes”

# TRICKY ISSUE: TECHNICAL DIFFICULTIES

- Examples:
  - Power/Internet outage at District's in-person meeting room
  - Power/Internet outage for some/all members of public
  - Zoom, YouTube, other third-party outage
- Consequences depend on facts
- Contingency plan for technical difficulties

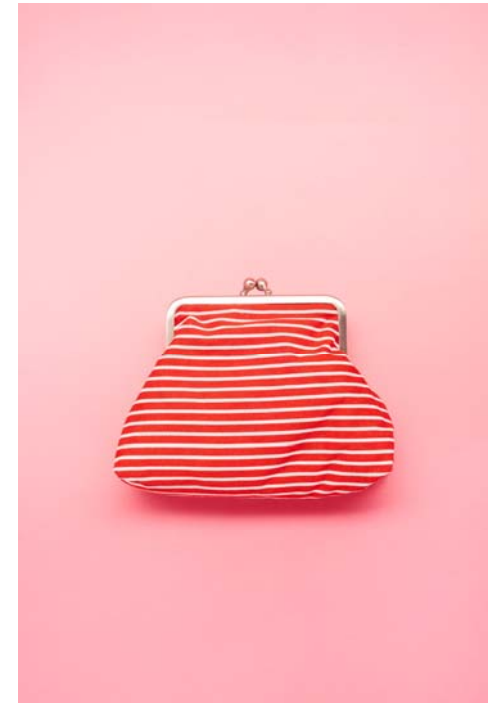


# ORAL REPORT: EXECUTIVE COMPENSATION

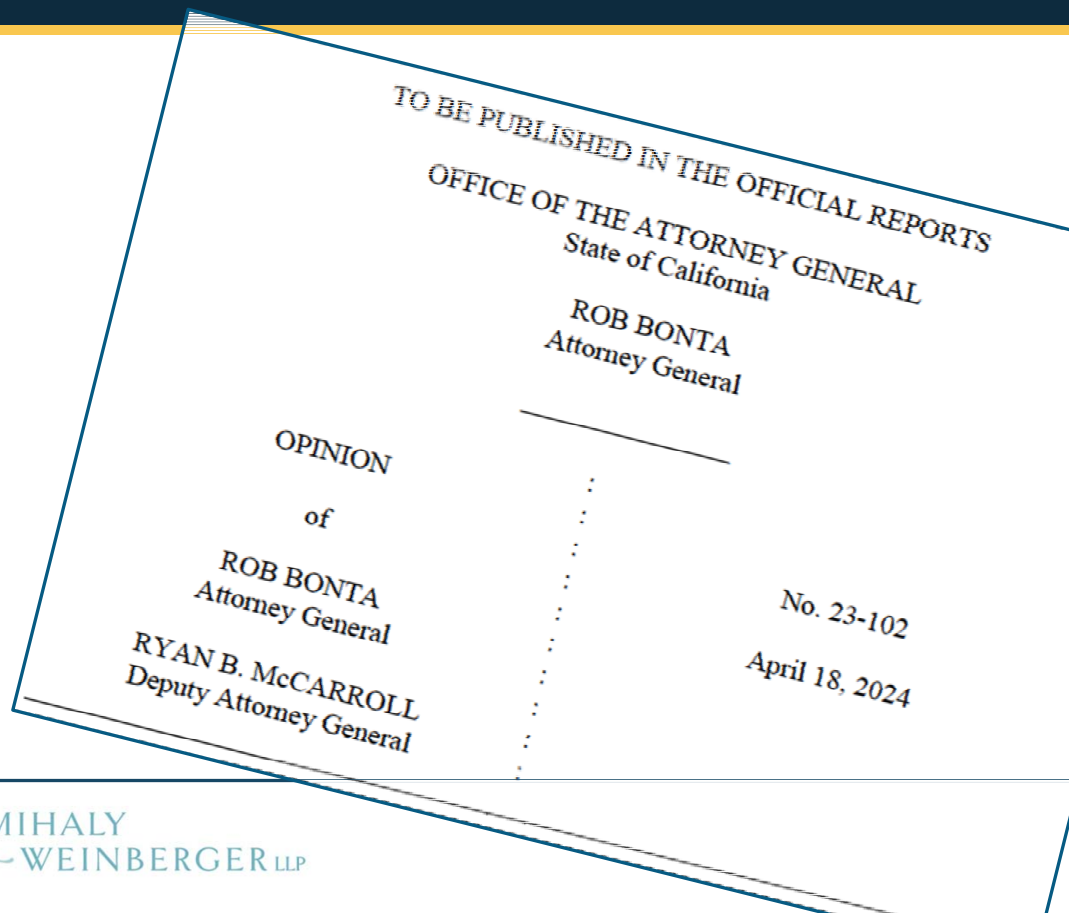
“Prior to taking final action, the legislative body shall orally report a summary of a recommendation...on the salaries, salary schedules, or compensation paid in the form of fringe benefits of...

(i) A local agency executive...

(ii) A department head or other similar administrative officer of the local agency.”



# BONUS TRICKY ISSUE: “STATE OF THE DISTRICT” EVENTS



# BONUS TRICKY ISSUE: WORKSHOPS, CONFERENCES & TRAININGS



Brown Act rules do not apply to:

“The attendance of a majority of the members of a legislative body at a **conference** or similar gathering **open to the public** that involves a discussion of **issues of general interest** to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members **do not discuss among themselves**, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency.”

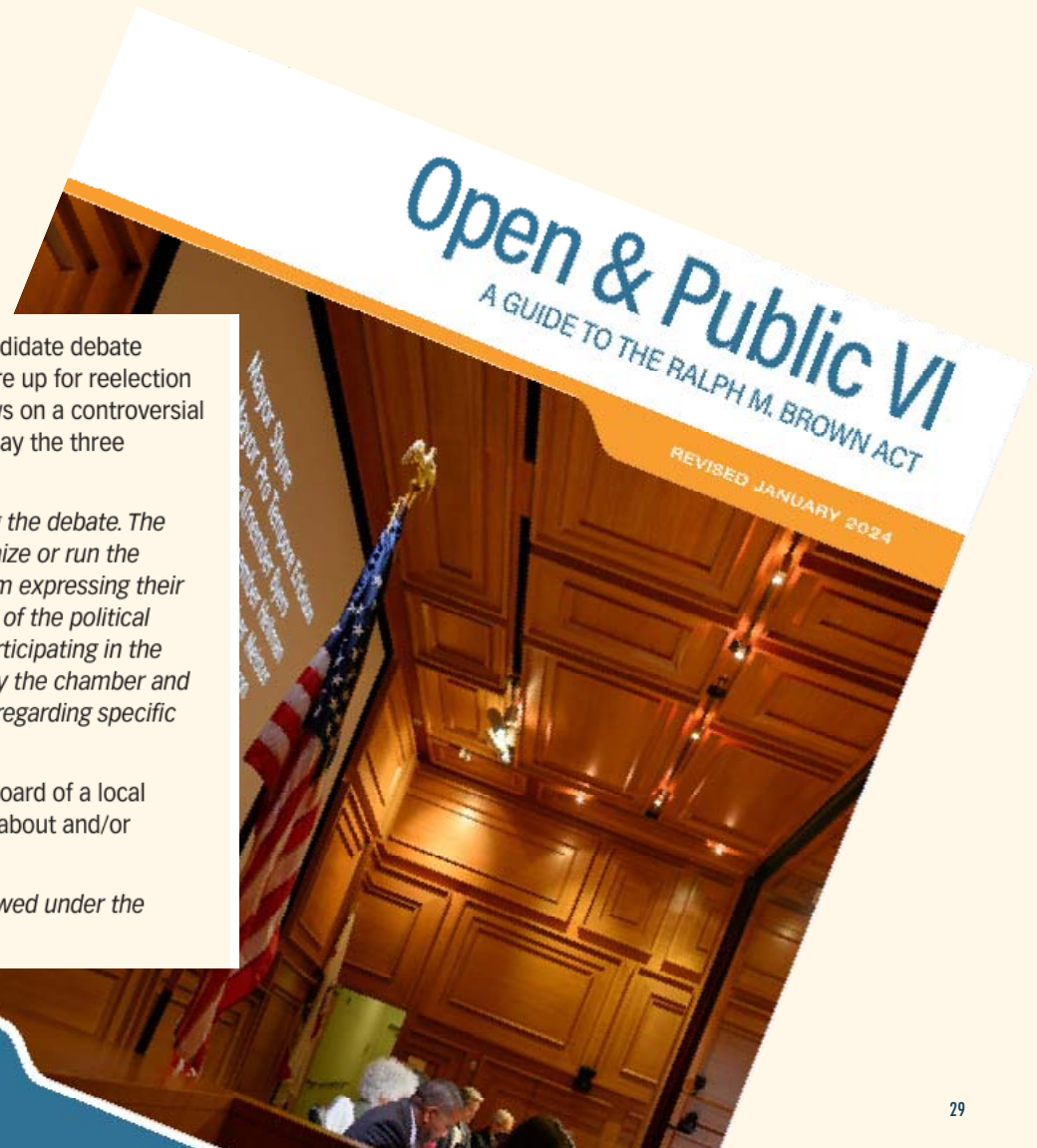
# WHAT'S NEXT?

SB 1159: should AI get to participate in Brown Act meetings as a member of the public?



## Open & Public Updated (2024) Excellent Guide with Helpful Q & A

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for reelection and all three participate. All of the candidates are asked their views on a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** *Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.*
- Q.** May the three incumbents accept an invitation from the editorial board of a local paper to all candidates to meet as a group and answer questions about and/or debate city issues?
- A.** *No, unlike the chamber of commerce event, this would not be allowed under the Brown Act because it is not an open and publicized meeting.*



# QUESTIONS?



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