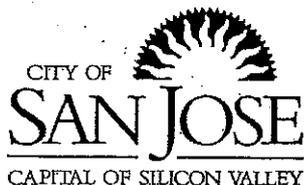


1-21-09  
#5B



# Memorandum

**TO:** New Councilmembers  
**FROM:** Richard Doyle,  
City Attorney  
**SUBJECT:** Brown Act – Seriatim Meetings  
**DATE:** December 18, 2002

## BACKGROUND

The Ralph M. Brown Act (Gov. Code, §§ 54950 – 54962) generally requires the legislative body of a public agency to hold its meetings open to the public. With the extensive use of e-mail to conduct City and Redevelopment Agency business, we want to remind you and your staffs about the legal issues with regard to Brown Act and prohibited “seriatim meetings.”

## DISCUSSION

### A. “Meeting” Defined

A “meeting” under the Brown Act is defined as any congregation of a majority of the members of a legislative body at the same time and place to discuss or deliberate on any item within their subject matter jurisdiction. The Act permits a meeting to take place through the use of electronic means, either audio, video or both. However, such meetings must conform to the typical Brown Act requirements of adequate notice and opportunity for public attendance and input.

### B. Seriatim Meetings

The Act specifically prohibits any use of direct communication, intermediaries or technological devices by a majority of the members of a legislative body to develop a collective concurrence as to action to be taken. (Gov. Code § 54952.2). Such a series of separate discussions by individual members of a legislative body regarding matters within their jurisdiction without actually coming together and meeting is referred to as a *seriatim* meeting. This type of prohibited meeting can result from a series of communications of individual members or groups of members that are less than a quorum which then result in involving a majority of the members of the legislative body.

A *seriatim* meeting is prohibited by the Act because the acquisition of information, as well as all debate, discussion, or any other aspect of the **deliberative process** is required to occur in public. The term “deliberation” has been broadly construed to include “not only collective discussion, but the collective acquisition and exchange of

facts preliminary to the ultimate decision." Rowen v. Santa Clara Unified School Dist. (1981) 121 Cal.App. 3d 231; (84 Ops.Cal.Atty.Gen. 30 (Feb. 20, 2001) Thus, the use of direct communications, personal intermediaries, or technological devices by a majority of members to develop a collective concurrence as to action taken by the legislative body is illegal.

Providing substantive information from staff to members of a legislative body may be a violation when such information is a part of systematic communications for preparation for a meeting or engaging in discussion, lobbying or any other aspect of the deliberative process. For example, briefing members in separate meetings on policy decisions and background events are part of the deliberative process. Such communications are problematic because the public is "able only to witness a shorthand version of the deliberative process, and its ability to monitor and contribute to the decision-making process will have been curtailed." (Calif. Attorney General's Office, The Brown Act (1994) p. 12)

#### C. E-mail – Brown Act Violations

Caution must be taken regarding all forms of communication, particularly the forwarding and exchange of e-mail or posting of messages to a discussion group or "bulletin board," to insure that an illegal *seriatim* meeting does not occur. Use of e-mail to develop a collective concurrence as to an action taken by a legislative body is still a violation even if the e-mails are sent to an agency's secretary and chairperson, posted on the agency's website and a printed version of each e-mail is reported at the next public meeting of the agency's board or the legislative body. (84 Ops.Cal.Atty.Gen. 30, supra).

Therefore, staff should be careful in the use of e-mail to communicate with Councilmembers with respect to possible actions to be taken by the City Council as a legislative body including matters which may appear on a City Council Agenda. Additionally, care must also be taken with forwarding e-mail messages received from the public or forwarding responses to messages from the public to Councilmembers or their assistants. The use of e-mail in this way could result in developing a consensus or encourage discussion and deliberation in violation of the Brown Act.

With regard to e-mail sent to Councilmembers from members of the public concerning a pending agenda item, we recommend that a printed version of the e-mail be provided to the City Clerk to be included as a part of the public record for that agenda item.

#### D. Penalties – Brown Act Violations - Enforcement

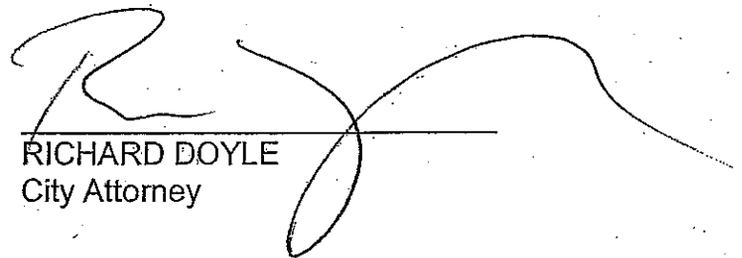
Any member of a legislative body who attends a meeting of that body where action is taken in violation of the Brown Act, and where the member intends to deprive the public of information to which the member knows the public is entitled, is guilty of a

misdemeanor. A civil lawsuit may be brought to invalidate certain actions taken by a legislative body in violation of the Act if a written demand to cure the violation is rejected. In addition, the District Attorney or any interested person may initiate a civil action for the purpose of preventing violations or threatened violations of the Act.

### CONCLUSION

The use of direct communications, personal intermediaries, or technological devices by a majority of the members to develop a collective concurrence as to action to be taken by the legislative body is prohibited. Caution must be taken regarding all forms of communication and particularly, e-mails, to insure that you and your staffs do not cause an illegal *seriatim* meeting to occur.

Please feel free to contact the City Attorney's Office if you have any questions concerning the requirements of the Brown Act.



RICHARD DOYLE  
City Attorney