

## COUNCILMEMBER PARTICIPATION ON BRISNET

It is my recommendation that the City Council members refrain from engaging in discussions about City business over the medium of Brisnet. Although there would be no problem if a single Councilmember posted a message on Brisnet and no further communications are made, the problem arises when that message is read by other Councilmembers who then post their own responses. If three Councilmembers participate in the same exchange of messages, then, in my opinion, we have a "seriatim" meeting and a violation of the Brown Act. Even though other persons who are not on the Council may be involved in the exchange, there would still be a form of dialogue between Councilmembers. This would not be substantially different than Councilmembers being engaged in a discussion during a regular meeting with members of the audience actively participating in that discussion – which happens at almost every Council meeting.

Under the Brown Act, a "meeting" includes any congregation of a majority of the members at the same time to hear, discuss, or deliberate on any matter within the subject matter jurisdiction of the City Council. *Govt. Code § 54952.2(a)*. A meeting includes any use of "direct communication, personal intermediaries, or technological devices" that are used "to develop a collective concurrence as to action to be taken on any item..." *Govt. Code § 54952.2(b)*.

A "seriatim" or rotating meeting is a series of communications (such as postings on Brisnet) by which a quorum of the Councilmembers ultimately becomes involved in discussing, deliberating upon, being polled about, or making a decision about official business. *63 Cal. Op. Att'y Gen 820 (1980)*. Even though no actual decision is made by the participating Councilmembers in terms of a vote taken over Brisnet, their respective comments and positions on an issue before the City Council may be communicated and even debated – which is an exchange of information and argument that the Brown Act contemplates will (and should) occur at an open meeting of the City Council. Under this rule, the communications do not have to occur at exactly the same time. For example, individual postings could be made not only at different times but also on different days. But if they are all part of the same line or subject of discussion, a seriatim meeting can occur once a majority of the Councilmembers become participants in this discussion.

It is my understanding that the special Brown Act restrictions applicable to Councilmembers has been posted on Brisnet. Hopefully, this will serve to prevent any expectancy of participation by Councilmembers in whatever issue may be the current subject of debate and encourage the members of that network to communicate their views directly to the City Council, preferably in the context of a regular meeting where Councilmembers are free to respond and engage in the debate.