

Updates to Sunshine Law

Office of Corporation Counsel
County of Hawai'i

December 2021

Today's Training Updates to Sunshine Law

- Review Meeting Notice Requirements
- Review New Meeting Notice requirements
- Review New requirements when holding Remote Meetings
- Reminder: All new requirements effective **January 1, 2022**

Brief Review – Purpose of Sunshine Law

- Protect the public's right to know
- Open governmental process to public scrutiny and public participation
- Thus, the discussions, deliberations, decisions and actions of government agencies shall be conducted as openly as possible

Agenda Requirements

- **Agenda**: Describe All Agenda Items With Reasonable Specificity. What is reasonable specificity?
 - Does the agenda provide enough information that members of the public could decide whether to participate in the meeting or not?
 - “Neighbor Test” – ask someone that is not familiar with Board or Commission to review Agenda if she or he cannot tell what subjects the board will be talking about at the meeting, the agenda needs further clarification.

Notice Requirements

- **Instructions** on how to request an auxiliary aid or service or an accommodation due to disability. If there is a deadline to make such a request, it must be stated in the notice and must be reasonable.
- **Executive Session:** If an executive meeting is anticipated, describe the purpose and statutory authority HRS § 92-5(a) or other laws applicable to your board that allow executive meetings. Use as much detail as possible without compromising the executive meeting's purpose.

Notice Requirements

- **Date**
- **Time**
- **Place:** List at least one meeting location that is open to the public that shall have audiovisual connection to enable public to provide testimony

New Notice Requirements Effective January 1, 2022

- **Email and Mailing Address** - Must include electronic and postal contact information for public to submit testimony before meeting.
- Inform members of the public how to contemporaneously:
 - Remotely view the video and audio of the meeting through internet streaming or other means; and
 - Provide remote oral testimony in a manner that allows board members and other participants to hear testimony, by internet or phone or by other means.

New Notice Requirements Effective January 1, 2022

- List all locations open to the public and specify whether the meeting will continue without that location or be automatically recessed to restore communication when connection is lost.
- How public can access meeting after an interruption to communication and/or when the meeting will be continued to, date and time, if interruption lasts more than 30 minutes.
- These will make more sense in a few minutes. 😊

Remote Meetings Option Effective January 1, 2022

- Boards and Commissions will have the option to hold remote meetings by interactive conference technology.

for example: Zoom, WebEx, Microsoft Teams, videoconference, etc.

Remote Meetings Requirements

- Must provide at least one location open to the public; and
- That location must have a guaranteed Audiovisual connection.

More Remote Meetings Requirements and Notice Requirements

- **“Courtesy locations”** aka other location open to the public may be provided for convenience of the public.
- However, if connection is lost or disrupted at a courtesy location there is NO requirement to stop or terminate meeting.
- **Notice Requirement:** All locations open to the public need to be on Notice and must specify whether the meeting will continue without that location or be automatically recessed to restore communication when connection is lost.

More Remote Meetings Requirements

- A quorum of board members are required to be visible and audible throughout the meeting.
- Other participants are NOT required to be visible.
- Board members participating remotely from a nonpublic location shall state who, if anyone, is present with them at that location.

More Remote Meetings Requirements

- At the start of the meeting, the Chair is required to announce names of participating board members.
- ALL votes shall be conducted by roll call unless unanimous.
 - Best to take roll call vote unless it is approval of minutes or adjournment.

More Remote Meetings Requirements

- When practicable, boards must records meetings and make the recording electronically available to the public as soon as practicable after the meeting and until a time as the minutes are posted.

More Remote Meetings Requirements

- **Executive Meeting/Session:** Chair must announce names and titles of authorized participants; and
- All authorized participants shall confirm that no unauthorized person is present or able to hear them at their remote location or via another audio or visual connection.
- Person organizing executive session shall confirm that no unauthorized person has access to executive meeting.

What happens if the meeting connection is lost?

- Meeting shall be automatically recessed for up to 30 minutes.
- If connection is not restored within 30 minutes the board must continue to another date and time or terminate the meeting.
 - Note: Meeting Notice should include how public can access meeting after an interruption to communication and/or when the meeting will be continued to, date and time, if interruption lasts more than 30 minutes. If NO notice meeting must be terminated.

What happens when connection is restored?

- The meeting can reconvene if:
 - Audiovisual communication is restored; or
 - Audio-only communication is established after an unsuccessful attempt to restore audiovisual communication.

No Video After Attempt to Restore

- If only an audio connection is available after audiovisual connection has been lost, all board members must state their names before speaking.
- Any visual aids available to the board shall be made available to all meeting participants within 15 minutes of losing visual connection. If visual aids cannot be provided to all participants then that agenda item shall not be acted upon.
 - Recommendation: Include visual aids in board packet or post online at time of meeting.

In Summary...

New Notice Requirements:

1. Include email and mailing address for public testimony
2. Include all public locations
3. Include how to access meeting and provide testimony remotely
4. Include what happens if connection is lost.

In Summary...

New Remote Meeting Requirements:

1. A quorum of board members shall be visible and audible
2. Chair must announce all participating members at beginning of the meeting.
3. Board members must state who else is present at remote location.
4. Voting must be by roll call vote.

Questions?

- www.oip.Hawaii.gov
- oip@Hawaii.gov
- 808-586-1400

The Office of Information Practices can provide further guidance on the Sunshine law.

MORE Questions?

- Reach out to the Deputy Corporation Counsel assigned to the board or commission.

Caveat/Disclaimer

- This written outline is intended to accompany and supplement an oral presentation and should not be used as the sole basis for any legal conclusion or opinion concerning the subject matter. Please consult the Office of the Corporation Counsel for the County of Hawai'i at (808-961-8251) if you have any questions.

Mahalo!
