

# Community Development Plan Action Committee Orientation

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Wednesday, August 23, 2023, 11:00am-1:00pm

## **AGENDA**

11:00 am *Welcome*

11:05 am *Introductions*

- ▶ Name, connection to district, & inspiration for past/present/future community work

11:25 am *CDP Action Committee Presentation*

- ▶ Purpose of the CDP Action Committee
- ▶ Roles & Responsibilities
- ▶ How does the AC make things happen

11:55 am *Corporation Counsel Presentation*

- ▶ Sunshine Law Orientation
- ▶ Robert's Rules
- ▶ Ethics

12:25 pm *Team Exercise – Social Networks*

- ▶ Networks of social interactions and personal relationships – What social networks are you a part of that can contribute to your role as a member of the CDP Action Committee?

12:55 pm *Wrap Up*

1:00 pm *PAU - Mahalo*

## [Aloha New Action Committee Members,](#)

We would like to welcome you to the Kona Community Development Plan (Kona CDP) Action Committee (AC) and thank you for volunteering to help the Kona Community. As an AC member, you are tasked with helping to implement the Kona CDP. Moving forward, the decisions you make as an AC member should be grounded within the context of the Kona CDP. We hope that this resource guide is helpful for quickly filtering through the expanse of materials we'll be sharing.

## [Authority - The County Charter, General Plan \(GP\), Community Development Plan \(CDP\), and Hawai'i County Code \(HCC\)](#)

### [County Charter](#)

Effective on January 2, 1969, the County Charter serves as the “constitution” of the government of the County of Hawai'i and provides the basic framework for its organization and operation. Section 3-15 requires the County Council to adopt by ordinance a general plan which shall set forth the council's policy for long-range comprehensive physical development of the county.

### [General Plan \(GP\)](#)

The County of Hawai'i General Plan is the blueprint that guides the long-term development of Hawai'i Island. It considers the needs of the entire island and provides a sound growth strategy that directs future opportunities related to land use, zoning amendments, and capital expenditures. The GP strives to position Hawai'i Island for economic progress while preserving the environment and strengthening community foundations. Chapter 15 of the 2005 General Plan established a process—the Community Development Plan (CDP) program—to translate island-wide goals and priorities put forth in the General Plan into action-items that could be executed on a district level. The CDP program has been a forum for communities across Hawai'i Island to express their views related to planning the future of their immediate area.

### [Community Development Plan \(CDP\)](#)

The purpose of a CDP is to implement the broad goals within the General Plan on a regional basis and translate the broad General Plan statements to specific actions. CDPs are the forum for community input into coordinating the delivery of government services to the community. Please note that a plan, like a CDP, is a guide to future actions. A plan exists to create a long-range framework and direction for specific decisions. It is not self-implementing, and it is not the action itself. A CDP, for example, may direct that rezoning in the CDP area follow certain criteria, but it does not in itself rezone land.

### [Hawai'i County Code \(HCC\)](#)

The Kona CDP Action Committee derives its authority from Hawai'i County Code Chapter 16 which is available in your resource binder. Chapter 16 codifies the CDPs and details the requirements of the Action Committees and its members. Chapter 16 provides important information pertaining to the Action Committees and their roles and responsibilities. Please read Chapter 16, it is only a few pages long.

## The Kona Community Development Plan (Kona CDP)

You should familiarize yourself with Kona CDP. We know that it will take some time to, so please don't hesitate to reach out if you have questions or you can also refer to the Working Group papers to dig deeper into context and intent.

## The Action Committee

### Committee's Composition

As defined in Chapter 16 of the HCC, each CDP has an Action Committee (AC) consisting of nine members. Each member is required to live in their respective CDP area and the committee should reflect a broad cross section of the community.

### Membership Appointment and Seat Term

Members are appointed by the Mayor and confirmed/approved by the County Council to fill a "seat" on the Action Committee. Seats on an Action Committee are typically planned or organized in 4-year terms and in "blocks" of three. These blocks are "staggered" to maintain committee quorum and ensure that only three committee member's terms expire at the same time. Please note that a Committee Member may be appointed to a seat that has less than four years left in that block. That being said, a Committee Member may be asked to serve as a "holdover" until a new appointment is made for a seat. Members' terms are tracked by the CDP Team. For any questions on your particular seat and term, please contact us.

### Committee's Role

The overarching role of an Action Committee is to be a proactive, community-based steward for implementation of their respective CDP. The Action Committee will provide ongoing feedback, advocacy, and action to advance implementation of the CDP goals and objectives and acts in an advisory capacity to the Planning Director.

### Committee Member's Role

An important role of an Action Committee Member is community outreach or liaising. Participating in community organizations, groups, or events can help AC members broaden the community's awareness of the CDP and build partnerships that help to implement the CDP's goals, objectives, policies, and actions. If you feel that a particular community issue is relevant to the Kona CDP and Action Committee, please feel free to ask the CDP Team or Committee Chair about it so discussion and consideration at a subsequent Action Committee meeting can take place. Please note that the Action Committee is not the forum for community complaints or personal agendas; but is a venue for community initiatives that are aligned with the Kona CDP's goals and objectives.

### The CDP Team's Role

The role of the CDP Team is to partner with the Action Committee, community, agencies, and organizations in the implementation of CDP goals and objectives. The CDP Team administers to the needs of the Action Committee in fulfilling their duties and responsibilities and serves as a planning resource. We are also "procedural and administrative leaders" that keep the Action Committee operating within State Law and County Regulations. Additional duties as outlined can be found in the Action Committee Operating Guidelines including details on meeting notification and information publication.

Please note, in order for the Action Committee to effectively operate within the parameters of Sunshine Law, it is important for Committee Members to be mindful of Action Committee deadlines and review communications. Please contact the CDP Team at any time if you are unclear about any communications or deadlines.

## Meetings – Procedural Guidance

### Operating Guidelines

A copy of the Action Committee’s Operating Guidelines is provided in your resource binder. These guidelines outline how an Action Committee should operate. It defines the duties and responsibilities of committee members, its presiding officers, and Planning Department staff. Please read these guidelines for more detailed information on the operations of the Action Committee.

### Robert’s Rules of Order

As for committee meetings, we follow a modified version of Robert’s Rules of Order. This protocol is intended to be a guide for conducting meetings and making decisions as a group. These rules help to define how a committee conducts committee business and also helps committee members understand the appropriate way to participate in a cooperative manner. We have located a series of videos that are available online. Please take some time to familiarize yourself with some of the basics but do not worry if you can’t remember all the rules because the Kona CDP Chair and CDP Team will help you as necessary.

- Mastering the 3 most important motions - [https://www.youtube.com/watch?v=eYwKX\\_P8YkU&list=PLk-ADWH1SPlgaaWScqkVTV2RRND2wA3MS&index=5](https://www.youtube.com/watch?v=eYwKX_P8YkU&list=PLk-ADWH1SPlgaaWScqkVTV2RRND2wA3MS&index=5)
- How to Handle “Friendly Amendments” - <https://www.youtube.com/watch?v=CNxMz6dXKzw&index=6&list=PLk-ADWH1SPlgaaWScqkVTV2RRND2wA3MS>
- Effective Debating in Meetings - <https://www.youtube.com/watch?v=oluyFEaGnyM&index=9&list=PLk-ADWH1SPlgaaWScqkVTV2RRND2wA3MS>
- How to Use Point of Order - <https://www.youtube.com/watch?v=rGWTLLwLTDY&index=11&list=PLk-ADWH1SPlgaaWScqkVTV2RRND2wA3MS>

### Sunshine Law

Since the AC is a County administered, advisory committee to the Planning Director, it becomes an “extension” of the Planning Department and is subject to the Sunshine Law. The Sunshine Law is Hawai’i’s open meeting law. It governs the manner in which all state and county boards must conduct their business. The Sunshine Law outlines requirements for committee and subcommittee meetings. It also dictates how committee members are allowed to interact with each other concerning committee business. The law is updated from time to time and the current version is included in your resource folder. The CDP Team will keep the AC apprised of any changes. In addition to the resource in your binder, we have provided some links to Sunshine Law videos below.

- Sunshine Law Training Resources - <https://oip.hawaii.gov/training/>
- Sunshine Law Test - [https://www.gocongr.com/en-US/p/34761830?frame=true&link\\_uid=hc3COz0jRQNCQ4maDIbVQ](https://www.gocongr.com/en-US/p/34761830?frame=true&link_uid=hc3COz0jRQNCQ4maDIbVQ)

## Ethics Guide

Chapter 2, Article 15 of the Hawai'i County Code established the Code of Ethics. The code provides standards of conduct which the Action Committee is subject to. Please take time to review the Ethics Guide provided in your resource binder.

## **Committee Information and Resources**

### Committee/Meeting Information and Notifications

Action Committee and CDP related information is disseminated in various ways.

#### *To Action Committee Members:*

The CDP Team will email AC members the meeting agenda and all other meeting materials about a week prior to the meeting when the agenda is published. Important notices, written public testimony, and other AC communications may be provided via email between meetings to Action Committee members. Email communications to and from Planning Staff could be to/from the individual Planner's or the CDP team's joint email address (see contact information below). We do our best to be available via phone and to drop in visits to the Hilo Planning Department office as well. If in doubt about how to contact us, don't overthink it! Our team works closely with each other, and we will be sure that your question or comment gets to the right person. Any member that has limited capacity to receive emails should notify us to coordinate alternative ways of receiving meeting materials and other communications.

#### *To the General Community:*

Planning Staff provides CDP related information to the general public in various formats. We maintain an email list of interested community members, agencies, and organizations for all CDP related notifications. We also maintain CDP portion of the Planning Department website and strive to keep it updated with current information (see below).

Kona CDP Website - <https://www.planning.hawaiicounty.gov/general-plan-community-planning/cdp/kona>

The Kona CDP website is a great resource for information pertaining to the Kona CDP and AC. It is also a great resource to learn about our other CDPs, the General Plan, and other related community planning projects.

### Contact Information

Please feel free to reach out to us via our joint email address: [cdp@hawaiicounty.gov](mailto:cdp@hawaiicounty.gov). If you send an email to this address, it will reach each member of the CDP Team.

## **Thank you!**

Thank you again for volunteering to be a part of the Kona Community Development Plan Action Committee. Please don't get overwhelmed with all the information you have been given. The Kona CDP Chair, and the CDP Planning Team are here to help you as you start to develop a familiarity with the Kona CDP and the Action Committee.

Thank you and welcome to the Kona CDP Action Committee!

COMMUNITY DEVELOPMENT PLAN

ACTION COMMITTEE

RESOURCE BINDER

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## KONA COMMUNITY DEVELOPMENT PLAN (CDP) ACTION COMMITTEE (AC)

Updated: August 21, 2023

**PURPOSE:** The purpose of the CDP Action Committee is to be a proactive, community-based steward responsible for implementing resident-driven solutions from the Community Development Plan that positively transform the community in partnership with a network of businesses, non-profits, and community leaders.

**AUTHORITY:** Hawai'i County Code, [Chapter 16](#)

**FULL MEMBERSHIP:** Nine members

**SPECIFIC REPRESENTATION:** Primary residence must be in the Planning area of the CDP.

**REQUIRED COMMITMENTS:** Possess a deep love for their community; a passion for equity; and a motivation to work for the greater good of their community.

Commit to a term of up to four years; attend regular meetings; invest a minimum of 8 hours of work each month advancing CDP implementation; organize/attend public meetings, workshops, and trainings; identify capacity building needs and opportunities within community; and agree to follow rules and operating principles of the committee and the Planning Department.

Commit to intentionally and explicitly engaging all factions of the community equitably while working to develop partnerships with individuals, non-profits, businesses, and community groups/associations to implement grass roots actions; serve as a point of contact for CDP and AC initiatives; and transmit project updates and opportunities to community within the CDP region.

**MEETINGS:** Meetings are scheduled as required to address new and existing actions. Please visit <https://www.planning.hawaiicounty.gov/about-us/planning-department-calendar> for up-to-date meeting information.

**REAPPOINTMENT:** Reappointment shall be in compliance with Hawai'i County Code §16-5(b).

| CURRENT MEMBERS: | <u>Seat #</u> | <u>Committee Member</u>      | <u>Seat Term Expiration</u> |
|------------------|---------------|------------------------------|-----------------------------|
|                  | 1             | PELLETIER, John              | 2027-05-31                  |
|                  | 2             | JASTER, Gary                 | 2027-05-31                  |
|                  | 3             | KOROTIE, Heather             | 2027-05-31                  |
|                  | 4             | DORABJI, Zarine              | 2024-05-31                  |
|                  | 5             | YOUNG, Charles [Holdover]*   | 2024-05-31                  |
|                  | 6             | PISICCHIO, Nancy             | 2024-05-31                  |
|                  | 7             | BANKSTON, Marisa [Holdover]* | 2025-05-31                  |
|                  | 8             | HUERTA, David [Holdover]*    | 2025-05-31                  |
|                  | 9             | MOLINA, Roselyn [Holdover]*  | 2025-05-31                  |

\*Holdover seats are eligible for replacement

**CONTACT INFORMATION:** [cdp@hawaiicounty.gov](mailto:cdp@hawaiicounty.gov); <https://www.planning.hawaiicounty.gov/home>

**ATTORNEY ASSIGNED:** Suzanna Tiapula, Deputy Corporation Counsel

***\*Please note that the information on this sheet is condensed. For full information see appropriate Sections of the County Charter, County Code and/or Hawai'i Revised Statutes.***

## **CHAPTER 16**

### **PLANNING**

#### **Article 1. General Plan.**

Section 16-1. The County of Hawai'i general plan.

#### **Article 2. Community Development Plans.**

Section 16-2. Adoption of community development plans.

Section 16-3. Review and amendment.

#### **Article 3. CDP Action Committees.**

Section 16-4. CDP action committees.

Section 16-5. Membership and tenure.

Section 16-6. Duties and responsibilities of the CDP action committees.

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**CHAPTER 16****PLANNING****Article 1. General Plan.****Section 16-1. The County of Hawai'i general plan.**

- (a) That certain planning code known and designated as “County of Hawai'i general plan,” as adopted on December 5, 1971, by the council of the County of Hawai'i, is hereby adopted by reference, subject to later amendments by ordinance, and may be cited as the “general plan.”
- (b) A copy of the general plan and amendments shall be available for public inspection at the planning department.

(1983 CC, c 16, sec 16-1; am 2006, ord 06-153, sec 1; am 2007, ord 07-70, secs 2, 3 and 4; am 2008, ord 08-98, sec 2; am 2009, ord 09-150, sec 2, ord 09-161, secs 1, 2, 3 and 4.)

**Article 2. Community Development Plans.****Section 16-2. Adoption of community development plans.**

The community development plans listed below are adopted and incorporated by reference. A copy of the plans and amendments shall be available for public inspection at the planning department.

**HĀMĀKUA.** The document identified as “Hāmākua Community Development Plan” is adopted by reference, subject to later amendments by ordinance, and may be cited as the “Hāmākua CDP.” The planning area for the Hāmākua CDP encompasses the Judicial District of Hāmākua, North Hilo, and a portion of the South Hilo District in the County of Hawai'i.

**KA'Ū.** The document identified as “Ka'ū Community Development Plan” is adopted by reference, subject to later amendments by ordinance, and may be cited as the “Ka'ū CDP.” The planning area for the Ka'ū CDP encompasses most of Judicial District 9 in the County of Hawai'i. Eastern portions of the district near and including Volcano Village were included in the Puna CDP planning area and were, therefore, not incorporated into the Ka'ū CDP.

**KONA.** The document identified as “Mapping the Future: Kona Community Development Plan Volume 1” is adopted by reference subject to later amendments by ordinance, and may be cited as the “Kona CDP.” The planning area for the Kona CDP encompasses the judicial districts of North and South Kona.

**NORTH KOHALA.** The document identified as “North Kohala Community Development Plan” is adopted by reference subject to later amendments by ordinance, and may be cited as the “North Kohala CDP.” The planning area for the North Kohala CDP encompasses the judicial district of North Kohala.

**PUNA.** The document identified as “Puna Community Development Plan” is adopted by reference subject to later amendments by ordinance, and may be cited as the “Puna CDP.” The planning area for the Puna CDP encompasses the judicial district of Puna and the Volcano Census Designated Place that includes the Volcano Golf Course subdivision in the district of Ka'ū.

**SOUTH KOHALA.** The document identified as “South Kohala Community Development Plan” is adopted by reference subject to later amendments by ordinance, and may be cited as the “South Kohala CDP.” The planning area for the South Kohala CDP encompasses the judicial district of South Kohala.

(2008, ord 08-98, sec 3; am 2008, ord 08-116, sec 2; ord 08-131, sec 2; ord 08-151, sec 2; am 2008, ord 08-159, sec 2; am 2017, ord 17-66, sec 2; am 2018, ord 18-78, sec 2.)

**Section 16-3. Review and amendment.**

A comprehensive review of the community development plans shall commence within ten years from the date of adoption.

(2008, ord 08-98, sec 3.)

**Article 3. CDP Action Committees.**

**Section 16-4. CDP action committees.**

- (a) A community development plan (CDP) action committee shall succeed each CDP steering committee upon adoption of a community development plan.
- (b) The purpose of the CDP action committee is to be a proactive, community-based steward of the plan’s implementation and update.
- (c) The planning department shall administer the CDP action committees and be responsible for developing a selection process for committee members and establishing rules of procedure, as needed.

(2008, ord 08-98, sec 4.)

**Section 16-5. Membership and tenure.**

- (a) The CDP action committee shall consist of nine members. All members shall have a primary residence in the area covered by the CDP. The members shall be appointed by the mayor and approved by the County council. Prior service as a member of a CDP steering committee shall not disqualify an individual from serving on the CDP action committee.
- (b) The members shall serve staggered terms of four years. Upon the initial appointment of the committee, three members shall serve for a term of two years, three members for a term of three years, and three members for a term of four years. When the term of a member expires, the member may, at the discretion of the member, continue to serve until a successor is appointed. Members whose terms expire may not be reappointed for at least two years, however, members appointed for one year or less may be reappointed for an additional term without the passage of two years’ time. Existing vacant positions shall be filled before filling any position occupied by a member whose term has expired but who is willing to continue serving until their position is filled.
- (c) The membership should reflect a broad cross-section of the community. The community development plan may specify more detailed selection criteria consistent with this objective.
- (d) A chairperson shall be elected from its membership annually.
- (e) Except as provided for in this section, the committee shall be governed by the County Charter, section 13-4.

(2008, ord 08-98, sec 4; am 2016, ord 16-77, sec 2.)

**Section 16-6. Duties and responsibilities of the CDP action committees.**

The duties and responsibilities of the committee are:

- (1) Provide ongoing guidance and advocacy to advance implementation of the CDP goals, objectives, policies, and actions;
- (2) Broaden community awareness of the CDP and build partnerships, as appropriate, with governmental and community-based organizations to implement CDP policies and actions;
- (3) Take into consideration statewide objectives and legislation for long-term and sustainable plans for the island as a whole;
- (4) Provide timely recommendations to the County on priorities relating to the County operational budget and the CIP budget and program;
- (5) Receive briefings, as requested, from the planning department on pending and approved permit applications involving property located within the planning area, and on other issues related to the CDP;
- (6) Receive briefings from other County agencies, as requested, on priority actions identified in the CDP, which briefings may be integrated and consolidated by the mayor's office or the planning department into a plan of action for the forthcoming year and a status report on the current year's plan of action;
- (7) Monitor the progress and effectiveness of the CDP including the need for CDP revisions based on emerging statewide plans, new technologies, innovative ideas, or changing conditions;
- (8) Review and make recommendations on interim amendments to the CDP;
- (9) Serve as the steering committee, as set forth in the general plan, in any comprehensive update of the CDP;
- (10) Provide recommendations to amend the general plan; and
- (11) Carry out other duties specified in the CDP and/or in agreement with the planning department.

(2008, ord 08-98, sec 4.)

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# PLAN IMPLEMENTATION

The General Plan sets forth broad goals, objectives, and policies. Implementation requires translating these broad statements to specific actions, systematically evaluating progress, and active community participation. In this regard, follow-up planning efforts will involve the preparation of Community Development Plans, Capital Improvements Program, and an annual report.

## **15.1 COMMUNITY DEVELOPMENT PLANS**

The Community Development Plans are intended to be the forum for community input into managing growth and coordinating the delivery of government services to the community. The Community Development Plans will translate the broad General Plan statements to specific actions as they apply to specific geographical areas.

A Community Development Plan should direct physical development and public improvements within a specific area. The Community development Plan may contain detailed land use and zoning guide maps, plans for roadways, drainage, parks, and other infrastructure and public facilities, architectural design guidelines, planning for watersheds and other natural features, and any other matters relating to the planning area.

The Planning Director or Council may initiate a Community Development Plan. Each Community Development Plan shall have a steering committee composed of members appointed by the mayor and confirmed by the council. The members shall be broadly representative of the affected communities.

The steering committee shall work in conjunction with the Planning Department and with any professional consultants hired to assist in the preparation of the plan. The exact boundaries of the planning area may be determined during the preparation of the plan.

It is not mandatory that there be a Community Development Plan for each region. Although the previous General Plan called for Community Development Plans, in the thirty years since the enactment of the first General Plan, only one Community Development Plan has been enacted by ordinance, one by County Council Resolution, and two by Planning Commission Resolution. Time, cost, the degree of effort, and, in some cases, the inability to achieve a sufficient consensus, has been the limiting factors.

The need for a Community Development Plan for a particular area should be assessed considering a number of factors, including how much is public infrastructure challenged by recent or anticipated growth and whether there are significant efforts to change the zoning and land use in the area.

After the steering committee has recommended approval of the Community Development Plan, it shall be forwarded to either the Windward or Leeward Planning Commission, or both meeting as a joint commission as provided for in the Hawai‘i County Charter, for review and recommendation to the County Council. The County Council may modify or amend the Community Development Plan before enacting it by ordinance, but it shall give the steering committee and the designated Planning Commission, or joint commission, as the case may be, an opportunity to review and comment upon substantive amendments and modifications before final adoption of the plan.

In the process of creating the Community Development Plan, it may be determined that the General Plan should be amended. The Planning Director or County Council may initiate amendments to the General Plan, and the steering committee may recommend amendments, that would be enacted at the same time as the Community Development Plan, or as a follow-up to the Community Development Plan. If there is a direct conflict between the Community Development Plan and the General Plan, the General Plan shall be controlling.

The Community Development Plans shall focus on action. The courses of action specified in each element of the General Plan need greater detail and need to be coordinated by district. The Community Development Plans shall identify appropriate governmental actions that include:

- Regulatory actions. Regulations rely on government's police power to control what people can and cannot do in the interest of the public's health, safety, or welfare. The County administers and enforces various regulations to control land use. These regulations include the zoning code, subdivision code, flood control code, grading code, sign code, and building code. The County also administers requirements imposed by the Federal and State governments, such as the Coastal Zone Management Act and the State Land Use Law. The Community Development Plans shall recommend amendments as appropriate to the codes, maps, or administration and enforcement.
- Incentive measures. Where regulatory controls are the government's “sticks”, incentives are the “carrots” to encourage certain actions. Too often, regulation is the solution. Regulation can be restrictive, reactive, and divisive. Incentive measures, on the other hand, can invite creative “win-win” solutions. Examples of incentive measures include property tax exemptions such as for agricultural or native forest dedications, expedited permit processing, density bonuses, and discounted facility fees. Community Development Plans shall consider appropriate incentive measures to achieve various objectives, as applicable.

- **Acquisition actions.** Where significant resources are located on private property, it may be more appropriate for government to purchase the development rights or fee simple title rather than to severely regulate the owner's use of the property. Obviously, purchasing in reaction to development proposals is expensive. The Community Development Plans shall identify acquisition priorities, as appropriate, and seek means to leverage financing by working creatively with the landowner, other levels of government, land trusts, and/or nonprofit groups.
- **Capital budgeting actions.** The County annually prepares a capital improvements budget where public facility projects (new construction or major repairs) are identified. The budget is accompanied by a six-year capital improvements program (CIP). The CIP process is explained in more detail below. The Community Development Plans shall identify and prioritize public facility projects important to the community. The CIP shall take into consideration the recommendations in the Community Development Plans, recognizing that the CIP must reconcile competing interests for a limited amount of funds.
- **Programs.** Certain community needs do not necessarily require land or a new facility, but rather a focused commitment of time and money towards achieving specific objectives. These operational projects are referred to as programs. Examples include an after-school youth program, neighborhood watch program, or mediation training program. Too often, resources are diverted to studies that could be more effectively used for pilot programs that actually try to achieve results and provide lessons through action. Community Development Plans shall identify desired programs and the community's role in planning and implementing the programs.
- **Development/Redevelopment.** In very special situations, it may be appropriate for government to take the lead and act as developer either singly or as a public/private partnership. These situations arise when the private market fails to address certain needs, such as very low income housing, or when the situation is quite large-scale, complex, and especially requires government's power of eminent domain to assemble land for redevelopment. Community Development Plans shall identify desired projects for public development or redevelopment, and shall coordinate input from appropriate agencies such as the Office of Housing and Community Development or the U.S. Department of Housing and Urban Development.

## 15.2 CAPITAL IMPROVEMENTS PROGRAM (CIP)

Capital improvement projects have the potential to influence where growth occurs, to more equitably distribute County services, and to promote important objectives such as affordable housing. The County Charter sets forth the procedure for the submittal and adoption of the CIP:

The various departments and agencies submit project requests and cost estimates to the Mayor. The Planning Director reviews the lists and recommends priorities.

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The Mayor reviews the lists in preparing the CIP.

- 1 By March 1, the Mayor submits the CIP to the Council together with a message explaining each project proposed in the capital budget, estimated cost, and proposed method of financing.
- 2 4. By May 5, the Mayor may submit amendments (adjustments may be necessary depending on actions taken by the State Legislature) together with a message that describes the changes and the circumstances, which justify the changes.
- 3 On or before June 30, the Council shall adopt the capital budget. The capital budget for the upcoming fiscal year is adopted by ordinance. The six-year CIP is for information purposes.

The capital budget appropriates funds for the specified projects. Capital appropriations lapse at the end of the second fiscal year following the year in which they are appropriated. Prior to lapsing, the agency responsible to implement the project may request the Mayor to allot the funds. Once allotted, the agency may proceed to encumber (e.g., execute contracts, issue purchase orders) and expend the funds.

In order for the CIP to comprehensively prioritize and allocate the financial resources available to the County within the context of the General Plan, the CIP shall be prepared as follows:

- The CIP shall be based on clear priority criteria;
- The CIP shall integrate the several sources of funding improvements, including the fuel tax and the County Water Board projects;
- The CIP shall coordinate County projects with State CIP projects and available Federal funding;
- The total County costs for the projects selected for the CIP shall not exceed an amount that could be prudently financed taking into consideration the debt service capacity of the County;
- The CIP process shall provide opportunity for community review of the CIP proposed by the administration prior to submittal to the County Council;
- Where additional studies are needed to prioritize projects from an islandwide or regional perspective, functional plans may be funded through the CIP;
- A system shall be established to monitor the status of appropriated projects.

### 15.3 ANNUAL REPORT

The Planning Department shall prepare an annual report to monitor progress towards achieving the General Plan goals, objectives, and policies. To the extent possible, the annual report should develop measurable indicators related to the policies. The Planning Department shall submit the annual report to the Mayor for review. The Mayor shall submit the annual report to the Council together with the capital and operational

§15.3: Annual Report

budgets in accordance with the budget submittal timetable set forth in the Charter. The annual report and CIP shall be the means to reconcile and prioritize competing community needs from a County-wide perspective. The Planning Department may organize an interagency committee to provide input for inclusion in the annual report.

## A.C. Subcommittees vs. Member-Community Liaison: Types, Purposes, Limits of Organizations

| Types of Organization                                                                                                                                          | Purpose                                                            | AC Representation                              | Community Representation   | Sunshine Law Applicability                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|------------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Investigatory Subcommittee of the Action Committee                                                                                                             | Defined by AC with clear purpose and possible deadline or end date | At least 2 AC members but less than quorum (4) | Defined by AC              | <ul style="list-style-type: none"> <li>Investigatory Subcommittee meetings NOT subject to Sunshine Law</li> <li>Agendized on minimum of 3 AC meetings: scope, recommendations, decision</li> </ul>                                                                                               |
| Any other Subcommittee of the Action Committee (e.g., formed to do its work on an ongoing basis, whether constant or sporadic, such as a “standing committee.” | Defined by AC with clear purpose                                   | No limitation on number of AC members          | Defined by AC              | <ul style="list-style-type: none"> <li>Any other Subcommittee meetings ARE subject to Sunshine Law: notice, agenda, open meetings, testimony, minutes.</li> <li>NOT subject to 3 meeting rule but should always be clear on agenda especially when decisions are expected to be made.</li> </ul> |
| Community Partner Group<br>(Independent community group, but CDP aware & supportive)                                                                           | Defined by community group                                         | Up to 2 AC representatives                     | Defined by Community Group | <ul style="list-style-type: none"> <li>These groups are not government affiliated and ARE NOT subject to Sunshine Law.</li> <li>Reports or communications are not subject to 3 meeting rule but should always be clear on agenda especially when decisions are expected to be made.</li> </ul>   |

## CDP Action Committee

### Group Agreements

#### **EXAMPLE**

Agreements help discussions move forward and make meetings more meaningful and efficient.

- Be brief and clear when making a point
- Respect each other's equal right to voice an opinion
- No sidebar conversations
- Agree to disagree with aloha
- It is everyone's responsibility to help move the process forward
- We are all allies
- Refer to rules, mission statement and vision statement when guidance is necessary to reach group consensus
- Remember that the Action Committee represents the Community-Based Plan, rather than personal interests
- Turn off cell phone

## **ROBERT'S RULES SIMPLIFIED**

### **1. To MAKE A MOTION**

The mover of a motion addresses the Chair and introduces the motion by stating, "I move..." The motion is repeated by the Chair. If the motion is long and involved, the Chair will ask the mover to submit it in writing.

### **2. To SECOND a motion**

A second is indicated by stating, "Second" or "I second the motion." This may be done without rising or addressing the Chair. All important motions should be seconded.

### **3. To AMEND**

This motion is to change, add, or omit words in the original main motion. It is DEBATABLE; MAJORITY VOTE.

#### **To AMEND THE AMENDMENT**

This is a motion to change, add, or omit words in the first amendment. It is DEBATABLE; MAJORITY VOTE.

#### **METHOD**

The first vote is on changing words on the second amendment. The second vote (if the first vote adopts a change) is on the first amendment as changed. The third vote is on adopting the main motion as changed.

### **4. To COMMIT**

When a motion becomes involved through amendments or when it is wise to investigate a question more carefully, it may be moved to COMMIT the motion to a committee for further consideration. DEBATABLE; AMENDABLE. COMMITTEE MUST MAKE A REPORT ON SUCH QUESTION.

### **5. To TABLE**

This motion postpones the subject under discussion in such a way that it can be taken up at some time in the near future when a motion "to take from the table" would be in order. This motion is NOT DEBATABLE or AMENDABLE; MAJORITY VOTE.

### **6. To DEFER**

A motion to defer the question being discussed to some future time is in order, except when a speaker has the floor. DEBATABLE; MAJORITY VOTE.

### **7. To SUSPEND**

This motion is always in order except:

- a. when a speaker has the floor;
- b. when a vote is being taken;
- c. after it has just been voted down;
- d. when the committee is in the midst of some business which cannot be abruptly stopped.

The time of reconvening must be specified. There is NO DEBATE; MAJORITY VOTE.

#### 8. To ADJOURN

This motion is always in order except:

- a. when a speaker has the floor;
- b. when a vote is being taken;
- c. after it has just been voted down;
- d. when the committee is in the midst of some business which cannot be abruptly stopped.

Under all the above circumstances, the motion is NOT DEBATABLE; MAJORITY VOTE.

#### 9. To RECONSIDER

The motion to reconsider a motion that was carried or lost is in order if made on the same day or the next calendar day. The motion must be made by one who voted with the prevailing side. No question can be twice reconsidered. DEBATABLE; MAJORITY VOTE.

#### 10. The PREVIOUS QUESTION

This motion closes debate on the pending question. This motion may be made when debate becomes long or drawn out. It is NOT DEBATABLE.

The form is "Mr. (Madam) Chair, I move the previous question." The Chair then asks, "Shall debate be closed and the question now be put to a vote?" If this motion is adopted by a two-thirds (2/3) vote, the question before the Committee is immediately voted upon.

#### 11. POINT OF ORDER

This motion is always in order, but can be used only to present an objection to a ruling of the Chair or some method of parliamentary procedure.

The form is "Mr. (Madam) Chair, I rise to a point of order." The Chair replies, "please state your point of order." After the member has stated his/her objection, the Chair answers:

"Your point of order is sustained," or

"Your point of order is denied" or

with the needed information.

If any member is not satisfied, he/she may appeal the decision of the Chair. The Chair shall address the Committee, "Shall the decision of the Chair be sustained?" This is debatable and the presiding officer may discuss it without leaving the chair. Voted on like any other motion, majority or tie vote sustains the decision of the Chair. A majority of "no" votes is required to reverse the decision of the Chair.

#### 12. VOTING

Each member KCDP Steering Committee, present and voting at the time of voting, has ONE vote on any matter before the Committee.

Each vote is cast by a show of hands/placards or by responding "AYE" or "NO" on a voice vote or by responding "YES", "NO", or "ABSTAIN" on a roll call vote.

The Chair may ask, "Is there an objection to accepting this motion, report, etc.?"  
If a member objects, then one of the above methods of voting is in order.

A roll call vote may be requested by any member immediately before a vote is taken.

A majority vote shall be the decision on any question except that of Previous Question, which shall require a two-thirds ( $2/3$ ) majority. A tie vote means the motion has failed.



# OPEN MEETINGS

Guide to  
“The Sunshine Law”  
for State and County Boards

Office of Information Practices  
State of Hawaii  
October 2021



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# OPEN MEETINGS

## Guide to “The Sunshine Law” *for State and County Boards*

October 2021

Part I of Chapter 92,  
Hawaii Revised Statutes

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## INTRODUCTION

This Open Meetings Guide (Guide) was prepared by the Office of Information Practices (OIP) as a reference tool for board members and members of the public to understand the open meetings requirements of Hawaii's "Sunshine Law" (Part I of Chapter 92, HRS). This edition of the Guide is applicable to all State and county boards, except neighborhood boards. A separate edition was developed by OIP specifically for neighborhood boards, which have some unique provisions under Part VII of Chapter 92, HRS. Both editions have been revised to incorporate changes to the Sunshine Law that allow boards to remotely conduct meetings online, effective January 1, 2022.

Every year, in response to questions and complaints about the manner in which State and county boards conduct their business, OIP initiates investigations into alleged Sunshine Law violations. Many of the questions, complaints, and violations arise because of a misunderstanding or a lack of understanding, and sometimes both, about the statute and its requirements.

The Sunshine Law imposes numerous requirements and restrictions on the manner in which a State or county board can conduct its business. Many board members, especially those who serve or have served on non-governmental boards, are surprised by the restrictions placed on how they, in their capacity as State or county board members, must conduct board business.

For instance, with a few exceptions, board members are not allowed to discuss board business with each other outside of a meeting, including by telephone or through email or social media. In addition, a board usually cannot consider at a meeting matters that were not included in its published agenda.

If you are elected or appointed to a government board, the honor and privilege of serving comes with the added responsibility of learning and complying with the Sunshine Law. We hope that this Guide will assist you and members of the public in generally understanding the statute's requirements.

We have attempted to present the law in “plain English” through the types of questions that are most frequently asked. We have also included the statute, various forms, and checklists.

Please note that the comments contained in this Guide are general in nature. OIP provides more detailed comments on various topics in Quick Reviews and other guidance that can be found on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

If you have questions about specific factual circumstances that may not be answered by this Guide, you should consult with your attorney, your board’s attorney, or OIP. OIP provides an “Attorney of the Day” (AOD) service, through which you may speak with an OIP staff attorney to receive, typically on the same day, general legal guidance and assistance with Sunshine Law issues.

Thank you for your participation in Hawaii’s open government.

Cheryl Kakazu Park, Director

## GENERAL INFORMATION

### **What is the Sunshine Law?**

The Sunshine Law is Hawaii's open meetings law. It governs the manner in which all State and county boards must conduct their business. The law is codified at Part I of chapter 92, Hawaii Revised Statutes (HRS).

### **What is the general policy and intent of the Sunshine Law?**

The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring State and county boards to conduct their business as openly as possible. The Legislature expressly declared in the statute that "it is the policy of this State that the formation and conduct of public policy — the discussions, deliberations, decisions, and actions of governmental agencies — shall be conducted as openly as possible."

In implementing this policy, the Legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to open meeting requirements be strictly construed against closed meetings. Thus, with certain specific exceptions, all discussions, deliberations, decisions, and actions of a board relating to the official business of the board must be conducted in a public meeting.

In other words, absent a specific statutory exception, board business cannot be discussed in secret. There must be advance notice; public access to the board's discussions, deliberations, and decisions; opportunity for public testimony; and board minutes.

### **What boards are covered by the Sunshine Law?**

There is no list that specifically identifies the boards that are subject to the Sunshine Law. As a general statement, the Sunshine Law applies to all State and county boards, commissions, authorities, task forces, and committees that have supervision, control, jurisdiction, or advisory power over a specific matter and are created by the State Constitution, statute, county charter, rule, executive order, or some similar official act. A committee or other subgroup of a board that is subject to the Sunshine Law is also considered to be a “board” for purposes of the Sunshine Law and must comply with the statute’s requirements.

Examples of State and county boards that are subject to the Sunshine Law include the county councils, neighborhood boards, police commissions, liquor commissions, licensing boards, island burial councils, Board of Water Supply, Board of Land and Natural Resources, Land Use Commission, Board of Agriculture, Board of Health, University of Hawaii’s Board of Regents, Board of Education, Small Business Regulatory Review Board, Real Estate Commission, and the boards of the Hawaii Tourism Authority, Aloha Tower Development Corporation, Hawaii Health Systems Corporation, Natural Energy Laboratory of Hawaii Authority, and Stadium Authority.

The Sunshine Law does not apply to the judicial branch or to the adjudicatory functions exercised by certain boards (with the exception of Land Use Commission hearings, which are open to the public). The Legislature sets its own rules and procedures concerning notice, agenda, minutes, enforcement, penalties, and sanctions, which take precedence over similar provisions in the Sunshine Law.

### **What government agency administers the Sunshine Law?**

Since 1998, OIP has administered the Sunshine Law. OIP also oversees the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), which is commonly referred to as Hawaii’s “open records” law or Hawaii’s version of the federal Freedom of Information Act.

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# PUBLIC MEETINGS

## MEETINGS DEFINED

### **Are all meetings of State and county boards open to the public?**

Generally, yes. All meetings of State and county boards are required to be open to the public unless an executive meeting or other exception is authorized under the law. The open meeting requirement also applies to the meetings of a board's committees or subgroups.

### **Are site inspections, presentations, workshops, retreats and other informal sessions that involve board business considered to be meetings open to the public?**

Generally, yes. Apart from the permitted interactions set forth in section 92-2.5, HRS, which are discussed below, the Sunshine Law requires a board to conduct, in either open or executive meeting, all of its discussions, deliberations, decisions, and actions regarding matters over which the board has supervision, control, jurisdiction, or advisory power.

Moreover, based upon the express policy and intent of the Legislature that the formation and conduct of public policy be conducted as openly as possible, OIP interprets the statute to require that any site inspection or presentation regarding a matter before the board, or which is reasonably likely to come before the board for a decision in the foreseeable future, be conducted as part of a properly noticed meeting.

Because the site inspection or presentation of a matter before the board are an integral part of the board's deliberation and decision-making process, they must be conducted in a properly noticed meeting. If it is not practical to allow the public to attend a site inspection as part of a meeting, the board may still be able to conduct the site inspection as a "limited" meeting under section 92-3.1, HRS.

With respect to board retreats, if board business is to be discussed, the retreat must be conducted as a meeting, which requires public notice, the keeping of minutes, the opportunity for public testimony, and public access to the board's discussions, deliberations, and decisions. Conversely, so long as no board business is discussed, the retreat is not considered a meeting subject to the Sunshine Law's requirements.

## **MULTI-SITE AND REMOTE MEETINGS**

### **Can a member of the public attend public meetings in person?**

Yes. Public meetings have traditionally been held in person, whether at a single site or multiple connected sites. Although the Sunshine Law now allows boards to hold remote meetings over the internet, as described below, a board must still provide at least one physical location where members of the public may attend a public meeting in person, even if the rest of the meeting is being conducted remotely.

### **Must board members attend public meetings in person?**

It depends on what type of meeting the board is holding. For an in-person meeting held at a single site or multiple connected sites, members must generally attend in person at a public meeting site listed in the board's notice. However, if the board is holding a remote meeting, board members can attend the meeting remotely from private locations such as their homes or offices.

Even when a board is holding an in-person meeting, a board member with a disability that limits or impairs the member's ability to physically attend may participate from a location not noticed and not accessible to the public, so long as the member is connected by audio and video means and identifies where the member is and who else is present with the member. Thus, for example, a disabled board member may participate from a non-noticed location such as a private residence or hospital, so long as the other Sunshine Law requirements are met. § 92-3.5, HRS.

### **What is a remote meeting?**

Effective January 1, 2022, the Sunshine Law allows a board to hold a remote meeting by interactive conference technology (ICT). The law does not define a "remote meeting," but ICT is defined in section 92-2, HRS, as "any form of audio and visual conference technology, or audio

conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.” Because remote meetings require video interactivity with limited exceptions, a remote meeting held by ICT will typically be hosted via an online meeting platform such as Zoom or WebEx.

The new remote meeting option requires the ICT used by the board to allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting. The new section also establishes various requirements for remote meetings discussed below that would allow members of boards and the public to participate in a public meeting held online, from the privacy of their own homes, offices, or other nonpublic locations.

### **What is the difference between a remote meeting and a multi-site meeting?**

A remote meeting allows “remote” board and public participation, typically online, from private locations. By contrast, a multi-site meeting is an in-person meeting held at multiple public locations that are connected by ICT. Even though ICT is used to connect the different sites, **board members must attend a multi-site meeting in person** at one of the physical locations identified in the notice as a public meeting site, unless they are disabled and meet the requirements of section 92-3.5, HRS, to be able to participate remotely. Members of the public are not necessarily required to be in-person — the board has the option, but is not required, to allow members of the public to participate remotely in a multi-site meeting, such as by phoning in oral testimony.

### **What is the difference between an “additional location” and the official meeting location(s)?**

Besides the official in-person meeting site(s) that a board is required to provide for every meeting, the Sunshine Law allows boards to also set up additional unofficial in-person sites, also known as “courtesy” sites. Before the Sunshine Law was amended to allow remote meetings, OIP had interpreted the requirement for meetings held via ICT to terminate if connection was lost to one site as only applying to sites noticed as official meeting sites where board members may be present. OIP’s interpretation was codified by Act 220, SLH 2021, to expressly allow boards the option to set up unofficial “additional locations” for the public’s convenience. There are two differences between an official meeting site and an additional location. First, for any type of meeting, if a noticed “additional location” is cut off from the rest of the meeting by

a connection failure, the meeting can still continue without that location so long as the notice made it clear that such an occurrence could happen. This is in contrast to an official meeting site where the meeting would have to recess and perhaps terminate if that site was cut off. Second, for an in-person meeting, board members cannot participate from an “additional location,” but instead must go to an official meeting site; the “additional location” is offered as an option for the public rather than for board members.

This option allows boards with a widespread constituency to improve public access to their in-person meetings for constituents in rural areas or on other islands while still limiting the number of sites for which a communication failure could require cancellation of the whole meeting.

### **What are the requirements for a board to hold a remote meeting online?**

A board must provide **public access to the remote meeting**. The meeting has to be on a platform that allows for audio-visual interaction between board members and the public, who can attend and participate from anywhere they wish via an online connection, or in some cases a phone connection. Board members and the public do not need to be at a public meeting site, and the meeting notice is not required to list private locations where board members are attending from or to allow the public to join members at private locations. Instead, **the notice must tell the public how to remotely view and testify at the meeting**. This will usually be in the form of a link to an online platform, perhaps with a phone number as an additional option for the public. A board can choose to have separate connections for viewing and for testifying at a meeting; for instance, a board expecting large public interest in a contentious issue might prefer to offer the public a view-only online connection separate from the link used by board members, paired with a phone number for presenting oral testimony, to avoid the potential for abuse of the online platform and disruption to the meeting. In most cases, though, boards will find it easier to use the same online meeting link for all meeting attendees. In either case, public access to the meeting must be contemporaneous with the meeting and allow members and the public to hear the oral testimony provided.

Although board members and the public need not physically attend a remote meeting and can instead participate from private locations, the board must still **provide for the public at least one physical meeting site linked by ICT** to the remote meeting. This requirement recognizes that in-person meetings are the traditional way of holding public meetings and that not all persons, including board members, have

the ability, equipment, internet capacity, or desire to attend online meetings.

Except during executive meetings closed to the public or when the ICT connection is interrupted, a **quorum of board members must be visible** to other members and the public during the public portion of a remote meeting. As with an in-person meeting, a board member's brief absence from view during a meeting, such as to take a five-minute restroom break, would not cause the board to lose quorum. However, if a board member who is needed to meet the quorum requirement will be out of view for an extended period of time or will be absent during a vote, the board should call for a recess until quorum can be reestablished.

At the start of the meeting, the presiding officer must **announce the names** of the participating board members, and board members attending from private locations must state who else is with them. All votes must be conducted by **roll call**, unless the vote is unanimous.

The notice and minutes requirements for remote meetings are discussed later in the Procedural Requirements section. The requirements when a remote meeting's ICT connection is interrupted or lost are discussed below.

#### **What happens if the ICT connection is interrupted or lost?**

If the audio-visual connection is lost during the public portion of a remote meeting or during a multi-site meeting, the Sunshine Law **requires the meeting to automatically recess for up to 30 minutes while the board attempts to restore the connection**. This requirement applies for all official meeting sites and the remote connection(s) provided as part of a remote meeting, however, it does not apply when the remote connection is working properly but a member of the public has lost internet connectivity or is otherwise unable to access the remote connection due to issues on that person's end.

The board **may reconvene with audio-only communication** if the visual link cannot be restored, **provided that the board has provided reasonable notice** to the public as to how to access the reconvened meeting after an interruption. For remote meetings only, the law specifically **requires speakers to state their names before speaking**, if the meeting has been reconvened with audio-only communication.

**Within 15 minutes of establishing audio-only communication,**

**copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation must be made available** by posting on the internet or other means to all meeting participants (including those participating remotely), otherwise agenda items with unavailable visual aids cannot be acted upon at the reconvened meeting.

If the meeting cannot be reconvened within 30 minutes after interruption to communication, and reasonable notice has not been provided to the public of how the meeting will be continued to another date or time, then the meeting is **automatically terminated**. OIP recommends that board prepare in advance for the possibility of technical difficulties and has provided tips in the next section.

**What are some tips to provide reasonable notice to continue any Sunshine Law meeting, whether in person or connected by ICT?**

Here are some tips for providing reasonable notice to continue any Sunshine Law meeting:

- The board's **notice may contain a contingency provision** stating that if the board loses online connection, then people should check the board's website (give address) for reconnection information. Alternatively, the notice could provide that if the connection is lost for more than 30 minutes, the meeting will be continued to a specific date and time, with the new link for the continued meeting either on the agenda itself or to be provided on the board's website.
- **At the start of the online meeting, the board could announce audibly** that if online connection is lost, information on reconvening or continuing the meeting will be posted on its website and give the website address.
- If the audio and video have gone down but there is still a chat function or something similar available, the board should also **post a visual notice** of the continuation of a meeting in that way.
- If visual connection has been lost during a meeting using ICT, the board could **audibly announce** that the meeting will be continued and direct people to its website where the relevant information has been posted.

- If time permits, the board can **email** people on its email list with a notice of continuation of the meeting. *See* the appendix or OIP’s website for a form notice of continuation.

**May a board hold an in-person multi-site meeting via telephone?**

Yes. Section 92-3.5, HRS, continues to allow board members to participate at an in-person meeting held at multiple meeting sites connected by ICT that provides for audio or audiovisual interaction among all board members and meeting participants. Unless the disability provisions of section 92-3.5, HRS, apply as described below, board members may participate only from the official, physical meeting sites noticed. Therefore, while the multiple sites may be connected only via telephone, board members must be at one of the in-person locations that was identified on the meeting notice as being open to the public.

If copies of visual aids are brought to such a meeting by board members or members of the public, they must be available to all meeting participants at all locations. Therefore, if audio-only interactive conference technology (*e.g.*, teleconference) is being used, all visual aids must be available within 15 minutes to all participants, or those agenda items for which visual aids are not available cannot be acted upon at the meeting.

If audio communication cannot be maintained at all noticed locations, then the meeting is automatically recessed for up to 30 minutes to restore communication. The meeting may reconvene if either audio or audiovisual communication is restored within 30 minutes. If it is not possible to timely reconvene the meeting, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated. Note that the failure to maintain at least audio communication at all noticed locations will require termination of the meeting, even if all or a quorum of board members are physically present in one location.

**May a sick or disabled board member participate in a meeting from home or another private location?**

Yes. If it is a remote meeting, that member can participate via the remote meeting link from a private location in the same way that other members and the general public can. Even for an in-person meeting, under the provisions for in-person multi-site meetings “a board member

**with a disability** that limits or impairs the member’s ability to physically attend the meeting” may attend a meeting via a connection by **audio and video** means (e.g., by videoconference, Skype, or Zoom) from a **private** location not open to the public, such as a home or hospital room. HRS § 92-3.5. The disability need not be permanent, so for example, a board member that has the flu or is hospitalized may participate via videoconference from home or a hospital room. A disabled board member attending from a private location must identify the location and any persons who are present at that location with the member. To protect the disabled member’s privacy interests and because members of the public are not able to participate from the private location, the disabled member’s location during a meeting may be generally identified, such as “home” or “hospital,” without providing an exact address.

Because members of the public are not able to participate from the private location, the filed notice does not have to state that a disabled board member will be participating from home, a hospital, or other location. It is sufficient for the disabled board member to announce at the meeting that he or she is participating from a stated location, without providing an exact address, and to state the names of any person that are present at the location with the member.

**Must a board provide additional in-person meeting sites to allow the public to more easily participate?**

No. The Sunshine Law does not require a board to provide more than the one in-person meeting site for any meeting. For an in-person meeting, it also does not require accommodating requests to remotely participate. At the same time, the Sunshine Law does not restrict remote participation in an in-person meeting by people who are not board members. However, it is **up to the board to decide** whether or not to allow testifiers, presenters, and other members of the public to watch, testify, or otherwise participate in an in-person meeting from places other than the official meeting site(s) by:

- Allowing testifiers to call in from home;
- Allowing their participation via audio or videoconferencing from a location not listed on the notice; or
- Setting up audio or videoconferencing at a location where no board member will be present, such as an additional location listed as such on the notice and not guaranteed to remain open for the whole meeting.

Boards are not required by the Sunshine Law to provide additional locations or accommodate requests from testifiers to testify remotely by telephone or other means. Boards may be required, however, to reasonably accommodate individuals with disabilities under the Americans with Disabilities Act (ADA), and should consult with their own attorneys or the State Disability and Communication Access Board at (808) 586-8121 (Voice) or (808) 586-6162 (TTY), email [dcab@doh.hawaii.gov](mailto:dcab@doh.hawaii.gov), or go to DCAB's website at [health.hawaii.gov/dcab/](http://health.hawaii.gov/dcab/) for advice on how to comply with the ADA. OIP does not have authority to provide legal advice on the ADA.

If the notice lists one or more additional locations for the convenience of members of the public who cannot make it to the official in-person meeting location(s), the notice must make clear the distinction between the noticed official meeting location(s) and the listed additional location. An additional location may be cancelled or shut down early while the meeting continues at the public meeting locations listed on the filed notice. Moreover, in most cases, board members themselves cannot attend an in-person meeting from an additional location or another non-noticed location, which also means that they cannot call in, cannot participate or just listen in by phone, and cannot vote or be counted toward quorum for an in-person meeting if they are at an additional location or other non-noticed location. The only exception to this rule is for disabled board members, as described above.

## **BOARD PACKETS**

### **What is a board packet?**

A board packet consists of the documents that are compiled by the board or its staff and distributed to board members before a public meeting for use at that meeting. Not all boards create and distribute board packets, and the requirements relating to board packets only apply to those boards that actually distribute board packets.

### **Must board packets be made available to the public?**

**Yes, but documents may be redacted or withheld as discussed below. Any board packet prepared for a meeting must be made available for public inspection in the board's office at the time it is distributed to board members.** Although the board is not required to automatically mail or email the packet itself to people on its

notification list, it must notify them that the board packet is available for inspection in the board's office and must provide "reasonably prompt" access to the packet to any person upon request. The board must accommodate requests for electronic access to the board packet as soon as practicable, which it can do by emailing the packet to requesters or by posting the packet on its website or in a file-sharing site and letting the public know where it can be found.

### **What board packet documents may be withheld or redacted from public inspection?**

The public disclosure requirement for board packets only applies to information that would be disclosable under the UIPA; in other words, non-public information within board packets can be redacted. In addition, the law allows the board to potentially withhold more records in creating the public version of the board packet than could have been withheld in response to a formal UIPA record request. Specifically, the public version of a board packet is not required to include executive meeting minutes, license applications, and other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the meeting. In this way, the board packet provision recognizes the challenge facing a board when it must both put together a board packet and create a public version of the board packet in the short time before a meeting, when the board packet may include materials from third parties that the board has not previously reviewed, or materials with public information and nonpublic information mixed together.

For example, if a board packet includes a long document with confidential information embedded throughout it, which would make redaction unreasonable or overly time-consuming in the days before the board meeting, the board could withhold the entire record from the public board packet. On the other hand, if a similarly long document is made up of several distinct sections, only some of which are confidential, then it may be relatively straightforward for the board to separate them and include only the non-confidential sections in the public board packet. If a document includes some confidential information but is only a few pages long, then the confidential information can readily be redacted before the record is included in the public board packet. If a document of any length is fully public, then it should be included in an unredacted form in the public board packet.

**If a board has made a public board packet available, does it still need to respond to a UIPA request for the original packet?**

Yes. The UIPA has separate and different requirements from the Sunshine Law, and **the Sunshine Law's board packet disclosure requirement does not replace the right of a member of the public to request a board packet under the UIPA.** In responding to such a request, a board would follow the UIPA's deadlines, standards for what may be redacted, and fees. For most members of the public, however, free access to the public version of the board packet prior to the meeting under the Sunshine Law will be preferable to waiting two weeks or more to receive what may be a slightly less redacted version for which review and segregation fees may be assessed under the UIPA.

**Do you have any practice tips for boards to prepare public board packets?**

- When compiling a board packet, prepare the public version at the same time. As each document comes in, determine whether it must be included in the public packet and prepare a redacted version if necessary.
- Have a copy of the public board packet available in the board's office by the time the packet goes out to board members. If the public board packet is available for public inspection only in electronic format, have equipment available for the public to be able to view the packet.
- Have a PDF version of the public packet ready to be emailed or faxed upon request, or if the board prefers, available to download from the board's website or a file-sharing service.

## **T**ESTIMONY

**Must a board accept testimony at its meetings?**

Yes. Boards are required to accept both oral and written testimony from the public on any item listed on the meeting agenda. Boards can decline to accept public testimony that is unrelated to a matter listed on the agenda.

**Can the public provide testimony from a remote location by telephone, videoconference, or using other interactive technology?**

If a board is holding a remote meeting via ICT, the public has a right to attend and testify at the meeting from a remote location using the ICT link(s) provided by the board.

If a board is conducting an in-person meeting, however, the law does NOT require a board to allow public testimony or participation from a location that was not listed on the notice as a meeting site, such as a person's home. Thus, unless the board is conducting a remote meeting, the **board may choose, but is not required** by the Sunshine Law, to hear testimony online or via telephone from members of the public who are not physically present at a meeting location.

Note, however, that a board may choose to establish additional locations to allow the public to testify remotely when holding an in-person meeting. See the discussion on additional locations in the earlier section for Multi-Site and Remote Meetings.

**Is a board required to read aloud the written testimony during its meeting?**

No. There is no requirement that a board read aloud each piece of written testimony during its meeting for the benefit of those attending the meeting. A board, however, must ensure that written testimony is distributed to each board member for that member's consideration before the board's action. Moreover, upon request, any member of the public is entitled to receive copies of the written testimony submitted to the board.

**Is written communication received by only one board member regarding a matter on the board's meeting agenda considered written testimony?**

Possibly. For instance, on occasion, the board chair or individual board members may receive email or other written correspondence regarding a matter on the board's agenda. If a written communication is received prior to the meeting and reasonably appears to be testimony relating to an agenda item (as opposed to correspondence directed only to the recipient), irrespective of whether the writing is specifically identified as "testimony," the board member receiving the communication must make reasonable efforts to cause the testimony to be distributed to the

other members of the board by the board's staff. The receiving board member should not directly distribute the testimony to other board members as it may be considered a serial communication or discussion outside of a meeting, which are prohibited by the Sunshine Law.

**How can a board avoid the possible problem of only one board member receiving testimony intended for the entire board?**

The Sunshine Law now requires that the posted notice for a meeting provide the board's electronic and postal contact information for submission of testimony before the meeting. This requirement avoids possible confusion as to whether an email or other written communication received by only one board member is intended to be "testimony" to the entire board, because the public will know the mailing address and email address written testimony should be directed to.

Providing the board's contact information does not completely relieve individual board members of their obligation to consider whether written communication that they individually receive was intended by the sender to be "testimony" for consideration by the entire board. Nonetheless, it reduces the likelihood of written testimony being sent to individual board members and may excuse a board member's reasonable failure to recognize that a written communication was intended to be "testimony."

**How must a board distribute written testimony to its members?**

Subject to the board packet requirements discussed above, the board is empowered to determine how to best and most efficiently distribute the testimony to its members, *e.g.*, whether to transmit it electronically or to circulate copies in paper format, and whether to distribute it in advance of the meeting or at the beginning of the meeting, so long as the testimony is distributed in a way that is reasonably calculated to be received by each board member. To avoid improper discussion of board business outside a meeting, however, the distribution of any testimony or other documents should be done by the board's staff, not members.

**May a board limit the length of each person's oral testimony offered at its meetings?**

Yes. Boards are authorized to adopt rules regarding oral testimony, including, among other things, rules setting limits on the amount of

time that a member of the public may testify. For instance, a council could adopt rules limiting each person's oral testimony to three minutes per item. Boards also are not required to accept oral testimony unrelated to items on the agenda for the meeting.

## **RECESSING, CONTINUING, CANCELLING, OR RELOCATING MEETINGS**

### **Can a board recess and later reconvene a meeting?**

Yes, as a general rule, boards are authorized to recess both public and executive meetings, and to reconvene at another date and time to continue and/or complete public testimony, discussion, deliberation, and decision-making relating to the items listed on the agenda. Meeting continuances were extensively discussed by the Hawaii Supreme Court in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (Kanahele) (2013). The Court recognized that section 92-7(d), HRS, requires items of reasonably major importance, which are not decided at a scheduled meeting, to "be considered only at a meeting continued to a reasonable date and time." The Court also found that a board is not limited by this statute to only one continuance of a meeting and is not required to post a new agenda or accept oral testimony at a continued meeting.

There are specific procedures that boards must follow if the ICT connection to a remote or multi-site meeting has been interrupted or lost. See the previous sections on In-Person, Multi-Site, and Remote Meetings.

### **What kind of notice should a board provide for a meeting that will be continued?**

Although the Sunshine Law contains no specific requirements for a written public notice or oral announcement for continued meetings, the Hawaii Supreme Court stated in Kanahele, discussed above, that "the means chosen to notify the public of the continued meeting must be sufficient to ensure that meetings are conducted "as openly as possible; and in a manner that 'protect[s] the people's right to know.'" Id. at 1198. When a meeting is being recessed for longer than 24 hours, the board should provide, if practicable, both oral and written (including, if possible, electronic) notice of the date, time, and place of a continuance. The date, time, and location of the reconvened meeting generally should be orally announced at the time that the meeting is recessed.

Based on the Court's guidance and examples in Kanahele, OIP has prepared a "Notice of Continuance of Meeting" form, which is available on the [Forms page at oip.hawaii.gov](#) and as an appendix to this Guide. This notice may be used to continue an ongoing meeting that had been originally posted as required under section 92-7, HRS. Consequently, the continuance notice is not subject to the same requirements of the original notice under section 92-7, HRS. Rather than post a new agenda for a continued meeting, a board should attach the agenda of the meeting being continued to a "Notice of Continuance of Meeting," on which the board should type, hand write, or otherwise note the agenda item(s) being continued.

**Can the meeting be reconvened at a different location?**

Yes. A board may reconvene a meeting at a location different from where the meeting was initially convened, as long as the board announces the location where the meeting is to be reconvened at the time when it recesses the meeting or otherwise notifies the public of the new location. The new location should be included in all announcements and other such publications, if any, regarding the reconvened meeting.

**Must the continuance notice be posted?**

Yes. A board should physically post in the board's office and, if practicable, at the physical meeting site, a "Notice of Continuance of a Meeting," with the agenda from the continued meeting attached thereto. Additionally, if possible and time permits, the Notice and agenda should be electronically posted on the board's website or the State or county electronic calendar, as appropriate, and emailed to persons on the board's email list.

Keep in mind that because the meeting notice requirements of section 92-7, HRS, do not apply to the notice of continuance, the failure to electronically post the continuance notice on the State or county electronic calendar or to give six days' advance notice would not require the cancellation of the continued meeting. State boards are also able to post a notice of a meeting being continued within six days by contacting NIC Hawaii (not OIP) at [Hawaiicalendar@ehawaii.gov](mailto:Hawaiicalendar@ehawaii.gov) from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays).

**Does a board have to re-hear testimony or accept new testimony at a continuation of a meeting?**

No. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting.

**Must a notice be posted online when cancelling a meeting?**

Boards are not required by the Sunshine Law to electronically file a notice when cancelling a meeting. A board's mere failure to be present at a noticed meeting automatically cancels the meeting. However, as a courtesy to the public, OIP recommends posting notification of a cancelled meeting at the board's office and at the meeting location, taking down the original meeting notice from the online calendar, and informing those people who have asked to receive notice by email.

**What notice must be provided if a physical meeting location must be changed?**

If a board must change the physical location of a meeting on the day of the meeting (for example, the room loses power or air conditioning), it may call the meeting to order at the noticed location and announce that it will be recessed and then reconvened shortly thereafter in the new location. A written notification of the new meeting location should be posted at the originally noticed physical location.

**What happens if the link to a remote meeting provided in the meeting notice has changed or does not work?**

The meeting notice for a remote meeting must include the remote meeting location, typically a link for an online meeting platform. If a board must change the online location of a meeting on the day of the meeting, perhaps because the original link is not working, it may do so if its meeting notice also provided the alternative online location in its meeting notice as a back-up link in case of connection problems with the first. If a board cannot use its noticed remote meeting location and it has not previously provided an alternative, it would be unable to convene the meeting in the first place, and thus would not have the option to convene it and announce its continuation at a different online location.

## **DISCUSSIONS BETWEEN BOARD MEMBERS OUTSIDE OF A MEETING**

### **Can board members discuss board business outside of a meeting?**

The Sunshine Law generally prohibits discussions about board business between board members outside of a properly noticed meeting, with certain statutory exceptions. While the Sunshine Law authorizes interactions between board members outside of a meeting in specified circumstances, the statute expressly cautions that such interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

In practical terms, this means that board members cannot “caucus” or meet privately before, during, or after a meeting to discuss business that is before the board or that is reasonably likely to come before the board in the foreseeable future.

The statute, however, does not prohibit discussion between board members outside of a properly noticed meeting about matters over which the board does not have supervision, control, jurisdiction, or advisory power. For instance, where the chair of a board has the sole discretion to set the agenda, the board has no “power” over that decision and, therefore, board members may request the addition of possible agenda items outside of a properly noticed meeting, so long as they do not discuss the substance of items. Similarly, logistical issues, such as when members are available to meet, are typically not “board business” and thus may be discussed in an email sent to all board members.

### **Does the Sunshine Law also prohibit board members from communicating between themselves about board business by telephone, memo, fax, or email outside of a meeting?**

Yes. Board members cannot discuss board business between themselves outside of a properly noticed meeting by way of the telephone or by memoranda, fax, email, or social media, such as Facebook. As a general rule, if the statute prohibits board members from discussing board business face-to-face, board members cannot have that same discussion through other media.

**Can board members discuss board business with non-board members outside of a meeting?**

Generally, yes. The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. Because the Sunshine Law does not apply to **non**-board members, a board member may discuss board business with **non**-board members outside of a meeting.

Board members should not discuss with non-board members any matters discussed during a closed executive meeting, or the members could risk waiving the board's ability to keep the matters confidential.

## **SOCIAL EVENTS**

**What about social and ceremonial events attended by board members?**

The Sunshine Law does not apply to social or ceremonial gatherings where board business is not discussed. Therefore, board members can attend functions such as Christmas parties, dinners, inaugurations, orientations, and ceremonial events without posting notice or allowing public participation, so long as they do not discuss official business that is pending or that is reasonably likely to come before the board in the foreseeable future.

**If I am a board member, what should I do if another board member starts talking about board business at a social event?**

The Sunshine Law is, for the most part, self-policing. It is heavily dependent upon board members understanding what they can and cannot do under the law. In the situation where a board member raises board business with other board members outside of a meeting, board members should remind each other that such discussion can only occur at a duly noticed meeting. If a board member persists in discussing the matter, the other board members should not participate in the discussion and should physically remove themselves from the discussion.

## PERMITTED INTERACTIONS

### What are “permitted interactions”?

Over the years, the Sunshine Law has been revised to recognize eight “permitted interactions,” which are designed to address instances when members of a board may discuss certain board matters outside of a meeting and without the procedural requirements, such as notice, that would otherwise be necessary. The statute specifically states that the “[c]ommunications, interactions, discussions, investigations, and presentations described in [the permitted interaction] section are not meetings for purposes of [the Sunshine Law].” These permitted interactions are summarized below.

### What are the types of “permitted interactions” allowed by the Sunshine Law?

- ***Two Board Members.*** Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board. Nevertheless, it would be a serial communication contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings.
- ***Investigations.*** A board can designate two or more board members, but less than the number of members that would constitute a quorum of the board, to investigate matters concerning board business. The board members designated by the board are required to report their resulting findings and recommendations to the entire board at a properly noticed meeting. This permitted interaction can be used by a board to allow some of its members (numbering less than a quorum) to participate in, for instance, a site inspection outside of a meeting or to gather information relevant to a matter before the board.
- ***Presentations/Negotiations/Discussion.*** The board can assign two or more of its members, but less than the number of members that would constitute a quorum of the board, to present, discuss, or negotiate any position that the board has adopted.
- ***Selection of Board Officers.*** Two or more board members, but less than the number of members that would constitute a quorum of the board, can discuss between themselves the selection of the board’s

officers.

- ***Acceptance of Testimony at Cancelled Meetings.*** If a board meeting must be cancelled due to lack of quorum or conference technology problems, the board members present may still receive testimony and presentations on agenda items from members of the public and may question them, so long as there is no deliberation or decision-making at the cancelled meeting. The members present must create a record of the oral testimony or presentations. At the next duly noticed meeting of the board, the members who were present at the cancelled meeting must provide the record and copies of the testimony or presentations received at the cancelled meeting. Deliberation and decision-making on any item, for which testimony or presentation were received at the cancelled meeting, can only occur at a subsequent duly noticed meeting of the board.

- ***Discussions with the Governor.*** Discussions between one or more board members and the Governor are authorized to be conducted in private, provided that the discussion does not cover a matter over which a board is exercising its adjudicatory function. This permitted interaction does not allow discussions with county mayors.

- ***Administrative Matters.*** Certain routine administrative matters, such as board budget or employment matters, can be discussed between two or more members of a board and the head of a department to which the board is administratively assigned.

- ***Attendance at Informational Meetings or Presentations.*** The Sunshine Law allows two or more members of a board, but less than a quorum, to attend an informational meeting. The board members may participate in discussions, even among themselves, so long as the discussions occur as part of the informational meeting or presentation and no commitment relating to a vote on the matter is made or sought. At the next duly noticed meeting of the board, the members who attended the informational meeting or presentation must report their attendance and the matters presented and discussed that related to official board business.

This informational meeting provision thus allows less than a quorum of board members to attend, for example, neighborhood board meetings, legislative hearings, and seminars, at which official board business is discussed, so long as no commitment to vote is made and the subsequent reporting requirements are met. The law is intended to improve communication between the public and board members and to enable board members to gain a fuller understanding of the issues and various

perspectives. As with the rest of the law, this permitted interaction will be interpreted to prevent circumvention of the spirit of the Sunshine Law and its open meeting requirements.

For a more detailed discussion, please see OIP's three-part "Quick Review: Who Board Members Can Talk to and When," which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

## **BOARD DISCUSSION OF LEGISLATIVE ISSUES**

### **How can a Sunshine Law board keep up with the fast-paced legislative calendar and submit timely testimony on legislative issues?**

When dealing with legislative matters, one major hurdle that boards face is the Sunshine Law's six-day notice requirement prior to conducting a meeting to discuss a legislative measure, even though legislative committees often give less than six days' notice of their hearings. Since most boards typically meet on a monthly or less frequent basis, their meeting schedule together with the notice requirement leave them with limited options to timely notice a meeting and discuss the adoption of its legislative testimony or position prior to the legislative hearing.

The Sunshine Law, however, allows board members to discuss board business outside a meeting in limited circumstances, as set forth in the "permitted interactions" section of the law, as discussed above. The permitted interactions that are most useful in developing or adopting positions on legislative measures are (1) the one allowing two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board; (2) the one allowing a board to assign less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting; and (3) the one allowing less than a quorum of board members to attend a legislative hearing (or other "informational meeting") and report their attendance at the next board meeting.

Besides permitted interactions, other options for a board to address legislative matters are through emergency or limited meetings or delegation to staff.

The various options or practical approaches that a board could take to discuss and submit timely testimony on legislative issues or measures

are discussed in more detail in OIP's "Quick Review: Sunshine Law Options to Address State Legislative Issues and Measures," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

## **DISCUSSIONS BETWEEN MULTIPLE BOARDS**

**When members of multiple Sunshine Law boards hold a joint meeting, roundtable discussion or similar event, how can they do so without violating the Sunshine Law?**

When planning an event that will bring together members of multiple Sunshine Law boards, every attendee who is a member of a Sunshine Law board must be able to justify his or her presence under the Sunshine Law with respect to his or her own board. The justification could be that no one else from that particular board was present, so there was no discussion of board business among that board's members; or it could be that one of the Sunshine Law's permitted interactions applied to the particular board's members who attended; or it could be that the event was noticed as a meeting of the members' own board (or a joint meeting of multiple boards including theirs). The justification does not have to be the same for all the boards with members attending, but all members of each board should have a Sunshine Law justification before attending and participating in the discussion of their board's business during the roundtable meeting.

For a more detailed discussion, please see OIP's "Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law," which is posted on OIP's [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

### 3

## EXECUTIVE MEETINGS

### **What is an executive meeting?**

An executive meeting (also called an executive session) is a meeting of the board that is closed to the public. Because an executive meeting is a narrowly construed exception to the Sunshine Law's presumption that all government board meetings will be open to the public, board members are advised to carefully weigh the interests at stake before voting to exercise their discretion to close a meeting. Because the "final action" taken by the board in an executive meeting may be voided by the courts if the board has violated the procedural requirements for going into such a closed meeting, boards must be careful to follow all requirements.

### **Must a board give notice that it intends to convene an executive meeting?**

Yes, if the executive meeting is anticipated in advance.

### **What must the agenda contain when the board anticipates convening an executive meeting?**

In addition to listing the topic the board will be considering (as is required for all items the board will consider whether in public or executive session), the agenda for the open meeting generally must indicate that an executive meeting is anticipated and should cite the statutory authority for convening the anticipated executive meeting. For an executive meeting, the listing of the topic should describe the subject of the executive meeting with as much detail as possible without compromising the closed meeting's purpose. For instance, if the board is to consider a proposed settlement of a lawsuit in an executive meeting, the agenda would note that the purpose of the executive session was consulting with the board's attorney on questions or issues regarding the board's powers, duties, privileges, immunities, and liabilities, and cite section 92-5(a)(4), HRS. The agenda in such a case should also describe the topic of the meeting as, at a minimum, the lawsuit identified by case name and civil number, and unless such description would compromise the purpose of closing the meeting from the public, that the board would consider a proposed settlement.

### **Can a board convene an executive meeting when it is not anticipated in advance?**

With significant restrictions, the Sunshine Law allows the board to convene an executive meeting when the need for excluding the general public from the meeting was not anticipated in advance. If, for example, during the discussion of an open meeting agenda item, the board determines that there are legal issues that need to be addressed by its attorney, the board may announce and vote to immediately convene an executive meeting to discuss those matters pursuant to section 92-5(a)(4), HRS.

The board, however, cannot convene an executive meeting to discuss an item that is not already on its meeting agenda without first amending the agenda to add the item in accordance with the Sunshine Law's requirements. No item can be added to an agenda if it is of reasonably major importance and the board's action will affect a significant number of persons. At least two-thirds of the board's total members (present or absent) must vote in favor of amending the agenda.

### **How does a board convene an executive meeting?**

To convene an executive meeting, a board must vote to do so in an open meeting and must publicly announce the purpose of the executive meeting. The minutes of the open meeting must reflect the vote of each board member on the question of closing the meeting to the public. Two-thirds of the board members present must vote in favor of holding the executive meeting, and the members voting in favor must also make up a majority of all board members, including members not present at the meeting and vacant membership position. Note that the 2/3 vote of all members present that is required to convene an executive meeting is different from the 2/3 vote of a board's total membership (including vacant positions) that is required to amend an agenda.

### **What are the eight purposes for which an executive meeting can be convened?**

Section 92-5(a), HRS, gives the board the discretion to go into an executive meeting only for the following eight specific reasons:

(1) ***Licensee Information.*** A board is authorized to meet in an executive meeting to evaluate personal information of applicants for professional and vocational licenses.

(2) ***Personnel Decisions.*** A board may hold an executive meeting to “consider the hire, evaluation, dismissal or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved.” However, if the person who is the subject of the board’s meeting requests that the board conduct its business about him or her in an open meeting, the request must be granted and an open meeting must be held.

(3) ***Labor Negotiations/Public Property Acquisition.*** A board is allowed to deliberate in an executive meeting concerning the authority of people designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations.

(4) ***Consult with Board’s Attorney.*** A board is authorized to consult in an executive meeting with its attorneys concerning the board’s powers, duties, immunities, privileges, and liabilities.

(5) ***Investigate Criminal Misconduct.*** A board with the power to investigate criminal misconduct is authorized to do so in an executive meeting.

(6) ***Public Safety/Security.*** A board may hold an executive meeting to consider sensitive matters related to public safety or security.

(7) ***Private Donations.*** A board may consider matters relating to the solicitation and acceptance of private donations in executive meetings.

(8) ***State/Federal Law or Court Order.*** A board may hold an executive meeting to consider information that a State or federal law or a court order requires be kept confidential.

**Does “embarrassing” or “highly personal”  
information allow a board to hold an executive  
meeting?**

A board may not hold such discussions in an executive meeting unless the discussion falls within one of the eight circumstances listed in the statute for which an executive meeting is allowed.

**Can confidential or proprietary information be  
considered in a closed-door meeting?**

Again, unless there is an exception that permits the board to convene in

an executive meeting, no matter how sensitive the information may be, a board cannot consider such information in a closed meeting. In such a case, a board may be better off using an applicable permitted interaction in section 92-2.5, HRS, to allow less than a quorum of board members to take a close look at the sensitive information so that it can be discussed in more general terms at the board's meeting.

**Does the Sunshine Law require a closed meeting when one of the eight purposes is applicable?**

No. A board may, but is not required to, enter an executive meeting closed to the public when one of the eight purposes listed above is applicable.

**Is a board subject to the Sunshine Law's criminal penalties for holding an open meeting, even if one of the eight purposes is applicable?**

No. Although section 92-13, HRS, provides for the criminal prosecution of board members who willfully violate the Sunshine Law, the Hawaii Supreme Court has held that holding an open meeting does not violate the Sunshine Law. Consequently, board members are not subject to criminal prosecution under section 92-13, HRS, for holding an open meeting.

**When personnel matters concerning an individual will be discussed, can an open meeting be held only upon the subject employee's request?**

No. Section 92-5(a)(2), HRS, gives the subject employee the right to request an open meeting, but does not require the employee's consent to hold an open meeting. Because the Sunshine Law presumptively requires open meetings, the board may choose to discuss personnel matters in the open. Meetings related to personnel matters are not required to be closed to the public.

**Must all personnel matters be discussed in a closed executive meeting?**

No. Certain personnel matters must be discussed in an open meeting. Under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), certain types of government employment information must be disclosed upon request, such as employee names, job titles, and salary information. HRS § 92F-12(a)(4). Consequently, government employees do not have a legitimate expectation of privacy

in such information, and the board cannot justify closing a meeting simply to discuss those types of personnel matters. Additionally, if the discussion is about personnel policies, and not about an individual, then there is no legitimate expectation of privacy at stake, so the meeting cannot be closed to discuss such policies. To the extent possible, policy-making must be conducted in public meetings.

The personnel matters that may be discussed in a closed meeting under section 92-5(a)(2), HRS, must relate to “the hire, evaluation, dismissal or discipline” of an individual officer or employee, or to “charges brought against” such an individual, and also requires a showing that “consideration of matters affecting privacy will be involved.” Just because a matter involves an employee’s personnel status does not necessarily mean that a legitimate privacy interest will be impacted. If no legitimate privacy interest will be involved in the board’s discussion, then the board cannot properly close the meeting to the public.

**How do you determine if there is a legitimate privacy interest under the personnel exception allowing closed executive meetings?**

Unlike the test balancing private interests against the public interest that is set forth in the UIPA at section 92F-14(a), HRS, to determine if disclosure of a record would constitute a clearly unwarranted invasion of personal privacy, the Sunshine Law requires a case-by-case analysis of the specific person and information at issue to see whether the person being discussed has a legitimate expectation of privacy. Only people, not companies or entities, can have an expectation of privacy. There is a legitimate expectation of privacy in “highly personal and intimate” information, which may include medical, financial, education, or employment records. Some circumstances, however, may reduce or entirely defeat the legitimacy of a person’s expectation of privacy, as in the case of government officials with high levels of discretionary and fiscal authority, like the University’s president or a head coach. Moreover, if the information must be disclosed by law, rule or regulation, or if it has already been disclosed, then there is no legitimate expectation of privacy that would warrant holding a closed executive meeting to discuss such information.

**May a board vote in an executive meeting?**

Generally, no. In most instances, the board must vote in an open meeting on the matters considered in an executive meeting. In rare instances, the Sunshine Law allows the board to vote in the executive meeting when the vote itself, if conducted in an open meeting, would

defeat the purpose of the executive meeting, such as by revealing the matter for which confidentiality may be needed.

### **Can non-board members participate in an executive meeting?**

The board is entitled to invite into an executive meeting any non-board member whose presence is either necessary or helpful to the board in its discussion, deliberation, and decision-making regarding the topic of the executive meeting. Once the non-board member's presence is no longer needed, however, the non-board member must be excused from the executive meeting. Because the meeting is closed to the general public, the board should allow the non-board members to be present during the executive meeting only for the portions of the meeting for which their presence is necessary or helpful, such as when a board staff member, attorney, or applicant is there to address a particular issue. Non-board members who may be needed throughout an executive session may include those providing technical or production support, or who are taking the minutes of the meeting. All persons attending an executive meeting, however, would be required to maintain the confidentiality of what was discussed in the meeting.

There are additional requirements for an executive meeting held as part of a remote meeting, which are discussed next.

### **What are the requirements for an executive meeting when the meeting is held remotely?**

During a remotely held meeting when board members go into an executive session closed to the public, they can participate via telephone or audio only, without being visible online as is generally required for the public portion of a remote meeting. Because participants may not be visible during an online executive session, and to preserve the executive nature of any portion of a meeting closed to the public, the presiding officer must **publicly state the names and titles of all authorized participants**. Upon convening the executive session, **all participants must confirm that no unauthorized person is present or able to hear them** at their remote locations or via another audio or audiovisual connection. Additionally, if the remote meeting platform allows doing so, **the person organizing the ICT must look at the listed participants and confirm that no unauthorized person has access** to the executive session.

These statutory requirements are intended to prevent the executive session from being breached by or remotely transmitted to unauthorized

persons during remote meetings. The “authorized participants” that the presiding officer must identify at the start of an executive session would generally be anyone properly included in the closed portion of the meeting, such as board members, staff members necessary to running the meeting (*e.g.*, technical or production staff), and in some cases, third parties whose presence is necessary to the closed meeting (*e.g.*, applicant, witness, or attorney).

For additional discussion of executive session issues, see OIP’s **Quick Review: Executive Meetings Closed to the Public**.

## 4

### OTHER TYPES OF MEETINGS

#### EMERGENCY MEETINGS

**Where public health, safety, or welfare requires a board to take action on a matter, can a board convene a meeting with less than six days' notice?**

A board may hold an emergency meeting with less notice than required by the statute or, in certain circumstances, no notice when there is "an imminent peril to the public health, safety, or welfare." When the board finds that an emergency meeting is appropriate, (1) the board must state its reasons in writing; (2) two-thirds of all members to which the board is entitled must agree that an emergency exists; (3) the board must electronically file an emergency agenda and the board's reasons in the same way it would file its regular notice and agenda, except for the usual six-days' advance notice deadline; and (4) persons requesting notification on a regular basis must be contacted by postal or electronic mail or telephone as soon as practicable.

#### UNANTICIPATED EVENTS

**When an unanticipated event requires a board to take immediate action, can a board convene a meeting with less than six days' notice?**

A board may convene a special meeting with less than six calendar days' notice because of an unanticipated event when a board must take action on a matter over which it has supervision, control, jurisdiction, or advisory power. The law defines an unanticipated event to mean (1) an event that the board did not have sufficient advance knowledge of or reasonably could not have known about; (2) a deadline beyond the board's control established by a legislative body, a court, or an agency; and (3) the consequence of an event for which the board could not have reasonably taken all necessary action.

The usual rule is that a State or county board may deliberate and decide whether and how to respond to the unanticipated event as long as (1) the board states, in writing, its reasons for finding that an unanticipated

event has occurred and that an emergency meeting is necessary; (2) the attorney general and two-thirds of all members to which the board is entitled concur with the board's finding; (3) the board's findings and the agenda for the emergency meeting are electronically filed in the same way it would file its regular notice and agenda, except for the usual six-days' advance notice deadline; and (4) persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable. At an emergency meeting, the board can only take those actions that need to be immediately taken.

## LIMITED MEETINGS

**If a board finds it necessary to inspect a location that is dangerous or impracticable for public attendance, may the board hold a meeting that is not open to the public?**

Yes. A board may hold a "limited meeting" that is not open to the public when it determines it is necessary to do so and specifies that the meeting location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable, and the OIP Director concurs in that determination. Prior to the limited meeting, the board must publicly deliberate in a regular meeting on the need for the limited meeting, and two-thirds of all members to which the board is entitled must adopt the determination specified above.

Public notice of a limited meeting must still be provided, and a videotape of the meeting must be made available at the next regular board meeting, unless the OIP Director waives the videotape requirement. No decision-making can occur during the limited meeting.

See the forms section of this Guide for a checklist to use when requesting the OIP Director's concurrence for a limited meeting or to request a waiver of the videotaping requirement.

**Can county councils have limited meetings to attend other boards' or community groups' meetings, such as candidate forums?**

Yes. County councils have a special limited meeting provision that allows an unlimited number of councilmembers to be the guests of a board or community group holding its own meeting, such as for candidate forums or neighborhood board meetings. To qualify for this

“guest meeting,” the council must follow the requirements to hold a limited meeting, as described above. But unlike the regular limited meetings described above, the guest meeting must be open to the public. The council need not file an agenda. However, if the host organization itself is a board which must follow the Sunshine Law requirements, then that board must file an agenda. The council can have no more than one guest meeting per month for any one board or community group, and no guest meetings can be held outside of Hawaii.

*See* the appendices to this Guide for a checklist to use when requesting the OIP Director’s concurrence for a council to attend a meeting as guests of another board or community group meeting or to request a waiver of the videotaping requirement.

## 5

### PROCEDURAL REQUIREMENTS

#### NOTICE AND AGENDA

##### **What are the Sunshine Law's requirements for giving notice of meetings?**

With the exception of emergency meetings, **a board must give at least six calendar days' advance notice** of any regular, special, or rescheduled meeting or any anticipated executive meeting. Meetings held by interactive conference technology (section 92-3.5, HRS), and limited meetings (section 92-3.1, HRS) are subject to the following provisions on notice as well as other conditions set forth in the applicable sections of the Sunshine Law. Emergency meetings (section 92-8, HRS) must also be noticed, but notice may be filed within a shorter time period than the normal six days, and there are additional conditions.

##### **Sunshine Law meeting notices must be posted on State and county electronic calendars as the official notice of the meeting.**

If there is a dispute as to whether an agenda was electronically filed at least six calendar days prior to the meeting, a printout of the electronic time-stamped agenda is conclusive evidence of the posting date.

A board must also file the notice with the Lt. Governor's office or the county clerk's office, which must continue to post the notices in a central location in a public building in paper form or in electronic format, such as via a monitor linked to the electronic calendar. This enables the public to still inspect courtesy copies of the meeting notices posted outside of the Auditorium at the State Capitol or at county buildings. The board must also retain proof of filing the notice with the Lt. Governor's or county clerk's office. The electronic calendar, however, will provide the official notice required by the Sunshine Law. Therefore, the failure to file timely copies of notices with the Lt. Governor's office or county clerks does not require cancellation of the meeting. Moreover, the Lt. Governor or county clerks have the discretion to determine whether they want paper documents to be provided to them, or if

electronic copies can be faxed to them or emailed to an email address designated by them.

The notice must also be posted at the meeting site, whenever feasible. Newspaper publication is not required for Sunshine Law meeting notices.

In addition to the date, time, and place of the meeting, the meeting notice must **include an agenda**, which lists all of the items to be considered at the forthcoming meeting. (The “guest meeting” form of limited meeting, discussed above, is an exception to this requirement.) The agenda requirements are discussed later herein.

If an executive meeting is anticipated, the notice must also state the **purpose of the executive meeting**. The Sunshine Law also requires all meeting notices to include the **board’s electronic and postal contact information for submission of testimony** before the meeting, and provide instructions on **how to request an auxiliary aid or service or an accommodation due to a disability**, which may include a reasonable deadline. Sample language is provided on page 43 of this Guide.

#### **Does a board have to notify individual members of the public of every meeting?**

The Sunshine Law requires the board to maintain a list of names and addresses of those persons who have requested notification of meetings and to mail or email a copy of the notice to those persons at the time that the notice is filed. A meeting must be cancelled if the board fails to send notice at least six days in advance of the meeting via postal mail (as determined by postmark date) or email to people on its notification list.

#### **What happens if a board files its notice less than six days before the date of the meeting?**

The State electronic calendar will not allow a board to file a regular meeting notice with less than six days’ notice, unless authorization is received after contacting NIC Hawaii (not OIP) at [hawaiicalendar@ehawaii.gov](mailto:hawaiicalendar@ehawaii.gov) from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays). Unless the short notice is specifically allowed (such as for an emergency meeting), if a board files its notice less than six calendar days before the meeting, the meeting is cancelled as a matter of law and no meeting can be held. The board chair or the director of the department within which the board is

established must ensure that a notice is posted at the meeting site to inform the public of the cancellation of the meeting.

Note that notices for emergency meetings may be posted on the State calendar with less than six days' notice, but only after special permission is obtained from the calendar's administrator (not OIP).

### **What happens if there is a joint meeting of two boards that are both subject to the Sunshine Law?**

If there is a joint meeting with two or more boards, then each board is responsible for meeting the Sunshine Law's requirements, but they can coordinate to avoid duplicative actions. All boards must ensure that notices are timely mailed or emailed to persons on their own notification lists; but if a person is on more than one mailing list, then only one of the boards must send the notice to that person. If one board meets all Sunshine Law requirements, but the other board in a joint meeting fails to do so, then the first board can proceed with the meeting without the second board. The second board must cancel its meeting and cannot have a quorum or more of its members in attendance at what would have been a joint meeting with the first board.

### **Do you have any practice tips for boards to help them comply with the notice requirements?**

- Be careful to keep accurate records of postal and email addresses of persons on the notification list, and any changes to those addresses, so that notices will be timely and properly sent to them, as the board's errors in an address that made a notice non-deliverable could potentially require the cancellation of a meeting.
- Reduce opportunities for clerical errors by board employees, particularly with email addresses. If possible, have requesters directly enter their own email or mailing addresses online to be added to the board's notification list, and keep a record of the addresses entered by the requesters so that any mistakes will be attributed to the correct source. Consider emailing an acknowledgement after requesters register for email notification, to ensure that the correct email address has been entered onto the board's email notification list.
- If mail is not deliverable, check the address to make sure that it was sent to the correct postal or email address. Keep a record of postal and email addresses that are returned as undeliverable and dates that they were sent to provide proof that the notification was timely sent to

the address provided by the requester.

- Consider filing agendas well before the six-day requirement, so that any potential errors in postal or email addresses can be corrected and timely notices can be sent to people on the notification list.
- Use technology to automate the notification process, reduce duplicative requests to the boards themselves, and eliminate potential clerical errors by the board in entering email addresses. Check to see whether the State or county electronic calendars will automatically notify those persons who subscribe to certain meeting notices.
- Keep a time-stamped copy of the agenda to provide conclusive evidence of the date when the notice was filed. The State electronic calendar shows the date and time that a meeting notice was posted or last updated. If a county calendar does not have this feature, then the board could print out and time-stamp a copy of the electronically filed meeting notice to keep in its files as evidence of the date that the meeting notice was posted.

### **What must the agenda contain?**

The agenda must list all of the business to be considered by the board at the meeting. It must be sufficiently detailed so as to provide the public with adequate notice of the matters that the board will consider so that the public can choose whether to participate.

For anticipated executive meetings, as noted above, the agenda must be as descriptive as possible without compromising the purpose of closing the meeting to the public and must identify the statutory basis that allows the board to convene an executive meeting regarding the particular matter.

To meet the Sunshine Law's requirement to include instructions on how to request an auxiliary aid or accommodation, the Disability and Communication Access Board recommends that boards include the following language on its agendas: "If you require an auxiliary aid or accommodation due to a disability, please contact (808) \_\_\_\_\_ (voice/tty) or email [the board] at \_\_\_\_\_ by [date]."

For a more detailed discussion, please see OIP's "Agenda Guidance for Sunshine Law Boards," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

**Are general descriptions such as “Unfinished Business” or “Old Business” allowed?**

No. The practice of listing general descriptions on agendas such as “Unfinished Business” or “Old Business” without any further description is insufficient and does not satisfy the agenda requirements.

**Can a board amend its meeting agenda once it has been filed?**

Adding an item to the agenda is **not** permitted if (1) the item to be added is **of reasonably major importance** and (2) action on the item by the board **will affect a significant number of persons**. Determination of whether a specific matter may be added to an agenda must be done on a case-by-case basis.

**If the requirements above are met**, boards may amend an agenda during a meeting to add items for consideration, but only after the affirmative vote of two-thirds of **all** board members to which the board is entitled, which **includes members not present at the meeting and vacant membership positions**. For example, if a board is entitled to 9 members, but only 5 are appointed and present, then it does not have the 6 votes needed to meet the 2/3 requirement to amend an agenda during the meeting.

Note that the voting requirement for amending an agenda **is not the same** as, and is typically harder to obtain than, the vote of two-thirds of members present and a majority of the total membership that is needed to go into an executive meeting.

## **MINUTES**

**Is a board required to keep minutes of its meetings?**

Yes. Boards must either keep written minutes, or recorded minutes with a written summary. If boards chose to keep written minutes, they must include the date, time, and place of the meeting; the members recorded as either present or absent; the substance of all matters proposed, discussed, or decided; a record by individual member of votes taken; and any information that a board member specifically asks at the meeting to be included.

Boards are not required to create a transcript of the meeting or to electronically record the meeting. But they may choose to keep a recording of the entire meeting instead of doing written minutes. For this option, a board must keep its minutes in a digital or analog recording format (e.g., via a cell phone, video, or tape recorder) and provide a written summary, which is required to include:

- The date, time, and place of the meeting;
- The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- A record, by individual members, of motions and votes made by the board; and
- A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

The written summary requirements will allow the public to quickly find key information about a meeting and skip to the point in the recording where an item of interest was discussed, without having to listen to the entire recording which may be hours long. Although a board does have the choice to record its minutes in either digital (audio or video computer file) or analog (e.g., a magnetic tape recording) format, OIP recommends that boards record in a digital format to avoid having to convert an analog recording into digital format to be able to place the recording online.

The option to create recorded minutes does not impose any general requirement to record meetings for boards that prefer using written minutes. Moreover, if a board is recording a meeting solely to help it prepare written minutes and plans to delete or record over the recording once those minutes are prepared, the temporary recording need not be posted online and typically need not be retained once the board no longer needs it. However, for one specific type of meeting — a remote meeting held using ICT — boards are required to record the meeting “when practicable” and make the recording electronically available to the public as soon as practicable after the meeting and until the board’s actual minutes (whether written or recorded) are posted on the board’s website. This provision recognizes that it is usually easy to record an online meeting but still allows boards to skip doing so in those unusual circumstances where recording an online meeting presents a more significant challenge.

For a more detailed discussion of what must be included in minutes,

please see OIP's "Quick Review: Sunshine Law Requirements for Public Meeting Minutes," which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

**Must the minutes of a board's meeting be posted online?**

Yes. The Sunshine Law requires all boards to post their written or recorded minutes online within 40 days after the meeting. If the board chooses to post a recording of its meeting, it still needs to also post a written summary within 40 days after its meeting, because the written summary is part of the recorded minutes.

A board that is preparing written minutes for an in-person meeting does not need to post a recording, even if it has one – for instance, temporary recordings intended to be used for note-taking to prepare written minutes do not need to be posted online, since the written minutes will be posted online instead. However, for a remote meeting held via ICT, a board is required to record the meeting "when practicable" and make that recording available to the public until its actual minutes are posted online.

**Must draft minutes be posted online within 40 days after a meeting, even if they have not yet been approved by the board?**

Yes. The Sunshine Law does not require boards to approve minutes. If a board does approve its minutes as a usual practice but has not had the opportunity to approve minutes for a meeting, minutes that satisfy the Sunshine Law's requirements must nevertheless be posted online within 40 days after the meeting, because there is no exception to the posting requirement when a board has not approved its minutes. The board can post its draft minutes online, marked as a "draft," and replace them with the board-approved minutes when those are ready, so long as it has minutes that satisfies the Sunshine Law's requirements posted within the required 40 days.

**If the board does not have its own website, where must its minutes be posted?**

A board that has its own website will most likely prefer to post its minutes there, but a board that does not have its own website may post its minutes on an appropriate State or county website instead, such as

the website for the department to which the board is administratively attached.

To provide enough time for an IT office or website administrator to post minutes online after they have been prepared by the board, the deadline for posting is 40 days after a meeting.

**Must executive meeting minutes be posted online?**

No. Minutes of an executive meeting closed to the public need not be posted online if the disclosure would defeat the purpose of going into executive meeting.

Keep in mind, however, that the Sunshine Law is different from the UIPA. The Sunshine Law permits boards to delay publication of executive meeting minutes for so long as publication would defeat the lawful purpose of the executive meeting. At some point in the future, the minutes may have to be disclosed in response to a UIPA request, when disclosure would no longer compromise the purpose for going into the executive meeting. For example, minutes of an executive meeting to discuss a property's acquisition should be disclosed after the property has been acquired. Thus, boards must review the minutes to determine if the need for confidentiality has passed, and may be required to disclose all or part of the executive meeting minutes in response to a UIPA request for the minutes.

## **RECORDINGS BY THE PUBLIC**

**Must a board allow a member of the public to record the meeting?**

The board must allow the public to record any portion or all of an open meeting, as long as the recording does not actively interfere with the meeting.

## **6**

### **SUIT TO VOID BOARD ACTION**

#### **Can a member of the public file a lawsuit for an alleged Sunshine Law violation?**

Yes. When the open meetings and the notice provisions of the Sunshine Law are not complied with, any person may file a lawsuit to void the board's action within 90 days of the allegedly improper board action. An OIP determination of wrongdoing is not necessary for a lawsuit to be filed. Enforcement is in circuit court of the circuit in which the prohibited act occurred.

Under certain circumstances, the judge may grant an injunction, but the filing of a lawsuit challenging a board's action does not stay enforcement of the action. Attorneys' fees and costs may be awarded to the prevailing party.

#### **What is the penalty for an intentional violation of the statute?**

A willful violation of the Sunshine Law is a misdemeanor and, upon conviction, may result in the person being removed from the board. The Attorney General and the county prosecutor have the power to enforce any violations of the statute.

#### **Can a board appeal an OIP decision regarding the Sunshine Law?**

Yes. OIP issues decisions in response to complaints that a board violated the Sunshine Law, and also on the question of whether a particular body is a board subject to the Sunshine Law. A board may appeal an OIP decision to the courts in accordance with section 92F-43, HRS. For more information, see OIP's Guide to Appeals to the Office of Information Practices, available on the Training page at OIP's website at [oip.hawaii.gov](http://oip.hawaii.gov).

## 7

### OFFICE OF INFORMATION PRACTICES

#### **If I have additional questions about the Sunshine Law, where can I go?**

For general information on the Sunshine Law, please visit OIP's website at [oip.hawaii.gov](http://oip.hawaii.gov), call OIP at (808) 586-1400, or email [oiip@hawaii.gov](mailto:oiip@hawaii.gov). The full text of the Sunshine Law, as well as OIP's opinions relating to various open meeting issues, are posted on the website.

Office of Information Practices  
(October 2021)

***Sunshine Law:***  
**PUBLIC MEETING NOTICE CHECKLIST**

**1. Notice Includes:**

- ☐ **Date:** In addition to the date itself, if the notice also specifies the day of the week, make sure it matches the date.
- ☐ **Time:** While the starting time must be provided, an ending time is not required.
- ☐ **Location:** All notices must list at least one physical location for the meeting. For an in-person meeting, the notice must list all locations where board members will be physically present and must state that the public can attend the meeting at any of those locations.
- ☐ For a remote meeting using interactive conference technology (ICT), the link(s) allowing the public to contemporaneously view and hear the meeting and provide remote oral testimony.
- ☐ If additional locations (formerly known as "courtesy" locations) are being provided for the public's convenience, specify whether the meeting will continue without the additional location if the ICT connection between the additional location and the public meeting site(s) is lost, or will be automatically recessed to restore communication.
- ☐ Board's electronic and postal contact information for submission of testimony before the meeting.
- ☐ Instructions on how to request an auxiliary aid or service or an accommodation due to a disability. If there is a deadline to make such a request, it must be stated in the notice and must be reasonable.
- ☐ Agenda describing with reasonable specificity all matters to be considered.
- ☐ If an executive meeting is anticipated, the agenda describes the purpose and statutory authority in section 92-5(a), HRS, or other laws applicable to your board that allow the executive meeting. Use as much detail as

possible without compromising the executive meeting's purpose.

- ☐ Optional: For a meeting **using ICT**, information about what will happen in the event of a connection failure, such as where to find **reconnection information and any necessary visual aids** online or an alternative date, time, and place for **continuation** of the meeting if the ICT connection cannot be restored.

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## 2. Filing Notice:

- ☐ 6 calendar days prior to meeting:

Electronically post on:

- ☐ State Calendar: <http://calendar.ehawaii.gov/calendar/html/event> (State only)  
☐ County Calendar (counties only)  
☐ Board's website (unlike the above, this is not a legal requirement)

Physically post for public inspection in:

- ☐ Board's Office  
☐ Site of meeting (when feasible or if meeting is canceled)

File (and keep proof of filing) with:

- ☐ Lieutenant Governor's Office (State)  
☐ County Clerk (counties)

Mail or email to persons who requested notification of meetings (MUST be postmarked/emailed no later than 6 calendar days before the meeting):

- ☐ Postal mailing list  
☐ Email list

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## 3. Meeting Canceled for Late Filing of Notice:

It is suggested but not required that the board post a notice canceling the meeting at:

- ☐ Meeting site  
☐ State Calendar: <http://calendar.ehawaii.gov/calendar/html/event> (State only)  
☐ County Calendar (counties only)  
☐ Anywhere else notice was previously posted, mailed, or filed such as county or board website (not a legal requirement)

#### 4. Special Instructions for Emergency Meetings

(held less than 6 calendar days prior to meeting):

- Board must first decide to hold emergency meeting by vote of two-thirds of members to which board is entitled (include authorized but vacant positions)
  - Must meet criteria in section 92-8, HRS, either:
    - when “imminent peril to the public health, safety, or welfare,” or
    - because of an “unanticipated event” and board must take action.
      - For an unanticipated event, the Attorney General must concur (even for county boards).
- ☐ File board’s findings justifying emergency meeting with emergency agenda as set forth in section 2 above (but without the 6-day notice requirement).

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#### 5. Special Instructions for Limited Meetings

- Limited meetings not open to the public may be held when a board determines it necessary to inspect a location that is dangerous or that is impracticable for public attendance.
  - Must obtain concurrence from OIP’s Director.  
*See OIP’s Request for the Office of Information Practices’ Concurrence for a Limited Meeting* form at [www.oip.hawaii.gov/forms/](http://www.oip.hawaii.gov/forms/).
  - For county councils only: *See OIP’s Checklist and County Council’s Request to Waive Videotaping of a Meeting as Guests of a Board or Community Group* form at [www.oip.hawaii.gov/forms/](http://www.oip.hawaii.gov/forms/).
  - Notice must be filed 6 days before limited meeting.
- ☐ File board’s limited meeting agenda as set forth in section 2 above.

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#### 6. Special Instructions for In-Person Meetings Involving Board Members with a Disability

- Notwithstanding the general requirements for multi-site in-person meetings in section 1 above, a “board member with a disability that limits or impairs the member’s ability to physically attend the meeting” may attend an in-person meeting via a connection by **audio and video** means from a private location (e.g., home or hospital room). The specific address of the private

location need not be listed on the notice, but a board member with a disability attending from a private location must generally identify the location (e.g., home; hospital) and all persons present with the member.

- See OIP's *Quick Review: Sunshine Law Requirements for In-Person Meetings held at Multiple Sites* on OIP's [Training Page at oip.hawaii.gov](#).

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## 7. Other Considerations

There are matters outside of OIP's jurisdiction that you may wish to consider when preparing a meeting notice, such as:

- Although the Sunshine Law requires a notice to include instructions for requesting a reasonable accommodation for disabled persons (for example, provision of sign language interpreters for individuals who are deaf or hard of hearing), OIP does not have authority to advise as to what constitutes a reasonable accommodation. If you have questions about what accommodations or auxiliary aids must be provided in response to a request, you may wish to contact your board's attorney or the State Disability and Communication Access Board: (808) 586-8121 (Voice or TTY) or email: [dcab@doh.hawaii.gov](mailto:dcab@doh.hawaii.gov) for assistance.
- Applicable statutes or administrative rules related to your board.
- For county boards, your County's applicable charter, ordinances, or other provisions.
- Your board's own procedural rules or policies; or instructions for the public regarding, among other things, your board's preferred method for submission of written testimony and opportunity to provide oral testimony at the meeting.
- Whether the public can find and get into the meeting site. For example, is the meeting site large enough that someone might have trouble finding the right room? Are there improper barriers to public access such as a security checkpoint requiring attendees to show identification?

**Request for the Office of Information Practices' Concurrence  
for a Limited Meeting**  
(HRS § 92-3.1)

Date: \_\_\_\_\_

Name of Board: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
Board's Attorney: \_\_\_\_\_ Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
Date of Proposed Limited Meeting: \_\_\_\_\_  
Place/Location of Proposed Limited Meeting: \_\_\_\_\_  
\_\_\_\_\_

1. Type of Limited Meeting:

- ☐ location is dangerous to health or safety of the public
- ☐ public attendance is impracticable

2. (Attach relevant portion of draft or adopted minutes.) Board has, after sufficient public deliberation at a prior regular meeting, determined by vote of two-thirds of all voting members that:

- ☐ the limited meeting is necessary and the location would be dangerous to the health or safety of the attending public, or
- ☐ the on-site inspection is necessary and public attendance is impracticable

The Board has made this determination based upon the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Notice of the Limited Meeting under HRS § 92-7 (attach agenda):

- ☐ was filed on \_\_\_\_\_
- ☐ will be filed by \_\_\_\_\_

4. Required Videotape of the Limited Meeting:

- ☐ will be made
- ☐ Board requests a waiver of this requirement because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OIP 5 (10/21)

## CONCURRENCE

The Director of the Office of Information Practices has reviewed the request made for a Limited Meeting and:

- ☐ concurs
- ☐ does not concur
- ☐ waives the videotape requirement

If concurrence is granted above, the Board must:

1. provide notice in accordance with HRS § 92-7;
2. make no decisions at the Limited Meeting;
3. comply with all requirements of HRS § 92-9; and
4. videotape the meeting and make it available at its next regular meeting, unless this requirement is waived above.

---

Cheryl Kakazu Park  
Director

BOARD:

ADDRESS:

WEBSITE:

E-MAIL:

TELEPHONE:

FAX:

### **NOTICE OF CONTINUANCE OF MEETING**

ORIGINALLY CONVENED ON \_\_\_\_\_, 20\_\_, AT \_\_\_\_\_ .M.  
See attached agenda for original meeting

TO BE CONTINUED TO:

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_ .M.

PLACE: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ Public testimony will be allowed in the manner described and on the items shown on the attached agenda as being continued.

\_\_\_ Public testimony has concluded and no further testimony will be allowed on the items described in the attached agenda. The board will discuss, deliberate, decide, and/or act upon the items described in the attached agenda.

This notice has been physically posted at the following location(s):

\_\_\_ Board Office

\_\_\_ Meeting Site

(Optional) This notice has been electronically posted at \_\_\_\_\_

(This notice is not subject to the filing requirements of HRS Sec. 92-7.)

**Chapter 92, Hawaii Revised Statutes**  
**PUBLIC AGENCY MEETINGS AND RECORDS**

The following is an unofficial copy of Part I of chapter 92, Hawaii Revised Statutes, which is current through the 2021 legislative session, including new and unnumbered provisions enacted by Act 220, SLH 2021, relating to remote meetings. For amendments made to the Sunshine Law by the Revisor of Statutes after publication of this manual, please visit OIP's website at [oip.hawaii.gov](http://oip.hawaii.gov) and look under Laws/Rules/Opinions.

**PART I. MEETINGS**

**Section**

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**§92-1 Declaration of policy and intent.** In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed;  
and
- (3) The provisions providing for exceptions to the open meeting  
requirements shall be strictly construed against closed meetings. [L

**§92-1.5 Administration of this part.** The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

**§92-2 Definitions.** As used in this part:

“Board” means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

“Chance meeting” means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

“Interactive conference technology” means any form of audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

“Meeting” means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1; am L 2021, c 220, §3]

**§92-2.5 Permitted interactions of members.**

- (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.
- (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:
  - (1) Investigate a matter relating to the official business of their board; provided that:
    - (A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;
    - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
    - (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

- (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.
- (c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.
- (d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:
  - (1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;
  - (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
  - (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:
    - (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
    - (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.
- (e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.
 

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.
- (f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.
- (g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

- (h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

**§92-3 Open meetings.** Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of § 1; am L 1985, c 278, §1]

**§92-3.1 Limited meetings.**

- (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
  - (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
  - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
  - (3) Notice of the limited meeting is provided in accordance with section 92-7.
- (b) A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:
  - (1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;
  - (2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;
  - (3) No more than one limited meeting per month shall be held by a county council for any one board or community group;
  - (4) No limited meetings shall be held outside the State; and
  - (5) Limited meetings shall not be used to circumvent the purpose of part I, chapter 92.

- (c) At all limited meetings, the board shall:
  - (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
  - (2) Make the videotape available at the next regular meeting; and
  - (3) Make no decisions at the meeting.
- (d) Each county council shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the effectiveness and application of limited meeting procedures provided in subsection (b), including any recommendations or proposed legislation. [L 1995, c 212, §1; am L 2008, c20, §1; am L 2014, c 221, §2; am L 2016, c 56, §1, 2]

**§92-3.5 In-person meeting at multiple sites by interactive conference technology; notice; quorum.**

- (a) A board may hold an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).
- (b) Any board member participating in a meeting by interactive conference technology under this section shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.
- (c) A meeting held by interactive conference technology under this section shall be automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive technology is being held, even if a quorum of the board is physically present in one location. The meeting may reconvene when either audio or audiovisual communication is restored. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and

the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

- (d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2; am L 2021, c 220, §4]

**§92-3.7 Remote meeting by interactive conference technology; notice; quorum.**

- (a) A board may hold a remote meeting by interactive conference technology; provided that the interactive conference technology used by the board allows audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided under this section; provided further that there is at least one meeting location that is open to the public and has an audiovisual connection. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at nonpublic locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall state who, if anyone, is present at the nonpublic location with the member. The notice required by section 92-7 shall:
  - (1) List at least one meeting location that is open to the public that shall have an audiovisual connection; and
  - (2) Inform members of the public how to contemporaneously:
    - (A) Remotely view the video and audio of the meeting through internet streaming or other means; and
    - (B) Provide remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.

The board may provide additional locations open for public participation. The notice required by section 92-7 shall list any additional locations open for public participation and specify, in the event an additional location loses its audiovisual connection to the remote meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

- (b) For a remote meeting held by interactive conference technology pursuant to this section:
  - (1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;
  - (2) Except as provided in subsections (c) and (d), a quorum of board members participating in the meeting shall be visible and audible to other members and the public during the meeting; provided that no

- other meeting participants shall be required to be visible during the meeting;
- (3) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board;
  - (4) At the start of the meeting the presiding officer shall announce the names of the participating members;
  - (5) All votes shall be conducted by roll call unless unanimous; and
  - (6) When practicable, boards shall record meetings open to the public and make the recording of any meeting electronically available to the public as soon as practicable after a meeting and until a time as the minutes required by section 92-9 are electronically posted on the board's website.
- (c) A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). This subsection shall not apply based on the inability of a member of the public to maintain an audiovisual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audiovisual link to the meeting. The meeting may reconvene when either audiovisual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audiovisual communication, but only if the board has provided reasonable notice to the public as to how to access the reconvened meeting after an interruption to communication. If audio-only communication is established, then each speaker shall be required to state their name before making their remarks. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.
- (d) During executive meetings from which the public has been excluded, board members shall be audible to other authorized participants but shall not be required to be visible. To preserve the executive nature of any portion of a meeting closed to the public, the presiding officer shall publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection. The person organizing the interactive conference technology shall confirm that no unauthorized person has access to the executive meeting as indicated on the

control panels of the interactive conference technology being used for the meeting, if applicable. [L 2021, c 220, §2]

**§92-4 Executive meetings.** A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2]

**§92-5 Exceptions.**

- (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:
  - (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
  - (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
  - (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
  - (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
  - (5) To investigate proceedings regarding criminal misconduct;
  - (6) To consider sensitive matters related to public safety or security;
  - (7) To consider matters relating to the solicitation and acceptance of private donations; and
  - (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.
- (b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

**§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.**

- (a) This part shall not apply:
  - (1) To the judicial branch.

- (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:
- (A) Hawaii labor relations board, chapters 89 and 377;
  - (B) Labor and industrial relations appeals board, chapter 371;
  - (C) Hawaii paroling authority, chapter 353;
  - (D) Civil service commission, chapter 26;
  - (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
  - (F) Crime victim compensation commission, chapter 351; and
  - (G) State ethics commission, chapter 84.
- (b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11; am L 1998, c 240, §6]

**§92-7 Notice.**

- (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board's electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.
- (b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall timely post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.

- (c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.
- (d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.
- (e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2; am L 2012, c 177, §2; am L 2014, c 68, §1; am L 2017, c 64, §2; am L 2018, c 63, §1; am L 2019, c 244, §2; am L 2021, c 220, §5]

**[§92-7.5] Board packet; filing; public inspection; notice.** At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section. [L 2017, c 64, §1]

#### **§92-8 Emergency meetings.**

- (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
  - (1) The board states in writing the reasons for its findings;
  - (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;

- (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and
  - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.
- (b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, with less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:
  - (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
  - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
  - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;
  - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and
  - (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- (c) For purposes of this part, an "unanticipated event" means:
  - (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
  - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
  - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64 §3; am L 2019, c 244 §3]

**§92-9 Minutes.**

- (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Written minutes shall include, but need not be limited to:
  - (1) The date, time and place of the meeting;

- (2) The members of the board recorded as either present or absent;
  - (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
  - (4) Any other information that any member of the board requests be included or reflected in the minutes.
- (b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:
  - (1) The date, time, and place of the meeting;
  - (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
  - (3) A record, by individual member, of motions and votes made by the board; and
  - (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.
- (c) All or any part of a meeting, of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1; am L 2017, c 64, §4]

**§92-10 Legislative branch; applicability.** Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

**§92-11 Voidability.** Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

**§92-12 Enforcement.**

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

- (c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.
- (d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.
- (e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:
  - (1) There is likelihood that the party bringing the action will prevail on the merits;
  - (2) Irreparable damage will result if a stay is not ordered;
  - (3) No irreparable damage to the public will result from the stay order; and
  - (4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5; am L 2012, c 176, §3]

**§92-13 Penalties.** Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]



**County of Hawai'i  
Board of Ethics**

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## **INTRODUCTION**

The Hawai'i County Charter's Article XIV established a Code of Ethics which is codified in Article 15 of the Hawai'i County Code. The Ethics Code provides standards of conduct for County officers and employees. This includes elected officials, appointed department heads and members of boards and commissions as well as regular civil service and non-civil service employees.

This guide is designed to give you a quick overview of the County's Ethics Code provisions. It is not intended as a comprehensive explanation of what is or what is not a permissible activity by County employees. Whenever in doubt, please seek an opinion from the Hawai'i County Board of Ethics.

You may contact the Board of Ethics through the Office of the Corporation Counsel at 961-8251 for samples of a request for an opinion, or for copies of Article 15, the Hawai'i County Ethics Code.

## **APPLICABILITY**

The Hawai'i County Ethics Code, Article 15, Sections 2-79 through 2-91.6, applies to you if you are a County officer or employee. Officers include the Mayor, members of the Council, and any person elected or appointed as administrative head, deputy or division chief of any agency of the County, or appointed as a member of any board or commission provided for in the Charter. An employee is anyone (other than an officer) who is employed by the County or any County agency, but does not include independent contractors. **Hawai'i County Charter Section 13-1.**

## **GIFTS**

You may not solicit or accept a gift under any circumstance in which it can reasonably be inferred that the gift is intended to influence you, as an officer or employee, in the performance of your duties or intended as a reward for any official action on your part. Hawai'i County Code (HCC) Section 2-91.1.4.

You must file a gifts disclosure statement with the Board of Ethics on June 30 of each year if:

- 1) You, a spouse or dependent child receives from one source any gift or gifts whose aggregate value exceeds \$100; and
- 2) The source of the gift(s) has interests that may be affected by official action that you take; and
- 3) The gift is not exempted by the Code from the reporting requirements. **HCC Section 2-91.5(a).**

## **CONFIDENTIAL INFORMATION**

You may not disclose or use confidential information acquired in the course of your employment for your personal gain or the benefit of others. **HCC Section 2-91.6.**

## **FAIR TREATMENT**

You may not use your County position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for yourself or others. **HCC Section 2-83.**

*NOTE: Pursuant to the Hawai'i County Charter, Section 13-10, you may not appoint, employ, promote or advance an individual who is a relative of yours to any office or position under your supervision. A relative is defined as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, step-father, step-mother, step-son, step-brother, step-daughter, step-sister, half-brother, or half-sister.*

You may not seek other employment or contracts by use of your government position. **HCC Section 2-83(b)(1).**

You may not solicit or receive other compensation for performance of your government duties except as provided by law. **HCC Section 2-83(b)(2).**

You may not use County time, equipment, or other facilities for private business or campaign purposes. **HCC Section 2-83(b)(3).**

**Examples of Prohibited Campaign Activities:** Prohibited campaign activities include performing campaign activities on County time; producing campaign literature or materials with County equipment or County supplies; and distributing or selling fundraiser tickets or soliciting campaign assistance at County offices. You should not attend a campaign event in a County vehicle. However, County facilities that are available to the public for use may be used for political activities on the same basis as the facilities are available to the general public.

**Examples of Prohibited Private, Personal, or Business Activities:** Prohibited private, personal, or business uses include use of County computers, email, tools, supplies, personnel or other resources. This includes things like mailing out a letter requesting donations for a non-profit organization, as this would be included in the definition of "private business." Similarly, using a County vehicle for a purely social or personal purpose would be prohibited. Use of County equipment to repair your vehicle or house is prohibited.

**Exceptions:** Occasional, incidental, reasonable personal use may be allowed. As an example, you may use your phone to check in with your spouse or children, and make medical, home and automobile repair and similar appointments. Whenever possible, do this before or after your work hours or during lunch or other authorized breaks. If calls are made during your normal work hours, keep the communications infrequent and short. You may not incur any long distance tolls or other usage fees chargeable to the County-you must use toll-free numbers or charge the communications or access fees to your personal credit card.

*REMEMBER: Reasonable personal use does not extend to personal communications to solicit business, advertise, or engage in other selling activities in support of private business enterprises, fundraising activities (other than those supported by the County), or any other use that is incompatible with public service.*

## **CONFLICTS OF INTEREST**

**Disqualification:** You must disqualify yourself from taking any official action directly affecting a business or undertaking in which you have a substantial financial interest. **HCC Section 2-84(a).**

Generally, a conflict of interest occurs when your personal or financial interests could interfere with carrying out your duty to the public. Specifically, you must disqualify yourself from taking any official action directly affecting a business or matter in which you, your brother or sister, a parent, a child or household member has a substantial financial interest.

**Exceptions:** These provisions do not apply to a department head who cannot disqualify himself and who had filed the required public disclosure requirement of HCC Section 2-91.1. It also has

limited application to members of boards and commissions that are mandated by law to have particular qualifications.

The rule does not prohibit officers from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the officer's legislative functions. Officers are, however, required to file a full and public disclosure of the nature and extent of the interest or transaction that the officer believes may be affected by legislative action. **HCC Section 2-83(c).**

## **PROHIBITED ACQUISITION**

You may not acquire a financial interest in a business if you have reason to believe that the business may be directly involved in official action you would normally be expected to take in your County position. **HCC Section 2-84(b).**

## **ASSISTANCE BEFORE COUNTY AGENCIES**

You may not assist a business or person before a County agency for a contingent compensation. **HCC Section 2-84(c).**

You may not assist or represent a business or person for compensation on a matter in which you participated or will participate in your County capacity; you may not appear for compensation before your employing agency or an agency or council on which you sit. **HCC Section 2-84(d).**

You may not assist or represent a business for compensation before any County agency if you have official authority over the County agency unless you have complied with the disclosure requirements of Section 2-91.1. **HCC Section 2-84(e).**

## **PUBLIC CONTRACTS**

The County may not enter into a contract with you or a business in which you have a controlling interest if the amount exceeds \$10,000 unless the contract was awarded pursuant to competitive sealed bids or proposals or the County has posted a notice of intent to award the contract and has filed a copy of the notice with the Board of Ethics ten (10) days before the contract is awarded. **HCC Section 2-85(a).**

The County Code states that a County agency may not enter into a contract with a person or business represented by a person who has been an employee of the agency within the preceding two (2) years and who participated in the subject matter of the contract. **HCC Section 2-85(b).**

## **RESTRICTIONS ON POST EMPLOYMENT**

After you have terminated your service with the County, the provisions of Section 2-91.2 of the Hawai'i County Code will apply to you as follows:

- 1) You may not disclose or use confidential information gained during County employment for your personal gain or the benefit of others. **HCC Section 2-91.2(a).**
- 2) You may not within twelve (12) months of termination of employment or term of office assist and/or represent a person or business for compensation on matters in which you participated as an officer or employee or on matters involving official action by the agency or department you actually served while you were an officer or employee. **HCC Section 2-91.2(b).**

The term "represent" means to engage in direct communication on behalf of any person or business with a councilmember, a council employee, a particular County board, commission or agency, or their employees.

**Exception:** Any County agency may contract with you to act on a matter on behalf of the County; in the course of fulfilling such a contract, you may appear before any agency.

## **FINANCIAL DISCLOSURES**

There are two types of financial disclosures: public and confidential.

**Public Disclosures:** All candidates for elective office, all elected officers, the administrative heads of the County agencies and their first deputies, and the managing director and deputy managing director are required to file public disclosures with the County Clerk. These disclosures are public records and are available for inspection by the public during office hours at the Office of the County Clerk. HCC 2-91.1(e).

**Confidential Disclosures:** Members of boards and commissions created by the Charter are required to file a financial disclosure. Members of other boards and commissions which have decision-making authority are also required to file. Members of boards and commissions that only have advisory powers and are not created by the Charter do not have to file a disclosure. Regulatory employees of the County are required to file.

**Boards and Commissions Required to File Confidential Disclosures:** Board of Appeals, Board of Ethics, Cost of Government Commission, Environmental Management Commission, Fire Board of Appeals, Fire Commission, Liquor Adjudication Board, Liquor Commission, Merit Appeals Board, Pension Board, Planning Commission, Police Commission, Reapportionment Commission, Salary Commission, Tax Board of Review, Transportation Commission, Water Board, Workforce Investment Board.

**Regulatory Employees Required to File Confidential Disclosures:** buyers and purchasing agents; supervisors of real property tax appraisers and real property tax appraisers with the Finance Department; the Legislative Auditor; supervisors of investigators and investigators with the Liquor Control Department; planners with the Planning Department; supervisors of inspectors and inspectors with the Public Works Department; and supervisors of inspectors and inspectors with the Water Supply Department.

## WHEN TO FILE A DISCLOSURE

**Candidates for Office:** All candidates for elective office for the County shall file a financial disclosure within ten (10) days after the deadline for filing as a candidate for office.

**Officers:** All officers shall file a financial disclosure within twenty working days after taking the oath of office. All officers are also required to file an annual disclosure on or before January 31 of each year until the end of the term of office.

**Regulatory Employees:** All regulatory employees shall file a disclosure on or before January 31 of each even-numbered year (2008, 2010, and 2012, for example). All persons who become regulatory employees who have not previously filed a disclosure shall file the initial financial disclosure within thirty (30) working days of commencement of employment or term of office.

**Requirement to File a Disclosure Upon Leaving Office or Employment:** Any officer or regulatory employee of the County shall file a financial disclosure within ten working days before an officer is to leave his office or a regulatory employee is to terminate his employment with the County. This requirement applies even if transferring from the County to state or federal employment, or transferring from a regulatory to a non-regulatory position within the County.

**Forms and Where to File:** Forms can be located on the County's website (<http://co.hawaii.hi.us>), at the Office of the County Clerk, or at the Office of the Corporation Counsel. Public disclosures are filed with the County Clerk. Confidential disclosures are filed with the Board of Ethics, care of the Office of the Corporation Counsel.

## PENALTIES FOR FAILURE TO FILE A DISCLOSURE

An officer or regulatory employee may be subject to discipline, including reprimand, probation, demotion, suspension or discharge. **HCC Section 2-91.**

Candidates for office who fail to file a financial disclosure shall be guilty of a misdemeanor and subject to a fine of \$1,000 and imprisonment of one year. **HCC Section 2-91.l(f) (2).**

## ADVISORY OPINIONS

### **Who May Request an Advisory Opinion?**

**Informal Advisory Opinion:** Any County officer or employee may petition the Board of Ethics for an informal advisory opinion concerning their own conduct by writing to the Board. Any person or the Board itself may petition for an informal advisory opinion on an alleged violation of the Code of Ethics by an officer or employee. All proceedings shall, upon the request of the petitioner, be confidential, provided that the Board determines that personal matters affecting the privacy of the petitioner are to be considered.

**Formal Advisory Opinion:** If an officer or employee fails to comply with an informal advisory opinion, the Board may institute proceedings for a formal opinion.

## REFERRAL TO AUTHORITY FOR DISCIPLINARY ACTION

With respect to officers removable only by impeachment, if there is no compliance with a formal opinion issued against an officer, the Board shall issue a complaint and refer the matter to the Council.

With respect to employees and officers other than officers removable by impeachment, if there is no compliance with a formal opinion, the Board shall issue a complaint and refer the matter to the appointing authority for action.

## AN ETHICS CHECKLIST

This is intended as a brief checklist that you can refer to when you are considering a proposed action, activity, outside employment, or are given a gift. This checklist is substantially similar to one published by the State Ethics Commission.

1. **Gifts:** Do not accept or solicit gifts unless you are sure of the application of the gifts section of the Hawai'i County Ethics Code, Section 2-91.4

*No officer or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise or in any other form, under circumstances in which it be reasonably be inferred that the gift is intended to influence the officer or employee in the performance of the officer's or employee's official duties or is intended as a reward for any official action on the officer's or employee's part.*

2. **Gifts Disclosure:** If you receive more than \$100 of legally acceptable gifts from a single source between June 1 of one year and May 31 of the following year, check with your office as to whether you need to file a gifts disclosure form.
3. **Confidential Information:** Do not disclose or use confidential information for your, or anyone's, personal benefit.
4. **Favoritism; Fair Treatment:** Do not use, or attempt to use, your official position to give yourself or anyone any preferential treatment or any unwarranted advantage.
5. **Supplemental Compensation:** Do not accept extra pay or anything of value in conjunction with the performance of your official duties, unless provided for by law.
6. **County Resources:** Do not use County time, equipment (computers, email, etc.), facilities, personnel, the County seal, office supplies or other County resources for non-County related purposes or political campaigning.
7. **Financial Transactions with Subordinates:** Do not engage in substantial financial transactions with subordinates, or persons or businesses you inspect or supervise. Check with your office as to the meaning of "substantial," as the application of that term may be different depending on the circumstances.

8. **Conflicts of Interest:** Do not take official action if the action affects your financial interests, or a business or undertaking in which you have a financial interest, unless you are sure of the application of the Hawai'i County Ethics Code. The financial interests of a spouse or dependent child are treated the same as your financial interests. Also, do not take action affecting an undertaking in which you, in your private capacity, represent a person or business.

*NOTE: This section does not apply to Council members; instead, they are required to make a full public disclosure of the nature and extent of the interest or transaction that may be affected by legislative action.*

9. **Acquiring New Employment or Financial Interests:** Do not accept new employment or new financial interests without checking with the Board of Ethics, if the business or undertaking you will work for, or have a financial interest in, may be subject to official action by you.

*NOTE: This section is stronger than state law, as council members are not excluded from this provision, unlike state legislators who are excluded from the State Ethics Code provision.*

10. **Contingent Compensation:** Do not assist or represent a person or business before a County agency for contingent compensation.

11. **Representing or Assisting Persons or Businesses:** Do not assist or represent a person or business for compensation:

- a) Before your own department or agency; or
- b) On matters you have been officially involved in; or
- c) On matters you will be officially involved in.

12. **County Contracts:**

- a) If you contract with the County, or have a significant interest in a company that contracts with the County, make sure the contract is awarded in accordance with HCC Section 2-85.
- b) Check with the Board of Ethics before privately assisting or representing a person or business trying to obtain a County contract, if you have been involved officially with the contract or its subject matter.

13. **Financial Interests Disclosure Statement:** File this statement at the appropriate times if required by the position you hold in County government.

14. **Post Employment:** After leaving your County agency or department:

- a) Do not disclose confidential information or use such information for your, or anyone's, personal benefit;

- b) For one year, do not personally represent any person or business for compensation on matters before your former agency or department unless you are sure of the application of the Hawai'i County Ethics Code; and
- c) For one year, do not personally represent a person or business for compensation regarding matters you have participated in officially.