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## County of Hawai'i PLANNING DEPARTMENT

COUNTY CLERK  
COUNTY OF HAWAII  
2023 NOV 17 AM 8:40

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### NOTICE OF PUBLIC MEETING KONA COMMUNITY DEVELOPMENT PLAN ACTION COMMITTEE

NOTICE IS HEREBY GIVEN of the following matters to be considered by the Kona Action Committee in accordance with the provisions of Section 92-7, Hawai'i Revised Statutes.

**DATE:** Tuesday, November 28, 2023  
**TIME:** 5:00 P.M.  
**LOCATION:** West Hawai'i Civic Center, Building G  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, HI 96740

This meeting will be held by Interactive Conference Technology (ICT) through Zoom. The public may provide verbal testimony at the meeting by joining Zoom or attending in-person at the physical location listed above. To register for verbal testimony please contact staff at [cdp@hawaiiicounty.gov](mailto:cdp@hawaiiicounty.gov) or (808) 961-8288.

Zoom registration link:  
<https://www.zoomgov.com/meeting/register/vJltcu-hpzsrGrp7WaQh5efXrLe95ZXnsnw>

If internet connection is lost, the public meeting will be automatically recessed to restore communication. If lost connection exceeds 30 minutes, the meeting will be terminated.

### AGENDA

#### CALL TO ORDER

#### ROLL CALL

#### ANNOUNCEMENTS

- General Plan Update

**PUBLIC COMMENT ON AGENDA ITEMS:** The public may provide verbal testimony at the meeting by joining the Zoom meeting or attending in-person. Please register to testify by contacting [cdp@hawaiiicounty.gov](mailto:cdp@hawaiiicounty.gov). Comments may be made either during the public comment portion of

the agenda or just prior to the relevant business item. With discretion of the Chair of the CDP Action Committee, comments may be limited to three (3) minutes in length per agenda item. Written testimony may be submitted via email at [cdp@hawaiiicounty.gov](mailto:cdp@hawaiiicounty.gov) or in person at the Hilo or Kona Planning Department, up to two (2) business days prior to this meeting (see the Notice Section below).

**APPROVAL OF THE MINUTES:** The Action Committee will consider the draft minutes for the Kona Action Committee Meeting on September 12, 2023.

**BUSINESS:**

1. **Training on Permitted Interaction Groups and the Duties and Responsibilities of the Community Development Plan Action Committees:** Presentation by Deputy Corporation Counsel Suzanna Tiapula & Michelle Ahn.
2. **Revisit the need for a PIG for Community Outreach**
3. **Revisit the need for a PIG for Kealahou Regional Park**
4. **Revisit the need for a PIG for Kona Open Space Network (KOSN)**
5. **Revisit the need for a PIG for Public Access, Open Space, Natural Resources (PONC)**
6. **Annual Nomination and Election of Committee Chairperson for 2024**

**AGENDA FOR NEXT MEETING:** Action Committee members will discuss potential agenda items for the next meeting.

**COMMUNICATIONS:**

- Communication No. 2023-12 Who Board Members Can Talk to and When Pt1
- Communication No. 2023-13 Who Board Members Can Talk to and When Pt2
- Communication No. 2023-14 Who Board Members Can Talk to and When Pt3

**ADJOURNMENT**

This agenda and all related documents are available in the Planning Department's Kona Community Development Plan Action Committee folder via the County of Hawai'i Public Documents Repository: <https://records.hawaiiicounty.gov/WebLink/1/fol/9059/Row1.aspx>. These documents may also be requested from the Planning Department by calling (808) 961-8288 or emailing [cdp@hawaiiicounty.gov](mailto:cdp@hawaiiicounty.gov).

**NOTICE:** The purpose of the public hearings is to afford all interested persons a reasonable opportunity to be heard on the above items. A person desiring to submit oral or written testimony shall indicate their name and whether the testimony is on their behalf or as a representative of an organization or individual. Written testimony can be submitted via email or hard copy. Hard copies should include an original and nine copies and be submitted no later than 4:30pm two days prior to the hearing date.

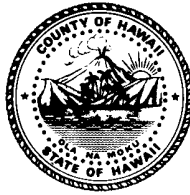
If you need an auxiliary aid/service or other accommodation due to a disability, contact the Planning Department at (808) 961-8288 as soon as possible, and no later than five (5) working days prior to the meeting date. Requests made as early as possible have a greater likelihood of being fulfilled. Upon request, this notice may be made available in alternate/accessible formats.

If you are a lobbyist, you must register with the Hawai'i County Clerk within five days of becoming a lobbyist. (Article 15, Section 2-91.3(b), Hawai'i County Code). A lobbyist means, "any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials." (Article 15, Section 2-91.3(a)(6), Hawai'i County Code). Registration forms and expenditure report documents are available at the Office of the County Clerk-Council, 25 Aupuni Street, Hilo, Hawai'i 96720.

KONA CDP ACTION COMMITTEE

Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director



Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

## County of Hawai'i PLANNING DEPARTMENT

### KONA COMMUNITY DEVELOPMENT PLAN ACTION COMMITTEE

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720

Phone (808) 961-8288 • Fax (808) 961-8742

**Tuesday, September 12, 2023**  
**DRAFT Meeting Minutes**

#### **CALL TO ORDER**

Committee Member Charles Young facilitated the Kona Community Development Plan (KCDP) Action Committee (AC) meeting. The meeting was called to order at 5:06 P.M. This meeting was held online via Zoom, and in person at the West Hawai'i Civic Center Planning Department Conference Room.

The YouTube video of this meeting can be found here:

[https://www.youtube.com/watch?v=j\\_1iCCxtivc](https://www.youtube.com/watch?v=j_1iCCxtivc)

#### **ROLL CALL**

AC Members Present: Charles Young (via Zoom), Nancy Pisicchio, John D. Pelletier, Gary Jaster, Zarine Dorabji, David Huerta (via Zoom), and Heather Korotie

AC Members Absent-Excused: Marisa Bankston, Roselyn Molina

County Staff: Planners – Bethany Morrison, Maryam Palma, Janice Hata

County Officials: Deputy Corporation Counsel, Suzanna Tiapula

Members of the public: 8

#### **ANNOUNCEMENTS:**

1. Kona CDP Action Committee Welcome New Members
2. The Action Committee is seeking a volunteer Secretary to take meeting notes and collaborate with the Planning Department accordingly. Any interested parties should email [cdp@hawaiicounty.gov](mailto:cdp@hawaiicounty.gov). AC Member Nancy Pisicchio offered to use a Microsoft 365 program to transcribe the recorded file of the meeting into a text document and create a summary of the minutes of the meeting. AC Member David Huerta commented that Zoom has a transcription program that is part of the software, therefore eliminating the need to export a file. Charles Young pointed out that the minutes do not have to be verbatim, but they really do have to capture the spirit of the content of the discussion and to be accurate in terms of who makes motions, who seconds the motion, and the final vote. Corp. Council agreed but

she added that speakers need to identify themselves for the record. This includes members of the public not sitting at the table. In addition, Corp. Council pointed out that she can only hear the people who are at the table, the people farther away cannot be heard through the speakers.

3. General Plan Update: Bethany Morrison, Long Range Planner with the County of Hawaii provided a brief update on where we are on the General Plan comprehensive review. Recently a press release has come out that details the various things that we're doing to reach out into the community and make sure that the Action Committee has an opportunity to participate in this update. The Planning Department hosted a recorded video series on the planning YouTube channel. The PD will also be doing public informational workshops. One is scheduled for September 30th. It will be here at West Hawaii Civic Center from 2:00 to 4:00. Other opportunities for sharing the new GP draft with the public include roadshow presentations where community groups can invite staff to their already regular meetings. There will also be informational booths at various planned Community events. Workshops, which are similar to the public informational workshops for those that cannot attend in person, there will be a Zoom webinar option there. The General Plan is our comprehensive long-range document for our county. It guides infrastructure decisions and land use decisions. Everything we do has to be consistent with that plan.

#### **APPROVAL OF MINUTES:**

*Committee Member Nancy Pisicchio moved to approve the July 25, 2023 minutes. Motion seconded by Committee Member John Pelletier. Motion passed with 6 votes aye, 0 votes nay.*

#### **BUSINESS:**

##### **1. Chapter 5.3 Implementation Matrix:**

Discussion to initiate a status update of the items within the matrix. Consider top priority community actions the AC may want to move forward and the potential creation of respective permitted interaction groups. The matrix can be found on pages 163 - 172 of the Kona CDP. This agenda item was suggested by Committee member Zarine Dorabji. Zarine was questioning the current status of action items that appear in the Matrix. She asked, for example, whether the Kona Mauka Watershed Partnership has been formed yet. Committee members suggested there is a need to go through the Matrix and identify things we want to work on, and what has been done so we can get a sense of where the AC could have the most impact. It was suggested that the previous Meeting Minutes be reviewed to identify priorities that have been identified by the Committee in the past and not to "reinvent the wheel". A five-year look back through the Minutes was suggested. The Minutes would also include letters from the AC Members to the Planning Director that identified priorities. The Committee members discussed the need to go through the Matrix and identify things we want to work on, just what has been done and what so we can get a sense of what, where we could have the most impact.

Charles Young also suggested that the new County Climate Change Plan also be reviewed in the process of reviewing the Kona CDP Matrix. It was suggested that the possibility of forming a Permitted Interaction Group to look at the Climate Change Plan could be added to

the next meeting's Agenda. Heather Korotie expressed an interest in the idea. The new Permitted Interaction Group could make recommendations with respect to implementation of the matrix and any additional needs that any additional needs might be related to the Climate Change Plan.

## 2. Kealakehe Regional Park:

Discussion and potential creation of a permitted interaction group to follow and support this project. This agenda item was suggested by Committee member John Pelletier. The Kealakehe Regional Park is identified in the KCDP Implementation Matrix as Policy PUB-6.2 (a). John explained that the West Hawaii Parks and Athletic Corporation has been trying to move this park project forward. He explained a desire to determine what we can do to help. He would like to create a Permitted Interaction Group to investigate where we're at and try to move this project forward. The park is mapped out, but currently, there is nothing there.

*The AC voted to form a Kealakehe Regional Park Subcommittee with John Pelletier representing the AC on the new Subcommittee. The motion was made by Committee member Nancy Pischchio, seconded by Heather Korotie. Motion passed with 6 votes aye, 0 votes nay.*

## 3. Permitted Interaction Groups (PIG):

The existing groups will provide updates, reports, or discussions and may vote to close any PIGs as needed.

### o Community Outreach:

Open nominations: Corp. Council explained that the AC needs to establish who's going to be on the committee in this meeting or in a public meeting. She reminded the AC members that there is a limitation of four AC members and that those four need to be articulated in the meeting. After that, other members of the public may join the Permitted Interaction Group. It was agreed that Nancy Pischchio, John D. Pelletier, Zarine Dorabji, and Heather Korotie will be members of the new Community Outreach Subcommittee.

A member of the public raised the issue that the Commission he serves on with the county, Department has Staff serves to generate Community Outreach. He stated that the Police Department has a Community Outreach officer. He recommended that the Planning Department should have a community outreach person.

### o Flood Mitigation and Erosion Control:

The AC Committee currently has no members on the Flood Mitigation and Erosion Control Subcommittee. It was recommended that it be closed out. Charles Young stated that he doesn't think the subcommittee actually met so there is nothing on the record. It officially doesn't exist. The AC can re-agendize it later if the committee decides to bring it back for later discussion. In that case, as new Subcommittee would have to reform with a new purpose and new members.

### o Kona Open Space Network (KOSN):

of the Subcommittee, Kari Kimura summarized the written report that was submitted to the AC. The lead consultant under contract with the County is Jacob Engineering. The

project leader is Christian Nishimura. The Planning Department is the lead agency. County Planning Department Staff Natasha Soriano is the project leader. About 80 to 100 people came to the Old Kona Airport Pavilion for the KOSN Kick Off open house.

Subcommittee Janice Palma suggested that we need to have those concepts of smart growth that are in the Plan such as TOD's and somehow have them a part of the open space network are the green belts.

Kari Kimura stated that the Subcommittee will come back to the AC periodically just to keep everyone updated.

Charlie Young commended Kari, Janice, and Shirley for their commitment to getting this project to where it is.

AC Member Nancy Pischio had been nominated to represent the KOSN Subcommittee. Kari Kimura suggested that three AC Members serve on the KOSN Subcommittee as had been the case when Kari, Shirley David, and Janice Palma had served on the KOSN Subcommittee before stepping down as AC Members.

A question was raised regarding how new community members are able to join a Subcommittee. The recommendation was that this should be decided by the Subcommittee members.

*Nomination of new AC members to KOSN Subcommittee.*

*Committee Member John Pelletier moved to add Nancy Pischio, John Pelletier, and Gary Jaster to the KOSN Subcommittee. The motion was seconded by Committee member Gary Jaster. Motion passed with 6 votes aye, 0 votes nay.*

o Public Access, Open Space, Natural Resources (PONC):

There currently is no Public Access, Open Space, Natural Resources (PONC) Subcommittee.

#### **4. Action Committee Meeting Strategy:**

The Action Committee will discuss the meeting cadence schedule, logistics, and format of future meetings such as if they should be all in-person or hybrid Zoom/in-person.

It was pointed out that Staff needs to participate in order to provide the option for Zoom participation. For the in-person meeting format, AC members can run the meetings themselves and keep meeting Minutes. The draft Minutes are sent to Staff to complete. A number of individuals also pointed out that the use of Zoom increases the chances that people are unable to hear the discussions.

AC Members raised the point that in-person meetings are preferable, but that providing the opportunity to participate via Zoom was practical. Members stated that they can commit to attending meetings if Zoom participation is an option. Without providing for Zoom participation, it may be difficult to get a quorum. It was agreed to continue running hybrid Zoom/in-person meetings.

Regarding the schedule for future meetings, Staff pointed out that to provide the opportunity for Zoom, the room should be reserved a month in advance. The AC Members discussed whether to schedule monthly meetings or to continue holding meetings every other month. These meetings would be held on the third Tuesday of the month, from 5:00 pm until 7:00 pm.

**PROPOSED AGENDA ITEMS FOR NEXT MEETING:**

1. Nancy Pisticchio requested that Community Outreach be included on the agenda.
2. John Pelletier requested that Kealahou Regional Park be included on the agenda.
3. A discussion of Kona CDP Action Priorities was suggested to be included on the agenda
4. Gary Jaster suggested that KOSN be included.
5. Charlie Young asked that a General Plan Update be included in the Community Outreach report.

The next meeting was set for November 28, 2023.

**ADJOURNMENT:**

*Without objection, Committee Member Young adjourned the meeting at 6:38 P.M.*

These minutes and all related documents are available in the Planning Department's Kona Community Development Plan Action Committee folder via [the County of Hawai'i Public Documents Repository](#). These documents may also be requested from the Planning Department by calling (808) 961-8288 or emailing [cdp@hawaiiicounty.gov](mailto:cdp@hawaiiicounty.gov).

## Quick Review: Who Board Members Can Talk To and When (Part 1) (Revised July 2018)

OIP often is asked whether board members can talk to the board's staff, members of the public, or one another in various situations when not in a meeting. To help board members understand what they can talk about outside a meeting, and with whom, OIP has put together a three-part Quick Review.

### 1. Topics that Are Not 'Board Business'

The Sunshine Law applies whenever board members are discussing board business, i.e., specific matters within the board's authority that are on a board's upcoming agenda or reasonably likely to appear on an agenda in the foreseeable future. When board members are discussing matters that are **not board business**, the **Sunshine Law does not apply** to restrict the discussion. Thus, board members could discuss with one another, or with anyone else:

- Matters **unrelated** to what the board does, such as the weather, sports teams, personal news, vacation plans, world events, or similar topics beyond the scope of the board's responsibilities;
- Matters related to what the board does, but that are **not being considered by the board** as a whole or a committee of the board at a meeting because they are ministerial (i.e., handled by staff) or within the Chair's sole purview, such as scheduling of meetings, including which items will appear on which meeting's agenda, members' travel arrangements, logistical arrangements for an award ceremony, or similar topics; or
- Matters that the board considered in the past but **does not expect to reconsider** in the foreseeable future because the **matter has concluded**, such as dedication of a completed baseball field that the board gave approval to at an earlier stage, or a report that the board was required to and did submit to a legislative body by a now-past date.

These sorts of matters can be discussed by board members in any number, and need not be discussed in a meeting, because they are **not board business** at the time they are being discussed and, thus, the discussion is not controlled by the Sunshine Law.

Board members may also attend lunches, social and ceremonial events, or board retreats, without violating the Sunshine Law, **so long as board business is not discussed, deliberated, or decided upon.**

## 2. Staff, Lobbyists, and the General Public

The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. Because the Sunshine Law does not apply to a board member's communications with people who are not members of the covered board, **a member may discuss board business with people who are not board members** outside of a meeting, without needing to fall into one of the permitted interactions. Board members, therefore, can freely talk or otherwise communicate with:

- Citizens concerned about a particular issue
- Reporters
- Lobbyists
- Board or agency staff
- Other government officials, and
- The general public.

It is possible that in some of those cases, the information from one board member will be transmitted to other board members. For instance, a lobbyist may be going from one county council member's office to the next to talk about a piece of board business and may carry information over, as in, "Councilmember A said she'd be willing to support us on this if the bill is amended to cover frogs as well. Could you support that?" However, this would not be considered a discussion directly between the council members. Similarly, a reporter might speak to multiple council members and say something like, "Member B told me that the Board expects to reconsider the motion next month. Can you confirm that?" Again, even though information was passed on, **because the actual communication was through a third party, it would not be considered a discussion between the board members.**

**Note:** If board members would like to discuss board business with individuals who are not board members, **members should be mindful not to improperly disclose information that was part of an executive meeting closed to the public**, and may wish to consult with the board's attorney in such situations.

**Information and materials provided by members to the staff may be incorporated into the staff's own analysis or report on a board matter and may be distributed by staff to the board members in advance of a meeting.** The staff's report should not identify individual board members' positions on an issue, but can recognize and discuss the various viewpoints in general and provide recommendations for actions.

**Board members should also refrain from using staffers as mere go-betweens to carry messages between board members**, as that could be found to be a discussion directly between board members, depending on the circumstances. Telling a staffer, "I have concerns about the direction we're taking on this issue and I'd like you to do some research on this aspect of it," is fine, even if the staffer tells other members, "Member C asked me to research this topic because of her concerns about the way the board is handling the issue." But telling a staffer, "Please go tell Members D and E that I have

concerns about the way we're handling this issue," would be inadvisable, as it could be construed as a serial communication with members D and E.

### 3. Other Board Members

As discussed above, the Sunshine Law applies whenever board members are discussing board business. **When board members communicate to one another about board business, they need to do so either in (1) a properly noticed meeting, or (2) in circumstances where the discussion is specifically permitted by one of the Sunshine Law's exceptions.** When board members are prohibited by the Sunshine Law from discussing or communicating about board business face to face, they also cannot do so by telephone, e-mail, letters or memoranda, social media such as Facebook and Twitter, or any other means of communication.

Before communicating with other board members outside a meeting, a board member should check whether one of the Sunshine Law's permitted interactions applies. **Permitted interactions are specific circumstances in which the law permits board members to discuss board business outside a meeting, so long as the statutory requirements are met.**

The most frequently used permitted interaction, section 92-2.5(a), HRS, allows **two board members to discuss any board business, without limitation, so long as they do not make or seek a commitment to vote and do not constitute a quorum of their board.** This limitation on making a commitment to vote does allow discussion of the two board members' views and inclinations on an issue, but prohibits, for example, horse-trading of votes such as, "If you'll agree to vote my way on this issue, I'll give you my vote on your pet project next month."

The two-person permitted interaction does not require any prior arrangement on the part of the two members using it; they can run into each other on the street, e-mail each other, or telephone each other, so long as only two members are part of the discussion. Other people who are not members of the board can be present, as their discussions with board members are not regulated by the Sunshine Law.

**Permitted 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. Specifically, where two members have discussed an issue using the two-person permitted interaction, they cannot then extend the discussion out to other board members through **serial use** of the permitted interaction. If Member X called Member Y to talk about the feral cat issue on the upcoming agenda, Member Y cannot then stop in the hallway to talk to Member Z about it, as there would then be three members who were privy to the discussion. Both Member X and Member Y must refrain from discussing the feral cat issue with other members until after the board has next discussed it at a meeting, which essentially clears the slate as to members' previous discussions.

The other permitted interactions listed in section 92-2.5, HRS, generally require prior planning, or apply only in certain circumstances, or both. OIP will discuss them in the forthcoming Parts 2 and 3 of this Quick Review series.

## Quick Review: Who Board Members Can Talk To and When (Part 2) (Revised August 2022)

Hawaii's Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), generally requires board members to discuss all board business in open meetings that have been properly noticed to allow for public participation. OIP often is asked whether board members can talk to one another in various situations when not in a meeting. To help board members understand when they can talk to each other outside a meeting, OIP put together a three-part Quick Review. This Quick Review is the second in the series. Part 1 concerned discussions of matters that are not board business, and Part 3 will follow and explain "permitted interaction groups" ("PIGs"). The entire series, along with other educational materials, is posted on the [training page](https://oip.hawaii.gov/training-page) of OIP's website at [oip.hawaii.gov](https://oip.hawaii.gov).

What constitutes board business was discussed in Part I. There are, however, a number of exceptions and "permitted interactions" that allow board members to have discussions outside of a meeting, even on matters that constitute board business. A few of these exceptions and permitted interactions are described below.

Members should note that the **Sunshine Law expressly states that no permitted interaction shall be used to circumvent the spirit or requirements of the Sunshine Law** to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. For this reason, permitted interactions generally may not be mixed and matched or used serially, as doing so can result in a discussion of board business outside a meeting that does not fit within the limits of any one of the permitted interactions and thus is not authorized under the Sunshine Law.

### 1. Selection of Board Officers (HRS § 92-2.5(c))

The selection of the board's officers may be discussed between two or more board members, but less than a quorum, in private without limitation or subsequent reporting.

### 2. Members May Continue to Accept Testimony When a Multi-site Meeting Must be Cancelled or Terminated (HRS §§ 92-2.5(d) and 92-3.5(c))

The Sunshine Law defines a "meeting" at HRS § 92-2 as 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. When a meeting must be **cancelled for lack of quorum or terminated when quorum is lost** during the meeting, the board members present may

nevertheless receive testimony and presentations on agenda items and may question testifiers or presenters under HRS § 92-2.5(d).

Under HRS § 92-3.5(c), when a board is holding a **multi-site meeting by interactive conference technology (ICT) and an audio connection to all meeting locations is interrupted for more than 30 minutes, the meeting must be terminated**, even if a quorum of the board is physically present in one location. However, under HRS § 92-2.5(d), members present at one location may continue to receive testimony and presentations on agenda items and may question testifiers or presenters, but cannot discuss, deliberate, or decide such matters. **Note that the permitted interaction under HRS § 92-2.5(d) specifically applies to HRS § 92-3.5(c) regarding multi-site meetings, and not when remote meetings held by ICT under HRS § 92-3.7 lose their audio or video connection.** Also note that this permitted interaction does not address Sunshine Law requirements to **continue** a meeting, instead of terminating it, which are addressed in a different training document posted on OIP's website at [oip.hawaii.gov/training](http://oip.hawaii.gov/training), "[Quick Review: Continuance of a Meeting Under the Sunshine Law.](#)"

For both cancelled and terminated meetings, HRS § 92-2.5(d) requires that board members' discussion, deliberation and decision-making on agenda items for which testimony or presentations are received must occur only at a subsequent, properly noticed meeting held after the cancelled or terminated meeting at which the testimony and presentations were received.

And, members who received the testimony at a cancelled or terminated meeting are required to create a record of the oral testimony or presentations in the same manner as would be required for testimony or presentations heard during a meeting of the board. In other words, the members must keep notes of the receipt of testimony and presentations in the same manner that the board would keep minutes of testimony and presentations received at a meeting.

Before deliberation or decision-making at a subsequent meeting, the board must provide copies of the testimony and presentations received at the cancelled meeting to all members. The members who were present at the cancelled or terminated meeting must also report about the testimony and presentations received.

### **3. Informational Meetings (HRS § 92-2.5(e))**

Two or more members of a board, but less than a quorum, 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 that no commitment relating to a vote on the matter is made or sought.

At the next board meeting, the members who attended the informational meeting are required to report their attendance and the matters presented and discussed that related to official board business at the informational meeting.

#### **4. Circulation of Proposed Legislative Testimony (HRS § 92-2.5(h))**

A board that has previously adopted a position on a legislative measure may circulate its proposed testimony among board members for review and written comment when it does not have enough time to notice a meeting before a legislative deadline, so long as all proposed testimony drafts and board member communications about the testimony are publicly posted online within 48 hours of the testimony's circulation to the board. This permitted interaction is best used for proposed testimony drafted by board staff or a single member, rather than by multiple board members using another permitted interaction to confer, in order to avoid conflicts with other permitted interactions as discussed in OIP's Quick Review on Sunshine Law Options to Address State Legislative Issues and Measures, which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov).

#### **5. Discussions with the Governor (HRS § 92-2.5(f))**

Discussions between the Governor and one or more board members 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.

Some boards that have adjudicatory powers include the: Hawaii Labor Relations Board; Labor and Industrial Relations Board; Hawaii Paroling Authority; Civil Service Commission; Employees' Retirement System Board of Trustees; Crime Victim Compensation; and State Ethics Commission.

#### **6. Discussions with Department Head (HRS § 92-2.5(g))**

Discussions between two or more members of a board and the head of a department to which the board is administratively attached may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35, HRS.

Section 26-35, HRS, provides that:

- department heads shall represent attached boards in communications with the Governor and the Legislature, unless otherwise requested by the Legislature;
- a board's financial requirements from state funds shall be submitted through the department head and included in the department's budget;
- rules adopted by the board are subject to approval of the Governor;
- employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of officers and employees of or under a board must be determined by the board subject to approval of the department head, and subject to applicable personnel laws;
- purchases of supplies, equipment, or furniture by a board are subject to approval by the department head;
- the department head has the power to allocate the spaces available for the board to occupy;
- quasi-judicial functions of a board are not be subject to the approval, review, or control of the department head; and
- the department head shall not have the power to supervise or control the board in the exercise of its functions, duties, and powers.

## Quick Review: Who Board Members Can Talk To and When (Part 3) (Revised December 2022)

OIP often is asked whether board members can talk to one another in various situations when not in a meeting. To help board members understand what they can talk about when they are not in a meeting, OIP put together a three-part Quick Review. The entire series can be found online on [OIP's Sunshine Law training webpage at oip.hawaii.gov](https://oip.hawaii.gov).

Boards subject to the Sunshine Law, Part I of Chapter 92, Hawaii Revised Statutes (HRS), are generally required to conduct all business in open meetings that have been properly noticed to allow for public participation. This Quick Review discusses an exception to the open meeting requirement for “permitted interaction groups” or “PIGs,” as set forth in section 92-2.5(b), HRS. While other types of permitted interactions were previously discussed in Part 2 of this Quick Review series, this article explains how members of a board may form a PIG to investigate or to negotiate a matter.

### PIGs Established to Investigate

Two or more members of a board, but less than the number of members which would constitute a quorum, may be assigned to investigate a matter relating to the official business of their board.

In order for a board to take action on a matter investigated by a PIG, **three separate board meetings must occur** in the order described below. At the **FIRST** meeting of the full board, the investigative PIG is formed and the scope of the investigation and the scope of each member's authority are defined. No new members or issues can be added to the PIG after the first board meeting. The PIG may then conduct its investigation outside of open meetings, which may take months to complete.

At a **SECOND** meeting of the full board, the findings and recommendations of the PIG are presented to the board, **but the board cannot discuss or act on the report at this meeting**.

- A PIG may present its findings to the full board in an executive session *if* the reason for entering into the executive meeting is one of those set forth in section 92-5(a), HRS, or other law. For example, if a PIG was created to investigate whether to take certain disciplinary action against an employee, it may present its findings to the full board in accordance with section 92-5(a)(2), HRS, which allows boards to enter executive meetings to consider the discipline of an employee. In such a situation, OIP generally recommends

that the PIG also present a “sanitized” report during the public session that omits the confidential information but informs the public of the general nature of the PIG’s findings and recommendations, so the public is at least generally informed of the PIG’s work and has something upon which to base testimony at the subsequent meeting where the board will discuss and perhaps act on the report.

**After the PIG makes its report to the board at the second meeting, the PIG is automatically dissolved and should not continue working.** The Sunshine Law does not allow a PIG to make more than one report or to continue working on its assignment after its report, so a PIG should not be providing “updates” on its work or more than one report. See [OIP Op. Ltr. No. F23-01](#) on OIP’s [Opinions page](#) for an in-depth discussion on investigative PIGs.

**The board cannot discuss, deliberate, or make any decisions regarding the PIG’s report** until a **THIRD meeting** held separately and after the meeting at which the findings and recommendations of the investigation were presented by the PIG.

Waiting until a subsequent board meeting to discuss and act on the PIG’s report gives the public the opportunity to present informed testimony at the meeting where the board will discuss and act on the report.

#### Some Practical Considerations for Investigative PIGs

- A PIG is fundamentally a permitted interaction with detailed reporting requirements, not a special type of committee.
- Because they are a permitted interaction rather than a type of committee, PIGs are not subject to the Sunshine Law’s requirements for giving notice, holding open meetings, or keeping minutes.
- PIG members may communicate by interactive technology (Skype, teleconference, etc.), and by email, telephone, etc., on matters within the scope of the PIG’s authority without violating the Sunshine Law.
- Although a PIG is not required to hold public meetings, it can choose to do so if it wishes.
- PIGs may solicit input from the public as part of an investigation without the need of filing a meeting agenda in accordance with the Sunshine Law.

- A PIG may include among its members people who are not members of the board that created the PIG. A PIG may also consult with others (i.e., staff, members of the public, individuals with expertise in a field, stakeholders, etc.) in furtherance of its investigation, but should NOT consult with other members of its parent board.
- Members of a board who are not part of the PIG may NOT attend PIG meetings or be included in PIG communications.
- Before the PIG reports to the board, PIG members should not discuss the status of their investigation with other board members who are not part of the PIG.
- A standing committee of a board may create a PIG, and such PIGs must follow all the requirements of section 92-2.5(b), HRS, including reporting back to the committee that created them.
- Sometimes, it may be better for a board to establish a temporary committee instead of a PIG, or to delegate authority to one member to perform a task and report back to the board. See OIP Op. Ltr. No. F23-01 at 15-16 for more information.
- A PIG may continue its work after the loss of a PIG member. For example, if a PIG's member's term on the board ends, that member also ceases to be a PIG member, but the PIG can continue working with the remaining original members. The board should not substitute another board member into that vacant PIG position. The PIG's membership was previously established at the initial meeting that created the PIG and new members cannot be added. The PIG can continue without the now-departed member, but if a board wants to change the PIG's membership, it should first allow the current PIG to report back and automatically dissolve. After hearing the investigative PIG's report and waiting until a subsequent board meeting to discuss and act on the report, the board can then create a new PIG to carry on the now-dissolved PIG's work.
- Similarly, once a PIG is formed, the board may not add new assigned tasks to an existing PIG.

## PIGs Established to Negotiate

Another less common type of PIG can be formed when two or more members of a board, but less than a quorum, are assigned to present, discuss, or negotiate any position adopted by the board at a meeting. The assignment of members to a PIG for the purpose of negotiation, and the scope of each member's authority, must be defined at a board meeting prior to the presentation, discussion, or negotiation. The three-meeting requirement for investigative PIGs does not apply to PIGs established to negotiate.

As a final note, boards should keep in mind that they may be subject to other laws or rules in addition to the Sunshine Law, which could affect members' ability to discuss pending matters. This may be particularly relevant for boards that exercise adjudicatory functions (which are not subject to the Sunshine Law), as they must generally avoid *ex parte* communications. Similarly, some boards are subject to confidentiality provisions outside the Sunshine Law, and if a board is involved in a procurement, it must follow procurement laws. Boards should consult with their own attorneys on the application of such laws and rules.