

QUICK REVIEW: CONTINUANCE OF A MEETING UNDER THE SUNSHINE LAW

July 2018

The State Office of Information Practices (OIP) has posted a revised ***Quick Review: Sunshine Law Meeting Notice Requirements*** (July 2018) on the Training page of its website at oip.hawaii.gov, which summarizes the Sunshine Law's notice requirements for public meetings under section 92-7, HRS, as amended, effective July 1, 2018. While the Sunshine Law has various procedural requirements for the typical meeting notices, there are no statutory requirements to provide notice that a board has continued an unfinished meeting to a later date and time to allow the board to finish its agenda. This Quick Review fills the gap by providing guidance on how to reasonably provide notice that a meeting is being continued beyond its originally noticed date and time to allow the board to finish hearing public testimony, finish its consideration of agenda items, or for some other reason.

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 not decided at a scheduled meeting to “be considered only at a meeting continued to a reasonable day and time.” 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, but the Court concluded that a board is “constrained at all times by the spirit and purpose of the Sunshine Law, as stated in HRS § 92-1.” *Kanahele*, 307 P.3d at 1194-95. Although the Sunshine Law contains no specific requirements for a written public notice or oral announcement for continued meetings, the Court stated 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.

Based on the Court’s guidance and examples in *Kanahele*, OIP has provided this Quick Review and a [“Notice of Continuance of Meeting” form](#), which are both available at oip.hawaii.gov. Depending on the circumstances, boards can follow the most appropriate of the “Practice Tips” described below to ensure that notices of meeting continuances are disseminated as widely as practicable to protect the public’s right to know. Please note that the term “notice” is used herein to describe the notice recommended to continue an ongoing meeting that had been originally posted as required under section 92-7, HRS. The Notice of Continuance is not subject to the same requirements of section 92-7, HRS.

Practice tips:

- When the meeting is being recessed for longer than 24 hours, a board should provide, if practicable, both **oral and written** (including electronic) notice of the date, time, and place of a continuance.

- 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,” which can be found on OIP’s [Forms page at oip.hawaii.gov](http://oip.hawaii.gov). On the attached agenda, the board should type, hand write, or otherwise note the agenda item(s) being continued.
- A Notice of Continuance of Meeting, with the agenda from the continued meeting attached thereto, should be physically posted in the board’s office and at the meeting site, if practicable. 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, and emailed to persons on the board’s email list.
- OIP anticipates that continuances will normally be held within six days of the originally scheduled meeting, and thus recognizes that there may not be sufficient time to mail notices to interested persons on the board’s mailing list. Depending on the circumstances, mailed notices and/or a new agenda filed as required by section 92-7, HRS may be advisable if continuances are held more than six days after the originally scheduled meeting.
- If a board anticipates that a single meeting will be insufficient for consideration of an agenda item and expects extensive testimony or board deliberation, then it could include anticipated dates, times, and places of continuances on its original agenda filed pursuant to section 92-7, HRS. The filed agenda can make clear that the continuances **will only occur if necessary**, so as to not require the delay of board action if testimony or deliberations take less time than anticipated.
- In the case of controversial or complex matters, a board may choose to convene separate meetings with separate agendas on different aspects of the same proposal or case. Testimony can be limited to specific subject matters within a single proposal or case, which would enable the public to testify on the issues of concern to them and to listen to the board’s discussion, deliberations, and actions on those issues.
- As new issues develop during the deliberation process for continued agenda items, a board may consider permitting periodic oral testimony by the public on such issues. If the new issues **do not fall within the scope** of the items described in the agenda, then to discuss those issues the board **must file a new agenda and meeting notice** as required under section 92-7, HRS, and identify the new issue as an agenda item. Only if the new issues are still within the scope of the items described in the original agenda does the board have the option to continue the original meeting, with sufficient notice of continuance, for further deliberation and/or additional testimony.
- Note that a continuance of a meeting is a reconvening of the same meeting previously noticed in an agenda, and thus, does not require a new agenda to be filed. But if new matters unrelated to the previously posted agenda items

are to be discussed at a continuance, then it should be instead treated as a new meeting and a new agenda must be filed in accordance with section 92-7, HRS.