

Quick Review: Sunshine Law Requirements for Remote Meetings

(Revised October 2021)

The Sunshine Law allows boards to hold remote meetings where board members and the public participate from various non-public locations as well as at least one physical meeting site, all connected via a remote meeting platform such as Zoom, WebEx or other interactive conference technology (ICT), subject to requirements listed in new section 92-___, Hawaii Revised Statutes (HRS). This Quick Review discusses the requirements for holding a remote meeting.

Note that OIP has created a separate Quick Review for In-Person Meetings Held at Multiple Sites, which generally require board member attendance in person and are not considered to be “remote” meetings even if the various sites are connected using ICT.

Access to the Remote Meeting

Whatever remote meeting platform or ICT is used for a meeting must generally allow audio-visual interaction between board members and the public. Board members and the public can attend and participate from anywhere via an online connection to the meeting platform, or in some cases by a phone connection to the meeting platform. Even though a board must still provide a physical public location connected to the meeting as further discussed below, there is no requirement for either board members or members of the public to go to the public location to participate in the meeting. Similarly, there is no requirement for board members to allow the public to join them at their homes, offices, or other private locations where they are physically located while participating in the remote meeting.

The notice for a remote meeting must inform the public how to remotely participate in the meeting, including how to view and testify at the meeting. This will typically take the form of a link to the scheduled remote meeting on whatever platform is being used, but the law does allow the board to provide separate connections for the public to view the meeting and to provide oral testimony. For instance, a board deciding a controversial and high-interest issue might choose to minimize the possibility of disruption during the meeting by having board members and staff access the meeting via a WebEx link not listed on the notice, while public access to view the meeting is via a live one-way YouTube stream and oral testimony is via a phone number, both listed on the notice. Regardless of how the board provides public access to view and testify, the connection(s) must be contemporaneous with the meeting and allow members and the public to hear

the public testimony.

Physical Location Open to Public

Even for a remote meeting, the meeting notice must list at least one physical meeting location that will be open to the public and connected via ICT to the remote meeting. However, unlike an in-person meeting, there is no requirement for board members to appear in-person at the physical meeting location to participate in the remote meeting; the physical location is simply a convenience for members and the public, allowing those without the ability or inclination to use their own connection to an online meeting the option to attend where the board has set up and will maintain the remote meeting connection. If the connection to the remote meeting fails at the requisite physical location, then the meeting will be recessed or terminated, as discussed below.

While the board is required to provide at least one physical location that is guaranteed to remain connected to the remote meeting, the board also has the option to provide one or more “additional” physical locations without a guarantee that those locations will remain connected to the remote meeting. To be considered an “additional” location, the notice must specify that in the event that location is disconnected from the remote meeting, the meeting will not be terminated or interrupted to restore connectivity.

Conducting the Meeting

At the beginning of a remote meeting, the chair must list the members present, and members attending from a private location must state who else is present with them. A quorum of members must be visible throughout the public portion of the meeting, but so long as that requirement is met, additional members not needed to maintain the quorum visibility requirement can participate via audio only, such as by turning the camera off or calling in by phone. In this way, a member with a poor internet connection or other difficulties in maintaining a visual connection can still participate, so long as a quorum of members are visibly present throughout the remote meeting. All participating members must maintain an audio connection at all times.

Votes during a remote meeting must be done by roll call unless the vote is unanimous. In practice this means the chair can ask if there are any objections or abstentions and call the roll only when members object or abstain.

Dealing with a Lost Connection

When a remote meeting is interrupted by a dropped connection to one of its required components – for example, the whole meeting goes down due to a problem with the meeting platform or the host’s connection to it, the public location is cut off, the public livestream or testimony connection listed in the notice goes down, or the board cannot keep a quorum of members visible – the meeting cannot continue even if a quorum of board members remain connected to one another. (Note that an individual member of the public’s inability to stay connected does not require recessing the meeting, unless the problem is actually with the public meeting link itself.) The meeting must be recessed for up to 30 minutes to restore the connection, and it can reconvene once the connection is restored. If the full audiovisual connection cannot be restored but the board can manage at least an audio connection for all the required components of the remote meeting, the board can proceed with the meeting that way, with each speaker required to state his or her name and visual aids required to be made available to all participants (perhaps by posting on the board’s website). The board should advise the public how to join a reconvened meeting, preferably through its original notice, such as to keep trying the original link, to use a backup link given in the notice, or to look at the board’s website for a new link.

If the board is unable to restore even an audio connection after 30 minutes, the meeting must terminate unless the board has reasonably informed the public how a disconnected meeting would be continued at a later date and time (such as in the notice). With proper notice of continuation, the meeting can be considered in recess and continued at the specified date and time, rather than terminated. If the meeting must be terminated, the only way to finish the intended agenda is to notice a new meeting at least six days in advance.

Executive Meeting Requirements

Executive meetings (also called executive sessions) during remote meetings have slightly different requirements than those applicable to the public meetings. Members are not required to be visible during an executive session, just audible. However, all participants – board members, staff running the meeting, the board’s attorney, anyone properly present during the executive session – must confirm to the chair that no unauthorized person is with them or linked into the meeting, and the meeting host must also confirm that no unauthorized person is participating if the meeting platform allows the host to check that.

Recording the Meeting

Boards are generally required to record a remote meeting and put the recording online until the meeting minutes are posted, but only when doing so is practicable. Online meeting platforms typically offer a straightforward option to record a meeting. Boards using such platforms are required to use that option and make the recorded meeting available for public viewers who may not have been able to watch the live meeting. In situations where recording and posting are not practicable, the board will not violate the law by its failure to do so. A board may choose to use the recording, with the addition of a written summary, as its recorded minutes under section 92-9, HRS. Alternatively, if it prefers to keep written minutes, a board can delete the recording once its written minutes are posted online.