

Quick Review: Tips for Remote Meeting Notices August 2022

As boards have had more experience holding remote meetings under the Sunshine Law's provisions, the State Office of Information Practices (OIP) has become aware of some confusion among boards about what specific information must be included in the notice for remote meetings. Even though remote meetings may feel different than in-person meetings, the basic Sunshine Law principles set out in sections 92-3 and 92-7, Hawaii Revised Statutes (HRS), still apply to all meetings, with further requirements specific to remote meetings set out in section 92-3.7, HRS. One basic principle is that a board's notice must tell the public the location of a Sunshine Law meeting. A second principle is that "all persons" have the right to attend a meeting (unless a board is properly in executive session) and to testify at the meeting, even if they choose to be anonymous. A third principle is that a board may provide for the reasonable administration of oral testimony by rule.

In this Quick Review, OIP explains how these principles apply to a board's remote meeting notice and offers practice tips to sufficiently inform the public of how to view the meeting and to present oral testimony under different situations.

A. Notice of How to Remotely View and Testify at a Meeting

The Sunshine Law requires a board to give written public notice of every meeting, including "the date, time, and place of the meeting," which "shall be open to the public and all persons shall be permitted to attend" unless the meeting is closed by law. HRS §§ 92-7(a) and 92-3. Thus, a person may attend a meeting anonymously and any meeting location must be described sufficiently in the notice to allow the public to find it without having to contact the board or make additional inquiries. OIP Op. Ltrs. No. 02-02 and F16-05.

For a remote meeting, its location includes not just the **physical location** connected to the meeting that the board is required to provide, but also the **online meeting link**. Specifically, the remote meeting notice must include information on how to "[r]emotely view . . . the meeting through internet streaming or other means" and "[p]rovide remote oral testimony . . . whether through an internet link, a telephone conference, or other means." HRS § 92-3.7 (Supp. 2021). Just as the address of a physical location should be sufficient to allow the public to find it without having to call staff for more information, **the link or description of how to view the remote meeting or present oral testimony should be sufficient to allow the public to attend and testify without having to take additional steps, such as contacting the board, registering to get a link, or searching a website for the link. Moreover, if the link to the remote meeting or testimony site must be changed, then just as when a meeting's physical location must be changed, the board cannot simply revise its**

existing agenda but must post a new notice at least six days in advance of the meeting.

Depending on how the board has chosen to set up its meeting online, the notice may need to inform the public about just one connection that will work to both view and testify at the meeting, or multiple separate connections to view the meeting and to remotely testify. Different remote meeting scenarios are described below.

1. When the public will use the same link to view and to present oral testimony at the meeting

Many online platforms offer different types of online gatherings to fit different situations. For instance, an organizer may be able to set up either (1) a meeting intended for a relatively small group of participants, or (2) an event or webinar, where some participants (e.g., board members and staff) are designated as hosts or panelists and can unmute themselves, while others (e.g., the general public) are attendees who will primarily be listening but have the ability to request to speak and be unmuted by the host (thus allowing for oral testimony). A board expecting relatively minimal public participation might choose the straightforward approach of setting up a remote meeting and providing the public with the same link board members will use to participate. A board expecting a larger crowd or with concerns about potential disruptions (e.g., “zoombombing”) could set up its remote meeting as a webinar, where board members will use a private link intended only for board members and staff, with a different public access link intended for public participants.

In either of those cases, the board would give the public a single link to use both to watch the meeting and to offer oral testimony, so the notice should include that public link itself as the online meeting address. **The notice need not include a separate private link intended to be accessed only by board members and staff during a meeting.**

The public link as listed in the notice should take a person directly to the meeting where the person may testify. It should not lead to a registration page with a form that must be filled out to get the actual meeting link. The public link also should not lead to a webpage with information on and links to all the board’s meetings where the public must browse or search for the correct meeting before being able to click to join it. Although a link to a general listing of the board’s meetings may be helpful as additional information, as discussed in section 3 below, it is not a substitute for the online meeting address itself.

2. When the board will use separate links for the public to view the meeting and to testify

A board may prefer to have a link for the public to view a one-way livestream or webcast of the remote meeting that is separate from the way the public can present oral

testimony. For instance, a board might offer a livestream on YouTube or another platform where the public can watch the live meeting, and separately offer a telephone number or an online link for use in giving oral testimony. In that case, the board would give the public two different links (or a link and a phone number): one for the public to watch the meeting and the other for the public to offer oral testimony during the meeting.

When a board uses separate methods for the public to watch the meeting and to offer oral testimony, its notice should provide both the direct link to watch, and the other direct link or telephone number to offer testimony during the meeting. As discussed in the prior section, the notice must provide the direct link to watch the meeting, and it is not sufficient to either provide a link leading to a registration page with a form that must be filled out to get the actual link, or a link to a webpage the public must browse or search for the correct meeting before being able to click to join it. Similarly, if the board is using a telephone line for oral testimony, the notice should provide the phone number that, when called, connects directly to the meeting testimony phone line. It is not sufficient to list a phone number or email address to contact (e.g., of a board staffer) in order to get the actual testimony phone number or link.

If the Sunshine Law's requirements for direct access to a remote meeting and to testify are met, a board may choose to include additional options or information in its notice that do require some form of prior registration, as discussed next.

3. Additional Options to Watch or Testify and Additional Online Links

If the Sunshine Law's basic requirements to allow all persons to attend and testify are met, a remote meeting notice could include additional ways for the public to view or testify at a remote meeting, such as listing an anticipated television broadcast of the meeting (e.g., `Olelo) or an additional livestream link. **If a board decides to list additional ways to view or testify at its remote meeting, OIP strongly recommends that the board make clear on its notice which is the primary way to view or testify and which are additional alternatives**, to avoid a potential complaint if one of the alternatives has connection problems and the meeting continues without it. For example, if the primary way to view or testify is via an online link to the meeting, with the notice clearly identifying `Olelo as an alternative means of viewing the meeting, the meeting would not have to be recessed if the `Olelo connection is interrupted but the online link to the meeting is not interrupted.

A notice of a remote meeting can also include links to websites with additional information, such as the general website where all of a board's meetings are listed with links to relevant documents and to the livestream or recording of each meeting. If the extra links serve as additions to, and not replacements for, the direct link to the meeting or livestream of it, then providing the public with this type of general information about the board is a good practice and does not present Sunshine Law problems.

So long as the basic statutory requirements are met, a board can offer an optional alternative way to view or testify at a meeting, even if the alternative requires some form of prior inquiry or pre-registration. For instance, suppose the notice listed a phone number as the primary method to provide oral testimony during the meeting and also offered an optional alternative to pre-register or email the board in advance to get an online link to give video testimony. In this example, the testimony phone number would meet the statutory requirement to provide information on how to orally testify, so the additional video testimony option available for those willing to pre-register would not violate the Sunshine Law. Keep in mind, however, that at the meeting in this example, the board must still allow people to testify orally via the telephone number on the notice, even if they have not registered in advance to testify or will be testifying anonymously. HRS § 92-3; OIP Op. Ltr. No. 02-02.

4. Sample Notice Language for Remote Meeting Links

- *A board **providing one link allowing the public to both view and testify at a meeting** could use the following language for the meeting location:*

Join Remote Meeting: <https://zoom.us/> [direct link to meeting]

Physical Meeting Location: Room 123, Nui Pilikia Bldg.
123 S. King Street, Honolulu, HI
96813

- *A board **providing separate links, one for the public to view the meeting and another for the public to testify, could use the following language:***

View Remote Meeting: <https://youtube.com/> [direct link to meeting livestream]

Remote Oral Testimony: <https://zoom.us/> [direct link to testimony waiting room]

Physical Meeting Location: Room 123, Nui Pilikia Bldg.
123 S. King Street, Honolulu, HI
96813

- *A board **providing a link for the public to view the meeting, a phone number for the public to testify, additional options to view the meeting on television and to register to present video testimony online, and additional informational links, could use the following language:***

View Remote Meeting: <https://youtube.com/> [direct link to meeting livestream]

Optional Alternative to View Remote Meeting: The meeting is expected to be televised live on 'Olelo Channel 49 / 1049, which can also be viewed at <https://olelo.org/tune-in/>. In the event of technical problems with the broadcast, the meeting will continue and may still be viewed at the remote meeting link above.

Remote Oral Testimony: Telephone testimony may be presented by calling (808) 123-4567 and entering meeting ID 123 456 7890. Please wait for the Chair to ask for testimony on the item you are interested in. The Chair will unmute testifiers who call in, one phone number at a time.

Optional Alternative to Present Remote Oral Testimony: If you would like to testify via an online video link, please email kimo.doe@hawaii.gov at least 24 hours before the meeting to request the link. You may also email to pre-register to present telephone testimony if you wish to be called on by name or before those who have not pre-registered. Testifiers who wish to remain anonymous or have not pre-registered may still call the testimony phone number and follow the instructions listed above.

Physical Meeting Location: Room 123, Nui Pilikia Bldg.
123 S. King Street, Honolulu, HI
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Additional Links: Information about all the board's meetings, including board packets, recordings of past meetings, and the links to view upcoming meetings, is available at agency.hawaii.gov/board/meetings. General information about the board is available at agency.hawaii.gov/board.

B. Managing Testimony

In all meetings, including remote meetings, boards may provide for the reasonable administration of oral testimony by rule, and they have various means of managing a meeting without violating the Sunshine Law. HRS § 92-3. **However, a recent amendment to the Sunshine Law restricts boards from allowing oral testimony only at the beginning of a meeting or agenda. A board also must hear the testimony on a given agenda item prior to its consideration of that agenda item. Beyond those restrictions, a board can choose when to hear testimony.** For instance, a board could allow a limited testimony period at the beginning of the meeting to accommodate members of the public who prefer not to wait, and then continue to hear testimony immediately before each agenda item from those who have not testified earlier on that item. A board could also choose to hear testimony on several agenda

items together (in which case it should still allow people testifying on multiple items a full opportunity to testify on each of those items).

A board can also determine the order of testimony and set in advance reasonable time limits for oral testimony. Thus, a **board could choose to first receive testimony from those who have pre-registered or indicated in advance that they wish to orally testify, before allowing oral testimony from others, including anonymous testifiers.** The board can also adopt a **rule limiting the time for a person to testify** on each agenda item.

A person who willfully disrupts a meeting to prevent and compromise its conduct **may be removed**, whether in person or online. Therefore, having a separate link or telephone line for public testimony may allow the board to more easily remove a person who is disrupting a meeting through use of improper images or language.

C. Additional Reminders

OIP reminds boards that the Sunshine Law requires the notice of a remote meeting to include a **physical location** open to the public that is connected to the remote meeting. The Governor's emergency suspension of this requirement ended after March 25, 2022, so the physical location requirement is now in full effect. There is no further statutory requirement about the physical location, so it could be the board's office on Oahu, even if the remote meeting is about matters on a neighbor island.

In case the online connection is interrupted during a meeting, boards should include on their notices information on what to do, such as how to reconnect, how to access visual aids, or an alternative date, time, and place for continuation of the meeting if the connection is lost for more than 30 minutes.

A notice must include the board's **electronic and postal contact information** for submission of testimony before the meeting. HRS § 92-7 (Supp. 2021). Even if the board's letterhead contains its electronic (*i.e.*, email address) and postal contact information, OIP recommends that the notice specifically state that written testimony may be submitted before the meeting to those addresses. The postal contact information should be a mailing address, P.O. Box, or other office address where members of the public can submit testimony by mail before the meeting (if they cannot or do not want to email the written testimony).

Finally, boards should remember to **abide by the Sunshine Law's other requirements** for all meetings, whether in-person or remote. For example, meeting notices must be **mailed or emailed to people requesting such notices** at the same time they are posted online, at least six calendar days before the meeting. HRS § 92-7(e) (Supp. 2021). Meeting notices should contain instructions on **how to request an auxiliary aid or service or accommodation** due to a disability. HRS § 92-7(a) (Supp. 2021). **The agenda must be sufficiently detailed** as to what the board intends

to consider, so that people will have enough information to decide whether they want to participate in a meeting. HRS § 92-7(a) (Supp. 2021); OIP Op. Ltr. No. 03-22.

Boards can find more information on holding remote meetings under the Sunshine Law, on creating a meeting agenda, on meeting notices, a meeting notice checklist, and board packet requirements on the Training page of OIP's website at <https://oip.hawaii.gov/training/>.