

South Maui Community Plan Advisory Committee

October 19, 2022



OPEN MEETINGS

The Sunshine Law - HRS Ch. 92



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

- ▶ Open up governmental process to public scrutiny and participation by requiring boards to conduct their business as openly as possible.
- ▶ Absent a specific statutory exception, board business cannot be discussed between board members outside a noticed public meeting.

What does the Sunshine Law govern?

- ▶ Conducting meetings, disseminating documents during meetings, public notice of meetings, minutes of meetings, and interactions between board members outside of regularly scheduled meetings.

Open Meetings

What is required?

- ▶ Every meeting of the board is open to the public.
- ▶ All interested persons shall have an opportunity to submit data, views, or arguments, in writing, on any agenda item.
- ▶ All interested persons shall have the opportunity to present oral testimony on any agenda item.
- ▶ Board may make reasonable time limit of oral testimony (HRS 92-3).
- ▶ Oral testimony cannot be limited to the start of the meeting.

§92-3.5 Meetings by Interactive Conference Technology

- ▶ Allowed if:
 - ▶ Allows interaction between all board members and members of the public in attendance
 - ▶ Notice provides locations where all participating board members will physically be
 - ▶ Notice states the public can attend meeting at any location where a board member is present
 - ▶ Quorum based on all members participating no matter where they are located

§92-3.5 Meetings by Interactive Conference Technology

- ▶ Are allowed if:
 - ▶ Must include video and audio
 - ▶ Exception: disabled member does not need to be present at place available to public, must have audio and video, state who is there at the meeting with the member

§92-3.5 Meetings by Interactive Conference Technology

- ▶ Are allowed if:
 - ▶ Must include video and audio
 - ▶ Member does not need to be present at place available to public, must have audio and video, state who is there at the meeting with the member

§92-2.5 Permitted Interactions of Members Outside Regular Meetings

- ▶ Two members can discuss matters relating to official board business so long as no commitment for vote is made or sought, and so long as 2 members do not make a quorum of that board



Sunshine Law: Communication between committee members

- ▶ Avoid talking about committee business outside of a regular meeting.
- ▶ No more than two members of a board can discuss board business. No serial communications.
- ▶ Board members can not discuss board business by phone, fax, email, or social media such as Facebook.
- ▶ How about social gatherings? Avoid discussing board business.
- ▶ Discuss board business with non-board members? Generally, Sunshine Law does not apply.
- ▶ Meeting may be held by videoconference (public location required for testimony/viewing)

Permitted Investigative Group AKA Temporary Investigative Group

- ▶ Two or more, but less than quorum
 - ▶ Scope of investigation and scope of authority defined at a meeting of the board.
 - ▶ All findings and recommendations must be presented to the entire board at a meeting.
 - ▶ Deliberation and decision making can occur at a subsequent meeting.
 - ▶ This means it takes a minimum of 3 meetings for action.
 - ▶ No discussion of the topic assigned to the PIG until deliberation and decision making occurs.

Attendance at Informational Meetings or Presentations §92-2.5

- ▶ Two or more but less than a quorum
- ▶ Informational meeting or presentation
- ▶ Matter relating to official board business so long as not specifically and exclusively organized for or directed to members of the board
 - ▶ Another entity
 - ▶ Legislative hearing
 - ▶ Convention
 - ▶ Seminar
 - ▶ Community meeting

What can a board do at these meetings?

- ▶ What can board members do at these meetings?
 - ▶ Participate in discussions, including amongst themselves
 - ▶ Discussion must be during and part of informational meeting or presentation
 - ▶ No commitments to vote on matter sought or made
 - ▶ At the next duly noticed meeting
 - ▶ Members shall report on attendance
 - ▶ Matters presented and discussed
 - ▶ That related to official board business

What constitutes “board business”?

- ▶ Sunshine law does not define “board business”
- ▶ Favors a narrow interpretation
- ▶ Balance between board member’s constitutional rights of free expression and association v. the public interest in open government (OIP opinion 01-01 at p. 31)
- ▶ Limit it to discrete proposals or issues that are actually pending before a board

Permitted Interaction:

Attendance at other meetings

- ▶ Less than quorum (up to 4) may attend informational meetings or presentations on matters relating to board business, including a meeting of another board or the County Council.
- ▶ Members may participate in discussions.
- ▶ No commitment relating to a vote on the matter may be made or sought.
- ▶ **Attending members must report their attendance and the matters presented and discussed that relate to board business.**

Closed Meetings

- ▶ Meeting closed to the public (HRS 92-4 and 92-5)
- ▶ Requires 2/3 affirmative vote of the members present.
- ▶ Purpose of the executive meeting should be announced in open session.
 - ▶ Example: To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. (HRS 92-5(a)(4))

§92-7 NOTICE

- ▶ Written
- ▶ Public
- ▶ Any regular, special, or rescheduled meeting
- ▶ Executive meetings if anticipated (describe the purpose for it if known)
- ▶ Agenda must list all items to be discussed
- ▶ Date, time, place of the meeting
- ▶ File in the county clerk's office

Sunshine Law Violations

- ▶ Decision may be voided (HRS 92-11)
- ▶ Injunction (HRS 92-12)
- ▶ Member may be found guilty of misdemeanor (HRS 92-13)
- ▶ Member may be removed from the committee (HRS 92-13)

Resources



- ▶ Hawaii Revised Statutes
 - ▶ Ch. 92 (Sunshine Law)
 - ▶ Ch. 92-F (Records requests)
- ▶ OIP website (oip.hawaii.gov)
- ▶ Training videos
 - ▶ Sunshine Law 2-part video training
 - ▶ Test your knowledge of the Sunshine law
- ▶ Changes to the Sunshine Law
- ▶ UIPA (Open Records) video training

Resources

- ▶ Administrative Rules governing the OIP
- ▶ Lawyer of the Day (586-1400 or OIP@hawaii.gov)
- ▶ Links to other government agencies
- ▶ OIP opinions (oip.hawaii.gov/laws-rules-opinions/opinions)
 - ▶ Index to opinions
 - ▶ Link to full text
 - ▶ Formal opinions (precedent for OIP actions unless overturned by court or subsequent OIP formal opinion)
 - ▶ Informal opinions (no precedential value)
 - ▶ Decisions by the OIP are enforceable by circuit court

Robert's Rules of Order: Parliamentary Procedure



Flow of a Meeting

- ▶ Chair controls the flow and order of the meeting.
- ▶ Members should look to the chair and obtain the chair's permission to speak or debate.
- ▶ Flow of a motion: A motion must be made and seconded prior to the motion being received and considered by the board.
- ▶ Silence or refusal to vote is considered an affirmative vote, unless the member is disqualified from voting (conflict of interest).

Flow of a Meeting

- ▶ “I move that the committee purchase pepperoni pizza.”
 - ▶ Second.
- ▶ “I move to amend the motion. We should purchase mushroom pizza instead.”
 - ▶ Second.
- ▶ Vote on amendment. (Majority needed)
- ▶ Vote on main motion.

Motions

- ▶ Method for taking action - such as finalizing recommendations on the South Maui CP
- ▶ Made by a member, must be recognized by the Chair, should be stated with specificity,
- ▶ Must be seconded
- ▶ Chair then restates the motion, it then becomes the SMCPACs motion

“Friendly” Amendment

- ▶ Once a motion has been made and seconded, it is no longer the property of the mover, but of the Committee.
- ▶ Any amendment, “friendly” or otherwise, must be adopted by the full body, by vote or unanimous consent. Once adopted or defeated, return to the main motion to discuss and vote.

Unanimous Consent

- ▶ Action may be taken by unanimous consent
- ▶ Chair states proposed action, asks if there are any objections
- ▶ If none, action is taken
- ▶ Generally reserved for minor actions—approval of minutes or changing the order of items on the agenda

Members' Roles & Duties

- ▶ Read your materials before you get to the meeting.
- ▶ Don't hesitate to ask questions of planning staff or corporation counsel
- ▶ Be respectful to other committee members and the public.

Ethics

Maui County Charter
Article 10, Code of Ethics



Prohibitions - Charter 10-4

- ▶ Accepting gifts or money
- ▶ Engage in any business transaction or activity or have a financial interest that:
 - ▶ Is incompatible with the proper discharge of the commissioner's duties, or
 - ▶ May impair a commissioner's independence of judgment in the performance of official duty
- ▶ Fail to disclose financial interest or vote on a matter affected by such interest

Conflicts of Interest

- ▶ Whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the Committee, the affected member should promptly make a full disclosure of the circumstances to the Committee. If the Committee member has a financial interest in any matter that may be affected by an action of the Committee, that member is disqualified from participating and voting in all actions relating to such matters.

Committee members must...

- ▶ Disclose the conflict or potential conflict on the record.
 - ▶ An employer-employee relationship is a financial interest that must be disclosed - do so prior to any Committee discussion.
 - ▶ If a parent or dependent child has a financial interest, that should be disclosed as well.

When in Doubt

- ▶ A committee members should:
 - ▶ Decide whether to proceed or not;
 - ▶ Abstain from voting; or
 - ▶ Request a deferral and seek an advisory opinion specifically on the specific issue from the Board of Ethics
- ▶ If a member obtains an advisory opinion from the Board of Ethics and acts accordingly, or acts in accordance with the opinions of the board, the commissioner shall not be held liable for violating the County Charter.

Decision Challenge & Penalties

- ▶ A complaint may be filed by someone who believes the decision a commissioner made was affected by the member's financial relationship.
- ▶ For failure to follow the Charter's Ethics requirements, members may be:
 - ▶ Fined
 - ▶ Removed from the Committee

Administrative Rule Making

Purpose

- ▶ Administrative Rules allow you to “fill in the details” on how you will fulfill your duties as a commission.
- ▶ It can indicate:
 - ▶ How to communicate with the SMCPAC
 - ▶ Who has the power to call special meetings.
 - ▶ What will be included in the minutes, and whether they need to be approved by the commission.
 - ▶ Time limits for testimony.
 - ▶ Officer duties.
 - ▶ What abstaining from a vote means.
 - ▶ When a conflict should be disclosed.

Procedure for adoption

- ▶ The law requires that you follow certain specified procedures if you intend to impose the rules on the public.
- ▶ It is required to have a public hearing on the rules, and you must publish notice of the hearing.
- ▶ We will work with the Planning Department to make sure rules are followed and the Administrative Rules follow the correct format.

Mahalo!!!!

