



2021-2022
Maui County
Charter
Commission
Orientation



Topics to be covered

- Role of the Corporation Counsel
- Role of the Commissioners
- Hawaii's Open Records Law (UIPA)
- Hawaii's Open Meetings Law (Sunshine Law)
- Code of Ethics

Role of the Corporation Counsel

- The Corporation Counsel is the “chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and commissions; and of all officers and employees in matters relating to their official duties, except as otherwise provided in this charter.” (Charter, Section 8-2.3.2)
- Every action of the commission has its own set of legal standards, including “layers” of state and county laws.
- Our job is to advise and assist the commission in carrying out your legal duties – not to police, manage, or control the commission’s actions.

Role of the Commissioners

- Understand the purpose and functions of the commission, and the laws that affect the commission's powers, duties, and functions.
- One of your first official duties will be to adopt rules of practice and procedure. Normally, Sunshine Law boards would have to follow the process in HRS Chapter 91, but state law exempts charter commissions from this law and instead authorizes you to adopt "such rules and regulation for the conduct of [the commission's] business" as you deem necessary and desirable. (HRS 50-5)

Hawaii's Open Records Law

– Hawaii Revised Statutes Chapter 92F

- The Uniform Information Practices Act, Chapter 92F, HRS (“UIPA”) is Hawaii’s public records law.
- The State Office of Information Practices was created by the Legislature in 1988 to administer the UIPA (www.oip.Hawaii.gov)
- Commission documents are subject to public inspection.

Sunshine Law – Hawaii Revised Statutes Chapter 92

- The Sunshine Law applies to all state and county boards, commissions, and legislative bodies (except the Hawaii State Legislature)
- All commission “meetings” must be open to the public
- Agendas must be posted 6 calendar days prior to the meeting and include the items to be discussed
- Testimony: Members of the public must be given the opportunity to submit oral or written testimony. The commission may set reasonable time limits.
- Minutes must be kept of all meetings and must include: date, time, place of meeting, members present/absent, and the substance of all matters proposed, discussed, or decided and votes taken.

Sunshine Law: Permitted Interactions (HRS 92-2.5)

- The purpose of the Sunshine Law is to protect the public's right to know. (HRS 92-1) and also to allow citizens to have input into the decision-making process.
- Courts have confirmed repeatedly that the Sunshine Law is to be "liberally construed," meaning that doubts are resolved in the favor of greater transparency.
- A Sunshine Law "board" is "any agency, board, commission, authority, or committee of the state or its political subdivisions which is created by constitution, statute, rule, or executive order to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and take official actions." (HRS 92-2)
- The Charter Commission is a Sunshine Law board.

What is a “meeting”?

- A “meeting” is 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. (HRS 92-2)
- Meetings held by committees or subcommittees of public boards are “meetings,” even though they may not have the quorum necessary to make a binding final decision. (AG Op. No. 85-27)

Permitted interactions – HRS 92-2.5

1. Two members may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought, and the two members do not constitute a quorum of their board.
2. Two or more members, but less than quorum may be assigned to a temporary investigative group (TIG)
3. Two or more members, but less than quorum, may discuss the selection of the board's officers.
4. Members who are present for a meeting that must be cancelled for lack of quorum, can receive testimony and presentations, and can ask questions of the testifiers or presenters, but must not deliberate.
5. Two or more (but less than quorum) can attend information meetings related to board business.

Permitted interactions - investigations

- Fewer than quorum (2-5 commissioners)
- Scope of investigation defined at a meeting
- Findings and recommendations presented at a 2nd meeting
- Deliberation and decision making at a 3rd meeting

Permitted interactions exclude deliberations

- **The Sunshine law prohibits “deliberations” outside of formal, noticed meetings.**
- **An investigative committee can make recommendations to the Commission, but the members of the TIG should refrain from discussing with each other the implications of the recommendations on formal decisions that the Commission will make.**

Meetings by Videoconference (92-3.5)

- Must allow interaction among all members of the Commission and all members of the public attending.
 - Must be properly noticed the same as in-person meetings (including notice of locations where members are present and the public may go to testify)
 - If audio can't be maintained at all locations, the meeting must be terminated.
 - Board members with a disability may participate by videoconference in non-public places.
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- **The Governor's and Mayor's Emergency Proclamations and Emergency Rules have suspended in-person meetings.**

Agendas & Notice

- Posted 6 calendar days in advance
- Public hearings require notice be published in the newspaper
- Agendas must list “items to be considered” with specificity
- Notice and access to board “packets” (the documents compiled and distributed to commission members prior to a meeting, to the extent the documents are public under Chapter 92F, HRS) (HRS 92-7.5)
- Matters can only be added to an agenda at a meeting with a 2/3 vote (e.g., 8 affirmative votes) and items cannot be added if they are “of reasonably major importance” or “will affect a significant number of persons.” (HRS 92-7(d))

Recessed meetings

- Meetings may be recessed, provided that the Commission should state the date, time, and place of the continued meeting prior to recessing.
- The Commission can decide the maximum length of time until the continued meeting in its administrative rules, but it should be reasonable.

Executive Sessions

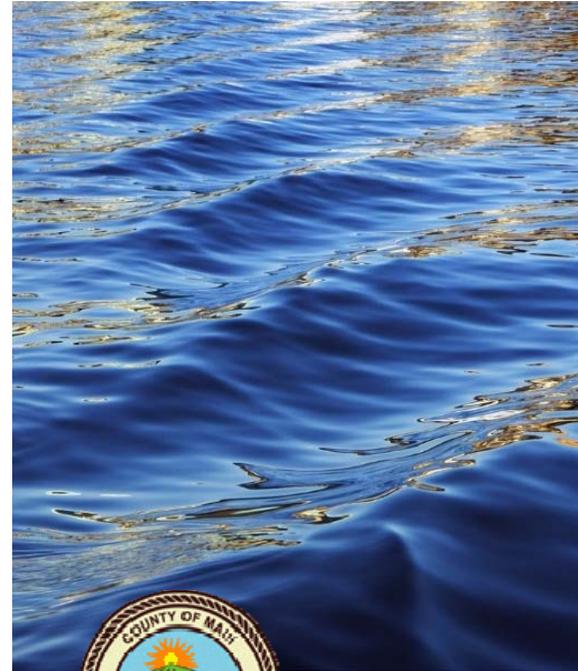
- An executive session (closed to the public) may be held by a 2/3 vote of the members present and only if the number of those approving constitute a majority of the members eligible to attend the meeting. (HRS 92-4)
- The purpose of the executive session should be listed in the agenda, if known in advance (HRS 92-7(a))
- The purposes of the executive session are only to discuss:
 - **Personnel matters (hiring, firing, discipline)**
 - Labor negotiations
 - Acquisition of public property
 - **Legal issues with the board's attorney pertaining to the board's powers, duties, privileges, immunities, and liabilities**
 - Investigative material concerning criminal misconduct
 - Sensitive matters relating to public safety or security

Sunshine Law Violations

- Voidability (HRS 92-11)
- Injunction (HRS 92-12)
- Commissioners who willfully violate the Sunshine Law:
 - Guilty of misdemeanor
 - Removal from Commission (HRS 92-13)

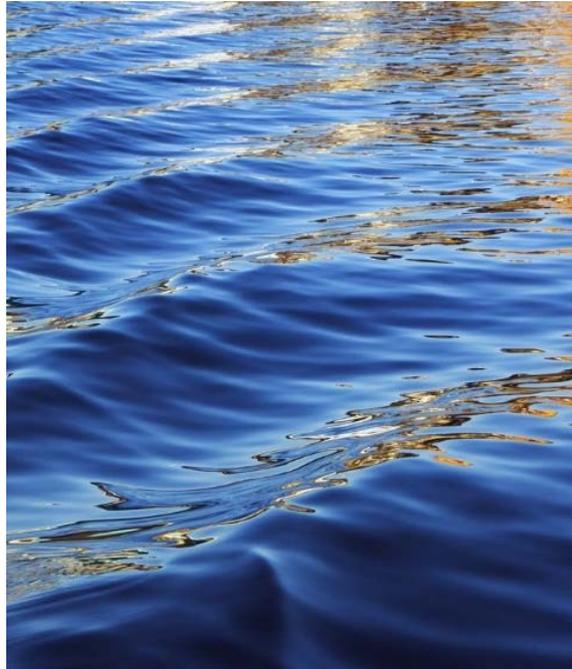
Ethics

Maui County Charter
Article 10, Code of Ethics



Code of Ethics – Prohibitions & Penalties

- Solicit, accept, or receive gifts intended to influence or as a reward for official action
- Disclose information not available to the public
- Engage in any business transaction or activity or have a financial interest which may tend to impair independence of judgment in the performance of official duty
- Fail to disclose financial interest
- Penalties: fine and removal from office



Questions?