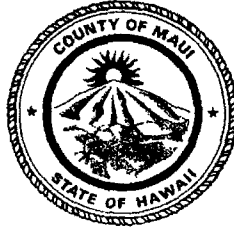


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September 14, 2015

MEMO TO: Robert Carroll  
Councilmember, East Maui

FROM: Linden H. Joesting   
Deputy Corporation Counsel

RE: Councilmember Participation

This is in response to your letter to Pat Wong dated September 8, 2015.

QUESTIONS PRESENTED:

Can a Councilmember participate in Council and Committee meetings from a remote location as for example out of state?

If a member can participate in all discussions, debate, executive session etc., via audio or audio/visual technology can they cast a vote?

SHORT ANSWER:

Your memo asked if a Councilmember can participate in all discussions, debate, executive session, and vote at Council meetings from a remote location. In short, yes.

Hawaii's Sunshine Law, found in Chapter 92 of the Hawaii Revised Statutes ("HRS"), provides for meetings by interactive conference technology ("ICT"). HRS § 92-3.5. This section of Chapter 92 is meant to expand the flexibility of Boards and allow Boards to be more effective in getting their work done.

However, there are pros and cons to attending a meeting by ICT. The positive benefits are:

- 1) Greater flexibility than in person attendance.

- 2) Quorum can still be established and voting take place.
- 3) A member with a disability that limits or impairs the member's ability to physically attend may attend in a location not accessible to the public.

These benefits are subject to the following requirements:

- 1) The agenda for the meeting must also list the public location for the distant attendee.
- 2) The public must be able to join the member at the distant location.
- 3) The ICT must allow all members of the board participating to interact.
- 4) The meeting *must be terminated* when audio communication cannot be maintained at all noticed locations.
- 5) Visual aids, if any, must be made available at all locations within fifteen minutes or the item for which visual aids are not available cannot be acted upon at the meeting.

Provision for board members with a disability

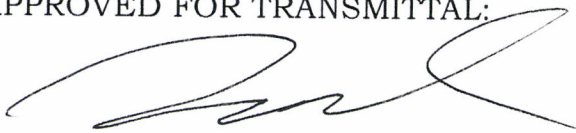
A provision was added to the Sunshine Law in 2012 allowing Board members with a disability that limits or impairs the member's ability to physically attend the meeting, to:

... participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member.

HRS § 92-3.5(d). Please note this section requires a *visual and audio* connection while the provisions mentioned above allow only an *audio* connection. As an example, the disabled board member may participate from a non-noticed location such as a private residence or hospital, so long as the other requirements are met.

Please advise if further information is needed.

APPROVED FOR TRANSMITTAL:



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EDWARD S. KUSHI  
First Deputy Corporation Counsel