

CHAPTER 19

PUBLIC MEETINGS AND CONDUCTING PUBLIC HEARINGS

PUBLIC MEETINGS

The public meeting hearing process is an important step in a good citizen involvement program, and is perhaps the oldest means of involving the public in governmental decision making. The Idaho Legislature established policy for citizen involvement through the Open Meeting Act found in chapter 23 of title 67.

The people of the State of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is policy of this State that the formation of public policy is public business and shall not be conducted in secret (§67-2340).

With the exception of an executive session, all other meetings to make a decision or deliberate toward a decision, by any entity of government, including any subagency or commission created by the government (§67-2341), must be open to the public and held where there is no discrimination practiced (§67-2342). Written minutes of all meetings of the public agency must be taken and be available to the public within a reasonable timeframe. (§67-2343(1))

Regular meetings are defined as a meeting to conduct the business of the governing body on a date fixed by law or rule (§67-2341(6a)). Notice for regular meetings must be no less than five (5) calendar days before the meeting and a forty-eight (48) hour notice for agenda items (§67-2343). If the public agency holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of a year, the meeting notice may be satisfied by giving notice at least once each year of its regular meeting schedule. (§67-2343(1))

A special meeting is when the governing body convenes because of a special call for specific business outside of their regular meetings (§67-2341(6)(b)). Special meetings cannot be held without at least a twenty-four (24) meeting and agenda notice unless an emergency, such as a situation where injury or damage to persons or property makes notice impracticable. (§67-2343(2))

An executive session is a meeting that is closed to the public so the governing body can ~~to~~ deliberate on certain matters that are exempt from open meeting requirements as delineated in section 67-2341(3). If only an executive session will be held, then the meeting cannot be held without at least a twenty-four (24) hour notice of the meeting and the agenda. The notice shall also state the reason for the executive session and the specific provision of law authorizing the executive session. (§ 67-2343(3)). The written minutes for executive session must reference the specific statutory subsection authorizing the executive session and provide sufficient detail to identify the purpose and topic of the executive session. (§ 67-2344(2))

An agenda is required for every meeting (§ 67-2343(4)). An agenda may be amended as long as

there has been a good faith effort to include all items of probable discussion in the original agenda. If an amendment is proposed after the agenda has been posted and less than forty eight (48) hours before a regular meeting and less than twenty four (24) hours before a special meeting, the agenda shall be posted but is not effective until motion is made at the meeting and the governing body votes to amend. An agenda may be amended at the start a meeting upon a motion that states the reason for the amendment and states the good faith reason why the item was not on the original agenda that was posted. (§ 67-2343(4))

Any actions or any deliberation or decisions that lead to an action that are made in meetings when the governing body violates open meeting statutes shall ~~will~~ be null and void. Furthermore, any member of the governing body that participates in the meting could be subject to a civil penalty not to exceed fifty dollars (\$50). Any member of the governing body who knowing violates the act shall be subject to a civil penalty not to exceed (\$500) (§ 67-2347). The prosecuting attorney has a duty to enforce the open meeting law against local governments and the attorney general has the duty to enforce this law against state agencies. Prosecuting attorneys must appoint a special prosecutor in conflict cases, for example when it is alleged that a board of county commissioners has violated the act. In addition, any affected person may commence a civil action for the purpose of requiring compliance with the law (§67-2347(6)). However, no citizen can file a damage suit against any individual member of the governing body for violating the provisions (§67-2347). Subsection 7 of Section 67-2347 outlines the process for curing a violation.

CONDUCTING PUBLIC HEARINGS

In certain circumstances, the Idaho Code requires public hearings rather than public meetings. For example, the Local Land Use Planning Act requires that public hearings be held to adopt ordinances, to adopt, amend or repeal the comprehensive plan, or to grant a conditional use permit. Public hearings are required. Hearings are also provided for in the adoption of the county budget where taxpayers may appear and be heard.

Public hearings are often mistakenly seen as the only time for citizen input and are looked upon as isolated events or formalities that must be legally satisfied. It is vital to anticipate and deal with the conditions that produce tension and hostility prior to the public hearing.

Recent court decisions have established the manner in which hearings are conducted (procedural due process). In Idaho, as well as other states, the court has determined that in many cases public hearings are quasi-judicial or administrative procedures rather than legislative acts.

“For quasi-judicial proceedings, procedural due process requires that:

There must be some process to ensure that the individual is not arbitrarily deprived of his rights in violation of the state or federal constitutions. This requirement is met when [a party] is provided with notice and an opportunity to be heard. The opportunity to be heard must occur at a meaningful time and in a meaningful manner in order to satisfy the due process requirement. Due process is not a concept to be applied rigidly in every matter. Rather, it is a flexible concept calling for such

procedural protections as are warranted by the particular situation.”

In re Jerome County Bd. of Com’rs, 153 Idaho 298, 311, 281 P.3d 1076, 1089 (2012) (quoting *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999)).

The Court ruled that in the case of administrative decision-making, specific standards and criteria must be established. These standards include: adequate public notice of hearings, transcribable verbatim proceedings of meetings and specific written findings of fact and conclusions on which decisions are based and an opportunity to present and rebut evidence. (*Cowan v. Bd. of Comm’rs of Fremont Cnty.*, 143 Idaho 501, 508, 148 P.3d 1247, 1254 (2006)). There are also many statutory requirements regarding permanent records in light of Idaho Supreme Court decisions.

PUBLIC HEARING PREPARATION

For a public hearing to be successful, it is important to pay attention to even the smallest detail before the hearing gets underway. The manner in which the public hearing is prepared reflects on the conduct of the hearing, the public's judgment of the local government and the impressions of the issue at hand.

When preparing for the hearing, determine the steps involved and assign responsibilities to the individuals participating. The local government sponsoring the public hearing may prefer to use a hearing facilitator or conduct the meeting itself. The purpose of using a hearing facilitator is to allow the local government officials to: Effectively listen to the proceedings of the hearing and participate freely; to make the hearings more formal thus reducing frictions and insuring that the procedural safeguards are observed; and, to reduce the amount of redundant testimony and speed the hearing along (so that all can express their feelings, written testimony is permitted).

CONDUCT OF THE PUBLIC HEARING

The agenda may vary according to the type of action to be discussed. If the hearing is related to comprehensive plans and ordinances and an outside facilitator is utilized, the local official may want to lead off the hearing with some opening remarks--function of their organization, history of the action, and purpose of the hearing--prior to any statement by the hearing facilitator. Where a more formal proceeding is desired, the hearing facilitator would conduct the meeting entirely and ask the local officials to give a statement prior to the public statements.

Option 1: Local Official Directs Hearing

Local Officials:

- Calls meeting to order
- Explains function of the officials/member composition, i.e. Planning & Zoning Commission, etc.

- Gives history of the proposed action -- prior hearings, past efforts
- States purpose of the hearing -- topic, consider citizen views, etc.
- Reads introductory statement (must mention name and title, date and location of the hearing, purpose of the hearing, legal authority, explanation of the legal notice publication, and method of receiving oral and written statements).

Public Testimony:

- Steps forward to microphone
- Gives name and place of residence
- Complies with time limit if applicable

Response from Local Officials:

- Closes public hearing
- Makes final statement of clarification
- Comments on main points raised
- States written testimony deadline
- Indicates if any future public hearings are planned
- Gives closing statement

Example of Ordinance Regarding Conduct of Public Hearing:

Hearings before the Board shall be conducted in general conformance with the following procedure:

- A. Generally: The Board may place a time limit on verbal testimony. If there will be a time limitation, the limitation shall be announced at the beginning of the hearing.
- B. Overview of the Application: Hearings before the Board shall commence with a very brief overview from staff and staff's submission of the written report to the Board.
- C. Applicant/Appellant Presentation of Application: The applicant/appellant presents his or her application and shall be allowed an opportunity to present testimony, documents, and other evidence which supports the application.
- D. Public Testimony: The Board shall take comments from the public. Those providing public testimony shall be provided an opportunity to present testimony, documents, or other evidence. In its discretion, the Board may alternate between those supporting and those opposing a particular application.
- E. Applicant/Appellant Rebuttal: The applicant/appellant shall be allowed the opportunity for rebuttal. Such rebuttal shall be limited to responding to testimony, documents, or other evidence provided during the public testimony.

- F. Clarification of Factual Questions: When statements of fact in the written record appear to be in dispute from all of the testimony given, the Board may ask the staff and/or applicant to clarify whether the written record is in error.
- G. Close Record: After the Board closes the record and begins its deliberation, no further comments or testimony may be taken from the applicant/appellant, staff or the public.

Option 2: Hearing Facilitator Directs Hearing

Local Officials:

- Calls meeting to order
- Explains function of the officials/member composition, ie. Planning & Zoning Commission, etc.
- Gives history of the proposed action--prior hearings, past efforts
- States purpose of the hearing--topic, consider citizen views, etc.
- Introduces hearing facilitator

Hearing Facilitator:

- Reads introductory statement (must mention name and title, date and location of the hearing, purpose of the hearing, legal authority, explanation of the legal notice publication, and method of receiving oral and written statements).

Public Testimony:

- Steps forward to microphone
- Gives name and place of residence
- Complies with time limit, if applicable

Response from Sponsoring Agency:

- Makes final statement of clarification
- Moderated by the hearing facilitator for order

Hearing Facilitator:

- Comments on main points raised
- States written testimony deadline
- Indicates if any future public hearings are planned
- Gives closing statement

After the Hearing:

The staff report shall automatically become part of the record as shall any documents submitted by the applicant/appellant and the public, as shall all testimony given at the hearing. At conclusion of the hearing, the Board shall close the record unless the Board determines, in its discretion, additional evidence is required, in which event, it may proceed as follows: close the record with the exception of allowing the submission of specifically requested information, leave the entire record open for the submission of additional evidence to a date certain at which time it will automatically be closed without further action of the Board, or continue the hearing to a date certain for the purpose of receiving additional evidence and conducting such further proceedings as may, in its discretion, be advisable.

When the record has been closed, the Board shall take the matter under advisement for the purpose of deliberating towards a decision based on the record. After deliberating, the Board may then immediately render a written decision complying with applicable law or may continue the matter to a date and time certain for further deliberation and decision.

Reopening the Record:

Prior to issuing a written decision, the Board may, for good cause demonstrated, reopen the record for the purpose of receiving additional evidence. An interested party may seek to reopen the record by filing a motion to reopen the proceedings within five (5) days of the date on the Board's written decision. Said motion shall contain information demonstrating good cause to reopen the record and any costs which will be incurred by the County to comply with applicable law shall be paid concurrently with the filing of the motion. The Board shall decide an applicant/appellant's motion to reopen the record within five (5) days of the receipt thereof. The Board may, within five (5) days of the date of its written decision, reopen the record for good cause on its own motion. If the Board determines to reopen the record, it shall thereafter comply with applicable law, if any, governing notice and hearings.

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