OPEN MEETINGS
Ways to stay out of trouble!

Jim McNall
ICRMP – Risk Management Specialist

On Being the Government
Public or Private Life?

Meetings
Records
Conflict of Interest
Purchasing
WHAT TO NOT DO

- Roles & Responsibilities
  - Authority of individual board members.
    - The board sets policy and exercises its authority as a single body, operating in public meetings preceded by notice.
  - An individual governing board member has no authority to supervise, discipline or fire employees.

Meeting Purpose

- To conduct the county’s business
- Issues may be either:
  - Executive
  - Legislative
  - Quasi-judicial?
- Gather needed (and wanted) input
- “Spectator sport”- The public gets to watch - and participate when invited.
  - Item on agenda for public comment (rules?)
  - Invited by presider to comment on agenda topic.
    - Hearings are different!
Conduct of Meetings

- Agenda – who sets?
  - Is the topic – not the person.
  - May indicate when public input is appropriate.
    - Usually general policy decisions.
- Allow (encourage) participants to discuss.
- Motions – need to be succinct, clear, comprehensive.
- Voting?
- Order of business?

Role of the Chairman

- Conducts the meeting.
- Retains rights (obligations) to discuss and vote.
- Controls public input when it is allowed.
- Ideally:
  - Keeps the discussion to the agenda item.
  - Prohibits personal attacks and discussions of issues not before the Board.
Meeting Rules

- Each speaker during the public comment period will be limited to 5 minutes.
- The council may not hear or take testimony regarding any planning & zoning matter that is before the city or is known to be a likely application.
- Issues regarding the performance of city employees constitute matters that must be discussed only in executive session and are not appropriate in the public portion of the meeting.
- Matters that have been previously heard and decided by the council may be determined to be not appropriate for the public comment period.
- Citizens may use this time to request that items be placed on future agendas for further discussion.

Differing Roles for BOCC

- Legislative functions
  - Talk with anyone – except another commissioner!
  - Research the issue from outside sources.
  - No requirement to explain decisions.
- Quasi judicial functions
  - No discussion/input outside of the hearing and record.
  - For questions consult Prosecutor or staff.
  - “Reasoned decisions”
Elected Officials and Electronic Communication

- What is public? (definitions)
- Keep private and public records separate or at least able to be viewed easily.
- Open meeting violations?
- Avoid “deliberating” between commissioners.
- Remember – you are now the government.

The RULES:

- All meetings of a Government Body shall be open to the Public (unless exception allows)
- No decisions shall be made by secret ballot
- No meeting shall be made where discrimination is practiced on the basis of race, creed, color, sex, age or national origin. {Idaho Code §74-203}

The POLICY:

- Formulation of Public Policy is Public Business and Shall Not Be Conducted in Secret
  {Idaho Code § 74-201}
Definitions:

MEETING:
Convening of
the governing
board

GOVERNING:
- Elected Board
- Appointed Board
- Advisory Group
  - Committees
    - Sub-Committees
  - Study Groups

DELIBERATION:
The receipt or exchange of
information relating to a
decision. NOT talk about
the weather.

DECISION:
A public policy action.
Quorum – Don’t bet
on it!

Meeting Notices

- Regular Meetings:
  Regular Commissioner meetings set by ordinance
  Exceptions post 5 calendar days in advance – 3 places

Special / Executive Meetings:
  24-hour notice
  Include statutory authority for executive session-only
  meeting

Emergency Meetings
  Requires good faith effort to notify governing board
  members and media if requested
AGENDAS

An agenda is required for each meeting.

- Posted same as meeting notice
- Posted 48 hours (or 24 hours for “special” meeting)
- Only “good faith” amendments
- Motion and vote required for amendments made within 48 hours of, or during, the meeting to include reason

Voting

- Most issues may be decided by voice vote.
- Certain actions require each member’s vote be cast and recorded individually in the minutes:
  - Motions to go into executive session.
  - A member can request a roll call vote on any motion.
- No voting by secret ballot.
MINUTES

(1) All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;
(b) All motions, resolutions, orders, or ordinances and their disposition;
(c) The results of all votes, and upon the request of a member, the vote of each member, by name.

Always a record of what happened – not what you wish happened!

MINUTES – EXECUTIVE SESSION

(2) Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.
Executive Session Rules

- Executive Sessions
  - May occur during regular or special meetings.
  - Require approval of two-thirds of the board by roll call vote & recorded in the minutes.
  - Both the motion to go into executive session and the minutes must state the specific statutory authorization for the executive session.
  - For example: pursuant to Idaho Code 74-206 (1) (a) to consider hiring a public officer, employee, staff member or individual agent.
  - Final actions/decisions must be made in public session??

Executive Session

Most common uses:
I.C. §74-206

- Personnel selection and evaluation (a) and (b)
- Acquire interest in real property (c)
- Consider records exempt from disclosure (d)
- Discuss litigation – with your attorney (f)
- Consider claims or potential claims – with your risk manager or insurer (i)
**Executive Session**

*Who can attend?*

- All “Governing Board” members
- Anyone else that Governing Board members wish to attend.
- May have witnesses come and go as needed

**Tele-Meetings**

- Specifically allowed - I.C. §74-203(5)
- One person must be present at site where meeting is advertised
- System must be set up so that all members can participate and the public can hear
CURING VIOLATIONS

- Either self-recognition or written notice of an alleged violation
- If a violation - determine within 14 days and acknowledge the violation
- Then 14 days to void that action or actions
- A cure acts as a bar to the civil penalty

Violations

- Failure to comply with the provisions of Idaho Code §74-201 through 74-207 renders the action null and void.

- Any member who participates in a meeting that violates these provisions will be subject to a civil penalty.
  - up to $250
  - up to $1500 for “knowingly” participating
  - up to $2500 if subsequent to previous violation within last 12 months

Idaho Code § 74-208