

Idaho Open Meeting Law

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Quick Links

The Idaho Open Meeting Law

<https://legislature.idaho.gov/statutesrules/idstat/Title74/T74CH2/>



The screenshot shows the official website of the Idaho Legislature. The header includes the Idaho state seal and the text "The official website of the Idaho Legislature". Navigation links include "SENATE", "HOUSE", "COMMITTEES", "LEGISLATORS", "LAWS/RULES", "LEGISLATIVE SESSIONS", and "LIVE AUDIO/VIDEO STREAMING". The main content area displays "Idaho Statutes" and a table of contents for "TITLE 74 TRANSPARENT AND ETHICAL GOVERNMENT" and "CHAPTER 2 OPEN MEETINGS LAW".

Statute Number	Description
74-201	FORMATION OF PUBLIC POLICY AT OPEN MEETINGS.
74-202	OPEN PUBLIC MEETINGS — DEFINITIONS.
74-203	GOVERNING BODIES — REQUIREMENT FOR OPEN PUBLIC MEETINGS.
74-204	NOTICE OF MEETINGS — AGENDAS.
74-205	WRITTEN MINUTES OF MEETINGS.
74-206	EXECUTIVE SESSIONS — WHEN AUTHORIZED.
74-206A	NEGOTIATIONS IN OPEN SESSION.
74-207	OPEN LEGISLATIVE MEETINGS REQUIRED.
74-208	VIOLATIONS.

How current is this law?
[Search the Idaho Statutes and Constitution](#)

Your Desk Reference

Idaho Open Meeting Law Manual

<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>



Office of the
Attorney General

Idaho Open Meeting Law Manual

Idaho Code §§ 74-201 through 74-208



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Legislative Intent

“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 the policy of this state that the formation of public policy is public business and shall not be conducted in secret (§74-201).”



Governing Body

- Two (2) or more members with authority to make decisions ([§74-202\(5\)](#))
- County governing bodies:
 - Board of county commissioners
 - Planning and zoning commission
 - Fair board
 - Any committee, subcommittee, or study group created by the county



Remember!

- All county advisory boards, committees, and commissions are subject to Idaho's Open Meeting Law, Public Records Act, Ethics in Government Act
- All county advisory boards, committees, and commissions need to be staffed by the county and trained to comply with applicable laws



Meeting Roles and Responsibilities

- Chairman of the board presides
- A quorum of board members is required to conduct business
- Clerk of the board (or clerk's designee) prepares and publishes the agenda, takes minutes, disseminates information, and records the meeting if required
- County staff and elected officials may be required to attend and provide updates, reports, or answer questions


Public Meeting

- The convening of a governing body of a public agency (the board of county commissioners) to make a decision or deliberate toward a decision ([§74-202\(6\)](#))
- Types of public meetings:
 - Regular meetings
 - Special meetings
 - Emergency meetings
 - Executive sessions

Location of Public Meetings

- A governing body shall not hold a meeting in any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced ([§74-203\(4\)](#))
- Meetings may be held telephonically or virtually as long as someone from the county is on site a there is a system allowing all governing board members to participate and the public to listen/view the meeting ([§74-203\(5\)](#))


The Meeting Agenda (§74-204)



KOOTENAI COUNTY
BOARD OF COMMISSIONERS

Agenda

Business Meeting
November 08, 2022
2:00 PM
451 N. Government Way, Administration Building, Meeting Room 1A/B

- A. Call to Order
- B. Moment of Silence
- C. Pledge of Allegiance
- D. **Changes to the Agenda (Action)**
Idaho Law prohibits Board action on items brought under this section except in an emergency circumstance. Comments related to future public hearings should be held for that public hearing.
- E. **Approve Meeting Minutes (Action)** 
 - 1. 10/25/2022 Business Meeting Minutes
 - 2. 10/25/2022 Parks & Waterways Minutes
 - 3. 10/26/2022 Resource Management Office Minutes
 - 4. 10/27/2022 Deliberations and Updates / CUP22-0004 Ingle; PUD22-0001 Gozzer Ranch PUD / Community Development Minutes
 - 5. 11/03/2022 Community Development Deliberations and Updates Minutes
- F. **Approve Consent Calendar (Action)**
 - 6. Assessor Allow Homeowner Exemption

Kootenai County does not discriminate against individuals or groups on the basis of disability in the admission access to, or treatment in, its public meetings, programs, or activities. Requests for assistance or accommodations can be arranged by contacting the Board of County Commissioners Office at (208) 446-1600.

An Agenda Is ...

- A good faith effort to include all probable items to be discussed/decided at the meeting
- Written for those not familiar with county government
- Does not have acronyms
- Your promise to the public

Consent Agendas

- Can be a helpful tool
- Generally used for routine items
 - Approval of minutes
 - Approval of claims
- Should not be used to “hide” important action items
- Must be agreed upon by all governing board members

An Agenda Is Not ...

- A list of categories (i.e.: old business, new business, adjourn)
- A list of presenters
- A request for actions hidden in “reports”

Types of Public Meetings

Regular Meeting

- The convening of the governing body of a public agency on a date fixed by law or rule, to conduct the business of the agency ([§74-202\(6\)\(a\)](#))

Regular Meeting Checklist

Before the Meeting

- Regular meeting date adopted by ordinance
- Agenda posted 48 hours prior to meeting
 - Physical posting
 - Online online posting
- Agenda amendments made prior to meeting

During the Meeting

- Quorum present
- Necessary staff present
- Agenda amendments made according to Idaho Open Meeting Law

After the Meeting

- Draft minutes available to public
- Draft minutes reviewed by BOCC
- Minutes approved by BOCC
- Approved minutes available to public

Special Meeting

- The convening of a governing body of a public agency pursuant to a special call for the conduct of business as specified in the call ([§74-202\(6\)\(b\)](#))
- Essentially, meetings not held on regularly scheduled meeting date.

Special Meeting Checklist

Before the Meeting

- 24 hour meeting notice
- Agenda posted 24 hours prior to meeting
 - Physical posting
 - Online online posting
- Agenda amendments made prior to meeting
- Notify Press

During the Meeting

- Quorum present
- Necessary staff present
- Agenda amendments made according to Idaho Open Meeting Law

After the Meeting

- Draft minutes available to public
- Draft minutes reviewed by BOCC
- Minutes approved by BOCC
- Approved minutes available to public

Emergency Meeting

- Meeting to address injury or damage to persons or property or immediate financial loss [*or likelihood*]
- Notice is impractical or increase severity of situation
- Must state the reason for the emergency at outset of meeting



Executive Session

- Any meeting or part of a meeting of a governing body that is closed to any persons for deliberation on certain matters ([§74-202\(3\)](#))

Executive Session Checklist

- Notice must state reason for executive session
- 48 hour notice if at regular meeting
- 24 hour notice if at special meeting
- $\frac{2}{3}$ roll call vote to enter executive session
- Motion states reason for executive session (including code section)
- Stay on topic
- Final decision made in open session

Who Attends and Executive Session

- All governing board members
- Anyone invited by the governing board
- Though not required, as a matter of practice, it is helpful to have legal counsel sit in with the board

Permitted Reasons for an Executive Session ([§74-206](#))

- Personnel selection, evaluation, discipline, or termination
- Acquire interest in real property
- Consider records exempt from disclosure
- Discuss litigation with your attorney
- Consider claims or potential claims with the county risk manager or insurer

More on Agendas and Minutes



Amending a Meeting Agenda

- The agenda is your promise you won't discuss items not on the agenda
- Only "good faith" agenda amendments are permitted after an agenda is posted
- Action items can only be added to an agenda if the item constitutes an emergency

Agenda Amendments

- If agenda must be amended and it is 48/24 hours before a meeting, simply repost the amended agenda
- If agenda must be amended less than 48/24 hours, but before the meeting starts, post the agenda ASAP
 - In meeting, move to amend agenda and include good faith reason why item wasn't included in initial agenda

Meeting Minutes ([§74-205](#))

- Written minutes shall be made and kept of all public meetings and be made available to the public within a reasonable timeframe.
- Meeting minutes must include:
 - The names of the governing body members present
 - All motions, resolutions, order, or ordinances and their disposition
 - The results of all votes, and upon request of a governing board member, the vote of each member by name

Meeting Minutes – Practical Suggestions

- Meeting minutes reflect what was decided at a meeting (not what you wish happened)
- Minutes should be an expanded version of the agenda (if its not on the agenda, it shouldn't be in the minutes)
- Minutes should not be editorialized
- Minutes create the history of your county (make them clear for future BOCCs)
- Minutes shouldn't be a transcript unless required

Meeting Minutes and Executive Sessions

- Minutes of executive sessions must include:
 - Reference to specific statutory subsection; and
 - Sufficient detail to identify purpose and topic, but not enough detail to compromise the purpose of the executive session

Approving Meeting Minutes

- Approval of board minutes should be on the agenda
 - Ok to use consent agendas
- Draft minutes should be made available to the public as soon as possible
- BOCC should review minutes to ensure the minutes accurately reflect BOCC actions
- Anything not in the minutes DID NOT happened

Public Hearings & Decision Making



Purpose of Public Hearing

- Required by law for specific purposes:
 - Approval of county budget
 - Board of equalization
 - Planning & zoning
 - Vacating a public right of way
- The public has the right to provide testimony during the hearing, provided the testimony is:
 - Within the time allowed
 - On topic
 - Within the hearing procedures established by the BOCC

Know the Difference Between a Public Hearing and a Public Meeting

- A public meeting is a spectator sport
 - The public may watch, but only participates if invited
- A public hearing is a participatory sport
 - The public can watch AND participate



Know Your Purpose

Legislative

- Open process
- Examples:
 - County ordinances
 - County resolutions
 - County budget
 - Fee increases
 - Administrative decisions

Quasi Judicial

- The process matters
- BOCC acts as “judges”
- Specific hearing and meeting recording procedures
- Examples:
 - Board of equalization
 - Planning and zoning

Know Your Responsibilities

Legislative

- You can:
 - Talk with the public
 - Research the issue from outside sources
- You can't:
 - Talk with fellow board members
- No legal requirement to explain decisions

Quasi Judicial

- You can:
 - Consult with prosecuting attorney
- You can't:
 - Talk to the public
 - Research the issue using outside sources
- Decisions must be reasoned and explained

Public Hearings

- Occur at a public meeting
- May be conducted by a hearing officer
- Final decisions are not made in the public hearing (the public hearing is closed)
- Final decisions are made in the public meeting

You Get to Set the Ground Rules

- The formation of public policy is the public's business, but ...
 - You can adopt bylaws, rules and policies ([§31-820](#))
 - You can place limits on length of comments
 - You can place limits on topics

Adopting Rules of Order

- The BOCC may “make and enforce such rules and regulations for the government of their body, the preservation of order and the transaction of business as may be necessary” ([§31-820](#))
- County may adopt Robert’s Rules of Order, Mason’s Rules of Order, other rules of order, or adopt your own rules.
- Do you really need rules?
- <https://www.utah.gov/pmn/files/817637.pdf>

Sample Meeting Rules

1. Each speaker during the public comment period will be limited to five minutes.
2. The board of county commissioners may not hear or take testimony regarding a planning and zoning matter that is before the county or is known to likely be before the county.
3. Issues regarding the performance of county employees constitute matters that must be discussed only in executive session and are not appropriate in the public portion of the meeting.
4. Matters that have been previously heard and decided by the board of county commissioners may be ruled out of order for the public comment period.

Other Examples

- Establish clear ground rules and empower board chair to enforce them
- Give one person the floor at a time (don't speak over others or allow others to speak over you)
- Speak up when the conversation veers off the agenda or into difficult matters
- Acknowledge strong feelings and then redirect to the agenda item
- If one person dominates the discussion, call on others to participate
 - "Thank you for your input Sally, would it be ok if we hear from Jill and Susan before we hear from you?"

Public Hearing Procedures

- Those invited to testify should be informed of the process
- Communicate what factors will shape decision
- Follow through in mailed notice (for land use/zoning decisions)
- Follow through again at public hearing (poster)
- And again with decision aids for commission
- And finally address criteria in final written decision

Planning & Zoning Hearing Procedures

- All favorable evidence first – applicant, staff, sign-up sheet messages, supporters and neutrals (present evidence)
- Contrary evidence by opponents (present evidence and rebut supporters)
- Rebuttal by applicant (only the applicant)
- Written decision is required (findings of fact and conclusions of law based on your county ordinance)
- Possibility of appeal – procedures now detailed

Planning & Zoning Decision Standards

- Criteria for consideration need to be in your ordinance
- Applicant for permit should know what target at which to shoot
- Do public hearings assist you to reach a sound decision?
- Is it more of a “check the box” exercise?
- How can you foster understanding – or at least avoid misunderstanding?

Criteria for Planning & Zoning Decisions

- Increased attention to specific decision standards
- Legislature enacted changes to I.C. §67-6535 to place special emphasis on decision criteria
- Review your ordinances to evaluate criteria – would you want your efforts judged by them?

Planning & Zoning Decisions

- Decision must be in writing
- Appeal procedure has been changed (revisions to I.C. §67-6535)
 - Must give effective notice of decision
 - Trying to keep decisions in the hands of the officials who make them
 - Avoid judicial appeals just to harass and delay
- Judges don't work with land use cases very frequently – decision needs to be clear and rational

Know the Role of the Chairman

- The BOCC chairman:
 - Conducts meetings (and hearings)
 - Has the right to discuss, debate, and vote
 - Controls public comment (if/when allowed)
 - Encourages board member participation
 - Keeps the discussion on the agenda
 - Prohibits personal attacks (on the board, on county officials, on members of the public)

Keys to Chairing an Effective Meeting

- Be respectful
- Be purposeful
- Set and understand expectations
 - Fellow board members
 - County elected officials
 - County employees
 - The public

Be Respectful

- Establish clear ground rules and empower board chair to enforce them
- Give one person the floor at a time (don't speak over others or allow others to speak over you)
- Speak up when the conversation veers off the agenda or into difficult matters
- Acknowledge strong feelings and then redirect to the agenda item
- If one person dominates the discussion, call on others to participate
 - "Thank you for your input Sally, would it be ok if we hear from Jill and Susan before we hear from you?"

Know the Roles of Board Members

- Discusses, debates, and votes on issues
- Follows board rules of procedure and conduct
- Respects other board members, county officials, and the public
- May make suggestions for items to be placed on future agendas

Managing Conduct at Meetings

- Explain the ground rules to the public at the onset of the meeting
 - Is it a public meeting or a public hearing?
- Arrange the meeting room so it is conducive to the meeting and supports meeting/hearing rules and procedures
- What happens when the debate or testimony gets heated?
 - Use your gavel
 - Take a break/recess
 - Invite the sheriff or one of his/her deputies to attend

Quorums and Voting

- Two or more county commissioners constitute a quorum
- A quorum is necessary for the board to conduct business
- All decisions (votes) must be made in open session
- Votes are generally by voice vote unless otherwise provided for in law (i.e.: a vote to enter executive session requires a roll call vote) or a voice vote is requested by a board member
- Voting may not occur by secret ballot ([§74-203\(1\)](#))

Motions

- Motions should be clear, succinct, and reflect intended action of the BOCC
- Avoid motions like “so moved”

Decision Making

- A valid decision is:
 - Made at a posted board meeting with a quorum present
 - On the agenda and listed as an “action item”
 - Made by a motion
 - Voted of by the BOCC
 - Recorded in the official meeting minutes

Decision Making

- A valid decision is not:
 - “Polling” the board
 - Gathering signatures
 - Made at an improperly posted agenda
 - Made without a quorum present
 - Made without being listed on the agenda as an “action item”
 - Made following deliberations that occurred outside of the public meeting/hearing

Open Meeting Law Violations



Open Meeting Law Violations

- Types of violations:
 - Inadequate notice
 - Decisions made on topics not on the agenda
 - Decisions made on topics improperly added to the agenda
 - Decisions arising from deliberations occurring outside of a public meeting
 - Failure to disclose a conflict of interest

Open Meeting Law Violations ([§74-208](#))

- Failure to comply with render board action null and void
- Any board member participating in an illegal meeting may be subject to civil penalties:
 - \$250
 - \$1,500 for “knowingly” participating in an illegal meeting
 - \$2,500 for multiple “knowing” violations within 12 months

Curing Open Meeting Law Violation ([§74-208](#))

- A public agency may “cure” an open meeting law violation by first acknowledging that a violation occurred and redoing any action undertaken as part of an open meeting law violation
- “Curing” a violation vacates any potential civil penalties
- The curing process must happen within 14 days of a violation
- A cure protects you from civil penalties