

# OPEN MEETING BEST PRACTICES

## CHAPTER 2, TITLE 74, IDAHO CODE

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# Key Definitions

Public Agency means

... any county, city, school district, special district, or other municipal corporation or political subdivision,

Or . . . Subagency created by or pursuant to:

[1]statute,

[2]ordinance, or

[3]other legislative act (Resolution?)

# Key Definitions

## Governing Body

Members of *any public agency* which consists of two (2) or more members with the authority to make *decisions for or recommendations to* a public agency regarding any matter.

# Key Definitions

## Decision

Any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, **at any meeting at which a quorum is present.**

# Key Definitions

## Decision – Discussion

Any two commissioners are always a quorum and two commissioners are required to bind the County.

Who can make “decisions” in county government?

# Key Definitions

## Exception

[a decision does] not include ministerial or administrative actions necessary to carry out decisions previously adopted in a meeting held in compliance with this chapter.

No case law guidance, except lawsuits, discussed below.

# Key Definitions

## Deliberation

The *receipt or exchange of information or opinion relating to a decision.*

# Key Definitions

## Deliberation

[deliberation does] not include informal or impromptu discussions of a general nature.

No case law guidance on this exception.

# Key Definitions

## Meeting

Convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.

Discussion: serial meetings

# General Rule

All meetings of a governing body of a public agency shall be open to the public.

Compare open meetings with public hearings.

An open meeting does not necessarily require public testimony unless it is also a public hearing.

# Other Rules

A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

Discussion: Out of courthouse/admin building meetings

# Other Rules

All meetings may be conducted using telecommunications devices.

One member of the board must be present where the agenda said the meeting would be conducted.

# Notice of Meetings

Regular Meetings - No less than a five (5) calendar day meeting **notice** and a forty-eight (48) hour **agenda** notice shall be given, unless otherwise provided by statute.

Notice must be posted in a prominent place at the principle office of the agency.

Examples: P&Z, Advisory Boards, Commissioners

# Notice of Meetings

Regular Meetings - A governing board that meets at least once a month may give notice of the time, place and date of regular meetings at least once a year.

Discussion: Codified meeting times?

A fixed time, place and date for regular meetings is provided for in Bonner County Code and is continuously available on the Bonner County Website.

# Notice of Meetings

Special Meetings - Shall not be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists.



# Notice of Meetings

Executive sessions - A twenty-four (24) hour meeting and agenda notice shall be given if an executive session **only** will be held. Notice must state reason and specific provision of law authorizing the executive session.

# Agendas

An agenda is required for each meeting.

- Posted same as meeting notice (Most agencies combine them).

Must include all probable items of discussion – *by implication* may only deliberate and decide matters on the agenda. *See also* – enforcement.

# Agendas

An agenda is required for each meeting.

- Filing lawsuits – *City of McCall v. Buxton*, 146 Idaho 656 (2009).
- Work sessions – *State ex rel. Roark v. City of Hailey*, 102 Idaho 511 (1981).

# Agendas

## Amendments of the Agenda

- Prior to 48 hours before the meeting (24 for a special meeting) may amend and repost.
- Within 48 hours before the meeting (24 for special meetings) motion **and** vote required at beginning of the meeting to approve the change.

# Agendas

- Amendments to the agenda made **during** the meeting require a vote **and** must state the reason the matter could not have been added to the agenda before the meeting.

# Minutes

The governing body of a public agency shall provide for the taking of **written** minutes of all its meetings, and all minutes shall be available to the public.

Writings don't include recordings – *State v. Yzaguirre*, 144 Idaho 471 (2007).

Compare with Public Records Act

# Minutes Shall Include

At a minimum:

- All members of the governing body present at the meeting;
- All motions, resolutions, orders, or ordinances proposed and their disposition; and
- The results of all votes.

Remember - some open meetings may also be public hearings which have additional requirements.

# Minutes - Executive Sessions

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 Sessions – Idaho Code Sec. 74-206(1)...

Must be by motion identifying the proper code section;

By roll call; and

With a 2/3 majority in favor.

The governing board may not switch topics in executive session – come out and revote to go back into executive session based on the proper topic.

Better practice is to post the proper sections on the agenda if known.

# Executive Sessions – Idaho Code Sec. 74-206(1)...

- a) “To consider hiring...an individual...wherein the respective qualities of individuals are to be evaluated...” does not include filling a vacancy in an elected office or general staffing needs.
- b) “To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student”.

# Executive Sessions

- c) “To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is **not owned** by a public agency”.

Discussion: Can sales of county property ever be discussed in an executive session?

- d) To consider records that are exempt from disclosure in Chapter 1, Title 74, Idaho Code.

# Executive Sessions

- f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for *pending litigation*, or controversies not yet being litigated but *imminently likely* to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.

Discussion: Risk of or the potential that litigation might arise.

# Executive Sessions

- i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presences of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

# Executive Sessions

The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

# Executive Sessions

No executive session may be held for the purpose of taking any final action or making any final decision.

# Why Should You and Your Clients Care?

Members of our Commissions, Committees and Boards may be Penalized Personally.

You may be called upon to provide advice upon which their personal fate may depend.

We must enforce in our county, except for clients, which goes to a special prosecutor.

# Violations

If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of this chapter, such action shall be null and void.

P&Z decisions

Ordinance approvals

Contract signatures

Recommendations.



# Violations

Any member of a governing board who conducts or participates in a meeting that violates these provisions will be subject to a personal civil penalty.

- 1st “innocent” violation - up to \$250
- “knowingly” violations – up to \$1,500
- 2nd “knowing” violation within 12 months – up to \$2,500

# Violations

The Attorney General shall have the duty to enforce this act in relation to public agencies of state government.

Prosecuting Attorney enforces for all local jurisdictions in his or her county.

Includes commissioners, which requires retention of a special prosecutor.

# Violations

Any person affected by a violation of the provisions of this act may commence a civil action to void the action within 30 days.

Standing? – Rural Kootenai Org., Inc. v. Board of Comm'rs, 133 Idaho 833 (1999).

Is the Prosecutor an “affected person”?

# Taking the “Cure”

A violation may be cured by a public agency upon:

- The agency’s self-recognition of a violation; or
- Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice.

# Curing Violations

- Upon notice, the governing body has fourteen (14) days to respond publicly and either acknowledge the violation and state an intent to cure or state that it has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

# Curing Violations

Following the public agency's acknowledgment of a violation, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

# Curing Violations

All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

State of Idaho  
Office of the Attorney General  
Open Meeting Law Checklist

***Regular Meetings***

Meeting Date and Time: \_\_\_\_\_

Meeting Location: \_\_\_\_\_

\_\_\_\_\_  
[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- ☐ Meeting Notice posted **5 or more** calendar days prior to the meeting date.  
[Idaho Code § 67-2343(1)]
- ☐ Agenda Notice posted **at least 48 hours** prior to the meeting. [Idaho Code § 67-2343(1)]
- ☐ Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- ☐ First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- ☐ Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Meeting

- ☐ Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

State of Idaho  
Office of the Attorney General  
Open Meeting Law Checklist

***Special Meetings***

Meeting Date and Time: \_\_\_\_\_

Meeting Location: \_\_\_\_\_

\_\_\_\_\_  
[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- ☐ Meeting and Agenda Notice posted **at least 24 hours** prior to the meeting.  
[Idaho Code § 67-2343(2)]
- ☐ Notification provided to the news media. [Idaho Code § 67-2343(2)]
- ☐ Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- ☐ First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- ☐ Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Meeting

- ☐ Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

State of Idaho  
Office of the Attorney General  
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***Executive Sessions***

Session Date and Time: \_\_\_\_\_

Session Location: \_\_\_\_\_

\_\_\_\_\_  
[Idaho Code § 67-2342(4) and (5)]

Executive Session Only - Before Session

- ☐ Meeting and Agenda Notice posted **at least 24 hours** prior to the session.  
[Idaho Code § 67-2343(3)]
- ☐ Posting of Amended Agenda [Idaho Code § 67-2343(4)]

Executive Session During Regular or Special Meeting

- ☐ Motion to enter Executive Session to discuss one of exemptions listed in Idaho Code § 67-2345 and  $\frac{2}{3}$  vote to enter Executive Session reflected in regular/special meeting minutes.  
[Idaho Code § 67-2345(1)]

During Session

- ☐ First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- ☐ Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Session

- ☐ Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session. [Idaho Code § 67-2344(2)]
- ☐ Minutes available to the public within a reasonable time after the meeting.  
[Idaho Code § 67-2344(1)]

QUESTIONS?