

THE IDAHO OPEN MEETING LAW



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THE LAW

“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 (Section 74-201, Idaho Code).”



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QUICK LINKS

The Idaho Open Meeting Law:

<https://legislature.idaho.gov/wp-content/uploads/statutesrules/idstat/Title74/T74CH2.pdf>



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TITLE 74
TRANSPARENT AND ETHICAL GOVERNMENT

CHAPTER 2
OPEN MEETINGS LAW

74-201. FORMATION OF PUBLIC POLICY AT OPEN MEETINGS. The people of the state of Idaho in creating the institutions 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, added 2015, ch. 140, sec. 5, p. 358.]

74-202. OPEN PUBLIC MEETINGS -- DEFINITIONS. [EFFECTIVE UNTIL JULY 1, 2023, AS USED IN THIS CHAPTER.]

(1) "Meeting" means any deliberative 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, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with this chapter.

(2) "Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature that do not specifically relate to a matter that pending before the public agency for decision.

(3) "Executive session" means any meeting or part of a meeting of a governing body that is closed to any persons for deliberation on certain matters.

(4) "Public agency" means:

- (a) Any state board, committee, council, commission, department, authority, educational institution or other state agency created by or pursuant to statute or executive order of the governor, other than courts and their agencies and divisions, and the judicial council, and the judicial magistrates commission;
- (b) Any regional board, commission, department or authority created by or pursuant to statute;
- (c) Any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho;
- (d) Any subagency of a public agency created by or pursuant to statute or executive order of the governor, ordinance, or other legislative act; and
- (e) Notwithstanding the language of this subsection, the cybersecurity task force or a committee meeting the Idaho model of accountability shall not constitute a public agency.

(5) "Quorum" means the members of any public agency that constitute two (2) or more members, with the authority to make decisions or to recommend to a public agency regarding any matter.

(6) "Vote" means the covering of a governing body of a public agency to make a decision or to deliberate towards a decision on any matter.

(7) "Public meeting" means the covering of a governing body of a public agency, on the date fixed by law or rule, to conduct the business of the agency.

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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OPEN MEETINGS 101: WHAT'S A MEETING?



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WHO IS THE GOVERNING BOARD?

- The board of county commissioners
- But also ...
 - Boards appointed by the board of county commissioners
 - County committees
 - County subcommittee
 - Study groups
 - Etc.



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PUBLIC MEETINGS

- The convening of a governing body of a public agency (i.e.: the board of county commissioners) to make a decision or deliberate toward a decision on any matter.
- Types of meetings:
 - Regular meeting
 - Special meeting (including emergency meetings)
 - Executive session



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MEETING TOPIC AREAS

- Executive (administrative decision making)
- Legislative (setting laws)
- Quasi-Judicial (appealable decisions, i.e.: land use)



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REGULAR MEETING VS SPECIAL MEETING

- A regular meeting is the fixed date on which a governing board meets.
- A special meeting is a meeting on a date other than the date fixed by the governing board pursuant to a special call to conduct the business specified in the call.



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WHAT IS AN EXECUTIVE SESSION?

- Idaho law grants governing boards the ability to exclude public from a meeting for an allowed purpose.
- Allowed purposes include (to be narrowly construed):
 - Personnel matters
 - Acquire an interest in real property
 - Consider records exempt from disclosure
 - Communication with legal counsel
 - Negotiations involving matters of trade or commerce
 - Communicate with the public agency's risk manager
 - Certain labor contract matters
- No final act or decisions made



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OPEN MEETINGS 101: MEETING NOTICES, LOCATIONS, AGENDAS, AND MINUTES



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LOCATION OF PUBLIC MEETINGS

“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” (Section 74-203(4), Idaho Code).



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WHAT ABOUT TELE-MEETINGS

- Authorized in Section 74-203(5), Idaho Code
- One person must be present at site where meeting is advertised.
- System must be set up so that all board members can participate and the public can listen



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NOTICE OF REGULAR BOCC MEETINGS

- Regular Meetings:
 - Set by ordinance or posted 5 calendar days in advance of meeting
 - Notice must be physically posted in a prominent place
 - Notice must also be posted to county website or social media page
 - 48 hour agenda notice



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NOTICE OF SPECIAL MEETINGS

- **24 Hour meeting and agenda notice (unless emergency exists)**
- **Emergencies include injury or damage to persons or property or immediate financial loss (or the likelihood of injury, damage, or loss).**
- **Reason for emergency must be stated at the onset of the meeting.**



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NOTICE OF EXECUTIVE SESSIONS

- **If only an executive session will be held, a 24 hour meeting and agenda notice is required.**
- **Notice must state the reason and the specific provisions of law authorizing the executive session.**



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MEETING AGENDAS

- Meeting agendas are required for each meeting.
- The agenda must be posted 48 hours in advance along with the meeting notice.
- Meeting agendas must be posted to your county website (or social media page) if your county maintains a website.
- Action items must be designated on the agenda as “action item.”



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AMENDING MEETING AGENDAS

- Only “good faith” amendments are allowed after agenda has been posted.
- Action items can only be added if the item is considered an emergency.



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MEETING 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.



MINUTES – PRACTICAL SUGGESTIONS

- Reflect what was decided at a meeting – (not what you wish had happened.)
- Minutes should be an expanded version of the agenda – Not on the agenda? Not a decision!
- Minutes are creating the history of the county, make the history clear to those who follow.
- Need not be a transcript – usually.
- What needs to be attached? Referenced?



MINUTES – EXECUTIVE SESSION

- 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.



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MEETING ROLES – STAFF

- Prepare and disseminate information
- Take minutes
- Record the meeting (if desired)
- Answer questions
- May provide regular reports (department heads)



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OPEN MEETINGS 101: EXECUTIVE SESSION



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EXECUTIVE SESSION RULES

- May occur during regular or special meetings
- Require approval of 2/3 of the governing board by roll call vote
- Vote must be recorded in the minutes
- Both the motion to go into executive session and the meeting minutes must state the specific statutory authorization for the executive session
 - i.e.: “I move to enter executive session pursuant to Section 74-206(a), Idaho Code, to consider hiring a public officer, employee, staff member, or individual agent.”
- Final action/decision must be made in public session



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WHO ATTENDS AN EXECUTIVE SESSION?

- All governing board members attend.
- Anyone invited by the governing board members can attend.
- Witnesses may be invited to come and go as needed.



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PERMITTED REASONS FOR EXECUTIVE SESSION

- Section 74-206, Idaho Code:
 - 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), or
 - Consider claims or potential claims with risk manager or insurer (f).



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OPEN MEETINGS 101: PUBLIC MEETING VS PUBLIC HEARING



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YOU GET TO SET THE MEETING RULES

- Remember that the formation of public policy is the public's business, but...
 - You can place time limits on public comments (i.e.: 5 minutes to speak),
 - You can place limits on who participates (i.e.: those providing testimony cannot give their time to someone else),
 - You can place limits on topics (i.e.: planning and zoning matters, employee performance matters, decisions that have already been made, etc.), and
- You can adopt other reasonable rules of order provided they are in keeping with the Open Meeting Law.



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KNOW YOUR PURPOSE

Legislative (Open Process)

- County Ordinances
- County Budget
- Fee Increases

Quasi Judicial (Process Really Matters)

- Board of Equalization
- Alcohol Licensing
- Planning and Zoning
- Personnel Decisions



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KNOW YOUR RESPONSIBILITIES/LIMITATIONS

Legislative

- You can:
 - Talk with community members
 - Research the issue from outside sources
- You can't:
 - Talk with another commissioners
- No requirement to explain decisions

Quasi Judicial

- You can:
 - Consult with prosecuting attorney
- You can't:
 - Talk with community members
 - Research from outside sources
- Decisions must be reasoned and explained



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PUBLIC MEETING VS PUBLIC HEARING

- A public meeting is a “spectator sport”
 - The public gets to watch (and participate only when invited)
- A public hearing is a “participatory sport”
 - The public gets to provide testimony



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PUBLIC HEARINGS

- Occur at a public meeting
- May be conducted by a hearing officer
- No decisions are made in hearings
- Decisions are made during public meetings



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ROLE OF THE CHAIRMAN

- Conducts the meeting (and hearing),
- Retains right to discuss and vote,
- Controls public input, and
- Keeps the discussion to the agenda item:
 - Prohibits personal attacks and
 - Prohibits discussion of issues not before the board.



QUORUMS AND VOTING

- Two county commissioners constitute a quorum.
- All decisions must be made in open session, generally by voice vote.
- Some actions require individual votes to be cast and recorded in the meeting minutes:
 - Motion to enter executive session
 - When a governing board member requests a roll call vote
- “No decision at a meeting of a governing board of a public agency shall be made by secret ballot.” (Section 74-203(1), Idaho Code)
- Motions need to be succinct, clear, and comprehensive.
 - Avoid stating “So moved”



DECISION MAKING

- A valid decision is:
 - Made at a posted meeting with quorum present
 - On the agenda as “action item”
 - Motion made and affirmative vote
 - In the minutes
- A decision is not:
 - “Polling the board”
 - Gathering signatures
 - Made without an agenda topic



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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



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PUBLIC HEARING PROCEDURES (P&Z)

- 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



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DECISION STANDARDS (P&Z)

- 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?



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CRITERIA FOR DECISIONS - WHY? (P&Z)

- Increased attention to specific decision standards
- Legislature enacted changes to I.C. §67-6535 to place special emphasis on decision criteria
- Responding to “don’t like your project” response
- Trying to get the standards in ordinance
- Review your ordinances to evaluate criteria - would you want your efforts judged by them?



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FOLLOW UP TO DECISIONS (P&Z)

- Decision must be in writing - getting to writing isn’t easy - working with multiple people on board/commission
- 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



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OPEN MEETINGS 101: VIOLATIONS



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VIOLATIONS

- Failure to comply with Idaho Open Meeting Law will render the board action null and void.
- Any board member who participates in a meeting that violates the Open Meeting Law will be subject to civil penalties:
 - \$250
 - \$1,500 for “knowingly” participating
 - \$2,500 for multiple violations within 12 months
 - Penalties are paid by board members, not the county



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CURING OPEN MEETING LAW VIOLATIONS

- A public agency must first acknowledge a violation of the Open Meeting law has occurred.
- Any actions undertaken as part of a violation must be done over again in accordance with the Open Meeting Law.
- Curing a violation vacates any potential civil penalties.



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QUESTIONS



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