

Transparent & Ethical City Government

Types of Council Meetings

Regular Meetings: Regularly scheduled meetings of Council, commission, or board

Meeting Notice: regular meeting day, time, and place, posted at City Hall, and on city website and/or social media (if city has website and/or social media)

Agenda: Posted at least 48 hours before meeting at City Hall, and on website and/or social media (if city has these)

Special Meetings: Held to deal with time-sensitive issues and can be called by the Mayor or a majority of the full Council

Meeting Notice and Agenda: Posted at least 24 hours before meeting at City Hall, and on city website and/or social media (if city has these)

Emergency Meeting: Under special circumstances, emergency meetings can be held – see Idaho Code 74-204



Open Meetings

By law, all decisions made by the Council, or city boards, commissions and committees must be made in a meeting in accordance with Idaho's Open Meetings Law. The Open Meetings Law also covers when, how, and where a meeting notice and agenda must be posted, what can be done in executive session, and more.

Preparing for Council Meetings

Good preparation and a well-organized agenda along with using a form of parliamentary procedure goes a long way toward promoting decorum, keeping meetings productive, and keeping the proceedings legal. Only putting items on the agenda that should be there and adding start and end times can help to regulate the length of meetings/discussions.

A Quorum of the Council is Required to Conduct Business:

- ▶ Majority of full Council—participating in person or remotely— is required to transact business
- ▶ Mayor is not counted toward the quorum
- ▶ If Council President or another Councilor is presiding in the Mayor's absence, they are counted toward the quorum

Meeting Procedures

Cities can adopt formalized rules by ordinance or create their own rules for conducting meetings. Whatever system is adopted should ensure the rights of citizens to participate and should not conflict with federal or state laws.

Some Helpful Agenda Tips:

- Follow Open Meetings Law
- Identify action items
- Set by Mayor with input from Councilors and city department heads
- Amending the agenda -- if the change is after posting deadline, Council must approve a motion to amend the agenda stating the good faith reason why the item was not on original agenda. No action can be taken on an item added to the agenda after the start of the meeting unless Council passes a motion declaring an emergency with justification in minutes.

Debate should be encouraged. If any one voice consistently dominates the discussion and decisions, the Council may make decisions that do not represent the will of the citizens.

A consent agenda or consent calendar can be used on the Council agenda to handle multiple routine, noncontroversial items like approving minutes and payables, by approving a single motion. Any Councilor can ask questions about these items or request to remove a specific item from the list so it can be considered on its own.

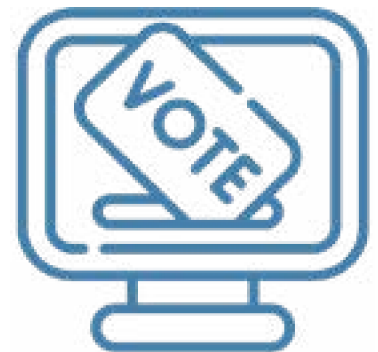
Public participation should be encouraged, but the Council and Mayor should:

- Control the meeting
- Insist on decorum
- Possibly limit time so that all interested parties can be heard – particularly on controversial issues
- Sincerely listen to the public to learn and understand
- Be thoughtful and respectful in reactions to criticism
- Recess to restore order if a meeting gets out of hand
- Not allow personal attacks



Voting

- Most issues may be decided by voice vote
- Councilors should declare a conflict if one exists, and speak with legal counsel to determine the best course of action
- Certain actions require each Councilor’s vote be cast individually and recorded individually in the minutes:
 - Passing ordinances
 - When requested by a member
 - Approving contracts, and
 - Motions to go into executive session



Executive Session

Certain topics authorized by Idaho law may be discussed in closed executive session. The discussion must stick to the topic(s) specified in the motion to enter executive session and no other topics can be discussed. Executive session can be held:

- To hire a public officer, employee, staff member, etc.
- To evaluate, dismiss or hear complaints or charges about a public officer, employee, staff member, or individual agent
- To acquire real property not owned by a public agency
- To consider records exempt from public disclosure
- To consider negotiations regarding trade or commerce where the city is in competition with other states or nations
- To communicate with legal counsel on pending litigation
- To communicate with risk managers or insurance providers regarding claims
- To consider labor contract matters

The motion to go into executive session must:

- Be decided by roll call vote recorded in the minutes by individual vote
- Pass by two-thirds vote
- State the specific subsection(s) of Idaho Code 74-206(1) that authorizes the executive session in the minutes and motion

Penalty for Violating Open Meeting Law

Any action occurring at a meeting held in violation of the Open Meetings Law is void. The following fines are paid personally by members of the governing body.

- A \$250 civil fine each for an initial violation.
- A \$1,500 civil fine each for a knowing violation.
- A \$2,500 civil fine each for repeated knowing violations within 12 months.

Undergoing the cure process below protects members of the governing body from the \$250 civil fine, but it does not protect them from liability for knowing violations.



Most Common Open Meeting Law Violations:

- ▶ Late posting of notice / agenda
- ▶ Discussing a topic not on the agenda or voting on an item not marked as an action item
- ▶ Improperly adding a topic to the meeting agenda
- ▶ Communication between governing board members outside of public meeting – for example replying to all on emails
- ▶ Discussing a topic in executive session that must be discussed in public meeting



Council Meeting Minutes

- ▶ The City Clerk ensures accurate minutes are taken of Council meetings that are available to public within reasonable time after the meeting
- ▶ City Council must approve the minutes, noting any changes

Minutes Best Practices

- ▶ Reflect what was decided at a meeting
- ▶ Minutes should be an expanded version of the agenda, but follow the flow of the meeting, so if the agenda is reorganized, minutes should capture the order things happened in
- ▶ Minutes provide a valuable record documenting decisions for succeeding generations
- ▶ Should not be a verbatim transcript — just a summary



How to Fix a Violation

In the case of a citizen complaint, the city has 14 days to respond and either acknowledge the violation on the record at a Council meeting and express the city's desire to cure it, or state that no violation occurred, and no cure is necessary.

The city may also recognize on its own that a violation has occurred and within 14 days, the Council must acknowledge on the record at a meeting that the law was violated.

Then, Council must declare the action(s) taken at the meeting void and may thereafter proceed to readopt the decision(s) in compliance with the Open Meetings Law.

Minutes Must Contain:

- ▶ The date, time, and place of the meeting, and whether it is a regular or special meeting
- ▶ The names of the Mayor and Councilors in attendance
- ▶ A record of each motion, the person making the motion, the person seconding the motion, and the vote
- ▶ All resolutions and ordinances proposed
- ▶ Upon request by a single governing board member, the roll call vote on the motion. Roll call vote is also required for motions to approve ordinances, enter executive session, and approve contracts

Executive sessions are excluded from the minutes, except the motion to enter executive session with the statutory authorization, and the time the governing board entered executive session and the time the session ended.

Meeting Roles and Responsibilities

Mayor

- Works with Councilors and department heads to set Council meeting agenda
- Presides over Council meetings — in the Mayor's absence the Council President presides
- Mayor may break tie votes of Council in certain situations, but breaking ties is the only time when the Mayor may vote on a motion

Council

- Read packets to prepare for meeting
- Suggest items for Council agenda
- May approve amendments to the agenda for items that were unforeseen when original agenda posted
- Make decisions by passing motions—usually only required to pass by majority of those present and voting, but sometimes requires majority of full Council (a majority is three Councilors for a four-member Council or four Councilors for a six-member Council)

City Clerk

- Posting the notice and agenda
- Preparing and distributing packets
- Taking minutes and posting in a timely fashion after the meeting

Attorney

- Ensures proper Open Meeting proceedings for example, proper reasons to enter executive session or to add agenda items



Ethical Considerations

Contracting:

Elected officials cannot:

- Be paid to work for the city over and above their salary as an elected official
- Have an interest in a contract let to the city
- Sell goods or services to the city
- Purchase surplus property

Bribery & Corruption:

Idaho law prohibits bribery, threats, and improper influence by elected officials, which includes:

- Compensation or retaliation for past actions
- Buying or selling political endorsement
- Using city funds or property for financial benefit
- Using or disclosing confidential information for economic gain



Gifts:

Gifts to city elected officials and staff are prohibited, with the following exceptions:

- Fees that a public servant is legally entitled to receive
- Gifts from family, friends, or business acquaintances
- Trivial gifts under \$50 in value

Idaho Ethics in Government

Elected officials are given the public's trust to use their tax dollars wisely and act on their behalf. The public's confidence in government is only as strong as the integrity displayed by government officials. Public votes as well as private acts of elected officials are scrutinized. Idaho has several laws to enforce ethics in public leadership, but even if officials are always following the law, sometimes an action won't pass "the smell test" or look good on the front page of your local paper. Questions of ethics are often complicated because in addition to the letter of the law, there is also the court of public opinion. Sometimes just the perception of a conflict can damage the public's trust as much as an actual violation.

Most written communication (including emails and texts concerning city government) can be public information and could become part of a court case, so always use caution. If you don't want to see it in the paper, don't write it down. When you do write it down, remember that more than just the person you intended to receive it might eventually read it.

What is a Conflict of Interest?

The law prohibits city officials—elected, appointed, and staff—from taking any official action or making a formal decision or recommendation on any matter where the official has a conflict of interest and has failed to disclose the conflict of interest. Conflict of interest is defined as an action, decision or recommendation by a city official which would financially benefit the city official, a member of their household, or a business with which the city official or a member of their household is associated.



The law provides an exception for situations where the benefit arises from an action that affects the city official in the same way as others engaged in a particular industry or occupation. There is also no conflict of interest on revenue or tax measures when the city official is affected similarly to the public.

The city official should seek advice from the city attorney to determine if a conflict of interest exists. If the city attorney advises that no real or potential conflict of interest exists, the public official may proceed to act and is not subject to the provisions of the Ethics in Government Act.

If the city attorney advises that a real or potential conflict of interest exists, then the official must disclose the conflict as follows:

- ▶ An elected city official must disclose the nature of the conflict on the record at a Council meeting before the Council acts on the matter and is subject to any city rules governing conflicts of interest.
- ▶ An appointed or employed city official must prepare a written statement to the Mayor and Council describing the matter and the nature of the conflict. The city official is entitled to act on the legal advice of the city attorney.

The law requires recusal in matters involving planning and zoning and urban renewal. A city official (elected, appointed or staff) with a conflict of interest must recuse themselves from participating in deliberations and the decision. In other areas, when the city's ethics policy or state law does not expressly require recusal, the city official has the discretion to decide whether to participate in deliberations and the decision.

The Local Land Use Planning Act prohibits a member of the city Council, a planning and zoning commissioner, or a city employee from participating in any proceeding or action if the person, their employer, business partner or associate, or any person related by blood or marriage within the second degree has an economic interest in the proceeding or action. Any actual or potential conflict must be disclosed at or before the meeting at which the action is to be heard. Knowing violation is a misdemeanor.

Likewise, Idaho law also prohibits any city elected officials, city or urban renewal agency employees, or urban renewal commissioners from voluntarily acquiring any interest in any urban renewal project or property to be included in an urban renewal project, or any contract associated with an urban renewal project. A conflict of interest must be disclosed in writing to the agency and reflected in the urban renewal agency meeting minutes, and the person must recuse themselves from the matter. A violation of the urban renewal conflict of interest prohibition constitutes misconduct in office.

What restrictions apply to gifts received by city officials?

Idaho law prohibits public officials—elected, appointed and staff—from soliciting or accepting any compensation or gift from any person subject to city regulation, inspection, or investigation; from any person known to be interested in or likely to be interested in any contract or purchase; or from any person known to be interested in any administrative matter. There is an exception for trivial gifts and benefits which do not exceed \$50 in value, which are incidental to personal, professional, or business contacts.

Ethical Pitfalls

Over the years, many people have gotten themselves into hot water by misusing some of the following:

- Travel privileges, agency vehicles, agency gas cards and agency credit cards
- Using letterhead, email, phone, fax, computers for personal or political uses
- Using the elected position for personal financial gain or to garner special privileges

Avoiding the Pitfalls

- Follow Idaho's Ethics in Government Act, Idaho Public Records and Open Meeting Laws
- Identify and consult with legal counsel on conflicts of interest
- Always strive for the appearance of fairness
- Spend public funds properly

I May Have a Conflict, What Should I Do?

- Seek advice from your city attorney

Liability Protection for Local Government Officials and Employees

One of the worries that newly elected officials frequently have is that they could be sued because of their public service and potentially face crippling personal losses as a result. Fortunately, Idaho law provides protection for city elected and appointed officials, and staff, if they “stay in their lane” in terms of carrying out their responsibilities.

The Idaho Tort Claims Act allows local governments to be sued for civil damages to the extent that private persons would be liable under Idaho law. Claims may be filed against local governments, elected and appointed officials, employees, and volunteers.

The city is obliged to provide a defense for city officials and indemnify them against claims when the person is acting within the course and scope of their position or employment. Officials will only be personally liable if acting outside of the course and scope, which includes things like sexual misconduct, criminal intent or malice.



Can a Mayor or Councilor be paid for goods or services aside from their compensation as an elected official?

No. It is illegal for the city to pay for goods or services (bookkeeping, purchasing equipment, running the snowplow, etc.) aside from their compensation as an elected official. Violation is a misdemeanor punishable by a fine of up to \$1,000 and one year in jail.



Is it true that relatives of Mayors and Councilors cannot be selected to work for the city?

Yes. Idaho law prohibits any person related to a Mayor or Councilor by blood or marriage within the second degree (parents, children, siblings, grandparents, aunts / uncles, cousins, nieces / nephews, and grandchildren) from being hired, appointed, or selected for any paid work for the city. Violation is a misdemeanor punishable by a fine of up to \$1,000 and one year in jail and potential forfeiture of office.

If a relative of a current employee is elected Mayor or Councilor does this jeopardize the person’s employment with the city?

No. An employee who holds their position prior to their relative’s election is entitled to retain their position and receive cost of living increases, merit increases, and promotions.

Examples of Ethical Breaches

- ▶ Harassment
- ▶ Public records release without authority
- ▶ Destroying or removing public records without authority
- ▶ Open meeting violations
- ▶ Failure to follow bid/public works statutes
- ▶ Inappropriate relationships with employees /co-workers
- ▶ Failure to disclose and step down when necessary in conflict situations
- ▶ Misuse of public funds – embezzlement and other less obvious issues (like use of public gas cards/purchasing cards for personal purchases and overstating expenses – for example claiming meals on a work trip that were provided)
- ▶ Threats and Improper Influence – for example threats of unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter.