



Idaho Open Meetings Law Manual

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INTRODUCTION

The purpose of meetings is to provide a forum open to the public for the city council and city boards, commissions and committees to meet and deliberate on issues relating to city governance. These governing bodies derive their authority from acting collectively: no individual member has authority to make decisions that bind the governing body or the city.

Open meetings of the city council and city boards, commissions and committees increase the public's confidence in government by allowing them to see the deliberations and decision making of these governing bodies. Open meetings also promote accountability on the part of local officials by ensuring that their decisions are made in the light of day.

The Idaho Open Meetings Law sets forth basic requirements concerning public accessibility of meetings, advance posting of the meeting notice and agenda, and drafting of meeting minutes. Aside from the legal considerations, meetings represent an important opportunity to inform and engage the public, which is an important consideration for city elected officials.

This manual was updated in July 2018 to reflect an important bill passed during the 2018 Idaho Legislature: House Bill 611, which requires that:

- Meeting notices and agendas must be posted electronically if the government entity has a website or social media presence, in addition to physical posting at the office of the government entity;
- Action items must be identified as such on the meeting agenda, but designating an agenda item as an action item does not require the governing board to take action on that item; and
- Final action cannot be taken on an agenda item added to the agenda after the start of the meeting unless in an emergency situation with a declaration and justification recorded in the minutes.

UNDERSTANDING MEETING BASICS

Meetings Open to the Public: The Idaho Open Meetings Law requires that “all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting, except as otherwise provided by this act.”¹

The sole exception to the requirement for open meetings involves executive sessions, where the public may be excluded from portions of a meeting that deal with sensitive topics that must be

¹ Idaho Code 74-203(1).

discussed confidentially to protect a person’s right to privacy, allow the governing board to communicate with its legal counsel concerning pending litigation, etc.²

Meeting Location: The Open Meetings Law prohibits holding of meetings at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.³

What is a Public Agency for the Purposes of the Open Meetings Law? The Open Meetings Law applies to public agencies, which are defined as:

- “(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the district 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 which is created by or pursuant to statute, ordinance, or other legislative act.”⁴

The Open Meetings Law applies not only to the city council, but also to city boards, commissions and committees created by city ordinance or resolution (e.g. planning and zoning commission, public works commission, library board, airport commission, historic preservation commission, parks and recreation commission, etc.). The law also applies to independent entities such as housing authorities and urban renewal agencies. All these entities are required to post notice and agendas for upcoming meetings, as well as draft minutes of their meetings.

What is a Governing Body for the Purposes of the Open Meetings Law? The Open Meetings Law defines a governing body as “the 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.”⁵ For the purposes of the Open Meetings Law, the term governing body includes the city council and city boards, commissions, and committees (e.g. urban renewal agency board, planning and zoning commission, parks and recreation commission, housing authority board, *ad hoc* sign ordinance committee, etc.).

What is a Meeting for the Purposes of the Open Meetings Law? The requirements of the Open Meetings Law, which include posted notice and agenda, and meeting minutes, come into play when a quorum of the council or a city board, commission or committee meets for the purpose of deliberating and/or making decisions on issues related to city government.⁶

² Idaho Code 74-206.

³ Idaho Code 74-203(4).

⁴ Idaho Code 74-202(4).

⁵ Idaho Code 74-202(5).

⁶ Idaho Code 74-202(6); 74-202(1) & (2).

Questions often arise as to whether workshops, work sessions, study sessions or public input sessions constitute meetings under the Open Meetings Law. Make no mistake: regardless of what the meeting is called, if a quorum is present to discuss issues relating to city government, the city must comply with the requirements of the Open Meetings Law.

Advance Posting of Meeting Notice & Agenda: The Open Meetings Law requires that notice of an upcoming meeting and an agenda must be physically posted in a prominent place at the principal office of the city or if the city does not have an office it is posted at the place where the meeting will be held, as well as electronically posted on the city’s website or social media account if the city has an online presence (see sections on regular and special meetings below for more information). Meeting notice must include the name of the city; the governing body calling the meeting; and the date, time and place of the meeting. The agenda must include a brief summary of each issue to be discussed.

Understanding Posting Versus Publishing: The term “posting” is often confused with “publishing.” Posting is tacking up a paper notice or agenda on the bulletin board at city hall or electronically on the city’s website or social media account. Publishing is printing a legal notice in the city’s official newspaper. In addition to posting of meeting notice and agenda there are certain issues that require published legal notice, generally in the context of public hearings (for more information on budget, land use and other state law publication and hearing requirements see the *AIC Public Notification Manual*).

Assembling the Agenda: It is the city clerk’s responsibility to assemble the agenda for council meetings, collecting suggestions from the mayor, councilors, and city staff. Idaho law provides that the mayor presides at council meetings and determines the order of business “subject to such rules as the council may prescribe...”⁷

It is important to remember these are *council* meetings: councilors should be able to request items be included on the agenda, with the exception of frivolous and/or unnecessarily repetitive requests. Such requests should be explained in writing, meeting standards established by the council. No councilor should be allowed to say “I want to be on the agenda. I’ll tell you what it’s about when we meet.” Setting the agenda is a shared responsibility and takes cooperation between the mayor and councilors.

The agenda must include the following.

- The name of the city.
- The name of the governing body that is convening the meeting.
- The date, time and place (street address) of the meeting.

⁷ Idaho Code 50-602.

- All issues that are expected to be discussed summarized in sufficient detail to allow a citizen to understand what will be discussed and make an informed decision as to whether to attend the meeting.
- If an executive session will be held, the authorization under Idaho Code 74-206(1) for holding the executive session.
- All agenda items that need a decision must be clearly marked as action items.⁸ See the example below:

Resolution 2018-36: A Resolution Supporting Enhanced State Transportation Funding for Local Highway Jurisdictions. **ACTION ITEM.**

When drafting the agenda it is important to avoid using acronyms, jargon and other language that is impossible for the general public to understand. Agenda descriptions such as New Business, Old Business and Public Works Director’s Report do not provide sufficient detail for citizens to understand what will be discussed.

Quorum: The quorum required for the transaction of business at a regular or special council meeting is a majority of the members of the full council.⁹ It is important to note that ***council vacancies do not reduce the number required for a quorum.***¹⁰ The mayor is not counted for quorum purposes. If the council president or another councilor is chairing the meeting they are counted for quorum purposes. Non-participation of a councilor by reason of conflict of interest does not disqualify the councilor for quorum purposes.

Presiding Officer: The mayor presides over city council meetings.¹¹ In the mayor’s absence, the council president presides over the meeting. If both the mayor and council president are absent, the council may designate one of the members in attendance as temporary chair (some cities select a council vice president or president pro tempore to serve as the backup if the council president is unavailable). When the council president or another councilor presides over the meeting, they retain their rights and responsibilities as a councilor: they can vote as a councilor and are counted for quorum purposes (but cannot break tie votes of the council, which is reserved exclusively for the mayor).

Duties of the Clerk: The city clerk is required by law to keep a journal of proceedings of the council.¹² The journal consists of the city council minutes, as well as ordinances and resolutions passed by the council.

⁸ If the city uses a consent agenda or consent calendar to approve a number of routine items in one motion, the agenda description should note that all of the following items are action items (each consent agenda item does not have to be listed as an action item individually since they normally handled as a single action).

⁹ Idaho Code 50-705.

¹⁰ McQuillin, Eugene. *The Law of Municipal Corporations*. Volume 4, 3rd Edition Revised, Clark Boardman Callaghan, 2001, p. 818. “In determining the legal quorum of a municipal governing body, ordinarily the whole membership of the body is to be counted. Where vacancies occur, the whole number entitled to membership must be counted and not merely the remaining members.”

¹¹ Idaho Code 50-602.

¹² Idaho Code 50-207.

Participation by Speakerphone: Councilors and members of other governing bodies may participate in meetings remotely by speakerphone or video conferencing, as long as the person(s) participating remotely can clearly hear those in attendance at the meeting and those in attendance can clearly hear the person(s) participating remotely.¹³ Those participating by speakerphone or video conference are counted for quorum purposes and can vote just as if they were physically present at the meeting. The mayor, city administrator/city manager, or a member of the governing body must be present in person at the meeting location to ensure the meeting is open to members of the public.

Who Gets to Speak? The public has the right to attend meetings with the exception of lawful executive sessions, but opportunities for the public to speak are generally limited to designated public comment periods and to public hearings. Public comment periods are not legally required.

Many cities provide a public comment period on the agenda of regular council meetings. While this provides an important opportunity to hear from the public, there should also be reasonable sideboards: issues must be relevant to city government, no repetitive or abusive comments, complaints about city staff must be made to the mayor outside of a meeting, time is limited to 3-5 minutes per speaker, and any issue requiring council action must be put on the agenda of a future council meeting.

No person has the right to disrupt a meeting; the presiding officer can order the removal of any person who disrupts a meeting. Declaring a temporary recess can be an effective way to establish order.

REGULAR MEETINGS

Meeting Day, Time & Location: Regular council meetings “shall be held each month at such place and times as the council may establish by ordinance.”¹⁴ For example, the City of Post Falls’ ordinance provides:

“The city council shall meet regularly on the first and third Tuesday of each month at six o'clock (6:00) P.M. at city hall.”

For city boards, commissions and committees, the regular meeting day, time and location may be set by resolution or motion of the board/commission/committee.

Meeting Notice: A city can satisfy the meeting notice requirement for regular meetings in one of two ways.¹⁵

¹³ Idaho Code 74-203(5).

¹⁴ Idaho Code 50-705.

¹⁵ Idaho Code 74-204(1).

- Notice may be posted at least five calendar days before the meeting in a prominent place at the city’s principal office, or if the city has no principal office at the place where the meeting will be held, as well as on the city’s website or social media account (if the city has an online presence). For example:

The City Council of the City of Iona will hold a regular meeting in the Council Chambers of Iona City Hall, 3548 North Main on Tuesday, July 21, 2015 at 6:30 p.m. City Hall and the Council Chambers are accessible for persons with disabilities. Any person needing special accommodations to participate in the meeting should contact the City Clerk, Julie Hammond, at least 24 hours prior to the meeting. The city clerk’s phone number is 523-5600.

- The regular meeting day(s) may be posted in a prominent place at the city’s principal office, or if the city has no principal office at the place where the meeting will be held, as well as on the city’s website or social media account (if the city has an online presence). For example:

The City Council of the City of Iona holds regular meetings in the Council Chambers of Iona City Hall, 3548 North Main on the third Tuesday of each month at 6:30 p.m. City Hall and the Council Chambers are accessible for persons with disabilities. Any person needing special accommodations to participate in the meeting should contact the City Clerk, Julie Hammond, at least 24 hours prior to the meeting. The city clerk’s phone number is 523-5600.

Agenda: The agenda for a regular meeting must be posted at least 48 hours prior to the meeting in a prominent place at the city’s principal office, or if the city has no principal office, at the place where the meeting will be held, as well as on the city’s website or social media account (if the city has an online presence).¹⁶

All agenda items that need a decision must be clearly identified as action items on the agenda.¹⁷ Identifying an agenda item as an action item does not require the governing board to vote on the item at that meeting.

The agenda may be amended to add unanticipated issues arising after the original agenda is posted, but a good faith effort must be made to ensure the original agenda includes all issues that will likely be discussed.¹⁸ The revised agenda must be posted as soon as possible, if the change is made prior to the meeting. If the change is made less than 48 hours before a regular meeting, or at the meeting, the governing body must pass a motion to amend the agenda stating the purpose and the good faith reason why the item was not listed on the original agenda. Final action may not be taken on an agenda item added after the start of a meeting unless there is an emergency situation that is reflected in the motion to add the item to the agenda and the minutes. Amending the agenda should be used sparingly and only when the issue can’t wait until the next meeting. It is important to note that the process for amending the agenda only applies to items

¹⁶ Idaho Code 74-204(1).

¹⁷ Idaho Code 74-204(4).

¹⁸ Idaho Code 74-204(4).

added to the agenda—items can be removed from the agenda as determined appropriate by the governing board.

SPECIAL MEETINGS

Meeting Day, Time & Location: Special council meetings are held on dates and times other than prescribed by city ordinance for regular council meetings. Special meetings of city boards, commissions and committees are held on dates and times other than the regularly scheduled meetings.

Business Specified in Written Call: Special meetings are held for the conduct of business specified in a written meeting call, to deal with certain issues that generally need to be resolved before the next regular meeting, or when a regular meeting is rescheduled due to a holiday, lack of quorum, etc. There is no restriction in state law on the number of items that can be on the agenda for a special meeting.

Method of Call: Special council meetings must be initiated by one of two methods:

- ✓ **Call by the Mayor:** The mayor may call a special council meeting.¹⁹
- ✓ **Call by the Council:** A majority of the full council may call a special meeting.²⁰

The bylaws or policies governing city boards, commissions and committees establish the method for calling special meetings.

Written Notice to Council: Regardless of whether the special council meeting is called by the mayor or the council, the councilors must be notified of the date, time, place and issue(s) to be considered at the special meeting in writing, and the written meeting notice and the disposition of the issues must be entered in the council minutes.²¹

Meeting Notice & Agenda: Meeting notice and agenda for special meetings must be posted at least 24 hours prior to the meeting (except in emergencies, see below) in a prominent place at the city's principal office, or if the city has no principal office at the place where the meeting will be held, as well as on the city's website or social media account (if the city has an online presence).²² The city clerk or other city staff are required to maintain a list of news media requesting notice of meetings and must make a good faith effort to provide advance notice of the time and place of each special meeting.

¹⁹ Idaho Code 50-604.

²⁰ Idaho Code 50-706.

²¹ Idaho Code 50-604; 50-706.

²² Idaho Code 74-204(2).

All agenda items that need a decision must be clearly identified as action items on the agenda.²³ Identifying an agenda item as an action item does not require the governing board to vote on the item at that meeting.

The agenda for a special meeting may be amended to accommodate unanticipated issues arising after the original agenda is posted, but a good faith effort must be made to ensure the original agenda includes all issues that will likely be discussed.²⁴ The revised agenda must be posted as soon as possible, if the change is made prior to the meeting. If the change is made less than 24 hours before a special meeting or at the meeting, the governing body must pass a motion to amend the agenda stating the purpose and the good faith reason why the item was not listed on the original agenda. Final action may not be taken on an agenda item added after the start of a meeting unless there is an emergency situation that is reflected in the motion to add the item to the agenda and the minutes. Amending the agenda should be used sparingly and only when the issue can't wait until the next meeting. It is important to note that the process for amending the agenda only applies to items added to the agenda—items can be removed from the agenda as determined appropriate by the governing board.

Emergency Meetings: The Open Meetings Law provides that “No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists.”²⁵ In the case of emergency meetings, the city must post notice and the agenda as soon as possible and the city clerk must make a good faith effort to notify members of the news media who have requested notification of meetings. The law defines an emergency as “a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting.”

VOTING

Who Gets to Vote? Councilors have the right to vote on issues. The mayor does not vote except in the case of breaking tie votes of the council.²⁶ Rules on voting by members of city boards, commissions and committees can be found in the bylaws and other city policies governing these bodies.

Methods of Voting: Two methods of voting may be used in meetings. In a voice vote, the presiding officer asks all those in favor of the motion to say “aye,” and all those opposed to say “no.” Voice voting is often the default method of voting, unless a roll call vote is requested by a member of the governing body, or required by state law or local policy. The disposition of a voice vote is recorded in the minutes (i.e. motion carried or motion failed) along with any members who wish to have their vote recorded in the minutes.

²³ Idaho Code 74-204(4).

²⁴ Idaho Code 74-204(4).

²⁵ Idaho Code 74-204(2).

²⁶ Idaho Code 50-602.

In a roll call vote, the clerk announces the name of each member of the governing body, who replies by saying “aye” or “no” on the motion. The disposition of the roll call vote is recorded in the minutes (i.e. motion carried or motion failed) *with the vote of each member listed separately*. The Open Meetings Law provides that a roll call vote may be requested by a single member of the governing body.²⁷ Other provisions of Idaho law require a roll call vote for specific issues, including:

- ✓ The motion to go into executive session.²⁸
- ✓ Approving ordinances.²⁹
- ✓ Approving contracts.³⁰

Some city councils have a policy to have all matters decided by roll call vote, which is more convenient than having to remember all the specific items for which a roll call vote is required and effectively prevents accidentally voting by the wrong method.

*It is important to note that the Open Meetings Law expressly prohibits voting by secret ballot.*³¹

Threshold for Approval: Most issues can be decided by a majority of the councilors voting.³² However, some issues specifically require majority vote of the full council or a supermajority vote at another threshold (two-thirds or three-fourths of the council). A majority of the full city council requires three votes to pass the motion for a four-member council, or four votes to pass the motion for a six-member council.

The following actions require supermajority approval by the council.

Majority of the Full Council

- Adopting a franchise ordinance.³³ This action requires a majority of the full city council.
- Confirming the mayor’s nomination for an appointed office, such as the city clerk, treasurer, attorney or other appointed positions established by local policy.³⁴ This action requires a majority of the full city council.
- Confirming the mayor’s removal of an appointed officer, such as the city clerk, treasurer, attorney or other appointed positions established by local policy.³⁵ This action requires a majority of the full city council.

²⁷ Idaho Code 74-205(1)(c).

²⁸ Idaho Code 74-206(1).

²⁹ Idaho Code 50-902.

³⁰ Idaho Code 50-902.

³¹ Idaho Code 74-203(1).

³² Idaho Code 50-705.

³³ Idaho Code 50-329.

³⁴ Idaho Code 50-205.

³⁵ Idaho Code 50-206.

- Adopting an ordinance providing for leasing of mineral rights.³⁶ This action requires a majority of the full city council.
- Overriding the mayor's veto of an ordinance.³⁷ This action requires a majority of the full city council.
- Calling special meetings of the city council.³⁸ This action requires a majority of the full city council.
- Calling a special election on adopting the council-manager form of government.³⁹ This action requires a majority of the full city council.
- Dispensing with the requirement for ordinances to be read on three separate days and once in full.⁴⁰ This action requires a majority of the full city council.
- Declaring an emergency caused by casualty, accident or act of nature after the appropriation ordinance for the year has been approved and authorizing short-term borrowing to pay for the costs of repairs or improvements.⁴¹ This action requires a majority of the full city council.
- Authorizing the use of portions of public parks, playgrounds or other grounds for athletic contests, golf links, agricultural exhibits, ball parks, fairs, rodeos, swimming pools and other amusements, and for military units of the state of Idaho or the United States, and making and entering contracts with the appropriate organizations and associations.⁴² This action requires a majority of the full city council.
- Initiation of a local improvement district by council resolution.⁴³ This action requires a majority of the full city council.
- Creation of a local improvement district when the owners of more than two-thirds of the property to be assessed have protested.⁴⁴ This action requires a majority of the full city council.
- Sale of property deeded to the city as a result of unpaid local improvement district assessments.⁴⁵ This action requires a majority of the full city council.

³⁶ Idaho Code 50-234.

³⁷ Idaho Code 50-611.

³⁸ Idaho Code 50-706.

³⁹ Idaho Code 50-802.

⁴⁰ Idaho Code 50-902.

⁴¹ Idaho Code 50-1006.

⁴² Idaho Code 50-1409.

⁴³ Idaho Code 50-1706.

⁴⁴ Idaho Code 50-1709.

⁴⁵ Idaho Code 50-1751.

Two-Thirds of the Council

- Approving a motion to go into executive session.⁴⁶ This action requires two-thirds vote of the city council.
- Council override of the term limits provision limiting planning and zoning commissioners to no more than two full, consecutive terms.⁴⁷ This action requires two-thirds vote of the city council.

Three-Fourths of the Full Council

- Passing an ordinance providing for disposition of excess revenues in a Local Improvement Guarantee Fund.⁴⁸ This action requires at least three-fourths vote of the full council.

EXECUTIVE SESSIONS

The Open Meetings Law provides that specific topics may be considered in closed executive session at regular or special council meetings.⁴⁹ The motion to go into executive session must be decided by roll call vote recorded in the minutes by individual vote, and the motion must be approved by two-thirds vote to pass. The motion must state the specific subsection(s) of Idaho Code 74-206(1) that authorize(s) the executive session.

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;
- (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;
- (c) To acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

⁴⁶ Idaho Code 74-206.

⁴⁷ Idaho Code 67-6504(a)(3).

⁴⁸ Idaho Code 50-1769.

⁴⁹ Idaho Code 74-206.

(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;

Subsections (g) and (h) apply to the Commission of Pardons & Parole and the Custody Review Board of the Idaho Department of Juvenile Corrections and are not relevant for cities.

(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 presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code.

Who Can Attend Executive Sessions? The mayor and council have discretion to determine what persons need to attend the executive session and can summon and excuse these individuals as necessary. The city clerk does not need to attend the executive session unless requested by the council. A mayor or councilor with a declared conflict of interest can be excluded from an executive session meeting.

Minutes: Minutes are not kept in executive session, but the minutes of the council meeting must reflect: the motion to go into executive session citing the specific subsection(s) of Idaho Code 74-206(1) authorizing the executive session; the roll call vote on the motion with every councilor's vote recorded individually; and the time when the council entered executive session and the time when the executive session ended. If notes do need to be taken, they should be taken by your city attorney so they are protected by attorney-client privilege and are not public record.

Prohibited Conduct: No executive session may be held for the purpose of taking any final action or making any final decision.⁵⁰ Changing the subject within executive session to one not identified in the motion to enter or to any topic for which executive sessions are not allowed constitutes a violation of the Open Meetings Law.⁵¹

Open Collective Bargaining Legislation: Prior to July 1, 2015, the Open Meetings Law permitted labor negotiations to be conducted in executive session if either side requested closed meetings. Because of the passage of House Bill 167 by the 2015 Idaho Legislature, all negotiations between a governing body (or its designated representatives) and a labor organization (or its designated representatives) must occur in meetings open to the public

⁵⁰ Idaho Code 74-206(3)

⁵¹ Idaho Code 74-206(2)

preceded by notice.⁵² Open meetings are also required for any meetings with any labor negotiation arbitrators, mediators or other facilitators.

The city council (or its designated representatives) may hold an executive session to consider labor contract offers or formulate counteroffers, as well as receive information about a specific employee, when the information has a direct bearing on the issues being negotiated and a reasonable person would conclude that the release of the information would violate the employee's right to privacy.

All documentation exchanged between the parties during negotiations, including offers, counteroffers, and meeting minutes is public record. The city must post notice of the negotiation sessions "at the earliest possible time practicable" by immediately putting the notice on the front page of the city's website and, if time permits, posting notice within 24 hours on the bulletin board at city hall. If public testimony will be allowed at the meeting, it must be posted as an agenda item.

Unless the Legislature acts to remove the sunset clause, the provisions of HB 167 are set to expire on July 1, 2020.

MINUTES

The city clerk is responsible for ensuring that accurate minutes are taken of every meeting of the city council, although the city clerk is not required to personally prepare the minutes.⁵³ Minutes must also be prepared for meetings of city boards, commissions and committees. The council or governing body should approve the minutes by motion, noting any desired changes. After approval, the minutes should be signed by the city clerk or the person responsible for taking minutes for a city board, commission or committee.

What Must be Included in Minutes? The Open Meetings Law provides that minutes must be "available to the public within a reasonable time after the meeting" and must include, at a minimum, the following information.⁵⁴

- ✓ The date, time and place of the meeting;
- ✓ The members of the governing body in attendance;
- ✓ All motions, resolutions, orders, or ordinances proposed and their disposition; and
- ✓ The results of all votes, and upon the request of a member, the vote of each member by name.

⁵² Idaho Code 74-206A.

⁵³ Idaho Code 50-207.

⁵⁴ Idaho Code 74-205.

Executive Session: Minutes are not taken in executive session, but the meeting minutes must include the following information.⁵⁵

- The motion to enter executive session with the specific subsection(s) of Idaho Code 74-206(1) authorizing the executive session.
- The roll call vote on the motion to enter executive session, with each councilor's vote listed individually.
- The time the council entered executive session and the time the council reconvened in public session.
- The minutes must not include information that would compromise the purpose of going into executive session.

What Level of Detail is Required for Minutes? The level of detail in the minutes involves tradeoffs and is an issue that each governing body must decide. More detail provides a more useful account of the meeting for future generations, but takes more time and effort to produce. The minutes should be a summary and do not have to reflect what a person says word for word. A recording or verbatim transcript of the meeting is not required; however, cities are required to have audio recordings of public hearings, deliberation and decisions on site-specific land use issues that are retained for at least six months after the final decision.⁵⁶

PENALTIES FOR VIOLATION & CURE PROCESS

The most significant penalty for violating the Open Meetings Law is that any action, or any deliberation or decision making that leads to an action, that occurs at a meeting held in violation of the Open Meetings Law is void.⁵⁷

The law also sets forth fines for members of the governing body for violating the Open Meetings Law. These fines are paid personally by the members of the governing body, not the city.

- A \$250 civil fine for a member of the governing body who conducts or participates in a meeting that violates the Open Meetings Law.⁵⁸
- A \$1,500 civil fine for knowing violation of the Open Meetings Law.⁵⁹
- A \$2,500 civil fine for repeated knowing violations of the Open Meetings Law within 12 months.⁶⁰

⁵⁵ Idaho Code 74-205(2).

⁵⁶ Idaho Code 67-6536.

⁵⁷ Idaho Code 74-208(1).

⁵⁸ Idaho Code 74-208(2).

⁵⁹ Idaho Code 74-208(3).

- Undergoing the cure process (discussed below) protects members of the governing body from the \$250 civil fine.⁶¹

The most significant change resulting from the passage of Senate Bill 1142 by the 2009 Idaho Legislature was the establishment of a process for curing Open Meetings Law violations. For years, AIC and many city attorneys had advised following such a process, but without clear guidance in the statute. The Open Meetings Law allows the governing body to acknowledge the procedural defect and re-do the action in compliance with the law.⁶²

The process begins when a violation is:

- Recognized by the governing body itself, or
- Brought to the attention of the governing body through a written complaint.

If a written complaint is filed, the governing body has 14 days to respond publicly and:

- Acknowledge the violation and state an intent to cure it, or
- Respond that the governing body has determined there is no violation and no cure is necessary.

After acknowledgement that a violation has occurred, the governing body has 14 days to declare the action occurring at or resulting from the unlawful meeting void. The governing body may proceed to reconsider the decision in compliance with the Open Meetings Law.

⁶⁰ Idaho Code 74-208(4).

⁶¹ Idaho Code 74-208(7)(d).

⁶² Idaho Code 74-208(7).

Steps for Entering Executive Session

1. Motion. “I move that the council enter executive session pursuant to Idaho Code 74-206 subsection (1) (*state the subsection(s) below that apply*) and request a roll call vote on the motion.”

- (a) To consider hiring a public officer, employee, staff member or individual agent (does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general).
- (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.
- (c) To acquire an interest in real property which is not owned by a public agency.
- (d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code.
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
- (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.

Subsections (g) and (h) are not relevant for cities.

- (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.
- (j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code.

2. Second. The motion must be seconded (if following rules of order that require a second).

3. Roll Call Vote. The city clerk calls each councilor's name, they vote yes or no on the motion, and each councilor's vote is recorded individually in the minutes.

4. Threshold for Approval. The motion must be approved by two-thirds vote.

5. Prohibited Conduct in Executive Session. The Idaho Open Meetings Law prohibits changing the subject in executive session to any topic not identified in the motion to enter executive session or changing the subject to any topic for which executive sessions are not allowed. Violation is punishable by a \$250 civil fine; a knowing violation is punishable by a \$1,500 civil fine. Fines are paid personally by the city official, not the city.