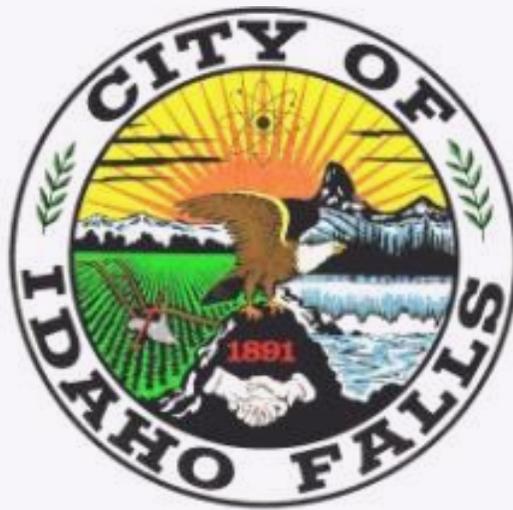


City of Idaho Falls, Idaho Public Service Handbook



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INTRODUCTION

Welcome to City Government. Your presence on the City Council or any of the various boards, commissions and committees is appreciated. Your willingness to serve in these capacities, however, brings with it the responsibility to abide by certain requirements imposed by the law. These requirements are meant to preserve the foundation of open and honest government.

The Mayor and Council strive to sustain and continually improve Idaho Falls' quality of life by maintaining the City's infrastructure and public amenities, promoting a clean and attractive, economically vibrant community, ensuring an efficient and sustainable transportation system, and focusing on the delivery of core City services.

Continued citizen participation is essential to maintain the operations of the City, and to further nurture the community's superior quality of life. Idaho Falls welcomes the participation and contributions of its citizens and community organizations. Good relations with our close community neighbors in Bonneville and adjacent counties, are important to the achievement of community goals.

The Council, with its boards and commissions, is committed to remaining close to its citizens and is responsive to their ideas and changing needs. Members of the Council are elected to provide positive leadership in creating a sense of mission, ensuring consistency of purpose and encouraging an active, cooperative spirit. Idaho Falls' leaders are expected to be open, accessible, flexible, fair, and to demonstrate high levels of integrity. The provision of services required by the community, through effective planning and sound fiscal policies, is the fundamental objective of our City government.

The expectations of the citizens of Idaho Falls govern the standards of staff services for the City, and the staff strives to meet, and often exceed, the high levels of technical, professional, and interpersonal competencies which citizens expect.

The purpose of this Handbook is to introduce you to various laws, procedures and ground rules established by the Idaho legislature and by the City.

Disclaimer: The contents and the advice contained in this Handbook are general and educational, and not intended to cover specific fact situations or substitute for legal advice from the City Attorney or other legal counsel. If you have any specific questions about the contents of this Handbook, or about a specific matter of concern, please contact the City Attorney for information and advice.

I. ETHICS

Because representatives in local government are entrusted with bringing about the will of the people in a democracy, it is of the utmost importance that each public servant acts in a manner that is honest, fair and impartial. For this reason, there are various regulations which govern the behavior of public servants. The Idaho Ethics in Government Act of 1990, and related statutes, are designed to preserve integrity in government and to minimize the possibility of self-dealing by decision makers.

Because the public is not in as good a position to know when there is a real or potential conflict of interest, or when there is a situation which could lead to self-dealing, it is up to the member of a governing body to recognize the potential for economic gain as a result of such membership and to act appropriately. Each member of a governing body should review his or her circumstances, relationships, and business dealings when considering a particular issue and, where appropriate, should determine whether a conflict of interest exists.

If there is no “conflict” as defined by Idaho law, a public servant may participate in all activities related to the issue before the governing board.

If there might be an actual “conflict” as defined by Idaho law, the City Attorney should be consulted for direction regarding how to proceed. In some cases, disclosure of a conflict is appropriate. In other cases, disclosure must be followed by non-participation.

It is important to remember that not all conflicts are actual, legal conflicts. For example, even if an individual could experience a pecuniary value (financial gain) as a result of an official action, decision or recommendation, such is not forbidden if it arises out of the following:

(a) An interest or membership in a business, industry, occupation or class required by law in order to participate in the business, industry, occupation or class (*i.e.*, engineering license, state bar license, union membership, etc.) as a prerequisite to the holding by the person of the office or position;

(b) An action which affects an official in the same degree as other members in the same industry or occupation group of which the member is engaged (*i.e.*, a contractor votes to raise building permit fees);

(c) An official who is a member of a profession, trade or occupation who votes on an issue which would affect that official to the same degree as others in the same profession, trade or occupation (*i.e.*, a contractor votes to limit building heights in certain City zones); or

(d) A public official's action upon a revenue, appropriation measure, or tax measure which affects the general public in a similar manner as it does the official (*i.e.*, a public official votes for a tax increase).

If you would like to review what the Idaho Attorney General has said about ethics in government, please review the Idaho Ethics in Government Manual at the Attorney General's website located at <<http://www.state.id.us/ag/manuals.htm>>.

A careful review of the statutes governing conflicts of interest contained in this handbook is worthwhile. The following checklist should help determine what action should be taken. It is part of the City Attorney's job to answer questions about conflicts and ethics so do not hesitate to ask.

Conflicts Checklist

1. Is there an "economic interest" or relationship?
 - a. In the past
 - b. Currently
2. Is there a "conflict"?
 - a. A legal conflict I.C. § 74-403(4)/I.C. § 67-6506
 - b. An "apparent" conflict
3. If there is a conflict, what type of official has the conflict?
 - a. Salaried/Unsalaried I.C. § 74-404(4) / I.C. § 74-405

- b. Appointed/Employed I.C. § 74-404(5)
- c. Elected I.C. § 74-404(4)
- 4. Can the conflict be cured by disclosure?
- 5. Do I need to talk to the City attorney?

The Idaho Ethics In Government Act

§ 74–401 Short title

This chapter shall be known and may be cited as the “Ethics in Government Act of 2015.”

§ 74–402 Policy and purpose

It is hereby declared that the position of a public official at all levels of government is a public trust and it is in the public interest to:

- (1) Protect the integrity of government throughout the state of Idaho while at the same time facilitating recruitment and retention of personnel needed within government;
- (2) Assure independence, impartiality and honesty of public officials in governmental functions;
- (3) Inform citizens of the existence of personal interests which may present a conflict of interest between an official's public trust and private concerns;
- (4) Prevent public office from being used for personal gain contrary to the public interest;
- (5) Prevent special interests from unduly influencing governmental action;
- and
- (6) Assure that governmental functions and policies reflect, to the maximum extent possible, the public interest.

§ 74–403 Definitions

For purposes of this chapter:

- (1) **“Official action”** means any decision on, or proposal, consideration, enactment, defeat, or making of any rule, regulation, rate-making proceeding or policy action or nonaction by a governmental body or any other policy matter which is within the official jurisdiction of the governmental body.
- (2) **“Business”** means any undertaking operated for economic gain, including, but not limited to, a corporation, partnership, trust, proprietorship, firm, association or joint venture.

- (3) **“Business with which a public official is associated”** means any business of which the public official or member of his household is a director, officer, owner, partner, employee or holder of stock over five thousand dollars (\$5,000) or more at fair market value.
- (4) **“Conflict of interest”** means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated, unless the pecuniary benefit arises out of the following:
- (a) An interest or membership in a particular business, industry, occupation or class required by law as a prerequisite to the holding by the person of the office or position;
 - (b) Any action in the person's official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;
 - (c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;
 - (d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree.
- (5) **“Economic gain”** means increase in pecuniary value from sources other than lawful compensation as a public official.
- (6) **“Governmental entity”** means:
- (a) The state of Idaho and all agencies, commissions and other governmental bodies of the state; and
 - (b) Counties and municipalities of the state of Idaho, all other political subdivisions including, but not limited to, highway districts, planning and zoning commissions or governmental bodies not specifically mentioned in this chapter.
- (7) **“Members of a household”** means the spouse and dependent children of the public official and/or persons whom the public official is legally obligated to support.

(8) **“Person”** means an individual, proprietorship, partnership, association, trust, estate, business trust, group or corporation, whether operated for profit or not, and any other legal entity, or agent or servant thereof, or a governmental entity.

(9) **“Public office”** means any position in which the normal and usual duties are conducted on behalf of a governmental entity.

(10) **“Public official”** means any person holding public office in the following capacity:

(a) As an elected public official meaning any person holding public office of a governmental entity by virtue of an elected process, including persons appointed to a vacant elected office of a governmental entity, excluding members of the judiciary; or

(b) As an elected legislative public official meaning any person holding public office as a legislator; or

(c) As an appointed public official meaning any person holding public office of a governmental entity by virtue of formal appointment as required by law; or

(d) As an employed public official meaning any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultive basis.

§ 74–404 Required action in conflicts

A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion. In order to determine whether a conflict of interest exists relative to any matter within the scope of the official functions of a public official, a public official may seek legal advice from the attorney representing that governmental entity or from the attorney general or from independent counsel. If the legal advice is that no real or potential conflict of interest exists, the public official may proceed and shall not be subject to the prohibitions of this chapter. If the legal advice is that a real or potential conflict may exist, the public official:

(1) If he is an elected legislative public official, he shall disclose the nature of the potential conflict of interest and/or be subject to the rules of the body of which he/she is a member and shall take all action required under such rules prior to acting

on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue.

(2) If he is an elected state public official, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall file such statement with the secretary of state prior to acting on the matter. A public official may seek legal advice from the attorney representing that agency or from the attorney general or from independent counsel. The elected public official may then act on the advice of the agency's attorney, the attorney general or independent counsel.

(3) If he is an appointed or employed state public official, he shall prepare a written statement describing the matter to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney general or from the attorney representing that agency. The public official may then act on the advice of the attorney general, the agency's attorney or independent counsel.

(4) If he is an **elected public official of a county or municipality**, he shall disclose the nature of a potential conflict of interest prior to acting on a matter and shall be subject to the rules of the body of which he/she is a member and take all action required by the rules prior to acting on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue. The public official may obtain an advisory opinion from the attorney general or the attorney for the county or municipality or from independent counsel. The public official may then act on the advice of the attorney general or attorney for the county or municipality or his independent counsel.

(5) If he is an **appointed or employed public official of a county or municipality**, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney for the appointing authority, or, if none, the attorney general. The public official may then act on the advice of the attorney general or attorney for the appointing authority or independent counsel.

(6) Nothing contained herein shall preclude the executive branch of state government or a political subdivision from establishing an ethics board or commission to perform the duties and responsibilities provided for in this

chapter. Any ethics board or commission so established shall have specifically stated powers and duties including the power to:

- (a) Issue advisory opinions upon the request of a public official within its jurisdiction;
- (b) Investigate possible unethical conduct of public officials within its jurisdiction and conduct hearings, issue findings, and make recommendations for disciplinary action to a public official's appointing authority;
- (c) Accept complaints of unethical conduct from the public and take appropriate action.

§ 74–405 Noncompensated public official—Exception

When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18–1361A, Idaho Code.

§ 74–406 Civil penalty

(1) Any public official who intentionally fails to disclose a conflict of interest as provided for in section 74–404, Idaho Code, shall be guilty of a civil offense, the penalty for which may be a fine not to exceed five hundred dollars (\$500), provided that the provisions of this subsection shall not apply to any public official where the governmental entity on which said official serves has put into operation an ethics commission or board described in section 74–404(6), Idaho Code.

(2) The penalty prescribed in subsection (1) of this section does not limit the power of either house of the legislature to discipline its own members, nor limit the power of governmental entities, including occupational or professional licensing bodies, to discipline their members or personnel. A violation of the provisions of this chapter shall not preclude prosecution and conviction for any criminal violation that may have been committed.

Land Use Issues/Planning Commission

§ 67-6506. Conflict of interest prohibited. A governing board creating a planning, zoning, or planning and zoning commission, or joint commission shall provide that the area and interests within its jurisdiction are broadly represented on the commission. **A member or employee of a governing board, commission, or joint**

commission **shall not participate in any proceeding or action** when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an **economic interest in the procedure or action**. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. For purposes of this section the term “participation” means engaging in activities which constitute deliberations pursuant to the Open Meetings Act. No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. A knowing violation of this section shall be a misdemeanor. (Emphasis added).

The definition of “conflict of interest” found in the Idaho Ethics in Government Act (I.C. § 74-403(4)) does not apply directly to this Local Land Use Planning Act (LLUPA) definition, according to *Gooding County v. Wybenga*, 137 Idaho 201 (2002). A conflict in LLUPA matters is defined as an “economic interest” rather than the broader definition in the Ethics in Government Act and I.C. § 67-6506, which specifically sets out what a person may and may not do relative to such a conflict.

If the conflict of interest is not specific to a LLUPA action, the regulations relative to the Ethics in Government Act should be followed. It is highly recommended that a person who thinks that they may have a conflict of interest, speak to the City Attorney well in advance of any participation regarding a matter of potential conflict of interest.

General Laws Governing Ethics

§ 18-1301. Bribery of judicial officers. Every person who gives, or offers to give, a bribe to any judicial officer, juror, referee, arbitrator or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matters or question which is or may be brought before him for decision, is guilty of a felony.

§ 18-1302. Receipt of bribe by officer. Every judicial officer, juror, referee, arbitrator or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives or agrees to receive any bribe, upon any agreement or understanding that his vote, opinion or decision upon any matters or

question which is, or may be, brought before him for decision, shall be influenced thereby, is guilty of a felony.

§ 18-1303. Acceptance of rewards. Every judicial officer who asks, or receives any emolument, gratuity or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

§ 18-1304. Attempt to influence jurors and arbitrators. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause pending, or about to be brought before him, either: 1) By means of any communication, oral or written, had with him, except in the regular course or proceedings; 2) By means of any book, paper or instrument exhibited, otherwise than in the regular course of proceedings; 3) By means of any threat, intimidation, persuasion or entreaty; or, 4) By means of any promise or assurance of any pecuniary or other advantage; is guilty of a felony.

§ 18-1305. Misconduct of jurors and arbitrators. Every juror or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either: 1) Makes any promise or agreement to give a verdict or decision for or against any party; or, 2) Willfully and corruptly permits any communication to be made to him, or receive any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is guilty of a felony.

§ 18-1307. Forfeiture of office on conviction. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office.

§ 18-1308. Offenses relating to bribery. Incriminating testimony may be required. No person shall be excused from testifying or producing documents, at the instance of the state, in any criminal cause or proceeding touching any offense relating to bribery, on the ground that the testimony required of him may incriminate him. But no person shall be prosecuted or punished on account of any transaction, manner or thing concerning which he may be so required to testify or produce evidence: provided, that no person so testifying shall be exempt from prosecution and punishment for perjury in so testifying.

§ 18-1309. Bribery of municipal or county officers -- Penalties. Every person who gives or offers a bribe to any member of any common council, board of county commissioners or board of trustees of any county, city or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before a body of which he is a member and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe and every person who gives or offers a bribe to any sheriff, deputy sheriff, policeman, constable, prosecuting attorney, or other officer charged with the enforcement of the laws of this state to receive or secure immunity from arrest, prosecution or punishment for a violation or contemplated violation of the laws of this state or any such officer who receives or offers to receive any such bribe is punishable by imprisonment in the state prison for a term not less than one (1) nor more than fourteen (14) years.

§ 18-1351. Bribery and corrupt practices -- Definitions. Unless a different meaning plainly is required in this Chapter: (1) “Benefit” means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose. “Benefit” does not include an award with economic significance of five hundred dollars (\$500) or less, given to a nonelected public servant by a nonprofit organization whose membership is limited to public servants as part of a public servant recognition program that is designed to recognize innovation and achievement in the workplace, provided that the organization discloses in advance on its website the nature of the program, the amount of the award, the names of any persons or entities that contributed to the award, and the recipient of the award. (2) “Confidential information” means knowledge gained through a public office, official duty or employment by a governmental entity which is not subject to disclosure to the general public and which, if utilized in financial transactions would provide the user with an advantage over those not having such information or result in harm to the governmental entity from which it was obtained. (3) “Government” includes any branch, subdivision or agency of the government of the state or any locality within it and other political subdivisions including, but not limited to, highway districts, planning and zoning commissions and cemetery districts, and all other governmental districts, commissions or governmental bodies not specifically mentioned in this chapter. (4) “Harm” means loss, disadvantage or injury, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested. (5) “Official

proceeding” means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding. (6) “Party official” means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility. (7) “Pecuniary benefit” is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain. (8) “**Public servant**” means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses. (9) “Administrative proceeding” means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals. (Emphasis added).

§ 18-1352. Bribery in official and political matters. A person is guilty of bribery, a felony, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another: (1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or (2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or (3) Any benefit as consideration for a violation of a known legal duty as public servant or party official. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 18-1353A. Threats against state officials of the executive, legislative or judicial branch or elected officials of a county or city. Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier, any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon any state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the

executive or legislative branch of the state of Idaho, or knowingly and willfully otherwise makes any such threat against a state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the executive or legislative branch of the state of Idaho, or upon any elected official of any county or city, is guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one thousand dollars (\$1,000) and shall be sentenced to not to exceed one (1) year in the county jail. If such threat is made while the defendant exhibits a firearm or other dangerous or deadly weapon, the defendant shall be guilty of a felony. Upon a second or subsequent conviction of an offense under this section, the defendant shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

§ 18-1354. Compensation for past official behavior. A person commits a misdemeanor if he solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits a misdemeanor if he offers, confers or agrees to confer, compensation, acceptance of which is prohibited by this section.

§ 18-1355. Retaliation for past official action. A person commits a misdemeanor if he harms another by any unlawful acts in retaliation for anything lawfully done by the latter in the capacity of public servant.

§ 18-1356. Gifts to public servants by persons subject to their jurisdiction. (1) Regulatory and law enforcement officials. No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated. (2) Officials concerned with government contracts and pecuniary transactions. No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction. (3) Judicial and administrative officials.

No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated. (4) Legislative and executive officials. No legislator or public servant shall solicit, accept or agree to accept any pecuniary benefit in return for action on a bill, legislation, proceeding or official transaction from any person known to be interested in a bill, legislation, official transaction or proceeding. (5) Exceptions. This section shall not apply to: (a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled; or (b) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or (c) trivial benefits not to exceed a value of fifty dollars (\$50) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality; or (d) benefits received as a result of lobbying activities that are disclosed in reports required by Chapter 66, Title 67, Idaho Code. This exception shall not apply to any activities prohibited by subsections (1) through (4) of this section. (6) Offering benefits prohibited. No person shall knowingly confer, or offer or agree to confer, any benefit prohibited by the foregoing subsections. (7) Grade of offense. An offense under this section is a misdemeanor and shall be punished as provided in this Chapter.

§ 18-1357. Compensating public servant for assisting private interests in relation to matters before him. (1) Receiving compensation. A public servant commits a misdemeanor if he solicits, accepts or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise. (2) Paying compensation. A person commits a misdemeanor if he pays or offers or agrees to pay compensation to a public servant with knowledge that acceptance by the public servant is unlawful.

§ 18-1358. Selling political endorsement-- Special influence. (1) Selling political endorsement. A person commits a misdemeanor if he solicits, receives, agrees to receive, or agrees that any political party or other person shall receive any pecuniary benefit as consideration for approval or disapproval of an appointment or advancement in public service, or for approval or disapproval of any person or

transaction for any benefit conferred by an official or agency of the government. "Approval" includes recommendations, failure to disapprove, or any other manifestation of favor or acquiescence. "Disapproval" includes failure to approve, or any other manifestation of disfavor or nonacquiescence. (2) Other trading in special influence. A person commits a misdemeanor if he solicits, receives or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant or procuring another to do so. "Special influence" means power to influence through kinship, friendship, or other relationship apart from the merits of the transaction. (3) Paying for endorsement or special influence. A person commits a misdemeanor if he offers, confers or agrees to confer any pecuniary benefit, receipt of which is prohibited by this section.

§ 18-1359. Using public position for personal gain. (1) No public servant shall: (a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself. (b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars (\$50) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality. (c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves. (d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in § 18-1361, Idaho Code. (e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of office, or appoint or furnish employment to any person whose salary, wages, pay or compensation is to be paid out of public funds or fees of office, and who is related by either blood or marriage within the second degree to any other public servant when such appointment is made on the agreement or promise of such other public servant or any other public servant to appoint or furnish employment to anyone so related to the public servant making or voting for such appointment. Any public servant who pays out of any public funds under his control or who draws or authorizes the drawing of any warrant or authority for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible

person, knowing him to be ineligible, is guilty of a misdemeanor and shall be punished as provided in this Chapter. (f) Unless specifically authorized by another provision of law, commit any act prohibited of members of the legislature or any officer or employee of any branch of the state government by § 67-5726, Idaho Code, violations of which are subject to penalties as provided in § 67-5734, Idaho Code, which prohibition and penalties shall be deemed to extend to all public servants pursuant to the provisions of this section. (2) No person related to any member of the legislature by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty within the legislative branch of government or otherwise be employed by the legislative branch of government when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds. (3) No person related to a mayor or member of a City Council by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the mayor's or city council's city when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds. (4) No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the Commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds. (5) (a) An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions. (b) Nothing in this section shall be construed as creating any property rights in the position held by an employee subject to this section, and all authority in regard to disciplinary action, transfer, dismissal, demotion or termination shall continue to apply to the employee. (6) The prohibitions contained within this Section shall not include conduct defined by the provisions of § 74-403(4), Idaho Code. (7) The prohibitions within this Section and § 18-1356, Idaho Code, as it applies to part-time public servants, do not include those actions or conduct involving the public servant's business, profession or occupation and unrelated to the public servant's official conduct, and do not apply to a pecuniary benefit received in the normal course of a legislator's business, profession or occupation and unrelated to any bill, legislation, proceeding or official transaction.

§ 18-1360. Penalties. Any public servant who violates the provisions of this Chapter, unless otherwise provided, shall be guilty of a misdemeanor and may be

punished by a fine not exceeding one thousand dollars (\$1,000), or by incarceration in the county jail for a period not exceeding one (1) year, or by both such fine and incarceration. In addition to any penalty imposed in this chapter, any person who violates the provisions of this chapter may be required to forfeit his office and may be ordered to make restitution of any benefit received by him to the governmental entity from which it was obtained.

§ 18-1361. Self-interested contracts -- Exception. Where there are less than three (3) suppliers of a good or a service within a fifteen (15) mile radius of where the good or service is to be provided, it shall not constitute a violation of the provisions of subsection (1) (d) or (e) of § 18-1359, Idaho Code, for a public servant or for his relative to contract with the public body of which the public servant is a member if the contract is reasonably necessary to respond to a disaster as defined in chapter 10, title 46, Idaho Code, or if the procedures listed below are strictly observed. For purposes of this Section, “relative” shall mean any person related to the public servant by blood or marriage within the second degree. (1) The contract is competitively bid and the public servant or his relative submits the low bid; and (2) Neither the public servant nor his relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid specifications; and (3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative’s intention to bid on the contract; and (4) Neither the public servant nor his relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

§ 18-1361A. Non-compensated appointed public servant -- Relatives of public servant – Exception. When a person is a public servant by reason of his appointment to a governmental entity board for which the person receives no salary or fees for his service on said board, it shall not constitute a violation of the provisions of subsection (1)(d) or (e) of § 18-1359, Idaho Code, for a public servant or for his relative to contract with the public body of which the public servant is a member if the procedures listed below are strictly observed. For purposes of this section, “relative” shall mean any person related to the public servant by blood or marriage within the second degree. (1) The contract is competitively bid and the public servant or his relative submits the low bid; and (2) Neither the public servant nor his relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid

specifications; and (3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and (4) Neither the public servant nor his relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

§ 18-1362. Cause of action. A prosecuting attorney or the attorney general may bring an action in the district court of the county in which a public servant resides to enjoin a violation of the provisions of this chapter and to require the public servant to make restitution to the government of any pecuniary gain obtained. The prevailing party shall be awarded his costs and reasonable attorney fees.

§ 74-501. Officers not to be interested in contracts. Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

§ 74-502. Remote interests. (1) A public officer shall not be deemed to be interested in a contract, within the meaning of §74-501, Idaho Code, if he has only a remote interest in the contract and if the fact and extent of such interest is disclosed to the body of which he is an officer and noted in the official minutes or similar records prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section, "remote interest" means:

- (a) That of a non-salaried officer of a nonprofit corporation; or
- (b) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; or
- (c) That of a landlord or tenant of a contracting party; or
- (d) That of a holder of less than one percent (1%) of the shares of a corporation or cooperative which is a contracting party.

(2) Although a public official's interest in a contract may be only remote, a public official shall not influence or attempt to influence any other officer of the board of which he is an officer to enter into the contract. Violation of the provisions of this subsection shall be a misdemeanor as provided in section 74-509, Idaho Code. Any contract created or entered into in violation of the provisions of this subsection shall be void.

§ 74-503. Officers not to be interested in sales. State, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

§ 74-504. Prohibited contracts voidable. Every contract made in violation of any of the provisions of the two (2) preceding sections may be avoided at the instance of any party except the officer interested therein.

§ 74-505. Dealing in warrants prohibited. The state treasurer and state controller, the several county, city, district or precinct officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons, whatever, any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy or clerk, and evidences of the funded indebtedness of such state, county, city, district or corporation.

§ 74-506. Affidavit of non-violation a prerequisite to allowance of accounts. Every officer whose duty it is to audit and allow the accounts of other state, county, district, city or precinct officers, must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this Chapter.

§ 74-507. Provisions of chapter violated -- Disbursing officer not to pay warrants. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city or district, when the same has been purchased, sold, received or transferred contrary to any of the provisions of this chapter.

§ 74-508. Suspension of settlement or payment -- Prosecution of offenders. Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is to be settled, audited, or paid by him, has violated any of the provisions of this Chapter, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation.

§ 74-509. Violation. A violation of the provisions of this chapter, unless otherwise provided, is a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or incarceration in the county jail for a period not exceeding one (1) year, or by both such fine and incarceration.

§ 74-510. Non-compensated public official -- Exception. When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in § 18-1361A, Idaho Code.

§ 74-511. Violation relating to public contracts. Officers shall not commit any act prohibited by § 67-5726, Idaho Code, violations of which are subject to penalties as provided in § 67-5734, Idaho Code, and which prohibitions and penalties shall be deemed to extend to all public officers governed by the provisions of this chapter.

§ 50-2017. Interested public officials, commissioners or employees. No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency. If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property. Any violation of the provisions of this section shall constitute misconduct in office.

§ 50-2705. Public corporations -- Directors. It shall be illegal for a director, officer, agent or employee of a corporation to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services or

materials to be furnished or used in connection with any industrial development facility financed through the public corporation. Violation of any provision of this section is a misdemeanor.

II. OPEN MEETINGS

The open meeting law is the standard for local government in Idaho. The purpose behind the requirement to hold open meetings is that no policy affecting the public interest shall be deemed private. Final decisions of the governing body shall not be made behind closed doors. Private meetings of the governing body are allowed only in very limited circumstances and pursuant to very specific rules. The Idaho Open Meetings Law Manual is available for review at the Attorney General's website located at <<http://www.state.id.us/ag/manuals.htm>>.

The following definitions are important to an understanding of the Idaho Open Meetings law:

“Decision” means 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, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with §§ 74-203 through 74-207, Idaho Code.

“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 which do not specifically relate to a matter then pending before the public agency for decision.

“Governing body” means the members of any public agency to make a decision or to deliberate toward a decision on any matter.

“Meeting” means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter. A “regular meeting” is one where a governing body of a public agency convenes on the date fixed by law or rule, to conduct the business of the agency. A “special meeting” is one where the governing body of a public agency convenes pursuant to a special call for the conduct of business as specified in the call.

What Is A Meeting?

Please remember that § 74-202(6) defines “meeting” as “the convening of a governing body of a public agency *to make a decision or to deliberate toward a decision* on any matter.” “Decision” is then defined by § 74-202(1) to include:

. . . *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.

The term “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 which do not specifically relate to a matter then pending before the public agency for decision.” Please note that “deliberation” includes the receipt of information relating to a “decision,” (*i.e.*, a measure on which the governing body will have to vote) and therefore triggers the requirement for a “meeting” under the Open Meeting Law.

A “meeting” may include things as informal gatherings, briefing sessions, informal discussions, attendance at social functions and other places where there is a quorum of the governing body present and the intent is to deliberate or to make a decision. In some cases, where there is less than a quorum present and information is exchanged which forms the basis of an ultimate decision or forms the basis of deliberation toward an ultimate decision, such activity may also constitute a “meeting” under the Open Meeting Law. When information has been given to a member of the governing board, which the member believes may have been inappropriately obtained (*i.e.*, without taking place in an open meeting), that person should contact the City Attorney for an opinion regarding the proper action to take. Such remedial action may include disclosure of the receipt of the information, recusal from the decision making process, making such information available to all other members of the governing body in an open meeting, or taking no action.

Notice Of Meetings

(1) Regular Meetings. For meetings which are regularly scheduled, pursuant to the Idaho Code, notice of the regular meeting is given not less than five (5) calendar

days. In Idaho Falls, the regular City Council meeting falls on the second and fourth Thursday of each month at 7:30 p.m. local time, except that the second meeting in November is on the Tuesday preceding the fourth Thursday. The regular meetings are held at the City Annex Building, 680 Park Avenue, Idaho Falls, Idaho, unless other such notice is given to the public. A forty eight (48) hour agenda notice is required in advance of every regular meeting. Additional agenda items may be added less than forty eight (48) hours prior to a regular meeting only where a motion is passed to amend the agenda and a “good faith reason” for not including the item in the properly published agenda is given. Agenda shall be posted in a prominent place at the principal office of the public agency or at the building where the regular meeting is to be held.

(2) Special Meetings. Special meetings may be called by any four (4) Council members, and require notice of the intent to hold a special meeting to be given at least twenty four (24) hours prior to the meeting. An agenda of the special meeting must be posted not less than twenty four (24) hours prior to the special meeting. Additional agenda items may be added less than forty eight (48) hours prior to a regular meeting only a motion is passed to amend the agenda and a “good faith reason” for not including the item in the properly published agenda is given. If there is an emergency situation (as such is defined in the Idaho Code) notice of a special meeting shall include, at minimum, the date, time, place and the name of the public agency calling for the meeting. Notice of such a special emergency meeting should also be given to news media and a good faith effort must be made to provide advanced notification to them.

Note: Failure to follow agenda posting and/or agenda amending rules voids the action taken in the meeting and may subject the members of the meeting’s governing board to personal civil fines. The Idaho Code allows mistakes because notice and agenda matters to be corrected by subsequent correct actions.

(3) Executive Sessions. An executive session is a meeting or part of a meeting of a governing body which is closed to the public so that the members of the governing board can deliberate on certain matters defined in the Idaho Code. See Idaho Code § 74-206. Executive sessions may be held upon a two-thirds (2/3) vote recorded in the minutes of a meeting. Executive sessions are typically held to consider employment matters; complaints or charges against public officers and City staff; labor negotiation offers and counteroffers, to discuss records exempt from disclosure under the Idaho Public Records Act; and limited business and legal matters. The purpose of the executive session is to allow for free and frank

discussion of sensitive issues before a public decision is made. **No executive session may be held for the purpose of taking any final action or making any final decision.**

Notice of an executive session (and its topic) may either be made pursuant to the notice required for regular or special meetings or, if an executive session only will be held, notice must be given twenty four (24) hours prior to the meeting and an agenda must accompany such notice.

Other Laws Regarding Open Meetings

§ 74–203 Governing bodies—Requirement for open public meetings

- (1) Except as provided below, 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. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.
- (2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.
- (3) Meetings of the Idaho life and health insurance guaranty association established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.
- (4) 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.
- (5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the

governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section 74–204, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

§ 74–204 Notice of meetings—Agendas

- (1) 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. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.
- (2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is 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. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a good faith effort to provide advance notification to them of the time and place of each meeting.
- (3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.
- (4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

- (a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.
- (b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.
- (c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

§ 74–205 Written minutes of meetings

- (1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. 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 proposed and their disposition;
 - (c) The results of all votes, and upon the request of a member, the vote of each member, by name.
- (2) Minutes pertaining to 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.

§ 74–206 Executive sessions—When authorized

- (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive

session shall be authorized by a two-thirds ($\frac{2}{3}$) vote of the governing body.

An executive session may be held:

- (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 conduct deliberations concerning labor negotiations or 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. The mere presence of legal counsel at an executive session does not satisfy this requirement;
 - (g) By the commission of pardons and parole, as provided by law;
 - (h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or
 - (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.
- (2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 74–204, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.
 - (3) 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.

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

§ 74–207 Open legislative meetings required

All meetings of any standing, special or select committee of either house of the legislature of the state of Idaho shall be open to the public at all times, except in extraordinary circumstances as provided specifically in the rules of procedure in either house, and any person may attend any meeting of a standing, special or select committee, but may participate in the committee only with the approval of the committee itself.

§ 74–208 Violations

- (1) 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.
- (2) Any member of the governing body governed by the provisions of this chapter, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed fifty dollars (\$50.00).
- (3) Any member of a governing body who knowingly violates the provisions of this chapter shall be subject to a civil penalty not to exceed five hundred dollars (\$500).
- (4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).
- (5) The attorney general shall have the duty to enforce this chapter in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31–2603, Idaho Code.

- (6) Any person affected by a violation of the provisions of this chapter may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of this chapter. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.
- (7) (a) A violation may be cured by a public agency upon:
- (i) The agency's self-recognition of a violation; or
 - (ii) 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. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency 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.
- (b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, 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.
- (c) 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.
- (d) 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.

III. OTHER REQUIREMENTS

Legislative v. Quasi-Judicial

Most governing boards function in at least two (2) distinct ways. (1) As representatives who formulate and implement general policies (legislative); and (2) as bodies who accept and assess information and then make a decision that affects a particular person, entity or group (quasi-judicial). Because there are different expectations of a governing body when it acts on an issue that affects the public at large and when it acts in a manner that is more specific, it is important to understand the difference between legislative and quasi-judicial functions.

Legislative. Legislative action is action taken by a governing body which guides or directs the public by enacting rules, regulations, policies and/or procedures. Legislative decisions are normally the result of broad input from a variety of sources up to the time the final decision is made by the governing body. A governing body is presumed to be acting within the scope of its authority when discussing, formulating and passing legislation. When the governing body is exercising its legislative authority, due process requirements are minimal. Although a person has the right to attend a public meeting and may even be heard, that person has no right to cross-examine witnesses or to present evidence, except as allowed by the Chair of the governing body.

In order for a person to challenge legislative action of a governing body, that person would have to show that the decision of the governing body was unreasonable, arbitrary or capricious. Usually this requires a clear showing that a member of the governing board had a direct personal interest in the outcome of the proceedings.

Quasi-Judicial. Quasi-judicial activities of a governing body occur when the purpose of the meeting or the action is to decide how general rule or regulation applies to a particular person or to a small group or interest. Because quasi-judicial decisions impact some members of the community more than the community as a whole, due process for a quasi-judicial proceeding is greater than that of a legislative proceeding. Due process requires, in a quasi-judicial planning and zoning case, for example:

- a. Notice and opportunity to be heard;
- b. The opportunity to present and rebut evidence;

- c. Impartial decision makers;
- d. A record of proceedings;
- e. Adequate findings and conclusions.

Because those affected by a quasi-judicial decision have the right to understand the basis of the decision made, evidence and testimony is considered by the governing board during a public hearing and a record is kept of the proceedings. *Ex parte* contact with the decision makers may result in their disqualification (because such increases the likelihood of favoritism and improper influence).

What is the difference between Legislative and Quasi-Judicial? The difference between the process necessary for legislative action and the process necessary for quasi-judicial action is sometimes confusing. How is the governing body to know when it is acting in its legislative capacity or in its quasi-judicial capacity?

The answer to that question is not simple but the nature of the action can usually be determined by analyzing the impact of the action. Legislative action is generally open-ended and broad in its scope and affects a broad class of individuals and a variety of situations. Legislative action results in the formation of a general rule or policy. Quasi-judicial action results in the more specific application of that general rule or policy. Quasi-judicial action is generally narrow in its scope and focuses on specific individuals and/or specific situations.

As an example, formulating a comprehensive plan or enacting a zoning ordinance is legislative in nature (because it applies generally and to all of the citizens), while acting upon an application for a variance or rezoning is quasi-judicial in nature (because it applies to a specific property and owner).

Public Hearing Procedure for Consideration of Land Use Ordinances

Because a Local Land Use Planning Act (LLUPA) related hearing is quasi-judicial and subject to potential judicial review, creation of the record by the Council and Planning Commission, is important. Although Idaho courts do not require procedural exactitude, the best practice is to follow the process as closely as possible to promote fairness, consistency and predictability.

The following process is recommended for quasi-judicial land use hearings:

A. The Hearing.

1. The Chair announces the agenda item including the purpose and subject of the hearing.

2. A member with a potential conflict should consult the City Attorney's office before the agenda item is considered. Discussion with the City Attorney regarding potential conflicts will normally insulate the member from potential legal liability.

3. The Chair should ask if any member wishes to declare a conflict. Any member of the Council/Planning Commission considering the matter should reveal a conflict, if there is one. That member may either reveal the conflict and participate, or they may recuse themselves (and should move off the dais) until the next agenda item is considered.

3. The hearing begins with announcement to that effect from the Chair (with the sound of the gavel), and BEFORE the staff presentation.

4. The staff presents the matter and asks the Chair to accept staff materials as part of the record. The staff presentation and all questions and answers by staff should be "on the record." Council/Planning Commission members should ask all of their questions of staff prior to public testimony, if possible.

5. The Chair gives an opportunity for the applicant and/or the applicant's legal representative to present the applicant's testimony and supporting materials.

6. The Chair gives an opportunity for presentation of any opposition or neutral comments or mixed comments (positive and/or negative).

7. The Chair gives the applicant an opportunity to rebut or to respond to, or to address matters brought up following the applicant's presentations.

8. BEFORE the close of the public hearing, the Chair ensures, to the extent possible, that all of the information that needs to be made part of the record and will contribute to the Council's/Planning Commission's decision, has been presented in the public hearing. This includes any written or other tangible materials presented and includes electronic communications received, such as emails, photos, and the like.

9. The Chair announces that the public hearing is closed (and sounds the gavel).

10. The Chair facilitates the Council's/Planning Commission's discussion based only upon materials and/or information presented during the public hearing portion. If there is any discussion or consideration of matters that were not made part of the record, the Chair should stop the discussion. The Chair and the council/Planning Commission may decide to reopen the public hearing for the receipt and inclusion of materials and/or data that was not made part of the record in order to make sure that the consideration of the issue is not based on any non-record data. If the hearing is reopened, the applicant and others should be given the opportunity to comment on the new information.

11. Following deliberation, a motion should be made.

B. Adopted a Reasoned Statement In Support of The Motion.

1. Because any LLUPA-related application must have an accompanying Reasoned Statement of Relevant Criteria and Standards (similar to findings of facts and conclusions of law), the Council/Planning Commission should discuss what the Reasoned Statement contents should be and should direct staff to prepare the Reasoned Statement for the next meeting following passage of the ordinance.

2. At the meeting immediately following the meeting where the land use decision was made, the consideration of Reasoned Statement should be an agenda item, should be discussed by the Council/Planning Commission, and should be passed to support the land use decision, made in the immediately preceding meeting. A court will review the Reasoned Statement of Relevant Criteria and Standards in order to understand the factual bases upon which the land use decision was made and the legal bases that are related.

C. Taking Final Action on a Zoning Motion.

There should be an ordinance for every zoning change. The procedure for the Planning Commission is different from that of the Council, as follows:

1. Planning Commission Procedures to Recommend Passage of an Ordinance. Because the LLUPA requires that a recommendation to the Council be made by Planning Commission, there is no requirement that the ordinance be considered three (3) times, or that it be read in full.

Accordingly, a motion should be made by a member of the Planning Commission to recommend passage of the ordinance, to recommend not passing the ordinance, or to recommend passing the ordinance with amendments/modifications. A motion passes by a majority vote of the Council members present eligible to vote.

2. Council Procedures for Passing a Zoning Ordinance. Notice required by the LLUPA should be given prior consideration of a Zoning Ordinance. Following the public hearing and prior to a motion to pass the zoning ordinance, the member of the Council making the motion should request that the City Clerk read the ordinance by title only:

a. If the maker of the motion wishes that it be passed immediately, then a motion similar to the following could be made:

I move that the provisions of Idaho Code requiring that all ordinances be read by title, and once in full, on three (3) separate dates be waived, and that the ordinance be passed and published by summary.

b. If the Council member who makes the motion wants to have the ordinance considered again, then a motion similar to the following could be made:

I move that the ordinance be read by title only on the (1st/2nd) reading.

c. If the ordinance has been considered and read by title only on two (2) previous occasions, then a motion similar to the following could be made by a Council member:

I move that the ordinance be read by title and in its entirety and that it be passed and published by summary.

Ex Parte Communications

Ex parte contacts are those contacts made either by the public official to an individual member of the public, or as more often happens, when a member of the public contacts the public official to voice his or her opinion.

Whether or not an *ex parte* contact is impermissible depends largely upon context. A good rule of thumb is that, if the matter addressed is “legislative” in nature, then almost any form of contact about an issue is allowed (and should be encouraged to determine the public's opinion). That is because input and communication is encouraged where the governing board is considering laws and policies that affect a broad group of citizens. When a matter is “quasi-judicial” in nature, such as an application for rezoning or for a subdivision, such an *ex parte* contact has the effect of compromising the decision maker's ability to make an informed and impartial decision based upon information contained in the formal record.

The rule prohibiting *ex parte* contact in quasi-judicial matters comes from the expectation that the decision makers should weigh only the evidence and issues formally before them and should not take into consideration personal matters or private influence as these taint the process of fair decision. Additionally, the public perception that the matter considered by the decision makers is being treated in a fair and even handed manner without regard to the individual participants is important to preserve the legitimacy of the process. The overriding principle is fairness to those affected by the decision.

Where a matter will be determined in a quasi-judicial hearing, *ex parte* contacts are forbidden. The decision maker should immediately inform the City Attorney of any attempt by anyone to make *ex parte* contact so that the City Attorney can advise a decision maker and can recommend corrective action, if needed.

Open Records/Public Records

In keeping with the philosophy that government should be open and subject to review, the Idaho Legislature has instituted the Idaho Public Records Law (Idaho Code Title 74, Chapter 1). The Idaho Public Records Law defines to what extent

records utilized by the government are available to the public. Although it is unlikely you will be directly affected by decisions pursuant to this law, you should be aware that there is a basic set of ground rules securing the public's access to government records, while preserving an individual's right to privacy.

According to the Idaho Open Meetings Act, a “public official” means any governmental official or employee whether elected, appointed or hired. A “public record” includes, but is not limited to, any writing containing any information relating to the conduct or administration of the public’s business prepared, owned, used, or retained by any State agency, independent public body corporate and politic, or local agency, regardless of physical form or characteristic.

“Writing” includes, but is not limited to, handwriting, typewriting, printing, photo stating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

“Custodian” means the person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then “custodian” means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

Every person has a right to examine or make a copy of a public record and there is a presumption that all public records in Idaho are open at all reasonable times for inspection, except as otherwise expressly provided by the Idaho State Code.

There are many exemptions to disclosure of public records but, the City Clerk must provide public records unless there is a specific exemption that applies to the document. Additionally, the Clerk may only redact or exempt certain portions of the public record where that is possible, so that the requester can obtain all of the records except for the portions redacted. Every person who believes that they have been denied the right to receive a public record may appeal the City’s decision within one hundred eighty (180) days of the denial of access to that record.

If you have a particular question regarding the Idaho Public Record Law, please contact the City Attorney or visit the State's website located at <<http://www.state.id.us/ag/manuals.htm>> to review the Idaho Public Records Law Manual.

IV. PUTTING IT ALL TOGETHER

You may wish to use the following guidelines to review whether the legal process has been followed.

Legislative Actions.

1. Has the input been broad?
2. Has the process been fair (and there is no conflict of interest)?
3. Has the process been public?
4. Have the established procedures been followed?
5. Has proper notice been given?

Quasi-Judicial Actions.

1. Has the process been public (and there is no conflict of interest)?
2. Is the decision being made from information "on the record" (with no *ex parte* communications)?
3. Is the basis of the decision well reasoned and clear?
4. Has the governing body given the process due?
5. Is the decision clear, final and appealable?

Of course, if you have any questions regarding the contents of this Manual or regarding any particular situation with which you may be confronted, please contact the City Attorney for advice and counsel. It is part of the City Attorney's duty to render such advice.

V. FREQUENTLY ASKED QUESTIONS

Question: How do I know whether what I think is a "conflict" is actually a "conflict?"

Answer: Ask the City Attorney. There are many times when something which is not a technical conflict according to the definitions in the Idaho Code, may be something that appears to be a conflict. It is best to discuss these matters with the

City Attorney so that you can get legal advice and can make a good decision based on that advice. There may be times when you would wish to decline participation in a particular decision even because of an apparent conflict (although there is no legal obligation not to participate).

Question: Is it a violation of Open Meetings Law to meet with other members of the governing board as long as there is no quorum?

Answer: It depends. The law allows members of a governing board to attend events that are not designed as meetings. If the purpose of the get-togethers with less than a quorum is to avoid the requirements of the Open Meeting Law, such is prohibited. An example of prohibited conduct might be sending separate emails to various members of the governing board to solicit their opinion or to comment on a quasi-judicial matter or to meet with less than a quorum of members to discuss and decide City business that should be handled in an open meeting.

Question: Do my private emails and communications become public because I am now a decision maker?

Answer: Not necessarily. It is the position of the City that it is the “custodian” of records which have been received by, generated by, with, or on City equipment or resources but, where the City has not received a record, it is not the “custodian,” of that record.

Where the City has received a document on its server or when the document has come in to the possession of the City in another way and it is a “public record,” the City is the “custodian” and will disclose the record according to the Idaho Code. The City does not take the position that it is a “custodian” of a record (public or not) which is in possession of a member of its governing body and is not in the possession of the City.

Question: Someone is trying to contact me or has contacted me regarding a quasi-judicial matter, what should I do?

Answer: Consult with the City Attorney. In general, if the communication was inadvertent (on the part of the decision maker), and has not tainted the decision making process by improperly influencing the member of the governing board, the City Attorney may recommend disclosure. On the other hand, if the information has prevented the decision maker from making a neutral decision based upon evidence presented during the formal hearing process, it is likely the City Attorney will recommend a disclosure of the communication and recusal of the decision

maker from participation in the particular decision made the basis of the *ex parte* communications.

Question: Is there something wrong with receiving small gifts or honoraria?

Answer: The Idaho Code prohibits the receipt of gifts except in certain limited circumstances. For example, trivial benefits not in excess of fifty dollars (\$50) which are incidental to personal, professional, or business context and which don't involve a substantial risk of undermining official impartiality are not prohibited. Please consult the City Attorney on specific instances involving gifts.

Question: Do the Robert's Rules of Order govern all City meetings?

Answer: Generally the Robert's Rules of Order are followed as closely as practicable but, there may be times where the specific and technical application of the Rules conflict with the overriding principle of fairness. In such case, the City attempts to be fair and impartial but will occasionally deviate somewhat from the Rules as written.

Question: The quasi-judicial rules seem confusing to me. How can I learn more about them?

Answer: Please feel free to consult with the City Supervisor, the Community Development Director, or the City Attorney regarding land use and other matters which involve quasi-judicial decision making. They understand that the rules are not always easy to understand and they can guide you in the decision-making process.

Question: Is the City Attorney "my" attorney?

Answer: The City Attorney's client is "the City." This means that the City Attorney, as a City employee, gives advice to the Mayor, Council, members of Boards, Commissions, Committees, and Task Forces, as well as to the public at large about the City's legal position or how the laws and City Codes work; however, advice from the City Attorney is not private legal advice. The City Attorney will discuss any matters related to City business with you, but will not give you private legal advice.

Question: If I am considering a quasi-judicial matter but know something about the situation that doesn't come out during the hearing and may affect my decision making, what should I do?

Answer: Any information upon which you will be basing your decision in a quasi-judicial matter should be disclosed prior to the close of the public input portion of the meeting. Such disclosure, as long as the decision maker remains impartial, becomes part of the record and can be made the basis of a decision. If the information is not presented during the hearing you cannot consider it when making your decision.

Question: If I am considering a quasi-judicial land use matter and want to visit the site, is it ok for me to go out to the property and look around or do my own independent “research?”

Answer: No. Any facts, evidence, or other information upon which a decision is made in a quasi-judicial matter should be part of the formal public record. Going by yourself (or with others) to visit a site is the same as an *ex parte* communication and must be avoided. You may gather or perceive information in a different way than the rest of the decision making members and/or you may be getting different information than other decision makers because of the time, manner, or place involved. If you would like to visit the site, please make your wishes known to the Planning/Building Division Director so that a formal site visit can be arranged for the decision making body as a whole and for any others interested and pursuant to the Idaho Open Meetings Law.

Question: What can I disclose after an executive session is over and a final decision is made?

Answer: Nothing. The purpose of the executive session is to allow for an unrestricted discussion of the subject in the executive session. Although no final decision can be made in an executive session, the contents (discussion and documents) of the executive session are to be kept confidential and should not be disclosed at any time following the executive session. Disclosure of discussion which occurred in the executive session or documents which were distributed would have a “chilling” effect on subsequent executive sessions and, additionally, would breach its confidential nature and erode trust among participants.

Question: What if I have a legal question that is not covered in this Handbook?

Answer: Please feel free to contact the City Attorney. It is part of the City Attorney’s job to answer questions for the Mayor, Council members and volunteers. This promotes fairness, consistency, and openness in government. If there is no immediate answer, the City Attorney can research the question and get back to you.

**PLANNING AND DEVELOPMENT CHART
PERMIT RESPONSIBILITIES**

ZONING	Board of Adjustment	Planning Commission	City Council
Legislative Matters		1 st Hearing and Recommendation	2 nd Hearing and Decision
Zoning District Changes		1 st Hearing and Recommendation	2 nd Hearing and Decision
Conditional Use Permit		Hearing and Decision*	Record appeal (with option to schedule hearing)
Variance	Hearing and Decision		Record appeal (with option to schedule hearing)
Appeals	Hearing and Decision		Record appeal (with option to schedule hearing)
RSC – 1 Zone Plan Approval		Recommendation	Decision
PT Overlay Zone Land Use Change		1 st Hearing and Recommendation	2 nd Hearing and Decision
Ruling of Similar Use			Hearing and Decision

*CUP proceedings may occasionally be considered by the BOA or Council.

**PLANNING AND DEVELOPMENT CHART
PERMIT RESPONSIBILITIES
(continued)**

SUBDIVISIONS	Board of Adjustment	Planning Commission	City Council
Preliminary Plat		Hearing and Decision	
Final Plat		Recommendation	Decision
Variance		Recommendation	Decision
Appeals	Hearing and Decision		Record appeal (with option to schedule hearing)
Planned Unit Development (PUD)		1 st Hearing and Recommendation	2 nd Hearing and Decision
COMPREHENSIVE PLAN		1 st Hearing(s) and Recommendation	2 nd Hearing(s) and Decision

NOTES:

