



Board of Directors

Kristin Muchow, Jim C. Walker, Jody B. Olson, Chase Erkins, Tiam Rastegar

# **PUBLIC NOTICE**

## **NOTICE OF WORK SESSION GREATER BOISE AUDITORIUM DISTRICT**

**Tuesday June 20, 2023  
3:30pm MDT  
Boise Centre West – Room 200**



Board of Directors  
Kristin Muchow, Jim C. Walker, Jody B. Olson, Hy Kloc, Chase Erkins

**NOTICE OF WORK SESSION MEETING  
GREATER BOISE AUDITORIUM DISTRICT**

**Tuesday, June 20, 2023**

**3:30 P.M. MDT**

**Boise Centre West – Room 200**

**AGENDA**

- I. **Call to Order**
- II. **Changes or Additions to the Agenda** **Action Item**
- III. **Agenda:**
  - A. **Board Meeting Statute Training:**
    - i. **Intro: Pat Rice, Exec** **Discussion Only**
    - ii. **Continuing education on Idaho statutes: Mike Stoddard, Hawley Troxell** **Discussion Only**
- IV. **Adjournment** **Action Item**



# Greater Boise Auditorium District

Board & Staff Training on:

Idaho's Open Meeting Law,

Idaho's Public Records Act,

Idaho's Ethics in Government Act, and

Examples of Conflicts of Interest & Ethics Policies

June 2023

Presented by: Michael Stoddard

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# Role of the District

To serve the public need and promote economic growth

- “Build, operate, maintain, market and manage for public, commercial and/or industrial purposes . . . Public auditoriums, exhibition halls, convention centers, sports arenas and facilities of a similar nature” (Idaho Code § 67-4902)
- Mission is to develop spaces for community engagement that facilitate the greatest positive benefit to our community

# The District's Board of Directors

- Only “qualified electors” living in the District can be Board members
- Board elects one member to be the Chairman/President
- Board elects a Secretary and a Treasurer, who may or may not be board members, and who can be the same person
- Secretary must keep a record of all proceedings, meeting minutes, certificates, contracts, and bonds in a “well-bound book”
- Treasurer must keep “strict and accurate” financial records

Idaho Code §§ 67-4908, 4909

# Board Meetings

- Must meet regularly each month at a time/place the Board designates
- Need three board members for a quorum at all meetings
- Special meetings can be held as often as the District needs

Idaho Code § 67-4910

- As a governing body, Board must follow Idaho's Open Meeting Law

Idaho Code § 74-203(1)

# Idaho Open Meeting Law

Policy: The public's business ought to be done in public

## Outline of Idaho's Open Meeting Law:

- I. Definitions
- II. Notice and Agenda
- III. Conduct of the Meeting
- IV. Executive Sessions
- V. Enforcement



# Rule of Statutory Construction

Words are given the meaning set forth in the definition portion of the code section or chapter.

- Definition section controls over the common definition of a word
- Different code sections or chapters may define the same word slightly differently
- If no statutory definition exists, the common meaning controls.

# Definitions

## Decision:

“any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of [the Board] is required, at any meeting at which a quorum is present”

## Deliberation:

“the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature that do not specifically relate to a matter pending before [the Board]”

Idaho Code § 74-202(1)&(2)

# Definitions

## Public Agency:

- Any state agency (boards, committees, departments, etc.)
- Any regional board, commission, department or authority
- Any county, city, school district, special district, or other municipal corporation or political subdivision in Idaho
- Any subagency of a public agency

Idaho Code § 74-202(4)(a-d)

# Definitions

# Definitions

## Executive Session:

Any meeting, or part of a meeting, of a governing body that is closed to any person for deliberation on certain matters.

Idaho Code § 74-202(3)

- More to come on Executive Sessions

# Notice and Agenda

## Regular Meetings:

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

## Special Meetings:

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

Idaho Code § 74-204(1)&(2)

# Notice and Agenda

- Executive Sessions:
  - A twenty-four (24) hour meeting and agenda notice shall be given if only an executive session will be held. Notice must state the reason and specific provision of law authorizing the executive session.
- Notice for meetings and agendas shall also be posted electronically if the entity maintains an online presence through a website or social media platform

# Notice and Agenda

An agenda is required for each meeting:

- Posted the same as a meeting notice
- Can amend the agenda, even after the meeting begins, but only in “good faith”
- Motion and vote required for amendments made within forty-eight hours (48) of, or during, the meeting

Idaho Code § 74-204(4)



# Action Items on Agenda

- An agenda item that requires a vote shall be identified on the agenda as an “action item” to provide notice that action may be taken on that item. Identifying an item as an action item does not require a vote to be taken on that item. (Idaho Code § 74-204(4))
- Final action may not be taken on an agenda item added after the start of a meeting unless an emergency is declared necessitating action at that meeting. The declaration and justification shall be reflected in the minutes. (Idaho Code § 74-204(4)(c))

# Conduct of Meeting

- All meetings of a governing body of a public agency shall be open to the public. (Idaho Code § 74-203)
- 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. (Idaho Code § 74-203(4))

# Conduct of Meeting

- All meetings may be conducted using telecommunications devices. (Idaho Code § 74-203(5))
- A virtual meeting only is **not** allowed
  - must have a physical meeting place where at least one board member, the Executive Director, or the Chief Administrative Office is physically present
- Members of a public board may **not** use computers or texting to conduct private conversations among themselves about board business.

# Conduct of Meeting

- The Boards meeting minutes, taken by the Secretary, shall be made available to the public. (Idaho Code § 74-205(1) & § 67-4909)
- Minutes shall include:
  - all members of the governing body present,
  - all motions, resolutions, orders, or ordinances proposed and their disposition, and
  - the results of all votes.

(Idaho Code § 74-205(1))

# Executive Sessions

# Executive Sessions

The Board can only enter an Executive Session when there is:

- a motion to enter into one that identifies the specific subsection authorizing the executive session,
- a roll call vote on the motion that shall be recorded in the minutes, and
- a two-thirds (2/3) vote of the governing body

Idaho Code § 76-201(1)

# Executive Sessions

- No executive session may be held for the purpose of taking any final action or making any final decision. (Idaho Code § 74206-3))
- Though minutes must include a reference to the specific statutory subsection authorizing the Executive Session and provide sufficient detail to show the purpose and topic of the Executive Session, the minutes shall not contain information sufficient to compromise the purpose of going into the Executive Session. (Idaho Code § 74-205(2))

# Enforcement

- Board's actions taken while not in compliance with the Open Meeting Law are null and void
- Board members participating in a meeting that violates the Open Meeting Law will be subject to a civil penalty of:
  - up to \$250
  - up to \$1,500 if they “knowingly” violate
  - up to \$2,500 if they are found to have violated it within twelve (12) months of a previous violation

Idaho Code § 74-208(1-4)



# Enforcement

- Attorney General has duty to enforce the Open Meeting Law of state public agencies
- Prosecuting Attorneys' has duty to enforce the Open Meeting Law of local public agencies within their jurisdiction
- Any person affected by a violation of the Open Meeting Law may commence a civil action on their own

Idaho Code § 74-208(5-6)

# Enforcement

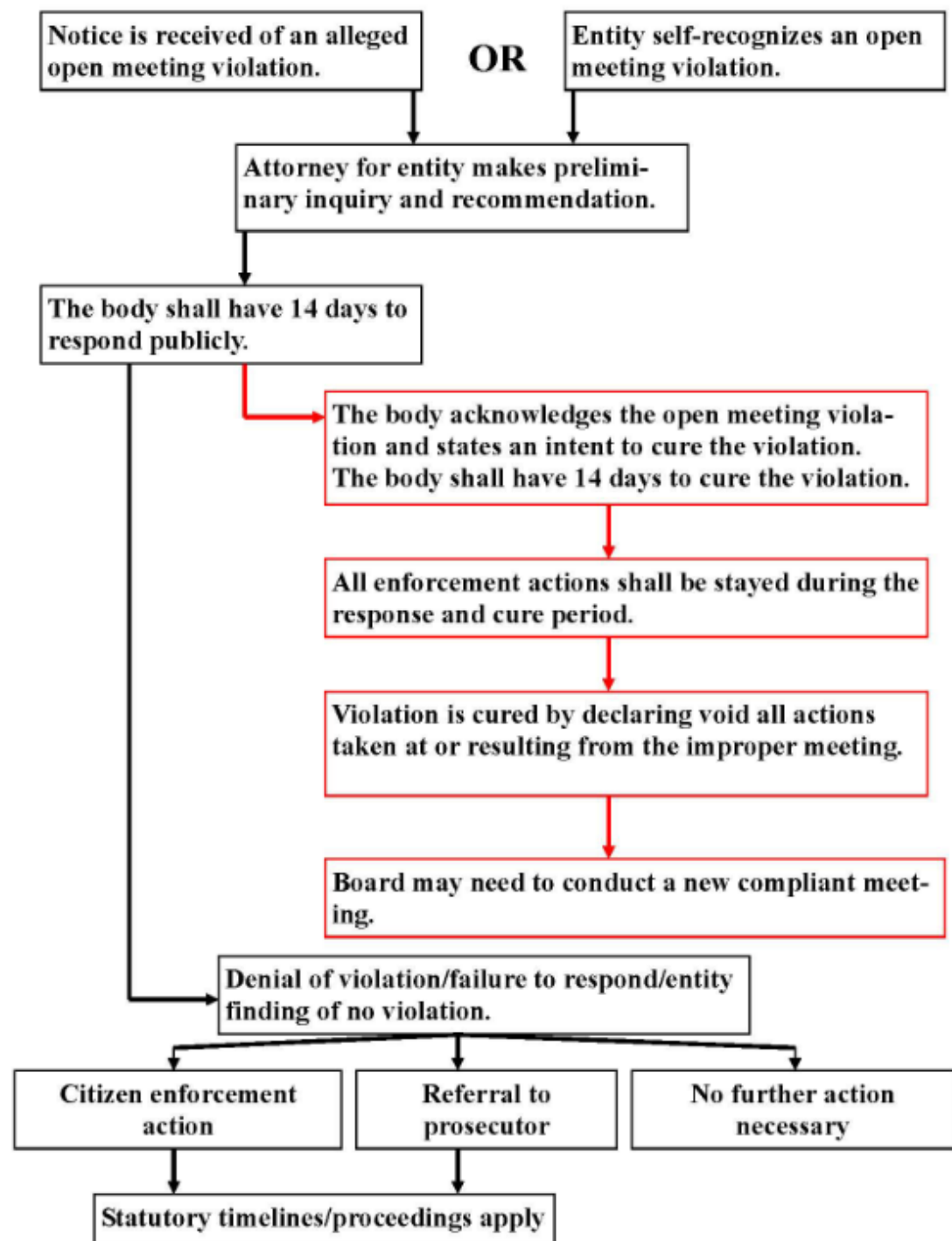
Violations can be cured by the Board upon:

- the Board's self-recognition of a violation; or
- Receipt by the Secretary of written notice of an alleged violation. A complaint filed and served upon the Board may be substituted for other forms of written notice
  - Upon notice, the Board has fourteen (14) days to respond publicly and either acknowledged the violation and state an intent to cure or state that it has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action

Idaho Code § 74-208(7)(a)

# Curing Process:

## Idaho Code § 74-208(7)



# Tools to Help Stay in Compliance

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

**OPEN MEETING LAW CHECKLIST**

***Regular Meetings***

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

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

\_\_\_\_\_  
[Idaho Code § 74-203(4) and (5)]

Before Meeting

- Meeting Notice posted 5 or more calendar days prior to the meeting date.  
[Idaho Code § 74-204(1)]
- Agenda Notice posted at least 48 hours prior to the meeting.  
[Idaho Code § 74-204(1)]
- Posting of Amended Agenda [Idaho Code § 74-204(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- Secretary or other person appointed to take minutes.  
[Idaho Code § 74-205(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting.  
[Idaho Code § 74-205(1)]

# Tools to Help Stay in Compliance

**State of Idaho**  
**Office of the Attorney General**  
**OPEN MEETING LAW CHECKLIST**  
***Special Meetings***

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

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

\_\_\_\_\_  
[Idaho Code § 74-203(4) and (5)]

Before Meeting

- Meeting and Agenda Notice posted at least 24 hours prior to the meeting. [Idaho Code § 74-204(2)]
- Notification provided to the news media. [Idaho Code § 74-204(2)]
- Posting of Amended Agenda [Idaho Code § 74-204(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 74-204(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 74-205(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 74-205(1)]

**>> SAMPLE FORM <<**

Public Agency: \_\_\_\_\_, Idaho  
(name of county, city, district, etc.)

Governing Body: \_\_\_\_\_  
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: \_\_\_\_\_

**EXECUTIVE SESSION MOTION AND ORDER**

\_\_\_\_\_, (print name), \_\_\_\_\_ (print title),  
MOVES THAT THE BOARD, PURSUANT TO IDAHO CODE § 74-206, CONVENE  
IN EXECUTIVE SESSION TO: (Identify one or more of the following)

- Consider personnel matters [Idaho Code § 74-206(1)(a) & (b)]
- Deliberate regarding an acquisition of an interest in real property [Idaho Code § 74-206(1)(c)]
- Consider records that are exempt from public disclosure [Idaho Code § 74-206(1)(d)]
- Consider preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body [Idaho Code § 74-206(1)(e)]
- Communicate with legal counsel regarding pending/imminently-likely litigation [Idaho Code § 74-206(1)(f)]
- Communicate with risk manager/insurer regarding pending/imminently-likely claims [Idaho Code § 74-206(1)(i)]

Purpose/Topic summary (required): \_\_\_\_\_  
AND THE VOTE TO DO SO BY ROLL CALL.

CONVENE AT: \_\_\_\_\_ ADJOURN AT: \_\_\_\_\_

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: \_\_\_\_\_  
(Signature)

Public Agency: \_\_\_\_\_, Idaho  
(name of county, city, district, etc.)

Governing Body: \_\_\_\_\_  
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: \_\_\_\_\_

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### MOTION AND ORDER TO AMEND AGENDA

*(less than 48 hours before regular meeting or 24 hours before special meeting)*

\_\_\_\_\_, (print name), \_\_\_\_\_ (print title),  
MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE § 74-204,  
AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Good faith reason item not included in posted agenda (required):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: \_\_\_\_\_  
(Signature)

# Switching Gears

Questions?



# Idaho's Public Records Act

## Policy:

- All records maintained by public entities are to be available for public access and copying, while balancing the need for privacy of certain information.

## Outline of Idaho's Public Records Act:

- I. Definitions
- II. Right to Examine
- III. Enforcement

# Definitions

## Custodian

The person(s) having personal custody & control of the public record in question

## Writing

Includes, but is not limited to, handwriting, typewriting, printing, photographing and every means of recording

## Local Agency

Includes any independent public body corporate or politic, district, and all committees of any local agencies

Idaho Code § 74-101

# Definitions

## Public Official

Any state, county, local district, independent body corporate/politic or governmental official or employee, whether elected, appointed or hired

## Public Record

Any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any public agency, regardless of its form or characteristics

- **Personal notes created by a public official solely for their own use shall not be a public record as long as such personal notes are not shared with any other person or entity**

# Right to Examine: Content v. Source

- Idaho operates as a “content” state, versus a “source” state.
- CONTENT= regardless of where the public record is stored, it is subject to disclosure if the content of that record relates to public business.
- SOURCE= even if the record is housed on a public source, if the content does not relate to public business, it is not subject to disclosure.

# Right to Examine

Everyone has a right to examine and take a copy of any public record

- Includes right to take photographs or photocopies of records possessed by a custodian, can use District's photocopy machine
- Copying Fee Restrictions:
  - First two (2) hours of labor to produce public records is free
  - The first one hundred (100) print pages of public records is free
  - District can charge fee for any labor or print pages in excess, BUT the fee cannot exceed the actual cost of copying and labor

Idaho Code § 74-102

# Right to Examine

How should requests for public records be responded to?

- Custodian cannot ask questions about the requester, except:
  - to verify the identity of the requester,
  - to ensure the record will not be used to create a marketing or mailing list
  - or, to protect personal information from disclosure
- Custodian cannot ask questions about the requested information, except to help narrow the scope of the search to avoid fees
- Grant or deny the request within three (3) days

Idaho Code § 74-102

# Enforcement

Proceedings to enforce one's right to examine/copy public records:

- A person seeking a public records document and is denied can compel the agency to make the information available under the Public Records Act through a civil lawsuit
- A court will schedule a hearing within twenty-eight (28) days, ordering the agency to show up and state why they have not disclosed the public record
- The court may order the public official to disclose the record(s), if their reason for not doing so is not justified

Idaho Code §§ 74-115, 116

# Switching Gears

Questions?



# Idaho's Ethics in Government Act

## Policy:

- To protect the government's integrity while assuring its honesty, independence, and impartiality by informing the public of a public official's personal interests which may present a conflict of interest.

## Outline of Idaho's Ethics in Government Act:

- I. Definitions
- II. Required Actions in Conflicts
- III. Enforcement

# Definitions

# Definitions

## Public Official

Any elected, appointed, or employed public official holding public office by virtue of their election, appointment, or employment

## Business

Any undertaking operated for economic gain

## Conflict of Interest

Any official action, decision, or recommendation by a person acting as a public official, the effect of which would be to the private pecuniary benefit of the person or their business or a member of the person's household or their business

Idaho Code § 74-403

# Definitions

## Exceptions to Conflict of Interest

If the pecuniary benefit arises out of:

- An interest or membership in a particular business, occupation, or class that is a prerequisite to holding the office or position;
- Any interest which the person has by virtue of their profession, trade, or occupation where their 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; or
- Any action by a public official upon any revenue, appropriation, or tax measure, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree

# Required Action in Conflicts

## Duty to Disclose:

### Board Members

- Must disclose the nature of the potential conflict of interest and/or be subject to the Board's rules regarding conflicts of interest

### District Employees

- Must disclose the nature of the potential conflict by preparing a written statement describing the matter to be acted upon and deliver it to their appointing/employing authority

Idaho Code § 74-403

# Enforcement

## Civil Penalty:

- Any public official who intentionally fails to disclose a conflict of interest shall be guilty of a civil offense carrying a fine not to exceed \$500, or
- The penalties the District puts in place itself

Idaho Code § 74-406

# Examples of Conflict of Interest Policy

## Disclosure by a Board Member:

- Annually complete a Conflicts of Interest questionnaire, and
- Immediately update the disclosures as necessary


## Disclosure by Staff:

- Report concerns regarding a Board Member's conflict to the Executive Director
- Executive Director should report to the Board Chair, if the concern relates to the Board Chair then should report to the Vice-Chair

Conflicts of Interest Policy ¶ 3(A)&(B)

# Resolving Conflicts of Interest



- 
- Conflicts of interest are not all of equal materiality
  - Remedy for each conflict should match the materiality of the conflict
  - At a minimum, the affected Board Member shall abstain from voting on any matter where a conflict of interest exists

Conflicts of Interest Policy ¶ 4

# Example of Code of Ethics Policy

# Example of Code of Ethics Policy

- No Board Member, Executive Director, or other staff employee or agent shall solicit any gifts or anything of value from Vendors
- If offered or given a gift exceeding \$100 in value by a Vendor who expects to receive a benefit from the District, you must report the offer
- This Ethics Policy does not apply to campaign contributions or related activities of a political campaign of a Board Member, Executive Director, or other staff employee or agent of the District

Conflicts of Ethics Policy pg. 1 & 2

# Code of Ethics Policy

- A record should be kept of all reports submitted under the Ethics Policy, as appropriate
- The Executive Director and legal counsel are authorized to take any and all other action necessary to implement the purposes and intent of the Ethics Policy, as appropriate

Conflicts of Ethics Policy pg. 2

# Other Ethic Laws

## Other laws applicable to the District:

- Bribery and Corrupt Influence Act – Idaho Code § 18-1351 et. seq.
- Prohibitions Against Contracts with Officers – Idaho Code §74-501 et. seq.
- Public Integrity and Elections Act – Idaho Code § 74-601 et. seq.

# Security Concerns

## Do I Pose Any Risk to the District?

You do NOT pose any risk to the District's operations or to the public it serves. However, you can pose a risk to the District if you were to be socially engineered.

Example: You receive a phishing email and click a link within the message. Malware is now installed on your machine and intercepts your Facebook credentials. The "Bad Actor" posts negative messages about the District from your account.

# Media Reminders

- Media requests are encouraged to be passed on to a designated District media person or the Board Chair, so the District speaks with a single voice
- No social media exchanges are ever truly “private” – be thoughtful about posts, and, in particular, District-related posts

Finish Line!

Questions?



**H**AWLEY  
Troxell  
ATTORNEYS AND COUNSELORS



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