

# City of Moscow, 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.

## **CITY OF MOSCOW STATEMENT OF MISSION**

The City of Moscow delivers quality municipal services while ensuring responsible use of resources. We anticipate and meet the needs of our diverse population in order to build public trust and enhance a sense of community.

Continued citizen participation is essential to maintain the operations of the City's Mission Statement and to further nurture the community's superior quality of life. Moscow welcomes the participation and contributions of its citizens and community organizations. Good relations with our close community neighbors in Latah and Whitman counties are important to the achievement of community goals, as are the City's, the regional, state and international relationships. We are pledged to strengthen them all.

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. Moscow's 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 Moscow 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 is 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);
- (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 don't 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. § 59-703(4)/I.C. § 67-6506
  - b. An "apparent" conflict



3. If there is a conflict, what type of official has the conflict?
  - a. Salaried/Unsalariated I.C. § 59-704(4) / I.C. § 59-704A
  - b. Appointed/Employed I.C. § 59-704(5)
  - c. Elected I.C. § 59-704(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**

§ 59-701. Short title. This act shall be known and may be cited as the "Ethics in Government Act of 1990."

§ 59-702. 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.

§ 59-703. 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 non-action 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. Emphasis added.

§ 59-704. 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. Emphasis added.

§ 59-704A. 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 section 18-1361A, Idaho Code.

§ 59-705. Civil penalty. (1) Any public official who intentionally fails to disclose a conflict of interest as provided for in section 59-704, 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 59-704(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 & Zoning 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 meeting 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. § 59-703(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 an "economic interest" rather than the broader definition in the Ethics in Government Act and I.C. § 67-6506 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 (\$50.00) 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 (\$50.00) 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 section 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 section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 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 section 59-703(4), Idaho Code. (7) The prohibitions within this section and section 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 section 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 section 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.

§ 59-201. 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.

§ 59-201A. Remote interests. (1) A public officer shall not be deemed to be interested in a contract, within the meaning of section 59-201, 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 59-208, Idaho Code. Any contract created or entered into in violation of the provisions of this subsection shall be void.

§ 59-202. 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.

§ 59-203. 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.

§ 59-204. 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.

§ 59-205. 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.

§ 59-206. 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.

§ 59-207. 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.

§ 59-208. 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.

§ 59-209. 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 section 18-1361A, Idaho Code.

§ 59-210. Violation relating to public contracts. Officers shall not commit any act prohibited by section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 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 sections 67-2342 through 67-2346, 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 Section 67-2341(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 section 67-2341(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**

Notice of meetings is required under the Open Meetings Law. There are three (3) types of meetings: (1) Regular Meetings (2) Special Meetings (3) Executive Sessions.

(1) Regular Meetings. For meetings which are regularly scheduled, pursuant to the Idaho Code or pursuant to the Moscow City Code, notice of the regular meeting is given of not less than five (5) calendar days. In Moscow, the regular City Council meeting falls on the first Monday of each month unless it is a holiday or weekend, in which case the meeting is the next City working day. 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 require notice of the intent to hold a special meeting to be given at least twenty four (24) hours prior to the meeting. Special City Council meetings in Moscow are usually scheduled on the second Monday following the regular City Council 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 State 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 State Code. See I.C. § 67-2345. 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, 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**

§ 67-2342. 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 67-2343, 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.

§ 67-2343. 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.

§ 67-2344. 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.

§ 67-2345. 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 (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 3, title 9, 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 67-2343, 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.

§ 67-2346. 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.

§ 67-2347. 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 sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void. (2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, 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). (3) Any member of a governing body who knowingly violates the provisions of this act 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 act 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 act 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 sections 67-2342 through 67-2346, Idaho Code. 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).

## **Moscow Public Hearing Procedures**

### Moscow City Code Title 4, Chapter 10, Public Hearing Procedures

- Sec. 10-1: Purpose
- Sec. 10-2: Organization
- Sec. 10-3: Types of Hearings
- Sec. 10-4: Procedures for Type 1 Quasi-Judicial Hearings
- Sec. 10-5: Procedures for Type 2 Quasi-Judicial Hearings
- Sec. 10-6: Procedures for Legislative Hearings
- Sec. 10-7: The Neighborhood Meeting
- Sec. 10-8: Procedures for Appeals of Interpretation or Administration

#### Sec. 10- 1. Purpose.

To provide consistency in the conduct of public hearings held in conjunction with the process of regulating the use and development of land within the jurisdiction of the City of Moscow; to protect the public interest and the private rights of all participants in the public hearing process; and to comply with the requirements of Idaho Code 67-6534.

For purposes of this Chapter, the term “decision-making board” shall mean the Board of Adjustment, Planning and Zoning Commission, Council, hearing examiner or advisory board and any other person or persons duly authorized to make a determination regarding zoning or land use planning pursuant to Idaho Code or this Code, excluding City staff.

#### Sec. 10-2. Organization.

This Chapter shall be organized into three distinct types of hearing procedures which are required by various portions of this Code and by the Idaho Code. Basic rights and responsibilities are spelled out for the participants in these different hearing procedures toward the goal of making the hearing process predictable and understandable.

#### Sec. 10-3. Types of hearings.

Three primary types of public hearings shall be included in the scope of this chapter.

A. Quasi-Judicial Hearings - Type 1: Type 1 Quasi-Judicial hearings shall be required when a permit or discretionary administrative ruling is sought from a decision-making board such as the Board of Adjustment, Planning and Zoning Commission, or Council and only one public hearing is required by this Code or the Idaho Code before final action can be taken on the request. Because such a hearing may influence the individual rights of applicants, this administrative procedure shall be more strictly controlled to protect individual rights. Decisions following Type 1 Quasi-Judicial hearings shall be final subject to appeal to a higher decision making authority as provided by this Code or the Idaho Code. Permits to which this procedure shall apply are the variance, Conditional Use Permit, Special Use Permit, vacation of a portion of a subdivision plat, or an appeal from a decision of the Zoning Administrator.

B. Quasi-Judicial Hearings - Type 2: Type 2 Quasi-Judicial hearings shall be required when the permit or regulatory change sought requires a sequence of two or more public hearings before final action may be taken on the request. The initial public hearing shall be conducted by the Planning and Zoning Commission whose task is to prepare a recommendation for submittal to the Council. Following receipt of the recommendation from the advisory board, a second public hearing must be scheduled before the Council before a decision on the request may be rendered. Like those hearings classified as Type 1 Quasi-Judicial hearings the rights of individuals are at stake and the protection of those rights is a prime purpose of the required procedure. Like a Type 1 procedure the resulting decision from a Type 2 procedure is final unless appealed to a subsequent decision-making tribunal. Unlike the Type 1 procedure, care must be taken in the steps between the initial and second hearing to protect the interests of all parties involved. Type 2 Quasi-Judicial hearings are used in request for changes in zoning district boundaries, changes to the Comprehensive Plan when sought in conjunction with a request for a change in zoning district boundaries, Planned Unit Developments and subdivision plats.

C. Legislative Hearings: Legislative hearings shall be required when amendments are contemplated to the substantive or procedural terms of Title 3, Chapters 1 and 2, all of Title 4, and Title 5, Chapters 1 and 2 of this Code. Legislative hearings are characterized by their general applicability to the community as a whole. Legislative hearings may only be initiated by the Planning and Zoning Commission or by the direction of the Council. Included in this category are public hearings leading up to changes in the zoning ordinance, the subdivision ordinance, and the comprehensive plan of the City.

## Sec. 10-4. Procedures for Type 1 Quasi-Judicial Hearings.

### A. Pre-Hearing Procedures:

#### 1. General Requirements and Responsibilities.

a. Prior to the conduct of the hearing no person shall attempt to discuss the subject of the hearing with a member of the decision-making board destined to decide the issue. Any such attempt shall be reported by the decision-making board member so approached to legal counsel for the decision-making board who shall advise the decision-making board in that regard.

b. Notices of public hearing shall provide adequate information to allow notice recipients to participate in the hearing process.

#### 2. Applicant's Responsibilities.

a. The applicant for a permit shall submit a completed application on a form provided by the City to the appropriate City official.

b. The applicant shall, in a timely manner, provide the names and addresses, on mailing labels provided by the City, of all persons entitled to notice under the provisions of this Chapter. In the alternative the applicant may contract with the City for research and preparation of the list of landowners and residents who require notice. The City shall have the option of billing for this service based on its out-of-pocket costs plus administrative expenses or the City may charge a fixed charge per notice, with said charge established by the Council from time to time by resolution.

c. The applicant should submit such additional written material as the applicant may desire to tender to the decision-making board at the public hearing at the time of application filing. Such written submittals should be made at this time so they may be reviewed by the interested public prior to the hearing. Petitions may be submitted by the applicant after the filing deadline. Materials provided tardy may be admitted subject to the discretion of the decision-making board.

#### 3. Public Participant's Responsibilities.

a. Public participants in the hearing process shall have the opportunity to examine written materials submitted by the applicant prior to the hearing.

b. Public participants desiring to submit textual materials (excluding petitions) to the decision-making board shall make that submission at least five (5) calendar working days in advance of the scheduled meeting. Material provided tardy may be admitted subject to the discretion of the decision-making Board.

#### 4. City's Responsibilities.

a. The responsible City administrative personnel shall provide appropriate application forms and related materials to applicants.

b. Where required, the City shall publish notice of the public hearing in accordance with the requirements of this Code and the appropriate Idaho Code sections.

c. Where required, the City shall provide proper notice to the residents and/or land owners entitled to notice within the terms of this code or applicable sections of the Idaho Code.

d. The City shall maintain a file of materials relating to the application available for public inspection during regular business hours.

#### B. Hearing Procedures:

##### 1. General Requirements.

a. Public hearings shall be conducted according to orderly procedures as specified by the chairperson of the meeting, subject to the will of the decision-making board.

b. All procedures shall be directed to providing the participants in the hearing a fair chance to be heard by an impartial decision-making board.

c. Decision-making board members having a conflict of interest involving the subject matter of a hearing shall not participate in the deliberations related to the item in which they possess an interest. Said abstention shall be governed by the applicable provisions of this Code, the Idaho Code, and the member's personal perception of the situation. The decision to abstain from participation shall be the personal decision of the individual decision-making board member.

d. The chairperson of the decision-making board shall have sole authority to recognize participants in the hearing process and to maintain order in its conduct.

e. Subject to decision-making board objection, the chairperson may establish time limits on presentations in the interest of fairness and to provide more people with a chance to participate. Said limitations may be established at the beginning of the hearing or may be invoked during the hearing when conditions warrant.

f. Formal rules of evidence will not apply during the hearing, but the chairperson may rule that certain testimony may be excluded or shortened because of its relevance to the subject of the hearing.

g. Hearings conducted in accord with this section shall generally be conducted in the following order:

- (1) Opening of hearing and call to order.
- (2) Introduction of hearing item and explanation of request.
- (3) Presentation by applicant.
- (4) Public testimony in support of the application.
- (5) Public testimony in opposition to the application.
- (6) Other public testimony.
- (7) Response of applicant to public testimony.
- (8) Closure of the public hearing.
- (9) Board deliberations without further unsolicited comment.

h. All inquiries regarding the presentation of any party shall be directed to the chairperson who shall decide the need for a response and seek one where necessary or appropriate.

i. At the close of the initial public hearing the decision-making board may take any of the following actions concerning the application before it:

- (1) Approve the application as presented.
- (2) Reject the application as presented.
- (3) Approve the application subject to specific conditions as permitted by the applicable substantive Zoning Code sections.

(4) Table the application to allow fact finding by the City staff, to receive answers to specific factual questions from the applicant or the interested public, or to defer the decision for further reflection. When a request is tabled, the final decision shall be made at a succeeding regularly scheduled meeting, or at a special meeting for which proper notice has been given.

(5) Schedule a continuation of the public hearing at a specific time and place. This provision shall apply to any visit to the site in question by the decision-making board.

j. Each person who testifies shall provide the recording secretary with his or her name and a true and accurate mailing address.

k. All information upon which a decision rests, including information held by decision-making board members from their own experience, shall be placed upon the record before the public hearing is closed.

l. Members of the decision-making board may question any participant in the hearing process concerning any representations made or questions raised in the course of the hearing or in written materials submitted prior to the hearing.



m. The chairperson of the decision-making board conducting the hearing may solicit a response to a question seeking a specific objective fact from any participant without reopening the hearing for general testimony.

n. Any person may testify through a designated representative. The decision-making board may request proof of authorization from anyone purporting to speak for another. All writings submitted as testimony shall contain the name and address of the testifying party in legible form and shall include that person's signature.

o. All votes on final decisions or adoption of findings of fact shall be recorded in the official minutes of the meeting.

## 2. Applicant's Responsibilities.

a. The applicant or a duly authorized representative shall be present at the public hearing to present the application to the decision-making board unless excused by the decision-making board.

b. The applicant shall describe the application with reasonable detail to inform the decision-making board and those in attendance of the character of the application, the permission being sought, and the efforts undertaken to make the permission, if granted, acceptable to the community. The applicant's presentation shall address the criteria detailed in this Code or the Idaho Code for the type of permission sought.

## 3. Public Participant's Responsibilities.

a. Public participants in the hearing process shall address the facts of the issue at hand and may state opinions as they relate to the criteria of the applicable Code sections governing the request for permission made by the applicant.

b. Questions from public participants to the applicant, City staff, members of the decision-making board, or other public participants shall be directed to the chairperson of the decision-making board during the hearing.

## 4. City Responsibilities.

a. The City shall provide meeting facilities adequate to accommodate all who wish to participate in the hearing process.

b. The City shall provide a person who shall produce minutes of the proceeding as required by this Code or the Idaho Code.

c. The City shall maintain a transcribable verbatim record of all hearing proceedings for six (6) months following the date of a final decision in a matter for which a public hearing of this type is conducted.

### C. Post-Hearing Procedures:

#### 1. General Requirements.

a. After the close of a public hearing, the only public communication with the decision-making board concerning the application before them shall be specific factual answers to questions raised at the hearing or during deliberations and requiring a subsequent reply. The decision-making board may communicate freely with City staff and its own legal counsel following the closure of the public hearing.

b. Following each public hearing the decision-making board shall reach a decision regarding the permission sought in the subject application. The deliberations and final decision shall be conducted in an open meeting subject to the public scrutiny, and shall be made in a timely manner.

c. Decisions in such applications shall be accompanied by a written Reasoned Statement of Relevant Criteria and Standards which shall set forth the reasons for the decision-making board's decision pursuant to Idaho Code Section 67-6535. Reasoned Statement of Relevant Criteria and Standards shall be adopted by specific motion of the decision-making board.

d. The decision-making board may reach a decision in each application in any of the following ways:

(1) A final decision may be reached on the day of the hearing subject to adoption of Reasoned Statement of Relevant Criteria and Standards at a later date.

(2) A final decision may be reached on the day of the hearing immediately followed by adoption of Reasoned Statement of Relevant Criteria and Standards at the same meeting.

(3) A tentative decision may be reached on the day of the hearing subject to development of suitable Reasoned Statement of Relevant Criteria and Standards at a later date.

(4) A decision may be deferred to a later date at either the next regularly scheduled meeting of the decision-making board or at a subsequent regular meeting or a properly scheduled special meeting identified at the public hearing.

e. Draft Reasoned Statement of Relevant Criteria and Standards may be developed by motion of the decision-making board immediately following the hearing in question; by a subcommittee of the decision-making board, numbering less than necessary to constitute a quorum, to be brought to the entire board for final

action; or by delegation to City staff or legal counsel to be brought to the entire decision-making board for final action.

f. Adoption of Reasoned Statement of Relevant Criteria and Standards shall constitute a final decision for purposes of appeal.

Sec. 10-5. Procedures for Type 2 Quasi-Judicial Hearings.

A. Comparison to Type 1 Quasi-Judicial Hearings:

1. The Type 2 Quasi-Judicial hearings are to be conducted according to the same format as the Type 1 Quasi-Judicial hearings in the preceding section. The Type 2 procedure differs only in that two (2) successive hearings on the same matter (not on appeal) are required to complete the process. Both hearings are de novo hearings which allow presentation of any pertinent information regardless of prior participation and/or deliberation in the process.

2. The first hearing shall be conducted by the Planning and Zoning Commission and shall be held for the purpose of formulating a recommendation to be forwarded to the Council. The Planning and Zoning Commission shall be responsible for considering all information submitted to it by participants in the hearing process and for developing a proposed Reasoned Statement of Relevant Criteria and Standards for the Council. The entire product of the Planning and Zoning Commission hearing and deliberation process shall be made available to the Council before the close of the second hearing. Dissenting members of the Planning and Zoning Commission may submit written statements explaining their disagreement with the proposed Reasoned Statement of Relevant Criteria and Standards. Such statements shall be made available to the Council before the close of the second hearing.

3. The second hearing shall be conducted by the Council according to the same guidelines and requirements which are applied to a Type 1 Quasi-Judicial hearing. Any member of the Planning and Zoning Commission who participates in the second hearing, in person or by written submission, shall do so only for themselves and not as a representative of the opinion of the Planning and Zoning Commission as a body. Evidence received by the Planning and Zoning Commission at the first hearing shall have the weight at the second hearing that each Council member assigns to such evidence.

B. At the conclusion of the public hearing held by the Council, the Council may take any of the following actions:

1. Approve the recommendation of the Planning and Zoning Commission, and adopt the Planning and Zoning Commission's Reasoned Statement of Relevant Criteria and Standards.

2. Approve the recommendation of the Planning and Zoning Commission, subject to modifications to the Planning and Zoning Commission's Reasoned Statement of Relevant Criteria and Standards.

3. Render a decision different from the recommendation of the Planning and Zoning Commission, and adopt a new Reasoned Statement of Relevant Criteria and Standards.

4. Defer decision on the request to a later meeting date.

5. Remand the recommendation to the Planning and Zoning Commission for clarification or further documentation of the recommendation prior to reaching a decision.

C. A decision shall be deemed final when a proposal has been either approved or disapproved by the Council.

#### Sec. 10-6. Procedures for Legislative Hearings.

##### A. General Requirements and Conditions:

1. Legislative hearings are required when changes are proposed to the land use regulations of the City which are subject to the requirements of Title 67, Chapter 65 of the Idaho Code.

2. Legislative hearings are required in tandem as are Type 2 Quasi-Judicial hearings, but legislative hearings are not subject to the same procedural restrictions as are Quasi-Judicial hearings.

3. Ex-parte contacts are not forbidden in conjunction with the legislative hearing process.

##### B. Pre-Hearing Procedures:

1. A legislative hearing may be scheduled by order of the chairperson of the Planning and Zoning Commission or the Mayor or by a motion passed by a majority of the membership of the respective board involved.

2. Upon said order the City staff shall cause to be published a public notice containing the nature of the proposed change contemplated to the land use regulations of the City and the time and place of the hearing.

3. A copy of the proposed change shall be made available to the public for inspection from the time notice is published to the time of the hearing.

4. Written comments may be forwarded for consideration any time prior to the close of comments as determined by the board hearing the matter.

### C. Hearing Procedures:

1. Testimony may be submitted in any form by any person interested in the legislative proposition, subject to rulings by the chairperson concerning form, length, or relevance.

2. Hearings conducted in accordance with this section shall generally be conducted in the following order:

- a. Opening of the hearing and call to order.
- b. Introduction of hearing item and explanation of proposal.
- c. Public testimony in support of the proposal.
- d. Public testimony in opposition to the proposal.
- e. Other testimony on the proposal.
- f. Closure of the public hearing.
- g. Board deliberations without further unsolicited commitment.

3. The chairperson shall be free to vary the order of hearing procedures as necessary or desirable.

4. Minutes shall be kept of all legislative hearings and said minutes shall be available for public inspection during regular business tours.

5. All deliberations on matters which are the subject of legislative hearings shall be conducted in a properly called open meeting of the board considering the proposal.

6. All persons testifying at a legislative hearing shall state their name and address prior to addressing the hearing board.

### D. Post-Hearing Procedures:

1. At the close of the initial hearing, the Planning and Zoning Commission shall prepare a recommendation to the Council concerning the proposal before them. This recommendation may take any of the following forms:

- a. Approval of the proposal as presented.
- b. Rejection of the proposal as presented.
- c. Approval of the proposal subject to modifications as included in the Planning and Zoning Commission's recommendation.

2. The Planning and Zoning Commission shall forward its recommendation to the Council within forty-five (45) days of the close of the initial public hearing. The recommendation shall be in writing and shall set forth the reasons for the Planning and Zoning Commission's recommendation. Dissenting members may submit written comments stating their reasons for disagreement with the majority position on the proposal.

3. Upon receipt of the Planning and Zoning Commission's recommendation, the Council shall determine whether to hold a second public hearing on the subject of the initial legislative hearing. Upon an affirmative finding the City shall publish notice of a legislative public hearing before the Council stating the nature of the proposal and the time, place, and date of the hearing.

E. Second Hearing Procedures:

1. Procedures for the second hearing, conducted this time before the Council, shall be the same as for the initial hearing before the Planning and Zoning Commission.

2. At the conclusion of the second hearing the Council may take any of the following actions:

a. Adopt the proposal in ordinance form as originally proposed or as recommended or modified by the Planning and Zoning Commission.

b. Reject the change as proposed.

c. Propose substantial modifications to the proposal originally made or to the proposal recommended by the Planning and Zoning Commission and return the substantially modified proposal to the Planning and Zoning Commission for a new initial hearing.

Sec. 10-7: The Neighborhood Meeting.

A. Purpose.

The purpose of the neighborhood meeting is to allow the developer to present the proposal to neighbors and other members of the public prior to the formal public hearing so that the parties can discuss and consider neighborhood impacts, mitigation, design and construction elements, and the like. A further purpose is to allow developers to have related applications considered concurrently by the hearing bodies.

B. When required.

1. A neighborhood meeting shall be required for each of the land use matters below. Where the applicant desires to file more than one (1) application involving the same project and/or property and desires all related applications to be considered within the same hearing, one (1) neighborhood meeting shall be necessary.

2. A neighborhood meeting shall be required as a pre-requisite to filing of an application with the City for the following land use matters:

a. Annexation,

b. Request to amend Comprehensive Plan Map land use designation,

- c. Request to amend Zoning District,
- d. Preliminary Plat,
- e. Planned Unit Development, or
- f. Any combination of the foregoing.

C. Notice of meeting.

1. Notice of the neighborhood meeting shall be given to all property owners of record within six hundred feet (600') of the subject property. Such notice shall be provided at least fourteen (14) days before the first neighborhood meeting regarding the subject property. Notice of the neighborhood meeting shall be made by mail to the current or last known address of the property owners of record. Property owners of record shall be determined by review of records in the possession of Latah County. Alternatively, the City may provide a list of property owners to the applicant upon receipt by City of the proper request form and the appropriate fee.

2. Notice shall include a vicinity map, the general nature of the proposal, the size of the land, the number of lots/dwelling units, the date, time and location of the meeting, and the name, address, telephone number and email address of a contact person.

The neighborhood meeting shall be set at a date, time, and place reasonably calculated to facilitate the attendance of the property owners required to receive notice. Evening meetings during the work week are encouraged.

D. Format.

1. General.

The applicant or applicant's representative shall chair and conduct the meeting according to orderly procedures. The Chair should provide the participants in the neighborhood meeting a fair chance to be heard. The Chair will have the authority to recognize participants in the meeting and to maintain order in the conduct of the neighborhood meeting. Formal rules of evidence will not apply during the neighborhood meeting but the Chair may limit the duration of comments or presentation where necessary to give the broadest number of participants the opportunity to express their views.

2. Order.

The neighborhood meeting shall generally be conducted in the following order; however, the meeting should not be so formal that it precludes or unduly limits participation by those in attendance nor should it be so unruly that information gathering and exchange cannot occur:

- a. Opening of the meeting and a call to order,

- b. Introduction of the proposal/project by the applicant and/or the applicant's representatives,
- c. Public comments in support of the application,
- d. Public comments in opposition of the application,
- e. Questions and/or other public testimony,
- f. A response of the applicant (if desired by applicant),
- g. Any related business,
- h. Close of the neighborhood meeting.

3. Other.

Conduct by all participating in the neighborhood meeting should be respectful, should avoid personal attack, and should be directed toward gathering and exchanging information regarding the proposal(s).

E. Scope.

Each neighborhood meeting shall be conducted so that those in attendance can discuss the project/proposal which is the subject of the application(s) to be filed. Where more than one (1) application is to be considered in the same public hearing, the meeting shall include discussion of all related matters. For example, where there is to be a submittal for a rezoning along with a preliminary plat, both shall be thoroughly discussed in the neighborhood meeting.

F. Submission of neighborhood meeting materials to City.

1. Time to submit materials.

Neighborhood meeting materials required to be submitted pursuant to this Chapter shall be submitted with the application(s) and relevant fee(s).

2. Materials to be submitted.

The following shall be submitted to the City with the original filing of the land use application(s) and shall constitute part of such land use application(s):

- a. Time, date and location of the neighborhood meeting,
- b. Names and addresses of property owners to whom notice was sent,
- c. Names and addresses of all attendees,
- d. Summary of comments, suggestions and discussion,
- e. Applicant's response to comments, suggestions and discussion, including any modifications made or intended to be made to the project proposal/application as a result of the neighborhood meeting comments,
- f. Materials utilized or submitted (including plans, proposals, designs, power point presentations, maps, handouts, petitions, letters, studies, etc.) shall be submitted with the application for the related project(s).



A verbatim transcript is not required nor is a video and/or audio tape (unless the applicant wishes to submit it). The summary of comments, suggestions and discussion should be extensive enough to allow the reader to understand what occurred.

G. Notice of hearing.

Following receipt by City staff of the required submittals, notice of a public hearing on the related application(s) shall be scheduled before the Planning and Zoning Commission. Notice of such public hearing shall take place not less than thirty (30) days prior to the required public hearing before the Planning and Zoning Commission pursuant to this Code and City policy.

Sec. 10-8. Procedures for Appeals of Interpretation or Administration.

A. The Council shall review the appeal on the written record generated and/or preserved by the Board. Decisions made regarding appeals herein should be founded upon sound reason and practical application of recognized principles of law. When considering the merits of an appeal, no additional public testimony or information shall be taken or considered by the Council. After considering the record and the reasons for the appeal, the Council shall take one or more of the following actions:

1. Sustain the Decision. Sustain the decision of the Board in whole or in part.
2. Reverse the Decision. Reverse the decision of the Board in whole or in part.
3. Remand the Decision.

a. Remand the matter in whole or in part to the Board with comments and/or instructions for further consideration by the Board or for remand by the Board to the Zoning Administrator in order to gather more information on the matter. The Council shall remand the appeal in whole or in part for gathering of additional material information and a subsequent decision only where it is shown by a preponderance of the evidence that there is:

- (1) New material information not available or readily discoverable at the time of the Zoning Administrator's decision; and
- (2) It is in the public interest to develop such additional material information on the matter.

B. Procedures and guidelines for an appeal in addition to that contained herein may be established from time to time by resolution of the Council.

## ***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.

The City of Moscow Zoning Ordinance states that, in a Type 1 administrative hearing, *ex parte* contacts are strictly forbidden and requires that the decision maker shall immediately inform the legal counsel of any attempt by anyone to make *ex parte* contact. Please remember to review Moscow City Code Title 4, Ch. 10 for procedures related to specific actions.

## **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 §§ 9-337 through 9-350). 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 State 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 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.

**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 Community Development 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 Supervisor and/or 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**

	Board of Adjustment	Planning & Zoning Commission	Mayor and City Council
<b>ZONING</b>			
Legislative Matters		1st hearing and Recommendation	2 <sup>nd</sup> hearing and Decision
Zoning District Changes		1 <sup>st</sup> hearing and Recommendation	2 <sup>nd</sup> hearing and Decision
Special Use Permit	Hearing and Decision		Record appeal (with option to schedule hearing)
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)



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

	Board of Adjustment	Planning & Zoning Commission	Mayor and City Council
<b>SUBDIVISIONS</b>			
Preliminary Plat		1 <sup>st</sup> hearing and Recommendation	2 <sup>nd</sup> hearing and Decision
Final Plat		Recommendation	Decision
<b>P.U.D.</b>			
Type I		Hearing and Decision	Record appeal (with option to schedule hearing)
Type II		1 <sup>st</sup> hearing and Recommendation	2 <sup>nd</sup> hearing and Decision
<b>COMPREHENSIVE PLAN</b>			
		1 <sup>st</sup> hearing(s); Recommendation	2 <sup>nd</sup> hearing(s); Decision

Notes: