

City of Driggs

Teton County, Idaho

{INSERT SEAL}

BEST PRACTICES CONCERNING QUASI-JUDICIAL MATTERS

Adopted {adoption date}

Principles, Policy, and Procedures for use by City Representatives in administering Quasi-Judicial applications, and related matters.

Purpose: To provide guidance on a best practices standard for city personnel and officials to follow, in order to maintain a superior level of trust with the community they serve. This document is intended to provide guidance to all City Representatives including the following: City Staff, City Planning & Zoning (P&Z) Commissioners, all other city appointed officials or representatives, City Council Members and Mayor. This policy is not intended to be comprehensive, but focuses primarily on Quasi-Judicial matters.

Applicability: The practices contained herein shall be applied in the following matters:

- All Quasi-Judicial application to the City, or an application which may become Quasi-Judicial at some point in the near future.
- In any circumstance where a public hearing is required, or public input is sought.
- In any circumstance where a public records request is made to the City, particularly one which relates to an active Quasi-Judicial application, or to a matter pending public hearing.
- In the Economic Development efforts of the Mayor and City Staff.

TABLE OF CONTENTS

[I. DEFINITIONS](#)

[II. STATEMENTS OF CITY POLICY](#)

[III. BEST PRACTICES OF CITY REPRESENTATIVES IN QJ PROCEEDINGS](#)

~~[IV. GENERAL COMMUNICATIONS IN QJ MATTERS](#)~~

[IV. REMEDIES: DISCLOSURE OR RECUSAL](#)

[V. PUBLIC HEARING AND PUBLIC COMMENT IN QJ APPLICATIONS](#)

[VI. PUBLIC HEARING TESTIMONY GUIDELINES](#)

[VII. PUBLIC RECORDS REQUESTS: STATEMENTS OF CITY POLICY](#)

I. DEFINITIONS

Legislative Action: An action resulting in a law (ordinance) or policy being adopted which is general in its application, rather than specific to a single property or group of properties.

EXAMPLE: The City Council considers an ordinance governing the licensing and management of dogs within the City. This would be generally applicable to all citizens, and is therefore legislative. General zoning action is legislative.

Quasi-Judicial Action: Quasi-Judicial refers to a review undertaken by the Planning & Zoning Commission (P&Z) and/or City Council in which a site-specific decision will be made. Quasi-Judicial may be referred to as QJ throughout this document. City Staff will attempt to clearly inform decision makers in advance which category applies for any given application.

EXAMPLES: Rezoning a parcel, Conditional Use Permit (CUP), Variance, and Preliminary Subdivision Plat. These actions are specific to a given property or site.

Decision Makers: Planning & Zoning Commissioners, City Council Members, Mayor (when called upon to break a tie vote of the Council), other committee members as occasion provides.

City Representatives: City Staff, Elected and Appointed officials, or a Contractor acting on behalf of the City under contract to the City.

Applicant/Petitioner/Beneficiary: These three words can be used interchangeably in the context of this document. They refer equally to any party which will benefit directly from a QJ process.

Ex-Parte: Refers to communication apart from the public arena. Ex-parte communication is only an issue in Quasi-Judicial (QJ) applications, in which a site-specific decision will be made. In a QJ application all Decision Makers should utilize the same body of information (the public record) in their decision making process. This same information must be available to the public in its entirety. Any additional information obtained outside the public process qualifies as ex-parte, and may not be utilized in a QJ decision unless equal access to that information is provided to the public and Decision Makers. Guidance on disclosure is provided under section V. REMEDIES.

II. STATEMENTS OF CITY POLICY

Legal compliance required: It is the Policy of the City of Driggs that in all activities the Staff, Appointed, and Elected Officials shall observe applicable Federal, State, and City laws.

- If at any point a question arises concerning interpretation or application of these laws it is the duty of City Representatives to obtain legal direction from the City Attorney.
- Such direction from the City Attorney shall be deemed the final interpretation of the law, regardless of opinions expressed by others within or without the City.
- When direction given by City Attorney is followed, City Representatives are shielded from any personal liability which might arise from their actions.
- Use of credible outside resources, such as circulars from the Idaho Attorney General's office, and training or advice obtained through Association of Idaho Cities and/or ICRMP are encouraged for the training and educating of City Representatives.

Best Practices encouraged: It is the Policy of the City of Driggs that in all activities the Representatives of the City shall strive to achieve a higher level of ethics and public service than required by law whenever practicable. This higher standard shall be called 'Best Practices'. Best Practices are a lofty goal which should be sought by all City Representatives in all actions they undertake, but cannot be measured, dictated, or described for every possible scenario.

- Each individual Representative of the City shall utilize their own judgment and the direction of their supervisor (as appropriate) in striving for this higher standard.

Adherence to Professional Codes of Conduct Encouraged: Each City Representative holding credentials from a professional organization shall seek to adhere to the codes of conduct adopted by such organizations in their performance of duties applicable to the professional credentials.

Authority to Commit or Bind City is Limited: No representative of the City may make promises or commitments to an Applicant. All agreements are subject to the review of the City Council.

- All agreements/contracts should be negotiated by City Representatives to obtain the best possible benefit to the City.
- Naturally, all negotiations require some establishment of anticipated outcomes, but Applicants, or parties in negotiations with the City should be notified that terms or conditions discussed are subject to review and approval.

Notification of Decision Makers: When an application is accepted by City Staff and determined to be Quasi-Judicial, the staff will attempt to notify all appropriate Decision Makers of the application by name and/or location, and advise them to refrain from conversations or other information gathering related to that application.

City Point of Contact: In QJ applications the P&Z Staff should be the primary points of contact. This applies equally for members of the public, other City Staff, and Decision Makers. The P&Z Staff will act as the clearing house for collection and dissemination of information regarding an application.

III. BEST PRACTICES OF CITY REPRESENTATIVES IN QJ PROCEEDINGS

STAFF:

City P&Z Staff will notify Decision Makers and City Staff of a pending QJ process so that they may make every effort to avoid improper contact with members of the Public, Applicants, or others lobbying for or against a proposal.

In QJ applications City P&Z Staff should be the primary points of contact with the public, with applicants, and other staff members. P&Z Staff may interact with any interested party to inform them of the details of the application, to answer questions, and to receive public input on the issue. P&Z Staff should refrain from expressing any non-fact based opinion or analysis at any time. Non-P&Z Staff members should direct public inquiries and comments to P&Z Staff.

Fact-based analysis should be utilized by all Staff in drafting their comments to P&Z Staff or their recommendations to Decision Makers.

HANDLING APPLICANT SUBMITTALS

In order to ensure that Decision Makers, Staff, and the public have access to the same information in a QJ application, the following are recommended:

- Applicant submittals should be date-stamped. Any subsequent corrected or updated submittals should have a clear marking indicating date and 'corrected' or 'updated'.
- Submittal standards may be required by Staff, which may include, but are not limited to: Application deadlines, and quality and format of application materials.
- Staff may propose an anticipated review calendar, but should not provide any guarantee of the application process milestones.

COMMUNICATING RECOMMENDATIONS TO DECISION MAKERS

In developing a report for Decision Makers, Staff should attempt to provide the following information:

1. A clear and concise list of objective standards and requirements which such applications are required to meet. Such references may include City, State, and Federal Codes, as well as established policy.
2. In the event that no governing standards are found which apply to a given application, or are found to be lacking sufficient clarity, detail, or applicability, Staff should recommend standards recognized by professionals in their field.
3. An objective analysis of the compliance of an application with those standards.
4. A summary statement which clearly states a fact-based conclusion or options.

DECISION MAKERS (P&Z, City Council):

Once P&Z Staff have notified Decision Makers of a pending QJ application, these members should refrain from any non-public discussion, individual inspection or information gathering, or comments or opinions regarding the application. Likewise, opinions and lobbying from opponents or supporters should be avoided. _

~~Decision Makers should avoid contact or discussion with any member of the public related to the application at hand.~~ This includes:

- Applicant-Petitioner-Beneficiary,
- any individual or group which may petition for or against the given application,
- any member of the general public.

Decision Makers should not discuss a pending application with any other Decision Makers or the Mayor outside of a public meeting where this item has been properly noticed. Conversations with P&Z staff or Legal Staff to better understand the application and/or applicable law are encouraged.

- Submitting questions in writing is preferred, as this will allow the Staff to provide all Decision Makers and the public equal access to the same information in responding.
- In such interactions with Staff, Decision Makers should refrain from expressing opinions or influencing toward a specific outcome.

Decision Makers should not express opinions publicly or provide any comments or judgment of an active QJ application or site until after applicable Public Hearings have been completed, and then only within the public meeting where the issue has been noticed.

~~P&Z or~~ City Staff may choose to provide Decision Makers individual site visits, or a video recording of a site if it is deemed important to the decision at hand, but all Decision Makers should be given equal access to the same information, which must also be readily available to the public.

Decision Makers must approach each application impartially, with no pre-existing bias toward the applicant or project outcome. In circumstances of clear and public bias prior to consideration of the application's public record, a Decision Maker may choose to recuse him/herself from the deliberative process. Recusal should not be taken lightly, as it is the solemn duty of Decision Makers to weigh the information and make a decision, however difficult it may be.

- Before recusing him/herself, a Decision Maker should consult with City Attorney and/or City Staff.
- Ultimately the decision to recuse oneself is up to the individual, unless there is a legally defined conflict under Federal, State, or City law which demands recusal.

MAYOR - Executive Responsibility:

The City of Driggs has a strong Mayor-Council form of government in which the Mayor acts as the City's Chief Executive, overseeing day-to-day operations of the City, while the four-member City Council serves as the Legislative body with policy setting and budgetary authority.

~~The Mayor is the Chief Executive Officer of the City, having oversight responsibility over all executive operations.~~—The Mayor is in a different position than the Decision Makers, since he/she is typically not a decision maker – only in the rare case of a tie vote of the City Council. The role of Mayor is a dual one; primarily executive, but occasional legislative or quasi-judicial while casting a tie-breaking vote. There is not much established case law, and so this is an area to use caution and be extremely aware of the perception resulting from the Mayor’s public actions. Like the Decision Makers, the Mayor is encouraged to err on the side of transparency and discretion.

It is understood that the Mayor will reasonably be involved in or have oversight of pre-application discussion of an application which may become QJ at some point in the future. The Mayor’s involvement may include (but is not limited to) contract negotiations, concept development, and other details which will ultimately require the approval of the City Council in a public meeting and/or Quasi-Judicial process.

- Discretion should be used in such cases, to avoid the appearance of an approval being granted prior to the public process. Parties involved in such conversations or negotiations should be expressly notified that the Decision Makers will need to approve the terms negotiated.
- The Mayor should negotiate on behalf of the City to obtain the best possible agreement or benefit for the City, but may not promise a specific result or outcome to an applicant.
- While it is generally best to keep the Mayor’s involvement as general as possible, leaving details to be refined by City Staff, the Mayor’s involvement can be beneficial to the interests of the City, and should be utilized when advantageous.
- The extent of mayoral involvement is at the sole discretion of the Mayor in consultation with the City Attorney and other appropriate City Staff or Representatives.

Once a QJ application has been received, or is imminently anticipated to be received, the Mayor should make a best effort to comply with the same directive regarding *Decision Makers* above with the following express exceptions:

- The Mayor is expected to work with Staff as is appropriate and normal in scheduling, planning, and preparing for public meetings, hearings, and notices, but should avoid even the appearance of influencing an application or outcome.
- In some circumstances the Mayor may need to interact with applicants regarding a pending application, but in all such cases should limit the interaction as much as possible, and take great care to avoid making commitments, or guaranteeing a specific outcome.

Mayoral involvement in this executive capacity does not in itself constitute ex-parte communication or imply bias.

MAYOR - Chairperson of City Council Meetings:

The Mayor's primary responsibility during City Council meetings is to facilitate meeting flow, which should be undertaken according to the established standards and policy, to provide the most fair and impartial adjudication of QJ applications.

- In the event that the Mayor has had ex-parte communication, such communication should be disclosed when it becomes apparent that the Mayor will be casting a vote. Prior to the Mayor voting (i.e. breaking a tie vote) the public hearing should be reopened and all ex-parte communications disclosed as part of the public hearing, consistent with all applicable hearing rules.
- It is entirely possible that the Mayor may be called upon to vote - breaking a tie-vote - on an issue which s/he was involved in negotiating. This is a reality of the political structure, and does not constitute a legal conflict or imply bias. The involvement of the Mayor in negotiations or concept discussions on behalf of the City does not imply bias on his/her part.
- In the event that the Mayor is called upon to break a tie vote on a matter, it is important that s/he utilize the same information and evaluation criteria available to the Decision Makers to reach a conclusion.

Because the Mayor is responsible for facilitating and managing meeting flow, recusal could complicate a meeting unduly, and should be undertaken only in consultation with City Attorney and Staff.

- In such circumstances the Mayor may opt to forgo participation in the discussion portion, though still remain present to facilitate the proceedings in a fair manner.
- The decision to recuse him/herself is solely up to the Mayor's judgement, unless there is a legally defined conflict under Federal, State, or City law.

IV. GENERAL COMMUNICATIONS IN QJ MATTERS

~~How a Decision Maker should handle communication initiated by an Applicant/Petitioner/Beneficiary:~~

~~Decision Makers should refrain from contact with petitioners/applicants/beneficiaries, in which the application is discussed. Occasionally, however, by simple human circumstances, such contact is unavoidable. Decision Makers are encouraged to politely decline to discuss the issue, directing the applicant to contact City P&Z Staff with their comments or questions. In some limited circumstances the Mayor may need to interact with applicants regarding a pending application, but in all such cases should limit the interaction as much as possible, and take great care to avoid the appearance of a commitment to a specific outcome. It is best to avoid such interactions altogether.~~

~~How a Decision Maker should handle communication initiated by a member of the public:~~

~~Decision Makers should refrain from contact with the public in which the application is discussed. Occasionally, however, by simple human circumstances, such contact is unavoidable. Decision Makers are encouraged to politely decline to discuss the issue, directing the individual to contact P&Z Staff with their comments or questions.~~

~~How non-P&Z City Staff should handle communication initiated by a member of the public or Petitioner/Applicant/Beneficiary:~~

~~In QJ applications the P&Z Staff are the City Representatives tasked with collecting all pertinent information and presenting it to Decision Makers. Unless otherwise determined within the City administration, all non P&Z Staff should direct comments from the public or applicants to the P&Z Department.~~

Comment [Johnson1]: AUGUST – unnecessary – consider deleting this entire section IV.

IV. REMEDIES: DISCLOSURE OR RECUSAL

In the event that there was contact between Decision Makers and applicants or the public on a QJ application the following options are available:

For conversations which were superficial in content and duration no remedy is needed. It is up to the individual Decision Maker to make this determination. Minor interactions in which the Decision Maker was able to redirect the individual to P&Z Staff need not be disclosed. Decision Makers are encouraged to err on the side of caution.

For circumstances where a conversation was held which was more than superficial in content or duration, the Decision Maker should disclose this conversation to the entire board/council. This is best done by submitting a brief written summary to P&Z Staff prior to a meeting. If time is too short this disclosure may be made prior to the beginning of council deliberations within a meeting. Such disclosure should include with whom the conversation was held, and what was discussed.

- In the event of a more serious interaction, in which details of the application are discussed, or opinions expressed, the Decision Maker should try to submit that information in writing to P&Z Staff, so that this information can be included within the public record.
- If additional information is obtained which may affect the decision process of a Decision Maker, this information must be made available to the general public and all Decision Makers. Submit all such information to a P&Z Staff member in writing for inclusion in the record and dissemination.

In circumstances where a legal conflict exists as defined in Federal, State, or City law, the Decision Maker must follow the law, which may require him/her to recuse him/herself. This decision should only be made in consultation with the City Attorney, preferably in advance of the meeting. See *Instructions for recusal* below.

In the event that the Decision Maker feels s/he may have developed a bias regarding an Application which would prevent him/her from fairly adjudicating:

- It is the solemn duty of Decision Makers to withhold judgment on an application until all relevant information has been heard, including testimony presented at a Public Hearing.
- While Decision Makers should make their best effort to remain open, and reserve judgment until the appropriate time, simple human nature may interfere. If a Decision Maker feels that they are not able to provide a fair hearing, they may consider recusing themselves from the deliberation and voting. This decision should only be made in consultation with the City Attorney and/or City Staff, preferably in advance of the meeting.
- Recusal for potential bias is up to the sole discretion of the Decision Maker.

Instructions for recusal:

- Recusal should never be used to avoid the burden of deliberation and decision making borne by public officials.

Comment [Johnson2]: JOHNSON – I don't see a clean edit/cut here. I'm inclined to leave as is. Suggest specific language if you prefer.

Comment [Johnson3]: AUGUST – Duplicates statements above? Consider editing out.

- Recusal should only be undertaken after consulting with City Attorney and other appropriate City Staff.
- In recusal the individual should remove themselves from the bench at the beginning of deliberations, and may return at the conclusion of the decision making process, or the completion of the affected agenda item.
- The written record should reflect recusals and the reasons given, as well as noting when the individual returns to the bench.

In summary, disclosure is the primary remedy for most circumstances of concern. Disclosure in writing is always preferred, and should be included in the written record. Recusal should be undertaken only when required due to legal conflict, or when a Decision Maker feels they have sufficient prior bias to justify it, and have consulted with the City Attorney.

Comment [Johnson4]: JOHNSON – I'm inclined to keep this summary statement intact.










Comment [Johnson5]: AUGUST – duplicate/repetitive.

VI. PUBLIC HEARING AND PUBLIC COMMENT IN QJ APPLICATIONS

QUASI-JUDICIAL HEARINGS

Quasi-judicial hearings involve site specific decisions (such as considering a request to rezone specific property) as opposed to legislative hearings, which require decisions that have a broad application (such as a change in the text of a zoning ordinance, which may affect multiple parcels or zones).

PUBLIC COMMENTS: Idaho Law does not provide for Public Comment outside of the formal Public Hearing process. Nevertheless the City values the input of its citizens, and recognizes that not everyone will choose to attend a Public Hearing. Therefore the City establishes the following policy regarding Public Comments received in writing prior to a Public Hearing:

-  Comments received in writing prior to the Public Hearing will be included in the public record, and distributed to the Decision Makers and available to the public.
-  Comments collected or aggregated by any third party will be considered and processed as a single comment from that party. Individual Public Comment must be received directly by the City in order to insure fairness.
-  All comments received must include a **valid name** and **physical address**. Anonymous comments cannot be accepted for consideration, and will not be included with the public record.
-  A deadline of one week prior to the Public Hearing is necessary to insure that written comments can be received and distributed to Decision Makers, applicant and the public in advance of the Hearing. This deadline is necessary to insure fairness, and to give the Decision Makers and affected parties ample time to review the new information..
 -  **Staff will collect written comments received after the one week prior deadline and provide a summary of those comments to the City Council in their staff presentation at the meeting.** The City Council may additionally request that late written comments be read into the public record by staff.
 -  Any comments received less than 24 hours prior to the Public Hearing are not guaranteed to be available to Decision Makers or the public prior to the Public Hearing.
 -  In the event that comments are received which are unable to be provided, they will be attached to the public record with a notation that they were received too late for inclusion at the Public Hearing.
 -  The P&Z Staff will make a reasonable effort to include comments received less than 24 hours prior to the Public Hearing in the presentation of late comments to the City Council as above.
-  Any written comments not provided to Decision Makers and the public prior to the Public Hearing or read into the record during the public hearing by staff or a hearing participant cannot be considered in the Decision Process.

PUBLIC HEARINGS WILL GENERALLY FOLLOW THIS ORDER: This represents a general format. Actual duration and order may vary slightly, unless noted below as required.

1. Presentation by Applicant. (*approximately 15 min.*) **At his/her sole discretion the Chair may grant additional time.** The Applicant has the burden of persuasion in quasi-judicial matters.
2. City Staff may present a staff report which presents evaluation criteria and an assessment of the application as presented by Applicant. Staff may also respond to Decision Maker questions to clarify application materials, related regulations, etc. (*approximately 15 min.*) At his/her sole discretion the Chair may grant additional time.
 - There is a set of criteria for each application type, which is what the decision should be based upon. City Staff will present the criteria, as well as their assessment of the application as measured by these set criteria.
 - Various departments may have different criteria for assessment, and **in some cases there may be some City Staff advocating for an application, while other departments advocate against/oppose.**
 - Each Staff **advocate/presenter** should clearly delineate their measurement criteria for the Decision Makers, and explain whether the application meets those criteria or not. This is a fact-based presentation, with clear and concise elements to consider.

At this point all information about the application/project needs to be expressed for the record and all questions asked by City Council/Commission of the applicant.

1. Public hearing. **The following order is critical and may NOT be altered.** Testimony from the public is taken in the following order (**approximately 3 min. per person unless otherwise noted by chair**):
 1. Those in favor of proposal
 2. Those speaking neutrally respecting proposal
 3. Those opposed to proposal
 4. Rebuttal testimony from applicant.
 - a. *The rebuttal should be based solely on the application and information that is already on record. If new evidence is presented that has not been part of the record thus far, the public must be given an opportunity to respond to the new facts perhaps by reopening opposing testimony.*
2. Public hearing closed.

At this point all available and pertinent information has been received by the Decision Makers. No new information may be introduced. The Chair may call Staff back for clarification only. New information presented at this time would necessitate a reopening of testimony

3. Discussion and decision by the City Council/Commission.

| City Council/**P&Z** Commission may approve, approve with conditions, or deny an application, or may continue the application to a future meeting.

- Decision Makers may opt to table or continue a decision to a later date, not making a decision at the time of Public Hearing. Tabling or Continuing to a future meeting **does**

not allow additional information to be collected and added to the record, unless an additional Public Hearing is properly scheduled and noticed.

VII. PUBLIC HEARING TESTIMONY GUIDELINES

Once the Public Hearing has been opened for comment, testimony from the public will be heard in the order delineated above.

- **Three (3) minutes will be given per person for individual testimony. If you are a spokesperson for a group, and you have been pre-authorized by the Chair, you may be granted additional time up to fifteen (15) minutes maximum for testimony.**
- **For the sake of this section a group is defined as a legal entity, or a loose organization of individuals numbering approximately ten or more who share a common interest in the matter at hand.**
- **Pre-authorization to act as a spokesperson for a group must be requested in writing (email okay) at least 24 hours in advance. Submittal of a request does not automatically guarantee approval. Amount of time granted is at the sole discretion of the Chair.**

GENERAL RULES FOR TESTIFYING

No person shall be permitted to speak before City Council/Commission at a public hearing until such person is recognized by the Chair Person. The City may have a sign-up sheet available for those wishing to speak.

Because Quasi-Judicial decisions are based on set criteria of approval for each application type, it is important to provide comments in terms of how an application relates to the criteria of approval and/or its compliance with City ordinances - whether speaking in favor, neutral, or opposed to the application.

Testimony should

- Be addressed to the Chair and Decision Makers.
- Directly address the topic at hand.
- Comply with the established time limits (3 minutes or as established by Chair.)
- Be specific to the details of the application and the measurement criteria established by Staff.

Testimony should not

- Be repetitious with other entries into the record. If another individual has made comments with which you agree, rather than repeat them you may simply state that you agree with what that person said.
- Be personally derogatory.
- Be addressed to any other person in the room.

If oral testimony fails to comply with the aforementioned standards, the Chair may declare such testimony out of order and require it to cease.

Comment [Johnson6]: JAY – define 'group'

Comment [7]: DOUG - Other than the sign up sheet, this section could be deleted since it is directed at the public and this is more of an internal policy guide. We could have a separate document for the public that gives direction/guidance on participating in the quasi-judicial process. There are many out there already that we can use.

Comment [8]: JOHNSON – This could be removed, but I think it provides clarity for the staff and decision makers as well. Since this is a policy document we should leave it in, and derive the information sheets for the public from this guide.

VIII. PUBLIC RECORDS REQUESTS: STATEMENTS OF CITY POLICY

The following policy statements are derived from the Idaho Public Records Law Manual – Published by Idaho Attorney General Lawrence Wasden – rev. July 2015. Available online at <http://www.ag.idaho.gov/publications/legalManuals/PublicRecordsLaw.pdf>.

Format of Public Records Request (PRR): All Public Record Requests must be submitted according to the following standards to be valid:

1. All Requests must be submitted to the Custodian of Records for the City. Unless otherwise designated the City Clerk is the Custodian of Records.
2. Records Requests must be submitted in writing on the City designated form, available on the Driggs City website or at the City Clerk's office. Emailed request forms are acceptable, provided the submitted form is signed by the requester.
- ~~3.~~ All requests must be signed by an individual, certifying that they are not using the collected information for a prohibited purpose under Idaho Statutes.
- ~~4.~~ ~~3.~~ The City requires advance payment of estimated fees. If the actual cost to fulfill a request is less than the advance payment, then a refund will be given. If the actual cost is greater than the advance payment, then full payment is required prior to releasing any material.
- ~~5.~~ 4. A PRR is deemed to have been received when the City Clerk stamps it with a date and time and acknowledges receipt. Emailed request forms will be printed and stamped accordingly. Once the signed request is acknowledged as having been received by the City Clerk's Office and advance payment of estimated fees has been received (when required), the clock begins.
- ~~6.~~ 5. If the City does not respond to a request within 10 days of formal receipt of a PRR, it is automatically deemed denied.

Time-Frame: It is the policy of the City of Driggs that Public Records Requests should be handled as quickly as reasonably possible, and at the lowest cost possible.

1. Where cost-reduction or speed may conflict cost-reduction to the City shall prevail.
2. Where a request relates to a pending Public Hearing, speed may be allowed to prevail at the discretion of the City Clerk.
3. The following excerpt from the Idaho Public Records Law Manual addresses required time limits related to Public Record Requests:

Question No. 25: What are the time limits for a public agency to respond to a request for information?

Answer: The intent of the law is that documents be provided upon request whenever possible. A public agency has three (3) working days from the date of the receipt of the request to grant or deny the information. However, public agencies should not delay three days to provide information that is readily available. Employees of the public agency are allowed to determine that a longer period of time is needed to locate or retrieve information, notify the individual in writing that more time is needed, and then grant or deny the request in whole or in part within ten (10) working days following the request.

Comment [Johnson9]: AUGUST - Consider adding additional detail on statutory response times.
MAYOR – quote from AG manual inserted.

How to count days for purposes of Public Records Requests: As directed under Idaho Statute, all Public Records Requests are governed by Business Days, not Calendar Days. The City of Driggs generally adheres to the Legal Holiday Schedule of the State of Idaho. In no case is a legal Holiday or weekend applicable when counting days for PRR.

Controlling Taxpayer Expense: Because PRR's have the potential to be very costly, an expense which is borne by the taxpayers of Driggs, it is the policy of the City of Driggs that if the PRR is anticipated to exceed the statutory no-cost threshold of two hours time and 100 pages, the following practices are required:

1. Upon determination that the request will likely exceed the no-cost threshold, the Clerk shall provide a written estimate of the cost to the requester, and receive estimated payment-in-full prior to proceeding.
 - ☞ If at any time the actual cost is determined to exceed the quoted estimate by more than 10%, then a new estimate should be provided, and new payment sought before proceeding further.
 - ☞ If the requester does not pay the additional fee no additional work should be undertaken on that request beyond the statutory no-cost limits or what has already been paid.
2. Full payment is required prior to releasing any material, unless the request meets the statutory exemption requirements. Over payments of more than \$1 will be refunded.
- 2-3. Copies will be charged at the current established rate of the City.

All City Representatives must comply and cooperate: All City Representatives must comply with applicable Federal, State, and City laws, and City Policy governing Public Records Requests. This includes cooperating with the City Clerk to retrieve requested documents in a timely manner.

City Clerk to maintain passwords: In order to insure timely access to all Public Records, the City Clerk is authorized to securely maintain a list of usernames and passwords for all City related email accounts, document storage or cloud accounts, backup facilities, databases, and any other method of collecting or storing public records of the City. All City Representatives must provide the most current access information to enable the Clerk to maintain this database.

All requests must be reviewed by City Attorney: All Public Records Requests must be reviewed by the City Attorney prior to release. Because of the complexities of Idaho Public Records Law, it is the policy of the City of Driggs that any request not considered simple or routine should be reviewed by or discussed with the City Attorney.

1. Consultation with and following the instructions of the City Attorney demonstrates a Good Faith effort to comply, and therefore provides legal immunity for public agencies and officials from liability which may arise. (Idaho Public Records Law Manual, Question No. 41.)
2. The City Attorney will determine whether attorney/client privilege or any statutory exemption applies to a requested document or portions thereof.
3. The City Attorney's time will be billed at the same rate it costs the City.

Electronic vs. Paper records: The City will provide requested documents in the form most easily managed by City Staff. The Clerk shall have sole discretion in determining best format.

Appropriate City Staff: In accordance with Idaho Statute, the staff utilized for PRR's should be the lowest cost staff capable of performing the work. **The City Clerk has full discretion in determining who should be involved in preparing a PRR.**

Calculating staff rate: As permitted under Idaho Statute, staff time will be billed as follows:

1. City Attorney employee - actual hourly cost to city including benefits
2. All other staff - because multiple staff may be required to retrieve, review, convert and compile records, **the City will use an average hourly cost to City including benefits.** The average will be calculated based on the average salary and benefits of all City Clerk staff, including Deputy Clerks. At the discretion of the City Clerk any other non-legal and non-clerk staff may be billed at the actual cost to City.
3. Time should be tracked in writing, and attached to the PRR file. All time spent collecting, retrieving, reviewing, converting, compiling, copying, or any other task related to the preparation of the PRR should be included.
4. On requests which are anticipated to exceed the no-cost minimums, a City Clerk Supervisor should review the process at least daily to determine whether the established and approved cost estimate will suffice, or if an additional estimate needs to be prepared and paid by the requester.

Denial of a Public Records Request: Full or partial denial of a PRR will be ~~denied~~ **denemaded** in writing, and must include the following information:

1. That the PRR was reviewed by the City Attorney,
2. Which provisions of Idaho Code authorize denial
3. The requester's right to appeal denial and the time frames for appeal.

Itemized Fee Statement: When fees are charged the City shall provide an itemized statement to the requester showing the following:

1. The per page costs for copies and the number of pages copied.
2. The number of hours worked by cost category, and the corresponding hourly rate charged.
3. A credit for the 100 pages and 2 hours free labor required under statute.

Additional conditions and guidelines: See Idaho Public Records Law Manual – Published by Idaho Attorney General Lawrence Wasden – rev. July 2015 – for additional information.