



## **Review of Draft Area of Impact “Process” Legislation**

**Friday, January 5, 2007 10:00 A.M. to 11:30 A.M.**

**Eagle City Hall  
660 E. Civic Lane, Eagle**

### **AGENDA**

**I. Summary of the Draft Legislation (Nichol Baird-Spencer or Association of Idaho Cities Representative) (10:00 – 10:15)**

The Association of Idaho Cities drafted the attached area of impact “process” legislation. The relationship of the legislation to the Blueprint for Good Growth process will be discussed along with a summary of the legislation revisions.

**II. Discussion of the Draft Legislation (10:15-11:30)**

An open discussion of the legislation will occur. The outcome of this discussion is will be a summary of recommendations to the Consortium concerning the Legislation. Individual Consortium member entities are also expected to make their own recommendations to the Association of Idaho Cities.

67-6526. Areas of city impact - Procedures.

(a) Areas of city impact are areas within the unincorporated areas of counties wherein development or other land use-related activity can result in economic, social or environmental consequences for nearby cities. Area of city impact agreements are intergovernmental contracts that define and provide for implementation of shared land use policies and regulations by virtue of agreements between counties and an included or nearby city. The governing board of, any county and each city therein or nearby, may implement an area of city impact agreement by adopting one or more county ordinances, following the notice and hearing procedures provided in section 67-6509, Idaho Code, identifying an area of city impact and setting forth accompanying regulations within the unincorporated area of the county or may incorporate the substantive provisions of an area of city impact agreement into said county's comprehensive plan and land use or subdivision ordinances, respectively. As an alternative to implementation of a regulatory ordinance or ordinances by area of city impact agreement, a county and city may agree to a referral-only area of city impact, without public hearing pursuant to section 67-6509, Idaho Code. Any such referral-only area of city impact shall be limited to terms of notice and comment concerning land use and development issues in unincorporated areas proposed or occurring near a city.

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Subject to the provisions of section 60-222, Idaho Code, no city may annex adjacent territory outside of an agreed upon or statutorily designated area of city impact, unless expressly requested to do so by a property owner.

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Negotiated Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.

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(b) If a county and a city do not reach a substantive area of city impact agreement, a statutory area of city impact shall be established hereby. Such statutory area of city impact shall consist of a mandatory referral area within which the city shall be entitled to 28 days' written notice of any land use activity for which a public hearing will be required by state law or county ordinance. Such notice shall be provided to the city clerk of the city or to such other city official as the mayor might designate. The statutory area of city impact shall be as fixed by this section in the absence of a negotiated area of city impact. Any such statutory referral area may overlap with that of another city. The statutory area of city impact shall extend one-half (1/2) mile from a city's existing city limits, as modified from time to time, if the city's population is less than 5000; one (1) mile if the population is more than 5000, but less than 25,000 and two (2) miles if the city's population is greater than 25,000. Population shall be determined by the current estimates published by the Idaho Department of Commerce in cooperation with the US Bureau of the Census. Within the area of city impact a city shall be deemed to be an affected person within the meaning of the Local Land Use Planning Act.

Deleted: This separate ordinance shall provide for one (1) of the following:¶  
(1) Application of the city plan and ordinances adopted under this chapter to the area of city impact; or¶  
(2) Application of the county plan and ordinances adopted under this chapter to the area of city impact; or¶  
(3) Application of any mutually agreed upon plan and ordinances adopted under this chapter to the area of city impact.

(c) Negotiated areas of city impact for different cities may overlap with consent of the board of county commissioners according to terms and conditions that are agreeable to all cities and the counties affected.

(d) Areas of city impact, plans, and ordinance requirements established pursuant to agreement shall remain fixed until a board of county commissioners agrees or decides to renegotiate or revise the substantive agreement. A county may cancel or seek modification of an existing area of city impact agreement, but no change of a substantive area of city impact agreement shall be effective until the board of county commissioners has conducted a public hearing concerning any proposed change for which notice has been provided pursuant to section 67-6509, Idaho Code.

(e) Prior to negotiation or renegotiation of agreed upon areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation.

Each commission shall have a reasonable time fixed by the governing board to make its recommendations to the governing board. The governing boards shall undertake a review of negotiated areas of city impact at least every ten (10) years of the city impact plan and ordinance requirements to determine whether renegotiations are in the best interests of the citizenry.

(f) This section shall not preclude growth and development in areas of any county within the state of Idaho which are not within the areas of city impact provided for herein.

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**Deleted:** (b) If the requirements of section 67-6526(a), Idaho Code, have not been met, either the city or the county may demand compliance with this section by providing written notice to the other of said demand for compliance. Once a demand has been made, the city shall select its representative as hereinafter provided, within thirty (30) days of said demand, and the process set forth in this subsection shall commence. The county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days after the city officials have been confirmed by the council, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county governing boards an area of city impact together with plan and ordinance requirements. The recommendations shall be submitted to the governing boards within one hundred eighty (180) days after the selection of the three (3) members at large and shall be acted upon by the ... [1]

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**Deleted:** the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners sh... [2]

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**Deleted:** In the event the city and county cannot agree, the judicial review process of subsection (b) of this section shall apply. Renegotiations shall begin within thirty (30) days after written request h... [3]

**Deleted:** (g) If the area of impact has been delimited pursuant to the provisions of subsection (a) (1) of this section, persons living within the delimited area of impact shall be entitled to representation on the ... [4]

(b) If the requirements of section 67-6526(a), Idaho Code, have not been met, either the city or the county may demand compliance with this section by providing written notice to the other of said demand for compliance. Once a demand has been made, the city shall select its representative as hereinafter provided, within thirty (30) days of said demand, and the process set forth in this subsection shall commence. The county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days after the city officials have been confirmed by the council, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county governing boards an area of city impact together with plan and ordinance requirements. The recommendations shall be submitted to the governing boards within one hundred eighty (180) days after the selection of the three (3) members at large and shall be acted upon by the governing boards within sixty (60) days of receipt. If the city or county fails to enact ordinances providing for an area of city impact, plan, and ordinance requirements, either the city or county may seek a declaratory judgment from the district court identifying the area of city impact, and plan and ordinance requirements. In defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future.

, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners shall, upon a request from either city, within thirty (30) days, recommend adjustments to the areas of city impact which shall be adopted by ordinance by the cities following the notice and hearing procedures provided in section 67-6509, Idaho Code. If any city objects to the recommendation of the board of county commissioners, the county shall conduct an election, subject to the provisions of section 34-106, Idaho Code, and establish polling places for the purpose of submitting to the qualified electors residing in the overlapping impact area, the question of which area of city impact the electors wish to reside. The results of the election shall be conclusive and binding, and no further proceedings shall be entertained by the board of county commissioners, and the decision shall not be appealable by either city involved. The clerk of the board of county commissioners shall by abstract of the results of the election, certify that fact, record the same and transmit copies of the original abstract of the result of the election to the clerk of the involved cities.

In the event the city and county cannot agree, the judicial review process of subsection (b) of this section shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section.

(g) If the area of impact has been delimited pursuant to the provisions of subsection (a) (1) of this section, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission, may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code. In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of city impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code.

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## Area of City Impact Issues: Is Change in Order?

When Idaho's Local Planning Act was first enacted by the 1975 Idaho Legislature it included an Area of City Impact procedure that was both innovative and extremely flexible. It was also mandatory. During the course of the next thirty (30) years it has worked famously where there has been agreement between city and county officials. However, where there have been differences of policy, the struggle to reach common ground and implement an Area of City Impact agreement has consumed numerous person-hours of time and energy. This brief outline addresses some ACI issues that have arisen in the course of the last thirty (30) years, providing a sketch of their contours and occasional comment about their future consequences. In the end, the statute will be shaped by some measure of agreement that it should stay unchanged, that it should be modified or that it should be replaced by an alternative approach. The points listed are but several, among those that could be placed on the table for further discussion.

- **Separate (Duplicative) Ordinances for Each Jurisdiction** - The statute requires that both city and county (respectively) adopt two separate ordinances to implement an Area of City Impact agreement. The first ordinance for each jurisdiction describes the physical area to be governed by the ACI agreement. The second establishes the substantive requirements that the agreement intends to implement. Because of judicial decisions early in the 21st century cities no longer have extraterritorial police power authority. The rationale for city-passed ordinances and for separate-function county ordinances is unclear. Simplification might be in order.
- **The *Blaha* Decisions** - In 2000 the Idaho Supreme Court handed down three decisions regarding jurisdiction over subdivision platting involving the cities of Boise and Eagle and the County of Ada. The Court reached a uniform decision in each case-that counties have exclusive police power jurisdiction (health, safety and general welfare) within unincorporated areas in Idaho. The basis for the Court's ruling regarding police power jurisdictional limitations was Article 12, section 2 of the Idaho Constitution that granted police powers to counties and cities "within their limits", thus vesting counties with exclusive ordinance authority outside of city limits. Accordingly, any Area of City Impact agreement would need to be implemented by county ordinance.
- **Mandatory Agreement** - Agreement regarding essential principles is, by common definition, the result of voluntary conduct by consenting parties. This statute mandates agreement, even if none, in reality, exists. As a consequence agreement on Area of City Impact requirements has been elusive (25 to 30 years, in some instances) or nonexistent, as the case may be. The result is an extensive dispute resolution procedure that winds up having critical community development decisions made by voters or courts - or by no one.

- **Dependence of Annexation** - Although most annexations are voluntary, the statute requires that un-requested annexations can only take place if lands are located within an agreed-upon Area of City Impact. As a consequence, city officials in counties where Area of City Impact agreements have not been achieved, do not have the ability to annex many lands that would otherwise be necessary for orderly community development. A secondary effect of Areas of City Impact that do not keep pace with development involves requests for annexation from landowners outside any Area of City Impact. Counties are faced with dealing with multiple city impact areas particularly in the face of rapid growth. The workload for all involved can be substantial.
- **Ordinance-by-City Requirement - Jurisdiction** - Significant legal questions exist regarding the legal effect (or lack thereof) of ordinances concerning Area of City Impact that would only have effect outside of city boundaries (see *Blaha* above).
- **Adoption of County Plan and Ordinances** - The statute offers as one of its options adoption of the county's plan and ordinances. In reality, only the county plan and ordinances can be adopted (per the *Blaha* decisions). The county plan and ordinances may be what the city wants to have applied, but the only effective plans and ordinances for land in unincorporated areas are those adopted by the board of county commissioners.
- **Adoption by Reference** - Several jurisdictions have adopted county ordinances implementing Area of City Impact agreements that purport to adopt city ordinances by reference. Idaho Code section 31-715 allows adoption of generally published national codes by reference, but many attorneys believe that adoption of specific ordinance provisions governing Areas of City Impact must expressly include all of the words that are intended to govern, rather than merely referencing local ordinances adopted by another jurisdiction.
- **Declaratory Judgment If Stalemate** - One of the methods for resolving differences between counties and cities concerning Areas of City Impact is pursuit of a declaratory judgment in the District Court. Declaratory judgments constituted a statutorily authorized cause of action to declare the rights of parties to a controversy. Most judges do not picture themselves as land-use planners by vocation. This statutory provision will likely be embraced by few judges if Area of City Impact disputes arrive in their courts. Additionally, pursuit of judicial determination often only adds to the conflict - which may spread to other matters.
- **Overlapping Areas/Jurisdiction** - The statute does not provide any orderly method for dealing with overlapping jurisdiction or comment opportunities in areas where more than one city has a legitimate interest in development concerns. The statute provides a means for determining a one-to-the-exclusion-



of-all-others solution to the overlapping jurisdiction question. Sometimes, more than one jurisdiction has a legitimate interest.

- **Fixed Boundaries Remain Until Both Will Renegotiate vs. Negotiations at Request of Any Party** - Some read the statute to require that both a city and county must agree to renegotiation before any change to ACI is possible. Likewise, some see a succeeding sentence to require negotiation at the request of any party. These two provisions are viewed as contradictory by some who have attempted to apply the statute.
- **Review at 10 Years** - The 10-year review provision was added several years ago in conjunction with annexation policy discussions. Although the statute requires a 10-year review, it does not identify what actions are necessary to demonstrate compliance with this requirement. The opportunity to revisit Area of City Impact policy sometimes begets the opportunity to create new grounds for disagreement, where none existed before.
- **ACI P-Z Membership - Only If Apply City Plan and Ordinances** - The statute requires that an Area of City Impact representative (who resides within the Area of City Impact) be added to a city's planning and zoning commission only if the city's plan and ordinances are applied in the ACI. As a result of *Blaha* it is a legal impossibility for the city's plan and ordinances to apply. Irrespective of the substantive content of Area of City Impact restrictions, they must be adopted by the board of county commissioners, whose plan and ordinance they become. Cities no longer have express planning and zoning authority outside of municipal boundaries.

These are but "first cut" issues concerning the Area of City Impact statute as it exists today. Many practical limitations of the current law have revealed themselves as cities have endeavored to apply the statute in the rapid growing environment of recent years. In light of these considerations, and others yet unspoken, critical review of the existing Area of City Impact statute may be worthy of shared effort by city and county officials.

## **A TRIAL BALLOON – FOR DISCUSSION**

- **Change Area of City Impact Agreements from mandatory to optional**
  - Eliminate dispute resolution procedures – now optional
  - Allow overlap of voluntary ACI's with means of resolving possible conflicts
  - Adjust procedures to reflect today's legal realities
- **Provide default referral option if no voluntary agreement**
  - Vary coverage with physical area or population of city
  - Provide for overlap of referral areas as standard fare

Suggest ideas for change to:

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