

Area of City Impact

A Tool Kit of Guidelines and Resources for Use by Idaho Cities and Counties

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University of Idaho

College of Law

Introduction:

This publication was prepared as a resource to Idaho cities and counties engaged in the process of creating or amending Area of City Impact maps and agreements. It is intended to provide guidelines and best practices for the provisions of Idaho state law §67-6526 AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE, and how those provisions interact with other requirements of the §67-65 LOCAL LAND USE PLANNING and §50-222 ANNEXATION OF CITIES.

Idaho local governments have the primary responsibility for the planning and regulation of land uses. State law requires that each city and county, “conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan... The plan shall include all land within the jurisdiction of the governing board.” (§67-6508) The purpose of the Land Use Planning Act is in part “to encourage urban and urban-type development to occur within incorporated cities.” (§67-6502) In order to allow cities to anticipate areas of land that may become urban and served by urban services, the Land Use Planning Act provides for Area of City Impact (§67-6526). Planning for an Area of City Impact provides the framework and is a necessary requirement for most types of city annexations (§50-222).

Many local governments struggle with the provisions of the Area of City Impact requirements. The lack of definitions, clear guidelines for implementation of the law, and technical resources has created confusion, conflicts and inconsistencies. How various state statutes and case law interface is unclear. Unnecessary tensions and issues between jurisdictions exist because of the lack of guidance. This handbook is intended to resolve some of those issues. However, these are only guidelines and are not a substitute for the legal requirements.

This Area of City Impact Tool Kit is organized into four sections: Chapter 1 describes the necessity for Area of City Impact, the purpose for

undertaking Area of City Impact procedures, a snapshot of statutory requirements, and roles and responsibilities. Chapter 2 outlines the criteria for establishing an Area of City Impact and the process. Chapter 3 reviews how disputes are resolved. Chapter 4 is about what happens once an Area of City Impact has been adopted. An appendix includes resources provided primarily by the University of Idaho College of Law, Economic Development Clinic in the Fall semester 2012. Included in the Appendix are: answers to frequently asked questions, an inventory of 125 AOI agreements collected by the clinic, a checklist for drafting an AOI, the case law and legislative history of legislation.

Acknowledgements:

The Tool Kit is the outcome from meetings with organizational representatives convened by Idaho Smart Growth 2012. The following organizations contributed to the content of this publication:

- Association of Idaho Cities
- Boise City
- Boise State University
- COMPASS
- Gem County
- Idaho Association of Counties
- Idaho Chapter of the American Planning Association
- Idaho District Council of the Urban Land Institute
- Idaho Smart Growth
- University of Idaho College of Law - Boise
- Valley Regional Transit

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Chapter 1: Preparing to Develop an Area of City Impact

Why it is Important to Plan for Area of City Impact

Statutory Reasons

- ① **The Area of City Impact provides a way for cities and counties to carry out the purposes for planning, most significantly:**
1. **To protect property rights.**
 2. **To ensure that adequate public facilities and services are provided at reasonable costs.**
 3. **To encourage urban development within cities.**

§67-6502 LAND USE PLANNING ACT sets forth the purpose for planning. The statutory provisions for Area of City Impact (§67-6526) are a part of the Planning Act and a requirement of planning for all cities and counties.

- ② **The Area of City Impact process provides a way for cities to grow in a way that is cost-effective for their residents.**

§50-222-1 ANNEXATION OF CITIES Idaho law says that cities should be able to expand “in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.” For cities that have a dwindling source of funds for municipal services, having the ability to plan ahead for future development outside the city boundaries, as provided by the AOI process, only makes sense.

§67-6502 LAND USE PLANNING ACT

1. *To protect property rights while making accommodations for others.*
2. *To ensure that adequate public facilities and services are provided at reasonable costs.*
3. *To ensure that the economy is protected.*
4. *To ensure that important environmental features are protected.*
5. *To encourage the protection of prime agricultural, forestry and mining lands and land uses.*
6. *To encourage urban development within cities.*
7. *To avoid undue concentration of population and overcrowding.*
8. *To ensure that land is developed commensurate with its physical characteristics.*
9. *To protect against natural hazards.*
10. *To protect natural resources.*
11. *To avoid pollution.*
12. *To allow school district to participate in the planning process.*

Other Reasons

③ **The Area of City Impact process provides a way for cities to clearly communicate with predictability its future vision for the land adjacent to a city.**

A comprehensive plan is an important statement of a city's future vision for land use and public services within its jurisdiction. The plan is a communication tool for a city; it allows cities to share with its citizens, property owners, service providers and surrounding jurisdictions the city's vision for the future of the community. For growing and expanding cities, it is logical that cities and citizens also be concerned about the land adjacent to a city boundary that the city ultimately expects to annex and serve with urban services.

④ **The Area of City Impact process provides a way for cities and counties to grow in a way that maintains the quality of life for its current and future residents.**

As Idaho continues to grow, it is critical that it grows in a way that makes sense and keeps our communities great places to live. Rapid development and population growth frequently occur just outside city boundaries where property is cheaper and zoning laws may be less restrictive. Without the ability to plan for this fringe development, communities face the problems of increased traffic congestion on inadequate roads, the need for improved public facilities and services, lack of police protection, and overburdened schools. Many of these problems impact not just the residents and property owners on the fringe but cross over boundaries and impact the residents of the city as well.

⑤ **The Area of City Impact process provides a way for cities and counties to prevent urban sprawl and protect critical lands.**

Urban growth without planning and development regulations becomes urban sprawl: low density, inefficient and wasteful land utilization. Development that follows a natural growth and orderly pattern minimizes the premature conversion of land, destruction of prime agricultural land, and loss of critical natural resources. Most importantly, **urban sprawl costs communities money.** Studies of community services in Idaho show that property taxes from commercial and agricultural land use essentially subsidize services on residential land uses.

⑥ **The Area of City Impact process provides a way for cities, counties and special districts to anticipate the future public service and facility needs and coordinate those services effectively.**

Delivery of public services and facilities in Idaho is often provided by multiple jurisdictions: cities, counties and special districts. Frequently, this patchwork of service providers can lead to administrative confusion, inefficiency, duplication, and excessive costs. If there is rapidly growing development with the pressure to serve, these problems can be magnified. Coordination on land use and regulations for fringe area is particularly critical between the cities and the counties. Clear understanding of the future plans for an area and the public service and facilities needed avoid inefficiencies.

⑦ **The Area of City Impact process provides an opportunity for residents who live within the Area of City Impact to have a greater voice.**

County residents living on the fringe of a city can be substantially affected by actions of an adjacent city, but they have limited ability to participate in its affairs. Decisions made by the City regarding streets, utility extensions, level of public services can impact their quality of life and the future of their neighborhood. When an Area of City Impact is

adopted it provides an opportunity for those persons on the fringe to be involved in the future plans for their area.

A Snapshot the Area of City Impact Statutory Requirements

§67-6526 AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE requires that every city and county adopt a **map** identifying an Area of City Impact and an **ordinance** specifying which comprehensive plan and land use regulations will apply within the area of impact. The boundaries of the **map**, and the plan and regulations to apply to the Area of City Impact are the outcome of a negotiation process between a city and a county. The **ordinance** can identify a plan and regulations that are either: (1) the city's; (2) the county's; or (3) some combination or variation, **but the application and enforcement of such plans and regulations are the responsibility of the county** until such time as the area is annexed to the city.

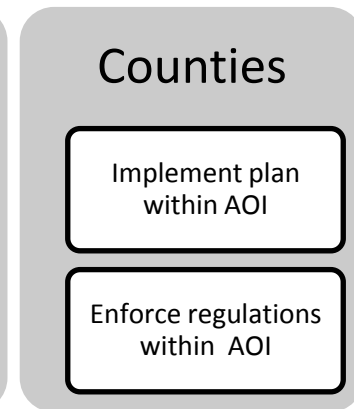
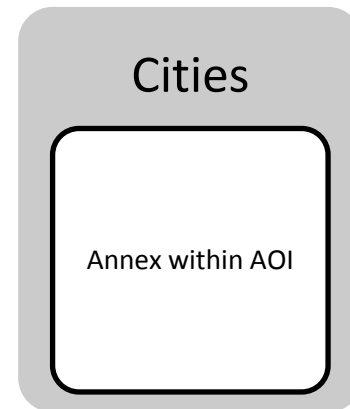
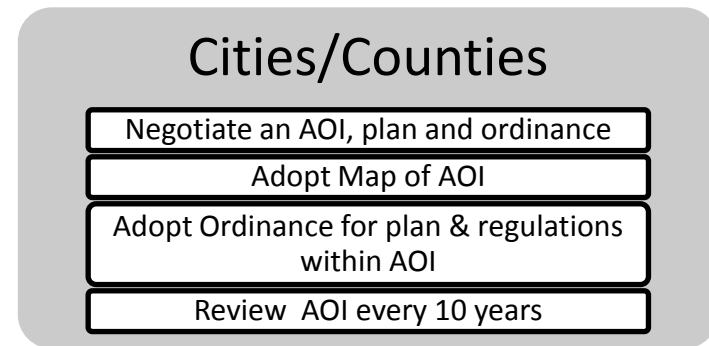
An Area of City Impact with plans and ordinances may also be adopted that cross county boundaries for cities that are within three miles of the county line.

For most annexations under the provisions of §50-222 ANNEXATION OF CITIES, an area of city impact must be established before a city may annex adjacent territory.

If there are disputes about the Area of City Impact requirements, a negotiation process is set forth in the law. Disputes may arise when: (1) there is a failure to establish or jurisdictions cannot agree an Area of City Impact, plans or regulations; and (2) two or more cities have interest in overlapping Areas of City Impact.

The law also requires an update of the Area of City Impact every ten years.

Primary Responsibilities



Chapter 2. The Area of City Impact Process

How an Area of City Impact is Determined- the Map

The law states, “that 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.* (§67-6526(b))

① *Trade area*

A *trade area* can be defined as a geographic area from which businesses or a city draws its customers. A *trade area* can be determined by the city size and location of the city with respect to other trade centers. A *trade area* can vary depending on the nature, number and size of the businesses.

The logic for the trade area criterion is that if a city is providing services and goods to people outside their jurisdiction, then those people should be residents of the community in which these services are provided. People living outside a jurisdiction are using the city facilities, like roads and utilities, which support businesses. They use those facilities, just like the residents of the city, but without paying for those facilities like residents do through property taxes. Similarly, the city may be providing direct services such as library and parks that are used by people who live outside the city and may not be paying their fair share for the costs of those services.

A city may have many *trade areas* depending on the nature of the goods and services and the size of the businesses that are located there. Some businesses require a wide geographical reach to support them. A big-box retail store, for example, has a much broader trade area than a neighborhood convenience store.

Location can play a major factor in a *trade area*. For example, the City of Twin Falls has annual average retail sales per capita that is twice as much as the Idaho state average (\$27,814 vs. \$13,691). This is due to the fact that Twin Falls is an isolated regional hub and has a trade area that draws people from long distances. By comparison, Caldwell, a similar size city to Twin Falls, has retail sales per capita closer to the state wide average (\$15,400). Determining *trade area* in a region with multiple jurisdictions and easy access to all locations within the region is obviously a much greater challenge than areas with single and/or isolated cities.

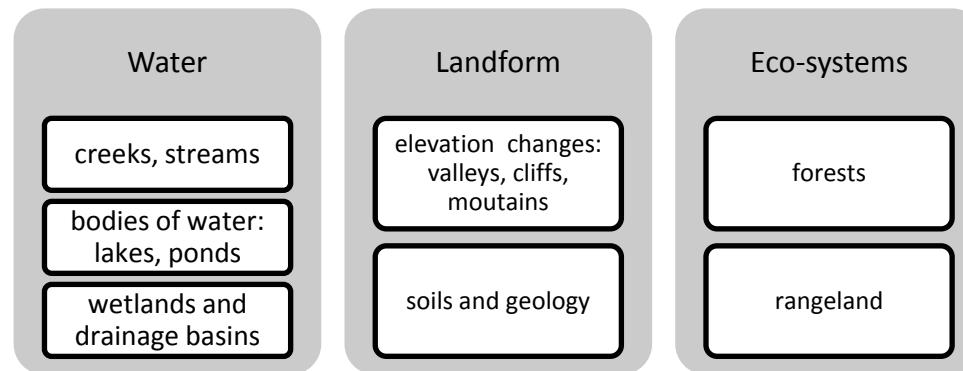
We live in a highly mobile and dynamic society with easy access to a wide range of goods and services. The old physical barriers and isolated locations that created distinctive *trade areas* are less important than in the past. The advent of electronic merchandising has also blurred the meaning of trade areas. The *trade area* criteria for determining an Area of City Impact probably has less meaning and relevance than in the past, particularly in multi-jurisdictional regions. For most cities, the best way to use trade area is to focus on the provision of city services; to analyze who is using city services and facilities, and where they live.

② *Geographical Factors*

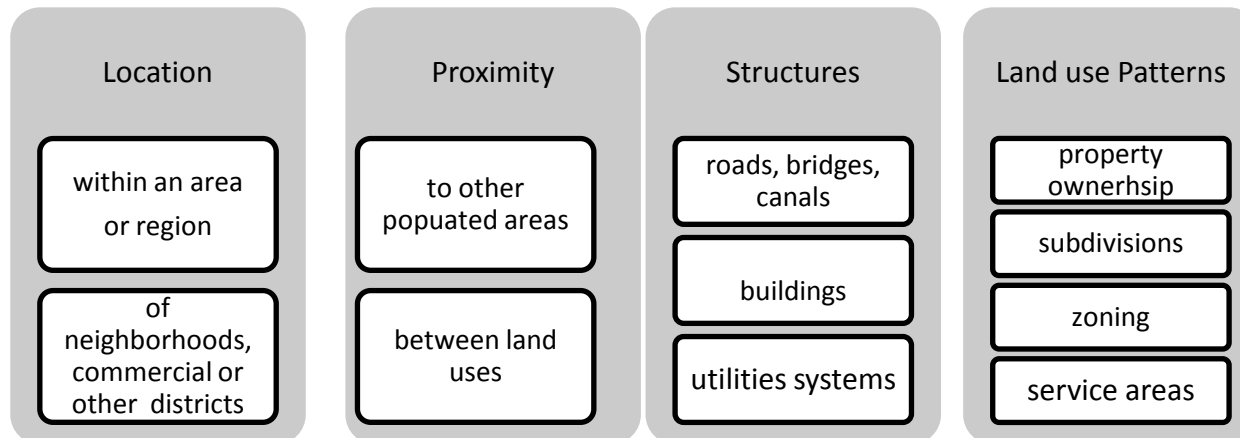
Geographical Factors can be both natural and manmade. Natural features can provide logical boundaries for an Area of City Impact. Maintaining the integrity of a natural system, by not splitting it into two jurisdictions is also a factor to consider in drawing lines. The most relevant natural geographic features are: water, landform, and eco-systems.

Geography can also be described as the infrastructure that people place on the land. Most obvious are structures including roads, bridges, canals and buildings. As described with trade area, a community's geographical location and proximity to other cities is a consideration, as well as clusters of development, neighborhoods or districts. Less obvious, but equally important, is the land ownership patterns and regulatory provisions that influence the human geography.

Natural Geographic Factors



Man-made Geographical Factors



③ **Areas that can reasonably be expected to be annexed to the city in the future.**

The consideration of areas that can reasonably be expected to be annexed to the city in the future raises two important questions for communities to answer in establishment of an Area of City Impact. What is the future? What is a reasonable expectation for annexation?

Since the law requires a review of the negotiated Area of City Impact every ten years, ten years should be a minimum future time frame. More desirable would be something longer so that there is time to plan for the future before all the land within an Area of City Impact has been annexed. Most ideal would be for the future time frame to match the horizon year of the city's Comprehensive Plan. Time periods beyond twenty years are questionable and usually motivated by a desire to control land use, with unrealistic expectations about the ability to serve and annex.

**§67-6526 AREA OF CITY IMPACT –
NEGOTIATION PROCEDURE**

The governing boards shall undertake a review at least every ten (10) years to determine whether renegotiations are in the best interests of the citizenry)

The identification of where urban services will be provided should be the best indicator of future areas to be annexed. Some communities have adopted master plans for infrastructure such as roads, sewers, and water. Many communities depend on special purpose districts, such as water and sewer districts, for city services. Some of these districts have plans that identify the future capacity and plans for their systems. Fewer communities and special districts have adopted Five Year Capital

Improvement Programs. These plans describe where services will be extended, an analysis of the costs of these services, the ability of the city to fund the services and the identification of funding sources. Matching infrastructure planning and funding with future growth of the city meets the purpose of the LOCAL LAND USE PLANNING ACT (§67-6526) that urban development happen within cities and is served by urban services; and the LOCAL LAND USE PLANNING ACT and ANNEXATION Law (§50-222-1) that adequate public facilities and services are provided at reasonable costs.

Other factors to consider in what areas may be reasonably annexed are:

1. the past trends in the development pattern and land owner requests for annexation;
2. the present and planned uses in the area, including agricultural and natural resource lands;
3. the relationship of proposed boundaries with ownership; and
4. creating regularity in boundaries, not creating islands or corridors of unincorporated territory.

In preparing an Area of City Impact, a first step is to collect data about these three factors and analyze what effect these factors have on influencing the Area of City Impact. Sources for data related to these factors are included in the Appendix.

How a Comprehensive Plan and Ordinance for the Area of City Impact is Determined – the Ordinance

Which comprehensive plan and development regulations are adopted for the Area of City Impact is subject to a negotiation process between the city and the county. The statute provides guidance for this negotiation, but that guidance has been found to be defective through case law. The statute states that the plan and ordinance be based on one of three sources: (1) the city's comprehensive plan and ordinance; (2) the county's comprehensive plan and ordinance; or (3) anything

mutually agreed upon by the city and the county. However, as set forth by Idaho constitution and reinforced through case law, cities and counties can only exercise their planning and zoning powers within their own jurisdiction. So, the three options listed in the statutes should be considered a starting point for the negotiation process. Whatever plan and ordinance are adopted for the area of city impact are **the county's plan and ordinances** until such time as the area is annexed into the city.

The approach to negotiation depends on the relationship between the county and the city, the desires of the citizens who live in the area, and land uses and development in the proposed Area of City Impact. Keys to successful negotiation are: (1) A good working relationship and trust between the city and county; (2) Data and information that allow for agreement on an area that will become incorporated; (3) Understanding of the need for and willingness to adopt standards that meet the city's plans; (4) Political support for the process and the decisions that are made.

Adopting a comprehensive plan with zoning and development standards that support that plan is ideal. A combination of a city plan and county or other regulations that do not fit with objectives of the comprehensive plan is a recipe for disaster. Since a city will eventually annex the area, the best scenario is for the city's plan and ordinances to be the basis for guiding growth and development within an Area of City Impact. Since most counties are primarily rural, county regulations are frequently less restrictive than a city. Less restrictive regulations in an area create unnecessary conflicts when an area is annexed. Rural road standards with no curb, gutter and sidewalks that do not match with urban street standards are just one example. However, in some regions with small cities, the county may have more resources and its plan and regulations may be better suited for the Area of City Impact.

The residents and property owners within the Area of City Impact also have a stake in the plan and regulations that affect them. Any

negotiation between the City and County should involve the people who have an interest in the area. Sometimes there is significant resistance to changes that are perceived as impacting property values, changing a rural lifestyle or from the fear of annexation and additional taxes. Some perceptions are difficult to overcome if there has been a history of misunderstanding and lack of communication. Opportunities to involve the public, ensure their understanding of the process and to air their concerns should happen long before a public hearing to consider the plan and ordinance for the Area of City Impact.

Process Steps

The steps in the process of adoption of an Area of City are simple unless there are disputes. A best practice is to create an agreed upon work program on how to proceed between the city and county before beginning the process. Next, collect data, do the necessarily analysis of the criteria and involve the public. Following that, begin the formal adoption process established in state law.

Cities and counties must adhere to the public notice requirements of state law for review and adoption of a Comprehensive Plan. (§67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE PLAN) The Planning and Zoning Commission for each jurisdiction must conduct a public hearing and provide a recommendation to their respective governing board ,who then makes the final decision. The governing board may conduct a public hearing. If there are material changes at either the Planning and Zoning Commission or governing board level, a new public notice, fifteen day notice period and public hearing are required.

Two ordinances are adopted by each jurisdiction: (1) a map of the Area of City Impact; and (2) an ordinance identifying the comprehensive plan and development regulations for the area identified on the map. The two should be cross-referenced, or the map should be adopted

contingent on adoption of the plans and regulations ordinance. A legal description of the boundary area, while not statutorily required is a best practice.

In adoption of the ordinances, it is also a best practice to include purpose and findings statements. This allows for the reasoning behind the agreed upon map, plans and ordinances to be clear.

An agreement between the city and county on how the process for review of development application within the AOI will be undertaken is also a best practice to be considered. The agreement should describe (1) roles and relationships between the city-county staff and decision-making bodies; (2) the steps in referral of an application from the county to the city; (3) time requirements and fees; and (4) how subsequent changes in the codes affecting the AOI will be reviewed.

See the Appendix for a more in depth discussion of the process steps and best practices.

Flow Chart

Statutory Requirements

Best Practices

PREPARATION

Early consultation between jurisdictions:

- Agree to negotiate or re-negotiate AOI.
- Review the criteria and the law
- Develop a work plan:
 - ✓ Identify issues, data and analysis to undertake
 - ✓ Schedule
 - ✓ Public Involvement
- Expectations among the parties in the outcomes of the process

The city and the county governing boards 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. (§67-6526(e))

Adopt scope of work, schedule and responsibilities by the governing body of each jurisdiction.

ANALYSIS AND CONSULTATION

- Review and analysis of the criteria for determining an area of city impact.
- Early consultation with the community within the Area of City Impact
- Early consultation with service providers about plans, capacity and ability to serve

Development of a map, plan and ordinances for Area of City Impact. (§67-6526)

- Two ordinances are drafted, one for the map and one for the plan and codes.
- Two ordinances should be linked by cross-references
- Ordinances should be adopted with findings of fact.

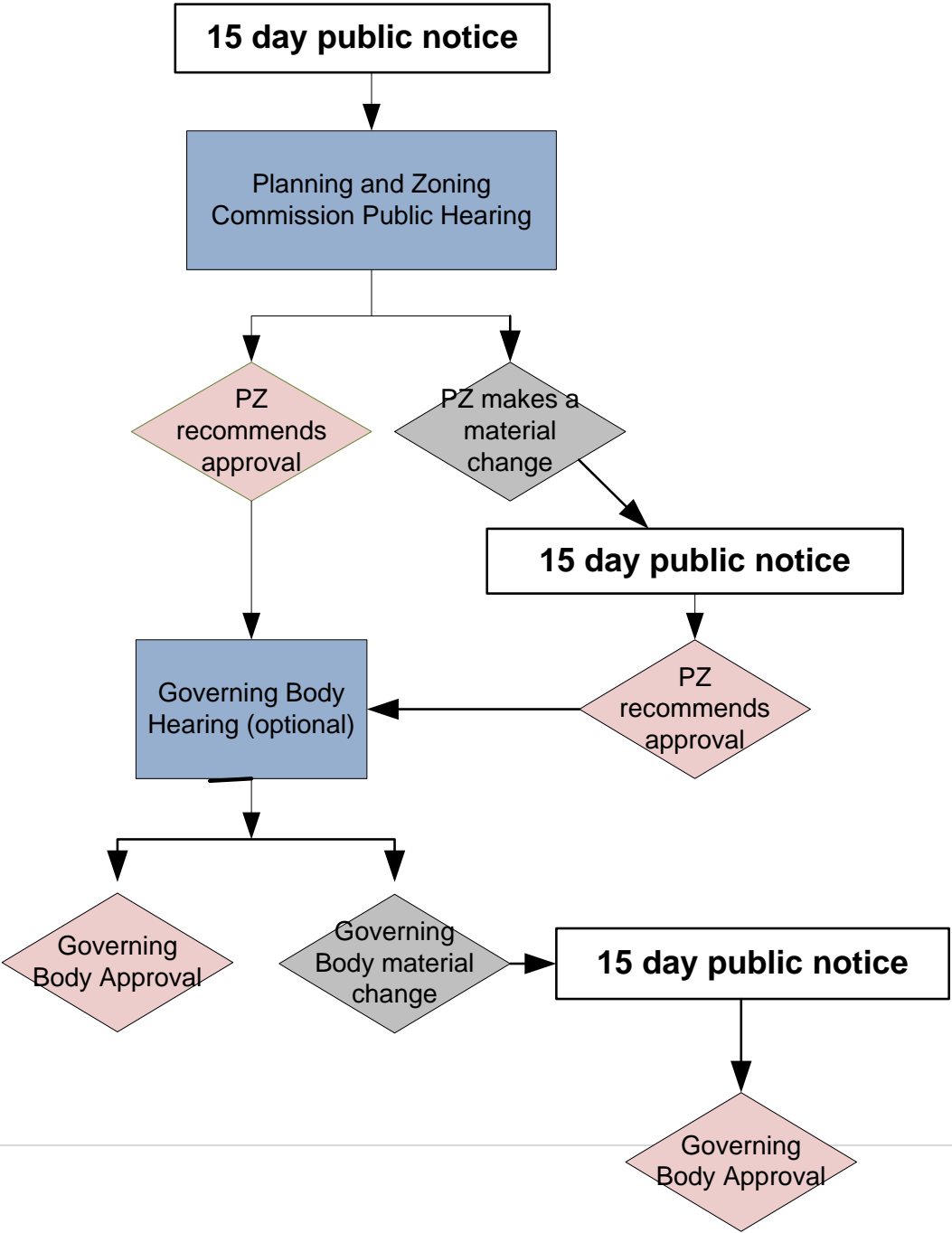
Decision process

15 day notice of public hearing before the Planning, Zoning or Planning and Zoning Commission

- Public Hearing and recommendation of the Planning, Zoning or Planning and Zoning Commission
- Optional public hearing before the governing body of the city and county.
- Decision by the governing body of the city and county. (§67-6509)

- An agreement is adopted between the governing bodies or made part of the ordinances that outlines the process of referrals of development applications.
- Ordinances adopted which specify when public services will be extended to unincorporated areas.

**Public Hearing Requirements
(§67-6509)**



Chapter 3. The Area of City Impact Dispute Process

By statute, the Area of City Impact is a negotiation process, and with negotiations often come disputes. Resolution of disputes are outlined in the law and occur in two situations: (1) when there is a failure to adopt an Area of City Impact, plans or regulations; or when a city and county cannot agree on the Area of City Impact area, plan or regulations; and (2) when more than one city has an interest in overlapping Areas of City Impact.

Failure to Adopt or Disagreement between a City and County

When a city or county fail to adopt an Area of City Impact, usually because there is some disagreement on the proposal, a process is started which involves what is known as the "Committee of Nine". After notice, the county commissioners, three elected city officials, and three residents of the city or county recommend an Area of City Impact, with the plan and ordinances. After consideration of their recommendation, if either jurisdiction fails to act, the recommendation on the Area of City Impact is decided through district court.

Written notice of demand for compliance with the law

Within 30 days, the mayor selects and the city council confirms 3 elected city officials as representatives

Within 30 days, the county commissioners and 3 city officials select 3 city or county representatives

Committee of Nine is formed including the 3 County Commissioners, three city officials and three at large representatives .

Within 180 days, the Committee of Nine, by majority vote recommend a plan, ordinance and Area of City Impact

Within 60 days, the city and county governing bodies act upon the recommendation.

Failure to act is basis for filing for a declaratory judgement in district court .

(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.

Disputes between Cities that have interest in overlapping Areas of City Impact.

Particularly in fast growing urbanizing regions, cities may desire the same areas/land for their Area of City Impact. When these potential overlaps develop, the statute outlines a process for resolution that includes the county recommending a solution. If this is unacceptable, the county holds an election within the disputed area for the citizens to decide.

A city makes a request to the county to resolve a disagreement between cities on a Area of City Impact boundary

Within 30 days, the county commissioners recommend adjustments to the cities.

The cities conduct a public hearing process to consider the county's recommendation.

If a city objects to the county's recommendation, the county schedules an election.

The county holds an election within the disputed area in which residents within that area are asked which Area of City Impact they desire.

The county submits the results of the election to the cities.

(c) If areas of city impact overlap, 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.

Chapter 4. After Adoption of an Area of City Impact

The Area of City Impact process is not static. Once adopted, the Area of City Impact sets the framework for annexations. The statute also establishes a time frame for Area of City Impact updates.

Annexations

The interface with the statutes governing the §67-6526 AREAS OF CITY IMPACT and §67-6526 AREAS OF CITY IMPACT are probably the most challenging. Most annexations are required to occur within the Area of City Impact, but in one type of annexation, they are not. A Category "A" annexation is allowed when all landowners agree to the annexation or there exists an enclave of less than 100 residential parcels. This allows for large property annexations outside the Area of City impact and even more egregious, annexation within another city's area of city impact. This situation has set up a scenario where some developers will "shop" for the most advantageous plan and regulations. This results in ad hoc application of plans and regulations to an area that was not anticipated to become urban, and may not have urban services to support the development.

The *Idaho Land Use Handbook* authored by the attorneys at Givens Pursley provides a comprehensive review of Idaho Annexation Laws and should be a reference to any community involved in the annexation process. One chart from that book provides a summary of the categories and requirements for annexations:

Summary of Annexation Statute (Idaho Code § 50-222) This summary omits some details and special exceptions. ⁶⁵ The reader should consult the statute in its entirety.			
	Category A	Category B	Category C
Definition of category:	All landowners consent. OR Enclaved residential and < 100 parcels.	< 100 parcels regardless of whether landowners consented. OR > 100 parcels and owners of > 50% (based on land) have consented.	> 100 parcels and owners of > 50% (based on land) have not consented at outset.
		AND Annexed land is subdivided into lots of 5 acres or less, or Owner has begun to sell land in parcels of 5 acres or less. OR Annexed land is completely surrounded by the city.	
Requirements and procedures applicable to each category:	All annexed land must be contiguous or adjacent to city (regardless of category).		
	Need not be within area of city impact. Where all landowners consent, must be included in comprehensive plan.	Must be within area of city impact.	
	May be annexed unilaterally	City must prepare detailed annexation plan	
	by ordinance.	Requires compliance with procedures for zoning district boundary change; publication and mailing to landowners; hearing; express findings.	
		So long as appropriate findings are made, annexation may proceed over objection of landowners.	After following procedures above, owners are polled again and over 50% must consent.
Judicial Review:	By declaratory action (very deferential).	By IAPA (somewhat deferential).	

Updates and Renegotiation of Area of City Impact

By statute, Area of City Impact is reviewed every ten years. The process for re-negotiation is the same as with the original negotiation.

Appendices

- A. Frequently Asked Questions
- B. Inventory of AOI Agreements
- C. Checklist for Drafting an AOI Agreements
- D. Case Law List
- E. Definitions
- F. Areas of City Impact Statute

Contribution of the Economic Development Clinic at the University of Idaho College of Law

In the Fall of 2012, the Economic Development Clinic at the University of Idaho College of Law's Boise campus (the "Clinic") cooperated with Idaho Smart Growth and the coalition preparing this tool kit. The Clinic's director and five third-year law students investigated area of city impact agreements and contributed information in four areas: (1) a checklist for counties and cities to review in drafting AOI Agreements followed by a detailed analysis of the checklist provisions. (2) A review of the legislative history of Idaho Code section 67-6526, which governs AOI Agreements. (3) An analysis of the effective dates of AOI Agreements in Idaho. (4) A brief case law history relevant to Idaho Code section 67-6526.

This appendix includes some of the investigations undertaken by the Clinic. The inventory and analysis of effective dates of AOI agreements is described in Appendix B. The checklist for drafting AOI agreements is in Appendix C, and a list of the case law summary is in Appendix D. An electronically retrievable copy (PDF file) of the full report undertaken by the Clinic is available, at no cost, from the website of the University of Idaho College of Law's Economic Development Clinic by contacting Professor Stephen R. Miller at millers@uidaho.edu, or on the Idaho Smart Growth Website, www.idahosmartgrowth.org

A. Frequently Asked Questions

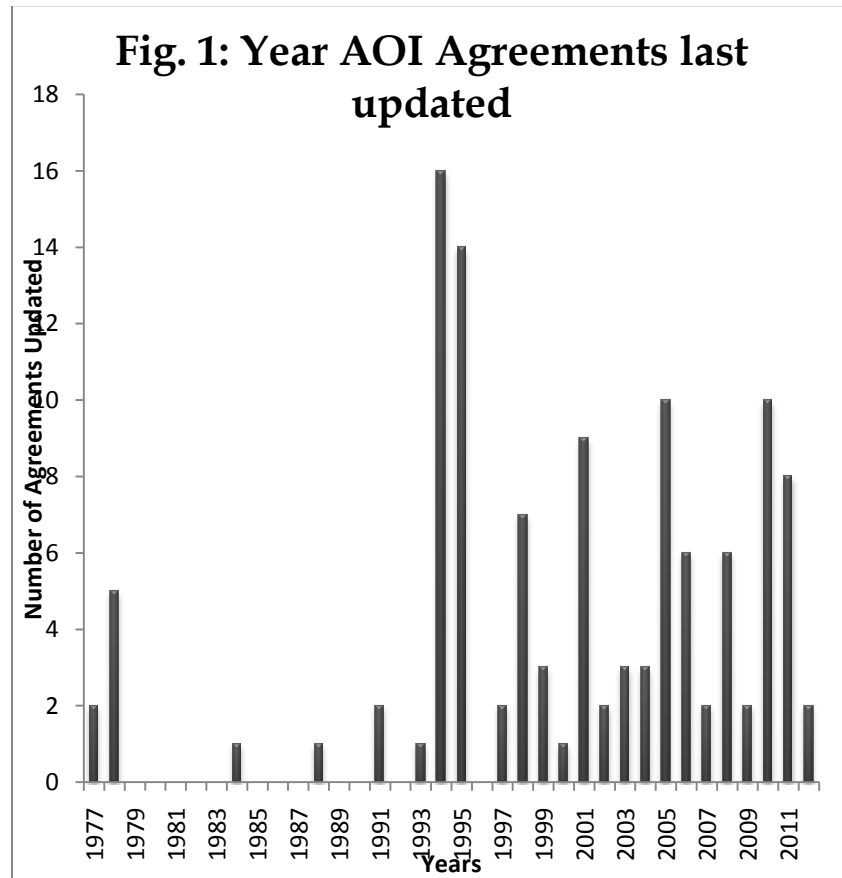
- 1. What is an Area of City Impact?** No explicit definition exists in statute, but from the requirements specified in law for an AOI, it can be implied that it is a geographical area where a city is expected to grow into and annex at some future time.
 - 2. What are the criteria for determining an Area of City Impact?** The law states, “that 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.*” (§67-6526(b)) These factors are listed in the section of the Statute describing the process when an agreement on an AOI cannot be achieved between the City and County, but this is the only criteria listed in the statute. The assumption is that if these factors are to be used in the resolution of dispute phase that they are relevant in the negotiation phase as well.
 - 3. Can you annex outside the area of city impact?** Yes, Category A annexation when there is a consent of all the property owners or the area is an enclave of less than one-hundred (100) residential property owners, annexation outside an AOI can be allowed.
 - 4. Is the one mile square the around the city, the area of city impact?** No, this is an artifact from the Idaho subdivision law before the Local Land Use Planning Act.
 - 5. What is the penalty for not following the AOI statute requirements?** There are no penalties in state law for enforcing the provisions of the AOI statute. However, a jurisdiction or an individual could bring a judicial action before the courts for non-compliance.
 - 6. If the city is not growing, what is the purpose of adopting an AOI?** The AOI probably has most relevance for communities that are growing. To comply with the law requires resources and time which creates a burden for small communities that are not growing.
 - 7. Who has jurisdiction for administering an adopted AOI?** The County; a county cannot delegate to a city the power to make land use decisions beyond the city's limits. However, the city should be an active participant in the administration of the plans and codes within the AOI, and the process of how the city is involved in the review of application within the AOI should be spelled out on the agreement between the city and the county.
-

B. Inventory of Area of Impact Agreements

The following information was extracted from the report, *Areas of City Impact Agreements in Idaho, Report 12-01* prepared by Economic Development Clinic at the University of Idaho College of Law's Boise campus (the "Clinic").

The Clinic collected AOI Agreements through the months of September, 2012 to November, 2012. The Clinic did so primarily through direct telephone and e-mail contact with county officials. All counties were contacted. For its efforts, the Clinic obtained 125 AOI Agreements in 37 counties, which is believed to be a significant proportion of all the AOI Agreements entered into by Idaho's 200 cities and 44 counties. The AOI Agreements obtained are grouped by county in the inventory that can be obtained through the link cited on page 1 of the appendices.

The oldest AOI Agreements of those obtained were from Clearwater County, both of which are from 1977. Several AOI Agreements were updated just this year, 2012, such as those of Twin Falls/Buhl and Blaine/Sun Valley. As shown in Figure 1, of the 125 AOI Agreements obtained for this report, the largest number of AOI Agreements, 30, were updated in the two-year period of 1994 and 1995. The next highest frequency was in 2001 (11 AOI Agreements) and the years of 2005 and 2010 (10 AOI Agreements each year). The Idaho Legislature amended the area of impact statute in 1993, a move that required cities and counties to update their agreements by November, 1995, which is likely responsible for the large number of AOI Agreements that were passed in 1994 and 1995. (Idaho Statute 1993, Chapter 55 § 1.)

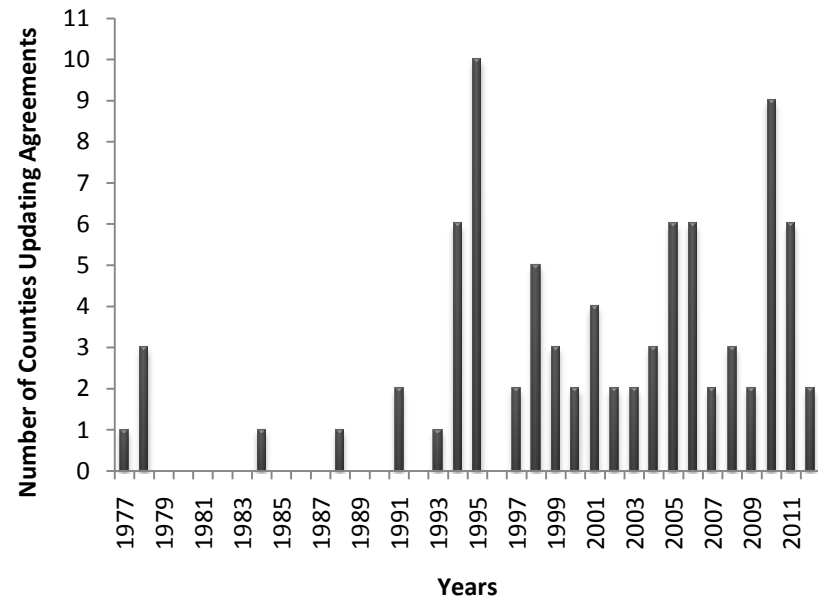


Some counties may have updated all their AOI Agreements in a single year. For instance, Figure 2 shows how many counties updated AOI Agreements for each year based upon the latest date of amendment. This data only reflects the most recent date of an amendment on any AOI Agreement; thus, a county could have updated an AOI Agreement in 1995 and again in 2005, but that AOI Agreement and that county would only be counted in 2005 for purposes of Figure 2.

Again, 1994 and 1995 had the highest number of counties updating their AOI Agreements. This means that it appears at least 17 counties have not renegotiated or adopted at least some new portion of an AOI Agreements since the mid-90s, almost twenty years ago, and several other counties have made no amendments for longer than that, as Figure 2 illustrates. The second highest frequency of amendments was in 2010, however, in which 9 counties updated AOI Agreements.

By reviewing the inventory of AOI Agreements, counties and cities may find a useful beginning in drafting their own AOI Agreements. The Clinic made no attempt to assess “best practices” in the agreements. However, some examples that may be a starting point for communities are the most recently adopted AOI agreements cited above. Others are the agreements between Blaine County with the city of Ketchum, Ada County with the city of Boise, and Nez Perce County and the city of Lewiston. For smaller cities, an example is the agreements of Adams County with the cities of Council and New Meadows.

Fig. 2: Number of counties updating at least one AOI Agreement, by last year of any update



C. Checklist for Drafting AOI Agreements

The following information was extracted from the report, *Areas of City Impact Agreements in Idaho, Report 12-01* prepared by Economic Development Clinic at the University of Idaho College of Law's Boise campus (the "Clinic").

This checklist for drafting AOI Agreements was developed after review of 125 existing AOI Agreements throughout the State of Idaho. The checklist is designed to help local governments select and develop a variety of provisions that they may want to consider or include in an AOI Agreement.

The elements and provisions identified in the substantive sections of the checklist are not all required; many are identified solely as potentially useful provisions for an effective and efficient AOI agreement, but most are not necessary to meet statutory obligations, and not all will be relevant to all jurisdictions. The checklist is presented in outline form. Each term in the checklist is discussed in greater depth in full report available at the website listed on the first page of these Appendices.

Statutory requirements for an AOI Agreement (Idaho Code § 67-6526)

1. Does the AOI Agreement comply with statutory requirements?

- Map:** "[A] map identifying an area of city impact within the unincorporated area of the county" adopted by ordinance by both city and county?
 - Agreement:** "[A] separate ordinance providing for application of plans and ordinances for the area of city impact" adopted by both city and county?
 - Statutory considerations** "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."
 - Negotiation and renegotiation** "Prior to negotiation or renegotiation of 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."
 - Review** "The governing boards shall undertake a review 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."
-

“Ordinance providing for application of plans and ordinances” component of an AOI Agreement

2. Prefatory statements of purpose and findings

3. Helpful reference provisions

- Are key terms defined in one central reference provision?
- Codification
 - Where is the AOI Agreement codified and referenced (e.g., zoning code, comprehensive plan, etc.)?
 - What other plans, codes, ordinances, or documents are operative in the area covered by the AOI Agreement, and where are they codified?

4. Incorporation of the Map (*see also* Map Ordinance section of outline below)

- Is there a legal description of the area of city impact (“AOI”) map boundaries in the AOI Agreement?
- Is the ordinance adopting the map referenced in the AOI Agreement?
- Is the ordinance adopting the map incorporated into the AOI Agreement?
- Are the dates of the adoption and amendment date(s) of the map stated?

5. Does the AOI Agreement address the following substantive issues?

- AOI Agreement boundaries
 - Statutory requirements
 - ✓ Trade area
 - ✓ Geographic factors
 - ✓ Areas that can reasonably be expected to be annexed to the city in the future
 - Other considerations
 - ✓ Airports, water supply, etc.
 - ✓ Use of multiple tiers, urban growth boundaries, and growth management tools

- Applicable law or code for the area of impact
 - Comprehensive plan (county, city, or AOI-specific)
 - Codes (zoning and subdivision)
 - Planned unit developments
 - Development agreements
 - Other development ordinances
 - Annexation
 - Statute appears to require county land to be annexed by city to be within AOI. But see *Coeur D'Alene Indus. Park Prop. Owners Ass'n, Inc. v. City of Coeur D'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985).
 - Permissive annexation by city within AOI?
 - Forced application for annexation of certain development proposals?
 - Application process
 - What is the application process for projects covered by the AOI Agreement? Is the application process transparent to applicants?
 - Does the AOI Agreement delegate powers to either city or county staff to create rules or policies not addressed by the AOI Agreement?
 - Pre-application meeting
 - Does the AOI Agreement provide for a pre-application meeting?
 - Role of city and county staff in pre-application meeting?
 - Decision-making on applications and permit issuance
 - Roles of the city council and county commissioners?
 - Roles of city and county staff?
 - Is there an AOI-specific commission?
 - Time limits or estimates for review and comment? Remedy for failure to meet time limit?
 - Is there opportunity for public notice and comment in addition to any such notice-and-comment requirement?
 - Which local government finally approves the project?
-

- To which local government are appeals filed? Which local government decides appeals?
- Which local government issues the permits (e.g., building permits, construction permits, etc.)?

Fees

- What types of fees are covered by the AOI Agreement?
- To which entity is the fee paid by the applicant?
- What is the amount of the fee?
- How is the fee allocated or distributed between city and county?

Procedure for mandatory 10-year review

- Date?
- Who initiates?

Renegotiation of AOI Agreement

- What is the trigger for renegotiation?
- Timeline
- Procedure

Enforcement and remedies

- Against private party
 - ✓ Who is responsible for enforcement?
 - ✓ Penalty or remedy?
- Against party to AOI Agreement
 - ✓ What is means of enforcement?
 - ✓ Penalty or remedy?

6. Miscellaneous provisions

- Effective date
- Severability

7. Appendices

- Place plans, codes, ordinances, or documents operative in the area covered by the AOI Agreement in appendices?

Map component of an AOI Agreement

8. Map basics

- Was a map created and passed by ordinance?
- Is the map incorporated into the AOI Agreement ordinance, and is the AOI Agreement incorporated into the map ordinance?
- Is the map attached to the AOI Agreement in an appendix?
- Where is the map codified?

9. Map accessibility

- Is the map stored in hard copy and/or digital format?
 - Is the map easily accessible to city/county staff?
 - Is the map accessible to the public?

10. Map clarity

- Does the map have a scale?
- Does the map have a key or legend?
- Do the boundaries on the map reflect the boundaries in the legal description in the AOI Agreement?
- Is the map of high enough quality to provide legal notice to private parties of the inclusion of a parcel within the AOI?

11. Map currentness

- Was the current map adopted within the last 10 years?
- Is there a date on the map?
- Do the adoption and amendment dates on the map match the dates in the AOI Agreement?

D. Case Law List

The following case law list was extracted from the report, *Areas of City Impact Agreements in Idaho, Report 12-01* prepared by Economic Development Clinic at the University of Idaho College of Law's Boise campus (the "Clinic"). See the website listed on the first page of these Appendices for access to the full report. Following is just a listing of the cited cases.

1. *City of Garden City v. City of Boise*, 104 Idaho 512, 660 P.2d 1355 (1983)
2. *Coeur D'Alene Indus. Park Prop. Owners Ass'n, Inc. v. City of Coeur D'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985)
3. *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994)
4. *Blaha v. Eagle City Council*, 134 Idaho 768, 769, 9 P.3d 1234, 1235 (2000)
5. *Blaha v. Bd. of Ada County Com'rs*, 134 Idaho 770, 772, 9 P.3d 1236, 1238 (2000)
6. *Evans v. Teton County*, 139 Idaho 71, 79-80, 73 P.3d 84, 92-93 (2003)
7. *Reardon v. City of Burley*, 140 Idaho 115, 116, 90 P.3d 340, 341 (2004)
8. *Burns Holdings, LLC v. Teton County Bd. of Com'rs*, 152 Idaho 440, 272 P.3d 412 (2012)

E. Definitions

1. **Annexation** is the inclusion of an unincorporated area into a city.
2. **Enclave** is an area of land completely surrounded by an incorporated city.
3. **Committee of Nine** is the group formed to resolve AOI disputes between a city and county and includes three county commissioners, three elected city officials, and three residents at large.
4. **Geographical Factors** are both natural and manmade features that may influence jurisdictional boundaries.
5. **Sprawl** is the inefficient, poorly planned pattern of scattered residential and/or strip commercial development.
6. **Trade area** is a geographic area from which businesses or a jurisdiction draws its customers.
7. **Urban Services and Facilities** are those that are provided by a city or special district to development at a scale or density that can be efficiently served with a system, such as sewer collection and treatment; water lines, pumping and treatment; stormwater management and flood control; fire and police protection; and multi-modal transportation systems.

F. Areas of City Impact Statute

**TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 65
LOCAL LAND USE PLANNING**

67-6526. AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE. (a) The governing board of each county and each city therein shall adopt by ordinance following the notice and hearing procedures provided in section [67-6509](#), Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted. Subject to the provisions of section [50-222](#), Idaho Code, an area of city impact must be established before a city may annex adjacent territory. 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.

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.

(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.

(c) If areas of city impact overlap, 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.

(d) Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. 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.

(e) Prior to negotiation or renegotiation of 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 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.

(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.

History:

[67-6526, added 1975, ch. 188, sec. 2, p. 515; am. 1977, ch. 155, sec. 1, p. 396; am. 1979, ch. 87, sec. 1, p. 212; am. 1993, ch. 55, sec. 1, p. 150; am. 1995, ch. 118, sec. 97, p. 506; am. 1996, ch. 116, sec. 2, p. 428; am. 1999, ch. 251, sec. 1, p. 651; am. 2002, ch. 333, sec. 6, p. 947.]