

Local Government Law outline, Fall 2005. Will Herrington.

I. EXISTENCE, POWERS, AND LIMITATIONS

A. EXISTENCE

1. Local government and the Constitution

a) Local government as agent of the state

- (1) State power over local government: *Hunter v. City of Pittsburgh* (1907) (p63): in the Pittsburgh-Allegheny consolidation, Allegheny citizens claim that the action was a violation of the Contracts Clause (impairing an alleged contract between the city and its taxpayers) and due process (because their property is subjected to more tax now). The Court rejects both claims, on the due process claim reasoning that cities are entirely creations of the state and so the state can do whatever it wants with cities, no matter what the people say.
 - (a) The court notes that there could be, possibly, a due process violation if property held by Allegheny in its proprietary capacity was taken without due process.
- (2) State power over local government can be trumped by U.S. Constitution: *Gomillion v. Lightfoot* (1960) (p69): despite *Hunter* and its ilk, it was unconstitutional for a state to redefine the boundaries of a city into a 28-sided figure that cut out all blacks-- this ran up against am15-- "when the legislature singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates am15."
- (3) Local government "standing" to sue its state: *Rogers v. Brockette* (5th Cir. 1979): the court says that there's not really a standing analysis for localities against their states, but rather simply a question whether there's really a constitutional violation or not (a la *Hunter* and *Gomillion*). Nevertheless, the CB says that many courts still cite the no-standing rule.

b) Local government as autonomous

- (1) Equal Protection clause reaches localities: *Avery v. Midland County* (1968) (p81): the Court says that "the EPC reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the state." The Court nevertheless left open the question of whether the EPC would apply to special purpose districts (see *Ball* (1981) and *Kessler* (2d Cir. 1998) below in Local Government as Quasi-Proprietary Firm section)).
- (2) Nonproperty owners cannot be excluded from bond elections: *Phoenix v. Kolodziejcki* (1970) (p91)
- (3) Nonresidents can be excluded from elections: *Holt Civic Club v. Tuscaloosa* (1978) (p96): the Court says that it's okay to disenfranchise nonresidents despite significant regulation of nonresidents by city ordinances.
 - (a) Brennan, dissenting, says that the Court should not take state-defined boundaries at face value-- it should look at the appropriate political community and ensure everyone in it is enfranchised.
 - (b) The people of Holt could fix this themselves by either incorporating (to get autonomy) or annexing (to get a vote).
- (4) Multi-district segregation remedy not allowed without finding of violation in all districts: *Milliken v. Bradley* (1974) (p107): noting the historical local

control over education and schools, the Court doesn't allow a federal court to order reorganization across school district boundaries.

(5) Single-family blood relation zoning constitutional: *Belle Terre v. Boraas* (1974) (p117): the Court rejects all constitutional challenges, over Marshall's am1 association argument in dissent.

c) **Local government as quasi-proprietary firm**

(1) One-person, one-vote doesn't apply to special water district without general government powers: *Ball v. James* (1981) (p124)

(2) Equal Protection clause does not reach special districts without general government powers: *Kessler* (2d Cir. 1998) (p135): EPC doesn't apply to a special district (business improvement district) in Manhattan

2. **Idaho**

a) De facto municipal corporations: *Clemens v. Pinehurst Water District* (Idaho 1959): even though the statute authorizing a water district was unconstitutional, the water district existed as a "de facto" municipal corporation and could not be attacked by anyone but the state. Otherwise, the court points out, everyone could attack every local entity.

b) Quasi-municipal corporations: *Strickfaden v. Greencreek Highway District* (Idaho 1926): highways districts are like municipal corporations-- they are quasi-municipal corporations (and so can be liable for torts, unlike counties at this time).

B. POWERS

1. **Idaho**

a) Idaho const. art. XII, sec. 2

Comment: Any county or incorporated city or town may make and enforce within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

(1) *State v. Clark* (Idaho 1965): three general restrictions apply to local legislation under a12s2: (1) it must be confined to the territorial limits of the entity (see *Blaha*), (2) it must not conflict with the general laws (see *Gumprecht, Caesar*), (3) it must not be unreasonable or arbitrary. Here, an Ada County subdivision ordinance was okay.

(a) "As long as there are considerations of public health, safety, morals, or general welfare which the legislative body may have had in mind . . . it must be assumed by the court that the legislative body had those considerations in mind and that those regulations did justify the regulation."

(b) "Under this provision [a12s2] the counties and cities of this state are not limited to police powers granted by the legislature, but may make and enforce, within their respective limits, all such police regulations as are not in conflict with the general law."

(c) Misrecitals of the source of authority for an ordinance do not invalidate the ordinance, if the authority for the ordinance did, in fact, exist.

b) Powers of municipal corporations, I.C. secs. 50-301 et seq.

(1) 50-301: general powers

(2) 50-302: promotion of general welfare

- (3) 50-302A: power to confine in local jail
 - (4) 50-303: recreation and culture
 - (5) 50-304: preservation of public health
 - (6) 50-305: hospitals
 - (7) 50-306: public carriers
 - (8) 50-307: license occupations and businesses
 - (9) 50-308: maintain peace, regulate amusements
 - (10) 50-309: fire department
 - (11) 50-310: hazardous materials
 - (12) 50-311: create and vacate streets
 - (13) 50-312: improve streets, including special tax levy
 - (14) 50-313: supervise public ways
 - (15) 50-314: regulate streets
 - (16) 50-315: rehabilitation improvements
 - (17) 50-316: sidewalks
 - (18) 50-317: remove snow, ice, weeds, rubbish
 - (19) 50-318: identification of streets and houses
 - (20) 50-319: stray animals
 - (21) 50-320: cemeteries
 - (22) 50-321: airports
 - (23) 50-322: transit systems
 - (24) 50-323: water systems
 - (25) 50-324: joint water systems
 - (26) 50-325: power systems
 - (27) 50-326: water light, power, and gas
 - (28) 50-327: selling excess power
 - (29) 50-328: utility transmission systems
 - (30) 50-329, 329A, 330: franchises
 - (31) 50-331: control waters
 - (32) 50-332: control sewers
 - (33) 50-333: flood prevention and drainage
 - (34) 50-334: abate nuisances
 - (35) 50-335: destroy dangerous buildings
 - (36) 50-341: competitive bidding
 - (37) 50-342: electric power
 - (38) 50-343: firearms-- no power to regulate
 - (39) 50-344: solid waste disposal
 - (40) 50-345: computerized mapping fees
- c) Estoppel: *Harrell v. Lewiston* (Idaho 1973): estoppel could not be invoked against a city that passed an invalid rezoning in favor of Pfs., because a municipality acts in its governmental capacity when zoning. The court allowed that there might be

extraordinary circumstances that would make estoppel viable (such as good faith reliance where lots of money is involved), and that estoppel can work where the municipality is acting in a proprietary, not governmental, capacity.

- (1) Herrington's commentary: itc. says that "promises don't count" when it comes to zoning-- you don't have anything until the council votes (on a valid ordinance).
- d) Extraterritorial powers: *Blaha v. Board of Ada County Commissioners* (Idaho 2000): cities and counties have no extraterritorial powers.
- (1) Variances holding: although the intersection design and street width standard that the board eased up on were not technically "variances" under the LPA (I.C. s 67-6516), the city adopted the Ada County Highway District standards by reference and so when ACHD waived the intersection design and street width requirements, they were effectively waived-- no variance needed.
 - (2) Powers holding: a city can't exercise jurisdiction outside of its boundaries-- its power "only exists within the sovereign boundaries." Same for counties. See Idaho const. art. XII, s 2.
 - (a) Area of city impact holding: the county has sole authority in the area of city impact, because it is outside of the city's limits. Any other agreement to the contrary would be unconstitutional.
- e) Implementing granted powers: *Condie v. Mansor* (Idaho 1974): a city council could deny a business license even though no city ordinance expressly gave the council power to deny a license. The court said that an ordinance which provided for a fee refund in the case of a disallowed license, and the fact that holding otherwise would require the city to license an unsafe business, showed that the power to deny a license was implied. There was no dispute, however, that the Idaho Code granted the city the power to license and regulate businesses-- so this is a case about whether the city has actually implemented the powers it is granted.
 - (1) Herrington's commentary: the message for cities is--"set out standards."
- f) Delegation: *State v. Clark* (Idaho 1965): a county could delegate the decision of whether to allow a subdivision to administrative staff, as standards for application were specified in "substantial detail."
- g) *Brewster v. Pocatello* (Idaho 1988): a fee is really a tax if it's just to raise revenue-- i.e., has no other purpose and/or is not reasonably related to that purpose.
 - (1) Facts: Pocatello wanted to pay to maintain its streets somehow, and tried first to get the city residents to agree (by election) to a tax. When those levies failed, the city passed an ordinance imposing a "street restoration and maintenance fee."
 - (2) Standing holding: even though caselaw supported the idea that the Pfs. itc. had no standing, because the city had not attempted to collect the fee, the court agreed that the suit should be allowed to proceed because of the important, "vexing" question involved and because otherwise the city would enforce the fee and the case would be back in court anyhow.
 - (3) Tax/fee holding: the street fee itc. did not have the necessary relationship to the regulation of travel over city streets-- rather, it was just to generate funds for the "non-regulatory" function of repairing streets. Compare *Foster's*.

Herrington thinks this holding may extend to all attempts to get money from citizens for things which are traditionally funded through taxes.

- (a) Idaho const. art. VII, s 6: this gives municipalities the power to tax, but only to the extent that the legislature has authorized a tax.
- (b) Idaho const. art. XII, s 2: cities can collect revenue "incidental" to the enforcement of police power regulations authorized under this section. But the revenue generated must "bear some reasonable relationship to the cost of enforcing the regulation."
- (c) I.C. s 63-2201A: this authorizes fees, but not if the fees are really a tax-- and to avoid being a tax there must be reasonable relationship between the funds and the regulation. "A license that is imposed for revenue is not a police regulation, but a tax, and can only be upheld under the power of taxation."

Comment: I.C. 63-2201A: Notwithstanding any other provision of law, the governing board of any taxing district may impose and cause to be collected fees for those services provided by that district which would otherwise be funded by ad valorem tax revenues.

- (d) Water and sewer charges: these are different, the court says, because the fees there are based on consumption.
- (e) Tolls: the fees here are not like tolls (which might be an option for cities, *if* they were authorized) because the fees here are imposed on landowners whether or not they use the streets.

2. Taxation

- a) *Feil v. City of Coeur d'Alene* (Idaho)
- b) *City of Pocatello v. Peterson* (Idaho)
- c) *Asson v. Burley* (Idaho)
- d) When a fee is really a tax: *Brewster v. Pocatello* (Idaho 1988): a fee is really a tax if it's just to raise revenue-- i.e., has no other purpose and/or is not reasonably related to that purpose.
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- e) When a fee is just a fee: *Foster's v. Boise City* (Idaho 1941): parking meter fees aren't taxes, even though they generate profit, because the fees have a reasonable relation to the regulation of streets. (The court anticipates *Brewster*, though, saying that "on the other hand, this power may not be resorted to as a shield or subterfuge, under which to enact and enforce a revenue-raising ordinance or statute.")

- (1) The parking meters also survive a due process/takings challenge, the court saying that the streets have already been taken for public use, and so now the city can regulate traffic on them.

C. LIMITATIONS

1. State control

- a) [top-down/bottom-up; general/special purpose; vertical distribution of power]
- b) Prohibition on special commissions: *Specht v. City of Sioux Falls* (S. Dak. 1995) (p239): a special regional EMS commission is struck down by the court because it violates municipal resident's rights to control the policies that directly effect them, mainly because "once commissioned, the special commission is beyond the control or supervision of any outside source."

- (1) Herrington says that if the commission had been subject to more control, it would have probably been upheld as a quasi-municipal entity.

2. Dillon's Rule

- a) Dillon's Rule: A municipal corporation possessed and can exercise only the following powers:
 - (1) Those granted in *express words*
 - (2) Those *necessarily or fairly implied* in or incident to the powers expressly granted
 - (3) Those *essential* to the accomplishment of the declared objects and purposes of the corporation--not simply convenient, but indispensable.
 - (4) And any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.

- b) *Arlington County v. White* (Va. 2000) (p269): the court applies Dillon's Rule to strike down a local domestic-partner benefits ordinance.
- c) *Hutchinson* (Utah 1980) (p274): the court basically abrogates Dillon's Rule in order to uphold a local CFR ordinance.
- d) **Home Rule**
 - (1) Home rule used as a sword: *Kalodimos v. Morton Grove* (Ill. 1984) (p285): court upholds local firearm ban as within home rule powers, despite statewide interests.
 - (a) See I.C. 50-343: state expressly prohibits localities from regulating firearms-- this was passed after NRA lobbying.
- e) **Idaho**
 - (1) Recognizing Dillon's Rule but still broadly reading fire district statute: *Big Sky Paramedics v. Sagle Fire District* (Idaho 2004): although municipal powers are strictly limited to those powers expressly granted and necessarily implied, and although all doubts are resolved against the municipality, a fire district could operate an ambulance service where the statute was ambiguous.
 - (a) Facts: a fire district operates an ambulance service. A private ambulance service says the first district can only do fire stuff, not ambulance stuff, too.
 - (b) I.C. s 31-1401: grants fire districts power for "The protection of property against fire and the preservation of life."
 - (c) Powers holding: a first district is a governmental subdivision and so has only the powers (1) granted it by the legislature and (2) necessarily implied. Even fair, reasonable, and substantial doubts are resolved against the city. The question itc., the court says, is "how indispensable" operation of an ambulance service is to a fire district. Noting that the fire district has a better response time than the private service, the court says that "preservation of life" in I.C. s 31-1401 includes the right to operate an ambulance service.
 - (d) Herrington's commentary: if the case had come out the other way, the locality could have formed a nonprofit corporation to provide ambulance service-- this would have the added benefit of allowing different pay levels for firefighters and EMTs. Also, the case for the district could have been made stronger by getting other fire districts to join or file briefs as amici-- this way, the district would have made a record of a *statewide* problem.
 - (2) Recognizing Dillon's rule and so not subjecting state to local building code: *Caesar v. State* (Idaho 1980): the court here recognizes that Dillon's Rule applies to Idaho cities-- "a municipal corporation, as a creature of the state, possesses and exercises only those powers either expressly or impliedly granted to it."

Comment: But see LPA 67-6528, subjecting state to local land use ordinances.

3. Preemption

- a) Home rule city impliedly preempted from regulating livestock confinement because of inconsistency with state policy: *Goodell v. Humboldt County* (Iowa 1998) (p345): note that a zoning regulation wouldn't work here because of express

state law prohibiting agricultural zoning.

- b) State buildings not governed by local building codes because preempted by state building regulations: *Caesar v. State* (Idaho 1980): even where an Idaho city has a direct grant of power, it cannot act in either (1) an area "completely covered by general law as to indicate that it is a matter of state concern" or (2) where acting would conflict with the state's general laws. Thus, here, despite art. XII, s 2, a state statute covered the area of state buildings regulation and therefore Boise's building code did not apply to Bronco Stadium.

(1) "Where it can be inferred from a state statute that the stat has intended to fully occupy or preempt a particular area, to the exclusion of municipalities, a municipal ordinance in that area will be held to be in conflict with the state law, even if the state law does not so specifically state."

D. REGIONAL GOVERNMENTS

1. Regional special districts

- a) *Hoogasian* (Ill. 1974) (p472):
- b) *Seto* (Ore. 1991) (p475):
- c) *Angel Fire* (N.M. 1990) (p481):

2. Consolidation

- a) No constitutional violation in state consolidation of two cities: *Hunter v. Pittsburgh* (1907) (p63): see above in the constitution and local government section.

3. Interstate compacts

II. OFFICERS AND EMPLOYEES

A. OFFICERS

1. Local entity structures

a) Cities

(1) Strong-Mayor

(a) Mayor, I.C. ss 50-601 et seq.

i) 50-601: qualifications:

- a. Any qualified elector is eligible to be mayor.
- b. Term is four years, unless specifically provided otherwise.

ii) 50-602: mayor is chief administrative official:

- a. Presides over meetings of council
- b. Has a vote when council is split
- c. Supervises all officers and affairs in the city
- d. Preserves order
- e. Takes care that the city laws are enforced

iii) 50-603: communication with council: the mayor must communicate to council from time to time with recommendations for improving the city.

iv) 50-604: the mayor can call special meetings of council

v) 50-605: the mayor can require accountings and reports from city officers

- vi)** 50-606: the mayor can have police power up to 5 miles outside of the city limits for health and quarantine matters, and up to 1 mile out for everything else except taxation.
 - vii)** 50-607: general powers: the mayor has all the authority granted to him by the state and council, and can administer oaths and must sign all city contracts and conveyances for the city.
 - viii)** 50-608: vacancy of office:
 - a.** Temporary vacancies: the president of the council steps in.
 - b.** Permanent vacancies: council fills the vacancy, the appointee serves until the next general election.
 - ix)** 50-609: the mayor can call on every male over 21 in the city to help him enforce the laws.
 - x)** 50-611: veto: the mayor can veto any ordinance passed by council. Council can override by 1/2 plus one.
 - xi)** 50-612: a city can require a majority vote for mayor, by ordinance, and there's to be a runoff if nobody gets a majority.
- (b) Council, I.C. ss 50-701 et seq.**
- i)** 50-701: composition and powers:
 - a.** Composition: council can be 4 or 6 people; half must be elected at each general election.
 - b.** Power: councils have all the authority granted to it by the state.
 - ii)** 50-702: qualifications:
 - a.** Any eligible elector can be a councilman.
 - b.** Term is four years unless specifically provided otherwise.
 - c.** Council must elect a council president.
 - iii)** 50-703: change in number of councilmen: changes must be by election (either council or citizen initiated). This code section provides for how to make the adjustments.
 - iv)** 50-704: vacancies: the mayor fills all vacancies, with consent of council. The appointee serves until the next general election.
 - v)** 50-705: meetings:
 - a.** Meetings must be held each month.
 - b.** Majority of council is a quorum.
 - c.** Questions must be decided by a majority unless otherwise provided by law.
 - d.** Member can compel attendance of absent members as provided by ordinance (including penalties).
 - vi)** 50-706: special meetings: 1/2 plus one of the full council can call special meetings.
 - vii)** 50-707: assignment of seats: council can by ordinance assign numbers to each council seat.
 - viii)** 50-707A: election by district: council can by ordinance provide for council election by district-- these seats can be elected by district or at

large.

- ix) 50-707B: a city can require a majority vote for council seats, by ordinance, and there's to be a runoff if nobody gets a majority.
- x) 50-708: accounts: council must examine accounts of all officers at least once a quarter.

(2) City Manager

(a) Council-manager plan, I.C. ss 50-801 et seq.

i) Adoption

- a. 50-801: any city can adopt the manager plan.
- b. 50-802: election for the manager plan can be by citizen initiative or by resolution passed by 1/2 + 1 of the full council.
- c. 50-803: time for election
- d. 50-804: proposition to be voted
- e. 50-806: election of officials following adoption
- f. 50-807: effective date after adoption (no more than 75 days after election)

ii) 50-805: composition of council: can be 5 or 7, but has to start with whatever it was + 1.

iii) 50-808: council powers and duties:

- a. All general law powers
- b. Power to appoint the city manager
- c. Power to confirm all appointments of department heads made by city manager

iv) 50-809: mayor:

- a. Council must select a mayor from their number,
- b. Or council can provide by ordinance for direct election of the mayor

v) 50-810: mayor's powers:

- a. Preside at council meetings
- b. Can vote on all matters before council
- c. Has no veto power
- d. Ceremonial head of the city
- e. Receives process for the city
- f. Governor of the city for military purposes
- g. Doesn't have the administrative powers of a real mayor (but still can call himself mayor)

vi) 50-811: city manager:

- a. Administrative head of the city
- b. Holds office at the pleasure of a majority of council
- c. Must take an oath and execute a bond before starting
- d. Powers and duties:
 - 1) General supervision over the city's business

- 2) Take care that the city's ordinances are faithfully executed
- 3) Must attend all council meetings when council requires him to
- 4) Can recommend measures to council
- 5) Appoints all department heads
- 6) Prepares reports for council when it or he wants
- 7) Keeps council fully advised of financial status and future needs of city
- 8) Prepares budget for the council
- 9) Performs other duties required by ordinance
- 10) Has all the powers vested in a real mayor (see 50-606)
- vii) 50-812: ending the manager plan: after 6 years, a city can go back to strong mayor form, by election like the one adopting the manager plan
- viii) 50-813: how to calculate required number of signatures when there's no direct election for mayor (use councilman who got the most votes)

b) Counties

(1) Board of county commissioners, I.C. ss 31-701 to 31-710

- (a) 31-701: composition: three members, every county must have one
- (b) 31-702: residency requirement: each member has to live in the county and district he represents
- (c) 31-703: term: staggered 4 year terms
- (d) 31-704: districts: at the January regular meeting, the board must district the county into 3 equal population districts.
- (e) 31-705: at the first meeting in January, the board must elect a chairman.
- (f) 31-706:
 - i) Quorum is a majority (2)
 - ii) If the chairman's not there, the 2 left must select one of them to be a temporary chairman.
- (g) 31-707: the county auditor is the ex officio clerk of the board
 - i) 31-708: clerk's duties: the clerk must:
 - a. Record all proceedings
 - b. Make full entries of resolutions on decisions about money
 - c. Record the vote of each member whenever a decision isn't unanimous
 - d. Sign all orders and warrants for payment
 - e. Record the county treasurer's reports
 - f. Preserve and file all accounts acted on by the board
 - g. Preserve and file all franchise applications
 - h. Record all tax levies
 - i. Perform all other duties required by the state or the board
- (h) 31-709: records: the board must keep permanently:
 - i) Minutes

- ii) Allowance records
- iii) Road records
- iv) Franchise records
- v) Warrant records
- vi) Ordinance records
- vii) Resolutions records
- (i) 31-719: meetings
 - i) Regular meetings must be on the second Monday of each month, or more regularly
 - ii) The board can hold adjourned meetings, but only on matters recorded beforehand
 - iii) Special meetings can be called by the majority of the board, with 5 days' notice
 - iv) All meetings must be public and noticed

2. Ethics and conflicts

a) Conflicts of interest

Comment: For land use and zoning matters, see LPA at 67-6506.

- (1) Ownership of property in a local improvement district doesn't disqualify councilmembers: *Simmons v. Moscow* (Idaho 1986): because there's a special assessment, the councilmember isn't the sole beneficiary, and there'd often be quorum problems otherwise.

b) Interested transactions

Comment: For land use matters, see LPA 67-6506.

- (1) Prohibitions against contracts with officers, I.C. ss 59-201 to 59-204:

(a) 59-201: county, city, and district officers cannot be interested in any contract made by them or their body in their official capacity.

(b) 59-201A: remote interests:

i) You can be deemed not interested if:

a. You have only a "remote interest":

- 1) Nonsalaried officer of a nonprofit corporation
- 2) Employee or agent of a contracting party with only fixed wages or salary
- 3) Landlord or tenant of a contracting party
- 4) Holder of less than 1% of a contracting party's shares

b. And you disclose it to the body and it's noted in the official minutes prior to K formation

c. And the body then approves the K in good faith without counting the vote of the remote interested member

ii) But you still can't vote and you can't influence or try to influence any other member of the body.

iii) Violation is a misdemeanor.

iv) Any K entered in violation is void.

(c) 59-202: county, city, and district officers cannot be interested in any sale

or vendor in any purchase they make in their official capacity

(d) 59-203: any K entered in violation of 59-201 or 202 is voidable by any party except the interested officer.

(e) 59-204: county, city, and district officers cannot buy, sell, receive or use any state, county, or city warrants or bonds, etc., except bonds issued to them for services rendered or funded bonds.

c) Ethics in government

(1) Ethics in Government Act of 1990, I.C. ss 59-701 et seq.

(a) 50-702: policy and purpose

i) Protect the integrity of government while facilitating recruitment and retention

ii) Assure independence, impartiality, and honesty of public officials

iii) Inform citizens of potential conflicts of interest

iv) Prevent public office from being used for private gain

v) Prevent special interests from unduly influencing government

vi) Assure government reflects the public interest

(b) 50-703: definitions

i) “Official action”: any decision about a rule of policy action or nonaction

ii) “Business”: undertaking for economic gain

iii) “Business with which a public official is associated”: where the official *or a member of his household* is:

a. Director

b. Officer

c. Owner

d. Partner

e. Employee

f. Holder of over \$5K in stock

iv) “Conflict of interest”: an “official action” by and person in official capacity which would have the effect of private pecuniary benefit to the person *or a member of their household, or a business with which the person is associated.*

a. Exceptions:

1) Interests required by law as a prerequisite for holding the office

2) Actions which would affect the person/household/business’s field to the same degree

3) Interests which would be affected by the same degree as a the interests of substantial group of the person’s profession, trade, or occupation

4) Revenue measures that affect similarly situated members of the public to the same manner and degree

v) “Members of the household”: spouses, dependent children, and people the person is obligated to support.

- (c) 50-704: required action in conflicts:
 - i) Can't take any official action or make a decision or recommendation where you have a conflict of interest unless you disclose it.
 - ii) If you disclose, you can still be counted for quorum, debate, and vote, unless you ask to be excused.
 - iii) To determine if a conflict exists, you can seek legal advice from the entity's attorney, the AG, or independent counsel.
 - a. If the legal advice is that no conflict exists, you can proceed.
 - b. If the legal advice is that there's a conflict you must disclose and follow the rules of the body you're on.
- (d) 50-704A: noncompensated public officials can have an interest in contracts if 18-1361A is followed.
- (e) 50-705: civil penalty: intentional failure to disclose makes you guilty of a civil offense, penalized by up to a \$500 fine.

B. EMPLOYEES

1. Constitutional rights

- a) *Police Association of New Orleans*
- b) *Rathert v. Peotone*
- c) *Rutan v. Republic Party of Illinois*

2. Civil service protections

- a) *Konno v. Hawai'i*
- b) *Civil Service Commission of New Orleans*
- c) *Wade v. Byles*

3. Privatization

III. OPEN GOVERNMENT

A. Ordinance passage

- 1. I.C. secs. 50-901 et seq.
 - a) 50-901: publication and effective date:
 - (1) Publication: all general ordinances must be published (in the newspaper or mailed out) within one month after passage and before they take effect.
 - (2) Emergency ordinances: these only have to be posted in five public places, and they take effect immediately.
 - b) 50-901A: ordinances can be summarized when published, if the requirements here are followed.
 - c) **50-902**: ordinance passage:
 - (1) Passage of every ordinance, resolution, and order to enter a contract has to be by roll call vote and requires a majority of the council.
 - (2) Ordinances must be get three readings, unless half plus one of the council suspends the rule.
 - (3) Ordinances must always have all their subjects expressed in their titles.
 - d) City codes
 - (1) 50-903: grant of power to cities to codify their ordinances.
 - (2) 50-904: city codes must be arranged in chapters, articles, and sections, and

must exclude formal parts (like enacting clauses).

(3) 50-905: codification is done by a single ordinance, repealing all conflicting ordinances.

(4) 50-906: city codes don't have to be printed or published.

e) City records

(1) 50-907: permanent, semipermanent, and temporary records. Permanent records must be kept forever; semipermanent records must be kept for at least five years; temporary records must be kept for at least two years. Destruction of semipermanent and temporary records must be by city resolution with advice of the city attorney. City councils must also adopt a records retention schedule by 2007.

(2) 50-908:

B. Open meetings

1. I.C. secs. 67-2340 to 67-2347

C. Open records

1. I.C. secs. 9-337 to 9-347

D. Public contracts

1. I.C. sec. 67-2805

2. I.C. secs. 54-1901 et seq.

IV. LAND USE

A. PROCEDURAL REQUIREMENTS

1. Idaho Local Planning Act

a) The LPA, I.C. 67-6501 et seq.

(1) 67-6502: purposes

(a) Protect property rights

(b) Ensure public facilities and services are provided at reasonable cost

(c) Protect state and local economy

(d) Protect environmental features

(e) Protect prime agricultural, forestry and mining lands

(f) Encourage urban and "urban-type" development

(g) Avoid overcrowding

(h) Ensure development appropriate to the land

(i) Protect areas subject to natural hazards

(j) Protect fish, wildlife, and recreation resources

(k) Avoid water and air pollution

(2) 67-6503: every city and county government *must* comply with the LPA

(3) 67-6504: P&Z commissions

(a) Governing board option: the city council or county board can do the P&Z work, and if it does, it needn't follow procedural requirements set out just for P&Z commissions.

(b) P&Z commission(s) option: the council or board can establish (by ordinance in accordance with 67-6509) either a P&Z commission or

separate planning and zoning commissions.

i) Powers (see also 6507): P&Z commission(s) can act with the full authority that the council or board has, except that they can't adopt ordinances or finally approve subdivisions.

ii) Membership (6504(a)):

a. Between 3 and 12 voting members.

1) Must have lived in the county for at least two years prior to appointment, and must stay in the county while on the commission.

2) For counties, no more than 1/3 of the members can live in an incorporated city, and at least 1/2 of the members must live outside of any city's area of impact.

3) See also 6506, requiring broad representation of interests and areas.

b. Appointed by mayor or chairman and confirmed by majority vote of council or board, and must be selected without respect to political affiliation.

c. Terms can be between 3 and 6 years, and members can't serve more than 2 terms without 2/3 approval of the council or board.

d. Removal for cause by a majority vote of the council or board.

e. Can receive mileage and per diem compensation if provided by the council or board.

iii) Organization (6504(b)): commissions must pick a chairman, and can have subcommittees, advisory committees, and neighborhood groups.

iv) Rules, records, and meetings (6504(c)):

a. A commission must adopt organization papers or bylaws.

b. A commission must maintain a record of its meetings and actions.

c. A commission must meet at least once a month for at least nine months of the year.

d. Quorum is a majority of voting members.

v) Spending and staff (6504(d)): a commission can receive and spend funds if it has council or board approval, and it can hire staff or contract with consultants (within its budget).

(4) 67-6505: Joint (multi-locality) P&Z commissions: counties and cities can create joint commissions.

(5) 67-6506: conflict of interest:

(a) Broad representation of areas and interests required in membership on P&Z commissions.

(b) No participation when: economic interest in a procedure or action by:

i) Member of commission or governing board

ii) Employee of commission or governing board

iii) Employer of member or employee of commission or governing board

iv) Business partner

- v) Business associate
- vi) Relative, either affinity or consanguinity within second degree
- (c) Disclosure: any actual or potential conflict must be disclosed at or before the meeting.
- (d) Violation: is a misdemeanor if knowing.
- (6) 67-6507: powers of P&Z commissions
 - (a) Hold meetings (including informational)
 - (b) Make recommendations
 - (c) Enter land with consent of the owner
 - (d) Seek judicial process
- (7) ***67-6508: comprehensive plan substance
 - (a) Must consider:
 - i) Previous and existing conditions
 - ii) Trends
 - iii) Goals
 - iv) Desirable future situations
 - v) 67-6537: effect on groundwater
 - (b) Must be based on (unless reasons given otherwise):
 - i) Property rights
 - ii) Population
 - iii) School facilities and transportation
 - iv) Economic development
 - v) Land use
 - vi) Natural resources
 - vii) Hazardous areas
 - viii) Public services
 - ix) Transportation
 - x) Recreation
 - xi) Special areas
 - xii) Housing
 - xiii) Community design
 - xiv) Implementation
- (8) ***67-6509: comprehensive plan procedure
 - (a) (1) Hearing requirement: P or P&Z must hold at least one public hearing before recommending a comp plan. It must be noticed at least 15 days prior. If it makes any material changes after the first hearing, it must hold another hearing unless the council or board is going to hold one. Records must be maintained of the hearing(s).
 - (b) (2) Council or board optional hearing: the council or board can conduct an additional hearing after the P/P&Z recommendation, pursuant to ordinance; but it can't hold a hearing before P/P&Z has made its recommendation. If the council or board makes a material change, it must

hold another hearing.

- (c) (3) Adoption by resolution required: comp plans must be adopted by resolution by the council or board
 - (d) (4) Petitioning for comp plan amendment: anybody can petition the commission (or otherwise the council or board) to amend the comp plan. The commission can recommend plan amendments at any tie, but can't recommend amendments to the land use map more frequently than once every 6 months.
- (9) 67-6509A: manufactured homes: comp plans must be amended to allow for manufactured homes, but the council or board can adopt certain placement standards, set out at 6509A(4).
- (a) 67-6509B: manufactured housing communities must get equal treatment.
- (10) 67-6510: mediation
- (a) (1) Required provision: the ordinance for application processing has to include a mediation option on request of either the applicant, affected, person, P&Z, council, or board.
 - (b) (2) Required participation:
 - i) If P&Z or council/board requests mediation, objectors have to participate in at least one session.
 - ii) If an applicant or affected person requests mediation, and objector can refuse to participate unless council/board directs them to, in which case they have to participate in at least one session.
 - (c) (3) Tolling: during mediation, all relevant time limits are tolled.
 - (d) (5) Mediation isn't part of the official record on the application.
- (11) ***67-6511: zoning ordinance
- (a) Required: council/board must adopt a zoning ordinance, with at least one zone, and the zones must be in accordance with the comp plan.
 - (b) Zones: standards have to be uniform for each kind of building in each zone; zone standards can regulate:
 - i) Structures:
 - a. Height
 - b. Number of stories
 - c. Size
 - d. Construction and reconstruction
 - e. Alteration and repair
 - f. Use
 - g. Location
 - ii) Percentage of lot occupancy
 - iii) Size of courts, yards, and open spaces
 - iv) Density of population
 - (c) Amendment of zoning ordinance:
 - i) (a) Requests must be submitted to Z/P&Z, which must consider the request with special consideration given to provision of services

(including schools).

- a.** Amendments may be subject to 67-8003 regulatory takings analysis.
- ii)** (b) Z/P&Z can then recommend that council/board adopt or reject an amendment by following 67-6509 notice and hearing.
 - a.** If the amendment is a zone boundary change, additional notice must be sent to all owners within 300 feet of the boundaries of the land considered, and to any other area impacted by the change. (This is notwithstanding jurisdictional boundaries.)
 - 1)** If notice is required to 200+ owners, though, council/board can use alternate procedures if it's adopted them by ordinance, or can fall back on the default alternate (newspaper) notice in the code section.
 - 2)** All owners entitled to specific notice have a right to participate in public hearings.
 - b.** Notice must also be posted on the premises at least a week before the hearing.
- iii)** (c) If the amendment conflicts with the comp plan or would adversely impact service delivery, then council/board can amend the comp plan pursuant to 67-6509 notice and hearing.
- iv)** (d) If an amendment is adopted after an owner's request, council/board revert back for four years unless it gets the owner's written consent.

(12) 67-6511: development agreements

- (a)** By ordinance adopted after 67-6509 notice and hearing, council/board can require or allow a development agreement as a condition of rezoning. Council/board must adopt an ordinance to govern procedures for these agreements.
- (b)** Agreements must be recorded with the county.
- (c)** Agreements are binding on the owner, and each later owner unless not recorded (and no actual notice).
- (d)** Amendment: agreements can be amended only with council/board permission and only after 67-6509 notice and hearing.
- (e)** Noncompliance: agreements can be terminated and the rezone reversed on noncompliance after a reasonable time, and after 67-6509 notice and hearing.
- (f)** Council/board doesn't obligate itself to rezone by entering an agreement.

(13) ***67-6512: SUPs

- (a)** (a) By ordinance adopted after 67-6509 notice and hearing, council/board can provide for SUPs/CUPs.
 - i)** SUPs can be granted if:
 - a.** Permitted by SUP ordinance
 - b.** Public services (including schools) can serve the use
 - c.** Not in conflict with the comp plan
 - ii)** SUP denial may be subject to 67-8003 regulatory takings analysis

- (b)** (b) SUP notice and hearing requirements
 - i)** At least one public hearing must be held.
 - ii)** Notice:
 - a.** In the newspaper at least 15 days before.
 - b.** One the premises at least a week before.
 - c.** To all owners within 300 feet and in any other area substantially impacted.
 - 1)** Those entitled to specific notice have a right to participate in the public hearings.
 - 2)** (c) If specific notice is required to 200 or more people, council/board can use alternate procedures if it's adopted them by ordinance, or fall back on the alternate procedures in the code section.
 - (c)** (d) Permissible conditions (nonexhaustive):
 - i)** Minimize adverse impact on other development
 - ii)** Sequence and timing of development
 - iii)** Duration of development
 - iv)** Maintenance of development
 - v)** Location and nature of development
 - vi)** Require public facilities or services
 - vii)** Require more restrictive standards than usual
 - viii)** Require mitigation of effects on public services (including schools)
 - (d)** (e)
 - i)** Studies: studies can be required.
 - ii)** SUPs don't establish precedent for granting other SUPs.
 - iii)** SUPs aren't transferable from one parcel to another.
- (14)** 67-6513: subdivision ordinances
- (a)** Required: council/board must adopt a subdivision ordinance, after 67-6509 notice and hearing.
 - (b)** Mitigation can be required: the subdivision ordinance can provide for mitigation of effects on public services delivery (including schools).
 - i)** Impact fees must comply with 67-8201 *et seq.*
 - (c)** Action on a subdivision permit application may be subject to 67-8003 regulatory takings analysis.
- (15)** 67-6515: PUDs
- (a)** Council/board may adopt a PUD ordinance, after 67-6509 notice and hearing.
 - (b)** PUDs are areas under single ownership with a variety of land uses.
 - (c)** PUD ordinances can regulate (nonexhaustive):
 - i)** Minimum area
 - ii)** Permitted uses
 - iii)** Ownership

- iv) Common open space
 - v) Utilities
 - vi) Density
 - vii) Arrangement of land uses on the site
 - viii) Permit processing
- (d) PUDs are permitted by following the SUP notice and hearing procedures (67-6512).
- (16) 67-6515A: development rights transfers: board/council can adopt an ordinance to create and allow transfers of development rights.
- (17) ***67-6516: variances
- (a) Council/board can provide for variances, as part of the zoning ordinance.
 - (b) Definition: a variance is *only* a modification of bulk and placement requirements (*not* uses):
 - i) Lot size
 - ii) Lot coverage
 - iii) Width, depth, front yard, side yard, backyard
 - iv) Setbacks
 - v) Parking space
 - vi) Height
 - vii) Other requirement affect size or shape or placement of structures
 - (c) Variances aren't special rights or privileges-- they may be granted *only* on a showing of undue hardship *because of* the site characteristics *and* that they're in the public interest.
 - (d) Notice and hearing must be given to adjoining owners.
 - (e) Action on a variance application may be subject to 67-8003 regulatory takings analysis.
- (18) 67-6517: future acquisitions map: upon a P/P&Z recommendation, council/board can adopt a future acquisitions map after 67-6509 notice and hearing.
- (a) The map must designate land for acquisition up to 20 years ahead of time.
 - (b) For stuff on the map, upon a permit request, the agency to acquire the property an get a stay to negotiate to buy the property.
 - (c) (However, because of budgetary constraints, most Idaho communities can't take advantage of this because they can't come up with money that fast.)
- (19) ***67-6518: development standards
- (a) Council/board can adopt standards for things like (nonexhaustive):
 - i) Building design
 - ii) Blocks, lots, and tracts
 - iii) Yards, courts, greenbelts, planting strips, parks, open spaces
 - iv) Trees
 - v) Signs

- vi) Parking spaces
 - vii) Roadways, streets, lanes, bikeways, pedestrian walkways, rights-of-way, grades, alignments, intersections
 - viii) Lighting
 - ix) Public utilities easements
 - x) Access to streams, lakes, and viewpoints
 - xi) Water, sewer, and storm drainage systems
 - xii) Street numbers and names, and house numbers
 - xiii) Schools and hospitals
 - xiv) Other public and private development
- (b) How adopted: they can be adopted as part of a
- i) Zoning ord
 - ii) Subdivision ord
 - iii) PUD ord
 - iv) Separate ord
- (c) The strictest standards prevail.
- (20) ***67-6519: permit process
- (a) (1) Procedures required: council/board must establish procedures for permit processing (reasonable fees can be charged).
- (b) (2) Required procedures:
- i) Permits must be submitted first to Z/P&Z, which must get a reasonable-- but specified-- time to make a recommendation or decision.
 - a. Permits relating to a public school facility get priority, though.
- (c) (3) special consideration for public school facility permits.
- (d) (4) Grant or denial requirements: whenever Z/P&Z grants or denies a permit, it must specify:
- i) The ordinance and standards used in evaluation
 - ii) The reasons for grant/denial
 - iii) The actions that the applicant could take to get the permit
- (e) (4) After exhaustion, a denied/aggrieved applicant has 28 days to seek judicial review. (The 28 days starts at the written decision, not the oral decision.)
- (21) 67-6520: hearing examiners
- (a) Definition: hearing examiners are professionals (usually planners or architects).
- (b) Council/board may adopt an ordinance, after 67-6509 notice and hearing, providing for hearing examiners to hear applications for:
- i) Subdivision permits
 - ii) SUPs
 - iii) Variance permits
 - iv) Rezone requests

- (c) Hearing examiner decisions must specify:
 - i) The ordinance and standards used in evaluation
 - ii) The reasons for the recommendation or decision
 - iii) The actions that the applicant could take to get the permit
- (d) After exhaustion, a denied/aggrieved applicant has 28 days to seek judicial review.
- (22) 67-6521: appeals
 - (a) (a) "Affected person": anybody with an interest in real property that could be adversely affected by a permit grant or denial. This includes everyone within 300 feet, at least, and apparently people far away (see cheese factory case).
 - (b) (b) Petition for hearing: before final action, any affected person can petition for a public hearing if one hasn't been held. If 20+ people petition, the public hearing must be held.
 - (c) (d) Affected persons have 28 days after exhaustion to seek judicial review.
- (23) 67-6522: combining permits
- (24) 67-6523: emergency ordinances and moratoriums: this statute was modified in 2003 to allow a little more time for emergency moratoria to last (up to 182 days), but also to prohibit more than one moratorium in a row (until there's been at least 1 year intervening).
- (25) 67-6524: interim ordinances
- (26) 67-6525: ordinance changes upon annexation
- (27) ***67-6526: area of city impact:
 - (a) (a) Required adoption: each county board, along with each city council in the county, must adopt, after 67-6509 notice and hearing:
 - i) A map showing the area of city impact into the county.
 - ii) A separate ordinance specifying application of plans and ordinances with the AOCI-- either:
 - a. Apply city plan and ordinances to AOCI
 - 1) (f) If the city plan and ordinances apply, county residents in the AOCI are entitled to representation on the city P,Z/P&Z.
 - b. Apply county plan and ordinances to AOCI
 - c. Apply mutually agreed on plan and ordinances to AOCI
 - (b) (a) Cross-border AOCIs: AOCIs can cross county boundaries if the city is within 3 miles of an adjoining county and the city and county agree.
 - (c) (b) Demanded compliance: either the city or county can demand compliance with 6526(a), and then the procedures specified in (b) are followed. If there's still failure, either the city or the county can go to court for a declaratory judgment setting out the AOCI.
 - (d) (c) AOCI overlaps: if there's AOCI overlap, cities are to negotiate boundary adjustments. If they can't agree, the procedures specified in (c) are followed-- the county recommends adjustments, and if any city objects, there's an election.
 - (e) (d) AOCIs remain fixed until city and county agree to renegotiate-- if they

can't agree one can seek a declaratory judgment pursuant to (b).

i) (e) Before renegotiation, the questions have to go to P, Z, or P&Z.

ii) (e) Council and board must review at least every 10 years

- (28) 67-6527: penalties: council/board can set penalties for ordinance violations, including civil and criminal (up to \$300 and/or 6 months).
- (29) 67-6528: applicability: the state has to comply with local ordinances, generally.
- (a) UI says that its unique because its a constitutional entity.
- (b) Caselaw (*Caesar*) says that the state doesn't have to comply with local building codes.
- (c) There's a Blaine County case that says that it doesn't apply to state trust lands.
- (30) 67-6529: ag land:
- (a) (1) The LPA can't be used by a board to deprive anyone of ag land.
- (b) (1) Ag land must be defined by local ordinance.
- (c) (2) Boards must enact ordinances to regulate CAFOs.
- i) See 67-6529A-G.
- (31) 67-6530 to 6532: shelter homes: shelter homes for 8 or fewer mentally retarded or elderly people are single-family dwellings, allowing mentally retarded and elderly persons to live in normal residential surroundings.
- (32) 67-6533: SOBs: limits SOBs to 2500 feet away from churches and schools.
- (33) 67-6534: public hearing procedures ordinances: council/board must adopt, by ordinance or resolution, procedures for the conduct of public hearings.
- (a) The procedures must at least allow all affected persons to present and rebut evidence.
- (34) 67-6535: quasi-judicial decision requirements
- (a) (a) Approvals and denials of permits must be based on standards set out in the comp plan, zoning ord, or other ord.
- (b) (b) Approval and denials must be:
- i) In writing
- ii) Accompanied with a reasoned statement, explaining:
- a. The relevant standards
- b. The relevant contested facts
- c. The rationale for the decision, based on comp plan, ord, statute, const, and facts.
- iii) (c) Accompanied by notice about the right to request a 67-8003 regulatory takings analysis.
- (c) (c) Courts are directed to consider proceedings as a whole and in light of practical considerations. Only actual harm or violation of fundamental rights can get a remedy or reversal.
- (35) 67-6536: transcribable record requirement: whenever appeal is available, a transcribable verbatim record must be kept for at least 6 months. Minutes must also be taken, and kept indefinitely.

- (36) 67-6537: groundwater: council/board must consider the effect of a comp plan on groundwater when amending, repealing or adopting one.
- (37) 67-6538: what to do when old uses are no longer permitted
- b) Regulatory Takings Act, I.C. 67-8001 et seq.
 - (1) 67-8003: protection of private property requirements
 - (a) (1) AG checklist: the AG has to make a checklist so that local governments and agencies can evaluate actions to avoid unconstitutional takings.
 - (b) (2) Takings analysis: a landowner can request a written takings analysis
 - i) (3) Actions are voidable if a takings analysis wasn't done after a request.
 - ii) (4) SOLs are tolled during preparation of takings analyses.
- 2. Zoning is constitutional: *Village of Euclid v. Ambler Realty* (1926): zoning ordinances have a rational relation to the health and safety of the community-- they can make sure its easy to put out fires, they can increase security, they can prevent street accidents, they can decrease noise, they can provide more favorable environments for children, etc.
- 3. Zoning decisions in particular cases are quasi-judicial acts: *Cooper v. Board of County Commissioners of Ada County* (Idaho 1980): the court says that zoning decisions on individual applications are quasi-judicial actions and thus subject to heightened procedural due process protections. Specifically, here, the board needed to (1) notice the hearings and meetings, (2) make a transcribable verbatim record of the proceedings, and (3) make specific written findings of fact and conclusions on which its decision was based.
- 4. A land-use map is just a guide: *Bone v. City of Lewiston* (Idaho 1984): the court decides, in this important, oft-cited case, that:
 - a) Because the LPA rezoning provision (6511) referenced only specific judicial review provisions in the (old) APA, a Pf.'s only avenue for judicial review is through those APA provisions--not anything else like mandamus;
 - b) That because those APA provisions require review of a record, the whole case must be remanded to the city council so that it can make a record;
 - c) That Pf. isn't entitled to have his property immediately zoned exactly the way it's shown on the land-use map (because a land use map is just the *projected* land uses).
- 5. Estoppel: *Harrell v. Lewiston* (Idaho 1973): estoppel could not be invoked against a city that passed an invalid rezone in favor of Pfs., because a municipality acts in its governmental capacity when zoning. The court allowed that there might be extraordinary circumstances that would make estoppel viable (such as good faith reliance where lots of money is involved), and that estoppel can work where the municipality is acting in a proprietary, not governmental, capacity.
 - a) Herrington's commentary: itc. says that "promises don't count" when it comes to zoning-- you don't have anything until the council votes (on a valid ordinance).
- 6. Comprehensive plan need not be a separate document (pre-LPA): *Dawson Enterprises* (Idaho 1977): absent specific requirements otherwise, "the comprehensive plan need not have a separate existence apart from the zoning

ordinances, and it need not be in writing, but its design may be found in the scheme apparent in the zoning regulations themselves."

- a) Itc. also says that it's okay to have aesthetic considerations in your zoning decisions (but Herrington says it's probably not a good idea to have just aesthetic reasons).
- b) Itc. also says that zoning decisions are essentially legislative (no longer true after *Cooper*) and entitled to great discretion and a presumption of validity.

B. ANNEXATION

1. I.C. sec. 50-222: Annexation by cities

Comment: See also LPA 67-6525 (ordinance changes upon annexation).

See also LPA 67-6526 (area of city impact must be established before annexation)

a) Consent at the outset:

(1) Express consent: a written authorization by the owner or his agent.

(2) Implied consent: consent will be implied for:

- (a) Land connected to a city's water or wastewater system.
- (b) Land subject to a recorded written consent to annex (binding on all subsequent purchasers).

b) Category A annexations

(1) Definition

- (a) No private landowners object, or
- (b) It's residential land only, with less than 100 owners, and it's surrounded by:
 - i) City land, or
 - ii) City land and county fairgrounds or outdoor recreation PUDs that always require owner approval, or
 - iii) City land and the boundary of a city's area of city impact.

(2) Procedure

- (a) The city can annex without doing anything special (if the land is contiguous or adjacent to the city, of course).

c) Category B annexations

(1) Definition

- (a) Less than 100 owners and someone objects (and not surrounded), or
- (b) More than 100 owners, but owners of more than 50% by area consent at the outset, or
- (c) Land subject to a development moratorium of a water or sewer connection restriction.

(2) Procedure

- (a) The land must be contiguous or adjacent to the city and must be within the city's area of city impact.
- (b) The land must be either:
 - i) Put into lots of no more than 5 acres each, or
 - ii) The owner has sold or has begun to sell off lots no more than 5 acres

within 28 days of the publication of the annexation ordinance.

- f) Airport annexations: a city can annex an airport that's not contiguous to the city if it's owned and operated by the city. It can't, though, annex any land adjacent to the airport without going through the regular procedures.
- 2. Developer consent to annexation: in exchange for providing city services to a new development, the city might ask for an agreement from the developer to consent to annexation. The city might also build agreements to impact fees into its development agreements.

C. SPRAWL

1.

D. TAKINGS

1. Regulatory takings

- a) Land use regulations must have "essential nexus" to their justifications: *Nollan v. California Coastal Commission* (1987): the Court suggests a supplement to / reformulation of the land-use regulation takings analysis, from whether the regulation "substantially advances legitimate state interests" and "does not deny an owner economically viable use of his land," to whether the regulation has an "essential nexus" to the (legitimate state) justification for the regulation. Where there is no essential nexus, the state must pay.
 - (1) Facts: the Coastal Commission wanted to impose a condition on a building permit for the replacement of a small, old house with a big, new one, on the seaside-- that the owners grant an easement along the beach. The Commission said this was because they were concerned about public "access" to the beach.
 - (2) The Court didn't buy the "access" justification-- while it's a legitimate interest, the "access" that's legitimate is access *to* the beach, not access along it. The Court specifically points out the different analysis for land-use takings ("*substantial* advancing of a legitimate state interest") than for due process and equal protection questions (rational basis only).
- b) Where there is an "essential nexus," there still must be "rough proportionality" between conditions and the expected development impact: *Dolan v. City of Tigard* (1994): although the state's interest in preventing flooding and reducing congestion had an essential nexus to the public greenway and pedestrian/bike path conditions imposed on the owner, the city did not make the required "individualized determination that the required dedication is related both in nature and extent to the proposed development's impact. Namely, the city didn't say why public greenway was needed instead of a private one or demonstrate that there was a real need for offsetting increased traffic with a bike path.
- c) Land use regulations denying all economic use are takings: *Lucas v. South Carolina Coastal Council* (1992): where regulations deny a property owner "all economically viable use of his land," the Court does not have to do a case-specific inquiry into the state justification or public interest-- they are categorically takings that require compensation. The only exception would be if the property owner never had-- as a matter of common law nuisance and property-- the right to use the land as he wished in his "bundle."
- d) Idaho Regulatory Takings Act, I.C. 67-8001 et seq.

Comment: See also LPA, 67-6521(2).

- (1) 67-8003: protection of private property requirements
 - (a) (1) AG checklist: the AG has to make a checklist so that local governments and agencies can evaluate actions to avoid unconstitutional takings.
 - (b) (2) Takings analysis: a landowner can request a written takings analysis
 - i) (3) Actions are voidable if a takings analysis wasn't done after a request.
 - ii) (4) SOLs are tolled during preparation of takings analyses.

2. Eminent domain

- a) Takings pursuant to carefully considered development plans are validly for "public use": *Kelo v. City of New London* (2005): although the state can't take land just to confer a private benefit to a private party, it can take pursuant to a carefully considered development plan not adopted to benefit a particular class of identifiable individuals, because economic development is indistinguishable from other valid public purposes. Moreover, the city's determination that economic rejuvenation was needed is entitled to deference.
- b) **Idaho eminent domain statutes**
 - (1) I.C. secs. 7-701 et seq.
 - (a) **7-701**: permissible condemnation purposes
 - (b) **7-702**: kinds of estates that can be taken
 - (c) **7-703**: kinds of property that can be taken
 - (d) **7-704**: prerequisites to a taking:
 - i) The proposed use is authorized by law.
 - ii) The taking is necessary for the proposed use.
 - a. If the property already has a public use, the new public use must be a more necessary one.
 - iii) Big power lines over ag. land: there has to be a noticed public meeting.
 - (e) 7-704A: omitted lands
 - (f) **7-705**: surveying
 - i) The land must be located in the place that will be best for the public good and cause the least private harm.
 - ii) The government can enter the property (to survey it, etc.)
 - (g) 7-706: condemnation proceedings are four the district court of the county where the property is, and they have to be started by a complaint and summons.
 - (h) 7-707: the complaint. It must contain:
 - i) The name of the entity in charge of the public use, as Pf.
 - ii) The names of all the owners of the property, as Dfs.
 - iii) A statement of the Pf.'s right to condemn.
 - iv) A description of the land or right-of-way.
 - v) A statement that the Pf. has tried to buy the lands or settle with the

Dfs.

- (i) 7-708: summons
- (j) 7-709: proper defendants (whether named or not)--anybody who occupies or has or claims an interest in the property.
- (k) 7-710: court's powers
- (l) 7-711: damages--the court has to determine all of the following:
 - i) The property value, with all improvements (the property tax assessed value is the minimum, here);
 - ii) Business damages, for businesses older than 5 years.
 - iii) The benefit to any uncondemned portions.
 - iv) If the land is for a railroad, the cost of putting up fences.
 - v) Big power lines on ag. land: the cost of farming around the transmission towers.
- (m) 7-711A: advice of rights form--whenever the government wants a fee simple of real property, it must send out this form, or else suffer a presumption that any subsequent sale or contract was not voluntary. The form must contain:
 - i) The name of the condemning entity;
 - ii) That the condemnation power can only be exercised when:
 - a. The property is needed for a public use;
 - b. The taking is necessary for that use;
 - c. The taking is located in the place best for the public use and causing the least private injury;
 - d. The entity negotiates with the owner in good faith to purchase or settle;
 - e. The owner is entitled to "severance damages" for diminution in value to remaining land;
 - f. The property is valued based on the highest and best use
 - g. The property value is assessed by a court (if no purchase or settlement);
 - h. The owner has a right to consult with his own appraiser;
 - i. The entity gives the owner (upon request) a copy of all of its appraisals;
 - j. The owner can consult with an attorney
- (n) 7-712: date of accrual of damages--damages accrue at the date of the summons (and draw interest thereafter).
- (o) 7-713: the entity can condemn again if it gets defective title.
- (p) 7-714: payment--the entity has to pay within 30 days of the final judgment (except for some special stuff with fences next to railroad tracks).
- (q) 7-715: failure to pay--if the entity doesn't pay, the Dfs. can seek a civil execution, and if that doesn't work, can get their property back.
- (r) 7-716: final order--the final condemnation order must describe the property and the purposes of the condemnation and must be recorded with

the county.

- (s) 7-717: possession by the entity:
 - i) Possession after judgment: after a judgment, the entity can pay the judgment to the court and take possession, even if the Dfs. appeal. If Dfs. withdraw the money, they abandon any defenses, except they can still claim that they're entitled to greater compensation.
 - ii) Possession during proceedings (see also 7-721): the court can appoint commissioners to assess the value of the property, and then the entity can pay the assessed amount and take possession.
- (t) 7-718: costs--costs can be awarded, and even apportioned between opposite sides. (Costs and fees are really important in condemnation cases.)
- (u) 7-719:
- (v) 7-720: these statutes don't effect other statutes providing for cities to take property for streets.
- (w) 7-721: possession pending trial--if the entity is seeking property for highways or streets, airports, or water and sewer systems, the entity can take possession before trial as long as it pays just compensation into the court. The Dfs. can withdraw up to 80% (or more if they promise to pay it back if the judgment is lower).

V. TORTS AND LIABILITY

A. Idaho Tort Claims Act, I.C. secs. 6-901 et seq.

1. 6-902: definitions
 - a) (2) "Political subdivision": includes counties, cities, municipal corps, and health, school, irrigation, special improvement, and taxing districts. "County" and "city" also means state licensed hospitals established by counties or counties and cities together.
 - b) (3) "Governmental entity": includes political subdivisions.
2. 6-903: government entities liable and must defend and indemnify employees
 - a) (a) Unless an exception applies, government entities are liable for money damages for their the their employees' negligent and wrongful acts/omissions, regardless of whether it arises from a governmental or proprietary function.
 - b) (b) Government entities must defend and indemnify their employees (secondary to any insurance company obligation to defend and indemnify).
 - (1) (c) Exceptions: the entity can refuse to defend and indemnify if it is *determined* that either:
 - (a) The employee wasn't acting within the course and scope of employment.
 - (b) or the act included malice or criminal intent
 - (2) (e) And it is *presumed* that the employee is not within the exceptions.
 - (3) (d) An entity isn't entitled to be paid back for its defense and indemnification unless a court finds-- in the same, principal lawsuit-- that one of the exceptions applies.
3. Exceptions to liability (6-904 to 6-904B)
 - a) 6-904: exceptions unless done with malice or criminal intent:

- (1) (1) Employees exercising ordinary care in reliance on or executing a statutory, regulatory, or discretionary function.
- (2) (2) Imposition of quarantines.
- (3) (3) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with property rights.
- (4) (4), (5) Activities of the Idaho national guard in training or duty or war.
- (5) (6) Riots, unlawful assemblies, public demonstrations, mob violence, civil disturbances.
- (6) (7) Plan or design for construction or improvement to highways, streets, etc. (if designed within standards and approved by the entity).
- b) 6-904A: exceptions unless done with malice, criminal intent, recklessness, or willfulness and wantonness:
 - (1) (1) Tax and fee collection and assessment.
 - (2) (2) Injury to people and property in custody.
- c) 6-904B: exceptions unless done with malice, criminal intent, recklessness, willfulness and wantonness, or gross negligence:
 - (1) (1) Detention of goods or merchandise by law enforcement.
 - (2) (2) Cancellation or motor vehicle registration.
 - (3) (3) Licenses and permits.
 - (4) (4) Inspections.
 - (5) (5) Medical care to people in custody.
 - (6) (6) Decisions of pardons and parole commission.
 - (7) (7) Decisions and acts of IDOC.
- 4. Filing claims (6-906 to 6-916)
 - a) 6-906: time: claims must be filed within 180 days of when the claim arose or reasonably should have been discovered, whichever is later.
 - (1) 6-906A: minors get an extension-- to 180 days after they reach 18 or 6 years after the claim arose or reasonably should have been discovered, whichever is earlier.
 - b) 6-907: contents
 - c) 6-909: allowance or denial: after getting the claim, the entity has 90 days to allow or deny the claim.
 - (1) 6-910: if denied, you can sue in district court.
 - d) 6-911: SOL: 2 years from whichever is later of when the claim arose or when it reasonably should have been discovered.
 - e) 6-912: councils/boards can compromise and settle claims, after consulting with their attorney.
 - f) 6-914: jurisdiction: district court has jurisdiction and IRCP governs.
 - g) 6-915: venue: suits against subdivisions can be brought in the county where the cause arose or the county where the subdivision is.
 - h) 6-916: summons
- 5. 6-917: if you recover from the entity, you're barred from recovering from the

employee.

6. 6-918: you can't get punitive damages.
7. 6-918A: the claimant, employee, or the entity can get attorney's fees if they show bad faith by clear and convincing evidence.
8. 6-923: subdivisions have authority to buy insurance.
 - a) 6-924: insurance policies must pay out at least up to \$500K per occurrence.
 - b) 6-925: insurance policies that don't comply with the act will be construed as if in full compliance.
9. 6-926: liability is limited to \$500K per person per occurrence, unless the entity has more insurance than that. The court is to reduce any higher judgments.

10. Taxing

- a) 6-927: all subdivisions have authority to levy an annual property tax to provide for liability plans.
- b) 6-928: if no funds are available and the subdivision didn't buy insurance, a subdivision must levy and collect a property tax to pay judgments.

11. 6-929: volunteer firemen are employees of entities for the act's purposes.

B. Cities liable for proprietary functions (pre-ITCA): *Carson v. Genesee* (Idaho 1903): the court that cities are have implied liability (even though no express liability) to the public with respect to streets and sidewalks-- and more generally for proprietary functions (but not governmental functions). Counties, however, are not liable-- but cities are not like counties, the court says because counties are organized by the state whereas cities are voluntarily organized.

1. The court also cites policy reasons for this result-- that there's much more travel in cities than in counties.
2. Cities can pay this liability through its other powers to raise revenue.

C. Highway districts are quasi-municipal corporations and so liable for proprietary functions: *Strickfaden v. Greencreek Highway District* (Idaho 1926): highway districts, in taking care of highways at least, are like municipal corporations (they are quasi-municipal corporations) and so can be liable for negligence.

D. County liability case under ITCA: *O'Guin v. Bingham County* (Idaho 2003): the court reaches three conclusions in a wrongful death suit against a county and its commissioners and public works department:

1. Attractive nuisance claim failed because the danger wasn't discovered until the children had entered county property.
2. Negligence per se claim is remanded because the lower court didn't consider it.
3. Children's brother had no standing because not an "heir" (because not dependent on brothers for support) under the wrongful death statutes.