



# "Hot Topics"

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**NOTE:**

*Information provided in this document is meant to be a general survey of the law and reflect current opinions on general matters only. It should not be relied on to aid in specific legal disputes without further legal consultation.*

## IMPACT FEES & MITIGATION FEES

You may already know that the Idaho Development Impact Fees Act was amended during the 2007 Legislature to allow for fire districts (and other units of local government) to obtain impact fees through intergovernmental agreements with counties and cities. This means that a county or city can enter into an agreement with other units of local government, such as fire districts, for the purpose of developing joint capital improvement plans and for collecting and expending development impact fees. This is good news for fire districts that are located within counties or cities that are willing to look at developing a development impact fee ordinance, and who are willing to include fire districts in that process. However, if the county or city decides to not develop an impact fee ordinance, then the fire districts located within those jurisdictions would be unable to collect impact fees on their own. (Idaho Development Impact Fee Act, Idaho Code Title 67, Chapter 82.)

However, under the Local Land Use Planning Act (LLUPA), Idaho Code Title 67, Chapter 65, Fire Districts have multiple opportunities to request and receive *mitigation* of the impacts of development.

In addition to promoting the health, safety and general welfare of the people of the state of Idaho, one of the legislative purposes of LLUPA is to “ensure that

adequate public facilities and services are provided to the people at reasonable cost.” I.C. §67-6502

### Who controls local land use planning?

- City and County planning & zoning commissions. I.C. §67-6504 & 67-6505
- County Commissioners & City Councils
- LLUPA provides for planning & zoning commissions to allow “other public agencies” to participate in the planning process.

### How is local land use planned?

- COMPREHENSIVE PLAN

It is the statutory duty of the Planning & Zoning Commission of each jurisdiction to “design, prepare, implement, review and update a comprehensive plan...” I.C. §67-6508

One of the mandatory components of a comprehensive plan is an analysis showing plans for fire stations and fire fighting equipment. I.C. §67-6508(h)

The comprehensive plan is the policy road map to guide all future development and land use within the jurisdiction.

- ZONING ORDINANCE

The City Council or County Commissioners of each jurisdiction must adopt a zoning ordinance establishing zones or zoning districts in accordance with the policies set forth in the comprehensive plan. I.C. §67-6511

Typical zones include residential, commercial, industrial, agricultural, etc.

When a request is made to amend the zoning ordinance to change a zoning district, the request is submitted to the planning & zoning commission. In evaluating a zone change request, the P&Z Commission must give particular consideration “to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction.” I.C. 67-6511(a)

The P&Z Commission conducts a public hearing on the zone change request and makes a recommendation to the City Council or Board of County Commissioners. The comments and recommendations of other public agencies are given great weight.

The zone change request can be denied if the request “would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services...” I.C. 67-6511(c).

- **DEVELOPMENT AGREEMENTS**

As a condition to approving a zone change request, the city council or board of commissioners can require the owner or developer to enter into a “development agreement.” I.C. §67-6511A

A development agreement is a contract between the owner/developer and the city or county jurisdiction. A development agreement places conditions and restrictions on the uses that will be allowed on the property in question. For example, a development agreement to allow a gas station (commercial use) within a residential zone may require the property owner to provide additional fire protection as recommended by the local fire district.

Because development agreements are voluntary, negotiated contracts, there is no limit on what the city or county can request. If the developer rejects the terms, their zone change request will likely be denied.

- **SPECIAL OR CONDITIONAL USE PERMITS**

Each zoning ordinance contains provisions for special or conditional use permits. A special or conditional use is a use allowed within a particular zone with the approval of a permit that places conditions and restrictions on the use.

For example, within a residential zone, a day care center may be allowed with a conditional use permit. The zoning ordinance will specify the particular standards and criteria for deciding if a day care center should be permitted in a residential zone.

A public hearing before the P&Z commission or a hearing officer is required prior to the issuance of a special or conditional use permit.

A special or conditional use permit request is evaluated “subject to the ability of political subdivisions to provide services for the proposed use.” I.C. §67-6512

If a conditional use permit is granted, the jurisdiction can attach conditions including:

“requiring the provision for on-site or off-site public facilities or services, and, requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.”

I.C. §67-6512(d)(6)&(d)(8)

- SUBDIVISION ORDINANCE

Each city and county is required by LLUPA to adopt a subdivision ordinance detailing the process and standards for approval of a subdivision plat.

“Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service

delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision.” I.C. §67-6513

This paragraph is part of the original statute enacted in 1975.

Fees established by the city or county to mitigate the financial impact of development must comply with the provisions of the Idaho Development Impact Fee Act, Idaho Code Title 67, Chapter 82. I.C. §67-6513

This provision was added to LLUPA in 1992 after the adoption of the Impact Fee statute

- VARIANCES

Each zoning ordinance must provide a process for the evaluation of variance requests. A variance is a modification of the requirements of a zoning ordinance with respect to “lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots.” I.C. §67-6516

A variance may be granted only by showing that the literal enforcement of the ordinance would result in an undue hardship because of the physical characteristics of the property, and that the variance is not in conflict with the public interest.

### How are local land use plans implemented?

In adopting and implementing local land use ordinances, cities and counties are required to take into account the plans and needs of local special purpose districts including fire districts. I.C. §67-6528

Zone changes, development agreements, conditional use permits, subdivisions and variances start with a written application filed by a property owner with the local city or county planning department.

Many cities and counties solicit written comments from other public agencies (i.e. fire districts) that may be affected by the land use request.

All these land use requests require at least one public hearing before the P&Z Commission or a hearing officer appointed by the jurisdiction. Often a second public hearing is held with the city council or board of county commissioners prior to a final decision.

### *How do fire districts get what they need?*

1. Get to know your local city and county planning departments.  
(The process starts with these people)
2. Get to know your local city and county planning commissioners and hearing officers. (They make recommendations to the decision makers)
3. Get to know your local city council and county commissioners.  
(They make the final decisions and can turn your requests into requirements)
4. Ask to be notified of every land use application.  
(You can't participate if you don't know what is happening)
5. Respond in writing to every land use application that may impact your district. (You are the experts in fire protection... don't hesitate to recommend denial of a land use request, or to ask for mitigation measures)
6. Participate in all public hearings. (Your physical presence and verbal comments send a strong message)
7. When a local land use ordinance is amended, ask the jurisdiction to insert the fire district into the review process.

8. Understand what motivates a developer.
9. Negotiate directly with property owners and developers.
10. Be prepared to justify the mitigation measures that you request.