



NOTICE OF PUBLIC MEETING

Monday, September 9, 2019

CITY COUNCIL CHAMBERS

680 Park Avenue

Idaho Falls, ID 83402

3:00 p.m.

The public is invited to attend. This meeting may be cancelled or recessed to a later time in accordance with law. If you need communication aids or services or other physical accommodations to participate or access this meeting or program of the City of Idaho Falls, you may contact City Clerk Kathy Hampton at 612-8414 or the ADA Coordinator Lisa Farris at 612-8323 as soon as possible and they will accommodate your needs.

COUNCIL WORK SESSION

Times listed in parentheses are only estimates.

Call to Order and Roll Call

Executive Session:

-The Executive Session is being called pursuant to the provisions of Idaho Code Section 74-206(1)(c) to acquire an interest in real property which is not owned by a public agency.

Mayor:

-Calendars, Announcements and Reports (5)
-Acceptance and/or Receipt of Minutes
Action Desired: To receive recommendations from the Planning and Zoning Commission

Council:

-Liaison Reports and Council Concerns (10)

Police; Municipal Services:

-Fleet Leasing Pilot Project Discussion (30)

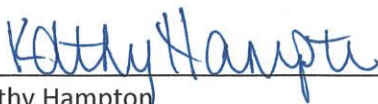
Legal:

-Run-off Elections Discussion (20)

Community Development Services:

-City-initiated Annexation Update (20)

DATED this 6th day of September, 2019



Kathy Hampton
City Clerk



MEMORANDUM

TO: Honorable Mayor and Council

FROM: Brad Cramer, Director

DATE: August 7, 2019

RE: August 6, 2019, Planning Commission Action

Planning Commission took the following action during the August 6, 2019 meeting.

1. **PLAT19-019. Final Plat. Snake River Landing Division 14.** Generally SE of Interstate 15, NW of Snake River Pkwy., & north of W Sunnyside Rd. On 8/6/2019, the Planning and Zoning Commission recommended to the Mayor and City Council approval of the final plat as presented.
2. **PLAT19-013. Preliminary Plat Fairway Estates.** Generally south of E 65th N, west of N 5th E, north of E 49th N, and east of N 5th W. On 8/6/2019, the Planning and Zoning Commission approved the preliminary plat with the following conditions:
 1. No Development of the R2 or R3A property shall occur until the bridge is constructed.
 2. The Fire Department must review the next final plat's access points to determine compliance with Fire Code.
 3. The City Engineer shall review the findings of the BMPO traffic count and if the data shows a variance of more than 50% the plat shall be reconsidered by the commission.
3. **ANNX19-008. Annexation and Initial Zoning of Highway Commercial. Lincoln Road and N 25th E Right-Of-Way.** Generally a portion of the right of ways of N 25th E and E Lincoln Rd. contiguous to the Costco Subdivision. On 8/6/19, the Planning and Zoning Commission recommended to the Mayor and City Council approval of the annexation and initial zoning as presented.
4. **ANNX19-007. Annexation and Initial Zoning of Highway Commercial. Snake River Landing Division 14.** Generally SE of Interstate 15, NW of Snake River Pkwy., & north of W Sunnyside Rd. On 8/6/19, the Planning and Zoning Commission recommended approval of the annexation and initial zoning as presented.

RECOMMENDED COUNCIL ACTION: To receive recommendation(s) from the Planning and Zoning Commission pursuant to the Local Land Use Planning Act (LLUPA).

PC Action 8/6//2019



MEMORANDUM

TO: Honorable Mayor and Council

FROM: Brad Cramer, Director

DATE: September 4, 2019

RE: September 3, 2019, Planning Commission Action

Planning Commission took the following action during the September 3, 2019 meeting.

1. **PUD19-002. Planned Unit Development. Snake River Townhomes.** Generally south of S. Utah Ave. extended, west of Snake River Parkway, north of Event Center Dr. and east of I-15. On 9/3/2019, the Planning and Zoning Commission recommended to the Mayor and City Council approval of the planned unit development as presented.
2. **RZON19-008. Title 11 Comprehensive Zoning Ordinance Amendment.** On 9/3/2019, the Planning and Zoning Commission recommended approval of amendments to Title 7, Chapter 9, Sign Code and Title 11 Comprehensive Zoning Ordinance of the Idaho Falls City Code, specifically the following sections and tables: Section 7-9-43, Electronic Message Center Signs and Changeable Copy Panels; Sections 11-2-6, O and W, Standards for Allowed Land Uses; 11-3-6, Standards for Commercial Zones; Tables 11-2-1, Allowed Uses in Residential Zones; 11-2-2, Allowed Uses in Commercial Zones; 11-3-5, Dimensional Standards for Commercial Zones, to the Mayor and City Council as presented.

RECOMMENDED COUNCIL ACTION: To receive recommendation(s) from the Planning and Zoning Commission pursuant to the Local Land Use Planning Act (LLUPA).

**PARKS & RECREATION
SHADE TREE COMMITTEE MINUTES
Tuesday April 30, 2019
Activity Center
12:00 Noon**

ATTENDEES:

Matt Hill, Ronnie Campbell, Lee Washburn, PJ Holm, Rich Potter, Kim Johnson, Randy Westergard and Terrie Safford

APPROVAL OF MINUTES

Rich Potter, Kim Johnson second

PUBLIC COMMENTS

Public was concerned about the removal of some of the trees in Community Park, We have removed some of the trees because of pathways, storm damage and disease and they will be replaced.

PLAN FOR TREES AT FAIRBRIDGE HOTEL

The trees will be removed and grind stumps on May 11, 2019 and they will pay for the removal and grinding

ARBOR DAY

Arbor Day will be May 13th at The Fairbridge Motel we will plant 7 trees to replace the old trees. Volunteers from the YMCA will be there to help plant the trees.

CHANGES IN STAFFING

Ronnie explained the Parks Department has changed to zones and the reasons why we changed it to zones.

COMMUNITY FORESTRY PROGRAM

We will discuss in our August meeting.

GOALS FOR MAYOR

Kami and Jim were going to talk to Mayor but were not present for this meeting so we will discuss in August meeting

WHEN, WHERE AND WHAT TO DO FOR TRAINING

Gary was not present so we will discuss in the August meeting

CALL FOR AGENDA ITEMS

Training/ conference
Community Forestry
Mayor Casper

*Recorded by
Terrie Safford*

Approved July 17, 2019
Idaho Falls Sister City Youth Meeting-Minutes

Attendees:

Sam Hawker	Melinda Cebull	Caroline Combs	Ron Boring
Lori Kidwell	Nicholas Cebull	Charlotte Combs	David Eaton
David Matranga	Abby Gallegos	Laura Combs	Katie Eaton
Delsina Matranga	Jo Gallagos	Charlie Medma	Kylie Eaton
David Archer	Jorge Padron	Heather Medema	Izabell Kelley
Cameron Archer	Gabe Padron	Max Medema	Laura Kelley
Andrew Nakashima	Marla Padron	Aurora Mahoney	Anna St. Michel
Kathy Murdock	Jenn Thompson	Rylee Young	Whitney St. Michel
Samatha Gohl	Carter Thompson		

Membership:

New Member: Rylee Young (given application, code of conduct and medical information form).

Medical Information form for Gabe Padron, Carter Thompson, Nathaniel Nakashima, and Kylie Eaton.

Approval of minutes:

Lori Kidwell motioned to approve June 26, 2019 meeting minutes and seconded by Heather Medema.

Reminder:

August meetings for Idaho Falls Sister City Youth are scheduled for August 7, 2019 and August 19, 2019 at 7:00 pm at the Idaho Falls Public library.

Treasurer's Report:

Current balance is \$10,146.23. This includes the \$3,500.00 check received from the City of Idaho Falls, Check from the Snow Eagle Fundraiser and \$50.00 for magazine sales.

Student Exchange:

Melinda sent around sign up sheets for Friendship Garden foods and Farewell party foods. FYI: If you volunteer to bring food please bring enough for 20 people. (We expect at least 80 people at the Friendship Garden)

If you have lawn chairs please bring them to the Welcome Party at Friendship Garden as there are a limited amount of picnic tables. Jorge will bring some tables, chairs, water, and lemonade. He also volunteered to take pictures.

It was confirmed that all host families have been in contact with their student.

The itinerary for student exchange 2019 was discussed to details worked out. Itineraries were handed out to those who requested a hard copy. Whitney will mail out the updated itinerary.

The Farewell Party will take place at Jorge's house at 550 Amy Lane, Idaho Falls, Idaho

Andrew Nakashima volunteered to translate speeches and at the fire station. Please email your speeches to Andrew Nakashima at anakashima89@gmail.com and cc Kendra Peck at kdpeck7@gmail.com.

Members, please RSVP to Whitney by the weekend for all tickets for activities needed.

*****Members should send their payment for cost of activities to Whitney by July 20.** Whitney's address is: 275 Pevero Drive, Idaho Falls, Idaho.

All Idaho Falls Sister City Youth student members must fill out a Medical information form in order to participate in away activities. Please email them to Katie Eaton at Mskatherinejean@gmail.com.

Everyone is invited to all activities beginning with greeting students at the airport on July 25 at 5:20 pm followed by the activity at the Friendship Garden.

Melinda will call Clark about getting Koi fish for decorating at the Friendship Garden.

Heather will be at the Friendship Garden at 5:00 so anyone who needs to can bring their items they volunteered to bring.

Need: If you have a cooler (on wheels is preferred) please bring it to the Welcome Party at the Friendship Garden on July 25. If you cannot bring them to the Welcome Party take them to Melinda' house at: 933 Limestone Drive, Idaho Falls, Idaho.

If you ordered T-shirts please pick them up after the meeting. If anyone needs to order a T-shirt please let Whitney know the size and she will put in another order. (The cost of each T-shirt is \$10.00 and money needs to be given to Whitney with your RSVP form. whitney5tmichel@gmail.com

For the Farewell Party members will need Halloween costumes (for your student and host family student), two Christmas gifts not more then \$2.00 - \$3.00 per gift, small bags filled with your business card and candy/gifts for Japanese students (18 students).

Nicholas Cebull will work on time line for activities for farewell party.

Maggie Boring will have powerpoint completed for all holidays.

Student Activities

Posters:

Each host family needs to have a welcome poster completed for your student.

Nicholas Cebull scheduled Skyping with Japanese students on July 22, 2019 at 6:30 PM at the Idaho Falls Public Library.

Rebecca Smith motioned that the meeting be adjourned. It was seconded by Jorge Padron.



MEMORANDUM

FROM: Idaho Falls Police Department

DATE: Thursday, September 5, 2019

RE: Work Session Agenda, Police Department Lease Vehicle Program Discussion

Item Description

The Idaho Falls Police and Municipal Services Departments are requesting time on the Monday, September 9, 2019 work session agenda to discuss the Police Department's interest in implementing a lease vehicle program. Items to be reviewed during this discussion include: a review of the municipal master lease agreement and lease terms; items included in the lease; criteria that will be used to identify Police vehicles for the lease program; a cost comparison between leasing and purchasing; and the proposed revised replacement schedule leveraging the lease program.

Purpose

Past administration practice was to contribute annual municipal equipment replacement funds (MERF) based on a ten-year vehicle replacement schedule. However, this has resulted in an aged fleet with outdated law enforcement equipment and/or the ability to install up-to-date equipment for officer field use. The Police Department is interested in securing approval to enter into a municipal master lease agreement with Bancorp. The proposed lease agreement is specifically designed to provide a tax-free lease program to law enforcement agencies. Several state and national law enforcement agencies are accessing this lease agreement as an alternative to purchasing law enforcement vehicles in efforts to maintain acceptable levels of the fleet. The master lease agreement provides a competitive package pricing for fully equipped law enforcement vehicles.

Fiscal Impact / Financial Review

The Police Department is proposing to use municipal equipment replacement funds (MERF) for leasing the vehicles.

Legal Review

The Bancorp Master Lease Agreement has been reviewed by Legal.

Interdepartmental Review

Municipal Services has met with the Police Department and will be present during the Police Department's work session discussion.

Recommended Action

Approval of the Police Department Lease Vehicle Program discussion for the Monday, September 9, 2019 City Council work session.



☐ Economic



☒ Governance



☐ Growth



☐ Learning



☐ Livable



☒ Safety



☐ Sustainability



☐ Transportation

Draft



MASTER LEASE AGREEMENT MUNICIPAL

The Bancorp Bank ("Lessor") with offices at 24437 Russell Rd, Ste 220, Kent, WA 98032 and the undersigned

Idaho Falls

("Lessee")

with offices at 605 North Capital Avenue, Idaho Falls, Idaho, 83402 hereby agree as follows:

1. **Use of Lease.** Lessee may finance Lessee's acquisition of vehicles (with all accessories, individually a "vehicle" and collectively "vehicles") under this lease. When Lessee wishes a vehicle to be covered hereby, Lessee will advise Lessor and upon agreement as to the terms the vehicle will be ordered and delivered in accordance with Lessor's usual procedures. Lessee will accept a vehicle on delivery. Lessor will deliver to Lessee a Schedule reflecting the agreed terms, which Lessee will sign promptly and return to Lessor.
2. **Lease Intended for Security.** This lease is a "lease intended for security". Accordingly, Lessee grants Lessor a security interest in each vehicle, which will secure Lessee's obligations to Lessor hereunder and under any other agreement in favor of Lessor. Lessee shall insure that Lessee has vehicle ownership and that Lessor's lien is the sole lien against a vehicle, other than the lien for property and similar taxes not yet due. As between the parties, Lessee takes the vehicles, AS-IS AND WITH ALL FAULTS. Lessee acknowledges that Lessee's obligations hereunder will not be released or otherwise affected if Lessee has any problems with any vehicle or for any other reason.
3. **Payments.** The monthly payment shall be due on the tenth day of the month following delivery of the vehicle(s). Subsequent lease payments will be due on the (10th) of each succeeding month up to and including the month during which the term expires for the vehicle, Lessee surrenders the vehicle to Lessor pursuant to the Termination Settlement paragraph or the Settlement Value thereof becomes due in accordance with the Loss or Destruction or Remedies paragraph, whether or not Lessor has rendered an invoice for any such payment. Any other amounts due hereunder will be payable upon demand. Upon payment of all amounts due under this lease as to a vehicle and the curing of any then defaults, Lessor will release Lessor's lien in the vehicle. Lessee will pay a late charge of \$25 if any amount is not paid within 10 days of the due date and interest at 1.5% per month from the due date until paid on all amounts past due.
4. **Tax Consideration.** This lease is intended to provide Lessor (or its consolidating entity) (a) tax free interest as provided by the Internal Revenue Code of 1986, as amended ("the Code") without any loss of deductibility of carrying costs and (b) similar tax exempt and deductibility treatment to the extent so provided under the laws of the State of Idaho, (the "State").
5. **Left blank intentionally.**
6. **Non-Appropriation.** If no funds or insufficient funds are appropriated in any fiscal year for lease amounts due as to any vehicle and under law Lessee has a right to terminate this lease as to the related vehicle because of such non-appropriation, Lessee shall immediately notify Lessor of such occurrence, and this lease shall terminate as to such vehicle on the last day of the fiscal period for which appropriations were received, without penalty or expense to Lessee except as to related amounts herein for which funds shall have been appropriated and budgeted or are otherwise available and past due amounts and damages because of Lessee's default hereunder. Upon such termination, Lessee shall peaceably surrender possession of the vehicle to Lessor at a location contemplated in the Termination Settlement paragraph. Lessor shall have all legal and equitable rights and remedies to take possession of the vehicle. Lessee agrees (a) that it will not cancel this lease if any funds are appropriated to it, or by it, for the acquisition, retention, or operation of another vehicle performing functions similar to the vehicle for the fiscal period in which such termination occurs or the next succeeding fiscal period thereafter and (b) that Lessee shall not give priority in the application of funds to any other functionally similar property.
7. **Titling; Registration.** Except as Lessor may title or register a vehicle, each vehicle will be titled and/or registered by Lessee as Lessor's agent and attorney-in-fact with full power and authority to register (but without power to affect title to) the vehicle in such manner and in such jurisdiction or jurisdictions as Lessor directs. Lessee will promptly notify Lessor of any necessary or advisable re-titling and/or re-registration of a vehicle in a jurisdiction other than the one in which such vehicle is then titled and/or registered. Lessee will use reasonable efforts to cause any and all documents of title will be furnished or caused to be furnished Lessor by Lessee within sixty (60) days of the date any titling or registering or re-titling or re-registering, as appropriate, is directed by Lessor.
8. **Other Duties Regarding Vehicles.** Lessee will file all returns and pay all taxes related to each vehicle or this lease. Lessee will use a vehicle in accordance with all laws and manufacturer's and insurance company instructions. Each vehicle will be permanently garaged, and not removed from that state for more than thirty (30) days or the United States, at the vehicle location set forth in the applicable Schedule A, unless Lessor consents to Lessee's movement of the vehicle. Lessee will maintain each vehicle in good condition and repair, pay all costs of operation and not make any detrimental additions or modifications. Lessee will allow Lessor to inspect any vehicle and Lessee's related records upon reasonable prior notice.

9. **Assignment.** Lessee will not sell, transfer, lend, lease or grant a further lien in any vehicle. Lessor may assign Lessor's rights hereunder, and if Lessee receives notice of an assignment, Lessee will pay any assigned amounts as directed in the notice. ANY ASSIGNEE'S RIGHTS WILL BE FREE OF ANY CLAIMS LESSEE MAY HAVE AGAINST LESSOR.
10. **Loss or Destruction.** Lessee will notify Lessor of any significant damage to or the loss or destruction of vehicle. If Lessor determines the vehicle is repairable or may be replaced, Lessee will promptly repair or replace the vehicle. Otherwise Lessee will pay Lessor the sum (the "Settlement Value") of (a) all amounts then owed by Lessee to Lessor, (b) the amortized depreciated value of the original value of the vehicle set forth in the Schedule and (c) sum of two (2) rent payments. Upon such payment, Lessee's payment obligations as to the vehicle will be satisfied.
11. **Insurance; Indemnity.** Lessee will maintain physical damage insurance on the Vehicles. Lessee shall also provide liability insurance of at least \$500,000 single limit. The insurance must be primary, list Lessor as loss payee and, if relevant, an additional insured, provide Lessor at least 10 days' notice of change or cancellation and be issued by an insurance company acceptable to Lessor. Lessee will provide Lessor such evidence of this coverage as Lessor may request. Lessee can self-insure for physical damage coverage and liability up to the state limit. Lessee also agrees to indemnify, defend and hold Lessor harmless against all claims, suits, losses, damages and expenses, including attorney's fees and court costs, incurred by or asserted against Lessor arising out of the Vehicles or this lease. This indemnity includes strict and vicarious liability.
12. **Termination Settlement.** If the term of the lease exceeds twelve (12) months, at any time after twelve (12) months from delivery of a vehicle Lessee, upon not less than ten (10) days prior notice to Lessor and provided the lease is not in default, may surrender the vehicle to Lessor at Lessor's office address shown above or at a location mutually agreed upon by the parties for sale by Lessor as more fully set forth above. Lessee will so surrender the vehicle at such location for such sale at lease expiration. Following such surrender Lessor will sell the vehicle through Lessor's standard wholesale sales procedure for the highest bona fide bid received and open at time of sale, provided that Lessor may choose alternatively to retain the vehicle. Lessor may move the vehicle from the location where surrendered to any other location, including to Lessor's office location shown above where the vehicle is returned to another location, Lessor deems advisable and/or clean and repair the vehicle in connection with such sale in Lessor's sole discretion. If the amount received by Lessor on account of such sale or the highest bona fide bid received and open at time of crediting where the vehicle is retained, as appropriate, net in either instance of a handling charge of \$150.00 and Lessor's cost of sale, including sales commissions and costs of cleaning, repairing or transporting the vehicle, is greater than the vehicle's then Settlement Value, Lessee will have no settlement obligation to Lessor as to the vehicle and the excess will be returned to Lessee after application to any amounts then owed by Lessee to Lessor; if less, Lessee will pay Lessor the difference. Alternatively, if the lease is not in default, Lessee may pay the Settlement Value and retain the vehicle free of Lessor's lien.
13. **Default.** If (a) Lessee fails to make any payment due hereunder within 10 days of the due date, (b) Lessee breaches any of its other obligations hereunder or under any other agreement under which Lessee has obligations to Lessor, (c) any warranty or representation made by Lessee to Lessor is materially incorrect or misleading when made, (d) there is a cessation of Lessee's governmental functions, or (e) insolvency proceedings are instituted by or against Lessee, this lease will be in default.
14. **Remedies.** If a default occurs, Lessor may (a) declare the Settlement Value due as to any or all vehicles, (b) exercise all rights of a secured creditor under the Uniform Commercial Code, (c) perform any obligation Lessee has failed to perform, in which case Lessee will reimburse Lessor's related costs and expenses, and (d) exercise any other rights available to Lessor under law or equity. Lessee will pay Lessor all costs and expenses, including repossession and court costs and attorneys' fees, Lessor expends in enforcing its rights. All remedies are cumulative and may be exercised separately or together from time to time. No waiver by Lessor of any default or remedy will be binding unless acknowledged by Lessor in writing.
15. **Lessee's Representations.** Lessee represents that this lease has been duly authorized, executed and delivered by Lessee and constitutes Lessee's valid and binding obligation enforceable in accordance with its terms. Lessee also represents that this lease does not violate Lessee's charter documents, any agreement by which Lessee is bound or any law or obligation binding on Lessee and that Lessor's lien rights are governed by the Uniform Commercial Code.
16. **Notices.** Any notices relating to this lease must be in writing and will be effective when deposited in the United States Mail with proper first class postage paid, addressed to the appropriate party at the respective address indicated above or at such other address of which the party has provided the other notice as contemplated in this paragraph.
17. **General Provisions.** Any security deposit set forth in a Schedule A will be held by Lessor without interest and may be applied by Lessor to any of Lessee's past due obligations hereunder. Any balance remaining will be returned to Lessee upon payment of all amounts due under this lease as to the relevant vehicle and the curing of any then defaults. Lessee will provide Lessor any further documents and information Lessor may request in connection with this lease. This lease binds the parties and their successors and assigns and constitutes the entire agreement between the parties respecting the vehicles. Any amendment must be in writing signed by the party to be bound. Any unenforceable provision shall be deemed deleted without affecting the remainder of the lease. This lease will be governed by Idaho law. Paragraph headings are for convenience only. Time is of the essence of this lease. **The parties waive any right to a jury trial in any related action. Any waiver must be in writing.**

By signing below, Lessor and Lessee agree the terms of this lease will govern Lessor's financing of Lessee's acquisition of the vehicles.

Dated: _____

LESSEE Idaho Falls	Signature _____
ADDRESS 605 North Capital Avenue, Idaho Falls ID 83402	Signature _____
Signature _____	
Signature _____	
Signature _____	
	<hr/> LESSOR
	Signature _____

Legal – Run-off Elections Discussion



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

August 13, 2019

TRANSMITTED VIA HAND DELIVERY

The Honorable Lawrence Denney
Idaho Secretary of State
Statehouse

Re: Letter from the Ada County Clerk, Phil McGrane

Dear Mr. Secretary:

This letter is in response to your inquiry seeking legal advice regarding a letter received from the Ada County Clerk, Phil McGrane. Within that letter, Mr. McGrane seeks advice and direction from the Secretary of State as the Chief Election Officer of the State of Idaho under Idaho Code §§ 34-201 and 34-203.

Consistent with the authority assigned the Secretary of State under Idaho Code § 34-203, this office recommends that the Ada County Clerk be advised to deny the City of Boise's request to place a "special ballot question" pertaining to any individual City of Boise-funded project helping to create or substantially improve a City of Boise asset where the City is reasonably expected to expend twenty-five million dollars or more in City general funds on the ballot because no express or implied authority exists for a city to create an election not authorized by the general laws of the State of Idaho. I will refer to the above described ballot question as the "special ballot question" for the purposes of analysis.

This recommendation is explained in greater detail below.

Cities Only Possess Powers Expressly or Impliedly Granted By the Constitution or Statute.

In Idaho, municipal corporations are creations of the State. Within their creation, cities are granted only that authority which is expressly or impliedly authorized by the Idaho Constitution or a statute. This authority is known as *Dillon's Rule*. *Caesar v. State*, 101 Idaho 158, 160-61 (1980). In order to determine whether a city has the ability to place the "special ballot question" on the ballot, one must analyze whether the city has either express authority in the form of a

statute or implied authority in an area not covered by the general law or not in conflict with the general law. *See id.* (citations omitted).

No Express Authority Permits A City To Place the “Special Ballot Question” Before the Voters.

Idaho’s election code comprises 22 chapters within title 34, plus an additional chapter in title 50. Nowhere within those statutes is express authority for the “special ballot question” found.¹ Additionally, these statutes comprehensively address which elections may be held and at what time those elections will be held. Idaho Code § 34-106 (Limitation Upon Elections).²

As there is no express authority allowing the City of Boise to place the “special ballot question” before the voters, this analysis will review the constitution and statutes to determine if implied authority exists.

No Implied Authority Permits A City to Place the “Special Ballot Question” Before the Voters.

Although cities enjoy a direct grant of power by Idaho’s Constitution, that power is limited. Article XII, section 2 limits the authority of local governments as follows:

LOCAL POLICE REGULATIONS AUTHORIZED. 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.**

(Emphasis added.) This constitutional provision establishes that the legislature has substantial authority with regard to the police powers of local governments.

The analysis of a city’s authority to place the “special ballot question” on the ballot turns on whether the comprehensive statutory election system enacted by the legislature fully occupies the field of elections to the exclusion of cities. *Caesar*, 101 Idaho at 161. If the state has fully occupied the election field, then a city ordinance will be held to be in conflict with state law, even if not specifically prohibited. *Id.*, citing *United Tavern Owners of Philadelphia v. Sch. Dist. of Philadelphia*, 272 A.2d 868, 870 (P.A. 1971).

The authority of cities with regard to elections is limited. As set forth below, the legislature has fully occupied the field of city elections with the intent of limiting municipal discretion regarding those elections. Idaho Code § 50-405 limits city elections as follows:

50-405. GENERAL AND SPECIAL CITY ELECTIONS. (1) A general election shall be held in each city governed by this title, for officials as in this title provided, on the Tuesday following the first Monday of November in each

¹ The legislature permits counties to hold advisory ballot questions under Idaho Code § 31-718, but no corresponding authority has been granted cities.

² This provision also expressly authorizes the Secretary of State to provide interpretations for the conduct of elections under this statute. Idaho Code § 34-106(5).

odd-numbered year. All such officials shall be elected and hold their respective offices for the term specified and until their successors are elected and qualified. **All other city elections that may be held under authority of general law** shall be known as special city elections.

(Emphasis added.) Idaho Code § 50-402(b) defines “special election” as “any election other than a general election held at any time **for any purpose provided by law.**” (Emphasis added.)

Idaho Code § 50-405 therefore expressly limits city elections to only those authorized by the general laws. In other words, a city does not have the authority to create any election that has not already been authorized by law. Idaho Code sets out specific special elections that a city is authorized by law to hold. *See, e.g.*, Idaho Code § 50-803 (authorizing special elections on the question of adopting a council-manager plan); Idaho Code § 50-2104 (authorizing special elections related to city consolidation); Idaho Code § 50-326 (authorizing special elections related to water, light, power, and gas plants); Idaho Code § 50-1044 (authorizing special elections in certain resort cities related to local-option non-property taxes).

Notably, advisory ballot questions are permitted only at the county level. *See* Idaho Code § 31-718. Had the legislature intended to allow cities to hold advisory ballot questions on any topic, it would have not limited its authorization to counties.

Idaho Code also establishes more generally that the legislature intended to fully occupy the field of city elections. Elections within Idaho have been consolidated with supervisory roles for the Secretary of State and county clerks. *See generally*, title 34, chapter 2, Idaho Code (assigning virtually all election authority to these two offices). Idaho Code § 50-403 expressly assigns the county clerk as the chief elections officer of city elections. Further, the county clerk is installed as the supervisory authority over local elections officials under Idaho Code §§ 34-206 and 34-209, including related to the payment for the costs of the election. Perhaps the most straightforward analysis is that a city cannot be permitted to create elections for which the county must pay—the legislature intended to limit the costs of elections through consolidation.

Additionally, the county clerk is responsible for the registration of all city electors under Idaho Code § 50-404. The legislature has defined the qualifications for ballot access for candidates. Idaho Code §§ 50-406 and -407. Additionally, the legislature has set forth a comprehensive system for ballot access for municipal initiatives and referenda. *See* Idaho Code §§ 50-418; title 34, chapter 18. Importantly, the legislature repealed the previous municipal authority to set election rules related to initiatives and referenda in 2015. 2015 Idaho Sess. Laws 1158 (repealing former Idaho Code § 50-501). And Idaho Code § 34-106 also places a variety of limitations on how elections may be held, consistent with its title, “Limitation Upon Elections.”

In sum, it is clear that the legislature has both fully occupied the field of municipal elections, and done so in a manner expressly limiting municipal authority over elections. This office

cannot identify any gap within the comprehensive election code enacted by the legislature to reasonably defend a city's creation of the "special ballot question."

The Code Provisions Advanced by the City of Boise Do Not Provide the Requisite Authority.

The City of Boise's reliance on Idaho Code §§ 50-301, 50-302, and 50-405(1) is misplaced. Idaho Code § 50-405(1) only authorizes a city to conduct elections as authorized by the general laws. As established above, no Idaho statute authorizes the "special ballot question" or provides for the creation of elections by city ordinance.

Idaho Code §§ 50-301 and 50-302 are general authority statutes and are limited by the general laws as well. Idaho Code § 50-301 is both general and specific:

Cities governed by this act shall be bodies corporate and politic; may sue and be sued; contract and be contracted with; accept grants-in-aid and gifts of property, both real and personal, in the name of the city; acquire, hold, lease, and convey property, real and personal; have a common seal, which they may change and alter at pleasure; may erect buildings or structures of any kind, needful for the uses or purposes of the city; and exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho.

Reading through this provision, nothing indicates that a city has the authority to create a new election for an advisory vote on a specific topic by its citizens. If anything, this statute provides the city with its identity as a municipal corporation and allows for it to transact business as such. This provision should not be read as a broad grant of authority to cities on virtually any topic, particularly when a comprehensive series of more specific statutes govern.

Similarly, Idaho Code § 50-302(1) appears inapplicable:

PROMOTION OF GENERAL WELFARE — PRESCRIBING PENALTIES. (1) Cities shall make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry. Cities may enforce all ordinances by fine, including an infraction penalty, or incarceration; provided, however, except as provided in subsection (2) of this section, that the maximum punishment of any offense shall be by fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

This statute makes no reference to elections, and appears to be specifically drafted to allow cities to make ordinances as allowed by law that can carry civil and criminal penalties with

them. The creation of an advisory election cannot reside comfortably in the shade of this statute because it is not any sort of enforcement ordinance as contemplated by Idaho Code § 50-302. Idaho Code § 50-302 cabins city authority consistently with article XII, section 2 of the Idaho Constitution by limiting city ordinance authority to only those not inconsistent with the laws of the state of Idaho.

As demonstrated above, the legislature has created a comprehensive and consolidated series of election statutes with clearly delineated authority for state, county, and other political subdivisions. The broad grant of implied authority required by the City of Boise to place the “special ballot question” upon the ballot is simply not found within existent Idaho law.

Based upon the analysis above, this office advises that the Secretary of State recommend that the Ada County Clerk deny the City of Boise’s attempt to place the “special ballot question” upon the ballot.

Please contact me if you would like to discuss any of this in greater detail.

Sincerely

A handwritten signature in blue ink, appearing to read 'BPK', with a stylized, flowing script.

Brian P. Kane

BPK/kdh