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IDAHO'S RAPID GROWTH BRINGS CHALLENGES AND OPPORTUNITIES

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Idaho and its cities are attracting record numbers of new residents. The unprecedented growth Idaho has seen over the past several years has been well documented.¹ While Meridian and Nampa, respectively the state's second and third largest cities by population, have been national leaders in growth for several years, six other smaller Idaho cities have cracked the top 200 cities in growth.²

Not even twenty years ago, many of these cities were small agricultural hubs that did not envision the interest they would receive from people seeking to live in their communities.³ With these new residents has come new needs for the services government provides, particularly public safety and infrastructure,⁴ and cities and other local service providers have struggled to keep up with the demand as new residents have moved in. These services and infrastructure are in place for a variety of reasons, as a result of environmental regulatory requirements⁵ or as amenities

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1. Press Release, U.S. Census Bureau, New Vintage 2021 Population Estimates Available for the Nation, States and Puerto Rico (Dec. 21, 2021), https://www.census.gov/newsroom/press-releases/2021/2021-population-estimates.html?utm_campaign=20211221msprts1ccpuprs&utm_content=&utm_medium=email&utm_source=govdelivery ("Idaho had the fastest annual and cumulative population increase, growing by 2.9% (53,151) in the last year, and by 3.4% (61,817) since April 1, 2020.").

2. *Star's Population Grows by More Than 90 Percent in 10 Years*, IDAHO NEWS 6 (July 18, 2021, 7:14 AM), <https://www.kivitv.com/news/state-of-208/stars-population-grows-by-more-than-90-percent-in-10-years> ("Nationwide, there are 3,093 cities with populations larger than 10,000. When those cities are ranked based on their percentage growth between 2019 and 2020, eight of the top 200 fastest-growing cities are in Idaho. Kuna (43), Post Falls (46), Star (55), Eagle (65), Meridian (70), Nampa (151), Ammon (167), and Caldwell (171) all have growth rates ranging from 7.5% to 3.5%.").

3. Betsy Z. Russell, *Star Is Ground Zero for Growth in the Treasure Valley*, IDAHO PRESS (Sept. 1, 2019), https://www.idahopress.com/news/local/star-is-ground-zero-for-growth-in-the-treasure-valley/article_878896ca-6670-538d-af75-097ce561d9ca.html.

4. COMMUNITY PLAN. ASS'N OF SW. IDAHO, TREASURE VALLEY ANNUAL CONGESTION MANAGEMENT SYSTEM REPORT, 2020 4 (2021), https://www.compassidaho.org/documents/prodsvr/reports/2020_Congestion_Management_Annual_Report.pdf

5. CATO INSTITUTE, THE CATO HANDBOOK FOR CONGRESS 65 (1995) ("Some of the more costly unfunded mandates include the Americans with Disabilities Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, and the Fair Labor Standards Act. Like most federal mandates, those measures tend to impose the same inflexible, one-size-fits-all requirements on jurisdictions as diverse as New York City and the state of North Dakota.")

modern commerce expects and needs. Nevertheless, they are services and infrastructure that a modern American has come to regard as fundamental.⁶

More people mean more calls for service for law enforcement and fire protection, new or expanded drinking water and wastewater infrastructure needs, and more wear and tear on our roads. All of these services and infrastructure come with a cost that only increases year over year. This demand for infrastructure, coupled with the ever-increasing cost of building and maintaining it, has caused some cities to question whether it is more cost effective to turn paved roads back into gravel. As Idaho leaps into the 21st Century, many city leaders are searching for the funds to pay for the services and infrastructure necessary to facilitate this growth.⁷

During Idaho's early history as a territory and state, the property tax was the primary revenue source to support state and local government. The first attempt to diversify state revenues came in 1931 during the Great Depression, when the state of Idaho passed an income tax under the banner of property tax relief.⁸ In 1936, the state also tried passing a sales tax that was defeated in a statewide referendum that put the sales tax out of reach until Governor Smylie's administration in 1965.⁹ At the state and local level, Idaho's three-legged tax stool, encompassing property taxes, sales taxes, and income taxes, has served the state well by providing revenue sources that offer predictability and stability during economic downturns (property taxes), and revenue growth when the economy is growing (sales and income taxes).¹⁰

In 1967, following voter approval of a state sales tax, Idaho began sharing sales tax revenue with local governments after repealing the property tax on business inventory.¹¹ Similarly, the state shares a portion of its revenue from the

6. Farhad Pooran, *Adapt to Succeed*, ROADS & BRIDGES MAG. (May 14, 2015), <https://www.roadsbridges.com/adapt-succeed> ("Traffic-signal retiming is one of the most cost-effective ways to improve traffic flow and one of the most basic strategies to help mitigate congestion." A Florida study with adaptive traffic management software found "[t]he study results for U.S. 19 indicate a \$600,000 annual savings in fuel costs to the motorist, while the study results for S.R. 60 demonstrate a \$750,000 annual savings in fuel costs to the motorist.").

7. AM. SOC'Y CIV. ENGINEERS, REPORT CARD FOR IDAHO'S INFRASTRUCTURE 4 (2018), <https://infrastructurereportcard.org/state-item/idaho/> ("In total, Idaho has identified needed repairs on 1,520 bridges, and the state estimates the cost of repair to these bridges will total \$2.2 billion."). "The Environmental Protection Agency estimates Idaho will need \$961.8 million over 20 years to maintain, repair and replace its existing drinking water infrastructure and accommodate a larger population." *Id.* at 13. "Over the next 20 years, the state will experience a \$3.6 billion shortfall if funding [for highways and roads] remains stagnant." *Id.* at 23. There is a \$301 million funding gap in estimated school capital expenditures. Idaho 2018 Report: Key Facts About Idaho's Infrastructure, INFRASTRUCTURE REPORT CARD, <https://infrastructurereportcard.org/state-item/idaho/> (last visited June 5, 2022).

8. RANDY STAPILUS & JAMES B. WEATHERBY, GOVERNING IDAHO: POLITICS, PEOPLE AND POWER 187 (2005).

9. Jim Weatherby, *From Benny's Penny to Luna's Laws*, LEWISTON TRIB. (Nov. 16, 2012), https://lmtribune.com/opinion/from-bennys-penny-to-lunas-laws/article_5f3e359c-ec26-5df0-9ae1-4aa2d19529ed.html; see also Stapilus & Weatherby, *supra* note 8, at 187.

10. STAPILUS & WEATHERBY, *supra* note 8, at 187.

11. RANDY STAPILUS, PARADOX POLITICS: PEOPLE AND POWER IN IDAHO, 254–55 (1st ed. 1988).

sale of liquor to cities and counties.¹² These revenue streams help local government cover the cost of the services they provide, which help to reduce reliance on local property taxes. However, these funds often follow the ebbs and flows of the broader economy and their inconsistencies make them difficult to rely on for planning long-term financial obligations.

From the federal perspective, Idaho cities greatly benefited from the federal investments made during the mid-twentieth century. In the 1960s and 1970s, the federal government made significant investments in community infrastructure.¹³ For example, it provided funding to help many cities install or upgrade their water and sewer systems.¹⁴ These projects were and remain expensive and small communities with few utility ratepayers struggle mightily to finance these projects without federal assistance.¹⁵ Federal funding helped ensure that the cost burdens to communities were reduced and sustainable.¹⁶

Since then, following decades of limited federal investment in cities, aging municipal infrastructure now presents a major challenge. Recently, the federal government has stepped up to provide more resources to help cities fund road, water, sewer, and broadband projects.¹⁷ For example, without this federal

12. IDAHO CODE ANN. § 23-404 (2022).

13. CONGRESSIONAL BUDGET OFFICE, FEDERAL INVESTMENT, 1962 TO 2018 16 (2019), https://www.cbo.gov/system/files/2019-06/55375-Federal_Investment.pdf.

14. *Five Cities Okay Sewer-Water Bond Issues*, 83 THE GEM CITY NEWS 1, 4 (1971) (“Grangeville voters recently approved a \$265,000.00 sewer and water bond proposal and to this figure will be added \$397,000.00 from a federal grant.”) (on file with the author).

15. Frankie Barnhill, *Watering Idaho: How Water Contamination in One Town Cost Residents \$5 Million*, BOISE STATE PUB. RADIO (Sept. 21, 2016, 6:15 AM), <https://www.boisestatepublicradio.org/environment/2016-09-21/watering-idaho-how-water-contamination-in-one-town-cost-residents-5-million> (“Ashton Mayor Teddy Stronks says building a \$5 million water treatment plant in 2012 to manage the nitrate levels was a bitter pill to swallow. He says many Ashton residents are retired or on a fixed income. ‘It’s pretty hard for a little community this size to do these kind of things,’ says Stronks, ‘because every time we do, it raises our rates and we have to borrow money to pay for the project.’”).

16. David Sedlak, *How Development of America’s Water Infrastructure Has Lurched Through History*, PEW CHARITABLE TRUSTS (Mar. 3, 2019), <https://www.pewtrusts.org/en/trend/archive/spring-2019/how-development-of-americas-water-infrastructure-has-lurched-through-history> (“Water pollution was a nuisance, but city leaders lacked the will to tax their constituents to build sewage treatment infrastructure that might benefit downstream communities more than their own—and the state of the nation’s waterways further deteriorated until the early 1970s. It was only then that the nation, fed up with water pollution, came to support the Clean Water Act—a federal law that established requirements for sewage treatment. The federal government provided cities with grants and low-interest loans to upgrade their inadequate sewage infrastructure.”).

17. American Rescue Plan Act of 2021, Pub. L. No. 117-2 § 2912, 135 Stat. 4 (2021) (“This section provides funding for FY2021 to HHS to provide grants to states, Indian tribes, and other jurisdictions to assist low-income households that pay a high proportion of household income for drinking water and wastewater services by providing funds to owners or operators of public water systems or treatment works to reduce arrearages of and rates charged to such households for such services.”); Infrastructure

investment, some utility ratepayers would be looking at massive increases in their water and sewer bills every month.¹⁸ This injection of funds to address critical infrastructure, while viewed by some as a chance to make “a once in a generation investment,”¹⁹ was seen by others as an opportunity to rob Peter to pay Paul.²⁰

As some state leaders debate the ideological merits of investment in local infrastructure, Idaho’s local leaders know investments made today are the best way to guarantee a better future.²¹ Mayors and city councilors across the state have a solid history of good stewardship of tax dollars used to carry out a city’s missions. While Idaho cities have common needs, they also have unique ones. Idaho’s city leaders evaluate the needs of their individual communities while listening to their constituents addressing how to best use limited funds. Local voters know very well what areas need attention—roads that need to be repaved, aging water and sewer lines that need to be replaced—not to mention ensuring our cities can hire police and firefighters to help residents in their time of need.

As cities and their local government counterparts have attempted to address the increased desire for services, the Idaho Legislature has weighed in on the topic, namely in narrowing how local governments may tax new growth in order to maintain and expand services and infrastructure. In 2021, the Legislature passed House Bill 389, which was ultimately a decision to no longer allow growth to pay for

Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (“Among other provisions, this bill provides new funding for infrastructure projects, including for roads, bridges, and major projects; passenger and freight rail; highway and pedestrian safety; public transit; broadband; ports and waterways; airports; water infrastructure; power and grid reliability and resiliency; resiliency, including funding for coastal resiliency, ecosystem restoration, and weatherization; clean school buses and ferries; electric vehicle charging; addressing legacy pollution by cleaning up Brownfield and Superfund sites and reclaiming abandoned mines; and Western Water Infrastructure.”).

18. Alex Brown, *Lead Pipe Removal Speeds Up as Federal Stimulus Dollars Flow*, PEW CHARITABLE TRUSTS (Sept. 29, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/09/29/lead-pipe-removal-speeds-up-as-federal-stimulus-dollars-flow> (“Many municipalities and utilities are still trying to determine whether and where they have lead pipes, and local leaders say they lack the resources to quickly replace lead lines without steep increases in residents’ water bills.”).

19. *USDOT Releases State by State Fact Sheets Highlighting Benefits of the Bipartisan Infrastructure Law*, U.S. DEP’T OF TRANSP. (Nov. 18, 2021), <https://www.transportation.gov/briefing-room/usdot-releases-state-state-fact-sheets-highlighting-benefits-bipartisan> (“‘Americans rely on our transportation infrastructure every day – to get to work, school, loved ones, and to move goods across our economy,’ said Secretary Pete Buttigieg. ‘The once-in-a-generation investments in the Bipartisan Infrastructure Law will improve people’s lives in every state in the nation by increasing access to safe, clean, reliable transportation.’”).

20. Press Release, Sen. Mitch McConnell, Democrats’ Pandemic Plan: “A Tremendous Opportunity to Restructure Things to Fit Our Vision” (Mar. 5, 2021), <https://www.mcconnell.senate.gov/public/index.cfm/pressreleases?ID=43679A8B-B52D-411A-9C96-06EE931FE8D0>.

21. Scott Bedke, Megan Blanksma, Jason Monks & Mike Moyle, *Right Now, Local Government Can Cut Your Property Taxes*, IDAHO STATE J. (Aug. 27, 2021), https://www.idahostatejournal.com/opinion/columns/right-now-local-government-can-cut-your-property-taxes/article_b33bc6e7-cb4e-5d85-8743-b8ce5ba4dda9.html.

itself.²² This decision has forced Idaho's current citizens and businesses to bear a greater burden in paying for demand based local services and infrastructure, such as roads, police, fire, and emergency medical services.

In order to continue to realize the return on the investment in local services and infrastructure made by generations of Idahoans throughout local communities, it is imperative that all stakeholders recognize the cost to develop and maintain them. Idaho's city leaders do not have the luxury of avoiding today's problems. Solving contemporary funding issues is not easy; yet municipal leaders get it done.

Looking towards the horizon, to allow Idaho's future mayors and city councilors to maintain affordable cities that are responsive to the needs and desire of residents, yet still meet regulatory and other demands, will require continued thought and evaluation of how local governments are funded. For example, cities rely on gas tax revenue to fund ongoing road maintenance and operation needs. As fuel efficiency standards continue to increase and hybrid and electric vehicles become more common, will the gas tax need to be raised? A new funding mechanism found? Or will the cost of maintaining roads continue to force some jurisdictions to turn paved roads into gravel?

As goods subject to sales tax have moved onto online sales platforms, the current state of another reliable funding source has been altered. Purchases made online from a retailer who does not have a physical presence in Idaho, such as eBay, are taxed at the same rate as goods purchased from a local hardware store.²³ However, the sales tax from that online purchase does not ultimately get shared with Idaho's communities, but rather it goes into a separate fund.²⁴ If that money were to be distributed in the same manner as regular sales tax, it would not only provide property tax relief, but also allow cities to make necessary investments in services and infrastructure to the benefit of their citizens.

Idaho's robust growth over the past several years has created new opportunities and posed new challenges the state has yet to contemplate. As the demands for city provided services and infrastructure continue to increase, it is important that the funding sources for the services and infrastructure remain up to date as well.

22. Geoffrey Wardle, *HB 389: Poor Policy, Poorly Written, Bad for Rural Idaho*, IDAHO BUS. REV. (May 11, 2021), <https://idahobusinessreview.com/2021/05/11/hb-389-poor-policy-poorly-written-bad-for-rural-idaho/>.

23. Logan Finney, *What's This "Wayfair Fund" I Keep Hearing About?*, IDAHO REPORTS (Feb. 11, 2022), <https://blog.idahoreports.idahoptv.org/2022/02/11/whats-this-wayfair-fund-i-keep-hearing-about/#:~:text=Idaho%20collects%20a%20six%2Dpercent,in%20the%20state's%20general%20fund.>

24. *Id.*