

WRAP Background Research Brief on BIDs

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What are BIDs:

BIDs are a marriage of two redevelopment approaches – the financing authority of a redevelopment agency and the targeted efforts of an enterprise zone. An authoritative definition of BIDs has yet to be accepted. Generally, however, a BID is a legally-recognized territorial subdivision within a city in which all property owners or businesses are subject to an additional tax assessment that is collected by the city and reallocated to the BID operating agency. The agency then uses the funds to provide services and capital improvements within the district. Services provided by BIDs are directed at improving the standard and quality of life in the area and may include garbage collection, street maintenance, security patrols, capital improvements, and even limited social services. BIDs often represent a city's downtown region and vary greatly in size. One detailed study found the size of a BID to be approximately 20 square blocks on average and range from 1 square block to 300 square blocks. Area improvements help convey the message to visitors, potential residents and potential businesses that the area is "clean & safe," therefore reducing crime in accordance with the "Broken Windows" theory.

BID Functions include: **Capital Improvements:** installing pedestrian-scale lighting and street furniture; planting trees and shrubbery. **Consumer Marketing:** producing festivals and events; coordinating sales promotions; producing maps and newsletters. **Economic Development:** offering incentives (such as tax abatements or loans) to new and expanding businesses. **Maintenance:** collecting rubbish; removing litter and graffiti; washing sidewalks; shoveling snow; trimming trees. **Parking and Transportation:** managing a public parking system; maintaining transit shelters. **Policy Advocacy:** promoting public policies to the community; lobbying government on behalf of business interests. **Public Space Regulation:** managing sidewalk vending; discouraging panhandling; controlling vehicle loading. **Security:** providing supplementary security guards; buying and installing electronic security systems; working with the city police force. **Social Services:** aiding the homeless; providing job training; supplying youth services.

BIDs assessment of an additional tax on property owners and/or businesses within the boundary of the business district is the primary tool that sets BIDs apart from other business associations and further fosters business owners' personal investment in the success of the district, as members expect an immediate and measurable return on their tax assessments. The most common sources of additional funding are voluntary donations and subsidies from federal and state governments.

BIDs tend to be more organized and politically stronger than other forms of business associations and are increasingly seen as the most local level of government. Many see BIDs as replacing city government in the sense that they provide the conditions for local collective action that were formerly only available at the city level.

In Portland the BID was created through lobbying by a non-profit representing business interests. The BID and its predecessor Economic Improvement District, functioned as permanent lobbying arms of the business community, which both shaped policy and was granted significant public resources. The creation of the BID went through many phases as it expanded their mandatory revenue base and power to patrol and clean downtown. Much of its efforts to expand were supported by local politicians. The BID became over time a sort of parallel government. Eventually the non-profit merged into a regional business alliance that simultaneously carried out government functions, endorsed candidates, and started a political action committee.

Resistance to BIDs include: those in the district not wanting to pay the extra taxes, those that worry about its impact on homeless and poor people, and those that feel it is unfair for downtown to get more services than elsewhere

One estimate indicates that 60% of U.S. BIDs were created between 1990 and 1999. However, the precise number of BIDs in the U.S. is not readily available. In 1997, the Urban Land Institute estimated 1,500 BIDs in the U.S, though in 1999, the International Downtown Association estimated over 700 U.S. BIDs.

BID formation, governance, and avenues for influence over BIDs:

In order for a BID to be formed, state-level BID-enabling legislation must be in place. Typically, the statute authorizes the local government to create and certify BIDs. The statute may specify details of how funds are to be collected, the types of services that may be provided, the size and makeup of the governing board, and the method by which property or business owners formally petition local government to create a BID. The original statute may have been adopted decades before the advent of BIDs and enacted for an entirely different purpose. It is not uncommon for statutes to be directly related to the provision of parking or other basic urban public goods. BIDs establish an entity to run daily operations and provide services. The state or municipal enabling legislation may specify the type of entity, though it could be a nonprofit organization, government corporation, or public-nonprofit partnership.

The BID formation process varies from city to city but will usually have the following basic elements: circulation of a petition among businesses to form a BID, consideration of the proposal by the municipal governing body, a public comment period (generally 30 days), a public hearing, and finally a council vote. The required stakeholder approval rate obtained through the petition will vary, but is generally between 51% to 70% of those eligible to vote.

Many states – including California and Oregon, as described above – allow municipalities to give greater weight to large business and property owners by weighting percent of assessment paid rather than giving each owner an equal vote.

A governing board is established to oversee the adoption of policies as well as the district generally. Though the process varies, the adoption of a new measure will either require a vote by board members, or a vote by all BID members. Nonproperty-owning residential and commercial tenants may or may not be eligible to vote on measures. A member's vote may be weighted by the size of the business or the amount of assessment paid. Literature and legal challenges demonstrate that representation of different stakeholders on the board may not be subject to the same representation standards and procedures of public institutions.

BIDs can be influenced at formation, in operation, or during recertification. The BID certification period is finite and requires a BID to request an extension of certification from city hall. Though this process varies, it often resembles the formation process and sometimes involves a review of performance and progress toward goals delineated in the initial legislation. Recertification provides a window for community input, especially if there is a formal review process.

BIDs are unique in that they straddle the line between what is private and what is public. They are therefore in the unusual situation of being funded by local tax dollars without being held to public sector standards of accountability and transparency. Enhancing accountability and

transparency language in state and municipal BID-enabling legislation may increase opportunities to address homeless issues in BIDs through legally binding provisions. Some tactics may include increasing disclosure, grievance processes, and mandating community impacts reports.

BIDs, Security, and Homeless People:

BIDs often result from downtown businesses believing that increased visibility of homelessness, nuisance crime, and physical decay deters consumers. Often they emerge due to the perceived “shortage of police officers,” to privately undertake public space patrols.

BIDs at times hire homeless people to undertake their projects and manage service programs, often to keep crime or nuisance levels low. BID policies affecting homeless people range from policies that aim to displace homeless people to policies which provide services to them.

BID websites will regularly list homeless policies under the drop-down menu for “Safety.” BIDs frequently see homeless people as a threat to business.

Private BID security generally takes on one of two forms. The first form of security is a team of “ambassadors.” Ambassadors usually roam the area wearing brightly-colored uniforms and a welcoming smile. Sometimes, the word “security” is printed on the back of the uniform to convey authority. While the role of ambassadors will vary from one BID to the next, it generally involves assisting visitors and looking out for suspect behavior. The second form of private BID security is the more traditional-looking security guard. Often times, security guard uniforms are intentionally designed to closely resemble that of the local police force, emitting a stronger sense of authority. The legal authority of ambassadors and security guards is the same. They may be described as the eyes and ears of law enforcement.

Despite being the target of intimidation, one survey found that many homeless may actually feel that the presence of private security enhances their safety as well. In a 2000 survey of homeless people in the Central City East Area of Los Angeles, 54.3% felt that the presence of BID security made the community a better place, 23.1% felt that the presence of BID security did not make the community a better place and 22.6% were undecided. Additionally, 64% felt that BID security acted in the best interest of the community. Still 48% responded that they had a negative impression of BID security, and 42% had witnessed some form of harassment or mistreatment resulting from interactions with BID security. Furthermore, 12% reported that they had been detained by BID security and 4% reported that they had been arrested by BID security.

Some BIDs track crime rates within the BID area to document BID policy performance. That data, however, is rarely available to the public. It is uncertain whether BIDs reduce serious crime.

Criminalization laws enforced by BIDs must be legally adopted by the municipal governing body. No known BIDs have the authority to adopt policies regulating public behavior unless the shared space is privately owned, as with a shopping mall. A BID may, however, lobby city hall for these policies on behalf of its members. On the other hand, elected officials may independently decide that these policies are needed in the district. If city officials initiate this type of legislation, it is unlikely to be approved if BID members actively express opposition.

Possible Legal Challenges to BIDS

Legal challenges to BIDS can serve a critical role in mitigating and preventing abuses of authority. A number of key legal challenges are discussed here:

Boundary of Legal Authority

A primary concern with BID reliance on private security is that private forces are not subject to the same public oversight and legal protocols (recitation of the Miranda Rights, for example) as are public police officers. Such power without adequate supervision may lead to private forces overstepping their legal authority:

As the private police assume a greater role in securing public places, issues of legal mandate, authority, and accountability arise. In a democratic society, police are accountable to the public and subject to certain limits. Since private agents hold little allegiance to the public, and since they are paid to address the interests of their immediate employer, the possibility exists for them to abuse their authority. This obviously has implications for matters of justice, equity and fairness – essential elements to ‘due process.’¹

In 1999, the ACLU represented a group of homeless individuals in a class action lawsuit against several Los Angeles BIDs. The BIDs’ private security officers were accused of overstepping the boundaries of their legal authority. As previously discussed, private security officers are not afforded any more legal authority than are private citizens (again, a citizen’s arrest can only be made when a citizen witnesses a felony), but advocates found that these security officers patrolled sidewalks and public parks carrying concealed guns, issuing legally invalid citations, actively pushing homeless people out of public spaces, and illegally detaining the homeless in their local security offices. The case was settled out of court and BIDs made promises to stay within the law: private security would no longer carry guns, issue citations, ask the homeless to leave the area, or ask for identification for the purpose of tracking.²

Freedom of Speech

Many of the legal battles on camping and panhandling in public spaces have been fought on the basis of the First Amendment, which protects freedom of speech – including a charity’s right to solicit contributions in public spaces. In the early 1990’s, the cities of Berkeley, San Francisco and New York were prevented from enforcing anti-panhandling ordinances on the basis of freedom of speech.³ Around the same time, advocates initiated lawsuits to establish the right to camp overnight in the downtown areas of large cities (*Pottinger v. City of Miami* and *Tobe v. City of Santa Ana*). Although the cases were not successful in establishing overnight camping rights, they did establish “the right of travel and the right to be free from prosecution for a status crime.”⁴ However, camping and bench squatting may be too passive to constitute “expressive conduct” under the First Amendment. In Miami, upholding the right to travel meant that the city was required to designate several public spaces for the homeless. In the case of Santa Ana, the California Supreme Court held otherwise.

¹ Greene, Seamon, and Levy (1995), p. 5.

² *Cervantes v. International Services*.

³ Ellickson (1996).

⁴ *Ibid*, p. 1239.

Voting Rights

In the case of *Reynolds v. Sims*, the Supreme Court interpreted the equal protection clause of the Fourteenth Amendment to require a “one-person, one-vote” rule on the state level; a state must draw legislative districts to be roughly equal in population size.⁵ The Supreme Court then went on to apply the same principle in the case of *Avery v. Midland County*, finding that county-level voting also needed to follow the “one-person, one-vote” rule. The *Avery* majority decision set an important precedent for future cases about local governance and decision-making, arguing that the “one-person, one-vote” rule applies to local governments that have “general governmental powers.”⁶ There have been three cases⁷ in which the Supreme Court found that the “one-person, one-vote” rule did not apply to specialized districts with limited functions; the Court found the powers of these districts to be “narrow and special,” as they were limited to water storage and reclamation. The Court concluded that this permits voting rights to be restricted to property owners within the district (excluding non-property owning residents) and that votes may be weighted based on property size. The *Avery* majority decision sets a binary democratic doctrine for all governing districts with “general governmental powers.” Everyone must have an equal vote, and it is unlawful for districts to weight any person’s vote more than that of another.^{8,9}

Application of these cases to BIDs is problematic: it is unclear whether the BID governing bodies have a narrow or general function. On paper, many BIDs serve fairly limited functions, and they often appear to be little different from a merchant’s association. Furthermore, BIDs are established by state statute and are accountable to city councils. One might say that there are already two levels of “equal protection” through state and city regulation, and that BIDs should be allowed to depart from the “one-person, one-vote” rule.¹⁰ However, due to questions regarding the strength of governmental oversight of BIDs and the scope (general versus limited) of BID functions, many consider the equal protection issue in BID representation to still be up for debate.¹¹

In the case of *Kessler v. Grand Central District Management Association*, non-property-owning residents in a BID challenged the voting structure for electing BID board members (see Figure 5). They asserted that the voting structure violated the constitutional guarantee of “one-person, one-vote” because a BID serves as a local government that provides general services affecting all residents in the area – therefore entitling all residents to an equal vote. The defendants responded that a BID is limited in purpose and that the “one-person, one-vote” rule does not apply because: “... (a) it does not exercise general governmental powers, (b) it does not supplant or replace local government, (c) its activities are subject to the supervision and control of the city, and (d) its activities affect property owners disproportionately.”¹² The Circuit Court upheld the restrictive voting scheme, finding that the Grand Central BID had a disproportionate affect on property owners and served the limited purpose of promoting business in the area; the Grand Central BID only supplemented the services provided by the city and was “qualitatively different from core municipal function.”¹³

⁵ Davies (1997).

⁶ *Ibid.*, p. 195.

⁷ *Salyer Land Co. v. Tulare Lake Basin Water Storage District, Associated Enterprises, Inc. v. Toltec Watershed Improvement District, and Ball v. James*, as cited in Davies (1997).

⁸ Davies (1997).

⁹ Davies (1997) cites a number of cases in which weighted votes were found to be in violation of the equal protection clause: *Cipriano v. City of Houma* (1969), *Kramer v. Union Free School Dist. No. 15* (1969), *Quinn v. Millsap* (1989), *Board of Estimate of New York v. Morris* (1989), *Hill v. Stone* (1975), *City of Phoenix v. Kolodziejcki* (1970).

¹⁰ Davies (1997).

¹¹ Garodnick (2000).

¹² Garodnick (2000), p. 1755.

¹³ *Ibid.*

Some data that could be collected about BIDs:

1. Crime data
 - a. Freedom of Information Act requests for crime data can be filed with local police departments. Examining rates of misdemeanors and quality-of-life violations issued within the BID, compared with outlying areas, will illuminate trends of enhanced enforcement within the BID. Depending on the level of detail in the data, it may be possible to determine the extent to which homeless people are cited for these violations.
 - b. Some BIDs do track crime data within their boundaries (usually to document success in crime reduction) but will often not release it. Avenues could be pursued for obtaining this data through legal or other means.
2. BID data
 - a. Information of interest may include the types of businesses that support BID establishment, who sits on the board and who they represent, who residential and/or vote-ineligible community members are, and what BID revenue sources are.
 - b. Information on BID security expenditures, while difficult to obtain, would assist in developing cost-benefit figures. Combined with other data recommendations, this data could uncover opportunities to lobby for redirecting funds toward homeless services.
3. Homeless data
 - a. Breakdown of the BID's expenditures and donations to homeless services, records of referrals to services. Depending on the accounting practices and legal reporting responsibilities of the BID, this information may be difficult to obtain.
 - b. Working with homeless service providers to collect or obtain detailed information about their clients allows a comparison with BID referral data; pairing this data will facilitate further assessments about the true impact of BIDs on homeless people.

Models of BIDs:

Following are three BID models with distinct homeless policy packages that characterize the culture of the respective BID. The models can be seen as falling on a cultural continuum, ranging from treating *homeless people* as a problem to treating *homelessness* as a problem. The policies in the models have been drawn from BIDs nationwide but do not collectively represent a particular BID. In other words, these are different possible types of BIDs, and in reality these policies are probably more often mixed in a BID.

Figure: The BID Culture Continuum

