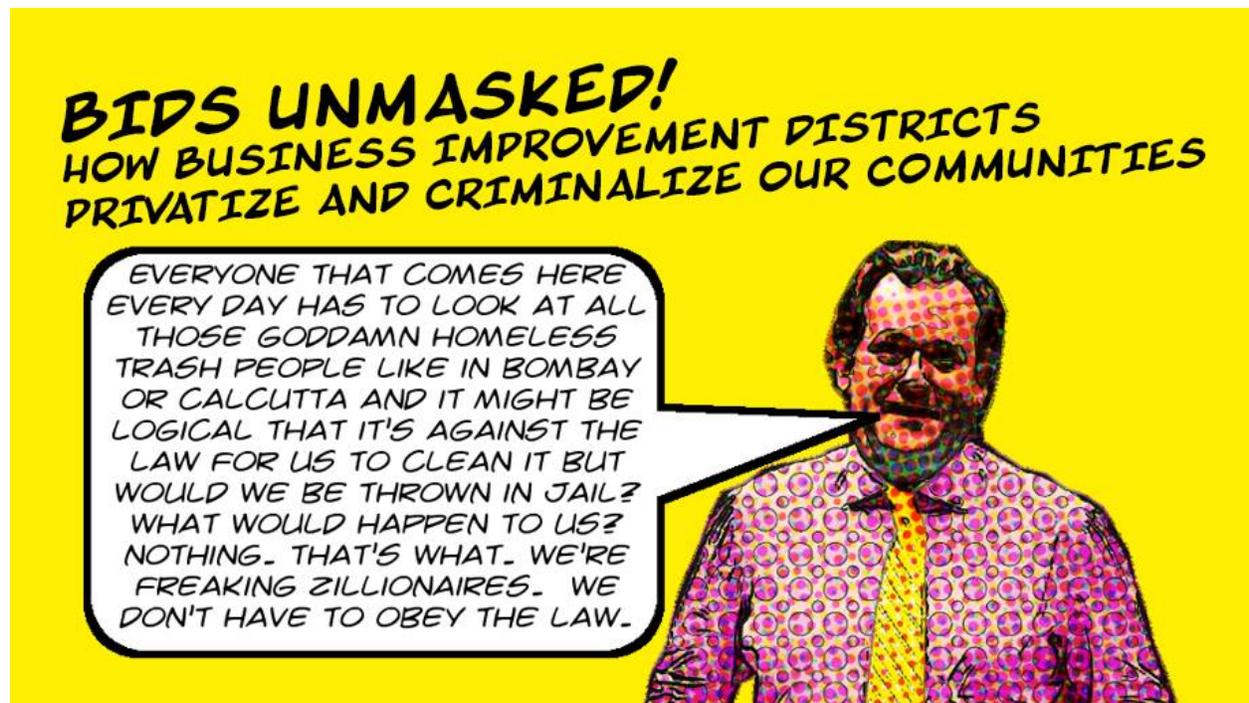


# BIDology 101 – Business Improvement Districts and City politics in Los Angeles

February 16, 2019



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## 1 What are BIDs?

1. A business improvement district (“BID”) is a geographical area in which the commercial property owners pay extra property tax on their parcels in order to fund various activities and improvements.
2. Modern BIDs in California are authorized by the [Property and Business Improvement District Law of 1994](#), known as “the PBID law.”
3. The money that the property owners pay is called “assessments” rather than tax by those involved with them, but for all practical purposes assessments are a kind of property tax. The distinction has to do with some technicalities of California law relating to creating new taxes. I don’t understand the details.
4. The money that’s collected from a BID is controlled by a private non-profit corporation called a property owners’ association (“POA”). In most cases these are created by the City before the BID is created.
5. In some cases pre-existing non-profits play this role, e.g. the Hollywood Chamber of Commerce is the POA for the East Hollywood BID. Also note that the City generally denies that they create POAs, but the California judiciary says that the City does create them, and that’s the only opinion that matters.
6. Usually it’s OK to intentionally confuse the POA and the BID. For instance, the Fashion District BID is controlled by the Downtown Los Angeles Property Owners Association, but usually people just say “Fashion District” no matter which one they’re talking about. In this document I follow this convention.

## 2 What kinds of BIDs are there?

7. California law authorizes three kinds of BIDs, which are differentiated by who the assessments are collected from. There are property based BIDs, or PBIDs, where owners of commercial property in the district pay the assessments. There are merchant based BIDs, or MBIDs, where business owners pay the assessments. And finally there are tourism BIDs, in which hotel owners pay the assessments.
8. There is one tourism BID in Los Angeles, and I don’t know anything about it.
9. There are a few MBIDs in Los Angeles. The most important one of these is the Wilshire Center BID, but it’s an anomaly. As far as I know the other MBIDs in Los Angeles are very small and not very important in City politics. I don’t know much about some of them, so this is a tentative opinion.
10. The City of Los Angeles greatly favors PBIDs over MBIDs. As I discuss below, one really important role that BIDs play in LA is to create a kind of privacy bubble around intense lobbying activity by members of the POA board and political paybacks by City officials to the board members. City officials want to have these kinds of interactions

with the wealthiest possible people, which is why they favor PBIDs. Why exchange money and influence with the person who runs the 7-11 when you can exchange money and influence with the person who owns the building the 7-11 is in?

11. It's clear that there are more white owners of commercial property than the proportion of white people in Los Angeles. This is probably not true about business owners, though. So by favoring PBIDs over MBIDs the City is favoring white people over others. Find [the argument in more detail at this link](#).

### 3 What BIDs do in theory

12. When modern BIDs began in California in 1994, they seem to have been meant to improve economically disadvantaged business areas. They were meant to provide services and improvements to benefit the property in the district.
13. According to the State legislature in 1994 the purpose is to revitalize blighted and/or disadvantaged business districts in Cities. In particular, the PBID law at [§36601\(a-c\)](#) states:
  - (a) Businesses located and operating within business districts in some of this states communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
  - (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
  - (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.

### 4 How are new BIDs formed?

14. BID formation in California is a two-stage process. First petitions and then ballots. BID formation also requires a "Management District Plan" ("MDP") and an "Engineer's Report" ("ER").
15. Votes in any type of election related to the creation of a BID are weighted by property value. For instance, suppose there are ten property owners in the district and the property of three of them constitutes 75% of the value in the district while the other seven own property worth 25% of the value. In an election to decide whether to create the BID, if the three vote yes and the seven vote no, the vote will be recorded as 75% in favor and 25% against and the BID will be created. This system is technically limited in one sense, described below.

16. The City of Los Angeles always votes its property in favor of BID creation. This requirement is due to a City ordinance passed in 1998 and memorialized in [Council File 96-1972](#), one aspect of which is to:

REQ the City Clerk to sign off on Proposition 218 ballots and support petitions for property-based BIDS, unless the Ccl directs otherwise.

#### 4.1 Petitions and the ordinance of intention

17. The PBID law at [§36621](#) states that the first step in establishing a BID is the collection of petitions in favor of establishment signed by property owners representing “more than 50% of the assessments proposed to be levied.”

18. The count is limited by the statement that:

The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

19. The petition phase is often rigged by the BID proponents by including as much City property in the BID as possible, since it represents guaranteed votes in favor. This can sometimes take on ludicrous proportions, such as in the Venice Beach BID, where City property was expanded by including a bunch of parking lots in the median strip of Venice Boulevard, bringing the total assessed value of City property to over 25%. This means that non-City property owners representing only 26% of assessed value would be able to impose a BID on opposed property owners representing twice as much, 50%, value.
20. Note that this is not really a significant limitation. E.g. two property owners, each owning more than 25% of the assessed value, can still force the creation of a BID over the objection of every other owner in the district, no matter how many there are. If one of them is the City of Los Angeles, as noted above, it only takes one non-City property owner to establish the BID if he or she controls enough of the property.
21. This scenario may seem implausible, and I don’t know of any cases where two owners own this much property, but it’s not unrealistic in the sense that there are plenty of BIDs that are created by a minority of property owners over the objection of a majority.
22. Consider the proposed West Adams BID, e.g. It hasn’t even gone to petition yet, but CIM Group owns a significant plurality of the property, that is 33 parcels out of 162. This is more than 20%, controlled by one owner, and guaranteed to be in favor of the BID. It’s not yet possible to determine how much value is represented by those 33 parcels, but it’s not likely to be less than 20% and it’s probably significantly more.

23. If the City receives enough petitions, then the City Clerk files a report with the City Council recommending that they adopt what's called an ordinance of intention, which states that the BID establishment process can continue.

## 4.2 MDP and ER

24. The PBID law at [§36622](#) requires the BID formation process to include a so-called Management District Plan, or "MDP." This is a long, detailed document that's required to include, among other things:
  - (a) The boundaries of the proposed district.
  - (b) The amounts of the proposed assessments.
  - (c) The various activities that the money will be spent on. This part is essential because other parts of the PBID law forbid any of the money collected to be spent on anything that's not described in the MDP.
25. Property-based BIDs must also include a report from a licensed engineer justifying the boundaries and the method of calculating assessments.
26. It's possible that this requirement is meant to serve as a check on really random methods, but in practice it doesn't act as a check on anything. The state department that oversees engineers has taken the position that writing these BID ERs is not under their jurisdiction, which means that the engineers can write whatever they want. In practice this means that they write whatever the BID proponents want them to write. This is a very flawed aspect of the law as it currently stands.
27. The MDP and the ER have to be approved by the City Clerk's office after the ordinance of intention is passed but before the next phase of the establishment process can continue. This takes many mind-numbing rounds of revisions.

## 4.3 Ballots and the ordinance of formation

28. After a successful petition phase and after the MDP and the ER are accepted by the Clerk's office the BID is ready to go to ballots.
29. The balloting process is described in [Government Code §53753](#). The fact that the ballots are weighted by assessment value is mandated by this section. Also, this section states that the only way BID establishment is disapproved by the balloting process is if a weighted majority of the ballots received are opposed to establishment.
30. This clause has a number of really important consequences. First, it means that if no ballots are received then the BID will be established, since there's no way to have a majority of zero ballots.

31. Second, it means that BID approval in the balloting phase is far easier than in the petition phase. In the balloting phase only ballots received are counted. If very few ballots are submitted then the BID can be established by a majority of those very few, which may be and often is an extreme minority of properties in the BID. In the petition phase there must be more than 50% of the assessed value in favor. The lesson for activists who might want to stop a BID being formed via political action is that it's going to be much more useful to act during the petition phase rather than during the balloting phase.
32. If sufficiently many ballots are received in favor of BID formation the City Council passes a so-called "ordinance of formation" and the BID is established.

#### 4.4 The City controls every aspect of the BID

33. One of the most neglected aspects of the BID formation process is laid out in [§36624](#) of the PBID law. This states:

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities.

34. It's crucial to remember this fact, that the City Council has the power to exclude any property they want from a BID, they have the power to lower assessments, either individually or all of them, they have the power to completely rewrite the MDP in order to control what the BID is allowed to spend money on, and so forth.
35. The City lies about this fact constantly, though. When people complain to the City about the activities of BIDs, the response is invariably that BIDs are controlled by private corporations and the City can't control what they do. But in fact the City can control what they do. The law purposefully gives the City the power to control what they do. The City of Los Angeles, though, has abandoned this responsibility.
36. The City also lies about how much control they have over how much property owners are assessed and which property owners are assessed. For instance, the 2016 formation of the Venice Beach BID included a lot of properties which were zoned for commercial use but have been used as residences for a really long time. These owners protested, the City claimed repeatedly that they had no power to exclude properties from the BID, which is not true. The City also claimed that properties zoned commercial were required to be included, which is not true. Finally, in the actual hearing where the BID was established, Mike Bonin told the unhappy owners that he would work with

them to have their properties rezoned to remove them from the BID, even though the City Council could have just unilaterally excluded them right at that hearing.

## 5 What BIDs do in practice

### 5.1 Cleaning

37. Every BID in Los Angeles provides street cleaning services. It's possible that this has unproblematic aspects in some cases with some BIDs. But as with any such thing the temptation for BIDs to weaponize cleaning is mostly too great for them to resist and BIDs' cleaning activities are very often used against homeless people.
38. Tree trimming is the classical example of what BIDs do, beloved of both BID people and the City because it's so innocuous. Who could be against keeping the trees trimmed? In City literature this example is used regularly. What do BIDs do? They spend their own money trimming the trees. The BIDs themselves also use it in the same way. Why do you hate tree trimming?
39. Even tree trimming can end up as a site of contention, though. After a 2016 scandal involving billboard company Outfront Media's illegal removal of trees in Silver Lake,<sup>2</sup> the City of Los Angeles proposed adding some teeth to City laws about tree maintenance by private parties, including actual City oversight. BIDs around the City flipped out over this and mobilized their resources to lobby against it.<sup>3</sup>

### 5.2 Security

40. BID security covers a wide range of activities across BIDs. Some restrict themselves to fairly innocuous "observe and report." Many are more involved and will, e.g. tell homeless people to move away at the request of business owners, work with LAPD to arrest or remove specific homeless people from BIDs, and so on. A very few are much more active, e.g. in the Downtown Industrial District, at least pre-settlement of the recent federal case, where BID security worked actively with the LAPD to confiscate the property of the homeless and also e.g. in the Hollywood Entertainment District, where, since 2007, BID security has made well over 10,000 actual custodial arrests with handcuffs, forced transportation, and locking of prisoners to benches.<sup>4</sup>
41. BID security works closely with the City to accomplish tasks that the City is forbidden from doing.

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<sup>2</sup> See [Silver Lake billboard defaced in protest over illegal tree trimming by sign company](#) by David Zahniser, Los Angeles Times, Feb. 15, 2016.

<sup>3</sup> See [HPOA to Oppose O'Farrell/Ryu Tree Trimming Motion](#) MichaelKohlhaas.Org. June 17, 2016.

<sup>4</sup> See [Final BID Patrol Arrest Rates for 2016 and 2017](#). MichaelKohlhaas.Org. January 1, 2018.

42. For instance, the Fashion District BID used to, before they were taken to federal court over it, confiscate equipment from street vendors.<sup>5</sup>
43. Similarly, in 2014 LACAN and LA Catholic Worker sued the Downtown Industrial District BID for their practice of confiscating the belongings of homeless people in coordination with the City. The case settled favorably for the plaintiffs and, as part of the settlement the City was required to issue a statement saying that BID security had no more power than any private people to enforce the law.<sup>6</sup>
44. In 2016 Mitch O’Farrell and Peter Zarcone, at that time commander of the Hollywood Division of the LAPD, worked out a plan to use O’Farrell’s discretionary funds to pay the Hollywood Entertainment District BID Patrol to provide late night security on Hollywood Boulevard and also, possibly, to deputize BID Patrol officers. For unknown reasons this plan was abandoned.<sup>7</sup>

## 5.3 Gentrification and social engineering

### 5.3.1 Signal box art

45. The City cedes control over signal box art to any BID that wants it. BIDs all over the City decide unilaterally what art to put on those public boxes, although not every BID participates. The ones that do, though, use it to push images of neighborhoods that are in line with their preferred narrative.
46. Many BIDs hold contests to choose artwork for the boxes, and many BIDs use guidelines which explicitly exclude graffiti-style art, a predominantly Latino genre. They see nothing wrong with this. Even though the LA Department of Transportation, which ultimately controls the boxes, has guidelines which forbid artwork that disparages people based on race or ethnic group, according to LADOT director Seleta Reynolds, excluding graffiti art is not disparaging and BIDs are free to do it.<sup>8</sup>

### 5.3.2 Murals

47. In an even more egregious display of the same kind of power over public art, the North Figueroa Association, which is the POA for the Highland Park BID, sought and

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<sup>5</sup> See [Acting on Behalf of Street Vendors](#), National Lawyers Guild LA Sues City, Fashion District. MichaelKohlhaas.Org. October 29, 2015.

<sup>6</sup> See [Today Judge Phillip Gutierrez Issued Final Order Dismissing LA Catholic Worker v. City of LA](#). MichaelKohlhaas.Org. June 30, 2017.

<sup>7</sup> See [LAPD Asks HPOA To Arrange For Late Night BID Patrol Hours](#) MichaelKohlhaas.Org. February 20, 2016.

<sup>8</sup> See e.g. [Kerry Morrison and the Hollywood Property Owners Alliance Hate On Mexican-American Artistic Themes](#). MichaelKohlhaas.Org. July 17, 2016. [Mitch O’Farrell Explicitly Approves In Writing Of Racist Sunset-Vine BID Public Art Guidelines](#). MichaelKohlhaas.Org. July 30, 2016. [An Open Letter to Mitch O’Farrell Regarding Signal Box Art in the Hollywood Entertainment District](#). MichaelKohlhaas.Org. August 3, 2016. [How the Racist Cancer of the HPOA Signal Box Art Contest Rules Spread](#). MichaelKohlhaas.Org. October 19, 2016.

got permission from the City to paint over two Latino-themed murals along Figueroa Street.<sup>9</sup>

48. As with the signal box art, BIDs wield this kind of power to rebrand the neighborhoods in which they operate to be more welcoming to residents who are more desirable from the point of view of the commercial property owners who run the BIDs. In Highland Park, at least, this means residents who will support the kinds of businesses who can afford to pay the outrageously high rents that the owners crave.

### 5.3.3 Skid Row Neighborhood Council

49. In early 2017 downtown BIDs spent an enormous amount of time and money opposing the formation of a neighborhood council for Skid Row. Their efforts included organizing people to give public comment, private meetings of BID staff and board members with José Huizar, hiring a lobbying firm and raising money to pay them,<sup>10</sup> convincing Huizar to illegally allow online voting in the election, and pressuring the Department of Neighborhood Empowerment to violate City law by hosting a number of illegal pop-up polls, some of which were audaciously held in buildings with security that excluded the homeless.

50. BIDs that participated in this effort were, in no particular order:

- (a) Fashion District
- (b) Industrial District
- (c) Little Tokyo
- (d) Historic Core
- (e) Downtown Center

51. The whole episode is the subject of an ongoing lawsuit against the City of Los Angeles.<sup>11</sup>

### 5.3.4 Street vending

52. BIDs have opposed legalized street vending since forever, and I became aware of the issue in March 2015 when the City of LA took the matter up (again) seriously. As described above BIDs organized speakers,<sup>12</sup> sent letters, opposed vendors, lobbied the

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<sup>9</sup> See [Proof That The North Figueroa Association Ordered The Destruction Of Two Highland Park Murals In 2017](#). MichaelKohlhaas.Org. June 27, 2018.

<sup>10</sup> See [Lobbying Firm Liner LLP and Lobbyist Matthew Nichols...](#) MichaelKohlhaas.Org. May 6, 2017.

<sup>11</sup> See [The Actual Technical Means By Which José Huizar Destroyed the SRNC Formation Effort](#). MichaelKohlhaas.Org. May 30, 2017. For the lawsuit see [Skid Row Neighborhood Council Formation Committee Files Blistering Petition](#). MichaelKohlhaas.Org. July 27, 2018. For just a taste of BID involvement see [It Is Now Confirmed That The Subject Of Furtive Hereditary Imperialist Zillionaire Michael Delijani's Meeting With José Huizar...](#) MichaelKohlhaas.Org. May 19, 2017. Also see [the tag archive](#).

<sup>12</sup> See [Kerry Morrison in Van Nuys](#). MichaelKohlhaas.Org. August 7, 2015.

City for required property owner permission, limits on vendors per block, vendor exclusion zones, some of which they successfully got into the law even now, likely to attract challenges in court, and so on.<sup>13</sup>

53. The Hollywood Entertainment District BID has spent years arresting hundreds of street vendors, destroying their wares, and turning them over to the LAPD.<sup>14</sup>

### 5.3.5 Downtown Los Angeles Neighborhood Council

54. The Downtown Los Angeles Neighborhood Council (“DLANC”) maybe uniquely among NCs permits BID staff members to sit on its board just by virtue of the fact that they are BID staff members. That is, the staff of Downtown BIDs qualify as DLANC stakeholders. Probably this wouldn’t matter elsewhere in the City where there isn’t such an intense concentration of BIDs, but Downtown it has led to the DLANC board being packed with BID staffers, who naturally push the agendas of their property-owning employers.
55. It’s possible that serving on the DLANC board and voting on land use issues involving property owned by members of BID boards is an illegal conflict of interest for BID staff. It’s certainly an immoral conflict of interest.
56. An example of this occurred in Spring 2017 when Rena Leddy, Executive Director of the Fashion District BID, lobbied the City of Los Angeles in favor of the City Market South project, one of the owners of which sits on the FDBID board of directors. As a member of DLANC at that time she voted in favor of recommending all of City Market’s variance requests and so on. I reported her to the City Ethics Commission in September 2017 but nothing seems to have come of the complaint.<sup>15</sup>
57. BIDs already have a great deal of influence with their Council offices over every decision that the reps make. To have them on an NC board gives them another communication channel and allows them to create the impression of widespread support for their positions.

## 5.4 Lobbying

### 5.4.1 In general

58. A significant number of BIDs also engage in lobbying activities. These can range from writing position letters to City officials all the way to proposing new legislation. This is not an accident in Los Angeles. The City actively encourages BIDs to lobby them.<sup>16</sup>

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<sup>13</sup> See e.g. [Marie Rumsey and Thuggish Rodriguez Strategies Flack Jessica Borek Plot With The HPOA](#). MichaelKohlhaas.Org. March 26, 2015.

<sup>14</sup> See [Don’t Incarcerate The Ice Cream Man](#). MichaelKohlhaas.Org. March 23, 2015.

<sup>15</sup> Although it’s hard to be sure with the Ethics Commission. Their investigations may take quite a long time. See [How I Reported Fashion District BID Executive Director Rena Leddy to the Ethics Commission](#). MichaelKohlhaas.Org. September 30, 2017.

<sup>16</sup>For instance, the standard City service contract contains a clause forbidding the contractor to spend any of the funds on lobbying the City. This clause is missing from BID contracts. Also, Miranda Paster,

59. In particular, BIDs regularly engage in lobbying campaigns, sometimes individually, sometimes in small groups, and occasionally, as with the recent street vending matter, in a City-wide coordinated effort involving most if not all of the BIDs in Los Angeles. These campaigns can involve some or all of the following elements:

- (a) Position letters from BIDs to City officials.
- (b) Coordinated public comments at City meetings by BID board members and staff, in some cases with the comments written by staff.
- (c) Private meetings between City officials and BID board members and/or staff.
- (d) Coordination between BIDs to lobby effectively.
- (e) Creating and/or influencing press coverage through interviews and/or professional PR.

#### 5.4.2 State-level lobbying by BIDs

60. In 2017 Assemblymember Rob Bonta introduced [AB-1479](#), seeking to add enforcement avenues to the California Public Records Act. Los Angeles BIDs hired a Sacramento lobbyist and successfully scuttled Bonta's bill. Many of the opposition letters they sent mentioned my putatively terrorist CPRA campaign against them.<sup>17</sup>

61. In 2001, after California courts determined that BIDs were subject to open government laws (see [Section 10.1](#) on page 18 below) BIDs lobbied then-state-legislator Jackie Goldberg, who helped them out by altering the PBID law so that BID people would at least not be subject to state political ethics and financial disclosure laws.<sup>18</sup>

62. In 2015 then-State-Senator Carol Liu introduced [SB 608](#), the Right to Rest Act. Among other things, this bill included the following language:

Every person in the state shall have the following basic human and civil rights, that may be exercised without being subject to criminal or civil sanctions or harassment by law enforcement, public or private security personnel, or BID agents:

- (1) The right to use and to move freely in public spaces, without discrimination and without time limitations that discriminate based upon housing status.
- (2) The right to rest in public spaces and to protect oneself from the elements, in a nonobstructive manner.
- (3) The right to eat, share, accept, or give food in any public space in which having food is not otherwise generally prohibited.

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who oversees the department of the City Clerk that's responsible for BID oversight, has stated publicly that the City considers lobbying to be one of the proper functions of BIDs.

<sup>17</sup> See [How Kerry Morrison and a Bunch of Other Bad BIDDies Helped Gut AB-1479](#). MichaelKohlhaas.Org. September 7, 2017.

<sup>18</sup> See [The Checkered History of Streets and Highways Code §36612](#). MichaelKohlhaas.Org. January 3, 2019.

- (4) The right to pray, meditate, worship, or practice religion in public spaces, without discrimination based upon housing status.
- (5) The right to occupy a motor vehicle or a recreational vehicle, provided that the vehicle is legally parked on public property or parked on private property with permission of the property owner.

BIDs completely flipped out and sent speakers to local hearings, wrote letters, and eventually got the bill killed.<sup>19</sup>

## 6 Limitations on BIDs' activities

- 63. The main restriction on BIDs' activities is found in the PBID law at [§36625\(a\)\(6\)](#), which states in part that:

The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

- 64. There are three parts to this. First is the statement that a BID can't spend money on anything happening outside the district. This is widely ignored by BIDs in at least two ways.
  - (a) First they actually just ignore it. For instance, in 2018 the South Park BID began surveilling homeless encampments outside its boundaries and lobbying various City and state agencies to clean them out. The board of directors actually asked the executive director if there would be any consequences to breaking the law.<sup>20</sup>
  - (b) BIDs also violate this restriction by spending money to lobby the City and especially the state government<sup>21</sup> on political issues that are only tenuously related if related at all to what's going on inside the boundaries of the BIDs doing the lobbying. One of the most egregious examples of this is the coordinated BID lobbying against improvements to the California Public Records Act, described above in [Paragraph 60](#) on page 12. There's no sensible way to argue that this benefits property owners in a given district.

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<sup>19</sup> This happened just a few months after I started working on BIDs and I didn't have the skills to get the whole story, but for some video of BID comments on the matter, see [The Right To Rest Act](#). MichaelKohlhaas.Org. March 25, 2015.

<sup>20</sup> See [What Passes for Wit Among Zillionaires](#). MichaelKohlhaas.org. November 3, 2019. Also see [Remember Those Underpass Homeless Encampments Outside the South Park BID Boundaries?](#). MichaelKohlhaas.Org. December 20, 2018.

<sup>21</sup> "Especially" in the sense that the state of California is mostly very far outside the boundaries of any given BID.

65. Second, this section prohibits BIDs from spending on things not specified in the ordinance of intention as modified by the City Council. Here it's essential to remember that the ordinance of intention, described above in [Section 4.1](#) on page 5 includes the Management District Plan, described above in [Section 4.2](#) on page 6. So this section requires BIDs and the City Council to describe exactly what they're going to spend money on in this publicly available MDP and not spend money on other stuff.<sup>22</sup> Again, BIDs will ignore this restriction.
66. Finally, the section does allow BIDs to spend money outside of the district for the limited purpose of marketing or signage.
67. Note that §36625(a)(6) also requires BID formation papers to contain:

A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments.

In February 2019 City Council authorized a pilot program to give a fraction of parking meter revenue to certain BIDs. It's conceivable that this program violates this section of the PBID law by funding BID activities out of non-assessment money.<sup>23</sup> It's also possible that the law means that they can't spend the parking meter money on activities that benefit the properties in the district. It's not clear to me, anyway, but it's something to think about.

## 7 How the City of Los Angeles relates to its BIDs

### 7.1 Before the formation of the BID

68. The City maintains a list of approved BID consultants who can be hired by POAs to form BIDs. They are often paid by the City for BID formation, up to \$40,000. This money is supposed to be matched by the POA, but in practice the difference can be paid by the Council District from discretionary funds.
69. City staff works extremely closely with BID consultants and POAs during the formation process to make sure that the proposed BID will go to City Council with a recommendation to approve. This process takes hundreds of hours of City staff time spread out over the 12 to 18 months that it can take to get a new BID approved. The relevant Council District is also deeply involved in this process. In at least some cases a Council staff member is assigned to work with the POA all the way through the BID formation process.

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<sup>22</sup> This description glosses over the so-called Annual Planning Report. BIDs are required to file one of these every year with the City and the City Council must approve it. The City Council has the same right of revision for APRs as they do for MDPs. A BID's APR can modify the activities described in the MDP, so a BID isn't restricted for its full five or ten year term to spending on activities decided long ago. This overglossing isn't important for understanding the restriction.

<sup>23</sup> See [CF 15-1450-S4](#).

70. For instance, this happened with the Venice Beach BID in 2015-16. Council District 11 representative Mike Bonin assigned his staffer Debbie Dyer Harris to shepherd the BID through the approval process. She was involved enough to, e.g. suggest that there should be a Board seat reserved for a City employee. This idea was turned down by the BID experts in the Clerk's office.
71. City-owned property is eligible to be included in BIDs and pay assessments. If it is included, the City gets to vote on whether a BID should be formed. In the 1990s the City Council made voting in favor of creating a BID the default position. As the law stands the Council can direct the City Clerk to vote no, but in practice this never happens.<sup>24</sup> This situation leads to the gerrymandering of City property into BID boundaries in order to create large guaranteed blocks of yes votes.
72. Recently this reached almost ludicrous proportions in the newly created Venice Beach BID, which has more than 25% City properties, including large parking lots in the median strip of Venice Boulevard, and in the newly expanded San Pedro Historic Waterfront BID, where the boundaries were stretched to include massive amounts of land belonging to the Port of Los Angeles, on which no cognizable business activity occurs.

## 7.2 During the formation of the BID

73. Formally, the state law that authorizes BIDs<sup>25</sup> gives the City the power not only to create them, but also to alter their boundaries in certain ways, to lower assessments on individual properties or groups of properties,<sup>26</sup> to decide what activities or improvements the BID will spend its money on, and many other similar matters.<sup>27</sup> Although the law grants these powers to the City Council as a whole, in practice in Los Angeles the powers are wielded entirely by the Councilmember in whose district the BID lies.
74. Informally the City has the power to choose which group of property owners can form a POA, which property owners can be on the Board of the POA, and the structure of the POA's Board. E.g. how many Board members there will be, what constituencies they will represent, and so on. José Huizar proved this with the reconstituted Arts District BID where, in order to settle a controversy between competing POA candidates, he forced the successful POA to dedicate a fixed number of seats on its Board of Directors for supporters of the alternative POA candidate.

## 7.3 After the formation of the BID

75. Formally the City has the power to determine what the BID spends its money on from year to year through the fact that the City Council must approve each BID's

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<sup>24</sup> See [Revealed – Why the City Always Votes Yes on BID Formation](#). MichaelKohlhaas.Org. September 17, 2016.

<sup>25</sup>This is the [Property and Business Improvement District Act of 1994](#).

<sup>26</sup>Although not to raise assessments.

<sup>27</sup> See [Section 4.4](#) on page 7 above.

annual planning report (“APR”) in order for it to receive a given year’s funding and the fact that BIDs are forbidden to spend their funds on anything that’s not listed in the APR,<sup>28</sup> and to withhold and even to cut off their funding for almost any reason at all. The City can even eliminate a BID at any time if they want to. Again, in practice these powers over BIDs are wielded entirely by the Councilmember in whose district the BID lies.

76. Informally the City has the power to decide which staff the POA hires, which again is shown by Huizar, who essentially forced the Historic Core BID to hire Blair Besten as its executive director. And the power to provide funding to BIDs in addition to their allocated assessment funds out of Councilmembers’ discretionary money. E.g. Mike Bonin gave the Pacific Palisades BID money in the first year of its operation. And probably many other matters as well.

## 8 How to destroy a BID

### 8.1 Disestablishment law

77. Once a BID is established, the PBID law provides two ways it can be disestablished.
78. These are found at [§36670\(a\)](#), which states:

Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

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<sup>28</sup> See [Section 6](#) on page [13](#) above.

## 8.2 The possibility of political action

### 8.2.1 Through the City

79. The PBID law at §36670(a)(1), quoted above, requires the City to hold a hearing on disestablishing a BID in case it finds that they've broken the law or stolen money. BIDs break the law all the time, but the loophole here is that the City Council has to "find" that they have, and they're probably not very willing to do that.
80. For instance I found a case where the East Hollywood BID lied to the City about the board having approved an annual planning report. It's required by the PBID law that BID boards approve APRs, and an approved APR is necessary for the BID to get paid. So submitting an unapproved one and saying it's approved must be some kind of fraud. I reported this to the City Clerk, who ignored the whole thing.<sup>29</sup>
81. My feeling is that if there's incontrovertible evidence that a BID has violated a law, like if a court finds that they have, then probably the City Council can't avoid also finding that, and then holding a disestablishment hearing is required.
82. This is a yet another really good reason to pay extremely close attention to BID activities.
83. Note that the City is only required to hold a hearing, the Council is not required to actually disestablish the BID. As far as I know this has never happened in Los Angeles, so it's hard to predict what the outcome might be.

### 8.2.2 Through the property owners

84. The PBID law at §36670(a)(2), quoted above, requires a 30 day period each year in which a BID is vulnerable to disestablishment by property owners.
85. If owners representing more than half of the assessed value protest to the City the City Council is required to pass a resolution of disestablishment and hold a hearing.
86. If enough owners can be convinced that the BID is a bad idea it might be possible to convince them to petition the City to disestablish it through this procedure.
87. All BIDs have dissatisfied owners. Some BIDs have a lot of them.
88. The establishment ballots are public records and easy to obtain from the City, which is a potential starting place to locate unhappy owners.
89. Obtaining public records from a given BID and from the City about the BID is a potential way to get information to convince owners to turn against the BID.

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<sup>29</sup> See [It Appears That East Hollywood BID Director Nicole Shahenian Lied To Los Angeles City Clerk Holly Wolcott](#). MichaelKohlhaas.Org. March 12, 2017.

90. A practical obstacle is that BIDs are very resistant to releasing contact information of owners to facilitate political action. Usually they will give up the physical addresses of the properties, but not the mailing addresses and/or email addresses of the owners. This information ought to be obtainable through the CPRA, and it's an ongoing project of mine to establish that they have to release it for precisely this purpose.
91. This may seem impracticable, but it's possible that it can be done. For instance, some BIDs are very small. The Brentwood Village BID, e.g., has only 29 parcels in it, which almost certainly represents fewer than 29 actual owners. There has been a lot of tension in that BID over the years,<sup>30</sup> and it's possible that with enough information about how the BID spends assessment money this could be leveraged into a protest.
92. Another BID that's possibly vulnerable to this tactic is the Melrose Avenue BID. Again, there is a lot of dissatisfaction among property owners, and last year some of them actively campaigned against BID renewal.<sup>31</sup> Also the BID board actually spends assessments on a lot of things that would possibly be objectionable to property owners, like really expensive lunch meetings and deeply stupid social media. This BID has 180 parcels and almost certainly fewer than 180 owners. Also Fairfax High is included here, and there's always tension between LAUSD and BIDs. Again, it may be possible to convince enough of these owners to protest the BID.

## 9 BIDs and LAUSD

93. I'm out of time to write, but please ask if you're interested in this and I don't get to it.

## 10 BIDs and transparency laws

### 10.1 Why are BIDs subject to transparency laws?

94. The Hollywood Entertainment District BID was established by the City in 1996. One of the property owners, Aaron Epstein, was frustrated by the fact that the POA's meetings were closed not only to the general public but to property owners as well. He sued the BID and the City of Los Angeles, claiming that the POA was subject to the Brown Act, which is the state law that requires meetings of "legislative bodies" to be open to the public. His theory was based on the Brown Act at [§54952\(c\)\(1\)\(A\)](#), which makes the following types of bodies subject to the Act's requirements:

A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that ... [i]s created by the elected legislative body in order to exercise authority that may

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<sup>30</sup> Unfortunately I can't track down the source, but I'm sure that some of the property owners are very unhappy about this BID.

<sup>31</sup> See [Open Rebellion in the Melrose BID](#). MichaelKohlhaas.Org. August 2, 2018.

lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

95. Epstein lost in superior court, but the appellate court reversed the decision and found that BIDs were legislative bodies in the meaning of the Brown Act because they were created by the City and funded with tax money to carry out municipal functions. The whole opinion is well worth reading and full of (unfortunately still relevant) incisive criticisms of the attitude of the City of Los Angeles towards its BIDs: [Epstein v. Hollywood Entertainment District II Business Improvement District](#).
96. Every legislative body that's subject to the Brown Act is also subject to the CPRA, so this decision meant that BIDs were also so subject.
97. Soon thereafter the legislature incorporated this new understanding into the Property and Business Improvement District Law itself at [§36612](#), which states in part:

... an owners' association shall comply with the Ralph M. Brown Act ... at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act ... for all records relating to activities of the district.

98. This change in the PBID law was due to then-Assemblymember Jackie Goldberg, who during her time on the City Council was a great promoter of BIDs.<sup>32</sup> She inserted the above-quoted language codifying what the courts had already decided, and mollified her friends on the BIDs by putting in language that was intended to exempt them from state ethics laws and their associated financial disclosure requirements.<sup>33</sup>

An owners association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

## 10.2 The California Public Records Act

99. The [California Public Records Act](#) is a law allowing citizens access to almost all records generated by state and local government agencies in California.
100. The right to have access to this material is so important that it's enshrined in the California Constitution. In particular, [Article I, Section 3\(b\)\(1\)](#) states:

The people have the right of access to information concerning the conduct of the peoples business, and, therefore, ... the writings of public officials and agencies shall be open to public scrutiny.

101. Also, [Article I, Section 7](#) states:

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<sup>32</sup> See [Files From The Archives: Former City Councilwoman Jackie Goldberg and the Prehistory of the Hollywood Property Owners Alliance](#). MichaelKohlhaas.Org. September 25, 2015.

<sup>33</sup> See [The Checkered History of Streets and Highways Code §36612](#). MichaelKohlhaas.Org. January 3, 2019.

In order to ensure public access to ...the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act ...

102. The law lists a number of reasons why access to records can be denied. The general idea is that unless one of those specific reasons applies the record must be made available to the public. That is, unless there's an specific reason explicitly stated by the legislature that allows the withholding of a record, the record must be made public. In practice, things are quite a bit more complicated.
103. Most of the exemptions are very specific and obviously necessary. For instance, library circulation records are exempt from release, as are records of the locations of Native American grave sites. A few of the exemptions are very vague, very broad, and very subject to interpretation. An explanation of these is beyond the scope of this document.

### 10.3 The Brown Act

104. The [Brown Act](#) is a California law regulating open meetings. In short, it requires all meetings of government bodies that are subject to it, called "legislative bodies," to be open to the public except for a short list of specific reasons why it's allowed to close them.
105. The Brown Act also requires all business done by legislative bodies to be done at meetings. E.g. they're not allowed to discuss issues by email, to vote by email, to send their staffers to confer in private and then facilitate agreements, and so on.
106. The Brown Act gives members of the public the right to record video or audio of meetings, to attend meetings without identifying themselves or paying admission, to give comment on any items being discussed or in general on the subjects that the legislative body is empowered to act on.
107. The law also requires legislative bodies to give proper notice of their meetings, to publish agendas, to only discuss agendized subjects at the meetings, and to have "regular," which means predicatable, meetings.
108. As with the CPRA, the only method of enforcement is through court action. The law empowers district attorneys to file suit to enforce the law. The Los Angeles County DA has a public integrity unit which is charged with enforcing the law. I've heard that under Steve Cooley they actually did this, but in my experience under Jackie Lacey they will not take action against violators.
109. The Brown Act also allows private citizens to file petitions against Brown Act violators. There's a lot of detail, and the easiest route to enforcement requires one to send the agency a demand letter explaining their violation and asking them to promise never to do it again. If they promise and they violate later they can be sued without notice. This is pretty weak, but it's what there is.

110. If the agency violates the Brown Act with the intention of withholding information that the public has a right to it is a misdemeanor. I am told that no one has ever been prosecuted under this statute.