

August 15, 2016

Honorable Los Angeles City Councilmembers,

I'm writing to urge you to postpone consideration of the proposed Venice Beach business improvement district and to think about placing a moratorium on the formation of new BIDs until we as a City can have a much-needed, long-delayed conversation about their proper role. A major problem is that as they're now constituted, there is no way for anyone not on their Boards of Directors to have any influence over property-based BIDs in Los Angeles. They have effectively isolated themselves from every one of the City's means of contractor oversight. People who live in or near BIDs are directly impacted by their activities in many ways but have no effective means of influencing them. Since the property owners associations that administer the BIDs are mostly controlled by self-perpetuating Boards there aren't even effective ways for the property owners in BIDs to influence their policies. Property-based BIDs also covertly and perhaps inadvertently perpetuate racist policies from the past in unexpected ways.

Here are just a few of many ways in which BIDs have been placed outside of the City's normal contractor oversight apparatus:

1. Unlike other private patrol services operating in Los Angeles, BID Security is exempt from oversight by the Police Commission.
2. The Bureau of Contract Administration's rules exempt BIDs from the Contract Performance Evaluation Ordinance, so no one ever looks to see if the POAs are doing a good job.
3. BIDs are exempt from filing the Ethics Commission's form 55, so no one ever checks to see if they're violating campaign finance laws.
4. Unlike other contractors, BIDs are allowed to use their city disbursements to lobby City officials. They're not exempt from the Municipal Lobbying Ordinance, but in 2010 at the behest of the BIDs, the Rules and Elections Committee killed a reform proposal from the CEC that would have made it actually practical to enforce this law in the case of BIDs, leaving them effectively exempt.

As I said above, BIDs are generally controlled by self-perpetuating Boards, which have no incentive to respond even to stakeholder complaints, as they're not elected and they're not removable by anyone but their colleagues. In 2001 the City Clerk proposed a clause in the BIDs' standard contracts which would have let the Clerk's office investigate complaints from stakeholders, but the Downtown Center BID, the Hollywood Entertainment District BID, and a few others complained, and the proposal was withdrawn. It's not really even within the power of the assessed property owners to form a new POA to manage their BID if they don't like the old one, since POAs are not chosen via a competitive process. Once a BID and its POA are in place, they're in place effectively forever, despite provisions in State law proclaiming them to be temporary institutions.

This nexus of problems has been recognized for years. For instance, in 2005 Controller Laura Chick audited two BIDs, found serious misconduct in one and less serious misconduct in another, and informed the City Council that:

These audits further raise questions about the City's responsibility and ability to oversee and monitor the services provided through BIDs. The City Clerk, on behalf of the City is responsible for ensuring that services are provided and terms of the contract are met. My audits show that they have not been given the authority or the tools to discharge that responsibility efficiently and effectively.

The situation is essentially unchanged. Although under the leadership of Holly Wolcott and Miranda Paster, BIDs are nominally held to more of their contractual obligations than they were in 2005, key parts of Controller Chick's recommendations remain unimplemented. The Office of the Clerk remains unable or unwilling to enforce many of the BIDs' contractual obligations. This whole situation provides another example of the lack of oversight of BIDs. Those two 2005 audits were the first and the last audits done by the City of Los Angeles of any of its BIDs.

These are not just theoretical worries. In some areas of the City BIDs have taken on aspects of full-scale local governments, even as they operate without any democratic control at all. For instance, the Hollywood Property Owners Alliance operates what's essentially a private police force. Since the inception of the current iteration of the BID Patrol in 2007 they have made over 10,000 custodial arrests in which citizens are handcuffed and transported in private patrol cars. The LAPD does the same thing, of course, which is why it's crucial that they're accountable to the Police Commission and the Inspector General and thereby subject to civilian oversight. The BID Patrol is not accountable to anyone. And this is a significant phenomenon. In 2013, which is the only year for which I have complete data, the BID Patrol was responsible for more than 1% of arrests in the entire City of Los Angeles. They were responsible for more than 7% of the arrests of homeless people in the entire City. Without even considering whether or not these arrests were justified or necessary, it should be clear that a security force operating on that scale must be accountable to someone with the public interest at heart.

It's also not possible to tell how much BIDs cost the City. When the Clerk files statements of economic impact in relation to the renewal or establishment of BIDs, they're calculated solely on the basis of the money to be assessed on City-owned property. But there can be other significant costs associated with BIDs which are currently not tracked at all. For instance, each of the arrests made by the Hollywood BID Patrol required an LAPD response, which costs money. Each required some kind of response by the City Attorney, which also costs money. At the rate that the BID Patrol arrests people these costs are likely to be significant, and yet there's presently no way to track them or to control them. Furthermore, no one is keeping track of the quality of these arrests. The fragmentary data I've been able to obtain suggests that the combined rate of dismissals and rejections by the City Attorney is relatively quite high, which may mean that some of these people shouldn't have been arrested, so that the City money spent on responding was wasted. There's no way to tell. The LAPD is audited intensively on such matters, but BID security is not. Under the present *laissez faire* regime it's just not possible to quantify or control the costs to the City associated with BIDs.

Finally, the City of Los Angeles seems to prefer property-based BIDs to merchant based BIDs. These are problematic in a unique way which the City doesn't seem ever to have considered. The real estate market in Los Angeles was completely racially segregated by law up until about 50 years ago and *de facto* segregated even more recently. Even though it is now illegal to discriminate on the basis of race in real estate transactions, racially distorted patterns of commercial property ownership persist throughout Los Angeles and are likely to do so for some time into the future. The City has formed and is forming property-based BIDs in areas where this effect is particularly

strong; e.g. Hollywood, Downtown, and now Venice Beach. As I've described above, BIDs give their Boards disproportionate and essentially unregulated power over their districts. BID Boards are selected in a manner which, intentionally or not, lead to their memberships being overwhelmingly white, and this revives and reinvigorates a thoroughly rejected race-based apportionment of local power. Whether or not this is the City's goal, it's clearly a result of the City's preference for property-based BIDs. In areas where there is a large homeless population; Hollywood, Downtown, Venice, the unacceptable, undemocratic effect of the City's BID creation policy is to give insular groups of white property owners a huge amount of power over the lives of people, disproportionately non-white, who have no effective means to respond politically.

For these reasons I urge you to stop approving new BIDs, including the Venice Beach BID, until you can convene a conversation among all interested parties on how these problems can be mitigated or eliminated in the future. At the very least the City should consider ways to make property owners associations more responsive to their stakeholders and to residents of the neighborhoods over which they exercise power. Empowering (and requiring) the Clerk's office to oversee BIDs would also be useful, as would requiring BID security to be monitored by the Police Commission. Competitive bidding for BID contracts would be useful, as would annual performance evaluations of the kind that other City contractors are subject to. I'm not sure how to solve the racial problems introduced by property-based BIDs in formerly segregated neighborhoods, but there are a lot of smart people in Los Angeles who are interested in BIDs, and I'm sure something can be worked out.

You can see from the other petitions and letters entered into this council file that I am by no means the only person concerned about these issues. One hundred and sixty nine residents of Venice, who will be subject to BID activities but will have absolutely no say in their operations, submitted a petition to you asking you to reject the VBBID. Also, a number of respected community organizations sent you a detailed and articulate letter supplying reasons to reject this BID. I urge you to take the issues raised by these many voices seriously, and at least consider postponing your approval of the VBBID until there has been time for a more thorough discussion of these and many other relevant issues.

Thank you for your attention,

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