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### Business Improvement Districts and the Urban Commons

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## **Business Improvement Districts and the Urban Commons**

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### **Introduction**

The word ‘city’ comes from the Latin *cīvitās*, meaning a highly organized community – something that has existed almost as long as human history.<sup>1</sup> Many of these urbanized communities make critical decisions for the vast numbers of people living within their boundaries through city councils that serve as the ‘legislatures’ of city decision-making. In addition to city councils, residents and businesses are also represented by associations that seek a decision-making role in local matters. One example is a Business Improvement District (BID). These neighbourhood-based bodies, which are most commonly located in downtown areas and otherwise scattered unevenly across cities, are formed through a city bylaw that permits the levying of a tax on member businesses and property owners, which can amount to millions of dollars per year. BIDs also have a powerful voice in planning and politics as a representative organization of local businesses. There is wide debate in the academic literature as to whether BIDs should be considered lobbyists for businesses, enablers of local action, or an arm of the city government. The existence and oversight of BIDs raise important questions about whose interests are given priority in city governance. Delegating power to localized bodies, generally speaking, has negative effects for racial and ethnic minorities, as well as low-income populations. BIDs are specifically critiqued as exacerbating space-based tensions in relation to

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<sup>1</sup> René Maunier, “The Definition of the City,” *American Journal of Sociology*, 15, no. 4 (1910): 536.

historically disadvantaged residents.<sup>2</sup>The term ‘urban commons’ has no uniform definition or agreed upon principles, and is used in a wide range of disciplines.<sup>3</sup> The city is an especially interesting setting for commons debates, as it is “not a frictionless agglomeration of commoners, but rather a site for ongoing contestation about what counts as a common and who counts as commoners.”<sup>4</sup> The notion of the urban commons suggests that, regardless of whether spaces are privately or publicly owned, the city is a territorial space in which citizens claim to have a role or stake, a norm which is reinforced in law. The conversation about the urban commons is relevant where multiple bodies claim to have rights to govern within an urban context, and centers on discussions pertaining to how such claims are mediated and by whom.

This chapter contributes to existing work that bridges two rich scholarly conversations by examining the role that BIDs play in city governance and their relationship to the urban commons.<sup>5</sup> The first section summarizes the existing literature on the scope and meaning of the urban commons: what do we mean by the governance of the ‘urban commons,’ and how do BIDs fit into this scheme? Section two contends that decision-making, representation, and accountability should be used as factors in evaluating urban commons institutions. Third, the chapter concludes that, instead of framing BIDs as singular bodies capable of managing a common pool resource within the city, scholars should insist on inclusive decision-making, representation, and accountability as necessary elements of the urban commons, including BIDs.

### Conceptualizing the Urban Commons

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<sup>2</sup> Gabriella Schaller & Susanna Modan, "Contesting Public Space and Citizenship Implications for Neighborhood Business Improvement Districts," *Journal of Planning Education and Research*, 24, no. 4 (2005): 394.

<sup>3</sup> Maja Hojer Braun, "Communities and the commons" in Christian Borch and Martin Kornberger, eds., *Urban Commons: Rethinking the City* (Routledge, 2015): 154.

<sup>4</sup> Christian Borch & Martin Kornberger, *Urban Commons: Rethinking the City* (Routledge, 2015): 15.

<sup>5</sup> Sheila R. Foster, *Collective Action and the Urban Commons*, 87 *Notre Dame L. Rev.* 57 (2013); and Garnett, Nicole Stelle, *Managing the Urban Commons* (November 14, 2011). Essay for the November 2011 University of Pennsylvania Law Review Symposium on "New Dimensions in Property Theory" 160 *University of Pennsylvania Law Review* 1995 (2012); *Notre Dame Legal Studies Paper No.* 11-44.

Scholars exploring the meaning of the commons and its implications for urban centres generally reference the works of Garrett Hardin and Elinor Ostrom, the grandparents of contemporary notions of the commons. Hardin, a biologist, claimed that coercive, centralized government regulation is necessary to avoid the overuse and exploitation of commons resources as individual parties do not have a vested interest to conserve or sustainably use the resource, which inevitably leads to depletion and destruction.<sup>6</sup> Hardin ominously called this the ‘tragedy of the commons.’ Free-riders will take advantage of the unrestricted nature of the good or land and, because there are no consequences to this abuse, the common property will ultimately fall into disrepair.

Elinor Ostrom critiqued Hardin’s claims among other reasons on the basis of governance.<sup>7</sup> She asserted that a commons is not solely a single resource, as Hardin saw it. She argued that it is a resource *plus* the social community and its corresponding values, rules, and norms that are used to manage or govern the resource. In her book, *Governing the Commons*, for which she won the Nobel Prize in 1999, Ostrom offered real-world examples of the management of common goods such as fisheries, land irrigation systems, and farmlands.<sup>8</sup> Identifying a number of factors conducive to successful resource management using a mix of private and public instruments, she argued that the tragedy of the commons could be avoided.

Three characteristics of the urban commons are especially relevant to the role of BIDs in local governance: scale, ownership, and governance. First, the urban commons may represent the city as a whole, but also micro-spaces within a municipality, e.g., public streets, public parks,

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<sup>6</sup> Garrett Hardin, “The Tragedy of the Commons,” *Science*, 162, no. 3859 (1968): 1243-48.

<sup>7</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990). See also Lee Anne Fennell, “Ostrom’s Law: Property Rights in the Commons,” *International Journal of the Commons*, 5, no. 1 (2011): 9.

<sup>8</sup> Elinor Ostrom, James Walker, & Roy Gardner, “Covenants With and Without a Sword: Self-Governance Is Possible,” *American Political Science Review*, 86, no. 2 (1992): 404.

and any public and neighbourhood amenities. Boavetura de Sousa Santos offered an analogy between maps and law by distinguishing between “large scale” and “small scale.” A large-scale map shows less land but far more detail (“a miniaturized version of reality”) and small-scale more land, showing relative positions, but ultimately less detail.<sup>9</sup> To Santos, the specific scale to be studied results in a different kind of analysis. The urban commons, too, exists at different scales. Sheila Foster and Christian Iaione asserted that, regardless of whether spaces are privately or publicly owned, the city is a territorial space in which citizens have a role or stake. Nicholas Blomley argued that an urban commons may include specific and discrete buildings within which squatting occurs.<sup>10</sup> BIDs lie within micro spaces of a city; in some cases, only a few city blocks and in others larger geographies, but in all cases smaller than the city itself. A focus on BIDs allows for an analysis of the very specific effects of these bodies on urban governance and an understanding of how they fit within notions of the urban commons.

Second, ownership is not the only type of property interest in a resource, whether public or private. While the language of the urban commons is also linked to categorizations within property law, the urban commons challenges the four traditional property categories: private, common, public, and non-property or open access. In particular, common property complicates the idea of private interest in land and, in so doing, recognizes shared uses among many users without necessarily having divided lines, hierarchical interests, or the capacity to exclude. Urban commons scholars echo critiques that ‘black letter’ notions of property law are overly simplistic, omit notions of belonging, disregard obligations to third-party non-interest holders, and undermine Indigenous conceptions of property, to name just a few challenges. BIDs do not have

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<sup>9</sup> Boaventura de Sousa Santos, “Law: A Map of Misreading – Toward a Postmodern Conception of Law” (1987) 14 *J.L. & Soc’y* 281 at 458.

<sup>10</sup> Nicholas Blomley, “Enclosure, common right, and the property of the poor,” *Social and Legal Studies*, 17 (2008): 318.

any of the management tools that accompany private ownership, the right to exclude outsiders and establish formal governance rules yet play a central role in administering the common pool resource.<sup>11</sup>

A third characteristic of the urban commons especially relevant to BIDs concerns the governance of the urban commons. Foster and Iaione equate urban commons with particular urban spaces that are collaboratively managed or governed. The city as commons is thus a system of governance over particular urban spaces, which incorporates *subsidiarity*, or delegated authority, and *polycentrism*, which refers to multiple parties working together. Institutions are meant to protect and enhance shared resources in a city, and land use regulations are seen as a way to improve utility or value within an urban landscape. If a local government does not manage urban spaces appropriately for whatever reason, regulatory slippage can occur, whereby the resource is degraded in value or attractiveness for other types of users and uses.<sup>12</sup> Put simply, the common pool resource of the city may be overseen by a variety of actors, with the resulting governance and involvement of multiple actors as the core characteristic in a commons analysis. This is sometimes called ‘bottom up governance’ – making room for co-partners, or co-collaborators who use and have a stake in the commons.<sup>13</sup> BIDs, explored in the next section, have been described as bodies that manage or govern common urban resources. I argue that they should be understood as one of many stakeholders in a multisector, multi-actor governance approach.<sup>14</sup>

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<sup>11</sup> Garnett, 2016.

<sup>12</sup> Tara Lynne Clapp & Peter B Meyer, “Managing the Urban Commons: Applying Common Property Frameworks to Urban Environmental Quality,” *Constituting the Commons: Crafting Sustainable Commons in the New Millennium, the Eighth Biennial Conference of the International Association for the Study of Common Property* (May 31-June 4, 2000): 1-2.

<sup>13</sup> Sheila Foster, 57.

<sup>14</sup> Foster & Iaione, 289.

## Evaluating BIDs: Relationship to City Government, Inclusivity, and Representation

BIDs play a pivotal and often positive role in local public realm management, through their financing and coordinating of public improvements, as well as the provision of other local services. BIDs benefit from these actions by increasing business activity and, in some case, revitalizing deteriorated neighbourhoods. BIDs can also bring together multiple stakeholders and broker partnerships, particularly in mid-sized cities.<sup>15</sup> At the same time, BIDs are not always transparent or inclusive, and represent only the narrow interests of their members, not the wider public, thus undermining democratic values.

The first BID was designed in Toronto in 1970. In the late 1960s, a small group of business leaders wanted to create a form of business association that would circumvent the ‘free-rider problem,’ whereby improvements by a small set of business owners would also advantage those who did not pay or otherwise contribute. Local business leaders believed that a stable and effective funding source would help a group of businesses with beautification and improvement, promote urban business areas, and ultimately allow them to regain market share. Now exported to thousands of cities across the world, the organizational form has not changed substantially in the five decades that followed.<sup>16</sup> BIDs provide a specific set of powers to business and property owners to achieve their mandate, most notably an organizational structure and direct access to the local councillors who serve on their boards.<sup>17</sup> Funding is collected through a levy against local property owners or businesses, which functions as a form of taxation. BIDs differ in size and budget depending on their locations and members.

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<sup>15</sup> Audrey Jamal, “From Operational to Aspirational? Business Improvement Areas (BIAs) in Mid-Sized Cities,” *Planning Practice & Research*, 33:5 (2018), 506-522; Randy Lippert & Mark Sleiman, “Ambassadors, Business Improvement District Governance and Knowledge of the Urban,” *Urban Studies* 49:1 (2012): 61-76, 62.

<sup>16</sup> City of Toronto, *City of Toronto Municipal Code*, s. 170-70.

<sup>17</sup> Gerald E. Frug, “The Seduction of Form,” *Drexel Law Review*, 3, n. 1 (2010).

### Relationship to city government

BIDs exacerbate the tension in the line between ‘public’ or ‘private’ governance. They are not simply private actors seeking additional power and do not fit easily within particular descriptions as exclusionary or inequality-enhancing: they are complex organizations that resist simple categorization. BIDs are uneasily classified as private and public because city taxation schemes secure funding and tie the organizations to the city, although some BIDs do not consider themselves governmental institutions, but rather part of the private sector.

Many BIDs provide useful services and programs that would ordinarily be the responsibility of municipal governments, like security, sanitation, physical improvements, beautification, social services, and business-oriented programs, although services vary significantly depending on the urban area in question. Some BIDs also play a substantially more proactive role in local governance and administration by establishing policy partnerships with local governments. Nathaniel Lewis found that as BIDs become service providers, development brokers and place makers, there is a corresponding retreat of municipal government.<sup>18</sup> Functions may also differ based on BID size: in New York, smaller BIDs focus on physical maintenance, mid-sized ones focus on marketing and promotional activities, and the large ones take care of a massive range of activities, including capital improvements.<sup>19</sup> At the same time, BIDs do not own the common property (for example, city sidewalks) and must act within the scope of the enabling legislation, although it is unclear how much oversight occurs in practice.<sup>20</sup>

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<sup>18</sup> Nathaniel M Lewis, “Grappling with Governance: The Emergence of Business Improvement Districts in a National Capital,” *Urban Affairs Review*, 46, no. 2 (2010): 180.

<sup>19</sup> Lorlene Hoyt & Devika Gopal-Agge. “The Business Improvement District Model: A Balanced Review of Contemporary Debates,” *Geography Compass*, 1, no. 4 (2007): 946, 949.

<sup>20</sup> Foster, 124.

In Toronto, BIDs are embedded within the city's bureaucratic structure, which offers professional, operational and administrative support, as well as partnership opportunities for streetscape improvements and street beautification initiatives. Through this enhanced institutional voice, BIDs can have an enormous impact on the built form within a neighbourhood. For example, in his study of the development of the 'creative city' within Toronto's Entertainment BID, Sébastien Darchen found that the BID had a strong voice in community deliberations and that its interests were specific to advantages for the member businesses.<sup>21</sup> While the city council ultimately supported a mixed-use neighbourhood with a more diverse range of economic activities than those proposed by the BID, Darchen concluded that the promotion of arts and culture as imagined by the BID led to the area's revitalization.<sup>22</sup>

### Representation

BIDs advance an 'us' versus 'them' within particular communities, with economically and ethnically mixed neighbourhoods especially vulnerable. Susanna Schaller and Gabriella Modan concluded that BIDs fundamentally increase space-related tensions.<sup>23</sup> Representation is a major element of these space-based tensions, specifically in relation to the composition and mandates of BID boards. At present, residents have few, if any, representative votes on BID boards. The board composition concentrates power among property and business owners, restricting the scope of representation. This framework reinforces political dynamics that exclude marginalized and low-income residents, as well as small businesses. BIDs insulate development decisions from communities and neighbourhoods by focusing on entertainment and high-rent

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<sup>21</sup> Sébastien Darchen, "The Creative City and the Redevelopment of the Toronto Entertainment District: A BID-Led Regeneration Process," *International Planning Studies*, 18, no. 2 (2011): 188.

<sup>22</sup> Darchen, 201.

<sup>23</sup> Schaller & Modan.

housing, with minimal attention to the interests of existing residents and with “profound implications for notions of spatial and social justice.”<sup>24</sup>

An especially poignant illustration of BIDs and vulnerable populations is in the area of homelessness. In 2014, actions for injunctive relief and damages were brought against the City of Los Angeles and the Los Angeles Downtown Industrial District Business Improvement District for confiscating the property of homeless people, despite clear jurisprudence that precludes such activity. The plaintiffs alleged that the City of Los Angeles “acts in concert with the BID to identify property to be removed and to ensure that the removals were not stopped or hindered.”<sup>25</sup> These seizures appeared to be random occurrences taking place while homeless people were shelters getting food and services, with items like tents, bedding, identification, and medications being seized.<sup>26</sup> The court enjoined the City and the bid from seizing a homeless person’s property that is not abandoned, or seizing abandoned property without notice or due process and, in 2017, the case settled for close to \$500,000. Similarly, in 2015, Toronto’s Chinatown BID objected to a plan to introduce a youth homeless shelter within the boundaries of the BID.<sup>27</sup> The BID noted a lack of consultation on the proposal and possible negative effects on the area, stating: “the BID had worked hard for a decade to “clean up” the area, and business owners are worried the facility will turn Spadina into a “centre of homelessness. To support their objection member businesses placed placards in their premises and demonstrated at City Hall. While some BIDs hope to harness their considerable influence to address homelessness, as a study done in

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<sup>24</sup> Lewis, 208.

<sup>25</sup> Schonburn Seplow Harris & Hoffman, LLP, “Skid Row Residents/Organizations Sue Downtown Business Improvement District and the City of Los Angeles for Unlawful Seizure of Property” (2016): 1.

<sup>26</sup> *Los Angeles Catholic Worker et al v. Los Angeles Downtown Industrial District BID*, 2:14-cv-07344 1 (2014).

<sup>27</sup> Kendra Mangione, “We don't need any more grit': Chinatown BID on street youth centre,” CTV News Toronto (December 30, 2015).

Washington, D.C. suggests, the organizations must work collaboratively with other stakeholders, including local advocates, although this is at the discretion of BIDs themselves.<sup>28</sup>

### Accountability

Accountability refers to the degree to which BIDs operate with openness and fairness, and especially the degree to which they are subject to the same transparency and accountability requirements as other public bodies. Richard Briffault declared that BIDs are “autonomous, even though subjected to municipal oversight in theory.”<sup>29</sup> He defined accountability in terms of reporting requirements to public officials, making a BID accountable to its board, the business community that it represents, city council, and the public. City governments may implement measures such as annual reports, outside audits, and sunset and reauthorization requirements. The rationale for these mechanisms is to ensure continuous evaluation of BID performance and to give power to municipal governments if BIDs are overstepping their authorities, although others argue that they are pro forma and after the fact.<sup>30</sup>

For example, the City of Toronto manages accountability issues through various laws and policies, principally the *Code of Conduct for Members of Local Boards*, which sets out the requirements of BIDs and other local boards in the city.<sup>31</sup> In Toronto, BID directors and board members, including the local city councillor, must conduct their affairs in compliance with all applicable law and City policies, which include privacy legislation, conflict of interest

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<sup>28</sup> Wonhyong Lee, “Downtown management and homelessness: the versatile roles of business improvement districts,” *Journal of Place Management and Development*, 11:4 (2018): 411-427.

<sup>29</sup> Richard Briffault, “A Government for Our Time? Business Improvement Districts and Urban Governance,” *Columbia Law Review*, 99, no. 2 (1999): 414.

<sup>30</sup> Hoyt & Gopal-Agge, 952.

<sup>31</sup> City of Toronto, *Code of Conduct for Members of Council City of Toronto Annotated Version* (2011): 1.

requirements, and the public appointments policy. Many other cities have similar accountability measures.<sup>32</sup>

Despite these requirements, some scholars have argued that the design of BIDs limits the degree to which they can ever be held accountable. Ian Cook stated that BIDs may claim accountability to the public through their links to city council, but “ultimately BIDs are not really accountable to the public in general and are more focused on being accountable – of sorts – to businesses.”<sup>33</sup> The increasing number of BIDs and their important role in local governance has been linked to municipal fragmentation and privatization in North American cities.<sup>34</sup> BIDs, which are led by and accountable to business owners, add a layer between urban citizens and elected councillors. The price of this process is to allow what has been conceived as ‘public’ to become incrementally more ‘private’.

One example is the accountability of BIDs in relation to public safety. A study in New York revealed the extent to which BIDs use strategies such as public realm design (e.g., planters), collaboration with police, surveillance techniques, and even harassment to limit street vending (which is largely illegal) within their boundaries.<sup>35</sup> These techniques are highly successful, and the landscape of street vending reflects the “decentralized, privatized and informalized vending management” of BIDs, rather than formal laws.

This brief review of the relevant literature on BIDs and their relationship to city government, inclusivity, and representation substantiates that, in their existing design, BIDs have

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<sup>32</sup> Wayne Batchis, “Business Improvement Districts and the Constitution: The Troubling Necessity of Privatized Government for Urban Revitalization,” *Hastings Constitutional Law Quarterly*, 38 (2010): 91.

<sup>33</sup> Paul Gallagher, “Business Improvement Districts: Local firms charged with funding BIDs say they are unaccountable - and are fighting back,” *The Independent* (October 11, 2014).

<sup>34</sup> Meghan Joy & Ronald K. Vogel, “Toronto’s governance crisis: A global city under pressure” 49 (2015): 35.

<sup>35</sup> Ryan Thomas Devlin, “‘An area that governs itself’ Informality, uncertainty and the management of street vending in New York City,” *Planning Theory*, 10, no. 1 (2011): 53, 59.

significant decision-making power in local geographies and represent BID members rather than the broader local public. Accountability provisions may not safeguard the effects of BID activities on the public, particularly the most vulnerable. The next section applies this knowledge to the urban commons.

### BIDs and the Urban Commons Framework

The legal and social problems identified in BID governance – representation, accountability, and relationship with city government – reflect the challenges of BIDs within a broader system of local governance. They also complicate the role of BIDs as an example of the urban commons, as the a devolution of responsibility and power to BIDs may undermine the very sense of belonging that advocates of the urban commons seek to foster.

According to Ostrom, the commons is a matter of collective governance. However, urban governance arrangements are generally voluntary and bind only those actually involved in the governance scheme. Such arrangements can have effects for many, beyond the actors that are specifically involved: “[I]n the case of urban commons governance institutions the governance arrangement may affect the everyday life of all city inhabitants that fall within the boundaries of the governance scheme (think of the BIDs, the decisions of which can have an impact also on those who are not part of the BID governance).”<sup>36</sup> Bodies that are sharing governance authority may further inequality amongst residents, stressing the need for questions of accountability and legitimacy to be “raised and constantly invoked” when querying collaborative governance in the urban commons.”<sup>37</sup> Parker and Schmidt put it this way: “The urban commons perspective may

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<sup>36</sup> Foster & Iaione, 339.

<sup>37</sup> Foster & Iaione, 340.

also underplay the role of government in deliberately creating shared urban resources and in selecting and enabling particular groups.”<sup>38</sup>

BIDs deserve particular scrutiny as to how they bolster or frustrate the urban commons framework. On one hand, they are woven into city administration through the existence of a dedicated office, an approved budget, and accessible information on how they may be contacted. This suggests that they are like any other local board of the city, with oversight by the city in regard to their expenditures and in their delegated service delivery role. On the other hand, they have significant power in public realm management. This dual role creates confusion as to what role they serve (local boards or independent actors?) and to whom they are accountable (to the public or their members?).

The ‘common pool resource’ engaged in BIDs is the spatial area defined by city bylaws. The spaces are not simply those that belong to business and property owners, but include ‘public’ areas like sidewalks and street furniture, and may include residential areas above or adjacent to storefronts.<sup>39</sup> Thus, the resource interest is shared among a diverse set of property holders: BID members, but also a broader range of residents and the public. Non-property owners have a stake in the area in question, however, these broader interests are not reflected in the BID governance model.<sup>40</sup> Moreover, this common pool resource is also subject to many city policies and bylaws, with numerous other parties asserting interest in the same spaces, including elected officials and organizations such as neighbourhood associations.<sup>41</sup> **Ultimately, BIDs are but one entity operating within a larger, polycentric governance constellation, and can be reimagined as more**

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<sup>38</sup> Peter Parker & Staffan Schmidt, “Commons-based Governance in Public Space: User Participation and Inclusion,” *Nordic Journal of Architectural Research*, 28, no. 3 (2016): 114-139, 118.

<sup>39</sup> Vinay Gidwani & Amita Baviskar, “Urban Commons,” *Economic and Political Weekly*, 46 (2011): 1, 2.

<sup>40</sup> Sarah Hamill, “Private Rights to Common Property: The Evolution of Common Property in Canada,” *McGill Law Journal*, 58, no. 2 (2012): 365.

<sup>41</sup> Clapp & Meyer, 1-2; Foster & Iaione, 298.

representative, accountable, and collaborative entities within the common pool resource, or urban space.

There may be no evidence that regulatory slippage has occurred where, for example, sidewalks are well-maintained by the BID. The regulatory slipping in question may not be the degradation of the resource (for example, the city street) as identified by Hardin, where the resource becomes prone to destruction. Instead, the regulatory slippage is reflected in the erosion of openness, participation, and representation in city-making, caused by a focus on narrow interests to the detriment of a broader population. Rather than balancing the competing interests of the space and those in it, the BID may be solely focusing on the profitability of member businesses. In short, BIDs advance a particular notion of the commons despite other competing conceptions.<sup>42</sup>

Looking solely at BID management of the resource impairs the strength and importance of the urban commons as a conceptual tool in reimagining city governance. Reframing the BID as one player among many in local city management acknowledges that the multiplicity of interests at the smaller-than-city scale. BIDs serve an important function, yet have narrow interests and little accountability, thus reducing the extent to which they should exert decision-making power in city spaces. Instead, city governments should mediate BID power within a thoughtful, inclusive, and representative local governance framework that balances the roles of other local bodies, like resident associations, but also public involvement through mechanisms such as charrettes and opportunities for deliberative participation.

The acknowledgement of BIDs as just one entity in local decision-making is evident in some local planning and infrastructure decisions in Toronto, where BIDs, resident associations,

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<sup>42</sup> Richard Schragger, "The Limits of Localism," Georgetown Public Law Research Paper No. 298003 (2001).

and the public are consulted as representative community voices.<sup>43</sup> The city consults each of these associations and residents with the understanding that no single one of these stakeholders can speak on behalf of the neighbourhood. When it comes to local resource management by BIDs, however, there is no corresponding acknowledgement that multiple entities should be reflected in the local governance model. While this chapter does not have the space to delve into the breadth of possibilities, there are lessons to draw from other jurisdictions. For instance, some cities have mandated that residents serve on BID boards or hold open meetings, thus bringing community voices to bear in BID deliberations.<sup>44</sup> Other jurisdictions have provided for ‘horizontal’ governance in the management of public space, where multiple actors including BIDs have discrete roles and similar levels of power, as well of opportunities to come together and collaborate.<sup>45</sup> At the end of the day, BIDs are legislated creatures, with governments holding the cards in the power and authority – and corresponding obligations – held by these smaller-than-city entities, and in the way that their roles are legally defined alongside other local stakeholders.

The urban commons recognizes the polycentric set of interests that legitimize a shared authority to govern, regardless of formal property rights. Put another way, the urban commons speaks to the relationships at the core of a governance model. Contextualizing BIDs as one of many actors in local governance offers an opportunity to reframe decision-making that avoids narrow interests.

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<sup>43</sup> Alexandra Flynn, “The Role of Business Improvement Areas and Neighbourhood Associations in the City of Toronto,” *Institute of Municipal Finance and Governance* 45 (2019).

<sup>44</sup> Mark Steel, & M. Symes, “The Privatisation of Public Space? The American Experience of Business Improvement Districts and their Relationship to Local Governance,” *Local Government Studies*, 31:3 (2005): 321-334, 326.

<sup>45</sup> Claudio de Magalhães & Sonia Freire Trigo, “‘Clubification’ of urban public spaces? The withdrawal or the re-definition of the role of local government in the management of public spaces,” *Journal of Urban Design*, 22:6 (2017): 738-756, 754.

## Conclusion

The urban commons is less preoccupied with property rights and who has what interest in the standard ‘bundle’ language that property law asserts, and instead theorizes the city as a territorial space in which citizens claim to have a role or stake, regardless of ownership, with law playing an enabling role. The urban commons is a helpful framework in considering local actors that claim to have rights to govern or be heard within an urban context, and how such claims are mediated and by whom. The strength of the urban commons framework is the room left for polycentric, bottom-up decision-making outside of formal governments.

BIDs have a long history as helpful partners in urban management through their financing and coordinating of public realm improvements, as well as the provision other local services, especially in run-down neighbourhoods. But, BIDs are not always transparent or inclusive, with countless examples of having narrow interests corresponding to their members’ prosperity, rather than those of the wider public, especially the most marginalized.

This paper argues against framing BIDs as a singular body capable of managing a common pool resource within the city. Instead, local spaces within the city include residents, businesses, and other key stakeholders, of which BIDs may be one. This conceptualization allows for a broader notion of local governance that incorporates multiple voices, including but not solely BIDs, and centers smaller-than-city spaces as the site of urban commons analysis. Such spaces can then be analysed with attention to accountability, representation, and relationships to city governments, for a richer understanding of how common pool resources are claimed, managed, and mediated, and by whom.