

DRAFT APRIL 30, 1997

## **THE RISE OF SUBLOCAL STRUCTURES IN URBAN GOVERNANCE**

Richard Briffault  
Columbia Law School

### **I. Introduction**

Two hallmarks of the American local government system are multiplicity and overlap. The average metropolitan area is divided into more than one hundred local governments, and in more populous areas there are hundreds of localities.<sup>1</sup> These local governments are frequently piled up on each other in multiple layers. Nearly all states are divided into counties; some states subdivide their counties into towns or townships. More thickly populated areas are usually incorporated into municipalities -- with a municipality typically falling within and subject to the jurisdiction of an overlying county. Overlapping most municipalities -- and sometimes running across more than one county -- are numerous special districts, which provide services or infrastructure, may wield revenue-raising and regulatory powers, and often have their own independent governing boards.

Within this system, municipalities have been "atomic" units. Municipal borders do not overlap, and there are no other general purpose governments within a municipality. A special district's borders are more likely to span a number of municipalities and unincorporated areas or to be coterminous with a particular municipality rather than to divide a municipality. In other words, although the political structure of metropolitan areas is highly fragmented, the large cities within them generally are not. Indeed, critics have long claimed that big cities are too large and

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<sup>1</sup> Donald N. Rothblatt, *Summary and Conclusions*, in METROPOLITAN GOVERNANCE: AMERICAN/CANADIAN INTERGOVERNMENTAL PERSPECTIVES 433, 452 (Donald N. Rothblatt & Andrew Sancton eds., 1993).

too centralized to provide services efficiently, to respond to their residents' concerns or to provide for effective community participation in governance. Some have called for the break up of major cities or the decentralization of service or regulatory responsibilities to the neighborhood level. However, relatively little formal decentralization has occurred in large cities and there have been few, if any, big city break-ups or secessions.

Nevertheless, over the last quarter-century new forms of submunicipal political institutions have been created, especially in larger cities, which point to the emergence of a new, sublocal level of urban governance. These structures include enterprise zones, tax increment finance districts, special zoning districts and business improvement districts. They have arisen in a variety of contexts -- economic development, land use regulation, service delivery -- although economic development appears to be a dominant concern. None of these structures is a true government. But in providing for territorially-based differences in taxation, services, or regulation within a city, each represents a departure from the traditionally centralized city. Some of these structures offer a degree of sublocal decision-making as well. Each of these structures is significantly different from the others; arguably each ought to be treated as a separate development, unrelated to the others. Yet, there are enough commonalities among them that it is useful to consider them together as different facets of one phenomenon -- the rise of sublocal governance.

Part II of this paper briefly describes each of these sublocal structures. Part III draws the structures together in making the case for treating them as a new type of governance. Part IV considers some implications of this new form of governance -- for the recapitulation of metropolitan area fragmentation *within* cities, the privatization of the urban public sector, and the further development of neighborhood governance.

## II. Four Sublocal Governance Structures

### A. Enterprise Zones

Based on a proposal of Peter Hall, a British geographer and urban planning expert, which was embraced by Sir Geoffrey Howe, economic spokesman for the British Conservative Party (then in opposition), enterprise zones became a central component of Republican Party urban policy in the 1980s.<sup>2</sup> The original theory of the enterprise zone was that the radical deregulation of business activity within a territorially defined economically depressed area of a city would stimulate the development of enterprise within the area. With the shackles of oppressive taxation and labor, environmental and land use regulation lifted, private enterprise would be encouraged and blighted inner city areas would flourish without further government intervention. The Reagan and Bush Administrations repeatedly pressed for federal enterprise zone legislation, but Congress resisted as long as the Republicans held the White House.<sup>3</sup> Although blocked at the national level, however, enterprise zone laws were enacted by roughly three-quarters of the states in the 1980s, leading to the creation of at least five hundred active zones.<sup>4</sup>

The state-authorized enterprise zones differ significantly from each other, as well as from the classic enterprise zone concept. Enterprise zones are rarely the “self-executing” free ports

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<sup>2</sup> On the intellectual origins of the enterprise zone, see Stuart M. Butler, *ENTERPRISE ZONES: GREENLINING THE INNER CITIES* (Universe Books 1981); Stuart M. Butler, *The Conceptual Evolution of Enterprise Zones*, in *ENTERPRISE ZONES: NEW DIRECTIONS IN ECONOMIC DEVELOPMENT* 27-32 (Roy E. Green, ed., 1991).

<sup>3</sup> Under the Clinton Administration, Congress enacted a significantly modified version of the enterprise zones, renaming them “empowerment zones” as if to underscore their departure from the original enterprise zone concept.

<sup>4</sup> See Enid Beaumont, *Enterprise Zones and Federalism* in *ENTERPRISE ZONES* at 41.

envisioned in the original Hall and Howe proposals.<sup>5</sup> Most enterprise zones make extensive use of tax abatements, reductions, and credits,<sup>6</sup> but regulatory relief is now a minimal component of enterprise zone programs.<sup>7</sup> Instead, many enterprise zones provide for a “more active or interventionist governmental presence” in depressed areas including the provision of loans and venture capital, land assembly to facilitate new uses of land, and public investment in physical infrastructure.<sup>8</sup> Many enterprise zones have their own administrative or management structures. These are generally public-private collaborations that provide technical assistance to zone businesses, help firms work with public and private sources of capital, and engage in marketing and promotion activities on behalf of firms in the zone and the zone as a whole. According to studies of enterprise zones, those with more interventionist management structures, that provide more services to firms, and that engage in more zone marketing and promotion have done better in promoting economic development than those that rely primarily on targeted tax breaks and

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<sup>5</sup> Richard C. Elling & Ann Workman Sheldon, *Determinants of Enterprise Zone Success: A Four State Perspective*, in ENTERPRISE ZONES, *supra*, at 140.

<sup>6</sup> See, e.g., Peter Eisinger, *THE RISE OF THE ENTREPRENEURIAL STATE: STATE AND LOCAL ECONOMIC DEVELOPMENT POLICY IN THE UNITED STATES 188-99* (1988).

<sup>7</sup> Rodney A. Erickson & Susan W. Friedman, *Comparative Dimensions of State Enterprise Zone Policies*, in ENTERPRISE ZONES, *supra*, at 164 (“regulatory relief appears to be used rarely”); Franklin J. James, *The Evaluation of Enterprise Zone Programs*, in ENTERPRISE ZONES, *supra*, at 232 (“the concept of extensive deregulation as a development incentive is defunct”). According to Erickson and Friedman, “the regulatory relief that is offered tends to be procedural rather than substantive, and is usually in the form of one-stop permits, fact-tracking, and fee reductions. When there has been substantive relief, it has usually been limited to assistance with zoning changes, variances that may well have been granted without an official policy of regulatory relief.” *Id.* at 164.

<sup>8</sup> See Elling & Sheldon in ENTERPRISE ZONES, *supra*, at 136-37.

limited regulatory relief.<sup>9</sup> Indeed, one study reported that “the most important role of an enterprise zone program may be as a tool for marketing otherwise relatively undesirable areas to potential employers or as a means of organizing development activities in the community.”<sup>10</sup>

Enterprise zones have received mixed reviews in terms of their ability actually to stimulate economic development, but analysts tend to agree that their use of geographic targeting within cities represents a distinctive break from prior economic development programs. Although enterprise zones in practice have “much in common” with other approaches to economic development, “they are unique in one major respect: [they are] policies . . . limited to particular geographic areas.”<sup>11</sup> Enterprise zone programs are “highly unusual” in concentrating their resources in small geographic areas -- usually, although not exclusively, within cities -- and in making tax and other incentives “available to all eligible establishments within a zone as a matter of right . . . irrespective of need.”<sup>12</sup> From an urban governance perspective, enterprise zones are significant in using discrete sublocal territorial units as a focus for capital and technical assistance; departures from locality-wide levels of taxation and, to a lesser degree, regulation; and the operations of a mixed public-private administrative structure that works with area businesses.

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<sup>9</sup> See, e.g., Elling & Sheldon, *supra*, in ENTERPRISE ZONES at 143-44, 152; Erickson & Friedman, *supra*, in ENTERPRISE ZONES at 174; James, *supra*, in ENTERPRISE ZONES at 238.

<sup>10</sup> Patrick G. Grasso & Scott B. Crosse, *Enterprise Zones: Maryland Case Study*, in ENTERPRISE ZONES, *supra*, at 134. See also International Downtown Ass’n, SUCCESSFUL DOWNTOWN DEVELOPMENT, DESIGN & MANAGEMENT PROGRAMS: A COMPENDIUM OF FUNDING TOOLS & TECHNIQUES 52 (1991).

<sup>11</sup> Susan B. Hansen, *Comparing Enterprise Zones to Other Economic Development Techniques* in ENTERPRISE ZONES, *supra*, at 7.

<sup>12</sup> James, *supra*, in ENTERPRISE ZONES, at 226.

## B. Tax Increment Finance Districts

Tax increment financing (TIF) emerged in the 1970s, following cutbacks in federal urban aid programs, as a major state and local tool for financing urban development. Under TIF, a geographically defined area of a city is defined as blighted or distressed. The assessed property valuation of the area is frozen for a specified period of time, typically ranging from ten to twenty-five years. Property tax revenues generated by the frozen assessed valuation level will continue to flow into local government coffers; any additional revenues resulting from growth in the area's assessed valuation will be reserved to pay for economic development programs for the area. The TIF authority -- either the municipality itself or a local economic development entity -- will issue bonds to finance the acquisition and clearance of land within the district, the construction of public facilities and parking lots, or the installation of utilities, street repairs and landscaping to make the area more attractive to private investment. The assumption is that this public spending will bring new private investment in the district which will drive up property values and generate the additional tax revenues which is reserved to pay the principal and interest on the bonds that financed the district improvements. In other words, district improvements are financed by the *incremental* property tax revenue resulting from the district improvements. TIF is frequently tied to the plans of particular developers or firms contemplating investments in the district. The municipality or development authority will often work closely with particular private developers in formulating and implementing a plan for a particular TIF zone.<sup>13</sup>

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<sup>13</sup> See, e.g., James R. Paetsch & Roger K. Dahlstrom, *Tax Increment Financing: What It Is and How It Works*, in FINANCING ECONOMIC DEVELOPMENT: AN INSTITUTIONAL RESPONSE (Richard D. Bingham, Edward W. Hill & Sammis B. White, eds., 1990) at 82-98; Eisinger, *supra*, at 182-88.

Seen as “development that pays for itself,”<sup>14</sup> tax increment financing is widely popular and is authorized by approximately three-quarters of the states.<sup>15</sup> At the end of the 1980s there were more than 1000 TIF districts,<sup>16</sup> although most of them are concentrated in California and in the upper Middle West states of Minnesota, Michigan and Wisconsin.<sup>17</sup> Minneapolis has been a particularly heavy user of the TIF technique; of eighty-five downtown redevelopment projects undertaken between 1980 and 1991, thirty of them benefited from tax increment financing. Between 1986 and 1990, 43% of the city’s funds for economic development came from tax increment financing and in 1990, TIF districts accounted for 13% of the tax base.<sup>18</sup>

Although state laws generally limit the availability of tax increment financing to “blighted” or otherwise economically distressed neighborhoods, in practice many TIF districts are in downtown business areas. TIF programs focus less on redeveloping the slums and more on providing cities with an additional tool for competing with other cities for new investment. This development was, to some extent, inevitable. Unlike enterprise zones, which provide for outside

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<sup>14</sup> Paetsch & Dahlstrom, *supra*, at 82.

<sup>15</sup> SUCCESSFUL DOWNTOWN DEVELOPMENT, *supra*, at 45.

<sup>16</sup> Paetsch & Dahlstrom, *supra*, at 86.

<sup>17</sup> *Id.* See also John R. Logan & Harvey L. Molotch, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 174-75 (U. Cal. Press. 1987) (discussing TIF in California); Alex Schwartz, *Rebuilding Downtown: A Case Study of Minneapolis* in URBAN REVITALIZATION: POLICIES AND PROGRAMS (Fritz W. Wagner, Timothy E. Joder & Anthony J. Mumphrey, Jr., eds, 1995) 189-95 (discussing role of TIF in Minneapolis downtown revitalization projects); Richard Child Hill, *Crisis in the Motor City: The Politics of Economic Development in Detroit*, in RESTRUCTURING THE CITY: THE POLITICAL ECONOMY OF URBAN REDEVELOPMENT (Susan S. Fainstein, Norman I. Fainstein, Richard Child Hill, Dennis R. Judd & Michael Peter Smith, eds., 1983) 110 (discussing role of TIF in Detroit downtown redevelopment).

<sup>18</sup> Schwartz, *supra*, at 189-94.

assistance to a sublocal area via tax breaks, direct investment, or technical assistance, TIF relies on new revenues generated *within* a district, and truly blighted areas are less likely to generate those revenues. Moreover, because of TIF's reliance on bonded debt to provide the initial funding for district improvements, localities have an incentive to use TIF for the redevelopment of just those areas most likely to draw private investment thereby minimizing the risk that the TIF district will be unable to cover its debt. Development advisers note that TIF "is particularly suited to large, high impact projects because these can be expected to bring in sufficient profits. . . . Income-generating projects such as shopping centers, hotels, industrial parks and mixed use projects have been the most popular facilities financed with TIF."<sup>19</sup>

As a geographically targeted economic development device, TIF resembles the enterprise zone. TIF gives significance to the sublocal district in providing that the additional tax revenues generated by new development are encapsulated in the district to pay for the public costs of stimulating development. Property within a TIF district is assessed in the same manner and at the same rate as other property in the city -- but the incremental tax revenues produced by new development are effectively returned to the district to finance the cost of the district's infrastructure. For the purposes of financing new development, the TIF district thus functions as a self-contained sublocal structure embedded within the broader city.

### C. Special Zoning Districts

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<sup>19</sup> SUCCESSFUL DOWNTOWN DEVELOPMENT, *supra*, at 45. See also Paetsch & Dahlstrom, *supra*, at 96 (TIF often used to draw developers and investors to "desirable parcels in growing areas"); Arthur C. Nelson & Jeffrey H. Milgroom, *Regional Growth Management and Central-City Vitality: Comparing Development Patterns in Atlanta, Georgia, and Portland, Oregon* in URBAN REVITALIZATION, *supra*, at 27-28 (TIF used to finance downtown waterfront festival marketplace and convention center in Portland, Oregon).



Special zoning districts are amendments to city zoning ordinances that provide detailed land use rules "tailor-made to some particular set of circumstances in a particular area."<sup>20</sup> Although all zoning involves dividing a city into different territorial areas, defined by the land uses permitted within the zones, and imposing different land use rules within different types of zones, zoning ordinances have traditionally relied on a few broad categories of zones based on the uses -- residential, commercial, industrial or mixed -- permitted within a zone. The rules applicable to two zones of the same character would be the same even though the zones are located in different neighborhoods. Moreover, although citywide in scope, zoning has traditionally focused on relatively limited aspects of land use, such as building height and mass, and type of use, within broad categories, permitted in the zone.

Special district zoning is both more detailed and more specific to particular neighborhoods. As the New York Court of Appeals noted, "special district zoning . . . represents a significant departure from [the] traditional Euclidian zoning concept. The districts created are not traditional zoning districts, narrowly limited to particular uses, but broad-based plans intended to preserve and enhance troubled areas . . . because of their singular characteristics."<sup>21</sup>

Special zoning districts are particularly common in New York City, which created thirty-seven such districts in the 1970s and 1980s.<sup>22</sup> Typically, these districts were intended to steer or limit development or to control the effects of growing market demand for land within a particular

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<sup>20</sup>Richard F. Babcock & Wendy U. Larsen, SPECIAL DISTRICTS: THE ULTIMATE IN NEIGHBORHOOD ZONING 3 (Lincoln Inst. of Land Policy 1990).

<sup>21</sup> Asian Americans for Equality v Koch, 531 N.Y.S.2d 782, 786 (1988).

<sup>22</sup> Babcock & Larsen, *supra*, at 5.

neighborhood on existing land uses and residents in the immediate area. Thus, the Midtown district provides special incentives to developers to protect theaters in the Broadway area.<sup>23</sup> The Special Clinton District protects the working poor residents of an area expected to undergo new development by limiting building heights, imposing tight restrictions on building demolitions, providing special protections against the harassment of tenants, addressing the number of rooms to be built in apartments in new and rehabilitated buildings, and protecting existing public parking lots in a carefully drawn district on Manhattan's West Side.<sup>24</sup> The Special Fifth Avenue District sought to "preserve what planners perceived as the traditional ambience of the Avenue" by using restrictions on signs and banners and precisely defined limits on the uses of the ground floors of district buildings to stem the influx of airline offices and branch bank offices. These were seen as threatening the district's luxury shopping facilities.<sup>25</sup> The Special Garment Center District restricts the conversion of manufacturing space to office use, reflecting the belief that such a rule would maintain the economic viability of apparel production in the district.<sup>26</sup> Other districts have focused on the protection of distinctive neighborhoods -- albeit not areas that could qualify for historic or landmark status. The Special Grand Concourse District, thus, imposes special design controls, including detailed prescriptions of sign colors, canopy materials, and the size of window graphics, in order to enhance the appearance of the Bronx's principal boulevard.<sup>27</sup>

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<sup>23</sup> Id. at 25-38.

<sup>24</sup> Id. at 46-47, 50-52.

<sup>25</sup> Id. at 57-61.

<sup>26</sup> Id. at 87-96.

<sup>27</sup> Id. at 107-10.

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Special zoning districts in San Francisco and Chicago have similarly sought to control development and buffer its consequences for residents or businesses in areas subject to market forces. San Francisco's fourteen special zoning districts are primarily neighborhood commercial streets characterized by three-story buildings, with small-scale neighborhood retail uses on the ground floor and residential units on the second and third floors. As development in the 1970s and 1980s in neighborhoods like Castro, North Beach and Sacramento Street brought fast-food restaurants and economic pressures to convert the upper floors to commercial or office use, special districts were created with special controls on residential conversions and specific parking, traffic, and anti-litter rules intended to limit the influx of fast-food establishments.<sup>28</sup> In Chicago, a special manufacturing district restricts new residential and retail development in the district to assure industrial firms enough space to expand their facilities as well to limit the threat to manufacturing created when new residents, complaining about the "noise, bad odors, or any of the other conditions associated with industry" secure the stricter enforcement of local public health codes that can be burdensome to industry.<sup>29</sup>

By tailoring land use regulation to the conditions specific to particular neighborhoods, special district zoning departs significantly from the traditional zoning tenets of citywide uniformity and regulation according to a comprehensive plan.<sup>30</sup> Special district zoning, in effect, creates mini-, district-specific, zoning ordinances for particular neighborhoods. Moreover, although special zoning districts are adopted at the city level and do not entail neighborhood-level

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<sup>28</sup> Id. at 113-21.

<sup>29</sup> Id. at 129.

<sup>30</sup> Id. at 3.

political or administrative structures to maintain or revise the district-specific codes, in practice neighborhood-level associations of residents or businesses play an important role in the initial decision to enact a special zoning district. Similarly, neighborhood groups, by their lobbying and their complaints to city agencies, taking a leading role in enforcing district rules.<sup>31</sup>

#### D. Business Improvement Districts

Business improvement districts (BIDs) represent probably the furthest development of sublocal governance. A BID is a territorially-defined district within a city which is created by that city to finance and to provide services within the district. BIDs are generally commercial districts, although most states permit the inclusion of residential property so long as the district is primarily commercial. The term "BID" also commonly refers to the governance structure created by the city to make decisions for the district with respect to services provided and finance charges imposed and to manage the district's operations.

The first BIDs were created in the 1970s, but the device really caught on and began to spread rapidly in the late 1980s and early 1990s, when local governments subject to tight fiscal constraints and businesses frustrated by the declining quality of local public services found in the BID device a means of improving services for commercial districts without increasing general taxes. Publicity about the most successful early BIDs -- such as New York City's Bryant Park and Philadelphia's Center City -- sparked emulation around the country. Most states have adopted BID enabling legislation, and there are now about a thousand BIDs in the United States, with new BIDs created each month. Many big cities have multiple BIDs -- New York City, for example, has 39, and San Diego has 14.

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<sup>31</sup> Id. at 121, 138-42.

There are considerable interstate and interlocal differences among BIDs, but most BIDs combine district-level financing of district-level services with some form of district-level decision-making. Property owners or businesses within a BID are subject to some forms of taxation, most commonly a property assessment, which may be based on assessed valuation, front footage, square footage, or some combination of methods. Some jurisdictions, however, rely on an addition to the business license tax. Typically, the supplemental tax or assessment is formally adopted and collected by the city itself, but the level of assessment generally follows the recommendation of the district property owners or businesses subject to tax. These revenues are then used exclusively to fund services and improvements within the district and to pay the administrative costs of managing BID operations. Assessments tend to run between two and five percent of existing property taxes within districts.<sup>32</sup> Most BIDs are quite small, with budgets well under \$100,000, but some BIDs, such as New York's Grand Central Partnership are quite large, and collect nearly \$10 million in assessments.

BIDs provide a wide variety of services; indeed, the proliferation of BIDs appears to have been accompanied by the diversification of BID activities. Virtually all BIDs provide two basic services -- sanitation (including garbage and litter pickup, street and sidewalk sweeping, and snow and graffiti removal) and public security.<sup>33</sup> The latter typically involves the hiring of private police officers -- such as the Philadelphia Center City BID's euphemistically named "community

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<sup>32</sup> Janet Rothenberg Pack, *BIDs, DIDs, SIDs, SADs: Private Governments in Urban America* THE BROOKINGS REVIEW (Fall 1992) at 20.

<sup>33</sup>With respect to these classic public services, the BID may first establish the baseline level of city services prior to the BID's formation and then enter into an agreement with the municipal government in which the city pledges to maintain that baseline and not use the BID to cutback city services in the district further.

service representatives<sup>34</sup> -- although some BIDs use their funds to finance their city's deployment of additional city police officers in their districts<sup>35</sup> or to furnish the city police with equipment, like drug surveillance cameras or bikes -- or in Philadelphia's case, a police precinct substation for the Center City area -- that the city cannot afford.<sup>36</sup> Beyond crime and grime, many BIDs also finance supplemental street and sidewalk maintenance. Many also operate parking facilities or maintain public amenities. Although BIDs are primarily engaged in the provision of services, some have engaged in ambitious capital programs, issuing bonds backed by BID assessments, to finance major streetscape improvements -- fountains, street lighting, benches and other street furniture, trees and plants, street and sidewalk repaving, landscaping and the like.

Many BIDs programs go beyond these basic traditional public services. BIDs are increasingly engaging in economic development activity intended to attract and retain businesses in the district. This can include sponsoring festivals and other special events, putting up Christmas lights, publishing direct mail advertising and informational brochures to draw tourists and shoppers, and providing management assistance and small business-type programs to firms in the district. These resemble the activities of the more "interventionist" enterprise zones, although the model BID managers are more likely to invoke is the suburban shopping mall.<sup>37</sup>

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<sup>34</sup>Lawrence O. Houstoun, Jr., *Betting on BIDs*, URBAN LAND (June 1994) at 15.

<sup>35</sup> International Downtown Association, BUSINESS IMPROVEMENT DISTRICTS 43 (n.d.) (Denver BID).

<sup>36</sup> Houstoun, *supra*, at 17.

<sup>37</sup> Richard Bradley, *Downtown Renewal: The Role of Business Improvement Districts*, PUBLIC MANAGEMENT (Feb. 1995), reprinted in BUSINESS IMPROVEMENT DISTRICTS, *supra*, at 14.

BID managers often engage in strategic planning for their districts. To that end, many BIDs now engage in quasi-regulatory activities, as they seek to implement uniform street lighting and signage and to impose codes that would guide private building facades and signs. Their goal is frequently the creation of a distinct, and marketable, district image. Some have sought to influence building owners to lease space to particular types of firms so that the mix of businesses in the district is consistent with the BID's strategic plan for the area. As part of improving a district's image, some BIDs lobby city hall for more vigorous enforcement -- often against district businesses -- of city sanitary and design codes, and of rules against street vendors, or seek adoption of special anti-vendor ordinances for their districts.<sup>38</sup>

Some BIDs also address social problems. Some are authorized to provide day care. Others have programs to deal with homelessness, albeit in very different ways. New York's Times Square BID provides services to the homeless and works with the Partnership for the Homeless to assist homeless people who are ready to get off the streets.<sup>39</sup> Other BIDs, however, are primarily interested in rousting the homeless from doorways and encouraging panhandlers to move along.<sup>40</sup> (Arguably, programs to move the homeless along are better seen as part of the BID economic development mission as such programs are intended to increase the attractiveness of districts to shoppers and tourists.)

Like special zoning districts, BIDs result from a combination of sublocal and citywide

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<sup>38</sup> Fanelli v. City of Trenton, 641 A.2d 541 (N.J. 1994).

<sup>39</sup> New York City Department of Business Services, NEW YORK CITY BUSINESS IMPROVEMENT DISTRICTS 59 (August 1996).

<sup>40</sup> Heather MacDonald, *BIDs Really Work*, THE CITY JOURNAL (Spring 1996) at 40.

action. BIDs are formally created by city governments, which retain oversight authority with respect to BID service programs, budgets, and assessments. But typically the impetus for BID formation comes from district businesses, especially those organized in a neighborhood chamber of commerce or a merchants' association. These business groups take it upon themselves to define the boundaries of the district, develop the BID program, and formulate its assessment structure. Some states provide that a city may create a BID only upon petition of the owners of a specified percentage of the property in the proposed district. More commonly, a property owners' petition is not required but a protest from the owners of a specified percentage of property in the proposed district can block the ordinance proposing to create the BID.<sup>41</sup>

Most states provide for some sublocal governance structure for the BID. Property owners in the district may be authorized to elect a board of directors which determines the budget, the services and improvements the BID will offer, and the level of assessments on BID members, subject to the restrictions of state enabling legislation and nominal oversight by the city government. Often, the initial board of directors will grow out of the property owners' or merchants' organization that led the drive to create the BID, and subsequent directors will be nominated by the initial board. The BID board of directors may, in turn, contract with a private, not-for-profit corporation for the day-to-day management of the BID. In other states, the city government itself is the governing body for the BID, but the city creates an advisory body composed of property owners and commercial tenants within the BID. The sublocally-based advisory body then takes the leading role in developing and annually revising the program,

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<sup>41</sup> State laws requiring property owner petitions or permitting property owner protests vary in terms of whether the requisite percentage to trigger -- or block -- city action is in terms of land area, number of parcels, assessed valuation, or prospective payment of BID assessments.



budget, and assessment formula for the BID. Even where there is no distinct body responsible for BID policy-making, many cities contract with district management corporations to administer the BID and make recommendations to the city concerning BID operations.

The BID, thus, combines elements of the enterprise zone, the TIF district, and the special zoning district. It resembles the enterprise zone and the TIF district in departing from citywide levels of taxation. Like special zoning districts, BIDs may seek distinctive sublocal design rules for their districts. The BID employs the TIF device of encapsulating some portion of district-generated revenues for the district. But unlike an enterprise zone, which cuts taxes within a zone, or a TIF district, which simply channels the additional revenues created by growth back to the district, the BID relies on supplemental assessments within the district to finance the BID's services. Like the more interventionist enterprise zones, most BIDs have some form of sublocal public-private governance structure, although the decisions of BID boards are either nominally advisory or are subject to city oversight.

### III. A New Paradigm?

Do these four developments add up to a new mode of sublocal governance? Arguably not. There are obvious and considerable differences among the four structures. Some, like the TIF district and the enterprise zone, are intended to promote development, while the special zoning district is most often used to limit development or to protect area residents or businesses from market-driven changes. The enterprise zone cuts taxes and, more modestly, regulation within its borders. The TIF district leaves the *level* of taxation intact while channeling the revenues produced by growth back to the district. The special zoning district increases district-specific

regulation. In contrast, the BID increases taxes, and it sometimes results in an increase in regulation as well.

Moreover, many of these structures have less to do with governance than with targeted assistance to particular firms or interests or the manipulation of legal categories. Many TIF districts and some improvement districts are created to provide tax-exempt financing for developers.<sup>42</sup> Some BIDs have been created to assure urban shopping mall developers that there will be a higher level of public services for their projects and, thus, reduce the risk for their investment.<sup>43</sup> Some special zoning districts are drawn so narrowly and are so focused on specific proposed developments as to be tantamount to "spot zoning."<sup>44</sup> Others are created with little more than the political purpose of according an ethnic group formal city recognition.<sup>45</sup> TIF districts are popular, in part, because they enable municipalities to shift part of the cost of financing development to other local governments, since much of the property tax revenue forgone by freezing TIF district assessed valuation would have been paid to the overlapping counties or school, library, or other special districts with jurisdiction over the TIF district.<sup>46</sup> BIDs

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<sup>42</sup> See, e.g., Paetsch & Dahlstrom, *supra*, at 96 (TIF district created to obtain the funds needed to provide the infrastructure for new headquarters for Sears, Roebuck); *Spradlin v City of Fulton*, 924 S.W.2d 259 (Mo. 1996) (district created, pursuant to Missouri's Neighborhood Improvement Act, to provide tax exempt financing for a golf course).

<sup>43</sup> Edward T. Rogowsky & Ronald Berkman, *New York's Outer Borough Development Strategy: Case Studies in Urban Revitalization* in URBAN REVITALIZATION, *supra*, at 85-90.

<sup>44</sup> Babcock & Larsen, *supra*, at 104.

<sup>45</sup> See *id.* at 65-70 (Special Little Italy District).

<sup>46</sup> See, e.g., Eisinger, *supra*, at 183 (noting Wisconsin study that found that 70% of the eligible costs of development in TIF districts were, in effect, borne by nonmunicipal governments); Paetsch & Dahlstrom, *supra*, at 96.

may be created less to facilitate distinctive sublocal governance than to evade state constitutional limitations on local tax increases.<sup>47</sup>

Nevertheless, a number of common themes link these developments and together they suggest the emergence of a new model of sublocal governance for larger cities. First, all four developments mark a departure from the traditional legal and political norm of uniformity of municipal action within a city. Most state constitutions require that rates of taxation and methods of assessment, particularly for property taxes, be uniform within a jurisdiction unless the constitution specifically authorizes an exception.<sup>48</sup> Enterprise zones and BIDs obviously break with the norm of uniformity of taxation.<sup>49</sup> TIF's variation from uniformity is more subtle; TIF district property is taxed at the same rate as property in the rest of the city but since TIF district incremental revenues are channeled back to the district, the district is contributing less than its

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<sup>47</sup> Cf. *Evans v. City of San Jose*, 3 Cal. App. 4th 728 (Cal. Ct. App. 1992) (BID assessment not a "special tax" within the meaning of California's Proposition 13 and thus not subject to the requirement of approval by two-thirds of local voters). The exemption of BID assessments from constitutional restrictions may be curtailed by California's recent initiative measure, Proposition 218, which will require voter approval for many forms of property-related fees and charges, as of July 1, 1997.

<sup>48</sup> See, e.g., Daniel R. Mandelker, Dawn Clark Netsch, Peter W. Salsich, Jr., Judith Welch Wegner, *STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM* 267-68 (4th ed. 1996).

<sup>49</sup> Because BID charges are "assessments" used to fund benefits to property rather than "taxes" that provide revenues for a local government's treasury, state courts have generally exempted them from uniformity requirements. See, e.g., *City of Seattle v. Rogers Clothing for Men, Inc.*, 787 P.2d 39 (Wash. 1990); *S.O.L. Club, Inc. v. City of Williamsport*, 443 A.2d 410 (Pa. Comm. Ct. 1982). I have not found any decisions that address the applicability of uniformity clauses to enterprise zones. But cf. Michael Alan Wolf, *Enterprise Zones Through the Legal Looking Glass* in *ENTERPRISE ZONES*, supra, at 66-67 (noting that some states omit property tax abatements, reductions, and exemptions from their enterprise zone programs because of state uniformity clauses, and that other states make tax breaks contingent on activity, like increasing employment or capital investment, in addition to location in a zone in order to accommodate uniformity clause concerns).

proportionate share to the municipality and other overlying local governments.<sup>50</sup> Most state zoning enabling acts require that localities zone “in accordance with a comprehensive plan,” but special district zoning effectively creates different zoning codes for different neighborhoods, and some BIDs also seek particular design and land use regulations for their districts.

Similarly, “the legal doctrine of equal service provision presumptively obligates the [city] government to offer the same level of service to all residents,”<sup>51</sup> but enterprise zones and BIDs target different neighborhoods for higher levels of government investment or supplemental services. The doctrine of equal service provision is not often judicially enforced, and in some cities some areas are no doubt better served than others. But this is usually attributable to bureaucratic decision rules rather than formal city policy. In general “municipal governments more often achieve a rough equivalence of service packages among their neighborhoods.”<sup>52</sup> Enterprise zones and, especially BIDs, however, constitute a formal city decision to offer more or better or special services to territorially defined areas.

Second, each of these initiatives tends to treat the sublocal zone or district as a distinctive actor with a formal legal-political identity rather than as an undifferentiated part of the city. Enterprise zones are focused on increasing economic activity in a particular area rather than in the city as a whole.

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<sup>50</sup> Because property in a TIF district is nominally subject to the same rates of taxation and assessment as property in the rest of the city, most state courts have rejected the argument that tax increment financing violates uniformity of taxation requirements. See *id.* at 290-95.

<sup>51</sup> Clayton P. Gillette, *Opting Out of Public Provision*, 73 DENVER U. L. REV. 1185, 1197 (1996).

<sup>52</sup> Robert L. Lineberry, *EQUALITY AND URBAN POLICY: THE DISTRIBUTION OF MUNICIPAL PUBLIC SERVICES* 181 (1977).

Special zoning districts extend formal recognition to informally established neighborhoods and reshape land use regulation in light of the particular circumstances and concerns of the neighborhoods so recognized. Even though the problems these districts are created to address may be common to many areas of the city, the special district's controls on building mass, store-fronts, parking, and changes in usage are specific to a defined neighborhood and its terms reflect the particular politics of particular sublocal areas. According to the principal study of these districts, they "foster community pride often at the expense of citywide solutions."<sup>53</sup>

TIF districts and BIDs encapsulate a portion of revenues generated within the district and reserve them for improvements in and services to the district. They function to a limited but real degree as distinctive taxing and spending enclaves within the larger city. Moreover, like special zoning districts, BIDs give formal recognition to a neighborhood by name. BIDs are required to frame a district-specific plan for services, improvements, and finances. BIDs are increasingly engaged in activities to emphasize the distinctiveness of the district and to promote shopping and tourism within their borders. This is likely to benefit the city as whole if the city contains just one BID -- typically in its downtown or central business district -- since the BID may enable the city to compete with other cities. But as larger cities have multiple BIDs, these BIDs may begin to compete with each other rather than serve the city in the intermunicipal wars.

Third, these developments often entail some form of sublocal involvement in decisions for the sublocal area. There may be neighborhood-level input in the formation or operation of the sublocal structure or in the enforcement of the specific sublocal regulations. Enterprise zones frequently have their own administrative mechanisms which include representatives of firms and

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<sup>53</sup> Babcock & Larsen, *supra*, at 146.

community groups within the zones. Special zoning districts are typically enacted on the initiative of, or after negotiation with, neighborhood business or residential or political organizations, and once in place the district-specific rules and regulations give “neighborhood advocates an incredible amount of potential power.”<sup>54</sup> BIDs grow out of district-level initiatives and often may be formally blocked by sublocal opposition. BID formation frequently entails the creation of a governing or advisory board composed of representatives of property owners or businesses within the district which takes the leading role in making decisions with respect to BID services, programs, and finances.

The formal authorization of a sublocal departure from citywide norms, the promotion of sublocal identity and sublocal distinctiveness, and the role for sublocal political action and, at times, formal sublocal administrative or political institutions, thus, tend to link up these diverse phenomena and to support the case for treating them as governance structures. These zones and districts do very different things and operate in different ways but they all tend to make sublocal areas both objects and subjects of local government law and to emphasize the sublocal area as a unit of governance.

Even the close connection of many of these structures with relatively narrow special interests, such as developers or local merchants, does little to undercut the case for assimilating these sublocal entities to local governments generally. Developers have long played a pivotal role in stimulating the formation of special districts. These districts can provide tax-exempt financing to cover the costs of extending public infrastructure to private developments and, thus, increase

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<sup>54</sup> Id. at 145.

their marketability.<sup>55</sup> The genesis of TIF districts is, thus, not all that different from many infrastructure districts generally. Similarly, the role of special neighborhood interests in the formation of special zoning districts or business improvement districts has parallels in the history of municipalities, which frequently were created to secure to their residents the power to regulate land use and to control revenues generated by property within the local area.<sup>56</sup>

To be sure, none of these structures vests broad governmental powers at the sublocal level. Even the most potent device -- the BID -- has relatively limited authority and is subject to substantial municipal oversight. However, I am not claiming that these zones and districts constitute full-fledged governments; instead I am suggesting that these four structures may herald the emergence of the sublocal level as a new focus of governance, especially in larger cities.

#### IV. Implications

##### A. Metropolitanization *Within* Large Cities

Growing out of the seminal work of Charles M. Tiebout,<sup>57</sup> the dominant model of metropolitan areas builds on the small size and large number of local governments, and the consequent ease with which residents can move among them.<sup>58</sup> In the "metropolitan area market

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<sup>55</sup> See Nancy Burns, *THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS* 26-27 (1994).

<sup>56</sup> See Richard Briffault, *Our Localism: Part II -- Localism and Legal Theory*, 90 COLUM. L. REV. 346, 364-74 (1990).

<sup>57</sup> See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

<sup>58</sup> See, e.g., Briffault, *supra*, at 399-403.

place," local governments offer a variety of packages of taxes, services, and regulations.

"Consumer-voters" reveal their preferences for particular local government packages by voting with their feet, that is, by relocating from one locality to another or by remaining in their home locality. The multiple "packages" and the ease of movement among them -- resulting from the small size and large numbers of localities -- increases the likelihood that local government offerings will correspond to preferences of local residents, thus promoting allocative efficiency. Moreover, the model suggests that over time the populations of individual localities will become more homogeneous with respect to their "taste" for local government action since like-minded people will be drawn to localities whose "packages" they find appealing while local dissenters relocate to places where their tastes are more likely to be accommodated. This homogeneity, in turn, reduces local internal disagreement and increases the fit between residents' preferences and local government action. The efficiency benefits of easy exit are reinforced by the political consequences of the small size of localities, which facilitates the ability of residents to voice their preferences and to oversee local politicians.

The Tiebout model also has implications for interlocal relations. Tiebout's seminal article took a passive view of local governments themselves: Different localities simply offered different tax-service packages; the dynamic was supplied by the relocating residents. In practice, however, local governments, reflecting the interests of current residents, actively seek to shape relocation decisions. Since local services are paid for out of local taxes, residents have an incentive to build up the local tax base per capita in order to either lower local tax rates or increase the quantity or quality of services at a given level of taxation. They, thus, have an interest in attracting new residents -- such as wealthy people or certain kinds of businesses -- that contribute more in taxes



than they claim in services, and, conversely, in shunning poorer people who would cost more in services than they provide in new taxes. Local governments may pursue this agenda by offering incentives to businesses, adopting land use regulations that drive up local housing costs and thereby exclude the poor, and avoiding the kinds of redistributive spending that would presumably attract the poor and repel the affluent.

Given the small size and large number of localities, and the ease of exit, localities are in competition with each other for tax base. This competition may promote the more efficient provision of local services, but it may also affect the mix of services and taxation the locality undertakes. A community may lose its mobile affluent residents if its tax-service package is less attractive than that offered by its neighbors.<sup>59</sup>

Underpinning this model are three legal rules: local autonomy, local borders, and local dependence on local revenues. The "market place" exists only because localities have the legal authority to determine the types and levels of public services they offer and to raise the local revenues necessary to pay for them.<sup>60</sup> Without local autonomy, all localities would be offering the same package. Local autonomy also give localities the legal authority to adopt land use rules intended to make their communities attractive to desirable taxpayers and unavailable to the less desirable. Similarly, local borders become crucial since they determine the political constituency for determining what taxes and services the locality offers and the regulations it adopts, the tax

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<sup>59</sup> See, e.g., Therese J. McGuire, *Federal Aid to States and Localities and the Appropriate Competitive Framework*, in *COMPETITION AMONG STATES AND LOCAL GOVERNMENTS: EFFICIENCY AND EQUITY IN AMERICAN FEDERALISM* (Daphne A. Kenyon & John Kincaid eds 1991) at 154.

<sup>60</sup> See *id.* at 401.

base for financing the services, and the people who have a claim to locally provided services.<sup>61</sup> If local borders did not matter, there would be no way to match consumer-voters to taxes, services, and regulation at the local level. Finally, the model's claim that local government is a "market-type" solution for determining the level of expenditures on public goods necessarily assumes that local taxation will pay for local services. If local services were centrally financed, people would have no need to move to reveal their preferences. They could simply voice them to their local government. If additional services could be provided at no additional cost to the locality, the locality could simply add the services, and there would be no local losers. To be sure, the small size of local governments -- relative to the states or the federal government -- would still facilitate resident voice, but in the absence of local fiscal responsibility, local government would cease to be the "mechanism to force the consumer-voter to state his true preferences."<sup>62</sup>

The Tiebout model is, obviously, a highly idealized model. At the very least, the costs of relocation are greater than the model suggests and operate to damp down the overall "efficiency" of the system. Moreover, although the model speaks of local governments generally, it fits the metropolitan area as a whole, and the suburbs in particular, far better than it does big cities. First, larger cities are somewhat less subject to the model's competitive constraints. Large cities are, well, larger -- in population, area, and in employment opportunities -- than most localities. Because they take up more space, and because they are the locus of more jobs, the costs of leaving are greater. As a result, taxpayer exit may be slightly less of a constraint on local

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<sup>61</sup> See Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1128-32 (1996).

<sup>62</sup> Tiebout, *supra*, at 417.

government action. To be sure, the steady hemorrhaging of central city populations over the last half-century demonstrates that taxpayer exit importantly affects cities as well as suburbs. Nevertheless, the largest cities -- those with particularly large territorial or employment shares of their metropolitan areas -- have been somewhat less hard hit than smaller central cities by this emigration.<sup>63</sup>

Second, and more importantly, large cities are much less capable of acting like self-interested Tieboutian localities in the ongoing metropolitan interlocal competition for tax base. That is due in large measure to their greater heterogeneity. Big cities are the sites of greater class, income, and ethnic diversity than smaller localities. Consequently, there is likely to be far greater conflict over local tax, service, and regulatory policies within larger cities. There will be a much greater range in taxes paid and benefits received in the cities than in smaller communities. More people will wind up paying taxes for services they do not want or that they do not see themselves benefiting from, and many people who pay relatively little in local taxes may receive substantial local services.

With the tax-benefit nexus more attenuated, and ease of exit somewhat reduced, intralocal politics may loom larger in affecting city decisions than interlocal movement. In particular, there are far more poor people in the larger cities, creating both the need for redistributive programs that aid the local poor and the political constituencies, which may include municipal employees as well as service recipients, that support these programs.<sup>64</sup> Many older cities, in particular,

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<sup>63</sup> See David Rusk *CITIES WITHOUT SUBURBS* (1993).

<sup>64</sup> See, e.g., Mark Schneider, *THE COMPETITIVE CITY: THE POLITICAL ECONOMY OF SUBURBIA* 29-30 (1989).

undertook relatively ambitious spending programs in their heyday, and the beneficiaries of those programs are likely to resist cutbacks. Cities, thus, may be less capable politically of pursuing their Tieboutian economic local interest than suburbs. Many city residents will oppose the tax cuts and spending programs intended to woo business and the affluent. Unlike newer suburbs, older cities cannot zone out their own poor. Exclusionary zoning can prevent the influx of low-income people, but it cannot eject people who are already there or destroy housing that already exists.<sup>65</sup>

City heterogeneity may affect regulatory policies as well. Big cities have more renters and more settled neighborhoods that may be threatened by the rising housing costs that result from development. Due to restrictive zoning in other localities, poorer city residents may be less able or willing to relocate, and so may fight development programs promoted by the city government to expand the municipal tax base. City residents in particularly areas, of course, may welcome additional development in the hope that it will create jobs for them. Indeed, the argument is not so much that city residents will be anti-development is that there may be more diversity of opinion within the city concerning the relative costs and benefits of development -- reflecting the greater social, economic, and demographic differences among city residents -- and this may affect the ability of cities to pursue their economic development programs.

The development of sublocal governance institutions may represent an initial step towards the creation of a more "suburban" political structure within big cities. This may enable cities to act more like Tieboutian localities. It may also stimulate the emergence of Tieboutian localities within cities.

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<sup>65</sup> Of course, urban renewal and slum clearance programs are an effective means of destroying existing low-income housing and, indeed, entire poor neighborhoods, but poor people, excluded from the suburbs by exclusionary zoning, may relocate to other areas of a big city.

First, these new sublocal structures provide cities with a means of compromising struggles over the tax cuts and land use regulation needed to attract development. Rather than cut taxes citywide -- which would impair a municipality's ability to finance its programs and thus draw opposition from constituencies that benefit from large city budgets -- or not at all, enterprise zones permit a city to provide geographically limited tax breaks targeted on the most depressed areas. Tax increment financing functions as a kind of hidden development-oriented tax break since it works by diverting tax dollars to pay for infrastructure that benefits new development. BIDs enable cities to offer more or better services within commercial districts without raising the taxes that may scare off new investment since BID charges are technically assessments and subject to control by business-dominated boards rather than politicians. Special district zoning defuses conflicts over the costs and benefits of development by enabling cities to steer development away from those areas that are most resistant while encouraging new growth generally. Instead of having to resolve land use policy conflicts on a citywide basis, special district zoning facilitates neighborhood-specific decision-making.

Second, and more importantly, some of these new institutions point in the direction of the creation of smaller, more homogeneous, suburban-style local units within larger cities. Elements of the three legal prerequisites for the operations of the Tiebout model -- local autonomy, local borders, and local financing self-reliance -- are present to a lesser or greater degree in these sublocal structures. All these entities operate within sublocal borders and limit the availability of their programs to firms or residents within those borders. TIF and BIDs rely on sublocal self-financing, and BIDs accord the residents within their borders a measure of sublocal autonomy as well. BIDs particularly resemble Tieboutian localities in enabling residents -- or, rather, the

businesses and property owners within the district who control the BID -- to translate their preferences into taxing and spending decisions. A BID offers a tight nexus between benefit and service, minimizes the dangers of redistribution otherwise built into big city taxation, and permits those within its borders to make their own collective decisions with respect to their levels of taxation and services. Special district zoning also offers sublocal residents a measure of autonomy in controlling land use regulation, although that autonomy is exercised through lobbying and enforcement activities at the city level.

Sublocal governance structures provide for greater intracity variation in rules, services, and taxes. They create the opportunity within larger cities for greater resident choice of, and control over, local government actions that are the hallmark of Tieboutian local government. Moreover, these zones and districts generally operate to promote sublocal consciousness and the sense of the distinctiveness of sublocal interests within the city as a whole.

By the same token, however, sublocal governance raises the possibility that some of the problems besetting metropolitan areas, particularly local parochialism and interlocal inequalities, may emerge within cities. More sublocal regulation may impose costs on adjacent areas, while some areas of cities may receive more and better services than other areas. Sublocal governance would be particularly problematic so long as some areas have these governance structures while others do not.

Moreover, even if sublocal districting became widespread, so long as these districts, like TIF districts and BIDs, are dependent on internally generated resources, some areas will inevitably receive more benefits than others. Cities generally provide their services according to citywide standards or bureaucratic norms that call for the allocation of resources according to

professional norms, need, or some notion of equal treatment for all residents.<sup>66</sup> The rise of BIDs and analogous special service districts<sup>67</sup> could make neighborhood ability and willingness to pay a new and important factor in the distribution of public services within cities -- much as ability and willingness to pay are critical determinants of interlocal differences in service expenditures. To be sure, enterprise zones suggest a model in which the sublocal structure could be the basis of funds from outside the neighborhood rather than an encapsulation of neighborhood funds. But in an era of highly constrained local budgets, it is likely that BIDs and not enterprise zones will set the pattern for the development of sublocal structures.

The dangers of intralocal parochialism and intralocal inequality raised by these new structures as they currently stand seems small. Special zoning districts are established and administered by city governments. The districts created thus far seem to be aimed more at balanced development and buffering the impacts of growth on those threatened with displacement than at blocking growth outright. Most BIDs offer a limited range of public services, BID budgets are relatively small, and many state BID laws limit assessments to a low percentage of general tax levels. The larger BIDs are typically located in downtown areas and central business districts and provide benefits to city residents who come into those areas for work, shopping or entertainment as well as to BID residents. To the extent these BIDs attract commerce and tourism from outside the City, the additional BID services may contribute to the City's tax base. Still, given the growing popularity of BIDs, and proposals to extend the concept to provide sublocal financing

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<sup>66</sup> Lineberry, *supra*, at 156.

<sup>67</sup> Cite to Marquette Park Special Service District and proposal for Upper East Side security district.

for parks<sup>68</sup> or for police in residential areas,<sup>69</sup> we may be only at the start of an era of sublocal structures. If sublocal areas develop greater political identity and formal legal powers, they may seek to reserve some portion of their tax base for sublocal purposes and, to the extent they can cover their needs from their own resources, they may be more likely to oppose local programs that provide services outside their districts. Greater formal territorially- based intracity service inequality is, thus, a distinct possibility.

#### B. Sublocalism and Privatism

These sublocal structures generally enhance the place of private interests and the private sector in urban governance. First, some of these institutions extend formal recognition to the private sector. The administrative structures of enterprise zones are typically public-private partnerships, with control shared by representatives of business, community groups, and state and local government. BID governing bodies are typically dominated by representatives of property owners and businesses within the district. Business or property owner control is often required by state law. Local public officials may also have seats on these bodies, but local residents have at most token representation. When BID governing bodies are elected, they are elected by property owners and/or businesses, not by the sublocal community as a whole.<sup>70</sup>

Second, many of these devices are consciously created to promote the interests of

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<sup>68</sup> *BIDs, PEDs, and Special Districts: A Better Way to Pay for Parks?* 1 GREENSENSE 1 (Spring 1995)

<sup>69</sup> Marquette Park; Upper East Side.

<sup>70</sup> See *Kessler v Grand Central Partnership*, 1997 U.S. Dist. LEXIS 3613 (Mar. 28, 1997) (upholding New York State law assuring property owner representatives voting control of BID governing boards).



business. The theory behind enterprise zones is to facilitate business activity by lifting the burdens of regulation and taxation. Even the interventionist, nonregulatory enterprise zones, primarily provide capital and technical assistance to businesses, rather than assistance directly to workers or to residents generally. TIF districts are intention to stimulate business investment in a particular area. TIF district creation is frequently part of a city program to subsidize a particular development. Business improvement districts are intended to provide services to business and, increasingly, they are expanding their focus from traditional public services like sanitation and security to business services marketing, promotion, and strategic planning for their districts. Although, as previously suggested, local governments have had a long history of providing assistance to the private sector,<sup>71</sup> several of these structures are unusually focused on providing assistance to business and property rather than in promoting the public health, safety, and welfare more broadly. The growth of these entities, thus, tends to underscore the importance of business promotion as a local government activity.

Many BID advocates and managers in particular have sought to emphasize the private benefits of BIDs and even to suggest that the BID itself is a private organization. This privatism is, to some extent, a consequence of BIDs' reliance on "assessments," rather than taxes -- itself a product of the need to escape constitutional uniformity requirements and other substantive and procedural restrictions on taxes. As a matter of law, assessments may be imposed only if they are used to finance a "private" benefit to the owners of property assessed. Thus, the BID must provide a significant private benefit as well as serve a public purpose. Nevertheless, the language

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<sup>71</sup> Indeed, according to historian Sam Bass Warner, a "tradition of privatism" is "the most important element in our culture for understanding the development of cities." Sam Bass Warner, Jr., *THE PRIVATE CITY: PHILADELPHIA IN THREE STAGES OF ITS GROWTH* 4 (2d ed. 1987).

of many BID proponents goes well beyond the legal requirements for BID assessments. Many strive to make BIDs sound more like private chambers of commerce or business associations than public governments -- even if these associations enjoy the governmental authority to coerce contributions from all property owners or business within the district. At a time when the capacity of government to provide public services is disparaged and the private sector is presumed to set the bench mark for presumed service delivery is praised, the rhetorical tendency of BID proponents to assimilate their organizations to the private sector is not surprising. To the extent that it is accepted, the proliferation of BIDs may augment the tendency to look to privatization as a solution to urban problems.

Finally, these structures tend to reinforce the connection between small size and private interest. These districts and zones enhance private interests in part by shifting the focus of government action from the public interest of the city to small areas where particular interests are more likely to be dominant than in the city as a whole. Even the least private sector-oriented sublocal structure, the special zoning district, serves the special interests of a particular neighborhood. Neighborhoods, in turn, are rarely microcosms of a city as a whole. Rather, they tend to include concentrations of particular groups. The greater use of smaller units thus increases the likelihood that urban government will serve private interests rather than a broader public. This is perhaps little more than a replication of the general phenomenon identified by Madison in Federalist Number 10 -- and just a restatement of the observation in the prior section of this paper that sublocal structures promote Tieboutization within cities.

#### C. Sublocal Structures and Neighborhood Governance

Should these sublocal structures be viewed as a harbinger of neighborhood government,

and a bridge towards a general decentralization of government in big cities? The late 1960s and early 1970s witnessed an outpouring of advocacy of the notion of neighborhood government, that is, of the decentralization of decision-making concerning public services down to the neighborhood level.<sup>72</sup> The concept of neighborhood government was particularly focused on the idea of political empowerment and, especially, of enhancing the role of the poor and minorities in urban governance. Advocates of neighborhood government assumed that decentralization would improve the quality of the services provided in poor areas, increase the responsiveness of government to poor people. More importantly, decentralization would give the poor greater opportunity and incentive to become engaged in public life. "One of the main objectives of the neighborhood movement has been to organize the poor to participate effectively in political life."<sup>73</sup> However, not much in the way of decentralization or community control of public services delivered in neighborhoods actually occurred then or later.<sup>74</sup>

These sublocal structures do represent a form of neighborhood governance. In some enterprise zones and most BIDs there is some neighborhood-based structure making decisions for the zone or district, and special zoning districts provide a measure of neighborhood control over

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<sup>72</sup> See, e.g., Milton Kotler, *NEIGHBORHOOD GOVERNMENT: THE LOCAL FOUNDATIONS OF POLITICAL LIFE* (1969).

<sup>73</sup> Robert H. Nelson, *Private Neighborhoods: A New Direction for the Neighborhood Movement*, in *LAND REFORM, AMERICAN STYLE* (Charles C. Geisler & Frank J. Popper, eds., 1984) at 319, 327.

<sup>74</sup> For an early evaluation of neighborhood government, see Douglas Yates, *NEIGHBORHOOD DEMOCRACY: THE POLITICS AND IMPACTS OF DECENTRALIZATION* (1973). A more recent review focusing on cities which have established neighborhood structures for participation in city-based decisions, see Jeffrey M. Berry, Kent E. Portney, and Ken M. Thomson, *THE REBIRTH OF URBAN DEMOCRACY* (1993).

land use decisions affecting the neighborhood. Moreover, many of these devices give formal legal recognition to the neighborhood, albeit for limited purposes, and this may promote a sense of neighborhood identity.<sup>75</sup> Yet, it is doubtful that these sublocal structures will be the basis for a transition to a more general decentralization or that they will provide the benefits to the poor that neighborhood government advocates envisioned.

First, although some enterprise zones generate outside investment for poor areas, these structures tend to rely primarily on revenues generated within the sublocal unit to pay for the new infrastructure or services provided to the neighborhood.<sup>76</sup> Given the fiscal, political -- and often legal -- constraints on city revenues, it is likely that the TIF or BID model, rather than the enterprise zone, will dominate in the future development of sublocal structures. This suggests that this entities will be of limited benefit to poor areas which, virtually axiomatically, suffer from a lack of neighborhood resources. These areas will need much greater economic growth before they can avail themselves of sublocal structures that rely on the encapsulation of a portion of the sublocal tax base.

Second, as previously noted, some of these structures are focused on the provision of

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<sup>75</sup> See, e.g., Eisinger, *supra*, at 198 (enterprise zone as "psychological" boost to an area); Babcock & Larsen, *supra*, at 138 (noting same phenomenon from designation as special zoning district); Gerald D. Suttles, *THE MAN-MADE CITY: THE LAND-USE CONFIDENCE GAME IN CHICAGO 89-90* (noting the role of "local exceptionalism" and "local boosterism" in the efforts of Chicago neighborhoods to have the city officially designate them as historic or ethnically distinct areas).

<sup>76</sup> Even enterprise zones rely more on tax cuts and regulatory relief for the zones than the direct infusion of public funds into the zone. Moreover, many of the tax cuts that enterprise zones provided entail credits, abatements or reductions in state, rather than municipal, taxes. The municipal contribution to these zones, whether in direct assistance or tax dollars foregone, is relatively small.

private benefits to private interests within the sublocal districts, and/or assuring that the private interests intended to be benefited control district operations. TIF districts and BIDs are intended to serve a constituency of businesses, property owners or developers, rather than district residents as a whole.<sup>77</sup> Structurally, many BIDs are designed to resemble corporate firms, with property owner shareholders, not the community as a whole, electing the board of directors. The missions and structures of these entities will do little to promote the notion of sublocal government as a device for promoting neighborhood-level involvement in public decision-making.

Third, none of these devices is intended to provide city-wide coverage within a city. Each is seen as a special answer to a special problem of a discrete part of the city rather than as a component of a city-wide structure for promoting neighborhood participation in decision-making. Enterprise zones are, by definition, targeted on a very small number of blighted areas in a city. States that use the TIF device may have more TIF districts in their cities, but the districts are often quite small in territorial scope. Moreover, the purpose of TIF -- whether the ostensible purpose of helping blighted areas or the de facto purpose of encouraging new investment in growing areas -- inherently limits the TIF device to small portions of a City. So, too, "business" improvement districts are likely to be confined to business areas -- in some states that is a legal requirement -- and thus will be unavailable for the significant portions of a city where most of its people live.<sup>78</sup> Special zoning districts have been used in residential and industrial as well as

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<sup>77</sup> Of course, district residents generally may benefit from programs that install new infrastructure, increase the frequency of street sweeping, or hire private security guards.

<sup>78</sup> In some states, the legal foundation for business improvement districts could also encompass residential neighborhoods. See Illinois (authorization for "special service districts"). Thus far, there have been relatively few BID-type organizations in residential areas. Marquette Park, Chicago as counterexample. Also St. Louis private street associations.

commercial areas, and, despite the tacit requirement that an area be "special" in order to win special zoning treatment, city governments have been willing to treat a wide variety of neighborhoods as "special" -- and certainly every neighborhood views itself as special. The real limiting factor for the spread of special districts is less conceptual than political. In the absence of a general commitment to neighborhood-based zoning, cities will designate as special only those districts with the political clout to win that designation. The poorest areas -- the ones that neighborhood government advocates most intended to benefit -- are the least likely to have that clout.

Still, the picture is not completely clear. Much depends on how these sublocal structures are perceived; that is, whether they are seen by politicians, political observers, and the public as particularized responses to discrete problems or as components of a broader phenomenon of decentralization. Similarly, to the extent these devices are seen as successful -- and BIDs, in particular, have been repeatedly praised in the popular press -- the implications for further decentralization may turn on whether the reasons for that success are seen as growing out of their quasi-private qualities or their sublocal status. If the latter, then there may be greater pressure to create comparable sublocal structures to residential areas and, ultimately, to address the question of whether the benefits of sublocal governance can be extended to areas unable to finance supplemental services or improvements out of their own resources.