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BLURRED LINES:

Homelessness and the Increasing Privatization of Public Space

HOMELESS RIGHTS
ADVOCACY PROJECT

BLURRED LINES:

Homelessness and the Increasing Privatization of Public Space

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ACKNOWLEDGEMENTS

The Homeless Rights Advocacy Practicum is a section of the Homeless Rights Advocacy Project (HRAP) at Seattle University School of Law's Korematsu Center. Alex Glyman, law student at Seattle University School of Law and member of the HRAP, authored this policy brief under the supervision of Professor Sara Rankin of Seattle University School of Law. The author is deeply grateful to the following individuals for their time and contributions toward the preparation of this brief:

- Paul Boden, Executive Director (Western Regional Advocacy Project)
- Sinan Demirel, Consultant to Nonprofit and Governmental Organizations (Sinan Demirel Consulting)
- Bob Erlenbusch, Executive Director (Sacramento Regional Coalition to End Homelessness)
- Carlo Garcia, Outreach Team Leader (Metropolitan Improvement District)
- Megan Hustings, Director (National Coalition for the Homeless)
- Kelli Larsen, Director of Strategic Initiatives (Plymouth Housing Group)
- David Mace, Managing Attorney (Open Door Legal Services)
- Kirk McClain, Executive Assistant to the CEO (Capitol Hill Housing)
- Breanne Schuster, Voting Rights Researcher (American Civil Liberties Union)
- Suzanne Skinner, Homeless Rights Advocacy Practitioner in Residence to the Homeless Rights Advocacy Project (Korematsu Center)
- Leslie Smith, Executive Director (Alliance for Pioneer Square)
- Dave Willard, Manager of Safety Services (Metropolitan Improvement District)
- HRAP Fellows Joshua Howard, Kaya Lurie, Scott MacDonald, and Justin Olsen
- Practicum colleagues Ruby Aliment, Jodilyn Gilleland, Samir Junejo, Ryan Mansell, Vanessa Moore, Dana Petersen, and Jessica So

The author would also like to thank Professor Sara Rankin, whose passion, dedication, and guidance made this report possible.

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Executive Summary

Visibly poor people are increasingly excluded from public spaces for the purported interests of cleanliness and safety. The push to exclude “undesirable” people from public view has a long and storied history, ranging from Jim Crow to anti-Okie laws.¹ Although many spatial manifestations of discrimination and inequity persist today such as resegregation of schools,² one lesser understood but increasingly popular forms of segregation involves laws and policies that effectively drive homeless and visibly poor people out of public spaces such as downtown centers.³ This contemporary trend, often referred to as the criminalization of homelessness,⁴ may be linked to the increasing privatization of public space.⁵ This brief considers the role of business improvement districts (“BIDs”) in the criminalization of people experiencing homelessness by creating a more restrictive form of public space: a quasi-public space that is technically and legally public but that is managed and allocated more like private space, allowing private entities greater discretion to exclude or restrict “undesirable” members of society.

This phenomenon—the shrinking of public space—creates significant problems with respect to the civil, constitutional, and human rights of visibly poor people. This brief articulates some of these problems and recommends steps to mitigate further harm to an already vulnerable population. Part I discusses the emergence of BIDs and the increasing privatization of public space. Part II discusses how BIDs can influence the lawmaking process, including the increasing enactment of criminalization laws. It also explains how BIDs often assume quasi-governmental roles, such as deputizing private citizens to police downtown areas. Part III considers how these developments can negatively impact visibly poor people and provides a set of recommendations to protect and restore truly public space and to better address the underlying problem of homelessness.

Some key findings include the following:

- BID practices and policies, like those adopted by many cities more broadly, can **negatively impact poor and homeless individuals**;
- “Clean and Safe” BID policies aim to support tourism and consumerism, not only by removing trash, but also by **removing poor and homeless people from view**;

¹ JAVIER ORTIZ & MATTHEW DICK, Seattle University Homeless Rights Advocacy Project, *THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN AND HISTORICAL CRIMINALIZATION LAWS* (Sara Rankin ed., 2015).

² See, e.g., *The Problem We All Live With: Part 1 & Part 2*, *THIS AM. LIFE* (Jul. 31, 2015 & Aug. 7, 2015), <http://www.thisamericanlife.org/radio-archives/episode/562/the-problem-we-all-live-with?act=1#play>; Jamelle Boule, *Still Separate and Unequal*, *SLATE* (May 15, 2014), http://www.slate.com/articles/news_and_politics/politics/2014/05/brown_v_board_of_education_60th_anniversary_america_s_schools_are_segregating.html

³ NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 8* (2014) (defining the criminalization of homelessness as prohibitions on “life-sustaining activities” that are performed in public); see also Teresa Wiltz, Pew Charitable Trust, *Anti-Panhandling Laws Spread, Face Legal Challenge*, 4 (Nov. 12, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/12/anti-panhandling-laws-spread-face-legal-challenges> (pointing to the foreclosure crisis and developers’ desire to “eliminate visible signs of poverty” as two primary causes of the recent increase of the criminalization of homelessness).

⁴ *Id.*; ORTIZ & DICK, *supra* note 1.

⁵ MARGARET KOHN, *BRAVE NEW NEIGHBORHOODS: THE PRIVATIZATION OF PUBLIC SPACE 8* (2004).

- **BIDs often deputize private citizens who exercise apparent policing authority in downtown areas;**
- A Canadian Supreme Court recently found that **ambassadors were discriminatorily targeting homeless individuals and pushing them out of public spaces;** similar risks exist throughout the United States;
- The Metropolitan Improvement District in Seattle, Washington, conducted 22,843 trespass and wake-up visits to homeless individuals from 2014–2015 (or 62.58 interactions per day), suggesting **heavy enforcement of “move along” warnings to remove visibly poor people;**⁶ and
- National surveys show that visibly poor people are **more frequently harassed by private security or ambassador-type authority figures than law enforcement generally.**

BIDs may vary in the degree to which they pursue the displacement of visibly poor people. Homeless individuals have the best chance of co-existence with “No-Displacement” BIDs.

- **Heavy Displacement BIDs** actively pursue displacing the visibly poor and claim no responsibility for the effects they have on homeless displacement;
- By contrast, **No-Displacement BIDs** do not respond to visible poverty with punitive measures; instead, they view visible poverty as a symptom of complex economic, housing, and health care problems that BIDs can help to address; and
- BIDs should avoid criminalization of the visibly poor and **offer longer-term and cost-effective ways to address homelessness and poverty.**

Although a comprehensive list of policy recommendations is beyond the scope of this report, it makes a few key recommendations to BIDs and policymakers:

- Policymakers should **re-examine laws and policies that restrict the accessibility of public space** to visibly poor people and revise these laws to be more inclusive and hospitable to such vulnerable populations;
- BIDs should **create meaningful ways for poor and homeless people to contribute** to BID policies and priorities;
- BIDs should **regularly examine and evaluate the impact of their policies and practices** on poor and homeless individuals. These assessments should be made public and policymakers should consider the results;
- **BIDs should function as Non-Displacement entities;**
- To the extent ambassadors are necessary, policymakers and BIDs should refine their role to serve as a sort of community concierge for all people in the community. Ambassadors should not be envisioned or groomed to serve as an extension of law enforcement;
- Police officers and ambassadors should receive **specific training in how to interact** with members of the community who may be homeless, struggle with mental health or substance abuse disorders, or suffer from trauma. These trainings should emphasize the perspectives and needs of such community members;

⁶ NATIONAL COALITION FOR THE HOMELESS, DISCRIMINATION AND ECONOMIC PROFILING OF THE HOMELESS OF WASHINGTON D.C. (Apr. 2014), *available at* <http://nationalhomeless.org/wp-content/uploads/2014/04/DiscriminationReport20141.pdf>

- To the extent ambassadors are necessary, policymakers and BIDs should **encourage a handoff process** from ambassadors to social services when interacting with the visibly poor because social service workers are better equipped to handle such interactions and make appropriate referrals; and
- BIDs should **direct a significant portion of their revenues to invest** in services and resources, such as mental health services, substance abuse treatment, and affordable housing options within the BID area.

Introduction

Imagine you are walking down the street, tired from another sleepless night, and you finally find a bench to sit and rest. A man approaches you. He tells you that you can't be here. You have to leave. He appears to be a policeman, but there's something different about him. Certainly his uniform looks right, but something is off. With this thought in mind you confront him, but only slightly. "This is a sidewalk. Don't I have a right to be here?"

"No," he says. You look around. It looks like any other downtown location. There are businesses around you and many other people walking around without being confronted. You ask, "what about those other people? Why don't they have to leave?" But you already know the answer. You don't need to hear him say it. It's because they look different from you; they live someplace else—in a house or an apartment somewhere—and they have money to buy things at these nearby businesses.

At this point you are feeling exhausted and angry. "What happens if I don't leave?" you ask. He responds by telling you that he'll call the police. But this doesn't make sense. You are in a public space. And you have nowhere else to go.

Sadly, the experience described above is not only reality for people experiencing homelessness but a relatively common experience.⁷ Public space is increasingly becoming privatized, causing a significant change in how the visibly poor are treated by their communities.

This brief articulates some of the problems with the privatization of public space, especially as this process negatively impacts visibly poor people. First, it describes public space and gives a history of how one particular site of privatization—business improvement districts or "BIDs"—continue to emerge as significant proprietors of "quasi-public" space. Second, it examines how BIDs often employ private security forces to enforce the rules of these quasi-public spaces on homeless individuals. Third, this brief considers whether BIDs and homeless individuals can co-exist. Finally, it offers recommendations so that BIDs and the visibly poor can co-exist.

He tells you that he'll call the police. But this doesn't make sense. You are in a public space. And you have nowhere else to go.

I. The Blurring of Public and Private Space

What is public space? Though at first the concept appears simple, the definition of public space becomes remarkably complex. If asked on the street, one would likely say that public space is a space that is open to people of all races, all religions, all ideologies, and all levels of income. Yet, public space may more accurately be described as "all areas that are open and accessible to all members of the public in a society, *in principle though not necessarily in*

⁷ See Mark Sleiman & Randy Lippert, *Downtown Ambassadors, Police Relations and "Clean and Safe" Security*, POLICING AND SOCIETY, 316 (Sept. 2010) (explaining that representatives of downtown areas, known as ambassadors, act as proxy police in interactions with visibly poor people).

practice.”⁸ Indeed, public space should be accessible to everyone, but both the control of and the access to public space are increasingly limited.⁹

Limited access to public space is problematic because from a purely social perspective public space creates an environment that “challenges our instincts to create social segregation by physically integrating us with diverse strangers.”¹⁰ This integration creates a public forum where the tolerance of diversity is tested and presents opportunities for social growth, both in oneself and for the world around.¹¹ The value of the diversity provided by public space is “unique and irreplaceable,” as “public streets and sidewalks are the only remaining sites of public expressions and ‘unscripted political activity.’”¹²

Public space may be described as “all areas that are open and accessible to all members of the public in a society, in principle though not necessarily in practice.”

Public space is also a bastion for the expression of free speech. The purposes of public space are “consistent with First Amendment jurisprudence, which protects the expression of offensive and disagreeable speech as essential to American democracy.”¹³ Free speech leads to “confrontation, tension, and discomfort,” which are essential principles for human beings to grow and define themselves.¹⁴

Public space provides an environment for people to be confronted with diverse groups of people and presents opportunities to use these differences for us to grow as individuals. As such, public space is essential for the visibility of poverty and homelessness.¹⁵ While private space generally allows for the exclusion of people, the reverse should be true for public space. If public space truly is open to all people, then the level of one’s real or perceived income, socio-economic status, or housing status should not be the deciding factor in one’s ability to remain in these areas.

Accordingly, the concept of public space is essential to the American experience. A nation that was founded to be a melting pot of different cultures and experiences may well be defined by its use and preservation of public space.¹⁶ Yet, public space arguably is shrinking and becoming more and more privatized; contests over the use of and access to public space are an increasingly frequent site for violations of the civil, constitutional, and human rights of visibly poor people.¹⁷

⁸ A. ORUM & ZACHARY NEAL (EDS.), *COMMON GROUND? READINGS AND REFLECTIONS ON PUBLIC SPACE* 1 (2010) (emphasis added).

⁹ See Sara K. Rankin, *The Influence of Exile*, 76 MD. L. REV. 13 (forthcoming 2016) (questioning who is a member of the public and who decides the terms of being a member of the public regarding public space).

¹⁰ *Id.* at 14.

¹¹ *Id.*

¹² *Id.* (quoting and citing Judith Bodnar, *Reclaiming Public Space*, URBAN STUDIES JOURNAL, Editorial (2015) at 3).

¹³ *Id.*

¹⁴ See *id.* (citing *McCullen v. Coakley*, ___ U.S. ___, 134 S. Ct. 2518, 2529, 189 L. Ed. 2d 502 (2014)).

¹⁵ *Id.*

¹⁶ See Kohn, *supra* note 5, at 51.

¹⁷ See NLHCP, *supra* note 3.

This section (1) tracks the rise of BIDs and explains their role in the increasing privatization of public space; and (2) gives an example of how BIDs limit the membership and movement of visibly poor people in public spaces.

A. The Rise of BIDs

To address what cities considered to be a growing homeless “problem,” cities across the country are increasingly enacting new ordinances¹⁸ that effectively criminalize the presence of visibly poor people.¹⁹ These ordinances range from making sleeping in vehicles illegal²⁰ to making it illegal to urinate or defecate in public.²¹ These ordinances, while perhaps done with the best of intentions, have been proven to be ineffective ways of dealing with homelessness.²²

The evolution of criminalization laws may, at least in part, be attributed to the “Broken Windows” theory.²³ The Broken Windows theory postulates that if neighborhoods tolerate the presence of disreputable individuals, more serious criminals will eventually invade these permissible cities.²⁴ Though the Broken Windows theory has been widely discredited as fundamentally flawed, it continues to play a significant role in criminal justice and policymaking systems.²⁵ To fix these “broken windows,” proponents of the theory claim police would need to be “proactive and address those conditions in which crime allegedly arises” and should use their authority to remove undesirable people from public view.²⁶ Accordingly, throughout the 1980s and 1990s, many cities began enacting laws that punish people for engaging in necessary, life-sustaining activities in public—such as sitting, asking for help, protecting oneself from the elements, or sleeping—even if that individual has no reasonable alternative.²⁷ One of the areas where these criminalization laws are frequently enforced is local business districts.²⁸

¹⁸ NLHCP, *supra* note 3, at 18–25 (showing that there has been a 25% increase in city-wide bans on panhandling, a 60% increase in city-wide bans on camping in public, a 43% increase in cities with laws prohibiting sitting or lying down in public, and a 119% increase in cities with laws prohibiting sleeping in vehicles).

¹⁹ *Id.* at 8 (defining the criminalization of homelessness as prohibitions on “life-sustaining activities” that are performed in public, especially when a person has no reasonable alternative due to a lack of shelter).

²⁰ JESSICA SO, JUSTIN OLSON, SCOTT MACDONALD & RYAN MANSELL, Seattle University Homeless Rights Advocacy Project, THE INTERSECTION OF LAW AND VEHICLE RESIDENTS (Sara K. Rankin ed., May 2016).

²¹ JOSH HOWARD & VANESSA MOORE, Seattle University Homeless Rights Advocacy Project, NOWHERE TO GO: HOMELESSNESS & THE LACK OF PUBLIC RESTROOM AND HYGIENE FACILITIES (on reserve).

²² JOSHUA HOWARD & DAVID TRAN, Seattle University Homeless Rights Advocacy Project, AT WHAT COST: THE MINIMUM COST OF CRIMINALIZING HOMELESSNESS IN SEATTLE AND SPOKANE (Sara Rankin, ed., 2015).

²³ KATHERINE BECKETT & STEVE HERBERT, BANISHED: THE NEW SOCIAL CONTROL IN URBAN AMERICA 31–32 (2011).

²⁴ *Id.* at 33.

²⁵ Rankin, *supra* note 9, at 22.

²⁶ BECKETT, *supra* note 23, at 33.

²⁷ *See id.*

²⁸ *See id.*

1. What are Business Improvement Districts?

A BID is formed through state-level BID-enabling legislation that authorizes local governments to create and certify them.²⁹ This legislation customarily specifies how BIDs collect funds, what services BIDs must provide, the size and composition of the governing board, and how businesses and property owners must petition the government to create BIDs.³⁰ At the city level, BIDs typically follow a formula for creation: the circulation of a petition among businesses to form a BID, a public comment period that typically spans 30 days, a public hearing, and a council vote.³¹ BIDs' purposes vary, but they often include business and neighborhood advocacy, business development and retail improvements, marketing and promotion for these areas, as well as "street civility and public safety."³² BIDs can trace their history to urban renewal projects created by the government in the mid-twentieth century.³³ However, it was not until the 1990s that BIDs exploded in popularity.³⁴ Approximately 60% of United States BIDs may have been created during this time.³⁵

Proponents of these practices include BIDs and local governments, but critics argue that sometimes it can be hard to tell the difference between the two. BIDs need state-level legislation to be created, and many BIDs are partially funded by state governments.³⁷ Property tax dollars are considered an "overwhelming driving force" behind BIDs because state governments often pay property tax assessments and turn them over to BIDs.³⁸ This financial arrangement prompts some critics to suggest that cities and states effectively "buy into" BIDs.³⁹ Through these arrangements, private business people can control how property tax assessments are spent, thus relegating some decisions about the use and control of public space to

BID Locations Throughout Seattle in 2015³⁶

²⁹ *Id.*

³⁰ *Id.* at 8–9.

³¹ *See id.* at 9.

³² Interview with Leslie Smith, Executive Director, Alliance for Pioneer Square, in Seattle, Wash. (Oct. 6, 2015).

³³ *See* WESTERN REGIONAL ADVOCACY PROJECT, STRATEGIZING THE RIGHT TO THE CITY: BUSINESS IMPROVEMENT DISTRICTS AND HOMELESS PEOPLE 8 (Working Paper, 2015).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Office of Economic Development, *Business Improvement Areas*, SEATTLE.GOV, <http://www.seattle.gov/economicdevelopment/business-districts/business-improvement-areas> (last visited Apr. 20, 2016).

³⁷ Telephone Interview with Paul Boden, Executive Director for Western Regional Advocacy Project (2015).

³⁸ *Id.*

³⁹ *Id.*

private entities.⁴⁰ When this practice began in 1994, the number of BIDs quadrupled and caused massive gentrification throughout the United States.⁴¹

BIDs can exert significant lobbying power at both a state and local level.⁴² BID attempts to lobby the government, however, “may not always be legal.”⁴³ In many locations, policy advocacy is not an authorized expenditure of BID assessment revenue.⁴⁴ Even so, some BIDs publically identify increased policy advocacy power as one of the main benefits of enrolling.⁴⁵ Because of this discrepancy, BIDs should not be able use their funds to influence public policy, and instead likely rely on their already significant ties to state and local governments for policy advocacy reasons. However, further analysis on BID lobbying is outside the scope of this brief.

BIDs as Quasi-Governmental Entities

Lobbying Power

- Influence the enactment of laws
- Tax mechanisms allow governments to “buy into” BIDs
- BIDs control how governmental money is spent

Performance of Some Governmental Services

- Regulation and maintenance of public space

Enforcement Power

- Deputize private citizens to perform some law enforcement duties

The policies behind BIDs may be attractive to many business owners and cities alike. BID advocates believe that they can be profitable for communities looking to encourage shoppers to visit.⁴⁶ For example, the Alliance for Pioneer Square, one of two BIDs in downtown

⁴⁰ *Id.*

⁴¹ *Id.*; see also Nicole Stelle Garnet, *Governing? Gentrifying? Seceding? Real-Time Answers to Questions about Business Improvement Districts*, 3 DREXEL L. REV. 35, 43–44 (2010); Sharon Zukin et al., *New Retail Capital and Neighborhood Change: Boutiques and Gentrification in New York City*, CITY & COMMUNITY (Mar. 2009), <http://macaulay.cuny.edu/eportfolios/chin15/files/2015/02/Zukin-et-al-2009.pdf> (last visited Mar. 30, 2016).

⁴² Telephone Interview with Paul Boden, *supra* note 37.

⁴³ *Id.* “If BID assessment revenue funds membership dues, which then funds lobbying at the city or state level, then assessment revenue is indirectly being used to fund something not authorized by any of the[ir] enabling statutes.” WESTERN REGIONAL ADVOCACY PROJECT, *BIDs Enabling Legislation* 7 (Working Paper, 2015).

⁴⁴ See, e.g., WRAP, *supra* note 43.

⁴⁵ *Id.*

⁴⁶ Interview with Leslie Smith, *supra* note 32. However, advocates may argue that profitability leads to sanitizing downtown areas by, among other things, removing evidence of visible poverty because it is inconsistent with consumerism. Studies show that people may react negatively to evidence of visible poverty and human desperation. Rankin, *supra* note 9, at 36. However, studies do not show a positive correlation between the enforcement of criminalization laws, such as sit/lie bans, and community profitability. JOSEPH COOTER ET AL., Berkeley Law Policy

Seattle, Washington, made approximately \$120,000 per year in profit when it first was created in 2010; however, that number is closer to \$800,000 per year now.⁴⁷ In addition, the Alliance for Pioneer Square expects to continue that trend into perpetuity.⁴⁸ These high revenues suggest both the popularity and the profitability of BIDs. BIDs promise to use this shared revenue pool to improve the areas within their boundaries and to support the goals and interests of BID members. Because these practices are so attractive to potential members, it is easy to see why BIDs have become so prevalent.

2. Common BID Theories & Practices

As BIDs and revitalization projects became more and more prevalent, the “Broken Windows” theory eventually spawned the more aggressive “Clean and Safe” theory. “Clean and Safe” refers to the assumed aesthetic preferences of customers for private shopping malls and combats images of downtown locations as dirty and dangerous.⁴⁹ Proponents of these “Clean and Safe” projects commonly believe that consumer-friendly environments should appear free of indicia of risk or discomfort; thus sanitized, public downtown areas should draw in more shoppers and stimulate further economic development.⁵⁰

Purposes of BIDs

- Business and Neighborhood Advocacy
- Business Development and Retail Improvements
- Marketing and Promotion
- Public Realm Projects
- Street Civility and Public Safety
- Generate Money

As a related matter, some believe that the increased regulation and privatization of public space is a benefit to society because it more effectively regulates the presence of individuals who detract from the “urban commons.”⁵¹ Thus, people who do not conform to social norms in public space must grapple with more effective regulations; outliers will “ultimately require either a system of more assertive government control, enforcement of social norms through criminal law, or some form of private governance in these spaces.”⁵² According to proponents, privatization of public space is the best interest of society because it prevents it from being polluted by those who do not treat it well.⁵³

Advocacy Clinic, DOES SIT-LIE WORK: WILL BERKELEY’S “MEASURE S” INCREASE ECONOMIC ACTIVITY AND IMPROVE SERVICES TO HOMELESS PEOPLE?, (2012).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Sleiman, *supra* note 7, at 326.

⁵⁰ See *id.*

⁵¹ See *id.*

⁵² Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57, 60–61 (Nov. 2011).

⁵³ See *id.*

In contrast, homeless rights advocates point out that studies do not prove a connection between the removal of visibly poor people and safety.⁵⁴ Instead, they contend that normative constructions of “Clean and Safe” public space consciously or subconsciously exclude people who are poor or otherwise marginalized because their presence creates discomfort.⁵⁵ Such “cosmetic improvements” go beyond the removal of litter and often seek to remove people that stir negative associations, such as people who appear poor, desperate, or ill.⁵⁶ The problem, such advocates maintain, is that such “Clean and Safe” programs do not meaningfully distinguish between criminality and poverty; instead, such programs often justify the removal of marginalized people from public space – not because those individuals are engaged in criminal activity, but because they are stereotypically associated with criminality.⁵⁷ Accordingly, the increased privatization of public space means that consumerism will dominate regulatory considerations instead of fairness, constitutional rights, and compassion.⁵⁸

In short, a BID gives private businesses a powerful platform to control public funds. These public funds, in turn, can determine the regulation of public space.⁵⁹ Unfortunately, the criminalization of homelessness is a common tool used in many downtown areas to keep homeless and visibly poor individuals from the public eye.⁶⁰ BIDs commonly exercise such control of public space through loitering and trespass ordinances.

B. You Can’t Be Here: How Businesses Use Loitering and Trespass Laws

Trespass and loitering laws are two of the most common ways to regulate access to both public land and private places open to the public.⁶¹ Typical locations include “transportation facilities, social service agencies, libraries, public housing facilities, and commercial establishments...and the sidewalks adjacent to them....”⁶²

Trespass authority is becoming a broader, more potent law enforcement tool that effectively banishes people from specific areas.⁶³ Trespass used to be enforced through “admonishments,” which specified the amount of time a violator was prohibited from entering a particular area.⁶⁴ Now, through a vehicle known as “trespass warnings,” violators are barred from particular areas for unspecified amounts of time.⁶⁵ Because trespass warnings are for unspecified amounts of time, those who receive them may not know when—if ever—they can return to those specified areas. Sometimes exclusion orders bar one from visiting family,

⁵⁴ See, e.g., Rankin, *supra* note 9, at 49 (discussing various studies and critiques).

⁵⁵ *Id.* at 57.

⁵⁶ See ORTIZ & DICK, *supra* note 1.

⁵⁷ See, e.g., Rankin, *supra* note 9 (reviewing a range of studies and critiques).

⁵⁸ See, e.g., Rankin, *supra* note 9; BECKETT, *supra* note 23.

⁵⁹ See WRAP, *supra* note 43.

⁶⁰ NLHCP, *supra* note 3.

⁶¹ BECKETT, *supra* note 23, at 49.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 51.

⁶⁵ *Criminal Trespassing Program*, SEATTLE POLICE DEPT., <http://www.seattle.gov/police/prevention/business/trespass.htm> (last visited Mar. 24, 2016).

receiving necessary services, and getting other vital resources.⁶⁶ Individuals subjected to trespass exclusion orders have no chance to contest them, and police are not required to record the reason for their exclusion.⁶⁷ Violators of trespass exclusion orders may be subject to up to one year in jail and a \$5,000 fine.⁶⁸ Such orders may also limit one's access to property that is normally open to the public, such as libraries and recreation centers, public transportation, hospitals, religious institutions, social services agencies, and commercial establishments.⁶⁹ These laws are also one of the driving forces blurring the boundaries between public and private land.⁷⁰

In addition to becoming a broader law enforcement tool, trespass authority is additionally becoming a more potent criminalization tool. This enhancement occurs when private property owners delegate their authority to exclude unwanted individuals to police officers.⁷¹ For example, in Seattle, local businesses frequently place “Conditions of Entry” signs in their window.⁷² These signs are created and promoted by the City of Seattle⁷³ and act as “no trespassing” signs for businesses. By displaying these signs, businesses can effectively make unwanted people criminally liable, rather than civilly liable should such a trespass occur on public land.⁷⁴

The Current Conditions of Entry Sign for the City of Seattle⁷⁵

The practice of sharing this power to exclude with police allows officers to use their own discretion to determine whether someone is trespassing on private property, rather than requiring any affirmative action on the business owner's part.⁷⁶ According to BID workers, these signs

⁶⁶ BECKETT, *supra* note 23, at 111, 121.

⁶⁷ *Id.* at 52.

⁶⁸ *Id.* at 58.

⁶⁹ *Id.* at 50.

⁷⁰ See Interview with Carlo Garcia, Outreach Team Leader, Metropolitan Improvement District of Seattle, in Seattle, Wash. (Oct. 13, 2015) (explaining that if a person is cited for trespass at a private business, he/she can be held criminally liable, while a trespass at a public location such as a park would be a civil violation).

⁷¹ BECKETT, *supra* note 23, at 51.

⁷² See Garcia, *supra* note 70.

⁷³ *Criminal Trespassing Program*, *supra* note 65.

⁷⁴ Garcia, *supra* note 70; see also *Criminal Trespassing Program*, *supra* note 65.

⁷⁵ *Criminal Trespassing Program*, *supra* note 65.

⁷⁶ Garcia, *supra* note 70 (explaining that “Conditions of Entry” signs may be used to remove unwanted visitors from the external doorway of a business).

extend the “private” portions of the property only to the edge of the doorway, effectively creating pockets of quasi-public space that are technically located on public land, but subject to laws for private property.⁷⁷ Thus, businesses may use this practice to dissuade homeless individuals from sleeping in the doorways of these businesses.⁷⁸ In fact, many Seattle BIDs encourage businesses to place such “Conditions of Entry” signs in their doorways so that businesses may share their private authority with the police.⁷⁹

Homeless individuals are hit particularly hard by this practice; for example, “public” parks typically require people to leave after certain hours, forcing some to return to downtown areas to use the sidewalks and doorways of businesses as shelter to sleep at night.⁸⁰ Accordingly, homeless individuals often have no choice but to foray back into the city, risking trespass warnings in the process. The risk is real: one study in Seattle estimated that at least 42.5% of trespass admonishments are given to individuals without permanent housing.⁸¹ Similarly, a recent study of people experiencing homelessness in Washington D.C. showing that homeless individuals are more likely to experience harassment by businesses and their private security agents than they are by police officers.⁸² Furthermore, homeless individuals often lack the means to pay any associated fines, which can then mutate into more significant criminal penalties or incarceration.⁸³

Almost half of trespass exclusion orders are given to people without permanent housing.

In addition to the significant legal issues that are associated with being visibly poor in BID locations, significant practical issues can arise depending on where, exactly, visibly poor people sleep. The January 2015 annual Point-in-Time count estimated 564,708 unsheltered people in the United States;⁸⁴ however, these numbers are believed to be minimized.⁸⁵ For example, news outlets recently reported that during the One Night Count in New York, visibly poor people “who sought warmth in ATM vestibules or McDonald’s on a frigid night... would not be counted as homeless in the annual assessment.”⁸⁶ Even though private businesses are a common refuge for visibly poor people, volunteers for New York’s One Night Count were instructed to ignore any evidence of homeless people who momentarily obtained refuge inside a

⁷⁷ *Id.*

⁷⁸ See BECKETT, *supra* note 23, at 51.

⁷⁹ See *id.*; Garcia, *supra* note 70.

⁸⁰ See Garcia, *supra* note 70.

⁸¹ Study conducted by Katherine Beckett and Steve Herbert between the years of 2000–2005. BECKETT, *supra* note 23, at 67.

⁸² NATIONAL COALITION FOR THE HOMELESS, *supra* note 6, at 5.

⁸³ BECKETT, *supra* note 23, at 117.

⁸⁴ HUD 2015 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS, HOUSING INVENTORY COUNT REPORT (Nov. 30, 2015).

⁸⁵ See, e.g., Paul Boden, *Homeless Head Counts Help No One*, SF GATE (Feb. 5, 2013), <http://www.sfgate.com/opinion/openforum/article/Homeless-head-counts-help-no-one-4254191.php> (“Point-in-time counts are a minimum number, always. They undercount hidden homeless populations because homeless persons are doubling up with the housed or cannot be identified by sight as homeless.”).

⁸⁶ Frank Rosario & Bruce Golding, *Here’s what separates you from the homeless, according to NYC*, N.Y. POST (Feb. 9, 2016), <http://nypost.com/2016/02/09/citys-homeless-estimates-dont-count-vagrants-in-private-business-spaces/>.

business or other commercial property.⁸⁷ Though several volunteers questioned these orders, officials responded with “that’s just the way we’re doing it.”⁸⁸ Advocates complained that this instance is one of many that lowballs estimates of homeless people within certain downtown areas.⁸⁹ Depressed estimates can also depress community understanding and investment in problems of poverty and homelessness.

II. Deputization: The Use of Private Citizens as Law Enforcement

The prior section details some of BIDs’ “Clean and Safe” goals and practices to regulate space within their boundaries; this section discusses some of the problems that can occur when BIDs hire private citizens to enforce these programs.⁹⁰ These teams are often referred to as “Ambassadors”: in addition to duties such as cleaning the streets of waste, ambassadors can give directions to tourists or act as a sort of city concierge for visitors.⁹¹ To help visitors recognize them, ambassadors wear distinct uniforms.⁹² The cost of ambassador programs tend to consume much of a BIDs “Clean and Safe” budget spending, and they are commonly accorded considerable resources, such as inflated hiring and equipment.⁹³ These investments suggest that ambassadors are both, in appearance and in reality, deputized representatives of BID communities.⁹⁴

A. The Ambassador Problem

Ambassadors appear vested with official authority, but the source and extent of this authority is not always clear. Police commonly train ambassadors to be their eyes and ears,⁹⁵ teaching them to “be aware of everything going on around them at all times.”⁹⁶ Generally, ambassadors are told to avoid representing themselves or appearing as police or private security; however, ambassadors tend to keep up appearances as such.⁹⁷ Uniforms are not supposed to be similar between the two different groups, but many locals and tourists may be unable to tell them apart from a glance.⁹⁸ Additionally, although police may not consider ambassadors a form of private security, ambassadors may be promised that this role will teach them policing skills.⁹⁹ In fact, some ambassadors volunteer because they see the job as a track into law enforcement; many do eventually make the shift into police work.¹⁰⁰

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See, e.g.,* Boden, *supra* note 85.

⁹⁰ BECKETT, *supra* note 23, at 94.

⁹¹ *Id.*

⁹² *See id.*

⁹³ Sleiman, *supra* note 7, at 320.

⁹⁴ *See id.*

⁹⁵ Ambassador training typically lasts a day or a few evening sessions. *Id.* at 323. Ambassadors are also given media and public relations training, the purpose of which is to give off the appearance that the downtown areas are “clean and safe.” *Id.* at 327.

⁹⁶ *Id.* at 323.

⁹⁷ *See id.* at 321.

⁹⁸ *See id.*

⁹⁹ *Id.* at 322.

¹⁰⁰ *Id.*

Comparisons of Police¹⁰¹ and Ambassador Uniforms¹⁰²

Although ambassadors technically would be subject to criminal charges for impersonating a police officer,¹⁰³ some tend to skirt the line in their interactions with homeless individuals.¹⁰⁴ BIDs generally arm ambassadors with knowledge of the law and give them permission to protect members' property, and ambassadors use this authority to influence visibly poor people.¹⁰⁵ Although often unfamiliar with the name or content of a potentially applicable law, ambassadors may be able to identify that certain conduct—such as standing, sitting, or begging—may be problematic under certain criminalization ordinances and may threaten homeless individuals by pointing out this out.¹⁰⁶ When asked if they enforce the law, ambassadors and their supervisors should clarify that such action is not within their powers.¹⁰⁷ Still, interactions between ambassadors and people experiencing homelessness often encourage people who are panhandling, loitering, and other street “nuisances” to cease their conduct and move on.¹⁰⁸ Merely threatening legal action against visibly poor people only works some of the time, so ambassadors may also either call the police or feign doing so as an exercise of power.¹⁰⁹ Some ambassadors avoid calling the police in these interactions and instead note a description and the location of the “panhandler” in their “suspect identification chart” upon returning to base, collecting the information for BID purposes.¹¹⁰ Such practices show the apparent authority that ambassadors have over homeless and visibly poor people in BID areas.

¹⁰¹ Photo Credit: GOOGLE, <http://cdn.ttgtmedia.com/visuals/ComputerWeekly/Hero%20Images/Police-Metropolitan-Fotolia.jpg> (last visited Apr. 22, 2016).

¹⁰² Photo Credit: Monica B., YELP.COM (July 21, 2013), http://www.yelp.com/biz_photos/metropolitan-improvement-district-seattle?select=i_316oCAikoHa_RIOU-IXg.

¹⁰³ WASH. REV. CODE § 9A.60.045.

¹⁰⁴ Sleiman, *supra* note 7, at 318.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 329.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 316; see also Tamsyn Burgmann, *Downtown Vancouver Ambassadors Discriminated Against Homeless*, CBC NEWS (Apr. 11, 2015), <http://www.cbc.ca/news/canada/british-columbia/downtown-vancouver-ambassadors-discriminated-against-homeless-1.3029392> (explaining that downtown Vancouver ambassadors were telling homeless people to move along and not using this same practice with any others).

¹⁰⁹ Sleiman, *supra* note 7, at 330.

¹¹⁰ *Id.* at 324.

Though BIDs can negatively affect homeless populations in BID areas, outreach teams for BIDs are in a position to help. Because they spend so much time on the streets, outreach teams often develop relationships with the homeless populations surrounding them.¹¹¹ Of course, these relationships can be either positive or negative. Because BIDs, including their ambassadors and outreach teams, have “operated below the public and mass media’s radar,” they can use more discretion in their interactions with people experiencing homelessness.¹¹²

Especially in the context of Clean and Safe policies, such discretion invites conscious or subconscious bias against homeless individuals.¹¹³ Similarly, discretionary actions may be used to subtly influence people experiencing homelessness to do as the ambassador recommends.¹¹⁴ Although some ambassadors are ostensibly creating positive relationships with the visibly poor by working to find out their individual needs,¹¹⁵ this discretion leads to questions that can only be answered when ambassadors are subject to public opinion; perhaps the most obvious one being: “why are we giving ambassadors so much power over homeless individuals even though these ambassadors lack governmental or official law enforcement authority?”

B. BID Ambassadors Discriminate in Vancouver: A Case Study

BID Locations Throughout Vancouver, Canada¹¹⁶

The above image represents the expansiveness of Vancouver BID oversight. As such, many visibly poor people residing in these locations are subject to significant authority from BID ambassadors—authority which directly discriminates against them.¹¹⁷ In 2015, a British

¹¹¹ Garcia, *supra* note 70.

¹¹² See Sleiman, *supra* note 7, at 332.

¹¹³ Burgmann, *supra* note 107.

¹¹⁴ See Sleiman, *supra* note 7.

¹¹⁵ Garcia, *supra* note 70.

¹¹⁶ CITY OF VANCOUVER, <http://vancouver.ca/doing-business/business-improvement-areas-bias.aspx> (last visited Apr. 15, 2016).

¹¹⁷ Burgmann, *supra* note 108.

Columbia trial court judge ruled that BID ambassadors were discriminating against homeless individuals when they told them to “move along.”¹¹⁸ The court found the ambassador practice of moving visibly poor people along actively dissuaded homeless individuals from occupying public space.¹¹⁹ This conduct disproportionately targeted aboriginals, people with addictions, and individuals suffering from mental and physical disabilities.¹²⁰ The Court awarded costs against the city, which had funded the ambassador program for a year, and the Downtown Vancouver Business Improvement Association, which had operated the ambassador program for fifteen years.¹²¹ The City of Vancouver subsequently appealed the decision of the British Columbia trial court; the case is still pending with the British Columbia Court of Appeal.¹²²

Despite the Court’s findings, Vancouver BIDs maintain that their efforts have helped the homeless population by directing them to social services and other social programs.¹²³ Vancouver BID efforts are not having enough of an effect on the homeless population, as homelessness continues to rank among the most persistent social issues in Vancouver based on BID member complaints.¹²⁴ Panhandling is the second most persistent issue behind break-ins in the Vancouver area, accounting for 44.4% of Vancouver city complaints and 27.8% of outer municipality complaints.¹²⁵ Homelessness accounted for 27.8% of Vancouver city complaints and 33.3% of outer municipality complaints; it was considered the fourth most persistent problem throughout Vancouver.¹²⁶ Homelessness is an even bigger concern in the greater Vancouver area, with half of outer municipality BIDs ranking homelessness as the most persistent problem they encounter.¹²⁷

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Canadian Press, *Ruling that cites homeless discrimination appealed*, NORTH ISLAND GAZETTE (May 8, 2015), <http://www.northislandgazette.com/national/vancouver/303103441.html>.

¹²³ Burgmann, *supra* note 108.

¹²⁴ See Darin Schaal, *Business Improvement Areas in Metro Vancouver: The Convergence of Economic Development and Social Responsibility* (Apr. 2011) (Unpublished, Master’s thesis, Queen’s University) (on file with Queen’s University), *available at* https://qspace.library.queensu.ca/bitstream/1974/6442/1/Darin%20Schaal_Masters%20Report_SURP.pdf.

¹²⁵ *Id.* at 35.

¹²⁶ *Id.*

¹²⁷ *Id.*

When homelessness and poverty are considered two of the most persistent issues in a community, one would expect the community to take action to repair that problem. Instead, it appears that communities are taking the opposite approach—attacking a symptom rather than forming a solution to the problem in general. One solution—though necessarily temporary—is establishing a coexistence between the two diametrically opposed parties.

III. Can BIDs Co-Exist with People Experiencing Homelessness?

A primary purpose of BIDs is to collectively organize to increase members' profits. Given this economic priority and related impacts on gentrification, can BIDs co-exist with visibly poor people? Increases in income disparity are associated with increases in criminalization: in other words, the greater the gap between the rich and the poor, the more punitive public spaces become.¹²⁸ A comprehensive assessment of the pros and cons of BIDs is beyond the scope of this report, but a clear tension exists between proponents who believe that BIDs increase public safety and public order and those who believe that BIDs (even subconsciously) exacerbate problems for visibly poor people who are increasingly ejected from public space. This section attempts to navigate the different types of BIDs and their impacts on the visibly poor—from those that heavily displace these individuals to those that want to have a minimal impact on this population. This section concludes with a case study of a BID in Seattle, Washington and attempts to determine what, if any, type of BID relationship it has with the visibly poor.

¹²⁸ JUSTIN OLSON & SCOTT MACDONALD, Seattle University Homeless Rights Advocacy Project, WASHINGTON'S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT (Sara Rankin ed., May 2015).

A. The Continuum of BID Relationships with Homeless Individuals

Three models, placed on a continuum, help to conceptualize the relationships between BIDs and homeless individuals.¹²⁹ The continuum ranges from models that frame people experiencing homelessness as the core problem, to those that understand homelessness as the result of core systemic social failings.¹³⁰ This section describes each of the three types of BID models from the most to least restrictive of the rights of visibly poor individuals: (1) Heavy Displacement BIDs; (2) Padded Displacement BIDs; and (3) No-Displacement BIDs.

The following figure is a simple continuum representing the range of BID relationships with homeless individuals:

Continuum of Bid Relationships with Homeless Individuals¹³¹

Each of the following subsections explains these illustrative models in turn.

1. Heavy Displacement BIDs

Heavy Displacement BIDs represent the end of the continuum that sees visibly poor people as the problem, rather than a symptom of a larger issue in society.¹³² This BID model embraces the notion that visibly poor people should be removed from downtown areas to give others the appearance of a “safe” or more comfortable environment.¹³³ Heavy Displacement

¹²⁹ WRAP, *supra* note 33, at 14 (citing Darren Noy, Ph.D., *The Systemic Inadequacy of Bush’s Homelessness Policy*, J. PROGRESSIVE HUM. SERVICES (forthcoming)).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

BIDs maintain that they are not responsible for any impacts on visibly poor people, including the potential displacement of people experiencing homelessness. Heavy Displacement BIDs commonly use policies like the following:

Hallmarks of Heavy Displacement BIDs	
Anti-Panhandling Practices	Restricting or prohibiting peaceful requests for donations by citation, arrest, and/or fine.
Anti-Camping Practices	Evidence that an individual is sleeping or protecting oneself from the elements is punishable by citation, arrest and/or fine.
Anti-Loitering Practices	Spending more than a specified amount of time—either standing, sitting or laying down—in one spot is punishable by citation, arrest and/or fine.
Nighttime Curfew	Limiting the hours in which a person can be in the area, and may be tied to a particular activity. For example, sitting may be an offense during curfew hours, although walking is permitted. Punishable by citation, arrest and/or fine.
Closing Public Stand-Alone Restrooms	Stand-alone restrooms are open to the public during the day, but closed outside of business hours.
Homeless Sweeps	Collaborating with the local police department to facilitate sweeps to clear homeless people and their belongings from the area. ¹³⁴

The first four policies would need to be legally adopted by the municipal governing body because BIDs do not have the authority to enact laws that regulate public behavior in public spaces.¹³⁵ However, BIDs can effectuate this result by using their considerable political power to lobby city government to enact such laws.¹³⁶ BIDs may also coordinate the enforcement of these policies with police departments and use their ambassadors or other private security forces to “unofficially” enforce these policies.¹³⁷

However, anti-panhandling practices are patently unconstitutional.¹³⁸ Peaceful panhandling requests are protected speech as defined under the First Amendment.¹³⁹ This “categorically prohibits the speech and expressive elements that may...be associated with the harmful conduct; [but] it must protect the speech and expression, and focus narrowly...on the

¹³⁴ *Id.* at 16.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *ACLU puts Municipalities on Notice: Laws Banning Peaceful Panhandling are Unconstitutional*, AMERICAN CIVIL LIBERTIES UNION (Oct. 29, 2013), <https://www.aclu.org/news/aclu-puts-municipalities-notice-laws-banning-peaceful-panhandling-are-unconstitutional>.

¹³⁹ *Id.*

conduct it seeks to prohibit.”¹⁴⁰ Anti-camping laws similarly may be unconstitutional.¹⁴¹ When the cities impose criminal penalties on this practice when there is no sheltered alternatives, it may constitute a violation of the “cruel and unusual punishment” clause of the Eighth Amendment.¹⁴²

The next two policies—nighttime curfews and closing public bathrooms—are problematic because they make BID areas difficult to inhabit during evening hours, when many homeless individuals are forced to leave parks and return to the sidewalks.¹⁴³ When public restrooms are closed in the evening, it effectively forces homeless individuals to make impossible choices: they can either hold their bodily urges or urinate or defecate outside and risk being arrested or fined for conducting these life-sustaining activities in public.¹⁴⁴ The policy encouraging sweeps shows the coordination between the BIDs, their private security forces, and the police department, allowing them all to enforce such policies.¹⁴⁵ Often unconstitutional, these Heavy Displacement BID policies create blanket bans and place a significant burden on the visibly poor, thus making it difficult for these individuals to stay in BID areas for any period of time.¹⁴⁶

2. Padded Displacement BIDs

The Padded Displacement BID model describes a system where business owners believe that minimizing the presence of homeless people to be in the BID’s best interest such BIDs acknowledge some responsibility for the impact that they have on displacement.¹⁴⁷ As such, the policies of Padded Displacement BIDs discourage homeless people from being in the area, but may also offer programs that provide or enhance limited services.¹⁴⁸ Emblematic policies include:

Hallmarks of Padded Displacement BIDs	
Anti-Aggressive Panhandling Practices	Limited panhandling is permitted; so-called “aggressive panhandling” is prohibited. ¹⁴⁹
Campaigns Discourage Donations to Panhandlers	Campaigns ask visitors to avoid giving money to panhandlers and instead to give money to a third party entity.

¹⁴⁰ *Id.*

¹⁴¹ NLHCP, *supra* note 3, at 18.

¹⁴² *Id.*

¹⁴³ WRAP, *supra* note 33, at 14.

¹⁴⁴ *Id.*; HOWARD & MOORE, *supra* note 21.

¹⁴⁵ WRAP, *supra* note 33, at 16 (citing Noy, *supra* note 129).

¹⁴⁶ *McLaughlin v. City of Lowell*, 84 Mass. App. Ct. 45, 992 N.E.2d 1036 (2013); *Browne v. City of Grand Junction, Colorado*, 27 F. Supp. 3d 1161, 2014 WL 1152020 (2014).

¹⁴⁷ *Id.* at 17.

¹⁴⁸ *Id.*

¹⁴⁹ Some anti-aggressive panhandling ordinances have been criticized as pretextual because they do not target specific conduct by the defendant. *See, e.g.,* Letter from ACLU to Mayor Ray Stephanson and Members of the Everett City Council (Oct. 27, 2015), regarding CB-1509-40: Amending Ordinance 1353-87 concerning Aggressive Begging October 28 Meeting, Agenda Item #9 (citing *McLaughlin v. City of Lowell*, 84 Mass. App. Ct. 45, 992 N.E.2d 1036 (2013)).

Homeless Individuals Referred to Off-Site Service Providers	Private security officers or ambassadors give homeless people information about the locations of available services such as food, shelter, job training, or counseling.
BID Donates Funds to Off-Site Service Providers	The BID does not directly provide services to homeless people but financially supports off-site providers.
Restroom Availability	Stand-alone restrooms remain open after business hours to the general public. ¹⁵⁰

The first policy, “aggressive” panhandling laws, can be less severe than the blanket ban-type of ordinances described in the Heavy Displacement BID section.¹⁵¹ Ordinances that link violations to specifically defined evidence of aggressive conduct are less likely to trigger constitutional violations; however, many such laws often fail this test. Instead, many “aggressive” begging laws encompass peaceable begging which, as stated above, is constitutionally protected speech.¹⁵² Aggressive begging laws should clearly define a defendant’s conduct and differentiate criminal conduct from constitutionally protected speech.¹⁵³

The second policy discourages direct donations to individuals and instead seeks to facilitate donations to other BID-approved service providers.¹⁵⁴ Some critics contend this approach is paternalistic: it sends the message that panhandling is wrong or illegal, when in fact peaceable begging is a constitutionally protected activity.¹⁵⁵ Moreover, discouraging individual donations makes panhandling a less viable source of income, although begging can be the only legal or viable source of income for some people.¹⁵⁶ Thus, this policy has the secondary effect of exerting more control over homeless and visibly poor populations. BIDs and policymakers may justify such programs under the assumption that panhandlers are trying to obtain money for drugs and alcohol.¹⁵⁷ Moreover, the messaging of anti-donation campaigns effectively reinforces negative stereotypes about visibly poor people and making it difficult for people experiencing homelessness to meet immediate needs for income.¹⁵⁸

The third policy—referring homeless individuals to off-site service providers—encourages homeless people to leave the areas they are occupying, but it also gives them access to food, temporary shelter, or other social services.¹⁵⁹ Such policies may convey a positive message that BIDs care about the homeless population or are trying to help the community more broadly.¹⁶⁰ However, off-site referrals also achieve the displacement of visibly poor people from

¹⁵⁰ WRAP, *supra* note 33, at 17.

¹⁵¹ *Id.*

¹⁵² ACLU, *supra* note 138.

¹⁵³ *Id.*

¹⁵⁴ WRAP, *supra* note 33, at 17.

¹⁵⁵ See NLHCP, *supra* note 3; ACLU, *supra* note 138.

¹⁵⁶ See *id.* at 17–18.

¹⁵⁷ This is a disputed assumption however. Scott Keyes, *Everything You Think You Know About Panhandlers Is Wrong*, THINKPROGRESS (Oct. 30, 2013), <http://thinkprogress.org/economy/2013/10/30/2856411/panhandling-stats/>

¹⁵⁸ NLHCP, *supra* note 3, at 18.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

the BID areas. Moreover, these referrals are not guaranteed to actually amount to an available service: many shelters and other social services are already insufficient to meet demand.¹⁶¹ If an off-site referral does not lead to an appropriate and available service, such a referral achieves nothing other than displacement of poor people from the BID area.¹⁶²

Therefore, policies in the “Padded Displacement” model are often criticized as token policies that do not advance systemic changes necessary to resolve homelessness.¹⁶³ However, these policies are incrementally better than the policies in the “Heavy Displacement” model, and they provide the opportunity to progress BIDs toward a No-Displacement model.¹⁶⁴

3. *No-Displacement BIDs*

The No-Displacement BID model understands the structural failings of the economic, housing and health care systems as core problems that must be addressed regarding homelessness.¹⁶⁵ No-Displacement BIDs represent an ideal BID culture as they relate to people experiencing homelessness.¹⁶⁶ They may be marked by the following types of policies and practices:

Hallmarks of No-Displacement BIDs	
Employment Opportunities	BIDs employ visibly poor people as ambassadors, greeters, or maintenance staff.
On-Site Homeless Services	Services such as job-training, affordable housing assistance, counseling, healthcare, drug and alcohol and other services provided within the BID.
On-Site Food and Shelter	Soup kitchens and shelters provided; 24-hour access to a restroom available onsite.
Designated Outdoor Space	24-hour outdoor space(s) are available for diverse groups of people to gather.
Representative Decision-Making	Homeless representatives are included in the BIDs decision-making process with voting and speaking power. ¹⁶⁷

The first illustrative policy, offering employment opportunities to homeless or formerly homeless people, is common in more progressive BIDs.¹⁶⁸ These programs may also include job

¹⁶¹ SUZANNE SKINNER, Seattle University Homeless Rights Advocacy Project, SHUT OUT: HOW BARRIERS OFTEN PREVENT MEANINGFUL ACCESS TO EMERGENCY SHELTER (Sara K. Rankin ed., May 2016).

¹⁶² WRAP, *supra* note 33, at 18.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 19.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*; see also GARY SHAHEEN & JOHN RIO, EXPLORING HOW DOWNTOWN EMPLOYERS CAN HIRE HOMELESS VETERANS (Aug. 2013), available at <http://vets.syr.edu/wp-content/uploads/2013/10/Downtown-Employers-Hiring-Homeless-Veterans-Field-Report.pdf>.

training and social services.¹⁶⁹ However, these jobs typically are transitional and often come with lower wages than what others may get for the same work.¹⁷⁰

Other no-displacement policies, such as on-site homeless services, on-site food and shelter, and designated outdoor spaces, allow visibly poor people a safe space to exist without fear of harassment or displacement.¹⁷¹ Designated outdoor spaces such as People's Park in Berkeley, California, or an established homeless encampment such as Dignity Village in Portland, Oregon, can provide a safe place to rest during the day to sleep at night without fear of being arrested or fined.¹⁷²

Finally, input in policy decisions would allow homeless individuals to have a speaking voice in the decision-making process of the BIDs that share space with people experiencing homelessness.¹⁷⁴ People experiencing homelessness have been at the receiving end of policies supposedly designed to help them but have no agency in their development.¹⁷⁵ As a result, these policies may have ineffective results and waste resources.¹⁷⁶ Visibly poor people know what services work and what services do not, and their input would be a valuable addition to policy decisions made by BIDs and local governments.

B. Putting the Continuum into Practice: Seattle, Washington

Few, if any, BIDs fall neatly into any of the three conceptual categories of BID relationships with homeless individuals described above. In practice, BIDs often feature policies and procedures that pull from each of these models. One case study, the Metropolitan Improvement District ("MID") in Seattle, Washington, demonstrates how different features may overlap in a single BID.

"Seattle is a compassionate city, the people around here care about their neighborhoods and communities, and the homeless are part of that."¹⁷³

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² These areas, though open to people experiencing homelessness, are sometimes subject to criticism from the public and city officials. *Id.*; see also Marcus Harrison Green, *In a Tiny House Village, Portland's Homeless Find Dignity*, YES! MAGAZINE (Jan. 28, 2016), <http://www.yesmagazine.org/peace-justice/-in-a-tiny-house-village-portlands-homeless-find-dignity-20160128> (explaining that the area provides visibly poor people with a semblance of community); Sam Davis, *People's Park: It's Time for Change*, THE BERKELEY BLOG (Sep. 29, 2015), <http://blogs.berkeley.edu/2015/09/29/peoples-park-its-time-for-change/> (arguing that the people of San Francisco cannot be satisfied with providing a park for visibly poor people to reside and must do more for them, as allowing the park to continue causes significant health issues for the nearby university campus).

¹⁷³ Telephone interview with Dave Willard, Manager of Safety Services, Metropolitan Improvement District of Seattle (October 7, 2015).

¹⁷⁴ NLHCP, *supra* note 3, at 19.

¹⁷⁵ William S. Barnett, *Ask the Homeless What They Want*, N.Y. TIMES (Nov. 24, 2015), <http://www.nytimes.com/roomfordebate/2015/02/19/homes-for-the-homeless/ask-the-homeless-what-they-need>.

¹⁷⁶ *Id.*

The MID, like many other BIDs, has “Clean and Safe” teams of ambassadors.¹⁷⁷ However, the MID also has a team of outreach members who say they are doing their best to help the homeless populations in their downtown area.¹⁷⁸ The MID outreach team seeks to establish positive relationships with people experiencing homelessness and to use those relationships to provide assistance rather than to involve the police.¹⁷⁹ Carlo Garcia, Outreach Team Leader for the MID, is an example of a member of the outreach team that uses his relationships to help visibly poor in Seattle.¹⁸⁰ Mr. Garcia spends a significant amount of his time on the downtown streets, where he has learned the names and stories of many people experiencing homelessness.¹⁸¹ Indeed, Mr. Garcia supports efforts to train other BID designees to “treat people with dignity.”¹⁸² According to the MID, this philosophy has three tenets: (1) teaching team members to be as polite as possible to everyone on the street; (2) following a low tolerance policy for overly aggressive ambassadors; and (3) referring people experiencing homelessness to referral-only shelters.¹⁸³ Mr. Garcia believes these measures will improve the relationships between the MID and individuals experiencing homelessness.¹⁸⁴ Certainly, the creation of meaningful relationships between BID workers and visibly poor people can help to deploy services, resources, and other support, such as asking about one’s health or offering to write a job recommendation.¹⁸⁵ Such efforts resonate with “No-Displacement” or “Padded Displacement” BID models.

But Mr. Garcia and other ambassadors or outreach workers also commonly advise visibly poor people about their legal rights. According to Mr. Garcia, he strives to do so in an affirmative way, noting that “if a Seattle statute says people cannot sit or lie down in public areas between the hours of 7 a.m. and 9 p.m., that also means that they can do so during the hours of 9 p.m. and 7 a.m.”¹⁸⁶ However well-intended, such efforts enter murky territory. When BID designees advise visibly poor people about their legal rights, a number of potential conflicts can occur. First, a BID representative presumably represents the interests of a BID which, as established earlier, often seek to remove or mitigate evidence of visible poverty.¹⁸⁷ Visibly poor people may not understand that the “advice” they receive from BID workers is not advocacy on their behalf; BID workers and visibly poor people do not share a client relationship. Second, BID representatives generally are not lawyers, trained social workers, or law enforcement officers. As a result, BID representatives are not adequately trained to provide legal advice or social service counseling, and their efforts are not subjected to any form of accountability or quality control. Therefore, visibly poor people have no assurance BID workers are providing accurate advice or counseling. Despite the best intentions of some outreach workers, such efforts to educate visibly

¹⁷⁷ *About the Metropolitan Improvement District*, DOWNTOWN SEATTLE, <http://www.downtownseattle.com/MID/> (last visited Apr. 27, 2016).

¹⁷⁸ Garcia, *supra* note 70.; *MID Outreach: Helping the Homeless, Educating the Community*, DOWNTOWN SEATTLE, (February 5, 2015), <http://www.downtownseattle.com/2015/02/mid-outreach-helping-homeless-educating-masses/>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ HRAP Student researchers Alex Glyman and Vanessa Moore participated in a walk-about with Mr. Garcia on October 13, 2015. *Id.*

¹⁸² *Id.*

¹⁸³ Garcia, *supra* note 70.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*; SMC § 15.48.040.

¹⁸⁷ See WRAP, *supra* note 33.

poor people about their rights can exert subtle but significant pressure on people experiencing homelessness to move along or comply with criminalization laws;¹⁸⁸ this pressure can ultimately amount to harassment.¹⁸⁹

Certainly, some evidence suggests the MID's interest in improving relationships with the visibly poor people within its boundaries. But other evidence suggests significant work remains to be done.¹⁹⁰ The Metropolitan Improvement District conducted 22,843 wake-ups and trespass visits from 2014–2015.¹⁹¹ That amounts to 62.58 wake-up and trespass visits each day throughout this timeframe. These numbers suggest that a significant amount of MID resources are devoted to displacement and other practices that disproportionately impact visibly poor people.¹⁹²

On balance, the MID at first appears as a Padded Displacement BID. Many of its policies, such as writing job recommendations or referring homeless individuals to referral-only shelters, illustrate practices of No-Displacement BIDs. However, evidence such as the high number of wake-up and trespass visits, along with the problematic practice of advising visibly poor people about their legal rights, suggests the MID may more accurately identify somewhere between a Heavy Displacement and Padded Displacement model.

**22,843 wake-ups
and trespass visits
in one year
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Recommendations

BIDs are both a symptom of and a contributor to the privatization of public space, which can undermine the constitutional, civil, and human rights of visibly poor people. The formation of BIDs suggests close relationships between BIDs and state and local governments. BIDs can exercise significant lobbying power on local governments to prioritize the interests of businesses over those of marginalized groups, who often have no reasonable alternative but to exist in public space. BIDs may also assume quasi-governmental roles and effectively police within their boundaries, encouraging the displacement of visibly poor people. All of this potential power exists without significant transparency or public scrutiny. Within these murky waters, the rights of visibly poor people are particularly at risk.

Accordingly, **policymakers and the general public should support definitions and constructions of public space that welcome all members of the public**, regardless of race, gender, religion, sexuality, ideology, or level of income, physical appearance, or housing status. The benefits and values of truly public space—especially marked by diversity and difference—are not only the hallmarks of democracy but also the key to our collective growth.¹⁹³ Inclusive

¹⁸⁸ See Sleiman, *supra* note 7.

¹⁸⁹ Burgmann, *supra* note 108.

¹⁹⁰ For example, from 2009 to 2013, Seattle police issued 5,814 citations for violations of criminalization ordinances. HOWARD & TRAN, *supra* note 22.

¹⁹¹ MID Clean Team Statistics, DOWNTOWN SEATTLE, <http://www.downtownseattle.com/mid/programs/mid-clean-team/> (last visited Oct. 29, 2015).

¹⁹² HOWARD & TRAN, *supra* note 22, at 8.

¹⁹³ Rankin, *supra* note 9.

public space also affords mainstream society the singular opportunity to confront poverty and homelessness.¹⁹⁴ Without public space as a venue, the needs of visibly poor people have no meaningful way of being noticed.¹⁹⁵

Furthermore, **BIDs need to regularly examine and evaluate the impact of their policies and practices on the visibly poor.** These assessments should then be made public so that policymakers and the larger community better understands the impact of BIDs on the most vulnerable people within a BIDs' boundaries.

Second, **to the extent that ambassadors and other BID workers are necessary, BIDs should carefully scope the responsibilities and training required for such positions.** BIDs should explicitly discourage such workers from providing legal advice or giving the appearance of acting as law enforcement. BIDs should limit the role of ambassadors to providing positive, inclusive support to all people within the BID boundaries. This process may help protect the safety, well-being, and legal rights of both homeless individuals and ambassadors.

Similarly, **to the extent ambassadors are necessary, policymakers and BIDs should encourage a handoff process from ambassadors to social services** when interacting with the visibly poor because social service workers are better equipped to handle such interactions and make appropriate referrals.¹⁹⁶ This practice would additionally protect the rights of both people experiencing homelessness and ambassadors because the relationship between the two parties would be more limited, minimizing some of the problems and conflicts that can arise when ambassadors attempt social service tasks beyond the scope of their training.¹⁹⁷

To assist with this transition, **police officers and ambassadors need to receive training from other agencies on the proper way to interact with people experiencing homelessness,** whether they suffer from mental illness, substance abuse, trauma, or merely have fallen on hard times. Training should be run by the agency that is best equipped to handle these problems: for example, social service entities may be best equipped to deal with issues involving substance abuse. By emphasizing the perspectives and needs of community members experiencing these issues, police officers and ambassadors can understand these community members better and ensure a better experience for everyone.

Finally, **BIDs should reallocate resources away from the displacement of people experiencing homelessness and toward the support of non-punitive practices and policies.** For example, BIDs can support job opportunities for people experiencing homelessness or provide on-site homeless services and shelter. BIDs should also provide meaningful opportunities for visibly poor people to participate in BID governance and policy decisions.¹⁹⁸ Such measures may not only help improve relationships but can also improve outcomes. No-Displacement BIDs can also move beyond support for emergency or temporary shelter, and can

¹⁹⁴ *Id.*; SAMIR JUNEJO, Seattle University Homeless Rights Advocacy Project, NO REST FOR THE WEARY: WHY CITIES MUST EMBRACE HOMELESS ENCAMPMENTS (Sara K. Rankin & Suzanne Skinner eds., May 2016).

¹⁹⁵ Rankin, *supra* note 9.

¹⁹⁶ See Interview with Kelli Larsen, Director of Strategic Initiatives, Plymouth Housing, in Seattle, Wash. (Dec. 1, 2015) (explaining that social service entities are trained to handle interactions with visibly poor people).

¹⁹⁷ *Id.*

¹⁹⁸ WRAP, *supra* note 33.

contribute to the development and maintenance of adequate and affordable housing within their boundaries.

Conclusion

Clear tensions exist between the goals and interests of BIDs and those of visibly poor people who struggle to live within BID areas. Like cities, BIDs generally do not strive to negatively impact the most vulnerable members of society; however, like many cities, BID policies and practices may have similar negative results. Nevertheless, BIDs can do more to revitalize truly public space and contribute to the quality of life for all members of their community.

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