

An Examination of Portland's BID: Their History and Approach

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## An Examination of Portland's BID: Their History and Approach

### **Introduction**

Certain downtowns in the United States became more competitive with suburban malls by modelling themselves after suburban malls. By making downtown free of visible crime, homelessness and signs of physical decay, downtowns began to attract the residents, shoppers, visitors and workers who had previously fled to the suburbs (Economist 104; Hoyt 2). Business improvement districts (BIDs) are the main mechanism downtowns used to address these issues. The BIDs collect funds for cleaning, security, and social services directed at homeless individuals, all of which are supplemental to what is provided by the local government (Briffault 401; Garodnick 1733). As the popularity of the BIDs gained momentum across the United States, researchers examined, in general, why BIDs were formed, expanded and were criticized. However, to this date, researchers have neglected to implement a similar study on Portland, Oregon – a city that implemented one of the first BIDs in the country.

Since the 1960s, in Portland, Oregon, government budget cuts decreased police presence and cleaning in public streets and parks. Downtown businesses believed that this led to increased visibility of homelessness, nuisance crime, and physical decay, which deterred consumers. Therefore, in 1988, they lobbied successfully for the creation of a downtown BID, which sought to remove signs of physical decay, encourage prosecution of low level crimes, and criminalize nuisance activities. As the BID expanded, its influence grew, but its approach remained the same. It continued to concentrate on the symptoms, while putting forth minimal effort to address the

systemic causes of homelessness, crime, and physical decay. Therefore, the BID gained critics with various concerns. A change in this approach may better address the concerns of the business community and its critics.

### **Theories Behind Portland's Business Improvement District**

Downtown businesses manage a BID because they believe its services and lobbying efforts improve downtown's image, which in turn attracts consumers and makes the economy thrive. Their approach stems from their belief in the Main Street and Broken Windows Theory movements in the U.S, which began in the 1970s (Wyatt). The Main Street movement focused on revitalizing business districts. If the business district had a more positive image, it would increase the number of businesses and individuals locating in and using downtown as a place to recreate, shop, and live (NTHP "Main Street"). Similarly, the Broken Windows Theory focused on the image of the business district. Visible, public nuisance crimes (e.g. aggressive panhandling, graffiti) deter people from living, working or recreating in the area. Some researchers even argued that these crimes spiral in to higher level crimes (e.g. murder, robbery) if left alone. Targeting these crimes would make more people feel comfortable and the area would revive economically (Worrall 74). Since the late 1960s, downtown businesses supported the movements' basic assumption that a visibly clean and safe downtown attracts people, making it more economically competitive against the suburbs.

### **The Creation of the Business Improvement District**

#### ***A Downtown Plan: Creation of the Idea of a Downtown BID***

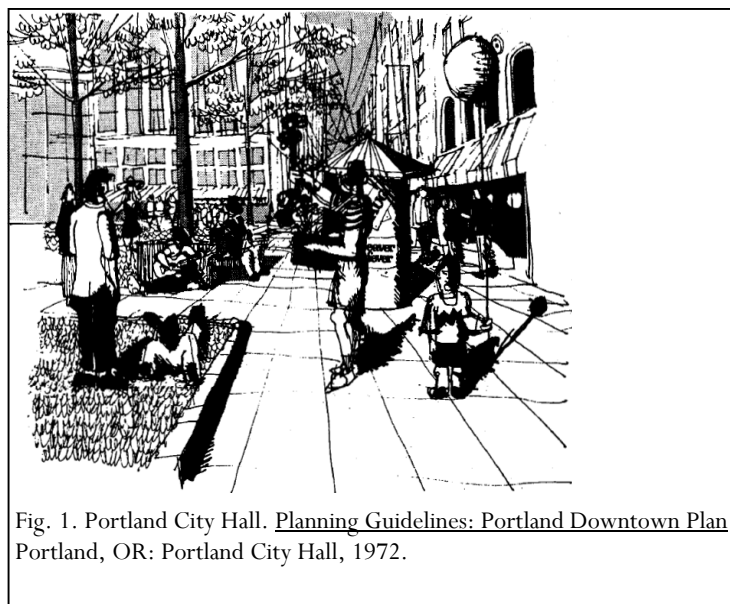
A group of downtown business executives started the Portland Improvement Corporation (PIC) in 1968 and financed a downtown parking study. Expanding on the parking study, PIC encouraged and actively developed the *Downtown Plan*, which sought to improve the negative image

of downtown and reverse its economic decline by proposing programs to reduce vagrancy and signs of physical decay and a potential economic improvement district that would provide private security services.

Downtown was in economic decline and the city's more affluent residents were choosing to shop, work and recreate in the suburbs instead. The decline began a decade earlier, when Portland's economic growth slowed and the city's population decreased. The economic slowdown has been attributed to city leaders' resistance to post-industrial development and the infrastructure development. Downtown suffered in particular from the stagnating economy. The white middle class moved to the outer edges of the city and suburbs and mainly shopped and engaged in recreation in private, suburban malls and shopping centers. As a result, housing stock declined downtown, business investment moved to the suburbs and the elderly, poor, homeless and minorities were the prominent demographics downtown (Kuykendall; APP "Annual Report"; Wollner et al. "Brief History"). One downtown business leader explained the feelings of many downtown businesses when she said downtown was "becoming poor, unattractive and dull" (APP "Annual Report").

In 1968, PIC was founded by a group of business executives. PIC decided to fund a study of downtown parking, but eventually realized it could be widened to a comprehensive study of development needs and patterns throughout downtown, which would address the negative image of downtown (APP "Annual Report"; Hales et al. 2). Therefore, PIC drafted the *Downtown Plan* (APP "Annual Report"; Wyatt). The City, especially Mayor Goldschmidt, was supportive and a Mayor's Citizen's Advisory Committee was set up to modify and implement the plan. This plan, implemented in 1972, became the "standard by which the City Planning Commission and City Council [could] judge proposals for both public and private development in Downtown Portland" (PCH "Planning Guidelines" 93).

The committee “identified a variety of design elements that are universally recognized as making a city look and feel good” (Hales et al. 2) and decided these design elements would address the loss of downtown’s “character, its charm and its economic base” (Hales et al. 1). The committee wanted downtown’s streets to feel safe. For example, the plan proposed the creation of an economic improvement district. It would provide private security services who would “work closely with the Portland police to reinforce the sense of on-street safety that is so critical to a dynamic urban community” (Hales et al. 6). As well, the plan wanted to address the presence of homelessness on the street. For example, the plan set targets for preserving and building new Single Resident Occupancy units in order to support the health and safety of low-income people and to reduce vagrancy on downtown streets (Hales et al. 10). Finally, there were efforts to reduce signs of physical decay. For example, the plan included rehabilitating and replacing substandard housing... [when necessary] relocating any downtown residents (PCH “Planning Guidelines” 96). Figure 1 illustrates the typical pedestrian mall planners wanted in the downtown retail core – one free of homelessness, low level crime and physical decay.



The *Downtown Plan* did not completely reverse downtown's economic decline or negative image, however, and so, in the late 1970s, businesses felt they needed to create a downtown chamber of commerce that would tackle these issues.

### ***A Downtown Chamber of Commerce: Creation of a Private-Public Partnership***

In the 1970s and 1980s, downtown businesses were successful in establishing a downtown chamber of commerce that advocated for solutions and provided supplemental services in the effort to address downtown's economic decline and increase in visible public nuisance crimes (e.g. aggressive panhandling, prostitution).

In the 1970s, industrial activity and business property values declined and rates of visible, public nuisance crime increased downtown. Businesses were finding it difficult to address these issues because they had lost political clout, particularly when up against powerful neighbourhood associations. Businesses felt that the regional Chamber of Commerce, the Portland Chamber of Commerce (PCC) was not meeting downtown's needs (Scott; Abbott). The PCC had been, since 1870, a regional chamber of commerce that represented the business perspective, actively supporting policies such as economic development and the promotion of jobs (Kuykendall; PBA "Portland Business"). Downtown businesses believed the chamber's regional approach did not adequately deal with their unique problems (Wyatt). Instead, they wanted a downtown chamber of commerce that would enable businesses to regain political clout and to institutionalize a public-private management of downtown to reverse the economic decline, address public nuisance crime, and make downtown more competitive with the outer edges of the city and the suburbs (Berry et al. 145; Abbott; Kuykendall; Ozawa 174; APP "A Decade"). Businesses felt that "every downtown needs a [public/private] downtown management association" to function effectively (Scott).

Once downtown businesses decided they wanted their own chamber of commerce, they had to find a way to fund it – and City Hall had an answer. City Hall, particularly Mayor Neil Goldschmidt, supported the idea (APP “A Decade”). He suggested that the downtown chamber of commerce run the city’s garages and use the profit to fund its services and advocacy (Wyatt).

With a plan of how to create a downtown chamber of commerce, businesses formed one. In 1979, businesses, such as Oregonian Publishing Co. and Melvin Mark Properties, after consulting with the Urban Place Consulting Group (which supports private business associations’ attempts to revitalize their downtowns) formed the private, non-profit Association for Portland Progress (APP) (Abbott; APP “Stewards”; UPCG “Urban Place”). APP started with fourteen members and two staff members, funded voluntarily by downtown businesses (APP “Stewards”; Kuykendall). APP focused on lobbying City Hall for changes that they believed would decrease visible, public nuisance crime and attract people to downtown and on managing a downtown marketing campaign to make sure “downtown continue to be viable...otherwise, everyone would go to the suburbs” (APP “A Decade”).

In the 1980s, APP became interested in expanding its lobbying and in providing private services for downtown, but it needed the funds to do so. Therefore, APP lobbied City Hall for a contract to run the city’s garages and, with the funding, to manage private services and advocacy that would attract people to downtown. Leaders from large downtown businesses, including banking, utilities and large retailers (e.g. Nordstrom) lobbied City Hall in support of APP’s efforts to manage the city’s garages (Wyatt). APP was successful, and as a result was able to fund the private services and advocacy it sought. The private services and advocacy included, but were not limited to, the following: supervising a downtown parking validation program, creating a retail promotion program, putting up holiday lighting, and development of the downtown urban renewal



project Pioneer Courthouse Square (APP “Stewards”; APP “Annual Report”). By the late 1980s, APP expanded to seventy corporate members (APP “Stewards”).

By the 1990s, APP had become a major political player, working closely with City Hall and citizen’s groups to create a “prosperous and active downtown” (Ozawa 174). As well, APP started to provide private cleaning services through its new Clean and Safe pilot project, part of Mayor Bud Clark’s 1989 *12 Point Plan to End Homelessness*. Homeless individuals were hired by APP to clean the city garages and public streets (APP “A Decade”; Wyatt). Despite their successful expansion, APP still felt that there was not enough being done to address downtown’s appearance and economy. So it lobbied for a contract to manage a downtown economic improvement district, a private-public venture that had been originally proposed in the *Downtown Plan*, which would provide more extensive cleaning service and other supplemental services (e.g. security).

### ***Creating a Downtown Economic Improvement District***

APP was approved by City Hall to manage a downtown economic improvement district (EID), which they felt was necessary to improve the image of downtown and stimulate economic growth. However, there were some critics of this move to privatize the management of public spaces.

In the 1980s, federal monies to the city decreased substantially (Worrall et al. “Brief History”). Businesses complained that the level of cleaning and police presence downtown was not enough to maintain a positive image. Businesses began complaining to APP and City Hall that downtown was “grungy” (Scott) and “dirty” (Wyatt) and that a general sense of cleanliness and security needed to be addressed (Scott). Specific issues mentioned were crime, lack of cleanliness in public streets and panhandling (PCH “City Hall” 758-759). They believed the negative image was affecting their survival as a business district, putting their property values in jeopardy (Wyatt).

Unlike the suburban shopping malls, downtown lacked the same level of cleanliness and security and was finding it difficult to compete (PCH “City Hall” 759; Kuykendall; Doern). Businesses concluded that the negative image of downtown could not be addressed by the cash strapped city and therefore they would have to provide concentrated security presence and superficial maintenance themselves (Wyatt; Scott). Businesses thought the most effective mechanism to fund the cleaning and security services would be a downtown economic improvement district. Now, they needed a legal framework in order to proceed, which they received in the passage of Oregon Legislature House Bill 2443 in 1985.

The Oregon Legislature House Bill 2443 allowed businesses to organize and petition their city to create a local economic improvement district (EID). An EID could be established and managed by the petitioner for up to three years, in areas zoned for commercial or industrial use only. To raise funds, the manager of the EID could implement mandatory assessments of all properties within the district, except residential properties. With the funds, the businesses could run a broad agenda of programs to improve downtown’s image and economic performance including: planning or managing development or improvement activities, landscaping or maintaining public areas, promoting commercial activities or public events, supporting business recruitment and development, improving parking systems or parking enforcement or implementing any other economic improvement activity that would benefit the assessed (business) properties (Economic Improvement Districts of 1985). Now APP had a legal framework to operate within.

In 1987, APP set up the Downtown Economic Improvement Committee in order to decide whether or not an economic improvement district was practical and subsequently decided it was. APP created the committee to “investigate the feasibility of a downtown EID and to assist the Portland City Hall in establishing such a district” (PCH, 1987, 1). The committee, directed by

APP's Executive Director Ruth Scott, was made up of essentially the same organizations that founded APP – leaders from large downtown companies, such as Nordstrom's and General Electric (APP "A Decade"; Wyatt). Not surprisingly, as Ms. Scott had previously worked for two organizations that advocated for EIDs (the Oregon Downtown Development Association and the International Downtown Association), the committee decided that an EID was feasible for downtown (Innovation Partnership "Ruth Scott"; APP "A Decade"). With legal framework and a supportive feasibility study, APP began to lobby City Hall to create a downtown EID.

The committee wrote an *Economic Improvement District Plan* and submitted it to City Hall for consideration (APP "A Decade"). In the plan, the committee argued that City Hall could not maintain downtown at a level that would support economic development and crime prevention. The current Mayor, Frank Ivancie, the Chief Financial Officer, and several Commissioners were supportive of APP's proposal for an EID because they had experience with APP's pilot Clean and Safe Program and therefore "knew what they were getting in to" (Wyatt; PCH "Interoffice Memo" 758-759). With the support of the City, the process of passing the necessary ordinances was "pretty straight forward" (Wyatt).

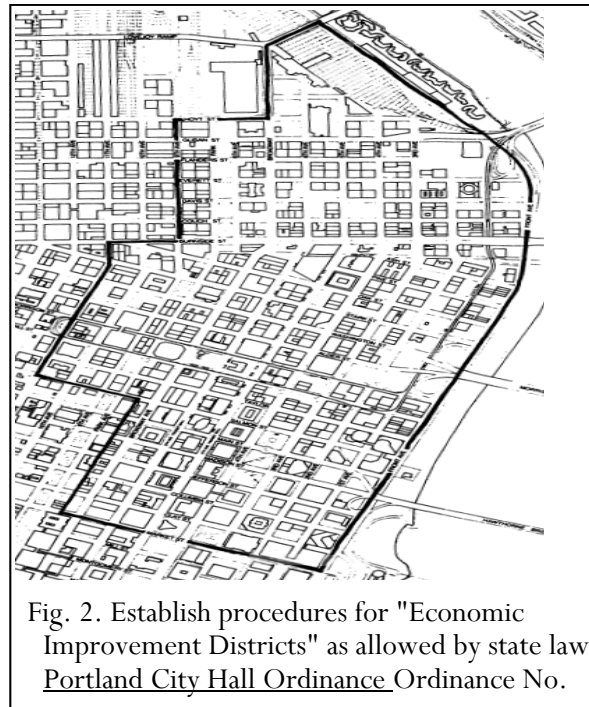
On March 9, 1988, the City implemented Ordinance No. 160561, which was based on the *Economic Improvement District Plan* written by APP and reviewed by the Offices of Transportation, the City Auditor, the Fiscal Administration, and the City Attorney. It outlined the procedures and requirements to establish an EID (PCH "Interoffice Memo" 1, App. E; Wyatt). There were two funding options for the EID: mandatory or voluntary. APP petitioned for an EID with mandatory funding, by submitting the *Preliminary Economic Improvement Plan* to City Hall (PCH "Interoffice Memo" 758-759). There were seventy-one petitioners (including Central City Concern and the PCC). The EID would be managed by APP and have two separate budgets: \$247,000 for seventeen street cleaning staff, \$892,000 for twenty-eight full time visitor guides, who would have two way

radios to the police, and five additional police officers. Again, APP argued that the EID would ensure that downtown appeared “clean and safe” (PCH “City Hall” 759-760, App. B). Again, the city agreed with APP’s argument for an EID and on June 1<sup>st</sup>, 1988, established a preliminary EID in Resolution No. 34431 on the condition that a *Final Economic Improvement Plan* would be developed and submitted by a task force appointed by the city.

A task force was set up by the Mayor, which included representatives from APP and City Hall, to write the final plan. The task force included a representative from each organization: Office of Fiscal Management, Bureau of Transportation Engineering, City Auditor’s Office, Bureau of Maintenance, Bureau of Police, EID Advisory Committee/APP, and the Mayor’s Office. On June 10<sup>th</sup> Larry Dully, from the Portland Development Commission, became the chairperson of the committee (Portland City Hall “City Hall” 760-766; Portland City Hall “Interoffice Memo” 3). June 22<sup>nd</sup>, the task force submitted the final plan for the EID and argued that it would effectively address concerns about cleanliness and crime and improve downtown’s economy (Portland City Hall “Interoffice Memo” 2-3).

The EID would provide supplemental security patrols and cleaning that would address these concerns. The security patrol would be named the ‘Portland Guides’. On regular walking patrols downtown, the guides would develop relationships with businesses, advise visitors, and communicate with the police, emergency services, parking patrol, city maintenance and the cleaning program through two way radios. The cleaning program, which would continue to be a homeless to work program, would be expanded to serve the entire EID. It would clean sidewalks and remove graffiti. Both the security patrols and the cleaning crews would be the “eyes and ears” for the police, reporting visible, public nuisance crimes to the police and dealing with minor disturbances such as vandalism and cleaning problems.

City Council agreed with the task force and formally established the EID by unanimous vote on June 29<sup>th</sup>, 1988 through Resolution No. 160995<sup>1</sup>. Figure 2 is a map of the new EID's boundaries.



The City directed the City Auditor to mail the affected properties to inform them of the creation of the EID and the assessments that they owe (Portland City Hall "Interoffice Memo"). APP established the EID and called it 'Downtown Clean and Safe. It was one of the first, if not the first, EID to be created in the U.S. (Scott).

Although there were supporters of Downtown Clean and Safe, there were also those who had a variety of concerns. Some businesses did not want to pay a private entity for the supplemental services. The EID did not receive universal support of affected businesses. Only fifty percent of the value of the district voted to approve the EID (Portland City Hall "Interoffice Memo" 2-3). There had been some business owners, in particular non-profits on 10<sup>th</sup> and 11<sup>th</sup> streets and small business owners, who were opposed to the mandatory assessment. Those businesses were worried about the extra costs.

Others worried about the impact on the disadvantaged. For example, although businesses had made an effort to reach out to homeless advocates, there remained tension between the two groups because the advocates had concerns that the BID might negatively affect the homeless community (Wyatt).

Others thought that it wasn't fair that a wealthier part of the City received a higher level of service than the rest of the city. APP felt that the supplemental services in their district was fair if a basic level of services remained constant throughout the City. There were others, however, who felt uncomfortable the potential for imbalance of services across the city (Wyatt).

Finally, Commissioners Koch and Blumenauer and the business community were concerned that the City would evade its responsibilities to implement basic downtown services. They did not want the supplemental services managed by the EID to replace City services (Portland City Hall "Interoffice Memo" 5). As well, the City was concerned that if the EID terminated, it would be expected to pay to maintain the same level of supplemental services. APP assured the City throughout the process that the private services provided by the EID were supplemental only, not a replacement (Portland City Hall "Interoffice Memo" 6). But these concerns were not the biggest threat the newly created EID faced. Just a few years after it had implemented the EID, APP had to find a new way to fund it.

### ***Creating a Downtown Business Improvement District***

Measure 5 decreased the City's budget and put Downtown Clean and Safe in jeopardy, which forced businesses to manage the EID through voluntary funds, and later, to lobby successfully for a reinstatement of the mandatory assessments in order to keep downtown visibly clean and safe. This led to the creation of a BID, which prescribed to many of the same principals as its predecessor, the EID.

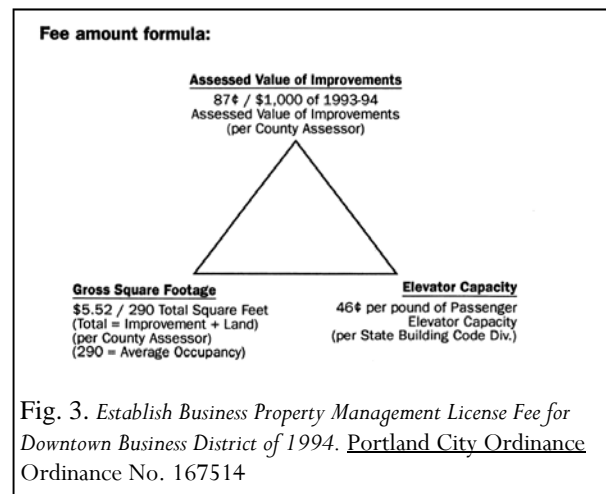
In 1991, Measure 5 was approved by Oregon voters and its passage resulted in City budget cuts, which made it difficult for the City to provide basic services for downtown. It also made Downtown Clean and Safe's mandatory assessments unconstitutional (APP "Stewards"; APP "A Work"). APP, however, continued to believe in Downtown Clean and Safe. They thought downtown needed the EID's extra services because it had a high concentration of economic and social problems, which included "crime, presence of transients, litter and other drawbacks", which needed to be addressed in order for people to feel comfortable downtown. The downtown businesses agreed with APP. In a 1991 APP survey, most respondents agreed that there was a "need for public/private sharing in the delivery of essential services such as security and public area maintenance" (APP "Economic Improvement"). Businesses had to find a legal way to fund the EID.

For the next three years, some of the downtown businesses elected to fund it voluntarily. Approximately eighty-five percent of businesses voted to provide voluntary funding to keep the EID running (APP "Stewards"; APP "A Work"). This voluntary assessment mechanism was approved by the city in Ordinance 164665. However, the voluntary assessment program had a major flaw - it took more resources to administer, unlike the mandatory mechanism administered by the City (APP "A Work"). Similarly, APP concluded that the EID would achieve better results if one hundred percent paid their assessments versus eighty percent (their highest contribution percentage during the three voluntary years) (APP "Downtown Clean"). After funding the EID voluntarily for three years, APP realized it would prefer mandatory assessments again. Mandatory assessments would increase funds, enabling APP to continue providing private services at a certain level. However, to do so, APP would have to find a mandatory assessment mechanism that could be found legal in a tax court (Wyatt).

In 1993, one year before the next renewal of the EID, the EID Advisory Committee directed APP staff to find a mandatory source of revenue to support the Downtown Clean & Safe

district, one that would be legal under Measure 5. APP researched, with the help of City Hall and legal staff, different ways to fund Downtown Clean and Safe. The research included a survey of property owners and civic leaders. Finally, APP submitted its findings to City Hall (APP “Economic Improvement”; APP “Downtown Clean”). APP argued that, after reviewing “all sources of municipal revenue authority under the Oregon Constitution and the Portland Charter”, it decided that the current EID should become a Business Improvement District (BID).

The BID would be financed by a business license fee, administered by the city and based on the approximate ‘load’ or need for private services that a given property placed on the district. This would be calculated by property value, square footage and passenger elevators. This complicated formula is outlined in Figure 3.



This fee would distribute the costs fairly and minimize the change from the EID to the new BID (APP “Development”). Once APP decided that the business improvement district would be the best choice, it needed City Hall to pass an ordinance supporting it.

In 1994, APP lobbied City Hall, with the support of sixty-seven percent of businesses, to institute a BID funded by a business license fee on downtown property management (APP “A Work”). City Hall agreed with APP’s argument for a BID that downtown was a unique area that attracted a concentrated number of people, especially disadvantaged individuals, and needed



Downtown Clean and Safe's supplemental services to maintain downtown as a "vital economic, cultural and citizenship center of the City and the region" (Establish Business). It also agreed that a business management license fee was necessary. So, on March 30, 1994, the City Council passed Ordinance 167514, which allowed APP to manage a BID through a business license fee (Amend City Code; Establish Business). APP obtained an ordinance that allowed them to manage a BID – now, the BID had to be found constitutional in a tax court in order for City Hall to legally approve of APP's petition.

The city petitioned the Oregon Tax Court to obtain a ruling on the constitutionality of the BID and the tax court found the BID constitutional.<sup>2</sup> In 1996, the City made the transition from EID to BID complete by implementing a Property Management License Fund that provided a process for the BID to receive monies from the city.<sup>3</sup> After Measure 5 made it necessary for APP to fund the EID voluntarily for three years, APP was able to fund Downtown Clean and Safe through mandatory assessments, which businesses felt would ensure higher level of service and maintain a positive image of downtown.

### **Expansion of the Business Improvement District**

#### ***Seeking Funds for the Expansion of the BID***

Since 1994, city budget cuts negatively affected city services. In response, APP lobbied City Hall to raise revenue for the BID's supplemental services, which kept downtown visibly clean and safe. Some were critical of raising the BID's fees, because they felt the BID's approach did not address their concerns.

When the BID came up for renewal in 1997, city budget cuts were further decreasing city services (e.g. fewer police officers on the street) (DelGizzi; Kuykendall). In response, APP, Central City Concern, Portland Police Bureau and seventy percent of businesses in the BID district

petitioned City Hall to vote yes on the renewal, with modifications to ensure sufficient funding “for supplemental services in the district...consisting generally of security, cleaning...” (Petition for Adoption; Amend Downtown). Along with the petition, APP wrote a draft of the desired amendments to the city code (Amend Downtown).

The petitioners wanted to increase the fees to “adjust the formula to 1997-2000 expected costs” (Petition for Adoption). As well, they wanted the ability to tax managers of downtown rental and owner occupied properties (i.e. most condos), to prevent them from benefiting from the private services provided by the BID without paying for them (Doern). The City agreed to renew the BID with the fee increase and the new assessment of rental properties, but without the assessment on owner occupied properties “to allow time for further consideration of whether management of owner occupied dwellings should be subject to the license fee” (Amend Downtown). The City declared that single room occupancy properties, low income, and subsidized housing remained exempted for public policy reasons. On July 2<sup>nd</sup>, 2007, City Hall passed Ordinance No. 171365 that amended the city code (Amend Downtown).

Although there were supporters of these amendments, there were also critics of the expansion of the BID’s taxing system. Some didn’t support the fee increase for the following reasons: the system for calculating the fee was unfair (e.g. fringe areas pay the same amount, but receive less services), the BID’s private service had not made downtown cleaner or safer, the BID could be managed at a reduced fee with similar results, an increase in the fee would go to a new layer of bureaucracy instead of more services, BID management did not use the money effectively, and a small segment of downtown paid for services that the whole city enjoyed (Amend Downtown).

Others didn’t support the taxes on residential properties and had the following concerns: the private services would not benefit condo owners because they were tailored for businesses,

residents didn't cause street disorder and so they shouldn't be assessed fees to deal with it, the fee structure was unfair (e.g. charges residential properties more than business properties), residential owners were not consulted appropriately about the proposed amendment, the cost of moderate and low income housing would increase and make it difficult for people to move and live there, and finally, increased fees discourage individuals from moving and living downtown and a concentration of residents increases the security of downtown (Amend Downtown).

In 2001, APP lobbied to renew the BID again and sent a draft of proposed amendments to City Hall (APP "Letter to Gary"). APP argued that the BID should renew every ten years instead of every three years in order to have fewer "expensive" reviews (Amend City). As well, APP declared that all residential properties should be assessed and owner occupied dwellings should be encouraged to pledge money to the BID (Doern). Mass shelters, property owned by religious organizations, and owner occupied dwellings would still be exempt from mandatory funding for public policy reasons (Amend City). APP also requested some modifications of the fee system to increase the fees (Scott). Finally, APP wanted the BID to expand to include Tax Block 2 of Block 1, a south-eastern section of the Downtown Neighbourhood which would increase the number of properties being assessed. The City approved all the proposed amendments in Resolution 175729.

As a result of the increased revenue from the variety of different avenues, the scope of services the BID offered expanded. In the amended city code of 2001, the activities of the BID were expanded to allow the BID to manage supplemental services that address crime prevention (instead of just security), transportation (instead of improvements to parking system and parking enforcement), public policy, housing, marketing and communication, and a lighting program (all new) (Amend City).

In order to increase the BID's range of supplemental services, APP lobbied City Hall, and in most cases was successful at raising more funds for the BID. Not everyone in the community, however, felt comfortable with the expansion.

### ***Future Plans to Expand the BID***

PBA (APP's successor) hopes to acquire more revenue sources, by assessing owner occupied dwellings and expanding the BID to include more city blocks. After an unsuccessful attempt by APP to include owner occupied units in the BID's assessment system, PBA is planning to lobby City Hall again for the same purpose. This would boost the PBA budget and would address the free rider status of owner occupied dwellings. As well, PBA wants to expand the BID's boundary, as far as 14<sup>th</sup> street, to assess new development in that area (Doern).

### ***The BID Gets Involved in Social Activism***

During the 1980s and 1990s, the BID's managers lobbied for and managed social services that it believed would make downtown visibly clean and safe for consumers, which it felt was still a critical issue. There were concerns about some of the policies APP advocated for, especially from within the homeless community.

In the 1980s and 1990s, APP believed that the needs of the city's disenfranchised should be addressed because "personal safety and security remain critical issues to shoppers, visitors, employees and residents: street people, panhandlers and the chronically mentally ill contribute to the public's fears...discomfort and negative perceptions" (APP "Strategic Plan" 12). APP thought the needs of the disenfranchised should be addressed in order for downtown to be noticeably clean and safe to shoppers, visitors, etc., so it lobbied the local government and non-profit agencies to provide services and it managed a few services supplemental to those programs.

APP did not feel responsible for addressing the systemic issues, but believed it to be the job of the city, Multnomah County, and non-profit agencies. It said “Multnomah County and non-profit agencies carry the primary responsibilities for addressing the needs of Portland’s disenfranchised citizens” (APP “Strategic Plan” 12). It saw its main role as an advocate for the formation or continuation of programs it felt would keep downtown free of visible nuisance activities and low level crimes. For example, in the early 1990s, APP advocated for a Drug and Prostitution Free Zone in Old Town – Chinatown.<sup>4</sup> APP lobbied City Hall and, in 1992, it was successful (APP “Stewards”; Kuykendall).

Although it believed its main role was primarily an advocacy one, APP did manage supplemental services aimed at making downtown free of noticeable nuisance activities and low level crimes. For example, in 1990, APP implemented Real Change, Not Spare Change, which was aimed at “discouraging panhandling and other nuisance behaviors downtown”, and in coordination with the Police Department, the Street Musician Guidelines which limited street musician activity (APP “A Work”). APP’s efforts were not limited to these examples.<sup>5</sup>

As APP obtained amendments to the city code and social services, critics began to mount against some of the policies that APP was advocating for. For example, City Hall and the homeless community were concerned about the Drug and Prostitution Free Zone’s implementation. When it came up for renewal in 2007, despite the hopes of the PBA (APP’s successor), it was not renewed because of concern about racial disparity (Goracke). At City Hall, Mayor Tom Potter was not supportive of the Drug and Prostitution Free Zones and conducted an official report about the ordinance’s implementation. The report, conducted by John Campbell, demonstrated that the ordinance was being implemented with racial disparity. PBA agreed that there were problems with the ordinance, but felt it should be renewed with modifications to ensure those issues are being addressed (Kuykendall). Some homeless advocates, however, wanted the ordinance to be

permanently shelved. They argued (later) that Old Town – Chinatown was safer in 2008 than it had been for three years, when the drug and prostitution free zones had been enforced. As well, they still had concerns that a new ordinance would exclude minorities and homeless individuals at higher rates than the European Americans and the housed (Nolen).

Another example of criticisms concerned APP's attempt to limit street musician activity and panhandling. When APP and the Police Department initiated the idea of limiting the activity of street musicians, it received negative publicity. Therefore, they modified their course of action and convened a meeting with important stakeholders. The result was a "community partnership with voluntary guidelines for performers" (APP "A Work"). APP's attempts to limit or remove panhandling, such as Real Change, Not Spare Change, also raised concerns. Panhandling, some homeless advocates argue, is misunderstood. Not only is panhandling is a protected form of free speech (NCH "Illegal"), it is often a survival function (Jolin). In a recent study, which analyzed 522 interviews with homeless men and women, seventy-two people reported that panhandling was an income source. The top four expenses of panhandlers were tobacco, food, hygiene items, or laundry. Only twenty-five panhandled for drugs or alcohol. Panhandling buys food after the rent is paid and food stamps are spent (NCH "Illegal").

When APP worked with the community and the government, the outcomes were more favourably received than those initiated and managed on their own or with the Police Department. APP's Executive Director at the time, Ruth Scott, believed it was important to work in conjunction with City Hall, because APP and City Hall were partners working together for the "mutual benefit of helping downtown" (Scott). APP successfully encouraged the implementation of ordinances and programs. There were concerns, however, about some of the policies APP advocated for and social services APP managed. In the end, APP realized that working with the

local government and the public would help ensure that its policies and services would be more favourably received.

### ***BID Managers Extend Their Reach***

In 2000, APP, under the leadership of a new executive director, merged with the PCC in order to expand its lobbying to a regional level, however, some businesses felt uncomfortable with the merger. In 2000, APP hired a new Executive Director, Franklin “Kim” Kimbrough, who decided to merge APP with PCC. The merger would respond to businesses who complained that they paid two sets of fees (to APP and PCC) for essentially the same services and it would provide more funds for “stronger advocacy at all levels of government” (Doern; Goldfield “Chamber Directors”). APP believed shifting to a regional focus wouldn’t result in downtown’s needs being neglected. Instead, “many of the large employers in the suburbs understand it is in their best interests, and the region's best interests, to maintain a strong and vital downtown” (Goldfield “Chamber Director”). Once APP decided it wanted to merge with PCC, it proceeded with the merger.

Working closely with Mayor Vera Katz, APP and the PCC merged and became the Portland Business Alliance in 2002 (Goldfield ‘Chamber Directors’; Doern). The new organization had two functions: one, as a downtown chamber of commerce that managed downtown garages, Downtown Clean and Safe, and some marketing programs, and two, as a regional chamber of commerce that advocated for businesses in greater Portland (Goldfield “Chamber Directors; Kuykendall). This merger was the first of its kind in the nation (Kuykendall).

As a result, PBA expanded its lobbying and became a “political force” (Jaquiss “Bulldog”). For example, for the first time, PBA endorsed candidates for regional elections. Or, as another example, PBA started a Political Action Committee that channelled money directly to candidates

and hired lobbyists who advocated for PBA's policies locally, regionally and state-wide (Jaquiss "Bulldog"; Kuykendall). PBA advocated for a range of policies, from lowering business taxes to forming a new Drug and Prostitution Free Zone. The funding came from donations, generally by PBA's members, which is legal (Kuykendall; Clucas). Some downtown businesses were uncomfortable with the new direction.

The business community had concerns that PBA was moving away from its original purpose as a downtown chamber of commerce and that it would be run ineffectively by its new leadership. Some argued that PBA had moved away from its original purpose - a downtown chamber of commerce that worked specifically to meet downtown businesses' needs - and as a result downtown's unique needs would not be adequately met (as the PCC had previously failed to do) (Wyatt). The Mayor, Vera Katz, agreed, expressing her wish that there "remain a focus on downtown" (Goldfield 'Chamber Directors').

Others worried PBA would be less powerful than APP (Wyatt). There were concerns about Mr. Kimbrough's ability to lead PBA. In the words of one scholar on the subject:

Mr. Kimbrough did not understand Portland politics and culture. He was very heavy handed, essentially threatening City Hall, who had previously thought of the APP as an ally. He got Mayor Katz furious at the PBA and helped them lose the contract for managing the city-owned Smart Park garages. PBA had a disastrous 2-3 years initially after the consolidation (Abbott).

Despite the concerns it produced, the merger went ahead and it enabled PBA to expand its lobbying, and as discussed in the next two sections, expand its security program and provide resources to keep the local community court running.



### *The BID Expands its Security Program*

The Police and Parks Bureaus' budgets were cut, which resulted in fewer police and park officers patrolling the streets and parks. In response, PBA lobbied successfully, with the support of most of the downtown business community, to restructure and expand the BID's security program, focusing its efforts on nuisance activities and low level crimes. Nevertheless, the Police Bureau, homeless advocates, researchers and others had concerns about the increased presence of private patrol officers in public streets.

Since 1994, the Police and Parks Bureaus' funding decreased, because there were budget cuts in the city's general fund. The budget cuts were a result of a poor economy and fewer tax receipts (DelGizzi). The resulting shortages decreased the number of police patrolling the streets and parks. For example, in the Central Precinct (where the BID is located), there were 125 officers in 1998 and there are 78 officers currently (Kuykendall). The Central Precinct police officers patrol an area that is 32.4 square miles and has 99,174 residents (Portland Central Precinct "Welcome"). The Police Bureau has few officers on streets to address visible, public nuisance crimes, especially when it has more serious crimes to deal with (Berman and Feinblatt 82; Reese).

Similar to the Police Bureau, the Parks Bureau's budget was cut and the bureau could not pay for police officers to patrol the parks or, even if it could pay for police officers, the Police Bureau would be unlikely to give up officers because of the shortage (Goracke). Both bureaus needed more inexpensive officers who would patrol public streets and parks to deal with visible, public nuisance crimes. PBA, addressing its members' concern that downtown was noticeably unsafe, lobbied City Hall to expand its security program, which would provide more inexpensive private patrol officers who would patrol public streets and parks.

Since the 1990s, downtown businesses were concerned that employees and the public considered downtown unsafe. In 1994, APP conducted a survey of downtown businesses and most

of the respondents worried downtown appeared unsafe to consumers, employees, etc., and came up with possible solutions. First, private patrol officers' presence on the street should be increased.

There should be more private patrol officers patrolling in the mornings to

...sweep through the downtown to check bus shelters, doorways, park areas, garage areas, etc., for any problems that could interfere with the early morning arrival of employees to work. This patrol could be accomplished on foot, on bicycle, or in the Clean & Safe van. This service would directly address concerns stated in the Values Survey as regards unwanted persons activity... (APP "Downtown Clean").

Second, more private patrol officers should patrol at night to "address public safety concerns" (APP "A Work"). Figure 4 is a clip from their 1994 Annual Report, illustrating one of the changes APP's members hoped to make happen.

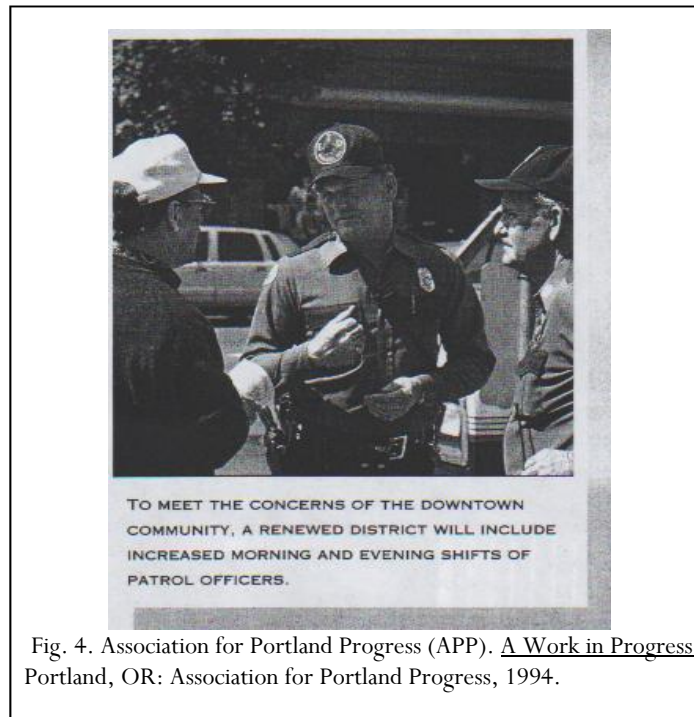


Fig. 4. Association for Portland Progress (APP). A Work in Progress. Portland, OR: Association for Portland Progress, 1994.

Third, a panhandling team should be created to address "panhandling, aggressive panhandling, as well as dealing with the public through APP's panhandler information and voucher program" (APP

“Downtown Clean”). Fourth, one Portland Guides’ evening shift should be replaced by patrol officers (APP “A Work”).

In addition to increase the officers’ hours on the street, private patrol officers’ authority should be enhanced through a closer relationship with the Police and Parks bureaus. For example, in APP’s 1998 Annual Report, APP said they were working towards a closer relationship between the private patrol officers and the Police Bureau, which would include the BID contracting two police officers (APP “Annual Report”). APP argued that private patrol officers, even if their authority was limited<sup>6</sup>, do make a difference simply by their presence on public streets (Goracke, Kuykendall). The close relationship between the patrol officers and the police, which would include similar uniforms, carrying guns, and a direct radio link, would increase the ‘police presence’ on the street and therefore deter individuals from committing crimes (Kuykendall; Doern).

To address its members’ concerns, PBA lobbied City Hall to approve of multiple expansions to the BID’s security program, arguing that the private patrol officers were inexpensive and the officers’ presence in public streets decreased crime downtown. For example, private patrol officers were hired at half or a third of the cost of a police officer. Private security costs \$60,000 per officer annually while a police officer costs \$80,000 per officer annually (in today’s pay). Or, as another example, in 2008, PBA asserted that PPI officers’ presence has reduced crime by twenty-nine percent over three years in the BID district (Doern; PBA “Downtown Portland’s”). PBA attributed the decrease to PBA’s partnership with the Mayor’s office, Central Precinct Police and City Concern that focused on low level, chronic offenders (PBA “Downtown Portland’s”).

The Police and Parks Bureaus agreed with PBA and encouraged private patrol officers to increase their patrol on the streets (police bureau) and in public parks and other city developments (parks bureau). The Police Bureau decided it needed to have a “good working relationship” with

PBA's Portland Patrol Inc. The bureau encouraged patrol officers to be the 'eyes and ears' of the police by persuading individuals to follow the law, especially when visible, public nuisance crimes were involved, and report those who did not (Reese). The Park Bureau contracted PPI patrol officers as official Park Officers. PPI patrolled public parks and handed out park exclusions (violations) (Goracke; Portland Patrol). Responding to the increased demand for private patrol officers, a result of successful lobbying, PBA restructured and expanded its security program.

PBA's security program was contracted, to make it easier for APP to administer, to the Portland Downtown Services Inc (PDSI). Then, PDSI contracted Portland Patrol Inc. (PPI) to hire and manage the private patrol officers (Kuykendall; Doern). A former Central Precinct police commander, who had previously worked closely with the Downtown Clean and Safe, had formed PPI (Kuykendall).

Once it restructured its security program, it expanded it. PBA hired seven more officers (Doern). The officers actively patrolled the streets. For example, Clean and Safe engaged in 17,903 interactions with individuals on the streets of downtown Portland in August 2007, including 8,400 pedestrian contacts, 111 arrests (assisting police officers), 257 park exclusions and an additional 138 non-enforcement problem solving contacts (PBA "September 2007"). Contracted by the Parks Bureau, private patrol officers began to patrol public parks and other public areas, including the new urban renewal neighbourhood New Columbia Development and the Vera Katz Eastbank Esplanade (Portland Patrol; Kuykendall).

Not only did PBA expand its private patrol officers' patrols, it also expanded its role in downtown crime prevention. For example, on October 11, 2005 Mayor Potter's initiative for a Downtown Public Safety Action Committee passed City Council. It would, in his words, "increase the security of our downtown streets, restore the confidence of residents who live, work and shop in one of our nation's safest cities, and make Portland a more welcoming place to visitors" by

making sure aggressive panhandling, car prowls, drinking in public, property crimes, selling drugs and prostitution, or in general, noticeable, public nuisance crimes, get dealt with (Portland City Hall “Mayor Potter’s”). PBA staff member Mr. Kuykendall became chair of the committee and six precinct officers were assigned to the committee to implement its recommendations (Portland City Hall “Mayor Potter’s”). In another example, PBA became actively involved in efforts to improve downtown’s environmental design in order to prevent crime (Kuykendall).<sup>7</sup>

Some groups in the Portland community were concerned about the expansion of PBA’s security program. The Police bureau doubted that the decrease in crime downtown was linked to the increase in private patrol officers (Reese). Current research agrees with this assessment. It is true that disorder<sup>8</sup> may play an important role in sparking decline (Worrall 288-289). Although BIDs nationwide have claimed to be responsible for the reduction in crime, a study by the Center for Juvenile and Criminal Justice found that there is no link between BIDs’ private security focus on visible, public nuisance crime and the decrease in crime (Ozawa 283).

Non-private policing that focuses on visible, public nuisance crime is more effective. Private patrol officers in Portland have limited abilities in part because the Police Bureau discourages them to take on the same responsibilities as the police. On patrol, PPI officers don’t have the authority to arrest or enforce laws, except park exclusions, which they are able to administer on their own. Even park exclusions, however, have to be verified by a judge in order to be enforced (Goracke). On the other hand, increased non-private police patrols, which focus on visible public nuisance crime, are linked to decreases in crime downtown. A review of research, at the macro and micro level, agrees that “quality of life” policing does affect physical disorder and public moral offences (Worrall 76). Law enforcement can “do things that private security can’t” (DelGizzi), which includes citing individuals for public nuisance crimes (Lyons). Specifically, “the police force of the City shall at all times of the day and night within the boundaries of the

City...remove nuisances existing in streets, roads, public places, and highways” (Duties of Police). Police officers are more effective at decreasing levels of visible, public nuisance crime than private patrol officers. It is unlikely the increase in private patrol officers’ presence downtown decreased the level of visible, public nuisance crimes.

Not only are private patrol officers less effective, when they do act, there is no public oversight of their actions – unlike the police bureau, which is more effective and is publicly overseen<sup>9</sup>. Some believe the solution should be the creation of a public oversight committee to oversee the private patrol officers. Others feel there should be more police officers and fewer, or no, private patrol officers.<sup>10</sup> In particular, homeless advocates are concerned about the lack of public oversight of private patrol officers because there have been complaints in the homeless community about the officers’ behaviour, which is less common, and private patrol officers’ authority to patrol public space, which is more common.<sup>11</sup>

Not only are private patrol officers’ actions less effective and not under the scrutiny of the public, they may also be unconstitutional. Private patrol officers’ actions would be unconstitutional if a law existed that found the contract improper and if the court viewed the private patrol officers as public actors (private actors can’t be sued for violating the constitution). In Portland, there are no laws that deny or approve of private patrol officers’ rounds in public space - it exists in a vacuum. On the other hand, some argue that private patrol officers could be viewed as public actors in court. Convincing the court that the officers are public actors may depend on what action they are doing - officers handing out park exclusions would be more likely to be viewed as public actors versus officers who are patrolling the streets and telling people to “move along” (Goracke; Jolin).

Some critics believe the argument should not be focused on which entity should enforce visible public nuisance crimes, but instead, should visible public nuisance crimes be enforced at all

(or considered a crime in the first place)? Downtown Clean and Safe is “all about the Broken Windows Theory” or keeping downtown visibly clean and safe in order to attract people downtown. Yet the theory misses a vital point – why does a poor neighbourhood appear ‘unclean and unsafe’ in the first place? To some, ‘quality of life’ policing is simply a “harassment model of policing” that ignores the systemic causes (Worrall 74). One homeless advocate explains his point of view:

Homelessness is directly attributed to lack of government funding for affordable housing and other vital services. Isn't it the government's fault that there are homeless individuals on the street in the first place? Wouldn't the solution be to provide enough housing and services so that people were housed and off the street! (Nolen)

Although PBA understands there are systemic issues that need to be addressed, they believe it is not their primary role, but the government's (Kuykendall). On the other hand, some argue it is PBA's social responsibility to deal with the underlying causes of why downtown is or isn't clean or safe. If it did, it would be more successful in removing nuisance activities and low level crimes from downtown's streets (Lyons). To sum it up, there “remains a need for all stakeholders [including the business community] and particularly less powerful constituencies, to be a part of the process of fixing neighbourhoods' broken windows. Quality of life is a shared interest” (Jolin).

When budget cuts resulted in fewer police officers patrolling public streets and parks, PBA restructured and expanded its security program to increase its private patrol presence and crime prevention strategies. PBA's expansion of its private security program resulted in some members of the community and the Police Bureau being concerned.

### *BID Management Develops a new Partnership with the Community Court*

Advocates in the local government created the Portland Community Court because the conventional judicial system lacked the resources to prosecute individuals for visible, public nuisance crimes. Later, when the community court's budget was cut substantially, PBA provided resources to keep the court going. PBA believed prosecuting individuals who committed low level crimes and criminalizing nuisance activities would make downtown free of these activities. Some worry the court has lost its original role in the community, while others simply believe that the court has important drawbacks and should not be used to deal with public nuisance 'crimes' at all.

In the early 2000s, a rise in caseloads and a decrease in resources meant conventional courts dismissed most public nuisance crimes and the probation system found it difficult to monitor those that were convicted (Berman and Feinblatt 91). The rise in caseloads resulted from an increase in social problems, mandatory arrest and no-drop prosecution policies of domestic violence cases and, important for Portland, new and controversial laws that restricted the access of convicted offenders to certain public spaces. The new laws criminalized "behavior that, up until recently, would have received no criminal sanction" or they "more aggressively enforce[ed] laws already on the books – thousands of new cases have been brought in to the system" (Berman and Feinblatt 24-25). The increase in caseloads led to fewer resources for non-serious, public nuisance cases. The conventional courts dismissed most visible, public nuisance crimes. For the cases that did lead to a conviction, courts had little guarantee that the defendants would actually perform the services as ordered; there weren't enough resources available to adequately monitor the defendants (Lyons; Berman and Feinblatt 91).

The District Attorney's Office believed a community court would be more effective prosecuting and monitoring individuals charged with visible, public nuisance crimes. The two main supporters, District Attorney Michael Schrunk and the Deputy District Attorney (later PBA's staff



member overseeing the BID) Mike Kuykendall (Berman and Feinblatt 83; Lyons) had three main arguments in favour of the court: it would restore the perception of safety downtown making downtown thrive economically, more adequately meet the needs of the defendants, result in more collaboration between the justice system and the community, and save the local government money.<sup>12</sup> In 1998, Mr. Schrunk lobbied the federal government for funding and the media and key players for support. He was successful, and the same year, the first community court was set up in Portland (Berman and Feinblatt 83). It was the second community court to be formed in the nation (Lyons).

At first, the court expanded from one location downtown to three locations in the city (Kuykendall). The court handled all non-violent misdemeanour crimes and violations in Portland and was aimed at low level, first time offenders, ages 18-25 (Lyons; Berman and Feinblatt 67). The court did not handle cases that involved person to person crimes, restitution, or ones that affected someone's immediate safety. Instead, it generally processed cases that were: "no camping", indecent exposure/offensive littering, prostitution, possession of small amounts of illegal substances (common), certain harassment charges, certain disorderly conduct charges, public intoxication (uncommon), graffiti (uncommon), and minor theft (common) (Lyons). Then, the expansion of the court was halted when the court lost most of its funding because of the county budget cuts. The community court system would have to close if it did not find funding elsewhere (Lyons; Kuykendall).

PBA believed visible public nuisance crimes that were not prosecuted would flourish downtown, deterring consumers, especially those from the suburbs. So, when the District Attorney and Multnomah Presiding Judge approached PBA for assistance with staffing for the remaining (downtown) West Side Community Court in 2002, PBA provided the necessary resources. The resources included funding for a legal assistant, a courtroom clerk and a community

service crew leader (Lyons). The court is located at the downtown courthouse, and because of PBA's provision of resources, is still able to process visible public nuisance crimes (Lyons).

Although there were no specific concerns about PBA's partnership with the court, general concerns about the court remained. The court has lost its connection to the community and needs to have more locations and better outreach to the community. Court is based on the idea of restorative justice, which requires that "all the parties with a stake in a particular offence [sic] come together to resolve collectively how to deal with the aftermath of the offence [sic] and its implications for the future"; therefore, it is important that the court reaches out to all affected community members to ensure the process is collective (Braithwaite J in Worrall 220). In contrast, the large reduction in funding forced the court to be located in one place, the formal courthouse downtown (Lyons). As a result, "community members feel shut off – even geographically isolated – from [the] central downtown court (Worrall 233). As well, the court lacks a comprehensive community outreach program. For example, a staff member from the court, while talking with multiple City Hall staff, found that they were unaware the Court still existed. As a result, the court is isolated from the community – it is no longer a court that practices restorative justice.

The court should have more funding to create new courts in different locations in the community and to create a comprehensive community outreach program that would seek to include all relevant stakeholders, including city bureaus, residents, and service providers (Lyons). Currently, PBA is advocating for more funding. Mr. Kuykendall, PBA staff member, is working with the District Attorney and the courts to find alternative locations in the community for the court, but the county is still having budgetary issues so the court will probably stay where it is for now (Kuykendall).

Some argue that the court should expand its jurisdiction and include more stakeholders, while others believe the court has serious problems that need to be addressed first. First, the court has become a “dumping ground” for cases the conventional court system doesn’t want and a place that “no one wants to work anymore” (Lyons). The conventional court system, because of budget constraints, has been channeling many visible public nuisance cases, especially drug cases, to the community court. As well, lawyers are becoming burnt out and disconnected from the community because there’s no rotation system. The court should implement a rotation system for all staff, particularly judges and lawyers, to prevent burnout. Altering the perception of the court, which is currently viewed as a dumping ground, would be difficult. It would require more funding for the conventional court system so it can process more visible public nuisance crimes (Lyons).

Second, the court discourages defendants to exercise their right to trial. Instead, it encourages them to plead guilty to avoid the hassle of the judicial system. Defendants exercise their constitutional right to a trial in fewer than five percent of the cases, for two reasons. One, most defendants lack adequate legal counsel. Defendants with misdemeanors receive free legal counsel, while defendants with violations (more common in court) don’t receive free legal counsel because there’s no threat of jail time (Goracke; Lyons). Defendants charged with a violation can ask the judge for an extension in order to talk to a lawyer (if they want to and can afford it), but then the defendant would have to be tried by a jury. Most defendants dislike being involved in the formal criminal justice system. As well, defense lawyers have few resources and little time to bring every case to trial. As a result, most defendants do not exercise this option (Lyons). Without adequate legal counsel, most defendants have to make important legal decisions alone.

Two, the legal decisions defendants have are limited. A defendant’s choices are generally a “court hearing in six months... between now and then...you’ll be in jail” or “waive that right, plead guilty tomorrow, and go to treatment right away, and by X date you will be done with

your chemical-dependency treatment. *And they'll get you a job*" (Berman and Feinblatt 178). The choices are limited because the defense lawyers had previously approved of the design guidelines, eligibility criteria, and sanctioning mechanisms ahead of time (Lyons). Without adequate legal counsel and with limited legal choices, many defendants are often persuaded to plead guilty (Lyons). Once defendants have pled guilty, limited resources in the community narrow the defendants' possibility of obtaining access to affordable housing and social service programs, which increases the possibility the defendants will be charged with another crime and return to the court again.

Affordable housing and social services are insufficient and short term, and as a result, many defendants leave the court with their needs unmet. For example, the court does not require defendants to obtain access to housing because there is a housing shortage. As another example, defendants are generally monitored by the court for only six weeks – two to gain entry in to a program and four in the program – and then their case is dismissed (Lyons). First time defendants' cases are completely dismissed. However, if the systemic issues are not addressed (i.e. the reason why the defendant was charged in the first place) the defendant is likely to become a repeat offender. Repeat offenders may have their sanctions discharged, but a conviction will remain on their record. This will make it more difficult for them to obtain access to (limited) affordable housing and social services, which will make it likely the defendant will be charged and return to the court again, and so forth. It's a broken system (Lyons). Some homeless advocates argue that the judicial system should not be handling these issues at all. Instead other, non-judicial options should be used.

Using non-judicial options to deal with public nuisance 'crimes' would save the government money and meet the needs of the defendant better. Jailing an individual costs \$20,000 per year, while putting an individual or family in a shelter costs \$15,000 to \$30,000 per year, and

housing subsidies costs only \$4,500 to \$6,000 per year per individual. Not only is the judicial system more expensive, it also increases the barriers for individuals convicted with these crimes to gain access to governmental services, jobs and housing - things individuals need in order to start again (NCH “Illegal”). In the end, it would cost the city less if it stopped jailing and temporarily housing individuals and spent that money on affordable housing and long-term programs that would address the systemic issues involved (Nolen). The city would have to change how bureaus and businesses implement programs and policies surrounding these issues. It would be difficult, but it should be done (Lyons).

### **Examples of the BID in Action**

#### *Two Different Approaches to Creating an Ordinance*

PBA lobbied for a tougher Obstructions as Nuisances ordinance for downtown and, when it was difficult to implement and found unconstitutional, it lobbied for a second Obstructions as Nuisances ordinance (entitled High Pedestrian Traffic Area), because it felt the ordinances made downtown free of visible nuisance activities and low level crimes. This would attract more people to downtown, particularly shoppers. Unlike the process to form the first obstruction ordinance, the second ordinance involved representatives from the community in most of the process and therefore, while there were still concerns about the second ordinance, the outcome was more favourable to most involved.

#### *A Closed Process: Enacting the First Ordinance*

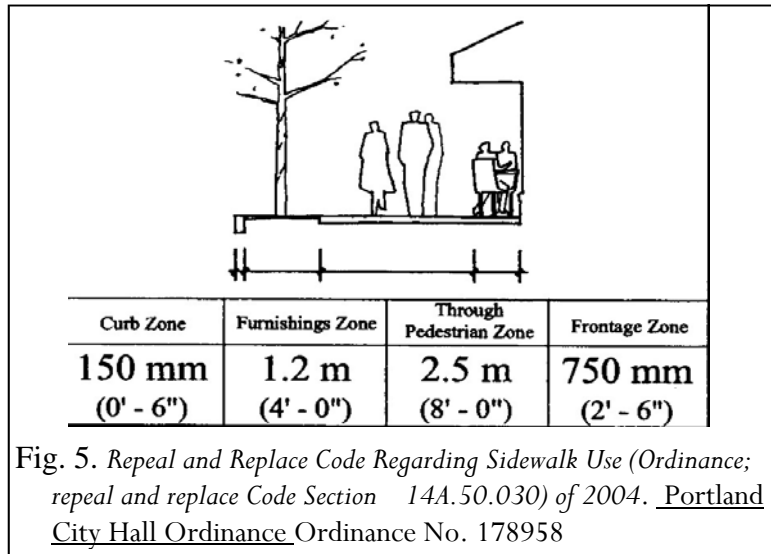
In 2001, PBA lobbied City Hall for a tougher obstruction ordinance, modelled on an ordinance in Seattle, because it believed preventing individuals from sitting or lying on the street would make streets visibly safer, attracting shoppers, visitors, etc., to downtown (Kuykendall).

However, homeless advocates, with the support of Commissioner Gretchen Kafoury, successfully lobbied against a tougher ordinance (Ozawa 292).

Nevertheless, PBA's members continued to demand a tougher ordinance. In 2004, PBA implemented a survey of its members and they ranked panhandlers and transients as the top two issues they wanted addressed, over the cost of parking, taxes and business fees (NCH "Illegal"). So, PBA lobbied City Hall again and City Hall agreed to draft a tougher obstructions ordinance. The city said that "the City has a compelling interest in proper regulation of sidewalk use in the downtown area to provide for the safety of sidewalk users and the efficient movement of pedestrian traffic" (Repeal and Replace) and, at the direction of the Mayor Vera Katz, the City Attorney drafted an obstruction ordinance that would specifically apply to people (Goracke).

The process of drafting the new obstruction ordinance did not involve substantial public input (Jolin). A few members of the public, including some homeless advocates, were involved in the writing process, but felt their main goal was to "make the ordinance less discriminatory and abusive" not to debate whether or not the ordinance should be passed (Newth). Most homeless advocates felt the law would unjustly discriminate against homeless individuals, because homeless individuals were frequently sitting and lying on the sidewalk out of necessity (Newth). Once it was drafted, the new obstruction ordinance passed City Council in Resolution No. 178958 on December 15, 2004.

Once implemented, prosecutors found it difficult to prove an individual had violated the ordinance and, as a result, police charged few individuals.<sup>13</sup> The prosecutors found it was particularly hard to prove that the police officer had been a good judge of whether or not the person had been sitting, lying or obstructing the thoroughway (no physical evidence, just the word of the officer). If individuals were sitting in the furnishing or frontage zones, instead of the thoroughway, it was legal. Figure 5 illustrates the different sections of the street.



Most cases were dismissed (Kuykendall). The low rate of convictions made the ordinance's enforcement less favourable to the police, and most chose not to implement it (Newth). Not only was ordinance difficult to implement, but was also found unconstitutional twice.

In 2004 - 2005, two court cases found the Obstructions as Nuisances ordinance unconstitutional. First, in 2004 the defendants (i.e. homeless individuals charged for violating the ordinance) argued in *State v. Kurylowicz* that the ordinance was unconstitutionally vague and overbroad, infringed upon constitutional guarantees of equal protection and due process, and violated Oregon's constitutional prohibition against disproportionate sentences. The circuit court agreed that the ordinance was unconstitutionally vague and overbroad, for multiple reasons.<sup>14</sup>

The second court case was *State v. Robinson*, filed in 2005. In this case, an individual was cited by a police officer for violating the ordinance. The constitutionality of the ordinance had been upheld in a lower Circuit Court of Multnomah ruling and therefore the individual appealed to the Oregon Court of Appeals. She argued that the ordinance was unconstitutionally overbroad and vague and was pre-empted by state statute. The court found that the ordinance pre-empted ORS 166.025.<sup>15</sup> In 2006, the Obstructions as Nuisances ordinance was about to lapse and City Hall had to decide, with the difficulties and unconstitutionality of the old ordinance in mind, whether it

wanted to keep the ordinance, create a new one with modifications, or not have an ordinance at all (Goracke).

### *A More Open Process: Enacting the Second Ordinance*

Businesses argued that a new ordinance, with modifications that addressed concerns, should be implemented. Homeless advocates argued that there shouldn't be an ordinance at all. Businesses believed visible street disorder impacted downtown's economy:

“businesses, visitors, and residents have expressed increasing concern about the impacts of street disorder...defined as behaviors as public drinking, aggressive panhandling, intimidation or harassment, low level criminal activity... on the business, tourism, safety and liveability of Portland's downtown and other neighborhood business districts” (Establish the Street).

Not only did PBA believe street disorder affected business, but businesses were obliged to act because downtown businesses own the sidewalks adjacent to their properties and are required by the city to maintain them (Kuykendall). Therefore, PBA wanted a new obstruction ordinance that would target street disorder. Nevertheless, it admitted that systemic issues had not been addressed in the first ordinance and believed the ordinance should be renewed with modifications that would “address those issues” (Doern; Kuykendall). Mr. Kuykendall wrote a letter to Mayor Potter asking him to renew the ordinance with modifications (Kuykendall; Newth). At the same time, some downtown businesses complained to City Hall about street disorder downtown (Rubio “The Legality”).

Homeless advocates believed there shouldn't be a renewal of the ordinance, with or without modification, for two reasons. One, it would disproportionately affects homeless individuals. They would receive the majority of the citations and their constitutional rights may be



affected. Two, the presence of people sitting or lying on the street does not deter shoppers from downtown. As well, they disagreed with PBA - businesses don't own the sidewalk adjacent to their property, the city does.<sup>16</sup>

The City realized it had to “work very hard to walk the fine line between the needs of downtown businesses (which are vital to the tax base and the general health of Portland), provide appropriate safety net of services for the poor (Kafoury) and respond to internal pressures. With the ordinance, City Hall hoped to take an inclusive “city-wide approach” to the issue, which would make it “comfortable for everyone downtown” (Rubio “The Legality”). It didn't feel the ordinance would specifically target homeless individuals, yet it wanted to address why there are people sitting and lying on the sidewalk in the first place (Rubio “The Legality”). It also felt pressure internally for an ordinance. The Police Bureau felt it needed a viable tool to deal with certain behaviours that its officers encountered on the street (Jolin). Responding to these pressures, the city decided to renew the ordinance with modifications.

The homeless advocates, who had argued against a new ordinance, had lost the political battle. The ordinance had strong support in City Hall and there was no clear legal challenge, therefore they had no opportunity to debate whether or not the ordinance should pass (Jolin). Some of the advocates decided that they wanted to be a part of the drafting and implementation of the ordinance to make it “as palatable as possible and get to the root causes...[it was] a tricky line to walk” (Jolin). On the other hand, others, particularly those in the media believed that anyone who worked on the ordinance with City Hall and PBA supported the ordinance's implementation.

Mayor Potter was in favour of the ordinance and believed that the drafting process should be open to different stakeholders in the community. On May 24, 2006, Resolution No. 36413 was passed that included provisions for a ‘Street Access for Everyone’ Workgroup. Similar to the first ordinance, the workgroup would create a report that would outline and “implement interim

strategies and steps to address public safety and liveability concerns as agreed to by stakeholders” (Establish the Street; Jolin). The liveability concerns were focused on street disorder and sidewalk nuisance problems such as aggressive panhandling, public drinking, low level criminal activity, intimidation, and harassment in Portland’s downtown (Portland City Hall “Street Access”). In contrast to the first ordinance, the workgroup was also charged with finding solutions to the systemic issues involved. The ordinance implementation was delayed until members of the committee could ensure Mayor Potter that the services were implemented (Direct the Portland). Next, the committee was set up with this general outline in mind.

The committee was comprised of business and city representatives and homeless advocates. After a reorganization that happened early on, as a result of three members’ (two homeless advocates and APP staff member) concerns over the facilitator, the committee included the following members: thirteen homeless/social advocates, nine business advocates, a newspaper representative and multiple government representatives. The co-chairs were both City Hall staff (Portland City Hall “Recommendations”; Kuykendall). With the committee set up, it went to work to find interim strategies that would address the concerns and the systemic issues involved.

The consensus agreement was unanimously approved of, but it was a compromise – a new, more enforceable “High Pedestrian Traffic Area” ordinance would be implemented in exchange for the creation and management of “lawful alternatives” (Goracke), such as multiple warnings to offenders from the police and directing individuals experiencing homelessness to services (Goracke; Rubio “The Legality”; Kuykendall). Some homeless advocates felt that the proponents of the ordinance, namely businesses, had made significant concessions that had never been made before (Jolin).

The workgroup had been a collaborative entity, but the creation and translation of the consensus agreement in to the new High Pedestrian ordinance was not. When the City Attorney

translated the consensus agreement in to the new ordinance, it was not viewed by many as an open process and two members of the committee subsequently withdrew their support of the ordinance (Jolin; Kuykendall). Despite the concerns of members on the committee, the ordinance was passed by City Council and an oversight committee was formed to oversee the implementation and management of the services and the ordinance. The oversight committee's membership was similar to the workgroup and was: two formerly homeless individuals, four homeless advocates, two BID advocates (one from the downtown BID and one from the Lloyd District BID), two downtown residents and multiple representatives of government bureaus. Not all of the representatives from the government bureaus could vote on the committee. The new co-chairs were Monica Goracke (homeless advocate) and Mike Kuykendall (business advocate) (Goracke and Kuykendall "Memorandum").

Once some of the services were implemented, the ordinance was passed on May 9, 2007 in Resolution No. 180953. The ordinance's main components were summarized on Mayor Potter's website:

"The new ordinance regulated certain behaviours in limited, defined 'high pedestrian traffic areas'. For example, with various exceptions, sitting, lying down, or leaving one's belongings in a high pedestrian traffic area during specific times would not be permitted. Only specifically trained Portland police officers would enforce such an ordinance; citations could only occur after a written warning notification that involves information about available Day Access Centers and other services offered; sanctions would be non-criminal/non-arrestable; and various oversight elements, described in more detail in the Street Access for Everyone Final Report" (Portland City Hall "Street Access").

The ordinance did not please everyone in the community. Homeless advocates were concerned that homeless individuals were disproportionately warned and cited under the new

ordinance (Goracke), which apparently had not been an outcome expected by the committee (Jolin).<sup>17</sup> Some, notably the workgroup member Sisters of the Road, believed that the ordinance was not just disproportionately affecting homeless individuals, it was “intentionally targeting homeless people” (Jolin; Nolen).

As well, ACLU and homeless advocates felt that the wording of the ordinance was not expansive enough to protect freedom of speech and therefore withdrew their approval of the ordinance (Kuykendall; Jolin). Also, some workgroup members had mixed feelings about the process of implementing the services and others felt that the services were not systemic enough (Goracke; Nolen).<sup>18</sup> In addition, some believed the police found the ordinance difficult to implement (though some may disagree) (Goracke).<sup>19</sup> Finally, some of the businesses downtown were not in favour of the services being implemented and had to be convinced by PBA that it was necessary to ensure the ordinance was passed (Kuykendall).<sup>20</sup> Although political considerations and lack of funding meant that the outcomes were not completely agreeable to all stakeholders, the outcomes ended up being more favourable to them than the previous ordinance, which had less public input.

The collaboration between the homeless community and the business community created a common ground of shared interests which they can work from for future political decisions. It's easier for both sides to refuse to work with the other than it is to choose to work with and trust each other in order to find common ground and make solutions that will meet the needs of all stakeholders (Jolin). Collaboration did increase the trust between the two groups. Originally, homeless advocates on the committee had scepticism about PBA's motives. They believed that it would promise services, but once the ordinance passed, it would pull out of the process. Many homeless advocates' perceptions of PBA became more positive because the businesses remained

actively involved in funding and implementing services after the ordinance was passed (Goracke; Jolin).

PBA may have been motivated by self-interest (as an advocacy group) or social responsibility, or both (Goracke). As an advocacy group, PBA did successfully obtain the passage of both ordinances which its members believed were important tools to address street disorder, particularly visible crime and transients. Whether or not PBA supported the services because it felt it was its social responsibility is left to speculation.

### **Conclusion: A Change of Approach**

Since the late 1960s, as a result of multiple budget cuts, the city could not prosecute many individuals for nuisance activities and low level crimes or maintain a comprehensive cleaning program. This contributed to a negative image of downtown. Downtown businesses believed that it was critical to maintain a positive image, to attract consumers and keep downtown's economy healthy. Therefore, they organized and spent their own resources to make downtown free of visible homelessness, nuisance activities, low level crime and physical decay. This has improved downtown's image, making it competitive with the suburbs – at least, this is the business perspective.

Critics of the businesses' efforts to improve downtown's image argue that this perspective misses a vital point – systemic issues are not being addressed. They agreed that decreases in the city budget resulted in an increase in 'nuisance activities' (generally homelessness), low level crimes, and physical decay. They disagree, however, that targeting the visible signs or symptoms of these issues is the right approach. This approach does not address the causes, and therefore a real reduction in homelessness, low level crimes, and physical decay will not occur. Instead, it will

simply be kept in check. Businesses prefer the current approach, critics do not, yet neither would prefer zero intervention.

Therefore, a new approach needs to be taken, one that is favourable to the businesses and the critics. First, the city's budget cuts would be recognized as the main source of the increase in homelessness, low level crime and physical decay. Next, both the businesses, using the leadership of the BID, and the BID's critics would work collaboratively to raise funds privately and lobby the city for funds that would be used to address the systemic causes. This may mean that the use of the Community Court, private patrol officers, and police officers would be de-emphasized. As the systemic causes are addressed, homelessness, low level crimes and physical decay would become less prevalent. Downtown would have a more positive image, which would please businesses, and systemic causes would be addressed, which would please most critics. As the two sides reach out to each other, they will build a common ground, which they can use to solve other issues critical to downtown.

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## Endnotes

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<sup>1</sup> The City of Portland would contract APP to run the EID. APP would oversee the EID Advisory Board, which would include representatives from City Hall and businesses. The board would run the day-to-day operation of the EID. The EID task force would represent the City bureaus' interests and report those interests to the advisory board and the City Council. The budget would be prepared by APP and approved by the task force and the advisory board. Subject businesses, the City, Multnomah County and the State of Oregon would be assessed by their property values and that money would make up the EID's budget (Portland City Hall "Interoffice Memo" 12-13; Wyatt).

<sup>2</sup> The city petitioned the Oregon Tax Court, as provided by ORS 305.589, for a judicial declaration concerning the effect of section 11b, Article XI (Measure 5) on the license fee (Establish Business). In the case, City of Portland v. Atwood, the business management license fee was found within the limits of Article XI. The case stated that the fee, which required the person responsible for paying water utility charges for property or the person with right of occupancy to pay fee did not violate Measure 5 because the fee was not imposed on a property or upon a property owner as direct consequence of property ownership (City of Portland v. Atwood).

<sup>3</sup> The city passed Resolution No. 170223, which created the Property Management License Fund. Under this fund, any revenues derived from assessments levied under the former downtown Economic Improvement District and all revenues generated by the Downtown Property Management License program would used by APP to manage Downtown Clean and Safe's supplemental services and for any costs of the City's administration of the Downtown Property Management License Fund (Property Management License Fund).

<sup>4</sup> The idea had been initiated in the District Attorney's Office by its Deputy District Attorney Mike Kuykendall (who later became manager of the BID for APP's successor PBA). Mr. Kuykendall drafted the first Drug and Prostitution Free Zone ordinance in Portland, which was passed by City Council and implemented in Washington Park. APP believed that the ordinance in Washington Park was effective at decreasing the amount of drug dealing and prostitution and thought a similar ordinance should be implemented downtown in order to ensure an "economically thriving downtown" (Kuykendall).

<sup>5</sup> APP also lobbied for or managed Project Respond, an outreach program for chronically mentally ill, Project Exit, an outreach to "disadvantaged downtown residents", more and better organized homeless youth services, community policing, a neighbourhood-based district attorney prosecution program and a project for affordable housing downtown (APP "Stewards"; APP "A Work"; APP "Strategic Plan" 27-28; Ozawa 289).

<sup>6</sup> Private patrol officers' authority is limited to looking for individuals breaking the laws, encouraging individuals to follow the laws, and performing a citizen's arrest and calling the police for backup (Goracke).

<sup>7</sup> PBA believed that improving downtown's environmental design would, in line with the theory of Crime Prevention through Environmental Design, "alter the environment so that crime is difficult to commit"(Worrall 286). Three examples are PBA's lobbying efforts for the Entertainment District, which increases public foot traffic or "eyes and ears" on the streets at all times, PBA's management of the Seasonal and Holiday Lighting Program, which keeps streets lit, and safer, during the darker months (Kuykendall), and the BID's cleaning and graffiti removal services, which makes downtown look cared for and this results in criminals being deterred from committing crime downtown (PBA "Downtown Portland's").

<sup>8</sup> Disorder is defined as "low level breaches of community standards that signal erosion of conventionally accepted norms and values" (Worrall 288-289).

<sup>9</sup> If an individual has a concern about a private patrol officer, he or she would receive the contact information for PPI if he or she asks for it. Then, the individual must contact PPI and, if he or she does, PPI or PBA will document and investigate the complaint. As well, PBA will send information about the complaint to City Hall and interested parties (i.e. homeless advocates like Sisters of the Road) (Doern). On the other hand, if an individual has a complaint about a police officer, he or she can contact the Independent Police Review Division (an independent, impartial office ready and available to the public) by email, telephone, in person or mail and file a report, anonymously if requested. The case

will be investigated by the division and, if recommended by and under the scrutiny of the division, by the Police Bureau. If the individual is not happy with the outcome of the case, he or she can appeal it (Portland City Hall “Frequently Asked”; Purpose).

<sup>10</sup> Some homeless advocates argued that private patrol officers are public actors and so there should be public oversight of the officers. Private patrol officers are public actors because the state ceded powers over to them, particularly the authority as Park Officers (Goracke; Jolin). As well, private patrol officers could easily be viewed by the public as public actors because they resemble law enforcement officers, with a close relationship with the police and similar uniforms as the police (Jolin). Therefore, an independent review board could be set up to oversee the officers (Jolin). Even some staff members of APP suggested that a staff member in City Hall could document and investigate complaints against PPI (Doern; Kuykendall).

However, there are budget and time constraints that would prevent City Hall from hiring an individual to track the complaints (Doern). With this in mind, some homeless advocates said would really prefer more police officers and fewer, or no, private patrol officers (Jolin). Most homeless advocates believe that hiring more police officers would be the most cost effective choice to address complaints about public nuisance crimes (Nolen). Even Mr. Kuykendall, from PBA, said he could “use the money elsewhere” if it wasn’t being used for private patrol officers. However, Mr. Kuykendall also argued that he would not want PBA to fund for police officers instead of private patrol officers because they were more expensive and would more likely be rookies (Kuykendall), so funding for new police officers would have to come from the city.

<sup>11</sup> There were a few complaints about private patrol officers’ behaviour. There have been few official complaints to PPI/PBA about harassment or similar charges (Doern). There have been some informal complaints about certain private patrol officers told by homeless individuals to homeless advocates/advocacy organizations. Some of those complaints accused private patrol officers of kicking them to wake them up or being treated rudely (Jolin; Nolen). However, those complaints seem to be directed at particular officers, not the whole organization. A systematic attempt of PPI to discriminate against homeless individuals would subject PPI to liability, and therefore it is not probable (Goracke). More commonly, there are concerns about whether or not private patrol officers have the authority to patrol public space. Some homeless individuals and advocates believe that PPI, because it is contracted by PBA, “looks out for business interests alone” (Jolin). Therefore, individuals question the authority of the private patrol officers to patrol public space and give out park exclusions (a duty formerly done by the City). Most feel that they were unfairly excluded from the park (Jolin).

<sup>12</sup> First, the proponents of the community court argued that it would better address public nuisance crimes than the conventional courts. Not dealing with the crimes would diminish the citizen’s pride and sense of safety downtown. Due to a lack of resources and a larger caseload, the conventional justice system devoted most of their attention to serious crime and lacked organization when processing low level offences (Berman and Feinblatt 83-85; Worrall 223). Processing public nuisance crimes is important because “the perception of safety can make the difference between an economically thriving neighbourhood and a blighted neighbourhood with the middle class flight to the suburbs (for shopping, homes and schools)” (Berman and Feinblatt 83-85). If a community court is implemented, the response to public nuisance crimes must be consistent and involve the community and would led to a downtown that would be perceived as safe and economic growth (Berman and Feinblatt 67). For example, the community court’s community service option would address the community’s desire for offenders to pay back the community and assist in restoring it to its original – and, ideally safe – state while traditional fines or probation wouldn’t restore people’s pride in downtown and do nothing to fix the community problems (e.g. graffiti). (Worrall 233; Berman and Feinblatt 83-85).

Second, they argued that the community court would be able to meet the needs of defendants better than the conventional court system because it would deal with ‘why’ the individual had committed the crime in the first place. A community court judge in 2005, Steve Todd, argued that the conventional court system is overburdened and does not spend enough time to ask defendants “why are you doing this?” (Berman and Feinblatt 89). The conventional system decides whether or not the defendant did the crime and then punishes them, which, “doesn’t help anyone, they simply return to the same environment they left after being released and, most likely, commit new crimes” (Lyons).

However, community court would focus on addressing the root causes of the defendant’s actions and create an environment that supports the defendant to complete (generally beneficial) sanctions as ordered, if they chose to do so. When the defendant arrives at court, he or she would be in an informal environment where the judge talks directly to the defendant and there is clapping when a defendant is successful (Berman and Feinblatt 86-87). The judge actively monitors the defendant’s progress, which would help ensure that the individual complete treatment, get social services

or does community service (Berman and Feinblatt 90-91). Directing people to treatment, social services and community service would direct people in to a “life-changing direction” versus more traditional sanctions, though the defendant would have a choice between social services, community service or more traditional sanctions (e.g. fines) (Berman and Feinblatt 179). The defendant can choose which sanction or service he or she would like to do which would increase their chance of successful completion of the sanction and would save precious resources. If the defendant chooses treatment or social services, the court would give the defendant two weeks to test out the treatment or social services while the case is pending and, at the end of the two weeks, the defendant can opt-in or opt-out (Berman and Feinblatt 179). This ensures that only those that want services would get it, which puts less pressure on under-funded social services and treatment programs (Lyons). As well, it would give the defendant’s lawyers more time to investigate the strength of the case against the client (Berman and Feinblatt 179). For those that choose community service, they would discover that it is a way to give back to the community or reconnect to the community by doing good work and meeting people (Lyons).

Third, proponents of the community court argued that the court would be located in various informal settings in the community to ensure involvement from the community members and experts. This is supposed to result in a collaborative effort between all members in the courtroom and between prosecutors and neighbourhoods (Berman and Feinblatt 86-87, 67). Finally, supporters argued that the court would save the local government’s money. Later, when the court was implemented, they felt that they had support for their theory. For example, the District Attorney’s office argued that the decline in short term jailing saved the system approximately \$95,000 in the course of a year (Berman and Feinblatt 165). A staff member at the court agreed that the court saves state and county resources (Lyons).

<sup>13</sup> The ordinance was complicated and made it difficult for police officers to determine and prove that an individual had violated the ordinance. Under the ordinance, individuals could not sit, kneel or create a trip hazard in the pedestrian thoroughway, at light rail stops, on any frontage or furnishing zone if between 7am-7pm. As well, individuals could not stand in a group of three or more persons in through pedestrian zone, lean on a structure or thing that reduces the through pedestrian zone to a certain length, or block pedestrian access to sidewalk apparatus and displays, such as a garbage can or a display window.

However, an individual could sit, lie or kneel on either edges of the sidewalk (‘frontage’ and ‘furnish’ zones) from 7pm to 7am and could sit, lie or kneel anywhere if he or she had a permit, was waiting in lines for goods and services (few exceptions to that), was doing so because it was out of his or her control, was performing as part of the Street Musician Partnership Agreement, was participating in a assembly (with some exceptions), was delivering or receiving merchandise or had not been warned by a police officer in the last seven days about the ordinance (Obstructions as Nuisances).

<sup>14</sup> The case stated that “...the ordinance made no exceptions to avoid infringing on the right to assemble peacefully, or to exclude conduct that merely causes others to step around a person who happens to be standing on any part of a sidewalk in a manner that is not causing any harmful effect”. Instead, the ordinance’s terms were indefinite, allowing officers leeway in determining, for example, whether a person or an object is “obstructing” a sidewalk, or whether “normal flow” of traffic is “interfer[ed]” with. In addition, the ordinance lacked a mental state requirement and contained no guidelines for police officers, giving a violator no opportunity to abate his or her behavior and failing to provide fair notice of prohibited conduct” (State v. Kurylowicz).

<sup>15</sup> The case outlined that only those individuals with the intention of or at risk of causing public annoyance, public inconvenience or alarm could be viewed as disorderly. The Oregon legislature consciously avoided creating a strict liability offence out of concern for constitutionally protected rights of freedom of expression. The court believed that the ordinance did effectively create a strict liability offence and therefore pre-empted state law (State v. Robinson).

<sup>16</sup> Although the law is written to apply to everyone, there are reasons that exist that made it harder for some individuals, particularly homeless individuals, to comply with it and so it may affect them disproportionately (Goracke). Encouraging homeless individuals to “move along” will not be enough to get people off the streets. Most homeless individuals have to be downtown because the service providers and government bureaus that they rely on are downtown (Patrick). For others, the concentration of people on the streets makes it an ideal place to panhandle. As mentioned before, panhandling is most likely to be people that have housing and/or a job but don’t have enough to make all the bills or buy food. Panhandlers are also homeless, especially those with disabilities. Finally, there are also individuals, particularly young adults, are escaping from broken homes that are on the street.

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Once on the street, homeless individuals make up almost all of those individuals sleeping on the street and the majority of people sitting on the street, especially for longer periods of time (Jolin). As a result, homeless individuals are more likely to be cited than any other group of people (which, they argue, was proven true when the modified ordinance was implemented and 78 of the first 88 citations were given to homeless individuals). The mentally ill suffer particularly from an obstruction ordinance. As well, because homeless individuals are cited more frequently, they are left feeling upset – they are unwanted downtown and are confused about where they can or can not be (Nolen “The Legality”).

Second, there are also concerns that the ordinance might violate constitutional rights of individuals using sidewalks, which are considered public space. There has been Supreme Court challenges, some successful, against cities putting limitations on what actions people can do on the sidewalks. The Supreme Court has consistently ruled that sidewalks, streets and parks are ‘special zones of protection’ for free speech. However, it requires that a person be engaging in free speech in order for that individual to be protected by law (e.g. holding up a sign while panhandling). If an individual is just sitting, kneeling or lying in the street, sidewalk or park and is told not to do so, it is not clear whether the individual would be protected by the first amendment – but they may (Goracke; Jolin).

The American Civil Liberties Union (ACLU), involved in the debate in Portland, argued that the ordinance does raise legal questions and state that the law is not necessary. Sidewalks should be available to everyone and police should only get involved with activity on the street when it is truly criminal or when the sidewalk is really blocked and no one can pass through. If people can walk through, whether it be around other people or sidewalk furnishings like tables, chairs, newspaper stands, or sidewalk cafes that can often “take up two thirds of the sidewalk”, it should be legal (Meyers “The Legality”). ACLU felt that the obstruction ordinance may not be expansive enough to protect freedom of speech (which they later felt was confirmed) (Jolin). The City Attorney, when approached with the issue, agreed and felt that there had to be a clear delineation between actions protected by free speech and disorder (Goracke). ACLU also argued that the ordinance was not necessary. The demand for the ordinance stemmed from a society that is uncomfortable seeing a person sitting on a sidewalk, instead of a society that seeks to understand why a person is sitting on the sidewalk in the first place (Meyers “The Legality”).

Third, the homeless advocates argued that suburban shoppers and visitors are not deterred from shopping and visiting downtown simply because of the presence of homeless individuals but, instead, inappropriate, aggressive behaviour from any individual towards a shopper or visitor could result in the shopper or visitor having a bad experience and, as a result, being deterred from shopping or visiting downtown again. That is why any approach to dealing with ‘disorder’ downtown should not be targeted at anyone who might sit, kneel or lie in public spaces, but instead should be focused on inappropriate, aggressive behaviour (Jolin).

Finally, some homeless advocates do not believe that the sidewalk is owned by the business owners. In City Code, it is true that property adjacent to a downtown business is the duty of that business to maintain. However, they argue, the city owns the right of way of the sidewalk. If the business owned the sidewalk, it could limit what people do on the sidewalk on its own initiative. Instead, downtown businesses have to go through the public process to have limits put on what people do on the sidewalk (e.g. business requests obstruction ordinance from City). Therefore, it appears that the city does not own the sidewalk (Jolin).

<sup>17</sup> There are several possible reasons why. For example, it could be the intention of private patrol officers and police officers to target homeless individuals. In the warnings and citations records, there is a pattern of private patrol officers and police officers arriving as soon as the ordinance starts in the morning to wake up homeless individuals sleeping on the street. However, there is a directive at PPI that this is “not their ordinance” and that they have nothing to gain by getting involved because they are under so much scrutiny already. There has been no report that the private security gave out warnings under this ordinance (Jolin).

Or, private patrol officers and police officers could be responding to hot spots, or particular areas where they get the most complaints from the public, and those areas have a higher concentration of homeless individuals. Most of the locations where warnings and citations are given out are the same. Or, homeless individuals could be sitting or lying on the street for longer periods of time and therefore are cited more often. Sometimes, homeless individuals may chose not to sit on a bench but instead sit under an eve because of inclement weather. As well, it possible that homeless individuals are protesting the ordinance by continuing to sit or lie or simply don’t want to get up. More research, possibly a survey, has to be done in this area (Jolin; Goracke).

<sup>18</sup> Some argued that the services provided were not systematic enough. While Sisters of the Road approved of the services that were going to be provided, they felt that systemic solutions, such as housing, were not at the table (Nolen). Therefore, Sisters of the Road withdrew their approval of the final ordinance (Kuykendall). Finally, the

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process of implementing the services has been mixed. For example, no owners objected to having a bench outside of their business, except for Portland Rescue Mission, who was worried about “turf wars”. Yet it has been difficult to place a day center, because “no one wants a day center in their backyard” (Goracke).

<sup>19</sup> Some believe that the ordinance has also been difficult for the police to implement. It is easier to enforce than the old ordinance because there are no “zones” (Goracke). However, there are a lot of exceptions in the ordinance, which means it applies to less people (Goracke; Jolin). As well, the police can’t give a citation immediately but instead have to give the person some time to comply. It seems as if the officers are erring on the side of not giving warnings or citations. When those warnings or citation are given, it is “I know this person” or “I know Officer X already talked to him”. The SAFE Committee gets copies of every warning and citation (Goracke). However, others disagree and believe that the ordinance is not difficult for the police to implement (Kuykendall).

<sup>20</sup> The business community was not in complete approval of the ordinance. Some businesses felt that there shouldn’t be services offered as part of the ordinance. However, Mr. Kuykendall was supportive of the services because he could see the “realities of the situation” (Lyons). PBA realized that it had enough political clout to keep the ordinance in place, but if it ignored homeless advocates argument for alternatives, the homeless advocates would walk away from the table and people would continue to sit and lie on the streets because they lacked alternatives (Jolin). After PBA lobbied the businesses to approve of the ordinance, most did...if for the only reason that they were reassured that a new ordinance would be passed (Kuykendall).