

Locked Out, Gentrified, Criminalized: Abolish Enhanced Service Districts

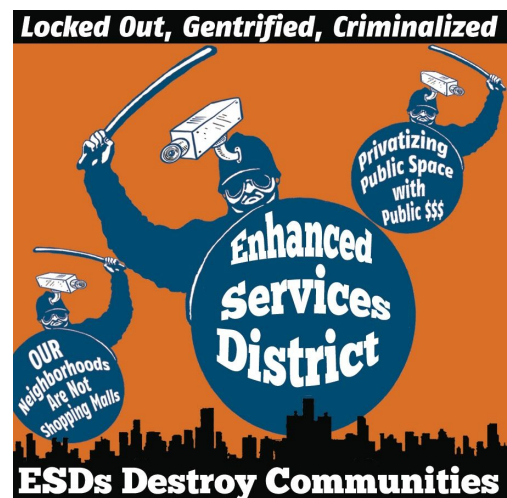
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The Western Regional Advocacy Project (WRAP) is a coalition of homeless-led groups in Oregon (Sisters of the Road, Right 2 Survive), California (LA Community Action Network, Coalition on Homelessness San Francisco, Sacramento Homeless Organizing Committee), and Colorado (Denver Homeless Out Loud). WRAP was created to expose and eliminate the root causes of civil and human rights abuses of people experiencing poverty and homelessness in our communities.

On August 13, 2020 the City of Portland released an audit focused on the management of Portland’s three Enhanced Services Districts (ESDs): downtown’s Clean & Safe, Lloyd, and Central Eastside Together. The audit confirms what WRAP has long known: the City of Portland collects millions of dollars a year from property owners, only to hand this *public* money over to *privately managed* ESDs, who use funds to *privately* police *public* space--with nearly NO oversight, transparency, or accountability. Until now, there has never been an overarching audit of ESDs, and the Revenue Division collects no annual reports, budgets, or yearly audits. Yet, ESDs pay for four extra Portland Police Bureau (PPB) officers to patrol downtown, and they employ armed private security forces that bolster and parallel the PPB throughout downtown, the central eastside, and the Lloyd area.

The audit confirms what we feared the most: NO oversight of financial activity regarding police and private security and nearly NO oversight of physical activity by police and private security officers. Nearly all known records of oversight lie with the managing organizations themselves and business associations, law firms, consultants, and other private entities they contract with.

Police and private security regularly harass, cite, and fine those living unsheltered in ESDs. The lack of accountability for funds spent on policing should be alarming to anyone concerned about civil rights, particularly for poor and homeless people living in public space, the overwhelming majority of whom are Black, Indigenous, and other people of color; are elders and youth; have disabilities; and are LGBTQ+. ESDs are an example of how a handful of property owners, coalescing with multinational corporations, are able to create policies impacting those in poverty, with very little accountability. ESDs are part of a larger influx of public-private partnerships that blur the lines between the interests of business and property owners and the needs of the public at large. **We are therefore not simply calling for “better ESDs”, with better oversight mechanisms. After so many years of operating with total impunity, ESDs cannot be fixed. They must be eliminated altogether. We demand the City of Portland DEFUND and DISMANTLE all ESDs.**



Where does the Enhanced Services District Model Come From?

Enhanced Services Districts are Portland’s local version of what are more universally known as Business Improvement Districts (BIDs). BIDs are publicly funded zones, authorized by city governments, in which extra fee assessments are levied on property owners to fund services above and beyond those already provided by the city in the zone. They first emerged in the US in the 1980s, as a model intended for business owners to leverage public tax rolls to gain funding to control the growing homeless populations in downtown commercial areas. Since then, BIDs have steadily transferred control over massive amounts of public space to cities’ largest property owners. Today, there are more than 1,200 BIDs in US cities, spanning a few to a few hundred blocks each.

In the cities we have studied across the US, the vast majority of funds collected via BID assessments pay for private security and additional police patrols, whose primary purpose is to control the activities of poor and homeless people within the BID. BIDs have a long and documented history of increasing violent conflicts between police and security, and poor and homeless people, who are disproportionately Black, Indigenous, and other people of color due to ongoing legacies of white supremacy, racism, and colonialism. BIDs often operate using the theory of “broken windows policing”, which suggests focusing on quality of life crimes will prevent more serious crimes. Using government-collected property assessments to advocate for the enactment, preservation, and strengthening of local and state laws that violate the rights of poor and homeless people, BIDs are also on the frontlines of lobbying for white supremacist policies.

A report from UC Berkeley confirms that BIDs spend property assessment revenue, including revenue from publicly owned properties, on anti-homeless policy advocacy as a primary expenditure and organizational priority. The report illuminates a strong correlation between the rapid growth in the number of BIDs and an equally rapid rise in laws targeting homeless people, and concludes that BIDs’ policy advocacy efforts (to promulgate cruel limitations on involuntary human activity, such as sleeping, in public space while curtailing the civil rights of homeless people) go hand-in-hand with the steep rise in anti-homeless laws. Such advocacy efforts are orchestrated by policy and government-relations specialists and registered lobbyists on staff, whose salaries are paid by BIDs and therefore by government-collected assessments.¹

The hyper-oppressive command and control policing that BIDs promote impacts our whole community, including street vendors, buskers, artists, day laborers, transit riders, protestors, homeless people, local residents, and people who are shopping whom security guards deem untrustworthy. Dismantling the structures that allow for the private policing and criminalization of poor and homeless people is particularly urgent in this moment of Black-led demands to abolish police. **Given the racist and**

¹ Selbin, J., Campos-Bui, S., Epstein, J., Lim, L., Nacino, S., Wilhlem, P., & Stommel, H. (2018). Homeless Exclusion Districts: How California Business Improvement Districts Use Policy Advocacy and Policing Practices to Exclude Homeless People from Public Space. *UC Berkeley Public Law Research Paper*. <http://www.williamsinstitute.law.berkeley.edu/wp-content/uploads/2018/09/SSRN-id3221446.pdf>

oppressive history of policing in the US, it is imperative that we make sure that as public policing is defunded, private policing does not become the go-to solution.

Portland's Enhanced Services Districts

In Portland, there are three ESDs, accounting for over 550 blocks of public space: Lloyd District, run by Go Lloyd, covers 77 blocks; Clean & Safe, run by the Portland Business Alliance, covers 213 blocks; and the Central Eastside Together, run by the Central Eastside Industrial Council, covers 263 blocks. Each year, the City of Portland collects millions of dollars of mandatory fees from property owners in these areas, and turns the money over to the organizations overseeing each ESD. Portland city code requires that any person responsible for water service provided to any building or parcel of land to pay the property management license fee. There is no exception for non-profits, and no exception for publicly-owned properties. Mass shelters and property owned by religious organizations are exempt from the fee. Lloyd also exempts residential properties with single room occupancy housing, low-income housing, subsidized housing, or owner-occupied. Clean & Safe and Central Eastside Together exempt only owner-occupied residential properties.

In 2020, ESDs will collect more than \$10,000,000 in property management license fees and related parking permit and meter revenue. This revenue funds four main categories of spending: security and policing, public space maintenance, communication and development, and administration and advocacy. **The majority of these funds go toward private security and paying for additional police officers. Yet, despite the significant role ESDs play in controlling public space, oversight for ESDs is non-existent. The Revenue Division collects NO annual reports or ESD budgets. There are NO oversight measures on spending. There are NO annual public audits. There is NO accountability to anyone other than property owners. Enough is enough.**

ESD Problem #1: Policing & Security.

The majority of ESD funds go towards increased policing and security in public spaces. For example, the Portland Business Alliance works with the Portland Police Bureau to increase policing in the Clean & Safe District by **hand-picking four Portland Police Bureau (PPB) cops to patrol the Clean & Safe district, in addition to the officers regularly stationed there; using funds collected by the City to pay for these additional cops; and hiring a private security contractor to supervise the PPB cops.** Additionally, the Portland Business Alliance contracts with the private security company Portland Patrol Inc. to provide extra armed and unarmed security throughout the Clean & Safe district. ESDs therefore directly contribute to a system in which over 50% of arrests made by Portland police in 2017 were of homeless people, with the vast majority of these arrests for so-called quality of life "crimes": sleeping, sitting, and standing still. As police commissioner, the mayor is tasked with obtaining and reviewing reports on security officers' activities, including complaints against officers and investigations. **The audit found zero evidence for any such oversight.**

To manage the arrests generated by ESD funding, ESDs have paid for additional “community courts”, commonly referred to as homeless courts, as well as deputy prosecutors that focus exclusively on “quality of life” crimes in ESDs. In particular, Lloyd provides \$75,000 in funding to Multnomah County District Attorney’s Office for the Strategic Prosecution and Services Unit, formerly the Neighborhood District Attorney Program, which coordinates the community courts and neighborhood deputy district attorneys. Clean & Safe previously funded the Westside Community Court and Strategic Prosecution and Services Unit. Although they claim to no longer fund the community court, they still currently fund a staffer at the Downtown Deputy District Attorney’s Office. A lawsuit against community courts in St. Louis, Missouri, *Bogan v. Bonner* (2004), ruled **community courts are unconstitutional**, effectively getting rid of all such courts. One of the reasons they were deemed unconstitutional was **because they receive funding from BIDs.**² **Yet, community courts continue to operate similarly in Portland.**

The Strategic Prosecution and Services Unit convenes the Lloyd Public Safety Committee which allows for collaboration between various law enforcement agencies and private security. Similarly, Clean & Safe provides a staffer for the Downtown Security Network which is a monthly meeting between Clean & Safe, the Portland Police Bureau, and other private security contractors downtown. These meetings are not publicly advertised nor are minutes publicly available. Members of the Downtown Security Network are also outfitted with communication devices to coordinate policing and security activities. This communication network includes Portland Police Bureau officers patrolling the district. **The city audit argues, “These enhanced law enforcement or criminal justice services [i.e., security officers, extra police, DA connections, and community courts] create a risk of disparate outcomes to other parts of the city.” It is highly concerning that such collaboration between policing and security agencies is allowed, particularly with such little transparency.**

Finally, ESDs often lobby to effect policy change in the city and state, advocating for anti-homeless laws, ambassadors, police, and armed private security, who regularly arrest, cite, harass, and remove poor and homeless people from public spaces. Portland Business Alliance, which manages Clean & Safe, in particular, is one of the most powerful lobbying groups in the City of Portland. Over the years Portland Business Alliance has been a highly vocal advocate for more cops, has argued against a proposed facial recognition technology ban³, and has lobbied for various sit-lie ordinances. What’s more, not only does Portland Business Alliance manage the Clean & Safe ESD, they also operate as the regional Chamber of Commerce. This happened in 2002 due to a merger between the Association for Portland Progress (former managing organization of Clean & Safe) and the Portland Chamber of Commerce forming Portland Business Alliance as we know it today. As a result, their lobbying power extends way beyond the Clean & Safe district. **Abolishing the police and prison system requires dismantling not only apparatuses of policing, including private policing, but also getting rid of the kinds of anti-homeless laws -- targeting survival activities such as sleeping, sitting, lying down, and eating in public space --**

² Kundu, S. (2005). Privately Funded Courts and the Homeless: A Critical Look at Community Courts. *Journal of Affordable Housing & Community Development Law*, 14(2), 170-194. www.jstor.org/stable/25782737

³ Bailey, E. (2020, February 21). Portland considering strictest ban on facial recognition technology in the U.S. <https://www.oregonlive.com/portland/2020/02/portland-considering-strictest-ban-on-facial-recognition-technology-in-the-us.html>

that PBA champions. Removing such historically discriminatory laws from the books eliminates the justification for increased policing to enforce them.

ESD Problem #2: Lack of Oversight of Funds

The audit echoes WRAP’s own findings in a second area: **the City of Portland has NO oversight of ESDs and does not hold them accountable for being transparent, despite funneling millions of dollars of public money a year toward policing and other activities.** The Revenue Division is charged with collecting ESD fees, deducting administration fees, and sending money back to ESDs, and appears to be highly efficient at these activities. The Revenue Division is also tasked with overseeing ESDs, through agreements stating they will review annual reports, audits, scope of services, budgets, etc.--and falls far short in these areas. Such basic transparency activities have not happened for at least fifteen years, if not longer. The audit finds that the Revenue Division does nothing to monitor finances to ensure that money is used for intended purposes (see table from City audit, below).

Has the City been completing its required oversight of the districts?	Clean & Safe	Lloyd	Central Eastside*
Administer the license fee calculations, billing collections, funds distribution, and appeals	✓	✓	✓
Review annual budget	✗	✗	✗
Review annual scope of work	✗	✗	✗
Monitor use of funds via audit provided by districts	✗	✗	N/A
Conduct financial and performance audits as needed	✗	N/A**	N/A
Review security officer complaints, investigations	✗	N/A**	N/A
Review districts’ subcontracts	✗	✗	N/A

N/A* - Central Eastside was formed in 2019

N/A** - Lloyd does not conduct audits and does not fund security services

It is wholly egregious that the Revenue Division enables the collection and disbursement of fees, but then does little to track the use of public money. Aside from the Revenue Division, the only other bureau to oversee ESD activities is Prosper Portland, which does a limited amount of grants administration.

The ONLY oversight measures in place, if they can be called that, is that ESD leadership occasionally meets with the mayor and city commissioners. But these meetings are ad hoc, and no meeting minutes are kept. It is up to the ESD what they share with city commissioners at these meetings. This information is not public, not transparent. Furthermore, evidence suggests at least some of these meetings between ESD representatives and the mayor and city commissioners are not used to ensure accountability, but rather to lobby for the interests of ESD managing organizations. Most notably, in December 2017, the Portland Business Alliance had a series of meetings with Mayor Ted Wheeler to negotiate the expansion

of “pedestrian only” zones near the Columbia Sportswear downtown store that ultimately impacted hundreds of homeless people living in the vicinity.⁴

When WRAP submitted public record requests to the City of Portland in spring 2019, we were told very few records exist, and it would cost us several hundred dollars for the city to search for records that *might* exist. Several hours spent in the digital and paper archives confirmed what city staff verbally asserted: the paper trail documenting ESD governance, protocols, and practices is scant. City staff confirmed a Fiscal Year 2010 audit of Clean & Safe has been the only audit of any ESD, ever, and, moreover, the audit was conducted by an agency hand-picked and contracted by Clean & Safe. The City failed to provide memoranda accounting for its relationships with ESDs, such as emails and meeting minutes. The City did produce self-disclosed ESD Scope of Work Reports, but none included analysis or review. When Ginger McCall, the Public Records Advocate in the Office of the Public Records Advocate of the State of Oregon, asked a City attorney why additional documents were not provided, the attorney stated that the City did not have further documents to release.

Given that ESDs exercise control that substantially impacts the public--sidewalk maintenance, law enforcement, and security, in addition to paying for holiday lights, graffiti removal, and marketing--the level of oversight over ESDs should be proportionally high. Instead, it is non-existent, with one exception: the Portland Police Bureau oversees officers and private security that patrol ESDs--but there is NO transparency in this oversight. Our request for public records prompted several delays and demands for hundreds of dollars, and ultimately we received very little information from the PPB. Additionally, police are being paid by Clean & Safe, making it a highly incestial arrangement. Contracts that describe who has control over ESD cops are vague, with too much open to interpretation.

ESD Problem #3: Lack of Accountability

The audit, and WRAP, have found there is NO guidance for ESD formation, management, or board makeup or activities, essentially allowing ESDs to practice as they wish and at the behest of the city’s wealthiest landowners. Establishing an ESD does not require ballots or petitions. Instead, the private encroachment on public space is built into the ESD incorporation process, lending itself to layers of evasion. Each ESD has sections within the Portland City Code setting the license fee rate, exemptions, and other characteristics. **This process does not require community feedback, written expressions of support from district residents, or oversight measures.** Chapter 6.06 of the Portland City Code determines who is required to pay property management license fees. To create a new ESD, the City Council adds new sections to Chapter 6.06. Unlike BIDs in California or Colorado, which have state-level enabling legislation, ESDs in Portland are established locally and ad-hoc. To create a new ESD, an organization, like the Central Eastside Industrial Council, requests a new ESD. City Council then simply approves the request and adds new sections to the Portland city code. To our knowledge, City Council has never denied the formation of an ESD. After the ESD is established, the overseeing non-profit receives license fee revenue to essentially do with what they wish.

⁴ Thomas, K. (2017, November 30). Mayor Wheeler calling for more no-sit zones in downtown Portland. <https://katu.com/news/local/mayor-wheeler-calling-for-more-no-sit-zones-in-downtown-portland>

ESDs are problematically governed by the city’s wealthiest property owners, not only in the formation process but also through the process set forth to dissolve an ESD and to govern it. Districts are governed by boards of volunteers who decide how to allocate funding and with whom to contract for services. Property and business owners make up the majority of these boards, omitting meaningful input by renters, houseless people, and anyone else who may live in or spend time in the district. There is often substantial overlap between business association and ESD board members, bolstering the power of corporate interests. Moreover, the renewal and dissolution process furthers this power imbalance. ESDs are free to request a City Council vote on renewal once every ten years, without prompting a district-wide election or even avenues for public participation. In order to dissolve an ESD outside of the renewal process, a number of property owners that make up at least 33% of the property value in the district must request the dissolution. This means property owners with higher property value have more influence in dissolving a district than those with less property value. Some of the highest valued properties in the Clean & Safe district include the Wells Fargo Center, Fox Tower, PacWest Center, and the U.S. Bancorp Tower. These four properties alone make up over 11% of the property value in the district. This is an example of how power is concentrated in the hands of only a few property owners within ESD districts, despite claiming to represent the entire district. **The flowchart below, from the city audit, depicts how ESDs essentially serve as pass-through entities for money to transfer from the public to business associations.**



ESDs’ unaccountability to the communities most impacted by their direct services coincides with concerns about ESD advocacy expenditures. The services ESDs tout on their websites about reaching out to houseless community members are predicated on the baseless theory that anti-homeless laws actually help homeless people by encouraging them to access social services. Among the many who have roundly debunked this theory, Forrest Stuart’s five-year study of LA Skid Row illustrates that not only are laws prohibiting sitting, standing still, and lying down unhelpful (not to mention explicitly classist and racist), but that “for those on the receiving end, therapeutic policing feels less like helpful guidance and more like abuse.” **If ESDs were in any way accountable to their service recipients or sincere in their efforts, they would not enforce, advocate for, nor funnel money toward anti-homeless laws.**

Furthermore, partnering with social service agencies isn't a form of accountability. ESDs often tout being progressive for hiring homeless people, despite the exploitative nature of many of these programs. In a document received during our public records request, former city commissioner, Jim Francesconi,

advocated against paying a living wage to Clean & Safe employees contracted through Central City Concern instead encouraging them to accept poverty wages in hopes of an eventual promotion. Similarly, adding homeless people to the board of ESDs is not substantial accountability. After much controversy around the creation of the Central Eastside Together ESD, the Central Eastside Industrial Council (CEIC) agreed to require at least two people with “lived experience” on their board. Beyond that, CEIC has not been accountable to homeless people living in their district especially by continuing their contract with Northwest Enforcement, one of the main points of contention during their formation.

Our Demands are Clear: Abolish ESDs

The Black Lives Matter movement has galvanized calls for abolishing local police departments. ESDs in Portland, and BIDs in cities across the US, are a significant component of the policing apparatus, filling in where public policing ends and collaborating directly with local police departments. **Defunding the *private policing* of our communities, including ESDs, is one crucial step along the path to a less white supremacist, more just world.**

While the problems we outline here are highly specific to ESDs, our concerns far exceed the ESD program itself. The fact our local government allows ANY private entity to patrol, control, and dominate public space seriously undermines the ability for all community members to exist in our sidewalks, streets, parks, and plazas, which are supposedly open and accessible to all. The fact the City of Portland legally collects public funds and turns those funds over to private entities to facilitate the take over of public space is egregious enough. On top of that, to then refuse to hold those entities accountable for their actions, not to mention to refuse to even monitor their actions and use of public funds is a total capitulation of governmental responsibilities. Worst of all, city officials have *known* they are operating in this manner. The City refused to meaningfully respond to our public records not because they did not understand what we were asking for and why we were asking for it; the City did not respond because officials prioritize the neoliberal relationship between the City and its wealthiest landowners--who run ESDs--at its core. The system for accessing public records in Portland is one of the worst, most corrupt systems in the US, and everyone we encountered knew that when we finally exhausted the process of “asking” for information, our appeals and their denials would end up with the DA--who has contracts with the ESDs to enforce their control!

After 26 years of ESDs expanding their control over our city, it is way beyond “fixing”. The whole concept of governing through corporatization of public space needs to be abolished, and structures need to be put into place to ensure that public space is directly for the benefit of, and under the control of, the public--including those most vulnerable to abuse of power. It is also imperative that public records requests be responded to quickly, fully, and freely. Without such measures, even if abolished, ESDs will be back with a different name and a different face. We are opposed to private contracts for public functions, of any kind, without public approval and public accountability. We can start with ESDs but this issue is much bigger than that, and needs to be settled once and for all. Government should work FOR the people, all the people, so damn it--do it!