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The Rise of Sublocal Structures in Urban Governance

Richard Briffault*

I. EXIT, VOICE, AND BIG CITIES

The dominant law and economics model of local government, based on the work of Charles M. Tiebout, assumes that decentralization of power to local governments promotes the efficient delivery of public goods and services. In his seminal article, A Pure Theory of Local Expenditures,1 Tiebout contended that the existence of a large number of local governments in any given area2 permits a "market solution"3 to the question of how to determine the level and mix of government services that people desire. The multiplicity of local governments in an area means that, as long as each locality is free to adopt its own mix of services, regulations, and taxes, area residents will have a variety of packages of local government actions to choose among in determining where to live. An individual, as a "consumer-voter,"4 can decide on the type and level of local services she wishes to receive, the type of local regulation she likes, and the local tax burden she is willing to assume by, in effect, shopping around among various localities and moving to the one that best suits her preferences.5 A metropolitan area,

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1. 64 J. POL. ECON. 416 (1956).
2. See id. at 419.
3. See id. at 421 (illustrating by example the ability of decentralized governments to satisfy individuals' needs for public goods).
4. See id. at 419 (discussing the limitations and premises underlying consumer-voter decisions).
5. See id. at 417 (describing the consumer role individuals play in the market model).
thus, functions as a kind of "marketplace" in which, due to inter-local mobility, residents are more likely to have their preferences satisfied by local government offerings than if comparable public goods and services were offered by higher levels of government.

The Tiebout model implies that over time the populations of individual localities will become more homogeneous with respect to tastes for local government actions. Like-minded people will be drawn to localities whose packages they find appealing while local dissenters relocate to other places where their tastes are more likely to be accommodated. Local homogeneity ought to reduce local internal disagreement and further increase the likelihood that local government activities will satisfy local residents.

Moreover, in a system in which local governments are heavily dependent on local resources for the revenues they need to finance local public services, the consumer-voter mobility central to the Tiebout model means that local governments must compete to retain their current taxpayers and to attract new ones. This competition can provide an incentive to local governments to hold down the costs they impose on their residents. In the view of the advocates of decentralization of public power to the local level "rivalry among local governments is analogous to rivalry among firms" in promoting efficient government operations.

Although Tiebout focuses on the multiplicity of local governments, his model relies on implicit assumptions concerning local autonomy and local size. Local governments must have the legal authority to determine taxes, services, and regulations within their jurisdiction. Otherwise the multiplicity of local governments would not result in any diversity of local government offerings and interlocal movement would not reveal any preferences for public actions. Similarly, localities


must be small in territory and population relative to the area as a whole so that people can change their locality of residence without having to make other major alterations in their lives. This increases the possibility that the choice of a community of residence will reflect a preference about public sector actions and not private concerns. Consistent with the premises of the Tiebout model, American local governments enjoy considerable autonomy, and most metropolitan areas are highly fragmented.

Like law and economics, the political argument for decentralization is also closely connected to the small size of local governments. This argument stresses the role of local governments in facilitating citizen participation in public action. The small size of local units makes it easier for citizens to voice their views to their local government and their fellow local citizens, to respond to each other's concerns, and to deliberate concerning important local public matters. Small local size makes it easier for people to gather information about local circumstances, local government actions, and the needs and perspectives of other local residents. In smaller units, individual citizens are likely to think they have a greater share of local power. The resulting sense of "citizen effectiveness" may lead to more participation, which, by reinforcing the sense of effectiveness, can maintain and increase participation.


11. See, e.g., William A. Fischel, Is Local Government Structure in Large Urbanized Areas Monopolistic or Competitive?, 34 NAT'L TAX J. 95, 101 (1981) (interpreting urban concentration ratios as a measure of fragmentation). The average metropolitan area is divided into more than one hundred local governments, and in more populous areas there are hundreds of localities. See Donald N. Rothblatt, Summary and Conclusions, in METROPOLITAN GOVERNANCE: AMERICAN/CANADIAN INTERGOVERNMENTAL PERSPECTIVES 433, 451 (Donald N. Rothblatt & Andrew Sancton eds., 1993).


14. See ROBERT A. DAHL & EDWARD R. TUFTE, SIZE AND DEMOCRACY 41-42 (1973) (discussing factors that increase the likelihood of political involvement by citizens).

15. See id. at 41-66.
In short, both economic and political models of local government rely on small local size in making the case for decentralization of power to local units.16 Yet, although most metropolitan areas are fragmented into a large number of relatively small local governments, in many areas there is at least one local government that does not fit the basic presuppositions of these models—the big city that is often at the core of the area. First, larger cities are, well, larger. They take up more space and are the location of more activities, including employment. As a result, city residents may have to move further and may incur greater commutation costs if they try to change their locality of residence while maintaining their old jobs. Movement from the city to the suburbs may result in a greater lifestyle change than movement from one suburb to another, and, thus, may constitute a greater disruption in the private life of the city resident. In other words, the costs of exit may be greater for city residents.17 As a result, from a Tieboutian perspective they ought to be less able to satisfy their preferences for local public actions. By the same token, if exit is more difficult, then the threat of exit may be less of a constraint on local government action.

In addition, cities are likely to be more diverse, in terms of race, class, and land uses than suburban local governments. There is, therefore, likely to be much greater heterogeneity of preferences concerning local tax, service, and regulatory polices. A higher percentage of big city residents are likely to be dissatisfied with their local government's decisions than are residents of smaller, more homogeneous localities. Moreover, internal conflicts may make big cities less capable of acting like self-interested Tieboutian localities in the ongoing metropolitan interlocal competition to attract and retain the mobile taxpayers needed to finance local spending programs.

With interlocal movement, or “exit,” potentially less available to city residents, political participation, or “voice” becomes


17. To be sure, the steady hemorrhaging of central city populations over the last half-century demonstrates the capacity of city residents to exit to the suburbs. My point is simply that relocation from the municipality may be harder for big-city residents than for their suburban counterparts, and, thus, in the big-city setting, the “consumer-voter” mobility that drives the Tiebout model may be less effective in achieving the efficiency and responsiveness goals of local autonomy.
more important. Yet the large populations that define big cities reduce the possibilities of voice as well. As political scientist Robert Dahl once put it in making the participationist case for local autonomy, "To regard the government of New York as a local government is to make nonsense of the term." For cities like New York City, Los Angeles, and Chicago, large size reduces the potential for participation associated with local autonomy.

Big cities, thus, are less likely to provide the benefits that economic and political theorists find in the local government system. One solution might be to break up larger cities into smaller cities, by encouraging individual neighborhoods to secede or dissolving the big cities outright. Secessions and dissolutions, however, have been rare. Alternatively, cities could be restructured to provide for the decentralization of significant service, tax, or regulatory responsibilities to neighborhoods or other discrete communities within cities. Although there was considerable public interest in such neighborhood governance in the late 1960s and early 1970s, very little in the way of big-city decentralization actually occurred.


20. Despite the broad support for small local units, neither political nor economic advocates have given much consideration to breaking up large localities. See Briffault, supra note 16, at 429 & n.358 (identifying proponents of dissolution and limited growth). For a direct discussion of secession from the law and economics perspective, see James M. Buchanan & Roger L. Faith, Secession and the Limits of Taxation: Towards a Theory of Internal Exit, 77 AM. ECON. REV. 1023, 1023-1031 (1987).


The more recent development of new forms of submunicipal political institutions, however, suggests new possibilities for ameliorating the basic tension between the assumptions of the Tiebout model\textsuperscript{24} and the position of big cities in the local government system. These new institutions— which include enterprise zones, tax increment finance districts, special zoning districts, and business improvement districts— provide for a variety of territorially based differences in taxation, services, or regulation within individual cities. To be sure, none of these structures is a full-fledged government or provides for the decentralization of significant city-government decisionmaking to the neighborhood or community level. Nevertheless, each structure represents a departure from the traditional centralized “big city.”

This Article examines these new sublocal structures and considers their implications for the applicability of the Tiebout model to larger cities. Part II describes the new structures and analyzes how they depart from traditional forms of local government. Part III draws the structures together and suggests that, despite their limitations and their differences from each other, they may represent a new type of urban governance. Part IV then turns to the interactions of the new structures with the Tiebout model. By implementing these structures, city governments may be able to increase their responsiveness to residents’ preferences and contribute to urban fiscal well-being. Moreover, because the scope of sublocal autonomy provided is relatively limited, cities that use these structures can still constrain the tendency, endemic to the Tiebout model, for local units to impose costs on their neighbors. On the other hand, these structures may increase service inequalities within cities, and they tend to enhance the place of private interests in urban governance. This Article concludes that these structures

\textsuperscript{24} The Tiebout model is, obviously, a highly idealized model. Even in the suburbs the costs of relocation are greater than the model suggests and operate to hamper the overall efficiency of the system. The Tiebout model tends to favor the interests of those who can relocate more easily over those whose mobility is more limited. Moreover, it has the effect of giving the marginal consumer-voter—that is, the person who can threaten to leave—a greater impact on local decisions than the resident more tightly tied to the locality. \textit{See} Brik-fault, \textit{supra} note 16, at 415-25 (examining the political shortcomings of the economic theory of local autonomy). This Article neither defends nor damns the Tiebout model; rather, its sole focus is the applicability of the model to large cities and how that may be affected by new structures of sublocal governance.
may be able to improve the efficiency of local operations, but they are unlikely to improve the prospects for political participation by ordinary citizens in big-city governance.

II. FOUR STRUCTURES OF SUBLOCAL GOVERNANCE

A. ENTERPRISE ZONES

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


The state-authorized enterprise zones differ significantly from each other, as well as from the classic enterprise zone concept. Enterprise zones are rarely the "self-executing" free ports Hall and Howe envisioned. Most enterprise zones make extensive use of tax abatements, reductions, and credits, but regulatory relief is now a minimal component of enterprise zone programs. Instead, many enterprise zones provide for a "more active or interventionist governmental presence" in depressed areas, "including the provision of loans and venture capital, land assembly to facilitate new uses of land, and public investment in physical infrastructure." Many enterprise zones have their own administrative or management structures. These are generally public-private collaborations that provide technical assistance to zone businesses, help firms work with public and private sources of capital, and engage in marketing and promotion activities on behalf of firms in the zone and the zone as a whole. According to studies, enterprise zones that have more interventionist management structures, provide more services to firms, and engage in more zone marketing and promotion have done better in promoting economic development than those that rely primarily on targeted tax breaks and limited regulatory relief. Indeed, one study reported that "the most


31. See Rodney A. Erickson & Susan W. Friedman, Comparative Dimensions of State Enterprise Zone Policies, in ENTERPRISE ZONES, supra note 26 at 155, 164 (observing that "[r]egulatory relief appears to be used rarely"); Franklin J. James, The Evaluation of Enterprise Zone Programs, in ENTERPRISE ZONES, supra note 26 at 225, 232 (claiming that "the concept of extensive deregulation as a development incentive is defunct"). According to Erickson and Friedman:

The regulatory relief that has been offered tends to be procedural rather than substantive, and is usually in the form of one-stop permits, fast-tracking, and fee reductions. When there has been substantive relief, it has usually been limited to assistance with zoning changes, variances that may well have been granted without an official policy of regulatory relief.

Erickson & Friedman, supra, at 164.


33. See id. at 151.

34. See id. at 152 (claiming that the use of interventionist techniques is superior to the classic enterprise zone model); see also Erickson & Friedman,
important role of an enterprise zone program may be as a tool for marketing otherwise relatively undesirable areas to potential employers or as a means of organizing development activities in the community."\(^{35}\)

Enterprise zones have received mixed reviews in terms of their ability actually to stimulate economic development,\(^ {36}\) but analysts tend to agree that their use of geographic targeting within cities represents a distinctive break from prior economic development programs.\(^ {37}\) Although enterprise zones in practice have "much in common" with other approaches to economic development, "they are unique in one major respect: [they are] [p]olicies ... limited to particular geographic areas."\(^ {38}\) Enterprise zone programs are "highly unusual" in concentrating their resources in small geographic areas—usually, although not exclusively, within cities—and in making tax and other incentives "available to all eligible establishments within a zone as a matter of right. ... irrespective of need."\(^ {39}\) Regardless of their economic development effects, enterprise zones are significant from a legal and institutional perspective.\(^ {40}\) Their use of discrete sublocal territorial units as a focus for capital and technical assistance, their departure from locality-wide levels of taxation, and their deployment of a mixed public-private administrative structure to work with area businesses are noteworthy developments in urban governance.

\(^{35}\) Patrick G. Grasso & Scott B. Crosse, Enterprise Zones: Maryland Case Study, in ENTERPRISE ZONES, supra note 26, at 122, 134; see also INTERNATIONAL DOWNTOWN ASSOCIATION, SUCCESSFUL DOWNTOWN DEVELOPMENT, DESIGN & MANAGEMENT PROGRAMS: A COMPRENDIUM OF FUNDING TOOLS & TECHNIQUES 52 (1991) (observing that enterprise zones are most successful as part of an overall local development plan).

\(^{36}\) See, e.g., EISINGER, supra note 30, at 194-99 (describing the lackluster results of various states' enterprise zones).

\(^{37}\) See, e.g., Susan B. Hansen, Comparing Enterprise Zones to Other Economic Development Techniques, in ENTERPRISE ZONES, supra note 26, at 7, 23.

\(^{38}\) Id. at 7.

\(^{39}\) James, supra note 31, at 226.

\(^{40}\) For an examination of some of the legal issues posed by enterprise zones, see Michael Allan Wolf, Enterprise Zones Through the Legal Looking Glass, in ENTERPRISE ZONES, supra note 26, at 58, 58-74.
B. Tax Increment Finance Districts

Tax increment financing (TIF) emerged in the 1970s, following cutbacks in federal urban aid programs, as a major state and local tool for financing urban development.\(^1\) It is a technique for enabling the increased revenue produced by economic growth in discrete urban areas to cover the costs of the public investment intended to stimulate new private investment in those areas. Under TIF, a geographically defined section of a city is designated as blighted or distressed. The assessed property valuation in the area is frozen for a specified period of time, typically ranging from ten to twenty-five years.\(^2\) Property tax revenues generated at that level of valuation will continue to flow into local government coffers; any additional revenues resulting from the growth in property values in the area is reserved to pay for economic development programs for the area.\(^3\)

The TIF authority, either the municipality itself or a local economic development entity, is authorized to acquire and clear land within the district, construct public facilities or parking lots, or install utilities, repair streets, engage in landscaping, and undertake other activities intended to make the area more attractive to private investment.\(^4\) The assumption is that this public spending will encourage new private economic activity in the district that will drive up property values and generate additional tax revenues. These revenues are earmarked to pay the debt incurred by the TIF authority to finance the district improvements. In other words, district improvements are financed by the incremental property tax revenue resulting from the district improvements.

The use of TIF is frequently tied to the plans of particular developers or firms contemplating investments in a district. The municipality or development authority will often work closely with particular private developers in formulating and implementing a plan for a particular TIF zone.\(^5\)


\(^{42}\) See id. at 83.

\(^{43}\) See id.

\(^{44}\) See id.

\(^{45}\) See generally id. at 82-98 (noting that thorough market analysis and concrete development or redevelopment plans are necessary to achieve the goals behind TIF); Eisinger, supra note 30, at 182-88 (describing a TIF zone...
Seen as "development that pays for itself," tax increment financing is widely popular and authorized by approximately three-quarters of the states. At the end of the 1980s there were more than one thousand cities with TIF districts, although most of them were concentrated in California and in the upper Middle West states of Minnesota, Michigan and Wisconsin. Minneapolis has been a particularly heavy user of the TIF technique. Of eighty-five downtown redevelopment projects undertaken between 1980 and 1991, thirty of them benefited from tax increment financing. Between 1986 and 1990, forty-three percent of the city's funds for economic development came from tax increment financing, and in 1990, TIF districts accounted for thirteen percent of the tax base.

Although state laws generally limit the availability of tax increment financing to "blighted" or otherwise economically distressed neighborhoods, many TIF districts are located in downtown business areas. TIF programs focus less on redeveloping the slums and more on providing cities with an additional tool for competing with other cities for new investment. This development was, to some extent, inevitable. Unlike enterprise zones, which provide for outside assistance to a sublocal area via tax breaks, direct investment, or technical assistance, TIF relies on new revenues generated within a district, and truly blighted areas are less likely to generate those revenues. Moreover, because of TIF's reliance on bonded debt to provide

in Madison, Wisconsin, which induced Rayovac to keep its corporate headquarters in the area).

46. Paetsch & Dahlstrom, supra note 41, at 82.

47. See INTERNATIONAL DOWNTOWN ASSOCIATION, supra note 35, at 45 (noting that 37 states authorize TIF).

48. See Paetsch & Dahlstrom, supra note 41, at 86 (ranking states by the number of cities with TIF districts).

49. See id.; see also JOHN R. LOGAN & HARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 174-75 (1987) (discussing TIF in California); Richard Child Hill, Crisis in the Motor City: The Politics of Economic Development in Detroit, in Restructuring the City: The Political Economy of Urban Redevelopment 80, 110 (Susan S. Fainstein et al., eds., 1983) (discussing role of TIF in Detroit downtown redevelopment); Alex Schwartz, Rebuilding Downtown: A Case Study of Minneapolis, in Urban Revitalization: Policies and Programs 189-95 (Fritz W. Wagner et al., eds., 1995) (discussing role of TIF in Minneapolis's downtown revitalization projects).


51. See Paetsch & Dahlstrom, supra note 41, at 95-96 (noting that slums and blighted areas do not generate large incremental revenues relative to growing suburbs and downtown areas).
the initial funding for district improvements, localities have an incentive to use TIF for the redevelopment of just those areas most likely to draw private investment. This minimizes the risk that the TIF district will be unable to cover its debt. Development advisers note that TIF "is particularly suited to large, high impact projects because these can be expected to bring in sufficient profits . . . Income-generating projects such as shopping centers, hotels, industrial parks and large mixed use projects have been the most popular facilities financed with TIF."\(^5\)

As a geographically targeted economic development device, TIF resembles the enterprise zone. TIF gives significance to the sublocal district in providing that the additional tax revenues generated by new development are encapsulated in the district to pay for the public costs of stimulating development. Property within a TIF district is assessed in the same manner and at the same rate as other property in the city—but the incremental tax revenues produced by new development are effectively returned to the district to finance the cost of the district's infrastructure.\(^5\) For the purposes of financing new development, the TIF district thus functions as a self-contained sublocal structure embedded within the broader city.

C. SPECIAL ZONING DISTRICTS

Special zoning districts are amendments to zoning ordinances that provide detailed land use rules "tailor-made to some particular set of circumstances in a particular area."\(^5\) They differ from traditional zoning districts in their explicit focus on the needs and characteristics of named neighborhoods, as well as in their detail and their focus on shaping district-level development. By definition, all zoning involves dividing a city into different territorial areas defined by the land uses

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52. INTERNATIONAL DOWNTOWN ASSOCIATION, supra note 35, at 45; see also Arthur C. Nelson & Jeffrey H. Milgroom, Regional Growth Management and Central-City Vitality: Comparing Development Patterns in Atlanta, Georgia, and Portland, Oregon, in URBAN REVITALIZATION: POLICIES AND PROGRAMS, supra note 49, at 1, 27-28 (observing that TIF partially financed a downtown waterfront festival marketplace and convention center in Portland, Oregon); Paetsch & Dahlstrom, supra note 41, at 96 (noting that TIF is often used to draw developers and investors to "desirable parcels in growing areas").

53. See Meierhenry v. City of Huron, 354 N.W.2d 171, 177 (S.D. 1984) (noting that the "equality and uniformity" in taxation required by South Dakota's constitution does not extend to the distribution of the revenue).

permitted in the areas. Zoning ordinances have traditionally been framed in terms of a few broad categories of uses—residential, commercial, industrial or mixed—and have focused on relatively limited aspects of land use, such as building height and mass, type of use, and density. Although traditional zoning districts may be tailored to take into account the distinctive conditions of different types of urban neighborhoods, the districts are typically defined in terms of the types of land uses permitted within them rather than by reference to specific named neighborhoods. In a city with two or more zones of the same character—such as “two-family residential” or “neighborhood shopping”—the land use rules in those districts would be the same, even though the zones are located in different neighborhoods.

Special zoning districts, by contrast, impose rules tailored to the concerns of particular neighborhoods. This difference is often reflected in the very titles of the special districts, which typically refer not to the type of use permitted but to the popular name of the district. As the New York Court of Appeals has noted, “Special district zoning . . . represents a significant departure from [the] traditional Euclidian zoning concept . . . . The districts created are not traditional zoning districts, narrowly limited to particular uses, but broad-based plans intended to preserve and enhance troubled areas . . . because of their singular characteristics . . . .”

Special zoning districts are particularly common in New York City, which created thirty-seven such districts in the 1970s and 1980s. The districts were intended to steer or limit development within the City, or to control the effects of growth on existing land uses and on residents in the immediate area. For example, the City created the Special Theater District to provide incentives to developers to protect theaters in the


59. *See* BABCOCK & LARSEN, supra note 54, at 5 (describing New York City as the “undisputed monarch of special district use”).
Broadway area. The Special Clinton District protects the working-poor residents of an area expected to undergo new development by limiting building heights, imposing tight restrictions on building demolitions, providing special protections against harassment of tenants, regulating the number of rooms in apartments in new and rehabilitated buildings, and protecting existing public parking lots. The Special Fifth Avenue District sought to "preserve what planners perceived as the traditional ambiance of the Avenue" by imposing restrictions on signs and banners and precisely defining limits on the use of the ground floors of district buildings. The Special Garment Center District restricts the conversion of manufacturing space to office use in order to maintain the economic viability of apparel production in the area.

San Francisco and Chicago also created special zoning districts in order to control development and buffer its consequences for particular communities. San Francisco's special zoning districts are intended to preserve neighborhoods that combine small-scale retail uses and residential units against an influx of fast-food restaurants and economic pressures to convert residences to commercial or office uses. In Chicago, a special manufacturing district restricts new residential and retail development to assure industrial firms enough space to expand their facilities.

60. See id. at 25-38 (describing the history and role of the Special Theater District as the first special zoning district in New York City).

61. See id. at 46-47, 49-52 (noting that the Special Clinton District was designed to protect the availability of affordable housing).

62. See id. at 57-61. Creation of this district was sparked by the influx of airline offices and branch bank offices on Fifth Avenue. These were seen as threatening the district's luxury shopping facilities. See id. at 55-56. The Special Fifth Avenue District and the Special Theater District subsequently became subdistricts of the Special Midtown District. See id. at 155-56.

63. See id. at 90-91. Other districts have focused on the protection of distinctive neighborhoods—albeit not areas that could qualify for historic or landmark status. The Special Grand Concourse District, thus, imposes special design controls, including detailed prescriptions of sign colors, canopy materials, and the size of window graphics, in order to enhance the appearance of the Bronx's principal boulevard. See id. at 107-10.

64. The districts, in such neighborhoods as Castro, North Beach, and Sacramento Street, impose special controls on residential conversions and special parking, traffic, and anti-litter rules. See id. at 113-23.

65. See id. at 131. One effect of the district has been to limit the threat to manufacturing that can arise when new residents complain about the "noise, bad odors, or any of the other conditions associated with industry" and seek the stricter enforcement of local public health codes that are burdensome to
By tailoring land use regulation to conditions specific to particular neighborhoods, special district zoning departs significantly from the traditional zoning tenets of citywide uniformity and standards based on type of land use rather than distinctive neighborhood conditions. Special district zoning, in effect, creates miniature, district-specific zoning ordinances for particular neighborhoods. Although special zoning districts are created by city governments and do not entail district-level political or administrative structures, in practice neighborhood-level associations of residents or businesses play an important role in the initial decision to enact a special zoning district. Similarly, neighborhood groups, by lobbying and voicing their complaints to city agencies, are taking a leading role in enforcing district rules. Thus, the special zoning districts provide a form of sublocal regulation, sublocal initiation, and sublocal implementation of district-specific land use rules.

D. BUSINESS IMPROVEMENT DISTRICTS

A business improvement district (BID) is a territorially defined district within a city which is created by that city to finance and to provide services within the district. The city subjects property in the district to additional taxation, and the revenues thereby generated are reserved to fund services and improvements within the district. Frequently, the city will create some administrative or advisory body, composed of representatives of businesses or landowners within the district, to manage the operations of the BID. In some states, the members of this body will actually be elected by district property owners; in other states they will be appointed by the city government. Although the BID is based on longstanding legal

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66. See id. at 3 (noting that special district zoning focuses on the “trees” rather than the “forest”).

67. See id. at 121-22, 139-42 (describing the effects of individual and group resident involvement on the permanence and enforcement of special district rules).

68. See, e.g., N.Y. GEN. MUN. LAW § 980-m(b) (McKinney Supp. 1997) (requiring that a majority of the board be composed of owners and that tenants be represented).

69. See, e.g., LA. REV. STAT. ANN. § 33:2740.3.D(1) (West 1988) (providing that the mayor shall appoint members subject to approval by the city council and that five members shall be selected by the mayor from eight nominated by the chamber of commerce); TEX. LOC. GOV'T. CODE ANN. § 375.064 (West Supp. 1997) (providing for the recommendation of new members for the governing board by the board itself, subject to the approval of the city council).
structures, such as the special assessment and the special district, the device caught on and began to spread rapidly only in the last two decades. 70 Most states have adopted BID-enabling legislation, 71 and there are about a thousand BIDs in the United States. 72

BIDs undertake a wide variety of activities. Most focus their attention on such traditional municipal services as sanitation, street maintenance, and public security. 73 They do not replace municipal activities in these areas; rather they supplement the services actually provided by the municipality. For example, in an area where the municipality picks up garbage three times a week, the BID may arrange for garbage pick-ups on two additional days. BIDs may provide these services by hiring their own workers, contracting with private providers, or financing the city government's provision of additional services within their districts. 74 Some BIDs operate parking facilities, maintain public amenities, and undertake capital programs intended to improve streetscapes by installing new streets and sidewalks, fountains, street lights, benches, and other forms of street furniture. 75 A few BIDs attempt to address social problems, particularly homelessness. New York's Times Square BID provides services to the homeless and works with the Partnership for the Homeless "to assist homeless people who are ready to get off the streets." 76 Other BIDs, however, are primarily interested in rousting the homeless from doorways and encouraging panhandlers to move

70. See Janet Rothenberg Pack, BIDs, DIDs, SIDs, SADs: Private Governments in Urban America, BROOKINGS REV., Fall 1992, at 18, 18 (noting that few BIDs existed before 1980).
72. See, e.g., Lawrence O. Houstoun, Jr., Business Improvement Districts, 20 ECONOMIC DEVELOPMENT COMMENTARY 4, 5 (1996) (stating that there are between 1,000 and 2,000 BIDs in the United States and Canada).
74. See, e.g., Lawrence O. Houstoun, Jr., Betting on BIDs, URB. LAND, June 1994, at 13, 14-16 (describing the approaches taken by five different cities); INTERNATIONAL DOWNTOWN ASSOCIATION, COMPARISON CHART—SELECTED DOWNTOWN MANAGEMENT DISTRICTS 41-42 (on file with author).
75. See Houstoun, supra note 74, at 13, 14-16.
76. 1 NEW YORK CITY DEPARTMENT OF BUSINESS SERVICES, NEW YORK CITY BUSINESS IMPROVEMENT DISTRICTS 59 (August 1996).
along. New York's Grand Central BID became embroiled in controversy in 1995 when homeless people alleged that the BID's homeless outreach workers were functioning as a "goon squad" to drive homeless people from the district. Although all BID activities are justified in terms of their ability to improve the business climate within the districts, some BIDs also engage in activities directly intended to attract and retain business, or to draw customers to district firms. This can include sponsoring festivals and other special events, putting up Christmas lights, publishing direct mail advertising and informational brochures, and providing management assistance to district firms. BIDs may engage in strategic planning, or attempt to create distinct, marketable images for their districts. As part of shaping a district's image, some BIDs may adopt uniform street lighting and public signage rules for their districts; attempt to influence the signs and facades of private owners; lobby city hall for more vigorous enforcement of city sanitary and design codes and rules against street vendors; or seek adoption of special antivendor ordinances for their districts.

Because BIDs are financed by taxes on property or businesses within the districts, most state laws condition the formation of a district on some proof that the property or business owners endorse the supplemental taxation. The state may require

77. See Heather MacDonald, BIDs Really Work, THE CITY JOURNAL, Spring 1996, at 29, 40 (describing Portland's, Phoenix's, and Baltimore's approaches to social problems).
78. See Kennedy, supra note 71, at 321-24 (describing the "goon squad" scandal).
79. See generally, NYCOM, GUIDE TO NEW YORK STATE BUSINESS IMPROVEMENT DISTRICTS (1996) (covering 60 BIDs within the state of New York).
80. See, e.g., N.J. STAT. ANN. § 40-56-71 (West 1992) (allowing for prior approval for construction or alteration of building and structure facades).
81. See, e.g., Janet Allon, Superstore Asked to Make Its Sign A Bit Less Super, N.Y. TIMES, Jan. 26, 1997, § 13 (The City), at 6 (describing the attempts of a BID to influence change in signage described as "overkill").
83. See, e.g., Fanelli v. City of Trenton, 641 A.2d 541, 542-44 (N.J. 1994) (upholding an anti-vendor ordinance passed pursuant to SID enabling legislation).
that a petition calling for the creation of the BID be signed by a significant fraction of property or business owners within the district before the city can create the district.\footnote{\textit{See, e.g.}, \textsc{Cal. Sts. \\& High. Code} § 36621(a) (West Supp. 1997) (requiring submission of a written petition signed by property owners who will pay more than 50\% of assessments to be levied in the proposed district).} Other states may permit the city to initiate the process of BID formation, but enable district landowners or businesses to block the district if some substantial fraction of those subject to taxation sign a petition protesting the creation of the district.\footnote{\textit{See, e.g.}, \textsc{Ore. Rev. Stat. Ann.} § 223.117(2)(c) (1993) (providing that improvement plan will be terminated when written objections are made from property owners upon whom more than 33\% of assessments is levied).} Typically, the process of creating the BID is initiated by landowners or businesses within the proposed district. A neighborhood chamber of commerce or a merchants' association will propose boundaries of the district, develop the BID program, and formulate its assessment structure.\footnote{\textit{See, e.g.}, Houstoun, supra note 74, at 14, 16 (listing the common key elements of BIDs and discussing various BID structures).} In New York, the New York City Partnership found that, notwithstanding state law that implies that the city government takes the lead in creating BIDs,\footnote{\textit{See \textit{N.Y. Gen. Mun. Law} § 980-d(a) (McKinney Supp. 1997) (stating that legislative body of a municipality or its chief executive officer may provide for preparation of a district plan, or, alternatively, this may be done upon submission of a written petition from property owners).} \textit{See \textsc{New York City Partnership, The BID Manual: Establishing and Managing a Business Improvement District} 5 (1995).} “property owners... have been the initiators of the BID, not the Mayor or the City Council.”\footnote{\textit{New York City Dept of Bus. Services, Establishing and Operating a Business Improvement District: A Step-by-Step Guide} 1 (1996).} The level of assessment within the district generally follows the recommendation of the district property owners or businesses subject to tax. This assessment is formally imposed and collected by the city government, and it is treated as a municipal tax for many legal purposes.\footnote{BID assessments are compulsory for all property owners or businesses in the district who are subject to assessment, including those who filed a written protest against the formation of the BID. Moreover, as a general rule, failure to pay a BID assessment subjects a property owner to the same penalties, including fines, the filing of a lien, and sale to pay for delinquency, that apply in the event of nonpayment of property taxes. \textit{See, e.g.}, Henry E.
The BID, thus, combines elements of the enterprise zone, the TIF district, and the special zoning district. Like these other devices, the BID constitutes a departure from citywide uniformity of taxation, spending, and land use regulation. Like the TIF and the special zoning district, the creation of the BID reflects both district-level initiation and municipal government action. The BID employs the TIF device of encapsulating some portion of district-generated revenues for the district. But unlike an enterprise zone, which cuts taxes within a zone, or a TIF district, which simply channels the additional revenues created by growth back to the district, the BID relies on supplemental assessments within the district to finance the BID's services. Like the more interventionist enterprise zones, most BIDs have some form of sublocal governance structure, although the decisions of BID boards are either nominally advisory or are subject to city oversight. Unlike any of the other bodies, BIDs devote a considerable portion of their resources to funding the types of public services—sanitation, street maintenance, and especially security—traditionally provided by municipal governments.

III. A NEW PARADIGM?

Do these four developments in local government structure add up to a new mode of sublocal governance? Arguably not. There are obvious and considerable differences among the four types of entities. Some, like the TIF district and the enterprise zone, are devices to promote economic development; in contrast, the special zoning district is often used to limit development and buffer residents or businesses from market-driven changes. The enterprise zone cuts taxes and, more modestly, regulation. The TIF district leaves the level of taxation intact while channeling the revenues produced by growth back to the district. The special zoning district increases district-specific regulation. The BID increases taxes and sometimes increases

(Hank) Turner, Economic Improvement Districts at Work in Oregon, in 3 DOWNTOWN INFORMATION at 17 (Oregon Downtown Dev. Ass'n, 1988). Assessments on district property or district businesses are the primary, but not the sole, source of BID funds. See Pack, supra note 70, at 20; PITTSBURGH DOWNTOWN PARTNERSHIP, SURVEY OF BUSINESS IMPROVEMENT DISTRICTS—PRELIMINARY FINDINGS (on file with author). Other sources of funds include voluntary payments from tax-exempt property owners, funds generated by charges for district operations, the sale of district services, and grants and loans from federal, state and municipal governments. See Pack, supra note 70, at 20.
regulation, but is primarily focused on the provision of traditional municipal services.

Moreover, many of these structures have less to do with governance than with targeted assistance to particular firms and interests or the manipulation of legal categories. TIF's may be created to provide tax-exempt financing for developers.90 Similarly, BID's may be established to assure urban shopping mall developers that there will be a higher level of public services for their projects and, thus, reduce the risk of their investment.91 Some special zoning districts have been so focused on specific projects that they are tantamount to illegal "spot zoning."92 Others are created with little more than the political purpose of according an ethnic group formal city recognition.93 Beyond the assistance to developers, TIF's are popular with city governments because they enable the cities to shift part of the cost of financing development to other local governments. Much of the tax revenue foregone by freezing TIF-district assessed valuation would have been paid to county governments or to school, library, or other special districts with jurisdiction over property in the TIF district. In effect, the TIF device enables the municipal government to force these other local units to contribute to economic development projects.94 Similarly, in some situations a BID may be established to enable a

90. See, e.g., Paetsch & Dahlstrom, supra note 41, at 96 (describing a TIF district created to obtain the funds needed to provide the infrastructure for new Sears, Roebuck headquarters); see also Spradlin v. City of Fulton, 924 S.W.2d 259 (Mo. 1996) (describing a district created pursuant to Missouri's Neighborhood Improvement Act to provide tax exempt financing for a golf course). Of course, the creation of local government units in order to help private developers is nothing new. Local governments generally can obtain tax-exempt financing to cover the costs of providing public infrastructure to private developments and thereby make those developments more marketable. See, e.g., NANCY BURNS, THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS 26-27 (1994) (citing several examples in which developers used special districts to finance start-up costs and to fund infrastructure).


92. See BABCOCK & LARSEN, supra note 54, at 104-06.

93. See id. at 65-70.

94. See, e.g., EISINGER, supra note 30, at 183 (noting a study that found that 70% "of the eligible costs of development in TIF districts were in effect borne by nonmunicipal governments"); Paetsch & Dahlstrom, supra note 41, at 96 (observing that when TIF districts are used as a development tool they generate tax revenue which would otherwise go to other taxing bodies in that district).
local government to avoid state constitutional limitations on local tax increase, rather than create a governance structure.⁹⁵

Despite these reservations, some common themes link these structures and suggest that together they represent the emergence of a new form of sublocal governance. First, all four developments mark a departure from the traditional legal and political norm of uniformity of municipal action within a city. Most state constitutions require that rates of taxation and methods of assessment, particularly for property taxes, be uniform within a jurisdiction unless the constitution specifically authorizes an exception.⁹⁶ Enterprise zones and BIDs obviously break with the norm of uniformity of taxation.⁹⁷ TIF's variation from uniformity is more subtle: TIF-district property is taxed at the same rate as property in the rest of the city but since TIF-district incremental revenues are channeled back to the district, the district contributes less than its proportionate share to the municipality and other overlying local govern-

⁹⁵. See, e.g., Evans v. City of San Jose, 3 Cal. App. 4th 728, 735-39 (Cal. Ct. App. 1992) (holding that BID assessment was not a "special tax" within the meaning of California's Proposition 13 and thus not subject to the requirement of approval by two-thirds of local voters). BID assessments are not always exempt from state constitutional restrictions on the level of taxation. See N.Y. GEN. MUN. LAW. § 980-k(b) (McKinney 1997) (stating district charges are to be included in the total amount a municipality is permitted to raise by a tax on real property). In California, the exemption of BID assessments from constitutional restrictions may be curtailed by a recent initiative measure, Proposition 218, which, as of July 1, 1997, requires voter approval for many forms of property-related fees and charges. See CAL. CONST. art. XIII D, § 6, cl. (c).


⁹⁷. Because BID charges are "assessments" used to fund benefits to property rather than "taxes" that provide revenues for a local governments treasury, state courts have generally exempted them from uniformity requirements. See, e.g., City of Seattle v. Rogers Clothing for Men, Inc., 787 P.2d 39, 49 (Wash. 1990) (en banc) (holding that special assessments levied against businesses located in a BID did not violate uniformity requirement of Washington constitution); S.O.L. Club, Inc. v. City of Williamsport, 443 A.2d 410, 411-12 (Pa. Comm. W. Ct. 1982) (holding that assessments did not violate uniformity clause of Pennsylvania constitution because it applies only to taxes, not assessments). I have not found any decisions that address the applicability of uniformity clauses to enterprise zones. But cf. Wolf, supra note 40, at 66-67 (noting that some states omit property tax abatements, reductions, and exemptions from their enterprise zone programs because of state uniformity clauses, and that other states make tax breaks contingent on activity, like increasing employment or capital investment, in addition to location in a zone in order to accommodate uniformity clause concerns).
ments.\textsuperscript{98} Most state zoning enabling acts require that localities zone "in accordance with a comprehensive plan,"\textsuperscript{99} but special district zoning can create different zoning codes for different neighborhoods. BID design and signage rules also vary from district to district.

Similarly, "the legal doctrine of equal service provision presumptively obligates the [city] government to offer the same level of service to all residents."\textsuperscript{100} But enterprise zones and BIDs target different neighborhoods for higher levels of government investment or supplemental services. The doctrine of equal service provision is not often judicially enforced, and in some cities some areas are no doubt better served than others. But this is usually attributable to bureaucratic decision rules rather than formal city policy. In general, "municipal governments more often . . . achieve a rough equivalence of service packages among their neighborhoods."\textsuperscript{101} Enterprise zones and, especially BIDs, however, officially offer more or better or special services to territorially defined areas.

Second, each of these initiatives tends to treat the sublocal zone or district as a distinctive actor with a formal legal-political identity rather than as an undifferentiated part of the city. Enterprise zones focus on increasing economic activity in a particular area rather than in the city as a whole. Special zoning districts extend formal recognition to informally established neighborhoods and reshape land use regulation in light of the particular circumstances and concerns of the neighborhoods so recognized. Even though the problems these districts are created to address may be common to many areas of the city, the special district’s controls on building mass, storefronts, parking, and changes in usage are specific to a defined neighborhood and its terms reflect the particular politics of particular sublocal areas. According to the principal study of

\textsuperscript{98} Because property in a TIF district is nominally subject to the same rates of taxation and assessment as property in the rest of the city, most state courts have rejected the argument that tax increment financing violates uniformity of taxation requirements. See MANDELKER ET AL., supra note 96, at 290-95.

\textsuperscript{99} See, e.g., 2 RATHKOFF ET AL., supra note 55, § 12.02.

\textsuperscript{100} Clayton P. Gillette, Opting Out of Public Provision, 73 DENV. U. L. REV. 1185, 1197 (1996).

\textsuperscript{101} ROBERT L. LINEBERRY, EQUALITY AND URBAN POLICY: THE DISTRIBUTION OF MUNICIPAL PUBLIC SERVICES 181 (1977).
these districts, they "foster[] community pride often at the expense of citywide solutions."\textsuperscript{102}

TIF districts and BIDs encapsulate a portion of revenues generated within the district and reserve them for improvements in and services to the district. They function to a limited but real degree as distinctive taxing and spending enclaves within the larger city. TIF districts tend to be relatively small and focused on financing the development of particular parcels of land, but BIDs may be used for the long-term financial support of services to and planning for whole neighborhoods. Indeed, like special zoning districts, BIDs give formal recognition to a neighborhood by name.

Third, these developments often entail some form of sublocal involvement in decisions for the area. There may be neighborhood-level input in the formation or operation of the sublocal structure or in the enforcement of the specific sublocal regulations. Enterprise zones frequently have their own administrative mechanisms which include representatives of firms and community groups within the zones. Special zoning districts are typically enacted on the initiative of, or after negotiation with, neighborhood businesses or residential or political organizations. Once in place, the district-specific rules and regulations give "neighborhood advocates an incredible amount of potential power."\textsuperscript{103} BIDs often grow out of district-level initiatives, and state law usually provides some opportunity for a district-specific voice in a city's determination whether to create a BID. Moreover, a city typically either establishes a board composed of representatives of interests within the BID to advise the city government concerning BID services, programs, and finances, or designates a group of representatives of district property owners or businesses to manage BID operations.

The formal authorization of a sublocal departure from citywide norms, the promotion of sublocal identity, the role for sublocal political action and formal sublocal administrative or political institutions, thus, tend to link up these diverse political structures and support the case for treating them as a new form of urban governance. Although they perform very different functions and operate in different ways, these zones and districts make sublocal areas both objects and subjects of local

\textsuperscript{102} BABCOCK & LARSEN, supra note 54, at 146.  
\textsuperscript{103} Id. at 145.
government law. Together they underscore the notion that the sublocal area is a distinct unit of governance.

To be sure, none of these structures vests broad governmental powers at the sublocal level. However, I am not claiming that these zones and districts constitute full-fledged governments; instead I am suggesting that these four structures may herald the emergence of the sublocal level as a new focus of governance, especially in larger cities.

IV. SUBLOCAL STRUCTURES AND THE TIEBOUT MODEL

A. METROPOLITANIZATION WITHIN CITIES

The development of sublocal governance institutions creates something akin to a metropolitan political structure within big cities. These sublocal structures have elements of the three legal prerequisites for the operation of the Tiebout model—borders that affect the scope of services and regulation, autonomy within those borders, and financing from sources within those borders. All four entities operate within distinctly defined sublocal borders that limit the availability of their programs to firms or residents within those borders. Enterprise zones, special district zoning, and BIDs all provide a measure of sublocal autonomy. In each case, either a board representing sublocal interests plays an important role in determining the entity’s operations, or sublocal constituents exercise influence over the district’s or zone’s policies—or both. In the case of BIDs, the sublocal representatives may actually be elected from within the district although the electorate is typically composed of businesses or property owners rather than residents. The formal recognition of the zone or district also contributes to the sense that the zone or district is an autonomous unit within the city. Finally, TIFs and BIDs rely on sublocal self-financing, and BIDs accord the residents within their borders a measure of sublocal autonomy as well. Indeed, by combining elements of all three components of local autonomy, BIDs bear more than a passing resemblance to Tieboutian localities. The scope of their autonomy is limited, but they provide for greater intracity variation in rules, services, and taxes than is otherwise the norm. With these structures in place, movement within a city can actually change the services a resident or firm receives, the taxes it pays, and the regulations that affect personal, business, or land use activities.
In addition to giving new significance to *intralocal* mobility within big cities, these structures may enable cities to act more like Tieboutian localities in the *interlocal* competition for mobile consumer-voters. Rather than cut taxes citywide, which could impair a municipality's ability to finance its programs and draw opposition from constituencies that benefit from city spending, or not at all, which would make it more difficult for the city to compete for investment, the city can use an enterprise zone to provide geographically limited tax breaks targeted on the most depressed areas. The city can use TIF as a targeted development-oriented tax break that does not affect the revenues that support existing levels of service. BIDs enable cities to offer more or better services within commercial districts without raising the taxes that may scare off new investment since the spending financed by BID charges is controlled by business-dominated boards rather than politicians. Moreover, by requiring that the funds that pay for the supplemental services BIDs provide come from firms or property owners within the districts, use of the BID device can defuse the charge that more public spending in business districts is unfair to other neighborhoods. Special district zoning defuses conflicts over the costs and benefits of development by enabling cities to steer development away from those areas that are most resistant while encouraging new growth generally. These zones and districts may, thus, facilitate new investment in cities and contribute to the cities' fiscal well-being.

Moreover, because these new structures provide sublocal zones or districts with only limited autonomy, such sublocal governance can avoid some of the negative aspects of the Tiebout model. As Tiebout himself noted, local government will be efficient only when locally supplied public services "exhibit no external economies or diseconomies between communities." Yet local government actions frequently have impact on other localities. A locality's decision to permit new development may enhance the local tax base but impose pollution and congestion costs on adjacent localities. Conversely, a locality's decision to treat a particular land use as undesirable and exclude

104. Tiebout, supra note 1, at 419.

it can displace the activity so excluded on to other localities or drive up the cost of that land use throughout the region.\textsuperscript{107} In the absence of some form of state or metropolitan oversight—and such oversight is rare—the spillover effects of local land use regulatory decisions can be a serious problem.

The sublocal structures under review, however, lack true autonomy. A sublocal decision, such as special district zoning or the enhanced taxation and service provision of a BID, that may have implications for other areas in the city generally requires formal municipal enactment in order to take effect. Similarly, if it turns out that a district action that appeared to have a primarily sublocal impact in fact has broader consequences, the municipality can repeal the regulation or curtail the authority of the sublocal entity. In other words, if the rise of sublocal governance structures constitutes a form of metropolitanization within large cities, it is a metropolitanization that includes a full-fledged metropolitan government—which is something most metropolitan areas lack.\textsuperscript{108}

Although sublocal autonomy in the context of municipal oversight and control can limit the externalities problem, the rise of sublocal institutions could extend another unattractive feature of the Tiebout model—interlocal service inequalities—into the cities. The Tiebout model assumes that differences in local public actions are primarily a reflection of the differences in the preferences of residents. In fact, local decisions are often based not simply on idiosyncratic tastes, but on disparities in local fiscal capacities. Wealthier communities are simply able to spend more per capita than poorer communities, and often they can raise more revenue while taxing their residents at much lower rates than poorer communities.\textsuperscript{109} With sublocal

\textsuperscript{106} These can range from sites for the treatment and disposal of hazardous wastes to housing for low-income people, who, many localities fear, will consume more in locally provided services than they pay in local taxes.

\textsuperscript{107} Although one small locality's regulatory activity may have little direct effect on the region as a whole, local land uses can have a ripple effect. When one locality acts to exclude a use, its neighbors may feel compelled to adopt comparable regulations to protect themselves from the use they fear will be diverted to them by the initial locality's regulation.

\textsuperscript{108} See DAVID RUSK, CITIES WITHOUT SUBURBS 89, 95-96 (1993) (noting the rarity of general purpose local governments that have jurisdiction over an entire metropolitan area).

\textsuperscript{109} See Briffault, supra note 16, at 422 & n.332 (stating that large discrepancies in levels of school spending between wealthy and poor school districts are less attributable to differences in "taste" for education than to differences in the ability of communities to raise revenue by taxation).
governance, different neighborhoods enjoy different services. Moreover, TIF districts and, especially, BIDs are dependent on internally generated resources. The rise of BIDs could make neighborhood ability and willingness to pay a new and important factor in the distribution of public services within cities—much as ability and willingness to pay are critical determinants of interlocal differences in service expenditures.

To be sure, enterprise zones suggest a model in which the sublocal structure could be the basis of funds from outside the neighborhood rather than an encapsulation of neighborhood funds. But in an era of highly constrained local budgets, it is likely that BIDs and not enterprise zones will set the pattern for the development of sublocal structures. These entities will be of limited benefit to poor areas which, virtually axiomatically, suffer from a lack of neighborhood resources. These areas will need much greater economic growth before they can avail themselves of sublocal structures that rely on the encapsulation of a portion of the sublocal tax base.

To date, the intralocal service inequality problem produced by these sublocal structures has been far less serious than the interlocal inequalities endemic to many metropolitan areas. TIF districts and BIDs engage in a relatively limited range of activities. Their programs are supplemental, and the vast bulk of city services are provided by city governments and financed out of general revenues. Moreover, BIDs finance their activities by raising tax rates within their districts, so that, unlike the residents of more affluent suburbs, BID residents do not enjoy both better services and lower tax rates. Most importantly, BIDs operate in downtown areas, central business districts, or neighborhood business strips and, thus, provide benefits to city residents who come into those areas for work, shopping or entertainment, as well as to BID landowners and residents. By attracting investment, commerce and tourism to the BIDs from outside the city, the additional BID services contribute to the city's tax base and may ultimately be a source of revenue for the city as a whole.

Still, the potential of these devices, especially BIDs, to exacerbate intralocal inequalities is there. Proposals have been

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110. Even enterprise zones rely more on tax cuts and regulatory relief for the zones than the direct infusion of public funds. Moreover, many of the tax cuts that enterprise zones provide entail credits, abatements or reductions in state, rather than municipal, taxes. The municipal contribution to these zones, whether in direct assistance or tax dollars foregone, is relatively small.
floated to extend the BID device to provide neighborhood-based financing for parks—situations in which the enhanced neighborhood services may provide little, if any, benefit to the city as a whole. Moreover, should the use of BIDs and comparable sublocal entities increase, neighborhoods with stronger tax bases might seek to have more public programs funded from neighborhood-based taxes while pressing for the reduction of city-wide taxes. BID-based services would play a relatively greater role, and intralocal service inequalities, tied to intralocal wealth inequalities, would grow. We are far from that stage now, but, should the role of sublocal institutions dependent on sublocal revenues grow, the Tiebout model suggests that intralocal wealth-based service inequalities would grow, too.

B. SUBLOCAL GOVERNANCE AND PRIVATISM

These sublocal governance structures appear to improve the fit between the Tiebout model and big cities but they are likely to do little to increase opportunities for political participation in big cities. This is because these institutions tend to enhance the place of private interests and the private sector in urban governance in several ways. First, some of these institutions give the private sector a considerable formal role in their operations. The administrative structures of enterprise zones are typically public-private partnerships, with control shared by representatives of business, community groups, and state and local government. BID governing bodies are typically dominated by representatives of property owners and businesses within the district. Indeed, many BIDs are designed to resemble corporate firms, with property owner shareholders, not the community as a whole, electing the board of directors. Local public officials may also have seats on these bodies; district residents have at most token representation. When BID governing bodies are elected, they are elected by property owners and/or businesses, not by the sublocal community as a whole.113

111. See BIDs, PEDs, and Special Districts: A Better Way to Pay for Parks?, GREENSENSE, Spring 1995, at 1, 1.


Second, many of these devices are consciously created to promote the interests of business. The goal of enterprise zones is to facilitate business activity by lifting the burdens of regulation and taxation. Even the interventionist, nonregulatory enterprise zones primarily provide capital and technical assistance to businesses, rather than assistance directly to workers or to residents generally. TIF districts are intended to stimulate business investment in a particular area. BIDs provide marketing, promotion, and strategic planning assistance to businesses in their districts. The growth of these entities, thus, tends to underscore the importance of business promotion as a local government activity.\textsuperscript{114}

Moreover, many BID advocates have sought to emphasize the private benefits of BIDs and even to suggest that the BID itself is a private organization.\textsuperscript{115} They strive to make BIDs sound more like private chambers of commerce or business associations than public governments—even if these associations enjoy the governmental authority to coerce contributions from all property owners or business within the district.\textsuperscript{116} At a time when the capacity of government to provide public services is disparaged, the rhetorical tendency of BID proponents to assimilate their organizations to the private sector is not surprising. To the extent that it is accepted, the proliferation of BIDs may augment the tendency to denigrate the public sector and to look to privatization as a solution to urban problems.

Finally, these districts and zones shift the focus of government action from the city as a whole to small areas. Even the least privately oriented sublocal structure, the special zoning district, serves the special interests of a particular neighborhood. Neighborhoods are rarely microcosms of a city. Instead, they tend to be composed of particular ethnic groups,
social or economic classes, or land uses. Neighborhood governance may increase the sense of neighborhood distinctiveness and make it more difficult for participants in neighborhood institutions to focus on the concerns of the city as a whole. The greater use of smaller units may increase the tendency for urban government to serve territorially concentrated interests, rather than those of the broader city public.

Ultimately, although these structures create forms of sublocal governance, by focusing on the interests of business, giving businesses and property owners a preferred position in their decisionmaking structures, and defining their missions in terms of the enhancement of relatively narrow territorial units, these structures do little to advance the possibilities of public participation in big-city governance. They are certainly unlikely to achieve the goal of political empowerment for the urban poor that was a central theme of the neighborhood government movement of the 1960s and 1970s.

CONCLUSION

The rise of sublocal governance structures underscores two of the central tensions in the economic and political arguments for local autonomy.

In a system in which local units are to a considerable extent dependent on local resources for their funds, local government programs reflect not just the preferences, but the fiscal capacity, of local citizens. The Tiebout model may be right in pointing to interlocal variation as a means for promoting responsiveness to citizen preferences, but the metropolitan marketplace is also marked by substantial interlocal inequalities in tax bases and spending. The rise of sublocal governance structures has the potential for making government in big cities more responsive to the preferences of city residents, but to the extent that sublocal governance is based on revenues generated within the sublocal unit, greater sublocal responsive-

117. See, e.g., GERALD D. SUTTLES, THE MAN-MADE CITY: THE LAND-USE CONFIDENCE GAME IN CHICAGO 89-90 (1990) (noting the role of “local exceptionalism” and “local boosterism” in the efforts of Chicago neighborhoods to have the city officially designate them as historic or ethnically distinct areas).

118. As one commentator noted, “[o]ne of the main objectives of the neighborhood movement” was “to organize the poor to participate more effectively in political life.” Robert H. Nelson, Private Neighborhoods: A New Direction for the Neighborhood Movement, in LAND REFORM, AMERICAN STYLE 319, 327 (Charles C. Geisler & Frank J. Popper eds., 1984).
ness is likely to be achievable only within business districts or more affluent neighborhoods willing to spend additional resources for additional services. Unless the benefits of sublocal governance can be extended to areas unable to finance supplemental services or improvements out of their own resources, improving the fit between the Tiebout model and big city operations may increase inequality along with allocative efficiency. The enterprise zone provides one model for coupling sublocal governance with an infusion of outside resources. But, given the straitened fiscal circumstances of most big cities, the BID and not the enterprise zone is the more likely model for future developments in big city decentralization. As a result, in those cities in which the tax base varies significantly from neighborhood to neighborhood, the rise of sublocal governance in taxing and spending decisions could very well lead to greater inequalities in service delivery.

A comparable tradeoff affects the assessment of whether these sublocal governance structures can enhance the opportunities for political participation by ordinary citizens. The small size of a sublocal polity ought to facilitate participation by the constituents of the smaller units, but the shift in power from a larger to a smaller political unit may change the nature of that participation, and the focus on the interests of that unit rather than on the interests of the city as a whole can change the nature of the deliberations of the constituents of that unit. Smaller size can narrow the range of issues that come before the sublocal structure and limit the range of interests entitled to participate in the debate over those issues. Participation becomes easier, but the value of that participation as an education in self-government or a basis for the formation of a community of public-spirited citizens is reduced when it is focused on the particular concerns of a discrete neighborhood, or on promoting the commercial interests of business or landowners. These sublocal structures may give new voice to certain districts or district interests, but as currently designed they are unlikely to serve as a basis for a broader empowerment of city residents or a transformation in the nature of big-city residents' participation in public affairs.

119. Although improved service delivery in downtown districts can have benefits for city residents generally, there would be less justification in terms of the interests of the city as a whole for the extension of the BID concept to non business districts, such as affluent residential areas.
In short, although the sublocal governance structures considered in this Article may improve the fit between the dominant model of local autonomy and the organization of big cities, they demonstrate anew the limitations of local autonomy as a normative goal of local government law.