

that, under these circumstances, they are to be treated like other public officials for purposes of the lobbying laws.

### 3. Business Improvement Districts

Representatives of several business improvement districts (BIDs) in the City also requested that they be categorically exempt from the MLO. They argued that they provide to their constituents the types of services that the City provides and, therefore, are extensions of the City. However, as a result of conversations with the BIDs and the City Attorney's office, as well as a review of the laws regarding BIDs and the documents necessary to establish a BID, the Commission does not believe that a categorical exemption for BIDs is appropriate.

Although BIDs do supplement some of the services typically provided by a municipality (security, sanitation, graffiti-removal, etc.), they also provide non-governmental services (marketing, promotion, landscaping, etc.) and capital improvements (sidewalk widening, fountains, parking facilities, etc.). The purpose of a BID is to "promote the economic revitalization and physical maintenance of the business districts of ... cities in order to create jobs, attract new businesses, and prevent the erosion of the business districts." Cal. Sts & Hy Code § 36601(b). Further, it "is of particular local benefit to allow cities to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that benefits from those improvements." Cal. Sts & Hy Code § 36601(c). Accordingly, BIDs are generally created to promote the business interests in a specific geographic area (they may also benefit real property, as long as they do not exclusively benefit parcels that are zoned residential). By definition, then, BIDs confer "special benefits" upon a limited group of people. Cal. Sts & Hy Code § 36601(d). They do not exist to promote all of the interests within their boundaries, and they do not exist to promote any interests outside their boundaries. Accordingly, their interactions with City officials are undertaken with a defined purpose on behalf of a distinct constituency—much like any other special interest that attempts to influence municipal decisions.

One of the arguments posed by the BIDs in favor of a categorical exemption is that they are funded through tax dollars. Although the fees used to fund the BIDs are collected through the City's tax rolls, they are not taxes. Cal. Sts & Hy Code § 36601(d). The tax rolls are an efficient way to collect the assessments and to ensure that everyone who benefits from a BID pays his fair share, but that money is used exclusively for the BID. In addition, the formation of a BID and the resulting assessments are imposed only through the consent of a majority of the affected property and business owners. Cal. Sts & Hy Code §§ 36621, 36623. If property and business owners representing more than 50 percent of the proposed assessments protest the BID, it cannot be formed. *Id.*

Two of the documents necessary for a BID are a management plan (Cal. Sts & Hy Code § 36622) and, if an owners' association is created, a contract with the City (Cal. Sts & Hy Code § 36651). The typical contract between a BID and the City identifies the BID as a nonprofit (typically a 501(c)(4) or 501(c)(6)) corporation and specifically states that the BID is a private entity—not a public entity—and that none of its agents may be considered public officials for any purpose. *See, e.g.*, Agreement No. C-111173, Arts District Business Improvement District

(January 2007), Council File No. 06-1083, §§ 14, 16.1, 25. That language mirrors state law. *See* Cal. Sts & Hy Code § 36614.5. In addition, the management plan for a BID must specify how its funds will be spent. Cal. Sts & Hy Code § 36622(e). Management plans for City BIDs often specifically state that they will dedicate a portion of their funds to advocacy. *See, e.g.,* Final Management District Plan, Arts District of Downtown Los Angeles (April 2006), Council File No. 06-1083, pp. 4, 9. In fact, the web site for the Central City East Association, a 501(c)(6) organization that represents several City BIDs, states, “CCEA is the principal *advocate* for the industrial, manufacturing, residential and property owners [in] the eastern Downtown Los Angeles Area.” *See* <http://www.centralcityeast.org/> (emphasis added).

In light of all of these considerations, the Commission determined that BIDs can—and often are required to—engage in advocacy on behalf of the business owners within their districts. Several BID executive directors stated that they interact on a regular and sometimes daily basis with City officials, urging them to take actions to benefit their districts. Furthermore, the issues they discuss with City officials are not limited to requesting City services, which is an exemption the Commission recommends based on initial input from BID representatives. *See* section VI.B, above. Instead, BIDs also engage in issues such as homelessness, billboards, newsracks, liquor licenses, and other policy matters with far-reaching implications.

It is appropriate for BIDs to have particular views regarding municipal decisions—that is why they exist. However, the Commission does not believe that their attempts to influence municipal decisions are any different from attempts made by other entities that advocate on behalf of distinct constituencies. The public has as great an interest in knowing how BIDs are affecting government as they do in knowing how other corporations are. Therefore, the Commission recommends against a categorical exemption for BIDs.

Following the Commission’s vote on these recommendations, BID representatives suggested three additional exemptions to add to the list of exempt lobbying contacts identified in section VI.B, as a means of clarifying what communications by BIDs are exempt. Rather than simply clarifying existing language, however, the suggestions would have made substantive changes and essentially created a categorical exemption. The Commission believes that the 16 recommended exemptions provide ample clarity regarding the communications that should not be considered lobbying—for BIDs or anyone else. The Commission also recommends a seventeenth exemption under which a person may be able to obtain an additional exemption from the Commission for circumstances that are not specifically identified in the law. *See* section VI.B, above. Therefore, if anyone has a question about whether a particular communication is exempt, further clarity can be provided on a personal basis.