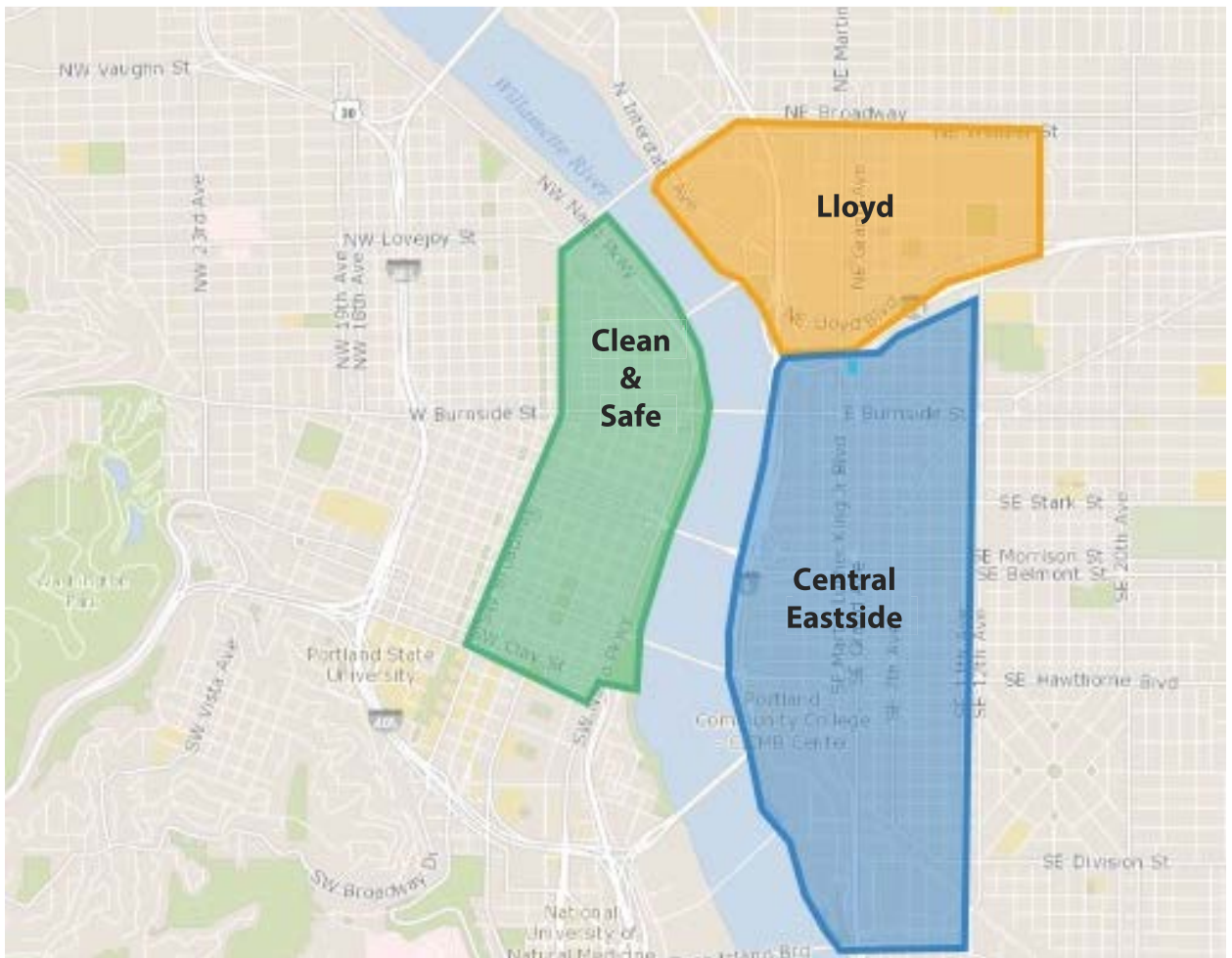


ENHANCED SERVICES DISTRICTS:

City provides little oversight of privately funded public services

August 2020



PORTLAND
CITY AUDITOR
Audit Services



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Enhanced services districts:

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Summary Security officers walk the central eastside to deter graffiti and vandalism. A team of cleaners removes litter from downtown sidewalks. A business owner calls private security to wake a person sleeping on the doorstep. The District Attorney has staff available to assist with low-level offenses.

All of these services are provided through Enhanced Services Districts, which are privately funded zones authorized by the City to pay for services that are supplemental to those already provided by the City. Once authorized, the City has taken a hands-off approach to the districts and provides little oversight of the services. Most concerning to some is the police-like activities within the zones.

The City does not provide guidance on the formation and governance of the districts or the services to be provided. The City approves the creation of the districts and collects the fees, but usually only those who pay them decide which services to fund and how to manage them.

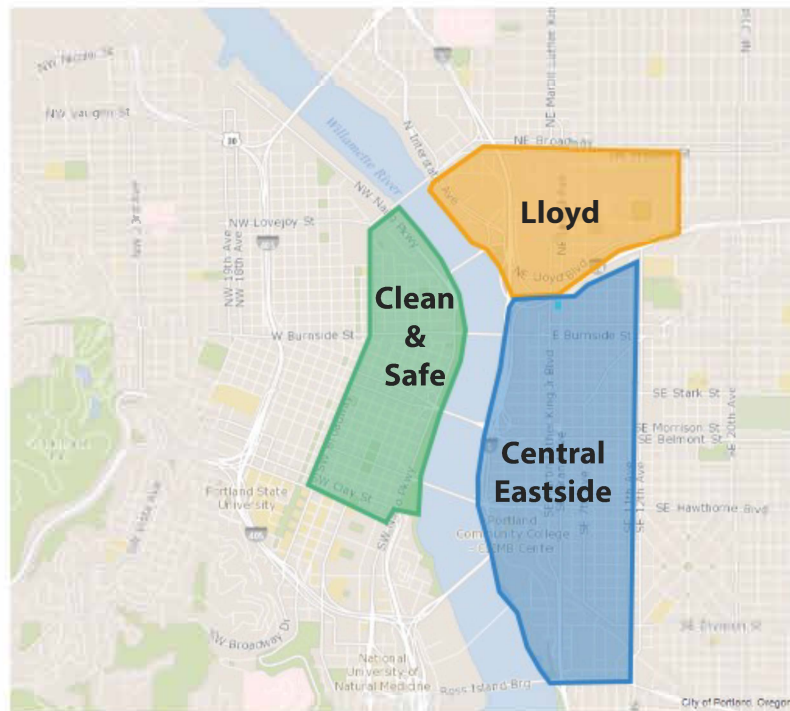
Businesses and property owners seek the authorization for districts because of dissatisfaction with the level of services provided by the City or County, and community members can benefit from the enhanced services. The problem arises when security, enforcement, and management of public spaces are decided by one paying sector of the community without the City's oversight and public input.

We recommend the City review the districts' purpose and the City's responsibility, and revisit the district agreements. If the districts continue to provide services in public spaces, the City should develop guidelines for district formation, governance, and management that ensures public input, transparency and accountability by the districts and their service providers.

Background

Three districts supplement City services

There are three districts in Portland - [Clean & Safe](#), [Lloyd](#), and [Central Eastside](#) - that were formed to collect fees from properties within their boundaries to fund services supplemental to those already provided by the City.



Source: PortlandMaps.com. District boundaries are approximate.

The districts are different in their budget size, scope of services, and management structure. The downtown Clean & Safe district, managed by the Portland Business Alliance, is the largest and oldest district, with an annual budget of \$5 million. District services include cleaning of streets and sidewalks, public safety, and business development.

The Lloyd District, managed by Go Lloyd, has an annual budget of \$0.5 million. Lloyd focuses on transportation incentives and urban development.

The newest district, Central Eastside Industrial District, is managed by the Central Eastside Industrial Council, and has an annual budget of \$3 million. The district provides security and street maintenance services, transportation incentives, business development and workforce investments.

Once a district is approved, the fee formula, district boundaries, and the process for dissolving the district is included in City Code. The City Revenue Division collects the fees, deducts an administration fee, and distributes the remaining revenue to the district board to pay for services.

The districts are managed by their respective business associations and governed as non-profit organizations. They are up for renewal every ten years, but fee collection can be terminated during any year if property owners who together contribute more than 33 percent of the district’s total revenue submit a written objection to the City.

Audit Results We assessed the City’s role in creating the districts and monitoring district activities. We found its hands-off approach may lead to disparate law enforcement outcomes in districts and limits community members’ ability to influence district activities and monitor the results.

Limited City oversight of district services and activities The City’s Revenue Division is charged with overseeing district activities. According to the agreements, Revenue is to review annual budgets, audits, and scope of services provided. The districts completed the required reports, but Revenue did not collect or review them despite the requirements to do so.

Revenue managers said they collect the fees but are not best suited to provide closer oversight or comment on district activities and budgets. Even so, Revenue did not initiate revision of the district agreements to shift this responsibility to a more suitable entity within the City or create an effective oversight process.

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

In addition, a district contract with a private security provider says that the City Police Commissioner (currently the Mayor) will obtain and review reports on security officers' activities, including complaints against officers and the resulting investigations. We did not find evidence that this was done.

District activities, by design, create a different level of service than in other areas of the city. Residents and visitors may value the litter and graffiti removal, park maintenance, and holiday amenities. Businesses benefit from transportation incentives and marketing. But some of the districts' activities are not benign to some community members, such as when someone sleeping on a sidewalk or blocking a business entrance is confronted by an armed security officer.

For example, Clean & Safe funds four Portland Police Officers who work with private security officers to enforce the downtown district. The private security firm has joint supervision with the Police Bureau over the police officers and provides input in their selection and assigning their duties. The private security officers begin work in the morning, walking the streets and waking people up if they are blocking business entrances. Throughout the day, private security and Portland Police coordinate to respond to complaints from district businesses and residents. The private security firm provides a phone number for the community to call and dispatches officers to respond to them.

The district provides a needed service to address cleanliness, vandalism and crime.

– Downtown Business survey comments

The Lloyd District on the eastside pays for a dedicated Assistant District Attorney, by providing office space and has an agreement with the Portland Police to provide administrative staff person. The Assistant District Attorney prosecutes crimes and helps coordinate the district's prevention and safety programs. Clean & Safe also employs a staff person to assist with cases at the Assistant District Attorney's office, and until recently, the district funded the westside community court.

These enhanced law enforcement or criminal justice services create a risk of disparate outcomes compared to other parts of the city. A crime such as public consumption of alcohol that may be ignored in another part of town may result in different consequences in a district with security officers and extra police presence or the district's access to a district attorney and community courts.

The districts fund services that have contributed to the increase of criminalization of the houseless.

– Advocates for the houseless

City oversight of these services is critical. There are established channels in the City for community members to file misconduct complaints about Portland Police officers and have them investigated. There is no equivalent accountable channel for complaints about private security officers. For example, when community members object to the City's approach to enforcing camping restrictions on City property, they can go to City Commissioners for information and advocate for a different response. Without the City monitoring district activities, there is no way for the community to obtain information, and to influence or hold districts accountable.

No guidelines for district formation or governance

Council must approve the districts, but neither City Code or State law provide guidance for their formation, governance, and oversight. Historically the business associations have initiated and developed the districts without clear legal or regulatory guidance. Other states, such as California and Colorado, have state laws that guide the governance of districts. For example, Colorado state law guides district formation and how board of directors should be determined.

Each district in Portland is governed by a board of volunteers who make decisions on how to allocate funding and enter into contracts for services. The board usually consists of property or business owners or their representatives, and because most districts don't offer membership, other community members, such as renters, may not be involved.

The districts contract with their respective business associations for district management, because the associations have the experience and staff to manage the district budget and activities. In some cases, the district and the business association share some of the same board members. This may be beneficial to the district because the association board members may provide expertise about City functions and connections to service providers. It also gives the business associations control when contracting for district services.



When the Central Eastside district was formed in 2018, its business association hired a consultant to navigate the City's process because there was little guidance about how to structure district management and governance.

Who decides and approves to create a district? Is it equitable, transparent, and inclusive? How are interests of large and small businesses protected? How about residents and other community members?

– *Compilation from studies of districts*

Public input led the district to create an inclusive and transparent governance structure to ensure all community members were considered when developing and choosing services. It created reporting mechanisms to inform the City and public about its activities.

The other two districts don't have similar, inclusive governance processes, and it is not a City requirement.

The complicated governance and management systems also make it difficult for community members to find information about the districts. For example, in 2019 advocates for houseless people submitted a public records request to learn about Clean & Safe district function, budgets, audits, and subcontracts. The City didn't provide all requested documents because the City didn't have the information. If the City does not obtain this information, there is no similar method, such as a public records request, to obtain records from a service district and their private sector providers.

We took our public records request to the District Attorney's office because we thought the City was hiding information and didn't want to provide it. What we didn't know is that the City does not obtain it.

– *Advocates for the houseless*

Recommendations The City has a responsibility to ensure that district services are equitable, and governance is inclusive and transparent. We recommend that the Office of Management and Finance work with Council to:

1. Review the status of districts, their purposes, and City's responsibility for them. If the review determines that districts continue to provide services in public spaces, propose City Code for Council approval governing:
 - a. District formation
 - b. Scope of allowed services in public spaces
 - c. Inclusive district governance
 - d. Accountable and transparent reporting
2. Revise agreements between the City and each district to align them with the Code approved in recommendation No. 1.
3. Develop a process for effective City oversight of district agreements. It should include a project manager or a liaison over the districts and reporting of district activities to Council and the public, including reporting of security and law enforcement activities.

Objective, Scope, and Methodology Our audit objective was to determine whether the City had a system in place to provide oversight of Enhanced Services District.
To accomplish our objective, we:

- Reviewed best practices, studies, and other audits of business improvement districts. Reviewed City Code and State Law related to the districts.
- Interviewed managers and staff from Revenue Division, City Attorney's Office, Portland Police Bureau, and City Council.
- Reviewed contracts between the City and the three districts.
- Interviewed staff from the three districts. Reviewed district budgets, scope of services, and service provider contracts.
- Interviewed district service providers and reviewed their activities.
- Interviewed district stakeholders.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESPONSE TO THE AUDIT



CITY OF PORTLAND
OFFICE OF MANAGEMENT AND FINANCE
BUREAU OF REVENUE AND FINANCIAL SERVICES

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M E M O R A N D U M

August 11, 2020

TO: Kari Guy, Audit Services Director; Alexandra Fercak, Performance Auditor II

FROM: Thomas Lannom, Deputy CFO & Revenue Division Director

CC: Sonia Schmanski, Mayor's Deputy Chief of Staff; Tom Rinehart, CAO; Michelle Kirby, CFO

SUBJECT: Response to ESD Audit

Thank you for providing an opportunity to comment on the audit of Enhanced Service Districts (ESDs). The Revenue Division (Revenue) largely agrees with the audit findings and recommendations for improvement.

An important piece of context that may be lost in the audit is that Revenue has historically been strongly encouraged by ESD administrators, subject property managers and City Council to keep administration costs low to maximize available resources for service provision. Revenue is keenly aware that ESD payers voluntarily assess themselves a Property Management License Fee to buy enhanced services the City otherwise provides, and in that context the City and Revenue have intentionally subsidized ESDs for decades. All ESD contracts and Financial Impact Statements to enabling ordinances going back decades acknowledge that the City is not recovering the full costs associated with the administration of the districts; ESDs were intentionally structured to be very lean. This is a strong contributing factor in why more formal oversight of ESDs has been limited.

The Clean & Safe and Lloyd ESDs date to the 1980s and early 2000s, respectively. Until the recent creation of the new East Side ESD, there has been virtually no interest or inquiries about creating new ESDs in 15 years. This lack of interest is why the City does not have a more formal process for ESD creation; there was little incentive or reason to formalize a structure. We agree that now with three active ESDs, a more formal process for creation and oversight is appropriate.

Much like the recently created City arts manager manages the RACC contract, we believe ESDs have grown to a size and scope that a dedicated ESD manager would be appropriate. As with the Arts Tax, the Revenue Division is best positioned to collect revenue, and contract administration best lies elsewhere. In the case of the City arts manager, the position is in OMF. We will consider a structure like this for ESDs.

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Report #529, August 2020

Audit Team: Alexandra Fercak, Bob MacKay

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