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Article 1

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## Cover Page Footnote

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## I. Introduction

Sports tourism is a global business that creates jobs, stimulates local economies and benefits communities by creating positive economic impact through hosting sports events. Cities, states, and regions charge sports commissions with identifying, recruiting, and facilitating major sports events to generate tourism. As tourism begins to recover from the COVID-19 pandemic, sports commissions will need to find alternative funding to traditional hotel occupancy taxes to rebuild. This article argues that Tourism Improvement Districts ("TIDs") provide that alternative funding source, as these special self-assessments on tourism-related businesses generate dedicated revenue to bid for, host, and market sports events. In addition, TIDs enhance public/private partnership as well as quality of life for a destination's residents by providing funding opportunities for local events and sports facilities.

First, this article will give a background on sports commissions, including the forms they take, their current funding sources, the state of the sports tourism industry and current challenges. Then, it will explain TIDs by providing a general overview of the concept and their mechanics, as well as the types of jurisdictional authority that allow destinations to create them. Next, it will show how destinations currently use TIDs to support sports tourism, including illustrations from: large market destinations San Diego, California and Dallas, Texas; mid-market destinations Denver, Colorado and Spokane, Washington; and small market destination Missoula, Montana. Then, it will discuss the challenges of implementing new TIDs as well as the significant benefits and opportunities for both destinations and sports commissions alike. Finally, it concludes that TIDs are the best alternative funding option for sports commissions because they provide dedicated funding while promoting public/private partnerships and enriching quality of life for residents.

## II. Background

### a) What are Sports Commissions?

Sports commissions determine which major events destinations will pursue, deciding how best to leverage funds and services to create attractive incentives for rights holders. Some sports commissions may also choose which local events or sports facilities will receive funding, helping to infuse public funds into privately-owned events or facilities in return for economic impact. Sports commissions most often conduct their activities as non-profit organizations operating independently or as part of a destination's convention and visitor's bureau ("CVB") or destination marketing organization ("DMO").[1] While sports commissions receive public funding,

[1] This article will refer to both CVBs and DMOs interchangeably. While a traditional role of a CVB was to attract and secure conventions and DMOs focused more on promoting the destination as a whole, CVBs and DMOs have blended together. Thus, the terms have become synonymous, and the consolidation and reorganization of such organizations due to the COVID-19 pandemic are likely to erase what remains of any previous distinctions. *See* MILES PARTNERSHIP, CIVITAS & TOURISM ECONOMICS, FUNDING FUTURES 72–78 (Aug. 20, 2020) https://covid19.milespartnership.com/wp-

they typically function separately from local government and as such have a greater degree of flexibility in deciding how those funds are put to use; however, the complex politics of using public funds for sports initiatives creates challenges for sports commissions seeking funding from municipal boards and state legislatures.

Traditionally, the local city or region's chamber of commerce led geographical promotion efforts. As tourism grew, local chambers began creating specialized departments or independent organizations dedicated to promoting tourism – sports commissions evolved from such committees or organizations.[2] A group of thirteen sports commissions formed the National Association of Sports Commissions (now the Sports Events and Tourism Association – "Sports ETA") in the 1990s, and since then the sports tourism industry has changed considerably.[3] Today, there are four categories of sports commissions: (1) those that are their own independent entities (often structured as 501(c)(3) or 501(c)(6) nonprofit organizations); (2) those that are a part of their local CVB or DMO, often structured as 501(c)(6) organizations; (3) chambers of commerce engaged in attracting sports events; and (4) those that are part of or affiliated with government agencies, whether at the state or local level.[4]

The number of independent sports commissions appear to be on the decline. A white paper produced by Sports ETA in 2015 estimated that of the approximately 110 sports commission organizations operating in the United States at that time, only about 20 operated within a DMO.[5] In contrast, of the 132 entities currently in operation almost half operate within a CVB (48%, 63 entities), while 36% (47) are independent sports commissions, 8% (10) are state-level organizations, and the remaining 9% have some other organizational structure.[6] There may be several reasons for this gravitation toward DMOs, including historical ties to CVBs and the efficiency of revenue and resource sharing.[7] However, this shift may also reflect a changing state of the industry due to the COVID-19 pandemic and uncertainty of funding.

b) Current Funding Sources: tourism taxes, membership dues, event revenues and other sources.

Most sports commission revenues are comprised of four main funding resources: (1) tourism taxes (most commonly hotel occupancy or bed taxes), (2) membership dues, (3) event

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content/uploads/2020/08/FundingFutures_FullReport_Final_08282020.pdf.

[2] National Association of Sports Commissions (Sports ETA), Sports Commissions 101 (2015) https://www.sportscommissions.org/Portals/sportscommissions/Documents/About/Sports%20Commissions%20101.pdf.

[3] Jennifer A. Stoll et al., *Sports Tourism Entity Desired Outcomes*, Journal of Sport & Tourism (2020) 195, 196 (2020).

[4] Commonly, independent sports commissions incorporate as 501(c)(3) organizations, while most DMOs are 501(c)(6) organizations. *See id.* However, some sports commissions incorporate as 501(c)(4) organizations. *See* Greater New Orleans Sports Foundation, https://www.gnosports.com (last visited Mar. 28, 2021).

[5] National Association of Sports Commissions (Sports ETA), Report on the Sport Tourism Industry 2 (2015) https://www.sportseta.org/Portals/sportscommissions/Documents/About/NASC%20Sport%20Tourism%20Industry%20Report.pdf

[6] Jennifer A. Stoll, How Sports Tourism Organizations Can Positively Affect Their Communities 3 (Mar. 2021) (unpublished manuscript) (on file with author).

[7] Stoll et al., *supra* note 3, at 207.

revenues, and (4) other sources such as corporate donations (cash and/or in-kind services), grants, and sponsorships. A 2019 survey of sports commissions conducted by Sports ETA found that for destinations with smaller annual budgets ($1 million or less), 76% of revenues come from hotel taxes.[8] On average, approximately 6% of revenues come from public general funds and another 6% are generated from membership, while other funding sources such as grants, event revenue, sponsorships, and private funding make up 8% of budgets.[9] Conversely, for larger destinations with annual budgets exceeding $1 million, 64% of operating revenues come from hotel taxes, while 8% comes from general funds, and other funding sources (including grants) contribute 19%.[10]

### *i) Public Funding & Tourism Taxes (Heads in Beds Taxes)*

The most common type of tourism tax associated with sports commissions and DMOs is a hospitality tax leveraged on hotel room nights, i.e. a "heads-in-beds" hotel occupancy tax.[11] This is especially true for those sports commissions that operate within a DMO. Of the 58 CVBs surveyed for an industry report, *Funding Futures*, 82.8% receive revenues from hotel taxes.[12] Comparatively, hotel tax revenues comprise 70% of sports commissions' budgets.[13] Other examples of tourism taxes include rental car taxes and levies from convention centers and airports.[14] Another source of funding may be taxes linked to entertainment activities, often referred to as amusement taxes, such as a sales tax on food and beverage, casino gaming revenues, or a tax on event tickets.[15]

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[8] TOURISM ECONOMICS, PREPARED FOR SPORTS ETA, SPORTS TOURISM: STATE OF THE INDUSTRY REPORT (2019) 28 (Sept. 1, 2020) http://sportseta.org/state-of-the-industry-report-2019.

[9] *Id.*

[10] *Id.*

[11] In the 2020 Funding Futures Report, Miles Partnership, Civitas Advisors & Tourism Economics took a sample of 100 U.S. cities and analyzed their hotel taxes in 2018 and in 2020. Bed taxes across the United States average at about 15% of total room rates. The Midwest has the highest average rate of 15.59%, while the West has the lowest average rate of 11.58%. Unsurprisingly, larger cities have higher tax rates than smaller cities; the 2018 findings reported that cities with more than 350,000 residents had an average rate of 15.44%, while the average for cities with populations of less than 350,000 was 13.80%. Overall, lodging charges have increased nationwide. *See* FUNDING FUTURES, *supra* note 1, at 34. *See also* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 28.

[12] *See* FUNDING FUTURES, *supra* note 1, at 40.

[13] It is important to distinguish the statistics provided in Destinations International's *Funding Futures* report from Sports ETA's *State of the Industry Report (2019)*, as many sports commissions overlap membership between the two organizations. *Funding Futures* focuses specifically on DMOs, while Sports ETA encompasses all types of sports tourism entities, such as sports commissions that are independent organizations, those that are part of a DMO, and others part of local government or other private organizations (such as economic development groups). This explains the different percentage amounts reported of total revenue provided by public sources. *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 28.

[14] *See* FUNDING FUTURES, *supra* note 1, at 74; *see e.g.,* TOURISM PROMOTION AREA 2020 FUNDING APPLICATION *infra* note 174.

[15] *See* FUNDING FUTURES, *supra* note 1, at 74; *see e.g.,* CITY OF CHICAGO, IS YOUR EVENT SUBJECT TO THE CHICAGO AMUSEMENT TAX?, https://www.chicago.gov/content/dam/city/depts/rev/supp_info/TaxSupportingInformation/AmusementTaxGeneralInfo.pdf; CITY OF PHILADELPHIA, AMUSEMENT TAX, https://www.phila.gov/services/payments-assistance-taxes/business-taxes/amusement-tax/.

Sports commissions and DMOs may also receive public funding not tied to specific tourism or entertainment taxes. Some DMOs receive general fund disbursements from state and local governments.[16] Many states also have statewide tourism bureaus (e.g., Pure Michigan) that provide assistance with marketing functions to local DMOs.[17] State associations for sports commissions have also become increasingly popular – there are currently 29 sports-specific statewide organizations.[18] The purpose of these state associations (which may be divisions of statewide tourism bureaus or otherwise affiliated with government agencies) is to provide a shared resource for sports tourism entities within that state. Structures and membership vary, but generally benefits for members include enhanced marketing and exposure, assistance with trade show fees and Sports ETA membership, and access to grant funding.[19] In 2019, 24 of these associations received state funding; however, in 2020 that number dropped to 19.[20]

Even before the pandemic, sports commissions and DMOs were already looking toward alternatives to room night tax revenues. Besides the demonstrated vulnerability of such taxes to disruption within the tourism industry, governments have historically diverted almost 50% of tourism tax revenues to non-tourism spending.[21] While it is important that a large portion of these funds be flexible to fill holes in government budgets, it leaves sports commissions and DMOs without a reliable, dedicated funding source. What is more, political battles can cripple sports commissions and DMOs, slashing budgets or stalling allocations as collateral damage from greater statewide politics.[22] Governments have continued to divert more and more of these funds, and the long-term effects of the pandemic-induced budget crisis will certainly impact future allocations.[23]

*ii) Memberships and Corporate Partnerships*

Membership programs range in exclusivity. Many sports commissions have pay-to-play corporate partnership programs, meaning that businesses pay annual dues for a seat on the sports commission's "board of directors," which may allow them to serve in an advisory capacity.[24]

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[16] *See* FUNDING FUTURES, *supra* note 1, at 50.

[17] *See* Amy Lane, *Pure Michigan Is Back: Rebooted Ad Campaign Gets $15 Million State-Funded Boost*, TRAVERSE CITY BUSINESS NEWS (Jan. 1, 2021), https://www.tcbusinessnews.com/pure-michigan-is-back-rebooted-ad-campaign-gets-15-million-state-funded-boost/.

[18] Study from Sports ETA, 2021 State Association Budget Study (Mar. 2021) (on file with author).

[19] *Id.*

[20] *Id.*

[21] *See* FUNDING FUTURES, *supra* note 1, at 80.

[22] *See e.g.*, Robert Channick, *With State Budget Stalled, Choose Chicago Cuts Staff*, CHI. TRIB. (Oct. 9, 2015), https://www.chicagotribune.com/business/ct-choose-chicago-layoffs-1010-biz-20151009-story.html; Lauren Gibbons, *No Funding Coming for Pure Michigan in Immediate Future*, MLIVE.COM (Dec. 12, 2019), https://www.mlive.com/public-interest/2019/12/no-funding-coming-for-pure-michigan-this-year.html.

[23] Tourism has been battling this political apathy since the beginning of the COVID-19 pandemic. Congress initially excluded DMOs from the federal Paycheck Protection Program (PPP), part of the CARES Act passed by Congress early in 2020. Targeted at small businesses, PPP funding was not available to 501(c)(6) corporations until late December 2020. *See* Mary Helen Sprecher, *New Legislation Finally Includes PPP Aid to Tourism* Sector, SPORTS DESTINATION MANAGEMENT (Dec. 22, 2020), https://www.sportsdestinations.com/management/economics/new-legislation-finally-includes-ppp-aid-tourism-s-19884; *see also* FUNDING FUTURES, *supra* note 1, at 61.

[24] Many sports commissions structured as 501(c)(3) organizations will have a volunteer board of directors. Others may have these decision-making board members as well as a pay-to-play membership group. *See e.g.*, DISCOVER

Some utilize a tiered system of increasing dues and commensurate benefits, and may limit overall membership.[25] Others may utilize nominal membership dues to create a broad base of supporters, open to businesses or individuals.[26] All membership programs have the dual purpose of (a) providing a source of funding and in-kind donations or services for the commission in exchange for sourcing business opportunities for corporate partners, and (b) generating community consensus and support for major sports events. Overall, membership dues comprise only 6% of funding on average, regardless of sports commissions' budget size.[27]

*iii) Event Revenues*

In general, there are two types of sports commission events: those owned and operated by the sports commission, and those owned and operated by other rights holders. Both types of events generate revenues for sports commissions, but such revenues make up only a small part of their overall budgets.[28] Sports commissions often pay rights holders various fees for the right to host an event, commonly known as host fees, rights fees, bid fees or license fees – hereafter referred to generally as host fees.[29] Ideally, a sports commission should have a healthy host fee funding pool to allow it to aggressively bid for event opportunities as they arise, as at least some portion of the host fee is often due prior to host city announcement.[30] Typically, bigger and more well-known events (i.e., international or professional league marquee events) have more expensive host fees and logistical costs, but also offer greater marketing exposure and have the potential to generate more revenue.[31] While event revenues should cover host fees and costs,

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PHILADELPHIA, https://www.discoverphl.com/meet/phl-sports/contact; GREATER NEW ORLEANS SPORTS COMMISSION, https://www.gnosports.com/membership; SEATTLE SPORTS COMMISSION, https://www.seattlesports.org/commissioners (last visited Mar. 28, 2021).

[25] *E.g.*, CHICAGO SPORTS COMMISSION, https://www.choosechicago.com/chicago-sports-commission/contact-us/; GREATER COLUMBUS SPORTS COMMISSION, https://www.columbussports.org/partners/ (last accessed Mar. 28, 2021).

[26] *E.g.*, NASHVILLE SPORTS COUNCIL, https://www.nashvillesports.com/membershipcampaign (last accessed Mar. 28, 2021).

[27] However, membership dues make up a significant portion of some sports commissions' budgets. For example, before the pandemic, the Chicago Sports Commission's corporate partner program comprised 50% of its budget. *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 28; *see also* E-mail attachment and comments from Kara Bachman, Exec. Dir., Chicago Sports Commission, to Roxanne Steinhoff, Marketing and Communications Specialist, Chicago Sports Commission (Mar. 28, 19:24 CDT) (on file with author).

[28] *Id.*

[29] About 73% of sports commissions/DMOs paid bid fees in 2019. *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 32.

[30] For example, *see* USA Triathlon's RFP for its Multisport Festival 2022-2023, MULTISPORT FESTIVAL 2022-2023, USA TRIATHLON 5 (2021) https://www.teamusa.org/USA-Triathlon/Events/National-Championships/National-Championship-RFPs, (requiring a total $40,000 rights fee for a two-year agreement ($20,000 per year)); *see also*, INTERNATIONAL SLOW PITCH SOFTBALL NATIONAL TOURNAMENTS 2022-2024 RFP, SPORTSTRAVEL MAGAZINE 10 (2020) https://www.sportstravelmagazine.com/wp-content/uploads/2019/04/2020_2021-ISPS-RFP.pdf, (requiring between $1,000 - $5,000 bid fee due per event upon submission of bid); *see also*, 2022 USA MASTER'S GAMES RFP, SPORTSTRAVEL MAGAZINE 12 (2021). https://static1.squarespace.com/static/5bc0ba427fdcb85908fa9003/t/5ccc77fae2c48310125dca78/1556903931688/USAMG+2022+RFP+5.3.19+Edition.pdf, (requiring a $60,000 total host fee with $10,000 paid prior to host city announcement, $20,000 two years prior to event, and $20,000 the year before the event occurs).

[31] *See e.g.*, Erik Spanberg, *NBA All-Star Game in Charlotte Will Cost $6 Million to Stage*, CHARLOTTE BUSINESS JOURNAL (Jul. 8, 2015), https://www.bizjournals.com/charlotte/blog/queen_city_agenda/2015/07/nba-all-star-game-

sports commissions also share those revenues with the rights holder, the venue, and any other parties as specified in host agreements.[32] Finally, although such events as All-Star Games and the Super Bowl generate significant revenue, there are relatively few of them and only large market cities are viable hosts, as such events require certain venue capacities, quality and quantity in hotel offerings, etc.

About 38% of sports commissions host their own "created events" as annual revenue generators: more than half of sports commissions with annual budgets over $1 million, and 28% of those with budgets less than $1 million.[33] These events are typically participant-based, meaning revenue is generated from a mass number of participants paying entry fees to compete versus a spectator-based event where primary revenue is generated from ticket sales.[34] However, while sports commission-owned events may eliminate the necessity of paying host fees, they do require significant investment of both financial and human capital. Therefore, while participant fees and corporate sponsorships cover upfront expenditures and generate revenue, not all sports commissions have the manpower to create and host their own events.[35]

*iv) Other Funding Sources: Sponsorships, Grants, & Other Private Funding*

Sports commissions also generate revenue from additional sources, such as sponsorships, grants, and other means of private funding. Sports ETA estimated that in 2019, approximately 33% of destinations received some sponsorship revenue.[36] Sponsorships are more common in larger markets: 56% of destinations with budgets of more than $1 million received sponsorships for their events compared to only 27% for those with budgets between $1 million - $500,000, 29% for those with budgets between $500,000 - $100,000, and 6% for organizations with a budget of $100,000 or less.[37] As mentioned above, some sports commissions may be eligible to apply for grants from their state associations.[38] Finally, some sports commissions may receive private funding through fundraisers or donations.[39]

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in-charlotte-will-cost-6-million.html.

[32] For example, NCAA championships require venues and sports commissions to partner with NCAA schools. *See* FUTURE NCAA DI CHAMPIONSHIP SITES THROUGH 2026, https://www.ncaa.com/news/ncaa/article/2017-04-18/2020-2026-future-di-ncaa-championship-sites (last visited Mar. 28, 2021). To download information for all NCAA championship events, *see also* NCAA SELECTION PROCESS AND INFORMATION, https://www.ncaa.org/championships/ncaa-selection-process-and-information (last visited Mar. 28, 2021).

[33] *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 30.

[34] However, this distinction is not necessarily mutually exclusive. Some events may have an elite component for which fans pay for tickets while also allowing amateur competition. *See e.g.*, Jason Gewritz, *Case Study: A Sports Commission Rethinks Its Events*, SPORTSTRAVEL MAGAZINE (June 10, 2020), https://www.sportstravelmagazine.com/case-study-a-sports-commission-rethinks-its-events/. *See also* PREVIOUS AWARD WINNERS, SPORTS ETA, https://www.sportseta.org/membership/awards-recognition/previous-award-winners (last accessed Mar. 13, 2021) (locally created event of the year category).

[35] The average number full-time staff for sports commissions is 5.3. That average increases to 13.6 when counting part-time staff and interns. Sports commissions with budgets less than $100,000 employed an average of 1.6 full-time staff, while those with budgets over $5m employed 21.8 full-time staff. *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 29.

[36] *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 35.

[37] *Id.*

[38] *See* Study from Sports ETA, *supra* note 18 at 7.

[39] *See e.g.*, Katy Tigchelaar, *West Michigan Sports Commission's Annual Event Moves to the Fall; Jack Nicklaus to Keynote the Event*, WEST MICHIGAN SPORTS COMMISSION (May 21, 2020), https://www.westmisports.com/press-

c) State of the Industry

Sports tourism reached its peak before the pandemic. Sports travel had increased by 10 million people since 2015, representing a 5.9% increase overall.[40] In 2019, almost 180 million people traveled to sports events in the United States either as participants or spectators, generating 69 million room nights.[41] That year, sports tourism produced $45.1 billion in direct impact, sustained almost 740,000 jobs, and created $14.6 billion in total tax revenue, with approximately $6.8 billion collected by state and local governments.[42]

The impact of the COVID-19 pandemic on sports tourism, and tourism as a whole, was drastic and immediate. In March 2020, almost 10 million fewer people traveled to watch or participate in sports compared to March 2019, equating to a loss of $2.5 billion in direct spending.[43]April 2020 saw a loss of 14.9 million travelers and $3.8 billion in direct spending.[44] These losses reflect the state of tourism overall. The *Funding Futures* industry report published in August 2020 predicted the overall drop in travel and tourism economic impact in the United States to be $500 billion, resulting in a wider economic impact of $1.2 trillion in losses for 2020.[45] This equates to a 52% percent drop in hotel tax related revenue and a 13% decline in state government budgets.[46] Since tourism taxes are the primary source of funding for most sports commissions, these numbers mean all are facing an unprecedented budget crisis. Further, while experts forecast full recovery for the tourism industry as a whole to take three to four years, sports commissions may take even longer to regain full budget levels as they are by nature dependent upon large venues and big events.[47]

d) Current Challenges

Immediate challenges include making up for decimated tourism tax revenues in 2020 and 2021. When surveyed this past August, almost 90% of DMOs reported an average of 45%

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releases/strongwest-michigan-sports-commissions-annual-event-moves-to-the-falljack-nicklaus-to-keynote-the-eventstrong; GREATER CLEVELAND SPORTS AWARDS, GREATER CLEVELAND SPORTS COMMISSION https://www.clevelandsports.org/events/2021/03/04/greater-cleveland-sports-awards#page-content (last visited March 28, 2021); *LASEC EVENTS*, LOS ANGELES SPORTS & ENTERTAINMENT COMMISSION https://www.lasec.net/lasec-events/ (last visited March 28, 2021).

[40] *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 6.

[41] *Id*. at 4.

[42] Direct impact is measured via direct spending of sports travelers, event organizers and venues. Direct spending from sports tourism generated $103.3 billion in business sales when indirect and induced impacts are included. Sports tourism sustained approximately 410,762 direct jobs, and 328,624 indirect and induced jobs in 2019. The cited report contains more information on how these numbers are calculated. *Id.*

[43] *Id*. at 24.

[44] *Id.*

[45] $500 billion in United States Tourism spending represents a 35% drop from 2019. *See* FUNDING FUTURES, *supra* note 1, at 10.

[46] *See* FUNDING FUTURES, *supra* note 1, at 11.

[47] Tourism experts say the outlook for the top 25 urban markets is weaker than the rest of the U.S. because international and group travel will be slowest to return. Therefore, sports tourism as a whole may be especially affected, and those sports commissions in major markets who depend on major, international events face more challenges. *See* FUNDING FUTURES, *supra* note 1, at 11, 49.

decrease in their 2020 budgets.[48] In December 2020, tourism industry news platform *Skift* reported some DMO budgets had shrunk by as much as 60%.[49] Further, DMOs and any sports commissions structured as 501(c)(6) organizations were ineligible to receive federal relief funding (PPP) until December 22, 2020.[50] As a consequence, staffing levels have dropped precipitously: before the pandemic, the average sports commission employed a staff of five.[51] By August 2020, close to 70% of DMOs reported they had conducted layoffs, while 50% had also furloughed employees and reduced staff salaries.[52] Thankfully, the recently passed American Recovery Plan Act will provide much needed relief to DMOs, including access to $350 billion in state and local grants as well as an additional $3 billion in Economic Development Administration funding, with $750 million earmarked for communities that experienced pandemic-related losses in tourism and outdoor recreation.[53]

However, sports commissions and DMOs have been seeking alternative means of funding even before the COVID-19 pandemic sent the tourism industry into a tailspin. Heavy reliance on discretionary public funds creates uncertainty, as governments may choose to re-appropriate those funds and often do so.[54] Even if funds remain earmarked for tourism, DMOs and sports commissions can become collateral damage of partisan political battles.[55] Now more than ever, destinations are searching for independent, sustainable funding sources.[56]

### *i) Meaningful Community Buy-In Generates Additional Funding Opportunities*

Before the pandemic, striking the balance between sustainable numbers of visitors and over-tourism had been an increasing challenge facing communities, and as a consequence there has been a concerted shift of focus among destinations from visitors to residents. In partnership with Destinations International, research consultancy Longwoods International released its 2020

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48 *Id.* at 41.

49 *See* Lebawit Lily Girma, *A Funding Crisis at Destinations Spurs New Tourism Marketing Models*, SKIFT (Dec. 1, 2020), https://skift.com/2020/12/01/funding-crisis-facing-destinations-forces-rethinking-for-tourism-marketing/.

50 *See* Sprecher, *supra* note 23.

51 *See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 29; *see also supra* note 35. Although larger budgets usually allow for more dedicated sports staff, destination size is not necessarily indicative of sports commission staffing levels. *See e.g.*, CHICAGO SPORTS COMMISSION, https://www.choosechicago.com/chicago-sports-commission/contact-us/ (last visited Mar. 12, 2021) (current staff of two); DALLAS SPORTS COMMISSION, https://www.dallassports.org/our-team/index.html (last visited Mar. 12, 2021) (current staff of six); LOS ANGELES SPORTS & ENTERTAINMENT COMMISSION, https://www.lasec.net/our-team/ (last visited Mar. 12, 2021) (current staff of ten); NASHVILLE SPORTS COUNCIL, https://www.nashvillesports.com/meet-our-staff (last visited Mar. 12, 2021) (current staff of nine); TAMPA BAY SPORTS COMMISSION, https://www.tampabaysports.org/about/staff_directory/index, (last visited Mar. 12, 2021) (current staff of seven).

52 *See* FUNDING FUTURES, *supra* note 1, at 42.

53 The plan also extends the Employee Retention Credit for all of 2021. *See* American Rescue Plan Act of 2021, 117 H.R. 1319, §§ Sec. 602(c)(1)(A), 603(c)(1)(A), 6001(c), 9651 (enacted Feb. 24, 2021). *See also* Tori Emerson Barnes, *U.S. Travel Applauds COVID Relief Package*, U.S. TRAVEL ASSOCIATION (Mar. 12, 2021) https://www.ustravel.org/news/us-travel-applauds-covid-relief-package.

54 *See* Johanna Jainchill, *DMOs Under Assault*, TRAVEL WEEKLY (Jul. 12, 2017) https://www.travelweekly.com/Travel-News/Government/DMOs-under-assault More recently, 51.2% of DMOs reported state government funding decreases in August 2020. *See* FUNDING FUTURES, *supra* note 1, at 6.

55 *See* Channick, Gibbons *supra* note 22.

56 More than 70% of DMOs are actively seeking "new and more sustainable sources of funding." *See* FUNDING FUTURES, *supra* note 1, at 42.

National Resident Sentiment study, the largest such study conducted on American attitudes toward tourism in their communities to date.[57] While sentiment toward tourism is generally positive (64% agree tourism is good for their state and 57% agree tourism is good for their local area), less than half of Americans believe their state government should support or help fund tourism promotion (46%), and only 40% believe local government should provide funding support for tourism promotion.[58] When asked about sports tourism specifically, just over half of Americans supported hosting professional and collegiate sports events in their communities, and also "agree[d] that hosting youth and amateur sporting events improves the quality of life in their communities."[59]

Because sustained funding for sports commissions and DMOs is inseparable from resident sentiment, engendering community support is more important than ever. Destinations International has led the push for DMOs to adopt a "Community-Benefit Funding Model" by engaging a variety of local businesses and institutions beyond those obviously tied to tourism so that they may "help develop, coordinate, and communicate 'Community Shared Values.'"[60] This approach enhances the "connection between tourism and wider economic and community development goals," while emphasizing "how a great place to visit is often synonymous with being a great place to study, work, start a business and more."[61] Sports commissions on the whole are also evolving toward this community-based approach as "sport tourism entities are now tasked with taking an active role within their destination."[62]

*ii) Reliance on Room Nights as Quantitative Data*

Refocusing on providing meaningful, holistic community benefits requires revaluating methods for quantifying success. Measuring return on investment for sports tourism is a much-discussed topic among sports commissions and DMOs.[63] The close relationship between sports commissions and CVBs created historic reliance on room nights as quantified measurements of success.[64] About half of sports commissions consider room nights a key performance indicator: smaller destinations especially value room nights and occupancy-related data, while larger destinations (those with budgets over $1 million) consider room nights and economic impact their top two factors for success.[65] However, this reliance on room nights has been a constant

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57 *See* LONGWOODS INTERNATIONAL & DESTINATIONS INTERNATIONAL, 2020 NATIONAL RESIDENT SENTIMENT WHITEPAPER 1 (Nov. 12, 2020) https://longwoods-intl.com/news-press-release/destinations-international-and-longwoods-international-reveal-research-american (follow "here" hyperlink; then click "download white paper").

58 *See id.* at 3.

59 Andria N. Godfrey & Dr. Jennifer Stoll, *Evaluating Resident Sentiment to Inform the Development of Sports Tourism*, SPORTS ETA BLOG, (Dec. 16, 2020) https://www.sportseta.org/blog/2020/12/16/evaluating-resident-sentiment-to-inform-the-development-of-sports-tourism.

60 *See* FUNDING FUTURES, *supra* note 1, at 75.

61 *See* FUNDING FUTURES, *supra* note 1, at 75.

62 Stoll et al., *supra* note 3, at 3.

63 For a discussion on economic impact, *see The Economic Impact of Sports* Events, SPORTS ETA BLOG (Sept. 29, 2010) https://www.sportseta.org/blog/2010/09/29/the-economic-impact-of-sports-events.

64 *See* Stoll et al., *supra* note 3, at 3; *see also* SPORTS COMMISSIONS 101 *supra* note 2, at 1.

65 54% of destinations with budgets less than $1 million consider room nights the most important measurement of success, followed by economic impact (29%), number of events (29%), lodging tax revenue (15%), and lodging occupancy (10%). Conversely, those with budgets over $1 million consider room nights (38%) and economic impact (38%) the most important, followed by earned media (17%), number of events (13%), and repeat business (13%).

source of friction for sports commissions and DMOs, because "one is concerned with filling hotels and convention centers, while the other aims to bring sports events to town for the betterment of the community's residents and businesses."[66] While certainly not mutually exclusive goals, the problem lies in data collection. Unlike the convention industry which has business hotel room blocks at its base, sports tourism is often connected to leisure travel (especially major spectator-based events) and therefore accurate economic impact measurements (including room nights) often require on-site data collection via attendee surveys.[67] Therefore, while there is an industry standard for calculating economic impact, many sports commissions beholden to room night goals still find themselves quantifying their success through arguably more speculative heads-in-beds estimates based on attendee data.[68]

The challenge facing sports commissions coming out of the pandemic is twofold. First, they must find other sustainable funding sources resilient to economic downturns and more independent from government. Second, they must find the appropriate balance between traditional performance indicators (like room nights and economic impact) and more community-based factors to provide quantified return on investment data. Implementing special assessments to create Tourism Improvement Districts is the best solution, as TIDs provide dedicated funding to sports commissions and DMOs while also fostering public/private partnership and providing additional community benefits.

## III. Tourism Improvement Districts

TIDs are enjoying a moment in the spotlight as destination marketing organizations and sports commissions look to diversify funding in the wake of the pandemic. At the time of writing, there are approximately 186 TIDs in 17 states, and ten other states are currently pursuing TID legislation.[69] Professional associations Sports ETA and Destinations International have

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*See* STATE OF THE INDUSTRY REPORT (2019), *supra* note 8 at 37.

[66] Joe Bush, *Sports Commissions vs. CVBs: Is One Better?*, CONNECT MEETINGS (Nov. 6, 2013) https://www.connectmeetings.com/sports/features/sports-commissions-vs-cvbs-is-one-better.

[67] For a thorough synopsis on sports economic impact, *see* Patrick Rishe, *Educating Sports Commissions and CVBs About the Economic Impact of Sports*, FORBES (Oct. 5, 2011) https://www.forbes.com/sites/prishe/2011/10/05/educating-sports-commissions-and-cvbs-about-the-economic-impact-of-sports/?sh=67199c6f7a91. For a discussion on the historic importance of room blocks for conventions, *see also* Lisa A. Grimaldi, *Are Room Blocks Still Necessary?*, MEETINGS & CONVENTIONS (May 1, 2012) https://www.meetings-conventions.com/News/Third-Party/Are-Room-Blocks-Still-Necessary-. For an example of a sports commission looking past room nights for other goals, *see Dallas Tourism Bureau Creates Sports Commission to 'Elevate Profile' in Industry*, THE DALLAS MORNING NEWS, (Oct. 29, 2014) https://www.dallasnews.com/news/2014/10/29/dallas-tourism-bureau-creates-sports-commission-to-elevate-profile-in-industry/ ("As a separate operation, [the sports commission] will be freed from the CVB's primary emphasis on booking hotel room nights and will consider other economic and community impacts when pursuing events").

[68] The industry standard for measuring the economic impact of sports tourism is the Sports Impact Calculator owned by global tourism organization, Destinations International and used by Sports ETA. Many sports commissions employ universities to conduct economic impact studies for major events. *See* SPORTS ETA EVENT IMPACT CALCULATOR, https://www.sportseta.org/resources/event-impact-calculator (last visited Mar. 12, 2021); TEMPLE UNIVERSITY SPORT INDUSTRY RESEARCH CENTER, https://sthm.temple.edu/sport-industry-research-center/about/ (last visited Mar. 12, 2021).

[69] E-mail from Racheal Mogravero, Executive Assistant to President & CEO, Civitas to Roxanne Steinhoff, author (Mar. 22, 2021, 6:40pm EDT) (on file with author); Zoom Interview with John Lambeth, President & CEO, Civitas (Mar. 25, 2021).

featured the concept in recent industry talks and webinars, and TID consulting firm Civitas hosted the industry's first-ever Annual TID Summit on April 29, 2021.[70] Currently, TIDs provide funding to approximately one third of American DMOs.[71]

a) Overview

Tourism Improvement Districts provide a viable alternative to public funding for sports commissions and DMOs by creating a fully customizable, self-governing mechanism for local businesses to enhance the DMO/destination partnership. As tourism bureaus started seeking alternative forms of funding to reduce reliance on government apportionment, Business Improvement Districts ("BIDs"), which allow special benefits assessments for participating businesses within a specified territory, became the starting point from which TIDs evolved.[72] In 1989, the City Council of West Hollywood, California, established the West Hollywood Business Improvement Area and the Hotel Marketing Benefit Zone, effectively approving a BID that created a 1.5% assessment on hotels within the area dedicated to the West Hollywood CVB.[73] The success of West Hollywood led to over 100 other Californian municipalities implementing similar assessments, and the innovative concept has since spread to other states.[74] Before the pandemic, TIDs raised $380 million for destinations nationwide each year.[75]

At its heart, a TID allows private businesses to organize promotional efforts while sports commissions and DMOs gain dedicated, stable funding to lead those efforts. TID revenues come from a benefit assessment of the businesses – the payors – located within the district.[76] It is the payors that agree to form the district, and while local government authorizes the assessment, formation does not rely on approval of the general electorate.[77] All TIDs have a governing document such as a formation charter or management plan that outlines the boundaries of the district, the types of activities funds may support, and the district's administration.[78] Because a TID's funds may only be spent on programs or services that benefit its payors as agreed upon in

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[70] *Revelations and Thought Leadership at the Annual National TID Summit,* CIVITAS, (May 20, 2021) https://civitasadvisors.com/ (last visited June 12, 2021).

[71] *See* FUNDING FUTURES, *supra* note 1, at 40.

[72] Tourism Improvement Districts have several name variations, including Tourism Business Improvement Districts, Tourism Marketing Districts, etc. Here, TID encompasses all these variations. *See* FUNDING FUTURES, *supra* note 1, at 81; *see also* CIVITAS, U.S. TOURISM DISTRICT LAW STUDY 2 (2019) https://civitasadvisors.com/resources/research/tourism-improvement-district/ (find "U.S. Tourism District Law Study (2019); click "download").

[73] In 2013 the City Council replaced the Hotel Marketing Benefit Zone with the West Hollywood Tourism Improvement District and raised the assessment to 3%. *See* CITY OF WEST HOLLYWOOD, https://www.weho.org/business/business-organizations/business-improvement-districts (last visited Mar. 28, 2021); *see also* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 2.

[74] *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 2.

[75] *Id*. at 1.

[76] *Id.* at 2.

[77] *Id.*

[78] *See e.g.*, Civitas, *San Diego Tourism Marketing District: District Management Plan*, SAN DIEGO TOURISM MARKETING DISTRICT CORPORATION & CITY OF SAN DIEGO (Sept. 11, 2012) https://www.sdtmd.org/wp-content/uploads/2013/05/tmdmanagementplan120911.pdf (San Diego renewed the district plan in 2016 – see *infra* note 112 for the renewed plan).

its charter, local government cannot divert those funds to other public programs.[79] Unlike taxes which are typically perpetual, payors implement TIDs for a defined term and require periodic renewal.[80] Typically, a TID will create a 501(c)(6) nonprofit corporation to manage the district, with payors choosing from among themselves its board of directors to allocate funds in accordance with its charter.[81] The payors in TIDs have traditionally been hotels, with assessments on room nights based either on a percentage or fixed rate per occupied night; however, some districts include assessments on restaurants, attractions, and retail.[82] Finally, while the payors govern and approve the district, local government maintains an oversight role.

b) Authority to Create

There are two general jurisdictional powers that allow for the creation of TIDs. First, state statutes may grant local counties or cities the authority to create BIDs, of which TIDs are a special form.[83] Alternatively, some municipalities without existing BID statutes have turned to their Home Rule powers to implement TIDs.[84]

The Tenth Amendment of the United States Constitution reserves the powers not delegated to federal government "to the States . . . or to the people."[85] As such, local governments derive discretionary authority as delegated by their state, categorized into four general areas: structural, fiscal, functional and personnel.[86] The broadest discretionary powers typically apply to the structural category so as to allow localities to choose their own form of government.[87] Fiscal Powers, on the other hand, are generally the narrowest and encompass the authority to set tax rates and determine revenue sources.[88] The third and fourth categories, functional and personnel, allow local governments to legislate on local matters and to create their own employment procedures.[89] Creation of TIDs fall under a local government's discretionary structural and fiscal powers.

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[79] *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 2.

[80] *Id.*

[81] *See e.g.*, DISTRICT MANAGEMENT PLAN, *supra* note 78 at 28-29. Some TIDs also have non-voting board members representing local government. *See e.g.*, Dallas Council Chamber Res. 161250, § 1(F) (Aug. 10, 2016) https://www.dallasecodev.org/DocumentCenter/View/448/Tourism-PID-Renewal-Resolution-PDF

[82] *See* FUNDING FUTURES, *supra* note 1, at 81, 83. Examples include statewide assessment funding for Visit California, the TID in Mammoth Lakes, California, and the recently formed TID in North Lake Tahoe, California, all of which assess many tourism-related businesses, including but not limited to hotels, restaurants, retail, attractions, and activities. *See* Cal. Tourism Marketing Act, § 13995 (West 1995); CALIFORNIA OFFICE OF TOURISM, Tourism.Ca.gov, https://tourism.ca.gov/ (last visited Mar. 27, 2021); TOURISM BUSINESS IMPROVEMENT DISTRICT, TOWN OF MAMMOTH LAKES, https://www.townofmammothlakes.ca.gov/551/TBID (last visited Mar. 27, 2021); NORTH LAKE TAHOE, TBID RESOURCES, https://www.nltra.org/resources/tbid-resources/ (last visited March 27, 2021)

[83] *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 1.

[84] *Id.* at 2.

[85] U.S. Const. amend. X.

[86] *See* NATIONAL LEAGUE OF CITIES, CITIES 101 – DELEGATION OF POWER (Dec. 13, 2016) https://www.nlc.org/resource/cities-101-delegation-of-power.

[87] *Id.*

[88] *Id.*

[89] *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 3.

i) Dillion's Rule and Home Rule

All local governments derive their authority from state government, a foundational principal of municipal common law known as Dillion's Rule. In 1868, Iowa Supreme Court Justice John Dillon articulated that because local government is necessarily a political subdivision of the state, created to carry out state government at the local level, a municipality may only exercise those powers as expressly delegated to it by the state.[90] Therefore, if a local government acts outside of its expressly delegated authority, the state may nullify its actions via preemption.[91] The Supreme Court adopted this strict construction of the powers of local government in 1907, and thus Dillion's Rule became the foundation for municipal law.[92]

In response, many states began to delegate broader power to localities by implementing "Home Rule" provisions.[93] Beginning in the 1870s and gaining steam in the early 1900s, many state legislatures passed Home Rule provisions to allow municipalities greater discretion over local issues via state constitutional amendments or legislation.[94] A Home Rule state affords localities authority over specified local issues, autonomous from state interference: as long as the issue is not preempted by the state constitution or by statute, a municipality will have broad discretion to enact ordinances as it deems appropriate.[95] Typically, tax authority is preempted, while authority to create assessments is not.[96]

States differ in their application of Home Rule, often specifying eligible municipalities by population.[97] Therefore, many states employ a combination of Dillon's Rule and Home Rule: for those locales that meet constitutional or legislative criteria, the Home Rule applies, while Dillon's Rule governs all others.[98] As such, a sports commission or DMO looking to create a TID will first need to determine under which rule their jurisdiction operates. If Dillion's Rule governs, local officials will need to look to statewide BID statutes for authority to create a TID. If none exists or the current statute is insufficient, they will need to lobby the state for enabling legislation. Conversely, municipalities with Home Rule provisions will need to ensure state government does not preempt local authority to create assessments.

ii) BID Statutes vs. Home Rule

A 2019 study conducted by Civitas provides a thorough examination of local governmental authority to create TIDs in all 50 states and the District of Columbia. In analyzing state BID legislation, Civitas identified fourteen factors relevant for the creation of TIDs. These factors include: (1) whether the BID statute grants authority to create an assessment district to all state political subdivisions or only to specified cities or counties based on size or other criteria;

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90 Clinton v. Cedar Rapids & M. R. R. Co., 24 Iowa 455, 475 (1868).

91 *See* Hon. Jon D. Russell & Aaron Bostrom, *Federalism, Dillon Rule and Home Rule – White Paper*, AMERICAN CITY COUNTY EXCHANGE, 1, 2 (Jan. 2016) https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf.

92 *See* Hunter v. Pittsburgh, 207 U.S. 161, 178 (1907).

93 *See* CITIES 101 – DELEGATION OF POWER, *supra* note 86.

94 *See* Russell, *supra* note 91, at 6.

95 *See* CITIES 101 – DELEGATION OF POWER, *supra* note 86; *See* Russell, *supra* note 91, at 6.

96 *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 3.

97 *See* CITIES 101 – DELEGATION OF POWER, *supra* note 86; *See* Russell, *supra* note 91, at 6.

98 *See* CITIES 101 – DELEGATION OF POWER, *supra* note 86; *See* Russell, *supra* note 91, at 6–9.

(2) whether assessments may be business or property based; (3) how the assessment may be levied and if the statute restricts calculation to enumerated methods or allows local governments flexibility to determine the levy basis; (4) whether the district levy can be a special assessment or fee, rather than a tax; (5) whether the statute allows a nonprofit corporation or advisory board to manage the district instead of local government; (6) the threshold of approval required from those in the district as well as whom may vote on its approval; (7) whether the statute restricts the ability to classify businesses or properties that would pay the assessment; (8) whether the statute allows for assessment of non-contiguous businesses or whether it requires all business within the boundary to be assessed; (9) whether the statute allows a new district to overlap an existing assessment; and most importantly, (10) whether the statute allows a district to provide funds for general services that benefit its payors for such services as marketing and promotion, sales, and events.[99] Other factors include whether a written district plan is required and if certain parameters must be included in that plan, whether local government is required to provide the same level of services as the district once it is created, whether there is a specified renewal term, and how the statute refers to assessment districts.[100]

Alternatively, a local jurisdiction may create a TID under its Home Rule power as long as the state does not preempt local authority to create assessments. Civitas identified five important elements of Home Rule powers relevant for creating TIDs.[101] First, is the Home Rule power limited to only certain governmental sub-divisions, such as cities or counties?[102] Second, are jurisdictions required to adopt a Home Rule charter or meet some other qualification (such as population size) before the state grants authority?[103] Third, is there express authorization for the local jurisdiction to create an assessment district?[104] Fourth, do the jurisdiction's Home Rule powers include the authority to levy assessments to provide services, with no prohibitions?[105] Finally, is the jurisdiction precluded from implementing legislation involving revenues and fees?[106]

## IV. Applying TIDs to Sports Commissions

Encouragingly, some TIDs already support sports tourism efforts. While certainly not exhaustive, the following examples provide a cross-section of TIDs supporting sports tourism in large markets (populations over 1 million), medium-sized markets (populations between 1 million and 100,000), and small markets (populations of less than 100,000). The majority of destinations with TIDs appear to promote sports tourism either through a DMO's in-house sports commission or sports sales staff, or by providing direct grants to rights holders to host events (or some combination of both). In the research conducted for this article, only one example of an

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[99] *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 5.
[100] *Id.*
[101] *Id.* at 7.
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*

independent sports commission directly receiving funds from a TID emerged: the Spokane Sports Commission, serving Spokane, Washington. While each destination is unique and faces its own challenges, the partnership between the Spokane Sports Commission, the destination's DMO, local hoteliers and county government provides a compelling model for those destinations looking to provide more stable funding for sports tourism.

a) Large Markets: San Diego, CA & Dallas, TX

*i) San Diego Tourism Marketing District: providing grants to sporting events.*

San Diego's TID provides significant support for sports events held in the city. As the birthplace of the concept, Californian destinations enjoy favorable conditions to create TIDs. Approximately one quarter of the state's major cities have Home Rule powers, and state law also expressly allows the creation of assessments.[107] Before the City of San Diego established a TID, it utilized its Home Rule powers to levy the San Diego Transient Occupancy Tax in 1964 "solely for the purpose of promoting the City of San Diego."[108] However, over time the City diverted those funds so that only 6% remained for tourism promotion by 2007.[109] Seeing the success of other cities that implemented TIDs, in 2008 the San Diego City Council levied a 2% assessment on room nights for hotels with 70 or more rooms to create the San Diego Tourism Marketing District (SDTMD), with 80% of SDTMD funds dedicated to funding the San Diego Tourism Authority.[110] A nonprofit oversees the SDTMD, with rotating board membership between its payors.[111] According to its Management Plan, activities eligible for SDTMD funds "shall include unique and exclusive marketing and sales promotions to increase hotel room night consumption and market *District* (emphasis original) lodging businesses as tourist, meeting, and event destinations."[112] Conversely, funds may not be used for "the acquisition, construction, installation or maintenance of any tangible public property," nor for closing streets or for security "facilities or equipment" unless done specifically to benefit the payors, nor "municipal services normally and historically provided by the *City*."[113]

At the time of the SDTMD's enactment, the San Diego Sports Commission operated as its own independent organization.[114] Examination of available SDTMD records show the Sports

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107 For a full overview of applicable statutes and constitutional provisions, *see* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 18–19.

108 SAN DIEGO TOURISM MARKETING DISTRICT, HISTORY https://www.sdtmd.org/sdtmd-overview/history/ (last accessed Mar. 28, 2021).

109 https://www.sdtmd.org/sdtmd-overview/history/

110 For more detailed information, *see District Management Plan*, *supra* note 78.

111 *See generally Bylaws of San Diego Tourism Marketing District*, (Apr. 8, 2016) https://staging3.sdtmd.org/wp-content/uploads/2020/12/SDTMD-Bylaws-v4-6-16-Approved-4-8-16.pdf.

112 *See* Civitas, *San Diego Tourism Marketing District: District Management Plan,* SAN DIEGO TOURISM MARKETING DISTRICT CORPORATION & CITY OF SAN DIEGO 2 (July 19, 2016) https://staging3.sdtmd.org/wp-content/uploads/2020/12/FINAL-Modified-SDTMD-MDP-7-29-16-CLEAN.pdf.

113 *Id.* at 6 (emphasis original).

114 *See Tourism Powers Cities – Annual Report 2011,* SDTMD 1, 33 (2011) https://sdtmd.org/wp-content/uploads/2011/09/TMD-Annual-Report-110711b.pdf. Created in 1960 as the San Diego Sports Association, it reorganized into the San Diego International Sports Council in 1995. It appears to have rebranded again in 2002. *See Legislative Analyst Report,* CITY AND COUNTY OF SAN FRANCISCO, (Feb. 1, 2005) https://sfbos.org/sports-commissions#:~:text=Founded%20as%20the%20Greater%20San,the%20San%20Diego%2FTijuana%20region (last

Commission received direct assessment revenue of $382,500 in 2010, a base allocation for $363,391 plus an additional $125,000 for a specific event in 2011, a base revenue of $561,800 plus an additional $332,000 for two events in 2012, and $338,299 in revenue in 2013. [115] In addition to dedicated funding for the Sports Commission, sports events also received funding from the SDTMD during those years.[116] However, despite its success as a stand-alone entity, the San Diego Tourism Authority absorbed the Sports Commission in late 2014.[117] Now, only one sales staff member of the Authority is dedicated to sports events.[118]

Although the Tourism Authority absorbed the Sports Commission, the SDTMD remains a vital source of funding for both the Tourism Authority and rights holders wishing to stage sports events in San Diego. To obtain SDTMD funding, a prospective event must complete a funding application and demonstrate "an increase in hotel room nights and a measurable return on investment."[119] SDTMD contracts with San Diego State University's L. Roberts Payne School of Hospitality and Tourism to conduct before and after economic impact studies, reconciling projected versus actual return on investment.[120] In fiscal year 2019, the SDTMD generated $44,917,468 in revenue.[121] That year, the SDTMD supported 18 events, 15 of which were sports related: grant amounts for sporting events ranged between $23,397 - $375,000, for a total of more than $2 million.[122] While 95% of STMD funding went to the Tourism Authority, approximately 93% of remaining funds were dispersed to sports events.[123] What is more, of SDTMD's 2020 reported revenue of $38,516,633 (representing a 27% decline in visitors from 2019), seven of the ten events receiving funding were sporting events.[124] In June 2020, the City renewed the SDTMD operating agreement for ten years.[125]

### *ii) Dallas: using TID funding to support marketing efforts for sports events*

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visited March 20, 2021).

[115] *See Days Into Nights – San Diego Tourism Marketing District Annual Report 2010*, SDTMD 1, 26 (2010) https://sdtmd.org/wp-content/uploads/2014/11/TMD-Annual-Report-112310.pdf; *Annual Report 2011*, *supra* note 114, at 34, 36–40, 50; *An Important Year – Annual Report* 2012, SDTMD 1, 31–32, 35–36, 51 (2012) https://sdtmd.org/wp-content/uploads/2013/01/TMD-Annual-Report-2012.pdf; *Annual Report 2013*, SDTMD 1, 18, 34–35, (2013) https://sdtmd.org/wp-content/uploads/2014/03/TMDAnnualReport2013.pdf.

[116] *See Annual Report 2010*, *supra* note 115 at 26–27; *Annual Report 2011*, *supra* note 114 at 38–43; *Annual Report 2012*, *supra* note 115, at 37–41; *Annual Report 2013*, *supra* note 115 at 24, 30–32.

[117] *See Milestone Report FY2019 – FY2023*, SDTMD 1, 8 (Apr. 13, 2018), https://www.sdtmd.org/wp-content/uploads/2018/07/FY2019-MILESTONE-REPORT-OF-ACTIVITIES-FINAL.pdf.

[118] *See Meet Your Sales Team,* SAN DIEGO TOURISM AUTHORITY, https://www.sandiego.org/meeting-planners/our-team.aspx (last visited Mar. 28, 2021).

[119] *Contractors*, SDTMD, https://sdtmd.org/contractors/ (last visited Mar. 20, 2021).

[120] Zoom Interview with Carl Winston, Director, San Diego State University L. Roberts Payne School of Hospitality and Tourism (Feb. 19, 2021).

[121] *See FY 2020 SDTMD Annual Report: Navigating Tourism in the Age of COVID-19*, SDTMD 1, 19 (2021), https://staging3.sdtmd.org/wp-content/uploads/2021/02/SDTMD_Annual-Report-US-Letter_02032021_r2_VO.pdf

[122] *See FY 2019 SDTMD Annual Report*, SDTMD 1, 10 (2020), https://sdtmd.org/wp-content/uploads/2020/02/SDTMD-Annual-Report-US_webFINAL.pdf.

[123] *Id.*

[124] *See FY 2020 SDTMD Annual Report*, *supra* note 121, at 6, 9.

[125] *Id.* at 4.

The Dallas Sports Commission utilizes TID funding as a department of the destination's DMO, VisitDallas. Like California, Texas allows the creation of TIDs, albeit with more restrictions. While the Texas legislature granted statutory authority to any municipality or county to form "public improvement districts," originally only certain cities could create hotel-only TIDs.[126] The statute supersedes any municipalities' Home Rule powers.[127] Dallas was the first Texas municipality to create a TID, establishing the Dallas Tourism Public Improvement District (DTPID) in 2012.[128] Hotels with 100 or more rooms are the DTPID's payors and collect a 2% assessment per room night: currently, there are 132 participating hotels, which represent more than 80% of the cities' hotel room inventory.[129] The governing 501(c)(6) nonprofit corporation includes a board of directors comprised of ten voting members (positions held only by hotelier payors) and four non-voting, ex-officio members, including leadership from DMO VisitDallas, the City of Dallas, and the Hotel Association of North Texas.[130] The Dallas City Council annually approves the service plan put forth by the DTPID board, which includes projected revenue and expenditures.[131] The DTPID contracts VisitDallas to administer and support the approved programs.[132] In general, DTPID funds may only be used for services in furtherance of five enumerated categories: Incentives & Sales Efforts (42.5% of revenues), Marketing (Promotion/Advertising) (35% of revenues), Site Visits and Familiarization Tours (10% of revenues), Event Funding Application Pool (7.5% of revenues), and Operations/Research/Administration (5% of revenues).[133] However, funds may not be used to pay for staff travel expenses or salaries.[134]

The DTPID reserves Incentives & Sales Efforts funds for those meetings, activities and events that it anticipates will "provide at least a 10-to-1 ROI, calculated by anticipated lodging revenues divided by the approved incentive."[135] While the DTPID and by extension VisitDallas use most of these funds to comp convention center rental fees, the DTPID also provides member hotels the opportunity to apply for up to $50,000 per year to use in attracting group business.[136] Another unique feature of the DTPID is its dedication to local cultural and community events – the DTPID awards over $1 million in funds per year to local cultural organizations and community groups.[137]

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[126] The Texas legislature passed a new statute that allows any city to establish a Tourism Public Improvement District. *See* Tex. Local Gov't Code Ann. § 372.0035 (West 2019).

[127] *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 101–102.

[128] *See 2020 Annual Report*, DALLAS TOURISM PUBLIC IMPROVEMENT DISTRICT, 1, 4 (2021), https://dallastpid.com/wp-content/uploads/2021/02/2021-2_TPID_AnnualReport.pdf.

[129] *Id.*

[130] *Id. See also* DALLAS TPID, https://dallastpid.com/about/board-members/ (navigate to "About," then "Board Members") (visited Mar. 20, 2021); Res. 161250, *supra* note 81.

[131] *See 2020 Annual Report*, *supra* note 128, at 4.

[132] *Id.*

[133] *See DTPID Service Plan FY21_FY25, Exhibit B*, DALLAS COUNCIL CHAMBER RES. 161250 (Jun. 18, 2021) https://www.dallasecodev.org/DocumentCenter/View/451/Tourism-PID---Service-Plan-PDF

[134] *See 2020 Annual Report*, *supra* note 128, at 4.

[135] *Id.* at 7.

[136] *Id.* at 7–8.

[137] *Id.* at 11.

The Dallas Sports Commission is a department of VisitDallas, and as such it "utilizes DTPID funding to market and attract sports events that generate hotel revenue and economic growth for the city of Dallas."[138] While the only annual report published on the VisitDallas website is from 2019 and does not include specific budget numbers for the Sports Commission, ostensibly some DTPID funding has gone to support sports events.[139] It would appear that the Sports Commission utilizes funds from the Incentives & Sales Efforts, Marketing & Promotions, and Site Visits and Familiarization Tours categories:

[138] DTPID PLAN SUMMARIES, https://dallastpid.com/about/tpid-resources/ (last visited Mar. 20, 2020).
[139] *See 2019 Annual Report*, VISITDALLAS, 1, 16 (2019), https://visitdallas.imgix.net/Annual_Meeting/2019_Annual_Report.pdf

> "[t]he Sports Commission sales strategy includes a marketing and sales presence at national industry leading conferences and trade shows, creating rights holder experiences and bid enhancements during site visits and familiarization tours, and development of overall DSC and event specific marketing campaigns to generate awareness, increase fan and spectator attendance, and further expand Dallas' position as a leading sports destination."[140]

The DTPID generates less funding than its counterpart in San Diego: in 2019, the DTPID generated $17.4 million in revenue.[141] Although VisitDallas supports and administers DTPID approved activities, the smaller funding pool (plus the allocations set aside for local cultural events and district hotels) meant that historically, public funding in the form of city hotel occupancy taxes and state grants made up the majority of the DMO's funding.[142] However, in January 2019 the City published an audit of VisitDallas' finances that landed the organization in hot water.[143] The City ultimately renewed its contract with VisitDallas in June of 2020, but as a consequence of the audit it resolved to annually decrease the percentage of hotel occupancy tax funding allocated to VisitDallas.[144] As VisitDallas works to repair its reputation and trust while simultaneously recovering from the pandemic, it remains to be seen if there will be an opportunity to increase DPTID funding for sports tourism in the future.

b) Mid-Markets: Denver, CO & Spokane, WA

*i) Denver: using TID funding for sports events as well as capital improvements to tourism assets.*

The Denver Sports Commission, as part of DMO Visit Denver, has utilized TID funding to host major sporting events. Additionally, TID revenues fund capital improvements to Denver's events facilities. Colorado's constitution grants broad Home Rule powers to cities with over 2,000 residents and explicitly allows municipalities to levy "special assessments for local improvements."[145] The City of Denver used this authority to create its TID.[146] Established in 2017, the TID levies a one percent tax to guest folios at hotels with at least 50 rooms within the

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140 *See* DTPID PLAN SUMMARIES, *supra* note 138.

141 *See 2020 Annual Report*, *supra* note 128, at 5.

142 For the five-year period of 2013-2018, "VisitDallas received more than $146M in city tax dollars and $20M in state funding, together accounting for 92% of total budget." Sam Merten, *After Scathing Audit, It's Time to Yank Funding From VisitDallas*, DALLAS MORNING NEWS (Jan 10, 2019), https://www.dallasnews.com/opinion/commentary/2019/01/10/after-scathing-audit-it-s-time-to-yank-funding-from-visitdallas/.

143 *See* Memorandum from the Office of the City Auditor on VisitDallas to the Gov't Performance & Fin. Mgmt. Comm. 25 (Feb. 19, 2018), https://dallascityhall.com/government/Council%20Meeting%20Documents/gpfm_1_office-of-the-city-auditor-audit-of-visitdallas_combined_021919.pdf.

144 *See* City Council of the City of Dallas, Res. 200938 § 1 (June 10, 2020), http://citysecretary2.dallascityhall.com/resolutions/2020/06-10-20/20-0938.pdf.

145 Colo. Const. art. XX, § 6(g); *see also* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 21.

146 *See* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 21.

County of Denver.[147] The joint City and County TID Creation Ordinance mandates the district's board of directors to consist of five to nine members, two of which the mayor shall directly appoint by confirmation of the city council, while all others are nominated for mayoral appointment and council confirmation by the district's payors.[148] The district board shall also annually submit an operating budget and district plan "outlining the district's revenues, expenditures, projects and goals" subject to approval of the city council.[149] All revenues generated may fund only "tourism improvements and services."[150] Tourism and improvement services include maintenance or capital improvements to the Colorado Convention Center or any public building or facility generally related to tourism, as well as marketing and promotion efforts designed to attract visitors to Denver.[151] In creating the TID, the City reserved a portion of revenues for its general fund, as well as a mutually-agreed upon amount for capital improvements.[152] The City also approved an agreement with Visit Denver to administer marketing and promotions services for the TID, and as such Visit Denver receives TID revenues to carry out those activities as provided in each annual plan.[153]

In 2018, its first year, the TID generated $8.7 million in revenue – about $5 million of those revenues went to Visit Denver .[154] Visit Denver had an operating budget of $38.8 million in 2019, primarily funded via the city's lodging tax and supplemented by the new TID revenues.[155] As a department of Visit Denver, the Denver Sports Commission utilized TID funds to host the UIAA World Cup Ice Climbing Finals of 2019.[156] Moving forward, Visit Denver is using TID funds "to create a framework for evaluation of annual events that have the potential to drive incremental overnight visitors."[157] In addition, the City and County of Denver and Visit Denver plan to use TID funds to expand the Colorado Convention Center.[158]

*ii) Spokane: TID funding constitutes 50% of Spokane Sports Commission's budget*

The Spokane Sports Commission, its own independent organization, is a major recipient of TID funding in Spokane, Washington. The Washington legislature passed a TID statute in 2003, which originally allowed any municipality within a county with a population of 40,000 or more to form a "Tourism Promotion Area," as long as the assessment does not exceed two

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[147] *See 2019 Annual Report*, VISIT DENVER, 1, 3 (2019), https://assets.simpleviewinc.com/simpleview/image/upload/v1/clients/denver/AR2019_2_18_20_598c7575-70e0-49b9-93cc-e124f422f2fd.pdf.
[148] *See* Denver, Colo., Code of Or. § 20-415(a).
[149] *See* Denver, Colo., Code of Or. § 20-404(1).
[150] *See 17-1397 Intergovernmental Agreement (Denver Tourism Improvement District)*, DENVER CITY COUNCIL, (Dec. 12, 2017) https://denver.legistar.com/LegislationDetail.aspx?ID=3289092&GUID=54AEF6DE-234C-4F08-A48F-7B9C15F9FD10&Options=&Search=&FullText=1 (click "1. 17-1397 CC TID IGA Agreement").
[151] *See* Denver, Colo., Code of Or. § 20-404(16).
[152] *See 17-1397 Intergovernmental Agreement*, *supra* note 150, at art. 1.3.
[153] *Id.* at art. 1.4(C)-(D).
[154] *See 2020 Marketing Plan*, VISIT DENVER, 7 (2019), https://issuu.com/visitdenver/docs/2020mp.
[155] *See 2019 Annual Report*, *supra* note 147 at 2.
[156] *See 2020 Marketing Plan*, *supra* note 154 at 7.
[157] *Id.* at 134.
[158] *Id.* at 44.

dollars per room night.[159] However, in response to the pandemic the Washington legislature removed the population requirement in June 2020 to allow more destinations to form TIDs.[160] The legislature also provided a mechanism to allow "an additional charge of up to three dollars per night of stay," as long as those hoteliers within the Area "who would pay sixty percent or more of the proposed charges" agree to the increase.[161]

The Board of County Commissioners of Spokane County created the Spokane Tourism Promotion Area (STPA) in 2004.[162] The Area contains five geographical zones, where the types of lodging businesses encompassed and the levies on those businesses vary by zone.[163] While the Board of Commissioners ultimately approve appropriation of STPA funds, the Spokane Hotel and Motel Commission provides recommendations for expenditures.[164] Members of the Hotel and Motel Commission must be hoteliers operating lodging businesses within the Area, and although at the time of the STPA's creation it appeared to have an eleven-member board, the Spokane County website only lists three members, one of whom is an "ex-officio appointee from the Spokane County Commission."[165] Finally, similar to TIDs in other states, the County designated that it shall contract with a DMO "to administer the operation of the Tourism Promotion Area."[166] Spokane's DMO, Visit Spokane, administers the STPA on behalf of Spokane County.[167]

Unique among the examples provided here, the Spokane Sports Commission is an independent organization that receives direct funding from a TID. Established in 1989, the Sports Commission is an incorporated 501(c)(3) nonprofit.[168] It has a current staff of eight, and a board of directors comprised of local community and business leaders.[169] Historically, STPA revenue contributes 50% of its funding, followed by various lodging tax funds (32%), a rental car tax (12%), sponsorship funds (2%), funds from the City of Spokane (2%), and other sources (2%).[170] In its 2020 Application for Funding from the Tourism Promotion Area, the Sports Commission requested an allocation of 28% of STPA funds, which it projected to be approximately $840,000 of its total $1.7 million budget.[171] In contrast, the Board of County

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[159] Wash. Rev. Code § 35.101.050(4) (2003); *see also* U.S. TOURISM DISTRICT LAW STUDY, *supra* note 72 at 109.

[160] Wash. Rev. Code § 35.101.010 (2020).

[161] Wash. Rev. Code § 35.101.057 (2020).

[162] *See Interlocal Cooperation Act Agreement for Establishment of Spokane County Tourism Promotion Area*, BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY (Mar. 16, 2004) http://mrsc.org/getmedia/508FA90A-1E20-44B6-88C0-A0145F2F6E35/S71TPArea.aspx.

[163] The County has amended the TPA ordinance several times. For the most recent, adopted January 19, 2021, *see* SPOKANE CO., WASH. CODE OF ORDINANCES § 7.66 (Jan. 19 2021). For the original, *see Interlocal Cooperation Act*, *supra* note 162.

[164] *See* § 7.66.010, *supra* note 163.

[165] SPOKANE CO., WASH. CODE OF ORDINANCES § 7.66.050(a) (Jan. 19 2021). *See also HOTEL/MOTEL BOARD*, SPOKANE COUNTY, https://www.spokanecounty.org/1198/HotelMotel-Board (last visited March 28, 2021).

[166] *See Interlocal Cooperation Act*, *supra* note 162, at §§ 1.10, 6.

[167] *See* TOURISM PROMOTION AREA (TPA) FUNDING, VISIT SPOKANE, https://www.visitspokane.com/industry/industry-resources/tpa/ (last visited Mar. 28, 2021).

[168] *See 2020 Funding Application: Tourism Promotion Area*, SPOKANE SPORTS, 2 (2019) https://www.spokanecounty.org/DocumentCenter/View/29143/Item-No-6g (part of the Minutes (*Item No. 6g Minutes*) from Board of County Commissioners of Spokane County, Wash. (Dec. 3, 2019)).

[169] *See TEAM*, SPOKANE SPORTS, https://www.spokanesports.org/team (last visited Mar. 21, 2021).

[170] *See 2020 Funding Application*, *supra* note 168.

[171] The Board of County Commissioners approved the application on December 3, 2019. *See Id.* at 1, 15.

Commissioners granted Visit Spokane 72% of the STPA's funds for a projected total of almost $2.2 million, approximately 40% of the DMO's $5.4 million budget.[172] In addition, Visit Spokane administers a portion of STPA funds as grants to local events: in 2019, a total of $68,630 went to five events, three of which were sporting events.[173] However, in 2021 these grants will not be offered because of the shortage of funds caused by the pandemic.[174] According to the County of Spokane's 2021 Comprehensive Budget, the STPA generated approximately $3.5 million in 2020.[175]

c) Small Market: Missoula, Montana

A more rural destination, DMO Destination Missoula uses its TID funding to incentivize rights holders to host their sports events in Missoula, as well as providing funding to increase airline flights to the city. Montana allows the creation of business improvement district by state statute. Available to all municipalities and counties, the BID statute, passed in 2007, explicitly allows a TID to encompass "noncontiguous areas if the properties in a district have a common purpose of providing overnight stays at lodging facilities."[176]

The City of Missoula created the Missoula Tourism Business Improvement District (MTBID) in 2010.[177] Starting with just ten hotels, the district gradually expanded over the years to encompass citywide properties in July of 2019.[178] Upon approval, the Missoula City Council established a Board of Trustees to oversee the TBID, consisting of five hoteliers with properties located within the district, appointed by the Mayor with approval of the City Council.[179] In addition, the Mayor also has the power to appoint a non-voting member to the board to act as a liaison between the City and the TBID.[180] The TBID levies a flat fee assessment of $2 per room

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[172] *Id.* at 1, 26.

[173] See *Tourism Promotion Area (TPA) Funding*, Visit Spokane, https://www.visitspokane.com/industry/industry-resources/tpa/ (last visited Mar. 20, 2021).

[174] *Id.*

[175] *See Spokane County 2021 Comprehensive Budget – All Funds*, https://www.spokanecounty.org/DocumentCenter/View/35947/2021-Final-All-Funds-Budget (access also from https://www.spokanecounty.org/199/Budget-Finance) (last visited Mar. 28, 2021).

[176] Mont. Code Ann. § 7-12-1111(4) (2007); *see also* U.S. Tourism District Law Study, *supra* note 72 at 64.

[177] *See* Missoula Tourism Improvement District, https://tbid.destinationmissoula.org/ (last visited March 21, 2020); *See also* City Council of Missoula, Resolution 7576 (Oct. 25, 2010), https://www.ci.missoula.mt.us/DocumentCenter/View/4878/Resolution-7576?bidId (housed at Tourism Business Improvement District, City of Missoula, https://www.ci.missoula.mt.us/915/Tourism-BID) (last visited Mar. 28, 2021).

[178] *See* Missoula Tourism Improvement District, *supra* note 177; *see also* Martin Kidston, *Hoteliers Look to Expand Missoula's Tourism Business Improvement District Citywide*, Missoula Current, (Apr. 17, 2019), https://missoulacurrent.com/business/2019/04/missoula-hoteliers-district/; Eve Byron, *Missoula Renews, Expands Downtown Tourism District*, Missoulian, (May 13, 2019), https://missoulian.com/news/local/missoula-renews-expands-downtown-tourism-district/article_6a53a990-2457-5751-be4f-29f9e6a7fdfd.html.

[179] *See* Resolution 7576, *supra* note 177, at § 3.

[180] *Id.*

night on district lodging businesses with seven rooms or more.[181] By the end of 2019, the TBID's annual budget was approximately $1.3 million.[182]

Destination Missoula works in close partnership with the TBID, as the TBID's establishment ordinance mandates the DMO's executive director shall serve as the TBID's director.[183] Destination Missoula hosts its board of directors' meetings in conjunction with TBID, and it would appear that Destination Missoula administers TBID programs and grants.[184] While it is unclear how much TBID funding is reserved for event grants versus Destination Missoula's budget, the DMO's most recent report from fiscal year 2018-2019 stated its just over $2 million budget is comprised of funds from the TBID, bed tax, and other private sources. That same report lists five events that received $43,000 in TBID funding in 2019, including two sports events.[185] While Destination Missoula does not have a sports commission per se (it lists one of its sales managers as a contact for sports events on its website), it is clear that the DMO sees sports events as key to its overall economic impact.[186] Past sports events utilizing TBID funds include the Cycling Collegiate Mountain Bike National Championships, USA Women's Gymnastics, and the Montana Special Olympics State Summer Games.[187] To qualify for TBID grant funding, a prospective event must be able to claim of minimum impact of 100 room nights, have the ability to match grant funding, and to track and report actual room nights generated.[188] Finally, Destination Missoula and the TBID created an annual $50,000 grant to increase air service to Missoula and is responsible for bringing American Airlines and Frontier Airlines to the city.[189]

d) Implementing New TIDs to Support Sport Tourism & Sports Commissions

A TID favorable for sports tourism will allow a sports commission or DMO to use its funds to bid for host and sports events, to market those events, and in some cases to maintain or

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181 *See* Missoula City Council Resolution 8458, (Sep. 2, 2020) https://www.ci.missoula.mt.us/DocumentCenter/View/54815/Resolution-8458; *see also* MISSOULA TOURISM IMPROVEMENT DISTRICT, *supra* note 177).

182 Although it appears to be so, it is unclear whether that $1.3 million budget number encompasses just assessment collection alone. *See Monthly Board of Directors' Meeting Agenda- Board Packet*, DESTINATION MISSOULA & MISSOULA TOURISM BUSINESS IMPROVEMENT DISTRICT, 9 (Jan 7, 2020) https://www.dropbox.com/s/560jw4of62miljp/January%20Board%20Packet.pdf?dl=0. Also in contrast, the TBID generated about $663,600 in 2020. *Monthly Board of Directors' Meeting Agenda- Board Packet*, DESTINATION MISSOULA & MISSOULA TOURISM BUSINESS IMPROVEMENT DISTRICT, 12 (Jan. 14, 2021) https://www.dropbox.com/s/560jw4of62miljp/January%20Board%20Packet.pdf?dl=0.

183 *See* Resolution 7576, *supra* note 177, at § 3.

184 "Destination Missoula/Tourism Business Improvement District Board meetings are held the second Thursday of the month from 3-5 pm." For board packets, including agendas, meeting minutes and budget reviews, *see* PARTNERS – BOARD PACKETS, http://partners.destinationmissoula.org/posts/14 (last visited Mar. 28, 2021).

185 *See FY18–19 Annual Report*, DESTINATION MISSOULA, 17 (2018), https://destinationmissoula.org/files/18-19-annual-report.pdf.

186 *See* MISSOULA TOURISM IMPROVEMENT DISTRICT, *supra* note 177.

187 *Id.*; *see also 2019 – 2020 Marketing Plan*, DESTINATION MISSOULA, 7, https://www.dropbox.com/s/evejv0wnve591dj/DM_2019-20%20Marketing%20Plan.pdf?dl=0.

188 Destination Missoula provides a comprehensive video explaining the grant application process, *see* TBID VIDEO, DESTINATION MISSOULA, https://destinationmissoula.org/tbid-video (time stamp 2:26) (last accessed Mar. 28, 2021).

189 *See FY18–19 Annual Report*, *supra* note 185, at 15; *see also* Kidston, *supra* note 178.

improve sports facilities.[190] As shown above, DMOs and sports commissions in markets of varying sizes are already using TIDs to successfully bring sports events to their destinations. TIDs present an opportunity to gain a reliable funding source immune from governmental diversion, as well as a way to engender greater community support by creating stronger business partnerships and by providing funding for local events. However, implementing a TIDs specifically for sports tourism comes with three basic challenges: (1) a destination's local government must have the legal authority to levy an assessment, (2) payors and local government must agree to create the TID, and (3) allowable uses for TID revenue must include the ability to bid for, market, and host sports events.

*i) Challenges & Opportunities*

While all TIDs face the same basic hurdles to formation (jurisdictional authority and public/private agreement), each destination will have its own unique challenges and needs. First, market size can be a factor influencing jurisdictional authority and a destination's ability to rally private support for a TID. A more rural destination with a smaller population may not have Home Rule authority to levy an assessment, or the state BID statute may not cover the destination if it contains a specified population requirement. In addition, a smaller market will have a smaller pool of potential businesses from which to include in the TID, especially if the only potential payors are hotels. Conversely, a larger market may be more likely to have jurisdictional authority, but hoteliers may be unwilling to add additional costs to overnight guest folios due to likely higher tax rates, as room rates are often a factor for rights holders in choosing where to host their events (especially participant-based events). [191] Other challenges regardless of market size include encompassing short-term rentals and engendering community support for tourism efforts. Finally, because the traditional payors in a TID have been hotels, funding allocation and return-on-investment key performance indicators are typically room nights.

These challenges are far from insurmountable. For those destinations currently lacking jurisdictional authority to create a TID, the concept is rapidly gaining traction nationwide as an attractive option to state governments seeking to balance budgets after the pandemic without sacrificing the ability of DMOs to build back tourism. At the time of writing, Massachusetts became the newest state to pass TID legislation in January of 2021, while other states have introduced TID bills to their legislatures.[192] States with existing TID legislation, like Washington, have also recently expanded state statutes to remove population requirements so as

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[190] In addition to the Visit Denver example, Placer Valley, California used their TID to secure $36 million in improvements to the community fairgrounds, including a new 190,000 square foot event center for volleyball and basketball. The destination used an additional $964,000 in TID funds to enhance other sports facilities in the county. *See 2017 Annual Report*, PLACER VALLEY TOURISM 3, 9–10, 13, https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/184856/PVT_Annual_Report.pdf; *see also* Nichole Farley, *Staying Competitive On and Off the Sports Field*, CIVITAS BLOG (Mar. 13, 2019), https://civitasadvisors.com/tourism-districts/staying-competitive-off-sports-field/.

[191] Occupancy tax and room rate generally tends to reflect population size, especially within states themselves. However, population by itself is not determinative of occupancy tax; region also plays a significant role. In a 2018 study of occupancy taxes nationwide, Destinations International found that the Midwest has the highest average occupancy tax rate at 15.59%, while the Northeast had the lowest at 14.33%. *See* FUNDING FUTURES, *supra* note 1, at 34.

[192] Mass. Gen. Laws ch. 40X, § 4 (2021). Approximately ten other states are seeking to implement TID legislation, *see* Zoom Interview, Lambeth, *supra* note 69.

to allow more rural areas to form TIDs.[193] State-wide tourism bureaus, already strong political allies for local destinations, could lead a unified call for TID-enabling legislation in their respective states. Further, industry organizations like Destinations International and Sports ETA also provide informational resources for destinations interested in creating TIDs.[194]

The flexibility of TIDs allow the payors to structure benefits so as to ensure the best return on investment at no cost to the public bottom-line, making formation of a TID a much lower-risk political cause than increasing taxes. For those hoteliers wary of adding additional costs to guest folios, assessments tend to be much lower than lodging taxes. Additionally, assessments can take the form of a percentage of the room rate or a flat-fee per overnight stay, allowing greater control for guest costs that could help allay these concerns. A flat-fee may also be attractive to a more rural destination with less room nights, as a few dollars per night may actually generate more revenue than a percentage-based assessment on lower nightly rates, while still keeping costs down for guests.[195] Hoteliers may also be resistant to a TID if they feel they are bearing the brunt of costs, especially as related to short-term rentals; however, TIDs may include short-term rentals. For example, the Portland Tourism Improvement District includes "all Short-Term Rental Hosts who use Booking Agents to advertise or accept reservations within the Portland City limits." [196] A TID could also weight the votes of its payors or reserve a certain amount of its governing nonprofit board seats based on a business' total rooms, which would give hotels more say within the TID.[197]

TIDs may also encompass other businesses besides lodging, which has the double advantage of generating higher revenue while also engaging broader community support for sports tourism. While it may make sense in the short run for a new TID to start with hotels and short-term rentals, most sports commissions have a variety of business owners and community leaders on their boards that see the value in sports tourism and who could encourage other, like-minded businesses to agree to an assessment. A short-term sacrifice for sports commissions will be a continued emphasis on room nights; however, using room nights is a familiar industry metric, and may help put the onus back on rights holders by requiring proven return on investment. This would not necessarily be a bar to new events without track records, but would help to justify time and resources spent on hosting events. Further, TIDs could create partnerships with local universities to conduct data collection and analysis, similar to the partnership between San Diego State University and the San Diego Tourism Marketing District. Such a strategy follows the Community Shared Values concept, as such partnerships create benefits for residents as well as visitors: Destinations International asserts that "the community benefit funding model is a natural extension of the evolution of Tourism Improvement

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[193] *See* § 35.101.010, *supra* at 160.

[194] *See generally* DESTINATIONS INTERNATIONAL, https://destinationsinternational.org/ (search "Tourism Improvement Districts"); SPORTS ETA, https://www.sportseta.org/ (past webinars are only available to members, but upcoming webinars are visible).

[195] For example, Missoula's TID assessment is a flat $2 fee, which allows the destination to generate more revenue on room rates below $100 per night than a 2% assessment, while also minimally impacting the overall rate for guests. *See* Resolution 8458, *supra* note 181; *see also* v *See* MISSOULA TOURISM IMPROVEMENT DISTRICT, *supra* note 177.

[196] Portland, Or. Code 6.05.010 (2018).

[197] For example, hotels with 100 rooms or more could have three board of director seats, while short-term rentals have one seat.

Districts."[198] Finally, as seen, a TID could reserve some of its revenue to create a grant pool for local sports events as well as to help fund improvements to local sports facilities used by both residents and visitors alike.[199]

## V. Conclusion

Tourism Improvement Districts are the next frontier in funding for DMOs and sports commissions. They provide a dedicated funding source to DMOs and sports commissions that alleviates reliance on public funding and creates self-governing partnerships with those businesses that benefit directly from sports tourism. They also encourage public/private partnerships, as local government plays an oversight role without the danger of it diverting TID funds to unrelated public programs. Sports commissions and DMOs can use TID revenue to bid for, host and market sports events, and also benefit residents by creating funding for local sports events and sports facilities. As sports commissions emerge from the pandemic, TIDs should be at the top of the list for new funding opportunities.

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[198] *See* FUNDING FUTURES, *supra* note 1, at 75.

[199] TIDs provide another option to public funding for sports facilities, an often-contentious issue in communities. Academia has discussed public funding for major sports facilities at length. For a start on this topic, *see* Matthew J. Parlow, *Equitable Fiscal Regionalism*, 85 TEMP. L. REV. 49 (2012).