Inclusion and Seclusion in Area Management Activities

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I. INTRODUCTION

This paper explores the significance of recent and current attention towards "area management" activities in Japanese urban policy. We will first examine the current situation of such activities and the historical background (II.). This is followed by an overview and analysis of the Ōsaka City BID ordinance, the first attempt in Japan to introduce a comprehensive legal scheme of "Business Improvement Districts" (BIDs) (III.). We will then examine how to demonstrate the "public nature" of such activities in order to justify public support (IV.). While present area management activities in Japan focus on business areas, we will also examine the possible impact of such activities in residential areas. The theoretical possibility of gentrification and the situation of "common interest developments" (CIDs) in the U.S. will be discussed (V.), followed by a short conclusion (VI.).

II. "AREA MANAGEMENT" AS A BUZZWORD

The phrase "area management" (*eria manejimento* エリアマネジメント)¹ has been a buzzword in Japanese urban policy and city planning since around 2005. An investigation committee organized by the Cabinet Bureau and the Cabinet Office defines area management as efforts aimed at town-building (*machi zukuri* まちづくり) or regional management, that target a specific

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¹ Sometimes abbreviated as "erimane $\pm \forall \forall \forall \forall$ ".

area under the leadership of the private sector (*minkan* \mathbb{R})² As of now, there are at least 600 organizations in Japan which engage in area management.³

Recently the focus of such activities has been on business districts in metropolitan centers as well as in local cities. However, in its earlier stages, area management included efforts in residential areas to promote and manage a good living environment.⁴

There are various forms of area management activities. According to a questionnaire sent to area management organizations, popular area management activities include: (1) performances or events (conducted by 55.1% of the organizations), (2) disaster- and crime prevention / environmental protection activities (36.2%), and (3) activities concerning making rules for town-building (30.5%).⁵ Typical of these activities are those that produce *nigiwai* (festivities) or encourage engagement in clean-up activities or safety patrols. In addition, the organization may, for example, discuss and establish common building rules (formal and/or informal) within the area. *Ginza*-rule⁶, an informal design rule in the famous downtown area in Tōkyō established by the *Ginza* Design Council is a leading example.

The organizations that take the initiative in area management activities are also diverse. Of these, 70% of the organizations are voluntary associations which do not have corporate status.⁷ While those organizations that have corporate status, such as joint-stock corporations or non-profit organi-

² Nihon-ban BID o fukumu eria manejimento no suishin hōsaku kentō-kai no chūkan torimatome [Interim Report of the Investigation Committee for the Promotion of Area Management Including Japanese Version BIDs]. 30 June 2016. http://www. kantei.go.jp/jp/singi/sousei/about/areamanagement/index.html.

³ Kanmin renkei machi zukuri kenkyū-kai hōkoku-sho [Report of the Research Group on Town-Building with Public-Private Collaboration] (Graduate School of Management, Kyōto University, 2016) 8.

⁴ Aratana ninaite ni yoru chiiki kanri no arikata kentö i'inkai hökoku-sho [Report of the Investigation Committee on the New Supporters of Regional Management], 2007. Cf. H. HARADA, Gaiku kanri no höseido sekkei doitsu BID hösei o tegakari to shite [Designing the Legal Scheme of Area Management—Business Improvement Districts (BIDs) in Germany], Högaku Ronsö 180-5/6 (2017) 434,438.

⁵ https://www.gsm.kyoto-u.ac.jp/ja/committees/city-anke.html. This survey was jointly conducted by Kyōto University, Wakayama University and the Ministry of Land, Infrastructure and Transportation. The report of the results points out that "performing events" are increasing whereas "rule-making" is declining. It is also noteworthy that the most popular activity ("performing events") is conducted only among 55.1% of the groups, which means there is large diversity among the aims and activities of area-management groups.

⁶ http://www.ginza-machidukuri.jp/rule/design_council.html.

⁷ Kanmin renkei machi zukuri kenkyū-kai hōkoku-sho, supra note 3, 9.

zations under the NPO Act⁸, tend to engage in comparatively large projects, small voluntary associations tend to focus on network-building activities.⁹ According to the above questionnaire, 60% of organizations were established by an initiative from the private sector.¹⁰ Membership of the area-management organizations is also varied. Stakeholders within the area such as landowners, leaseholders, residents and enterprises often participate, but in some cases outside experts in related fields also take part.¹¹ Academic and governmental reports into area management activities recommend co-operation with administrative agencies, since the activities often require administrative permission or coordination with the agencies. Those reports also emphasize the importance of collaboration with the police or public health office, which is not so frequent in the field of city planning.¹²

What is the background of the increased levels of attention to area management?

First, we should mention the transformation of urban policy tasks. As in many industrialized countries, the task of city planning in Japan underwent three stages: 'urbanizing society' in the era of city expansion; 'urbanized society' in the era when restructuring of built-up areas became an important concern; and the current era of 'shrinking cities' when the strategic and intelligent reduction of urban areas has become necessary in the era of population decrease.¹³ In the ''urbanized society'' phase, urban land-use policy shifted its focus from the orderly expansion of urban areas to the improvement of the quality of living in already built-up areas. Calls for the improvement of 'amenities' or people's attempts to engage municipal authorities in the creation of 'values' began to attract policy attention. Finding and enhancing the value of a specific area can be better performed by voluntary participation of local stakeholders than the one-sided decision of governmental authorities.

Second, there is the difficulty of public funding. It is a well-known fact that both national and local governments in Japan face a serious financial situation, thus they cannot afford to take on additional responsibilities for

⁸ Tokutei hieiri katsudō sokushin-hō [The Act on Promotion of Specified Non-profit Activities], Act No. 7/1998.

⁹ Kanmin renkei machi zukuri kenkyū-kai hōkoku-sho, supra note 3,14.

¹⁰ Kanmin renkei machi zukuri kenkyū-kai hōkoku-sho, supra note 3, 10.

¹¹ Ministry of Land, Infrastructure, Transport and Tourism, *Eria manejimento suishin manyuaru* [Manual on the Promotion of Area Management], 2008, 71.

¹² Kanmin renkei machi zukuri kenkyū-kai hōkoku-sho, supra note 3, 82; Eria manejimento suishin manyuaru, supra note 11, 135.

¹³ N. KADOMATSU, Legal Management of Urban Space in Japan and the Role of the Judiciary, in: Susan Rose-Ackerman et al. (eds.), Comparative Administrative Law (2nd ed., Northampton 2017) 497, 500–504.

the management of public facilities.¹⁴ In addition, profits from new developments, which used to cover the cost of building public space,¹⁵ are far less likely in an "urbanized society".

Third, there is a general tendency in Japanese politics to emphasize "regional competition". With the advance of local decentralization, the national government often stresses the significance of competition among municipalities. A governmental report on area-management emphasizes that "there is a now wider recognition among landowners, the administration etc. on the importance of increasing the attraction of their own communities, in order to maintain an edge against other communities".¹⁶

III. THE ŌSAKA CITY BID ORDINANCE

For many area management organizations, the biggest problem is financing. In addition to voluntary contributions from members, the organizations often acquire financial resources from advertisements, performing events or by running open cafes in the area, etc. Local governments often allow exclusive use of public facilities such as roads or parks for area management activities.

In 2014, Ōsaka City enacted a new local ordinance ($\bar{O}saka-shi$ eria manejiment katsudō sokushin jōrei [Ōsaka City Area Management Promotion Ordinance]). The ordinance is the first attempt in Japan to introduce a comprehensive legal scheme of Business Improvement Districts (BIDs), which is widely utilized in North America and Europe. Among other purposes, the Ōsaka BID scheme¹⁷ aims to guarantee stable revenue for area management activities and to prevent those activities being used for free. For that purpose, the ordinance allows the city (i) to collect compulsory contributions from the beneficiaries such as landowners or leaseholders in the area and (ii) to grant subsidies to area management organizations. However, this legal scheme is not a completely new creation of the ordinance but a packaged combination of the schemes already stipulated in existing national laws.¹⁸

First, the Ōsaka BID scheme specifies an area management organization as responsible for management activities in the area once the organization

¹⁴ Eria manejimento suishin manyuaru, supra note 11, 8.

¹⁵ Land readjustment project [*Tochi kukaku seiri jigyō*] is a typical example of such a city planning legal scheme.

¹⁶ Eria manejimento suishin manyuaru, supra note 11, 8.

¹⁷ See http://www.city.osaka.lg.jp/toshikeikaku/page/0000263061.html

¹⁸ ŌSAKA CITY PLANNING SECTION, Ōsaka-shi eria manejiment katsudō sokushin jōrei [On the Area Management Promotion Ordinance of Ōsaka City], in: Kobayashi (ed.), Saishin eria manejiment [Area Management: the Latest Situation] (Kyōto 2015) 163, 165.

acquires the status of an Urban Renewal Promotion Corporation (*toshi saisei suishin hōjin* 都市再生推進法人), as stipulated in Art. 118 of the Urban Renewal Act.¹⁹ By that, the city acknowledges the "public status" of the organization.²⁰

Second, the Ōsaka BID scheme identifies the location where the area management activities will be conducted and the policy of town planning in that area. Such identification is made by the development of the district plan (*chiku keikaku* 地区計画) provided for by Art. 12-4(1) of the City Planning Law²¹ and the Urban Renewal Improvement Plan (*toshi saisei seibi keikaku* 都市再生整備計画) by Art. 46 of the Urban Renewal Act.

Third, the Ōsaka BID scheme makes it possible for area management organizations to collect compulsory contributions from the beneficiaries of the activities. For that purpose, the ordinance utilizes a levy scheme (*buntankin*分担金) laid out in Art. 224 of the Local Autonomy Act,²² which stipulates that local autonomies may, with respect to incidents that give benefit to only some people or part of the local autonomy, collect levies appropriate to the benefit derived solely from those who receive special benefit.

However, the premise of the application of the BID scheme is the conclusion of Urban Convenience Promotion Agreement (*toshi riben zōshin kyōtei*, 都市利便增進協定) in Art. 74 of the Urban Renewal Act. Such agreements shall be voluntarily concluded between the area management organization as an Urban Renewal Promotion Corporation, and the landowners or leaseholders. Namely, the collection of compulsory contributions is possible only from those beneficiaries that have voluntarily agreed in advance to pay the contributions. Although the only merit of using the scheme is that money is collected by local governments, this does have significance. Moreover, as the above Art. 224 of the Local Autonomy Act stipulates, the levy may be collected only "to the extent of the benefit". Hence the Ōsaka BID scheme collects the contributions only for the expenses necessary for the management of the public facilities, for which the area management organization is entrusted. The organization cannot collect contributions for the expenses of such activities as performing events or running open cafes.

Fourth, the Ōsaka BID scheme makes it possible for area management organizations to occupy part of public road sites for the use of advertisements, open cafes etc. Under the Japanese Road Act,²³ such exclusive oc-

¹⁹ *Toshi saisei tokubetsu sochi-hō* (The Act on Special Measures concerning Urban Reconstruction), Act No. 22/2002.

²⁰ ŌSAKA CITY PLANNING SECTION, supra note 18, 166.

²¹ Toshi keikaku-hō [City Planning Act], Act No. 100/1968.

²² Chihō jichi-hō [Local Autonomy Act], Act No. 67/1947.

²³ Dōro-hō [Road Act], Act No. 180/1952.

cupancy shall be permitted only when it is unavoidable because there is no room apart from the road site (Art. 33). However, the Urban Renewal Act stipulates that such restrictions may be relaxed in the area where an Urban Renewal Improvement Plan has been enacted. The Ōsaka BID ordinance promotes the use of such exceptional clause.

IV. THE "PUBLIC NATURE" OF AREA MANAGEMENT ACTIVITIES?

As we have seen, the Ōsaka City BID ordinance is an attempt to institutionalize public support for area management activities, albeit with restraint. The city government collects levies compulsorily from the landowners and leaseholders, however only from those who have agreed to pay them in advance. The scope of purpose for which the levies can be used is limited. The legal scheme is very reserved compared with its counterparts in North America or Europe. However, it remains a fact that the national government and many municipalities such as Ōsaka city are seeking effective measures to give support to area management activities by financial support or allowing exclusive use of public space. Hence, whether or not the area management activities have a "public nature" becomes a problem worthy of discussion.

Generally speaking, there are two contexts in the field of city planning where "public nature" emerges as a question.²⁴ The first context is the justification of legal restrictions or deprivation of property rights. Legal restrictions such as Use Districts (*vōto chiiki*, 用途地域)²⁵, a type of zoning regulation, may be justified as a means for the prevention of negative externalities to the neighborhood. Concerning deprivation of property, the Japanese Land Expropriation Act lists the types of projects for which expropriation is possible.²⁶ In principle, they have the common feature that they give benefit to "the public", namely "many and unspecified persons". The second context is the justification for spending public money. For example, the permissibility of giving direct financial aid out of public funds to the victims of natural disasters such as earthquakes has long been a point of discussion. In addition, efficiency is always required in the use of public spending.

In the "urbanizing society" phase, the "public nature" of city planning policy was relatively easy to understand. The City Planning Law of 1968,

²⁴ For details, see N. KADOMATSU, "Toshi no suponjika" e no taiō to kōkyō-sei [On the Public Nature of Policy Responses to the Perforation of Cities], in: Kurumizawa et al. (eds.), Gendai toshi-hō no kadai to tenbō [Tasks and Perspectives of Contemporary Urban Law] (Tōkyō 2018) 53.

²⁵ Art. 8 Para. 1 Item. 1 of the City Planning Act (supra note 21).

²⁶ Art. 3 of the Tochi shuyō-hō [Land Expropriation Act], Act No. 219/1951.

whose central concern was preventing residential suburban sprawl,²⁷ restricted development in Urbanization Control Areas (*shigai-ka chōsei kuiki*, 市街化調整区域). The justification of this restriction of property can be found in the need for effectiveness in public spending for the provision of urban infrastructure. Use Districts regulations in the Urbanization Areas (*shigai-ka kuiki*, 市街化区域) can be justified as a means of preventing negative externalities. Such clarity has been lost in the "urbanized society", where the focus of land-use policy has shifted to the improvement of the quality of living. Moreover, in the era of "shrinking cities" when not only the "overuse" but also the "underuse" of property become a serious problem, new types of administrative interventions are necessary. As a result, the intersection of public and private interests has become more prevalent.

If area management activities were to be found solely in the efforts of landowners for the purpose of promoting their asset values, it would constitute only a pursuit of private interests.²⁸ On the other hand, a study suggests that the public nature of area management activities can be demonstrated by (i) the spillover effects to the neighborhood outside of the target area, (ii) the spillover effects to non-members within the target area (iii) the effect of obtaining total surplus (iv) improvement of governmental finance (v) protection of the weak and fairness.²⁹ However, if the nature of such spillover effects is still limited to the promotion of asset values³⁰, we cannot find that the area management activities have a public nature.

The case can be made that the public nature of area management activities can be found in increasing the attractiveness of public space that is open to "many and unspecified persons", which is nothing but the classic feature of "publicness". The promotion of asset values in the area or even in the neighborhood itself cannot be recognized to be "public", unless the significance of the area is legally acknowledged, such as by its positioning in city planning. The pursuit of private interests may coexist, but these interests alone cannot be something that legitimizes public support. While admitting the importance of area management activities, the cautious approach of a restrictive and incremental expansion of public support, as it is presently taken in Japan, seems reasonable.

²⁷ KADOMATSU, supra note 13, 501.

²⁸ HARADA, supra note 4, 438.

²⁹ Kanmin renkei machi zukuri kenkyū-kai hōkoku-sho, supra note 3, 43.

³⁰ The above study uses the hedonic approach and suggests that it is highly probable that area management activities have had positive influence on the land price in the target area. Kanmin renkei machi zukuri kenkyū-kai hōkoku-sho, supra note 3, 29–30.

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V. GENTRIFICATION AND "GATED COMMUNITIES"

Another point should be added. There is at least a theoretical possibility of gentrification as a by-product of area management activities. David Harvey describes the relationship between promoting the property value of common space and gentrification.

"(S)treets were often a common – a place of popular sociality, a play space for kids [...]. But that kind of common was destroyed and turned into a public space dominated by the advent of the automobile (prompting attempts by city administrations to recover some aspects of a "more civilized" common past by organizing pedestrian precincts, sidewalk cafés, bike paths, pocket parks as play spaces, and the like). But such attempts to create new kinds of urban commons can all too easily be capitalized upon. In fact they may be designed precisely with that in mind. Urban parks almost always increase nearby residential property prices in surrounding areas [...]. The newly created High Line in New York City has had a tremendous impact on nearby residential property values, thus denying access to affordable housing in the area for most of the citizens of New York City by virtue of rapidly rising rents. The creation of this kind of public space radically diminishes rather than enhances the potentiality of commoning for all but the very rich."³¹

In Japan, area management activities are presently focusing on business districts in metropole centers as well as in local cities, so the above danger of gentrification may be minimal. However, when the activities spread into residential areas, such risks may become more acute.

In the United States, a type of development called "common interest developments" (CIDs) is prevalent. This is characterized as

"the individual ownership of either a housing unit or parcel coupled with the right to use shared common areas and facilities. These common areas can include roads, parks or open space, lakes, clubhouses, gyms, pools, and tennis courts".³²

All property owners are obliged to acquire the membership of the homeowner association (HOA) that owns as well as manages the common areas, which often includes streets and parks.³³ It is said that

"(p)lanned subdivisions of single-family homes with homeowner associations (HOAs) are now the norm in suburbs across the nation, and new residential construction in central cities nearly always take the form of condominium and townhome developments".³⁴

³¹ D. HARVEY, Rebel Cities: From the Right to the City to the Urban Revolution (Verso, 2012 (Kindle edition)) 74–75.

³² J. L. JOHNSTON/K. JOHNSTON-DODDS, Common Interest Developments: Housing at Risk? California Research Bureau, 2002, 3. *https://www.library.ca.gov/crb/02/12/02-012.pdf*.

³³ E. McKENZIE, Privatopia. Homeowners Associations and the Rise of Residential Private Government (New Haven 1994) 126–127.

Since these HOAs carry out "what once would have been the responsibilities of local governments"³⁵ such as the provision and management of streets or parks and enforce the rules stipulated in the covenants that established the CIDs, some authors describe HOAs as "private governments".³⁶ Since many CIDs segregate themselves from the outside world by physical gates – not only privately-owned areas but also the common areas—, they are sometimes called "gated communities".³⁷

In Japan, CIDs and HOAs have been rather rare until now, although some condominiums have recently attracted social attention as being "gated communities".³⁸ In addition, it is reported that some luxurious high-rise condominiums (*tawā mansion* $\beta \nabla \neg \neg \neg \checkmark \because \exists \checkmark$) have various common facilities inside the building, therefore effectively segregating themselves from the common spaces of the city.³⁹

VI. CONCLUSION

We have seen that the focus on area management activities in Japan has emerged as a result of the transformation of the tasks of urban policy. In the "urbanized society", the value of a specific area cannot be enhanced without voluntary participation of the stakeholders. However, so long as the purpose of area management activities is focused upon the promotion of asset values, regardless of whether this is in the target area or in the surrounding area, the "public nature" of the activities used to justify public support for them is doubtful. As a counterbalance, the classic feature of "publicness" as "many and unspecified persons" should be kept in mind. Moreover, a similar emphasis on the active participation of the stakeholders in the context of the residential area might easily introduce segregation such as in gated communities. We must also note that one may not need physical gates to induce gentrification. As such, the tasks of present urban policy face a dilemma.

There is a school of thought which highly appreciates HOA and other related schemes as a means to protect and manage a comfortable living envi-

³⁴ E. McKENZIE, Beyond Privatopia. Rethinking Residential Private Governments (Washington D.C. 2011) ix.

³⁵ McKENZIE, *supra* note 34, ix

³⁶ For the discussion, see McKENZIE, *supra* note 33, 122–149.

³⁷ E. J. BRAKELEY/M. G. SNYDER, Fortress America. Gated Communities in the United States (Cambridge 1997).

³⁸ For example, a newspaper article on Asahi Shimbun *"Kakowareta machi, kau anshin"* [Buying Peace of Mind in a Gated Town], 13 October 2008.

³⁹ Y. HIRAYAMA, *Tōkyō no hate ni* [To the End of Tōkyō] (Tōkyō 2006) 92–100.

ronment, and to preserve valuable community resources such as *satoyama*⁴⁰ (the border area between mountain foothills and arable flat land).⁴¹ The view also emphasizes that the joint management and shared use of common space contributes to community building.⁴² It also praises the building of "territory consciousness *(nawabari ishiki)* with the common space as the core". "When walking down the street, one will be asked tough questions such as "Where are you going?" or "Do you want something?". Those questions sound as if to say: "Strangers must get out!". Such towns have high level of crime prevention".⁴³ Thus, it becomes difficult to draw a line between community building and segregation.

Another view values condominium management as "schools of democracy" (Alexis de Tocqueville/James Bryce).⁴⁴ In such management, so the view argues, the members will be "individualized" and participate in the democratic governance that solves conflicts of interests by putting restrictions on the use of property.⁴⁵

Yet another view criticizes gated communities as being a "segregation of social space", which "hinders political communication among people with different positions, brings indifference to and distorted images of the people living in other spaces".⁴⁶ Hence, the conditions for "publicness" as a heterogeneous communication space will be endangered.⁴⁷

While the author of this article feels sympathy to the latter view, we must face the fact that segregation may be an expression of the classic dilemma of city planning. While city planning may strive for the ideal of coexistence and participation of heterogeneous people, the actual driving force for participatory planning practice may be homogenous communities.⁴⁸ The main effect of planning schemes such as zoning may be only a consolidation of the existing habitation structure. The promotion of area

- 45 TAKEI, *supra* note 44, 185
- 46 J. SAITO, Kōkyō-sei [Publicness] (Tōkyō 2000) 82
- 47 J. SAITO, *supra* note 46, 82
- 48 In a certain famous condominium conflict in Japan between the developer and the neighborhood, a civic leader criticized the developer saying: "By what power are you authorized to intrude into our sanctuary with your dirty shoes on?". This feeling of "our space" as sanctuary must surely have been the driving force of the civic movement. However, it may not be completely off the mark to sense a risk of exclusivism in that statement.

⁴⁰ https://en.wikipedia.org/wiki/Satoyama

H. SAITO, Ju kankyō manejimento [The Management of Living Environment] (Kyōto 2011) 8–10, 18, 60–79.

⁴² H. SAITO, *supra* note 41, 20.

⁴³ H. SAITO, *supra* note 41, 20.

⁴⁴ T. TAKEI, Shūgō jūtaku demokurashī [Collective Housing Democracy] (Kyōto 2005), 8

management activities will be conducted in the midst of such a dilemma. Therefore, we will need a subtle balancing in formulating measures to activate such activities and in discussing which types of public support may be possible or desirable.

SUMMARY

The contribution explores the significance of recent and current attention towards "area management" activities in Japanese urban policy. It, first, examines the current, highly diverse situation of such activities in Japan and the historical background. The author then provides for an analysis of the first attempt in Japan to introduce a comprehensive legal scheme of so-called "Business Improvement Districts" (BIDs) by the city of Ōsaka in 2014. BIDs are widely utilized in North America and Europe. Among others, the Ōsaka BID scheme aims to guarantee stable revenue for area management activities and attempts to institutionalize public support for them. This raises the question whether area management activities have a public nature or whether they constitute only a pursuit of private interests. Another aspect discussed is the possibility of gentrification and the creation of social segregation in the form of socalled "gated communities" as a by-product of area management activities.

(The Editors)

ZUSAMMENFASSUNG

Der Beitrag untersucht die wachsende Bedeutung von lokalen planerischen Initiativen als Instrumente der Stadtplanung in Japan. Besonderes Augenmerk wird auf eine Initiative der Stadt Ösaka gelegt, welche erstmals für Japan im Jahr 2014 einen rechtlichen Rahmen für das Projekt eines aus Nordamerika und Europa bekannten sogenannten "Business Improvement District" (BID) geschaffen hat. Ziel des Projektes ist, eine stabile Finanzierung und eine öffentliche Unterstützung für derartige planerische Vorhaben zu gewährleisten. Das wirft die Frage auf, ob solche lokalen Initiativen im öffentlichen oder lediglich im privaten Interesse der unmittelbar Beteiligten liegen. Ferner wird die Gefahr diskutiert, dass derartige Vorhaben im Ergebnis zu einer Gentrifizierung der betroffenen Gebiete und zu einer sozialen Trennung in Form von "gated communities" führen können.

(Die Redaktion)