

**IN THE CIRCUIT COURT OF ST. LOUIS
STATE OF MISSOURI
21ST JUDICIAL CIRCUIT**

IN RE: CREATION OF THE)
KIRKWOOD CITY-WIDE)
TRANSPORTATION DEVELOPMENT)
DISTRICT,)
)
CITY OF KIRKWOOD, a third-class city)
with a charter form of government, and)
)
DOWNTOWN KIRKWOOD)
SPECIAL BUSINESS DISTRICT, a)
political subdivision,)
)
Petitioners,)
)
v.)
)
STATE OF MISSOURI HIGHWAYS AND)
TRANSPORTATION COMMISSION,)
)
and)
)
ST. LOUIS COUNTY, MISSOURI,)
)
)
Respondents.)

Case No.: 24SL-CC01204

**PUBLIC COMMENT SUBMISSION IN RESPONSE
TO THE PETITION FOR THE CREATION OF A TRANSPORTATION DEVELOPMENT DISTRICT**

COMES NOW, David Stokes, Director of Municipal Policy at the Show-Me Institute and in connection with the Petition for the Creation of the Kirkwood City-Wide Transportation Development District files these comments to provide the court information relevant to the creation of a transportation development district (TDD) in Kirkwood. The Show-Me Institute is a nonprofit, nonpartisan Missouri based think tank that supports free-market solutions for state and local policy. The ideas presented herein are my own.

TDDs are a common and increasingly popular kind of special taxing district in Missouri. They are authorized to use sales taxes, property taxes, special assessments, or user fees (e.g., tolls) to fund transportation-related projects, including but not limited to roads, bridges, mass-transit facilities, and

parking lots. They may be created by a vote of the people within the district or by signatures of the affected property owners.¹ They are independent government agencies and are required to submit financial reports and be subject to audits at certain intervals.

A TDD, for example, operates the heavily traveled toll bridge in the Lake of the Ozarks. TDDs also have been successfully used to build needed roads in rural communities.² However, despite those public uses of TDDs, the large majority of TDDs operate as a troubling form of tax subsidy for private developers. TDDs created by votes of the public are rare. The large majority of them are simply formed by commercial property owners—often just one owner—creating a TDD to implement a special sales tax on their commercial property. They then use the funds generated by the tax—which are public tax dollars—for essentially private purposes, such as parking lots.

The Missouri state auditor's office and other local oversight agencies have routinely flagged TDDs for many reasons, including failure to use competitive bidding, board member conflicts of interest, failure to provide necessary financial reports, not notifying shoppers of the added taxes as required by law, and improperly collecting sales taxes from businesses outside of the districts.³ State auditors of both parties have called for much greater oversight, increased transparency, and other limits on TDDs.⁴

The proposed Kirkwood TDD would fund maintenance on various transportation projects in Kirkwood with a one-half of one percent (0.50%) sales tax within the proposed district, which I understand to be coterminous with Kirkwood city boundaries. I want to commend a few aspects of this proposal as well as offer suggestions for further consideration. Shoppers within the city impose some costs on the facilities for which the proposed TDD would fund upgrades, and it is fair that shoppers pay for some of the costs of the upgrades. This proposal for establishing a TDD appears to be an improvement over TDDs in use elsewhere in Missouri. Since the borders of the proposed TDD would be city-wide, all

¹ RSMO §238.230.

² For example, US Highway 36 from Hannibal to Macon, Missouri.

³ Stokes, David, "Here's a Crazy Idea, Tax Yourself," Show-Me Institute, June 2021. <https://showmeinstitute.org/blog/taxes/heres-a-crazy-idea-tax-yourself/>.

⁴ Missouri State Auditor, List of State Audits – Special Taxing Districts: <https://auditor.mo.gov/AuditReport/Reports?SearchLocalState=41>.

residents of Kirkwood would be able to vote on the proposal. Additionally, the city and the Downtown Kirkwood Special Business District, rather than a single developer or commercial property owner, are seeking the TDD. This fact makes it more likely that the money raised will go toward projects genuinely in the public interest. Both of these aspects of the TDD under consideration appear to be improvements over TDDs that are requested by developers and voted on by only a few members of the affected community. The ongoing oversight over tax dollars is crucial, as the state auditor has released reports on widespread financial mismanagement of TDDs statewide.⁵

However, the fact that this TDD proposal is an improvement over other TDDs should not exclude consideration of other relevant policies. While the TDD would fund projects beyond just road maintenance, there are better ways to fund local road maintenance than through sales taxes.⁶ Paying for road maintenance with taxes only tangentially related to road usage promotes road usage choices that lead to faster road deterioration.⁷ City officials should consider implementing a local fuel tax to better connect the act of driving with paying for road upkeep. Local fuel tax revenue is constitutionally required to be spent on local road maintenance, decreasing the risk of financial misuse. At least seven other Missouri cities have local fuel taxes, with none higher than two cents per gallon.⁸ Kirkwood has seven gas stations within its borders.⁹ According to national estimates, gas stations sell approximately 1.2 million gallons of

⁵ Galloway, Nicole. Transportation Development Districts. Office of the Missouri State Auditor. Report No. 2017-020. April 2017. <https://app.auditor.mo.gov/Repository/Press/2017020228917.pdf>.

⁶ Stokes, David and Jakob Puckett. Local Fuel Taxes are the Secret Garden of city road funding options. Columbia Daily Tribune. 8 February 2021. <https://www.columbiatribune.com/story/opinion/2021/02/08/local-gas-taxes-secret-garden-city-road-funding-options/4404425001/>; Puckett, Jakob. Kirkwood Should Consider a Local Fuel Tax to Fund Its Transportation Needs, Not a TDD. Show-Me Institute. 16 March 2021. <https://showmeinstitute.org/blog/special-taxing-districts/kirkwood-should-consider-a-local-fuel-tax-to-fund-its-transportation-needs-not-a-tdd/>.

⁷ National Surface Transportation Infrastructure Financing Commission, "Paying Our Way: A New Framework for Transportation Finance," 2009. Page 8, 84, 136. https://financecommission.dot.gov/Documents/NSTIF_Commission_Final_Report_Mar09FNL.pdf.

⁸ Puckett, Jakob. What to Know About Local Fuel Taxes. Show-Me Institute. 11 February 2021. <https://showmeinstitute.org/blog/state-and-local-government/what-to-know-about-local-fuel-taxes/>.

⁹ Seven is my best estimate. I asked the city if they had an exact number from business license records, and they said they did not. Seven comes from a review of Kirkwood's GIS portal and Google maps.

gasoline each year.¹⁰ Assuming no behavior changes, a 2 cent per gallon tax on gasoline would raise approximately \$168,000 per year.¹¹ It is not possible to know how much fuel sales would differ if such a tax were instituted, although it is possible that some sales could be diverted. However, the same logic could be applied to the sales tax in the proposed TDD to argue that some commercial sales would be diverted. Projects other than road upkeep could be funded by a small property tax increase, as property tax revenue is more stable than sales tax revenue.¹²

While there is no doubt this proposed TDD would raise more local tax revenue than a local gas tax, the purpose of taxation is not to maximize revenues. Taxes should be constructed in the best possible manner to fund government in a way that encourages efficient choices by consumers. A local gas tax does that. A general transportation sales tax does not.

Whatever the outcome, if a TDD is approved by the voters, Kirkwood should carefully manage the money raised from any tax and ensure that all proper reporting, transparency, and auditing rules are observed. The proposed TDD appears to offer commendable improvements over other TDDs, but city officials should also keep other policy options in mind as they look for ways to fund the proposed projects.

Respectfully submitted,

By:

David Stokes, Director of Municipal Policy

¹⁰ Babcock, Bruce A. and Sebastian Pouliot. Impact of Sales Constraints and Entry on E85 Demand. CARD Policy Brief 13-PB 12, August 2013. <https://www.card.iastate.edu/products/policy-briefs/display/?n=1188#>.

¹¹ We have left diesel sales out of the equation. As best we can tell, none of the Kirkwood gas stations are highway stops with significant truck traffic. The seven Kirkwood stations likely sell very little diesel gasoline, but if Kirkwood were to tax diesel at the same level, the tax revenue total would be higher than \$168,000.

¹² Baier, Corianna and Elias Tsapelas. Making Missouri Resilient: Assessing State and Local Government Recession Preparedness. Show-Me Institute. June 2021. Page 5. <https://showmeinstitute.org/wp-content/uploads/2021/06/20210602-Recession-Preparedness-Baier-Tsapelas.pdf>.

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