

RESOLUTION NO. 07-49**A RESOLUTION RELATING TO THE ESTABLISHMENT OF A TRANSPORTATION DEVELOPMENT DISTRICT IN CONJUNCTION WITH THE ARNOLD TRIANGLE TRANSPORTATION DEVELOPMENT DISTRICT.**

WHEREAS, the City of Arnold, Missouri (the "City") desires to facilitate the following transportation-related improvements to be located within the boundaries of the City: (1) a new connection road between Highway 141 and Michigan, (2) relocation of Church Road, (3) a new intersection at Church Road, Missouri State Road and Old Lemay Ferry Road, (4) a new intersection at Church Road and Big Bill Road, (5) acceleration and de-acceleration lanes along Highway 141, (6) relocation of Big Bill Road, (7) landscaping and beautification of the intersection at Highway 141 and Interstate 55 and (8) improvements to Jeffco Boulevard, Highway 141 and other publicly accessible roadways, parking facilities and transportation-related improvements; and

WHEREAS, the City Council hereby finds that the foregoing improvements described above will significantly improve the safety and welfare of the citizens of the City, enhance the economic viability of its commercial areas, and otherwise benefit the residents and businesses within the City in furtherance of a master road and transportation plan for the City; and

WHEREAS, the City Council finds and determines that the creation of a joint transportation development district with the Arnold Triangle Transportation Development District (the "District") pursuant to Section 238.207.5 of the Revised Statutes of Missouri, as amended, will provide a source of revenue to fund said improvements, and therefore the creation and implementation of the joint transportation development district is in the best interest of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:

Section 1. The City Council finds and determines that it is in the best interests of the City to join with the District in the creation of a transportation development district within the boundaries of the City. The City Council hereby calls for the joint establishment of the transportation development district for the purpose of funding the costs of the transportation-related improvements as described in the Petition for the Creation of a Transportation Development District (the "Petition"), attached as **Exhibit A** hereto.

Section 2. Gilmore & Bell, P.C., and Robert Sweeney, Esq., are hereby authorized and directed to execute the Petition, in substantially the form attached as **Exhibit A** attached hereto, and are further authorized and directed to take such other steps as are necessary to create and implement the transportation development district in accordance with Chapter 238 of the Revised Statutes of Missouri, as amended.

Section 3. This Resolution shall be in full force and effect after its passage and approval.

[Signatures on following page]

PASSED and APPROVED this 20 day of September 2007.



Mayor

(SEAL)

ATTEST:



City Clerk

~~XXXXXX~~
Changes →

EXHIBIT A
FORM OF PETITION

[On file in the Office of the City Clerk.]

IN THE CIRCUIT COURT OF THE COUNTY OF JEFFERSON,
STATE OF MISSOURI

IN RE THE FORMATION OF THE ARNOLD)
RETAIL CORRIDOR TRANSPORTATION)
DEVELOPMENT DISTRICT.)

CITY OF ARNOLD, MISSOURI.)
a Missouri political subdivision,)

and)

ARNOLD TRIANGLE TRANSPORTATION)
DEVELOPMENT DISTRICT.)
a Missouri political subdivision,)

Petitioners.)

v.)

Cause No. _____

MISSOURI HIGHWAYS AND)
TRANSPORTATION COMMISSION)
105 West Capitol Avenue)
Jefferson City, Missouri 65101)

SERVE: Mari Ann Winters)
Secretary to the Commission)
105 West Capitol Avenue)
Jefferson City, Missouri 65101,)

Respondent.)

PETITION FOR THE CREATION
OF A TRANSPORTATION DEVELOPMENT DISTRICT

COME NOW Petitioners, the City of Arnold, Missouri, and the Arnold Triangle Transportation Development District, pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275, inclusive, of the Revised Statutes of Missouri, as amended (the "TDD Act") and petition the Court for the purpose of creating a transportation development district (the "District") and in support thereof state as follows:

THE PARTIES

1. Petitioner, the City Council of the City of Arnold, Missouri ("Arnold"), a third-class city and a political subdivision of the State of Missouri in which the District will be located, is a "local transportation authority" within the meaning of Section 238.202.1(4) of the TDD Act.

2. Petitioner, the Board of Directors of the Arnold Triangle Transportation Development District (the "Arnold Triangle TDD"), a transportation development district and political subdivision of the State of Missouri in which the District will be located, is a "local transportation authority" within the meaning of Section 238.202.1(4) of the TDD Act.

3. Respondent, Missouri Highways and Transportation Commission (the "Commission"), is the constitutional authority responsible for constructing and maintaining the Missouri highway system and is a necessary party under Section 238.207.4(2) of the TDD Act.

BACKGROUND

4. On August 16, 2006, the Arnold Triangle TDD was organized and established pursuant to the TDD Act by a Consent Judgment and Order entered by this Court (Cause No. 06JE-CC00120) for the purposes of funding, constructing and implementing certain transportation-related projects within and adjacent to the boundaries of the Arnold Triangle TDD, which constituted a "project" within the meaning of the TDD Act.

5. On September 13, 2006, the board of directors of the Arnold Triangle TDD adopted a resolution (i) imposing, upon majority approval of the "qualified voters" (as defined in the TDD Act) of the Arnold Triangle TDD, a transportation development district-wide sales tax at the rate of one percent (1.0%) for a period not to exceed forty (40) years from the date on which such tax is first imposed and (ii) calling an election within the boundaries of the Arnold Triangle TDD on the question of whether to impose said sales tax.

6. On January 8, 2007, Arnold, as the sole property owner within the Arnold Triangle TDD, pursuant to Sections 238.215 and 238.216 of the TDD Act, filed its verified Unanimous Petition of Property Owners approving the imposition of the Arnold Triangle TDD sales tax with the Clerk of this Court, thereby constituting an "election" under the TDD Act.

7. On August 13, 2007, the boundaries of the Arnold Triangle TDD were amended pursuant to Section 238.208 of the TDD Act by a Judgment and Order Adjusting the Boundaries of the Arnold

Triangle Transportation Development District entered by this Court (Cause No. 07JE-CC00460) and the properties within the amended boundaries became subject to the Arnold Triangle TDD sales tax.

8. Arnold has approved the funding, construction and implementation of additional projects within and adjacent to its retail corridor in furtherance of a master road and transportation plan for Arnold (collectively, the "Transportation Project")(as further described below).

11. On September ____, 2007, the Arnold Triangle TDD approved a resolution (attached hereto as Exhibit B and incorporated herein by reference) authorizing the Arnold Triangle TDD to assist Arnold in the funding, construction and implementation of the Transportation Project.

12. Arnold and the Arnold Triangle TDD desire to create the District under the TDD Act for the sole purpose of funding the Transportation Project through the imposition of a transportation development district sales tax (as further described below).

PETITION REQUIREMENTS

13. Petitioner Arnold is the governing body of a local transportation authority acting in its official capacity and has adopted a resolution (attached hereto as Exhibit A and incorporated herein by reference) calling for the joint establishment of the District pursuant to Section 238.207.5 of the TDD Act.

14. Petitioner Arnold Triangle TDD is the governing body of a local transportation authority acting in its official capacity and has adopted a resolution (attached hereto as Exhibit B and incorporated herein by reference) calling for the joint establishment of the District pursuant to Section 238.207.5 of the TDD Act.

15. The name and address of each local transportation authority within the District is as follows:

City of Arnold, Missouri
2101 Jeffco Boulevard
Arnold, Missouri 63010

Arnold Triangle Transportation Development District
2101 Jeffco Boulevard
Arnold, Missouri 63010

16. The name and address of each Respondent, including the Missouri Highways and Transportation Commission and each "affected" local transportation authority (except the Petitioners), is as follows:

Missouri Highways and Transportation Commission
105 West Capitol Avenue
Jefferson City, Missouri 65102

17. The District is composed of contiguous land pursuant to Section 238.207.5(2) of the TDD Act.

18. A description of the property to be included in the District is attached as Exhibit C and shown on the map attached as Exhibit D.

19. A general description of the Transportation Project proposed to be undertaken by the District, including a description of the approximate location of the Transportation Project, is attached as Exhibit E.

20. The name of the District will be the "Arnold Retail Corridor Transportation Development District."

21. The board of directors of the District will have four (4) members which shall be comprised of the presiding officer of each affected local transportation authority within the District and one person designated by the governing body of each affected local transportation authority within the District pursuant to Section 238.220.3(1) of the TDD Act.

22. The Transportation Project will be funded from the proceeds of a transportation development district sales tax (the "TDD Sales Tax") to be imposed pursuant to Section 238.235 of the TDD Act. Under the TDD Act, the District may impose the TDD Sales Tax upon approval of the "qualified voters" (as defined in Section 238.202.2(2) of the TDD Act) of the District in increments of one-eighth of one percent up to a maximum of one percent on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the District, if such property and services are subject to taxation by the State of Missouri pursuant to the provisions of Section 144.010 to 144.525 of

the Revised Statutes of Missouri, as amended, except the TDD Sales Tax shall not apply to the sale or use of motor vehicles, trailers, boat or outboard motors nor to sales of electricity or electrical current, water and gas, natural or artificial, nor to sales of service to telephone subscribers, either local or long distance. The Petitioners desire to seek voter approval of the imposition of the TDD Sales Tax at a rate not to exceed one percent (1.0%), to (i) pay costs of financing or refinancing the Transportation Project, (ii) reimburse the Petitioners for the costs of filing and defending this Petition as authorized by Section 238.217 of the TDD Act and (iii) pay the principal of, premium, if any and interest on bonds, notes or other obligations issued pursuant to Section 238.240 or 238.242 of the TDD Act (the "TDD Obligations") to fund the costs of financing or refinancing the Transportation Project. The Petitioners intend for the District to impose the TDD Sales Tax at a rate of less than one percent (1.0%) if the revenues derived from the TDD Sales Tax will be sufficient to pay the costs of the Transportation Project.

23. The District's proposed boundaries will overlap all of the Arnold Triangle TDD. Pursuant to Section 238.235 of the TDD Act, the Arnold Triangle TDD currently imposes a transportation development district sales tax at a rate of one percent (1.0%) on all taxable sales within its boundaries. Pursuant to a resolution approved on September ____, 2007 (attached hereto as Exhibit B and incorporated herein by reference), the Arnold Triangle TDD has agreed, simultaneously with the imposition of the TDD Sales Tax, to repeal its sales tax. Consequently, the transportation development district sales tax imposed by the District and the Arnold Triangle TDD, collectively, will not exceed one percent (1.0%).

26. The District will not be an undue burden on any owner of property within the District and is not unjust or unreasonable.

DISSOLUTION OF THE DISTRICT AND REPEAL OF THE TDD SALES TAX

27. After development and initial maintenance costs of the Transportation Project have been paid, the District shall transfer ownership and control thereof to the Commission or each local transportation authority as provided in Section 238.275 of the TDD Act, unless such transfer is made sooner with the consent of the recipient.

28. The District shall be dissolved only in compliance with Section 238.275 of the TDD Act. In no event shall the TDD Sales Tax be repealed, in whole or in part, nor shall the District be dissolved, until payment in full and satisfaction of all obligations, except in accordance with the TDD Act.

WHEREFORE, the Petitioners request that the Court enter judgment and decree pursuant to the TDD Act:

a. Finding and certifying that this Petition is not legally defective and that the Respondent has been duly served with process in this action or otherwise properly appeared in this action;

b. Finding and certifying that the District is contiguous;

c. Finding and certifying that the District is neither illegal nor unconstitutional and certifying the creation of the District for qualified voter approval;

d. Finding and certifying that the proposed funding method and mechanism (*i.e.*, the imposition of the TDD Sales Tax) is neither illegal nor unconstitutional and certifying such funding mechanism for qualified voter approval;

e. Finding and certifying that the District is not an undue burden on any owner of real property within the District and is not unjust or unreasonable;

f. Finding and certifying that the Transportation Project is an authorized "project" within the meaning of Section 238.202.1(5) of the TDD Act;

g. Finding and certifying the question regarding District creation, Transportation Project development, and proposed funding for voter approval pursuant to Section 238.210.2 of the TDD Act;

h. Finding and certifying that notice of the Petition has been given to the public, by publication once a week for four (4) consecutive weeks in a newspaper of general circulation within the District, as required by Section 238.212.1 of the TDD Act;

i. Ordering the Circuit Court Clerk, pursuant to Section 238.216 of the TDD Act, to prepare a ballot containing a single question regarding the creation of the District, the

development of the Transportation Project and the imposition of the TDD Sales Tax in substantially the form set forth in Section 238.215.3(1) of the TDD Act;

j. Ordering the Circuit Court Clerk to mail a ballot to each qualified voter who applied for a ballot pursuant to Section 238.216.2 of the TDD Act along with (i) a return-addressed envelope directed to the Circuit Court Clerk's office and (ii) a sworn affidavit on the reverse side of such envelope for the voter's signature in substantially the form set forth in Section 238.216.3 of the TDD Act;

k. Specifying a date, pursuant to Section 238.216.1(2) of the TDD Act, on which ballots for the election shall be mailed by the Circuit Court Clerk, which date shall be a Tuesday, and shall be not earlier than the eighth Tuesday from the issuance of this Court's judgment and decree, and shall not be on the same day as an election conducted under the provisions of Chapter 115 of the Revised Statutes of Missouri, as amended;

l. Ordering the Circuit Court Clerk to notify each qualified voter who was mailed a ballot that, pursuant to Section 238.216.5 of the TDD Act, voted ballots shall be returned to the Circuit Court Clerk's office by mail or hand delivery no later than 5:00 p.m. on the sixth Tuesday after the date for mailing the ballots;

m. Ordering the Circuit Court Clerk to transmit all voted ballots to a team of judges of not less than four to be selected by this Court from lists compiled by the election authority of Jefferson County, with an equal number from each of the two major political parties, who shall, upon receipt of the voted ballots, verify the authenticity of the ballots, canvass the votes, certify the results and immediately transmitted said results to this Court;

n. Ordering the Circuit Court Clerk to transmit a certified copy of the results of the election to the Clerk of Jefferson County, and ordering the Clerk of Jefferson County to cause the same to be spread upon the records of the Jefferson County Commission; and

o. Making any additional findings and granting such further relief that the Court deems necessary and proper.

Respectfully submitted,

GILMORE & BELL, P.C.

By:

Mark D. Grimm, #34660
Shannon W. Creighton, #52465
One Metropolitan Square, Suite 2350
St. Louis, Missouri 63102
(314) 436-1000
(314) 436-1166 (Facsimile)

Attorneys for Petitioners the City of Arnold, Missouri,
and the Arnold Triangle Transportation Development
District

ROBERT SWEENEY, ESQ.

By:

Robert Sweeney, #38322
9806 Big Bend Road
Kirkwood, Missouri 63122
(314) 821-9882
(636) 797-4900 (Facsimile)

Attorney for Petitioner the City of Arnold, Missouri

EXHIBIT A

RESOLUTION OF PETITIONER ARNOLD
CALLING FOR THE JOINT ESTABLISHMENT OF THE DISTRICT

EXHIBIT B

RESOLUTION OF PETITIONER ARNOLD TRIANGLE TDD
CALLING FOR THE JOINT ESTABLISHMENT OF THE DISTRICT

EXHIBIT C

DESCRIPTION OF THE PROPERTY

The Transportation Development District consists of the following property:

EXHIBIT E

DESCRIPTION OF THE TRANSPORTATION PROJECT

The Transportation Project consists of the design and construction of the following road improvements in and adjacent to the District: (1) a new connection road between Highway 141 and Michigan, (2) relocation of Church Road, (3) a new intersection at Church Road, Missouri State Road and Old Lemay Ferry Road, (4) a new intersection at Church Road and Big Bill Road, (5) acceleration and deceleration lanes along the south side of Highway 141, (6) relocation of Big Bill Road, (7) landscaping and beautification of the intersection at Highway 141 and Interstate 55 and (8) improvements to Jeffco Boulevard, Highway 141 and other publicly accessible roadways, parking facilities and transportation-related improvements within the District.

The Transportation Project shall also include: (1) the costs associated with the operation and maintenance of the Transportation Project; (2) costs of right-of-way and other land acquisition, settlement and transfer, including relocation costs, taxes, surveys and other professional fees; (3) costs for demolition, earth work, erosion control, including paving, sanitary sewers, storm drainage, water systems and retention basins, provisions for the construction and/or relocation of utilities, including electric, gas, telephone, fiber optic cable, as well as landscaping, street lighting and environmental engineering and abatement; (4) costs for replacement of existing roadway surfaces, curbs and gutters, replacement or installation of sidewalks, traffic/pedestrian signalization, signage, street lighting and landscaping; (5) costs for legal and engineer's fees, construction cost financing, placement fees, interest, builder's risk insurance, design, engineering, development, project management, architect and contractor fees, as well as all other professional costs associated with the Transportation Project, including accounting and appraisal fees; and (6) the administrative, legal and accounting costs associated with the creation, administration and existence of the District and costs associated with the collection and enforcement of the TDD Sales Tax.



PROPOSED CONTEXT PLAN
NOT TO SCALE

ARNOLD CENTRAL RETAIL/COMMERCIAL AREA
REGIONAL TRANSPORTATION DEVELOPMENT DISTRICT PLAN

ARNOLD,
MISSOURI
08.019
08.13.07