

# City Clerk's Role Economic Development

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# Economic Development



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## Legal Requirements From the Clerk's Perspective

# Economic Development Tools

- ✓ CID, TIF, NID, TDD, Chapter 353
  - ✓ Overview of Program
  - ✓ Process to Establish
  - ✓ Checklist for Clerks

**Notes:** Citations to Revised Statutes of Missouri (RSMo.) current as of March 12, 2018, and may change subsequently.

Checklists are guidelines of a clerk's role, and are not exhaustive of all requirements, and should not substitute for consultation with municipality counsel.

# Community Improvement District “CID”

COMMUNITY IMPROVEMENT DISTRICT ACT

Sections 67.1401 to 67.1571, RSMo.

# CID Overview

- ❖ Separate Political Subdivision or corporate entity (nonprofit) governed by a Board of Directors (*5 members minimum*)
- ❖ Can be controlled by City or by Developer/Private Party
- ❖ May levy Property Taxes, Special Assessments, Sales Tax in addition to/independent of other local levies
- ❖ Contiguous Area
- ❖ What “Public Improvements” are Authorized:
  - Wide Variety of Improvements/Services
  - Must Be Undertaken within District boundaries

# CID: Process to Establish

- File petition with Clerk of municipality governing authority
- “municipality” includes cities and counties
- Hold Hearing of the Governing Body to Establish CID, pursuant to proper notice
- Governing Body adopt an ordinance establishing the CID
- Clerk to notify Missouri Department of Economic Development regarding creation of CID

# CID – Clerk Checklist

- ❑ The petition to form a CID must be filed with the Clerk of the governing authority of the municipality (unless the governing authority of a home rule city is forming the CID, then done by governing authority).
- ❑ Within **90 days** of receipt of the Petition, the Clerk should review the Petition to make sure it is proper, and complies with all of the items listed in [Section 67.1421.2, RSMo.](#)
- ❑ See [67.1471.5](#) regarding process for Amendments to Petition, before and after hearing, and before and after adoption of ordinance.

# CID – Clerk Checklist

- ❑ If Petition does not meet requirements, within a “reasonable time” Clerk shall deliver notice to submitting party specifying which requirements were not met.
- ❑ If the Petition meets requirements, then governing body shall hold a public hearing within 45 days, in accordance with notice given under [67.1431.5](#), RSMo.
- ❑ Notice of hearing given by governing authority
- ❑ After the public hearing, the governing authority may pass an ordinance creating the CID.
- ❑ Municipal clerk shall report in writing the creation of such district to the Missouri department of economic development.



# CID Post-Formation Clerk Checklist

- ❑ If required, coordinate election of Board of Directors to govern the CID:
  - ❑ If the CID is a *nonprofit*, then the Board of Directors shall be determined under Chapter 355 (not for profit corporation statute). *Clerk likely not involved in this process.*
  - ❑ If the CID is a *political subdivision*, then the Board of Directors shall be established through the City under Section 67.1451.
    - ❑ Clerk shall coordinate election of directors, if directors are to be elected.
    - ❑ See [Section 67.1451](#) for election guidelines.

# CID Post-Formation Clerk Checklist

- ❑ Within 120-days after the end of each fiscal year, CID to submit a report to the municipal clerk and the Missouri DED stating the services provided, revenues collected and expenditures made by the district during such fiscal year, and copies of written resolutions approved by the board during the fiscal year. [Section 67.1471, RSMo.](#)
- ❑ These reports also go to the State Auditor. [Check for annual report filings at the State Auditor's website.](#)
- ❑ CID Fiscal Year is the same as the fiscal year of the municipality.

# CID Post-Formation Clerk Checklist

- ❑ Clerk to retain annual report as part of the official records of the municipality...
- ❑ And shall also cause this report to be ***spread upon the records of the governing body.***
  - ❑ *Cockrell v. Taylor*, 940347 Mo. 1, 145 S.W.2d 416 (1940) – recording by clerk is sufficient to “spread upon the records.”
  - ❑ Suggest having agenda item at board or council meeting, and recording in minutes that the CID report was presented.

# CID Post-Formation Clerk Checklist

- ❑ If the CID has an election to impose a real property tax, the results of the election shall be entered upon the records of the election authority and a certified copy of the election results shall be filed with the municipal clerk, who shall cause the same to be entered upon the records of the municipal clerk. [67.1551.7, RSMo.](#)
- ❑ *Other than receiving election results, the municipal clerk is not involved in assessment or collection of CID revenue unless the CID has an agreement with the City to perform administrative functions of CID.*
- ❑ Similar to creation of a CID, a CID may be terminated by ordinance after filing of a petition for termination with the municipal clerk and public hearing. See [67.1481, RSMo.](#) for process.

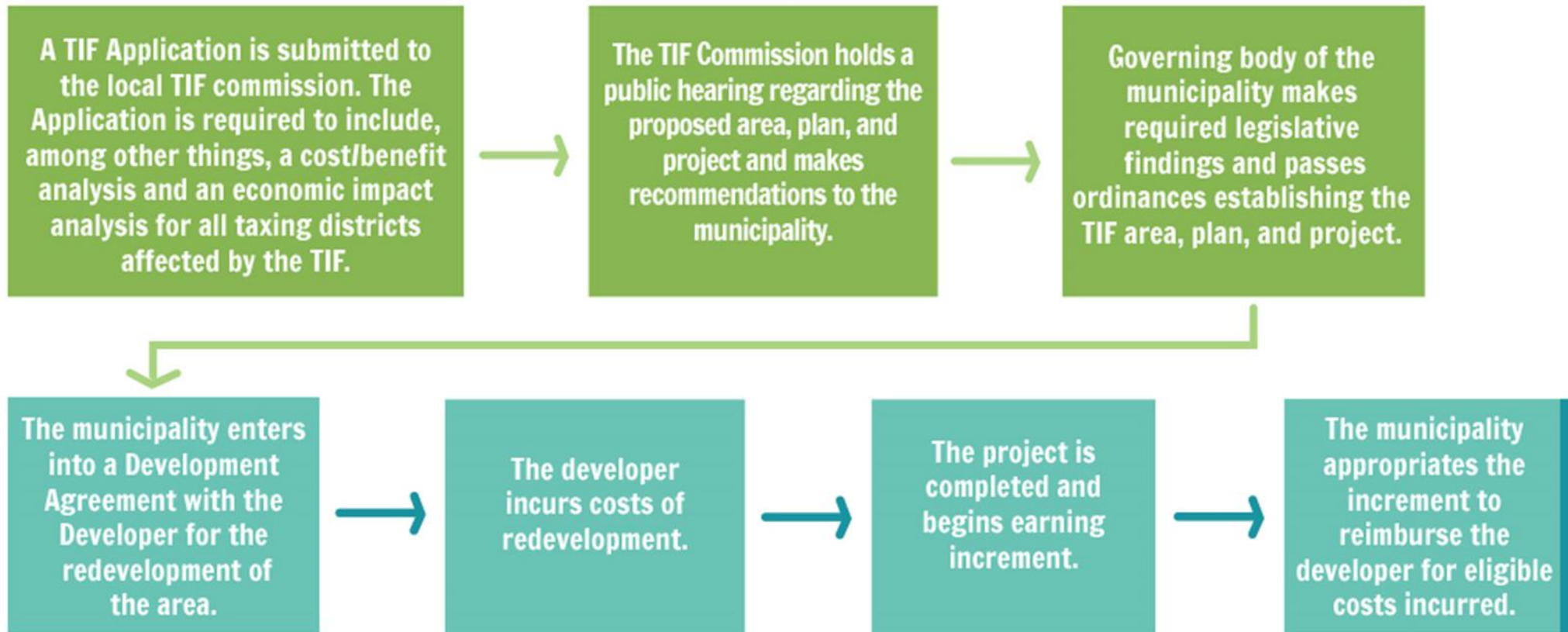
# Tax Increment Financing “TIF”

REAL PROPERTY TAX INCREMENT ALLOCATION  
REDEVELOPMENT ACT

Sections Sections 99.800 to 99.865, RSMo.

# TIF Overview

## Local TIF



<https://ded.mo.gov/programs/community/local-tif>

# TIF Overview

## NOTE:

- ✓ TIF Commission is established, but governing body of municipality retains control of TIF activities. (See 99.820.4, RSMo.)
- ✓ Clerk's role in TIF activities will be similar to other activities that the clerk typically handles, such as publishing notices, posting agenda, keeping minutes, setting hearings, and establishing sales taxes.
- ✓ If the clerk also performs administrative, financial, or management duties for the city, the clerk will likely take on those duties with respect to the TIF.
- ✓ See *also* 99.820.5, RSMo.: all proceedings of TIF Commission must be retained by the municipality, and are subject to Missouri Sunshine Act.

# TIF: Process to Establish

- Municipality establish TIF Commission
- TIF Commission hold hearing/s and make recommendations to governing body of municipality in favor of or in opposition to redevelopment area/s, plans, project/s, and amendments thereto
- Governing body pass an ordinance approving development area/s, plans, project/s, and agreements
- 2/3 of governing body approval is required if the TIF Commission makes a recommendation in opposition



# TIF - Clerk Checklist

- ✓ The clerk's role may include complying with notice requirements for Commission meetings, presenting ordinances for adoption by the municipality, TIF record-keeping, annual reporting, and possibly revenue collection.
- ✓ The following slides will outline statutory requirements for establishing and administering TIFs.
- ✓ Clerks may assist in compliance with any of these requirements; however, it is likely that clerk duties will vary by municipality.
- ✓ Strict compliance with statute is recommended.

# TIF Clerk Checklist

- ❑ Assist municipality in creating a TIF Commission by ordinance. TIF Commission formation after August 2008 is outlined in [99.820.3, RSMo.](#)
- ❑ Assist TIF Commission in hearings to consider redevelopment plans and projects.
  - ❑ Within 15-days of a plan, project, designation, or amendment thereto that meets requirements of statute (as determined by municipality counsel), Commission shall set a time and place for a hearing date.
  - ❑ Hearing shall be not more than 75-days after receiving the plan, project, designation, or amendment thereto.

# TIF Checklist - Commission Hearing Notices

- ❑ Notices of TIF Commission hearings must be given under 99.825 and 99.830, RSMo.
- ❑ Publication and mailing to owners and taxing jurisdictions required.
- ❑ Notices have specific content requirements. See [99.830, RSMo.](#)
- ❑ Compliance with Sunshine Law also required. Post notice and agenda in public place/hearing location at least 24-hours in advance.
- ❑ A copy of notices to taxing jurisdictions shall be given to Missouri DED at least 45-days before hearing.

# TIF Checklist - Commission Hearing Notices

- ❑ Notices of TIF Commission hearings must be given:
  - ❑ Not less than 45-days before the hearing date, by mail to each taxing district located wholly or partially within the boundaries of the proposed redevelopment area, including an invitation to submit comments in writing before the hearing.
  - ❑ By publication at least twice, the first publication to be not more than 30-days and the second publication to be not more than ten days prior to the hearing, in a newspaper of general circulation in the area of the proposed redevelopment.
  - ❑ In writing by certified mail addressed to the person or persons in whose name the general taxes for the last preceding year were paid not less than 10-days prior to the date set for the public hearing.

# TIF Checklist - Hearing

- ❑ TIF Commission Hearing
  - ❑ The commission shall hear and consider all protests, objections, comments and other evidence presented at the hearing.
  - ❑ At the public hearing any interested person or affected taxing district may file with the commission written objections to, or comments on, and may be heard orally in respect to, any issues embodied in the notice.
  - ❑ The hearing may be continued to another date without further notice other than a motion to be entered upon the minutes fixing the time and place of the subsequent hearing.
  - ❑ Recommendation of the Commission shall be given to the governing body of the municipality within 30 days of completion of hearing under 99.825, RSMo.

# TIF Checklist – Approving Ordinances

- ❑ Assist governing body in adoption of ordinances approving TIF plans, projects, designations, or amendments thereto.
- ❑ Assist governing body in adoption of ordinances approving financing, refunding, or pledging TIF revenue as provided in [99.835, RSMo.](#)
- ❑ Ordinances may be adopted in the usual manner of approval by municipality.
- ❑ Consult with municipality counsel to draft approving ordinances to ensure required recitals are included and required findings are made.

# TIF – Post-Approval Checklist

- ❑ If the clerk is also the treasurer or other designated financial officer of the municipality, he or she shall allocate revenue, distribute PILOTs, and deposit all TIF funds in separate segregated accounts within the special allocation fund as provided in [99.845, RSMo](#).
- ❑ Note there can be significant legal issues regarding which taxes are captured by the TIF and spent.
- ❑ Carefully consider impact of TIF projects and TIF financings on any new tax adopted, or on any existing tax continued, or repealed.

# TIF – Post-Approval Checklist

- ❑ By the last day of February each year, commission shall report to the director of economic development the name, address, phone number and primary line of business of any business which relocates to the district.
- ❑ By November 15<sup>th</sup> each year, the governing body of the municipality or its designee shall file a report with the Director of Revenue. (See [99.865, RSMo.](#) for the DOR website for required information.)
- ❑ Annually publish a statement in newspaper of general circulation in the municipality showing PILOTs received and expended in that year, the status of the redevelopment plan and projects therein, amount of outstanding bonded indebtedness and any additional information the municipality deems necessary. See [99.865, RSMo.](#)



# TIF–Checklist of things to verify

- ❑ Do any members of the governing body, TIF commission, or any TIF employee or consultant have an interest (direct or indirect) in property within the redevelopment area?
  - ❑ If so, he or she must disclose the same in writing to the clerk of the municipality, and shall also so disclose the dates, terms, and conditions of any disposition of any such interest, which disclosures shall be acknowledged by the governing body of the municipality and entered upon the minutes books of the governing body of the municipality. [99.820.1\(13\) RSMo.](#)
- ❑ Is the proposed plan or project located in a floodplain (see [99.847, RSMo.](#)) or greenfield? If so, make sure they qualify for an exception to exclusion from TIF. If not, then area cannot be included in a plan or project.

# Neighborhood Improvement District “NID”

NEIGHBORHOOD IMPROVEMENT DISTRICT ACT

Sections 67.453 to 67.475, RSMo.

# NID Overview

- ❖ Special Assessment Area Initiated by Owner Petition (2/3 of proposed land area) or by City
  - ❖ Funds “*Public Improvements*”
  - ❖ Levies special assessments on “benefited properties” based on share of improvement costs
- ❖ City issues limited General Obligation Bonds

# NID: Process to Establish

- NID created by vote of property owners in NID area through election, or by petition signed by the record owner of 2/3<sup>rd</sup> of the area within the NID.
- Ballot form for election and contents of petition are set forth in [67.457, RSMo.](#)
- Upon requisite approval, the governing body of the municipality may pass a resolution or ordinance establishing the NID and proceeding with a plan for improvements, and for assessment and collection of benefits derived from improvements.

# NID - Clerk Checklist

- ❑ Assist governing body with election on question of establishing a NID.
- ❑ In the alternative, property owners can file a petition with the clerk.
- ❑ Review petition to determine if it is proper, and meets requirements of [67.457.3, RSMo.](#)
- ❑ Assist the governing body with passage of ordinance or resolution:
  - ❑ establishing the NID, in accordance with [67.457.4, RSMo.](#)
  - ❑ determining and establishing reasonable general classifications and formulae for the methods of assessing the benefits. [67.459, RSMo.](#)
  - ❑ Ordering the assessment of benefits and preparation of an assessment roll. [67.461, RSMo.](#)

# NID - Clerk Checklist

- ❑ Upon the governing body assessing benefits, the clerk shall have the assessment roll and improvement plans available for public inspection.
- ❑ At governing body direction, clerk shall publish notice of a hearing to consider the proposed improvement and proposed assessments.
  - ❑ published in a newspaper of general circulation at least once not more than twenty days and not less than ten days before the hearing and including information required by [at 67.461.2](#)
  - ❑ at same time as publication, mail to the owners of record of the real property made liable to pay the assessments, at their last known post office address, a notice of the hearing and a statement of the cost proposed to be assessed against the real property.

# NID – Clerk Checklist

- ❑ After construction of improvements, assist the governing body in adopting a resolution or ordinance apportioning the final cost of improvements to property in the NID.
- ❑ Mail notice to each property owner within the district with description of property, the special assessment assigned, and a statement that the owner can pay the assessment in full with interest, or in annual installments.
- ❑ Certify amounts of assessments due from time to time.
- ❑ See [67.463](#) for final assessment and collection requirements.
- ❑ Recording assessment information required to create lien.

# NID - Clerk Checklist

Section 67.457 Clerk shall record with the recorder of deeds for the county in which any portion of the neighborhood improvement district is located a document conforming to the provisions of sections 59.310 (format and fees) and 59.313 (St. Louis City), and which shall contain at least the following information:

- (1) Owner names;
- (2) Name of the governing body establishing the NID, and the person responsible for collecting and enforcing assessments (identified as grantees);
- (3) The legal description of the property either whole district or by parcel; and
- (4) The identifying number of the resolution or ordinance creating the neighborhood improvement district, or a copy of such resolution or ordinance.



# Transportation Development District “TDD”

MISSOURI TRANSPORTATION DEVELOPMENT DISTRICT ACT  
[Sections 238.200 to 238.275, RSMo.](#)

# TDD Overview

- ❖ Separate Political Subdivision governed by a Board of Directors (5 minimum)
- ❖ Levies Property Taxes, Special Assessments, Sales Tax in addition to/independent of other local levies
- ❖ Formed by petition of all property owners or city or registered voters
- ❖ Transportation-Related Improvements/Services, subject to City or MHTC approval, as applicable
- ❖ Can Be Undertaken outside District boundaries

# TDD Process to Establish

- ❑ Formed by petition to the circuit court of county where all or part of the district will be located upon election or signature of owners.
- ❑ Board of directors is elected or appointed.
- ❑ Plans and specifications for improvements are completed and approved by MHTC or the local transportation authority (municipality).
- ❑ The TDD enters into an agreement with MHTC and/or the municipality regarding construction and funding of the improvements.

# TDD-City Clerk's Checklist

- ❑ Petition requirements are listed in [238.207, RSMo.](#)
- ❑ Circuit court shall hear the cause without a jury, and determine if the district should be formed.
- ❑ In the case of a petition by the voters or the municipality, the court shall certify a question for election to the voters in the district, and may hold a public hearing on notice required by [238.212, RSMo.](#)
- ❑ Elections on the question of establishing a TDD shall be held in accordance with [238.215, RSMo.](#)
- ❑ In the case of petition by the property owners, the court shall declare the district formed. [238.210, RSMo.](#)

# TDD-City Clerk's Checklist

- ❑ The circuit court and election authority are responsible for most of the organizational requirements.
- ❑ Following organization, the clerk may assist governing authority with review and approval of plans and specifications for construction of improvements, and agreement for funding and assessment.
- ❑ If municipality is responsible for administration of the TDD by agreement, the municipal clerk may be required to assist with annual TDD meetings, record keeping, and election or appointment of TDD directors.
- ❑ TDD is required to file a financial report with the Missouri State Auditor in accordance with Section 105.145, RSMo.

# Economic Development Selected Issues for City Clerk's To Watch For

- Sunshine Law – Ensure there is a policy
- Record Keeping – Ensure someone is keeping records, particularly financial records for CIDs, TDDs, and Chapter 353 corporations
- Bond Financing Compliance – if clerk is also a financial officer, have a policy and plan for post-issuance tax and securities compliance, if applicable.

# Questions? Comments?

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