Note: Developed by Widener Law students as an example of what similar municipal ordinances might look like. Borough council should confirm with their solicitor first.

TRANSIT ORIENTED DEVELOPMENT

Howard Gold and LaTasha Williams

I. **Introduction:**

Transit-oriented development (TOD) is a strategy of community planning and development that orients mixed-use commercial and residential zoning while trying to achieve a walkable neighborhood.[1] Neighborhoods are located around public transportation. The overall goal of transit-oriented development is to prioritize land use; while encouraging and facilitating people to use public transportation.[2] TOD planning involves medium to high-density buildings centered around public transportation.[3] Although there is no consensus on what constitutes TOD, generally TOD is thought of as a strategy of planning that allows residents to live and walk within a high-density area, usually within a ten-minute walk, no greater than a mile away from a public transportation stop.[4] TOD can involve the construction or redevelopment of buildings whose design and location facilitate transit use.[5] A main purpose of TOD is to provide communities with alternative means of transportation, such as walking and biking, reducing automobile

[1] Reconnecting America, What is TOD (2016), http://reconnectingamerica.org/what-we-do/what-is-tod
[2] *Id.*; *See also*, Matthew G. Jewitt, *Notes: Encouraging Transportation-Oriented Development in the United States: A Case for Utilizing "Earned-as-of-Location" Credits to Promote Strategic Economic Development*, 57 WM. & MARY L. REV. 1949, 1953-54 (2016).
[3] Terry Parker et al., Statewide Transit-Oriented Development Study: Factors for Success in California (2002),
http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/TOD-Study-Final-Rpt.pdf
[4] See, Reconnecting America *supra* note 1; See also, Transit Oriented Development Institute, (2016), http://www.tod.org
[5] *Id.*

dependency.[6] With less automobile dependency citizens of a TOD community are able to live lower-stress lives.[7] Another main component of TOD communities is the ability of pedestrians to walk many places, cutting out carbon emissions altogether.[8] With less reliance on cars communities have less traffic congestion and people are able to travel more freely throughout the community.[9]

This paper will illustrate the following points: (1) how transit-oriented development will help solve many issues facing communities today, (2) the lack of effective legislation regarding transit-oriented development, (3) how other communities have approached implementing a transit-oriented development system, and (4) practical issues that policy makers will encounter when trying to implement a system of transit-oriented development. A proposed model ordinance is attached.

Finally, this paper and the ordinance that follows, will track the thesis that as U.S. cities and communities begin to rethink their growth, a transit-oriented development ordinance will play a substantial part in: containing urban sprawl; cutting down on greenhouse emissions; reducing residents reliance on automobiles for mobility; creating a more equitable community, and positively influencing public health and the overall quality of life of the residents.[10]

II. **Problems Facing Communities:**

[6] Jewitt, *supra* note 2, at 1954.
[7] Transit Oriented Development Institute, *supra* note 4.
[8] *Id.*
[9] *Id.*
[10] Matthew J. Nahlik and Mikhail V. Chester, Life-Cycle Impacts of Transit- Oriented Development (2015), http://www.accessmagazine.org/articles/fall-2015/life-cycle-impacts-of-transit-oriented-development/

An increase in population has led to a number of problems. However, TOD will be effective in reducing these problems. Some of these problems are: sprawl; greenhouse emissions; non-existent or inadequate public transportation; unaffordable housing; and poor public health. By implementing a policy decision-making attitude towards TOD, communities, big or small, will be able to reduce, if not eliminate, the negative impacts of all these problems. The following section of this paper will lay- out each of these problems, while ultimately showing how a system of TOD will have a positive influence on all the problems.

A. Sprawl:

Most people view sprawl as a "big city" problem. However, urban sprawl not only has negative impacts on urban settings, but also has similar impacts on smaller communities and towns. Urban sprawl can be defined in a variety ways, but the overall concept is that urban sprawl is the uncontrolled expansion of urban areas into neighboring areas, usually in an unsustainable way.[11] Since World War II, American cities have grown decentralized resulting in a lower density use of land while continuing to spread out over a larger area.[12] As cities and communities have continuously spread out land has become increasingly scarce and use of land has become increasingly inefficient.[13] One of the most troubling facts about sprawl is the rate at which it is occurring. Most U.S. cities are expanding their area at double the

[11] Michael Batty, Elena Besussi, and Nancy Chin, Traffic, Urban Growth and Suburban Sprawl (November 2003), https://www.bartlett.ucl.ac.uk/casa/pdf/paper70.pdf
[12] Dena Belzer and Gerald Autler, Countering Urban Sprawl with Transit- Oriented Development (2002), http://issues.org/19-1/belzer
[13] *Id.*

rate the population is growing; some cities continue to expand without any population growth.[14]

An increase in sprawl has lead most residents of communities to be forced to solely rely on automobiles for travel.[15] Sprawl and automobile reliance have a symbiotic effect on one another. As communities and cities sprawl outwards automobiles become one of the only means of transportation. Not only must people rely on automobiles for transportation, cities are not planned for people to get their errands done in one trip.[16] There are no pedestrian friendly areas or parking lots where they can park and then walk to all the locations they need to go.[17] They must make multiple stops all while driving around in their automobile.[18]

Furthermore, sprawl has a negative impact on the environment. As sprawl occurs land is lost and in most circumstances used inefficiently. Some of the negative environmental impacts of sprawl include: loss of environmentally fragile land; greater air pollution; loss of farmland; increased runoff of storm water; increased risk of flooding; ecosystem fragmentation; and decreased aesthetic appeal of landscape.[19]

Finally, sprawl has a negative impact on taxpayers. In most circumstances sprawl leads to a waste of tax money.[20] Sprawl results in cities and counties spending money on new water and sewer lines as well as new schools; the

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[14] *Id.*
[15] *Id.*
[16] Useful Community Development, Effects of Urban Sprawl: Costs, Health, Environment (2016), http://www.useful-community-development.org/effects-of-urban-sprawl.html
[17] *Id.*
[18] *Id.*
[19] Michael P Johnson, *Environmental impacts of urban sprawl: a survey of the literature and proposed research agenda*, Environmental and Planning A, Vol. 33 no. 4, 717, 721-22 (April 2001).
[20] Everything Connects, Urban Sprawl (2014), http://www.everythingconnects.org/urban-sprawl.html

estimated costs of sprawl being in the millions of dollars.[21] In addition, sprawl also increases taxes on existing residents.[22]

Sprawl impacts everybody regardless of location. There is only a limited amount of land that can be used in the state, thus, if bigger cities continue to spread out or if smaller communities tend to be spread out, there will eventually become a time in the future were there is no longer any land left to use. Although sprawl may look different or have different consequences in bigger cities and smaller communities, sprawl is a major concern to everyone in the state.

B. Reliance on Automobiles:

The phenomena of sprawl has not only impacted land use, it has also made people rely on automobiles as the primary source of transportation.[23] Decentralization of communities has lead to a public transit system being impractical, leading to automobiles as the only practical/effective mode of transportation for most people.[24] The amount of time that the average U.S. citizen spends in a car is staggering. Studies show that the average U.S. citizen spends approximately 443 hours per year in an automobile.[25] That number is the equivalent to one eight hour workday per week for the average citizen.[26] There is a relationship between how densely populated an area is and the dependence on automobiles. The more densely populated an area is the less reliance there is on

[21] Sierra Club, Stop Sprawl: Sprawl Overview (2016), http://vault.sierraclub.org/sprawl/factsheet.asp
[22] *Id.*
[23] Useful Community Development, *supra* note 16.
[24] Belzer and Autler, *supra* note 12.
[25] Belzer and Autler, *supra* note 12.
[26] Belzer and Autler, *supra* note 12.

automobiles for transportation.[27] Another statistic showing this correlation is the number of people that use public transportation. As density in an area is reduced the number of people that use public transportation decreases.[28]

Although these studies were conducted in major cities, such as San Francisco, New York, and Los Angeles,[29] the same results will be experienced in smaller cities or communities. Similar problems happen when smaller communities expand outward rather than having a more centralized growth plan that revolves around public transportation. As communities expand outward, public transportation becomes ineffective because of the large amount of land area that the public transportation routes have to cover. Thus, people have to rely on their automobiles as the only practical means of transportation.

C. Greenhouse Gas Emissions:

Related to public transportation and automobile reliance is the threat of greenhouse gas emissions. High reliance on automobiles for mobility results in higher levels of carbon emission. The U.S. Environmental Protection Agency released a study in 2014 that showed that around twenty-six percent of total gas emissions came from transportation.[30] Looking further at those numbers

[27] Peter Newman and Jeffery Kenworthy, *Urban Design to Reduce Automobile Dependency*, Opolis: An International Journal of Suburban and Metropolitan Studies, Vol. 2, no. 1, 35, 40, (2006). The graph at the top of the page shows the relationship between population density and how much gasoline is used in that area. The greater the density of people in an area, the less gasoline used.
[28] *Id.* at 41. The graph at the top of the page shows a definite relationship between urban density and the use of transit. As urban density increases the annual number of transit rides increases.
[29] *Id.* at 40-1. The graphs show the relationship between density and gasoline use occurred in the cities of San Francisco and New York, respectively. The graph on page 41, shows the relationship between density and transit use, occurred in Los Angeles.
[30] U.S. Environmental Protection Agency, Sources of Greenhouse Gas Emissions (last updated August 9, 2016),
https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions

greenhouse gas emissions from transportation mainly come from burning fossil fuel.[31] Petroleum based fuel, such as gasoline and diesel, account for over ninety percent of the fuel that is used for transportation.[32] Sixty-one percent of the transportation sector's emissions come directly from the emissions from personal auto use.[33] Household location has an enormous impact on how much carbon dioxide that household emits. The closer the household is to public transportation the lower the amount of carbon dioxide that household emits.[34] "A household that lives in a densely populated area does not drive as much or spend as much money on transportation as someone who lives in a sprawling location."[35]

D. Unaffordable Housing:

The average household spends approximately thirty-two percent of expenses on housing and another nineteen percent on transportation.[36] With numbers like that, it is easy to see how transportation and housing are integrally connected. Lower income families spend a higher percentage of income on transportation.

The pie chart on the right side of the page breaks down the percentage of gas emissions that each economic sector was responsible for in the year 2014. The total emissions in that year totaled 6,870 million metric tons of carbon dioxide equivalent. Thus, transportation accounted for 1,786.2 million metric tons of emissions back in the year 2014.

[31] *Id.*

[32] SUZANA RIBEIRO ET. AL., Climate Change 2007: Mitigation of Climate Change. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge University Press, Cambridge, United Kingdom (2007).

[33] Peter Haas et. al., Transit Oriented Development and the Potential for VMT-related Greenhouse Gas Emissions Growth Reduction, Center for Transit-Oriented Development, 1, 8 (March 2010), http://ctod.org/pdfs/2010TODPotentialGHGEmissionsGrowth.pdf

[34] *Id.* at 9. The graph breaks down a location into a transit zone. The transit zones are separated by how closely they are located to a transit system. If transit is located within a walkable distance carbon emissions are at their lowest.

[35] *Id.* at 16.

[36] NC State Design, Transit Oriented Development & Affordable Housing, https://design.ncsu.edu/ah+sc/?page_id=114

Families with low income can spend up to fifty percent of their income on transportation alone.[37]

E. Public Health:

Public health has become a serious concern within the United States. Public health has been on a steady decline, with some causes being less people walking to their destination and air pollution from cars. Residents that do not have access to transit do not get the same amount of physical activity as people that utilize public transit do.[38] Not only does lack of physical activity negatively impact public health; automobile use impacts public health as well. One way automobiles negatively impact public health is automobile crashes. Automobile crashes impact public health and safety by causing injuries to drivers and pedestrians.[39]

Another negative impact of automobiles on public health is air pollution. The more automobiles that are on the streets, the more polluted the air will be.[40] Greater air pollution can lead to an increase in the number of more serious asthma and other cardio-pulmonary diseases.[41]

A final public health concern is stress. The more automobiles that are on the roads, the more traffic congestion there will be. An increase in traffic congestion causes residents to become more stressed because they don't have other reliable

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[37] *Id.*
[38] Mineta National Transit Research Consortium, Measuring Benefits of Transit-Oriented Development: MNTRC Report 12, 17 (October 2014), http://transweb.sjsu.edu/PDFs/research/1142-measuring-TOD-benefits.pdf
This study points out that transit users walk an average of more than nineteen minutes per day then non-transit users.
[39] *Id.* at 18.
[40] *Id.*
[41] *Id.*

public transit options.[42] A trip that could take twenty minutes without congestion could become a forty-five minute trip. Overall, this leads to negative impacts on people's quality of life, life satisfaction, and happiness.[43]

III. **Why a Revised Ordinance is Needed:**

A revised ordinance is needed because many communities in Pennsylvania simply do not have an ordinance for transit-oriented development and have not thought about TOD as a way to develop their community. Many people view TOD as a bigger city development strategy. However, many smaller communities can adopt TOD. A good starting point for an effective TOD approach is an overhaul of zoning ordinances.

One of the first things that should be considered in developing a transit-oriented development ordinance is mixed-use zoning.[44] In order for transit-oriented development to achieve its maximum effectiveness, cities, townships, and boroughs must abolish antiquated zoning laws that only allow for areas to be zone for residential use or commercial use. A TOD ordinance should be designed to have residential buildings, office buildings, and shops located with a small geographic area, around transit stops. Zoning laws must be relaxed and mixed-use zoning must be allowed at a much higher degree than it is currently being used. TOD ordinances must have the intent to allow for commercial and residential uses within a compact area, around transit stops.[45] Mixed-use zoning areas do not have to be large in scale.

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[42] *Id.*
[43] Mineta National Transit Research Consortium, *supra* note 38, at 19.
[44] Transit Oriented Development, *supra* note 4.
[45] TOWNSHIP OF EAST WHITELAND, PA., ORD. § 200-32, 5/11/2016; *See also*, PITTSBURGH, PA., ORD. § 904, 12-31-03.

In fact, transit-oriented development planning should have walkability in mind.[46] People should be able to walk to transit stops. Another thought that should be in mind while examining current zoning laws is making sure they are going to be compatible with transit stops. Because transit-oriented development is centered around transit stops; zoning ordinances should be modified or rewritten to accommodate that goal. One such modification would be to allow high-density development with a certain zone around transit stops.

Once that step is complete policy makers must understand the numerous benefits of adopting a transit-oriented approach to development.

The first benefit that communities will enjoy is the lessening of sprawl. TOD adopts a strategy of compact-mixed use zoning centered around transportation stops.[47] By reducing sprawl, communities will spend less money. One example is the amount of money communities spend on infrastructure costs. By adopting a strategy of mixed-use zoning and compact high-density development centered around transit stops, communities will reduce the amount of money spent on infrastructure costs.[48] Smart Growth America released a study about the financial benefits of compact development to municipalities. The results showed that municipalities that use a compact development plan save on average "thirty-eight percent on costs for

[46] *See* BOROUGH OF QUAKERTOWN, PA., Ord. § 314.1, 2/6/2013; *See also*, Creating a Small Town Character, Montgomery County, http://www.montcopa.org/DocumentCenter/View/4105
[47] Reconnecting America, *supra* note 1.
[48] University of Delaware, Benefits of Mixed-Use Zoning (2016), http://www.completecommunitiesde.org/planning/landuse/mixed-use-benefits/

construction on roads, sewers, water lines, and other infrastructure."[49] Not only will a TOD approach save municipalities money, it will also result in an increase of tax revenue per acre.[50] A denser use of land results in an increase of tax revenue per acre.[51] Communities that use a compact zoning strategy that is centered around transit will reduce the amount of sprawl experienced in that community, while saving money in the process.

TOD will also reduce people's reliance on automobiles. As communities spread out and cover a larger area people must rely on their automobile as the only effective transportation method.[52] A transit-oriented development approach would resolve this issue. TOD aims to achieve a centralized community that is located within a walk-able distance around a transit stop.[53] TOD is focused around a public transit system as well as alternate means of transportation, such as walking and biking.[54] Compact high-density development will allow people to be able to walk to many destinations, rather than rely on their automobile for travel.[55] Citizens in TOD communities will enjoy many other modes of transportation, the biggest one being the public transportation. Along with alternative means of transportation citizens will no longer have to rely solely on automobiles for transportation.

[49] Smart Growth America, Building Better Budgets: A National Examination of the Fiscal Benefits of Smart Growth Development (May 2013), http://www.smartgrowthamerica.org/documents/building-better-budgets.pdf
[50] University of Delaware, *supra* note 48.
[51] *Id.* A study conducted in Raleigh, North Carolina showed that a six story mixed-use building generated 110,461 dollars worth of tax revenue, while a three story residential and three story commercial building only generated 56,155 dollars worth of tax revenue for the city.
[52] Belzar and Autler, *supra* note 12.
[53] Creating a Small Town Character, *supra* note 46.
[54] Institute for Transportation & Development Policy, What is TOD? (2016), https://www.itdp.org/library/standards-and-guides/transit-oriented-development-are-you-on-the-map/what-is-tod/
[55] *Id.*

A third benefit of TOD is an increase in public health. TOD encourages non-motorized transportation, such as walking and cycling.[56] By facilitating physical activity, TOD reduces many medical conditions that occur when people are not getting enough physical activity.[57] With more physical activity, people have a better quality of life.[58] On average people walk an average of nineteen more minutes a day when they have access to public transportation.[59]

Another public health benefit would be the decrease of stress to residents of a TOD community. Residents in TOD communities would have access to reliable public transit, reducing the stress many people experience when having to rely on inadequate public transit or having to solely rely on their automobile. TOD would result in an adequate public transportation system, as well as, alternative transportation options, such as walking or biking.[60] People would have many ways to travel around TOD communities, alleviating much of the stress people experience by having to solely rely on their automobile.

A final public health benefit from TOD would be lower air pollution. A transit-oriented approach wants to lower the amount of cars on the streets, which will lower the amount of air pollution. Air pollution can have numerous-negative effects on people's health.[61] TOD will discourage motorized vehicle use by having narrower

[56] *Id.*
[57] Todd Litman, *Evaluating Public Transportation Health Benefits*, Victoria Transport Policy Institute, 1, 13 (June 2010), http://www.apta.com/resources/reportsandpublications/Documents/APTA_Health_Benefits_Litman.pdf
[58] *Id.* A study done by the Victoria Transport Institute found that New Yorker's body mass index ratings declined as the density of subway and bus stops increased.
[59] Mineta National Transit Research Consortium, *supra* note 38.
[60] *Id.* at 14. Another Victoria Transport Institute study that showed the relationship of TOD and obesity rates in countries. As the percentage of residents that biked, walked, or rode transit increased, obesity rates trended downward.
[61] Mineta National Transit Research Consortium, *supra* note 38.

streets, as well as, reducing the amount of parking spots.[62] With fewer cars on the streets, the air will be less polluted and people will not suffer from as many asthmatic and pulmonary medical conditions. By adopting a transit-oriented strategy of development an increase in public health benefits would be seen throughout neighborhoods and communities.[63]

Another benefit of TOD is the creation of affordable housing. An average U.S. citizen spends nineteen percent of their income on transportation costs.[64] By adopting a system of transit-oriented development communities will be able to provide affordable housing to their residents. Residents will not have to spend as much of their income on transportation expenses. Residents in transit-oriented neighborhoods will be able to take public transportation or walk to their destinations. In either of those scenarios costs related to transportation will be lower than if that neighborhood did not adopt a transit-oriented approach.

TOD will also have a positive impact on the environment. TOD will conserve natural resources and natural aesthetics by not building on as much land. Compact and high-density development will result in less land being destroyed.[65] Another environmental impact of TOD will be reducing carbon emissions.[66] Personal automobile use contributes to sixty-one percent of the total carbon emissions from

[62] Institute for Transportation & Development Policy, *supra* note 54. A goal of TOD is to have the amount of land used for motor vehicle traffic and parking decrease, less than twelve percent of the total land area.
[63] *Id.* One example that shows this is San Bernardino, California and Boston, Massachusetts. San Bernardino is a much more automobile-oriented city, while in contrast, Boston is a transit-oriented city. If San Bernardino would adopt a transit-oriented approach it would "reduce two hundred chronic medical conditions per 1,000 residents, a 16% reduction." *Id.*
[64] NC State Design, *supra* note 36.
[65] John L. Renne, Evaluating Transit-Oriented Development Using Sustainability Framework: Lessons from Perth's Network City, http://www.vtpi.org/renne_tod.pdf
[66] Haas, *supra* note 33, at 8.

the transportation sector.[67] TOD will greatly reduce these emissions by facilitating non-motorized means of transportation.[68] Additionally, people will have access to public transit, resulting in the lowering of cars on the streets. Rather than each resident having to rely on his or her own automobile for travel, he or she could opt to take public transportation.

TOD will have many benefits to a community that chooses to adopt this type of development. Benefits of TOD include: less sprawl; increased tax revenue per acre; walkability for pedestrians; less motorized vehicle travel; positive impacts on public health related to walking and biking; and lessening greenhouse gas emissions from motorized vehicles.

IV. **How Other Jurisdictions Have Adopted Transit-Oriented Development:**

This section will look at how other jurisdictions have adopted a transit-oriented approach to planning, while evaluating the effectiveness of each approach.

A. Minneapolis and Saint Paul:

The first case example of TOD, are the cities of Minneapolis and Saint Paul, respectively. These two cities will be discussed together because they share such a close proximity to each other, that one governing body, The Metropolitan Council (Council), has planning authority over both of them.[69] The Council was created back in 1967, to ensure that both cities worked together on future regional planning.[70]

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[67] *Id.*
[68] Institute for Transportation & Development Policy, *supra* note 54.
[69] Susan Haigh, Fortieth Anniversary Tribute: Doug Heidenreich, Trish Furlong and Mike Steenson: Article: The metropolitan council, 40 WM. MITCHELL L. REV. 160, 161-62 (2013).
[70] *Id.* at 163. The author points out that the two cities used to be "intense rivals but joined together in the mid-1960s in an attempt to secure a major league baseball, football, and hockey teams." *Id.* By joining

Some of the challenges that the region was facing when the Council was formed included: failing private septic systems in many suburban communities; the financial suffering of the cities privately owned bus company; rapid population growth that was threatening the natural landscape; and communities not being able to fund essential services.[71] The Council was initially met with harsh criticism from the public; however, the Council survived and is now one of the leading forward thinking governmental bodies on transit-oriented development.[72]

The Council has been focused on a transit-oriented development approach to planning since 2006, when it released a regionally specific "Guide for Transit-Oriented Development."[73] The Council released this guide in "response to changing regional demographics and highway traffic congestion," as well as, in an effort to "maximize its investments in fixed transitways."[74] However, the Council recognized that TOD can and will vary in style, as well as size. In response to this concern the Council recognized that all types of TOD share common elements.[75] These elements include: compact development, a mix of uses, pedestrian orientation, and transportation interfaces.[76]

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together in an attempt to secure these sports teams the cities realized that they would have to work together in the future to be able to confront regional challenges that would lie ahead.

[71] *Id.* at 164.

[72] *Id.* at 164-65. The author mentions that one of the first major decisions of the Council came out in 1970, a mere three years after its formation, when it vetoed a proposal to make Ham Lake a site for a second major airport, over fears that "the development would cause environmental harm to the 23,000 acre Carlos Avery Wildlife Refuge, the state's largest wildlife refuge. *Id.*

[73] Haigh, *supra* note 69, at 186-87. In relation to the TOD guide, the Council began a three year Sustainable Communities Initiative, called Corridors of Opportunity in 2011. *Id.* at 187. Nearly all projects funded by the Corridors of Opportunity have TOD as a central goal. *Id.*

[74] *Id.* at 186.

[75] *Id.* at 187.

[76] Metropolitan Council, Guide for Transit-Oriented Development (2006), http://www.metrocouncil.org/getattachment/7f95e0f4-2909-4d0e-81cb-b19ca205a454/.aspx

The Council has helped facilitate a TOD approach that not only includes the big cities of Minneapolis and Saint Paul, but also includes surrounding counties as well.[77]

The counties are controlled by a governing agency called The Counties Transit Improvement Board (CTIB).[78] One example of the CTIB facilitating TOD is shown in certain sales taxes. In 2008, the CTIB instituted a quarter-cent sales tax and twenty-dollar motor vehicle sales tax.[79] Both of these taxes are invested in transit projects by awarding annual capital and operating grants.[80] The Board describes its visions as " a network of interconnected transitways that allows users to move efficiently and safely, while mitigation congestion, enhancing economic development, and improving environmental stability for the region."[81]

Funding TOD projects is another way counties have influenced TOD in the region.[82] In 2003, Hennepin County created a TOD program to support redevelopment and new construction of infrastructure that enhances transit usage.[83] This project gives approximately two million dollars per year to TOD projects throughout the county.[84]

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[77] Haigh, *supra* note 69, at 188.
[78] *Id.* The CTIB was formed in 2008 and includes five counties: Anoka, Dakota, Hennepin, Ramsey, and Washington.
[79] Counties Transit Improvement Board, About (2016), http://www.mnrides.org/about
[80] *Id.*
[81] *Id.* Although the Board is composed of five counties, CTIB works in close partnership with two other counties that are not on the Board: Carver and Scott counties. Haigh, *supra* note 69, at 188.
[82] Haigh, *supra* note 69, at 189.
[83] Hennepin County, MN, Transit Oriented Development (2016), http://www.hennepin.us/business/work-with-henn-co/transit-oriented-development (Since the program began, Hennepin County has awarded more than $24 million dollars to funding for both urban and suburban projects).
[84] *Id.* The website includes "examples of past projects" that show how much money was awarded and what the projects set out to accomplish. *Id.*

Those are just some examples of how counties have embraced the Council's core concept of TOD. Cities play a key role in the region by setting standards and providing technical assistance to developers, business owners, and community groups seeking to develop near transit.[85] One example of cities playing an active role in TOD is the city of Saint Paul.[86] Saint Paul, through its 2011 Transit-Oriented Development Guidebook, provides existing and future property owners and residents with information about how to take part in TOD.[87] The Guidebook includes information on many different topics, such as: tips for success[88]; zoning regulations and the process for environmental review[89]; policy guidance[90]; and design standards to illustrate elements and principles of TOD.[91] The city has also incorporated this guidance into its official land-use guidelines.[92]

Furthermore, the Council identifies the TOD needs of local jurisdictions and tries to help with those needs.[93] The Council has realized that in order for TOD to work it cannot just be each jurisdiction thinking about only their needs. In order for TOD to be effective local governments need to work together to establish a regional TOD policy.

Minneapolis has adopted many TOD friendly ordinances that help facilitate public transit use. One example is the reduction of minimum parking space

[85] Haigh, *supra* note 69, at 189-90.
[86] *Id.* at 190.
[87] Central Corridor Design Center, Saint Paul Transit-Oriented Development Guidebook for the Central Corridor (November 2011), https://www.stpaul.gov/DocumentCenter/View5/19527.pdf
[88] *Id.* at §§ 1.1-14.
[89] *Id.*
[90] *Id.* at §§ 2.1-2.8.
[91] *Id.* at §§ 3.1-3.23.
[92] Haigh, *supra* note 69, at 190.
[93] *Id.*

requirements for buildings located near transit stops.[94] Under this ordinance multiple-family dwellings are authorized to reduce the amount of parking spaces they have to supply, depending on their proximity to transit location.[95] By reducing the amount of spaces required, land around transit is not wasted on parking and can more productively developed. The ordinance further goes on to facilitate transit use by allowing higher-density development around transit stops and prohibiting certain uses in those locations.[96] Prohibited uses involve: self-service storage; commercial parking lots, including the expansion of existing lots; and conversion of accessory parking lots into commercial lots.[97] By not using land with this type of development, land around transit stops can be developed to allow more people to use transit.

The effectiveness of these ordinances can be shown in the number of transit riders. In 2014, Metro Transit, Minneapolis' transit system, carried 84.5 million passengers.[98] This number represents the highest amount of riders since 1981.[99] The increase in number of people using light rail helped bolster the jump in ridership.[100] Another number showing the effectiveness of these ordinances is the amount of land area serviced by public transportation. In 2014, Minneapolis opened

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94 MINNEAPOLIS, MN, MUNICIPAL CODE OF MINNEAPOLIS, title 20, chapter 541, § 541.200 (July 10, 2015).
95 *Id.*
96 MINNEAPOLIS, MN, MUNICIPAL CODE OF MINNEAPOLIS, title 20, chapter 551, § 551.180
97 *Id.*
98 Metro Transit, Metro Transit 2014 ridership is highest in more than three decades (January 28, 2015), https://www.metrotransit.org/metro-transit-2014-ridership-is-highest-in-more-than-three-decades
99 *Id.*
100 *Id.*

a second light rail line, resulting in more land serviced by transit.[101] This line connects the downtown areas of Minneapolis and Saint Paul, giving residents of both cities another reliable transit option.[102] These numbers show the effectiveness of the TOD ordinances because cities would not spend enormous amounts of money on new transit options if it were not valuable to their communities. The increase number of riders shows that people in these cities value transit options. These ordinances have helped facilitate the growth of transit options in the Minneapolis-Saint Paul area by allowing for many transit friendly policies.

B. Chicago:

The next city that will be examined is Chicago. Unlike Minneapolis and Saint Paul, Chicago has only recently adopted a more transit-oriented development approach.[103] Chicago's first TOD Ordinance introduced by the Mayor in 2013 and passed by the city council the same year.[104] Prior to 2013, Chicago's zoning code did not promote development around transit stations.[105] This ordinance was a good start to TOD in Chicago, and a second TOD ordinance was introduced shortly

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[101] Metro Green Line, Grand Opening for METRO Green Line (January, 22, 2014), https://metrocouncil.org/getattachment/a2736263-18dd-4121-9a2f-8e60a74169e8/Green-Line-Launch-Announcement.aspx

[102] *Id.*

[103] Metropolitan Planning Council, Chicago's 2015 TOD Ordinance (2016), http://www.metroplanning.org/work/project/30/subpage/4?utm_source=%2ftod-ordinance&utm_medium=web&utm_campaign=redirect

[104] Steven Vance, StreetsBlog Chicago, Zoning Committee Passes Watered Down TOD Ordinance (September 10, 2013), http://chi.streetsblog.org/2013/09/10/zoning-committee-passes-watered-down-tod-ordinance/

[105] City of Chicago, Mayor Emanuel Introduces Transit Oriented Development Reform Ordinance to Accelerate Development Near Public Transportation Stations (July 25, 2015), https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2015/july/mayor-emanuel-introduces-transit-oriented-development-reform-ord.html

thereafter.[106] Two years later in 2015, the Mayor introduced the second TOD ordinance. This ordinance was passed on September 24, 2015.[107] Under the new ordinance, the distance where dense development can be built around a transit stop expanded to 1,320 feet or 2,640 if the street is deemed to be a "pedestrian street."[108] The new ordinance will also virtually eliminate minimum parking requirements within these geographic locations.[109] By getting rid of the minimum parking space requirements around transit stops, more land can be used for high-density development, facilitating the use of that transit. Chicago's mayor believes that this new TOD ordinance will generate more than four hundred million dollars in economic activity and one hundred million dollars in tax revenue for the city.[110] Chicago is a great example of a city that has just recently adopted a TOD approach to city zoning and planning and has made great progress in accomplishing the goal of TOD.

Chicago's 2013 TOD ordinance has generally been viewed as being ineffective.[111] Although the ordinance was a good start, studies have shown that it did not do enough and had little affect on much of the city's land.[112] Land zoned for TOD was not large enough and zoning restrictions still did not greatly help facilitate

[106] *Id.* Before the zoning committee voted on the ordinance, the ordinance was changed to make it harder to construct buildings with lower volumes of car parking then was originally intended.
[107] City of Chicago: Office of the City Clerk, https://chicago.legistar.com/LegislationDetail.aspx?ID=2393423&GUID=83B45B27-5104-4A12-A793-05F398C91940&Options=Advanced&Search=
[108] CHICAGO, IL., MUNICIPAL CODE OF CHICAGO, title 17, chapter 17-3, § 17-3-0402-B (2015).
[109] *Id.* at chapter 10, § 17-10-0102-B (2015).
[110] City of Chicago, *supra* note 98.
[111] Metropolitan Planning Council, Grow Chicago (July 2015), http://growchicago.metroplanning.org/documents/grow-chicago.pdf
[112] *Id.*

use of public transit.[113] Under the new ordinance, TOD zoned land around transit stops has doubled and minimum parking requirements have been relaxed.[114] Although it is too soon to tell what kind of impact this newer ordinance will have, it is a promising start for the adoption of TOD in Chicago.

V. **Key Policy Issues:**

This section will discuss key issues that municipalities will encounter when trying to implement a system of TOD. This section will conclude with proposals on how a municipality or county can pay for a TOD approach.

When planning to draft a TOD ordinance one of the first things that policy makers should have in mind is how big their municipality or jurisdiction is. TOD is a planning strategy to facilitate the use of public transit. The size and population of a jurisdiction will influence what kind of public transportation system will work best. Policymakers must keep in mind the logistics of implementing each type of public transportation system, such as the cots of developing the system and what infrastructure they will need to facilitate public transportation. Smaller communities may need to work together to implement a public transportation system. The example of Minneapolis, discussed above, is a great outline to show how communities, counties, cities can all work together in implementing TOD.

Another thing that policy makers must keep in mind is the use of compact development. TOD will work best when public transportation and a walk-able neighborhood are thought of contemporaneously. Policymakers want to draft an

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113 *Id.*

114 CHICAGO, IL., MUNICIPAL CODE OF CHICAGO, title 17, chapter 17-3, § 17-3-0402-B (2015); CHICAGO, IL., MUNICIPAL CODE OF CHICAGO, title 17, chapter 17-10, § 17-10-0102 (2015).

ordinance that will facilitate high-density development around transit stops. Based on the examples discussed above, a way to accomplish this goal is to determine a length of distance around a transit stop where development can be much denser than other parts of the community.

A third thing policy makers must keep in mind is TOD will work best if there is communication between jurisdictions. The example of Minneapolis and Saint Paul above shows all TOD can accomplish if cities work together with each other as well as with counties. Jurisdictions must support and help each other so that TOD can have its greatest possible effect on the region that those cities, towns, counties, and boroughs are located in.

Finally, policymakers must keep in the roadblocks they are going to face while trying to implement a strategy of TOD.

Like everything in life, TOD will face roadblocks. One roadblock TOD could face is the public itself. In order for TOD to be successful it needs to attract riders to use transit.[115] TOD will only be successful if people intend to and actually do use public transportation. There must be a demand for public transportation in order for TOD to work. If the public does not want a public transportation then TOD will not be able to function as it is intended to.

Another barrier for TOD involves the use of mixed zoning. Zoning changes or restrictions are usually unpopular with the community.[116] Some jurisdictions may have to rewrite their zoning laws in order to incorporate mixed-zoning. These

[115] David S. Silverman, Annual Review of the Law: Green Transportation: Roadblocks and Avenues for Promoting Low-Impact Transportation Choices, 43 URB. LAW. 775 (2011).
[116] *Id.*

modifications of the zoning law may alter the layout of the community, which could become unpopular with the residents.

Paying for TOD will likely be the biggest roadblock a jurisdiction will encounter. Implementing a public transportation will cost the community money. The infrastructure costs of implementing a public transportation could become enormous, depending on existing infrastructure. Each transportation system has special costs associate with it. For example, trains would need rails and train stations and buses would need bus stations. Additionally, the costs of the actual transportation vehicles must be factored into the amount of the cost. However, these costs could be offset in many ways. One technique, a tax, was discussed above.[117] By implementing a tax, such as a vehicle sales tax, jurisdictions could use the revenue generated to pay for TOD or give grants to companies or businesses that will help implement TOD.

Another way to help pay for the costs of TOD would be fees. Fees could be implemented the use of parking spaces. By implementing fees on the use of parking spaces, jurisdictions would not only discourage the use of cars, they could use that money to implement TOD, as well as, fund future TOD projects.

V. **Conclusion:**

TOD is a strategic planning system to facilitate: walkability, compact development, high-density development, and use of public transit systems. TOD will address many problems facing communities today and if implemented correctly can be a valuable planning tool in the future. Some of these problems include: affordable

[117] Counties Transit Improvement Board, *supra* note 79.

housing, greenhouse gas emissions, public health, reliance on automobiles, and sprawl. TOD will greatly reduce these problems, while allowing for sustainable development. If a community embraces the notion of TOD and uses it as a tool for current and future development, that community will be a better place for residents to live.

A model ordinance will follow this narrative. It that can be implemented by communities in their quest to focus on a more transit-oriented development approach to community planning. The ordinance will incorporate policy issues at the same time addressing concerns. The model ordinance is intended to be a starting point for policymakers. While the whole ordinance could be adopted by jurisdictions it is also flexible so jurisdictions can choose sections that will work for them and alter other sections that may not be preferable to their specific location or jurisdiction.

Transit Oriented Development District Ordinance
_____MUNICIPALITY, _____, COUNTY
Ordinance No.: ____

An ordinance of _____, Municipality, _____ County, Pennsylvania, creating procedure for implementing transit oriented development.

Chapter 1

Preliminary Provisions

Section 101. Short title.

This ordinance shall be known and may be cited as the Transit Oriented Development District Ordinance of _____ Municipality, Pennsylvania.

Section 102. Authority.

This ordinance is enacted and ordained under the grant of powers by the General Assembly of the Commonwealth of Pennsylvania through the act of December 8, 2004, (P.L. 1801, No. 238), also known and cited as the Transit Revitalization Investment District (TRID) Act, later reenacted and amended as Act No. 151 of 2016, which empowers municipalities, counties and public transportation agencies to work cooperatively to establish and regulate transit oriented development.

Section 103. Declaration of policy.

(1) The primary purpose of transit oriented development is to foster an appropriate mixture and density of activity that is centered around transit stations to increase ridership along the rail corridors in the

Commonwealth and promote alternative modes of transportation to the automobile.[118]

(2) The secondary purpose of transit oriented development is to decrease dependency on the automobile while minimizing the unhealthy and adverse effects of congestion and pollution.[119]

(3) The specific objectives of creating a transit oriented development district within a municipality include all the following[120]:

i Encourage individuals to walk, ride a bicycle or use transit.

ii Allow for a mix of uses designed to attract pedestrians.

iii Achieve a compact pattern of development more conducive to walking and bicycling.

iv Provide a high level of amenities that create a comfortable environment for pedestrians, bicyclists and other users.

v Maintain an adequate level of parking and access for automobiles which is safely integrated with pedestrians, bicyclists and other users.

vi Ensure sufficient density of employees, residents and recreational users to support transit.

vii Generate a relatively high percentage of trips serviceable by transit.

Section 104. Definitions.

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[118] PHX., ARIZ., PHX. CITY CODE § 662 (2008).
[119] Id.
[120] Id.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accessway."[121] A formalized path, walkway or other physical connection that allows a pedestrian to directly reach a destination.

"Applicant."[122] A landowner or developer as hereinafter defined, who has filed an application for development including his heirs, successors and assigns.[123]

"Board." Any body granted jurisdiction under a land use ordinance to render final adjudications.

"Bond." The term includes bond, note, instrument, refunding bond, refunding note or other evidence of indebtedness or obligation.

"Bulk retail use." A retail or wholesale facility that serves the public, selling primarily institutional sized or multi-pack products in bulk quantities.

"Conditional use." A use permitted in a zoning district pursuant to the provisions of Article VI of the Pennsylvania Municipalities Planning Code, an Act of 1968, P.L. 805, No. 247.

"Department." Municipal Department of Community and Economic Development or synonymous municipal entity.

"Developer."[124] Any landowner, agent of such landowner or tenant with the permission of such landowner who makes or causes to be made a subdivision of land or a land development.

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[121] CHI., ILL., CHICAGO ZONING ORDINANCE, Title 17 § 17-3-0402 (2015).
[122] PHX., ARIZ., PHX. CITY CODE § 662 (2008).
[123] Pennsylvania Municipalities Planning Code, an Act of 1968, P.L. 805, No. 247.

"Development agreement."[125] A binding agreement between the partnering municipality, transportation authority, public transportation agency and, if participating, county representatives, including the designated management entity and the private sector development organization or organizations to implement the proposed TODD. The agreement shall stipulate the final project scope as well as the partners' roles, responsibilities, financing arrangements, schedule of improvements and the exactions or contributions to the project.[126]

"Drive-through facility." A facility allowing transactions for goods or services without exiting a motor vehicle which does not provide for any walk-in service.

"Eligible project." Development or improvement within a TODD including construction, infrastructure and site preparation, reconstruction or renovation of a facility within a TODD which will result in economic development in accordance with the TODD and the TODD planning study.

"Fast food establishment." A food service business that offers semi-prepared or prepared foods received promptly after order for take-out or in-house consumption in disposable containers and serving walk-in or drive-through customers.

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[124] PHX., ARIZ., PHX. CITY CODE § 662 (2008).
[125] Transit Revitalization Investment District Act, an Act of Dec. 8, 2004, P.L. 1801, No. 238.
[126] Transit Revitalization Investment District Act, an Act of Dec. 8, 2004, P.L. 1801, No. 238.

"Form-based code."[127] A land development regulation, which is an alternative to conventional zoning regulation, that uses physical form – rather than separation of classified uses such as residential, commercial, and zoning – as the organizing principle for the code. A form-based code addresses the relationship between building facades and the public's realm, the form and mass of buildings in relation to one another and the scale and types of streets and blocks.

"Light rail transit." A fixed guideway transit system.

"Management entity."[128] Any of the following:

(1) A participating municipality, county or public transportation agency.

(2) A redevelopment authority, municipal authority, neighborhood improvement district management association, business improvement district or a similar governmental or nonprofit organization authorized to act in a manner consistent with the TODD planning study and with a service area compatible with the TODD.

"Mixed-use." Development contained within a single parcel, horizontally or vertically, or adjacent parcels that contain different uses that are complementary to each other and provide activity throughout the day.

"Municipality."[129] Any city of the second-class A or third class, borough, incorporated town, township of the first or second class, county of the second class

[127] E-mail from Andy Kunz, Exec. Dir., Transit Oriented Development Institute, to La Tasha Williams, J.D. Candidate, Widener University Commonwealth Law School, (Nov. 15, 2016, 22:25 EST) (on file with author).
[128] Transit Revitalization Investment District Act, an Act of Dec. 8, 2004, P.L. 1801, No. 238.
[129] Pennsylvania Municipalities Planning Code, an Act of 1968, P.L. 805, No. 247.

through eighth class, home rule municipality, or any similar general purpose unit of government which shall hereafter be created by the General Assembly.

"Off street parking." Marked or unmarked parking located within a parcel and outside a private or public right-of-way.

"On street parking." Marked or unmarked parking located within a private or public right-of-way and outside of a parcel.

"Parking structure." A parking garage located above ground or underground consisting of one or more levels. The term does not include surface parking.

"Park-and-ride lot." A parking structure or surface parking lot intended primarily for use by persons riding transit or carpooling that is owned or operated either by a transit agency or by another entity with the concurrence of the transit agency.

"Pedestrian." A natural person afoot.[130]

"Project costs." Any expenditures made or estimated to be made, or monetary obligations incurred or estimated to be incurred, which are listed in a TODD plan or agreement as costs of improvements that create economic development or revitalization within a TODD, plus any costs incidental thereto. Project costs include, but are not limited to, the capital, financing, real property assembly, professional service, administrative, relocation, organizational and other necessary or convenient costs delineated in the act of July 11, 1990, (P.L. 465, No. 113), known as the Tax Increment Financing Act.

[130] 75 PA CONS. STAT. § 102.

"Regional planning agency."[131] A planning agency that is comprised of representatives of more than one county. Regional planning responsibilities include providing technical assistance to counties and municipalities, mediating conflicts across county lines and reviewing county comprehensive plans for consistency with one another.

"Setback."[132] The required minimum distance between the building line and the related front, side or rear lot line over which no part of any building may extend, except as otherwise provided.

"Transit oriented development (TOD)."[133] Developing an appealing mix of businesses, residences and public areas in clusters around transit stations for the convenience of pedestrians.

"Transit oriented development district (TODD)." Development concentrated around and oriented to transit stations in a manner that promotes transit riding or passenger rail use. The term does not refer to a single real estate project but represents a collection of projects, usually mixed use, at a neighborhood scale that are oriented to a transit node.

"TODD planning study." A study required to be undertaken by one or more municipalities, with the active involvement and approval of a public transportation agency and the pertinent county or counties, for the purpose of establishing the boundaries, existing environmental conditions, existing and proposed land use,

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[131] Pennsylvania Municipalities Planning Code, an Act of 1968, P.L. 805, No. 247.

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[133] Andy Kunz, Exec. Dir., Transit Oriented Development Institute, Welcome Address at the TOD Institute Conference: Accelerating Sustainable Communities (Sept. 27, 2016).

property availability, real estate market conditions, development potential, including use of air space rights, required zoning amendments, desired infrastructure and necessary transportation-related improvements and a financial plan, including funding sources, a proposed amortization schedule where applicable and estimated future maintenance requirements, to support the designation and implantation of a proposed TODD.

Chapter 2

Establishment of a TODD

Section 201. Prerequisites.

(1) The department shall define and support the rationale for the establishment and implementation of a TODD by executing a TODD planning study and drafting appropriate amendments to existing municipal zoning ordinances in conformity to the Pennsylvania Municipalities Planning Code, an Act of 1968, P.L. 805, No. 247.

(2) The regional planning agency may assist the department with undertaking the TODD planning study.

Section 202. Criteria for proposed TODD.[134]

The department shall establish TODD locations which may include any geographic area of a municipality or municipalities, including vacant, underutilized or potentially redevelopable land, within an area not to exceed a radius of three-quarters mile from a railroad, transit, light rail, busway or similar transit stop or

[134] Transit Revitalization Investment District Act, an Act of Dec. 8, 2004, P.L. 1801, No. 238.

station, measured from the centerline of the track or roadway traversing the station or stop location.

Chapter 3

Designation

Section 301. TODD boundaries.

(a) Boundaries.-- The department shall designate the TODD and its boundaries and when collaborating with public transportation agencies, transportation authorities, AMTRAK, passenger rail transportation providers or any combination thereof, may designate a TODD in advance of or in conjunction with actual development proposals.[135]

(b) Agreement.-- The Department shall draft and enter into a development agreement with the transit agency that approves the TODD planning study under section 201 (2) and the developer which defines the activities, commitments and administrative and management roles of each party to the TODD. The agreement shall include a description of the management entity.

Section 302. Management entity.[136]

The department shall designate the management entity in the TODD agreement to administer, manage and facilitate the implementation of the TODD planning study. The management entity shall have the power to provide or borrow money for purposes of executing a TODD, a TODD planning study or for an eligible

[135] In a city of the third class situate within a county of the second class A, the designation and boundaries of the TODD shall be made exclusively by the governing body of the county. Pennsylvania Municipalities Planning Code, an Act of 1968, P.L. 805, No. 247.

[136] Pennsylvania Municipalities Planning Code, an Act of 1968, P.L. 805, No. 247.

project. A management entity may also issue bonds, if permitted to do so under Commonwealth statute, for the purposes of executing a TODD, a TODD planning study or for an eligible project.

Section 303. Prohibition on management entities.

A member of the management entity may not receive money directly or indirectly from the TODD.

Section 304. TODD planning study factors.[137]

The planning study shall consider the need for capital improvements to transit-related facilities and adjacent public infrastructure, including roads, sidewalks and water, sewer and storm drainage service and public facilities, as well as opportunities for private sector real estate development and ways in which such facilities, services and development can be financed.

Section 305. Notification.[138]

(1) Community and public involvement in the establishment of TODDs is required. The municipality and the public transportation agency shall jointly conduct at least one public meeting in the proposed TODD area prior to the enactment of a TODD and TODD planning study. The meeting is intended to explain the purpose and components of the TODD establishment and implementation processes.

[137] Transit Revitalization Investment District Act, an Act of 2016, P.L. 1160, No. 151.
[138] Transit Revitalization Investment District Act, an Act of Dec. 8, 2004, P.L. 1801, No. 238.

(2) The department and the public transportation agency shall jointly conduct at least one public meeting in the TODD area to review the proposed TODD prior to implementation.

Section 306. Hearing request.

(a) Opposition.-- Any affected landowner, person aggrieved or interested party in opposition to the department's proposed TODD must submit to the Board in writing a request for a public hearing no later than thirty (30) calendar days after the public meeting.

(b) Hearing.-- The Board shall only grant a request for a hearing if the complaining party is able to demonstrate a prima facie case that the proposed TODD infringes the particular party's constitutionally-protected real property rights. The Board shall conduct the hearing. The department and the complaining party shall be permitted to call witnesses. Each party may conduct direct and cross examination and admit relevant evidence into the record. Relevance is determined at the sole discretion of the Board.

(c) Decision.-- The Board shall announce a final decision of its findings in writing and present a copy of its final decision to the governing body.

(d) Appeal.-- The procedures set forth in this section shall constitute the exclusive mode for securing review of a board decision by the court of common pleas of the county and judicial district wherein the department lies:

(1) The appellant shall file a notice of appeal with the board within thirty (30) days of the board's final order.

(2) All appeals challenging the validity of a board decision shall only be based on a defect in procedure and shall be filed within the time provided in section 306(d)(1) unless a party establishes each of the following:

i That the person filing the appeal had insufficient actual or constructive notice of the decision to permit filing an appeal within the time provided in section 306(d)(1).

ii That because of the insufficient actual or constructive notice of the decision, the application of the time limitation in section 303(a) would result in a deprivation of property without due process of law.

Chapter 4

Rules Governing TODD

Section 401. Application Process.

A landowner seeking to develop land situated in a TODD must file an application with the department and $2,500 one-time filing fee.[139] This filing will acknowledge the landowner's covenant to adhere to the provisions set forth in this Ordinance.

Section 402. Prohibitions.

Except as provided under section 403, the following uses are prohibited in a TODD:

[139] The application filing fee will assist the municipality with funding TODD projects. The municipality will be eligible to receive funding from the Commonwealth of Pennsylvania as well as federal funding from the United States Department of Transportation, the Railroad Rehabilitation and Improvement Financing Program and the Fixing America's Surface Transportation Act.

(1) Automobile or other motorized vehicle dealer, reseller, repair, leasing, or service station, including oil and lubrication service, tire and muffler installation and service, body shop, or other motor vehicle service. A retail or wholesale outlet selling motor vehicle parts and accessories without provision for on-site installation is excluded.

(2) Boat dealer, reseller, repair or leasing.

Commented [JD1]: Be sure to use proper punctuation, like periods.

(3) Bulk retail or wholesale use including building material, food and beverage sale, and restaurant supplier.

(4) Car wash facility.

(5) Cemetery.

(6) Cold storage plant.

(7) Drive-in movie theater or similar drive-in business.

(8) Funeral home and mortuary.

(9) Gas station and gas station accessory use including, convenience food and sundries sale.

(10) Golf course including miniature golf course.

(11) Junk yard and motor vehicle wrecking yard.

(12) Kennel, excluding those accessory to a veterinary clinic.

(13) Manufactured home sale.

(14) Nursery or greenhouse.

(15) RV park or mobile home park and campground.

(16) Solid waste transfer station.

(17) Towing service.

(18) Truck stop and use related to trucking except loading and unloading for permitted commercial use.

(19) Warehouse, mini-warehouse, storage facility and mini storage facility.

Section 403. Uses requiring conditional use permit.

Notwithstanding section 402 or property within the TODD, the following uses are considered uses that are conditional and that require permits:

(1) Drive-through facility.

(2) Fast-food establishment.

(3) Grocery store with a building footprints over 50,000 square feet.

(4) Liquor, retail sales and package retail sales.

(5) Outdoor recreational use.

(6) Parking, accessory to a permitted use, that exceeds automobile parking maximum regulations as outlined by the Department.

(7) Commercial parking facility or principal use structured or surface parking.

(8) Post office.

(9) Sport facility with over 10,000 seats.

Section 404. Exceptions.

Uses prohibited in the TODD which existed legally prior to the effective date of the ordinance and became non-conforming due to the newly established TODD may expand on the same or adjacent parcel if the prohibited use parcel:

(1) was owned or leased prior to the effective date of this ordinance,

(2) will be further developed under the conditions and development standards of the TODD, and

(3) will engage in use permitted by underlying zoning laws.

Section 405. Form-based codes.

Permitted uses shall be in accordance with the following form-based code development standards:

(1) General standards.[140]

(A) Mechanical equipment, including air conditioning, piping, ducts and conduits external to a building shall be concealed from view from adjacent buildings and the street level by use of landscaping, grills, screens or other enclosure.

(B) Outdoor lighting shall confine glare and reflections to the boundaries of the site. Each light source shall be shielded and directed away from any adjoining properties and public rights-of way.

(C) All non-residential uses shall be conducted and located within an enclosed building, except that the following uses may be conducted outside an enclosed building:

i Outdoor dining.

ii Bicycle sharing station.

iii Seasonal outdoor sales of plants, trees or produce no more than twice a year for a maximum of five consecutive weeks for each sales period.

(D) The following outdoor fixtures are permitted in connection with all non-residential uses:

[140] L.A., CAL., L.A. CNTY. CODE, Ch. 22.46 (2014).

i Tables.

ii Chairs.

iii Umbrellas.

iv Landscape pots.

v Valet stations.

vi Bicycle racks.

vii Planters

viii Benches.

ix Bus shelters.

x Kiosks.

xi Waste receptacles.

(E) The following outdoor structures are prohibited when located outdoors of a non-residential use and clearly visible from the street:

i Donation boxes for collecting goods.

ii Machines such as photo booths, penny crunching machines, blood pressure machines, fortune-telling machines, video games, animated characters and other such machines that are internally illuminated or have moving parts, make noise or have flashing lights.

iii Inanimate figures such as statues or sculptures of horses, kangaroos, bears, gorillas or similar animals, and mannequins, cartoon figures or human figures.

(2) Setbacks and build-to-lines.[141]

i The following standards shall apply to new non-residential and mixed-use development within the TODD:

(A) If a building is 0-1000 feet from the transit station, the building must be set back no more than six feet.

(B) If a building is 1000-2000 feet from the transit station, the building must be set back no more than six feet.

ii If ground level retail uses are present, setback may be increased up to 12 feet for outdoor seating, patio dining or retail sales by securing a conditional use permit in accordance with section 403.

(3) Architectural character.[142]

(A) Proposed buildings shall be compatible with the architectural characteristics of surround buildings, and allow for a range of architectural characteristics of surrounding buildings and allow for a range of architectural expressions that complement the existing urban fabric. The proposed building plan should be based upon, and reflect, a thorough analysis of the surrounding patterns with regard to the following:

i Building orientation.

ii Horizontal and vertical building articulation.

iii Architectural style.

iv Building scale and proportion.

[141] PHX., ARIZ., PHX. CITY CODE § 662 (2008).
[142] LOUISVILLE, KY., LAND DEVELOPMENT CODE Ch. 2 Part 7 (2006).

v Roof line and form.

vi Window pattern and detailing.

vii Architectural detailing.

viii Exterior finish materials and colors.

ix Lighting and landscape patterns.

Section 406. Parking Regulations.[143]

(1) For a new development within the TODD, the number of required parking spaces shall be determined by existing zoning ordinances.

Commented [JD2]: Rephrase.

(2) For new development occurring within the TODD, on-street parking shall count towards the parking requirements for uses on the lot set forth within the regulations of this district.

(3) Convenient bicycle facilities shall be provided within the transit oriented development district at 1 space per 2,000 square feet of tenant leasable floor area.

(4) Off-street parking shall be located to the rear or interior of a lot with visibility from a street shall be minimized. At-grade, above-ground or below-ground parking structures shall be permitted.

Section 407. Street and Sidewalk Regulations.

Sidewalks within the TODD shall have a minimum 6-foot unobstructed width from any obstruction, including light poles, parking meters, other street furniture, landscaping or fences.

Section 408. Parking fees.

[143] AUSTIN, TEX., CITY CODE Chapters 25-2 and 25-6 (2005).

The department shall assess a daily parking fee in the amount of $5 per vehicle for use of a parking space located within a TODD. The department shall assess a monthly parking fee in the amount of $75 per vehicle for use of a parking garage located within a TODD.

Section 409. Penalties.

The following shall apply:

(a) Criminal.-- Any applicant, landowner or other person who violates a provision under section 402 or section 403 of this ordinance commits a misdemeanor of the first degree.

(b) Civil.-- Any applicant, landowner or other person who violates a provision under section 402 or section 403 of this ordinance shall be strictly liable, without regard to fault, and shall be subject to an injunction and fine of $2,500 per occurrence payable to the department.

Chapter 5

Miscellaneous Provisions

Section 501. Applicability.

The requirements of this ordinance shall apply to parcels of land situated within a TODD as designated by the department.

Section 502. Severability.

The provisions of this ordinance shall be severable, and if any of its provisions shall be held to be unconstitutional, the validity of any of the remaining provisions of this ordinance shall not be affected. It is hereby declared as the

legislative intention that this act would have been adopted had such unconstitutional provision not been included therein.

Section 503. Repeals.

All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed insofar as they may be inconsistent herewith.

Section 504. Effective date.

The adoption of this Ordinance, which is a power specifically delegated to the _____ Municipality, is not subject to referendum. This Ordinance or a summary thereof shall be published in an official newspaper of general circulation in the County of _____ and shall take effect and be in full force five (5) days after the date of publication.

Passed by the [governing body] the ____ day of _____, 2017, and signed by me in open session in authentication of its passage this ____ day of _____, 2017.

_____
Municipality Chief Executive Officer