



## Legislation Text

File #: 26627, Version: 1

### Fiscal Note

Under terms of the sale and lease agreements, economic impacts may be anticipated in three areas. First, the building improvement would be sold to the purchaser / lessee for \$190,000. Next, a 99 year ground lease would generate \$5,906 per year, with a 2% annual escalator. And finally, upon expiration of the ground lease, the City is obligated to repurchase the building improvement. Assuming a 2% discount rate, the present value of the building improvement sale and ground lease payments is \$774,694. The repurchase at the end of the 99 year ground is to be based upon independent appraisals commissioned by each party. If the building improvement is purchased at fair market value, this would represent the exchange of a cash assets for a real estate asset. Assuming that the building could be sold again for cash at fair market value, the repurchase provision would have no impact upon the net present value calculation.

Project #30 of the 2012 Parks Division 2012 Adopted Capital Budget provides that "proceeds from the sale or lease of all properties within the [James Madison] Park will be divided equally between James Madison Park and general parklands."

### Title

Approving the sale of the residential structure located at 646 East Gorham Street (the "Building Improvement") within James Madison Park to O'Kroley / 646 LLC, (the "Lessee") and approving a ground lease (the "Ground Lease") for the land underneath said Building Improvement (the "Leased Land").

### Body

WHEREAS, on April 14, 2004, the Madison Board of Park Commissioners declared the Building Improvement located at 646 East Gorham Street, but not the land underneath it, surplus to the needs of the City of Madison Parks Division; and

WHEREAS, the Mayor established the James Madison Park Disposal Surplus Criteria and Selection Committee (the "Committee") pursuant to Madison General Ordinance 8.075 Disposal of Surplus City Real Property; and

WHEREAS, the Committee identified the type(s) of use(s) and special conditions desired for the Building Improvement located at 646 East Gorham Street; and

WHEREAS, the Committee established criteria with point values to be used in the evaluation of bid proposals submitted by potential purchasers of the Building Improvement; and

WHEREAS, the Committee, after having conducted a public hearing and held numerous public meetings to gather input on the future use of the structures, recommended the issuance of the Request for Proposals (the "RFP"); and

WHEREAS, the Common Council approved the issuance of in the RFP on March 16, 2011 (RES-11-00248, File ID 21244); and

WHEREAS, the Common Council approved the rejection of the initial responses to the RFP and approved the re-issuance of the RFP on September 20, 2011 (RES-11-00789, File ID 23898); and

WHEREAS, the Lessee submitted a response to the RFP to purchase the Building Improvement for \$190,000 and enter into a 99 year Ground Lease with the City to occupy the Building Improvement and Leased Land as

an owner occupied multi-family residential property; and

WHEREAS, the Committee recommended that the Common Council accept the proposal of the Lessee; and

WHEREAS, the Common Council accepted the proposal of the Lessee on February 28, 2012 (RES-12-00117, File ID 25053) and directed City staff to enter into negotiations on behalf of the City of Madison to determine the terms of the conveyance of the Building Improvement and a lease of the Leased Land beneath the Property, and

WHEREAS, there is a sidewalk located on 648 East Gorham Street that serves the Building Improvement and said sidewalk will require the City to grant an easement to the Lessee to allow them to utilize it to access said Building Improvement, and

WHEREAS Staff and the Lessees have agreed to the material terms of the sale of the Building Improvement and the Ground Lease outlined below:

- Ground Lease Term - 99 years
- Lessee - O’Kroley / 646 LLC, a Wisconsin Limited Liability Company, sole member - Dawn O’Kroley
- Ground Lease Rent - \$5,906 per year with a 2% annual escalator
- Use Restriction - The Building Improvement shall only be used as an owner occupied multi-family residence.
- Special Conditions - Lessee shall take reasonable measures to prevent parking by anyone on any unimproved area of the Leased Land. City reserves the right to review and approve any and all landscaping changes or improvements, excluding the planting of flowers or vegetables and regular maintenance such as lawn mowing.
- Assignment - The Lessee will be the owner of the Building Improvement. It is understood that the Lessee’s Ground Leasehold interest shall not be severed from the ownership of the Building Improvement. The Lessee shall at any time, upon notice to the City, be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interest in the Ground Lease, but only if such transfer is made simultaneously with the transfer of the Building Improvement to the same purchaser or transferee of the Ground Lease.
- Leasing Units - In addition to Lessee’s unit, the Building Improvement contains up to three (3) other units that Lessee may rent to residential tenants. Lessee may sublet Lessee’s unit for a period of no more than twelve (12) cumulative months in any sixty (60) month period. Lessee shall provide the City with a copy of all leases. All leases shall be subject to and subordinate to the terms of the Ground Lease.
- Maintenance - Lessee shall maintain the Leased Land in a presentable condition. Lessee’s maintenance responsibilities include but are not limited to, general repairs, maintenance and replacement of fencing, maintenance and replacement of sidewalks, exterior stairwell, patio, concrete wall and driveway; removal of garbage and debris, snow removal, and landscape upkeep. No exterior storage of materials is permitted on the Leased Land, except as part of maintenance, repair or construction activities.

- Taxes / Special Assessments - Lessee shall pay real estate taxes and special assessments on the Building Improvement and Leased Land.
- Subordination - The City's interest in the land shall not be subordinated.
- Damage / Destruction - In the event that the building is damaged more than 50%, the Ground Lease shall terminate and the Building Improvement shall revert back to the City .
- Repurchase - Upon the expiration of the Ground Lease, the City shall repurchase the Building Improvement from the Lessee. The price shall be determined by the City and Lessee each retaining an independent appraiser who shall appraise the Building Improvement in "as-is" condition. In the event that the lower of the appraised values is ninety (90%) percent or more of the higher appraised values, the value of the Building Improvement shall be the average of the two values. In the event that the lower of the appraised values is less than ninety (90%) percent of the higher appraised values, a third appraiser shall review the two appraisals and make a determination of the "as-is" value. In the event of a termination of the Ground Lease due to the Building Improvement's damage or destruction of more than 50%, the repurchase price shall be reduced by the amount of any insurance proceeds received by the Lessee from the Lessee's insurer. Upon the termination of the Ground Lease for a default, the repurchase price shall be determined in the same manner. However, once the repurchase price has been determined, it shall be reduced ten (10%) percent as a payment to the City for liquidated damages.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council approves the Ground Lease between the City of Madison and Lessee for the Leased Land on the terms and conditions as described herein, and;

BE IT FURTHER RESOLVED, that the Common Council approves the sale of the Building Improvement to Lessee by bill of sale for \$190,000 for its adaptive rehabilitation and reuse as an owner occupied multi-family residence, and;

BE IT FURTHER RESOLVED, that the Common Council authorizes the grant of a sidewalk easement to the Lessee as described herein, and;

BE IT STILL FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute any and all documents, in a form approved by the City Attorney, necessary to complete the transactions described in this Resolution.