



## Legislation Text

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**File #:** 40555, **Version:** 1

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### **Fiscal Note**

This resolution would authorize a \$1,433,000 loan to The Gebhardt Galaxie, LLC ("Developer") for the redevelopment of the former City-owned property located at the north 800 Block of East Washington Avenue.

The Project consists of approximately 50 apartment units, 21,800 gross square feet of commercial, 6,630 gross square feet of retail space, a sustainable rooftop production farm that was funded in Phase I and approximately 190 parking stalls ("Project"). This loan would be repaid through incremental taxes generated by the Project and represents approximately 70% of the present value of all incremental taxes anticipated from the Project throughout the remaining 17-year life of proposed TID #36.

Upon completion of the Project, the City will review the Developer's audit of project costs and financing, to the City's satisfaction, or conduct its own audit. In the event that project costs are less than stated in the TIF Application, Developer shall make a clawback payment to the City of 50% of the difference between actual project cost and actual project financing ("Clawback"). This Clawback formula is consistent to the formula recently utilized for condominium projects over the last several years.

Funds to capitalize this loan were authorized in the 2015 Capital Budget and reauthorized in the 2016 executive capital budget, funded with general obligation debt. The City's General Obligation borrowing will not occur until after this TIF Loan is proposed for disbursement. Therefore, funds will be internally borrowed until they are reimbursed by scheduled General Obligation borrowing in the fall of 2016. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 6 years, the Developer is required to guaranty a minimum payment if sufficient future tax increment is not available.

If Developer sells or transfers the Property to a tax-exempt entity, Buyer shall pay an annual payment in lieu of taxes (PILOT) in the amount of the property tax paid as of the date of sale, frozen, through 2032. The increment guarantee and PILOT payment are secured by a subordinated mortgage on the property.

### **Title**

Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$1,433,000 Tax Incremental Finance Loan to The Gebhardt Galaxie, LLC to assist in Phase II of the development of a housing and commercial redevelopment project located at the north 800 Block of East Washington Avenue in TID #36 (Capitol Gateway).

### **Body**

WHEREAS, on September 6, 2005, the City of Madison adopted RES-05-00696 creating a Project Plan and Boundary for TID #36; and

WHEREAS the intent and purpose of the Project Plan, among other things, is to eliminate blighting conditions and encourage development of a wide range of housing options and attract and retain business and employment along East Washington Avenue; and

WHEREAS, The Gebhardt Galaxie, LLC ("Developer") proposed to construct approximately 205 apartment units and approximately 39,000 gross square feet of commercial and retail, a 55,000 square foot grocery, approximately 501 stalls of structured parking, a sustainable rooftop production farm and other use(s) allowed by the zoning text at an estimated development cost of approximately \$43,772,000 ("Phase I") on City-owned property generally located at the north 800 Block of East Washington Avenue ("Property"); and

WHEREAS, on April 29, 2014, the Common Council of the City of Madison adopted RES 14-00311, authorizing a \$4,417,000 TIF Loan to Developer; and

WHEREAS, in Phase II, Developer proposes to construct approximately 50 market-rate apartment units, approximately 21,800 gross square feet of commercial, 6,630 gross square feet of retail, and 190 stalls of structured parking, complete a sustainable rooftop production farm authorized in Phase I on the Phase I development and other use(s) allowed by the zoning text at an estimated development cost of approximately \$15,318,000 ("Project") on property generally located at the north 800 Block of East Washington Avenue ("Property"); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$1,433,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$1,433,000 gap is attributable to the remaining 76 structured grocery stalls and reduced bank lending for the commercial development; and

WHEREAS, \$1,433,000 of said TIF assistance represents approximately 70% of the present value of the estimated tax incremental revenues generated by the Project and requires an exception to TIF Policy that no more than 55% be made available to a project; and

WHEREAS, the TIF Loan becomes a grant when tax increment received from the Project and/or Developer out-of-pocket payments are sufficient to repay the TIF Loan; and

WHEREAS, in addition to any other powers conferred by law, the City may exercise any power necessary and convenient to carry out the purpose of the TIF law, including the power to cause project plans to be prepared, to approve such plans, and to implement the provisions that effectuate the purpose of such plans; and

WHEREAS, funding of the loan proceeds to this project is authorized in the City of Madison 2015 Capital Budget; and

WHEREAS, in order to make loan funds available the City may have to internally borrow until General Obligation borrowing occurs in the fall of 2015.

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes of Tax Increment Finance Law and the plans and objectives set forth in City of Madison TIF Policy, the City's loan to Developer demonstrates the potential to eliminate blighting conditions, encourage development of a wide range of housing options and attract and retain businesses and employment in the East Washington Avenue corridor and finance additional public works and improvements that would stimulate planned commercial redevelopment in TID #36, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan and its amendment, the TIF Law and City TIF Policy.

BE IT FURTHER RESOLVED that funding is subject to the following conditions:

1. The Project. Developer agrees to develop:
  - a. Approximately 50 apartment units and approximately 21,800 gross square feet of commercial and retail, 6,630 gross square feet of retail and other use(s) allowed by the zoning text;
  - b. A parking ramp of approximately 190 parking stalls allocated for apartment tenants, commercial or

retail customers, the grocery and employees or other use allowed by the zoning text; and

- c. Completion of the Phase I Rooftop Production Farm required in the Phase I project, partially funded with \$440,000 of the \$4,417,000 of TIF authorized in RES 14-00311 and in accordance with the Phase I Loan Agreement referenced in Section 7 below; and
  - d. A landscaped rooftop terrace and tenant community room in Phase II.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan from the City to Developer, in the aggregate amount of One Million Four Hundred Thirty-Three Thousand Dollars (\$1,433,000) ("TIF Loan") to partially finance Developer's development of the Project. The TIF Loan shall be disbursed in escrow with the title company on the date of closing of all financing for the Project. Upon completion of the applicable portions of the Project, the TIF Loan shall be disbursed in accordance with a Development Agreement. Obligations for each portion of the TIF Loan will become a grant and the TIF Loan Documents be released when tax increment recovered from the Project and/or cash payments by Developer, or any guarantor, are sufficient to repay the applicable portion of the TIF Loan and the City's associated borrowing costs.
  3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and equity in the aggregate amount of not less than \$13,885,000 ("Financing"), as stated in Developer's TIF Application dated September 2, 2015 and its amendments or attachments ("TIF Application"). Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Developer has met all of the lender's conditions of financing, such as commercial pre-leasing requirements. Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Developer and/or a financial statement demonstrating Developer's financial capacity to invest equity in the Project. In aggregate, Developer's equity investment shall not be less than the amount of the TIF Loan at closing. The TIF Loan shall be used solely for the purpose of partially funding the TIF-eligible total project costs stated in the TIF Application, estimated therein at approximately \$15,318,000 ("Project Cost"). Upon completion of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing, to the City's satisfaction, for the City's review and approval. If the City does not approve the Developer's audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer's books and records related to Project Cost and Financing. In the event that the audited actual Project Cost is less than \$15,318,000, on or before July 1, 2018, Developer shall pay the City a clawback payment of fifty percent (50%) of the difference between the audited actual Project Cost and the greater of \$13,885,000 or the audited actual Financing ("Clawback"). Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 8 below.
  4. Grocery Condominium Sale. If Developer sells the condominium unit which comprises the Premises leased to a grocery operator, upon such sale, the City shall provide a partial release of mortgage for no release price releasing such condominium unit from the TIF Mortgage (defined below) provided the buyer executes a PILOT Agreement, if necessary, and Mortgage as set forth in Section 10 below.
  5. Grocery Clawback Provision. If a grocery discontinues operations prior to the date that is ten years from the issuance of a certificate of occupancy for the grocery, the City shall provide Developer a one-time grace period of one year from the date of such discontinuance to procure another grocery to occupy the space. If Developer is unable to secure another grocery operator within the grace period, Developer shall pay the City 18% of the TIF assistance provided to Phase II of the Project (representing the percentage of the total project occupied by the grocery) or \$258,000, in one lump sum on December 31, 2025.
  6. Rooftop Terrace. Developer shall pay no less than \$275,000 (100% of the \$275,000 estimated cost) to construct the landscaped rooftop terrace and community room as part of Phase II including, but not

limited to, the foundation and structural components which will support the rooftop terrace and community room ("Rooftop Terrace Funds"). Failure to complete construction of the landscaped rooftop terrace and community room within Phase II upon completion of the Project in accordance with Section 14 below shall constitute a default under the Phase II Loan documents.

7. Rooftop Production Farm - Amendment to Phase I Loan. Developer shall complete the development of a rooftop production farm on Phase I in accordance with the terms of that certain Tax Increment Financing Loan agreement recorded as document number 5074910 in the Dane County Register of Deeds (the "Phase I Loan Agreement"). The Phase I Loan Agreement will be amended to reflect an affirmative covenant to complete the Rooftop Production Farm. Failure to comply with the amended terms of the Phase I Loan Agreement will result in a default on the Phase I Loan Agreement.
8. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer. Developer shall guaranty the City's receipt of increment revenue. A schedule of the projected tax increments used to calculate the TIF loan amount shall be attached to the TIF Loan Agreement.
9. Security. The TIF Loan shall be evidenced by a Note to the City of Madison in the amount of the TIF Loan bearing zero percent (0%) interest ("Note"). Developer shall execute a mortgage in favor of the City of Madison securing payment of the TIF Loan ("TIF Mortgage"). The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney if necessary. An individual principal of the Developer shall execute a personal guaranty guaranteeing payment of the TIF Loan and PILOT payment, if applicable.
10. Sale to Tax Exempt Entity - PILOT Payment. If Developer sells or transfers any portion of the Property to a tax exempt entity ("Buyer"), whereupon such ownership renders the Property or any portion thereof as property tax exempt, Buyer shall pay the City an annual payment in lieu of taxes (PILOT) in the amount of property tax last levied as of the date of sale to Buyer, frozen, through 2032. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments ("Buyer's Mortgage") at the time of Buyer's acquisition of the Property. The Buyer's Mortgage and PILOT Agreement shall be released and terminated by the City upon the receipt by the City of the required PILOT payments.
11. Satisfaction. Subject to Section 4, the TIF Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and PILOT payment, if applicable.
12. Affirmative Action MGO 39.02 (9). Developer and its contractors/subcontractors shall comply with all applicable provisions of the Madison General Ordinance (MGO) 39.02 (9), concerning contract compliance requirements. Prior to commencing construction, Developer shall contact the City's Affirmative Action Division to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Affirmative Action Division in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Developer shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract.
13. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Borrower to provide a living wage.
14. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.

15. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
16. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application as of the date of introduction of a resolution to the Common Council to approve this TIF Loan, shall subject this TIF Loan commitment to reconsideration by the City, or if the loan has been made to immediate repayment of the TIF Loan by Developer. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be unreasonably withheld, reconfigure the size and use of the Project to address current market conditions (for example, the number and size of apartments may be increased or decreased, and certain space designated for office use may be converted to residential use).
17. Project Completion. Developer shall guarantee that the construction of the Project shall be completed by July 1, 2017. Project completion shall be evidenced by the issuance of a certificate of occupancy for all of the apartment units.
18. Property Insurance. Prior to funding, evidence shall be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.
19. Title Insurance. At least fifteen (15) days prior to closing, Developer shall provide a commitment for a title insurance policy of the proper type and amount (i.e. the amount of the TIF Loan) of coverage to the City. The City shall receive a lender's policy.
20. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval of zoning and other land use approvals for the Project as described in the TIF Application and its amendments and attachments including approximately 50 apartment units, 21,800 gross square feet of commercial, approximately 6,630 gross square feet of retail and commercial land uses and a parking ramp of approximately 190 parking stalls and a rooftop terrace, or other use allowed by the zoning text.
21. Automatic Expiration. The TIF Loan to Developer shall be null and void in the event that Developer does not commence construction on the Project, as evidenced by issuance of construction permits, by April 30, 2016.

BE IT STILL FURTHER RESOLVED that the TIF Loan to the Developer is hereby approved and that the Mayor and City Clerk are hereby authorized to execute a development agreement and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.

BE IT STILL FURTHER RESOLVED that the Common Council hereby authorizes internal borrowing to fund the Loan to be reimbursed from the proceeds of 2014 General Obligation borrowing.