



Legislation Text

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Fiscal Note

The proposed resolution amends the Economic Development Division's 2024 Adopted Capital Budget to appropriate \$1,669,000 in TID-supported GO Borrowing in Tax Incremental District (TID) 54 (Pennsylvania Ave). The additional funding will be used for a loan in the amount of \$1,669,000 to Vermillion Madison LLC, or its assigns ("Developer") to close a funding gap in the proposed development ("Project") attributable to sanitary sewer upgrades and associated costs to accommodate increased capacity required by large, multi-family residential development, such that, but for TIF assistance, the Project could not occur. This TID funding is also contingent upon an amendment of the TID 54 (Pennsylvania Ave.) boundary ("Property") in 2024.

This resolution further authorizes the 0% interest \$1,669,000 loan to Vermillion Madison LLC, or its assigns ("Developer"). The TIF Loan would be repaid through incremental taxes generated by the Project and represents 15% of the present value of all incremental taxes anticipated from the Project over the proposed TID's 27-year life. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 5 years, the Developer is required to guaranty a minimum payment if sufficient future tax increment is not available.

The increment guarantee is secured by a subordinated mortgage on the property. The TIF Loan also requires that the Developer be prohibited from selling or transferring the Property prior to repayment of the TIF Loan. If the Developer sells or transfers the Property to a tax-exempt entity ("Buyer"), the 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, until 2051.

Title

SUBSTITUTE Authorizing the Mayor and City Clerk to execute a development agreement and authorizing an amendment to the 2024 Capital Budget to fund a \$1,669,000 Tax Incremental Finance Loan to Vermillion Madison LLC, or its assigns, to upgrade sanitary sewer and associated costs and construct approximately 328 units of market rate housing and approximately 361 parking stalls located at 1617 Sherman Avenue in Tax Incremental District (TID) 54. (District 12)

Body

WHEREAS the City of Madison is in the process of amending TID #54 (Pennsylvania Ave.) during 2023; 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 commercial and housing options and attract and retain business and employment in the City of Madison; and

WHEREAS Vermillion Madison LLC, or its assigns, ("Developer") has proposed to construct 328 market-rate housing units on the Property at a total estimated development cost of approximately \$96,572,000 ("Project") located at the site of the former Filene House, at 1617 Sherman Avenue, in the City of Madison and within the boundary of a proposed amendment to the TID #54 (Pennsylvania Ave.) boundary ("Property"); and

WHEREAS City staff has conducted an analysis (See Attached Report) of the Project and has determined a gap of approximately \$1,669,000, attributable to sanitary sewer upgrades and associated costs to accommodate increased capacity required by large, multi-family residential development, such that, but for TIF assistance, the Project could not occur; and

WHEREAS, \$1,669,000 of TIF assistance to the Project represents approximately 15% of the present value of the estimated tax incremental revenues generated by the Project, in conformance to TIF Policy that no more than 50% be made available to a project (“50% Rule”); 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

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 and encourages the development of a wide range of housing options in TID #54, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan, 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 on the Property all of the following:
 - a. Construction of approximately 328 units of market rate apartments
 - b. Approximately 361 structured parking stalls
 - c. Public improvements including a new sewer and public street.
2. Form of Assistance. TIF assistance shall be provided in the form of a 0% loan in the amount of One Million Six Hundred Sixty-Nine Thousand Dollars (\$1,669,000) to the Developer for the purposes of constructing the Project (the “TIF Loan”). The TIF Loan will be repaid either through tax increment or a guaranty payment pursuant to Section 10 herein.
3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and/or equity in the aggregate amount of not less than \$94,903,000 for Project (“Financing”). For the avoidance of doubt, the Financing does not include the TIF Loan.
 - a. 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.
 - b. Equity investment may be evidenced by any of the following:
 - i. 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.
 - ii. Opportunity Zone Equity Investment. The Developer’s equity investment may include equity from Opportunity Zone fund investors, that shall be evidenced by providing the City with a copy of a signed Letter of Intent between the Opportunity Zone fund and Developer stipulating an Opportunity Zone fund investment in the Project.
 - iii. Other evidence of equity reasonably acceptable to the City.
 - c. In aggregate, Developer’s sources of equity investment, as established through financing documents described herein shall not be less than the amount of the TIF Loan at closing.

After closing, the TIF Loan shall be used solely for the purpose of funding the TIF eligible portion of the

total project costs as stated in the TIF Application, and as defined in Wis. Stat. §66.1105. The total project costs estimated therein at approximately \$96,572,000. Upon completion of the Project, which is defined as issuance of a certificate of occupancy for all elements of the Project, Developer shall provide the City with a cost certification of the total Project Cost and Financing ("Audit"), 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 financing gap for Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by the Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by the Audit, in Financing ("Audited Actual Financing"), the following formula shall apply to determine the clawback payment due to the City ("Clawback"):

The Clawback shall be calculated as follows:

1. "Cost Savings" = \$96,572,000, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$94,903,000.

If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as a Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Sections 10 and 12 below and shall reduce the outstanding amount of the TIF Loan pursuant to Sections 10 and 12 below.

4. Second Look Clawback. For four years following the Commencement Date (defined in Section 23), Developer shall not sell the property without prepaying the TIF loan (the "Prepayment Period"). Prepayment of the TIF Loan is subject to the following conditions: Developer shall provide to the City an appraisal of the Property; if the appraised value of the Property (the "Value"), is 150% or more of the City's projected value of the Property in the year of the sale, then Developer shall pay to the City, an amount equal to the Second Look Clawback, as defined below.

Within 10 days of receipt of the appraisal, the City shall accept or object to the appraisal if it reasonably determines that the Developer's appraisal is insufficient. The City shall have 30 days to obtain its own appraisal, at its own cost and expense. The value shall be the average of the two appraisals and the Incremental Value shall be calculated using that number.

Developer shall have the right to terminate the prepayment without consequence as long as it maintains control of the Property.

The City's projected value of the Property shall be attached to the TIF Loan Agreement as an exhibit.

Second Look Clawback calculation:

1. Net Value = Value minus TIF Loan balance.
2. Adjusted Gap Amount = Net Value minus Audited Actual Cost.
3. Second Look Clawback = Adjusted Gap Amount multiplied by fifty percent (50%), not to exceed \$1,669,000.

Following the Prepayment Period, the Second Look Clawback shall have no further effect. The Developer shall have the right to prepay the TIF Loan or, in the event of sale, request further subordination of the TIF

Loan documents, subject to the discretion of the City.

5. Disbursement Method. At closing, the City shall disburse the TIF Loan to a title company to be held in escrow. Developer shall have the right to lend a portion of the TIF Loan to the project in phases, secured by one or more notes and mortgages as approved by the City Attorney. In order to facilitate the City's review of project cost to confirm eligibility under Wisconsin TIF Law (Wis. Stats. 66.1105) and Developer's progress toward SBE bidding goals as set forth in Section 14 herein, the City and Developer shall enter into a Disbursement Agreement that authorizes no less than three (3) disbursements of TIF funds, including a final 20% of total TIF funds retained until 80% project completion confirmation by the Department of Civil Rights ("DCR") that Developer has complied with the applicable provisions of MGO 39.02 (9). TIF funds shall be disbursed upon the City's receipt and satisfactory review of a detailed draw request from Developer provided on or about no less than three (3) disbursement dates, to a title company.
6. 2024 Capital Budget Amendment. Funding for the One Million Six Hundred Sixty-Nine Thousand Dollars (\$1,669,000) is contingent upon an amendment to the City of Madison 2024 Capital Budget authorizing the expenditure of funds stated herein.
7. TID 54 Project Plan Amendment. The City shall not make TIF funds available until the date of an approval of a TID #54 Project Plan and Boundary Amendment by the TIF Joint Review Board.
8. No TID Project Plan Amendment. In the event that the TID #54 Project Plan Amendment (the "Project Plan Amendment") is not approved by the TIF Joint Review Board of the City of Madison and certified by DOR on or about April 30, 2025, then Developer shall have the option to either terminate the agreement, or to accept the TIF Loan as a conventional loan, amortized over ten years, together with the costs of issuance and interest on the unpaid principal balance at a rate equal to the rate of the City's borrowing, plus one hundred basis points, with payments of principal and interest shall be made quarterly (the "Conventional Loan").

In the event the Project Plan Amendment is not certified by DOR on or about April 30, 2025, Developer shall be obligated to repay the TIF Loan in accordance with the terms of the Conventional Loan. The City shall make its best effort to secure TID certification as soon as possible thereafter. If the City is able to secure certification, then the Conventional Loan balance shall revert back to a TIF Loan on the terms described herein.

All funds not spent or remaining in escrow shall be returned to the City.

9. Intentionally omitted.
10. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan for the Project shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer. A schedule of the projected increment used to calculate the TIF Loan amount shall be attached to the Agreement ("Increment Schedule").

Developer shall perform on all requirements of the respective TIF Loan Agreement for the loan funds disbursed to Developer by the City ("City Loan"), including but not limited to either of the Clawback provisions (Sections 3 and 4), and the Tax Increment Guaranty (Sections 10 and 12). In such event, the City shall credit Developer for the City's portion of annual estimated incremental property taxes levied on the Project, as set forth in the Tax Increment Guaranty provision in Sections 10 and 12, until the City Loan is repaid. If in any year, the actual annual tax levy on the Project is less than the amount set forth in the Tax Increment Guaranty, Developer shall pay the City the annual difference as a guaranty payment. Developer shall repay to the City remaining principal on the City Loan, if any, at its ten-year maturity in

2034.

11. Sale to Tax Exempt Entity - PILOT Payment. Developer shall be prohibited from selling or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written consent of the City (except for transfers made pursuant to foreclosure of senior loan on the Project). If Developer sells or transfers the Property to a tax-exempt entity ("Buyer"), whereupon such ownership renders the Property 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 2051. 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 closure of TID 54. This obligation will be secured by a land use restriction terminable upon closure of TID 54.
12. Security and Corporate Guaranty. The TIF Loan shall be evidenced by notes executed by Developer, or its assigns, to the City of Madison in the amount of the TIF Loan bearing zero percent (0%) interest (together the "Note"). Developer shall execute mortgages in favor of the City of Madison securing payment of the TIF Loan (together the "Mortgage"). The City agrees, if necessary, to execute a subordination of mortgage in a form approved by the City Attorney and acceptable to Developer and Developer's lender(s) and said subordinated Mortgage shall be in the second mortgage position. Developer and its assigns shall cause to be provided a corporate guaranty of the TIF Loan to the Project. The corporate guaranty shall be from the same entity guaranteeing Developer's bank loan, QLC/VERM JV LLC, which Developer shall provide evidence of prior to Closing.
13. Satisfaction. The TIF Mortgage and Agreement shall be satisfied and the Note cancelled via a recordable release upon full payment of the TIF Loan.
14. 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 in pursuant to the contract. The Developer understands that it is obligated to meet the goal set by the Department of Civil Rights, or show best efforts to meet the goal based on documented evidence of efforts.

Furthermore, in order to ensure compliance with the above provisions, Developer and its contractor agree to the following:

- a. The general contractor provides a schedule of values as soon as reasonably possible following the execution of this Term Sheet.
- b. A meeting shall take place before loan closing to set affirmative action goals for the Project. Additional meetings may be scheduled at the request of DCR and must be held within 10 days of the request.
- c. At 80% completion, the goal is either met, signed contracts establish that the goal will be met, or documented good faith efforts are shown as to why the goal is not met.

For the purposes of this paragraph, "Completion" shall mean expenditure of total project costs as described in the TIF Application.

15. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
16. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
17. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
18. Material Changes. At the time of Closing, if any material adverse changes to the size, use or ownership of the Project or Property stated in the TIF Application, including any changes to the number or rent of units, have been made, this TIF Loan commitment shall be subject to reconsideration by the City. Following Closing, any material change made without consent of the City shall subject the TIF Loan to immediate repayment. 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 configuration of parking stalls may be increased or decreased).
19. Project Completion. Developer shall guarantee that the construction of the Project will be completed within 30 months of Closing (the "Completion Date"). Project completion shall be evidenced by the issuance of a certificate of occupancy. Failure to complete the Project by the Completion Date may require payment under the increment guaranty under Sections 10 and 12 if such delay causes a shortfall under the Increment Schedule.
20. 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.
21. Title Insurance. At least thirty (30) days prior to closing, Developer shall provide a commitment for a title insurance policy of the proper type and amount of coverage to the City. The City shall receive a lender's policy in a form to be approved by the City Attorney, which will require, among other things, an updated survey of the Property. Developer shall be responsible for all lending costs and fees.
22. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.
23. Automatic Expiration. The TIF Loan shall be null and void if the Closing and commencement of construction on the Project, as evidenced by issuance of permits for footings and foundations (the "Commencement Date"), do not occur by December 31, 2024.

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 FINALLY RESOLVED that the 2024 Capital Budget be amended to authorize \$1,669,000 of TIF loan assistance to the Project and authorize \$1,669,000 of TIF-supported GO borrowing to finance that loan.