



## Legislation Text

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### Fiscal Note

This resolution would authorize a \$4,900,000 loan to Union Corners, LLC ("Developer") for the construction of the first phase of a project located in the vicinity of the intersection of East Washington Avenue, Winnebago and Milwaukee Streets. The redevelopment consists of a 131-unit condominium project, 70,000 square foot commercial space and 166 underground parking stalls ("Project"). This loan would be repaid through incremental taxes generated by the Project and represents approximately 53% of the present value of all incremental taxes anticipated from the Project throughout the remaining 26-year life of the TID. This funding level is slightly above the 50% policy established by Common Council and would require a Council exception to TIF Policy.

The 2007 Capital Budget provides authorization to capitalize this loan, funded with general obligation debt. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 10 years, the Developer is required to guarantee a minimum payment if sufficient future tax increment is not available. The Developer is also obligated to return an equity participation payment equal to a 50% share of any surplus proceeds as defined by the equity participation formula in the TIF Policy that is in effect as of June 30, 2008, in the development agreement. The increment guarantee and equity participation payment are secured by a subordinated mortgage on the property.

### Title

AMENDED SUBSTITUTE - Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$4,900,000 Tax Incremental Finance Loan to Union Corners, LLC ("Developer") in the development of the first phase of a mixed-use redevelopment project (Union Corners) located in the former Rayovac site, roughly bounded by East Washington Avenue, Winnebago and Milwaukee Streets in the proposed TID #37 (Union Corners) and making exceptions to TIF Policy 4(e) concerning the 50% Rule and 3.1(i) Equity Participation Payment formula.

### Body

WHEREAS, the City of Madison has, by adoption on July 18, 2006 of Resolution Number RES-06-00607 created the boundary and Project Plan for Tax Incremental District (TID) #37; and

WHEREAS said Project Plan, among other things, provides for planned economic, commercial, housing and mixed-use development in order to revitalize the area bounded by East Washington Avenue, Winnebago and Milwaukee Streets, commonly referred to as Union Corners; and

WHEREAS, Developer shall construct 131 residential condominium units to be sold to owner occupants including 19 Inclusionary Zoning (IZ) units, 13 commercial condominium units, totaling 70,000 gross square feet to be sold or leased, and 166 underground parking stalls at an estimated value of \$53,867,000 ("Project"); and

WHEREAS, Developer shall guaranty that tax increments of the Project shall be sufficient to repay the TIF Loan; and

WHEREAS, after review of the TIF Application and its attachments, staff concluded that approximately \$3,200,000 of the \$4,900,000 gap was attributable to infrastructure costs and approximately \$1,700,000 of gap attributable to the commercial development in the Project; and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$4,900,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, ~~even with said TIF assistance, the Project under current market conditions does not forecast a profit necessitates a one-time exception to the Equity Participation formula under TIF Policy 3.1 (i); and~~

WHEREAS, in conformance to TIF Policy, \$4,900,000 of said TIF assistance represents approximately 53% of the present value of the estimated tax incremental revenues generated by the Project; and

WHEREAS, for the purpose of promoting market and affordable owner-occupied housing, elimination of blighting conditions and revitalization of the Union Corners area, the City finds it necessary and appropriate to make an exception to TIF Policy 4(e) that no more than 50% of the net present value of the tax increment generated by a private development project shall be made available to that project as gap financing and to current TIF Policy 3.1(i) ~~concerning regarding~~ the Equity Participation formula ~~for equity participation~~; and

WHEREAS, current TIF Policy 3.1(i) establishes estimated costs per the TIF Application as the measure by which an Equity Participation Payment formula is calculated; and

WHEREAS, the City's TIF Policy Committee ("Committee") is considering methods of auditing actual costs and profit of TIF-assisted projects that may be adopted as part of a new TIF Policy; and

WHEREAS, Developer agrees to comply with the Committee's recommendations concerning the auditing of actual costs, as they may be adopted by the Common Council but desires to retain a 12% annual simple return on investment (as currently defined), as is the City's current practice, in the event that the new TIF Policy reduces or modifies the percentage of annual simple return; and

WHEREAS, in any case, the City of Madison shall allow Developer a 12% annual simple return on investment (as currently defined) prior to applying the Profit Sharing formula; and

WHEREAS, \$3,900,000 of the loan becomes a grant when the Developer sells 50 residential condominium units to owner-occupants and sells or leases 25,000 square feet of commercial space by December 31, 2011 and the \$1,000,000 of the loan becomes a grant when Developer sells an additional 38 residential condominium units and sells or leases an additional 10,000 square feet of the commercial space in the Project by December 31, 2012; 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 was authorized in the 2007 Capital Budget; and

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes, plans and objectives set forth in the TID #37 Project Plan and that the City's loan to Union Corners, LLC will stimulate redevelopment in TID #37, 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 or cause to develop:
  - a. 131 residential condominium units and 13 commercial condominium units in the French Battery and Building A, B and G components of the Project;
  - b. No less than 19 of the residential condominium units shall be made affordable and sold to households at a stipulated percentage of Dane County Median Income (DCMI) or as set forth and executed in an Inclusionary Zoning agreement;
  - c. Approximately 70,000 gross square feet of commercial space; to be sold or leased as 13 commercial condominium units and
  - d. No fewer than 166 parking stalls at an estimated cost of \$4,283,000.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan ("TIF Loan") at closing from the City to Developer, in the amount of Four Million Nine Hundred Thousand Dollars (\$4,900,000) to partially finance Developer's development of the Project. Three Million Nine Hundred Thousand Dollars (\$3,900,000) of said TIF Loan becomes a grant if Developer sells 50 residential condominium units to owner-occupants and Developer leases or sells 25,000 square feet of the commercial space by December 31, 2011 and the remaining One Million Dollars (\$1,000,000) of said TIF Loan becomes a grant if an additional 38 residential condominium units are sold to owner-occupants and Developer leases or sells an additional 10,000 square feet of the commercial space by December 31, 2012.

3. Pre-Sales Requirement. TIF Loan Funds shall not be disbursed until Developer has demonstrated, in a form acceptable to the City, that either of 30% of the residential condominium units has been pre-sold or such other percentage as is required in an executed primary construction lender commitment for the French Battery and Building G components of the project.
4. Default and Remedy. Should Developer default under any terms of the TIF Loan Agreement ("Development Agreement") the City may exercise all rights and remedies in the Development Agreement and mortgage, including but not limited to foreclosure.
5. Method of Payment. 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 required to repay the TIF Loan.
6. Security. The proceeds of the TIF Loan shall be disbursed to the Developer at closing. The TIF Loan shall be evidenced by a Note to the City of Madison bearing 0% interest. Developer shall execute a third mortgage in favor of the City of Madison and an individual principal of the Developer shall execute a personal guaranty.
7. Equity Participation Payment-Residential Condominiums. In the event that the aggregate of actual net residential unit sales (i.e. gross sales prices less the costs of sale and customary tax and other prorations as shown on the closing statement from each sale) ("Net Sales Proceeds"), exceeds 100% of the projected sales prices, less the cost of sale and closing costs estimated at 6.5% ("Profit Sharing Threshold"), Developer agrees to return to the City 50% of the Net Sales Proceeds over and above the Profit Sharing Threshold; as adjusted by the Equalized Profit Adjustment in Paragraph 9. "Actual" project costs that exceed the estimated project costs identified in the TIF Application ("excess costs") plus the first Three Million Eight Hundred Thousand Dollars \$3,800,000, representing a 12% simple return on Developer's \$4,500,000 of equity invested as of January 1, 2007 shall be added to the Profit Sharing Threshold prior to applying the 50% profit sharing percentage, subject to the provisions of Paragraph 9 herein. Actual project costs shall be verified through an audit performed or commissioned by the City.

In the event there is an aggregate project cost savings from the estimated project costs identified in the TIF Application, said aggregate cost savings shall be added to the Net Sales Proceeds prior to applying the Profit Sharing Threshold for the purpose of determining Shared Profits. There shall be one (1) aggregate calculation of the commercial and residential equity participation payment. Shared Profits shall be paid to the City at or prior to the closing of the sale of the last remaining unit sold by the Developer, including the estimated market value of the remaining unsold commercial units as referenced in Paragraph 8.

In the event that an officer, employee or member of Developer, or a Familial Affiliate of an officer, employee or member of Developer (as defined below), purchases a unit from Developer at a gross sales price that is less than the projected sales price for that unit as designated in the TIF Application, then the projected sales price rather than the actual sales price for each unit shall be used when calculating Shared Profits under this section. Familial Affiliate of an officer, employee or member of Developer shall mean an officer, employee or member's spouse, children, parents or siblings.

8. Equity Participation Payment - Commercial. In the event that the aggregate of actual net commercial unit sales (i.e. gross sales prices less the costs of sale and customary tax and other prorations as shown on the closing statement from each sale) including the estimated market value as of December 31, 2012 of the remaining unsold commercial units ("Net Sales Proceeds"), exceeds 100% of the projected sales prices, less the cost of sale and closing costs estimated at 6.5% ("Profit Sharing Threshold") Developer agrees to return to the City 50% of the Net Sales Proceeds, including the estimated market value as of December 31, 2012 of the remaining unsold commercial units over and above the Profit Sharing Threshold. The market value of said unsold commercial units shall be determined by an appraisal commissioned by the City; as adjusted by the Equalized Profit Adjustment ("Adjustment") in Paragraph 9. "Actual" project costs that exceed the estimated project costs identified in the TIF Application ("excess costs") and the first Three Million Eight Hundred Thousand Dollars \$3,800,000, representing a 12% simple return on Developer's \$4,500,000 of equity invested as of January 1, 2007, shall be added to the Profit Sharing Threshold prior to applying the 50% profit sharing percentage, subject to the provisions of Paragraph 9 herein. Actual project costs shall be verified through an audit performed or commissioned by the City.

In the event there is an aggregate project cost savings from the estimated project costs identified in the TIF Application, said aggregate cost savings shall be added to the Net Sales Proceeds prior to applying the Profit Sharing Threshold for the purpose of determining Shared Profits. The Shared Profits shall be paid to the City at or prior to the closing of the sale of the last remaining unit sold by the Developer.

In the event that an officer, employee or member of Developer, or a Familial Affiliate of an officer, employee or member of Developer (as defined below), purchases a unit from Developer at a gross sales price that is less than the projected sales price for that unit as designated in the TIF Application, then the projected sales price rather than the actual sales price for each unit shall be used when calculating Shared Profits under this section. Familial Affiliate of an officer, employee or member of Developer shall mean an officer, employee or member's spouse, children, parents or siblings.

9. Changes in the Equity Participation Formula. The Equity Participation formula as applied to this Project shall be the formula established in an adopted TIF Policy in effect as of June 30, 2008 except that Developer shall, in any case, be allowed actual cost and a 12% annual simple return on investment (**as currently defined**) to be added to the Profit Sharing Threshold prior to applying any Equity Participation formula. This exception shall remain in effect in the event the new TIF Policy reduces or modifies the percentage of annual simple return, however actual cost shall be subject to any audit criteria adopted in TIF Policy as of that date.

9. Equalized Profit Adjustment. Prior to applying the equity participation formula the City of Madison shall allow Developer a one-time Equalized Profit Adjustment ("Adjustment) comprised of the following:

- a. A cost overrun allowance of up to an additional 3% of total project costs not to exceed One Million Seven Hundred Thirty-Nine Thousand Dollars (\$1,739,000);
- b. The first Three Million Eight Hundred Thousand Dollars \$3,800,000, representing a 12% simple return on Developer's \$4,500,000 of equity invested as of January 1, 2007, shall be deducted from the Net Sales Proceeds from the aggregate of residential and commercial units sold.
- c. Said Adjustment is a one-time exception afforded to Developer by the City of Madison for the purpose of equalizing profit since the time Developer began investing in the project when market conditions were favorable and the current period that forecasts a loss of approximately -4% (negative four percent). Said Adjustment shall not obviate the Equity Participation formula under current TIF Policy nor shall be construed as a precedent to future TIF Policy.

10. Satisfaction. The Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and Equity Participation Payments and full compliance with the Inclusionary Zoning requirements. For non-IZ units, the City shall execute partial releases for individual units at the request of Developer prior to or simultaneously with the closing of each unit. For each of the IZ units, the City shall execute a partial release if the IZ unit is sold as an IZ unit to a qualified buyer or if the IZ marketing period has expired in accordance with the City's inclusionary zoning ordinance.

11. Affirmative Action (MGO 3.58(9)). Developer and its contractors/subcontractors must comply with all applicable provisions of the Madison General Ordinance (MGO) 3.58(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 minority/disadvantaged women business enterprises to compete for any contracts.

12. Prevailing and Living Wage (MGO 4.20 & 4.23). Developer agrees to comply with Madison General Ordinances 4.20 and 4.23 that require Developer to provide a living wage and a prevailing wage. Developer shall insure the payment of Prevailing Wage on all components constructed in the Project.

13. Accessibility (MGO 3.72). Developer agrees to meet applicable accessibility accommodations for the Project as required by Madison General Ordinance 3.72.

14. Equal Opportunity and Fair Housing. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity and Fair Housing.
15. Material Changes. Any material changes to the size or use of the Project, as stated in the TIF Applications dated October 11 and 27, 2006 and all subsequent attachments and amendments submitted to the City as of the date of introduction of a resolution to the Common Council to approve this TIF Loan, will 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.
16. Project Completion. Developer must guarantee that the construction of the Project will be completed by December 31, 2012.
17. Property Insurance. Prior to funding, evidence must 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.
18. Title Insurance. At funding, Developer must 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.
19. Environmental Assessment. Developer shall provide the City an environmental assessment of the site which is acceptable to staff.
20. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval and recording of the GDP/SIP for Phase I of the Project as described in the TIF Applications dated October 11 and 27, 2006 and all subsequent attachments and amendments.
21. TID Certification Contingency. The terms and conditions of this TIF assistance are contingent upon satisfactory certification of proposed TID #37 (Union Corners) by the Wisconsin Department of Revenue, anticipated during the first quarter of 2007.

BE IT STILL FURTHER RESOLVED that the City, at its sole discretion, finds it necessary and appropriate to make exception to City of Madison TIF Policy 4(e) that no more than 50% of the net present value of the tax increment generated by a private development project shall be made available to that project as gap financing; and

BE IT STILL FURTHER RESOLVED that the City, at its sole discretion finds it necessary and appropriate to make exception to City of Madison TIF Policy 3.1(i) that concerns the Equity Participation formula as described in paragraphs 7, 8 and 9 herein; and ~~in the form of an Equalized Profit Adjustment, as demonstrated in Paragraph 9 above; and~~

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.