



## Legislation Text

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### Fiscal Note

Adopted RES-20-00732 (File ID 62430) authorized \$5.77 million in direct financial support for five proposed affordable housing developments, including up to \$1,680,000 to JT Klein Company, Inc. for Westgate Commons. The proposed resolution does not change the amount of the award. No additional City appropriation is required.

### Title

Authorizing a change to the proposed unit mix at JT Klein Company, Inc.'s Westgate Commons development, one of five affordable rental housing development projects approved by the Council to receive an award of Affordable Housing Funds.

### Body

#### Background

A primary strategy in the City's efforts to increase the supply of affordable housing has been to use the Affordable Housing Fund (AHF) to leverage the powerful federal Low Income Housing Tax Credit (LIHTC) financing. The most valuable of these credits, (so-called "9% credits") are allocated annually by the Wisconsin Housing and Economic Development Authority (WHEDA). WHEDA, through an annual, competitive process, uses priorities and evaluation criteria spelled out in a Qualified Action Plan (QAP). The competition for these tax credits is fierce and is becoming increasingly so for Madison developers as the QAP seeks to achieve a wider distribution of credits throughout the state.

The City's Community Development Division (CDD) conducts its own annual process, timed to coincide with WHEDA's process and largely aligned with the QAP. This year, WHEDA released its QAP later than usual. That delay made it more difficult to align the City's 2020 funding process with WHEDA's standards. Developers did not have details of the QAP available as they prepared their responses to the City's Request for Proposals (RFP). However, the City process proceeded, and on October 22, 2020, the Common Council adopted a resolution ([RES-20-00732](#)) authorizing \$5.77 million in assistance to five proposed developments seeking WHEDA tax credits.

After further analyzing its competitiveness under WHEDA's QAP, JT Klein Company, Inc., one of the developers offered City AHF support, has decided to alter its proposed development and pursue an alternative tax credit financing model. On November 4, 2020, JT Klein Company, Inc. requested City support for a proposed modification to its tax credit application - foregoing a request for more valuable, 9% tax credits in favor of slightly less competitive, but also less valuable, 4% credits. The revised proposal includes changes in the unit mix from that for which the Council approved AHF funding. And while RES-20-00732 authorizes CDD staff ". . . to approve minor alterations to development projects, including to the number and mix of housing units, if such changes are deemed necessary to improve prospects for securing federal LIHTCs . . .", the proposed changes exceed that threshold and warrants Council review.

The original proposal called for 71 total units, 15 units reserved for household incomes at or below 30% County Median Income (CMI), 25 units reserved for 50% CMI households, 16 units for 60% CMI households, and 15 units with no income or rent restrictions. The revised proposal includes 68 total units, with 14 units reserved for households with incomes at or below 30% CMI, 27 for households 50% CMI and the remainder

reserved for households at or below 80% CMI. Like the original, the revised proposal meets the City's goal of designating 20% of the units for households with incomes at or below 30% CMI while providing supportive services to those households.

The use of 4% tax credits affords the developer the ability to use an "income averaging approach" to meet federal affordability requirements. Unlike the structure of 9% tax credit developments, in which 15% of proposed units are not subject to income or rent restrictions, the income averaging approach under the 4% model requires all units to be income- and rent-restricted at levels not to exceed 80% CMI. The impact on this proposal of the change from 9% credits to 4% credits is to shift the units designated as 60% CMI units to 80% units, but it also changes the designation of units that were previously not income- or rent- restricted to 80% CMI units. In sum, compared to the original proposal, the revised proposal yields three fewer total units, 15 fewer units that meet the 60% CMI threshold and converts the previously non-income- or rent- restricted units to 80% CMI units.

Under the resolution, the AHF award would remain unchanged at \$1,680,000. CDD does not calibrate AHF awards on a per unit subsidy basis, rather it determines need based on a financial gap analysis of the proposal. However, awards are often described in those terms by dividing the total AHF award amount by the number of units designated for households at or below 60% CMI. Using that measure, the impact of the change to the proposal is to raise the per unit subsidy from \$30,000 (for 56 units) to \$41,000 (for 41 units). (This comparison does not account for the fact that the non-restricted units in the original proposal are converted to 80% CMI units in the revision.) The unit mix using the income averaging approach is also proportionally similar to other City-supported developments such as Northpointe's Uno's Madison and Rule Enterprises/Movin' Out's proposed development at Truman Olson.

The changes to JT Klein's Westgate Commons proposal come from the developer's assessment that they will improve the prospects for securing tax credits, albeit 4% rather than 9% credits. A decision to maintain the City's offer of \$1,680,000 in AHF funds would, in turn, reflect its desire to secure affordability of units developed at this premium location. This resolution is intended to affirm support for the previously committed \$1,680,000 in City funds to JT Klein Company, Inc. for Westgate Commons with a revised unit mix.

## *ACTION*

WHEREAS, in order to advance the City's objective of expanding the supply of affordable rental housing called for in the Adopted 2021 Capital Budget, and using City-administered resources in concert with federal LIHTC's, the CDD issued an RFP in June 2020 seeking tax credit-eligible development proposals; and,

WHEREAS, in response to the RFP, the City received an application for Westgate Commons, submitted by JT Klein Company, Inc., seeking assistance for its proposed development; and

WHEREAS, the review team, comprised of staff from the City's Community Development, Economic Development, and Planning Divisions evaluated proposals against the criteria outlined in the RFP; and,

WHEREAS, based on the evaluation of proposals, the staff team found the proposed development to be highly aligned with the priorities outlined in the AHF-TC RFP including, but not limited to, being located in a Super-Preferred Area proximate to future Bus Rapid Transit within the context of a major redevelopment

opportunity; and

WHEREAS, CDD recommended, and the Common Council approved, up to \$1,680,000 in City financial support for JT Klein Company, Inc.'s proposed Westgate Commons development with 71 total units, 56 of which would be affordable to households with incomes at or below 60% CMI; and,

WHEREAS, after further analysis, the developer concluded the project's prospects for securing federal low-income housing tax credits are much higher if it competes for 4%, rather than 9% tax credit allocations, modified the proposal accordingly, and now seeks Council support for the revised project proposal; and

WHEREAS, CDD staff share the developer's concern that the 2021-22 WHEDA QAP scoring and anticipated competition may make it extremely challenging for proposed Madison developments to secure WHEDA 9% tax credits for the next two years.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and the Common Council hereby authorize the issuance of a letter of funding commitment reflecting JT Klein Company's request to proceed with the revised unit mix for a 4% state and 4% federal tax credit application, no later than December 11, 2020, or the deadline for the WHEDA tax credit applications, whichever is sooner; and,

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are authorized to execute loan agreements, utilizing CDD-administered funds, for the affordable housing project as described below and reflecting any minor adjustments approved by CDD staff or caused by the application of TIF, HOME or other resources:

- Developer, Project and Loan Amount
  - Up to \$1,680,000 to JT Klein Company, Inc., or an affiliate LLC, for Westgate Commons, a 68-unit rental housing development with 41 units with rents affordable to households with incomes at or below 30% and 50% CMI and 27 units with rents affordable to households with incomes at or below at 80% CMI;
- Form of Loans
  - The AHF assistance will be provided in the form of a loan, up to 50% of which will be amortized over 30 years and payable over 16 years, contingent upon available cash flow, and at least 50% of which will be a 0% interest, long-term deferred loan with shared appreciation, payable upon sale, transfer, or change in the use of the property; and
  - The AHF loan will be secured by a subordinate mortgage, note, and Land Use Restriction Agreement securing a 40-year period of affordability; and
  - The developer shall apply the proceeds of the loan to the expense of acquiring the property and/or constructing the project, including at least the total number of units and units to be used as affordable housing, for rent to income-eligible households as specified above; and
  - The loan agreement will be in full force and effect until the loan is repaid or at the expiration of the respective periods of affordability, whichever is later.
- Assignment
  - The loan shall not be assigned without permission of the City except for an assignment to an affiliate entity of the developer prior to loan closing.

- Closing
  - Prior to closing, the developer must submit to the City a standard ALTA commitment for a loan policy of title insurance in the amount of the Loan for such Property, which will be subject only to municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, mortgages, security agreements, assignments of leases and rents, regulatory and land use restriction agreements and an extended use commitment pursuant to Section 42 of the Internal Revenue Code, recorded building and use restrictions and covenants, taxes levied in the year of closing, and any other encumbrances acceptable to the City; and
  - Prior to closing, the developer must provide evidence of property insurance as required by the Mortgage, containing a standard loss payee endorsement identifying the City as mortgagee. Developer also agrees to provide evidence of property insurance annually by February 10th or before expiration of existing policy; and,

BE IT STILL FURTHER RESOLVED, that the execution of a loan agreement and disbursement of City funds will be made contingent upon the project developer demonstrating that it has (1) secured financing sufficient to complete the project, including WHEDA LIHTCs; (2) received from the City all necessary land use and permit approvals; (3) satisfied any other City requirements; and (4) provided any other City-requested documentation; and,

BE IT FINALLY RESOLVED, that the Mayor and City Clerk are hereby authorized to execute, deliver, publish, file and record such other documents, instruments, notices and records, and take such other actions as shall be deemed necessary or desirable to accomplish the purpose of this Resolution, and to comply with and perform the obligations of the City hereunder.