City of Madison

Legislation Details (With Text)

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Type:	Resolution			**Status:**	Passed
File created:	10/19/2021			**In control:**	Department of Planning and Community and Economic Development
On agenda:	11/16/2021			**Final action:**	11/16/2021
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Title: SECOND SUBSTITUTE Authorizing an Agreement to Support Low Cost Student Housing between the City and Core Campus Manager, LLC

Sponsors: Michael E. Verveer, Yannette Figueroa Cole

Indexes:

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Attachments: 1. V1 FILE ID 67977, 2. Oliv Madison.pdf, 3. Oliv Madison Presentation.pdf

Date	Ver.	Action By	Action	Result
11/16/2021	2	COMMON COUNCIL	Adopt	Pass
11/5/2021	2	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
10/25/2021	1	FINANCE COMMITTEE	Refer	Pass
10/19/2021	1	COMMON COUNCIL	Refer	Pass
10/19/2021	1	Department of Planning and Community and Economic Development	Referred for Introduction	

Fiscal Note

No additional City appropriation is required with the approval of the proposed resolution. City costs associated with urban development in this area will be included in future operating and capital budgets subject to Common Council approval.

Title

SECOND SUBSTITUTE Authorizing an Agreement to Support Low Cost Student Housing between the City and Core Campus Manager, LLC

Body

WHEREAS, as a university city, the City of Madison has a need for low-cost ~~affordable~~ student housing; and

WHEREAS, the City regularly provides financial support to developments containing affordable housing for families; and

WHEREAS, the City does not have a program to provide the same financial support for student housing; and

WHEREAS, the Developer intends to provide ~~affordable~~ low-cost student housing in a building to be

constructed (the “Building”) upon property located at 341 State Street, 317-321 West Gorham Street, and 322 West Johnson Street (the “Property”); and

WHEREAS, the Developer is seeking rezoning of the Property from Downtown Core (DC District) and Urban Mixed Use (UMX District) to a Planned Development - General Development Plan - Specific Implementation Plan (PD-GDP-SIP District), as defined in Madison General Ordinances (MGO) 28.098, which would include construction of additional stories, more than would be allowable in the zoning district where the Property is located; and

WHEREAS, the additional height allows for two floors of rentable student housing, which provides a financial benefit that can be used by Developer to subsidize the ~~affordable~~ low-cost student housing in the Building; and

WHEREAS, in order to memorialize this understanding, the City and Developer have agreed to enter into a contract based on the terms stated herein.

NOW THEREFORE BE IT RESOLVED, that the Common Council hereby authorizes the execution of a contract for ~~affordable~~ low-cost student housing with Core Campus Manager, LLC on materially, though not exclusively, the following terms and conditions:

1. Planned Development Approval

A. Developer acknowledges and agrees that the land use submission for the Building does not comply with requirements of the Downtown Core (DC) or Urban Mixed Use (UMX) zoning districts, and, therefore, requires a Planned Development District (the “PD”) zoning approval.

B. Developer acknowledges and agrees that the City and its employees cannot guarantee the outcome of a legislative approval process, but can issue an objective planning staff report regarding the land use application, and provide time and effort to attend meetings, draft and review documents, and in other ways assist the Developer in seeking approval of the PD in the normal course of business (the “City Work”). The City Work shall not include the making of any report, statement or other representation of any kind that contains factually untrue information, and shall not require the City to avoid or suppress any comments or concerns related to the development.

C. In exchange for the City Work and subject to issuance of the requested PD zoning approval, Developer agrees to execute a LURA containing terms more fully described in Section 2. The LURA shall be recorded prior to receiving a building permit from the City for the Building. The City consents to subordination of the LURA to a first mortgage lender upon the reasonable approval of the City Attorney as to the form of such subordination.

D. Developer agrees that the City Work is required in order to obtain the necessary approvals of the PD, and that the approval of the PD would provide a necessary financial incentive to support the affordability required in the LURA. Therefore, the City and the Developer agree and acknowledge that the City Work constitutes sufficient consideration for this Agreement, and that neither this Agreement, nor any contract arising therefrom, can be challenged due to a lack of consideration.

2. Terms of LURA.

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A. Term. The Term of the LURA shall be Thirty (30) years minimum from the date of a certificate of occupancy for the Building, or that portion of the Building containing the housing.

B. Affordability. Developer shall provide one hundred and ~~eleven~~ twelve (11~~1~~2), ~~or ten-percent (10%) of the total~~ beds in two (2) bedroom dwelling units being leased to four (4) individuals ~~whichever is greater~~ (the "~~Affordable~~ Low-Cost Beds")~~,~~. The Low-Cost Beds shall be leased to qualified UW applicants as determined to be ~~qualified~~ eligible by UW, at a lease rate that is ~~thirty~~forty-percent (~~3~~40 %) less (the "Student Discount") than the market rate charged for a bed in a comparable bed in the Building. Developer shall provide Eligible Students, as defined below, the right to relocate to another bed in another dwelling unit (whether in the unit described above or in another unit), but at rate of the Student Discount, under the same terms and conditions that are provided under the Eligible Student's lease. Except for the Student Discount rental rate, the Eligible Student's leases shall include the same terms and conditions as those set forth in the market rate leases. If an Eligible Student relocates to a bed in a unit other than the above described units, such student shall still count toward the 112 Low-Cost Beds requirement.

C. Eligibility. UW's Office of Financial Aid ("UWOFA") has agreed to a Memorandum of Understanding (MOU) with Developer to apply its guidelines for determining eligibility based on household income, or other criteria (the "Eligible Students"). Developer shall be deemed to have complied with this section by accepting students referred to the Developer by UWOFA. In the event UWOFA stops providing such service, Developer shall comply with the same UWOFA rules for eligibility at its own expense. Compliance with the terms of the MOU may result in an increase in the number of Low-Cost Beds in a given year, and the definition of Low-Cost Beds shall be amended as necessary to reflect the MOU's terms.

D. Compliance. Developer shall provide a report each June during the Term certifying the number of leases to Eligible Students ("Lease Certification"). The City shall have the right, but not the obligation, to audit the Lease Certification in a commercially reasonable manner as it chooses (the "Audit"), but with the understanding that the City shall not create public records of student names as a result of during the Audit.

E. Default. In the first event of a default under the LURA, due to the failure to provide sufficient Low Cost Beds, and subject to any cure rights and Section 3 below, Developer shall pay to the City an amount equal to the Student Discount multiplied by the deficient number of Low-Cost Beds ("Low-Cost Bed Deficiency"). Any repeated Low-Cost Bed Deficiency, or other form of Default, shall result in the City having the option to seek specific performance, or liquidated damages as provided herein.

~~E~~F. Liquidated Damages. The City and Developer agree that the approval of the PD will result in the authorization to construct a Building that has additional height, and rentable space resulting from the City Work. The harm to the City for failing to comply with the LURA would be difficult if not impossible to calculate, and, therefore, the parties agree that liquidated damages for willful uncured default shall be Five Million Dollars ($5,000,000). In the event Developer pays the liquidated damages set forth in this Section 2F., this Agreement shall automatically terminate upon such payment and a release, in form and substance sufficient to remove the land use restrictions set forth in the LURA, shall be recorded promptly thereafter. The City's rights under this paragraph shall be in addition, and not cumulative, to all other rights and remedies at law or equity.

3. Meet and Confer. Whenever, during the term of the LURA, and in advance of the payment of Liquidated Damages, and optionally upon any other default, any disagreement or dispute arises between the parties as to the interpretation of this Agreement, or any rights or obligations arising hereunder, such matters shall be resolved, whenever possible, by meeting and conferring. The Developer shall produce, at the City's reasonable request, documents related to Eligible Students and

~~Affordable~~ Low-Cost Beds. Any party may request such a meeting by giving notice to the other; in which case such other party shall make itself available within seven (7) business days thereafter. If such matters cannot be so resolved within no more than ten (10) business days after the giving of such notice to confer, either party may proceed under any applicable remedy at law or in equity.

4. Opportunity to Cure. In the event Developer defaults in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Developer, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Developer, including expressly the specific enforcement hereof, recover the Liquidated Damages defined in Section 2(F). The City shall extend the cure period if the City determines, in its sole discretion, that the Developer has begun to cure the default and diligently pursues such cure, or, without further written notice to the Developer, declare the Developer in default. The cure period shall in no event be extended more than ninety (90) days.

5. Application of Funds. Any funds received by the City pursuant to this Agreement, shall be applied toward programs supporting housing initiatives, in the City's discretion.

BE IT FINALLY RESOLVED, that the Mayor and Clerk are authorized to enter into the contracts stated herein and any other agreements required to carry out the purposes of this resolutions, subject to reasonable and non-substantive changes approved by the City Attorney.

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