



## Legislation Text

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**File #:** 38622, **Version:** 1

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### **Fiscal Note**

This resolution would authorize a \$2,050,000 loan to 316 WWA, LLC or its assigns ("Developer") for the redevelopment of property located at 316 West Washington Avenue. The site would be included in a new proposed TID #45 (Capitol Square West). A boundary and Project Plan is required to be adopted in 2015 by the Common Council and approved by the TIF Joint Review Board.

The Project consists of approximately 141,000 square feet of office and approximately 11,000 gross square feet of first floor retail ("Project"). This loan would be repaid through incremental taxes generated by the Project and represents approximately 55% of the present value of all incremental taxes anticipated from the Project throughout the 27-year life of proposed TID #45.

Due to construction timing, the TIF Loan for this Project is anticipated to be disbursed to the Project in the first quarter of 2016, contingent upon Joint Review Board approval of the new TID that shall occur in 2015 but in advance of the TID #45 boundary and Project Plan being certified by the Wisconsin Department of Revenue (DOR). Such certification is anticipated on or about April 30, 2016.

In the event that the TID is not certified by the Wisconsin Department of Revenue, Developer shall be credited for the City portion of annual actual taxes levied on the Project to repay the \$2,050,000 disbursed prior to DOR certification. The City portion of the average taxes over the first ten years is approximately \$101,000 per year. Developer shall be obligated to repay all funds disbursed by the City 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. Payments of principal and interest shall be made quarterly. In the event that the TID is not certified, this estimated credit and any Developer guaranty payments is sufficient to recover the \$2,050,000 disbursed in advance of DOR certification within ten (10) years. Under this provision, all other provisions of the TIF Loan Agreement would apply. Developer would guaranty that annual property taxes levied against the project would equal or exceed a tax increment schedule provided in the TIF Loan Agreement.

Once the TID is certified by DOR, the TIF Loan is recovered through tax increments estimated at an average of approximately \$261,000 per year. The full TIF Loan is anticipated to be recovered in eight (8) years.

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 and/or financing is greater 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 require an authorization in the 2016 Capital Budget. The City's General Obligation may not occur until after this TIF Loan is proposed for disbursal. Therefore, funds may 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 10 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 Developer be prohibited from selling or transferring the Property prior to repayment of the TIF Loan. 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 2042.

**Title**

Amendment to Res. 15-00227 Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$2,050,000 Tax Incremental Finance Loan to 316 WWA, LLC or its assigns to assist in the redevelopment of the office and commercial project located at 316 West Washington Avenue and within the boundary of a proposed TID #45.

**Body**

WHEREAS the City of Madison is in the process of creating a new TID #45 (Capitol Square West) during 2015; 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 options and attract and retain business and employment in Downtown Madison; and

WHEREAS, 316 WWA, LLC or its assigns ("Developer") has proposed to redevelop approximately 141,000 gross square feet of office and approximately 11,000 gross square feet of first floor retail at an estimated development cost of approximately \$29,157,000 ("Project") to the existing building located at 316 West Washington Avenue ("Property"); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$2,050,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$2,050,000 gap is attributable to installation of a fire suppression system (including sprinkler), asbestos remediation, elevator upgrade and significant exterior improvements; and

WHEREAS, \$2,050,000 of said TIF assistance represents approximately 55% of the present value of the estimated tax incremental revenues generated by the Project; and

WHEREAS, the TIF Loan shall be disbursed to Developer in advance of a proposed TID #45 base value certification being provided by the Wisconsin Department of Revenue (DOR) but contingent upon the approval of TID #45 by the TIF Joint Review Board; and

WHEREAS, the TIF Loan may be assigned to another corporate entity controlled by the Developer in the form of a loan in order to gain certain taxes advantages which will maximize value on the TIF Loan and result in a better product; 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 during the first quarter of 2016 requires authorization in the City of Madison 2016 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 2016.

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, attract and retain businesses and employment in the Capitol Square West area and finance additional public works and improvements that would stimulate planned commercial redevelopment in the proposed TID #45, 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 or redevelop, as applicable:
  - a. Approximately 141,000 gross square feet of office and approximately 11,000 gross square feet of first floor retail.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan from the City to Developer or its assigns, in the aggregate amount of Two Million and Fifty Thousand Dollars (\$2,050,000) ("TIF Loan") to partially finance Developer's redevelopment of the Project. The TIF Loan may be loaned to a corporate entity controlled by the Developer. The TIF Loan shall be placed into escrow with the title company on the showing of evidence of construction financing and following the creation of TID #45 as described in Section 4. The TIF Loan shall be disbursed in accordance with a Development Agreement. The TIF Loan becomes a grant when tax increment recovered from the Project and/or cash payments by Developer, or any guarantor, are sufficient to repay the TIF Loan and the City's associated borrowing costs.
3. 2016 Capital Budget Authorization. Funding of the TIF Loan is anticipated in the first quarter of 2016. The TIF Loan shall be contingent upon funding being authorized in the adopted 2016 City of Madison Capital Budget.
4. Creation of Proposed Blighted Area TID #45. Funding of the TIF Loan shall be contingent upon the successful creation and TIF Joint Review Board approval of a project plan and boundary for a proposed 27-year, blighted area TID#45.
5. TIF Loan Disbursal Prior to TID #45 Certification of Boundary and Project Plan. The TIF Loan shall be disbursed to Developer in advance of a proposed TID #45 base value certification being provided by the Wisconsin Department of Revenue (DOR). Such certification is anticipated on or about April 30, 2016.
6. No TID Certification. In the event that the TID #45 creation is not certified by DOR on or about April 30, 2016, Developer shall be obligated to repay all funds disbursed by the City 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. Payments of principal and interest shall be made quarterly. Developer shall perform on all requirements of the TIF Loan Agreement for the loan funds disbursed to Developer by the City ("City Loan"), including but not limited to the Clawback provision (Section 7) and the Tax Increment Guaranty (Section 8). 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 Section 8, 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 2025. In the event of the TID #45's non-certification, the City shall make its best effort to secure TID certification in 2016 and receive such TID certification by DOR no later than on or about April 30, 2017.

7. 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 \$27,107,000 ("Financing"), as stated in Developer's TIF Application dated November 7, 2014 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. 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 \$29,157,000 ("Project Cost"). Upon completion of the Project, Developer shall provide the City with an audit 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 the Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by 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 the sum of:

1. \$29,157,000 minus the Audited Actual Cost ("Cost Savings"); and
2. Audited Actual Financing minus \$27,107,000 ("Financing Increase").

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 Section 8 below.

8. Method of Payment and Tax Increment Guaranty. Except as provided in Section 6, 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 its mortgage to any other third party mortgages granted by the Developer in connection with its financing of the Project, in a form approved by the City Attorney and the Developer's mortgagee (s). Individual principals of the Developer shall execute a personal guaranty guaranteeing payment of the TIF Loan and PILOT payment, if applicable.

In the event that the TIF Loan is loaned by the Developer, the City will be additionally secured by collateral assignments of a Note and Mortgage from the Developer to its subsidiary.

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 2042. 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. The TIF Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and PILOT payment.
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 with a minimum Small Business utilization to be negotiated with the City’s Affirmative Action Division based on total construction costs.
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 (by a third party not affiliated with Developer) 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 December 31, 2018. Project completion shall be evidenced by the issuance of a certificate of occupancy for the parking ramp, office and retail.
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. 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 December 31, 2015.

21. The Developer and the City recognize the economic benefit to the City that results from hiring a local workforce to perform construction work. In recognition of the financial benefit provided by the City for development, the City and the Developer will discuss the use of local workers and contractors in the construction projects that are part of the TIF application, after the loan approval. This paragraph does not create or provide any legal rights or benefits to third parties.

BE IT STILL FURTHER RESOLVED that the Common Council hereby authorizes internal borrowing to fund the Loan to be reimbursed from the proceeds of 2016 General Obligation borrowing.

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.