



## Legislation Text

---

**File #:** 49587, **Version:** 1

---

### **Fiscal Note**

This is the second application for TIF assistance by this Developer. The first TIF application was reviewed by the Finance Committee on January 23, 2017 to consider an exception to the 55% Gateway policy. Finance recommended that no more than 55% of TIF, or \$343,000, be provided to the project. Authorization for this amount of TIF assistance required an amendment to the 2017 Capital Budget. Subsequently, the proposed measure failed to receive the extra-majority Common Council votes required to authorize an amendment to the 2017 Capital Budget.

Developer subsequently re-applied for TIF assistance for 2018 Capital Budget funding. As a year had lapsed since the previous calculation, 55% of TIF is now calculated at \$322,000. On November 14, 2017 the Common Council adopted the 2018 Capital Budget that authorized sufficient funds for this TIF Loan.

This resolution would authorize a \$322,000 loan to 134 Fair Oaks, LLC or its assigns ("Developer") for the redevelopment at 134 S. Fair Oaks Avenue in the existing TID #37 (Union Corners) boundary.

The Project consists of approximately 80 apartment units (68 affordable and 12 market rate) and 2,200 square feet of commercial space and approximately 80 parking stalls ("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 over the 15 years of life remaining in TID #37.

Within 30 days of closing, Developer shall provide to City, a certified pro forma with final sources and uses ("Certified Pro Forma"). TIF funding will be contingent upon verification that the project has a gap in the amount of the TIF Loan based on the total sources and uses. Should the gap be less than the TIF Loan, then the TIF Loan shall be reduced to the amount of the gap shown in the Certified Pro Forma.

While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 8 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, until July 18, 2033.

### **Title**

Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$322,000 Tax Incremental Finance Loan to 134 Fair Oaks, LLC or its assigns to assist in the development located at 134 S. Fair Oaks Avenue within the boundary of TID #37 (Union Corners).

### **Body**

WHEREAS, the City of Madison (the "City") adopted Resolution 05-00580 approving a Project Plan and Boundary for TID #37 (Union Corners) on July 18, 2006; 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 district; and

WHEREAS, 134 S Fair Oaks, LLC (“Developer”) applied for TIF assistance for the first time in October 20, 2016 requesting an exception to the 55% Gateway policy; and

WHEREAS, the Finance Committee reviewed the request for a TIF Policy exception on January 23, 2017 and recommended that no more than 55% of TIF (\$343,000) be provided to the project; and

WHEREAS, TIF assistance to the project required an amendment to the 2017 Capital Budget that subsequently failed to receive the extra-majority Common Council votes required for authorization; and

WHEREAS, Developer subsequently re-applied for \$343,000 of TIF assistance, to be authorized for funding in the 2018 Capital Budget; and

WHEREAS, due to the time elapsing between the first and second applications, 55% of TIF is now calculated at \$322,000; and

WHEREAS, on November 14, 2017 the Common Council adopted the 2018 Capital Budget that authorized sufficient funds for this TIF Loan; and

WHEREAS, Developer has proposed to 80 residential units, comprised of 68 affordable units and 12 market rate units, 80 parking stalls and 2,200 square feet of commercial space on the Property at an estimated development cost of approximately \$14,776,000 (“Project”) located at 134 S. Fair Oaks Avenue (“Property”); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project; and

WHEREAS, \$322,000 of said TIF assistance represents approximately 55% of the present value of the estimated tax incremental revenues generated by the Project, thus being in conformance to TIF Policy that no more than 55% be made available to a project (“55% Gateway”) without Board of Estimates prior authorization; 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 encourage development of a wide range of housing options in TID #37, 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:
  - a. Approximately 68 units of affordable housing and 12 units of market rate housing;
  - b. Approximately 80 parking stalls; and
  - c. Approximately 2,200 square feet of commercial space.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan at closing from the City to SHD, Inc. (“SHD”) (“TIF Loan”) and then loaned to Developer, or its assigns, not to exceed Three Hundred Twenty-Two Thousand Dollars (\$322,000). Said TIF Loan becomes a grant when the tax

increment recovered from the Project and/or cash payments from Developer or any guarantor are sufficient to repay the TIF Loan.

3. 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 \$14,454,000 ("Financing").

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, if any.

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 at closing.

Additionally, within 30 days of closing, Developer shall provide to City, a certified pro forma with final sources and uses ("Certified Pro Forma"). TIF funding will be contingent upon verification that the project has a gap in the amount of the TIF Loan based on the total sources and uses. Should the gap be less than the TIF Loan, then the TIF Loan shall be reduced to the amount of the gap shown in the Certified Pro Forma.

After closing, the TIF Loan shall be used solely for the purpose of partially funding the TIF-eligible total project costs estimated at approximately \$14,776,000 ("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 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" = \$14,776,000 minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$14,454,000.

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. Notwithstanding anything contained herein to the contrary, the amount of deferred developer fee shall not be used for purposes of calculating the amount of Cost Savings, Audited Actual Financing, Financing Increase or the Clawback. By way of example, but not in limitation of the foregoing, should the Audited Actual Financing increase or Audited Actual Cost decrease, such that the deferred development fee is reduced to zero, there shall be no associated Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 9 below and shall reduce the outstanding amount of the TIF Loan pursuant to Section 6 below.

4. Tax Credit Approval. TIF assistance to the Project is contingent upon Developer receiving an award of Section 42 low-income housing tax credits from Wisconsin Housing and Economic Development Authority ("WHEDA") in 2018.

5. Affordable Housing Initiative Fund. TIF assistance to the Project is contingent upon the execution of loan documents evidencing a commitment by the City of Madison to fund to Developer \$1,350,000 of City of Madison Affordable Housing Initiative Fund financial assistance.
6. 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.
7. 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 2044. 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.
8. Affordability. Developer shall obtain an allocation of federal low-income housing tax credits from the Wisconsin Housing and Economic Development Authority ("WHEDA"). Developer shall maintain approximately sixty-eight (68) apartment units as affordable low-income units subject to the applicable tenant income and rent restrictions imposed by WHEDA and Section 42 of the Internal Revenue Code. Such restrictions shall be evidenced by a "land use restriction agreement" in WHEDA's standard form, and shall be specifically enforceable for a period of no less than fifteen (15) years.
9. Security and Personal Guaranty. The TIF Loan shall be evidenced by a Note, executed by SHD, or its assigns, to the City of Madison in the amount of Three Hundred Twenty-Two Thousand Dollars (\$322,000) bearing zero percent (0%) interest ("Note"). SHD shall loan the proceeds to Developer, and Developer shall execute a note to evidence the loan from SHD to it (the "Second Note") and also a subordinate mortgage in favor of SHD (the "Mortgage"). SHD will assign its interest in the Second Note and Second Mortgage to the City of Madison to secure payment of the TIF Loan. The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney and acceptable to SHD, Developer and Developer's lender(s). Individual principals of the Developer shall execute a personal guaranty guaranteeing payment of the TIF Loan.
10. Satisfaction. The Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan. At Developer's or SHD's request, the City shall provide a letter to Developer's lender indicating whether Developer has satisfied any of the terms of the Loan Agreement.
11. 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.
12. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Developer to provide a living wage.

13. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
14. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
15. Equal Benefits. Developer shall comply with Madison General Ordinance 39.07 that requires Developer to provide equal benefits.
16. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
17. Section 8. Developer agrees to not refuse to lease or otherwise make unavailable units in the Project solely because any applicant for a unit is a direct recipient of federal, state, or local housing subsidy. Developer shall comply with the provisions of Section 32.12(13), MGO, for as long as the TIF Loan remains outstanding.
18. Material Changes. Any material changes to the size, use or ownership 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).
19. Project Completion. Developer shall guarantee that the construction of the Project will be completed by June 30, 2019. Project completion shall be evidenced by the issuance of a certificate of occupancy for all of the apartment units.
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 fifteen (15) 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.
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 to SHD 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 April 30, 2019.

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.