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OFFICE OF THE CITY CLERK
OAKLAND

2017 JUN - 1 PM 3:46

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Michele Byrd, Director,
HCDD
Katano Kasaine, Director,
FMA

SUBJECT: Linked Banking Services Ordinance
Amendment

DATE: May 1, 2017

City Administrator Approval

Date:

[Handwritten signature]
6/1/17

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 12066 C.M.S. Establishing The Linked Banking Services Program To Require Eligible Depositories To Submit Improvement Plans And Other Information Concerning Banking And Lending Practices As Required By The City Administrator.

EXECUTIVE SUMMARY

The proposed amendments to the Linked Banking Services Ordinance seek further information from current and prospective providers of City banking services and add additional screening criteria for eligible depositories. Staff is in the process of pursuing new screening criteria that would require prospective depositories to provide strategic assessment of how they intend to address disparities in lending. Specifically, prospective depositories will be asked to respond to disparities in home mortgage denial rates, high cost home mortgage lending, and loan modifications. The goal of the pilot program is to encourage banks that serve our community to discuss how to reduce inherent bias in residential and commercial lending to minority and African American communities and change their to produce greater equity over time. The proposed amendments would broadly require prospective depositories to provide any information concerning the depository's lending, loan servicing and banking practices in Oakland requested by the City Administrator, including information on the depository's home mortgage loan origination, servicing, modification, and foreclosure policies and practice, branch banking and other consumer services, and any other lending and banking policies and practices that may adversely impact Oakland residents and businesses. In addition, the amendments would require eligible depositories to commit in writing to a plan approved by the City Administrator for (a) correcting any identified disparities in access to or provision of banking and lending services in Oakland, with the goal of producing greater equity of such services over time, and (b) improving the overall level of banking services as needed to promote equity and

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fairness in Oakland. These amendments are necessary to provide the legal basis for staff to implement the new pilot program.

BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland has been a leader in progressive banking policies, passing the Linked Banking Services Ordinance No. 11607 C.M.S. (the "Ordinance") in 1993 and amending it in 1998 and 2001. The Linked Banking Services Ordinance is a tool that allows the City to leverage its banking relationships and deposits to maximize benefits for the City and the community. The Ordinance was passed after a 1989 Community Credit Needs Assessment commissioned by the City found that racial prejudice and racist practices severely restrict access to capital for minority businesses in the City's low-income neighborhoods.

Current Practice. Under the Ordinance, an annual survey is conducted of banks interested in doing business with the City to determine whether each bank has met its "Fair Share Goal" of community credit lending. The Fair Share Goal is calculated based on the bank's deposits in Oakland and on an assessment of the City's need for residential and commercial credit in the areas of affordable housing, small businesses, nonprofit enterprises, economic development, and seismic safety. Banks that show that they met that goal the previous year through lending activity in the Community Development Districts and to low- and moderate-income households, commit to meeting future lending goals, and comply with reporting requirements are deemed "Eligible Depositories" and are eligible to do business with the City.

Recent Modifications to Requirements. In 2012, Council Resolution No. 83988 C.M.S. was passed that directs the City Administrator to (1) include specific information in the survey addressing foreclosure loans, small business lending, and payday loan products; (2) require survey completion as a prerequisite to deeming a bank an "Eligible Depository"; (3) provide a transparent comparative analysis of bank performance; and (4) return to Council with recommendations for possible changes to update the Linked Banking Services Ordinance.

In 2013, Council authorized a three-year banking services contract with JP Morgan Chase. Under this resolution, JP Morgan Chase was required to continue to provide information on the bank's lending, services and investment activities in Oakland, especially in low and moderate income communities, including business loan, home loans, media outreach, and branch locations for historically underserved communities. The bank was also required to provide information by census tracts or zip codes as necessary to promote efforts by the Housing and Community Development Department (HCDD).

Current Actions. On January 12, 2016, staff presented an informational report to City Council's Finance and Management Committee (the "Committee") on the community and economic investment and foreclosure data provided by JP Morgan Chase pursuant to the 2013 resolution. Members of the Committee and community members requested additional information beyond current reporting requirements. Staff provided a subsequent report at the March 8, 2016, Committee meeting. While some additional information was provided, JP Morgan Chase declined to provide all of the requested information. Therefore, staff determined that an amendment to the current Linked Banking Services Ordinance would be necessary to memorialize and require the specific reporting elements that would enable the City to determine

whether City funds are being used to support or contribute to banking practices that would negatively impact the City's fiscal health.

On June, 7, 2016, staff presented amendments to the Linked Banking Ordinance that would have expanded the information required from prospective and current depositories in the areas of home mortgage lending, servicing, loan modifications, and foreclosures, with such information provided by census tract, race/ethnicity, and income of borrowers, as well as information on branch banking, consumer fees, payday lending, and regulatory actions against the depositories. Council rejected the proposed amendments, and directed that, in addition to the expanded reporting requirements, a new process should be developed to evaluate the community lending and banking activities based on the new reporting requirements.

ANALYSIS AND POLICY ALTERNATIVES

The Linked Banking Services Ordinance was adopted in 1993 to address the problem of the lack of community lending in Oakland, particularly in Oakland's low income and minority communities¹. Aside from the general benefits to the community at large, robust community lending benefits the City's overall finances by circulating funds to Oakland homeowners and small businesses, thus decreasing the need for the City to fund its own community lending programs such as mortgage assistance programs and economic development loans. This aspect of local lending and banking activity has become even more important because much of the capital for Oakland's lending programs came from redevelopment funds. The Ordinance was also intended to mitigate the negative impacts on the City caused in part by the historical failure by lending institutions in Oakland to adequately lend to small businesses and low and moderate-income homeowners, particularly in low income and minority neighborhoods in Oakland. These impacts include decreased property tax revenue to the City resulting from stagnant property values, decreased business and sales tax revenue resulting from the lack of business activity, and increased need for police, fire, and code enforcement services in low income and minority neighborhoods in Oakland.

Current Linked Banking Services Program Methodology

Under the Linked Banking Services Ordinance, prospective depositories provide the City with loan and grant volume related to community lending and investing activities. Eligible community lending and credit lending activities include financing affordable housing such as loans to low-and moderate-income homebuyers and loans to affordable housing developers, small business lending in the seven Community Development (CD) Districts, loans or grants to non-profit enterprises in Oakland, lending to commercial developers with projects within the seven CD Districts, lending related to seismic safety, home equity lending on homes in the seven CD Districts, and sponsorship of or technical assistance for consumer banking and financial education training. A threshold of loan and grant volume must be met to be considered an eligible depository. By limiting their lending activities to the CD Districts, staff can evaluate lending activity in the low- and moderate income census tracts.

¹ Greenlining Institute. (2016). *Locked Out of the Market; Poor Access to Home Loans for Californians of Color*. Retrieved from <http://urbanstrategies.org/resources/>

Current Process Does Not Measure Disparities. While this process encourages community lending, it does not evaluate or address disparities in access to banking services. There are too many ways financial institutions can comply without providing services to low- and moderate-income or minority households. Increased lending activity in the CD districts may also be indicators of gentrification or predatory lending and does not conclusively indicate that loans are being made to low- and moderate-income households.

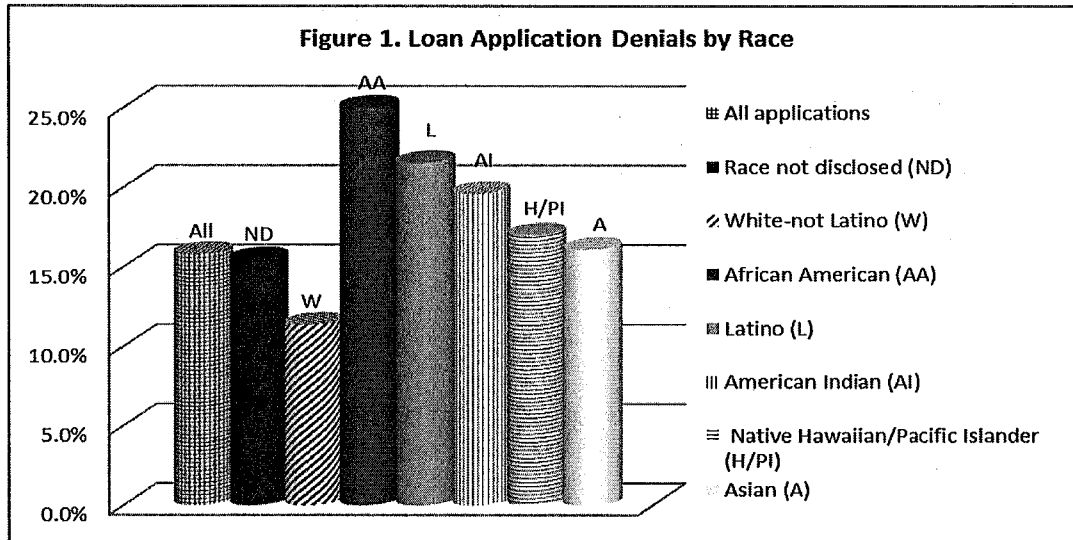
Responsible banking Ordinances in other Jurisdictions

Staff has compared responsible lending ordinances approved by the cities of San Diego, Los Angeles, Pittsburgh (PA), Philadelphia, and Seattle to evaluate other methods for selecting depositories that practice responsible banking. Most of the cities evaluate community lending based on geographic location and not borrower demographics. Additionally, they require statistical information regarding their lending activity. Some cities require reinvestment plans to address the lending and banking disparities experienced by minority community members. Additionally, ordinances have established reinvestment commissions to evaluate prospective depositories.

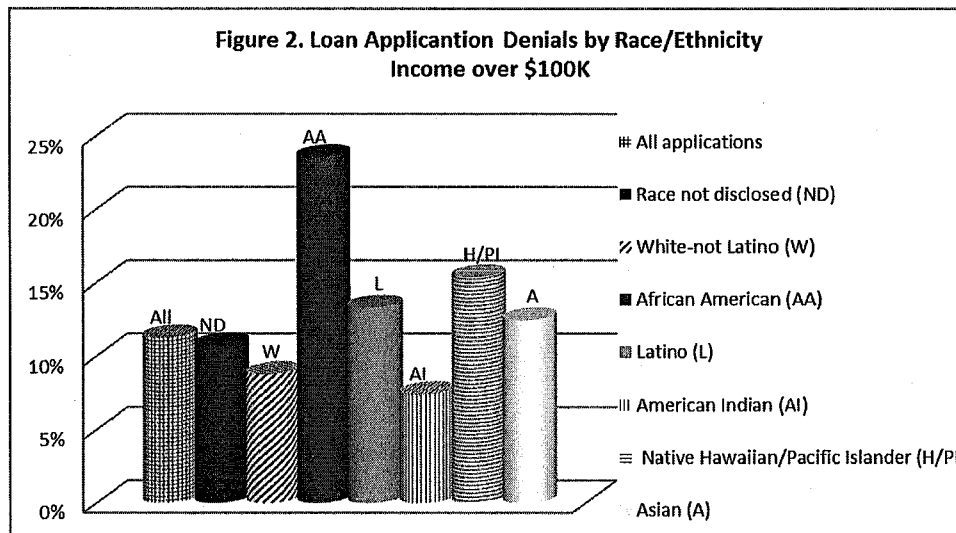
Implementation of the requirements established by responsible banking ordinances has varied. Two of the cities only collect the required data and have not implemented an evaluation process and do not have active commissions. Pittsburgh was in the process of evaluating responses to their RFP for depository services which included responsible banking criteria. A consultant had been hired to evaluate the responses and findings would be presented to a committee for consideration. Philadelphia had fully implemented their ordinance, which requires that depositories submit an annual statement of community reinvestment goals, and that the city commission an annual disparity study. However, Philadelphia was working on modifying its program to identify specific needs that could be addressed by its depositories. Unfortunately, the survey of other jurisdictions' responsible banking ordinances has not produced any best practices that clearly identify benchmarks for evaluating responsible banking. Most importantly, there is no clear path, except for Philadelphia's efforts, to define desired outcomes and actions that may be taken to achieve them.

Local Disparities in Lending and Access to Capital

The history of the linked banking ordinance is in part based on historic and continuing glaring disparities by banks doing business in the Oakland community. As an overview, **Figure 1** compares the denial rates in Oakland by race for owner-occupied one to four unit loan applications. Denial rates for minorities are substantially higher than those of white applicants. Loan applications by African American applicants are 2.2 times more likely to be denied than loan applications by white applicants. While denial rates drop for applicants with incomes over \$100,000, the denial rates for African American applicants remain high as illustrated in **figure 2**. Loan applications for African American applicants with incomes over \$100,000 are 2.7 times more likely to be denied than loan applications by white applicants in the same income category.

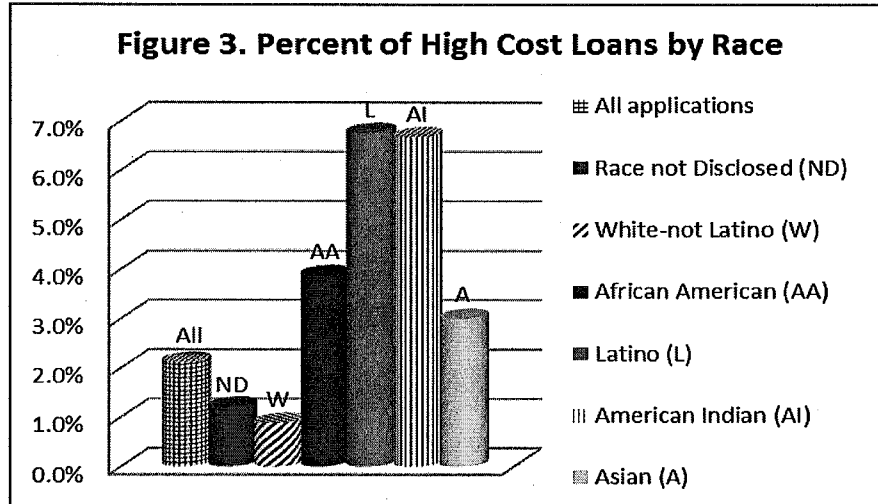


Source: City of Oakland tabulation of 2015 Home Mortgage Disclosure Act data.



Source: City of Oakland tabulation of 2015 Home Mortgage Disclosure Act data.

Minorities are also more likely to receive a high cost home mortgage loan. **Figure 3** illustrates this disparity.



Source: City of Oakland tabulation of 2015 Home Mortgage Disclosure Act data

Lastly, there is no data available for loan modifications under the Home Mortgage Disclosure Act.

Proposed Pilot Program to Accompany Ordinance Amendments

Staff, with the guidance of the Department of Race and Equity, has identified a new process intended to assist financial institutions to recognize disparities and inherent biases in access to lending and banking services experienced by minority communities in Oakland. This new process would be pursued with the objective of creating better equity outcomes for those that can be served. Banks will be encouraged to better serve the Oakland community by reflecting on the outcomes of their current practices and making adjustments that will produce greater equity over time. Under the pilot program, potential depositories would be required to provide data and analysis for loan activity, identify causes for disparity and produce an improvement plan to address the disparities in lending based on their findings. By evaluating only a select number of disparities, staff can evaluate the financial institution's willingness to identify factors that are causing disparities, willingness to change practices that cause disparities or assist with social issues that cause disparities. The effectiveness of the changes that are implemented can also be measured.

This program will be accomplished by a three-phase process. First, through an initial screening process staff will request that financial institutions:

- (a) provide data and analysis related to three identified disparities in lending, as follows;
 - 1) denial rates for owner-occupied one to four unit home mortgage loan applications;
 - 2) the number and location of high cost (sub-prime) home mortgages;
 - 3) loan modification practices, procedures and the profiles of applicants able to obtain them and for those who are denied.

b) compare and contrast the financial institution data with larger City and regional data about the three identified disparities. Review and consider changes in practices such as risk assessments, evaluation criteria and other factors that could be modified. From this information staff can evaluate how the financial institution's lending activity compares to lending disparities in Oakland and determine the depository's willingness and capacity to change practices that limit minority's access to banking services. It will also provide a baseline of lending activity that staff can use to evaluate if the financial institution's improvement plan to address disparities has produced the intended outcomes.

(c) based on the results of (a) and (b), provide an improvement plan to address these disparities in lending.

Second, the linked banking survey and Request for Proposals (RFP) for depository services will indicate that if selected to be the City of Oakland's depository, the requirements of the ordinance and improvement plan that was provided in response to the linked banking survey will be included in the final agreement.

Third, as required by the current ordinance, the depository will be required to make semi-annual or annual reports to the City. Under the new process as set forth in the ordinance amendments, the depository would provide a status update regarding improvement plan implementation, statistics related to lending activity, and data analysis. Staff would evaluate the response to consider causes of disparities, progress toward mitigating disparities and determine if a revised course of action is required. If a revised course of action is necessary, then the depository would be given the opportunity to revise their improvement plan.

Proposed Amendments

Due to the time constraints and the urgency of replacing the depository, staff has released the linked banking survey under the current ordinance and included questions related to the three listed disparities. Proposed changes to the ordinance will authorize staff to exclude depositories from the list of eligible depositories that fail to provide meaningful responses to the questions related to lending disparities in Oakland. If the proposed amendments are approved, depositories will have to provide data related to community lending and develop a strategic assessment of how to address disparities. After initiating the new process, staff may return to Council with additional amendments to the ordinance.

FISCAL IMPACT

No direct cost is anticipated to be incurred as a result of these amendments.

PUBLIC OUTREACH / INTEREST

In response to Council's request for additional data at the January 12, 2016 FMC, Treasury staff met with staff from the Green Lining Institute and California Reinvestment Coalition to discuss potential data available from the depository that could help the City evaluate the population being served by the depository.

COORDINATION

HCDD prepared this report in coordination with the Treasury Bureau, Controller's Bureau, the Department of Race and Equity, and the Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: The Linked Banking Services Program encourages lenders to invest at least their fair share community lending goal in Oakland if they wish to be considered an Eligible Depository for the purpose of providing the City of Oakland's banking services. Their investment expands lending opportunities for the purchase and/or development of affordable housing, small business, non-profits, small business, and community development in Oakland. The proposed amendments would expand those efforts.

Environmental: There are no environmental opportunities or issues associated with these actions.

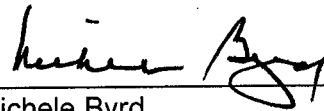
Social Equity: The Linked Banking Services Program encourages lenders to provide credit to markets that have been traditionally underserved such as small businesses and low and moderate-income homeowners, particularly in low income and minority neighborhoods. The proposed amendments would expand those efforts by modifying reporting requirements to identify demographic information of clients being served by the depository thus verifying equitable lending practices.

ACTION REQUESTED OF THE CITY COUNCIL

Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 12066 C.M.S. Establishing The Linked Banking Services Program To Require Eligible Depositories To Submit Improvement Plans And Other Information Concerning Banking And Lending Practices As Required By The City Administrator

For questions regarding this report, please contact Norma Thompson, Housing Manager, at 510-238-7137 or Christina Morales, Housing Development Coordinator, at 510-238-6984.

Respectfully submitted,



Michele Byrd
Director, Department of Housing and
Community Development



Katano Kasaine
Director, Finance Department

Reviewed by:
Norma Thompson, Manager of Housing
Development

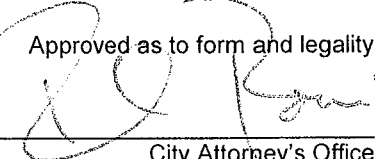
David Jones, Interim Treasury Manager
Treasury Bureau

Prepared by:
Christina Morales, Housing Development
Coordinator
Housing Development Services

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Approved as to form and legality



City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**ORDINANCE AMENDING ORDINANCE NO. 12066 C.M.S.
ESTABLISHING THE LINKED BANKING SERVICES PROGRAM TO
REQUIRE ELIGIBLE DEPOSITORY TO SUBMIT IMPROVEMENT
PLANS AND OTHER INFORMATION CONCERNING BANKING AND
LENDING PRACTICES AS REQUIRED BY THE CITY ADMINISTRATOR**

WHEREAS, the City passed an ordinance establishing a linked banking services program, Ordinance No. 11607 C.M.S. (the "Linked Banking Services Ordinance") on July 13, 1993, in order to encourage community lending and require that any depository with which the City contracts for banking services meet certain lending goals and provide certain information on lending practices; and

WHEREAS, the Linked Banking Services Ordinance was amended and restated by Ordinance No. 12066 C.M.S. passed on July 14, 1998; and

WHEREAS, the Linked Banking Services Ordinance was originally intended and continues to ensure that City funds, including funds deposited into the City's deposit accounts and fees paid by the City to the depository for banking services, are used for community lending in ways that benefit the City of Oakland; and

WHEREAS, the City Council wishes to amend the Linked Banking Services Ordinance to allow the City Administrator to expand the criteria for determining when a depository may be considered an "Eligible Depository", including expanding the reporting requirements for prospective providers of banking services to gain additional information concerning the providers' lending and banking policies and practices in Oakland; and

WHEREAS, the City Council wishes to amend the Linked Banking Services Ordinance to further authorize the City Administrator to seek commitments from prospective and current banking services providers to correct harmful and discriminatory banking and lending practices and to improve their level of service to the Oakland community as needed to promote equity and fairness in banking; and

WHEREAS, among other benefits, robust community lending benefits the City's finances by circulating additional funds to Oakland homeowners and small businesses, thus decreasing the need for the City to fund its own community lending programs such as mortgage assistance programs and economic development loans; and

WHEREAS, such community lending further benefits the City by mitigating and decreasing the negative impacts on the City caused in part by the historical failure by lending institutions in Oakland to adequately lend to small businesses and low and moderate income homeowners, particularly in low income and minority neighborhoods in Oakland; and

WHEREAS, such negative impacts have included substantial fiscal impacts to the City from decreased property tax revenue to the City resulting from stagnant property values, decreased business and sales tax revenue resulting from the lack of business activity, and increased need for police, fire and code enforcement services in low income and minority neighborhoods in Oakland resulting from the lack of investment by private financial institutions in those neighborhoods; and

WHEREAS, since 2008, the City has suffered from an unprecedented foreclosure crisis; and

WHEREAS, these foreclosures have been caused in part by a failure of some lenders to modify the terms of distressed mortgage loans in ways that would have avoided default and foreclosure; and

WHEREAS, the excessive number of foreclosures of home mortgage loans, particularly in Oakland's low income and minority neighborhoods, has resulted in an extraordinary incidence of property vacancies and abandonment in these neighborhoods, which leads to blight, theft, vandalism, drug use, arson, fire hazards, and other public nuisances; and

WHEREAS, as documented in the staff report accompanying this Ordinance and previous staff reports on the issue of linked banking, such property conditions have resulted in significant negative fiscal impacts to the City, including millions of dollars in decreased property tax revenues to the City resulting from decreased property values, and millions of dollars in increased costs to the City resulting from the need to provide additional police, fire, code enforcement, and abatement services in low income and minority neighborhoods in Oakland in response to the increased crime and nuisance conditions caused by vacant, abandoned and blighted properties; and

WHEREAS, the additional information sought by the City from prospective and current banking services providers regarding banking and lending practices in Oakland is intended to inform the City whether City funds are being used to support or contribute

to banking policies and practices that would lead to negative impacts on the City's fiscal health; now, therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. Section 2.D. of Ordinance No. 12362 C.M.S. is hereby revised to read as follows (added text is noted with double-underlining and deleted text is noted with strikeout text):

"Eligible Depository": a "depository" under Government Code Section 53630, defined as a state or national bank, savings and loan association or federal association, or a state or federal credit union doing business in this state, which meets all of the following:

1. Meets its Fair Share Goal, as defined in paragraph E below, for the previous year with respect to Community Credit Lending;
2. Commits in writing to a volume goal by loan products responsive to Oakland's published annual Community Credit Need assessment. It is understood that depositories may specialize in loan products where they have particular expertise, e.g. small business lending, construction lending, permanent residential lending, home purchase lending, rehabilitation lending, etc. Nevertheless, no depository will be eligible to provide the City with Banking Services without a written commitment to meeting a fair share of the City's published Community Credit Need; and,
3. Commits in writing to a plan, approved by the City Administrator, for (a) correcting any identified disparities in access to or the provision of banking and lending services in Oakland, and (b) improving the overall level of service to the Oakland community as needed to promote equity and fairness in banking to all of Oakland; and
4. Complies with reporting requirements specified in Section 3 of this Ordinance.

SECTION 2. Section 3 of Ordinance No. 12362 C.M.S. is hereby revised to read as follows (added text is noted with double-underlining and deleted text is noted with strikeout text):

Depositories providing the City with Banking Services must provide annually to the City such information as established from time to time by the City Manager Administrator or his or her designee in order to establish whether the depository has met the requirements of an Eligible Depository as defined in Section 2.D. In particular, depositories must provide annually information to establish whether they have provided sufficient levels of Community Credit Lending, as defined in Section

2.A. to meet their Fair Share Goals. Such information must be provided at the census tract level, and, for information on lending to individuals or businesses, must be broken down by the race or ethnicity and income category of the borrower or business owner, to the extent the depository collects such information. Depositories meeting the definition of a small bank contained in the federal Community Reinvestment Act may elect to submit information annually on one or more reporting areas to demonstrate that it has met its Fair Share Goal of providing community credit. All other depositories must provide information on all Community Credit Need reporting areas as established by the City Manager Administrator.

In addition, depositories that provide the City with Banking Services or that propose to provide the City with Banking Services must provide information concerning the depository's lending, loan servicing and banking practices as requested by the City Administrator or his or her designee, including without limitation information on the depository's home mortgage loan origination, servicing, modification, and foreclosure policies and practices in Oakland, branch banking and other consumer services provided by the depository in Oakland, and other lending and banking policies and practices of the depository that may adversely impact Oakland residents and businesses. The City Administrator or his or her designee is hereby authorized to request such information from a depository as the City Administrator determines in his or her discretion is necessary or helpful in gauging a depository's level of service to the Oakland community.

SECTION 3. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid, such holding shall not impair or invalidate the remainder of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such provisions not been included.

SECTION 4. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of the City Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, and PRESIDENT REID

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

**ORDINANCE AMENDING ORDINANCE NO. 12066 C.M.S.
ESTABLISHING THE LINKED BANKING SERVICES PROGRAM TO
REQUIRE ELIGIBLE DEPOSITORIES TO SUBMIT IMPROVEMENT
PLANS AND OTHER INFORMATION CONCERNING BANKING AND
LENDING PRACTICES AS REQUIRED BY THE CITY ADMINISTRATOR**

NOTICE AND DIGEST

This Ordinance amends the Linked Banking Services Ordinance to required depositories that provide or propose to provide banking services to the City to submit certain information on the depositories' banking and lending practices as required by the City Administrator.