

CITY OF OAKLAND

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OAKLAND

2017 JUN 14 PM 3:51

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

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

SUBJECT: Linked Banking Services Ordinance
Amendment

DATE: June 13, 2017

City Administrator Approval

Date:

6/14/17

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.

REASON FOR SUPPLEMENTAL

Staff is providing this supplemental report to include a full copy of Ordinance No. 12066 C.M.S. and to incorporate new language proposed by Councilmember Kaplan and accepted by the Finance Committee at its meeting on June 13, 2017.

ANALYSIS

Current Ordinance

During the June 13, 2017 Finance Committee meeting, it was noted that the Ordinance Amending Ordinance No. 12066 C.M.S only referenced the sections subject to change. **Attachment A** provides the complete ordinance without the proposed amendments.

Additionally, there were concerns that the inclusion of additional requirements may prevent contracting with a new depository in the event that no depository meets all the City's requirements. Section 5 of the existing Linked Banking Services Ordinance states that the City Administrator may waive the requirements of the Linked Banking Services Program if no depository is available which meets the definition of eligible depository. Furthermore, the City Administrator would endeavor to select a depository that best meets the requirements as an eligible depository in accordance with the City's Ordinance and can provide a level of service and/or investment return equal to that offered under the prevailing current market conditions.

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June 20, 2017

Proposed Additional Changes

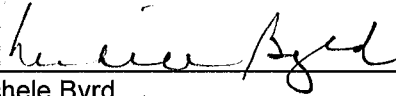
At the June 13, 2017 Finance Committee meeting Councilmember Rebecca Kaplan proposed additional criteria for Eligible Depositories that the Finance Committee accepted. The additional language proposed requires that potential depositories provide detailed information that shows whether the depository does or does not Support the Dakota Access Pipeline, Violates Indigenous Sovereignty, or Supports Mass Incarceration.

ACTION REQUESTED OF THE CITY COUNCIL

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

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

Attachments (1):

(A) Ordinance No. 12066 C.M.S.: Ordinance Amending and Restating Ordinance Nos. 11607 C.M.S. and 12045 C.M.S. Establishing A Linked Banking Services Program.

Item: _____
City Council
June 20, 2017

OFFICE OF THE CITY ATTORNEY
[Signature]
CITY ATTORNEY

ORDINANCE No. 12066 C. M. S.

**ORDINANCE AMENDING AND RESTATING ORDINANCE
NOS. 11607 C.M.S. AND 12045 C.M.S. ESTABLISHING A
LINKED BANKING SERVICES PROGRAM**

WHEREAS, the 1989 Community Credit Needs Assessment commissioned by the City found "respondents from both diverse ethnic backgrounds and widely different sectors in small businesses, housing development, nonprofit service organizations, appraisers, brokerage--even lenders themselves--asserted that racial prejudice and racist practice severely restrict access to capital for minority businesses in the City's low income neighborhoods"; and

WHEREAS, the 1991 Community Credit Needs Assessment, commissioned by the City to update the findings of the 1989 community Credit Needs Assessment, found that the credit demand for affordable housing is approximately \$200 million annually; the credit demand for total long and short term debt for small businesses is at least approximately \$358 million; and, the credit demand for small minority-owned and women-owned businesses is approximately \$46 million annually; and

WHEREAS, a 1989 study by the Federal Reserve Bank of San Francisco affirmed many of the same credit needs and lender shortcomings cited in the 1989 study of community credit need and capital flow in Oakland; and

WHEREAS, the lack of community lending to the City's low income and minority communities significantly impairs the City's ability to meet its community development, neighborhood preservation and housing goals; and

WHEREAS, the City passed an ordinance establishing the Linked Banking Services program, Ordinance No. 11607, in July, 1993, in order to encourage community lending and further amended Section 2 of that Ordinance by Ordinance No. 12045 C.M.S. passed on March 24, 1998; and

WHEREAS, following a review of the linked banking services program, the City Council wishes to amend and restate these Ordinances; now, therefore

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

SECTION 1. The City of Oakland hereby establishes a Linked Banking Services Program. All City Banking Services shall be provided only by Eligible Depositories that meet the guidelines as set forth herein or as otherwise authorized in this Ordinance. In the event that a depository with which the City contracts for banking services fails to meet its Fair Share Goal, as defined in

Section 2.E. below, for the previous year, the depository may continue on contract with the City for the current year, provided that:

- A. The depository commits to meeting during the current year the balance of its unmet Fair Share Goal credit for the previous year plus an additional penalty equal to ten percent of its total Fair Share Goal for the year it failed to meet said Goal; and
- B. The depository submits a plan of how it intends to provide the unmet Fair Share Goal credit, the penalty, and the current year Fair Share Goal credit that is acceptable to the City Manager or his or her designee.

At the end of the current year, the City will not continue to contract with such a depository if it fails to achieve its previous year Fair Share Goal, including the penalty amount of community credit as described above, or if it fails to achieve its current year Fair Share Goal.

SECTION 2. Definitions. For purposes of this Ordinance, certain terms, phrases, words, and derivatives shall be construed as specified in this Section.

- A. "Community Credit Lending": lending within the City of Oakland, in the following areas:
 1. Affordable housing for persons at or below the area median income, as adjusted for household size, for the Oakland Primary Metropolitan Statistical Area, as defined by the U.S. Department of Housing and Urban Development, in any of the following categories: Single-family purchase, rehabilitation and new construction; multi-family purchase, rehabilitation and new construction; credit needed to build, acquire or rehabilitate housing for special needs populations such as the homeless, the elderly, single parents, physically or mentally disabled.
 2. "Local economic development credit needs", defined as:
 - a. lending for small businesses, defined as businesses with sales greater than Fifty Thousand Dollars (\$50,000) and less than Five Million Dollars (\$5,000,000), except for small manufacturing businesses which are defined as businesses with sales of less than Fifteen Million Dollars (\$15,000), addressed in any of the seven Community Development Districts;
 - b. lending to or grants made to nonprofit enterprises, other than universities and hospitals, addressed in Oakland; or
 - c. lending to commercial developers seeking credit for development projects within the seven Community Development Districts. For loans for the acquisition and substantial rehabilitation or the acquisition and new

construction (or for substantial rehabilitation or new construction alone) of such development projects, no more than Twenty Million Dollars (\$20 million) per development loan may be considered as meeting local economic development credit needs. For loans for the acquisition of such development projects without substantial rehabilitation or new construction, no more than Ten Million Dollars (\$10 million) per loan may be considered as meeting local economic development credit needs.

3. Seismic safety credit needs, particularly in the area of seismic retrofitting of "Potentially Hazardous Unreinforced Masonry Buildings" citywide, as identified by the City of Oakland.
 4. Other community needs defined as:
 - a. home equity lines of credit and home equity loans made on homes in the Community Development Districts;
 - b. sponsorship of or technical assistance provided for consumer banking and financial education and training; or
 - c. donations of equipment or other property to Oakland nonprofit organizations serving community development needs.
- B. "Community Credit Need": The estimated total credit need in the City of Oakland in areas of Community Credit Lending, as published annually by the City Manager or his or her designee.
- C. "City Banking Services": All banking services utilized by the City including the Port of Oakland operating fund, with the exception of investments made through investment banks and broker/dealers.
- D. "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. Complies with reporting requirements specified in Section 3 of this Ordinance.

E. "Fair Share Goal": A depository's fair share community lending annual dollar goal equal to Oakland's total annual published Community Credit Need multiplied by that depository's total deposits as a percent of all depository deposits in Oakland:

TCCN = Oakland's annual published total community credit need;

DOD = Depository's total deposits in Oakland;

TDOD = Total deposits of all Oakland depositories;

DFSG = Depository's Fair Share Goal;

DFSG = $\frac{DOD}{TDOD} \times TCCN$

In the event that a depository does not have any deposits in Oakland, the depository will be considered an Eligible Depository only upon approval by the City Manager.

In the event that a depository maintains an office in Oakland primarily serving the needs of businesses on a regional, statewide, or national level, the depository may be allowed to, but is not obligated to, deduct the dollar amount of deposits of non-Oakland businesses from the total level of deposits in Oakland for the purposes of calculating the depository's Fair Share Goal.

SECTION 3. 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 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 Section 2. A., to meet their Fair Share Goals. 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.

SECTION 4. A list of Eligible Depositories and those depositories doing business in Oakland that are not Eligible Depositories will be filed by the City Manager or his or her designee

with the City Clerk each year. This list will also be supplied to the appropriate federal and state regulatory agencies each year. A notice whether a depository meets its Fair Share Goal will be filed by the City in each depository's Community Reinvestment Act public comment file.

SECTION 5. Notwithstanding any other provisions in this Ordinance, the City Manager may waive the restrictions imposed by the Linked Banking Services Program if the City Manager makes any of the following findings:

- A. No depository is available which meets the definition of an Eligible Depository; or
- B. The City will incur more than \$100,000 per year in costs, such as lost interest opportunity and/or increased bank charges, as a consequence of the requirements of the Linked Banking Services Program, as determined by and reported by the City's Director of Finance. The City's Director of Finance shall report to the City Manager on interest earning differentials and relative bank charges otherwise available to the City, and other costs that may be incurred by the City as a consequence of the requirements of the Linked Banking Services Program.

In such event, the City Manager shall endeavor to select those depositories which best meet the following criteria:

1. those depositories that most nearly meet their Fair Share Goals and other requirements as defined in Section 2.D.; and
2. those depositories which are most capable of providing a level of service and/or investment return equal to that offered under the prevailing current market conditions.

SECTION 6. The Program will be subject to California Government Code Section 53630 et. seq. governing the local deposit of public funds. In particular, it is the intent of this Ordinance that the Program will be consistent with Section 53635 which specifies eligible investments for the deposit of public funds by local agencies. Nothing in this Ordinance shall be construed to supersede the provisions of Section 53630 et. seq., or covenants governing the deposit of loan proceeds or loan redemption funds.

SECTION 7. The requirements of this Program shall be incorporated into the City of Oakland Investment Policy adopted by the City Council and published by the Director of Finance.

SECTION 8. This Ordinance shall be effective immediately upon adoption.

SECTION 9. The City Manager is hereby authorized to issue rules and regulations for the Linked Banking Services Program consistent with this Ordinance.

SECTION 10. This Ordinance replaces and supersedes Ordinance Nos. 11607 C.M.S. and 12045 C.M.S. in their entirety.

I certify that the foregoing is a full, true and correct copy of an Ordinance passed by the City Council of the City of Oakland, California on

July 14, 1998

CEDA FLOYD

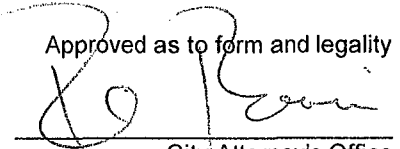
City Clerk and Clerk of the Council

Per *Catherine A. [Signature]* Deputy

2017 JUN 14 PM 3:52

REVISED FINANCE & MANAGEMENT COMMITTEE 6/13/2017

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;
4. Provides detailed information that shows whether or not the depository does or does not "Support the Dakota Access Pipeline", "Violate Indigenous Sovereignty", or "Support Mass Incarceration" as defined below; and
5. Complies with reporting requirements specified in Section 3 of this Ordinance.

SECTION 2. The following definitions are added to Section 2 of Ordinance No. 12362 C.M.S.:

F. "Support the Dakota Access Pipeline": Direct investment in, or provision of loans, credit, bonds or similar debt instruments, or underwriting services

to, entities organized to carry out the construction of the Dakota Access Pipeline, operate the Dakota Access Pipeline, or operate pipeline and energy infrastructure connected to the Dakota Access Pipeline. As of December 2016, such companies include Energy Transfer Partners, Energy Transfer Equity L.P., Dakota Access LLC, and Sunoco Logistics.

G. "Violate Indigenous Sovereignty": Any act that: violates the standards set out in the International Finance Corporation's Environmental and Social Sustainability Performance Standard 7; or that violates articles 11, 12, or 25 of the United Nations Declaration on the Rights of Indigenous People; or that violates Indigenous People's right to free, prior, and informed consent; or that violates a treaty of the United States.

H. "Support Mass Incarceration": Direct investment in, or provision of loans, credit, bonds or similar debt instruments, or underwriting services to, for-profit corporations that own, lease, or operate prisons, jails, immigration detention centers, or youth detention centers.

SECTION 3. 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 4. 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 5. 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.