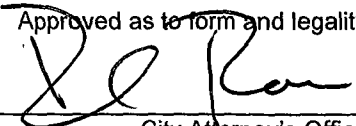


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OFFICE OF THE CITY CLERK
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2016 MAY 26 PM 1:01

REVISED FINANCE COMMITTEE, 5/24/2016

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
ADD REPORTING REQUIREMENTS, AND CODIFYING THE LINKED
BANKING SERVICES ORDINANCE INTO THE OAKLAND MUNICIPAL
CODE**

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 further amended by Ordinance No. 12362 C.M.S. passed on October 2, 2001 to add provisions prohibiting eligible depositories from engaging in certain predatory home mortgage lending practices as defined in the City's Anti-Predatory Lending Ordinance; and

WHEREAS, the amendments to the Linked Banking Services Ordinance enacted by Ordinance No. 12362 C.M.S. are not in effect given that the City's Anti-Predatory Lending Ordinance was overturned by the California Supreme Court in the case of *American Financial Services Association v. City of Oakland* (2005) 34 Cal.4th 1239; and

WHEREAS, Council wishes to amend the Linked Banking Services Ordinance to expand the reporting requirements for providers of banking services, both prospective providers and current providers, to gain additional information concerning the providers' lending and banking practices in Oakland; 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, 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, 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 City wishes to amend the Linked Banking Services Ordinance to seek further information from prospective providers of banking services on their community lending practices, including their foreclosure and loan modification practices, particularly in low income and minority neighborhoods in Oakland, to inform the City whether City funds deposited with or paid to such providers are being used to contribute to home mortgage lending practices that negatively impact the City's fiscal health; and

WHEREAS, the additional information sought by the City from prospective and current banking services providers regarding home mortgage lending in Oakland neighborhoods, branch banking services, compliance with banking laws, consumer fees, and payday lending is also intended to inform the City whether City funds are being used to support or contribute to banking practices that would lead to negative impacts on the City's fiscal health; and

WHEREAS, Council wishes to codify the Linked Banking Services Ordinance into the Oakland Municipal Code to make it more accessible to the public; now, therefore

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

SECTION 1. Ordinance No. 12362 C.M.S. is hereby repealed.

SECTION 2. Ordinance No. 12066 C.M.S. is hereby replaced by the provisions of the Oakland Municipal Code added by this Ordinance.

SECTION 3. Chapter 4.52 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 4.52

LINKED BANKING SERVICES

4.52.010 Purpose.

The City of Oakland hereby establishes a Linked Banking Services Program. The purpose of the Program is 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.

4.52.020 Definitions.

The following definitions apply to this chapter:

"Affiliate" means any business entity that controls, is controlled by, or is under common control with, another entity, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq.), as such statute may be

amended from time to time, and includes any successors in interest or alter egos to the business entity.

"Community Credit Lending" means lending within the City of Oakland in the following areas:

- A. 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.
- B. "Local economic development credit needs", defined as:
 - 1. 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 (\$15,000,000), addressed in any of the seven Community Development Districts;
 - 2. lending to or grants made to nonprofit enterprises, other than universities and hospitals, addressed in Oakland; or
 - 3. 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.
- C. 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.
- D. Other community needs, defined as:

1. home equity lines of credit and home equity loans made on homes in the Community Development Districts;
2. sponsorship of or technical assistance provided for consumer banking and financial education and training; or
3. donations of equipment or other property to Oakland nonprofit organizations serving community development needs.

"Community Credit Need" means the estimated total credit need in the City of Oakland in areas of Community Credit Lending, as published annually by the City Administrator or his or her designee.

"City Banking Services" means 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.

"Eligible Depository" means 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:

- A. Meets its Fair Share Goal, as defined below, for the previous year with respect to Community Credit Lending;
- B. 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,
- C. Complies with reporting requirements specified in Section 4.52.040 of this chapter.

"Fair Share Goal" means 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:

$$\text{TCCN} = \text{Oakland's annual published total Community Credit Need};$$

DOD = Depository's total deposits in Oakland;

TDOD = Total deposits of all Oakland depositories;

DFSG = Depository's Fair Share Goal;

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

4.52.030 Fair share goals.

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 chapter. In the event that a depository with which the City contracts for banking services fails to meet its Fair Share Goal, as defined above, 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 Administrator 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.

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 Administrator.

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.

4.52.040 Reporting.

Depositories providing the City with Banking Services must provide annually to the City such information as established from time to time by the City Administrator

or his or her designee in order to establish whether the depository has met the requirements of an Eligible Depository as defined above. In particular, depositories must provide annually information to establish whether they have provided sufficient levels of Community Credit Lending, as defined above 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 Administrator.

In addition, depositories that provide the City with Banking Services or that propose to provide the City with Banking Services must provide the following information, to the extent such information is collected, in a format provided by the City Administrator:

- A. The number and dollar volume of home mortgage loans (both originations and refinancings) applied for, and the number and volume of such loans made by the depository or any affiliate of the depository the previous year in Oakland. Such information shall indicate what percentage of said loans made in Oakland qualify as "covered loans" under California Financial Code Section 4970(b).
- B. The number and dollar volume of home mortgage loans serviced by the depository or any affiliate of the depository the previous year in Oakland.
- C. The number of home mortgage loan foreclosures initiated by the depository or any affiliate of the depository in Oakland over the previous five years. For purposes of this paragraph, a foreclosure is initiated if a notice of default has been given to the borrower and/or a judicial foreclosure action has been filed.
- D. The number of home mortgage loan modifications applied for and the number of such modifications approved by the depository or any affiliate of the depository in Oakland over the previous five years. Such information must specify what percentage of said loan modifications (1) resulted in lower monthly payments, (2) reduced interest rates, (3) reduced loan principal, (4) deferred loan payments, (5) increased loan principal, and/or (6) resulted in permanent modifications.
- E. Information on the depository's branch office locations in Oakland, including any imminent plans for closing any branch offices and efforts to mitigate the effects of branch closures on customers.

- F. Information on any felony convictions of the depository and any civil or regulatory fines or penalties exceeding \$10 million imposed on the depository within the past five years.
- G. A summary of the fees charged to the depository's consumer customers.
- H. A list of names and locations of payday lending companies doing business in Oakland that are affiliated with the depository.

For purposes of this section, "home mortgage loan" means a loan secured by a mortgage or deed of trust on residential property used or intended to be used by the borrower as their principal dwelling if the loan proceeds are used by the borrower to purchase or improve said residential property. For the information required under subsections A through D above, the information must be provided at the census tract level, and must include demographic information on borrowers or applicants, including their race or ethnicity and income category specified by the City, to the extent such information is collected by the depository.

4.52.050 Eligible Depository list.

A list of Eligible Depositories and those depositories doing business in Oakland that are not Eligible Depositories will be filed by the City Administrator 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.

4.52.060 Waivers.

Notwithstanding any other provisions in this chapter, the City Administrator may waive the restrictions imposed by the Linked Banking Services Program if the City Administrator 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 Administrator 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 Administrator 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 herein; 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.

4.52.070 State law.

The Linked Banking Services 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 chapter 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 chapter shall be construed to supersede the provisions of Section 53630 et. seq., or covenants governing the deposit of loan proceeds or loan redemption funds.

4.52.080 Investment policy.

The requirements of the Linked Banking Services Program shall be incorporated into the City of Oakland Investment Policy adopted by the City Council and published by the Director of Finance.

4.52.090 Regulations.

The City Administrator is hereby authorized to issue rules and regulations for the Linked Banking Services Program consistent with this chapter.

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, _____, 2016

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

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NOTICE AND DIGEST

This Ordinance amends the Linked Banking Services Ordinance to add certain reporting requirements on depositories. This Ordinance also codifies the Linked Banking Services Ordinance into the Oakland Municipal Code.