



SEATTLE CITY COUNCIL

Legislative Summary

CB 118905

Record No.: CB 118905

Type: Ordinance (Ord)

Status: Passed

Version: 3

Ord. no: Ord 125257

In Control: City Clerk

File Created: 01/27/2017

Final Action: 02/10/2017

Title: AN ORDINANCE relating to strengthening The City of Seattle's policies for conducting City business with partners that are committed to fair business practices; adding Chapter 20.46 to the Seattle Municipal Code; amending the revised City of Seattle Investment Policies adopted by Resolution 31525; and requesting the Mayor and Director of Finance and Administrative Services to take certain actions, including not renewing the Contract for Bank Depository Services with Wells Fargo Bank beyond the initial term and refraining from making new investments in Wells Fargo securities for a period of three years.

Notes:

Filed with City Clerk: 2/10/2017

Mayor's Signature: 2/10/2017

Sponsors: Burgess, Sawant, Juarez

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: jodee.schwinn@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: Yes No

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	01/30/2017	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	01/30/2017	sent for review	Affordable Housing, Neighborhoods, and Finance Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Affordable Housing, Neighborhoods, and Finance Committee						
	Notes:						

- 1 Full Council 01/30/2017 referred Affordable Housing, Neighborhoods, and Finance Committee
- 1 Affordable Housing, Neighborhoods, and Finance Committee 02/01/2017 pass as amended Pass
- Action Text: The Committee recommends that Full Council pass as amended the Council Bill (CB).
In Favor: 8 Chair Burgess, Vice Chair Herbold, Member Johnson, Alternate O'Brien, Bagshaw, González, Sawant, Juarez
Opposed: 0

- 1 Full Council 02/07/2017 passed as amended Pass
- Action Text: The Motion carried, the Council Bill (CB) was passed as amended by the following vote, and the President signed the Bill:
- Notes: ACTION 1:

Motion was made by Councilmember González, duly seconded and carried, to amend Council Bill 118905, Section 2.E, by amending the definition of unfair business practices, as shown in the strike-through and underlined language below:

E. "Unfair business practices" shall mean a system or pattern of acts or practices that a relevant federal or Washington state enforcement agency has found to be discriminatory, deceptive, fraudulent, or abusive (as these or similar terms) may be defined in under the any applicable Washington or federal Consumer consumer protection laws~~Protection Act chapter 19.86-RCW or an applicable federal consumer protection law~~ relating to the subject matter of the Contract) or that have violated a relevant criminal statute, as evidenced by a public enforcement order or judgement, settlement with the enforcement agency or other formal finding by the relevant enforcement agency with regulatory enforcement authority under the applicable consumer protection law, or criminal conviction.

ACTION 2:

WHEREAS, in 2016, it was widely reported that Wells Fargo

employees after creating may have created over 2,000,000 millions of unauthorized bank and credit card accounts, without the knowledge or consent of ordinary consumers. These allegations were the subject of Congressional Hearings in the U.S. Senate's Committee on Banking, Housing and Urban Affairs on September 20, 2016, and in the House of Representatives' Financial Services Committee on September 29, 2016." On September 4, 2016, the Consumer Financial Protection Bureau (CFPB) placed Wells Fargo under a Consent Order ("Order") related to its unfair consumer practices. In the Order, the "CFPB" found that Wells Fargo "opened, among other potentially fraudulent accounts, 1,534,280 deposit accounts that may not have been authorized and that may have been funded through simulated funding, or transferring funds from consumers' existing accounts without their knowledge or consent." The CFPB also found that Wells Fargo "terminated roughly 5,300 employees for engaging in Improper Sales Practices." —However, the Order also found that Wells Fargo "set sales goals and implemented sales incentives, including an incentive-compensation program, in part to increase the number of banking products and services that its employees sold to its customers..." and these employees engaged in this behavior to satisfy the demands of Wells Fargo's incentive compensation program. Since September 2016, former Wells Fargo employees have filed a multi-billion dollar class action (case number BC634475 in the California Superior Court) lawsuit claiming they were wrongfully terminated for failing to meet unreasonable quotas while not engaging in improper sales practices. That class action lawsuit has not been

~~resolved; CNN Money reported on September 8, 2016, that Wells Fargo National Bank ("Wells Fargo") "fired 5,300 employees over the last few years related to the shady behavior," and Vanity Fair reported on January 24, 2017, that those employees "were thrown under the bus for the scandal while management walked away scot free;" and.~~

WHEREAS, In the Public Interest ("ITPI"), a non-profit research and policy center, issued ~~'s a~~ report in November 2016 entitled, "The Banks That Finance Private Prison Companies." ITPI's stated commitment is to equip "citizens, public officials, advocacy groups, and researchers with information, ideas, and resources on best practices in government contracting and other types of public-private agreements." ITPI is a project of Partnership for Working Families, which is "a national network of leading regional advocacy organizations who support innovative solutions to our nation's economic and environmental problems." The national network includes reputable and well-respected organizations such as Puget Sound Sage based in Seattle. (November 2016) stated, "Wells Fargo is complicit with private prison companies in contributing to and enabling mass incarceration and the criminalization of immigration" and expounded how Wells Fargo provides financial services to GEO Group, which owns and operates the Northwest Detention Center, a private prison detention center located in Tacoma, Washington, and utilized to detain near immigrants and refugees, from all over the state including Seattle, who are undergoing removal proceedings. According to the ITPI report, GEO Group depends on "debt financing to

conduct their day-to-day business operations and acquire smaller companies." An analysis of U.S. Securities and Exchange Commission (SEC) filings over the past 10 years, which is detailed in ITPI's report "The Banks That Finance Private Prison Companies," shows that Wells Fargo has played a leading role in financing these debts"; ~~incarcerating immigrant detainees;~~ and

ACTION 3:

Motion was made by Councilmember Herbold, duly seconded and carried, to amend Council Bill 118905, by substituting the 8th recital as shown in the underlined language below:

Whereas, According to U.S. Securities & Exchange Commission (SEC) filings by the Energy Transfer family of companies (Energy Transfer Partners, L.P. (ETP); Energy Transfer Equity, LP; and Sunoco Logistics Partners LP) on February 10, 2015, February 17, 2015, and May 7, 2015, Wells Fargo maintains \$347 million in total credit facility commitments to these companies building the Dakota Access Pipeline, serves as the administrative agent for a \$3.75 billion line of credit held by ETP, and according to SEC filings on June 18, 2015 and January 11, 2017, Wells Fargo Securities, LLC underwrote \$450 million in bonds in 2015 and \$72 million in bonds so far in 2017 for ETP, all in support of the Dakota Access Pipeline project opposed by nearly 200 Indian Nations and environmental organizations, with police response to project opponents and journalists including arrest, use of rubber bullets, tear gas, pepper spray, and fire hoses in freezing weather.

ACTION 4:

Motion was made and duly seconded to pass Council Bill 118905 as amended.

In Favor: 9 Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

3	City Clerk	02/08/2017	submitted for Mayor's signature	Mayor
3	Mayor	02/10/2017	Signed	
3	Mayor	02/10/2017	returned	City Clerk
3	City Clerk	02/10/2017	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

CITY OF SEATTLE

ORDINANCE 125257

COUNCIL BILL 118905

AN ORDINANCE relating to strengthening The City of Seattle’s policies for conducting City business with partners that are committed to fair business practices; adding Chapter 20.46 to the Seattle Municipal Code; amending the revised City of Seattle Investment Policies adopted by Resolution 31525; and requesting the Mayor and Director of Finance and Administrative Services to take certain actions, including not renewing the Contract for Bank Depository Services with Wells Fargo Bank beyond the initial term and refraining from making new investments in Wells Fargo securities for a period of three years.

WHEREAS, The City of Seattle is committed to protecting the City’s interests and the public’s trust by managing and spending City funds in a fiscally responsible and prudent manner; and

WHEREAS, as part of that commitment, it is a priority of The City of Seattle to conduct City business with partners who are committed to engaging in fair business practices; and

WHEREAS, the Seattle City Council has passed certain ordinances, including but not limited to Ordinance Nos. 119748 (1999, nondiscrimination in benefits), 121717 (2005, equality in contracting), and 124250 (2013, socially responsible banking), as amended from time to time, which have collectively established a framework of contracting to consider certain social equity and responsibility factors in choosing whom the City conducts its business with and enforcing the goals and requirements of that framework; and

WHEREAS, the Seattle City Council also passed Resolution 31525 in 2014, adopting revised City of Seattle Investment Policies, including Policy 4, Social Policies, which guides the Director of Finance and Administrative Services to seek opportunities to conduct investment business with institutions that, by their charter, seek to benefit the common good and do not solely pursue maximum profit; and

1 WHEREAS, in 2016, it was widely reported that Wells Fargo employees may have created over
2 2,000,000 bank and credit card accounts without the knowledge or consent of ordinary
3 consumers. These allegations were the subject of Congressional Hearings in the U.S.
4 Senate’s Committee on Banking, Housing and Urban Affairs on September 20, 2016, and
5 in the House of Representatives’ Financial Services Committee on September 29, 2016.
6 On September 4, 2016, the Consumer Financial Protection Bureau (CFPB) placed Wells
7 Fargo under a Consent Order (“Order”) related to its unfair consumer practices. In the
8 Order, the CFPB found that Wells Fargo “opened, among other potentially fraudulent
9 accounts, 1,534,280 deposit accounts that may not have been authorized and that may
10 have been funded through simulated funding, or transferring funds from consumers’
11 existing accounts without their knowledge or consent.” The CFPB also found that Wells
12 Fargo “terminated roughly 5,300 employees for engaging in Improper Sales Practices.”
13 However, the Order also found that Wells Fargo “set sales goals and implemented sales
14 incentives, including an incentive-compensation program, in part to increase the number
15 of banking products and services that its employees sold to its customers,” and these
16 employees engaged in this behavior to satisfy the demands of Wells Fargo’s incentive
17 compensation program. Since September 2016, former Wells Fargo employees have filed
18 a multi-billion dollar class action (case number BC634475 in the California Superior
19 Court) lawsuit claiming they were wrongfully terminated for failing to meet unreasonable
20 quotas while not engaging in improper sales practices. That class action lawsuit has not
21 been resolved; and WHEREAS, In the Public Interest (ITPI), a non-profit research and
22 policy center, issued a report in November 2016 entitled, “*The Banks That Finance*
23 *Private Prison Companies.*” ITPI’s stated commitment is to equip “citizens, public

1 officials, advocacy groups, and researchers with information, ideas, and resources on best
2 practices in government contracting and other types of public-private agreements.” ITPI
3 is a project of Partnership for Working Families, which is “a national network of leading
4 regional advocacy organizations who support innovative solutions to our nation’s
5 economic and environmental problems.” The national network includes reputable and
6 well-respected organizations such as Puget Sound Sage based in Seattle. GEO Group
7 owns and operates the Northwest Detention Center, a private detention center located in
8 Tacoma, Washington, and utilized to detain immigrants and refugees from all over the
9 state including Seattle, who are undergoing removal proceedings. According to the ITPI
10 report, GEO Group depends on “debt financing to conduct their day-to-day business
11 operations and acquire smaller companies.” An analysis of U.S. Securities and Exchange
12 Commission (SEC) filings over the past 10 years, which is detailed in ITPI’s report “The
13 Banks That Finance Private Prison Companies,” shows that Wells Fargo has played a
14 leading role in financing these debts”; and

15 WHEREAS, the Seattle City Council passed Resolution 31709 in 2016, proclaiming The City of
16 Seattle’s support for the Standing Rock Sioux Tribe’s opposition to the construction of
17 the Dakota Access Pipeline (DAPL), and Wells Fargo and other financial institutions’
18 investments in the building of this pipeline are contrary to The City of Seattle’s values as
19 proclaimed in the resolution; and

20 WHEREAS, according to U.S. Securities & Exchange Commission (SEC) filings by the Energy
21 Transfer family of companies (Energy Transfer Partners, L.P. (ETP); Energy Transfer
22 Equity, LP; and Sunoco Logistics Partners LP) on February 10, 2015, February 17, 2015,
23 and May 7, 2015, Wells Fargo maintains \$347 million in total credit facility

1 commitments to these companies building the Dakota Access Pipeline, serves as the
2 administrative agent for a \$3.75 billion line of credit held by ETP, and according to SEC
3 filings on June 18, 2015 and January 11, 2017, Wells Fargo Securities, LLC underwrote
4 \$450 million in bonds in 2015 and \$72 million in bonds so far in 2017 for ETP, all in
5 support of the Dakota Access Pipeline project opposed by nearly 200 Indian Nations and
6 environmental organizations, with police response to project opponents and journalists
7 including arrest, use of rubber bullets, tear gas, pepper spray, and fire hoses in freezing
8 weather; and

9 WHEREAS, President Donald Trump signed an executive order on January 24, 2017, with the
10 subject line, "Construction of the Dakota Access Pipeline," instructing the United States
11 Army Corps of Engineers to "review and approve in an expedited manner, to the extent
12 permitted by law and as warranted, and with such conditions as are necessary or
13 appropriate, requests for approvals to construct and operate the DAPL;" and

14 WHEREAS, approximately 1,000 Seattleites joined a protest of this executive order in Westlake
15 Park the same day it was signed in an emergency action organized by the Defund DAPL:
16 Seattle Action Coalition; and

17 WHEREAS, the Seattle City Council finds that Wells Fargo's investment in the Dakota Access
18 Pipeline and recent misconduct and dishonest business practices are contrary to The City
19 of Seattle's strong commitment to conducting its business with socially responsible
20 banks, and it is in the City's best interest to strengthen its framework for social equity and
21 responsibility in contracting by enacting authority and responsibilities to ensure the City
22 conducts business with partners who are committed to and demonstrate engaging in fair
23 and responsible business practices; NOW, THEREFORE,

1 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

2 Section 1. The City Council finds and declares:

3 A. Wells Fargo National Bank (“Wells Fargo”), pursuant to a competitive
4 procurement in 2012, currently provides services to The City of Seattle under the Contract for
5 Bank Depository Services with an initial contract term through December 31, 2018, which
6 includes managing more than \$3 billion of Seattle’s operating account.

7 B. In September 2016, the Consumer Financial Protection Bureau issued a final
8 Consent Order (File No. 2016-CFPB-0015), the Office of the Comptroller of the Currency issued
9 final Cease and Desist, Civil Money Penalty and Restitution Orders (File Nos. 2016-077 and
10 2016-079) and the City and County of Los Angeles reached a stipulated final judgement in its
11 lawsuit *People v. Wells Fargo & Co., et al.*, Los Angeles Superior Court, Case No. BC580778,
12 (collectively, the “Orders”) requiring Wells Fargo to pay restitution and a total of \$185 million in
13 civil penalties to all three enforcement agencies for fraudulently opening more than two million
14 unauthorized consumer deposit and credit card accounts.

15 C. Wells Fargo has been the subject of additional enforcement orders during the last
16 two years, including two more Consumer Financial Protection Bureau orders (File No. 2016-
17 CFPB-0013 (August 2016) and Case No. 1:15-cv-00179-RDB (February 2015)), involving
18 findings that Wells Fargo engaged in illegal private student loan servicing practices and an
19 illegal marketing-services-kickback scheme with a title company, and one Office of the
20 Comptroller of the Currency order (File No. 2016-082 (September 2016)) involving findings that
21 Wells Fargo engaged in violations of the Servicemembers Civil Relief Act. These orders
22 resulted in Wells Fargo paying approximately \$48 million in civil penalties and restitution to
23 students, servicemembers, and other mortgage borrowers.

1 For the purposes of this Chapter 20.46:

2 A. "Contract" means a written agreement for public works as defined in RCW
3 39.04.010, for consultant services under Chapter 20.50, or supplies, material, equipment, or
4 services under Chapter 20.60.

5 B. "Contract awarding authority" means the City officer, department, commission,
6 employee, or board authorized to enter into or to administer contracts on behalf of the City.

7 C. "Department" means the Department of Finance and Administrative Services.

8 D. "Director" means the Director of Finance and Administrative Services.

9 E. "Unfair business practices" shall mean a system or pattern of acts or practices that
10 a relevant federal or Washington state enforcement agency has found to be discriminatory,
11 deceptive, fraudulent, or abusive (or similar terms) under the Washington Consumer Protection
12 Act chapter 19.86 RCW or an applicable federal consumer protection law relating to the subject
13 matter of the Contract) or that have violated a relevant criminal statute, as evidenced by a public
14 enforcement order or judgement, settlement with the enforcement agency or other formal finding
15 by the relevant enforcement agency with regulatory enforcement authority under the applicable
16 consumer protection law, or criminal conviction.

17 **20.46.030 Requirements**

18 A. No contractor on a City Contract shall engage in unfair business practices.

19 B. For Contracts under Chapters 20.50 and 20.60 that are procured under a request
20 for proposal process, the Contract awarding authority will include relevant proposal and
21 evaluation criteria to factor in a contractor's commitment to ensuring that it does not engage in
22 unfair business practices, as may be applicable to the subject matter of the Contract, unless the

1 Contract awarding authority determines, in writing, that including such evaluation criteria for a
2 particular Contract is not in the best interest of the City.

3 **20.46.040 Powers and duties of the Director**

4 The Director, in consultation with Contract awarding authorities, shall have the power and
5 duty to:

6 A. Prepare specifications, responsibility or evaluation criteria, and contract
7 provisions to carry out the purposes and requirements of this chapter, as appropriate for the
8 various types of City Contracts, which may include but not be limited to:

9 1. Developing relevant evaluation criteria that considers internal policies,
10 controls, and processes to ensure that a contractor does not engage in unfair business practices.

11 2. Developing relevant Responsibility criteria as that term is defined under
12 Chapter 20.60.

13 3. Developing appropriate contractual provisions and remedies, including,
14 but not limited to, reporting of enforcement actions, termination of the contract or
15 disqualification of the contractor from bidding on or being awarded a City contract for a period
16 of up to five years if they engage in unfair business practices during the term of a City Contract.

17 B. Waive the requirements of this Chapter 20.46 when it is in the best interests of the
18 City.

19 **20.46.050 Effective date**

20 The provisions of this Chapter 20.46 shall apply to any contract awarded on or after July 1,
21 2017.

22 Section 3. Section 20.70.040 of the Seattle Municipal Code, enacted by Ordinance
23 121723, is amended as follows:

1 **20.70.040 Grounds for Debarment ((-))**

2 Pursuant to Section 20.70.030, the Director may issue an Order of Debarment that prevents a
3 Contractor from entering into any Contract with the City or from acting as a subcontractor on
4 any Contract with the City after determining that any of the following reasons exist:

5 A. The Contractor has received overall performance evaluations of deficient,
6 inadequate, or substandard performance on three ((3)) or more City Contracts.

7 B. The Contractor has failed to comply with City ordinances or Contract terms,
8 including but not limited to ((-)) ordinance or Contract terms relating to small business
9 utilization, discrimination, prevailing wage requirements, equal benefits, fair business practices,
10 or apprentice utilization.

11 C. The Contractor has abandoned, surrendered, or failed to complete or to perform
12 work on or in connection with a City Contract.

13 D. The Contractor has failed to comply with Contract provisions, including but not
14 limited to quality of workmanship, timeliness of performance, and safety standards.

15 E. The Contractor has submitted false or intentionally misleading documents,
16 reports, invoices, or other statements to the City ((in connection with a Contract)).

17 F. The Contractor has colluded with another contractor to restrain competition.

18 G. The Contractor has committed fraud or a criminal offense in connection with
19 obtaining, attempting to obtain, or performing a Contract for the City or any other government
20 entity.

21 H. The Contractor has failed to cooperate in a City debarment investigation.

1 I. The Contractor has failed to comply with ~~((SMC Ch.))~~ Chapter 14.04, ~~((SMC~~
2 ~~Ch.))~~ 14.10, ~~((SMC Ch.))~~ 20.42, ~~((or SMC Ch.))~~ 20.45, or 20.46 or other local, state, or federal
3 non-discrimination laws.

4 Section 4. Exhibit A to Resolution 31525 is amended as follows:

5 * * *

6 Policy 4. Social Policies. A City social policy will take precedence over furthering
7 the City's financial objectives when expressly authorized by City Council ordinance or
8 resolution, except where otherwise provided by law or trust principles. In managing its
9 investments, the City shall seek opportunities to conduct business with institutions ~~((;))~~ that, by
10 their charter and ongoing business practices, seek to benefit the common good, engage in fair
11 business practices, and do not solely pursue maximum profit.

12 When two or more investment institutions offer essentially the same maturity, yield,
13 quality, and liquidity, it will be the intent of the City to give priority to:

- 14 a. The institution based in Seattle, then
15 b. Other financial institutions in the State of Washington, and then
16 c. Other financial institutions.

17 Section 5. It is the intent of the City Council that the Mayor and Director of Finance and
18 Administrative Services, pursuant to their authority under Section 3.39.020 of the Seattle
19 Municipal Code:

20 A. Provide Wells Fargo with immediate notice of the City's intention not to renew
21 the Contract for Bank Depository Services for any of the allowable five one-year extensions
22 beyond the initial term of the contract, which expires December 31, 2018.

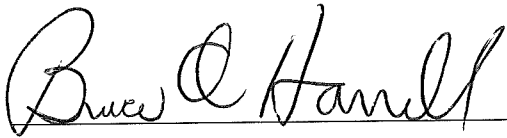
1 B. Undertake a new competitive bidding process in order to select, contract with, and
2 establish a new, qualified financial institution to provide depository banking services to The City
3 of Seattle by no later than December 31, 2018, and include socially responsible banking and fair
4 business practices performance as factors worth at least 20 percent in that bidding process.

5 C. Refrain from making any new City-directed cash investments in Wells Fargo
6 securities from the effective date of this ordinance through September 30, 2019, which is a three-
7 year period from the date of the Orders referenced in Section 1 of this ordinance.

8 Section 6. The Seattle City Council requests the Mayor and Director of Finance and
9 Administrative Services to provide a written report to the Council's Affordable Housing,
10 Neighborhoods and Finance Committee no later than September 1, 2017, regarding the
11 implementation of this ordinance.

1 Section 7. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 7th day of February, 2017,
5 and signed by me in open session in authentication of its passage this 7th day of
6 February, 2017.

7 

8 President _____ of the City Council

9 Approved by me this 10th day of February, 2017.

10 

11 Edward B. Murray, Mayor

12 Filed by me this 10th day of February, 2017.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal)