



**Legislative Department
Seattle City Council
Memorandum**

Date: January 31, 2017
To: Affordable Housing, Neighborhoods and Finance Committee
From: Patricia Lee, Council Central Staff

**Subject: CB 118905: Fair Business Practices
Proposed Amendments**

Committee Action: On February 1, 2017, the Affordable Housing, Neighborhoods and Finance (AHNF) Committee will discuss and possibly vote on the Fair Business Practices Ordinance (CB 118905).

CB 118905 strengthens social responsibility and fair business standards for all City contracts. It adds a new Chapter 20.46 to the Seattle Municipal Code (SMC), and it prohibits City contractors from engaging in unfair business practices. Contracts awarded under a Request for Proposals will include evaluation criteria on commitment to fair business practices. City contract awarding authorities will develop evaluation criteria and contractual remedies for addressing any unfair business practices by City contractors, including debarment for up to 5 years. The legislation adds language to the City's Investment Policies, Policy 4, Social Policies, stating that the City will seek to conduct business with institutions that in their ongoing business practices, as well as by their charter, engage in fair business practices.

CB 118905 amends the SMC provisions for debarment and adds as grounds for debarment a City contractor's failure to comply with the new fair business practice requirements of SMC 20.46.

CB 118905 also specifically addresses the City's current depository bank contract with Wells Fargo National Bank ("Wells Fargo"). Wells Fargo, pursuant to a competitive procurement in 2012, currently provides services to The City of Seattle under a Contract for Bank Depository Services with an initial contract term through December 31, 2018, which includes managing more than \$3 billion of Seattle's operating account. CB 118905 expresses the City Council's intent that the Mayor and Director of Finance and Administrative Services provide immediate notice that the City will not renew that contract, undertake a new competitive bidding process, request the contracting authority to develop bid evaluation criteria, and refrain from new cash investments in Wells Fargo securities for at least three years.

Below are amendments that staff understands may be offered at the February 1, 2017 AHNCF Committee meeting.

Potential Amendments to CB 118905

Amendment 1 by Councilmember Sawant

I move to amend CB 118905 to amend the fourth recital in the base legislation, to add two new recitals to be inserted after this amended fourth recital, and to amend the fifth recital in the base legislation as follows (the new language is shown in underline):

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

WHEREAS, after creating “millions of unauthorized bank and credit card accounts,” 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’s report *The Banks That Finance Private Prison Companies* (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 near Seattle incarcerating immigrant detainees;

and

WHEREAS, the Seattle City Council passed Resolution 31709 in 2016, proclaiming The City of Seattle’s support for the Standing Rock Sioux Tribe’s opposition to the construction of the Dakota Access Pipeline, and ~~Wells Fargo National Bank~~ (“Wells Fargo”) and other financial institutions’ investments in the building of this pipeline are contrary to The City of Seattle’s values as proclaimed in the resolution; NOW, THEREFORE,

AHNF Committee Vote:

Amendment 2 by Councilmember Sawant

I move to amend CB 118905 to amend the fifth recital in the base legislation, to add three new recitals to be inserted after this amended fifth recital, and to amend Section 1(F) as follows (the new language is shown in underline):

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

WHEREAS, Food and Water Watch reported on September 6, 2016, that Wells Fargo is one of the largest contributors to the DAPL, having invested \$467,000,000 in project-level loans and revolving credit, which enabled repression of and

intimidation against nearly 200 Indian Nations, environmental organizations, journalists, and other non-violent demonstrators; and

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

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

...

F. The Seattle City Council finds that Wells Fargo’s investment in the Dakota Access Pipeline and recent misconduct and dishonest business practices are contrary to The City of Seattle’s strong commitment to conducting its business with socially responsible banks, and it is in the City’s best interest to strengthen its framework for social equity and responsibility in contracting by enacting authority and responsibilities to ensure the City conducts business with partners who are committed to and demonstrate engaging in fair and responsible business practices.

AHNF Committee Vote:

Amendment 3 by Councilmembers Herbold and Sawant

I move to amend CB 118905 Section 5(B) to increase from 15 percent to 20 percent the worth of socially responsible banking and fair business practices performance when the City selects a financial institution for the City’s depository bank services. The new language is shown in underline:

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

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

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

AHNF Committee Vote:

Amendment 4 by Councilmember Sawant

I move to amend CB 118905 Section 2 to add to the word “discriminatory” to the definition of “unfair business practices” in SMC 20.46.020 as shown in underline 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 those or similar terms may be defined in the Washington Consumer 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.

AHNF Committee Vote:

Amendment 5 by Councilmember Sawant

I move to amend CB 118905 Section 2 to amend SMC 20.46.040, Powers and duties of the Director, to give the Director the authority to require the reporting of enforcement actions. The new language is underlined as follows:

20.46.040 Powers and duties of the Director

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

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

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

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

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

AHNF Committee Vote: