

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..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.

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

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

7 Section 1. The City Council finds and declares:

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

12 B. In September 2016, the Consumer Financial Protection Bureau issued a final
13 Consent Order (File No. 2016-CFPB-0015), the Office of the Comptroller of the Currency issued
14 final Cease and Desist, Civil Money Penalty and Restitution Orders (File Nos. 2016-077 and
15 2016-079) and the City and County of Los Angeles reached a stipulated final judgement in its
16 lawsuit People v. Wells Fargo & Co., et al., Los Angeles Superior Court, Case No. BC580778,
17 (collectively, the “Orders”) requiring Wells Fargo to pay restitution and a total of \$185 million in
18 civil penalties to all three enforcement agencies for fraudulently opening more than two million
19 unauthorized consumer deposit and credit card accounts.

20 C. Wells Fargo has been the subject of additional enforcement orders during the last
21 two years, including two more Consumer Financial Protection Bureau orders (File No. 2016-
22 CFPB-0013 (August 2016) and Case No. 1:15-cv-00179-RDB (February 2015)), involving
23 findings that Wells Fargo engaged in illegal private student loan servicing practices and an

1 illegal marketing-services-kickback scheme with a title company, and one Office of the
2 Comptroller of the Currency order (File No. 2016-082 (September 2016)) involving findings that
3 Wells Fargo engaged in violations of the Servicemembers Civil Relief Act. These orders
4 resulted in Wells Fargo paying approximately \$48 million in civil penalties and restitution to
5 students, servicemembers and other mortgage borrowers.

6 D. On October 6, 2016, the President of the Seattle City Council, the Chair of the
7 Finance and Budget Committee, and the Mayor of Seattle took immediate action to discontinue
8 negotiations with Wells Fargo as lender on a \$100-million bond financing for Seattle City Light
9 because the Orders resulted in a loss of confidence in Wells Fargo as a trusted business partner
10 for conducting City business, and requested Wells Fargo to provide information regarding
11 corrective actions taken including reparations to those harmed and actions to ensure that the
12 practices would not occur again.

13 E. On October 13, 2016, Wells Fargo responded to the City's letter.

14 F. The Seattle City Council finds that it is in the City's best interest to strengthen its
15 framework for social equity and responsibility in contracting by enacting authority and
16 responsibilities to ensure the City conducts business with partners who are committed to and
17 demonstrate engaging in fair and responsible business practices.

18 Section 1. A new Chapter 20.46 is added to Subtitle III of Title 20 of the Seattle
19 Municipal Code as follows:

20 **Subtitle III Contracting**

21 * * *

22 **Chapter 20.46 City Contracting—Fair Business Practices**

23 **20.46.010 Purpose**

1 The City finds that it is a priority to protect the City’s interests and the public’s trust by
2 conducting City business with partners that are committed to and consistently demonstrate
3 engaging in fair and responsible business practices. The general purpose and intent of this
4 Chapter 20.46 are to ensure to the maximum extent practicable that the City’s contracting
5 practices support conducting City business with partners who are committed to and consistently
6 demonstrate engaging in fair and responsible business practices and avoid conducting City
7 business with partners that engage in criminal or systematic deceptive, fraudulent or abusive
8 business practices.

9 **20.46.020 Definitions**

10 For the purposes of this Chapter 20.46:

11 A. “Contract” means a written agreement for public works as defined in RCW
12 39.04.010, for consultant services under Chapter 20.50, or supplies, material, equipment, or
13 services under Chapter 20.60.

14 B. “Contract awarding authority” means the City officer, department, commission,
15 employee, or board authorized to enter into or to administer contracts on behalf of the City.

16 C. “Department” means the Department of Finance and Administrative Services.

17 D. “Director” means the Director of Finance and Administrative Services.

18 E. “Unfair business practices” shall mean a system or pattern of acts or practices that
19 a relevant federal or Washington state enforcement agency has found to be deceptive, fraudulent,
20 or abusive (as those or similar terms may be defined in the Washington Consumer Protection Act
21 chapter 19.86 RCW or an applicable federal consumer protection law relating to the subject
22 matter of the Contract) or that have violated a relevant criminal statute, as evidenced by a public
23 enforcement order or judgement, settlement with the enforcement agency or other formal finding

1 by the relevant enforcement agency with regulatory enforcement authority under the applicable
2 consumer protection law, or criminal conviction.

3 **20.46.030 Requirements**

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

5 B. For Contracts under Chapters 20.50 and 20.60 that are procured under a request
6 for proposal process, the Contract awarding authority will include relevant proposal and
7 evaluation criteria to factor in a contractor's commitment to ensuring that it does not engage in
8 unfair business practices, as may be applicable to the subject matter of the Contract, unless the
9 Contract awarding authority determines, in writing, that including such evaluation criteria for a
10 particular Contract is not in the best interest of the City.

11 **20.46.040 Powers and duties of the Director**

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

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

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

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

21 3. Developing appropriate contractual remedies, including, but not limited to,
22 termination of the contract or disqualification of the contractor from bidding on or being awarded

1 a City contract for a period of up to five years if they engage in unfair business practices during
2 the term of a City Contract.

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

5 **20.46.050 Effective date**

6 The provisions of this Chapter 20.46 shall apply to any contract awarded on or after July 1,
7 2017.

8 Section 2. Section 20.70.040 of the Seattle Municipal Code, enacted by Ordinance
9 121723, is amended as follows:

10 **20.70.040 Grounds for Debarment ((-))**

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

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

16 B. The Contractor has failed to comply with City ordinances or Contract terms,
17 including but not limited to ((-)) ordinance or Contract terms relating to small business
18 utilization, discrimination, prevailing wage requirements, fair business practices,
19 or apprentice utilization.

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

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

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

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

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

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

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

11 Section 3. Exhibit A to Resolution 31525 is amended as follows:

12 * * *

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

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

- 21 a. The institution based in Seattle, then
22 b. Other financial institutions in the State of Washington, and then
23 c. Other financial institutions.

1 Section 4. It is the intent of the City Council that the Mayor and Director of Finance and
2 Administrative Services, pursuant to their authority under Section 3.39.020 of the Seattle
3 Municipal Code:

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

7 B. Undertake a new competitive bidding process in order to select, contract with, and
8 establish a new, qualified financial institution to provide depository banking services to The City
9 of Seattle by no later than December 31, 2018.

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

13 Section 5. The Seattle City Council requests the Mayor and Director of Finance and
14 Administrative Services to provide a written report to the Council’s Affordable Housing,
15 Neighborhoods and Finance Committee no later than September 1, 2017, regarding the
16 implementation of this ordinance.

