



Text File

Introduced: 10/11/2011

Bill No: 2011-2174, Version: 3

Committee: City Council

Status: Veto was Sustained

Ordinance amending and supplementing the Pittsburgh Code, Title Two-Fiscal, Article Three-Depositories, Chapter 221-Contracts, by requiring financial institutions seeking to become City depositories to make a commitment to community reinvestment and responsible banking and instructing the City Controller to evaluate banks with which the City does business as to their success or failure in meeting this commitment.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Pittsburgh Code, Title Two - Fiscal, Article Three - Depositories, Chapter 221 - Contracts, is hereby amended and supplemented as follows:

CHAPTER 221: - CONTRACTS

§ 221.01 - DEFINITIONS

As used in this Chapter, certain terms are defined as follows:

- (a) **ACTIVE DEPOSITORY** is defined as a financial institution that holds city assets in an account which allows those assets to be withdrawn at any given time by the city.
- (b) **BANKS** refers to banks and trust companies.
- (c) **CENSUS TRACT INCOME LEVEL as a percentage of metropolitan statistical area median, upper level refers to greater than or equal to 120%, middle level refers to less than 120% but greater than 80%, moderate refers to less than 80% but greater than 50%, and low refers to less than 50% but greater than .01%.**
- (d) **CITY DEPOSITORY** means a financial institution receiving municipal deposits.
- (e) **CITY MONEYS** are funds of the City and other funds for which the City or any officer or employee thereof shall act as custodian or trustee, wherein the legal or equitable title in such funds shall belong to persons, copartnerships, corporations or the federal or state government, or any agency or political subdivision thereof other than the city.
- (f) **COMMUNITY DEVELOPMENT INVESTMENT** means an investment that has as its primary purpose community development as defined in the Community Reinvestment Act (CRA).
- (g) **COMMUNITY DEVELOPMENT LOAN** means a loan that has as its primary purpose community development as defined in the CRA, and is not otherwise collected and reported for consideration as a consumer, home or small business loan by the financial institution.
- (h) **COMMUNITY HOUSING DEVELOPMENT ORGANIZATION is a not-for-profit community-based service organization whose staff members have the capacity to develop affordable housing for the community it serves and which meets the certification requirements set forth in the Code of Federal Regulations Title 24 Part 92.**
- (i) **COMMUNITY REINVESTMENT PLAN** is a two-year plan describing community reinvestment goals.

(j) **FULL SERVICE BANKING** means banking services as defined by the Federal Deposit Insurance Corporation (FDIC) in their Summary of Deposits Reporting Instructions that may include but are not limited to accepting deposits, making loans, opening and closing accounts, having a loan officer on site, normal business hours, full-time staff, phone, PC or web access, and may offer safe deposit facilities.

(k) **IN-ACTIVE DEPOSITORY** is defined as a financial institution that holds city assets in an account which does not allow those assets to be withdrawn for whatever period of time designated by the account stipulations.

(l) **LENDING INSTITUTIONS** are banks and mortgage lending institutions as defined herein.

(m) **LIMITED PURPOSE BANK** means banks and trust companies that, because of their business structure, are designated by their primary bank regulatory agency as either "Limited Purpose" or "Wholesale" for compliance with the CRA, or do not have a branch office within the City of Pittsburgh.

(n) **LOW-INCOME** means less than fifty percent (50%) of the median income for the Metropolitan Statistical Area.

(o) **LOW- TO MODERATE-INCOME** means at least fifty percent (50%) but less than eighty percent (80%) of the median income for the Metropolitan Statistical Area.

(p) **MINORITY BUSINESS ENTERPRISE** means a business for which more than fifty percent (50%) of the ownership or control is held by one or more minority individuals and more than fifty percent (50%) of the net profit or loss accrues to one or more minority individuals.

(q) **MORTGAGE LENDING INSTITUTIONS** are state and federal savings and loan associations, building and loan associations, savings banks and mutual thrift institutions which make in excess of thirty (30) percent of all their residential mortgages by number in the City in the twelve (12) months immediately preceding the month in which their bid is offered.

(r) **NEIGHBORHOOD DEVELOPMENT** means an organized, community-based effort involving government, non-profit neighborhood groups, financial institutions, private individuals and resident leadership with the purpose of revitalizing residential, commercial and industrial areas in neighborhoods.

(s) **PREDATORY LENDER** means a business entity that, through itself and/or an affiliate has made, issued or arranged, or assisted others in so doing, within any 12 month period, predatory loans that comprise 5% of the total annual number of loans made, issued or arranged, or 5% of the total annual number of loans which the business entity has assisted others in so making, issuing or arranging.

(t) **PREDATORY LOAN** means a threshold or high cost loan that was made under circumstances that involve fraudulent or deceptive acts or practices, including fraudulent or deceptive marketing and sales efforts to sell high cost loans.

§ 221.02 - REQUIREMENTS FOR QUALIFICATION

Any institution that desires a continuing or a new designation as a city depository shall submit at the time that institution initially applies to engage in such business and annually thereafter, unless otherwise specified, to the Director of Finance and the City Controller a sworn statement of its financial condition, showing the amount of paid-in capital and surplus and its general financial condition.

Any institution that desires a continuing or a new designation as a city depository shall also submit at the time that institution initially applies to engage in such business and annually thereafter, unless otherwise specified, to the Director of Finance and the City Controller the following information needed for evaluation of the policies

and practices regarding housing and economic development of such depository or potential depository. The information shall be reported for the institution and its affiliates and subsidiaries in the aggregate. The information shall be reported for the City of Pittsburgh, unless otherwise specified.

(a) Financial and Lending Data

(1) *Residential Lending Information.* The total number and the total dollar amount of residential loans for one- to four-family dwellings applied for and originated during the previous calendar year in each of the following categories:

- A. One- to four-family home purchase loans, both federally insured and conventional loans **grouped by census tract income level;**
- B. Refinancings of home loans;
- C. Home improvement loans;
- D. Home equity loans;
- E. Multi-family loans;
- F. Loans to non-occupant owners of single family housing;
- G. Modifications of distressed loans and type of modification, including interest rate reductions, principal reduction, or repayment plans in which the outstanding loan amount increases, and an indication of whether the modification was executed under the federal Home Affordable Modification Program (HAMP), another federal program, or the institution's own modification program. This section will only be applicable once new federal HMDA stipulations are enacted;
- H. Defaults and delinquencies on home loans. This section will be reported only for the entire City, not for each census tract;
- I. Real Estate Owned properties.

The residential loans for each type shall be provided for the entire City, and for each census tract within the City, unless otherwise specified. Fixed rate loans shall report separately from adjustable rate loans.

(2) *Small Business Lending Information.* The total number and the total dollar amount of small business loans originated during the previous calendar year (a) for the entire City, (b) for each census tract within the City, and (c) for minority business enterprises in the entire City (once new stipulations are enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203 <<http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/content-detail.html>>). Loans to small businesses with revenues above \$1 million shall be reported separately from loans to small businesses with revenues under \$1 million. The City depository will use the same data reporting procedures that are federally mandated by the Community Reinvestment Act for reporting small business loans. (Pub.L. 95-128, title VIII of the Housing and Community Development Act of 1977, 91 Stat. 1147, 12 U.S.C. § 2901, 12 C.F.R. Part 25, Subpart B .42).

(3) *Community development loans and investments.* The number and dollar amount of community development loans and investments including loans and investments for affordable housing, small business development, economic development, and community facilities for the entire City. The definition of community development is that of the federal Community Reinvestment Act regulations.

For each loan and investment, the institution shall indicate if the loan or investment was for affordable housing, small business development, community facilities, and other such categories as defined by the CRA.

(4) *Branches and deposits.* The number of branches, ATMs, and number and dollar amount of deposits for the entire City as of June 30th of the preceding year.

(5) *Consumer loan data.* The number and dollar amount of consumer loans for the entire City and for each census tract. Price information shall be reported in a manner similar to the federally mandated reporting requirements for HMDA data. This shall only be reported by those financial institutions that choose to collect the relevant data for CRA consideration.

(6) The most recent annual report, including financial data, or SEC 10-K report with quarterly financial updates and other subsequent filings.

(7) The most recent "Community Reinvestment Act Performance Evaluation" issued by the federal regulatory agency authorized to conduct such evaluations.

Except where otherwise specified, the information shall be made on forms provided by or prescribed by the Director of Finance.

(b) All financial institutions participating in the bid process pledge to make the best efforts to:

1. Develop responsible lending and financing opportunities to support residential and commercial development of the City's neighborhoods and execute the Community Reinvestment Plan submitted to the City.

Such efforts shall include, but are not limited to:

- A. The presence of identifiable trained loan officer professionals with a clearly defined focus on "neighborhood development" finance;
- B. Cooperation with and support of non-profit neighborhood development organizations in the successful implementation of "neighborhood development" finance, through vehicles such as grants, below-market financing and equity investments;
- C. A willingness to participate in the financing of publicly-subsidized neighborhood development projects;
- D. A commitment to affirmatively market and make available banking services throughout the City's neighborhoods;
- E. A commitment to safe and sound financial products and investments, adhering to federal and local anti-discrimination laws, and a commitment to affirmatively serving communities of color and low- to moderate-income communities;
- F. The submission of the information required by this statute to the Director of Finance and the City Controller on an annual basis.

(c) Community Reinvestment Plan

Every two years current city depositories and any eligible financial institution seeking to become a city depository shall submit a Community Reinvestment Plan. Limited purpose banks may submit a Community Reinvestment Plan consistent with their CRA designation that may include only their community development lending, investment, or service activities. The Plan describes current and proposed initiatives within the City of Pittsburgh to address the financial needs of the City, its residents and businesses, including low- to moderate-income and minority residents, and shall include, **to the extent offered by the financial institution**, qualitative discussion of the following services, products, and areas of activity:

- (1) Small consumer loans, including those that serve as an alternative to payday loans;
 - (2) Affordable check cashing and other transactional services used by consumers with limited banking accounts or experience;
 - (3) Participation in City-sponsored neighborhood development programs and consortiums;
 - (4) Equitable contributions to community based non-profit organizations in the City that engage in neighborhood development;
 - (5) Provision of full service banking in City neighborhoods;
 - (6) Plan to market loan products and services throughout the City, including in low- to moderate-income neighborhoods and to low- to moderate-income consumers;
 - (7) Plan to market loan products to residents of historic communities to promote and enhance housing stock and improve quality of life;**
 - (8) Plan to engage with CHDOs to assist with the development of affordable housing;**
- (7) The Community Reinvestment Plan shall also indicate how the depository will match or exceed peer performance in lending and investment to the target groups.

No depository shall be designated as an eligible depository under this statute unless it has executed a Community Reinvestment Plan.

(d) (1) Any bank or other lending institution desiring to qualify as a depository of funds shall invest in the stocks, securities or other obligations of any company doing business with or actually operating in Northern Ireland subject to the provisions of this subsection.

(2) On or before January 1 of each year, those City officials and the departments which have fiduciary responsibility for the investment of City moneys shall determine the existence of affirmative action taken by companies actually operating in Northern Ireland to eliminate ethnic or religious discrimination based on actions taken for:

A. Increasing the representation of individuals from underrepresented religious groups in the workforce including managerial, supervisory, administrative, clerical and technical jobs;

- B. Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;
 - C. The banning of provocative political emblems from the workplace;
 - D. Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;
 - E. Providing that layoff, recall and termination procedures should not in practice favor particular religious groupings;
 - F. The abolition of job reservations, apprenticeship restrictions and differential employment criteria, which discriminate on the basis of religion or ethnic origin;
 - G. The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees;
 - H. The establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement; and
 - I. The appointment of senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.
- (3) Consistent with sound investment policy, any bank or lending institution accepting deposits as a depository hereunder shall invest its funds in the manner that the investments in companies doing business with or actually operating in Northern Ireland shall reflect the advances made by the companies in eliminating discrimination according to the principles set forth in this subsection.
- (4) *Identification of companies.* United States companies, their subsidiaries or affiliates operating in Northern Ireland shall be identified by cumulative reference to the documents and directories of U.S. Corporations in Northern Ireland, compiled by the Investor Responsibility Research Center and to relevant publications by the United States Department of Commerce. (Ord. 15-1988, eff. 8-15-88)

§ 221.03 - DEPOSITS AND INVESTMENTS IN INSTITUTIONS PRACTICING PREDATORY LENDING PROHIBITED

The Director of Finance shall not keep any City funds on deposit in any bank, its affiliates, or other financial institution that makes predatory home loans, abusive payday loans, or other unscrupulous non-home loan or financial products.

The Director of Finance shall not allow City monies to remain invested, or hereafter make investments in, stocks, securities, or other obligations of any business entity that makes predatory home and non-home loans, or has an affiliate that, or is an affiliate of a bank or other financial institution that makes predatory loans.

The Director of Finance shall not allow City monies to remain invested, or hereafter make investments in, securities collateralized by any interest in predatory home and/or non-home loans.

Any divestiture required by this section shall be completed within six months of a determination by the Director of Finance or the City Controller that a business entity makes predatory loans, or has an affiliate that, or is an affiliate of a bank or other financial institution that makes predatory loans. During the six-month period, the Director of Finance shall make regular reports to the City Council concerning the progress of

divestiture. If, prior to expiration of the six-month time limit for divestiture, the Director of Finance determines that completion of divestiture within the six-month time limit will necessitate substantial losses to the City then the Director of Finance shall request from City Council an extension of time within which to complete divestiture.

§ 221.04 - NOTICE OF PROPOSED BRANCH CLOSINGS

Each contract with a depository shall contain a requirement that the depository provide written notice to the Mayor and the Director of Finance ninety (90) days prior to the closing of any branch of such depository located within the City. The notice shall identify the location of the branch, the date on which it is anticipated that the branch will close and the reasons for closing the branch.

§ 221.05 - EVALUATION OF FINANCIAL INSTITUTIONS

The City Controller, on an annual basis, shall review and evaluate the information contained in the most recent disclosure statements filed by financial institutions pursuant to this Article. In addition, the City Controller shall review any information deemed necessary or desirable in evaluating the performance of financial institutions including but not limited to the public sections of evaluations and reports prepared by federal and state agencies pursuant to the Community Reinvestment Act of 1977, as amended.

The City Controller, on an annual basis, shall score the overall financial and community reinvestment performance of financial institutions under contract with the City. For each financial institution receiving City deposits, The City Controller shall assign a numerical score between 1 and 5, with 1 being poor performance and 5 being excellent performance, for each of the following criteria. Financial institutions shall be evaluated only on those criteria which are relevant to their activities.

- (1) Qualitative evaluation of the financial institution's performance as it relates to the stated goals of the institution's most recent Community Reinvestment Plan.
- (2) The City's average return on investment with the institution, commensurate with the services being provided.
- (3) The percentage of one- to four-family home loans to low- to moderate-income borrowers within the City of Pittsburgh in the preceding year.
- (4) The percentage of one- to four-family home loans to low-income borrowers within the City of Pittsburgh in the preceding year.
- (5) The percentage of one- to four-family home loans to borrowers purchasing in low- to moderate-income census tracts within the City of Pittsburgh in the preceding year.

- (6) The percentage of small business loans to businesses located in low- to moderate-income census tracts within the City of Pittsburgh in the preceding year.
- (7) The percentage of small business loans to businesses located in low-income census tracts within the City of Pittsburgh in the preceding year.
- (8) The dollar amount of community development loans as a percentage of market share within the City of Pittsburgh in the preceding year.
- (9) The dollar amount of community development investments as a percentage of market share within the City of Pittsburgh in the preceding year.
- (10) The dollar amount of CRA eligible grants as a percentage of market share within the City of Pittsburgh in the preceding year.
- (11) The number of bank branches in low- to moderate-income census tracts as a percentage of the total number of branches within the City of Pittsburgh.

The numerical scores for each of the criteria listed above shall be averaged together to obtain an overall numerical score of 1 to 5 for each financial institution. This shall be the institution's "Responsible Banking and Neighborhood Reinvestment Score." A draft of the scores awarded for each category and the final score shall be submitted as a memo to each financial institution evaluated and each institution shall be provided a thirty (30) day period for further discussion with the City Controller. At the end of this thirty (30) day period a final score shall be decided upon.

The institution's Responsible Banking and Neighborhood Reinvestment Score shall be one of the factors, together with an analysis of the institution's overall financial health and range of services offered to the City, used to determine at what level the City will continue to do business with the financial institution. An institution which receives a score of 3 to 5 shall be deemed a qualified depository, while an institution which receives a score of 1 or 2 shall be deemed unqualified.

Upon making such evaluations the City Controller may recommend:

- (1) increasing the level of City banking business held by a financial institution that scores in the top 10% of local reinvestment performance; and
- (2) withdrawing City banking business from a financial institution that scores in the bottom 10% of local reinvestment performance; and
- (3) taking other such steps, consistent with sound fiscal practice and applicable law, as may be necessary or desirable.

The City Controller's annual evaluation of financial institutions under contract with the City shall be presented as a report to the Director of Finance within thirty (30) days of completion. This report shall include a detailed

accounting of each institution evaluated, the criteria each institution was evaluated on, the numerical score awarded for each category, the final Responsible Banking and Neighborhood Reinvestment Score, a designation of “qualified” or “unqualified”, and a recommendation. A summary report shall be presented to the City Council within thirty (30) days of completion. The information presented in this summary report shall be limited to a list of each financial institution evaluated, the criteria that each institution was evaluated on, and a designation of “qualified” or “unqualified” for each institution.

§ 221.06 - EVALUATION OF FINANCIAL INSTITUTIONS REVIEW PERIOD

The first year of the City Controller's evaluation process (2013) shall be considered a “review period” to determine if the process is effective in achieving the desired results and if the data collected is sufficient to make recommendations. The recommendations made in this review period shall not be used to increase or decrease funding levels for any City depository.

Beginning in 2014 the City Controller's recommendations shall be presented and considered pursuant to this Article.

§ 221.07 - AWARD OF BANKING BUSINESS

The Director of Finance shall issue a Request for Proposals/Request for Qualifications (RFP/RFQ) for depository services once each year.

The Director of Finance, upon receipt of proposals, shall evaluate them based upon their annual disclosures, the most recent rankings and recommendations provided by the City Controller, and any other factors deemed necessary for the good of the City. The Director of Finance shall submit the proposals from potential depositories to City Council with recommendations. Council shall authorize those proposals that meet the standards set forth in this Article and are most advantageous to the City. The Director of Finance and the City Council shall make every effort to recommend and authorize a diverse group of depositories which includes banks of all sizes.

Council shall designate to the Director of Finance the active and inactive depositories for each ensuing year, specifying at least two (2) banks which shall be active depositories for general fund accounts, at least one (1) bank which shall be the active depository for bond fund accounts and other banks as Council shall deem necessary as active depositories for all other accounts.

The Mayor and the Director of Finance, upon Council approval, are authorized to enter into new or to extend existing contracts with the financial institutions designated by Council to act as depositories for the next ensuing fiscal year if the qualifications set forth in Chapter 221.02 of this Article are met.

The financial institution shall enter into a written agreement under its seal with the City to accept and comply with all the conditions and provisions of this Title and contracts and agrees to accept all the City moneys tendered to it and to pay the interest, if any thereon, in accordance with this Title, and to safely keep and pay over all such moneys deposited with it. By accepting the deposit and executing the agreement aforesaid, the financial institution shall be held to agree to these provisions for itself, its successors and assigns.

City monies shall not be deposited in any financial institution which has not been designated by Council as herein provided.

§ 221.08 - LOCK BOX SYSTEM

The Treasurer is hereby authorized to establish a "lock box" system with a bank which Council has designated as a depository and with which the City has entered into a depository contract, whereby the bank will deposit, including but not limited to incoming real estate tax payments, water bill payments, and delinquent sewage payments, withheld Earned Income tax (PGH-40) payments, mercantile tax payments, business privilege tax, and institution service privilege tax and amusement tax, parking tax, personal property tax and any other tax or license or fees, into a temporary interest-bearing holding account and will forward the accompanying tax or billing document and a copy of the check or other means of payment to the Treasurer's Office for routine processing, following which, if the payment is proper, a single check shall be drawn on the temporary interest-bearing holding account for deposit in the proper City account. Any temporary interest-bearing account shall be subject to audit at any time by the City Controller. Whenever the bank deposits incoming tax payments in a lock box system holding account, the bank is deemed an agent of the City for the purpose of the collection of the tax and, as such, is bound by the provisions of statutes and ordinances governing collection of the taxes, including provisions of confidentiality.

§ 221.09 - HOLDING ACCOUNT

The Treasurer is hereby authorized to establish a holding account with a bank which Council has designated an inactive depository and with which the City has entered into an inactive depository contract, whereby the Treasurer will deposit incoming payments of self-assessed taxes into a temporary interest-bearing holding account. Following the routine processing of the related tax documents, a single check shall be drawn on the temporary interest-bearing holding-account for deposit in the proper City account. The temporary interest-bearing account shall be subject to audit at any time by the City Controller.