LARA WEISIGER

From: David R Baker <drbatty@sbcglobal.net>
Sent: Monday, February 20, 2017 9:10 AM
To: City Clerk
Subject: Wells Fargo Bank Divestment

February 20, 2017

City Council
City of Alameda

Dear Councilmembers:

I am a long-term resident of the city of Alameda and very concerned about climate change and the consequent sea level rise. I am writing in support of the effort of the City of Alameda to divest itself from Wells Fargo bank since it's a major lender on the Dakota pipeline project.

Very truly yours,

David R Baker

From: Jessica Reed <jessreed12@gmail.com>
Sent: Thursday, February 16, 2017 3:37 PM
To: LARA WEISIGER
Subject: Comment for City Council Agenda Item 9C
Attachments: To City Council Item 9C.pdf

Hi Ms. Weisiger:
Attached please find my comment to the Council regarding the upccoming Agenda Item 9C. I hope there are not too many typos!
Please let me know if you need any information or if you cannot accept a comment by email.
I am an Alameda resident.
Thank you very much,
Jessica Reed

RE: February 21, 2017- Item 9C- 2017-3539

Dear City Councilmembers:

I support your efforts to make Alameda a responsive, responsible and humanitarian City. To that end, I appreciate your thoughtful consideration regarding the City's business partners. It makes a difference. We can send a message with where we put our money. Do we as a City want to support businesses that disregard humanity and the environment in their quest for more money? Do we as a City want to support businesses that assist others in breaking promises and trusts all for the sake of more money? Do we as a City want to support businesses that value the greed over everything else? I hope the answer is a resounding NO. I know we cannot stop such greed, but we can choose not to be a part of it.

I hope you will vote to work towards ending any relationships the City of Alameda has with Wells Fargo for several reasons that have come to light recently, as set forth in Vice Mayor Vella and Councilmember Oddie's referral form and in the Seattle Ordinance below, including the unfair consumer practices and the bank's multi-billion dollar commitment to the companies that are building the Dakota Access Pipeline despite the opposition by those who hold water and fishing rights to the water that will (not may) be polluted when (not if) there is a spill, and I hope you will work to adopt an ordinance like those adopted by Seattle, Davis and the UC. Further, if we do not have one, which is my understanding, then I further request that the Council consider adoption of Social Policies as part of the City's Investment Policies.

Thank you very much for your consideration and service.

Sincerely,

Jessica Reed

Seattle's Ordinance, https://seattle.legistar.com/LegislationDetail.aspx?ID=2948595&GUID=F2604ED2-C0BC-44AA-9985-F3E338B8FBC9&Options=Advanced&Search=&FullText=1:

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

WHEREAS, in 2016, it was widely reported that Wells Fargo employees may have created over 2,000,000 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; and

WHEREAS, In the Public Interest (ITPI), a non-profit research and policy center, issued 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. GEO Group owns and operates the Northwest Detention Center, a private detention center located in Tacoma, Washington, and utilized to detain 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"; 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 (DAPL), and 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

WHERAS, 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; 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; and

WHEREAS, 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; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council finds and declares:

A. Wells Fargo National Bank ("Wells Fargo"), pursuant to a competitive procurement in 2012, currently provides services to The City of Seattle under the 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.

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

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

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

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

Section 2. A new Chapter 20.46 is added to Subtitle III of Title 20 of the Seattle Municipal Code as follows:

Subtitle III Contracting

* * *

Chapter 20.46 City Contracting-Fair Business Practices

20.46.010 Purpose

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

20.46.020 Definitions

For the purposes of this Chapter 20.46:

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

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

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

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

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 (or similar terms) under 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.

20.46.030 Requirements

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

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

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.

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

20.46.050 Effective date

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

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

20.70.040 Grounds for Debarment ((~~,~~))

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

a. The institution based in Seattle, then

b. Other financial institutions in the State of Washington, and then

c. Other financial institutions.

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.

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

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

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