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REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT
AND INTERGOVERNMENTAL RELATIONS

ADDITION OF RESPONSIBLE BANKING ORDINANCE
TO SAN DIEGO MUNICIPAL CODE

INTRODUCTION

At the Rules Committee meeting of May 16, 2012, Council President Young introduced the concept of adding a responsible banking ordinance to the San Diego Municipal Code. The Rules Committee gave direction to the City Attorney to prepare a draft “Responsible Banking Ordinance” to return to the Committee on June 27, 2012. The extent of the Committee direction contained in the report was to create an ordinance that included the following:¹

- 1) Submission of ***annual data*** which would include the financial institution’s home and small business lending; distress loan modifications; branches and ATM’s; community development investments (affordable housing and small business development); foreclosure information; employment diversity and number of jobs;
- 2) Submission of a ***two-year Community Reinvestment Plan (CRP)***, which would include plans for residential and small business lending, including with low- and moderate-income communities; community development loans and investments, branches and deposits; consumer loan lending; investing; and corporate giving; and
- 3) Establishment of a ***Community Reinvestment Review Committee***, which would include council members and members of the Mayor’s staff. This committee would review the CRP and issue recommendations to the Council and City Treasurer as to which banks and financial institutions with whom the City should make deposits and conduct other financial transactions.

Attached are two draft ordinances: (1) a proposed Responsible Banking Ordinance (RBO) which addresses the responsible banking reporting and review issues; and (2) a proposed ordinance establishing the Reinvestment Review Advisory Committee.

¹ Rules Committee Report No. 12-066 (May 16 Report).

DISCUSSION

I. SUMMARY OF DRAFT ORDINANCES

The draft RBO addresses the goal of ensuring that financial institutions with whom the City does business are responsive to community needs, while also recognizing the Charter mandated functions of both the City Treasurer, responsible for determining City depositories under Charter section 45, and the Funds Commission, charged with overseeing City investments under Charter section 41. As currently drafted, the RBO does not impinge on these functions.

The RBO annual report requirement includes the reporting categories recommended by the Rules Committee and generally mirrors those required in the Community Reinvestment Act of 1977 (CRA), except that reports are to be specifically for the City of San Diego.² The CRA is a federal regulatory scheme that requires reporting from covered financial institutions as to their lending activities for small businesses, small farms and community development. Its purpose is to assess a financial institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The reports are reviewed, rated and made public, and are used by the federal government in reviewing applications for branch locations, mergers and acquisitions.

In addition, the draft RBO provides for submittal of a two-year "Community Reinvestment Plan." The contents of the plan are more limited than the annual report. For example, the CRA rating information is not part of the plan, nor is employment diversity reporting. In order to address concerns raised regarding potential proprietary information, we have included a provision clarifying that financial institutions are not required to submit confidential financial information or trade secrets protected under State and federal law.

The draft RBP requires that the plans and annual reports be provided to the newly established Reinvestment Review Advisory Committee (RRAC) for review. The RRAC will function in an advisory capacity and provide recommendations to the City Treasurer and City Council as recommended by the Rules Committee. The recommendation is then considered by the City Treasurer in fulfilling her duties under Charter section 45.

II. LEGAL ISSUES

The Rules Committee recommendation provides for the proposed RRAC to include a City Councilmember. However, this Office has previously opined that the Charter does not permit a City Councilmember to sit on a Charter section 43 advisory body, such as the proposed RRAC.³ Therefore, the draft ordinance establishing the committee includes community and business representatives as provided in the Committee recommendation.

As discussed above, the draft RBO specifically recognizes the authority of the City Treasurer under Charter section 45 and the Funds Commission, as established in Charter section 41. Both the Treasurer and the Commission have mandated duties under the Charter that

² The draft RBO includes reporting on employment diversity as requested by the Rules Committee.

³ City Att'y Report 09-3 (April 3, 2009).

may not be transferred.⁴ Charter section 45 vests authority in the City Treasurer to determine the selection of depositories for City funds.

III. POLICY ISSUES FOR ADDITIONAL GUIDANCE

In preparing the draft RBO, we referred to the Committee recommendation and reviewed ordinances adopted by other jurisdictions, the CRA review requirements, and comments from council staff, the City Treasurer's office and the community. The current draft RBO reflects one approach among others that would be legally permissible. However, there are several key provisions on which additional policy input from the Committee is needed. These provisions directly affect the scope of the RBO's reach relating to the financial institutions and City financial services affected, as well as the geographic area covered by the reported information.

A. Scope of Financial Institution and Financial Services to be Covered

The May 16 Report recommendation, references "banks and other financial institutions." We recommend additional discussion and policy direction as to the financial institutions the Committee wishes the RBO to reach. The CRA has reporting requirements for specific classes of banks, but does not regulate all financial institutions, not even all financial institutions that provide traditional deposition and loan services, for example, credit unions. Likewise, ordinances adopted by various jurisdictions referenced in the May 16 Report differ in the types of financial institutions affected. In some cases, distinctions are made between depository banking functions and investment banking. In others, virtually any financial institution that touches City finances is potentially affected. Our discussions with staff and community input received reveal differing perspectives on the types of financial institutions the proposed RBO should affect. Distinctions are made among commercial banking, investment banking and other financial institutions.

Similarly, the May 16 Report references "deposits and other financial transactions." The model ordinance and other city ordinances also differ in the scope of treatment on this issue. The policy issue for clarification is what City "financial transactions" will be included for purposes of requiring that financial institutions who want to provide those services must comply with the RBO. In some instances, it may not be practical. For example, a broker working with the City Treasurer on the placement of City investment funds may not be associated with a bank that provides the kinds of services that would be reported in the required annual reports. In order to clarify these key issues, we recommend input from qualified technical staff and professionals in the community to ensure that the RBO appropriately fulfills its stated purpose.

While these distinctions do not present a direct legal issue, clarification on the desired scope is important in order to make the information provided meaningful to the Reinvestment Review Committee. In reviewing the input from council staff, the City Treasurer's office and community representatives, we recommend further Committee review and discussion to provide policy direction for a final draft of the RBO for consideration.

⁴ See, e.g., City Att'y MOL No. 10-12 (June 10, 2010), addressing the question of potential transfer of record keeping functions of the City Treasurer (provided for in Charter section 45) to the City Auditor.

B. Geographic Area for Reports

The May 16 Report is silent on the geographic level for which annual data reporting is required. At Rules Committee meeting, discussion centered on having information reported for the San Diego community. Council staff recommendations go to Council District level. Some ordinances report at the census tract level. In addition the CRA provides for certain reporting at the census tract level, as do some of the ordinances adopted in other jurisdictions. The draft RBO requires the information be reported for the City. We recommend further discussion and clarification on this issue to provide policy guidance needed to complete the ordinance.

C. Council Policy 900-09

Council Policy 900-09 "Community Reinvestment," adopted November 5, 2001, provides for the City to "encourage financial institutions doing business within its boundaries to develop and implement San Diego-specific community reinvestment programs consistent with the spirit of CRA. It provides for the creation of a Community Reinvestment Master Plan by the San Diego City-County Reinvestment Task Force and further provides for the City Treasurer to consider San Diego-specific community reinvestment programs as part of its banking services contracting process. The draft RBO is not directly inconsistent with the Council Policy. However, there is significant overlap and some potential duplication of effort. This is a policy issue for the Committee's consideration.

CONCLUSION

The draft Responsible Banking Ordinance presents just one approach among many that would be legally permissible. We recommend further discussion and clarification on key policy issues related to scope of coverage and level of reporting as discussed in this report before a final ordinance is presented to the City Council. This Office will work with designated City staff to ensure that the legal issues are appropriately addressed.

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By /s/ Prescilla Dugard
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PMD:jdf:ccm
Attachments
cc: Gail Granewich, City Treasurer
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