



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: May 16, 2012

REPORT NO: 12-066

ATTENTION: Committee on Rules, Open Government and Intergovernmental Relations

SUBJECT: Responsible Banking Ordinance

REQUESTED ACTION: Accept the recommendation

STAFF RECOMMENDATION: Direct the City Attorney to prepare a draft responsible banking ordinance to include the provisions provided below.

OVERVIEW:

Since their inception, banks and financial institutions have been an integral part in the economic vitality of communities, cities and the nation. Their vital role in sustaining and improving the quality of life and businesses, particularly in low- and moderate- income communities cannot be understated. As our local and national economies continue to recover from the crisis of the past decade, banks and financial institutions have an even more important role in revitalizing our communities and neighborhoods. Lending, investing, providing quality non-predatory financial products to individuals and businesses and being a good corporate citizen is essential to ensuring our communities recover from hard economic times and accelerate their recovery as the economy improves. Cities across the nation have taken steps to work with banking and financial institutions to help ensure they are more responsive to community needs. Ordinances have been passed that are designed to increase the amount of responsible loans, investments, financial services, and corporate giving in cities and their low and moderate-income communities.

In 1991 the City of Cleveland passed the first of these responsible banking ordinances, followed by Philadelphia (2005), Kansas City, MO, (February 2012) and Pittsburgh (April 2012). The cities of New York, Los Angeles and Boston are also considering similar ordinances. Terms of the ordinances vary from a bank not being eligible for a contract unless a four-year responsible banking plan is approved by the city to a point-system whereby the financial institutions are required to submit progress reports that are used by an appointed City staff person in awarding points based on factors such as how close they came to meeting various lending and investing goals, how many branches they opened in low- and moderate-income neighborhoods and how many minorities and women they employed in executive positions.

In October 2010, the National Community Reinvestment Coalition (NCRC), an association of more than 600 community-based organizations promoting access to basic banking services and creating and sustaining affordable housing and job development, created and distributed a model responsible banking ordinance for cities to use. The model ordinance provides the following:

- (1) Requires institutions desiring to receive deposits from a municipality to submit annual data that includes their home and small business lending, branching and deposits and community development investments;
- (2) Requires the institutions to submit a Community Reinvestment Plan to the municipality, which is a two year plan for lending, investing and providing banking services to city communities;
- (3) Establishes a process that occurs every two years for reviewing bank community reinvestment performance and making recommendations regarding in which banks to place deposits;
- (4) Creates a "Community Reinvestment Review Committee" composed of city officials and community organizations that review the Community Reinvestment Plan and commission a study once every two years, using the data submitted by financial institutions, to rank the community reinvestment performance of banks and make recommendations regarding which institutions the City should use to do its banking;
- (5) Prohibits the City from placing deposits or investing in institutions that make or finance predatory home and non-home loans; and
- (6) Requires financial institutions seeking to become city depositories to sign an affidavit promising to adhere to their Community Reinvestment Plans and pledging to provide responsible and safe and sound loans and other financial products.

The City of San Diego is unique in that it has the Reinvestment Task Force (RTF), comprised of government officials representing the City and County; representatives from lending institutions, community housing and economic development; and members of the general public. The RTF serves as an advocate for affordable housing, encouraging small business and economic development, and promoting consumer education and fair access to financial services by assisting financial institutions in identifying the credit and savings needs in the San Diego region. Having the RTF, which was created in 1977, has provided San Diego an opportunity to work in collaboration with our banking institutions in accomplishing many of the goals proposed by the model Responsible Banking Ordinance.

RECOMMENDATION:

As one of the ten largest cities in the United States, it is important that we ensure that the banks and other financial institutions that do business with our city are responsive to our community needs. The City of San Diego differs from many other cities in that the RTF has already produced a positive working relationship with our financial institutions. The addition of certain reviewing mechanisms would be more appropriate for our city such as (1) clearly defining with which banks and financial institutions the City will deposit funds and conduct other banking activities; (2) requiring a review of the financial institution's community reinvestment performance; and (3) not permitting deposits with financial institutions that practice predatory lending practices.

It is recommended that a responsible banking ordinance be created that includes the following:

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 and 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 information including with, and especially, low- and moderate-income communities; community development loans and investments, branches and deposits; consumer loan lending; investing; and corporate giving.
3. Establishment of a **Community Reinvestment Review Committee** which could include council members and member of the Mayor's financial staff. This Community Reinvestment Review Committee would be charged with reviewing the CRPs and issuing recommendations to the Council and City Treasurer as to which banks and financial institution(s) the city should make deposits and conduct other financial transactions.



Council President Tony Young
Chair, Rules Committee



Lea Fields-Bernard
Committee Consultant, Rules Committee

- Attachments(s):
1. Responsible Banking Ordinance (Enacted as of May 2012) chart
 2. "How Cities Can Pursue Responsible Banking: Model City Ordinance to Create Community Reinvestment Requirements for Depository Institutions, prepared by National Community Reinvestment Coalition (October 2010)

RESPONSIBLE BANKING ORDINANCES
Enacted as of May 2012

City	Inception	Terms	Reviewing Body
Cleveland	1991	Each financial institution wanting designation must submit to the Director of Finance (1) residential lending information, (2) commercial lending information, (3) its most recent annual report with quarterly financial updates, (4) a statement detailing current and proposed initiatives to address the credit needs of the city; (5) commercial loan product(s) for SB, MBE and FBE; (6) participation in city-sponsored neighborhood development programs and consortiums, (7) equitable contributions to community based non-profit organizations; (8) provision of full service banking in city neighborhoods, (9) programs to market loan products and services throughout the city to target groups and (10) goals established for service and production levels for target groups.	"Reinvestment Review Committee" comprised of: the Director of Finance (who serves as chair); one member of the administration chosen by the Department of Economic Development; one member of the administration chosen by the Department of Community Development; one representative from the citywide bank clearinghouse; two members of the City Council; and two members of community organizations whose principal purpose is neighborhood development.
Philadelphia	2005	<p>Modified existing ordinance to include new terms of an <i>annual certification that an institute is in compliance with the statute requiring a long term strategic plan to address disparities in lending and investment activities.</i></p> <p>Existing ordinance already required an annual statement of community reinvestment goals including the number of small business loans, home mortgages, home improvement loans and community development investments to be made with low and moderate-income neighborhoods in the city.</p>	City Treasurer who conducts an annual review as to whether or not each bank and institution on the list of potential City depositories has complied with each requirement of the subsection in the preceding fiscal year. The city Treasurer must withdraw all city funds from any bank or institution that has not complied with each requirement. The City Treasurer provides this information to the Council President
Kansas City, MO	February 2012	The City Manager considers the following criteria in evaluating RFPs for banking services: (1) community investment, such as loan modifications, (2) small business loans, (3) affordable home loans, (4) absence of payday lending and investments; and (5) the number and location of branches and services provided at each branch.	City Manager

Pittsburgh	April 2012	<p>Any institution desiring a designation as a city depository must submit at the time of application, and annually thereafter, a sworn statement of its financial condition as well as financial and lending data including residential and small business lending information, community development loans and investments, its most recent annual report and the most recent Community Reinvestment Act Performance Evaluation issued by its federal regulatory agency.</p> <p>Every two years current city depositories and eligible financial institutions seeking to become a city depository shall submit a Community Reinvestment Plan describing current and proposed initiatives within the city to address financial needs of the city, its residents and business, including low- to moderate-income and minority residents and information as to certain services, products and areas of activity.</p> <p>The City Controller annually reviews and evaluates the performance of the financial institutions receiving City deposits and assigns a numerical score between 1 and 5 based on certain criteria relevant to their activities. The final score is submitted to the financial institution giving it 30 days to discuss the score with the City Controller. At the end of the 30 day period a final score is decided upon. The score is one of the factors used to determine at what level the City will continue to business with the financial institution.</p>	<p>“Reinvestment Review Committee” (RRC) that acts in an advisory capacity to the Director of Finance and assists the City Controller in evaluating the performance of the financial institutions. The RRC is comprised of nine members including (1) the Director of Finance; (2) the Executive Director of the Urban Redevelopment Authority; (3) the director of the Mayor’s Office of Neighborhood Initiatives; (4) the Financial Committee Chair of the City Council; (5) two members of the City Council, appointed by the President of Council; (6) the City Controller, who serves as Chair, or his/her representative; and (7) two members of community-based organizations whose principal purpose is community and/or economic development appointed by City Council and approved by the Mayor. Of the two appointees, one must be a representative of a minority lead community organization.</p>
------------	------------	--	---

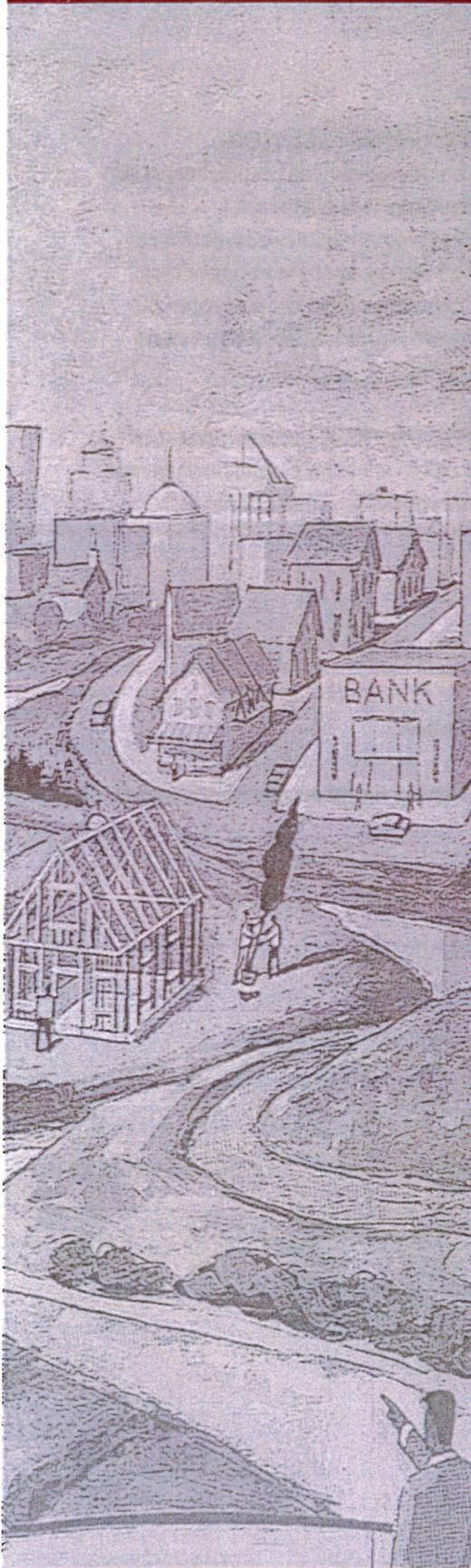
NATIONAL
COMMUNITY
REINVESTMENT
COALITION

NCRC

How Cities Can Pursue Responsible Banking: Model City Ordinance to Create Community Reinvestment Requirements for Depository Institutions

October 2010

MODEL CITY ORDINANCE



Prepared by National Community Reinvestment Coalition

National Community Reinvestment Coalition

The National Community Reinvestment Coalition is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America's working families. Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations and social service providers from across the nation. Their work serves primarily low- and moderate-income people and minorities.

The Board of Directors would like to express their appreciation to the NCRC professional staff who contributed to this publication and serve as a resource to all of us in the public and private sector who are committed to responsible lending. For more information, please contact:

John Taylor, President and CEO
David Berenbaum, Chief Program Officer
Joshua Silver, Vice President, Policy and Research

© October 2010 by the National Community Reinvestment Coalition

Reproduction of this document is permitted and encouraged, with credit given to the National Community Reinvestment Coalition.

Creating Community Reinvestment Requirements in Your City or Town

The model ordinance is designed to increase the amount of responsible loans, investments, and financial services in minority and low- and moderate-income communities through heightened public accountability to municipalities and their residents.

In return for receiving municipal deposits, the NCRC model ordinance creates an affirmative obligation for financial institutions to serve all communities, including and especially minority and low- and moderate-income communities, consistent with safety and soundness. The model ordinance is based on laws in Cleveland and Philadelphia as well as a soon-to-be enacted ordinance in Los Angeles.

The ordinance requires institutions desiring to receive deposits from a municipality to submit annual data that includes their home and small business lending, branching and deposits, and community development investments. The institutions will also be required to submit a Community Reinvestment Plan to the municipality, which is a two year plan for lending, investing, and providing banking services to city communities.

The model ordinance establishes a process that occurs every two years for reviewing bank community reinvestment performance and making recommendations regarding in which banks to place deposits. A Community Reinvestment Review Committee composed of city officials and community organizations shall review the Community Reinvestment Plans and shall commission a study once every two years, using the data submitted by the financial institutions to rank the community reinvestment performance of banks.

Using the findings of the study, the Community Reinvestment Committee will make recommendations regarding which institutions the City should use to do their banking. The Reinvestment Committee shall also hold a public comment period of 60 days on the reinvestment performance of institutions, culminating in a public hearing, before issuing its recommendations.

The city would be prohibited from placing deposits or investing in institutions that make or finance predatory home and non-home loans. Financial institutions seeking to become city depositories must swear and sign an affidavit promising to adhere to their Community Reinvestment Plans and pledging to provide responsible and safe and sound loans and other financial products.

Implementation Considerations for Cities

Once every two years, the model ordinance requires a Community Reinvestment Committee composed of city officials and community organizations to commission a study and then make recommendations regarding which institutions receive municipal deposits. The banks submit Community Reinvestment Plans for each of the two years. Different cities may opt to choose different time periods, but a two year time period strikes the correct balance between not being too frequent and not often enough. Also, a two year Community Reinvestment Plan is roughly the same time period covered by most CRA exams; a longer time frame such as planning four or five years in the future may be difficult due to the likelihood of significant changes in economic conditions.

Although the Reinvestment Committee would make recommendations once every two years, the model ordinance requires banks receiving municipal deposits to submit data to the Reinvestment Committee on an annual basis. Regular time periods for submitting data eases submissions logistics and also reminds banks during the “off years” (when the Committee is not issuing recommendations) that they have affirmative requirements to the city.

Below, some of the data requirements are followed by an asterisk. This is data beyond the data that is currently required by the federal government. While collecting this data is desirable, some cities may reach different conclusions about the feasibility of collecting some or all of this data.

Our model ordinance rotates the chair of the Reinvestment Committee between the City Treasurer and the director of the Community Development and Housing Department. The director of the Community Development and Housing Department has the best sense of neighborhood needs and conditions while the Treasury disburses various city contracts and decides where to place municipal deposits. It thus seemed important to include both officials as chairs. Again, different cities will make different decisions based on their structure and politics. Some cities may dispense with a Reinvestment Committee; it is designed to promote transparency and build support for this program by involving various constituencies.

Although the Reinvestment Committee would make recommendations once every two years, the model ordinance requires banks receiving municipal deposits to submit data to the Reinvestment Committee on an annual basis.

The Model Ordinance

WHEREAS, The practices and products (such as loan and investment products) of financial institutions have a measurable impact on the City's tax base, quality of life and overall economic viability and competitiveness; and

WHEREAS, Economic viability and competitiveness comes from strengthening, and providing opportunities within all areas of the City;

WHEREAS, financial institutions receive deposits and other forms of investments and accounts from City residents;

BE IT RESOLVED, therefore, that in return for the privilege of safeguarding and investing the community's wealth and doing business with the City, the financial institutions have a continuing and affirmative obligation to serve the credit and other financial needs of all communities, including and especially minority and low- and moderate-income communities, consistent with safety and soundness. The City shall assess financial institutions' performance in meeting community needs and use this assessment as a factor in its decision to place municipal deposits in financial institutions and conduct other business with financial institutions.

Definitions

Certain terms are defined as follows:

- (a) City depository – financial institution receiving municipal deposits.
- (b) "Female Business Enterprise" means a company certified by the City as a Female Business Enterprise in accordance with standards authorized by the Council.
- (c) "Full Service Banking" means banking services which include, but are not limited to, use of branches, on-site loan officers, automatic teller machines, and Saturday hours.
- (d) "Low to Moderate Income" means eighty percent (80%) of the median income for the Metropolitan Statistical Area.
- (e) "Minority Business Enterprise" means a company certified by the City as a Minority Business Enterprise in accordance with standards authorized by the Council.
- (f) "Minority Neighborhoods" means census tracts in the City with more than fifty percent (50%) racial and/or ethnic minorities.

(g) "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.

(h) "Community Reinvestment Plan" – a two-year plan describing goals in terms of annual numbers and dollar amounts of loans and investments offered to low- and moderate-income and minority residents and communities. The plan includes descriptions of innovative and flexible product features and assurances that the products are responsible because only safe and sound loans and investments meet community needs. The plan describes efforts to ascertain community needs and marketing approaches to reach traditionally underserved communities. The Community Reinvestment Plan shall also indicate how the depository will match or exceed peer performance in lending and investment to traditionally underserved groups of consumers and communities.

*** Annual Disclosures and Affidavit of Intent**

Note: An asterisk, "*", indicates data disclosure requirements beyond those required by the federal government.

Any institution desiring designation as a city depository shall submit annually to the City the following information needed for evaluation of the policies and practices regarding housing and economic development of such depository. The information shall be reported for the institution and its affiliates and subsidiaries. The information shall be reported separately for each affiliate/subsidiary and aggregated for the institution as a whole:

(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. Home purchase loans, both federally insured and conventional loans;
- 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*;

H. Defaults and delinquencies on home loans*.

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. Fixed rate loans shall reported 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, (d) for minority business enterprises in the entire City and in each ward*, and (e) for female business enterprises for the entire City and for each ward*. Loans to small businesses with revenues above \$1 million dollars shall be reported separately from loans to small businesses with revenues under \$1 million. The City depository can use the data reporting procedures mandated by the federal Community Reinvestment Act for reporting small business loans.
- (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 and for each census tract*. 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 requested by the City Treasurer or Community Reinvestment Committee*.
- (4) *Branches and deposits.* The number of branches, ATMs*, and number and dollar amount of deposits* for the entire City and for each census tract.
- (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 HMDA data.*
- (6) The most recent annual report or SEC 10-K report with quarterly financial updates.
- (7) The affidavit set forth below executed by a duly authorized officer of such financial institution.
- (8) The most recent "Community Reinvestment Act Evaluation" issued by the federal regulatory agency authorized to conduct such evaluations.

- (9) A copy of the depository's branch closing policy.
- (10) Information regarding the number of minorities, females and City residents employed by the depository as loan officers and as members of its board of directors and senior management staff.
- (11) Any additional information requested by the City Treasurer.

Except where otherwise specified, the information shall be made on forms provided by or prescribed by the City Treasurer.

Submission of Community Reinvestment Plan

Once every two years, a City Depository and other institutions wishing to receive municipal deposits submit a Community Reinvestment Plan. A Community Reinvestment Plan is a two-year plan with annual loan and investment numbers and dollar amounts. As a two year plan, the plan describes goals in terms of loans, investments, and services for each of the two years. The Plan describes current and proposed initiatives to address the financial needs of the City, its residents and businesses, including low-and moderate-income and minority residents, in the above categories of loans and investments described in the "Annual Disclosure" section and including:

- A. Small consumer loans, including those that serve as an alternative to payday loans;
- B. Affordable check cashing and other transactional services used by consumers with limited banking accounts or experience;
- C. Participation in City-sponsored neighborhood development programs and consortiums;
- D. Equitable contributions to community based non-profit organizations in the City that engage in neighborhood development
- E. Provision of full service banking in City neighborhoods;
- F. Plan to market loan products and services throughout the City to include (1) low and moderate income neighborhoods, (2) minority neighborhoods, (3) low and moderate-income consumers (4) minority consumers (5) small businesses, (6) minority business enterprises and (7) female business enterprises; and,
- G. 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 eligible to be designated as an eligible depository under this statute unless it has executed a Community Reinvestment Plan.

Review of Disclosure and Creation of Reinvestment Review Committee

- (a) Each eligible depository shall submit to the Reinvestment Committee the information and Community Reinvestment Plan set forth above and the sworn affidavit set forth below.

This information and Community Reinvestment Plan shall be used to determine whether the eligible depository has acted in compliance with its sworn affidavit and whether it will be considered for designation as a City depository in the future as well as to inform policy decisions by the City regarding investment of City funds and purchase of services.

All such information required in this section will be available for public inspection.

- (b) The review process occurs once every two years and will be administered by the Reinvestment Review Committee, composed of eleven members, including:
 - (1) The City Treasurer, who shall serve as Chair (the Chair rotates between the Treasurer and the head of the Department of Community Development and Housing);
 - (2) The director of the Department of Economic Development;
 - (3) The director of the Department of Community Development and Housing;
 - (4) Two members of City Council; and
 - (6) Six members of community organizations whose principal purpose is neighborhood development or civil rights enforcement.

The Chair in conjunction with the Committee shall commission a study once every two years using the data and information submitted above by each depository. The Chair shall issue a Request for Proposals (RFP) soliciting a contractor to conduct the study. The study shall assess and rank each depository's community reinvestment performance. The rankings in the report shall inform the recommendations of the Committee regarding which institutions shall receive City deposits and the amount and percentage of City deposits received by each depository.

Prior to making recommendations regarding which depositories shall receive City business and municipal deposits, the Committee shall receive public comments over a period of 60 days regarding the community reinvestment performance of financial institution(s). At the end of the public comment period, the Committee shall hold a public hearing to receive any additional comments and to describe the community reinvestment performance of depositories to the public. The Committee shall consider public comments received during the comment period and at the hearing in making their

recommendations. The recommendations shall include which institutions shall receive City deposits and other City business and the amount or percentage of deposits received by each institution.

Deposits and Investments in Institutions Practicing Predatory Lending Prohibited

- (1) The City Treasurer 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.
- (2) The City Treasurer 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.
- (3) The City Treasurer 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.
- (4) Any divestiture required by this section shall be completed within six months of receipt by the City Treasurer of notice from the Director of Consumer Affairs or the Reinvestment Committee 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 City Treasurer 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 City Treasurer determines that completion of divestiture within the six-month time limit will necessitate substantial losses to the City then the City Treasurer shall request from City Council an extension of time within which to complete divestiture.

Affidavit

The affidavit required by this statute shall be in the following form and shall contain the information herein required:

AFFIDAVIT OF COMMUNITY REINVESTMENT AND RESPONSIBLE FINANCIAL SERVICE INTENT

I, _____, a duly-authorized representative of _____, being first sworn, depose and say as follows:

1. That for the purpose of becoming an eligible depository for active deposits of the City, the undersigned affiant states that it will develop responsible lending and financing opportunities to support residential and commercial development of the City's

neighborhoods and make "best efforts" to execute our Community Reinvestment Plan submitted to the City.

Affiant states that such best 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- and moderate-income communities;
- E. The cooperative establishment of investment services through incentive programs such as linked deposits;
- F. Further, the affiant certifies that neither [insert institution desiring to become City depository], nor any of its affiliates, (i) will make or finance predatory home and non-home loans; and,
- G. Further, the affiant agrees to submit the information required by this statute to the Reinvestment Committee on an annual basis and other information more frequently as requested by the Committee.

Notice and Meetings of Proposed Branch Closings

Each contract with a depository shall contain a requirement that the depository provide written notice to the Mayor and the City Treasurer one hundred and twenty 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 reason for closing the branch. The depository shall also participate in public meetings with members of the Community Reinvestment Committee, state and/or federal regulatory agencies, non-profit community organizations, and other members the public to consider alternatives to branch closure.

