

November 29, 2017

Councilmember Paul Krekorian
Councilmember Herb Wesson
Councilmember Mitchell Englander
Councilmember Bob Blumenfield
Councilmember Marqueece Harris-Dawson



cc: Chief Legislative Office
City Attorney's Office

Dear Councilmembers:

We have attached a legal memorandum prepared by Davis Polk & Wardwell on behalf of the Lawyers Committee for Civil Rights of the San Francisco Bay Area on the ability of the City of San Francisco to start a public bank. We concur with nearly all the analysis and recommendations made in the memo, and we submit it for your review as a very relevant examination of the legal and regulatory questions surround the formation of a Los Angeles public bank. Because San Francisco is also a charter city in the state of California with a comparable government, economy and public finance needs, we feel this memo provides the best answers to those questions thus far contemplated by suitably experienced legal experts.

The primary findings of the memo that we feel are key to the feasibility of a Bank of Los Angeles are:

- San Francisco (and Los Angeles) has the power under the state constitution to found a public bank as part of its *home rule* power determine its “municipal affairs,” based on the findings of the **Owen Memo**¹.
- A bank whose deposits are guaranteed by a public entity, rather than traditional FDIC deposit insurance, is not subject to the oversight of the FDIC. This allows it to forgo certain compliance issues that would prove contrary to the banks’ purpose, most importantly restrictions on transactions with affiliates and shareholders, which would defeat the purpose of a public bank.
- The question of whether cannabis businesses can be serviced by a public bank adds a layer of complexity and potential legal issues which make a public bank unfeasible until cannabis is reclassified.
- A commercial banking charter or credit union charter are poor fits for a public bank, for a number of reasons, and that a statutory exception may be necessary to create a “Public Bank Charter (License)” allowing the Department of Business Oversight to approve municipal charter applications for a special type of bank.
- Such a charter or license would allow and require a public bank to:
 - o Operate, lend, and take deposits from qualified depositors within the borders of a given region;

- Raise capital by donation, public bond or appropriation;
- Establish an independent governance committee, comprised of bank employees, elected or appointed officials, and members of the local community;
- Maintain a business plan to operate a commercially viable bank and policies as required to achieve it;
- Require public input, in the form of a social impact and mission statement, annual review, participatory budgeting, or city statute on the allocation of the bank's loan portfolio;
- Use the founding charter city and its partners as guarantors of deposits, qualifying them as a 'source of strength' for federal and state regulatory purposes;
- Hold deposit insurance or equivalent security (including public guarantee or general obligation bond) for deposits as approved by the Department of Business Oversight;
- Relax or remove collateral requirements and affiliate transaction restrictions for public funds that would prove antithetical to the bank's purpose;
- Adhere to strict social and environmental responsibility standards in its lending and business practices;
- Seek to return a profit to its shareholders by making commercially viable, economically sustainable loans and providing a high level of service to its depositors, customers, and partners;

This special status available to charter cities seeking to found a public bank addresses the central regulatory obstacles and peculiarities facing those efforts. We hope that the Committee and city staff will closely read this memo and make their own analysis of how it applies to Los Angeles. We believe this, and other work on the subject by the Treasurer, the City of Santa Fe, and others, show the path forward for a municipal bank. This includes rigorous planning, budgeting, and stakeholder onboarding at the city level in preparation for state-level action, and the creation of a special Public Bank Charter under existing California banking regulations, carving out the exceptions and requirements as listed above.

We encourage the city to lend its influence to the effort in Sacramento to create a public bank license for cities like Los Angeles, and we believe this goal can be achieved in a relatively short time, concurrent with city efforts to prepare a business plan, exploratory committee, and a plan to capitalize a Bank of Los Angeles.

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ⁱ Thomas J. Owen, Deputy City Att'y, to John Avalos, Member, Board of Supervisors, Municipal Bank Formation