



# Public Bank

## EAST BAY

Steps to Opening the Public Bank East Bay  
White Paper  
Revised September 2019

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The Public Bank East Bay  
White Paper  
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This White Paper is intended to provide the history, guidelines, and timelines to move the Public Bank East Bay forward to its opening. As you read this paper, please compile a list of questions you'd like answered in the Business Plan. This will ensure that our consultant responds to everyone's concerns.

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**Clarification:** the difference between a “feasibility study” and a “business plan”:

The development of any 21<sup>st</sup> century public bank involves either beginning with a business plan or recognizing a continuum from feasibility study to business plan, with the division between them being somewhat arbitrary. The point of both documents is to lay out various plausible scenarios for the bank in question and assess the viability of each scenario. We have learned in the last few years from the various feasibility studies that have been done around the country, that they usually raise more questions than they answer, because they're really just the preludes to business plans. The more detailed and specific a region's feasibility study is, the more it resembles a business plan. Public bank advocates have come to the conclusion that, in the interest of saving time, money, and confusion, it makes sense to skip feasibility studies and move directly to business plans.

Washington State is the exception that proves the rule. Washington had one of the only professional-quality feasibility studies, done by the University of Washington. Upon receipt of [this study](#), the state legislature allocated \$500,000 for the state's public bank business plan.

The San Francisco Municipal Bank Task Force's final report, on the other hand, is an example of a poorly executed feasibility study. Nevertheless, once the Board of Supervisors reviewed the study, along with changes suggested in the two attached letters from Task Force members, they appear to be proceeding to their business plan. The February 2019 Board resolution states that the “Board of Supervisors supports the continued efforts in San Francisco to create and operationalize a municipal public bank.”

## **Public Bank East Bay History**

In October 2018, the Oakland City Council formally received the Preliminary Multi-Jurisdictional Feasibility Study for the Public Bank, which (despite undisputed flaws) concluded that the Bank is feasible. The study was done under the supervision of Oakland's Finance Department and an informal committee including the Alameda County Treasurer- Tax Collector and the Finance Department of the City of Berkeley.

Since the study was not considered a useful stepping-stone to moving forward, a new supervisory arrangement was considered essential. As a component of the city's acceptance of the study, and with the written agreement of Henry Levy, the County of Alameda's Treasurer-Tax Collector, the Oakland Council resolved to shift supervision of the next steps to the Alameda County Treasurer. Jesse Arreguin, Berkeley Mayor, and Eduardo Martinez, City Councilmember in Richmond, along with several Oakland Council members, urged moving expeditiously to the business plan.

At that point, advocates and supporters of public banking expected the County Treasurer to call a meeting of all the relevant parties (representatives from the cities of Berkeley, Oakland, and Richmond, and the Bank advocates, with the Treasurer representing the County) to discuss their various visions for the Bank, and to agree on a specific process and timeline for moving forward with the business plan.

Instead, the Treasurer decided to hold small, individual meetings with some of the relevant parties (Finance Department of the City of Berkeley, Oakland Councilmembers Kaplan and Kalb). The decision to hold individual meetings has delayed any progress toward a shared vision, and has not met the basic standards of transparency we desire from our elected officials. The Treasurer has not met with the advocates, nor, to the best of our knowledge, has he met with representatives from Richmond.

That brings us up to date locally.

## **The Process of Chartering a Bank**

Banks in California can be "chartered," or "licensed" (these terms are used interchangeably) by either the federal government or the California Department of Business Oversight (DBO). It is clear to all interested parties that the state process is more desirable than the federal route for the Public Bank East Bay. To be licensed by DBO the organizing group must submit a business plan and an application.

The [DBO application](#) is publicly available online. The contents of the business plan for a public bank will be very closely aligned with the known standard business plan contents for commercial banks licensed in California. Thus, we already understand the necessary elements of the business plan. A bank business plan - for public and private banks alike - describes in extensive detail the financial and community development goals, purposes and benefits that justify the bank's existence and then presents further detailed implementation of the administrative

infrastructure that will fulfill those goals, purposes and benefits. The business plan also presents a checklist of the steps to fulfill regulatory requirements, to constitute a board of directors and governance structure, and to phase in the start-up of the public bank's services. It generally includes:

1. Assessment of the market to be served by the Bank including economic and competitive assessment of area;
2. Description of the governance structure, including ownership, board, management, organization chart and overview of required policies and procedures for operation of the Bank;
3. Description of products and services to be offered including deposit, loan, education and support products and services and recommended fees. Overview of how the products and services are currently delivered in the market and why the Bank's products and services will be received;
4. Proposed Marketing Plan for products and services;
5. Controls and auditing that will be performed on regular basis including BSA/AML and other related controls;
6. Technology platform that will be used;
7. Capital requirements for first three years;
8. Financial projections for balance sheet and income statement for the first three years;

Expanding a little on 3, above, one of the services the Bank should provide is banking for the currently un- and under-banked. We are appalled by the predatory payday lenders, and want to put them out of business. We anticipate four ways of doing this:

1. re- inventing postal banking, which may need Congressional action;
2. partnering with community banks and credit unions to back them up in offering services to the unbanked;
3. offering no-frills online checking accounts directly through the Bank; and
4. replicating the unique and successful Community Check Cashing storefront. This business, in Oakland's own Fruitvale Village, is the only non-profit check-cashing service in the country, and the local public banking advocates are proud to call them our friends. They are eager to expand their clientele and their services, and the Bank can help them do so.

The business plan will also include the steps necessary for moving forward with an application to the necessary regulatory agencies, securing management and employees, and a flow chart of action steps necessary to open the Bank.

Advocates have to date been mostly unsuccessful in raising the funds (\$216K) for the business plan, with the exception of reclaiming \$30K from the City of Oakland, which was unspent in the Feasibility Study process. The County of Alameda's funding of the East Bay Community Energy (EBCE)'s business plan is a precedent worth exploring. The County has lent EBCE \$4.3 million so far, loans which EBCE has already started to repay. The County's Community Development Agency was the recipient of the original loan and could step into the same role for the Public Bank (EBCE contract attached). This approach was suggested to advocates by Supervisor Nate Miley, and has been endorsed by State Senator Nancy Skinner in a letter dated May 7, 2019.

County rules say that if a consultant has been engaged in the planning of a project to date, there need not be an RFP issued. Fortunately, Jan Lynn Owen, the past Commissioner of the DBO, identified and recommended Gary Steven Findley, a highly-respected bank attorney, who has written approximately 200 bank business plans. (We note that in the 7/3 Senate Governance and Finance Committee hearing on AB857, State Senator John Moorlach described Mr. Findley as "the top banking attorney in Orange County.") Having such a prominent and skilled candidate who is available and interested will, we hope, obviate the need for an RFP. The Bank advocates have been working with him for two years now; he has met the Treasurer; his associate, Tom Sgouros, has done some work with the Treasurer; and Gary has become an integral part of the planning for the Bank.

### **AB 857 -- California Enabling Legislation**

Meanwhile, the California Public Banking Alliance, whose members include Los Angeles, San Francisco, South Bay, San Diego, Santa Cruz, Santa Barbara, Santa Rosa, Eureka, and of course the East Bay, have successfully moved [AB 857](#) through most of the state legislative process. This bill will make it easier in some ways, and potentially more challenging in others, for California localities to start public banks. (The Alliance remains agnostic about including cannabis deposits in local public banks.) The process of initiating and refining this bill has raised and helped clarify many of the procedural issues we anticipate in starting the Public Bank East Bay. As the legislative working group of the Alliance considered each proposed amendment to the bill, the East Bay "tried it on for size" to see what effect it would likely have on our vision for the Bank. The bill has passed all Senate committees and will soon be brought to the Senate floor and then the Assembly floor for reconciliation. We anticipate a signature from Governor Newsom. As of this writing, the Bank we envision is in keeping with the current text of the legislation. The provisions of the bill that are relevant to our next steps are the following. Our comments are interspersed in square brackets:

“(a) Before submitting an application to organize and establish a public bank pursuant to Section 1020 of the Financial Code, a local agency shall conduct a study to assess the viability of the proposed public bank. [As will become clear, the

elements of this study are, in fact, the elements of a business plan as expected by DBO, and we believe that a single business plan document can also serve as a viability study.] The study shall include, but is not limited to, all of the following elements:

- (1) A discussion of the purposes of the bank including, but not limited to, achieving cost savings, strengthening local economies, supporting community economic development, and addressing infrastructure and housing needs for localities.
- (2) A fiscal analysis of costs associated with starting the proposed public bank.
- (3) An estimate of the initial amount of capital to be provided by the local agency to the proposed public bank.
- (4) Financial projections, including a pro forma balance sheet and income statement, of the proposed public bank for at least the first five years of operation. The financial projections shall include an estimate of the time period for when expected revenues meet or exceed expected costs and an estimate of the total operating subsidy that the local agency may be required to provide until the proposed public bank generates sufficient revenue to cover its costs. In addition to projections that assume favorable economic conditions, the analysis shall also include a downside scenario that considers the effect of an economic recession on the financial results of the proposed public bank. The projections may include the downside scenario of continuing to do business with the local government's current banker or bankers.
- (5) A legal analysis of whether the proposed structure and operations of the public bank would likely comply with Section 6 of Article XVI of the California Constitution, but nothing herein shall compel the waiver of any attorney-client privilege attaching to that legal analysis.
- (6) An analysis of how the proposed governance structure of the public bank would protect the bank from unlawful insider transactions and apparent conflicts of interest.

(b) The study may include any of the following elements:

- (1) A fiscal analysis of benefits associated with starting the proposed public bank, including, but not limited to, cost savings, jobs created, jobs retained, economic activity generated, and private capital leveraged.
- (2) A qualitative assessment of social or environmental benefits of the proposed public bank.
- (3) An estimate of the fees paid to the local agency's current banker or bankers.
- (4) A fiscal analysis of the costs, including social and environmental, of continuing to do business with the local agency's current banker or bankers.

[Everything in this list would or could be part of a standard commercial bank business plan, with two exceptions: first, private banks are under no obligation to provide “social or environmental benefits”; to the contrary, they are required to maximize profits for their shareholders. Second, private banks are the very bankers we are trying to divest from, because of their “social and environmental costs.”]

(c) The study required by subdivision (a) shall be presented and approved by the governing body of the local agency, and a motion to move forward with an application for a public banking charter shall be approved by a majority vote of the governing body at a public meeting prior to the local agency submitting an application pursuant to Section 1020 of the Financial Code. [The Bank’s application to the DBO will, of course, have to be reviewed and approved by the jurisdictions involved.] In addition, the local agency shall include a copy of the study required by subdivision (a) in the application submitted to the Commissioner of Business Oversight.

(d) The local agency shall make available to the public the financial models and key assumptions used to estimate the elements described in paragraphs (2) through (4) of subdivision (a) before presenting the study to the governing body of the local agency as required by subdivision (c). [This requirement for public transparency is very much in keeping with our vision for the Bank.]

The bill mandates that the banks partner with credit unions and community banks wherever possible, which has always been our intent, modeled on the very successful public Bank of North Dakota (BND). The BND had a return on investment of 18% in 2018, in keeping with its ROI for the last several years. North Dakota has six times the national average of credit unions and community banks per capita, in contrast to California, which has lost almost 75% of its community banks since 2008.

AB 857 also mandates that California public banks acquire FDIC insurance, which will require another application (included in the business plan under “applications to the necessary regulatory agencies”), and provides another layer of oversight. [The FDIC is known as a difficult hurdle to pass, and this may be one of the biggest obstacles we face.]

Under the legislation, public banks will need to be accepted by the San Francisco Federal Reserve, which also requires another application, and also provides another layer of oversight. In 2018, the San Francisco Federal Reserve approved the application of the Territorial Bank of American Samoa to become a public bank, so our process can follow a recent precedent.

Finally, a late amendment to the legislation limits the number of local public bank applications that the Department of Business Oversight can process. The limit is two every calendar year until 10 have been licensed, after which the Commissioner of Business Oversight must conduct a study of public banking in California, presumably to determine the future of additional local public banks. [We think ten local banks is a

reasonable number, though we would prefer to have no such constraint. The “two per calendar year” limitation creates a certain amount of competition among localities that are closer to making a bank happen, a group which certainly includes San Francisco, Los Angeles, and us. This provision also places additional urgency on our moving forward as quickly as possible.]

## **Timeline**

Month 1: stakeholder meeting convened by the jurisdiction sponsoring the bank, to include appropriate government officials, potential board members, and local advocates. This meeting will establish the members of the mutual benefit corporation that will own the Bank and will appoint the first Board of Directors. Advocates recruit and vet potential Board Members and critical executive staff.

Month 1: simultaneous continued fundraising to secure funds to pay the business plan author. We have not lost sight of prospects for a loan from Alameda County as described above; however, other avenues are also being pursued.

Months 2-4: A project manager from the “home” jurisdiction plus key stakeholders identified at the Month 1 meeting work with the business plan author in developing a draft plan. Advocates set up Academy in collaboration with Laney Community College.

Month 5: Draft Business Plan/“Viability Study” reviewed by all stakeholders, comments collated.

Month 5: Business Plan/“Viability Study” presented at community meeting. Necessary approval votes scheduled.

Month 6: All jurisdictions approve final Business Plan. Applications submitted to DBO, Federal Reserve, FDIC.

Month 7: Academy trains Board Members; Staff begins planning for opening.

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