

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 1990**

**No. 49**

Introduced by the Speaker (Council Member Vallone) and Council Members Gerges, Crispino, Pinkett, Williams, Eisland, Fields, Robles and Albanese (by request of the Mayor); also Council Members Alter, Berman, Castaneira Colon, Dear, DeMarco, DiBrienza, Dryfoos, Eldridge, Foster, Friedlander, Greitzer, Harrison, Horwitz, Lisa, Katzman, Maloney, McCaffrey, Michels, Povman, Rivera, Spigner, Ward and Wooten. (Passed under a message of necessity from the Mayor)

**A LOCAL LAW**

**To amend the New York city charter in relation to the depositing of city funds in banks doing business in South Africa, and to amend the administrative code of the city of New York, in relation to city contracts with entities that do business in South Africa.**

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. In 1985 the city of New York, as an expression of moral outrage at the South African government's relentless enforcement of apartheid, adopted a policy of restricting its business with banks and companies doing business in South Africa. In 1986, finding that the repression of black South Africans by the South African government had worsened, the city adopted stronger measures to express New Yorkers' deep abhorrence for apartheid.

The council finds that these measures, together with the divestiture policies of the city's pensions systems, similar measures adopted by private institutions, and state and local governments across our country, sanctions against South Africa adopted by our federal government and other nations, and above all the relentless struggle and untold sacrifices of South Africans fighting against racism, have had a significant impact on the South African government.

The city rejoices in the release of Nelson Mandela after more than a quarter century of political imprisonment, and celebrates the release of other great leaders in the anti-apartheid struggle, including Walter Sisulu, Ahmed Kathrada, Andrew Mlangeni, Elias Motsoaledi, Raymond Mhlaba, Wilton Mkwayi, Oscar Mpetha, and Jafta Masemola. Yet the city and the world do not lose sight of the fact that thousands of political prisoners remain in detention without recognition for their most fundamental civil rights. The city welcomes the unbanning of many political organizations, but strongly condemns the violence with which the South African government continues to react against peaceful demonstrations. Despite the few positive steps that the South African government has taken within recent months, it continues to commit heinous crimes against humanity, subjugating, brutalizing and degrading millions of its own people.

In view of the developments in the Republic of South Africa, the council finds it appropriate to strengthen the provisions of the city charter and the administrative code applicable to depository banks and city contracts with companies doing business in South Africa. As an

expression of our moral concerns as to the conduct of the city's business and financial affairs, this local law provides for the city's depository banks and contractors to certify that they have withdrawn or are actively engaged in withdrawing from South Africa, and do not have any non-equity ties with businesses there. In addition, because of the significant contribution that banks can make toward forcing the South African government to face the human costs of its policies, this law calls on financial institutions to end correspondent banking relationships with South Africa and to require strict terms for the repayment of all outstanding loans.

The council is concerned about reports from South African trade unions that many companies are effecting withdrawal plans by unilaterally terminating duly negotiated collective bargaining agreements, withholding pension and other-benefit payments, and suspending union recognition agreements. The council condemns these practices as an affront to the efforts by South African trade unions to protect and advance the basic human rights of South African workers. Responsible divestment can and should uphold fair labor practices as companies withdraw.

Accordingly, the city will monitor whether companies effecting withdrawal give advance notification to all South African employees and their representative employee organizations of termination of investment or withdrawal of operations not less than six months prior to such termination, and engage in good faith negotiations with representative trade unions regarding the terms of termination, including, but not limited to: pension benefits, the relocation of employees, the continuation of union recognition agreements, severance pay, and the acquisition of the terminated business or business assets by employees or representative worker organizations.

The city heralds the new independence of the Republic of Namibia and the inauguration of its president, Sam Nujoma, on March twenty-first, nineteen hundred ninety, a day for which, in Mr. Nujoma's words, "tens of thousands of Namibian patriots laid down their lives, shed their precious blood, suffered imprisonment and a difficult life in exile." Now that this last colony of Africa has been liberated, due to the heroism and tenacity of its people, its new struggle for national reconciliation, reconstruction and prosperity begins. The long-awaited freedom of Namibia having at last arrived, the council finds it appropriate to no longer ask that city contractors refrain from doing business in Namibia, and instead to encourage American businesses to invest in Namibia, and to provide the full range of resources that will be required to develop the enormous economic potential of that new nation.

This local law responds to the call of the leaders of the anti-apartheid movement that the worldwide community intensify its efforts to persuade the South African government to negotiate toward the quick establishment of a truly democratic and non-racial society recognizing the principle of "one person, one vote." The City urges all members of the private and public sectors -- local, state, national, and international -- to adopt similar measures to hasten the fall of apartheid.

§2. Section 1523 of the charter of the city of New York is amended by adding a new subdivision 3, to read as follows:

*3. The commissioner of finance, in consultation with other agency heads, shall by rule establish criteria by which to evaluate whether banks are using the means at their disposal to create pressure on the South African government to eliminate apartheid, including but not limited to:*

- a. withdrawal of operations from South Africa,*
- b. denial of loans, letters of credit and other correspondent banking services to South African entities;*
- c. restrictions on the rescheduling of loans owed by South African entities; and on*

*conversion of outstanding loans to instruments having longer maturity dates; and*  
*d. divestiture of outstanding debt owed by South African entities.*

*The commissioner shall, after offering banks designated pursuant to section fifteen hundred twenty-four and the public an opportunity to be heard, classify such banks according to such criteria, and publish notice of such classification in the City Record. The commissioner may at any time, upon the request of a bank or at his or her own initiative, and after offering the public and the bank an opportunity to be heard, change the classification of a bank and publish notice of such change. The failure of a bank to provide information requested by the commissioner for the purposes of this subdivision shall be grounds for the commissioner to lower the classification of the bank. When choosing among banks offering comparable services at a comparable cost, city agencies shall, in a manner consistent with guidelines established by the commissioner of finance, seek to deposit or invest funds at, and obtain services from, the available banks that have received the highest classification.*

§3. Subparagraph 3 of paragraph a of subdivision 2 of section 1524 of the New York city charter is amended to read as follows:

(3) it does not provide the following services, either directly or through a subsidiary or agent, to the government of the Republic of South Africa: (a) advertising or otherwise promoting the sale, outside of the Republic of South Africa [or Namibia], of krugerrands or other coins minted in the Republic of South Africa [or Namibia], (b) underwriting securities of the government of the Republic of South Africa, or (c) making loans to such government[, other than loans for educational, housing or health facilities available to all persons on a totally non-discriminatory basis and located in geographic areas accessible to all population groups without any legal or administrative restrictions].

§4. The unnumbered opening paragraph of subdivision a of section 6-115 of the administrative code, as added by local law number 19 for the year 1985, is amended to read as follows:

a. With respect to contracts described in subdivisions b and c of this section, and in accordance with such provisions, no city agency shall contract for the supply of goods [or] , services *or construction* with any person who does not agree to stipulate to the following as material conditions of the contract if there is another person who will contract to supply goods [or] , services *or construction* of comparable quality at a comparable price.

§5. Paragraph 1 of subdivision a of section 6-115 of such code, as added by local law 19 for the year 1985, is amended to read as follows:

(1) The contractor and its [substantially-owned subsidiaries] *affiliates* shall not during the term of such contract sell or agree to sell, goods or services [other than food and medical supplies] directly to the following agencies of the South African government or directly to a corporation owned or controlled by such government and established expressly for the purpose of procuring such goods and services for such [specific] agencies:

- (a) the police
- (b) the military,
- (c) the prison system,
- (d) the ministry of home affairs and national education,
- (e) the ministry of education and development aid, including the development boards and the rural development boards,
- (f) the ministry of justice,
- (g) the ministry of constitutional development and planning,
- (h) the ministry of law and order,
- (i) the bureau for information,

(j) the ministry of manpower,

(k) any other agency of the South African government, including the governmental agencies of the "homelands" and any other political subdivisions of such government,

[(k)] (l) the Armaments Development and Production Corporation (ARMSCOR), and its subsidiaries Nimrod, Atlas Aircraft Corporation, Eloptro (Pty) Ltd., Kentson (Pty) Ltd., Infoplan Ltd., Lyttleton Engineering Works (Pty) Ltd., Naschem (Pty) Ltd., Pretoria Metal Pressing (Pty) Ltd., Somchem (Pty) Ltd., Swartklip Products (Pty) Ltd., Telecast (Pty) Ltd., and Musgrave Manufacturers and Distributors,

[(l)] (m) the national intelligence services,

[(m)] (n) the council for scientific and industrial research,

[(n)] (o) the electricity supply commission (ESCOM),

[(o)] (p) the South African Coal, Oil and Gas Corporation (Sasol Limited or Sasol 1, 2 or 3),

[(p)] (q) the Atomic Energy Corporation (Ltd.), or

[(q)] (r) the Southern Oil Exploration Corporation (Soekor).

§6. Paragraphs 2 and 3 of subdivision a of section 6-115 of the administrative code of the city of New York, paragraph 2 as added by local law number 19 for the year 1985, and paragraph 3 as added by local law number 81 for the year 1986, are amended, and five new paragraphs 4, 5, 6, 7, and 8 are added, to read as follows:

(2) In the case of a contract to supply goods, none of the goods to be supplied to the city originated in the Republic of South Africa [or Namibia].

(3) The contractor and its [substantially-owned subsidiaries] *affiliates* do not do business in South Africa [or Namibia] by maintaining any office, plant or employee in South Africa or Namibia, or the contractor and its [substantially-owned subsidiaries] *affiliates* are actively engaged in the withdrawal of their operations from South Africa [and Namibia] and *will have completed such withdrawal* within six months [will not maintain any office, plant or employee in South Africa or Namibia], provided, however, that any such company that has withdrawn or is so engaged in withdrawing its operations from South Africa [or Namibia] that maintains a presence in South Africa [or Namibia] after such six month period solely for the purpose of liquidating its business shall *not be* [eligible] *ineligible for that reason* to make the certification provided for in this paragraph. [The provisions of this paragraph shall not apply to news organizations, or to companies whose sole activity in South Africa or Namibia is the manufacture, processing and distribution of food or medical supplies.]

(4) (a) *It shall not make new investments in South Africa.*

(b) *If at any time during the course of the contract the contractor acquires an entity which is doing business in South Africa, the contractor shall initiate withdrawal of its acquisition's operations from South Africa.*

(c) *It shall not enter into any new agreement with a South African entity allowing the use of its trademark, copyright or patent by such entity.*

(5) *In the case of a contract to supply motor vehicles, heavy equipment, electronic data processing equipment and software, copying machines or petroleum products, the contractor will, in addition to providing the certification described in this section with respect to itself and its affiliates, certify or provide a certification to the contracting agency from the manufacturer or refiner of the product to be supplied to the city that such manufacturer or refiner and its affiliates are in compliance with the terms set forth in this subdivision and subdivision d of this section. The commissioner of general services shall consider whether to designate other goods supplied to the city to be subject to the provisions of this paragraph, and by rule so designate any such goods as he or she determines appropriate based upon considerations including information that one or*

more manufacturers of such goods or affiliates of such manufacturers have not withdrawn their operations from South Africa, the effects on the city's procurement process, including the opportunities of small, minority and women owned business enterprises to compete for such contracts, and the recommendations of other agency heads.

(6) For purposes of this subdivision, an entity shall be considered to have withdrawn its operations from South Africa if:

(a) it does not maintain any office, plant or employee in South Africa other than for the following purposes: (i) the activities of religious, educational or charitable organizations; (ii) activities intended to promote the exchange of information, including the publication or sale of newspapers, magazines, books, films, television programming, photographs, microfilm, microfiche, and similar materials; (iii) the gathering or dissemination of information by news media organizations; and (iv) the providing of telecommunications and mail services not involving the sale or leasing of equipment;

(b) it has no investments in South Africa; and

(c) it does not provide goods or services to any South African entity pursuant to any non-equity agreement.

(7) The provisions of paragraphs four and six of this subdivision concerning investments, agreements concerning trademarks, copyrights and patents, and non-equity agreements shall not apply to ownership of or agreements with entities engaged in activities described in clauses i, ii, iii and iv of subparagraph a of paragraph six.

(8) For purposes of this subdivision: (a) "Affiliates" of a contractor means the parent company of the contractor, and any subsidiaries of the parent company, and any subsidiaries of the contractor.

(b) "Parent company" shall mean an entity that directly controls the contractor.

(c) "Subsidiary" shall mean an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or the contractor's parent company.

(d) "Control" shall mean holding five percent or more of the outstanding voting securities of a corporation, or having an interest of five per cent or more in any other entity.

(e) "Entity" shall mean a partnership, association, joint venture, company, corporation or any other form of doing business.

(f) "South African entity" shall mean an entity organized in South Africa, or a branch or office in South Africa of an entity which is domiciled or organized outside South Africa.

(g) "Investment" shall mean the beneficial ownership or control of a controlling interest in a South African entity, but shall not include the purchase of securities of a South African entity for a customer's account.

(h) "Non-equity agreement" shall mean a license, franchise, distribution or other written agreement pursuant to which an entity provides management, maintenance, or training services directly to a South African entity, or supplies goods directly to a South African entity for distribution by such South African entity, or for use as component parts in the manufacture of other goods by such South African entity. In addition, a non-equity agreement shall mean an original equipment manufacturer agreement, as defined pursuant to rules promulgated by the commissioner of general services, for equipment sold by a manufacturer of computers, copiers, or telecommunications equipment, which provides for or authorizes the sale of such equipment alone or as part of a finished product, to a South African entity. Such commissioner shall consider whether to designate other equipment to be subject to this provision regarding original equipment manufacturer agreements, and by rule so designate any such equipment as he or she determines appropriate based upon considerations including the effects on the city's procurement

*process, including the opportunities of small, minority and women owned business enterprises to compete for such city contracts.*

§7. Subdivisions b, c and d of section 6-115 of such code, as added by local law 19 for the year 1985, are amended to read as follows:

b. In the case of contracts subject to [public letting under] *competitive* sealed [bids] *bidding* pursuant to section three hundred [forty-three] *thirteen* of the charter, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in subdivision a of this section and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, [or] services *or construction* of comparable quality, the contracting agency shall refer such bids to the [board of estimate which, pursuant to such rules as it may adopt, and] *mayor or such other official as may exercise such power pursuant to section three hundred ten of the charter, who*, in accordance with subdivision b of section three hundred [forty-three] *thirteen* of the charter, may determine that it is in the [public] *best interest of the city* that the contract shall be awarded to other than the lowest responsible bidder.

c. In the case of contracts [requiring the approval of the board of estimate] *for goods, services or construction involving an expenditure of an amount greater than the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter*, the contracting agency shall not [refer a contract to such board if the person seeking to perform such contract] *award to a proposed contractor who has not agreed to stipulate to the conditions set forth in subdivision a of this section unless the head of the agency seeking to use the goods [or], services or construction determines that the goods, [or] services, or construction supplied by such person are necessary for the agency to perform its functions and there is no other responsible contractor who will supply goods [and], services or construction of comparable quality at a comparable price. Such determination shall be made in writing [by such agency] and shall be forwarded to the [board of estimate] procurement policy board and the agency designated by the mayor pursuant to subdivision j of this section, and published in the City Record.*

d. No city agency shall enter into a contract [which requires the approval of the board of estimate or which is subject to public letting under sealed bids pursuant to section three hundred forty-three] *for an amount in excess of the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter with any [person] proposed contractor who does not agree to stipulate as a material condition of the contract that such [person] entity and its [substantially owned subsidiaries] affiliates have not within the twelve months prior to the award of such contract violated, and shall not during the period of such contract violate the provisions of the comprehensive anti-apartheid act of nineteen hundred eighty-six, the export administration act of nineteen hundred seventy-nine as amended (50 U.S.C. 2401 et seq.) or the arms export control act of nineteen hundred seventy-six as amended (22 U.S.C §2778) respecting business activity in the Republic of South Africa [or Namibia].*

§8. Subdivision e of such section, as amended by local law number 81 for the year 1986, is amended to read as follows:

e. Upon receiving information that a contractor, *manufacturer or refiner* who has agreed to the conditions set forth in subdivision a of this section is in violation thereof, the contracting agency shall review such information and offer the contractor *and such other entity* an opportunity to respond. If the contracting agency finds that a violation of such conditions has occurred, or if a final determination has been made by the commerce department or any other agency of the United States or a finding has been made by a court that [a contractor or its substantially owned subsidiary] *any such entity* has violated any provision of the comprehensive

anti-apartheid act, the export administration act or the arms export control act respecting business activity in the Republic of South Africa, the contracting agency shall take such action as may be appropriate and provided for by law, rule [or regulation], or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages and declaring the contractor in default. The mayor shall designate an agency to maintain records of actions taken in such cases.

§9. Subdivision f of such section, as added by local law 19 for the year 1985, is amended to read as follows:

f. As used in this section the term "contract" shall not include *contracts with governmental and non-profit organizations, contracts awarded pursuant to the emergency procurement procedure set forth in section three hundred fifteen of the charter, or contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, provided that agencies shall consider the policies of this law when selecting a consultant to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.*

§10. Subdivision g of section 6-115 of the administrative code of the city of New York, as added by local law number 81 for the year 1986, is amended to read as follows:

g. The provisions of this section shall not apply to contracts for which the city receives funds administered by the United States department of transportation, *except to the extent congress has directed that the department of transportation not withhold funds from states and localities that choose to implement anti-apartheid selective purchasing policies, or to the extent that such funds are not otherwise withheld by the department of transportation.*

11. Such section is amended by adding three new subdivisions h, i and j to read as follows:

h. *The department of general services and any other agency or agencies designated by the mayor shall conduct a study to develop recommendations concerning the application of the policies set forth in this section to procurement of goods, services or construction for amounts less than or equal to the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter, and shall, on or before January first, nineteen hundred ninety-two, submit a report to the mayor and the council containing such recommendations.*

i. *Nothing in this section shall be construed to limit the authority of a contracting agency or any official authorized by the charter to approve the selection of a contractor from taking into account, in making a determination to select or approve the selection of a contractor, in a manner consistent with applicable law and rules, any information concerning any direct or indirect relationship an entity may have related to business activity in South Africa.*

j. (1) *The mayor shall designate an agency or agencies to collect information concerning entities doing business in the Republic of South Africa and to maintain records of contractors which have or have not agreed to the conditions set forth in subdivision a of this section. In October of each year, beginning in nineteen hundred ninety-one, such agency or agencies shall submit a report to the mayor and the council setting forth information concerning contractors that have and have not agreed to such terms during the previous fiscal year, and the circumstances under which any contract subject to this section was awarded to a contractor who did not agree to such terms. The agency shall also report at such time on the efforts of public and quasi-public entities operating in the city to implement anti-apartheid policies.*

(2) *The mayor shall designate an agency to collect information concerning whether entities withdrawing from South Africa have given or agreed to give advance notification to their South African employees and representative trade unions (or other representative employee organiza-*

tions if there are no appropriate unions) of the planned termination of investment not less than six months prior to such termination, and have engaged or agreed to engage in good faith negotiations with such representative unions or organizations regarding the terms of such termination, including but not limited to pension benefits; relocation of employees; continuation of existing union recognition agreements; severance pay; and acquisition of the terminated business or its assets by representative trade unions, union-sponsored workers trusts, other representative worker organizations or employees. Such agency shall inform such entities of, and offer them an opportunity to respond to, any such information it collects. In October of each year, beginning in nineteen hundred ninety-one, such agency shall submit a report to the mayor and the council on the information collected pursuant to this subdivision.

§12. Notwithstanding any provision of section 6-115 of the administrative code or any contract entered into pursuant to such section, any person who has stipulated that it would comply with the anti-apartheid contract provisions set forth in such section shall not be deemed to be in violation of such section or in breach of such contract on the basis of any lawful business such person may have conducted in Namibia on or after March 21, 1990.

§13. If any provision of this local law or the application thereof is held invalid, the remainder of this local law and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

§14. a. Sections 12 and 13 of this local law shall take effect immediately.

b. Section 10 of this local law shall take effect immediately and shall apply to contracts for which a request for bids or proposals is issued on and after the effective date.

c. Sections 2, 3, 4, 7 and 8 of this local law shall take effect on September 1, 1990.

d. Sections 5, 6, 9, and 11 of this local law shall take effect on September 1, 1990 and shall apply to contracts for which a request for bids or proposals is issued on and after such date.

e. On and after the date of enactment of this local law the city agencies may take any actions necessary for its implementation, including but not limited to the adoption of any necessary rules.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on July 10, 1990, and approved by the Mayor on July 25, 1990.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed local law (Local Law 49 of 1990, Council Int. No. 458-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on July 10, 1990:

33 for, 0 against

Was approved by the Mayor on July 25, 1990.

Was returned to the City Clerk on July 26, 1990.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel