

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1986**

No. 81

J-739-A

Introduced by Council Member Katzman (by request of Mayor); also Council Members Dryfoos, Albanese, McCaffrey and Robles and the President (Mr. Stein). Amended December 18, 1986. (Passed under a Message of Necessity from the Mayor).

A LOCAL LAW

To amend the administrative code of the city of New York in relation to city contracts with companies doing business in South Africa and Namibia.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. The Council finds that apartheid is the most virulent form of racism inflicted by a government against its people since the Nazi era, and that it is incumbent on all levels of government to express opposition to this evil system.

The Council reaffirms the declaration made in local law nineteen of nineteen hundred eighty-five that the legally enshrined policy of apartheid practiced by the government of the republic of South Africa is morally repugnant to the people of the city of New York, and that it is appropriate for the city to conduct its business in keeping with the city's long tradition of ensuring that public monies are expended consistently with moral standards and in a manner which promotes the public welfare. Local law nineteen requires the city's depository banks to certify that they do not market coins minted in South Africa or Namibia or provide loans to or underwrite securities for the South African government, requires city contractors to comply with federal law regulating exports to South Africa and Namibia, and provides for a certification by city contractors that they do not sell goods or services directly to the South African police, military, prison system, or the agency that enforces the pass laws and will not supply goods to the city that originated in South Africa or Namibia. The Council finds that these provisions and similar laws enacted by local governments throughout the country, together with divestiture actions taken by state and local governments and religious and educational institutions have been influential in increasing corporate sensitivity to the morally intolerable conditions in South Africa, leading companies to cease activities supportive of apartheid, and in a growing number of cases to withdraw their operations from that country.

In the past year, despite worldwide condemnation of its racist policies, the South African government has continued to deprive non-white South Africans of basic human rights. It has responded with brutality to peaceful demonstrations, and banned participation in funerals and other religious observances. It has imposed a new set of repressive laws granting the government sweeping powers to close or take control of businesses, allowing arrest and detention of persons without charge or access to counsel, and providing for strict censorship of the press. In response to the worsening situation in South Africa and the plea for support from black South African leaders, nations throughout the world have imposed sanctions on South Africa, and many more state and local governments have adopted law regulating their own business with companies operating in

South Africa and Namibia. Congress has overridden a presidential veto to adopt the comprehensive anti-apartheid act of nineteen hundred eighty-six. This new federal law represents an important development in American policy toward South Africa.

In view of the developments in South Africa and the effectiveness of local law nineteen and the divestiture programs adopted by the city's pension funds, the council finds it appropriate to strengthen the provisions of local law nineteen applicable to city contracts with companies doing business in South Africa and Namibia as an expression of our moral concerns in the conduct of the city's business. The provisions of this local law will expand the certification by prospective city contractors established by local law nineteen of nineteen hundred eighty-five in two stages. In the first stage, the certification will state that, in addition to the apartheid enforcing agencies already covered by local law nineteen, the contractor agrees that it will not provide goods or services other than food and medical supplies to other agencies that assist the South African government in its enforcement of apartheid: the bureau for information, the ministry of law and order, the ministry of education and development aid, the ministry of justice, the ministry of constitutional development and planning, the ministry of manpower, the armaments development and production corporation, the national intelligence services, and the council for scientific and industrial research; or energy-producing agencies that help to make South Africa energy-independent and thus less susceptible to international pressure for change: the electricity supply commission (ESCOM), the Atomic Energy Corporation (Ltd), the Southern Oil Exploration Corporation (Soekor), and the South African Coal, Oil and Gas Corporation (Sasol). This stage will take effect sixty days after the enactment of this local law.

In the second stage, companies seeking to do business with the city of New York will be asked to certify that they do not do business in South Africa and Namibia. This stage will take effect one year after the effective date of the first stage.

The council applauds the withdrawal of companies from South Africa but is nonetheless concerned that companies should not continue to supply their goods and services to the South African government through licensing agreements and other arrangements. The council is also concerned that goods and services provided to the city by companies that make the certification set forth in this local law should not be obtained from entities that do business in South Africa or Namibia in a manner that supports apartheid. The council will therefore study these problems to determine whether this law should be amended in the future. The council will also monitor whether progress is made by the South African government toward the release of political prisoners, the repeal of apartheid laws, the termination of the state of emergency, the lifting of banning orders against individuals and political parties, and the commencement of good faith negotiations with truly representative members of the black majority, and shall consider whether developments in South Africa and Namibia warrant any further modifications of the city's anti-apartheid law.

Local law nineteen of nineteen hundred eighty-five expresses New Yorkers' deeply-felt abhorrence for apartheid and responds in a responsible manner that recognizes the city's long tradition of spending public monies consistent with moral standards and the need to obtain goods and services economically. Despite the careful way in which these interests have been balanced in local law nineteen, and despite congressional and presidential action restricting activities supportive of apartheid, the United States department of transportation, with the support of the United States department of justice, has taken the position that it will not approve federal funds for city contracts that contain the terms and conditions provided by local law nineteen on the grounds that they conflict with federal law and regulations. The position of the federal departments of transportation and justice on this issue is counterproductive to the policy of opposition to apartheid

embodied in the recently enacted federal legislation and sends the wrong message to the South African government. The city has taken and will continue to take action to seek the reversal of that position, including the support of federal legislation that will recognize state and local anti-apartheid purchasing policies, and expressly allow the application of these policies in programs using federal funds.

§2. Subdivision a of section 6-115 of the administrative code of the city of New York 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 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 of comparable quality at a comparable price:

(1) The contractor and its substantially-owned subsidiaries shall not during the term of such contract sell or agree to sell, goods or services other than food or 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) the Armaments Development and Production Corporation (ARMSCOR), and its subsidiaries Nimrod, Atlas Aircraft Corporation, Eloptro (Pty) Ltd., Kentson (Pty) Ltd., Infoplan Ltd., Lytleton 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) the national intelligence services,
- (m) the council for scientific and industrial research,
- (n) the electricity supply commission (ESCOM),
- (o) the South African Coal, Oil and Gas Corporation (Sasol Limited or Sasol 1,2 or 3),
- (p) the Atomic Energy Corporation (Ltd.), or
- (q) the Southern Oil Exploration Corporation (Soekor).

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

§3. Subdivisions d and e of such section are amended to read as follows:

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 of the charter with any person who does not agree to stipulate as a material condition of the contract that such person and its substantially owned subsidiaries 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 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.

e. Upon receiving information that a contractor 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 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 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 or Namibia, 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.

§4. Such section of such code is amended by adding a new subdivision g 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.

§5. Subdivision a of such section of such code is amended by adding a new paragraph three to read as follows:

(3) The contractor and its substantially-owned subsidiaries 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 are actively engaged in the withdrawal of their operations from South Africa and Namibia and 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 be eligible 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.

§6. The provisions of subdivision a of section 6-115 of the administrative code as added by this local law shall not apply to actions taken or contracted to be taken by any person with respect to the agencies named in subparagraphs d through q of paragraph one of such subdivision prior to the effective date of such provisions.

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

§8. a. Sections one, four and seven of this local law shall take effect immediately.

b. Sections two, three and six of this local law shall take effect sixty days after it shall have become law.

c. Section five of this local law shall take effect one year after the effective date of sections two, three and six of this local law.

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 December 18, 1986, and approved by the Mayor on December 30, 1986.

CARLOS CUEVAS, City Clerk, Clerk of 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 81 of 1986, Council Int. No. 739-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 9, 1986: 34 for, 0 against, 1 not voting.

Was approved by the Mayor on December 30, 1986.

Was returned to the City Clerk on December 31, 1986.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.