

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 1985**

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**No. 19**

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Introduced by Council President (Ms. Bellamy) the Vice-Chairman (Council Member Cuite), and Council Members Vallone, Messinger, Foster, Pinkett, Samuel, Spigner, Williams, Wooten (by request of the Mayor); also Council Members Berman, Dryfoos, Friedlander, Gerges, Lisa, Maloney, Michels, Albanese, Alter, Eisland, Crispino, Ferrer, Greitzer, Horwitz, Robles, Fossella and O'Donovan.

**A LOCAL LAW**

**To amend the charter of the city of New York in relation to the depositing of city funds in banks that have dealings with the government of the Republic of South Africa, and to amend the administrative code of the city of New York in relation to the purchase by the city of goods originating in the Republic of South Africa or Namibia and city contracts with companies that export goods to the Republic of South Africa or Namibia in violation of the arms control act or the export administration act, and companies that make direct sales to certain agencies of the South African government.**

*Be it enacted by the Council as follows:*

Section 1. Declaration of legislative intent and findings. 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. Under apartheid, the South African government uses the processes of law to deprive the black majority of basic human freedom and dignity. Blacks are by law excluded from participation in politics and government. They are overwhelmingly compelled to live in designated homelands far from cities and employment, systematically excluded from education and training, and almost all relegated to menial, low paying jobs. Other non-whites have been allowed nominal participation in some aspects of government but suffer many of the same privations and indignities as do the blacks. Apartheid is maintained by the repressive tactics of a police state. Under South African law, blacks must carry passes in order to travel. The police detain and arrest persons indefinitely without charging them with the commission of a crime. Freedom of speech, press, and assembly are severely restricted. Non-whites seeking to exercise fundamental human freedoms individually or collectively are swiftly subjected to brutal repression. Apartheid, which has been official government policy at least since nineteen hundred forty-eight, as yet shows no signs of retreat in the face of condemnation by the world community of nations.

The city of New York has a long tradition of regulating the use of public monies to ensure that purchases, deposits and investments are made consistently with moral standards and in a manner which promotes the public welfare. For example, as early as nineteen hundred forty-two the council enacted a local law prohibiting discrimination on the basis of race, color or religion by city contractors. The council has also required that city contractors agree not to violate provisions of the export administration act prohibiting participation in foreign-sponsored boycotts of nations friendly to the United States. The council recently enacted legislation providing for a "locally based enterprise" program to increase opportunities for disadvantaged persons to be employed in city construction contracts. The charter provides that city funds may be deposited only at banks which have a policy of hiring and promoting employees without regard to race, color, creed, religious affiliation, sex or

national origin. The trustees of the New York City Employees' Retirement System have adopted a resolution calling for the divestiture of assets invested in those companies doing business in the Republic of South Africa which are not doing enough to oppose apartheid. In keeping with this tradition, the council seeks, through city policy on depositing public funds and public contracting, to send a message to the government of the Republic of South Africa and to encourage those who do business there to support change.

This local law provides that the banking commission shall not designate a bank or trust company as eligible to receive city deposits if, after the effective date of this law, the bank or trust company provides certain services that benefit the South African government. A bank or trust company may not be so designated if it promotes the sale of krugerrands or other coins minted in the Republic of South Africa or Namibia outside of the Republic of South Africa or Namibia, but merely selling the krugerrands or other such coins to a customer upon request would not disqualify a bank for designation. Nor may a bank or trust company be designated if it underwrites securities for or makes a loan to the government of the Republic of South Africa. An exception is made for loans for educational, housing or health facilities, but only where these are available to all persons on a totally nondiscriminatory basis and located in geographic areas accessible to all groups of the population. A further exception is made to allow for the designation of a bank if such designation is necessary to allow the city to obtain essential services which are not reasonably obtainable from another bank.

This local law also applies to certain city contracts for goods and services. Recognizing the needs of city agencies to contract economically and in accordance with applicable competitive bidding requirements, this law provides for a determination to be made whether it is in the public interest to contract with persons who do not agree to certain conditions concerning their activities in the Republic of South Africa and Namibia if the city can obtain goods or services of comparable price and quality from a person who does agree to those conditions. This determination would occur when a person seeking a contract would sell the city goods originating in the Republic of South Africa or Namibia or sells goods or services other than food or medical supplies directly to the South African police, military, prisons, or the department of cooperation and development (the agency that administers the pass laws). In addition, contracts by city agencies will be required to provide that the contractor shall not violate provisions of the export administration act or the arms control act concerning shipment of military supplies and equipment and other goods to the Republic of South Africa and Namibia.

These provisions not only express the moral concerns of the city of New York, but also seek to protect the financial interests of the city by limiting the number of city contracts which may depend for their satisfaction on the internal security of the Republic of South Africa, where relentless oppression has led to increasing civil disturbances, making sabotage of business interests and even revolution possible. Like the provisions concerning deposits, these provisions operate prospectively, and contracting decisions shall not be based on a contractor's dealings with the South African government prior to the effective date of this law.

§2. Section fifteen hundred twenty-four of the New York city charter is amended to read as follows:

§1524. Deposit banks. 1. The banking commission which consists of the mayor, the commissioner and the comptroller shall, by majority vote, by written notice to the commissioner, designate the banks or trust companies in which all moneys of the city shall be deposited, and may by like notice in writing from time to time change the banks and trust companies thus designated.

2. a. Except as provided in paragraph b of this subdivision, no bank or trust company shall be designated pursuant to this section unless:

(1) it shall agree to pay into the city treasury interest on the daily balances at a rate which the banking commission shall, by a majority vote, fix quarterly on the first day of February, May,

August, and November in each year, according to the current rate of interest upon like balances deposited in banks and trust companies in the city by private persons or corporations;

(2) it shall file with the banking commission and city clerk a certificate signed by the president or other duly authorized officer of such bank setting forth that its board of directors has established and will adhere to a policy of hiring and promotion of employees and officers without regard to race, color, creed, religious affiliation, sex or national origin which certificate shall further set forth affirmatively the steps taken by the bank or trust company to implement said policy; and

(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 nondiscriminatory basis and located in geographic areas accessible to all population groups without any legal or administrative restrictions.

b. The commission may designate a bank or trust company which does not meet the criteria set forth in clause three of paragraph a of this subdivision upon a determination, made in writing and forwarded to the council, that deposit of city moneys in such bank or trust company is necessary to obtain essential services which are not reasonably obtainable from another bank or trust company.

If the banking commission by majority vote shall decide that such policy not to discriminate or provide services to the government of the Republic of South Africa has been violated after giving the bank or trust company an opportunity to be heard, then upon giving thirty days' notice to the bank or trust company such designation may be revoked.

3. The commissioner may, with the approval of the comptroller, make time deposits of city moneys, for a period not to exceed six months, in any bank or trust company designated for deposit of city funds. Each such bank or trust company shall before deposits are made, other than such as are of a temporary character and specifically relate to the current business of the city, execute and file with the commissioner a bond to the city in such form and in such amount as may be prescribed and approved by the commissioner and the comptroller for the safekeeping and prompt payment of city moneys on demand with interest at the rate agreed upon and, as security for such funds, shall deposit with the comptroller outstanding unmatured obligations issued by the city, the value of which at the existing prices on the open market shall be equal to the estimated amount of the proposed deposit, for which the comptroller shall deliver a certificate of deposit containing the condition of such bond.

4. On the withdrawal of all or a part of the funds deposited in any depository and a closing or depleting of the account thereof, or in the event of the deposit actually made being less than the estimated amount of such deposit, the commissioner and the comptroller shall certify to such settlement or depletion or difference and direct the surrender of the whole or a proportionate share of the securities so deposited to the owner or owners thereof.

§3. Title A of chapter thirteen of the administrative code of the city of New York is amended by adding a new section 343-11.0 to read as follows:

§343-11.0 Anti-apartheid contract provisions.

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) that the contractor and its substantially owned subsidiaries have not within the twelve months prior to the award of such contract sold or agreed to sell, and 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, or
- (d) the department of cooperation and development; and

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

b. In the case of contracts subject to public letting under sealed bids pursuant to section three hundred forty-three 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 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 in accordance with subdivision b of section three hundred forty-three of the charter, may determine that it is in the public interest 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, the contracting agency shall not refer a contract to such board if the person seeking to perform such contract has not agreed to stipulate to the conditions set forth in subdivision a of this section unless the agency seeking to use the goods or services determines that the goods or services 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 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.

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 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) by unlawfully exporting or reexporting goods to 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 affiliate has violated any provision of the export administration act or the arms control act by unlawfully exporting or reexporting goods to 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.

f. As used in this section the term "contract" shall not include 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.

§4. No bank shall be denied designation pursuant to section two of this local law because of any action taken prior to the effective date of this local law.

§5. The provisions of section 343-11.0 of the administrative code as added by this local law shall not apply to actions taken or contracted to be taken by any person prior to the effective date of this local law.

§6. Nothing in this local law shall be deemed to restrict or diminish the powers conferred on the board of estimate by law.

§7. 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.

§8. This local law shall take effect one hundred twenty days from the date it shall have become law, but all actions necessary to prepare for the implementation of this local law may be taken prior to its effective date.

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 February 26, 1985, and approved by the Mayor on March 15, 1985.

DAVID N. DINKINS, City Clerk, Clerk of the Council.

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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 19 of 1985, Council Int. No. 900) contains the correct text and, received the following vote at the meeting of the New York City Council on February 26, 1985: 33 for, none against.

Was approved by the Mayor on March 15, 1985.

Was returned to the City Clerk on March 18, 1985.

HADLEY W. GOLD, Acting Corporation Counsel.