

Ordinance No. 15-11 ORDINANCE: To amend Chapter 15 entitled “Personnel” of the Rockville City Code by amending Article VI. “Retirement Plan,” Division 2. “Retirement Board” by adding a new Section 15-88 so as to prohibit the investment of retirement funds in certain businesses conducting operations in Sudan; and to add a new Section 15-89 so as to provide for the indemnification of members of the Retirement Board due to the action in connection with the provisions of Section 15-88

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE as follows:

SECTION 1. That Chapter 15 entitled “Personnel” of the Rockville City Code be amended by amending Article VI. “Retirement Plan,” Division 2. “Retirement Board” by adding new sections 15-88 entitled “Sudan Investments- Restrictions” and 15-89 entitled “Indemnification of Retirement Board Members” to read as follows:

Chapter 15 “Personnel”

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Article VI. Retirement Plan

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Division 2. Retirement Board

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Sec. 15-88. Sudan Investments – Restrictions

(a) In this Section, the following words have the meanings indicated:

(1) “Actively managed separate account” means assets held in a separate account by an investment manager hired by the Board. “Actively managed separate account” does not include an indexed fund, private equity fund, real estate fund, mutual fund, or other commingled or passively managed fund.

(2) “Board” means the City Retirement Board established by Section 15-82.

(3) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited

liability company, or other entity or business association, including any wholly owned subsidiary, majority-owned subsidiary, and parent company of any of them, or business association, that exists for profit-making purposes.

(4) “Divestment action” means selling, redeeming, transferring, exchanging, or otherwise disposing of, and refraining from further buying of, certain investments.

(5) “Doing or does business in Sudan” means maintaining equipment, facilities, personnel, or other apparatus of business or commerce in Sudan, including ownership of real or personal property in Sudan:

(A) for the purposes of:

(i) engaging in any business activity with the Government of Sudan;
or

(ii) conducting business with any company in which the Government of Sudan has a direct or indirect equity share; or

(iii) participating in a Government of Sudan-commissioned consortium or project; and

(B) if the business operation includes:

(i) supplying military equipment in Sudan; or

(ii) oil-related activities constituting more than 10% of the entity’s operations in Sudan; or

(iii) mineral extraction activities constituting more than 10% of the entity’s operations in Sudan; or

[[iv) power production activities constituting more than 10% of the entity’s operations in Sudan.]]

(6) “Government of Sudan” means the government in Khartoum, Sudan, led by the National Congress Party (formerly known as the National Islamic Front), or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan). “Government of Sudan” does not include the regional government of southern Sudan.

(7) “Marginalized populations of Sudan” means adversely affected groups in regions authorized to received assistance under section 8(c) of the Darfur Peace and Accountability Act (Public Law 109-344) or areas in Northern Sudan described in section 4(9) of that Act.

(8) “Military equipment” means:

(A) weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or

(B) supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(9) “Mineral extraction activity” means exploring, extracting, processing, transporting, or wholesale selling or trading any elemental mineral or associated metal alloy or oxide (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

(10) “Oil-related activity” means exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; or constructing, maintaining, or operating a pipeline, refinery, or other oilfield infrastructure. “Oil-related activity” does not include the retail sale of gasoline or related consumer products in Sudan or leasing or owning rights to an oil block in Sudan.

[[(11) “Power production activity” means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or any similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including establishing any power-generating plant or hydroelectric dam, selling or installing components of any such plan or dam, or providing service contracts related to installing or maintaining any such plant or dam.]]

[[(12)]] (11) “Substantial action” means:

(A) adopting, publicizing, and implementing a formal plan to cease business operations in Sudan within one (1) year and to refrain from any such new business operations;

(B) undertaking significant humanitarian efforts in conjunction with an international organization, the Government of Sudan, the regional government of southern Sudan, or a non-profit entity that is evaluated and certified by an independent third party to be substantial in relationship to the company’s business operations in Sudan and of benefit to one or more marginalized populations of Sudan; or

(C) engaging the Government of Sudan for the purpose of materially improving conditions for the victimized populations in Darfur.

[[(13)]] (12) “Trust Fund” means the assets held for the City Pension Plan and/or the Retiree Benefit Trust.

(b) The Board must review the investment holdings in each actively managed separate account of the trust fund and identify each investment in any company that does business in Sudan. The Board must review its investment holdings in these accounts periodically and provide a report to the Mayor and Council at least annually.

(c) The Board:

(1) must take divestment action with regard to investments in any company doing business in Sudan within 12 months after the Board finds that the company is doing business in Sudan; and

(2) must not make any new investments in an actively managed separate account in any company that does business in Sudan.

(d) In determining if any company does business in Sudan, the Board may:

(1) retain a professional consultant; and

(2) review publicly available information regarding companies doing business in Sudan, including information provided by a non-profit organization, research firm, international organization, or government.

(e) The divestment or investment prohibition under this Section must not apply to a company that can demonstrate that its business operations in Sudan:

(1) are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) are conducted under a license from the federal Office of Foreign Assets Control, or are expressly exempted under Federal law from the requirement to be conducted under such a license;

(3) consist of providing goods or services to marginalized populations of Sudan for at least 75% of its business operations in Sudan;

(4) consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) consist of providing goods or services that are used only to promote health or education; or

(6) have been voluntarily suspended.

(f) The Board:

(1) before taking any divestment action under this Section, must provide written notice and an opportunity to comment in writing to each company subject to the action;

(2) must not take the divestment action until 90 days after written notice is provided to the company; and

(3) must not take the divestment action if the company shows that it:

(A) is not doing business in Sudan;

(B) has taken substantial action, as defined in subsection (a)(12); or

(C) is exempt from divestment under subsection (e).

(g) The Board must report annually to the Mayor and Council on the operation of and compliance with this Section. The report must:

(1) identify each investment in a company doing business in Sudan held in an actively managed separate account of the trust fund;

(2) list each divestment action taken under this Section; and

(3) provide the approximate administrative cost of compliance.

(h) This Section expires 30 days after the President of the United States certifies to Congress that the Government of Sudan has honored its commitments to:

(1) abide by United Nations Security Council Resolution 1769 (2007);

(2) cease attacks on civilians;

(3) demobilize and demilitarize the Janjaweed and associated militias;

(4) grant free and unfettered access for delivery of humanitarian assistance; and

(5) allow for the safe and voluntary return of refugees and internally displaced persons.

Section 15-89. Indemnification of Retirement Board members

The Mayor and Council must indemnify every member of the Board who is or may become a party to any action, suit, or proceeding including administrative and investigative proceedings, because of any action taken to comply with Section 15-88.

SECTION 2. The Board must complete its initial review of the investment holdings in all actively managed separate accounts of the trust fund and identify all investments in companies doing business in Sudan within 90 days after the effective date of this Ordinance.

NOTE: Underlining indicates material added
Asterisks * * * indicate material unchanged by this ordinance
Double Underlining indicates material added after introduction
[[Double Brackets]] indicate material deleted after introduction

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I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the mayor and Council at its meeting of July 18, 2011.

Glenda Evans, City Clerk