

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 07-0591

Introduced by: Councilmembers Holton, Kraft, Curran, President Rawlings-Blake, Young,
Spector, Conaway, Branch

Introduced and read first time: February 12, 2007

Assigned to: Taxation and Finance Committee

Committee Report: Favorable with amendments

Council action: Adopted

Read second time: November 19, 2007

AN ORDINANCE CONCERNING

1 **Retirement Systems – ~~Precluded Investments~~ Divestments – Republic of Sudan**

2 FOR the purpose of ~~prohibiting~~ authorizing the ~~investment~~ divestment of public pension or
3 retirement funds ~~in from~~ Sudan or ~~in from~~ companies doing business in or with Sudan;
4 defining certain terms; specifying certain criteria and considerations; requiring certain
5 reports; and providing for the automatic termination of this Ordinance.

6 BY adding

7 Article 22 - Retirement Systems
8 Section(s) 7(a)(1), 23(b), and 35(a)(1)
9 Baltimore City Code
10 (Edition 2000)

11 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
12 Laws of Baltimore City read as follows:

13 **Baltimore City Code**

14 **Article 22. Retirement Systems**

15 **Subtitle – Employees’ Retirement System**

16 **§ 7. Management of funds.**

17 (a) *Trustee of funds.*

18 ~~(1) (i) NO FUNDS HELD UNDER BY THE EMPLOYEES’ RETIREMENT SYSTEM MAY REMAIN~~
19 ~~INVESTED OR BECOME INVESTED IN THE STOCKS, SECURITIES, OR OTHER~~
20 ~~OBLIGATIONS OF ANY BANK OR FINANCIAL INSTITUTION THAT MAKES LOANS TO~~
21 ~~THE REPUBLIC OF SUDAN, OR TO A NATIONAL CORPORATION OF SUDAN, OR IN THE~~

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

Council Bill 07-0591

1 ~~STOCKS, SECURITIES, OR OTHER OBLIGATIONS OF ANY COMPANY DOING BUSINESS~~
2 ~~IN OR WITH SUDAN, OR WHOSE SUBSIDIARY OR AFFILIATE DOES BUSINESS IN OR~~
3 ~~WITH SUDAN.~~

4 ~~(H) COMPANIES DOING BUSINESS IN OR WITH SUDAN SHALL BE AS IDENTIFIED BY THE~~
5 ~~U.S. DEPARTMENT OF THE TREASURY'S OFFICE OF FOREIGN ASSETS CONTROL.~~

6 (1) (i) 1. IN THIS PARAGRAPH (1), THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 2. "COMPANY" MEANS ANY CORPORATION, UTILITY, PARTNERSHIP, JOINT
9 VENTURE, FRANCHISOR, FRANCHISEE, TRUST, ENTITY, INVESTMENT VEHICLE,
10 FINANCIAL INSTITUTION, OR ITS WHOLLY-OWNED SUBSIDIARY.

11 3. "DIVESTMENT ACTION" MEANS SELLING, REDEEMING, TRANSFERRING,
12 EXCHANGING, OR OTHERWISE DISPOSING OR REFRAINING FROM FURTHER
13 INVESTMENT IN CERTAIN INVESTMENTS.

14 4. "DOING BUSINESS IN SUDAN" MEANS MAINTAINING EQUIPMENT, FACILITIES,
15 PERSONNEL, OR OTHER APPARATUS OF BUSINESS OR COMMERCE IN SUDAN,
16 INCLUDING OWNERSHIP OF REAL OR PERSONAL PROPERTY IN SUDAN, OR
17 ENGAGING IN ANY BUSINESS ACTIVITY WITH THE GOVERNMENT OF SUDAN.

18 5. A. "SUDAN" MEANS THE GOVERNMENT IN KHARTOUM, SUDAN, THAT IS LED
19 BY THE NATIONAL CONGRESS PARTY (FORMERLY KNOWN AS THE
20 NATIONAL ISLAMIC FRONT) OR ANY SUCCESSOR GOVERNMENT FORMED ON
21 OR AFTER OCTOBER 13, 2006, INCLUDING THE COALITION NATIONAL
22 UNITY GOVERNMENT AGREED ON IN THE COMPREHENSIVE PEACE
23 AGREEMENT FOR SUDAN.

24 B. "SUDAN" DOES NOT INCLUDE THE REGIONAL GOVERNMENT OF SOUTHERN
25 SUDAN.

26 6. A. "ACTIVELY MANAGED SEPARATE ACCOUNT" MEANS THE ACCOUNTS OF THE
27 SYSTEM THAT ARE ACTIVELY MANAGED AT THE DIRECTION OF THE BOARD
28 OF TRUSTEES AND HELD IN SEPARATE ACCOUNTS.

29 B. "ACTIVELY MANAGED SEPARATE ACCOUNT" DOES NOT INCLUDE:

30 1. INDEXED FUNDS,

31 2. PRIVATE EQUITY FUNDS,

32 3. HEDGE FUNDS,

33 4. REAL ESTATE FUNDS, AND

34 5. OTHER COMMINGLED OR PASSIVELY MANAGED FUNDS.

Council Bill 07-0591

1 (II) EACH INVESTMENT MANAGER ENGAGED BY THE BOARD WILL PROVIDE TO THE
2 BOARD QUARTERLY WRITTEN REPORTS PRESENTING A LIST OF:

- 3 1. SECURITIES OF COMPANIES UNDER MANAGEMENT DOING BUSINESS IN
4 SUDAN, AND
- 5 2. SECURITIES OR INSTRUMENTS ISSUED BY SUDAN HELD BY THE INVESTMENT
6 MANAGER, IN WHICH SYSTEM FUNDS ARE INVESTED.

7 (III) IN PREPARING REPORTS REQUIRED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (1),
8 AN INVESTMENT MANAGER SHALL REFERENCE THE U.S. DEPARTMENT OF THE
9 TREASURY'S OFFICE OF FOREIGN ASSETS CONTROL, INSTITUTIONAL
10 SHAREHOLDER SERVICES, OR OTHER LIST APPROVED BY THE BOARD OF TRUSTEES.

11 (IV) CONSISTENT WITH THE FIDUCIARY DUTIES OF THE BOARD OF TRUSTEES UNDER
12 THIS ARTICLE 22, AND THE PROVISIONS OF SUBPARAGRAPH (V) OF THIS
13 PARAGRAPH (1), THE BOARD OF TRUSTEES MAY TAKE DIVESTMENT ACTION IN
14 ACTIVELY-MANAGED SEPARATE ACCOUNTS WITH REGARD TO INVESTMENTS IN:

- 15 1. ANY BANK OR FINANCIAL INSTITUTION THAT MAKES LOANS TO THE
16 REPUBLIC OF SUDAN,
- 17 2. A NATIONAL CORPORATION OF SUDAN, AND
- 18 3. THE STOCKS, SECURITIES, OR OTHER OBLIGATIONS OF ANY COMPANY
19 DOING BUSINESS IN OR WITH SUDAN.

20 (V) IN DETERMINING WHETHER TO TAKE DIVESTMENT ACTION UNDER SUBPARAGRAPH
21 (IV) OF THIS PARAGRAPH (1) WITH REGARD TO THE INVESTMENT OF FUNDS IN
22 ACTIVELY-MANAGED SEPARATE ACCOUNTS IN A COMPANY DOING BUSINESS IN
23 SUDAN, THE BOARD OF TRUSTEES MAY CONSIDER THE FOLLOWING:

- 24 1. REVENUES PAID BY A COMPANY DIRECTLY TO THE GOVERNMENT OF
25 SUDAN,
- 26 2. WHETHER A COMPANY SUPPLIES INFRASTRUCTURE OR RESOURCES USED BY
27 THE GOVERNMENT OF SUDAN TO IMPLEMENT ITS POLICIES OF GENOCIDE IN
28 DARFUR OR OTHER REGIONS OF SUDAN,
- 29 3. WHETHER A COMPANY KNOWINGLY OBSTRUCTS LAWFUL INQUIRIES INTO
30 ITS OPERATIONS AND INVESTMENTS IN SUDAN,
- 31 4. WHETHER A COMPANY ATTEMPTS TO CIRCUMVENT ANY APPLICABLE
32 SANCTIONS OF THE UNITED STATES,
- 33 5. THE EXTENT OF ANY HUMANITARIAN ACTIVITIES UNDERTAKEN BY A
34 COMPANY IN SUDAN,
- 35 6. WHETHER A COMPANY IS ENGAGED SOLELY IN THE PROVISION OF GOODS
36 AND SERVICES INTENDED TO RELIEVE HUMAN SUFFERING, OR TO PROMOTE
37 WELFARE, HEALTH, EDUCATION, OR RELIGIOUS OR SPIRITUAL ACTIVITIES,

Council Bill 07-0591

1 7. WHETHER A COMPANY IS AUTHORIZED BY THE FEDERAL GOVERNMENT OF
2 THE UNITED STATES TO DO BUSINESS IN SUDAN,

3 8. EVIDENCE THAT A COMPANY HAS ENGAGED THE GOVERNMENT OF SUDAN
4 TO CEASE ITS ABUSES IN DARFUR OR OTHER REGIONS IN SUDAN,

5 9. WHETHER A COMPANY IS ENGAGED SOLELY IN JOURNALISTIC ACTIVITIES,

6 10. THE ECONOMIC IMPACT OF THE DIVESTMENT FROM THE PORTFOLIO, AND

7 11. ANY OTHER FACTOR THAT THE BOARD OF TRUSTEES DEEMS PRUDENT.

8 (VI) IF THE BOARD OF TRUSTEES TAKES DIVESTMENT ACTION UNDER SUBPARAGRAPH
9 (IV) OF THIS PARAGRAPH (1) WITH RESPECT TO INVESTMENTS IN A COMPANY, THE
10 BOARD OF TRUSTEES SHALL DIRECT THE INVESTMENT MANAGER TO PROVIDE THE
11 COMPANY WITH WRITTEN NOTICE OF ITS DECISION AND REASONS FOR THE
12 DECISION.

13 (VII) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD OF TRUSTEES SHALL
14 SUBMIT A REPORT TO THE CITY COUNCIL THAT PROVIDES:

15 1. ALL DIVESTMENT ACTIONS TAKEN BY THE BOARD IN ACCORDANCE WITH
16 THIS PARAGRAPH (1),

17 2. A LIST OF THOSE COMPANIES DOING BUSINESS IN SUDAN AND OF THOSE
18 SECURITIES OR INSTRUMENTS ISSUED BY SUDAN, AS REPORTED TO THE
19 BOARD BY ITS INVESTMENT MANAGERS UNDER SUBPARAGRAPH (II) OF THIS
20 PARAGRAPH (1), FROM WHICH THE BOARD HAS NOT DIVESTED; AND

21 3. OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN COMPANIES DOING
22 BUSINESS IN SUDAN.

23 **Subtitle – Elected Officials’ Retirement System**

24 **§ 23. Management of Funds.**

25 (B) THE PROVISIONS OF § 7(A)(1) OF THIS ARTICLE, CONCERNING THE INVESTMENT OF FUNDS
26 IN COMPANIES DOING BUSINESS IN OR WITH SUDAN, APPLY TO ALL FUNDS OF THE ELECTED
27 OFFICIALS’ RETIREMENT SYSTEM.

28 **Subtitle – Fire and Police Employees’ Retirement System**

29 **§ 35. Management of Funds.**

30 (a) *Trustee of funds.*

31 ~~(1) (i) NO FUNDS HELD UNDER BY THE FIRE AND POLICE EMPLOYEES’ RETIREMENT~~
32 ~~SYSTEM MAY REMAIN INVESTED OR BECOME INVESTED IN THE STOCKS,~~
33 ~~SECURITIES, OR OTHER OBLIGATIONS OF ANY BANK OR FINANCIAL INSTITUTION~~
34 ~~THAT MAKES LOANS TO THE REPUBLIC OF SUDAN, OR TO A NATIONAL~~
35 ~~CORPORATION OF SUDAN, OR IN THE STOCKS, SECURITIES, OR OTHER OBLIGATIONS~~

Council Bill 07-0591

~~OF ANY COMPANY DOING BUSINESS IN OR WITH SUDAN, OR WHOSE SUBSIDIARY OR
AFFILIATE DOES BUSINESS IN OR WITH SUDAN.~~

~~(H) COMPANIES DOING BUSINESS IN OR WITH SUDAN SHALL BE AS IDENTIFIED BY THE
U.S. DEPARTMENT OF THE TREASURY'S OFFICE OF FOREIGN ASSETS CONTROL.~~

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Council Bill 07-0591

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Council Bill 07-0591

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22 BOARD BY ITS INVESTMENT MANAGERS UNDER SUBPARAGRAPH (II) OF THIS
23 PARAGRAPH (1), FROM WHICH THE BOARD HAS NOT DIVESTED; AND

24 3. OTHER DEVELOPMENTS RELEVANT TO INVESTMENT IN COMPANIES DOING
25 BUSINESS IN SUDAN.

26 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
27 are not law and may not be considered to have been enacted as a part of this or any prior
28 Ordinance.

29 **SECTION 3. AND BE IT FURTHER ORDAINED,** That if the President of the United States
30 rescinds or repeals Executive Order 13067 or the United States Congress lifts all economic
31 sanctions against the Republic of Sudan, this Ordinance shall automatically, with no further
32 action required by the City Council, be abrogated and of no further force and effect.

33 **SECTION 3 4. AND BE IT FURTHER ORDAINED,** That subject to the provisions of Section 3 of
34 this Ordinance, this Ordinance takes effect on the 1st day of the 2nd fiscal quarter after the date it
35 is enacted.

Council Bill 07-0591

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City