ORDINANCE NO. 1295

AN ORDINANCE ESTABLISHING POLICIES FOR THE INVESTMENT OF COUNTY FUNDS IN OR CONTRACTING WITH COMPANIES DOING BUSINESS IN OR WITH SOUTH AFRICA

WHEREAS, the citizens of the County of Solano recognize the responsibility to take positive steps to end the practices of racial discrimination and racism both in the United States and abroad; and

WHEREAS, the Board of Supervisors recognizes and embraces the founding principles of our Constitution that all men are created equal and endowed with certain inalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS, the government of South Africa has institutionalized racial discrimination and racism under the policy of apartheid, denying more than 20.9 million Africans, as well as Coloureds and Indians, the right to participate in the political process or to benefit from the system of justice; and

WHEREAS, the government of South Africa has implemented a web of racially discriminatory laws and practices, including:

(a) the Constitution itself, which entrenches a white monopoly of political power;

(b) the "independent homelands" policy and Group Areas Act which mandate separate residential areas for whites, Africans, Coloureds, and Indians, and which denationalize South Africa's 20.9 million African citizens by arbitrarily assigning them to live in resource-poor "independent homelands" (constituting a non-contiguous 13 percent of the land for 72 percent of the population), regardless of their place of birth or location of their home and family, and which has already caused the forcible uprooting of over 3.5 million black persons;

(c) the influx control or "pass" laws, which prescribe and limit the conditions under which African workers and their families may remain outside the homelands, and which traps several hundred thousand wives and African migrant workers to be left to bring up their families through subsistence farming and remittances from their spouses (black women are treated under South African law as perpetual minors, limiting their ability to own or rent accommodations and depriving them of employment alternatives);
(d) separate and unequal educational systems for the various race groups (average expenditure for white students exceed 1,000 percent of expenditures for black students);

(e) labor laws and practices that effectively limit the proportion of black workers as a percentage of a company's labor force in an urban area and tightens controls on the activities of free trade unions;

(f) the Internal Security Act and other so-called security legislation which is designed to stifle and silence public opinion by authorizing the banning of individuals who are then unable to work and are exiled to remote areas, and by allowing the arbitrary, preventive and secret detention of critics who can be held indefinitely and incommunicado for interrogation without the right to a writ of habeas corpus and without being brought to trial; and

WHEREAS, the government of South Africa continues its military occupation and control of its neighbor state, Namibia, despite United Nations directives to withdraw; and

WHEREAS, the United States Supreme Court has upheld the power of local governments to make legitimate economic decisions without being subject to the restraints of the interstate Commerce Clause when it participates in the market place as a corporation or a citizen as opposed to exerting its regulatory powers; and

WHEREAS, the County of Solano declares the right to measure the moral character of its business partners in determining with whom it seeks to have business relations; and

WHEREAS, the system of apartheid in South Africa is morally repugnant to the citizens of the County of Solano, the Board of Supervisors of Solano County does hereby set forth a policy prohibiting authorized deposits, investments and use of County Funds with banks, financial institutions, investment firms, or service firms who either loan money or who provide services to the public or private sector in South Africa or Namibia, prohibiting investment in any private company doing business with or in South Africa or Namibia, prohibiting the purchase of any commodities actually produced in South Africa or Namibia, and setting forth a policy prohibiting the purchase of products manufactured by firms who do business with, or maintain facilities in South Africa or Namibia in accordance with standards enumerated in this Ordinance;

NOW, THEREFORE, BE IT RESOLVED the Board of Supervisors does ordain as follows:

SECTION I.

Chapter 22 of the Solano County Code is hereby re-entitled "Purchasing of Goods and Services and Investment of County Funds."
SECTION II.

Section 22-7(a) of Chapter 22 of the Solano County Code is hereby amended to read as follows:

Section 22-7(a). Competitive Bidding—Exemption (South Africa).

(a) Purpose. The County of Solano, in exercising its power to make economic decisions as a participant in the market, shall restrict, to the extent permissible and consistent with the County's interest, its contracting relative to goods and services to persons or entities which do not do business in or with South Africa.

(b) Definitions.

(1) "Bid documents" shall include requests for proposals (RFPs), invitations for bids (IFBs), requests for qualification (RFQs), advertisements for bids, and other similar documents.

(2) "Doing business" shall mean any person or entity engaged in the activity of a business, commercial enterprise, trade, calling, vocation, profession, or any means of livelihood, whether or not carried on for gain or profit.

(3) "Goods" shall include, but not be limited to, goods, services, products, commodities, materials, supplies, equipment, and any rights in real or personal property.

(4) "Government of South Africa" or "South Africa" shall mean the Republic of South Africa and any territory controlled by the Republic of South Africa, including the government of "Namibia" (also known as "South-West Africa"), and any public or quasi-public entity operating as an agency or political subdivision of the Republic of South Africa, including, but not limited to, municipal, provincial, national, or other government bodies (including all departments, agencies, and other instrumentalities of such bodies), public utilities, public facilities, or any national corporation in which the public sector of the Republic of South Africa has a financial interest or operational responsibility.

(5) "Person or entity" shall include all individuals, domestic corporations, foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, joint ventures, clubs, unincorporated associations, and public agencies, including any parent company, subsidiary, exclusive distributor or company affiliated therewith.

(c) Prohibited Transactions. The County shall not enter into or renew any contract, nor shall it exercise any option pursuant to any contract,
(1) for goods and services produced by:

(i) the government of South Africa;

(ii) any person or entity organized under the laws of South Africa; and

(iii) for goods and services with any person or entity which is doing business with the government of South Africa or has done business with the government of South Africa within the preceding twelve (12) months.

(d) Statement Required from Bidder. Prior to reviewing responses to bid documents for contracts covered by this section, the awarding authority shall obtain from each person or entity seeking a contract award, a statement under penalty of perjury from an authorized representative, on a form to be provided, declaring the nature and extent to which said person or entity is doing business in or with South Africa. In the case of goods to be provided, a statement shall be included as to the origin of said goods, to the best of the person's or entity's knowledge. Further, said person or entity shall promptly notify the awarding authority, in writing, if there is a subsequent change in the nature or extent of its business in or with South Africa.

(e) Contract Condition. Each contract for the supply of a commodity to the County shall include, as a material condition to that agreement, the following paragraph in the contract:

Seller is not the government of South Africa, person, or business entity organized under the laws of South Africa, or a person or entity doing business in South Africa, and that Seller will forego any such activities or relationship until the system of apartheid is dismantled and Namibia becomes self-governing. The item(s) sold in this contract (purchase order) to the County of Solano is (are) not made in South Africa as defined in Section 22-B(4)(b) of the Solano County Code. County reserves the right to terminate this contract for default if the contractor furnishes items made in South Africa. Seller shall notify County should it not be able to comply with the provisions of this contract.

(f) Exemptions. In order to promote the purposes of this section and to protect the County's interest, the following contracts are exempt from the application of Section 22-B(c):

(1) contracts mandated by law to be let through competitive bidding;

(2) contracts, including any amendments, modifications, or renewals of such contracts in existence at the time of the effective date of this section and, which is a matter of law, cannot be terminated or cancelled;
(3) contracts for the purchase of any sole source goods and services;

(4) contracts for the acquisition of news publications services;

(5) contracts under which a financial institution engages in activities required to assure repayment of credit extended before the effective date of this section;

(6) contracts wherein application of Section 22-B(c) would result in a significant loss of quality or significant additional costs to County.

(g) **Contract Termination upon Subsequent Determination of Ineligibility.** Each contract not exempted under this section shall contain a provision granting the County the authority to terminate the contract and to refuse payment for goods received or services performed if the County determines that the person or entity under contract with the County was ineligible under this section at the time of entering the contract or became ineligible thereafter.

(h) **Rules and Regulations.** The County Administrator and Purchasing Agent shall deliver, subject to the approval of the Board of Supervisors, rules and regulations not in conflict with this section to assist the awarding authorities of the County to carry out the purposes of this section. Such rules and regulations shall include, but not be limited to, the following:

(1) the form and content of the oath to be obtained from prospective bidders;

(2) standards for the gathering, interpretation, and dissemination of information received from public and private sources, respecting eligibility of persons or entities under this section;

(3) provision of an opportunity for a person or entity to rebut, under oath, information regarding possible South African connections;

(4) guidelines for the granting of exemptions under Section 22-B(f);

(5) preparation of suggested sample language for specific provisions in bid documents, contracts, and other documents which implement this section.
Within ninety (90) days after the effective date of this Ordinance, the County Administrator shall establish a listing of companies and their subsidiaries or affiliates which are and are not doing business with South Africa, and may utilize the listing developed by the City of Oakland.

The promulgation of rules and regulations under this section shall not be deemed to be a prerequisite to the performance of the duties and compliance with the requirements established by this section.

(i) **Consistency with Federal or State Law.** The provisions of this section shall not be applicable to those instances wherein the application of Section 22-08(c) would be prohibited by federal or state law, or where such application would violate or be inconsistent with the terms or conditions of a grant or contract with any agency of the United States, the State of California, or the instruction of an unauthorized representative of any such agency with respect to any such grant or contract.

SECTION III.

Section 22-16 of Chapter 22 of the Solano County Code is hereby added, to read as follows:

**Section 22-16. Limitation of Investment or Deposit of County Funds in South Africa.**

(a) **Definitions.**

(1) "County funds" shall mean all monies, grants, or other funds received and managed by, or otherwise under the control of the County Treasury, and any notes, bonds, or securities issued by the County of Solano.

(2) "Loans" shall include providing lines of credit or loans made as a participant in lending consortia.

(3) "Professional services" shall mean investment counseling, underwriting, providing brokerage services, acting as a trustee or escrow agent, providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual agreement.

(4) "Government of South Africa" shall be as defined in Section 22-7(A)(b)(4) of the Solano County Code.

(b) **General Prohibited Transactions.**

(1) No County funds shall be deposited or remain deposited in any bank or financial institutions which has any outstanding loan to:

(i). the government of South Africa; or
(ii). any business or corporation organized under the laws of South Africa; or

(iii). any business or corporation for the express purpose of doing business with, conducting operations in, or trading with any private or public entity located in South Africa.

(2) No County funds shall be invested or remain invested in the stocks, bonds, securities, or other obligations of any bank or financial institution which as any outstanding loan to:

(i). the government of South Africa; or

(ii). any business or corporation organized under the laws of South Africa; or

(iii). any business or corporation for the express purpose of doing business with, conducting operations in, or trading with any private or public entity located in South Africa.

(3) The prohibitions of this section shall not apply to any bank or financial institution which submits an affidavit in compliance with the requirements of subsection "d" of this section.

(4) The provisions of this section shall not apply to County funds invested under a trust indenture or investment agreement, or otherwise invested by County under a preexisting contractual obligation; provided, that such funds, if invested or deposited in non-compliance with this Ordinance, shall be withdrawn or divested at the earliest maturity date which is reasonably possible.

(c) Waiver. The prohibitions of Section (b) above shall not apply if the Treasurer finds that:

(1) no bank or financial institution is available which is capable of performing the desired function; or

(2) County will incur significant, imprudent, or unreasonable financial loss as a consequence of said prohibitions.

In such event, the County Treasurer shall endeavor to select that bank or financial institution which best meets the objectives of this ordinance and which is most capable of providing a level of service and/or investment return equal to that which the County could have received if the prohibitions of this section had not been enacted.

The Treasurer shall periodically report to the Board of Supervisors each and every exercise of waiver implemented pursuant to this subsection.
(d) **Affidavit Required.**

(1) Before any county funds can be deposited or invested in any bank or financial institution, the Treasurer shall obtain from each bank or financial institution an affidavit certifying that it does not have any outstanding loan of the type listed in subsection (b) of this section, or that the policy of the bank or financial institution is to not make any such future loans until the system of apartheid is dismantled in South Africa. The affidavit shall require the bank or financial institution to notify the Treasurer if it subsequently enters into any loan described in this subsection, or if the policy prohibiting such loans is changed.

(2) The requirements of this section shall be satisfied by ensuring that no County funds are invested or deposited by banks or financial institutions which fail to submit the affidavits required by this Section.

(e) **Compliance.**

(1) When the Treasurer determines that County funds must be withdrawn or divested from banks or financial institutions for noncompliance with the provisions of this Ordinance, the Treasurer shall advise the bank or financial institution that the withdrawal or divestiture of County funds is required by this Ordinance.

(2) If the Treasurer determines that County funds have been deposited or invested in a bank or financial institution which subsequently comes into noncompliance with this Ordinance, the Treasurer shall withdraw or divest those funds within three (3) months after the date of determination of noncompliance, or at the earliest maturity date which is reasonably possible.

(f) **Consistency with Federal or State Law.** The provisions of this section shall not be applicable to those instances wherein the application of Section 22-B(c) would be prohibited by federal or state law, or where such application would violate or be inconsistent with the terms or conditions of a grant or contract with any agency of the United States, the State of California, or the instruction of an authorized representative of any such agency with respect to any such grant or contract.

**SECTION IV.**

This ordinance shall be published once before the expiration of FIFTEEN (15) DAYS after its final passage in the _Daily Republic_, a newspaper of general circulation, printed and published in the
County of Solano, State of California, and shall be in full force and effect THIRTY (30) DAYS after its passage.

RICHARD BRANN, Chairman of the Board of Supervisors

ATTEST:

LINDA TERRA, Clerk to the Board

I, LINDA TERRA, Clerk to the Board of Supervisors of the County of Solano, State of California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting held November 25, 1986.

On motion of Supervisor Davis, and Second by Supervisor Hewitt, this Ordinance was adopted at a regular meeting of said Board on December 2, 1986, by the following vote:

AYES:
SUPERVISORS: Davis, Hewitt, Pippo, Sturn and Chairman Brann

NOES:
SUPERVISORS: None

ABSTAINED:
SUPERVISORS: None

ABSENT:
SUPERVISORS: None

WITNESS my hand and the Seal of said Board this 2nd day of December, 1986.

LINDA L. TERRA, Clerk to the Board of Supervisors