

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2012-12
Amending the Takoma Park Code by
Repeal of Chapter 9.08 Restricted Relations with Burma

WHEREAS, the Takoma Park City Council adopted the Takoma Park Free Burma Act by Ordinance 1996-33 on October 28, 1996 to assist in the restoration of democracy and respect for human rights in Burma; and

WHEREAS, the Ordinance restricted City contracts with firms that provides services, goods or professional services to the military regime in Burma; and

WHEREAS, the Ordinance also established a Free Burma Committee to oversee implementation of and adherence to the Free Burma Act; and

WHEREAS, the Takoma Park Free Burma Act is codified at Chapter 9.80 of the Takoma Park Code; and

WHEREAS, on October 23, 2000, the City Council adopted Resolution 2000-53 suspending enforcement of the selective purchasing provisions of the Takoma Park Free Burma Act because they were, in effect, invalidated by a United States Supreme Court decision striking down the Massachusetts Burma law on the grounds that the Massachusetts state law was preempted by the act of Congress that imposed federal sanctions on Burma; and

WHEREAS, the City Council has determined that the City Code should be amended to remove Chapter 9.08 (Takoma Park Free Burma Act) and to remove the Free Burma Committee from the list of standing committees of the City of Takoma Park.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT:

SECTION 1. Title 9, Civil Liberties and Human Relations, Chapter 9.08, Restricted Relations with Burma, of the Takoma Park Code is hereby repealed.

~~Chapter 9.08~~

~~RESTRICTED RELATIONS WITH BURMA~~

~~Sections:~~

~~9.08.010 Title.~~

~~9.08.020 Purpose.~~

~~9.08.030 Findings.~~

~~9.08.040 Eligibility for City contracts.~~

~~9.08.050 Exclusions.~~

~~9.08.060 Violations and penalties—Other remedies.~~

9.08.070— Definitions.

9.08.080— Notification.

9.08.090— Takoma Park Free Burma Committee.

9.08.100— Contract stipulation.

9.08.010 Title.

This chapter shall be known as the “Takoma Park Free Burma Act.”

9.08.020 Purpose.

The purpose of this Act is to establish the City of Takoma Park, Maryland, as a City assisting in the restoration of democracy and respect for human rights in Burma in the manner requested by Nobel Peace Prize Laureat Daw Aung San Suu Kyi and the National League for Democracy Party.

9.08.030 Findings.

It is the finding of the City Council, that:

A.— The citizens of the City, believing that their quality of life is diminished when peace and justice are not fully present in the world, recognize the important role local communities can take to promote universal respect for human rights and fundamental freedoms.

B.— The City has a stormy and vibrant tradition of organizing local action to affect larger world events, as manifested by the Takoma Park Nuclear-Free Zone Act.

C.— Citizens of Takoma Park have petitioned the City Council requesting that tax moneys not be spent in ways that help support the military regime in Burma, currently known as the State Law and Order Restoration Council (SLORC).

D.— Burma has been singled out year after year by the United States Department of State and the United Nations Human Rights Commission for widespread violations of human rights, and according to the Commission’s Special Rapporteur to Burma and other respected human rights monitoring organizations, such as Human Rights Watch/Asia and Amnesty International, the military regime in Burma has institutionalized torture and rape as political instruments, embarked upon campaigns of forcible relocation and persecution of ethnic minorities, and incarcerated political opponents including 20 Members of Parliament elected in 1990, thereby denying the majority of the population the right to participate in the political process, to benefit from the system of justice or to exercise economic rights.

E.— The military regime in Burma has been repeatedly rebuked by the International Labor Organization (ILO) for “widespread and extremely serious” use of forced labor for infrastructure projects and denial of the right of the freedom of association, and the United States Government continues to deny trade privileges for Burma because of violations of labor rights.

F.— Both the Drug Enforcement Agency and the Department of State have identified Burma as the largest source of heroin reaching the United States and reported that the military regime in Burma continues to protect narcotics traffickers wanted by the international community.

G.— Daw Aung San Suu Kyi, the 1991 Nobel Peace Prize winner and the leader of the democratic forces in Burma, has called on the world community to impose economic sanctions against the military regime in Burma because foreign investment serves to bolster the resources and power of the SLORC.

H.— Aung San Suu Kyi’s call for sanctions has been publicly supported by a group of Aung San Suu Kyi’s fellow Nobel Peace Prize laureates which is led by Archbishop Desmond Tutu of South Africa and includes Oscar Arias Sanchez, the Dalai Lama, Mairead McGuire and Betty Williams, and Adolpho Perez Esquivel.

I.— The military regime in Burma continues to refuse calls from the United Nations General Assembly and political leaders around the world urging them to engage in political dialogue with Aung San Suu Kyi and the democratic forces led by the National League for Democracy (NLD) Party, which won 82% of the seats in the Parliament in the 1990 elections but was prevented by SLORC from taking power.

J.—The United States Supreme Court has upheld the power of a municipality 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.

9.08.040 Eligibility for City contracts.

A.—The City and its officials, employees or agents shall not knowingly and intentionally grant any award, contract or purchase order, directly or indirectly, to any firm on the Takoma Park Free Burma list.

B.—The City and its officials, employees or agents shall not knowingly and intentionally grant any award, contract or purchase order, directly or indirectly, to purchase or lease products produced by a firm on the Takoma Park Free Burma list.

C.—The recipient of a City contract, award or purchase order shall certify to the City Clerk by a notarized statement that it is not knowingly or intentionally a firm on the Takoma Park Free Burma list.

D.—The City shall phase out the use of any products of a firm on the Takoma Park Free Burma list which it owns or possesses. Insofar as non-Burmese alternatives are not available, for the purpose of maintaining a product during its normal useful life and for the purpose of purchasing or leasing replacement parts, supplies and services for such products, subsections (A) and (B) of this section shall not apply.

E.—The City Council shall annually adopt a Takoma Park Free Burma list to guide the City, its officials, employees and agents in the implementation of subsections (A), (B) and (C) of this section. Prior to such adoption, the Takoma Park Free Burma Committee shall review and suggest any modifications to the Takoma Park Free Burma list. In the event the City Council fails to adopt a list, the prior list shall remain in full force and effect. The list shall not preclude application or enforcement of these provisions to or against any other firms with a direct investment or employees in Burma.

F.—Waivers.

1.—The provisions of subsections (A) and (B) of this section may be waived by resolution passed by a majority vote of the City Council, provided that:

a.—The City Council shall determine, after a diligent good-faith search, that a necessary good or service cannot reasonably be obtained from any source other than a firm on the Takoma Park Free Burma list;

b.—The City Administrator or his or her designee shall notify the Takoma Park Free Burma Committee of the City Council's intent to consider a waiver resolution 30 days prior to the formal consideration of such a resolution and that the Committee, upon receipt of such notice, shall provide the City Council with its considered advice; provided, however, that failure to provide such advice shall not prohibit the City Council from taking appropriate action after the 30-day notification period; and

c.—The City Council shall hold a public hearing prior to the passage of a waiver resolution and no sooner than 30 days after the notification to the Committee of the City Council's intent to consider such a resolution.

2.—The reasonableness of an alternative source shall be determined upon the consideration of the following factors:

a.—The intent and purpose of this chapter;

b.—Documented evidence establishing that the necessary good or service is vital to the health or safety of the residents or employees of the City, with the understanding that the absence of such evidence shall diminish the necessity for waiver;

c.—The recommendations of the City Administrator and the Takoma Park Free Burma Committee;

- d.—The availability of goods or services from a firm not on the Takoma Park Free Burma list reasonably meeting the specifications or requirements of the necessary good or service;
- e.—Quantifiable substantial additional costs that would result from the use of a good or service of a firm not on the Takoma Park Free Burma list, provided that this factor shall not become the sole consideration.

9.08.050 Exclusions.

A.—Nothing in this chapter shall be interpreted, construed or applied to prevent the City Council or the City Administrator or his or her designee of the City, from acting to remedy, ameliorate or prevent an emergency situation presenting a clear and present danger to the public health, safety and general welfare, as defined in Section 2-6.1 of this Code, provided that should any such emergency situation require the purchase of products or services from or entry into a contract with a firm on the Takoma Park Free Burma list, then the City Administrator or his or her designee shall notify the Chairperson or his or her designee of the Takoma Park Free Burma Committee within 3 working days of the City's actions.

B.—Nothing in this chapter shall be interpreted, construed or applied to supersede or bypass any procurement regulations, whether those regulations are legislative or administratively promulgated; provided, however, that no procurement regulations pertaining to the granting of any award, contract or purchase order shall alter or abrogate the intent or requirements of this chapter.

9.08.060 Violations and penalties—Other remedies.

A.—Any violation of this chapter shall be a Class B offense.

B.—Without limitation or election against any other available remedy, the City or any of its citizens of any other aggrieved party may apply to a court of competent jurisdiction for an injunction enjoining any violation of this chapter. The court shall award attorney's fees and costs to any party who succeeds in obtaining an injunction hereunder.

9.08.070 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

“City Administrator” means the City Administrator of the City of Takoma Park or any authorized representative of the City Administrator.

“City” or “City of Takoma Park” means the City of Takoma Park, or any entity or official agent acting under the direction of the City Council of the City of Takoma Park.

“Military regime in Burma” (also known as “Myanmar”) means any public or quasi-public entity sanctioned by the State Law and Order Restoration Council (known by the acronym “SLORC”) operating within Burma, including, but not limited to, municipal, provincial or other governing bodies operating as proxy of SLORC, including all departments and agencies of such bodies, public utilities, public facilities or any national corporation in which the public sector of Burma has a financial interest or operational responsibilities.

“Person” means any individual, firm, partnership, corporation, association or any other organization or entity, however formed.

“Professional services” means personal services of members of a licensed or otherwise recognized profession, including, but not limited to, accountants, architects, attorneys, auditors, engineers, medical practitioners, surveyors and the like.

“Services and goods” includes, but is not limited to any services, supplies, goods, vehicles, machinery or equipment.

“Takoma Park Free Burma List” shall be the most current list of all direct investment or employees in Burma as listed by the Investors Research Responsibility Center (IRRC).

9.08.080 Notification.

A. Upon adoption of this chapter, the City Council shall forward a true copy of this chapter to the President of the United States, the Secretary of State, Nobel Peace Prize Laureate Aung San Suu Kyi and the Secretary General of the United Nations and the Prime Minister of the National Coalition Government of the Union of Burma (NCGUB).

B. In addition, true copies of this chapter shall be sent to the Governor of the State of Maryland, to the United States Senators from Maryland, to the United States Representatives representing Takoma Park, to State Delegates and State Senators representing Takoma Park, to the County Executives of Montgomery and Prince George's Counties, and to the County Council members of the respective counties.

C. Finally, a true copy of this chapter shall be sent to the Ambassador of Burma (Myanmar) to the United States for conveyance to the military regime of Burma.

9.08.090 Takoma Park Free Burma Committee.

A. Within 60 days of the effective date of this chapter, the Council shall appoint a 7-person nonpartisan Takoma Park Free Burma Committee to oversee implementation of and adherence to this Act. At least one Committee member should be Burmese origin.

B. Persons appointed to the Committee shall serve 2-year terms, except that 3 of the initial appointees as designated by the City Council shall serve one-year terms. Terms shall begin on April 1st and expire on March 31st. The Committee shall appoint its own Chair and establish its own bylaws, both subject to approval by the City Council.

C. The Committee shall have the following duties and responsibilities:

1. The Committee may review any work within the City which it has reason to believe is not in compliance with this chapter. The Committee shall inform appropriate legal authorities of suspected violation of this chapter.

2. The Committee may review any existing City contracts, awards, purchase orders and investments and may review proposed contracts, awards, purchase orders and investments to assure compliance with Section 9.08.040 of this chapter. If the Committee finds any contracts, awards, purchase orders or investments in violation of this chapter, it shall, in conjunction with the City Administrator, make recommendations to the City Council regarding the existence of reasonable alternatives.

3. The Committee shall, through a collection of materials, newsletter articles, cable television programming, public forums and other means, provide public education and information on issues related to the intent and purpose of this chapter. In performing this task, the Committee shall cooperate with City staff and other interested community groups and individuals.

4. The Committee shall maintain a collection of current materials concerning the contemporary situation in Burma. From this information and from consultations with individuals and organizations involved in the debate regarding Burma, the Committee shall annually prepare and report to the City Council a list of firms with a direct investment or employees in Burma to guide the City, its officials, staff and agents in the implementation of Section 9.08.040 of this chapter.

5. Before a waiver of the provisions of Section 9.08.040 (A), (B) or (C) above pursuant to Section 9.08.040 (F) may be sought, the Committee, in conjunction with the City Administrator or his or her designee, shall conduct a diligent search to determine the availability of reasonable alternative sources for a necessary product or service, except, however, the City Administrator or his or her designee and/or the Committee's unwillingness or inability to conduct such a search shall not preclude actions by the City Council pursuant to Section 9.08.040 (F).

9.08.100 Contract stipulation.

A. Any person who enters into a contract with the City shall be required as a condition of such contract to certify that said person, and any of its parent or subsidiary entities does not provide

~~services, goods or professional services to the military regime in Burma. This certification shall be required until the City Council determines that the people of Burma have become self-governing.~~
~~B.—In making this determination, the City Council may consult, no less than 30 days in advance of making a determination that the people of Burma have become self-governing, with the representatives of the National Coalition Government of the Union of Burma (NCGUB), and the Free Burma Committee of Takoma Park, in addition to any other reliable persons the Council sees fit to contact.~~
~~C.—The provisions of this section shall apply to renewals of existing contracts, as well as to new contracts.~~

SECTION 2. Title 2 Administration, Chapter 2.16 Boards and Commissions is hereby amended to delete reference to the Free Burma Committee in the table of boards, commissions and committees found in Section 2.16.010.

Adopted this 26th day of March, 2012 roll-call vote as follows:

AYE:	Williams, Daniels-Cohen, Grimes, Male, Schultz, Seamens, Snipper
NAY:	None
ABSENT:	None
ABSTAIN:	None