SUBTITLE 25
PREVAILING WAGES FOR WORK UNDER CONSTRUCTION CONTRACTS

§ 25-1. Definitions.

(a) *Apprentice.*

(1) The term "apprentice" as used in this subtitle means a person at least 16 years of age who has entered into a written agreement with an employer or his agent, an association of employers, or an organization of employers, or a joint committee representing both, and which shall state the trade, craft, or occupation which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(2) All such apprenticeship agreements shall be approved by the Maryland Apprenticeship and Training Council, and certification of such approval shall be furnished to the Wage Commission.

(b) *Contractor.*

"Contractor", as used herein, shall mean the person, firm or corporation awarded a City contract.

(c) *Subcontractor.*

"Subcontractor", as used herein, shall mean any person, firm or corporation, other than the contractor, performing any work upon the site of the project, whether subcontractor or lower tier contractor.

(City Code, 1966, art. 1, §1(c); 1976/83, art. 1, §19(parts).) (Ord. 59-1960; Ord. 67-969; Ord.73-348.)

§ 25-2. Scope of subtitle.

Each and every contract in excess of $5,000 (hereinafter referred to the "the contract") made by the Board of Estimates (hereinafter referred to as "the City"), or on its behalf, with any person, firm or corporation for the construction, reconstruction, erection, conversion, installation, alteration, repair, maintenance, renovation, razing, demolition, moving, removing, grading, paving, repaving, curbing, filling, excavation, or any other operation or work to be done or performed in, on, upon, or in connection with any building, bridge, viaduct, tunnel, tower, stack, or other structure, airport, land, highway, pier, wharf, sewer, drain, main, conduit, machinery, or mechanical, electrical, or other equipment for said municipality shall contain the following provisions.

(City Code, 1950, art. 1, §14(intro par.); 1966, art. 1, §16(a); 1976/83, art. 1, §19(intro).) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 89-309.)

§ 25-3. Workday.

(a) *Regular work day.*

8 hours shall constitute a regular work day for every laborer, mechanic, and apprentice working directly upon the site of the work for any contractor or subcontractor engaged in the performance of the contract.

(b) *Overtime.*

All hours worked on Saturdays, Sundays and all hours worked in excess of 8 hours per day on Monday through Friday and all hours worked on such legal holidays as shall be designated by the Board of Estimates as overtime holidays constitute overtime hours.

(City Code, 1950, art. 1, §14(a), (b); 1966, art. 1, §16(b),(c); 1976/83, art. 1, §19(a).) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348.)

§ 25-4. Worker classifications.

Every such laborer, mechanic, and apprentice shall be properly classified according to his trade and skill into a classification specifically set forth in the contract, which classification has been established by the Board of Estimates as provided herein.

(City Code, 1976/83, art. 1, §19(b).) (Ord. 67-969; Ord. 73-348.)

§ 25-5. Prevailing wages - In general.

(a) *Payment required.*

(1) Every mechanic, laborer, and apprentice shall be paid not less often than once a week, and without subsequent deduction or rebate on any account (except payroll deductions as are directed or permitted by law, by a collective bargaining agreement, or by specific written authorization from an employee), the full amount due at the time of payment computed at wage rates not less than the prevailing hourly wage rate established by the Board of Estimates and set forth in the contract.

(2) No hourly employee, other than an apprentice, working directly upon the site of the work, may be paid less than the amount established for the lowest classification on the project.

(b) *Rates to be posted.*

(1) A copy of the prevailing hourly wage rates shall be kept posted by the contractor at the site of the work in a prominent place where it can be easily seen and read by the workers.

(2) If a copy of the prevailing hourly wage rates is not posted, the contractor shall forfeit and pay to the City a penalty in the amount of $20 per day for each day on which the copy is not posted. Each day's violation constitutes a separate offense.

(City Code, 1950, art. 1, §14(d); 1966, art. 1, §16(e); 1976/83, art. 1, §19(c)(1).) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 89-309; Ord. 08-085.)

§ 25-6. Prevailing wages - Overtime.

(a) *Payment required.*

The contractor and every subcontractor shall pay every such laborer, mechanic, or apprentice compensation at the overtime rates established by the Board of Estimates, which shall not be less than 1½ times the regular hourly rate of pay, for all hours worked in excess of 8 hours in any

work day, on a Saturday, Sunday or a legal holiday designated as an overtime holiday by the Board of Estimates.

(b) *How computed.*

No overtime hours, however, shall be compensated for more than once and overtime shall be paid only on the regular hourly rate of pay and not on the fringe benefits or their cash equivalents, provided for in § 25-17 of this subtitle.

(City Code, 1950, art. 1, §14(b); 1966, art. 1, §16(d); 1976/83, art. 1, §19(c)(2).) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 08-085.)

§ 25-7. Prevailing wages - Sanctions for underpayment.

(a) *$50 per day.*

In the event that any such laborer, mechanic, or apprentice shall be paid less than the compensation to which he shall be entitled hereunder, the contractor shall make restitution to such affected employee for the amount due, and shall forfeit and pay to the City a penalty in the amount of $50 per day for each employee so underpaid.

(b) *Exception.*

Provided, however, that no penalty shall be assessed for wage violations to any individual which amount to a total of less than $1 in any payroll period.

(c) *Each day a separate offense.*

Each day's violation shall constitute a separate offense.

(City Code, 1950, art. 1, §14(g); 1966, art. 1, §16(h); 1976/83, art. 1, §19(c)(3).) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 89-309; Ord. 08-085.)

§ 25-8. Prevailing wages - Workers' complaints.

(a) *In general.*

Any laborer, mechanic, or apprentice may within 1 year from the date of the incident file a protest in writing with the Wage Commission, objecting to the amount of wages paid for services performed by him on a public project as being less than the prevailing wages for such services.

(b) *Retaliation prohibited.*

(1) It is unlawful for any contractor or subcontractor to discharge, reduce the compensation of, or otherwise discriminate against any laborer, mechanic, or apprentice for making a complaint to the Wage Commission, participating in any of its proceedings, or availing himself or herself of any civil remedies.

(2) In such a case, the Wage Commission may, pursuant to similar procedures as provided in Article 11, Subtitle 1 of the Baltimore City Code, as amended, order appropriate restitution or the reinstatement of such employee with backpay to the date of violation.

(City Code, 1976/83, art. 1, §19(c)(4).) (Ord. 73-348; Ord. 04-672; Ord. 08-085.)

§ 25-9. Required records - In general.

(a) *Contractors to maintain.*

The contractor and each of his subcontractors shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of 3 years thereafter for all laborers, mechanics, and apprentices working directly upon the site of the work.

(b) *Contents.*

These records shall contain:

(1) the name and address of each such employee;

(2) his classification in accordance with the classifications fixed in the contract;

(3) a designation of laborer, mechanic, or apprentice;

(4) the number of hours worked each day;

(5) the hourly wage rate;

(6) the gross wages, deductions made, and actual wages paid;

(7) a copy of the Social Security returns and evidence of payment thereof;

(8) a record of fringe benefit payments including contributions to approved plans, funds, or programs and/or additional cash payments; and

(9) such other data as may be required by the Board of Estimates from time to time.

(City Code, 1950, art. 1, §14(e); 1966, art. 1, §16(f)(1st sen.); 1976/83, art. 1, §19(d)(1).) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 04-672.)

§ 25-10. Required records - Project payroll reports.

(a) *Contractor to submit.*

The contractor shall submit 2 complete copies of his weekly project payrolls and the weekly project payrolls of each of his subcontractors, consecutively numbered, not later than 14 days from the end of their respective payroll periods, 1 copy to be sent to the contracting agency, the other to the Wage Commission where the same will be available for public inspection during regular business hours.

(b) *Contents.*

The weekly project payrolls shall contain:

(1) the name of the prime contractor and the subcontractor, if any;

(2) a designation of the project and location;

(3) the name, Social Security Number, and occupation of each employee;

(4) his classification in accordance with the classifications fixed in the contract;

(5) a designation of laborer, mechanic, or apprentice;

(6) the number of hours worked daily by said employee at straight time and at overtime and his hourly wage rate for each;

(7) the gross wages paid to said employee per week; and

(8) such other data as may be required by the Board of Estimates from time to time.

(c) *Prime contractor responsible for subcontractors.*

The prime contractor shall be responsible for the submission of all subcontractors' payrolls covering work performed directly at the work site.

(d) *Signed statement of compliance.*

Each copy of the payroll shall be accompanied by a statement signed by the contractor or the subcontractor, as the case may be, indicating:

(1) that the payroll is correct;

(2) that the wage rates contained therein are not less than those established by the Board of Estimates as set forth in the contract;

(3) that the classification set forth for each laborer, mechanic, or apprentice conforms with the work he performed; and

(4) that the contractor and the subcontractor, as the case may be, has complied with the provisions of this subtitle.

(City Code, 1966, art. 1, §16(f)(2nd sen.) ; 1976/83, art. 1, §19(d)(2).) (Ord. 59-1960; Ord. 67-969; Ord. 73-348.)

§ 25-11. Required records - Delinquencies.

(a) *Payments may be withheld.*

If the contractor is delinquent in submitting his or any of his subcontractors' payrolls, processing of partial payment estimates may be held in abeyance pending receipt of the payrolls.

(b) *Fines.*

In addition, if the contractor is delinquent in submitting any payroll, the contractor shall forfeit and pay to the City a penalty of $10 for each calendar day that the weekly payroll is late.
(City Code, 1966, art. 1, §16(h); 1976/83, art. 1, §19(d)(3).) (Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 08-084.)

§ 25-12. Mechanics, apprentices, and laborers.

(a) *Mechanics and apprentices.*

(1) On any project which is operating under a contract pursuant to the provisions of this subtitle, only competent mechanics and their apprentices of the trades, crafts, and occupations involved shall be employed by the contractor and his subcontractors on the project, provided that for each such project, the ratio of mechanics to apprentices for each trade craft or occupation shall be as established by the Maryland Apprenticeship and Training Council in connection with an approved apprenticeship program.

(2) Provided, that whenever an apprentice is employed on any project which is operating under a contract pursuant to the provisions of this subtitle, the Wage Commission shall be notified of such employment.

(b) *Laborers.*

(1) Nothing in this subtitle prevents the employment of laborers to perform work not ordinarily performed by a skilled mechanic or his or her apprentice of the trade, craft, or may perform work ordinarily performed by a skilled mechanic or apprentice of the trade, craft, or occupation.

(2) Where a laborer performs the work ordinarily performed by any skilled mechanic or his or her apprentice, she or he shall be paid for the entire time she or he has performed that work at the prevailing hourly wage rate applicable to a skilled mechanic; and in the event of underpayment, restitution shall be made by the contractor to the employee and in addition, the contractor shall be subject to a penalty as set forth in this section.

(c) *Penalties.*

(1) If the contractor or subcontractor utilizes more apprentices than permitted under the ratio established under the provisions of this subtitle, the contractor shall forfeit and pay to the City a penalty in the amount of $20 per day per employee for each violation. Each day's violation shall constitute a separate offense.

(2) If the contractor or subcontractor pays an employee a laborer's wage rate when the employee is performing work ordinarily performed by a skilled mechanic or a skilled mechanic's apprentice, the contractor shall forfeit and pay to the City a penalty in the amount of $50 per day per employee for each violation. Each day's violation shall constitute a separate offense.

(City Code, 1966, art. 1, §1(a), (b); 1976/83, art. 1, §19(e).) (Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 89-309; Ord. 08-085.)

§ 25-13. Withholding payments.

(a) *For outstanding obligations.*

The City may withhold or cause to be withheld from the contractor so much of the accrued payments as may be considered necessary:

(1) to pay such laborers, mechanics, and apprentices employed by the contractor or any subcontractor the full amount of wages required by the provisions of this subtitle; and

(2) to satisfy any liability of any contractor or subcontractor for any penalties as provided herein.

(b) *For failure to post rates.*

The City may also withhold payments from any contractor who has failed to post and keep posted a copy of the regular hourly rates as required herein, until such default shall have been corrected.

(City Code, 1976/83, art. 1, §19(f).) (Ord. 67-969; Ord. 73-348.)

§ 25-14. Investigations.

(a) *Agency to report irregularity.*

It shall be the responsibility of the contracting agency to promptly examine all weekly project payrolls submitted by contractors and subcontractors working upon the job site for compliance with the provisions of this subtitle and the regulations promulgated in pursuance thereof and to report any irregularities to the Wage Commission.

(b) *Commission to investigate.*

(1) The Wage Commission shall cause investigations to be made as may be necessary to determine whether there has been compliance with the provisions of this subtitle and the regulations promulgated thereunder, and contained in the contract.

(2) The contractor and subcontractors shall permit representatives of the City to observe work being performed upon the work site, to interview employees, and to examine the books and records relating to the payrolls on the project being investigated to determine the correctness of classifications, ratios or apprentices to mechanics and any payment of proper regular and overtime rates as required.

(3) Complaints of alleged violations shall be investigated promptly and statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to his employer without the consent of the employee.

(c) *Subpoenas.*

(1) If necessary for the enforcement of this subtitle, the Wage Commission may issue subpoenas, compel the attendance and testimony of witnesses and the production of books, papers, records, and documents relating to payroll records necessary for hearings, investigations, and proceedings.

(2) Any such subpoena shall be served by the Sheriff of Baltimore City or any of his deputies.

(3) In case of disobedience to a subpoena, the Wage Commission may apply to a court of appropriate jurisdiction for an order requiring the attendance and testimony of witnesses and the production of books, papers, records, and documents. Said court, in case of contumacy or refusal to obey any such subpoena, after notice to the person subpoenaed, and upon finding that the attendance or testimony of such witnesses or the production of such books, papers, records and documents, as the case may be, is relevant or necessary for such hearings, investigations or proceedings of the Wage Commission, may issue an order requiring the attendance or testimony of such witnesses or the production of such books, papers, records and documents, and any failure to obey such order of court may be punishable by the court as contempt thereof.

(City Code, 1976/83, art. 1, §19(g)(1), (2).) (Ord. 67-969; Ord. 73-348.)

§ 25-15. Penalties.

(a) *Debarment for 1 year.*

If the Board of Estimates, upon recommendation from the Wage Commission after notice and hearing, determines that any contractor or subcontractor has failed to pay the prevailing wage rate or has otherwise violated the provisions of this subtitle and that the failure was intentional, no contract may be awarded to that contractor or subcontractor, or to any firm, corporation or partnership in which that contractor or subcontractor has an interest until 1 year has elapsed from the date of the determination.

(b) *Criminal penalties.*

(1) And provided, further, that any such intentional violation of the provisions of this subtitle shall be a misdemeanor, punishable upon conviction by a fine of not more than $500.

(2) Proceedings before the Wage Commission shall not be considered a precondition to criminal prosecution under this subtitle.

(City Code, 1950, art. 1, §14(g); 1966, art. 1, §16(h); 1976/83, art. 1, §19(g)(3).) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 08-085.)

§ 25-16. Schedules of prevailing wage rates.

(a) *Board of Estimates to adopt, review, and revise.*

(1) The Board of Estimates may adopt, establish, repeal, modify, change, or amend, from time to time, schedules of prevailing hourly wage rates to be paid to all classes of laborers, mechanics, or apprentices directly employed by any contractor or any subcontractor on the site in any of the various types of work or projects mentioned in or contemplated by this subtitle.

(2) These schedules of prevailing hourly wage rates shall be reviewed and revised by the Board of Estimates at least once every year to conform to the area prevailing hourly wage rates.

(b) *Basis of revision.*

(1) The revision may be based on recommendations by the prevailing wage section of the Wage Commission.

(2) The schedules of prevailing hourly wage rates, including overtime rates for all hours worked on Saturdays and Sundays, and all hours worked in excess of 8 hours per day on Monday through Friday, and all hours worked on legal holidays designated as overtime holidays by the Board of Estimates may not be less in amount than the general prevailing hourly wage rates being paid to laborers, mechanics, and apprentices for doing work of a similar character in the locality in which the project is located.

(3) These general prevailing hourly wage rates shall be determined by the Board of Estimates whose decision in the matter is final.

(c) *Authority of Board not restricted.*

Nothing in this Ordinance limits or restricts in any way the power and authority of the Board of Estimates to classify the type of work to be done for the Mayor and City Council of Baltimore and to establish schedules of prevailing hourly wage rates for these classifications.

(City Code, 1950, art. 1, §15; 1966, art. 1, §18; 1976/83, art. 1, §20.) (Ord. 45-225; Ord. 59-1960; Ord. 67-969; Ord. 73-348; Ord. 08-085.)

§ 25-17. "Prevailing" wage rates defined; obligation to pay.

(a) *Definitions.*

(1) In this subtitle,"prevailing hourly wage rate(s)" includes:

(i) the regular hourly rate of pay; and

(ii) the amount of:

(A) the rate of contribution irrevocably made by a contractor, subcontractor, or third person pursuant to a fund, plan, or program that provides for medical or hospital care, pensions on retirement or death, compensation for time lost

from work due to injuries or illness, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of these, for unemployment benefits, life insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by federal, state, or local law to provide any of these benefits; and

(B) the rate of costs to the contractor or subcontractor that may be incurred in providing the fringe benefits specified in subparagraph (A) to laborers, mechanics, and apprentices pursuant to an enforceable commitment to carry out a financially responsible plan or program that is communicated to the laborers, mechanics, and apprentices affected.

(2) The amount referred to in paragraph (1)(ii)(A) shall be determined by the Board of Estimates on the basis of those fringe benefits found to be generally prevailing for laborers, mechanics, and apprentices doing work of a similar character in the locality in which the project is located. The decision of the Board of Estimates is final.

(b) *Obligation to pay.*

The obligation of a contractor or subcontractor to make payment in accordance with the schedules of prevailing hourly wage rates established by the Board of Estimates and fixed in contracts under this subtitle may be discharged by making payments in cash, by making contributions of any type referred to in subsection (a)(1)(ii)(A), or by assuming a plan or program of a type referred to in subsection (a)(1)(ii)(B), or any combination of these, where the aggregate of the payments, contributions, and costs is not less than the rate of pay described in subsection (a)(1)(i) plus the amount referred to in subsection (a)(1)(ii).

(City Code, 1976/83, art. 1, §21.) (Ord. 67-969; Ord. 73-348; Ord. 08-085.)

§ 25-18. Board of Estimates to adjudicate and assess.

(a) *In general.*

The Board of Estimates is hereby authorized and empowered to make any and all rules and regulations from time to time, that may be necessary to effectuate the purpose of this subtitle, including, but not limited to, the authority to make a final determination as to the amount of restitution and the amount of liquidated damages to be assessed for violations of the provisions of this subtitle.

(b) *Private action not precluded.*

In no event shall such determination of restitution preclude an employee from instituting suit to recover any underpayments due him.

(City Code, 1950, art. 1, §16; 1966, art. 1, §19; 1976/83, art. 1, §22.) (Ord. 45-225; Ord. 67-969; Ord. 73-348.)

§ 25-19. Effect of federal law.

(a) *Agreements with federal government.*

In case of any conflict between any provision of this subtitle or any minimum wage rate or any rule or regulation established or adopted by the Board of Estimates under the authority of this subtitle, and any provision of, or minimum wage rate or rule or regulation established by, contained or provided in, or contemplated by, any agreement, and any papers forming a part thereof, between the Mayor and City Council of Baltimore and the federal government, or any agency thereof, then the provision or minimum wage rate or rule or regulation of such agreement shall control.

(b) *Suspension of Davis-Bacon Act.*

(1) In the event that the provisions of the Federal Davis-Bacon Act are suspended as authorized by § 6 of said Act then the Board of Estimates, during the period of such suspension of the Davis-Bacon Act, may suspend the application of the provisions of this subtitle with respect to any project upon which the United States Secretary of Labor would have been required to make a prevailing wage determination under said Davis-Bacon Act.

(2) Provided that if only a portion of a particular project requires a prevailing wage determination by the United States Secretary of Labor, the Board of Estimates may suspend the application of the provisions of this subtitle with respect to that portion only or with respect to the entire particular project in its discretion.

(3) Provided, however, that nothing herein contained shall be deemed to affect in any manner the provisions of this subtitle as they apply to non-federally funded projects.

(City Code, 1950, art. 1, §17; 1966, art. 1, §20; 1976/83, art. 1, §23.) (Ord. 45-225; Ord. 71-1020.)

§ 25-20. Existing contracts excepted.

Nothing contained herein shall in any manner affect or apply to any existing contract to which the Mayor and City Council of Baltimore is a party or to any contract that the Mayor and City Council of Baltimore may enter into pursuant to invitations for bids issued by the municipality prior to October 1, 1945.

(City Code, 1950, art. 1, §18; 1966, art. 1, §21; 1976/83, art. 1, §24.) (Ord. 45-225.)

§ 25-21. Inconsistent laws repealed.

Any and all laws or ordinances and any and all parts of any and all laws or ordinances in force in the City of Baltimore inconsistent with the provisions of this subtitle are hereby repealed to the extent of any such inconsistency.

(City Code, 1950, art. 1, §19; 1966, art. 1, §22; 1976/83, art. 1, §25.) (Ord. 45-225.)

§ 25-22. Severability.

In case it be judicially determined that any phrase, clause, sentence, paragraph, section or part in or of this subtitle, or the application thereof to any person or circumstance, is invalid, the remaining provisions and the application of such provisions to other persons or circumstances shall not be

affected thereby, the Mayor and City Council hereby declaring that they would have ordained the remaining provisions of this subtitle without the phrase, clause, sentence, paragraph, section or part, or the application thereof, so held invalid.

(City Code, 1950, art. 1, §20; 1966, art. 1, §23; 1976/83, art. 1, §26.) (Ord. 45-225.)

§ 25-23. Effect of repeal.

The repeal by this subtitle of any provision of law shall not revive any law heretofore repealed or superseded, nor shall any such repeal affect any act done, liability incurred, or any right accrued or vested, or affect, or abate, or prevent any right or penalty or punishment of any offense under the authority of such repealed laws.

(City Code, 1950, art. 1, §21; 1966, art. 1, §24; 1976/83, art. 1, §27.) (Ord. 45-225.)