§ 26-2. Scope of subtitle.

The provisions of this subtitle shall apply exclusively to service contracts and shall not be construed to conflict with Subtitle 25 of this article on Construction Contracts or any provisions on construction contracts as provided in this subtitle.
(City Code, 1976/83, art. 1, §26A(k).) (Ord. 94-442.)

§ 26-3. Workday.

8 hours shall constitute a regular work day for every individual working directly for any service contractor or subcontractor engaged in the performance of a service contract.
(City Code, 1976/83, art. 1, §26A(b).) (Ord. 94-442.)

§ 26-4. Worker classifications.

Employees of service contractors shall be classified as service workers or non-service workers as specifically set forth in the contract, pursuant to the classification schedule established by the Board of Estimates.
(City Code, 1976/83, art. 1, §26A(c).) (Ord. 94-442.)

§ 26-5. Living wages - In general.

(a) *Payment required.*

(1) Every service worker shall be paid not less often than biweekly, 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 living hourly wage rate established by the Board of Estimates and set forth in the service contract.

(2) A service worker may not be paid less than the amount established by the Board of Estimates for the living hourly wage rate for a service contract.

(b) *Rates to be posted.*

A copy of the living hourly wage rate for the service contract shall be kept posted by the service contractor at the site of the work in a prominent place where it can be easily seen and read by the service workers. At the request of a service worker, a copy shall be given to the service worker within a reasonable period after the request.
(City Code, 1976/83, art. 1, §26A(d)(1).) (Ord. 94-442; Ord. 08-085.)

§ 26-6. Living wages - Overtime.

(a) *Payment required.*

The service contractor shall pay the service worker compensation at the overtime rates established by the Board of Estimates, which shall not be less than 1½ times the regular hourly

SUBTITLE 26
LIVING WAGES FOR WORK UNDER SERVICE CONTRACTS

§ 26-1. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated unless the context clearly requires a different meaning.

(b) *Index.*

"Index" means the most recent available figure stated in the publication "Poverty in the United States", published by the Bureau of the Census and updated on an annual basis, which defines the national poverty level for a family of 4.

(c) *Living hourly wage rate.*

"Living hourly wage rate" means the rate established by the Board of Estimates under the formula set forth in § 26-16 of this subtitle, as the minimum hourly wage rate that must be paid a worker employed by a service contractor.

(d) *Person.*

"Person" means any individual, business entity, corporation, partnership, or joint venture.

(e) *Service contract.*

"Service contract" means a contract designated by the Board of Estimates on the recommendation of the City Purchasing Agent as a service contract that is awarded to a service contractor.

(f) *Service contractor.*

"Service contractor" means the person awarded a City service contract and includes all subcontractors of that person.

(g) *Service worker.*

"Service worker" means any non-professional employee of a service contractor, as defined by the Board of Estimates.

(City Code, 1976/83, art. 1, §26A(a).) (Ord. 94-442; Ord. 04-672; Ord. 08-085.)

rate of pay, for all hours worked in excess of 8 hours in any work day, or 40 hours in any work week.

(b) *How computed.*

Overtime hours, however, shall not 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, other personnel costs, or their cash equivalents.

(c) *Exemption for workers receiving commissions.*

(1) No service contractor shall be deemed to have violated subsection (a) of this section by employing any service worker for a workweek or workday in excess of the applicable workweek or workday specified therein, if:

(i) the service worker's regular rate of pay (hourly rate plus commission) is in excess of one and one-half times the living hourly wage rate established by the Board of Estimates, and

(ii) more than half the service worker's compensation for a representative period (not less than one month) represents commissions on goods or services.

(2) In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee (as those terms are used in the Federal Fair Labor Standards Act).

(City Code, 1976/83, art. 1, §26A(d)(2).) (Ord. 94-442; Ord. 08-085; Ord. 11-497.)

§ 26-7. Living wages - Sanctions for underpayment.

(a) *$50 per day.*

(1) In the event that any service worker is paid less than the compensation to which the service worker is entitled to under this subtitle, the service contractor shall make restitution to the service worker 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.

(2) Provided, however, that the penalty shall not be assessed for wage violations to any individual which amount to a total of less than $1 in any payroll period.

(3) Each day's violation shall constitute a separate offense.

(b) *Debarment for multiple offenders.*

On recommendation of the Wage Commission, when a service contractor has paid fines on more than 3 service contracts in a 2-year period, the Board of Estimates may prohibit a service contract vendor from participating in the bid process for up to 3 years.

(City Code, 1976/83, art. 1, §26A(d)(3), (4).) (Ord. 94-442.)

§ 26-8. Living wages - Workers' complaints.

(a) *In general.*

Within 1 year from the date of the incident, any service worker may file a protest in writing with the Wage Commission, objecting to the wages paid for services performed by the service worker on a service contract as being less than the living hourly wage rate for those services.

(b) *Retaliation prohibited.*

(1) A service contractor shall not discharge, reduce the compensation of, or otherwise discriminate against any service worker for making a complaint to the Wage Commission, participating in any of its proceedings, or using any civil remedies.

(2) In such a case, the Wage Commission may, pursuant to similar procedures as provided in Article 11, Subtitle 4 of the Baltimore City Code, as amended, order appropriate restitution and the reinstatement of such employee with back pay to the date of violation.

(City Code, 1976/83, art. 1, §26A(d)(5).) (Ord. 94-442; Ord. 04-672; Ord. 08-085.)

§ 26-9. Required records - In general.

(a) *Contractors to maintain.*

The service contractor 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 service workers working directly upon the service contract.

(b) *Contents.*

The records shall contain:

(1) the name and address of each service worker;

(2) the service worker's classification in accordance with the classifications fixed in the contract;

(3) the number of hours worked each day;

(4) the applicable living hourly wage rate;

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

(6) a copy of the Social Security returns and evidence of their payment;

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

(8) any other data that the Board of Estimates requires from time to time.

(City Code, 1976/83, art. 1, §26A(e)(1).) (Ord. 94-442; Ord. 04-672; Ord. 08-085.)

§ 26-10. Required records - Project payroll reports.

(a) *Contractor to submit.*

The service contractor shall submit 2 complete copies of the project payrolls and the project payrolls of each subcontractor, 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 project payrolls shall contain:

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

(2) a designation of the project and location;

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

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

(5) the number of hours worked daily by the service worker at straight time and at overtime and the hourly wage rate for each;

(6) the gross wages paid to the service worker per pay period; and

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

(c) *Prime contractor responsible for subcontractors.*

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

(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 service worker conforms with the work that the service worker performed; and

(4) that the service contractor has complied with the provisions of this subtitle.

(City Code, 1976/83, art. 1, §26A(e)(2).) (Ord. 94-442.)

§ 26-11. Required records - Delinquencies.

(a) *Payments may be withheld.*

If the service contractor is delinquent in submitting any 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 payroll is late.

(City Code, 1976/83, art. 1, §26A(e)(3).) (Ord. 94-442; Ord. 08-084.)

§ 26-12. ***{Reserved}***

§ 26-13. Withholding payments.

(a) *For outstanding obligations.*

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

(1) pay the service workers employed by the service contractor the full amount of wages required by the provisions of this subtitle; and

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

(b) *For failure to post rates.*

The City may also withhold payments from any service contractor who has failed to post and keep posted a copy of the living hourly wage rate, as required by this subtitle, until the default has been corrected.

(City Code, 1976/83, art. 1, §26A(f).) (Ord. 94-442; Ord. 08-085.)

§ 26-14. Investigations.

(a) *Agency to report irregularity.*

It shall be the responsibility of the contracting agency to promptly examine all weekly project payrolls submitted by service contractors working on a service contract 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 service contractor shall permit representatives of the City to observe work being performed upon the work site, to interview service workers, and to examine the books and records relating to the payrolls on the project being investigated to determine the correctness of classifications 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 a service worker shall be treated as confidential and shall not be disclosed to the service contractor without the consent of the service worker.

(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.

(3) In case of disobedience to 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 of 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 order of court may be punishable by the court as contempt thereof.

(City Code, 1976/83, art. 1, §26A(g)(1), (2).) (Ord. 94-442.)

§ 26-15. Penalties.

(a) *Debarment for 1 year.*

If the Board of Estimates, upon recommendation from the Wage Commission after notice and hearing, determines that any service contractor has failed to pay the living wage rate or has otherwise violated the provisions of this subtitle and that the failure was intentional, no contract may be awarded to that service contractor, or to any person in which that service contractor 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, 1976/83, art. 1, §26A(g)(3).) (Ord. 94-442; Ord. 08-085.)

§ 26-16. Establishment of living wage.

(a) *In general.*

The living hourly wage rate shall be as established by Resolution of the Board of Estimates.

(b) *Annual revision.*

(1) By December 15 of each year, the Wage Commission shall recommend to the Board of Estimates a revised living hourly wage rate for the next fiscal year.

(2) This rate shall be based upon the Index and other factors the Commission is authorized to consider.

(c) *Goals.*

The ongoing goal is to achieve a rate that exceeds the poverty level, as defined in the Index.
(City Code, 1976/83, art. 1, §26A(h).) (Ord. 94-442; Ord. 08-085.)

§ 26-17. Goal of 40-hour work week.

As a matter of policy it is a continuing goal to submit bids based on a 40-hour work week for service workers.
(City Code, 1976/83, art. 1, §26A(i).) (Ord. 94-442.)

§ 26-18. Manner of administration.

The Board of Estimates and the Wage Commission shall administer and enforce the provisions of this subtitle in the same manner that the Board of Estimates and the Wage Commission administer and enforce the provisions of Subtitle 25 of this article on Construction Contracts.
(City Code, 1976/83, art. 1, §26A(j).) (Ord. 94-442.)