

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 08-0146

Introduced by: The Council President
At the request of: The Administration (Wage Commission)
Introduced and read first time: July 21, 2008
Assigned to: Taxation, Finance and Economic Development Committee

Committee Report: Favorable
Council action: Adopted
Read second time: October 6, 2008

AN ORDINANCE CONCERNING

1 Prevailing Wages for Work Under Construction Contracts –
2 Living Wages for Work Under Service Contracts

3 FOR the purpose of clarifying and distinguishing the nomenclature used for the minimum wages
4 to be paid workers under a construction contract and those to be paid workers under a service
5 contract; deleting certain obsolete language; and correcting, clarifying, and conforming
6 related provisions.

7 BY repealing and reordaining, with amendments
8 Article 5 - Finance, Property, and Procurement
9 Section(s) 25-5, 25-12(b), 25-15(a), 25-16, 25-17, 26-1,
10 26-5, 26-8(a), 26-9(b), 26-13(b), 26-15(a), and 26-16
11 Baltimore City Code
12 (Edition 2000)

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

Baltimore City Code

Article 5. Finance, Property, and Procurement

17 Subtitle 25. [Hours and Wages -]
18 PREVAILING WAGES FOR WORK UNDER Construction Contracts

19 **§ 25-5. [Minimum] PREVAILING wages - In general.**

20 (a) *Payment required.*

21 (1) Every [such] mechanic, laborer, and apprentice shall be paid not less often than once
22 a week, and without subsequent deduction or rebate on any account (except [such]
23 payroll deductions as are directed or permitted by law, by a collective bargaining
24 agreement, or by specific written authorization from an employee), the full amount

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.

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1 due at the time of payment computed at wage rates not less than the [minimum]
2 PREVAILING hourly wage rate established by the Board of Estimates and set forth in
3 the contract.

4 (2) No hourly employee, other than an apprentice, working directly upon the site of the
5 work, [shall] MAY be paid less than the amount established for the lowest
6 classification on the [said] project.

7 (b) *Rates to be posted.*

8 (1) A copy of [such minimum] THE PREVAILING hourly wage rates shall be kept posted by
9 the contractor at the site of the work in a prominent place where it can be easily seen
10 and read by the workers.

11 (2) [In the event] IF a copy of [such minimum] THE PREVAILING hourly wage rates is not
12 posted, the contractor shall forfeit and pay to the City a penalty in the amount of \$20
13 per day for each day on which the copy is not posted. Each day's violation [shall
14 constitute] CONSTITUTES a separate offense.

15 **{§ 25-6. [Minimum] PREVAILING wages - Overtime.}**

16 **{§ 25-7. [Minimum] PREVAILING wages - Sanctions for underpayment.}**

17 **{§ 25-8. [Minimum] PREVAILING wages - Workers' complaints.}**

18 **§ 25-12. Mechanics, apprentices, and laborers.**

19 (b) *Laborers.*

20 (1) Nothing in this subtitle [shall prevent] PREVENTS the employment of laborers to
21 perform work not ordinarily performed by a skilled mechanic or his OR HER
22 apprentice of the trade, craft, or occupation, but no person receiving the rate of pay
23 [which] THAT is the prevailing rate for laborers [shall] MAY perform work ordinarily
24 performed by [any such] A skilled mechanic or apprentice of [such] THE trade, craft,
25 or occupation.

26 (2) Where a laborer performs the work ordinarily performed by any skilled mechanic or
27 his OR HER apprentice, SHE OR he shall be paid for the entire time SHE OR he has
28 performed [such] THAT work at the [minimum] PREVAILING hourly wage rate
29 applicable to a skilled mechanic; and in the event of [such] underpayment, restitution
30 shall be made by the contractor to [said] THE employee and in addition, the contractor
31 shall be subject to a penalty as [hereinafter] set forth IN THIS SECTION.

32 **§ 25-15. Penalties.**

33 (a) *Debarment for 1 year.*

34 [In the event] IF the Board of Estimates [shall determine], upon recommendation from the
35 Wage Commission after notice and hearing, DETERMINES that any contractor or
36 subcontractor has failed to pay the [minimum] PREVAILING wage rate or has otherwise
37 violated the provisions of this subtitle and that [such] THE failure was intentional, no
38 contract [shall] MAY be awarded to [such] THAT contractor or subcontractor, or to any

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1 firm, corporation, or partnership in which [such] THAT contractor or subcontractor has an
2 interest until 1 year has elapsed from the date of [such] THE determination.

3 **§ 25-16. Schedules of [minimum] PREVAILING wage rates.**

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

5 (1) The Board of Estimates [is hereby authorized and empowered to] MAY adopt,
6 establish, repeal, modify, change, or amend, from time to time, schedules of
7 [minimum] PREVAILING hourly wage rates to be paid to [any and] all classes of
8 laborers, mechanics, or apprentices directly employed by any contractor or any
9 subcontractor on the site in any of the various types of work or projects mentioned
10 in[,] or contemplated by[,] this subtitle.

11 (2) [Provided, however, that the] THESE schedules of [minimum] PREVAILING hourly
12 wage rates [so established] shall be reviewed and revised by the Board of Estimates at
13 least once every year to conform to the area prevailing hourly wage rates.

14 (b) *Basis of revision.*

15 (1) [Such] THE revision may be based [upon] ON recommendations by the prevailing
16 wage section of the Wage Commission.

17 (2) [Such] THE schedules of [minimum] PREVAILING hourly wage rates, including
18 overtime rates for all hours worked on Saturdays[,] AND Sundays, and all hours
19 worked in excess of 8 hours per day on Monday through Friday and all hours worked
20 on legal holidays designated as overtime holidays by the Board of Estimates, [shall]
21 MAY not be less in amount than the general prevailing hourly wage rates being paid to
22 laborers, mechanics, and apprentices for doing work of a similar character in the
23 locality in which the project is located.

24 (3) [And such] THESE general prevailing hourly wage rates shall be determined by the
25 Board of Estimates, whose decision in the matter [shall be] IS final.

26 (c) *Authority of Board not restricted.*

27 Nothing in this Ordinance [shall be construed to limit] LIMITS or [restrict] RESTRICTS in
28 any way the power and authority of the Board of Estimates to classify the type of work to
29 be done for the Mayor and City Council of Baltimore and to establish schedules of
30 [minimum] PREVAILING hourly wage rates for [such] THESE classifications[, established
31 by the Board of Estimates].

32 **§ 25-17. [“Minimum” and “prevailing”] “PREVAILING” wage rates defined; obligation to**
33 **pay.**

34 (a) *Definitions.*

35 (1) [As used in] IN this subtitle, [the terms “minimum hourly wage rate(s)” and]
36 “prevailing hourly wage rate(s)” [shall include] INCLUDES:

37 (i) the regular hourly rate of pay; and

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1 (ii) the amount of:

2 (A) the rate of contribution irrevocably made by a contractor,
3 subcontractor, or third person pursuant to a fund, plan, or program
4 [which] THAT provides for medical or hospital care, pensions on
5 retirement or death, compensation for time lost from work due to
6 injuries or illness, compensation for injuries or illness resulting from
7 occupational activity, or insurance to provide any of [the foregoing]
8 THESE, for unemployment benefits, life insurance, or accident
9 insurance, for vacation and holiday pay, for defraying costs of
10 apprenticeship or other similar programs, or for other bona fide fringe
11 benefits, but only where the contractor or subcontractor is not required
12 by federal, state, or local law to provide any of [the foregoing] THESE
13 benefits; and

14 (B) the rate of costs to the contractor or subcontractor [which] THAT may
15 be incurred in providing the fringe benefits specified in subparagraph
16 (A) to laborers, mechanics, and apprentices pursuant to an enforceable
17 commitment to carry out a financially responsible plan or program
18 [which] THAT is communicated to the laborers, mechanics, and
19 apprentices affected.

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

25 (b) *Obligation to pay.*

26 [And provided further, that the] THE obligation of a contractor or subcontractor to make
27 payment in accordance with the schedules of [minimum] PREVAILING hourly wage rates
28 established by the Board of Estimates and fixed in contracts [pursuant to] UNDER this
29 subtitle may be discharged by [the] making [of]payments in cash, by [the] making of
30 contributions of any type referred to in subsection (a)(1)(ii)(A), or by [the assumption of]
31 ASSUMING a plan or program of a type referred to in subsection (a)(1)(ii)(B), or any
32 combination [thereof] OF THESE, where the aggregate of [any such] THE payments,
33 contributions, and costs is not less than the rate of pay described in subsection (a)(1)(i)
34 plus the amount referred to in subsection (a)(1)(ii).

35 **Subtitle 26. [Hours and Wages -]**
36 **LIVING WAGES FOR WORK UNDER Service Contracts**

37 **§ 26-1. Definitions.**

38 (a) *In general.*

39 [As used in] IN this subtitle, the following terms have the meanings indicated unless the
40 context clearly requires a different meaning.

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1 (b) *Index.*

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

5 (c) *LIVING HOURLY WAGE RATE.*

6 “LIVING HOURLY WAGE RATE” MEANS THE RATE ESTABLISHED BY THE BOARD OF
7 ESTIMATES UNDER THE FORMULA SET FORTH IN § 26-16 OF THIS SUBTITLE, AS THE
8 MINIMUM HOURLY WAGE RATE THAT MUST BE PAID A WORKER EMPLOYED BY A SERVICE
9 CONTRACTOR.

10 (D) [(c)] *Person.*

11 “Person” means any individual, business entity, corporation, partnership, or joint venture.

12 [(d)] *Prevailing rate.*

13 “Prevailing minimum hourly wage rate” means the rate established by the Board of
14 Estimates as the minimum hourly wage rate that shall be paid a worker employed by a
15 service contractor and professional services contractor pursuant to the formula set forth in
16 § 26-16 of this subtitle.]

17 (e) *Service contract.*

18 “Service contract” means a contract designated by the Board of Estimates, on the
19 recommendation of the City Purchasing Agent, as a service contract that is awarded to a
20 service contractor.

21 (f) *Service contractor.*

22 “Service contractor” means the person awarded a City service contract and includes all
23 subcontractors of [service contractors] THAT PERSON.

24 (g) *Service worker.*

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

27 **§ 26-5. [Prevailing] LIVING wages - In general.**

28 (a) *Payment required.*

29 (1) Every service worker shall be paid not less often than biweekly, and without
30 subsequent deduction or rebate on any account (except [such] payroll deductions as
31 are directed or permitted by law, by a collective bargaining agreement, or by specific
32 written authorization from an employee), the full amount due at the time of payment
33 computed at wage rates not less than the [prevailing minimum] LIVING hourly wage
34 rate established by the Board of Estimates and set forth in the service contract.

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1 (2) A service worker [shall] MAY not be paid less than the amount established by the
2 Board of Estimates for the [prevailing minimum] LIVING hourly wage rate for a
3 service contract.

4 (b) *Rates to be posted.*

5 A copy of the [prevailing minimum] LIVING hourly wage rate for the service contract
6 shall be kept posted by the service contractor at the site of the work in a prominent place
7 where it can be easily seen and read by the service workers[, and]. [it shall be supplied
8 to the service worker at] AT the request of [the] A service worker, A COPY SHALL BE
9 GIVEN TO THE SERVICE WORKER within a reasonable period [of time] after the request.

10 **{§ 26-6. [Prevailing] LIVING wages - Overtime.**

11 **{§ 26-7. [Prevailing] LIVING wages - Sanctions for underpayment.}**

12 **§ 26-8. [Prevailing] LIVING wages - Workers' complaints.**

13 (a) *In general.*

14 [Any service worker may within] WITHIN 1 year from the date of the incident, ANY
15 SERVICE WORKER MAY file a protest in writing with the Wage Commission, objecting to
16 the [amount of] wages paid for services performed by the service worker on a service
17 contract as being less than the [prevailing minimum] LIVING hourly wage rate for [such]
18 THOSE services.

19 **§ 26-9. Required records - in general.**

20 (b) *Contents.*

21 The records shall contain:

- 22 (1) the name and address of each service worker;
- 23 (2) the service worker's classification in accordance with the classifications fixed in
24 the contract;
- 25 (3) the number of hours worked each day;
- 26 (4) the [prevailing minimum] APPLICABLE LIVING hourly wage rate;
- 27 (5) the gross wages, deductions made, and actual wages paid;
- 28 (6) a copy of the Social Security returns and evidence of THEIR payment [thereof;]
- 29 (7) a record of fringe benefit payments, including contributions to approved plans,
30 funds, or programs and[/or] ANY additional cash payments; and
- 31 (8) [such] ANY other data [as may be required by] THAT the Board of Estimates
32 REQUIRES from time to time.

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1 § 26-13. Withholding payments.

2 (b) *For failure to post rates.*

3 The City may also withhold payments from any service contractor who has failed to post
4 and keep posted a copy of the [prevailing minimum] LIVING hourly wage rate, as required
5 [herein] BY THIS SUBTITLE, until [such] THE default [shall have] HAS been corrected.

6 § 26-15. Penalties.

7 (a) *Debarment for 1 year.*

8 [In the event] If the Board of Estimates [shall determine], upon recommendation from the
9 Wage Commission after notice and hearing, DETERMINES that any service contractor has
10 failed to pay the [minimum] LIVING wage rate or has otherwise violated the provisions of
11 this subtitle and that [such] THE failure was intentional, no contract [shall] MAY be
12 awarded to [such] THAT service contractor, or to any person in which [such] THAT service
13 contractor has an interest until 1 year has elapsed from the date of [such] THE
14 determination.

15 § 26-16. Establishment of [prevailing] LIVING wage.

16 (a) *[Initial rate] IN GENERAL.*

17 [Effective July 1, 1995, the initial prevailing minimum] THE LIVING hourly wage rate
18 shall be AS established by Resolution of the Board of Estimates.

19 (b) *Annual revision.*

20 (1) By December 15[, 1995, and] OF each year [thereafter by that date], the Wage
21 Commission shall recommend to the Board of Estimates a revised [prevailing
22 minimum] LIVING hourly wage rate for the next fiscal year.

23 (2) This rate shall be based upon the Index and other [such] factors [as] the Commission
24 is authorized to consider.

25 (c) *Goals.*

26 [(1)] The ongoing goal is to achieve a rate [which] THAT exceeds the poverty level, as
27 defined in the Index.

28 [(2)] For the first 4 years of the effective date of this subtitle, the City's goal is to phase in
29 an hourly wage rate of \$7.70 by Fiscal Year 1999, using the following timetable:]

[Fiscal Year	Wage Rate
1996	\$6.10
1997	\$6.60
1998	\$7.10
1999	\$7.70]

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

4 **SECTION 3. AND BE IT FURTHER ORDAINED**, That this Ordinance takes effect on the 30th day
5 after the date it is enacted.

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