

ARTICLE 5
FINANCE, PROPERTY, AND PROCUREMENT

(As Last Amended by Ord. 17-068)

Published by
BALTIMORE CITY DEPARTMENT OF LEGISLATIVE REFERENCE
Avery Aisenstark, Director
2017

Copyright © 2017
The Mayor and City Council of Baltimore
Department of Legislative Reference
All rights reserved

For information – call, write, or fax:

Department of Legislative Reference
626 City Hall
Baltimore, Maryland 21202
Tel: (410) 396-4730 • Fax: (410) 396-8483

TABLE OF SUBTITLES

- Subtitle 1. City Comptroller
- Subtitle 2. Director of Finance
- Subtitle 3. Deposit of City Funds
- Subtitle 4. Stocks and Certificates of Indebtedness
- Subtitle 5. Investments
- Subtitle 6. Social Services Expenditures
- Subtitle 7. Human Services Expenditures
- Subtitle 8. Special Funds
- Subtitle 9. *{Reserved}*
- Subtitle 10. Property Insurance
- Subtitle 11. *{Repealed}*
- Subtitle 12. Comprehensive Insurance and Risk Management Program
- Subtitle 13. Self-Insurance Program for Commodity, Service, and Construction
- Subtitle 14. *{Reserved}*
- Subtitle 15. *{Reserved}*
- Subtitle 16. Records and Inventory of Real Property
- Subtitle 17. Real Property Acquisition
- Subtitle 18. Condemnation Notice and Hearing
- Subtitle 19. Real Estate Appraisals
- Subtitle 20. Naming City Property
- Subtitle 20A. Demolition of City Property
- Subtitle 21. Public Art
- Subtitle 22. *{Reserved}*
- Subtitle 23. *{Reserved}*
- Subtitle 24. Contract Bonding Requirements
- Subtitle 25. Prevailing Wages for Work Under Construction Contracts
- Subtitle 26. Living Wages for Work Under Service Contracts
- Subtitle 27. Local Hiring
- Subtitle 28. Minority and Women’s Business Enterprises; Small Local Business Enterprises
- Subtitle 29. Commercial Non-Discrimination Policy
- Subtitle 30. Health Care Services Providers
- Subtitle 31. Health Care Advisory Panel
- Subtitle 32. Purchase of Foodstuffs
- Subtitle 33. Purchase of Recycled Products
- Subtitle 34. Commission on Sustainability
- Subtitle 35. American Preference for Vehicle Procurement
- Subtitle 36. Purchase Orders
- Subtitle 37. Payment of City Obligations
- Subtitle 38. Vendors’ Hot Line
- Subtitle 39. *{Reserved}*
- Subtitle 40. Debarment from City Contracts
- Subtitle 41. Prohibited Contracts
- Subtitle 42. *{Reserved}*
- Subtitle 43. *{Reserved}*
- Subtitle 44. Tangible Personal Property
- Subtitle 45. Energy Costs
- Subtitle 46. *{Reserved}*
- Subtitle 47. Miscellaneous Contract Provisions
- Subtitle 48. Miscellaneous Fees

TABLE OF SECTIONS

SUBTITLE 1 CITY COMPTROLLER

- § 1-1. Oath of office.
- § 1-2. Deputy Comptroller.

SUBTITLE 2 DIRECTOR OF FINANCE

- § 2-1. Surety bond.
- § 2-2. Deputy Director.

SUBTITLE 3 DEPOSIT OF CITY FUNDS

- § 3-1. Required deposit and accounting.
- § 3-2. Agreements with custodians.
- § 3-3. Petty cash checking account.

SUBTITLE 4 STOCKS AND CERTIFICATES OF INDEBTEDNESS

- § 4-1. Records required.
- § 4-2. Lost certificates - publication.
- § 4-3. Lost certificates - bond.
- § 4-4. Faith and credit of City.
- § 4-5. Sinking fund investments.
- § 4-6. Consolidation of certificates.
- § 4-7. Duties of Board Clerk.

SUBTITLE 5 INVESTMENTS

- § 5-1. Rules, regulations, guidelines for investments.
- § 5-2. Local government investment policy.

SUBTITLE 6 SOCIAL SERVICES EXPENDITURES

- § 6-1. Payments to Social Services Director.
- § 6-2. Deposit of funds.
- § 6-3. Withdrawal of funds.
- § 6-4. Surety bond.

SUBTITLE 7 HUMAN SERVICES EXPENDITURES

- § 7-1. Payments to Executive Deputy Commissioner.
- § 7-2. Deposit of funds.
- § 7-3. Withdrawal of funds.
- § 7-4. Surety bond.

SUBTITLE 8 SPECIAL FUNDS

- § 8-1. Public School Construction and Renovation.

SUBTITLE 9 {RESERVED}

SUBTITLE 10 PROPERTY INSURANCE

- § 10-1. Insurance claims.
- § 10-2. Purchase of insurance.
- § 10-3. City Property Insurance Fund - uses; appropriations.
- § 10-4. City Property Insurance Fund - investments.
- § 10-5. Restoration of damaged property.

SUBTITLE 11 {REPEALED}

SUBTITLE 12 COMPREHENSIVE INSURANCE AND RISK MANAGEMENT PROGRAM

- § 12-1. Legislative findings; losses covered.
- § 12-2. Creation of Fund; funding.
- § 12-3. Committee on Insurance and Risk Mgmt.
- § 12-4. Disbursement of funds.
- § 12-5. Investment of funds.
- § 12-6. Administration of Fund.

SUBTITLE 13 SELF-INSURANCE PROGRAM FOR COMMODITY, SERVICE, AND CONSTRUCTION CONTRACTS

- § 13-1. Definitions.
- § 13-2. Program established.
- § 13-3. Liability Reserve Fund - established.
- § 13-4. Liability Reserve Fund - when to be used.
- § 13-5. Payment under Program not waiver of remedies.
- § 13-6. Investments; annual statement.
- § 13-7. Annual report.

SUBTITLE 14 TO 15 {RESERVED}

SUBTITLE 16 RECORDS AND INVENTORY OF REAL PROPERTY

- § 16-1. Record of conveyances and contracts.
- § 16-2. Comprehensive inventory required.

FINANCE AND PROCUREMENT

**SUBTITLE 17
REAL PROPERTY ACQUISITION**

- § 17-1. Real Estate Dep't or designee of Brd of Estimates.
- § 17-2. Negotiations confirmed.
- § 17-3. Effect of subtitle.

**SUBTITLE 18
CONDEMNATION NOTICE AND HEARING**

- § 18-1. User agency to list properties.
- § 18-2. DoT to notify owners.
- § 18-3. Hearing.

**SUBTITLE 19
REAL ESTATE APPRAISALS**

- § 19-1. Certified or licensed appraiser required.

**SUBTITLE 20
NAMING CITY PROPERTY**

- § 20-1. Definitions.
- § 20-2. Ordinance required for naming.
- § 20-3. Inventories of property.
- § 20-4. Subtitle inapplicable to streets.

**SUBTITLE 20A
DEMOLITION OF CITY PROPERTY**

- § 20A-1. Definitions.
- § 20A-2. Exclusions from subtitle.
- § 20A-3. Notice to City Council.
- § 20A-4. Council action on proposed ordinance.

**SUBTITLE 21
PUBLIC ART**

Part I. General Provisions

- § 21-1. Findings; purpose.
- § 21-2. Definitions.
- §§ 21-3 to 21-5. *{Reserved}*

Part II. Public Art Commission

- § 21-6. Commission established.
- § 21-7. Composition.
- § 21-8. Compensation and expenses; staff.
- § 21-9. General functions and duties.
- § 21-10. Rules and regulations.
- § 21-11. Agency liaisons.
- §§ 21-12 to 21-15. *{Reserved}*

Part III. Artwork Allocation

- § 21-16. Amount required.
- § 21-17. Grant and other funding requests.
- § 21-18. Preliminary determinations.
- § 21-19. Incorporation into contract specifications.
- § 21-20. Allocation of funds.
- §§ 21-21 to 21-25. *{Reserved}*

Part IV. Artwork for Project

- § 21-26. Scope of Part.
- § 21-27. Preparation of proposal.
- § 21-28. Commission review and action.
- § 21-29. Disposition of artwork allocation.
- § 21-30. *{Reserved}*

Part V. Public Art Uses

- § 21-31. Commission to determine.
- § 21-32. Priorities.
- § 21-33. Authorized uses.

**SUBTITLES 22 TO 23
*{RESERVED}***

**SUBTITLE 24
CONTRACT BONDING REQUIREMENTS**

- § 24-1. Surety bonds generally.
- § 24-2. Bid bonds.
- § 24-3. Performance bonds.
- § 24-4. Letters of credit for certain school contracts.

**SUBTITLE 25
PREVAILING WAGES FOR WORK UNDER
CONSTRUCTION CONTRACTS**

- § 25-1. Definitions.
- § 25-2. Scope of subtitle.
- § 25-3. Workday.
- § 25-4. Worker classifications.
- § 25-5. Prevailing wages - In general.
- § 25-6. Prevailing wages - Overtime.
- § 25-7. Prevailing wages - Sanctions for underpayment.
- § 25-8. Prevailing wages - Workers' complaints.
- § 25-9. Required records - In general.
- § 25-10. Required records - Project payroll reports.
- § 25-11. Required records - Delinquencies.
- § 25-12. Mechanics, apprentices, laborers.
- § 25-13. Withholding payments.
- § 25-14. Investigations.
- § 25-15. Penalties.
- § 25-16. Schedules of prevailing wage rates.
- § 25-17. "Prevailing" wage rates defined; obligation to pay.

BALTIMORE CITY CODE

- § 25-18. Board of Estimates to adjudicate and assess.
- § 25-19. Effect of federal law.
- § 25-20. Existing contracts excepted.
- § 25-21. Inconsistent laws repealed.
- § 25-22. Severability.
- § 25-23. Effect of repeal.

**SUBTITLE 26
LIVING WAGES FOR WORK UNDER
SERVICE CONTRACTS**

- § 26-1. Definitions.
- § 26-2. Scope of subtitle.
- § 26-3. Workday.
- § 26-4. Worker classifications.
- § 26-5. Living wages - In general.
- § 26-6. Living wages - Overtime.
- § 26-7. Living wages - Sanctions for underpayment.
- § 26-8. Living wages - Workers' complaints.
- § 26-9. Required records - In general.
- § 26-10. Required records - Project payroll reports.
- § 26-11. Required records - Delinquencies.
- § 26-12. *{Reserved}*
- § 26-13. Withholding payments.
- § 26-14. Investigations.
- § 26-15. Penalties.
- § 26-16. Establishment of living wage.
- § 26-17. Goal of 40-hour work week.
- § 26-18. Manner of administration.

**SUBTITLE 27
LOCAL HIRING**

- § 27-1. Definitions.
- § 27-2. Scope of subtitle.
- § 27-3. *{Reserved}*
- § 27-4. Employment analysis.
- § 27-5. Initial hiring through MOED.
- § 27-6. New employees to be City residents.
- § 27-7. Rules and regulations.
- § 27-8. Required reports.
- § 27-9. *{Reserved}*
- § 27-10. Penalties.

**SUBTITLE 28
MINORITY AND WOMEN'S BUSINESS ENTERPRISES;
SMALL LOCAL BUSINESS ENTERPRISES**

**Chapter 1
General Provisions**

Part I. Definitions; General Provisions

- § 28-1. Definitions.
- § 28-2. Rules of construction.
- § 28-3. Legislative findings and policy.
- § 28-4. Scope of subtitle.

- § 28-5. Automatic termination.
- §§ 28-6 to 28-8. *{Reserved}*

Part II. Administration

- § 28-9. Business Opportunity Office established.
- § 28-10. General functions and duties of Office.
- § 28-11. Rules and regulations.
- § 28-12. Authority of Board of Estimates and Finance Department.

**Chapter 2
MBE/WBE Subcontracting Requirements**

Part I. Definitions; Short Title

- § 28-13. Definitions.
- § 28-14. Short title.
- § 28-15. *{Reserved}*

Part II. Annual Participation Goals

- § 28-16. Establishment.
- § 28-17. Purpose.
- §§ 28-18 to 28-20. *{Reserved}*

Part III. Contract Participation Goals

- § 28-21. Establishment.
- § 28-22. Considerations.
- § 28-23. Publication.
- § 28-24. Applicability to alternates, modifications, etc.
- § 28-25. Office review and report.
- §§ 28-26 to 28-30. *{Reserved}*

Part IV. Counting MBE and WBE Participation

- § 28-31. In general.
- § 28-32. Commercially useful function.
- § 28-33. Joint ventures.
- § 28-34. Subcontracting by MBE or WBE.
- § 28-35. One subcontractor, one goal.
- § 28-36. Manufacturers.
- § 28-37. Suppliers.
- § 28-38. Insurance companies; travel agents.
- § 28-39. Financial institutions.
- § 28-40. *{Reserved}*
- § 28-41. Non-affiliation.
- §§ 28-42 to 28-45. *{Reserved}*

Part V. Utilization Requirements

- § 28-46. Contracts between \$1,000 - \$4,999.
- § 28-47. Contracts between \$5,000 - \$49,999.
- § 28-48. Contracts of \$50,000 or more.
- § 28-49. Leases and concessions.
- § 28-50. Other services.
- § 28-51. *{Reserved}*
- § 28-52. All contracts - In general.
- § 28-53. All contracts - Bid specifications.

FINANCE AND PROCUREMENT

- § 28-54. All contracts - Contract specifications.
- § 28-55. All contracts - Payments to subcontractors.
- § 28-56. All contracts - Reports and documentation.
- §§ 28-57 to 28-60. *{Reserved}*

Part VI. Waivers

- § 28-61. Agency’s pre-solicitation request.
- § 28-62. Bidder’s pre-award request.
- § 28-63. Contractor’s post-award request.
- § 28-64. Waiver by agency.
- § 28-65. *{Reserved}*

Part VII. Agency’s Duties

- § 28-66. In general.
- § 28-67. Adherence to bid procedures, etc..
- § 28-68. Responsibility for achieving goals.
- § 28-69. Advertisements, notices, etc.
- § 28-70. Contract division.
- § 28-71. Payment procedures.
- § 28-72. Conditioning notice to proceed.
- § 28-73. Documentation.
- §§ 28-74 to 28-75. *{Reserved}*

Part VIII. Certification

- § 28-76. Required before bid opening.
- § 28-77. *{Repealed}*
- § 28-78. MBEs and WBEs - General criteria.
- § 28-79. MBEs and WBEs - Control.
- § 28-80. MBEs and WBEs - Size standards.
- § 28-81. Certification investigations.
- § 28-82. Decertification.
- § 28-83. Certification appeals.
- §§ 28-84 to 28-85. *{Reserved}*

Part IX. Enforcement

- § 28-86. Office to monitor compliance.
- § 28-87. Noncompliance - Contractor or subcontractor.
- § 28-88. Noncompliance - Agency.
- § 28-89. Office may require reports, etc.
- § 28-90. Agencies to keep records.
- § 28-91. Annual report.
- §§ 28-92 to 28-95. *{Reserved}*

Chapter 3
Small Local Business Enterprise
Procurement Requirements

Part I. Definitions; General Provisions

- § 28-96. Definitions.
- § 28-97. Purpose; Scope.
- § 28-98. Program objectives.
- § 28-99. *{Reserved}*

Part II. Administration

- § 28-100. Minority and Women’s Business Office – Duties.
- § 28-101. Goal-setting committees - Establishment.
- § 28-102. Goal-setting committees - Duties.
- § 28-103. SLBE Program performance review.
- § 28-104. *{Reserved}*

Part III. SLBE Program Participation Criteria

- § 28-105. Eligibility for Program.
- § 28-106. Certification ... as an SLBE.
- § 28-107. Certification as an Emerging SLBE.
- § 28-108. *{Reserved}*
- § 28-109. Graduation, suspension, or revocation.
- § 28-110. Adverse determinations; Appeals.
- §§ 28-111 to 28-112. *{Reserved}*

Part IV. Affirmative Procurement Initiatives

- § 28-113. Initiatives to be set by GSCs.
- § 28-114. Bonding or insurance waiver.
- § 28-115. Price preferences.
- § 28-116. Evaluation preferences.
- § 28-117. Mandatory subcontracting.
- § 28-118. Sheltered Market Program.
- § 28-119. Competitive business development demonstration program.
- §§ 28-120 to 28-121. *{Reserved}*

Chapter 4
Penalties

- § 28-122. Administrative penalties.
- § 28-123. *{Reserved}*
- § 28-124. Criminal penalties.

SUBTITLE 29
COMMERCIAL NON-DISCRIMINATION POLICY

- § 29-1. Purpose and intent.
- § 29-2. Definitions.
- § 29-3. Scope.
- § 29-4. Rules of construction.
- § 29-5. Short title.
- § 29-6. Commercial non-discrimination policy.
- § 29-7. Complaints of discrimination.
- § 29-8. Investigation of complaints.
- § 29-9. Initial findings and recommendations.
- § 29-10. Hearings.
- § 29-11. Remedies.
- § 29-12. Sanctions for false or frivolous complaints.
- § 29-13. Administrative appeals.
- § 29-14. Judicial and appellate review.
- § 29-15. Mandatory nondiscrimination contract clause.
- § 29-16. Contractor bid requirements.
- § 29-17. Contract disclosure requirements.

BALTIMORE CITY CODE

- § 29-18. Other legal remedies.
- § 29-19. Non-interruption of performance.
- § 29-20. Rules and regulations.

**SUBTITLE 30
HEALTH CARE SERVICES PROVIDERS**

- § 30-1. Definitions.
- § 30-2. Prequalification requirements.
- § 30-3. Board of Estimates' authority.

**SUBTITLE 31
HEALTH CARE ADVISORY PANEL**

- § 31-1. Definitions.
- § 31-1. Composition of Advisory Panel.
- § 31-3. Annual review of providers, etc.
- § 31-4. Annual report.

**SUBTITLE 32
PURCHASE OF FOODSTUFFS**

- § 32-1. Purchases of \$40,000 or more.
- § 32-2. Purchases of \$20,000 or more, less than \$40,000.
- § 32-3. Performance bonds.

**SUBTITLE 33
PURCHASE OF RECYCLED PRODUCTS**

- § 33-1. "Recycled paper" defined.
- § 33-2. Purchasing requirements.
- § 33-3. Use requirements.
- § 33-4. Board of Estimates' authority.

**SUBTITLE 34
COMMISSION ON SUSTAINABILITY**

- § 34-1. Commission created; members.
- § 34-2. Terms; Chair.
- § 34-3. Compensation; expenses.
- § 34-4. Duties.
- § 34-5. Comprehensive Sustainability Plan.
- § 34-6. Commission staff.
- § 34-7. Adoption of Plan.
- § 34-8. Effect of Plan.

**SUBTITLE 35
AMERICAN PREFERENCE FOR VEHICLE PROCUREMENT**

- § 35-1. Definitions.
- § 35-2. Purpose of subtitle.
- § 35-3. Procurement requirements.
- § 35-4. Bids; contracts; annual reports.

- § 35-5. Exemptions.
- § 35-6. Rules and regulations.

**SUBTITLE 36
PURCHASE ORDERS**

- § 36-1. Drafts authorized.
- § 36-2. Signatures.
- § 36-3. Maximum amount.

**SUBTITLE 37
PAYMENT OF CITY OBLIGATIONS**

- § 37-1. Definitions.
- § 37-2. City payment policy.
- § 37-3. Interest.
- § 37-4. Exemptions.
- § 37-5. Rules, regulations; allocating interest charges.

**SUBTITLE 38
VENDORS' HOT LINE**

- § 38-1. Establishment; costs.
- § 38-2. Purpose.
- § 38-3. Weekly updates.

**SUBTITLE 39
{RESERVED}**

**SUBTITLE 40
DEBARMENT FROM CITY CONTRACTS**

Part I. Definitions; General Provisions

- § 40-1. Definitions.
- § 40-2. Probation before judgment.
- § 40-3. Rules and regulations.
- § 40-4. Notices.

Part II. Offenses Subject to Debarment

- § 40-5. Automatic debarment for certain bribery offenses.
- § 40-6. Other bribery offenses.
- § 40-7. Violations of other laws.
- § 40-8. Other events.

Part III. City Solicitor

- § 40-9. Designation of representative.
- § 40-10. Reports to Board.
- § 40-11. Investigations - in general.
- § 40-12. Investigations - investigative demand.
- § 40-13. Preliminary recommendations.
- § 40-14. Participation in proceedings.

Part IV. Debarment Procedures

- § 40-15. Reports.
- § 40-16. Notice and opportunity for hearing - automatic debarments.
- § 40-17. Notice and opportunity for hearing - other debarments.
- § 40-18. Suspension pending decision.
- § 40-19. Hearing and decision.
- § 40-20. Debarment of businesses.

Part V. Reinstatements

- § 40-21. Automatic reinstatement.
- § 40-22. Petitions for reinstatement.
- § 40-23. Reinstatement hearing and decision.

Part VI. Effect and Enforcement of Debarment

- § 40-24. Effect of debarment or suspension.
- § 40-25. Roster of debarred and suspended persons and businesses.
- § 40-26. Affidavits of qualification.
- § 40-27. Limitations of actions.

**SUBTITLE 41
PROHIBITED CONTRACTS**

- § 41-1. Persons in contempt for unfair labor practices.
- § 41-2. Persons owing delinquent taxes.
- § 41-3. Contracts using tropical hardwood.

**SUBTITLES 42 TO 43
{RESERVED}**

**SUBTITLE 44
TANGIBLE PERSONAL PROPERTY**

- § 44-1. Sale of tangible personal property.

**SUBTITLE 45
ENERGY COSTS**

- § 45-1. DGS to supervise.
- § 45-2. Annual energy consumption report

**SUBTITLE 46
{RESERVED}**

**SUBTITLE 47
MISCELLANEOUS CONTRACT PROVISIONS**

- § 47-1. No Dumping Clause.

**SUBTITLE 48
MISCELLANEOUS FEES**

- § 48-1. Marriage license fees for domestic violence shelters.
- § 48-2. Fees for copying, certifying, etc. records.
- § 48-3. Penalty for bad checks.

SUBTITLE 1
CITY COMPTROLLER

§ 1-1. Oath of office.

The Comptroller, before entering upon his duties, shall take the usual oath of office.
(*City Code, 1927, art. 8, §1; 1950, art. 6, §1; 1966, art. 5, §1; 1976/83, art. 5, §1.*) (*Ord. 1896-038; Ord. 66-793.*)

§ 1-2. Deputy Comptroller.

The Deputy Comptroller is hereby required to perform the duties of Clerk to the Board of Estimates.
(*City Code, 1893, art. 11, §17; 1927, art. 8, §21; 1950, art. 6, §2; 1966, art. 5, §2; 1976/83, art. 5, §2.*)
(*Ord. 1888-109; Ord. 1899-161; Ord. 05-031; Ord. 46-466.*)

**SUBTITLE 2
DIRECTOR OF FINANCE**

§ 2-1. Surety bond.

Before he enters upon the duties of his office, the Director of Finance shall execute a bond to the corporation, with such securities as the Mayor may approve, in the penal sum of \$150,000, with the condition that he will faithfully discharge the duties and trust reposed in him.

(City Code, 1879, art. 11, §17; 1893, art. 11, §19; 1927, art. 8, §23; 1950, art. 6, §9; 1966, art. 5, §8; 1976/83, art. 5, §8.) (Ord. 46-392; Ord. 65-658.)

§ 2-2. Deputy Director.

In the event of the necessary absence of the Director of Finance from sickness or other cause, the Deputy Director shall have full power and authority to exercise and perform all the duties of the Director.

(City Code, 1950, art. 6, §10; 1966, art. 5, §9; 1976/83, art. 5, §9.) (Ord. 46-392; Ord. 65-658.)

**SUBTITLE 3
DEPOSIT OF CITY FUNDS**

§ 3-1. Required deposit and accounting.

(a) *Deposits.*

- (1) The Director of Finance shall deposit all money belonging to the City in banks which shall be designated by the Board of Finance.
- (2) And it shall be the duty of the Board of Finance in making the selection to enter into an agreement with the banks so selected with regard to compensating the City either by service rendered by the banks to the City, or some rate of compensation in the form of interest on the balances belonging to the City, as in its judgment will be most beneficial to the City.
- (3) The Board of Finance, in consultation with the Minority and Women's Business Opportunity Office, shall adopt regulations to require that the banks selected are in full compliance with the City's Commercial Non-Discrimination Policy, as set forth in Subtitle 29 of this Article.

(b) *Accounts; reports.*

- (1) It shall be the duty of the Director of Finance to keep regular and correct account of all moneys received and expended by him on behalf of the City.
- (2) And he shall submit an annual report as soon as practicable after June 30, showing all moneys received and expended by him during the preceding fiscal year.

(*City Code, 1950, art. 6, §12; 1966, art. 5, §11; 1976/83, art. 5, §11.*) (*Ord. 46-392; Ord. 65-658; Ord. 06-186.*)

§ 3-2. Agreements with custodians.

The Director of Finance, the Board of Estimates, and the Board of Finance are hereby authorized and empowered to execute and approve, on behalf of the Mayor and City Council of Baltimore, from time to time, agreements pertaining to the safekeeping by such custodial institutions as may from time to time be selected by them of collateral posted by financial institutions to secure funds deposited therein by the Mayor and City Council of Baltimore and the Director of Finance and other departments, agencies, and officials of the municipality.

(*City Code, 1950, art. 6, §13; 1966, art. 5, §12; 1976/83, art. 5, §12.*) (*Ord. 43-031; Ord. 48-131; Ord. 63-002; Ord. 65-658.*)

§ 3-3. Petty cash checking account.

(a) *Director of Finance may authorize.*

Baltimore City departments and agencies which maintain imprest *{advanced}* funds, which are petty cash funds containing certain constant amounts of money, and are maintained by the department or agency with monies advanced by the City, are hereby authorized to set aside a

certain percentage of that fund for the establishment of a checking account, providing such checking account is specifically authorized by the Director of Finance and the Board of Estimates.

(b) *Designated depository.*

All monies set aside for the checking account under the provisions of this section must be deposited in a depository or depositories designated by the Board of Finance from time to time.

(c) *Withdrawal of funds.*

Funds placed in said depositories as aforesaid may be withdrawn therefrom by check to pay expenses duly incurred by the City departments and agencies maintaining the imprest funds.

(d) *Signature requirements.*

(1) Said checks shall bear the signature of:

(i) the director of the City department or agency or his designee; and

(ii) 1 other person designated by the director to sign as Disbursing Officer.

(2) Such designation shall be made by the director and filed with the depositories on which such checks are drawn.

(3) Any signature on any such checks may be manual or facsimile.

(e) *Surety bond.*

The director of any City department or agency maintaining an imprest *{advanced}* fund, his designee, and the Disbursing Officer designated by the director as aforesaid, before performing any act under the provisions of this section, shall give bond to the Mayor and City Council of Baltimore in such amount, in such form, and upon such conditions as may be determined appropriate by the Director of Finance.

(City Code, 1976/83, art. 5, §13C.) (Ord. 80-184; Ord. 82-575.)

SUBTITLE 4
STOCKS AND CERTIFICATES OF INDEBTEDNESS

§ 4-1. Records required.

(a) *In general.*

It shall be the duty of the Director of Finance:

- (1) to open and keep regular and correct books for the registry and transfer of City stock and certificates of indebtedness; and
- (2) under the direction of the Board of Finance, to prepare a list of the owners in time for the punctual payment of the interest.

(b) *Closing date for interest.*

For this purpose, the transfer books shall be closed the 15th of the month previous to the day on which the interest is made payable.

(City Code, 1879, art. 46, §4; 1893, art. 47, §4; 1927, art. 43, §5; 1950, art. 34, §2; 1966, art. 5, §15; 1976/83, art. 5, §14.) (Ord. 46-406.)

§ 4-2. Lost certificates — publication.

In all cases of application for renewal of certificates of City stock or indebtedness of the City of Baltimore, where said certificates may have been lost or destroyed, the person making such application shall give at least 60 day's notice by publication once a week, in 2 of the daily newspapers published in the City of Baltimore, describing such certificate or certificates, and at the same time, declaring his or her intention to make such application.

(City Code, 1879, art. 46, §5; 1893, art. 47, §5; 1927, art. 43, §5; 1950, art. 34, §2; 1966, art. 5, §15; 1976/83, art. 5, §15.) (Ord. 46-406.)

§ 4-3. Lost certificates — bond.

The Director of Finance shall, before he issues such duplicate certificate or certificates, require the person making such application to enter into a bond, with security to be approved by him, in double the amount of such certificate or certificates.

(City Code, 1879, art. 46, §6; 1893 art. 47, §6; 1927, art. 43, §7; 1950, art. 34, §3; 1966, art. 5, §16; 1976/83, art. 5, §16.) (Ord. 46-406.)

§ 4-4. Faith and credit of City.

The faith and credit of the Mayor and City Council of Baltimore and its corporate property are hereby pledged for the redemption of its stock and certificates of indebtedness and the payment of interest thereon, at such times as may be specified in the ordinances authorizing the same.

(City Code, 1879, art. 46, §10; 1893, art. 47, §10; 1927, art. 43, §9; 1950, art. 34, §4; 1966, art. 5, §17; 1976/83, art. 5, §17.) (Ord. 46-406.)

§ 4-5. Sinking fund investments.*(a) Government securities.*

The Board of Finance is authorized and empowered in its discretion to invest moneys belonging to the various sinking funds for the redemption of the public debt of the City in certificates of indebtedness of the City, of the State of Maryland, or of the United States.

(b) Redeemable annuities or ground rents.

The Board of Finance is also authorized and empowered in its discretion to invest any of said moneys in the purchase of redeemable annuities or ground rents reserved out of lands heretofore leased to the Mayor and City Council of Baltimore and payable by said City, the conveyances thereof to be made to the Mayor and City Council of Baltimore, in trust for the benefit and purpose of said sinking fund in accordance with the provisions of Article II, § (33) of the Baltimore City Charter.

(City Code, 1893, art. 47, §19; 1927, art. 43, §18; 1950, art. 34, §5; 1966, art. 5, §18; 1976/83, art. 5, §18.) (Ord. 1881-081; Ord. 46-406.)

§ 4-6. Consolidation of certificates.

The Board of Finance is hereby authorized and empowered in its discretion to consolidate the several certificates of City stock or certificates of indebtedness held by it with any and every sinking fund under its care.

(City Code, 1879, art. 46, §19; 1893, art. 47, §20; 1927, art. 43, §19; 1950, art. 34, §6; 1966, art. 5, §19; 1976/83, art. 5, §19.) (Ord. 46-406.)

§ 4-7. Duties of Board Clerk.*(a) To maintain accounts of sinking funds.*

The Clerk to the Board of Finance is hereby authorized and directed to open accounts for all sinking funds wherein shall be entered full and detailed accounts of:

- (1) each sinking fund;
- (2) the amount thereof;
- (3) how invested;
- (4) the acts of the Board in relation thereto; and
- (5) all other facts necessary to a full succinct history of each fund.

(b) *Other duties.*

The Clerk shall also, under the direction of the Board of Finance, keep the books, accounts, and records of the office and perform such other duties as may be required.
(*City Code, 1879, art. 46, §20; 1893, art. 47, §21; 1927, art. 43, §20; 1950, art. 34, §7; 1966, art. 5, §20; 1976/83, art. 5, §20.*) (*Ord. 46-406.*)

**SUBTITLE 5
INVESTMENTS**

§ 5-1. Rules, regulations, or guidelines for investments.

The Board of Finance of the City of Baltimore is hereby designated as the agency of the Mayor and City Council of Baltimore which is authorized to adopt rules, regulations or guidelines covering the exercise of the investment authority granted to the Treasurer of Baltimore City by Chapter 755 of the Laws of Maryland of 1974.

(City Code, 1976/83, art. 5, §21.) (Ord. 74-749.)

Editor's Note: The State enabling law to which the preceding section refers, State Article 95, §22A, was repealed by Chapter 319, Laws of Maryland 1997. *But see* § 5-2 of this subtitle below.

§ 5-2. Local government investment policy.

(a) *State guidelines adopted.*

The Mayor and City Council of Baltimore shall be governed by a local government investment policy that is consistent with and complies with the local government investment guidelines adopted in under State Code Article 95, § 22F.

(b) *Board of Finance to adopt and implement policy.*

The Board of Finance shall adopt and implement the local government investment policy for Baltimore City.

(c) *Amendments.*

Any amendments to the City's local government investment policy:

(1) shall be consistent with the local government investment guidelines; and

(2) shall be submitted to the State Treasurer in accordance with State Code Article 95, § 22F.

(d) *Commercial non-discrimination.*

Consistent with the requirements of this section, the Board of Finance shall amend the City's local government investment policy to be consistent with Subtitle 29 {"Commercial Non-Discrimination Policy"} of this article and to ensure that no City funds are invested in or through business entities that are in violation of the City's Commercial Non-Discrimination Policy.

(City Code, 1976/83, art. 5, §22.) (Ord. 95-611; Ord. 06-186.)

SUBTITLE 6
SOCIAL SERVICES EXPENDITURES

§ 6-1. Payments to Social Services Director.

Upon the receipt of the written request of the Director of Social Services or his duly authorized agent, for the funds for the assistance rolls and foster care program of the Department of Social Services, previously approved by the Director of Finance for payment, the Mayor and the Director of Finance, are hereby authorized and empowered to pay funds of the Mayor and City Council of Baltimore to the Director of Social Services for the assistance rolls and foster care program of the Department of Social Services.

(City Code, 1966, art. 5, §13(a); 1976/83, art. 5, §13(a).) (Ord. 51-142; Ord. 67-1101; Ord. 76-018.)

§ 6-2. Deposit of funds.

All money received by the Director of Social Services from the Mayor and City Council of Baltimore under the provisions of this subtitle must be deposited in a depository or depositories designated by the Board of Finance from time to time.

(City Code, 1966, art. 5, §13(b); 1976/83, art. 5, §13(b).) (Ord. 51-142; Ord. 67-1101; Ord. 76-018.)

§ 6-3. Withdrawal of funds.

(a) *In general.*

Funds placed in said depositories as aforesaid may be withdrawn therefrom by check for the assistance rolls and foster care program of the Department of Social Services.

(b) *Signature requirements.*

(1) Said checks shall bear the signature of:

(i) the Director of Social Services; and

(ii) 1 person of the Department of Social Services designated by the Director thereof to sign as Disbursing Officer.

(2) Such designation shall be made in writing by the Director of Social Services and filed with the depositories on which such checks are drawn.

(3) Any signature on any such checks may be manual or facsimile.

(City Code, 1966, art. 5, §13(c); 1976/83, art. 5, §13(c).) (Ord. 51-142; Ord. 67-1101; Ord. 76-018.)

§ 6-4. Surety bond.

The Director of Social Services and the Disbursing Officer designated by the Director of Social Services as aforesaid, before performing any act under the provisions of this subtitle, shall give bond to the Mayor and City Council of Baltimore in such amount, in such form, and upon such conditions as may be required for employees of the Department of Finance.

(City Code, 1966, art. 5, §13(d); 1976/83, art. 5, §13(d).) (Ord. 51-142; Ord. 67-1101; Ord. 76-018.)

SUBTITLE 7
HUMAN SERVICES EXPENDITURES

§ 7-1. Payments to Executive Deputy Commissioner.

Upon the receipt of a written request of the Executive Deputy Commissioner of the Human Services Division of the Department of Housing and Community Development or his duly authorized agent, for funds for such programs as approved for payment by the Board of Estimates on recommendation of the Director of Finance, the Mayor and the Director of Finance are hereby authorized and empowered to pay funds of the Mayor and City Council of Baltimore to the Executive Deputy Commissioner for such programs.

(City Code, 1976/83, art. 5, §13A(a.)) (Ord. 80-131.)

§ 7-2. Deposit of funds.

All money received by the Executive Deputy Commissioner of the Human Services Division from the Mayor and City Council of Baltimore under the provisions of this subtitle shall be deposited in a depository or depositories designated by the Board of Finance from time to time.

(City Code, 1976/83, art. 5, §13A(b.)) (Ord. 80-131.)

§ 7-3. Withdrawal of funds.

(a) *In general.*

Funds placed in these depositories may be withdrawn therefrom by check for such programs as approved by the Board of Estimates on recommendation of the Director of Finance.

(b) *Signature requirements.*

(1) The checks shall bear the signature of:

- (i) the Executive Deputy Commissioner of the Human Services Division; and
- (ii) 1 other person of the Agency designated by the Executive Deputy Commissioner to sign as Disbursing Officer.

(2) This designation shall be made in writing by the Executive Deputy Commissioner and filed with the depositories on which the checks are drawn.

(3) Any signature on the checks may be manual or facsimile.

(City Code, 1976/83, art. 5, §13A(c.)) (Ord. 80-131.)

§ 7-4. Surety bond.

The Executive Deputy Commissioner of the Urban Services Agency and the designated Disbursing Officer, before performing any act under the provisions of this subtitle, shall give bond to the Mayor and City Council of Baltimore in the amount and form and under the conditions as may be required for employees of the Department of Finance.

(City Code, 1976/83, art. 5, §13A(d.)) (Ord. 80-131.)

SUBTITLE 8
SPECIAL FUNDS

§ 8-1. Public School Construction and Renovation Special Fund.

(a) *Fund established.*

There is a Public School Construction and Renovation Special Fund.

(b) *Nature of Fund.*

The Special Fund is a continuing, nonlapsing fund established under the authority of City Charter Article I, § 12 (“Special funds for education”).

(c) *Purpose of Fund.*

The purpose of the Special Fund is to provide increased support to the Baltimore City Public School System for:

- (1) new school construction; and
- (2) the renovation and improvement of existing school buildings.

(d) *Contents of fund.*

The Special Fund consists of:

- (1) money appropriated to it by the annual Ordinance of Estimates or by a Supplementary Appropriation; and
- (2) contributions, grants, or gifts received from any public or private source for the benefit of the Special Fund.

(e) *Uses of Fund.*

The Special Fund may be used only for the purposes specified in subsection (c) of this section. (Ord. 12-007.)

SUBTITLE 9
{RESERVED}

SUBTITLE 10
PROPERTY INSURANCE

§ 10-1. Insurance claims.

(a) *Comptroller to negotiate.*

The Comptroller shall represent the City in the negotiation of all claims against any insurance company from which insurance has been purchased covering loss or damage to City-owned property, and he is authorized to approve all settlements with the insurance company.

(b) *Referral to City Solicitor.*

If the Comptroller and the insurance company, during the course of their negotiations are unable to agree upon an equitable settlement, the Comptroller shall request the City Solicitor to press the City's claim and assure that the City's interest is protected.

(c) *Use of proceeds.*

(1) All money that may be awarded to the City by reason of loss from damage or destruction covered by City-purchased insurance shall be paid to the Mayor and City Council of Baltimore, and the appropriate agency shall be credited with these funds.

(2) Repairs or replacement of the property suffering damage shall be made, subject to the approval of the Director of Public Works, the Director of Transportation, or the Director of General Services, whichever has jurisdiction, by either City employees or under contract.

(City Code, 1879, art. 11, §6; 1893, art. 11, §6; 1927, art. 8, §6; 1950, art. 6, §3; 1966, art. 5, §3; 1976/83, art. 5, §3.) (Ord. 66-793; Ord. 76-018; Ord. 15-435.)

§ 10-2. Purchase of insurance.

(a) *Principal coverage.*

The Comptroller shall purchase insurance, subject to the approval of the Board of Estimates, to protect adequately the Mayor and City Council of Baltimore against any risk or risks of an insurable nature which may reasonably be expected to result in financial loss in excess of \$200,000 in any 1 occurrence or in excess of an aggregate of \$2,000,000 in any 1 fiscal year.

(b) *Lesser coverage.*

The Comptroller may purchase insurance to protect against lesser amounts of potential loss if in his opinion the protection or the services obtained through the purchase of the insurance justify its cost.

(City Code, 1879, art. 11, §7; 1893, art. 11, §7; 1927, art. 8, §§7, 8; 1950, art. 6, §4; 1966, art. 5, §4; 1976/83, art. 5, §4.) (Ord. 46-336; Ord. 66-793.)

§ 10-3. City Property Insurance Fund — uses; appropriations.(a) *Uses of Fund.*

- (1) The “City Property Insurance Fund” created by Ordinance 408 (1913-14) shall be used to defray the cost of repair or replacement of any real or personal property owned by or in the custody of the Mayor and City Council of Baltimore.
- (2) The Comptroller may determine the property and perils to be covered by this Fund and promulgate rules and regulations governing payments from this Fund. Such rules and regulations shall be in accord with the provisions of § 10-5 of this subtitle, but may amplify and extend the basic principles as set forth in that section.

(b) *Annual appropriations.*

- (1) There shall be appropriated annually to this Fund a sum equal to estimated losses payable from the Fund during the next fiscal year, but not less than the average aggregate annual losses paid from this Fund during the latest 5-year period, and in any event not less than \$100,000, this sum to be provided for annually in the annual Ordinance of Estimates for each year.
- (2) The appropriation shall continue until the accumulations and earnings therefrom, less expenditures or disbursements therefrom as may be made as hereinafter provided, amount to \$2,700,000, at which time the appropriations and further addition of earnings of the Fund shall cease; and appropriations and the further addition of earnings shall begin again and continue to be made as herein provided if the Fund becomes depleted below this amount.
- (3) Whenever the amount in the Fund exceeds this \$2,700,000 maximum, the excess shall be promptly transferred to the General Funds of the City.
- (4) The appropriations as made shall be paid by the Comptroller to the Board of Finance, to be held and invested by the Board of Finance as hereinafter directed.

(City Code, 1927, art. 8, §10; 1950, art. 6, §5; 1966, art. 5, §5; 1976/83, art. 5, §5.) (Ord. 14-408; Ord. 66-793; Ord. 83-1037.)

§ 10-4. City Property Insurance Fund — investments.

The Board of Finance is hereby authorized and directed to:

- (1) receive the money directed to be paid to it by the Comptroller, to hold and invest the same as other moneys in its charge and keeping are held and invested;
- (2) retain the same as a permanent fund subject to be used only for the repair, rebuilding, or replacement of property owned by or in the custody of the City which may be lost, damaged, or destroyed by a peril intended to be covered by such fund in accordance with rules and regulations promulgated by the Comptroller;

(3) keep a separate account of said fund, together with the earnings thereof as the “City Property Insurance Fund” of the Mayor and City Council of Baltimore; and

(4) submit annually on July 1 of each and every year to the Comptroller, a statement, in writing, showing the state and amount of said fund.

(City Code 1927, art. 8, §11; 1950, art. 6, §6; 1966, art. 5, §6; 1976/83, art. 5, §6.) (Ord. 14-408; Ord. 66-793.)

§ 10-5. Restoration of damaged property.

(a) *Estimate to be obtained.*

In the event of the loss, damage, or destruction of property owned by or in the custody of the Mayor and City Council of Baltimore, the department, sub-department, municipal official, special commission, or board subjected to loss shall promptly notify the Comptroller and the Director of Public Works, the Director of Transportation, or the Director of General Services, whichever has jurisdiction, to obtain an estimate of the cost of repair, rebuilding, or replacement from the latter.

(b) *Estimated loss not more than \$200,000.*

(1) If the loss is estimated to be not more than \$200,000, the agency, subject to the approval of the Director of Public Works, the Director of Transportation, or the Director of General Services, whichever has jurisdiction, either shall arrange for repairs by its own maintenance force or shall proceed in the usual manner to effect the awarding of a contract for the work.

(2) Upon completion and the consequent knowledge of the actual cost of the restoration, the agency shall apply to the Comptroller for reimbursement from the Self-Insurance Fund. Upon approval by the Comptroller, a request for the transfer of the actual cost of the work performed from the Self-Insurance Fund to the appropriate account of the affected agency shall be made to the Director of Finance.

(3) The first \$1,000 of each loss shall be borne by the agency suffering the loss, and the agency shall be reimbursed for the total amount of loss in excess of this sum.

(c) *Estimated loss more than \$200,000.*

If at the time of the estimate of the Director of Public Works, the Director of Transportation, or the Director of General Services, whichever has jurisdiction, it is reasonably expected that the loss may be in excess of \$200,000, a copy of the estimate shall be transmitted immediately to the Comptroller to enable him or her to negotiate with the insurance carrier.

(City Code, 1927, art. 8, §13; 1950, art. 6, §7; 1966, art. 5, §7; 1976/83, art. 5, §7.) (Ord. 14-408; Ord. 66-793; Ord. 76-018; Ord. 15-435.)

SUBTITLE 11
{REPEALED BY ORD. 06-251}

SUBTITLE 12
COMPREHENSIVE INSURANCE AND RISK MANAGEMENT PROGRAM

§ 12-1. Legislative findings; losses to be covered.

(a) *Need for self-insurance fund.*

The Mayor and City Council of Baltimore has conducted a management audit of the City's insurance program and an actuarial review of its casualty and liability losses and has determined that there is a need for a self-insurance fund for liability, casualty, property, and other designated losses, administered as an insurance and risk management program.

(b) *Losses to be covered.*

Casualty and property losses include, but are not limited to, uninsured losses to City buildings and contents, City vehicles, City water craft, City boilers and machinery; workers' compensation and employers liability; and third-party general liability and automobile liability losses.
(*City Code, 1976/83, art. 1, §195.*) (*Ord. 86-750.*)

§ 12-2. Creation of Fund; funding.

(a) *Fund created.*

There is created a Self-Insurance Fund.

(b) *Funding.*

(1) The initial funding shall be such amounts as may be provided:

- (i) by the Fiscal Year 1987 Ordinance of Estimates;
- (ii) such supplementary appropriation ordinance(s) that may be enacted for this purpose;
and
- (iii) from transfer of existing insurance reserves.

(2) In succeeding years the Fund shall be replenished or augmented as may be required.

(3) The Fund shall not exceed \$27,000,000.

(*City Code, 1976/83, art. 1, §196.*) (*Ord. 86-750.*)

§ 12-3. Committee on Insurance and Risk Management.

(a) *Established; members.*

(1) There is established a Committee on Insurance and Risk Management, to be constituted of persons knowledgeable in the field of risk management.

(2) The Committee shall be appointed by the Mayor pursuant to Article IV, § 6 of the City Charter. The Committee shall have such number of members as the Mayor may deem appropriate to carry out its function.

(3) The Chairman shall be appointed and replaced from time to time by the Mayor.

(b) *Evaluation of City's needs.*

The Committee shall periodically employ a casualty actuary to conduct an actuarial review of the self-insured loss exposure of the City, and the Committee shall review the loss experience of the City, its claim and potential liability exposure, and any other factors which the Committee considers necessary or appropriate to evaluate the City's insurance and risk management needs.

(c) *Recommendations; annual statement.*

(1) The Committee shall recommend to the Mayor and the Board of Estimates such amount of money, if any, for inclusion in the annual Ordinance of Estimates that it deems necessary to be appropriated to sustain the Self-Insurance Fund at a level to protect the City's interest and meet the demands upon it.

(2) The Committee shall submit to the Mayor and the Board of Estimates annually not later than March 1, a statement showing the condition and amount of the Fund.

(City Code, 1976/83, art. 1, §197.) (Ord. 86-750.)

§ 12-4. Disbursement of funds.

No monies shall be disbursed from the Fund except:

(1) to pay casualty and liability losses, and such other categories of losses or obligations consistent with the insurance and risk management program purposes of the Fund as may be directed by law or by the Board of Estimates;

(2) to pay insurance premiums; and

(3) to cover the actual cost of administering the expenses related to a risk management program.

(City Code, 1976/83, art. 1, §198. (Ord. 86-750.)

§ 12-5. Investment of funds.

The monies in the Self-Insurance Fund and the earnings thereon shall be invested by the Board of Finance as are other monies in its charge.

(City Code, 1976/83, art. 1, §199) (Ord. 86-750.)

§ 12-6. Administration of Fund.*(a) By Office of Risk Management.*

The Self-Insurance Fund shall be administered by the Office of Risk Management in the Department of Finance, headed by the Risk Management Officer who shall be appointed by the Director of Finance under the provisions of the City Charter relating to the classified civil service.

(b) Standards.

The Fund shall be administered in accord with all applicable laws, standard insurance industry practice, accepted accounting principles, and such requirements as the Board of Estimates may establish.

(c) Risks to be covered; insurance.

(1) The Risk Management Officer shall recommend to the Board of Estimates the types and extent of risks to be covered by the Fund and any insurance or excess insurance deemed advisable, and the Board shall determine what risks are to be covered and the amount of any insurance to be obtained.

(2) Pursuant to Article V, § 3 of the City Charter, the Comptroller shall obtain insurance approved by the Board of Estimates.

(City Code, 1976/83, art. 1, §200.) (Ord. 86-750.)

SUBTITLE 13
SELF-INSURANCE PROGRAM FOR
COMMODITY, SERVICE, AND CONSTRUCTION CONTRACTS

§ 13-1. Definitions.

(a) *Self-Insurance Program.*

The term “Self-Insurance Program for Commodity, Service, and Construction Contracts” (Self-Insurance Program) as used herein shall mean the self-insurance program of the City as provided in this subtitle for the payment of monetary claims arising from any loss, damage, or expense which the Mayor and City Council of Baltimore may sustain by reason of the failure of a service, commodity, or construction contractor to comply with the terms of any contract not exceeding \$200,000 which said contractor has entered into with the Mayor and City Council of Baltimore.

(b) *Self-Insurance Fund.*

The term “Self-insurance Fund for Commodity, Service, and Construction Contracts” (Self-insurance Fund) as used herein shall mean the appropriation provided in the annual Ordinance of Estimates to pay any claims authorized by this subtitle.

(c) *Liability Reserve Fund.*

The term “Liability Reserve Fund for Commodity, Service, and Construction Contracts” (Liability Reserve Fund) as used herein shall mean the fund that is to be accumulated as set forth in this subtitle to pay any claims ordinarily payable by the Self-Insurance Fund, provided the Self-Insurance Fund has been depleted in that fiscal year.

(d) *Contractor.*

The term “contractor” as used herein shall mean any person, firm, or legal entity with whom the City has entered into an agreement.

(e) *Construction.*

The term “construction” shall mean the repair, renovation, construction, or maintenance of any property owned by the City of Baltimore or financed in whole or in part by the City of Baltimore.

(*City Code, 1976/83, art. 1, §201.*) (*Ord. 86-774; Ord. 89-362.*)

§ 13-2. Program established.

(a) *Coverage.*

The Mayor and City Council of Baltimore shall implement a Self-Insurance Program for Commodity, Service, and Construction Contracts for the reimbursement of any losses the City

sustains through the default of a commodity, service, or construction contractor under a contract not exceeding \$200,000.

(b) *Self-Insurance Fund.*

- (1) A Self-Insurance Fund shall be established to be used to pay for losses and other expenses of implementing and operating the Self-Insurance Program.
- (2) Monies for said Fund shall be appropriated annually in the Ordinance of Estimates in an amount approved by the Board of Estimates.

(c) *Payment of claims.*

- (1) Payment of any and all claims under the Self-Insurance Program for losses sustained by the Mayor and City Council of Baltimore shall be made from the Self-Insurance Fund by the City Solicitor upon certification by the head of the procuring agency that the Mayor and City Council of Baltimore has sustained a loss due to the default of a commodity, service, or construction contractor.
- (2) Provided, however, that for any claim exceeding \$5,000, the City Solicitor shall not have authority to make any payments pursuant to this Act without both a certification of loss by the head of the procuring agency and subsequent approval by the Board of Estimates.
- (3) And provided further, that in any case where the decision is contested by a contractor, the decision to pay the claim is subject to approval by the Board of Estimates.

(d) *Annual excess to go to Reserve Fund.*

Any monies remaining in the Self-Insurance Fund at the end of any fiscal year, including any interest accrued thereon, shall be turned over to the Director of Finance to be placed in the Liability Reserve Fund.

(e) *Rules and regulations.*

The Board of Estimates shall have the authority to promulgate rules and regulations for the administration of this program.

(City Code, 1976/83, art. 1, §202.) (Ord. 86-774; Ord. 89-362.)

§ 13-3. Liability Reserve Fund — established.

(a) *Fund established; annual appropriations.*

- (1) The Director of Finance is hereby authorized and directed to create a fund to be known as the “Liability Reserve Fund for Commodity, Service, and Construction Contracts” (Liability Reserve Fund) for which purpose a sum shall be appropriated annually in the Ordinance of Estimates.

- (2) The appropriation to the Liability Reserve Fund shall continue with the accumulations thereto, together with the earnings of the same and the balance from the Self-Insurance Fund, less any expenditures or disbursements therefrom as may be made.

(b) *Limit on appropriations.*

The Reserve Fund shall continue to accumulate in the aforesaid manner to the maximum amount established in an ordinance approved by the Mayor and City Council upon the recommendation of the Board of Estimates. Any monies remaining in the Liability Reserve Fund at the end of any fiscal year in excess of the maximum amount established by ordinance shall be credited to the General Fund of the City.

(c) *Board of Finance to hold.*

The appropriation so made and any other sums paid to the Fund shall be turned over by the Director of Finance to the Board of Finance of the Mayor and City Council of Baltimore, to be held and invested by the Board of Finance.

(City Code, 1976/83, art. 1, §203.) (Ord. 86-774.)

§ 13-4. Liability Reserve Fund — when to be used.

The Liability Reserve Fund shall be used to pay any losses which the Mayor and City Council of Baltimore sustains pursuant to its Self-Insurance Program, only after the sums provided for in § 13-2 of this subtitle have been fully expended or encumbered.

(City Code, 1976/83, art. 1, §204.) (Ord. 86-774.)

§ 13-5. Payment under Program not waiver of remedies.

(a) *City may pursue remedies against defaulting contractor.*

No provision of this subtitle shall be interpreted or construed to prevent the Mayor and City Council of Baltimore from pursuing any remedy at law available to it against a defaulting commodity, service, or construction contractor whose failure to comply with the terms of a contract results in a loss to the City.

(b) *Remedies cumulative.*

All remedies provided by this subtitle are cumulative with all other remedies available to the City at law. Payment of a claim under this subtitle shall not prohibit the Mayor and City Council from pursuing civil remedies in order to recover any damages sustained by the City, even if the recovery exceeds any claim paid under this subtitle.

(City Code, 1976/83, art. 1, §205.) (Ord. 86-774.)

§ 13-6. Investments; annual statement.

The Board of Finance for Baltimore City is hereby authorized and directed to:

- (1) receive the monies directed to be paid to it by the Director of Finance;

- (2) hold and invest the same as other monies in its charge are held and invested;
- (3) retain the same as a permanent fund to be used only for the payment of claims as provided in §§ 13-2 and 13-4 of this subtitle;
- (4) keep a separate account of said fund, together with the earnings thereof, as the “Liability Reserve Fund for Commodity, Service and Construction Contracts” of the Mayor and City Council of Baltimore; and
- (5) submit annually to the Director of Finance a statement in writing showing the state and amount of said fund.

(City Code, 1976/83, art. 1, §206.) (Ord. 86-774.)

§ 13-7. Annual report.

After the close of each fiscal year, the Director of Finance shall report to the Mayor and City Council the year-end fund balances of the Self-Insurance Fund and the Liability Reserve Fund, the amount of excess funds credited to the General Fund, and the claims paid under this Self-Insurance Program, by itemizing in sufficient detail the total amounts paid for applicable commodity, service, and construction contracts.

(City Code, 1976/83, art. 1, §207.) (Ord. 86-774.)

SUBTITLES 14 TO 15
{RESERVED}

SUBTITLE 16
RECORDS AND INVENTORY OF REAL PROPERTY

§ 16-1. Record of conveyances and contracts.

(a) *Comptroller to keep record book.*

The Comptroller shall keep a well-bound record book, and have therein recorded:

- (1) all deeds and leases made to the City, or sufficient extracts from such deeds and leases as will fully explain the same; and also
- (2) all contracts and agreements made in relation to the property of the City.

(b) *Form.*

The records in said record book to be written on every other page, so that the page opposite the record may be left blank for any remarks that may be necessary to be made in regard to the disposition of said property.

(c) *Index.*

The said record book shall also have an alphabetical index made for more easy reference to said deeds, leases, contracts, and agreements.

(City Code, 1879, art. 1, §57; 1893, art. 1, §64; 1927, art. 1, §85; 1950, art. 1, §24; 1966, art. 1, §92; 1976/83, art. 1, §95.) (Ord. 1858-009.)

§ 16-2. Comprehensive inventory required.

(a) *Comptroller and Director of Finance to maintain.*

The Comptroller and the Director of Finance must maintain jointly a comprehensive inventory of City-owned real property, which must be updated quarterly to reflect acquisitions and dispositions.

(b) *Information required.*

For each parcel of property, the inventory must provide the following information:

- (1) a street address or, if there is no street address, a description sufficient to identify the location of the property;
- (2) the date when the City acquired or took possession of the property;
- (3) the purchase price paid by the City;
- (4) the name of the grantor; and

(5) an estimate of the market value of the property, which must be updated every 3 years.

(c) *Agencies to cooperate.*

All City agencies that own, acquire, or dispose of real property must comply with requests of the Comptroller and the Director of Finance in maintaining the inventory.

(d) *Inventory open to public inspection.*

The inventory must be kept in the office of the Comptroller and must be open for public inspection during regular office hours.

(City Code, 1976/83, art. 5, §2A.) (Ord. 97-144.)

SUBTITLE 17
REAL PROPERTY ACQUISITION

§ 17-1. Real Estate Department or designee of Board of Estimates authorized.

(a) *Designations amended.*

In any and all parts of any and all ordinances in force in the City of Baltimore, and any and all amendments thereto, which authorize any person to acquire property on behalf of the Mayor and City Council of Baltimore, any reference therein to such person and to his power to acquire property is hereby changed to a reference to:

- (1) the Department of Real Estate in the Comptroller's Office; and
- (2) such other person and in such manner as the Board of Estimates, in the exercise of the power vested in it by Article V, § 5 of the City Charter, may hereafter from time to time designate.

(b) *Entities authorized.*

The said Department of Real Estate, and such person as the Board of Estimates may hereafter from time to time designate, is hereby authorized and empowered so to acquire such property. (*City Code, 1966, art. 1, §81(a); 1976/83, art. 1, §82(a).*) (*Ord. 59-055.*)

§ 17-2. Negotiations confirmed.

Any acquisition of real property or an interest therein, and any and all negotiations for the purpose of acquiring real property or an interest therein made on behalf of the Mayor and City Council of Baltimore by such persons who shall have been designated by the aforesaid divers ordinances, or by the Department of Real Estate, or by the Board of Estimates in the exercise of the authority vested in it by § 39 of the Baltimore City Charter as aforesaid *{cf. Article V, §5(a) of the City Charter (1996 Edition)}*, are hereby ratified and confirmed, and shall be deemed to have been made by the persons designated in the aforesaid divers ordinances as the persons to negotiate for and acquire property on behalf of the Mayor and City Council of Baltimore, it being hereby declared to have been the legislative intent of said divers ordinances in purporting to designate the persons to negotiate for and acquire property on behalf of the Mayor and City Council of Baltimore to have named the persons designated by the Board of Estimates in the exercise of the powers vested in it by § 39 of the Baltimore City Charter, as aforesaid *{cf. Article V, §5(a)}*. (*City Code, 1966, art. 1, §81(b); 1976/83, art. 1, §82(b).*) (*Ord. 59-055.*)

§ 17-3. Effect of subtitle.

Nothing contained in this subtitle shall be construed to affect adversely the validity of any acquisition of property heretofore made, or to affect any pending or future acquisition of property by or on behalf of the Mayor and City Council of Baltimore, except as specifically provided in this subtitle. (*City Code, 1966, art. 1, §81(c); 1976/83, art. 1, §82(c).*) (*Ord. 59-055.*)

SUBTITLE 18
CONDEMNATION NOTICE AND HEARING

§ 18-1. User agency to list properties.

When an ordinance is introduced into the City Council for the condemnation of any property, the department, bureau, or agency by which the property would be used shall file with the Department of Transportation a complete list of all properties in the area proposed to be condemned. (*City Code, 1966, art. 1, §44(1st sen.); 1976/83, art. 1, §46(1st sen.). (Ord. 56-645; Ord. 75-946; Ord. 76-022; Ord. 09-217; Ord. 15-435.)*)

§ 18-2. DoT to notify owners.

(a) *In general.*

The Department of Transportation shall promptly notify the owners of the properties in the area, as shown on the records kept by the Department under City Charter Article VII, § 116(j), of the ordinance's introduction.

(b) *Mailing.*

The notice to property owners shall be mailed to the address shown for property owners in the assessment records, by ordinary United States mail, and no proof of delivery is necessary.

(c) *Contents of notice.*

(1) The notice shall include:

- (i) the number of the ordinance;
- (ii) the name or general description of the project for which the property is condemned;
and
- (iii) the place at which plats or other descriptive material may be seen.

(2) Also, the notice either shall:

- (i) give the date, time, and place for the public hearing to be held on the ordinance by the City Council or 1 of its committees; or
 - (ii) indicate the place or person from which or whom this information may be obtained.
- (*City Code, 1966, art. 1, §44(2nd - 5th sens.); 1976/83, art. 1, §46(2nd - 5th sens.). (Ord. 56-645; Ord. 75-946; Ord. 76-022; Ord. 09-217; Ord. 15-435.)*)

§ 18-3. Hearing.

Such a hearing shall not be scheduled by the City Council or its committees within a shorter period than 1 week following the time the said property owners should ordinarily have received the mailed notice of the introduction of the ordinance.

(City Code, 1966, art. 1, §44(6th sen.); 1976/83, art. 1, §46(6th sen.)) (Ord. 56-645.)

SUBTITLE 19
REAL ESTATE APPRAISALS

§ 19-1. Certified or licensed appraiser required.

(a) *In general.*

Where the City is required by law or contract to subject real property to an appraisal, that appraisal shall be performed by a real estate appraiser who is certified or licensed under the provisions of Title 16 — “Real Estate Appraisers” of the Business Occupations and Professions Article of the Annotated Code of Maryland.

(b) *Exception.*

The provisions of this section shall not apply to appraisals conducted or ordered on or before the date of enactment of this section.

(City Code, 1976/83, art. 1, §240.) (Ord. 92-149.)

SUBTITLE 20
NAMING CITY PROPERTY

§ 20-1. Definitions.

(a) *In general.*

The following terms shall have the meanings indicated unless their context clearly indicates otherwise.

(b) *City property.*

“City property” means any property or part thereof owned by the Mayor and City Council of Baltimore or by any municipal agency and includes any property leased by the Mayor and City Council of Baltimore or any municipal agency for a term longer than 7 years.

(c) *Municipal agency.*

“Municipal agency” shall include:

(1) all departments, bureaus, boards, commissions, offices, or trustees; and

(2) persons not embraced in a department who exercise authority comparable to that of heads of departments or bureaus.

(*City Code, 1976/83, art. 1, §229(a).*) (*Ord. 89-268.*)

§ 20-2. Ordinance required for naming.

(a) *In general.*

City property shall be named or renamed by an ordinance of the Mayor and City Council.

(b) *Referral of bill.*

(1) When legislation is introduced into the City Council to name or rename City property, the legislation shall be referred to:

(i) the Planning Commission;

(ii) the municipal agency that has or will have control over the City property;

(iii) the Department of Real Estate; and

(iv) any other agency that may have an interest in naming the City property.

(2) Within 30 days after referral, the Planning Commission and the municipal agency in control of the City property shall submit reports.

(3) If the reports are not received within the 30-day time period, the City Council may act on the legislation.

(City Code, 1976/83, art. 1, §229(b), (c).) (Ord. 89-268.)

§ 20-3. Inventories of property.

(a) *Agency inventory.*

On or before July 1, 1989, all municipal agencies shall submit to the Planning Commission an inventory of all named and unnamed City property under their control.

(b) *Consolidated inventory.*

On or before September 1, 1989, the Planning Commission shall submit a consolidated inventory of all named and unnamed City property to the Mayor and City Council.

(c) *Filing with Legislative Reference.*

A copy of the report shall be filed with the Department of Legislative Reference.

(City Code, 1976/83, art. 1, §229(d).) (Ord. 89-268.)

§ 20-4. Subtitle inapplicable to streets.

This subtitle shall not apply to the naming of streets as provided in Article 26, Subtitle 7 of the City Code.

(City Code, 1976/83, art. 1, §229(e).) (Ord. 89-268.)

SUBTITLE 20A
DEMOLITION OF CITY PROPERTY

EDITOR'S NOTE: This subtitle was added by Ordinance 16-451 (Bill 15-590), effective March 9, 2016. Bill 15-590 passed the City Council on January 11, 2016. Pursuant to City Charter Art. IV, § 5(c), that bill became law February 8, 2016, without the Mayor's signature. *See also* Note to § 20A-1(b) of this subtitle.

§ 20A-1. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(b) *City structure.*

(1) *In general.*

“City structure” means, except as provided in paragraph (2) of this subsection, any building or other structural improvement to real property that:

- (i) is owned by the Mayor and City Council of Baltimore; and
- (ii) has been or is being used for a municipal function or public purpose, including offices, work places, schools, fire stations, police stations, monuments, recreation facilities, neighborhood centers, and the like.

(2) *Exclusions.*

“City structure” does not include:

- (i) any subsurface infrastructure or its appurtenances;
- (ii) any operational facility not routinely open to the public; or
- (iii) any structure (other than a building), to the extent that the structure:
 - (A) is located on, over, or under a street, alley, or other public way or land; and
 - (B) is designed, constructed, controlled, and maintained by and under the authority and supervision of the Director of Public Works, the Director of General Services, the Executive Director of the Parking Authority of Baltimore City, or the Director of Transportation, whichever has jurisdiction, or an authorized representative of the applicable Director.

EDITOR'S NOTE: The application of this definition to school buildings has subsequently been limited by Chapter 607, Acts of 2016. Among other things, Chapter 607 amended State Economic Development Article § 10-645 to add new subsection (m), as follows:

Notwithstanding any other provision of law, a demolition or partial demolition of a school building under the Baltimore City Public Schools' 10-Year Plan shall be exempt from any required notice to the Baltimore City Council or the President of the Baltimore City Council.

(c) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(d) *Person.*

“Person” means:

(i) an individual;

(ii) a partnership, firm, association, corporation, or other entity of any kind;

(iii) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; or

(iv) a governmental entity or an instrumentality or unit of a governmental entity.

(Ord. 16-451.)

§ 20A-2. Exclusions from subtitle.

This subtitle does not apply to a City structure for which the Building Official or his or her designee has certified in writing that its demolition is an emergency measure necessary to protect life, health, safety, or property from imminent danger.

(Ord. 16-451.)

§ 20A-3. Notice to City Council.

EDITOR’S NOTE: See Note to § 20A-1(b) of this subtitle for this section’s limited application to school buildings.

(a) *In general.*

No City agency, official, employee, or contractor, nor any other person may undertake, approve, or allow the demolition, in whole or substantial part, of any City structure unless the agency proposing the action first submits to the President of the City Council, for publication in the Council Journal, a notice describing the structure and proposed action.

(b) *If no objection received.*

If, within 30 days of the notice’s publication in the Journal, the President has received no objection to the proposal from any Councilmember:

(1) the President shall so notify the agency that submitted the notice; and

- (2) without need for further action by the City Council, the agency may proceed with the proposed demolition.

(c) *If objection received.*

If a timely objection is received from a Councilmember:

- (1) the President shall so notify the agency that submitted the notice; and
- (2) the demolition may not proceed unless:
 - (i) expressly authorized by an Ordinance of the Mayor and City Council; or
 - (ii) the structure remains unoccupied for 3 years or more following the publication of notice under subsection (a) of this section.

(Ord. 16-451.)

§ 20A-4. Council action on proposed ordinance.

(a) *Agency referrals.*

On introduction of any proposed ordinance to authorize the demolition of a City structure, the City Council shall refer the bill to the following for their written reports and recommendations:

- (1) the Planning Department;
- (2) the agency or public official that has or will have control over the City structure; and
- (3) any other agency that the Council President designates.

(b) *Reports, etc., for Second Reading.*

The City Council may not place the bill on the Council's second reading calendar until the Planning Department and the agency or official in control of the City structure:

- (1) submit their reports and recommendations to the Council; or
- (2) fail to do so within 30 days of the referral.

(Ord. 16-451.)

{PAGE LEFT INTENTIONALLY BLANK}

**SUBTITLE 21
PUBLIC ART**

EDITOR'S NOTE: Ordinance 07-489 repealed former Subtitle 21 {"Ornamentation on Municipal Projects"} in its entirety and substituted the following new subtitle, effective August 14, 2007.

PART I. GENERAL PROVISIONS**§ 21-1. Findings; purpose.**(a) *Findings.*

Public art has enabled people in all societies to understand better their communities and individual lives.

(b) *Purpose.*

The City of Baltimore, named the "Monumental City" over 175 years ago, wishes to expand public experience with visual art by creating a public artwork program that:

- (1) encourages the direct commission of artwork for municipally supported projects; and
- (2) engages the individual and collective imagination of artists who create artwork for public places.

(c) *Intent.*

To that end, it is intended that:

- (1) the public artwork program encompass the broadest possible range and variety of expression, media, and materials; and
- (2) selections of artists and artwork reflect a standard of excellence and the cultural and ethnic diversity of the City.

(Ord. 07-489.)

§ 21-2. Definitions.(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(b) *Artwork allocation.*

"Artwork allocation" means the amount required by § 21-16 of this subtitle to be allocated to artwork.

(c) *Artwork.*

“Artwork” means works of art that are:

- (1) produced by professional visual artists; and
- (2) affixed to, made a functional part of, or sited in, on, or near a public work.

(d) *Bid.*

“Bid” means a response to:

- (1) an invitation to bid; or
- (2) a request for proposals.

(e) *Commission.*

“Commission” means the Public Art Commission .

(f) *Construction costs.*

(1) *General.*

“Construction costs” means, except as otherwise provided in this subsection, the total appropriation for a construction project.

(2) *Inclusions.*

“Construction costs” includes:

- (i) demolition costs; and
- (ii) equipment costs.

(3) *Exclusions.*

“Construction costs” does not include:

- (i) real property acquisition costs;
- (ii) soil remediation costs; or
- (iii) architectural or engineering fees.

(g) *Construction project; Project.*

“Construction project” or “project” means, except as otherwise provided in this subsection, any capital improvement project that:

- (1) involves the construction, reconstruction, or renovation of all or part of any publicly-owned property in the City, including any building, parking facility, park, utility, bridge, street, highway, footway, bikeway, or other structure or public work;
- (2) exceeds \$100,000 in construction costs;
- (3) is required by law to be publicly bid; and
- (4) is to be paid for wholly or in part by the City.

(h) *Eligible funds.*

“Eligible funds” means any funds that are available for construction costs and are not precluded by restrictions on the source of funding for the project, including limitations on the use of City bond funds, state or federal grants or loans, or donations, from being used for artwork.

(i) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(j) *Maintenance of artwork.*

“Maintenance of artwork” means the maintenance, preservation, and conservation of, including curatorial services for, artwork owned by the City, whether created under this subtitle or otherwise obtained.

(Ord. 07-489.)

§§ 21-3 to 21-5. {Reserved}***PART II. PUBLIC ART COMMISSION*****§ 21-6. Commission established.**

There is a Public Art Commission .
(Ord. 07-489.)

§ 21-7. Composition.(a) *In general.*

The Commission consists of 9 members, as follows:

- (1) 8 appointed by the Mayor and approved by the City Council under Article IV, § 6 of the City Charter; and

(2) 1 appointed by the President of the City Council.

(b) *Qualifications.*

(1) Of the members appointed by the Mayor:

(i) 1 must be a professional visual artist;

(ii) 1 must be a curator or art historian from an established Baltimore arts or educational institution;

(iii) 1 must be a licensed architect;

(iv) 1 must be a licensed engineer; and

(v) 4 must be persons chosen from related disciplines, such as landscape architects, design professionals, urban planners, conservators, art educators, art administrators, and citizens interested in civic improvement.

(2) All members must reside or work in the City.

(Ord. 07-489.)

§ 21-8. Compensation and expenses; staff.

(a) *Compensation; expenses.*

The members of the Commission:

(1) serve without compensation; but

(2) are entitled to reimbursement for reasonable expenses incurred in the performance of their duties, as provided in the Ordinance of Estimates.

(b) *Staff.*

The Commission and its programs shall be staffed by the Baltimore Office of Promotion & The Arts.

(Ord. 07-489; Ord. 16-503.)

§ 21-9. General functions and duties.

The Commission shall:

(1) administer the public artwork program established by this subtitle;

(2) generally promote and encourage public art in the City of Baltimore; and

(3) work cooperatively with state and federal offices to encourage public art.

(Ord. 07-489.)

§ 21-10. Rules and regulations.*(a) Commission to adopt.*

The Commission shall adopt rules and regulations to carry out this subtitle.

(b) Required coverage.

The Commission's rules and regulations shall include procedures and guidelines for:

- (1) determining whether and to what extent artwork is appropriate for a particular construction project;
- (2) selecting artists and artwork for a particular project;
- (3) submitting artwork proposals to the Commission for approval; and
- (4) allocating eligible funds for:
 - (i) the creation of new artwork;
 - (ii) the maintenance of existing artwork; and
 - (iii) the performance of the Commission's other functions and duties under this subtitle.

(c) Filing with Legislative Reference.

A copy of all rules and regulations must be filed with the Department of Legislative Reference before they take effect.

(Ord. 07-489.)

§ 21-11. Agency liaisons.*(a) Designation.*

Each of the following agencies shall designate an agency liaison to the Commission:

- (1) Baltimore Development Corporation.
- (2) Parking Authority.
- (3) Planning Department.
- (4) Public Works Department.

(5) Recreation and Parks Department.

(6) Transportation Department.

(7) General Services Department.

(b) *Periodic review.*

Each agency liaison shall meet periodically with the Commission staff to review the agency’s ongoing and proposed construction projects.

(Ord. 07-489; Ord. 15-435.)

§§ 21-12 to 21-15. {Reserved}

PART III. ARTWORK ALLOCATION

§ 21-16. Amount required.

(a) *Minimum allocation – General.*

Except as provided in subsection (b) of this section, at least 1% of all eligible funds for a construction project shall be allocated for:

(1) artwork for that project; or

(2) other public art uses as authorized by this subtitle.

(b) *Minimum allocation – Water and wastewater utility work.*

For water or wastewater utility projects, the Commission shall determine, on a case-by-case basis after consultation with the Department of Public works, whether and to what extent eligible funds for that project may be allocated for artwork or other public art uses. If the Commission and the Department of Public Works disagree as to whether or to what extent eligible funds may be allocated, the Director of Public Works makes the final decision.

(Ord. 07-489.)

§ 21-17. Grant and other funding requests.

In applying for grants or other funding for a construction project, a City agency shall request that:

(1) to the fullest extent practicable, the grant or other funding be in the form of “eligible funds; and

(2) the grant or other funding include an additional 1% of those eligible funds for artwork.

(Ord. 07-489.)

§ 21-18. Preliminary determinations.*(a) Consultation with agency.*

(1) Each City agency shall consult with the Commission on the application of this subtitle to any construction project being proposed by that agency.

(2) This consultation shall occur:

- (i) as early as possible in the design stage; and
- (ii) in any event, before the project is advertised for bid.

(b) Determination.

Based on the consultation, the Commission shall determine within 90 days:

(1) the aggregate amount of the artwork allocation required by § 21-16 of this subtitle; and

(2) at least preliminarily, the extent to which all or part of that aggregate amount can and should be used for:

- (i) artwork for that project; or
- (ii) other public art uses as authorized by this subtitle.

(Ord. 07-489.)

§ 21-19. Incorporation into contract specifications.

The contract specifications in the invitation to bid or request for proposals shall incorporate:

(1) the requirements of this subtitle; and

(2) the Commission's determinations under § 21-18(b)(1) and (2) of this subtitle.

(Ord. 07-489.)

§ 21-20. Allocation of funds.

On the award of a contract for the project, the contracting agency shall notify the Department of Finance that the aggregate amount of the artwork allocation, as determined under § 21-18(b) of this subtitle, shall be transferred as it become available to a capital account to be used for purposes of this subtitle.

(Ord. 07-489.)

§§ 21-21 to 21-25. {Reserved}

PART IV. ARTWORK FOR PROJECT

§ 21-26. Scope of Part.

This Part IV applies to the extent that some or all of an artwork allocation is used for artwork for the project that generated the allocation.
(*Ord. 07-489.*)

§ 21-27. Preparation of proposal.

(a) *Artist and site selection.*

- (1) As soon as practicable, the Commission shall consult with the contracting agency about artist and site selection.
- (2) The Commission then shall:
 - (i) identify, approve, and engage an appropriate artist or artists through an RFQ or RFP process; and
 - (ii) determine an appropriate site for the artwork.

(b) *Proposal.*

The artist shall prepare a proposal and submit it to the Commission for its review and approval.
(*Ord. 07-489.*)

§ 21-28. Commission review and action.

(a) *Commission to review.*

The Commission shall review the proposal in an open session at which the public is invited to attend and comment.

(b) *Commission action.*

The Commission may:

- (1) preliminarily approve the proposal, subject to modifications;
 - (2) finally approve the proposal as submitted or as later modified;
 - (3) disapprove the proposal, with or without prejudice to submit a new proposal; or
 - (4) take any other action it considers necessary or appropriate under the circumstances.
- (*Ord. 07-489.*)

§ 21-29. Disposition of artwork allocation.*(a) Approved proposal.*

- (1) On approval of an artwork proposal, the Commission shall authorize payments to the artist for the cost for the artwork, and to provide other necessary services, as approved and contracted for by the Commission.
- (2) The balance, if any, of the artwork allocation from that project shall be retained for other public art uses as authorized by this subtitle.

(b) Disapproved proposal.

If the Commission disapproves a proposal and determines not to consider any new one for the project, the full remaining amount of the artwork allocation from that project shall be retained for other public art uses as authorized by this subtitle.

(Ord. 07-489.)

§ 21-30. {Reserved}***PART V. PUBLIC ART USES*****§ 21-31. Commission to determine.**

The Commission is responsible for determining the use of all eligible funds.

(Ord. 07-489.)

§ 21-32. Priorities.

In making its determinations, the Commission shall be guided by the following priorities:

- (1) first, to provide artwork for the project that generates an artwork allocation;
- (2) second, to provide support for:
 - (i) new artwork for other public works; and
 - (ii) the maintenance of existing artwork; and
- (3) third, to provide support for the Commission's other functions and duties under this subtitle.

(Ord. 07-489.)

§ 21-33. Authorized uses.

The uses to which eligible funds may be used include, but are not restricted to:

- (1) the selection, acquisition, commissioning, fabrication, placement, installation, display, and maintenance of artwork;

- (2) the development of design concepts and models;
- (3) artist design services;
- (4) administrative services for staffing the Commission and its programs;
- (5) other professional services;
- (6) publications and other educational activities;
- (7) dedications, plaques, and labels; and
- (8) support for the Commission's other functions and duties under this subtitle.
(*Ord. 07-489.*)

SUBTITLES 22 TO 23
{RESERVED}

SUBTITLE 24
CONTRACT BONDING REQUIREMENTS

§ 24-1. Surety bonds generally.

Hereafter, in all cases where any bond shall be taken from any contractor for the execution of any work to be done under and by virtue of any ordinance or resolution of the Mayor and City Council, or by any authority thereof, there shall be inserted in said bond, and as one of the conditions thereof, an express stipulation on the part of such contractor that he will defend, indemnify, and save harmless the Mayor and City Council of Baltimore against any suit or suits, loss, damage, or expense, to which the said Mayor and City Council of Baltimore may be subjected by reason of any default or negligence, want of skill, or care on the part of such contractor, his agent or employees, or of any subcontractor, in or about the performance and execution of said work.

(City Code, 1893, art. 1, §59; 1927, art. 1, §76; 1950, art. 1, §13; 1966, art. 1, §15; 1976/83, art. 1, §18.) (Ord. 1879-052.)

§ 24-2. Bid bonds.

Pursuant to the provisions of Article VI, § 11(h) of the City Charter, a bidder on a contract for any public work or the purchase of any supplies, materials, equipment, or services for the City or by any municipal agency is required to post a bid bond if the bid is more than \$100,000.

(City Code, 1976/83, art. 1, §18A(1st par.)) (Ord. 89-349.)

§ 24-3. Performance bonds.

A contractor on a contract for any public work or the purchase of any supplies, materials, equipment, or services for the City or by any municipal agency is required to post a performance bond if the contract is for more than \$100,000.

(City Code, 1976/83, art. 1, §18A(2nd par.)) (Ord. 89-349.)

§ 24-4. Letters of credit for certain school contracts.

When a sole source contract between the City of Baltimore and a vendor to provide instructional, supervisory, or administrative services to the Board of School Commissioners is renegotiated, the vendor shall post an irrevocable letter of credit if the contract is for more than \$100,000.

(City Code, 1976/83, art. 1, §18B.) (Ord. 95-559.)

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.)

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.)

§ 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

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 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 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.*)

SUBTITLE 27
LOCAL HIRING

EDITOR'S NOTE: This subsection was added by Ordinance 13-142, effective December 22, 2013. Pursuant to City Charter Art. IV, § 5(c), Bill 12-159 became law on June 25, 2013, as Ord. 13-102, without the Mayor's signature.

§ 27-1. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(b) *Beneficiary.*

“Beneficiary” means any person who:

- (1) has a contract with the City for more than \$300,000; or
- (2) will benefit from more than \$5,000,000 in assistance for a City-subsidized project.

(c) *City-subsidized project.*

“City-subsidized project” means any project for which the City or any of its agents or contractors provides funds, resources, or financial assistance, including:

- (1) the sale or transfer of land substantially below its appraised value;
- (2) payment in lieu of taxes;
- (3) tax increment financing;
- (4) grants or loans that equal or exceed 15% of total projected project costs; or
- (5) installation or repair of physical infrastructure directly related to the project and with value equal to or exceeding 5% of total projected project costs.

(d) *MOED.*

“MOED” means the Mayor's Office of Employment Development.

(e) *Person.*

“Person” means:

- (1) an individual;
- (2) a partnership, firm, association, corporation, or other entity of any kind; or

- (3) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

(Ord. 13-142.)

§ 27-2. Scope of subtitle.

- (a) *City contracts over \$300,000.*

This subtitle applies to every contract for more than \$300,000 made by the City, or on its behalf, with any person.

- (b) *City-subsidized projects receiving assistance over \$5,000,000.*

This subtitle applies to every agreement authorizing assistance valued at more than \$5,000,000 to a City-subsidized project.

(Ord. 13-142.)

§ 27-3. {Reserved}

§ 27-4. Employment analysis.

Before the disbursement of any City funds, the beneficiary must perform an employment analysis with MOED to determine how many jobs will be required to complete the contract or project and how many of those jobs will require new hiring.

(Ord. 13-142.)

§ 27-5. Initial hiring to be through MOED.

All new jobs needed for the contract or project must be posted through MOED for a period of 7 days before being publically advertised.

(Ord. 13-142.)

§ 27-6. New employees to be Baltimore City residents.

- (a) *In general.*

At least 51% of the new jobs required to complete the contract or project must be filled by Baltimore City residents.

- (b) *Exceptions.*

MOED may waive or lower the requirement of subsection (a) of this section if it finds that:

- (1) a good faith effort to comply has been made by the beneficiary;
- (2) the beneficiary is located outside the Baltimore Standard Metropolitan Statistical Area and none of the contract work is performed inside the Baltimore Standard Metropolitan Statistical Area;

(3) the beneficiary has entered into a satisfactory special workforce development training or placement arrangement with MOED; or

(4) there are insufficient numbers of Baltimore City residents in the labor market who possess the skills required by the new jobs needed to be filled for the contract or project.

(Ord. 13-142.)

§ 27-7. Rules and regulations.

(a) *MOED to adopt.*

MOED may adopt rules and regulations to carry out this subtitle or to clarify any terms or phrases in this subtitle.

(b) *Filing.*

A copy of all rules and regulations adopted under this subtitle must be filed with the Department of Legislative Reference before they become effective.

(Ord. 13-142.)

§ 27-8. Required reports.

In each month of the contract or project the beneficiary must submit a report to MOED, on the form designated by MOED, that includes the following:

(1) the number of employees needed for the contract or project;

(2) the number of current employees transferred;

(3) the number of new job openings created;

(4) the number of job openings listed with MOED;

(5) the total number of Baltimore City residents hired for the reporting period and the cumulative total number of Baltimore City residents hired;

(6) total number of all employees hired for the reporting period and the cumulative total of employees hired; and

(7) for each new hire during the reporting period, the new hire's:

(1) name;

(2) social security number;

(3) job title;

(4) hire date;

(5) residence; and

(6) referral source.

(Ord. 13-142.)

§ 27-9. {Reserved}

§ 27-10. Penalties.

(a) *Debarment for 1 year.*

If the Board of Estimates, on recommendation from MOED, and after notice and hearing, determines that any beneficiary has violated the provisions of this subtitle and that the failure was intentional, no contract may be awarded to that beneficiary, or to any firm, corporation, or partnership in which that beneficiary has an interest, until 1 year has elapsed from the date of the determination.

(b) *Criminal penalties.*

An intentional violation of any provision of this subtitle is a misdemeanor, and, on conviction, is subject to a fine of not more than \$500 for each offense.

(Ord. 13-142.)

SUBTITLE 28
MINORITY AND WOMEN'S BUSINESS ENTERPRISES;
SMALL LOCAL BUSINESS ENTERPRISES

CHAPTER 1
GENERAL PROVISIONS

PART I. DEFINITIONS; GENERAL PROVISIONS

§ 28-1. Definitions.

(a) *In general.*

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

(b) *Baltimore City Market Area.*

“Baltimore City Market Area” means Baltimore City, Baltimore County, Anne Arundel County, Howard County, Harford County, Carroll County, and Queen Anne’s County.

(c) *Bid.*

“Bid” means a response to:

- (1) an invitation to bid; or
- (2) a request for proposals.

(d) *Business enterprise.*

“Business enterprise” means a corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity operated for profit that is properly licensed and otherwise authorized to do business in the State of Maryland.

(e) *Chief.*

“Chief” means the Chief of the Minority and Women’s Business Opportunity Office.

(f) *Construction.*

- (1) “Construction” means building, altering, repairing, improving, or demolishing any structure, building, street, utility, or other improvement to real property.
- (2) “Construction” includes:
 - (i) building construction;

- (ii) heavy construction (road construction and bridge construction); and
- (iii) specialty trades construction (e.g., carpentry, electrical, and plumbing).

(g) *Contracting agency.*

“Contracting agency” means the City agency, department, or authorized representative that issues invitations to bid or requests for proposals.

(h) *Contractor.*

“Contractor” means the person, firm, or legal entity with which the City has entered into an agreement.

(i) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(j) *Joint venture.*

“Joint venture” means an association between business enterprises that provides for the sharing of economic interest.

(k) *Manufacturer.*

“Manufacturer” means a business enterprise that:

- (1) produces goods from raw materials or substantially alters or fabricates them before resale; and
- (2) assumes the actual and contractual responsibility for providing the materials and supplies.

(l) *Office.*

“Office” means the Minority and Women’s Business Opportunity Office.

(m) *Purchasing.*

“Purchasing” means the buying, renting, leasing, or otherwise obtaining or acquiring any supplies, materials, equipment, or services.

(n) *Sole proprietorship.*

“Sole proprietorship” means a business enterprise that is 100% owned, operated, and controlled by 1 individual.

(o) *Subcontractor.*

“Subcontractor” means a business enterprise that has a direct contract with a contractor to perform part of the work on a contract.

(p) *Supplier.*

“Supplier” means a business enterprise that:

(1) furnishes needed items to a contractor; and

(2) either:

(i) is involved in the manufacture or distribution of the supplies or materials; or

(ii) otherwise warehouses and ships the supplies.

(Ord. 00-098; Ord. 07-606; Ord. 16-695.)

§ 28-2. Rules of construction.(a) *Liberal construction.*

The provisions of this subtitle are to be liberally construed to accomplish its policies and purposes.

(b) *Mandatory, prohibitory, and permissive terms.*(1) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(2) *Prohibitory terms.*

“Must not”, “may not”, and “no ... may” are each mandatory negative terms used to establish a prohibition.

(3) *Permissive terms.*

“May” is permissive.

(c) *Number.*

The singular includes the plural and vice versa.

(d) *Severability.*

(1) All provisions of this subtitle are severable.

- (2) If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances remain in full force and effect to the maximum extent practicable.

(e) *Time computations.*

(1) *Computation of time after an act, event, or default.*

- (i) In computing any period of time prescribed by this subtitle, the day of the act, event, or default after which the designated period of time begins to run is not included.
- (ii) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.
- (iii) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.
- (iv) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Computation of time before a day, act, or event.*

- (i) In determining the latest day for performing an act that is required by this subtitle to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (ii) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday, or legal holiday.

(Ord. 00-098; Ord. 16-695.)

§ 28-3. Legislative findings and policy.

(a) *Findings.*

- (1) The Mayor and City Council makes the findings contained in this subsection, on full consideration of:

- (i) the extensive findings made by an independent task force prior to the enactment of Ordinance 90-610;
- (ii) the evidence of significant levels of utilization disparity identified by the 2000 Disparity Study;
- (iii) hearings held by the City Council;

- (iv) the extensive findings of the 2014 Disparity Study, “The State of Minority and Women-Owned Business Enterprise: Evidence from Baltimore”;
 - (v) the findings of the City Council that the prevalence of contract awards to large, non-local, businesses has significantly contributed to underutilization of minority and women’s business enterprises; and
 - (vi) all other relevant facts.
- (2) Past discrimination in the City’s contracting process by prime contractors against minority and women’s business enterprises has resulted in significant underutilization of minority and women’s business enterprises in contracts awarded by the City of Baltimore. As determined by the 2007 Disparity Study, this disparity has been persistent, pervasive, and statistically significant based on available vendor data.
- (3) This discrimination has occurred in the major City contracting markets (construction, commodities, architectural and engineering, and services), with the effect of significant underutilization of minority and women’s business enterprises.
- (4) The provisions of this subtitle are necessary to overcome the effects of past discrimination and to prevent ongoing discrimination in the City’s contracting process, while assuring that high quality goods and services are obtained through the competitive bidding process.
- (5) A general objective of this subtitle is to provide a narrowly tailored remedy to ongoing effects of past discrimination, an objective that is advanced by:
- (i) setting minority and women’s business enterprise goals that are flexible and rationally related to the disparity identified in the City’s contracting markets;
 - (ii) instituting race- and gender-neutral remedies, including a Small Local Business Enterprise Program, in conjunction with the narrowly tailored administration of the MBE/WBE Program;
 - (iii) setting goals on a contract-by-contract basis;
 - (iv) providing criminal penalties for fraudulent misuse of this subtitle;
 - (v) requiring regular review of the necessity for this subtitle;
 - (vi) limiting those minority and women’s businesses that qualify for certification under this subtitle to those located in the Baltimore City Market Area;
 - (vii) requiring regular review of the categories included in the definition of minority-group members; and
 - (viii) providing for post-bid submission of required information about minority and women’s business enterprises as well as other subcontractors.

(b) *Policy.*

It is the policy of the City of Baltimore to promote equal business opportunity in the City’s contracting process by encouraging full and equitable participation by minority and women’s business enterprises in the provision of goods and services to the City on a contractual basis. (Ord. 00-098; Ord. 07-606; Ord. 16-695.)

§ 28-4. Scope of subtitle.

(a) *In general.*

This subtitle applies to all contracts awarded by the City.

(b) *Third-party contracts.*

Every contract or other agreement between the City of Baltimore and any governmental agency, quasi-governmental agency, corporation, developer, or contractor, under which the agency, corporation, developer, or contractor receives any fiscal assistance from or through the City for the purpose of contracting with businesses to perform real estate development, renovation, maintenance, or other services must require the agency, corporation, developer, or contractor to comply with this subtitle in awarding and administering that contract or agreement. (Ord. 00-098.)

§ 28-5. Automatic termination.

This subtitle automatically expires on July 30, 2019, unless the City Council, after causing an appropriate study to be undertaken, conducting public hearings, and hearing testimonial evidence, finds that the purposes identified in this subtitle have not yet been achieved, in which case this subtitle may be extended for 5 more years. (Ord. 00-098; Ord. 05-010; Ord. 06-356; Ord. 07-472; Ord. 07-524; Ord. 07-606; Ord. 11-557; Ord. 13-130; Ord. 13-188; Ord. 14-215; Ord. 14-265; Ord. 16-695.)

§§ 28-6 to 28-8. {Reserved}

PART II. ADMINISTRATION

§ 28-9. Business Opportunity Office established.

(a) *In general.*

There is a Minority and Women’s Business Opportunity Office in the Department of Law.

(b) *Chief to administer.*

The Office is administered and controlled by the Chief of the Minority and Women’s Business Opportunity Office, who reports directly to the City Solicitor. (Ord. 00-098; Ord. 16-695.)

§ 28-10. General functions and duties of Office.(a) *In general.*

The Minority and Women's Business Opportunity Office is responsible for the administration of this subtitle.

(b) *Specific duties.*

The Office's duties include:

- (1) certification of business enterprises covered by this subtitle;
- (2) maintaining a directory of business enterprises certified under this subtitle;
- (3) providing information and needed assistance to business enterprises covered by this subtitle to increase their ability to compete effectively for the award of City contracts;
- (4) investigating alleged violations of this subtitle and, when appropriate, making written recommendations for remedial action;
- (5) developing and distributing all necessary forms, applications, and documents necessary to comply with this subtitle;
- (6) maintaining statistics on and reviewing regularly the progress of agencies towards achieving the annual goals for the utilization of minority business enterprises, women's business enterprises, small business enterprises, and local business enterprises;
- (7) recommending to appropriate City officials methods to further the policies and goals of this subtitle;
- (8) monitoring contractors throughout the duration of their contracts to ensure that all efforts are made to comply with this subtitle; and
- (9) certifying compliance with this subtitle before contracts are submitted to the Board of Estimates for award.

(Ord. 00-098; Ord. 00-118; Ord. 16-695.)

§ 28-11. Rules and regulations.(a) *In general.*

The Office may adopt rules and regulations to carry out this subtitle.

(b) *Filing with Legislative Reference.*

A copy of all rules and regulations must be filed with the Department of Legislative Reference before they take effect.

(Ord. 00-098; Ord. 16-695.)

§ 28-12. Authority of Board of Estimates and Finance Department.

(a) *Authority of Board of Estimates not abrogated.*

Nothing in this subtitle abrogates the authority of the Board of Estimates to award contracts under Article VI, § 11 of the City Charter.

(b) *Board of Estimates may waive minor defects.*

At its discretion, the Board of Estimates may waive minor defects and errors in a bidder’s submissions under this subtitle.

(c) *Authority of Finance Department not abrogated.*

Nothing in this subtitle abrogates the authority of the Department of Finance to insure that competitive bidding is used and competitive prices are obtained in purchasing materials, supplies, equipment, and services to the fullest practicable extent, under Article VII, § 17, of the City Charter.

(Ord. 00-098; Ord. 16-695.)

**CHAPTER 2
MBE/WBE SUBCONTRACTING REQUIREMENTS**

PART I. DEFINITIONS; SHORT TITLE

§ 28-13. Definitions.

(a) *In general.*

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

(b) *African American.*

“African American” means a U.S. citizen or lawfully admitted permanent resident who originates from any of the black racial groups of Africa.

(c) *Asian American.*

“Asian American” means a U.S. citizen or lawfully admitted permanent resident who originates from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(d) *Certified business enterprise.*

“Certified business enterprise” means a minority or women’s business enterprise that has been certified by the Minority and Women’s Business Opportunity Office as meeting the criteria for certification under this chapter.

(e) *Control.*

- (1) “Control”, for purposes of determining whether a business is a minority business enterprise or women’s business enterprise, means that the minority-group member owners or women owners:
 - (i) possess and exercise the legal authority and power to manage business assets, goodwill, and daily operations of the business; and
 - (ii) actively and continuously exercise this managerial authority and power in determining the policies and directing the operations of the business.
- (2) If owners who are not minority-group members or women are responsible for the operation of the business out of proportion to their ownership interest, then the business is not controlled by minority-group members or women.

(f) *Hispanic American.*

“Hispanic American” means a U.S. citizen or lawfully admitted permanent resident of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish or Portuguese culture or origin, regardless of race.

(g) *Minority business enterprise; MBE.*

“Minority business enterprise” or “MBE” means a business enterprise:

- (1) that is owned, operated, and controlled by 1 or more minority-group members who have at least 51% ownership;
- (2) in which the minority-group members have day-to-day operational and managerial control, interest in capital, and risks and earnings commensurate with their percentage of ownership; and
- (3) that is located in the Baltimore City Market Area.

(h) *Minority-group member.*

“Minority-group member” means a member of a minority group, such as African American, Hispanic American, Asian American, or Native American, for which a utilization disparity has been identified.

(i) *Native American.*

“Native American” means a U.S. citizen or lawfully admitted permanent resident who originates from any of the original peoples of North America and who maintains cultural identification through tribal affiliation or other suitable authority in the community.

(j) *Owned.*

“Owned”, for purposes of determining whether a business is a minority business enterprise or women’s business enterprise, means that:

- (1) the minority-group member or female owner, as the context requires, possesses an ownership interest of at least 51% of the business;
- (2) this ownership is real and continuing and goes beyond the mere indicia of ownership reflected in the ownership documents; and
- (3) the minority-group member or woman owner enjoys the customary incidents of ownership and shares in the risks and profits commensurate with his or her ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

(k) *Women’s business enterprise; WBE.*

“Women’s business enterprise” or “WBE” means a business enterprise:

- (1) that is owned, operated, and controlled by 1 or more women who have 51% ownership;
- (2) in which the women have day-to-day operational and managerial control, interest in capital, and risk and earnings commensurate with their percentage of ownership; and
- (3) that is located in the Baltimore City Market Area.

(Ord. 00-098; Ord. 07-606; Ord. 16-695; Ord. 17-068.)

§ 28-14. Short title.

This chapter may be cited as the “Minority and Women’s Business Program”.

(Ord. 00-098; Ord. 16-695.)

§ 28-15. {Reserved}

PART II. ANNUAL PARTICIPATION GOALS

§ 28-16. Establishment.

Annually, the Board of Estimates, with the advice of the Minority and Women’s Business Opportunity Office, must review and establish the participation goals for Minority Business Enterprises and for Women’s Business Enterprises.

(Ord. 00-098; Ord. 07-606.)

§ 28-17. Purpose.(a) *In general.*

The purpose of the annual goals is to aid the City in its annual evaluation of the Program's effectiveness.

(b) *Goals, not quotas.*

Annual participation goals are not and may not be quotas.
(*Ord. 00-098; Ord. 07-606.*)

§§ 28-18 to 28-20. {Reserved}*PART III. CONTRACT PARTICIPATION GOALS***§ 28-21. Establishment.**

The Minority and Women's Business Opportunity Office must establish appropriate MBE and WBE participation goals on each specific contract, as provided in this Part III.
(*Ord. 00-098; Ord. 16-695.*)

§ 28-22. Considerations.(a) *In general.*

In setting the goals on a contract, the Office must consider:

- (1) the availability in various industry classifications and professions of MBEs and WBEs that are qualified and willing to provide goods, expertise, and services on the particular contract;
- (2) the level of utilization of these firms in past contracts awarded by the City;
- (3) the contract specifications;
- (4) the adverse impact on non-MBEs and -WBEs; and
- (5) any other relevant factors.

(b) *{Vacant}*(c) *Construction contracts of \$1,000,000 or more.*

On construction contracts for which the estimated cost is \$1,000,000 or more, the Office may, in consultation with the contracting agency, set goals for MBEs divided into subgoals for African American-, Hispanic American-, Asian American-, or Native American-owned firms.

(d) *Architectural or engineering contracts.*

On architectural or engineering contracts, the Office may, in consultation with the contracting agency, set goals for MBEs divided into subgoals for African American-, Hispanic American-, Asian American-, or Native American-owned firms.

(e) *Consultation.*

In establishing goals on each contract, the Office must consult with the contracting agency, the City Purchasing Agent, or both.

(Ord. 00-098; Ord. 07-606.)

§ 28-23. Publication.

The contract goals must be clearly published as part of the contract specifications in the invitation to bid or request for proposals.

(Ord. 00-098.)

§ 28-24. Applicability to alternates, modifications, etc.

The contract goals apply to the initial contract amounts, to any alternates, and to all subsequent amendments, supplements, extra work orders, change orders, or other modifications that, whether individually or in the aggregate, increase the dollar value of the contract by more than 10%.

(Ord. 00-098.)

§ 28-25. Office review and report.

(a) *Office to evaluate.*

Annually, the Office must review MBE and WBE participation on all contracts and procurement to evaluate the effect of the Program and the City’s progress towards meeting the annual goals.

(b) *Report to Board of Estimates.*

The Office must report its findings to the Board of Estimates.

(Ord. 00-098; Ord. 07-606.)

§§ 28-26 to 28-30. {Reserved}

PART IV. COUNTING MBE AND WBE PARTICIPATION

§ 28-31. In general.

(a) *Part governs.*

MBE and WBE participation toward meeting contract goals must be counted in accordance with this Part IV.

(b) *Dual certification.*

A business that is certified both as an MBE and a WBE may be counted towards either the MBE or the WBE contract goal, but not towards both. The participation of the certified firm cannot be split between the MBE goal and the WBE goal.

(c) *Payment required.*

Participation of an MBE or WBE subcontractor cannot be counted towards the goal until the amount being counted has been paid to the MBE or WBE.

(d) *Credit for self performance.*

(1) Subject to limitation in paragraph (2) of this subsection, a certified MBE or WBE that has been awarded a contract as a prime contractor may count up to 50% of the dollar value of the work it intends to perform with its own forces towards the applicable MBE or WBE goal.

(2) The amount of the credit may not exceed the MBE's or WBE's available work capacity calculated in accordance with the contractor prequalification rules established by the Board of Estimates.

(Ord. 00-098; Ord. 07-606; Ord. 14-265; Ord. 16-695.)

§ 28-32. Commercially useful function.(a) *“Commercially useful function” defined.*

In this section, “commercially useful function” means the performance by a business enterprise of real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise.

(b) *Requirement.*

The bidder may count toward the contract goals only expenditures to certified business enterprises that perform commercially useful functions in the execution of the contract.

(c) *Determination.*

(1) To determine whether a certified business enterprise is performing a commercially useful function, the City must evaluate:

(i) the amount of work subcontracted;

(ii) industry practices;

(iii) whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and with the MBE or WBE credit claimed for its performance of the work; and

(iv) other relevant factors.

(2) With respect to materials and supplies used on the contract, the MBE or WBE is responsible for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.

(3) When an MBE or WBE is presumed not to be performing a commercially useful function, the MBE or WBE may present evidence to rebut this presumption. The MBE or WBE must provide written documentation to the Chief, whose decision is final.

(Ord. 00-098; Ord. 07-606.)

§ 28-33. Joint ventures.

(a) *Percentage of participation.*

A bidder may count toward the contract goal the portion of its expenditure to a joint venture that is equal to the percentage of a certified business enterprise's participation in the joint venture.

(b) *Nature and extent of interest.*

The MBE or WBE member of the joint venture must have an interest in the control, management, risks, and operation of the joint venture commensurate with the member's percentage of ownership.

(c) *Share of work responsibility.*

The certified business enterprise that is a member of the joint venture must be responsible for a distinct, clearly defined portion of the work to be performed with its own forces, equal to its share in the ownership, control, and management of the joint venture.

(Ord. 00-098; Ord. 07-606.)

§ 28-34. Subcontracting by MBE or WBE.

(a) *Limitation.*

A bidder may not count toward its contract goal any agreements with certified business enterprise subcontractors who intend to subcontract more than 10% of the dollar amount of the services to be performed under the agreement between the bidder and the certified business enterprise.

(b) *Exception for supplies, etc.*

This section does not apply to a subcontractor's contracts for the purchase of materials, equipment, or supplies as an incident to the performance of services under its contract.

(Ord. 00-098.)

§ 28-35. One subcontractor, one goal.

A business enterprise that is certified as both an MBE and a WBE may not be counted toward both MBE and WBE goals for the same project. The bidder must select the goal for which the business enterprise is to be counted toward.

(Ord. 07-606.)

§ 28-36. Manufacturers.

A bidder may count towards the contract goal its entire expenditure to a certified business enterprise manufacturer.

(Ord. 00-098.)

§ 28-37. Suppliers.

(a) *In general.*

If a bidder uses 1 or more suppliers to satisfy a contract goal, in whole or in part, the certified business enterprise supplier participation may be credited towards the applicable goal, as provided in this section.

(b) *Supplier-manufacturers.*

A bidder may count 100% of its expenditure to a certified business enterprise supplier who manufactures the goods supplied.

(c) *Others.*

(1) A bidder may count 100% of its expenditure to a certified business enterprise supplier who is:

- (i) a wholesaler warehousing the goods supplied; or
- (ii) a manufacturer's representative,

(2) However, only 25% of the applicable contract goal may be attained by expenditures to certified business enterprises that are non-manufacturing suppliers.

(d) *Adjustment for extraordinary proportion.*

For contracts where an extraordinarily large proportion of the contract price is for equipment or supplies:

- (1) a lower project goal may be set than otherwise would be required;
- (2) the 25% limit for suppliers may be increased; or
- (3) a combination of these two methods may be used.

(Ord. 00-098.)

§ 28-38. Insurance companies; travel agents.

A bidder may count towards the contract goals the fees or commissions charged by a certified business enterprise insurance company or travel agent, as long as the fee or commission is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.

(Ord. 00-098; Ord. 07-606.)

§ 28-39. Financial institutions.

A bidder may count towards the contract goals only the fees charged and earned by a certified business enterprise financial institution.

(Ord. 00-098.)

§ 28-40. {Reserved}

§ 28-41. Non-affiliation.

(a) *Affiliation disallowed.*

A bidder is precluded from using a certified business enterprise to meet a contract goal if the bidder has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified business enterprise.

(b) *Office criteria to be met.*

In order for a non-certified bidder to use a certified business enterprise to meet a contract goal, the non-affiliation criteria established by the Minority and Women’s Business Opportunity Office must be met.

(Ord. 00-098; Ord. 07-606.)

§§ 28-42 to 28-45. {Reserved}

PART V. UTILIZATION REQUIREMENTS

§ 28-46. Contracts between \$1,000 - \$4,999.

(a) *In general.*

The following standards and procedures apply to every contract for which the estimated cost is \$1,000 or more and less than \$5,000.

(b) *Office to provide list of certified enterprises.*

The Office must provide the contracting agency with a list of certified business enterprises qualified to provide each of the materials, equipment, supplies, or services that the contracting agency indicates are required by the City.

(c) *Agencies to solicit certified enterprises.*

The contracting agency must solicit bids from certified business enterprises that are certified to supply the required materials, equipment, supplies, or services.

(d) *When certified enterprises unavailable.*

If no qualified certified business enterprise is available:

- (1) the contracting agency must so notify the Office before the solicitation of bids; and
- (2) the Office must attempt to identify qualified businesses and, if successful, notify the contracting agency of their availability.

(e) *Opportunity to bid.*

The contracting agency must provide certified business enterprises every practical opportunity to submit bids.

(Ord. 00-098.)

§ 28-47. Contracts between \$5,000 - \$49,999.(a) *In general.*

The following standards and procedures apply to every contract for which the estimated cost is \$5,000 or more and less than \$50,000.

(b) *Agency to provide Office with bid documents.*

Before the solicitation of bids, the contracting agency must furnish the Office with an informational copy of all bid conditions and requests for proposals.

(c) *Office may recommend certified enterprises.*

The Office may recommend to the contracting agency certified business enterprises that can be solicited directly to submit bids.

(Ord. 00-098; Ord. 11-557.)

§ 28-48. Contracts of \$50,000 or more.(a) *In general.*

The following standards and procedures apply to every contract for which the estimated cost is \$50,000 or more.

(b) *Participation affidavit required.*

- (1) In addition to any other applicable requirements, the bid conditions and requests for proposals must require each bidder to include in its bid a certified business enterprise

participation affidavit in which the bidder commits to utilize certified business enterprises in a percentage that equals or exceeds the applicable contract goals.

(2) Any bid that does not include the certified business participation affidavit is non-responsive.

(c) *Participation affidavit requirements.*

(1) Prior to bid opening, bidders must submit to the City the certified business enterprise participation statement, including executed statements of intent, that specify:

- (i) the name of each certified business enterprise to whom the bidder intends to award a subcontract;
- (ii) whether that subcontractor is:
 - (A) a minority business enterprise; or
 - (B) a women's business enterprise.
- (iii) the dollar value of each subcontract;
- (iv) the scope of the work to be performed under that subcontract; and
- (v) any other information the Office requires to determine whether the contract goals have been satisfied.

(d) *Verifying certification.*

Each bidder is responsible for verifying that all MBEs and WBEs to be used have been certified by the Office before bid opening.

(e) *Maintaining levels during contract term.*

During the term of the contract, any unjustified failure to comply with the levels of certified business enterprise participation identified in the bid is a material breach of contract.

(f) *Report for final payment.*

(1) Before final payment may be made under the contract, the contractor must submit a list of all subcontractors utilized on the contract, both MBE/WBE and non-MBE/WBE.

(2) The list must include, as to each subcontractor:

- (i) its name;
- (ii) the service or goods provided;
- (iii) the total amount paid to it; and

(iv) its owner's race/ethnicity and sex.
(*Ord. 00-098; Ord. 07-606; Ord. 11-557.*)

§ 28-49. Leases and concessions.

(a) *In general.*

The following standards and procedures apply to:

- (1) every lease in which the City is the lessee; and
- (2) every contract for a concession.

(b) *Agency to solicit certified enterprises.*

City agencies must solicit bids from certified business enterprises that are certified to enter into leases or concession contracts.

(c) *When qualified enterprises unavailable.*

If, after investigation, a contracting agency determines that no qualified certified business enterprise is available:

- (1) the contracting agency must so notify the Office before signing a lease or awarding a concession contract, unless the Office has waived notification based on the known unavailability of qualified certified businesses to perform a particular contract; and
- (2) the Office may attempt to identify qualified certified business enterprises and, if successful, must notify the contracting agency of their availability.

(d) *Opportunity to bid.*

The contracting agency must provide the minority and women's business enterprises every practical opportunity to submit bids.

(e) *Concession subcontractors and suppliers.*

- (1) All requests for concession bids must require concessionaires to make every good faith effort to utilize minority and women's business enterprises as subcontractors and suppliers, whenever possible, if subcontractors are used.
- (2) Concession bidders must be required to submit their projected utilization of minority and women's business enterprises along with a description of the efforts made to utilize those businesses.

(*Ord. 00-098.*)

§ 28-50. Other services.

(a) *Efforts required.*

All City agencies, commissions, and boards, in the deposit of funds and performance of their other official duties, must make every good faith effort to equitably utilize the services of minority and women’s business enterprises.

(b) *Scope.*

The services to which this section applies include, but are not limited to:

- (1) the financial services of banks, savings and loan companies, insurance companies, and other commercial financial institutions;
- (2) arrangements for travel and accommodations when traveling on official City business; and
- (3) legal services.

(c) *Annual reports.*

(1) All City agencies must submit to the Office, on an annual basis, a written report on the efforts made under this subsection.

(2) The City Finance Department, City Comptroller, and Retirement Boards must report annually to the Mayor and City Council on their utilization of financial institutions that are minority or women’s business enterprises.

(Ord. 00-098.)

§28-51. {Reserved}

§ 28-52. All contracts – In general.

In addition to any other applicable requirements, the following requirements apply to all contracts awarded by the City.

(Ord. 00-098.)

§ 28-53. All contracts – Bid specifications.

Bid conditions, requests for proposals, and all other specifications for contracts awarded by the City must require that, where a contract goal is applicable, the bidder must:

- (1) make good faith efforts before the opening of bids or submission of proposals to meet the contract goal; and
- (2) keep records of its good faith efforts, adequate to permit a determination of compliance with this chapter.

(Ord. 00-098; Ord. 07-606; Ord. 16-695.)

§ 28-54. All contracts – Contract specifications.

Each contract must:

- (1) incorporate this chapter by reference;
- (2) provide that the failure of any bidder, contractor, or subcontractor to comply with this chapter is a material breach of contract; and
- (3) require that, during its term, the contractor will:
 - (i) fulfill Program commitments submitted with the bids;
 - (ii) continue to make good faith efforts to utilize minority and women's business enterprises; and
 - (iii) maintain records reasonably necessary for monitoring compliance with this chapter.

(Ord. 00-098; Ord. 07-606; Ord. 16-695.)

§ 28-55. All contracts – Payments to subcontractors.

(a) *In general.*

A contractor must pay its subcontractors in a timely fashion for satisfactory work.

(b) *When payment considered timely.*

A payment is timely if it is mailed, delivered, or transferred to a subcontractor no later than 7 calendar days after the contractor receives payment from the City.

(c) *Evidence of compliance.*

Beginning with the second pay request from a contractor to the City, the contractor must provide the City with evidence that all subcontractors have been paid out of the proceeds of the prior payment, unless a bona fide dispute, documented in writing, exists between the contractor and the unpaid subcontractor.

(Ord. 00-098; Ord. 07-606.)

§ 28-56. All contracts – Reports and documentation.

As a condition of each contract, the awardee of the contract must submit the following when requested by the Office:

- (1) copies of signed agreements with the business enterprises being utilized to achieve the contract goals;

(2) reports and documentation verifying payments to the business enterprises being used to achieve the contract goals; and

(3) reports and documentation on the extent to which the contractor has awarded subcontracts to minority and women's business enterprises under contracts not affected by this chapter.

(Ord. 00-098; Ord. 16-695.)

§§ 28-57 to 28-60. {Reserved}

PART VI. WAIVERS

§ 28-61. Agency's pre-solicitation request.

(a) *In general.*

A contracting agency may request that the Office waive or reduce the contract goals by submitting the reasons for the request in writing before bids are solicited.

(b) *Criteria for granting.*

The Office may grant the waiver or reduction if the Office determines that:

- (1) the reasonable and necessary requirements of the contract render subcontracting or other participation of businesses other than the bidder infeasible; or
- (2) at least 2 qualified certified business enterprises capable of providing the goods or services required by the contract are unavailable in the Baltimore City Market Area despite every feasible attempt to locate them.

(c) *Amount to be specified.*

Any reduction granted by the Office must specify the amount to which the goal has been reduced.

(d) *Appeal of denial.*

(1) Whenever the Office denies a request to waive or reduce a goal, the contracting agency may appeal that denial to the Board of Estimates.

(2) The Board's decision on the request is final.

(Ord. 00-098; Ord. 07-606.)

§ 28-62. Bidder's pre-award request.

(a) *In general.*

If a bidder is unable to comply with the contract goals, the bidder may submit a request for a waiver at the time of bid opening.

(b) *Documentation of efforts.*

The request for a waiver must include documentation that demonstrates the bidder's good faith efforts to meet the goals.

(Ord. 00-098; Ord. 07-606.)

§ 28-63. Contractor's post-award request.

(a) *Effort to substitute required.*

- (1) If, after award of a contract, the contractor is unable to meet any contract goal by utilizing the certified business enterprises specified at bid opening, the contractor must seek a substitute certified business enterprise to fulfill its commitment.
- (2) The Office may approve the substitution only after consulting with the Mayor's Office of Minority and Women's Business Development.

(b) *Request for waiver.*

- (1) If, after reasonable good faith efforts, the contractor is unable to find a substitute, the contractor must request a post-award waiver.
- (2) A contractor may not substitute an MBE or WBE subcontractor or perform the work designated for an MBE or WBE subcontractor with its own forces unless the Chief, after consulting with the contracting agency, approves the substitution in writing.

(c) *Documentation of reasons.*

- (1) The request must be in writing and document the reasons for the contractor's inability to meet the contract goal.
- (2) The contractor must negotiate with the MBE or WBE subcontractor to resolve the problem.
- (3) The Chief's final decision to permit or deny a proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the Chief.
- (4) Where the contractor has established the basis for a substitution to the satisfaction of the Chief, the contractor must make good faith efforts to achieve the goals. The contractor may seek the assistance of the Office in obtaining a new MBE or WBE. If the contract goals cannot be reached and good faith efforts have been made, the contractor may substitute with a non-certified business.

(Ord. 00-098; Ord. 07-606; Ord. 14-265.)

§ 28-64. Waiver by agency.

(a) *In general.*

A contracting agency may waive the utilization requirements for a specific contract as provided in this section.

(b) *Sole source.*

The agency may waive the utilization requirements if, with the advice of the Office, it finds that:

- (1) needed goods or services are available only from a sole source; and
- (2) the prospective contractor is not currently disqualified from doing business with the City.

(c) *Emergency.*

The agency may waive the utilization requirements if it certifies in writing to the Office that:

- (1) an emergency exists that requires goods or services to be provided with such an immediacy that the agency is unable to comply with this chapter; and
- (2) the prospective contractor will make every good faith effort to subcontract to minority and women’s business enterprises if subcontracting is utilized.

(Ord. 00-098; Ord. 16-695.)

§ 28-65. {Reserved}

PART VII. AGENCY’S DUTIES

§ 28-66. In general.

Each contracting agency must take the following actions to ensure that MBEs and WBEs have maximum opportunity to participate on City contracts.

(Ord. 00-098.)

§ 28-67. Adherence to bid procedures, etc.

Every contracting agency must ensure that invitations to bid or requests for proposals emanating from the agency comply with this chapter.

(Ord. 00-098; Ord. 16-695.)

§ 28-68. Responsibility for achieving goals.

Each agency head or designee must:

- (1) assume primary responsibility for achieving the goals of the Program; and
- (2) on a continuing basis, review all aspects of the Program’s operations to assure that the purpose is being attained.

(Ord. 00-098.)

§ 28-69. Advertisements, notices, etc.(a) *Media advertisements.*

Advertisements for bids must appear in minority-owned media no less than 10 days before bids are due for specific contracting opportunities.

(b) *Notices to trade associations.*

A written notification of contracting opportunities must be sent to minority and women's business trade associations and contractor's associations no less than 10 days before bids are due.

(c) *Solicitation materials.*

All contract solicitations must include the MBE/WBE policy and any related materials required by the bid documents.

(Ord. 00-098.)

§ 28-70. Contract division.

All contracting opportunities must be evaluated in an effort to divide the total requirements of a contract to provide reasonable opportunities for participation by minority and women's business enterprises.

(Ord. 00-098.)

§ 28-71. Payment procedures.

Each contracting agency must establish procedures to ensure that:

(1) all contractors who submit correct invoices are paid within 30 days; and

(2) all subcontractors are paid within 7 days after the City pays the general contractor.

(Ord. 00-098.)

§ 28-72. Conditioning notice to proceed.

Each contracting agency must establish guidelines to ensure that a notice to proceed is not issued until the contracting agency has received copies of all documents needed to evidence the contractor's fulfillment of its commitments under this chapter.

(Ord. 00-098; Ord. 16-695.)

§ 28-73. Documentation.

Each contracting agency must submit to the Office all statistics and documentation that the Office requests.

(Ord. 00-098.)

§§ 28-74 to 28-75. {Reserved}

PART VIII. CERTIFICATION

§ 28-76. Required before bid opening.

(a) *In general.*

For the purposes of determining compliance with contract goals, a business enterprise may be counted as an MBE or WBE only if it has been so certified by the Office before bid opening.

(b) *Effect on participation amount.*

If a business listed in a bidder’s Information and Utilization Commitment Form has not been certified, the amount of participation will be deducted from the total MBE or WBE utilization in determining whether the bidder is responsive.

(Ord. 00-098.)

§ 28-77. {Repealed}

§ 28-78. MBEs and WBEs – General criteria.

(a) *General eligibility requirements.*

To be eligible for certification as a minority business enterprise or women’s business enterprise, the business enterprise must:

- (1) be an independent, operating business;
- (2) be at least 51% minority- or women-owned;
- (3) before applying for certification, have been in operation for at least 12 months before applying for certification;
- (4) have been minority- or women-owned for at least 12 months before applying for certification; and
- (5) have an operating office in the Baltimore City Market Area.

(b) *Operating office.*

To determine whether the business enterprise has the required operating office, the Office will consider the office arrangements, industry practices, and other relevant factors.

(Ord. 00-098; Ord. 07-606; Ord. 08-063.)

§ 28-79. MBEs and WBEs – Control.

(a) *In general.*

- (1) The ownership and control by minorities or women must be:

- (i) real and substantial; and
 - (ii) indicated by the customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.
- (2) The minority or women owners must possess the power:
- (i) to direct or cause the direction of the management and policies of the business enterprise; and
 - (ii) to make day-to-day decisions, as well as decisions on matters of management, policy, and operations.
- (b) *Restrictions precluded.*
- (1) The business enterprise may not be subject to any formal or informal restrictions that limit the customary discretion of the minority or women owners.
 - (2) There may not be any restriction, whether by partnership agreement, charter requirements, or other arrangement, that prevents the minority or women owners from making business decisions without the cooperation or vote of any owner who is not a minority or a woman.
- (c) *12-month prerequisite.*

The operating arrangements and the ownership and control by the minority-group members must have been in operation for at least 12 months before applying for certification.

(Ord. 00-098.)

§ 28-80. MBEs and WBEs – Size standards.

- (a) *Board to set standards.*
- (1) With the advice of the Office, the Board of Estimates may establish maximum size standards for minority and women's business enterprises.
 - (2) There may be separate size standards for separate business categories.
 - (3) The Board of Estimates must annually review any size standards established under this section.
- (b) *Certification contingent.*

A business enterprise may not be certified as an MBE or WBE or, once certified, have its certification renewed if, on the effective date of the application or renewal, the MBE or WBE no longer meets size standards established under subsection (a) of this section.

(Ord. 00-098; Ord. 07-606.)

§ 28-81. Certification investigations.*(a) In general.*

The Office may investigate a business enterprise's ownership, management, qualifications, and other relevant matters beyond formal documentation:

- (1) at the initial certification; and
- (2) during certification or recertification.

(b) Scope.

To the extent reasonably necessary to ensure compliance, these investigations may include, but are not limited to:

- (1) personal interviews with persons having knowledge or relevant information relating to a business enterprise's eligibility, certification, or decertification;
- (2) personal interviews with bidders, contractors, vendors, or suppliers involved in a joint venture or contractual relationship with the business enterprise;
- (3) reviewing records pertaining to certification; and
- (4) conducting random, on-site visits, audits, or relevant inquiries.

(Ord. 00-098.)

§ 28-82. Decertification.

The Office may decertify a business that it determines no longer meets the certification criteria.
(Ord. 00-098.)

§ 28-83. Certification appeals.*(a) Office determinations.*

All adverse certification determinations by the Office must:

- (1) be in writing;
- (2) include the reasons for the determination; and
- (3) be sent to the affected business enterprise.

(b) Appeal.

- (1) An aggrieved party has a right to protest an adverse certification determination and seek administrative review.

- (2) To obtain administrative review, the aggrieved party must submit a written protest to the Chief within 7 days of receipt of the adverse determination.
- (3) The protest must specify the reasons and factual grounds of the protest and be accompanied by any supporting documents.

(c) *Action by Chief.*

Within 25 days of receipt of the protest, the Chief must:

- (1) review the protest and all relevant supporting documents; and
- (2) render a written decision that includes the reasons for the decision.

(d) *Hearing.*

- (1) After all departmental remedies have been exhausted, the aggrieved applicant may request a hearing before a panel of independent hearing officers, with 1 member of the panel being appointed by the President of the City Council and the other members of the panel being appointed by the City Solicitor.

- (2) The hearing officer must be knowledgeable of Baltimore City procurement laws and procedures, including this subtitle.

(Ord. 00-098; Ord. 07-606.)

§§ 28-84 to 28-85. {Reserved}

PART IX. ENFORCEMENT

§ 28-86. Office to monitor compliance.

During the term of a contract subject to this chapter, the Office must monitor continued compliance with this chapter.

(Ord. 00-098; Ord. 16-695.)

§ 28-87. Noncompliance – Contractor or subcontractor.

(a) *Notice and attempt to resolve.*

If the Office finds cause to believe that a contractor or subcontractor has failed to comply with any requirement of this chapter or with any contract provision relating to utilization under this chapter, the Office must:

- (1) so notify the contracting agency and the contractor; and
- (2) attempt to resolve the noncompliance through conciliation.

(b) *Referral to Board of Estimates.*

(1) If the noncompliance cannot be resolved, the Office and the contracting agency must submit written findings and recommendations to the Board of Estimates.

(2) The Board of Estimates may impose sanctions in accordance with Chapter 4 of this subtitle. (*Ord. 00-098; Ord. 16-695.*)

§ 28-88. Noncompliance – Agency.

(a) *Notice and attempt to resolve.*

If, after investigation, the Office finds that a contracting agency has failed to comply with a provision of this chapter, the Office must:

(1) send the agency a written finding that specifies the nature of the noncompliance; and

(2) attempt to resolve the noncompliance through conference and conciliation.

(b) *Referral to Board of Estimates.*

(1) If the noncompliance cannot be resolved, the Office must submit its written findings and recommendations to the Board of Estimates.

(2) the Board of Estimates may take appropriate action to secure compliance. (*Ord. 00-098; Ord. 16-695.*)

§ 28-89. Office may require reports, etc.

The Office may require contractors, bidders, contracting agencies, and the head of any City agency to submit any reports, documents, or other information reasonably necessary to determine compliance with this chapter.

(*Ord. 00-098; Ord. 16-695.*)

§ 28-90. Agencies to keep records.

(a) *Records required.*

A contracting agency must keep accurate records for each contract it awards.

(b) *Contents.*

These records must include:

(1) dollar value of contract;

(2) nature of goods or services to be provided;

(3) name of contractor;

(4) efforts employed to solicit bids from certified minority and women's business enterprises; and

(5) all subcontracts awarded by the contractor, identifying for each:

- (i) dollar value;
- (ii) nature of goods or services provided;
- (iii) name of subcontractor; and
- (iv) race/ethnicity and sex of subcontractor's owner.

(Ord. 00-098.)

§ 28-91. Annual report.

(a) *Report required.*

The Office must submit an annual report to the Mayor and the City Council on the City's progress toward the utilization goals established under this chapter.

(b) *Contents.*

The report must include:

- (1) any problems; and
- (2) specific recommendations for improving the City's performance.

(Ord. 00-098; Ord. 16-695.)

§§ 28-92 to 28-95. {Reserved}

CHAPTER 3

SMALL LOCAL BUSINESS ENTERPRISE PROCUREMENT REQUIREMENTS

PART I. DEFINITIONS; GENERAL PROVISIONS

§ 28-96. Definitions.

(a) *In general.*

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

(b) *Affirmative procurement initiative.*

“Affirmative procurement initiative” means a procurement tool authorized by Part IV of this chapter to be used to enhance contracting opportunities for small local business enterprise firms, including bonding and insurance waivers, bid incentives, price preferences, sheltered

market, mandatory subcontracting, competitive business development demonstration projects, and SLBE evaluation preference points in the scoring of proposal evaluations.

(c) *Commercially useful function.*

(1) “Commercially useful function” means the performance by a business enterprise of real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise, as determined by an evaluation of:

- (i) the amount of work subcontracted;
- (ii) normal industry practices;
- (iii) whether the amount the firm is to be paid under the contract is commensurate with both the work it is actually performing and the SLBE credit claimed for its performance of the work; and
- (iv) other relevant factors.

(2) A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE participation, when in similar transactions in which SLBE firms do not participate, there is no such role performed.

(d) *Emerging SLBE.*

“Emerging SLBE” means a firm that meets the eligibility requirements specified in § 28-107(a) {“Certification as Emerging SLBE: Eligibility”} of this chapter.

(e) *Goal-setting committee; GSC.*

“Goal-setting committee” or “GSC” means a committee appointed by the Chief in accordance with this chapter to assist in the administration of the SLBE Program.

(f) *Independently owned and operated.*

“Independently owned and operated” means a firm:

- (1) that is independent and directly owned by individuals only; and
- (2) whose day-to-day management is direct and independent of the influence of any other business that cannot itself qualify under the SLBE eligibility requirements.

(g) *Principal place of business.*

“Principal place of business” means a location where a firm maintains a headquarters or physical office within the geographic boundaries of the City limits and through which it coordinates and obtains no less than 50% of its overall sales dollars.

(h) *Professional services.*

- (1) “Professional services” means any non-construction, non-architectural, or non-engineering services that require highly specialized training or licensed credentials to perform, such as legal, accounting, scientific, technical, insurance, investment management, medical, or real estate services.
- (2) The term “professional services” as used in this chapter is not intended to be restricted to those professional services which *{that}* are exempted from formal advertising requirements pursuant to Article VI, § 11, of the City Charter or competitive bidding requirements pursuant to Article VII, § 17, of the City Charter.

(i) *Services.*

“Services” means non-construction, non-architectural, and non-engineering services that are not professional services and do not require any license or highly specialized training or credentials to perform.

(j) *Sheltered market.*

“Sheltered market” means an affirmative procurement initiative designed to set aside a City contract offering for bidding exclusively among certified SLBE firms or certified Emerging SLBE firms.

(k) *Small local business enterprise; SLBE .*

“Small local business enterprise” or “SLBE” means a firm that meets the eligibility requirements specified in § 28-105(a) {“ Eligibility for SLBE Program: General eligibility requirements”} of this chapter.

(Ord. 16-695.)

§ 28-97. Purpose; Scope.(a) *Purpose.*

- (1) The purpose of this chapter is to establish a race- and gender-neutral remedy for ongoing effects of past discrimination in the marketplace by providing a variety of procurement tools for the City that will ensure that all segments of its local business community have a reasonable and significant opportunity to participate in City contracts for construction, architectural, and engineering services, professional services, services, and materials, supplies, and equipment.
- (2) The SLBE Program also furthers the City’s public interest to foster effective broad-based competition from all segments of the vendor community, including minority business enterprises, small business enterprises, and local business enterprises. This policy is, in part, intended to further the City’s compelling interests in both ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community to participate in City contracts.

- (3) The SLBE Program also provides additional avenues for the development of new capacity and new sources of competition for City contracts from the growing pool of small and locally based businesses. This capacity building will increase the quality of bidding on City contracts and lower prices for City contracts over the long term.

(b) *Scope and limitations.*

This SLBE Program may be applied by the City on a contract-by-contract basis to the maximum practicable extent permissible under federal and state law, as well as the City Charter.

(Ord. 16-695.)

§ 28-98. Program objectives.

To meet the objectives of the SLBE Program, the City is committed to:

- (1) increasing the participation of SLBEs in City contracting and, to the extent possible, ameliorating through race- and gender-neutral means any disparities in the participation of minority business enterprises or women business enterprises on City contracts;
- (2) regular evaluation regarding the progress of the SLBE Program, using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, or curtailment; and
- (3) providing accountability and accuracy in setting goals and in reporting program results through the City's Centralized Purchasing System, in the Department of Finance, Bureau of Purchases, which maintains a centralized bidder registration process capable of identifying with specificity the universe of firms that are available and interested in bidding on, or performing on, City contracts, and of providing the means of tracking actual City bids, contract awards, and prime contract and subcontract payments to registered bidders, on the basis of certification status, and commodity or service code.

(Ord. 16-695.)

§ 28-99. {Reserved}

PART II. ADMINISTRATION

§ 28-100. Minority and Women's Business Office – Duties.

The Office must:

- (1) report at least annually to the Mayor and the City Council on the City's progress towards satisfying SLBE Program objectives;
- (2) formulate SLBE Program waivers, improvements, and adjustments to the GSC goal-setting methodology and other program functions;
- (3) have substantive input in the contract specification review process to ensure that contract bid specifications are not unnecessarily restrictive or unduly burdensome to small, local, minority-owned, women-owned, and other businesses;

- (4) receive and analyze external and internal information, including statistical data and anecdotal testimonies, it deems appropriate to effectively accomplish its duties;
- (5) adopt rules and regulations to carry out this chapter; and
- (6) where appropriate, make recommendations for approval of changes to established size standards for SLBE firms.

(Ord. 16-695.)

§ 28-101. Goal-setting committees – Establishment

(a) *Chief to appoint.*

The Chief must appoint 5 goal-setting committees to assist in the administration of the SLBE Program.

(b) *Industry-category specific committees.*

A separate committee must be established with responsibility for each of the following industry categories:

- (1) architectural and engineering;
- (2) construction;
- (3) professional services;
- (4) services; and
- (5) materials, supplies, and equipment.

(c) *Committee membership; Chair.*

- (1) Each GSC is chaired by the Chief or the Chief's designee.
- (2) The Chief determines the number of members on each GSC at the time of its establishment.
- (3) Each GSC must include representatives from the Office and from the primary contracting agencies and end-user agencies for the committee's industry category.
- (4) The Chief must appoint the remaining members of the GSC from the City's procurement personnel and other City departments affected by this Program.

(d) *Meetings.*

Each GSC may meet as often as necessary to accomplish its duties, but not less than twice annually.

(Ord. 16-695.)

§ 28-102. Goal-setting committees – Duties

(a) *Set SLBE parameters for each industry category.*

(1) For its industry category, each GSC must:

(i) establish SLBE participation goals; and

(ii) select appropriate SLBE affirmative procurement initiatives to be applied to each contract, subject to § 28-97(b).

(2) In making its decisions, the GSC must consider:

(i) vendor availability;

(ii) industry characteristics; and

(iii) project-specific characteristics.

(b) *Review overall SLBE Program.*

Each committee may also review the regulations issued to implement this chapter and provide the Chief with general advice on administering the policy and modifying the policy objectives of the SLBE Program.

(*Ord. 16-695.*)

§ 28-103. Program performance review.

(a) *Annual report by Chief.*

The Chief must submit an annual report to the Mayor and City Council that provides an assessment of:

(1) the progress towards achieving the goals established for awards to certified SLBE and certified Emerging SLBE firms;

(2) both dollars awarded and expended through the SLBE Program; and

(3) the progress towards achieving the stated Program objectives, including:

(i) enhancing competition;

(ii) establishing and building new business capacity; and

- (iii) removing barriers to the utilization of available minority business enterprises, women business enterprises, and small local business enterprises on City contracts.

(b) *Public hearing every 2 years.*

At least once every 2 years, the City Council must conduct a public hearing to solicit public comments on the SLBE Program.

(c) *Periodic City review.*

The Board of Estimates, or its designee, must periodically review the SLBE Program to determine whether the various contracting procedures used to enhance SLBE contract participation need to be adjusted or used more or less aggressively in future years to achieve the goals stated in § 28-97 {"Purpose; Scope"} and § 28-98 {"Program objectives"} of this chapter. (Ord. 16-695; Ord. 17-068.)

§ 28-104. {Reserved}

PART III. SLBE PROGRAM PARTICIPATION CRITERIA

§ 28-105. Eligibility for SLBE Program.

(a) *General requirements.*

To be eligible for certification as an SLBE, the business enterprise must:

- (1) be an independently owned and operated business enterprise that is not a broker, that is not a subsidiary of another business, and that is not dominant in its field of operation;
- (2) have owners who are actively involved in day-to-day management and control of the business;
- (3) perform a commercially useful function;
- (4) not have employed more than 50 full-time persons at any time during the last 3 years;
- (5) have annual gross revenues, as averaged over its most recent past 3 fiscal years or, if the business has not existed for 3 years, over the course of the existence of the business, of not more than:
 - (i) \$5 million for construction firms, specialty trade contractors, and manufacturing firms;
 - (ii) \$2.5 million for architectural firms;
 - (iii) \$1.5 million for professional services firms;

- (iv) \$1.25 million for engineering firms; or
- (v) \$1 million for firms providing other services, materials, or equipment, except for manufacturing firms; and
- (6) have a principal place of business in Baltimore City;
- (7) have:
 - (i) been established for at least 1 year; or
 - (ii) managing principals of the business who each have at least 3 years of relevant experience prior to forming or joining the business; and
- (8) in the year preceding the date of the initial certification application, not have received more than \$1,000,000 in City contract payments as a result of contract awards from the City achieved through an open competitive bidding process.

(b) *Ineligible firms.*

(1) A business firm is not eligible to become a certified SLBE if it is owned by:

- (i) other businesses that cannot themselves qualify under the SLBE eligibility requirements in subsection (a) of this section; or
- (ii) the principals or owners of other businesses that cannot themselves qualify under the SLBE eligibility requirements in subsection (a) of this section.

(2) A business firm that has graduated from the SLBE Program under § 28-109 {“Graduation[, etc.]”} is no longer eligible to participate in the SLBE Program even if it otherwise meets all other eligibility criteria.

(Ord. 16-695.)

§ 28-106. Certification or decertification as an SLBE.

(a) *In general.*

In order to apply for certification or recertification as an SLBE, an enterprise must provide the Office with:

- (1) a completed certification or recertification application in the form required by the Office;
- (2) all supporting documentation required by the Office; and
- (3) a signed affidavit stating that it meets all of the SLBE eligibility criteria set forth in § 28-105 {“Eligibility for SLBE Program”}.

(b) *Recertification.*

Certified SLBEs must submit a completed recertification application to the Office every 2 years for review and continued certification.

(c) *Application review.*

- (1) After receiving an SLBE certification or recertification application, the Office must review all enclosed forms, affidavits, and documentation to make a prima facie determination as to whether the applicant satisfies the SLBE eligibility requirements as set forth in this chapter.
- (2) If, after the review required by this section, the Office finds that the applying firm satisfies the SLBE eligibility requirements as set forth in this chapter, the Office must grant the firm certified SLBE status.

(d) *Ineligible applicants.*

- (1) If an applicant is determined to be ineligible for certification as an SLBE, the Chief must send a letter to the applicant stating the basis for the denial of eligibility.
- (2) Applicants determined to be ineligible are not eligible to submit a new application until at least 1 year after the date of the notice of denial of eligibility.

(e) *Joint ventures.*

- (1) Joint ventures must be certified on a bid-by-bid basis.
- (2) A joint venture seeking certification is not itself subject to the size limitations imposed by § 28-105(a)(4) and (a)(5).
- (3) Each individual business participating in the joint venture must be a certified SLBE in order for the joint venture to receive the benefits of the SLBE Program.

(f) *Certification audits.*

In the course of considering the certification or recertification status of any SLBE firm or joint venture, the Office must periodically conduct audits and inspect the office, job site, records, and documents of the firm, and interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of the SLBE Program is maintained.

(Ord. 16-695; Ord. 17-068.)

§ 28-107. Certification or decertification as an Emerging SLBE.

(a) *Eligibility.*

A firm is eligible for certification as an Emerging SLBE if it meets the following eligibility criteria:

- (1) the firm complies with all of the SLBE criteria set forth in § 28-105 {"Eligibility for SLBE Program"};
- (2) the firm has been in existence for less than 5 years;
- (3) the firm has no more than 5 full-time employees; and
- (4) the firm's annual gross revenues, as averaged over the life of the firm, are less than \$1 million.

(b) *Application.*

In order to apply for certification or recertification as an Emerging SLBE, an enterprise must provide the Office with:

- (1) a completed application for certification or recertification in the form required by the Office;
- (2) all supporting documentation required by the Office; and
- (3) a signed affidavit stating that it meets all of the eligibility criteria set forth in subsection (a) of this section.

(c) *Application review.*

- (1) After receiving an Emerging SLBE certification or recertification application, the Office must review all enclosed forms, affidavits, and documentation to make a prima facie determination as to whether the applicant satisfies the Emerging SLBE eligibility requirements as set forth in this chapter.
- (2) If, after the review required by this section, the Office finds that the applying firm satisfies the Emerging SLBE eligibility requirements as set forth in this chapter, the Office must grant the firm certified Emerging SLBE status.

(d) *Ineligible applicants.*

- (1) If an applicant is determined to be ineligible to participate as an Emerging SLBE, the Chief must send the applicant a letter stating the basis for the denial of eligibility.
- (2) Applicants determined to be ineligible are not eligible to submit a new application for Emerging SLBE certification for 1 year after the date of the notice of denial of eligibility.
- (3) Applicants determined to be ineligible for certification as an Emerging SLBE may still be eligible for certification as an SLBE.

(Ord. 16-695; Ord. 17-068.)

§ 28-108. {Reserved}

§ 28-109. Graduation, suspension, or revocation.*(a) Permanent graduation from SLBE Program.*

- (1) An SLBE firm must be permanently graduated from the SLBE Program after it has received a cumulative total of \$5 million of City-funded prime contract or subcontract payments in at least 5 separate contracts since its initial certification as an SLBE firm.
- (2) An SLBE firm must be permanently graduated from the SLBE Program after its 3 fiscal year average gross sales exceeds the size standard eligibility requirements.

(b) Temporary suspension from SLBE Program.

An SLBE firm must be temporarily suspended by the Chief for the balance of any fiscal year after it has received, as contractor or subcontractor of City-funded contracts, a cumulative total of \$1.5 million in payments for that fiscal year.

(c) Permanent revocation of SLBE or Emerging SLBE eligibility.

An SLBE or Emerging SLBE firm may have its certification and eligibility permanently revoked by the Chief if it:

- (1) fails to perform a commercially useful function under a contract; or
- (2) allows its certified SLBE status to be fraudulently used for the benefit of a non-SLBE firm or the owners of a non-SLBE firm so as to provide the non-SLBE firm or firm owners benefits from affirmative procurement initiatives to which they would not otherwise be entitled.

(d) Permanent graduation from Emerging SLBE Program.

- (1) An Emerging SLBE firm must be permanently graduated from Emerging SLBE status after it has received a cumulative total of \$2.5 million of City-funded prime contracts or subcontract payments in at least 5 separate contracts since its initial certification as an Emerging SLBE firm.
- (2) An Emerging SLBE firm must be permanently graduated from Emerging SLBE status once its 3 year average annual gross sales exceeds \$2 million.

(e) Temporary suspension from Emerging SLBE Program.

- (1) An Emerging SLBE firm must be temporarily suspended from Emerging SLBE status by the Chief for the balance of any fiscal year after it has received, as a contractor or subcontractor on City-funded contracts, a cumulative total of \$750,000 in payments for that fiscal year.
- (2) An Emerging SLBE firm suspended under this subsection may still be eligible to continue participating in affirmative procurement initiatives as an SLBE firm for the remainder of the fiscal year.

(f) *Effects of graduation or suspension.*

- (1) This section is not intended to require or allow the City to terminate a contract or fail to renew a contract solely due to the finding that a firm's SLBE or Emerging SLBE status is permanently graduated or temporarily suspended during the contract term, including all renewal options originally available.
- (2) Bids or proposals submitted by an SLBE or Emerging SLBE prior to graduation or suspension may be awarded as if the firm retained its SLBE or Emerging SLBE status.
- (3) An SLBE or Emerging SLBE may not participate as an SLBE or Emerging SLBE on new bids during a period in which it has been permanently graduated or temporarily suspended, and will not receive any preference for which it may have previously been qualified.
- (4) If SLBE or Emerging SLBE status is revoked under subsection (c) of this section, the Board of Estimates may, upon recommendation by the contracting agency, terminate or fail to renew an impacted contract, if the Board of Estimates determines that termination or non-renewal is in the best interests of the City.

(g) *When effective.*

Permanent graduation and temporary suspension is only effective upon receipt of written notice, as an adverse certification or eligibility determination.

(Ord. 16-695.)

§ 28-110. Adverse determinations; Appeals.

(a) *Office determinations.*

All adverse certification or eligibility determinations by the Office or Chief must:

- (1) be in writing;
- (2) include the reasons for the determination; and
- (3) be sent to the affected business enterprise.

(b) *Appeals.*

- (1) An aggrieved party has a right to protest an adverse determination and seek administrative review.
- (2) To obtain administrative review, the aggrieved party must submit a written protest to the Chief within 7 days of receipt of the adverse determination.
- (3) The protest must specify the reasons and factual grounds of the protest and be accompanied by any supporting documents.

(c) *Action by Chief.*

Within 25 days of receipt of the protest, the Chief must:

- (1) review the protest and all relevant supporting documents; and
- (2) render a written decision that includes the reasons for the decision.

(d) *Hearing.*

- (1) After all departmental remedies have been exhausted, the aggrieved applicant may request a hearing before a panel of independent hearing officers, with 1 member of the panel being appointed by the President of the City Council and the other members of the panel being appointed by the City Solicitor.
- (2) The hearing officer must be knowledgeable of Baltimore City procurement laws and procedures, including this subtitle.

(Ord. 16-695.)

§§ 28-111 to 28-112. {Reserved}

PART IV. AFFIRMATIVE PROCUREMENT INITIATIVES

§ 28-113. Initiatives to be set by GSCs.

To promote the award of City contracts to SLBEs or Emerging SLBEs, each GSC may, subject to § 28-97(b), authorize the use of any or all of the SLBE affirmative procurement initiatives in this Part IV for contracts in its industry category.

(Ord. 16-695.)

§ 28-114. Bonding or insurance waiver.

(a) *Public works contracts.*

- (1) Subject to applicable federal and state law, as well as the City Charter, and applicable regulations, policies, and procedures, the Board of Estimates, on the recommendation of the contracting agency, may waive or reduce the bonding or insurance requirements for public works contracts, depending on the type of contract and whether the contracting agency determines that the bonding or insurance requirements would deny an SLBE, or Emerging SLBE, an opportunity to perform a contract that the SLBE or Emerging SLBE has shown itself otherwise capable of performing.
- (2) From time to time the Chief shall make written suggestions to a contracting agency relating to concerns about bidding restrictions caused by bonding or insurance requirements on solicitations issued by that agency.

(b) *All other contracts.*

(1) Subject to applicable federal and state law, as well as the City Charter, and applicable regulations, policies, and procedures, the Board of Estimates, on the recommendation of the Department of Finance, may waive or reduce the bonding or insurance requirements, depending on the type of contract and whether the Department determines that the bonding or insurance requirements would deny an SLBE or Emerging SLBE an opportunity to perform a contract that the SLBE or Emerging SLBE has shown itself otherwise capable of performing.

(2) From time to time the Chief shall make written suggestions to the Director of Finance relating to concerns about bidding restrictions caused by bonding or insurance requirements on solicitations issued by the Department of Finance.

(Ord. 16-695; Ord. 17-068.)

§ 28-115. Price preferences.(a) *In general.*

Subject to § 28-97(b), the Board of Estimates may award a contract to a certified SLBE or certified Emerging SLBE that submits a bid within 10% of a low bid by a non-SLBE.

(b) *Exclusions.*

A price preference may not be applied if:

(1) the award to the SLBE would result in a total contract cost that is, on an annual basis, more than \$25,000 higher than the low bid;

(2) if the total contract cost would exceed the City's budgeted funding for the contract; or

(3) the total contract cost is determined by the contracting agency, with concurrence from the agency receiving the primary benefit of the contract, to be so high in price as to be not reasonable.

(Ord. 16-695.)

§ 28-116. Evaluation preferences.(a) *In general.*

The City may reserve up to 10% of the total points available for RFP evaluation purposes for firms that are certified as SLBE or Emerging SLBE firms, or to joint ventures that have certified SLBE or certified Emerging SLBE partners.

(b) *Allocation among joint venturers.*

For joint ventures, available evaluation preference points must be allocated on a pro rata basis, based on the percentage of SLBE or Emerging SLBE participation in the overall ownership, performance, and management of the joint venture.

(c) *Limitation.*

An evaluation preference may not be applied if the resulting total contract cost:

- (1) would exceed the City's budgeted funding for the contract; or
- (2) is determined by the contracting agency, with concurrence from the agency receiving the primary benefit of the contract, to be so high in price as to be not reasonable.

(Ord. 16-695.)

§ 28-117. Mandatory subcontracting.

(a) *Contract-by-contract determination.*

A GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific contract, up to 40%, be subcontracted to certified SLBEs or to certified Emerging SLBEs.

(b) *Subcontracting by SLBEs.*

- (1) If the contractor is a certified SLBE or certified Emerging SLBE, then the contractor is entitled to count the dollar value of the work performed by its own forces towards satisfaction of the mandatory subcontracting goal for that contract.
- (2) An SLBE or Emerging SLBE contractor may not subcontract more than 49% of the contract value.
- (3) An SLBE or Emerging SLBE subcontractor may not further subcontract more than 10% of its portion of the contract value to a vendor who is not an SLBE or Emerging SLBE.

(c) *Required bidder submissions.*

- (1) For a contract bid out under this section, a prospective bidder must submit, at the time of bidding, a form providing the name of the SLBE or Emerging SLBE subcontractor or subcontractors and describing both the percentage of subcontracting by the SLBE or Emerging SLBE and the work to be performed by the SLBE or Emerging SLBE.
- (2) At the time of bidding, a bidder may request a full or partial waiver of this mandatory subcontracting requirement from the Chief for good cause, by submitting an SLBE unavailability certification to the Chief along with adequate documentation of good faith efforts to obtain SLBE participation, in the form required by the Office.

(d) *Review of waiver requests.*

The Chief must base his or her determination on a waiver request on the following criteria:

- (1) whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available SLBEs or Emerging SLBEs;

- (2) whether subcontracting would be inappropriate or not provide a commercially useful function under the circumstances of the contract; and
- (3) whether there are no certified SLBE or certified Emerging SLBE firms that are qualified and available to provide the goods or services required.

(e) *Failure to satisfy SLBE subcontracting goals.*

- (1) In the absence of a waiver, failure of a contractor's bid or proposal to satisfy the mandatory SLBE subcontracting goal renders its bid or proposal non-responsive.
- (2) In the absence of a waiver, failure of a contractor, in the performance of the contract, to attain a mandatory subcontracting goal for SLBE participation is grounds for termination of existing contracts with the City, debarment from performing future City contracts, or any other remedies available under the terms of its contract with the City or under the law.
- (3) A Contractor commits a material breach of contract if it fails to notify and obtain written approval from the Chief in advance of any negative change in usage of a designated SLBE or Emerging SLBE subcontractor, including any:
 - (i) reduction in subcontract scope;
 - (ii) termination of a subcontract; or
 - (iii) substitution of a new SLBE or Emerging SLBE subcontractor for a designated SLBE or Emerging SLBE.

(f) *Sole source and emergency contracts exempt.*

Sole source and emergency contracts are exempt from subcontracting goal requirements under this section.

(Ord. 16-695; Ord. 17-068.)

§ 28-118. Sheltered Market Program.

(a) *Eligible contracts.*

- (1) The Chief and a contracting agency may select certain contracts that have a contract value of \$250,000 or less for award to a certified SLBE, or a joint venture with a certified SLBE, through the Sheltered Market Program.
- (2) The Chief and a contracting agency may select certain contracts that have a value of \$50,000 or less for award to a certified Emerging SLBE firm through the Sheltered Market Program.

(b) *Contract selection for the Sheltered Market Program.*

In determining whether a particular contract should be bid through the Sheltered Market Program, the contracting agency and Chief must consider:

- (1) whether there are at least 3 certified SLBEs or certified Emerging SLBEs that are available and capable to participate in the Sheltered Market Program for that contract;
- (2) the degree of underutilization of the SLBE and Emerging SLBE contractors in the specific industry categories; and
- (3) the extent to which the City's SLBE and Emerging SLBE contractor utilization goals are being achieved.

(c) *Removal of contracts from the Sheltered Market Program.*

A contract may be removed from the Sheltered Market Program for purposes of rebidding if:

- (1) a responsive and responsible bid or response is not received for the contract; or
- (2) the apparent low bid is determined by the contracting agency, with concurrence from the agency receiving the primary benefit of the contract, to be so high in price as to be not reasonable or not within the City's budgeted funding for the contract.

(d) *Effect of determinations.*

- (1) A finding made regarding the number of available certified SLBE's or Emerging SLBE's in determining whether a contract should be bid through the Sheltered Market Program for purposes of subsection (b) of this section does not create a presumption that any bidder is a responsible bidder for purposes of subsection (c) of this section.
- (2) The determination of a contracting agency, or the City's prequalification process, that a bidder is not a responsible bidder for purposes of subsection (c) of this section is final and conclusive.

(Ord. 16-695; Ord. 17-068.)

§ 28-119. Competitive business development demonstration project.

(a) *Eligibility.*

If an industry category routinely has too few sources of bidders to provide meaningful or sufficient competition for City contracts, the Chief, with the concurrence of the impacted contracting agency, may reserve certain contracts within that industry category for placement into a competitive business development demonstration project to encourage the development of new capacity within the industry to competitively bid on the future supply of specialized goods or services to the City.

(b) *Competitive Business Development Process.*

- (1) Contracts reserved for Competitive Business Development Demonstration Projects are subject to a Request for Proposals process open only to joint ventures between an established firm, or experts in the relevant industry, and a certified SLBE firm.

- (2) The scope of work for the selected joint venture must include teaching a hands-on curriculum to SLBE firms that have expressed an interest in diversifying into the relevant industry, in addition to performing the customary functions of the contract.
- (3) The curriculum required by paragraph (2) of this subsection must teach skills required to qualify for future City contracts and to successfully compete in the industry, including both:
 - (i) technical skills taught through hands-on demonstrations of how to perform necessary tasks in the field; and
 - (ii) administrative skills such as cost estimating, bidding, staffing, or project management.

(c) *Selection of candidate firms.*

The Chief must select certified SLBE candidate firms for participation in competitive business development demonstration projects on the basis of an assessment of their current capabilities and their likely success in diversifying into the new relevant industry once given technical assistance, training, and an opportunity to develop a performance track record in the industry.

(Ord. 16-695.)

§§ 28-120 to 28-121. {Reserved}

**CHAPTER 4
PENALTIES**

§ 28-122. Administrative penalties.

A contractor who fails to comply with any provision of this subtitle is subject to any or all of the following penalties:

- (1) suspension of contract;
- (2) withholding of funds;
- (3) rescission of contract based on material breach;
- (4) refusal to accept a bid;
- (5) disqualification of a bidder, contractor, or other business from eligibility for providing goods or services to the City for a period not to exceed 2 years; and
- (6) payment of liquidated damages.

(Ord. 00-098; Ord. 16-695.)

§ 28-123. {Reserved}

§ 28-124. Criminal penalties.*(a) Prohibited conduct.*

No person may:

- (1) fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain certification under this subtitle;
- (2) in any matter administered under this subtitle, willfully falsify, conceal, or cover up by a trick, scheme, or device a material fact or make any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry;
- (3) willfully obstruct, impede, or attempt to obstruct or impede an authorized official or employee who is investigating the qualifications of a business enterprise that has requested certification under this subtitle;
- (4) fraudulently obtain, attempt to obtain, or aid another in fraudulently obtaining or attempting to obtain public money to which the person is not entitled under this subtitle;
or
- (5) make a false statement to any person or entity that another person or entity is or is not certified under this subtitle.

(b) Penalties.

Any person who violates any provision of this section is guilty of a misdemeanor and, on conviction, is subject to imprisonment for not more than 1 year, to a fine of not more than \$1,000, or to both imprisonment and fine.

(Ord. 00-098; Ord. 16-695.)

{PAGE LEFT INTENTIONALLY BLANK}

SUBTITLE 29
COMMERCIAL NON-DISCRIMINATION POLICY

§ 29-1. Purpose and intent.

It is the intent of the City of Baltimore to avoid becoming a passive participant in private sector commercial discrimination by refusing to engage in business with business firms that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability by providing a procedure for receiving, investigating, and resolving complaints of discrimination filed against business firms that have submitted a bid or proposal for, have been selected to engage in, or are engaged in doing business with the City. (Ord. 06-186.)

§ 29-2. Definitions.

(a) *In general.*

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

(b) *Baltimore City Market Area.*

“Baltimore City Market Area” means Baltimore City, Baltimore County, Anne Arundel County, Howard County, Montgomery County, and Prince George’s County.

(c) *Business firm.*

“Business firm” means any person, firm, sole proprietorship, partnership, corporation, limited liability company, or other business entity or combination of them, including any financial institution, developer, consultant, prime contractor, subcontractor, supplier, or vendor, that has submitted a bid or proposal, has been selected to do business, or is doing business with the City, including selling or leasing supplies, or goods, or providing construction, financial, professional, or other services, in return for a fee or any other form of compensation.

(d) *Chief.*

“Chief” means the Chief of the Minority and Women’s Business Opportunity Office.

(e) *City.*

“City” means the City of Baltimore and those agencies, boards, commissions, government authorities, and corporations authorized to act on behalf of, or as agent for, the City of Baltimore.

(f) *Commercial customer.*

“Commercial customer” means a business entity that has procured or attempted to procure goods or services from another business entity for business purposes, as opposed to personal, family, or household purposes.

(g) *Contract.*

“Contract” means an agreement with any business firm let by or on behalf of the City for that business firm to sell or lease supplies, or goods, or provide construction, financial, professional, or other services, in return for a fee or any other form of compensation.

(h) *Discrimination.*

(1) *In general.*

“Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a vendor, supplier, subcontractor, commercial customer, or any other business entity on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, disability, or any other form of unlawful discrimination regarding the characteristics of that business entity’s employees or owners.

(2) *Exclusion.*

“Discrimination” does not include otherwise lawful efforts, including those specified in Subtitle 28, {“Minority and Women’s Business Enterprises”} of this Article, to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

(i) *Financial institution.*

(1) *In general.*

“Financial institution” means any person or entity engaged in the business of lending money, guaranteeing loans, extending credit, securing bonds, or providing venture or equity capital to business entities, or that offers financial services in connection with City projects or the administration of City government.

(2) *Inclusions.*

“Financial institution” includes any bank, savings and loan association, venture capital company, insurance company, bonding company, mortgage company, credit union, and broker.

(j) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(k) *Hearing examiner.*

“Hearing examiner” means an individual appointed by the City Solicitor to conduct hearings under this subtitle.

(l) *Office.*

“Office” means the Minority and Women’s Business Opportunity Office.

(m) *Subcontract.*

“Subcontract” means an agreement for the performance of a particular portion of work to be performed under a contract with the City.

(Ord. 06-186.)

§ 29-3. Scope.(a) *In general.*

This subtitle applies to all business firms and all contracts to which the City is a party. A claim of discrimination may be investigated and adjudicated under this policy only if the claim alleges that:

- (1) the discrimination was committed by a business firm within the applicable limitations period set forth in § 29-7 of this subtitle; and
- (2) the discrimination occurred in the Baltimore City Market Area.

Discrimination is deemed to have occurred in the Baltimore City Market Area only if:

- (1) each party either operated a place of business in, or resided in, the Baltimore City Market Area at the time of the discrimination; or
- (2) the discriminatory act was committed in the Baltimore City Market Area.

(b) *Third-party contracts.*

Every contract and other agreement between the City of Baltimore and any governmental agency, quasi-governmental agency, corporation, developer, or contractor, under which the agency, corporation, developer, or contractor receives any fiscal assistance from or through the City for the purpose of contracting with businesses to perform real estate development, renovation, maintenance, or other services, must require the agency, corporation, developer, or contractor to comply with this subtitle in awarding and administering that contract or agreement.

(Ord. 06-186.)

§ 29-4. Rules of construction.(a) *Liberal construction.*

The provisions of this subtitle are to be liberally construed to accomplish its policies and purposes.

(b) *Mandatory, prohibitory, and permissive terms.*

(1) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(2) *Prohibitory terms.*

“Must not”, “may not”, and “no...may” are each mandatory negative terms used to establish a prohibition.

(3) *Permissive terms.*

“May” is permissive.

(c) *Number.*

The singular includes the plural and vice versa.

(d) *Severability.*

(1) All provisions of this subtitle are severable.

(2) If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances remain in full force and effect to the maximum extent practicable.

(e) *Time computations.*

(1) *Computation of time after an act, event, or default.*

(i) In computing any period of time prescribed by this subtitle, the day of the act, event, or default after which the designated period of time begins to run is not included.

(ii) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.

(iii) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.

(iv) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Computation of time before a day, act, or event.*

- (i) In determining the latest day for performing an act that is required by this subtitle to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (ii) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday, or legal holiday.

(Ord. 06-186.)

§ 29-5. Short title.

This subtitle may be cited as the “Commercial Non-Discrimination Policy”.

(Ord. 06-186.)

§ 29-6. Commercial non-discrimination policy.

It is the policy of the City of Baltimore not to accept bids or proposals from, nor to engage in business with, any business firm that has discriminated on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, disability, or any other form of unlawful discrimination in its solicitation, selection, hiring, or treatment of another business.

(Ord. 06-186.)

§ 29-7. Complaints of discrimination.

Any adult person, business entity, association, organization, or government agency may file an administrative complaint with the Chief stating facts showing or tending to show that a business firm has engaged in discrimination against one or more other businesses. The complaint must be filed within 4 years from the date it accrues. Within 10 business days, the Chief shall notify the business firm against whom the complaint was filed that a complaint has been received.

(Ord. 06-186.)

§ 29-8. Investigation of complaints.

The Office’s investigative unit shall review and investigate discrimination complaints filed under this subtitle. The City Solicitor in consultation with the Chief shall exercise his or her best judgment to assign Office staff persons, other City personnel, and outside consultants to the investigative unit as necessary to conduct investigations in a comprehensive, fair, competent, and efficient manner.

The investigative unit shall seek all relevant evidence from the complainant, from the respondent business firm, and from external sources relating to the allegations of the complaint.

(Ord. 06-186.)

§ 29-9. Initial findings and recommendations.

- (a) Based upon the investigative unit’s review and investigation, the Chief shall make an initial non-binding finding of each allegation stated in the complaint, that either:

- (1) the investigation produced sufficient evidence to find that the alleged discrimination did take place (“sustained”);
 - (2) the investigation failed to produce sufficient evidence to find that the alleged discrimination took place (“not sustained”);
 - (3) the investigation produced sufficient evidence to find that the alleged discrimination did not take place (“unfounded”);
 - (4) the investigation produced sufficient evidence to establish that the complainant knowingly made one or more false or frivolous allegations (“false or frivolous”);
 - (5) the allegation has been settled or otherwise resolved with the agreement of the interested parties; or
 - (6) the allegation has been withdrawn.
- (b) The Chief shall recommend to the City Solicitor, or his or her representative, appropriate action to be taken. That action may include additional investigation of the complaint, sanctions, remedies, or other action consistent with this subtitle.
- (c) In making the initial finding and recommendation, the Chief may consider evidence regarding:
- (1) whether there was an intent to discriminate on the part of the respondent business firm;
 - (2) whether there was a pattern and practice of discrimination on the part of the respondent business firm;
 - (3) any actions taken by the respondent business firm to remedy the alleged discrimination;
 - (4) the effectiveness of any prior attempts by the respondent business firm to remedy the discrimination;
 - (5) whether the respondent business firm had procured goods or services from or otherwise engaged in business with persons or entities of the same protected class as the complainant to an extent sufficient to demonstrate that the respondent had not discriminated against such protected class in the overall context of its business; and
 - (6) any other evidence deemed relevant by the Chief.
- (d) The Chief shall make the initial finding based upon a preponderance of the evidence.
- (e) The initial non-binding findings and recommendations shall be made by the Chief within 120 calendar days of receipt of the complaint.
- (f) The City Solicitor may extend this time limit at the request of the Chief either for good cause, or if the parties agree to mediate a settlement to the complaint.

- (g) The Chief shall notify the complainant and the business firm within 5 business days of the issuance of the initial non-binding findings and recommendations, including an explanation of the reasons justifying the initial findings.

(Ord. 06-186.)

§ 29-10. Hearings.

- (a) If the Chief determines that one or more allegations are sustained, the business firm against whom the allegations were made shall be entitled to an administrative hearing on the allegations and an opportunity to participate in the administrative hearing. The business firm must request an administrative hearing by filing a written request with the Chief within 15 calendar days of notice of the initial findings and recommendations. If the business firm fails to properly request an administrative hearing, the initial non-binding findings and recommendations shall become the final administrative decision of the City pending review and approval by the Board of Estimates. If the business firm does request an administrative hearing, the Chief shall so notify the City Solicitor immediately, and within 10 days, the City Solicitor shall appoint a hearing examiner for purposes of conducting the administrative hearing. The administrative hearing shall be held by the hearing examiner within 90 calendar days of the appointment of the hearing examiner.
- (b) The City Solicitor shall establish regulations, as necessary, that are in accordance with this Subtitle and any due process rights to which any party is entitled, to further specify the procedures and standards by which these administrative hearings are conducted. At a minimum, the hearing shall afford all parties an opportunity to present witnesses, conduct direct and cross-examination of witnesses, introduce relevant evidence, submit briefs, and present oral argument. Findings shall be made by the hearing examiner based upon a preponderance of the evidence presented.
- (c) Consistent with the State Public Information Act, Title 4 of the State General Provisions Article, and with the State Open Meetings Act, Title 3 of the State General Provisions Article, the hearing examiner may issue protective orders for good cause for the following reasons:
 - (1) to limit, or otherwise impose conditions on, access by any person to any document in the possession of a party, including a document in the City's possession or in the record of the hearing that is not a public record; or
 - (2) to close all or any portion of the hearing, or otherwise impose conditions on access to the hearing by any person.
- (d) Within a reasonable period of time not to exceed 120 days after the closing of the hearing record, the hearing examiner shall prepare a written decision that may affirm or reject the initial findings and recommendations, may substitute different findings and order appropriate remedies, or may return the case to the Chief for further investigation and findings to be completed within a period of time specified by the hearing examiner.
- (e) The hearing examiner's written decision shall be based upon a preponderance of the evidence contained in the hearing record, and shall reflect the evidentiary basis for its findings.

(f) At the hearing, the City shall have the burden of proof based upon a preponderance of the evidence.

(Ord. 06-186; Ord. 16-503.)

§ 29-11. Remedies.

(a) When a complaint is sustained in a final administrative decision, the hearing examiner or the Board of Estimates may order any one or more of the following actions:

- (1) any remedy agreed to by the respondent business firm, the complainant, and the City;
- (2) recommendation to, or implementation of procedures by, the City Solicitor and the Board of Estimates for debarment of the respondent business firm from bidding and contract awards on City projects for a period of not more than 5 years;
- (3) rescission, suspension or termination of any current contract between the respondent business firm and the City;
- (4) referral of the matter for criminal prosecution for fraud and other violations of law, if appropriate under the circumstances; or
- (5) The Board of Estimates or Hearing Examiner may order the parties to subject the complaint to mediation.

(Ord. 06-186.)

§ 29-12. Sanctions for knowingly filing false or frivolous complaint.

If the Chief determines that one or more allegations of a complaint are false and that the complainant knew them to be false when filed, or that one or more of the allegations of a complaint are frivolous and without merit, the Chief may refuse to review or investigate any complaint filed under this subtitle by the same complainant for a period of up to 3 years. The Chief may also recommend to the hearing examiner or the Board of Estimates that monetary sanctions be imposed against the complainant in the amount of the costs incurred for the investigation and review of the false or frivolous complaint.

(Ord. 06-186.)

§ 29-13. Administrative appeals.

A business firm against whom a complaint has been filed or a complainant may appeal the decision of the hearing examiner by filing a request for an appeal in writing with the City Solicitor within 10 calendar days from service of the notice of the decision. The City Solicitor, or his or her representative, shall within 10 calendar days of receipt of the request for appeal, notify all parties that an appeal has been requested, and refer the matter to the Board of Estimates to hear the appeal. The City Solicitor shall also transfer the entire record of the investigation and administrative hearing to the Board of Estimates in advance of the appeal hearing. The appeal shall be heard and the Board of Estimates shall render a final administrative decision within 90 calendar days of receipt of the request for appeal. At the appeal hearing, the Chief or the Chief's designee shall be responsible for

presenting the justifications for its findings and recommendations as previously sustained or modified by the hearing examiner.

(Ord. 06-186.)

§ 29-14. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Board of Estimates may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

(Ord. 06-186.)

§ 29-15. Mandatory nondiscrimination contract clause.

Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:

Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. Contractor shall provide equal opportunity for subcontractors to participate in all of its public sector and private sector subcontracting opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace, such as those specified in Article 5, Subtitle 28 of the Baltimore City Code, as amended from time to time. Contractor understands and agrees that violation of this clause is a material breach of the contract and may result in contract termination, debarment, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

(Ord. 06-186.)

§ 29-16. Contractor bid requirements.

All requests for bids or proposals issued by the City shall include a clause that reads as follows:

As part of its bid or proposal, Bidder shall provide to the City a list of all instances within the past 5 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder has discriminated against its subcontractors, suppliers, vendors, or commercial customers on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability, and a description of any resulting sanction entered and remedial action taken.

(Ord. 06-186.)

§ 29-17. Contract disclosure requirements.

Every contract shall include a clause that reads as follows:

Upon the City's request, and only after the filing of a complaint against Contractor pursuant to Article 5, Subtitle 29, of the Baltimore City Code, as amended from time to time, Contractor agrees to provide the City, within 60 calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the Baltimore City Market Area as defined in Article 5, §28-1(d) of the Baltimore City Code, as amended from time to time, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Commercial Non-Discrimination Policy, as contained in Article 5, Subtitle 29, of the Baltimore City Code, as amended from time to time. Contractor understands and agrees that violation of this clause is a material breach of the contract and may result in contract termination, debarment, and other sanctions.

(Ord. 06-186.)

§ 29-18. Other legal remedies.

The remedies provided by this subtitle are in addition to any other statutory, legal, or equitable remedies that may be available and are not intended to be prerequisite to or exclusive of any other remedies.

(Ord. 06-186.)

§ 29-19. Non-interruption of performance.

The filing, investigation, hearing, and appeal of a complaint under this subtitle does not hinder or affect the award of, performance of, or payment on a contract prior to a final administrative decision that establishes a violation.

(Ord. 06-186.)

§ 29-20. Rules and regulations.

(a) *Solicitor may adopt.*

The City Solicitor may adopt rules and regulations to carry out this subtitle.

(b) *Filing with Legislative Reference.*

A copy of all rules and regulations must be filed with the Department of Legislative Reference before they take effect.

(Ord. 06-186.)

SUBTITLE 30
HEALTH CARE SERVICES PROVIDERS

§ 30-1. Definitions.

(a) *In general.*

For the purpose of this subtitle the following words have the meanings indicated unless their context clearly indicates otherwise.

(b) *Carrier.*

“Carrier” means:

- (1) an insurer;
- (2) a network delivery system;
- (3) a nonprofit health service plan;
- (4) a health maintenance organization;
- (5) a preferred provider organization;
- (6) a dental plan organization; or
- (7) any person acting as a third party administrator.

(c) *Network delivery system.*

“Network delivery system” means a person or entity that provides health care services to covered individuals through a provider panel.

(d) *Person.*

“Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(e) *Provider.*

- (1) “Provider” means a person licensed, certified, or otherwise authorized under the Health Occupations Article of the Annotated Code of Maryland to provide health care services in the ordinary course of business or practice of a profession.
- (2) “Provider” includes a health care facility, professional service corporation, partnership, limited liability company, professional office, or any other entity licensed or authorized by law to render professional services for or on behalf of a provider.

(f) *Provider panel.*

“Provider panel” means a group of providers who have entered into a provider service contract with a carrier to provide services under the carrier’s health benefit plan.

(City Code, 1976/83, art. 1, §27C(a).) (Ord. 96-004.)

§ 30-2. Prequalification requirements.

(a) *Prequalification criteria.*

(1) Any person who submits to the City a bid or who contracts with the City to be a health care carrier or to provide health care services to Baltimore City employees or persons receiving health care through any entity funded by the City must prequalify pursuant to City Charter Article VI, §11(g), and the rules, regulations, and standards adopted by the Board of Estimates.

(2) The criteria for the prequalification of health care carriers shall include, but not be limited to:

- (i) experience levels;
- (ii) financial history; and
- (iii) ethnic diversity of their respective provider panels.

(b) *Same.*

Each health care carrier interested in doing business with, or continuing to do business with the City of Baltimore in this regard shall apply for prequalification and be so prequalified.

(City Code, 1976/83, art. 1, §27C(b).) (Ord. 96-004; Ord. 16-503.)

§ 30-3. Board of Estimates’ authority.

Nothing in this subtitle shall be deemed to abrogate the authority of the Board of Estimates to award contracts pursuant to the authority provided by Article VI, §11 of the City Charter.

(City Code, 1976/83, art. 1, §27C(c).) (Ord. 96-004.)

SUBTITLE 31
HEALTH CARE ADVISORY PANEL

§ 31-1. Definitions.

(a) *In general.*

For the purpose of this subtitle, the following words have the meanings indicated unless their context clearly indicates otherwise.

(b) *Person.*

“Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(c) *Provider.*

(1) “Provider” means a person licensed, certified, or otherwise authorized under the Health Occupations Article of the Annotated Code of Maryland to provide health care services in the ordinary course of business or practice of a profession.

(2) “Provider” includes a health care facility, professional service corporation, partnership, limited liability company, professional office, or any other entity licensed or authorized by law to render professional services for or on behalf of a provider.

(d) *Provider panel.*

“Provider panel” means a group of providers who have entered into a provider service contract with a carrier to provide services under the carrier’s health benefit plan.

(City Code, 1976/83, art. 1, §27D(a).) (Ord. 96-077.)

§ 31-2. Composition of Advisory Panel.

The Health Care Advisory Panel shall consist of:

- (1) the Commissioner of the Baltimore City Health Department;
- (2) the Director of Human Resources;
- (3) the Labor Commissioner;
- (4) a member of the City Council Health and Environment Committee as chosen by the Committee;
- (5) a representative of the Medical and Chirurgical Faculty of Maryland as chosen by the general membership;
- (6) a representative of the Maryland Hospital Association as chosen by the general membership;

- (7) a representative of the Monumental City Medical Society as chosen by the general membership;
- (8) a representative of the Black Mental Health Alliance as chosen by the general membership;
- (9) a representative of Greater Maryland Coalition for Health Assurance, Inc. as chosen by the general membership;
- (10) a representative of the Black Nurses Association of Baltimore as chosen by the general membership;
- (11) a representative of the Maryland Association of Health Maintenance Organizations as chosen by the general membership; and
- (12) a representative of the Metropolitan Council of the AFL-CIO.
(*City Code, 1976/83, art. 1, §27D(b).*) (*Ord. 96-077; Ord. 04-822.*)

§ 31-3. Annual review of providers, etc.

(a) *Advisory Panel to review.*

The Health Care Advisory Panel shall conduct an annual review of all persons, providers, or provider panels prequalified to provide health care services to employees or dependents of employees of the City of Baltimore.

(b) *Scope of review.*

The annual review shall cover the evaluation criteria adopted by the Board of Estimates, including, but not limited to, the following evaluation criteria:

- (1) that each entity seeking to provide health care services under this subtitle consider all qualified applicants for its provider panel without regard to race, color, religion, sex, disability, sexual orientation, or national origin;
- (2) that all solicitations or advertisements for applicants for membership on provider panels state that all qualified applicants will be considered without regard to race, color, religion, sex, disability, sexual orientation, or national origin; *{and}*
- (3) that all participants in the prequalification process maintain a provider panel that meets certain criteria with respect to ethnic diversity as determined by the Board of Estimates.
(*City Code, 1976/83, art. 1, §27D(c).*) (*Ord. 96-077.*)

§ 31-4. Annual report.

The Health Care Advisory Panel shall submit a written report of its findings and recommendations to the Mayor and City Council and the Board of Estimates by April 30 of each year.
(*City Code, 1976/83, art. 1, §27D(d).*) (*Ord. 96-077.*)

SUBTITLE 32
PURCHASE OF FOODSTUFFS

§ 32-1. Purchases of \$40,000 or more.

(a) *Advertising required.*

(1) In accordance with the provisions of Article VI, § 11 of the City Charter, in contracting for and purchase of foodstuffs and related perishables involving an expenditure of \$40,000 or more, for the City or by any municipal agency, advertisements for proposals for the same shall first be published at least twice in 2 or more daily newspapers published in Baltimore City unless otherwise provided by the Charter.

(2) The first publication shall be made not less than 10 nor more than 30 days prior to the day set for opening the bids.

(b) *Contracts to comply with Charter.*

All such contracts for foodstuffs and related perishables shall be made by the Board of Estimates in the manner provided in Article VI, § 11(g) of the City Charter.

(c) *Exception.*

The provisions of this section may be dispensed with in accordance with the conditions and provisions of Article VI, § 11(d) of the City Charter.

(City Code, 1966, art. 1, §88; 1976/83, art. 1, §§89 and 90.) (Ord. 65-608.)

§ 32-2. Purchases of \$20,000 or more, but less than \$40,000.

The contracting for and purchase of foodstuffs and related perishables involving an expenditure of more than \$20,000 and less than \$40,000, except those contracts awarded by the Board of Estimates pursuant to the provisions of Article VI, § 11(g) of the City Charter, shall be submitted to the Board of Estimates for its approval and shall be binding upon the City only when so approved.

(City Code 1966, art. 1, §90; 1976/83, art. 1, §91.) (Ord. 65-608.)

§ 32-3. Performance bonds.

It shall not be necessary for any bidder who has been awarded a contract to supply foodstuffs or related perishables to the City of Baltimore or any agency thereof to furnish a performance bond when the total amount of the contract does not exceed \$40,000.

(City Code, 1976/83, art. 1, §92.) (Ord. 74-600.)

SUBTITLE 33
PURCHASE OF RECYCLED PRODUCTS

§ 33-1. “Recycled paper” defined.

In this subtitle, “recycled paper” means a paper product meeting the Environmental Protection Agency recommended content standards as defined in 40 C.F.R. Part 250.
(*City Code, 1976/83, art. 1, §232(a).*) (*Ord. 91-772.*)

§ 33-2. Purchasing requirements.

Whenever feasible or practicable, the City shall use the following guidelines in procurement of paper and other goods:

- (1) To the extent practicable, in procuring paper or paper products, the City shall purchase or approve for purchase only supplies that are produced from recycled paper and are recyclable.
- (2) Of the total volume of paper that the City buys, at least 20% shall be recycled paper with a projected goal of 40%.
- (3) No non-recyclable polystyrene products or products packaged in non-recyclable polystyrene shall be purchased.
- (4) Where practicable, contracts shall specify that materials must be packaged in recycled and recyclable materials.
- (5) In the purchase of non-paper goods, the Purchasing Agent shall review product specifications, and shall revise specifications, where appropriate, to include recycled content in the following product areas:
 - (i) re-refined oil;
 - (ii) plastic products;
 - (iii) auto parts;
 - (iv) compost material;
 - (v) aggregate;
 - (vi) insulation;
 - (vii) solvents; and
 - (viii) rubber products.
- (6) To the extent practicable, no inks containing toxic components shall be used in any City publication.

(7) To the maximum extent possible, all photocopiers purchased by the City shall be capable of doing double-sided copying and using recycled paper.

(8) Wherever practicable, durable rather than non-recyclable disposable products shall be purchased.

(City Code, 1976/83, art. 1, §232(b).) (Ord. 91-772.)

§ 33-3. Use requirements.

(a) *Photocopying.*

Whenever feasible, all documents over 6 pages photocopied by the City shall be copied on both sides of the page.

(b) *Bids and proposals.*

(1) Contractors doing business with the City shall be advised of the City's policies regarding recycled and recyclable materials.

(2) All bids and proposals shall be submitted on recycled and recyclable paper printed on both sides, where practicable, with removable or reusable bindings or staples.

(c) *Consultants' reports.*

Any consultant producing reports for the City shall use recycled and recyclable paper printed on both sides, where practicable.

(City Code, 1976/83, art. 1, §232(c) - (e).) (Ord. 91-772.)

§ 33-4. Board of Estimates' authority.

The provisions of this subtitle and their applications are subject to the authority of the Board of Estimates as set forth in Article VI, §11 of the City Charter.

(City Code, 1976/83, art. 1, §232(f).) (Ord. 91-772.)

SUBTITLE 34
COMMISSION ON SUSTAINABILITY

EDITOR’S NOTE: Ordinance 07-488 repealed former Subtitle 34 {“Commission on Resource Conservation and Recycling”} in its entirety and substituted the following new subtitle, effective August 14, 2007.

§ 34-1. Commission created; members.

(a) *Created.*

- (1) There is a Commission on Sustainability
- (2) The Commission consists of 21 members, 20 of whom are appointed by the Mayor in the manner prescribed by Article IV, § 6 of the City Charter.

(b) *Appointed members.*

The 20 appointed members shall represent:

- (1) community organizations;
- (2) environmental groups representing all elements of environmental sustainability, including but not limited to air quality, water quality, green building techniques, energy conservation, and alternate transportation;
- (3) labor unions;
- (4) public health and environmental justice;
- (5) private industry, to include but not limited to restaurants and bars, packaging industry, and recycling industry;
- (6) the Mayor’s office;
- (7) City agencies; and
- (8) persons with a general interest in environmental issues.

(c) *City Council representative.*

The 21st member shall be a member of the City Council appointed by the Council President. (Ord. 07-488.)

§ 34-2. Terms; Chair.*(a) Terms of members.*

The terms of each member is 4 years, concurrent with the Mayor's term of office, and until a successor qualifies and takes office.

(b) Commission Chair.

The Mayor shall appoint one member as Chair of the Commission.
(Ord. 07-488.)

§ 34-3. Compensation; expenses.

No member of the Commission may receive any compensation for services, but each member may be reimbursed for necessary and proper expenses incurred in the performance of his or her duties.
(Ord. 07-488.)

§ 34-4. Duties.*(a) Comprehensive Plan.*

The Commission shall prepare a Comprehensive Sustainability Plan and, from time to time, recommend appropriate amendments to the Plan.

(b) Monitor Office of Sustainability.

The Commission shall monitor the Office of Sustainability and that Office's incorporation and implementation of the Comprehensive Sustainability Plan.

(c) Report to Council.

The Commission shall report annually to the City Council on its activities.
(Ord. 07-488.)

§ 34-5. Comprehensive Sustainability Plan.

The Commission's Comprehensive Sustainability Plan shall:

- (1) discuss all elements of sustainability, including air quality, water quality, resource conservation and recycling, energy, public health, environmental justice, reduction of greenhouse emissions, and increasing use of alternative means of transportation;
- (2) establish 3-, 5-, and 10-year sustainability targets;
- (3) create public and private sustainability initiatives, to include but not limited to standards for city purchasing, incentives for citizens and businesses to recycle and purchase recycled goods, incentives for energy conservation, and water quality improvements;

- (4) describe the resources and responsible agencies and others needed to implement the Plan;
- (5) include a public information component;
- (6) establish key sustainability indicators to track progress of Plan implementation; and
- (7) set criteria and recommend mandatory measures for annual reporting to the City Council on:
 - (i) Energy Consumption Reports, as required in City Code Article 5, § 45-2;
 - (ii) Comprehensive Recycling and Composting Plan, as prescribed in City Code Article 23, § 16-2; and
 - (iii) greenhouse gas emissions reduction reports.

(Ord. 07-488.)

§ 34-6. Commission staff.

(a) *Planning Department.*

The Department of Planning will provide staff for Commission in the development and implementation of the Plan.

(b) *Consultants.*

The Commission may employ, as provided in the Ordinance of Estimates, consultants and other personnel necessary for the proper performance of its duties.

(Ord. 07-488.)

§ 34-7. Adoption of Plan.

To become effective, the Sustainability Plan or an amendment to it must be approved by an Ordinance of the Mayor and City Council.

(Ord. 07-488.)

§ 34-8. Effect of Plan.

The Sustainability Plan will be incorporated into the City's Comprehensive Master Plan as an appendix.

(Ord. 07-488.)

SUBTITLE 35
AMERICAN PREFERENCE FOR VEHICLE PROCUREMENT

§ 35-1. Definitions.

(a) *In general.*

As used in this subtitle, the following terms have the meanings indicated unless their context clearly indicated otherwise.

(b) *Person.*

“Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(c) *Subcontract.*

“Subcontract” means any agreement between a vendor and another person for the performance of work under a procurement contract.

(d) *Vehicle procurement contract.*

“Vehicle procurement contract” means every agreement entered into by the City Purchasing Agent or a City agency with a vendor to buy, rent, lease, or otherwise obtain or acquire passenger cars and trucks.

(e) *Vendor.*

“Vendor” means any person who enters into a vehicle procurement agreement with the City Purchasing Agent or a City agency.

(*City Code, 1976/83, art. 1, §233.*) (*Ord. 91-773.*)

§ 35-2. Purpose of subtitle.

(a) *Findings.*

The Mayor and City Council of Baltimore find that:

- (1) the economy and general welfare of this City and its people, as well as the economy and welfare of the State of Maryland and the United States, is adversely affected when international fair trade laws are not being equitably applied to all nations;
- (2) unfair trade practices have resulted in foreign products saturating city, state, and national markets, which places American businesses and industry in an untenable competitive posture;
- (3) the erosion of American industry, especially the automobile industry, has already translated into the loss of thousands of American jobs;

- (4) the taxes paid to the City and the State by local workers engaged in the production, construction, and sale of such products provide a significant source of public revenue in Baltimore City and the State of Maryland; and
- (5) with the reduction of the tax base and the loss of other revenue caused by plant closings, the loss of jobs, and related economic dislocations and relocations, the City is faced with a great fiscal burden when thousands of our citizens must seek public assistance.

(b) *Declaration of policy.*

The Mayor and City Council of Baltimore City declares that it is the policy of this City that:

- (1) the City Purchasing Agent and all City agencies, at all times, shall aid and promote the economy of the City and likewise the State and the United States by making every reasonable effort to ensure that passenger cars and trucks purchased through the City's procurement system be produced in the United States;
- (2) the first option in the purchase of passenger cars and trucks by any City agency should be the purchase of such items that are completely produced in the United States;
- (3) a program be established by September 30, 1991, to inform bidders of the City's policy for passenger cars and trucks of American businesses;
- (4) as a first step in the process, this policy shall apply to the procurement of all passenger cars and trucks; and
- (5) additional products shall be added by executive order or legislation of the Baltimore City Council.

(*City Code, 1976/83, art. 1, §234.*) (*Ord. 91-773.*)

§ 35-3. Procurement requirements.

All passenger cars and trucks which are provided pursuant to a vehicle procurement contract or subcontract shall be manufactured or assembled in the United States.

(*City Code, 1976/83, art. 1, §235.*) (*Ord. 91-773.*)

§ 35-4. Bids; contracts; annual reports.

(a) *Notice to Purchasing Agent.*

A vehicle procurement contract and any subcontract to a vehicle procurement contract shall contain a notice notifying the City Purchasing Agent when any passenger cars and trucks or any component or part of any of them that are provided under vehicle procurement contract or subcontract are manufactured or produced in any other nation except the United States.

(b) *Bids.*

- (1) The City Purchasing Agent and all City agencies shall include in all City bids and requests for bids a statement of the City's policy on the preference for passenger cars and trucks made or assembled by American businesses.

- (2) All bids submitted to the City Purchasing Agent or City agencies shall identify when passenger cars and trucks of American businesses have been included in the bid.

(c) *Annual report.*

The City Purchasing Agent shall submit an annual report to the Mayor and City Council on the number and amount of contracts that included the purchase of passenger cars and trucks as provided for in this subtitle.

(City Code, 1976/83, art. 1, §236.) (Ord. 91-773.)

§ 35-5. Exemptions.

(a) *Purchases of \$16,000 or less.*

This subtitle does not apply to any vehicle procurement contract or subcontract that involves a purchase of \$16,000 or less.

(b) *Product unavailability.*

This subtitle does not apply to the purchase of any passenger cars and trucks that the City Purchasing Agent has certified in writing are:

- (1) not produced in sufficient quantity in the United States to meet the agency's requirements; or
- (2) not available in the United States in the necessary time to meet the agency's requirements.

(City Code, 1976/83, art. 1, §237.) (Ord. 91-773.)

§ 35-6. Rules and regulations.

The Director of Finance may adopt rules and regulations to carry out the provisions of this subtitle.

(City Code, 1976/83, art. 1, §238.) (Ord. 91-773.)

**SUBTITLE 36
PURCHASE ORDERS**

§ 36-1. Drafts authorized.

The City Purchasing Agent is authorized to send out with certain purchase orders to city suppliers a draft or other form of payment to cover the cost of the goods or services on the order.
(*City Code, 1976/83, art. 5, §13B(1st sen.)*.) (*Ord. 80-182; Ord. 82-663.*)

§ 36-2. Signatures.

(a) *By whom.*

The drafts shall bear the signatures of:

- (1) the City Purchasing Agent or the Acting City Purchasing Agent in the absence of the City Purchasing Agent; and
- (2) another person from the Bureau of Purchases designated by the Director of Finance.

(b) *How.*

1 of the 2 signatures must be manual.
(*City Code, 1976/83, art. 5, §13B(3rd, 4th sens.)*.) (*Ord. 80-182; Ord. 82-663.*)

§ 36-3. Maximum amount.

The maximum dollar amount of a draft shall be \$2,000.
(*City Code, 1976/83, art. 5, §13B(2nd sen.)*.) (*Ord. 80-182; Ord. 82-663.*)

SUBTITLE 37
PAYMENT OF CITY OBLIGATIONS

§ 37-1. Definitions.

(a) *In general.*

For the purpose of this subtitle, the following words have the meanings indicated unless their context clearly indicates otherwise.

(b) *City.*

“City” means Mayor and City Council of Baltimore, the body politic and corporate as established by the Baltimore City Charter.

(c) *Construction estimate.*

“Construction estimate” means that document signed by the contractor, the inspector, the proper division and bureau chief, and the Director of Public Works, the Director of General Services, or the Director of Transportation, whichever has jurisdiction, certifying that certain work has been completed on a construction contract.

(d) *Contractor.*

(1) “Contractor” means any person having a contract with the City.

(2) “Contractor” does not include employees with labor contracts.

(e) *Director.*

“Director” means the Director of Finance.

(f) *Payment date.*

“Payment date” means the date of the Director’s check.

(g) *Person.*

“Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(h) *Proper invoice.*

“Proper invoice” means an invoice which contains the contractor’s federal Employer’s Identification Number or Social Security Number and the contract or purchase order number or other description of the contract and which contains or is accompanied by such substantiating information and documentation as required by the Director.

(i) *Receipt date.*

“Receipt date” means the date that a proper invoice and receiving notice or, in the case of a construction contract, a proper construction estimate is received and recorded by the Bureau of Payroll and Disbursements.

(*City Code, 1976/83, art. 1, §27A(a).*) (*Ord. 89-280; Ord. 15-435.*)

§ 37-2. City payment policy.

(a) *Procurement contracts.*

It is the policy of this City that payment pursuant to any authorized, written procurement contract shall be made by the City to the contractor not later than 30 calendar days from the receipt date of a proper invoice.

(b) *Construction contracts.*

Payment pursuant to a construction contract shall be made by the City to the contractor not later than the date specified in the contract or, if no date is specified, then not later than 30 days from the receipt date of a proper construction estimate.

(*City Code, 1976/83, art. 1, §27A(b).*) (*Ord. 89-280.*)

§ 37-3. Interest.

(a) *In general.*

Any amount due and payable pursuant to law and under an authorized, written procurement contract or a construction contract which remains unpaid for more than 45 calendar days after the receipt date shall accrue interest, at a rate specified by the Board of Estimates, for the period that begins 31 calendar days after the receipt date.

(b) *Construction contracts.*

If the written construction contract specifies a date before which payment must be made by the City, then the provisions of that contract shall apply to the payment of interest by the City.

(*City Code, 1976/83, art. 1, §27A(c).*) (*Ord. 89-280.*)

§ 37-4. Exemptions.

The City is not liable for the payment of interest pursuant to this subtitle:

- (1) if a proper invoice for accrued interest is not submitted within 30 calendar days after the payment date of the amount on which the interest accrued;
- (2) if there is a dispute between the City and the contractor;
- (3) for more than 1 year following the 31st calendar day after the receipt date; or

(4) on amounts representing unpaid interest.
(*City Code, 1976/83, art. 1, §27A(d).*) (*Ord. 89-280.*)

§ 37-5. Rules and regulations; allocation of interest charges.

(a) *Rules and regulations.*

The Director of Finance may adopt rules and regulations approved by the Board of Estimates to carry out this subtitle.

(b) *Allocation of interest.*

The Director may charge the contracting City agency the interest provided for in this subtitle when the City agency is the cause of any delay requiring the payment of interest; otherwise the Department of Finance shall pay the interest provided for in this subtitle.
(*City Code, 1976/83, art. 1, §27A(e).*) (*Ord. 89-280.*)

**SUBTITLE 38
VENDORS' HOT LINE**

§ 38-1. Establishment; costs.

(a) *City Purchasing Agent to establish.*

The City Purchasing Agent shall establish a telephone line or system of telephone lines known as the Vendors' Hot Line.

(b) *Shared costs.*

Any City agency that uses the hot line to advertise contract opportunities shall contribute its proportional share to the cost of the hot line operation.

(City Code, 1976/83, art. 1, §228(a).) (Ord. 88-057; Ord. 90-594; Ord. 91-771.)

§ 38-2. Purpose.

(a) *In general.*

The primary purpose of the Vendors' Hot Line is to provide callers with prerecorded information on all contracting opportunities that are currently available with agencies or departments of the City of Baltimore.

(b) *Information to be provided.*

The Vendors' Hot Line shall provide by prerecorded message to callers the following information:

- (1) the title of the bid and other identifying information on the contract;
- (2) the nature of the procurement, including whether the procurement is for supplies, services, construction, or commodities;
- (3) the amount of deposit required, if any;
- (4) a reference to the MBE/WBE requirements;
- (5) a reference to the City's policy and requirements regarding recycled and recyclable materials;
- (6) the date, time, and place for submission of bids;
- (7) a brief description of the type of supplies, services, commodities, or construction being sought and whether the offer is for term contract *{sic}*;
- (8) where and when further information on the contract may be obtained; and

(9) any other information the Director *{of Purchasing}* considers appropriate and practicable.
(*City Code, 1976/83, art. 1, §228(b), (c).*) (*Ord. 88-057; Ord. 90-594; Ord. 91-771.*)

§ 38-3. Weekly updates.

(a) *Initiation.*

The Director of Purchasing shall have the Vendors' Hot Line in operation on or before October 1, 1988.

(b) *Updates.*

Thereafter, the information on the Vendors' Hot Line shall be updated at least once each week.
(*City Code, 1976/83, art. 1, §228(d).*) (*Ord. 88-057; Ord. 90-594; Ord. 91-771.*)

SUBTITLE 39
{RESERVED}

SUBTITLE 40
DEPARTMENT FROM CITY CONTRACTS

EDITOR'S NOTE: Ordinance 00-005 repealed former Subtitle 40 in its entirety and substituted the following new subtitle, effective April 30, 2000.

PART I. DEFINITIONS; GENERAL PROVISIONS

§ 40-1. Definitions.

(a) *In general.*

In this subtitle, the following words have the meanings indicated.

(b) *Board.*

“Board” means the Baltimore City Board of Estimates.

(c) *Business.*

“Business” means any commercial activity conducted by a person.

(d) *City.*

“City” means:

- (1) the Mayor and City Council of Baltimore; and
- (2) any of its agencies, instrumentalities, or units.

(e) *Contract.*

“Contract” means any agreement in any form.

(f) *Controlling stockholder.*

“Controlling stockholder” means a stockholder who:

- (1) owns more than 25% of the voting stock of a corporation; or
- (2) notwithstanding the number of shares that the stockholder owns, has the power to direct or control the direction of the management or policies of a corporation.

(g) *Convicted.*

“Convicted” includes an accepted plea of nolo contendere.

(h) *Person.*

“Person” means:

- (1) an individual;
- (2) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; or
- (3) a partnership, firm, association, corporation, or other entity of any kind.

(i) *Principal.*

“Principal” means:

- (1) a sole proprietor;
- (2) a partner, officer, director, or controlling stockholder; or
- (3) an employee directly involved in the process of obtaining contracts with public bodies.

(j) *Public body.*

“Public body” means:

- (1) the United States;
- (2) the State of Maryland;
- (3) the City of Baltimore;
- (4) any other local governmental unit in the State, including a county, a municipal corporation, or a bicounty or multicounty governmental entity; and
- (5) any agency, instrumentality, or unit of these entities.

(Ord. 00-005.)

§ 40-2. Probation before judgment.

For purposes of this subtitle, the Board may treat the imposition of probation before judgment as a conviction.

(Ord. 00-005.)

§ 40-3. Rules and regulations.

The Board may adopt rules and regulations to carry out this subtitle.

(Ord. 00-005.)

§ 40-4. Notices.

All notices required to be given under this subtitle must be in writing.
(*Ord. 00-005.*)

PART II. OFFENSES SUBJECT TO DEBARMENT**§ 40-5. Automatic debarment for certain bribery offenses.**

A person is debarred by operation of law from entering into a contract with the City if the person has been convicted under the laws of this State or of the United States for bribery, attempted bribery, or conspiracy to bribe, committed in furtherance of obtaining a contract with a public body.
(*Ord. 00-005.*)

§ 40-6. Other bribery offenses.

The Board may debar a person from entering into a contract with the City, if the person:

- (1) has been convicted under the laws of this State or of the United States for bribery, attempted bribery, or conspiracy to bribe, committed other than in furtherance of obtaining a contract with a public body;
- (2) has been convicted under the laws of another state of bribery, attempted bribery, or conspiracy to bribe; or
- (3) during the course of an official investigation or other proceeding, has admitted, in writing or under oath, an act or omission that would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of this State, another state, or the United States.

(*Ord. 00-005.*)

§ 40-7. Violations of other laws.**(a) *Judgments.***

The Board may debar a person from entering into a contract with the City if that person, or a principal of that person, or any other person substantially involved in that person's contracting activities:

- (1) has been convicted under the laws of the City, this State, another state, or the United States of:
 - (i) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (ii) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (2) has been convicted of a criminal violation of an antitrust statute of this State, another state, or the United States;

- (3) has been convicted of a violation of the Racketeer Influenced and Corrupt Organization Act or of the Mail Fraud Act for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) has been convicted of a violation of Title 14 {"Preferences"}, Subtitle 3 {"Minority Business Participation"} of the State Finance and Procurement Article;
- (5) has been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described in paragraphs (1) through (5) of this subsection;
- (6) has been found civilly liable under an antitrust statute of this State, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
- (7) has been found in a final administrative determination to have violated the City's Commercial Non-Discrimination Policy, as set forth in Subtitle 29 of this article.

(b) *Admissions.*

The Board may debar a person from entering into a contract with the City if, during the course of an official investigation or other proceeding, that person, or a principal of that person, or any other person substantially involved in that person's contracting activities has admitted, in writing or under oath, an act or omission that constitutes grounds for conviction or liability under any law described in subsection (a) of this section.

(*Ord. 00-005; Ord. 06-186.*)

§ 40-8. Other events.

The Board may debar a person from entering into a contract with the City:

- (1) if the Board finds that the person was established or operates in a way designed to evade the application of this subtitle or to defeat the purpose of this subtitle;
- (2) if the person is a principal, successor, assignee, subsidiary, or affiliate of a person who is debarred or suspended;
- (3) for one of the following violations of a contract provision, if the Board believes the violation to be serious enough to justify debarment:
 - (i) the deliberate failure to perform in accordance with the specifications or within the time limits provided in a contract; or
 - (ii) within the preceding 5 years, the failure to perform or the unsatisfactory performance in accordance with the terms of 1 or more contracts, unless the failure to perform or unsatisfactory performance was caused by acts beyond the control of the person; or
- (4) for any other cause that the Board determines to be so serious as to affect the integrity of the procurement process.

(*Ord. 00-005.*)

PART III. CITY SOLICITOR**§ 40-9. Designation of representative.**

The City Solicitor may designate one or more Assistant Solicitors to perform the functions and duties assigned by this subtitle.

(Ord. 00-005.)

§ 40-10. Reports to Board.

The City Solicitor shall promptly report to the Board any information that indicates a basis for instituting debarment proceedings under this subtitle.

(Ord. 00-005.)

§ 40-11. Investigations — in general.

The City Solicitor shall investigate the matters to be determined by the Board in any hearing held under this subtitle.

(Ord. 00-005.)

§ 40-12. Investigations — investigative demand.**(a) *Scope of section.***

This section applies whenever the City Solicitor reasonably believes that a person may have information or may possess or have custody of or control over any potential evidence, wherever situated, that the City Solicitor believes is relevant to an investigation under this subtitle.

(b) *Service of demand.*

Before making any recommendation to the Board, the City Solicitor may serve on a person described in subsection (a) of this section a written investigative demand that requires the person to do one or more of the following:

- (1) be examined under oath;
- (2) answer written interrogatories; or
- (3) produce documentary material for inspection and copying.

(c) *Contents of demand.*

The demand of the City Solicitor shall:

- (1) state the matter under investigation;
- (2) describe the documentary material to be produced with sufficient specificity to indicate fairly the material demanded;

- (3) contain a copy of the written interrogatories to be answered;
- (4) specify the place for taking testimony and for producing documentary materials; and
- (5) prescribe a reasonable time of not less than 3 days after the demand is served within which the person must comply with the demand.

(d) *Enforcement.*

If the person fails to comply with the demand, the City Solicitor may apply to a court of appropriate jurisdiction for an order requiring compliance.

(Ord. 00-005.)

§ 40-13. Preliminary recommendations.

On completing the investigation of a person, the City Solicitor may recommend to the Board whether the Board should:

- (1) institute debarment proceedings against the person; and
- (2) suspend the person pending a final decision.

(Ord. 00-005.)

§ 40-14. Participation in proceedings.

As a party to any proceeding brought under this subtitle, the City Solicitor may:

- (1) present to the Board the evidence that the City Solicitor considers appropriate; and
- (2) recommend to the Board:
 - (i) whether the Board should debar the person; and
 - (ii) the appropriate time period for the debarment.

(Ord. 00-005.)

PART IV. DEBARMENT PROCEDURES

§ 40-15. Reports.

(a) *Units to report to Board.*

Each agency, instrumentality, and unit of the City shall promptly report to the Board any information that indicates a cause for debarment under:

- (1) § 40- 5 {“Automatic debarment for certain bribery offenses”};
- (2) § 40-6 {”Other bribery offenses”};

(3) § 40-7 {"Violations of other laws"}; or

(4) § 40-8 {"Other events"}.

(b) *Board to seek copies of State reports.*

The Board shall seek to obtain from the State Board of Public Works timely copies of reports made to the State Board under § 16-302 of the State Finance and Procurement Article.

(Ord. 00-005.)

§ 40-16. Notice and opportunity for hearing — automatic debarments.

(a) *Scope of section.*

This section applies if:

(1) a person is convicted of an offense described in § 40-5 {"Automatic debarment for certain bribery offenses"} of this subtitle; and

(2) that person or a business in which that person is a principal is seeking a contract with the City.

(b) *Notice of debarment.*

When the Board learns of the conviction, the Board shall:

(1) notify the person of the person's automatic debarment under § 40-5 of this subtitle; and

(2) give the person reasonable opportunity to be heard on whether the stated basis for debarment exists.

(Ord. 00-005.)

§ 40-17. Notice and opportunity for hearing — other debarments.

(a) *Scope of section.*

This section applies if:

(1) a person is subject to debarment under § 40-6 {"Other bribery offenses"}, § 40-7 {"Violations of other laws"}, or § 40-8 {"Other events"} of this subtitle; and

(2) that person or a business in which that person is a principal is seeking or is performing under a contract with the City.

(b) *Notice of proposed debarment.*

(1) When the Board receives information that indicates a basis for debarring a person under § 40-6, § 40-7, or § 40-8 of this subtitle, the Board may institute debarment proceedings by notice to that person.

(2) The notice shall state:

- (i) the grounds for the debarment;
- (ii) the person’s right to a hearing before the Board; and
- (iii) that the right to a hearing is waived unless the person files a request for hearing as required by subsection (c) of this section.

(c) *Request for hearing.*

A request for a hearing must be:

- (1) in writing; and
- (2) filed with the Board within 30 days after the person received the notice.

(d) *Debarment on failure to request hearing.*

If the person fails to file a request for hearing as required by subsection (c) of this section, the person:

- (1) waives the right to a hearing; and
- (2) is debarred.

(Ord. 00-005.)

§ 40-18. Suspension pending decision.

(a) *Persons.*

Pending a final decision on a debarment, the Board may suspend any person against whom debarment proceedings have been instituted under this subtitle.

(b) *Businesses.*

A business is suspended to the same extent that a person is suspended under this section if:

- (1) the suspended person’s debarment would cause the debarment of the business under § 40-20 {“Debarment of businesses”} of this subtitle; and
- (2) the Board notifies the business of its suspension under this subsection.

(c) *Modification or termination.*

- (1) A person or business suspended under this section may petition the Board to modify or terminate the suspension.

(2) In its sole discretion, the Board may conduct a hearing on the petition.

(3) In considering the petition, the Board shall determine whether the integrity of the contracting process and the best interests of the City would be served by continuing, modifying, or terminating the suspension.

(4) The Board shall give the petitioner notice of the Board's decision.

(Ord. 00-005.)

§ 40-19. Hearing and decision.

(a) *Hearing.*

(1) Within 90 days after receipt of a request for a hearing, the Board shall:

(i) conduct a hearing; and

(ii) decide whether the person should be debarred.

(2) The time for hearing and decision may be extended by the Board for good cause shown.

(b) *Factors to be considered.*

In a proceeding under § 40-6, § 40-7, or § 40-8 of this subtitle, the Board shall:

(1) determine whether the integrity of the contracting process and the best interests of the City would be served by debarring the person from entering into or performing contracts with the City; and

(2) for that purpose, consider all relevant factors, including:

(i) the nature and seriousness of the act that caused the person to be subject to debarment;

(ii) the time the act occurred;

(iii) whether and to what extent the person cooperated with authorities investigating the matter;

(iv) the conditions under which the person cooperated; and

(v) the conduct of the person since the act occurred.

(c) *Decision.*

(1) The Board shall notify the person of the Board's decision.

(2) The notice shall:

(i) state whether the person is debarred for the act in question; and

(ii) if the person is debarred, state the period of debarment.

(Ord. 00-005.)

§ 40-20. Debarment of businesses.

(a) *Grounds.*

A business is debarred from entering into or performing under a contract with the City if the Board debars any principal in that business.

(b) *Scope of debarment.*

A business debarred under subsection (a) of this section is debarred to the same extent as the debarred principal.

(c) *Duration.*

A business remains debarred under this section:

(1) as long as the debarred person remains with the business in any principal capacity; or

(2) until the debarment is removed in accordance with this subtitle.

(d) *Notice.*

The Board shall notify a business of any debarment of the business under this section.

(Ord. 00-005.)

PART V. REINSTATEMENTS

§ 40-21. Automatic reinstatement.

If the conviction that was the basis for a debarment or suspension is reversed or otherwise voided, the debarment or suspension terminates automatically.

(Ord. 00-005.)

§ 40-22. Petitions for reinstatement.

(a) *In general.*

A person debarred under this subtitle may petition the Board for removal of the debarment as provided in this section.

(b) *Bribery offenses.*

For a person debarred under § 40-5 or § 40-6 of this subtitle, the petition may be filed at any time after expiration of 5 years from:

- (1) the date of the debarment; or
- (2) in the case of an automatic debarment under § 40-5, the date of the Board's notice under § 40-16 {"Notice and opportunity for hearing — automatic debarments"}.

(c) *Other causes.*

For a person debarred under § 40-7 or § 40-8 of this subtitle, the petition may be filed at any time after expiration of the earlier of:

- (1) one-half of the period of debarment; or
- (2) 5 years from the date of the debarment.

(*Ord. 00-005; Ord. 14-307.*)

§ 40-23. Reinstatement hearing and decision.

(a) *Hearing.*

(1) Within 90 days after receipt of a petition, the Board shall:

- (i) conduct a hearing; and
- (ii) decide whether the debarment should be removed.

(2) The time for hearing and decision may be extended by the Board for good cause shown.

(b) *Factors to be considered.*

In deciding whether the debarment should be removed, the Board shall:

- (1) determine whether the integrity of the contracting process and the best interests of the City would be served by continuing the debarment; and
- (2) for that purpose, consider all relevant factors, including those listed in § 40-19(b) {"Hearing and decision: Factors to be considered"}.

(c) *Decision.*

(1) The Board shall notify the petitioner of the Board's decision.

(2) The notice shall state:

- (i) whether the debarment is removed or continued; and
- (ii) if continued, how long the petitioner must wait before again petitioning for reinstatement.

(*Ord. 00-005.*)

PART VI. EFFECT AND ENFORCEMENT OF DEBARMENT

§ 40-24. Effect of debarment or suspension.

A person or business that is debarred or suspended under this subtitle may not, at any time during the period of debarment or suspension, be considered for the award of, be awarded, or perform, directly or indirectly, a contract with the City.

(Ord. 00-005.)

§ 40-25. Roster of debarred and suspended persons and businesses.

(a) In general.

The Board shall keep a roster of all persons and businesses debarred or suspended under this subtitle.

(b) Public record.

The roster is a public record.

(Ord. 00-005.)

§ 40-26. Affidavits of qualification.

(a) In general.

On submitting a bid, proposal, or other offer or request for a contract with the City, a person must submit an affidavit as provided in this section.

(b) Offenses.

The affidavit shall state whether, to the best of the person's knowledge, the person or any principal in the person's business:

- (1) has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of this State, any other state, or the United States;
- (2) has been convicted of any offense described in § 40-7 of this subtitle;
- (3) has been found civilly liable under an antitrust statute as described in § 40-7 of this subtitle; or
- (4) is a principal, successor, assignee, subsidiary, or affiliate of a person who is debarred or suspended.

(c) Subcontractor and suppliers.

The affidavit also shall contain the person's affirmation that, in performing the contract with the City, it will not knowingly contract with a person or business debarred or suspended under this

subtitle to provide, directly or indirectly, supplies, architectural services, construction or construction-related services, leases of real property, or any other goods or services.

(d) *Updating prior affidavit.*

The requirements of this section are satisfied if the affidavit:

(1) incorporates by reference the statements contained in an affidavit filed with the City within the previous year; and

(2) states that those statements remain accurate.

(Ord. 00-005.)

§ 40-27. Limitations of actions.

(a) *In general.*

Except as provided in subsection (b) of this section, debarment proceedings under this title must be instituted within 5 years after:

(1) the conviction or judgment that constitutes cause for debarment has become final;

(2) the admission that constitutes cause for debarment has been made; or

(3) the occurrence of any other event that constitutes a cause for debarment.

(b) *Extension of time.*

Debarment proceedings may be brought after the period set forth in subsection (a) of this section if they are instituted within 1 year of when the Board discovered or, by the exercise of ordinary diligence, should have discovered the grounds for debarment.

(Ord. 00-005.)

SUBTITLE 41
PROHIBITED CONTRACTS

§ 41-1. Persons in contempt for unfair labor practices.

(a) *Board of Estimates to maintain list.*

- (1) The Board of Estimates shall establish and maintain a monthly list of all persons found in contempt of court by a federal court of appeals for failure to correct an unfair labor practice prohibited by the National Labor Relations Act (29 U.S.C. § 158, 49 Stat. 452).
- (2) This list shall contain the names of those persons found to have engaged in these practices during the 2-year period before the date of the list.

(b) *Listed persons barred from contracting with City.*

- (1) The Board will consider any company whose name appears on this list to have violated this ordinance and shall upon a formal charge and hearing of the facts, inform that company of its inadmission to the procedure for awarding of public works, services, or supply contracts or subcontracts.
- (2) Nor shall any contract or subcontract be let to a bidder whose bid includes supplies from the adjudged violator.

(c) *Exceptions — certain manufacturers.*

This restriction does not prohibit the awarding of a contract to a company whose name does not appear on such a list but whose goods manufactured include component parts manufactured by a company whose name does appear on the list.

(d) *Exceptions — emergency contract with sole source.*

This restriction does not apply during an emergency situation when the listed person is the sole source of supply for the goods or services.
(City Code, 1976/83, art. 1, §17A.) (Ord. 79-1165.)

§ 41-2. Persons owing delinquent taxes.

(a) *Contracts prohibited.*

No contract shall be awarded to an individual, organization, or corporation which, at the time of the award, owes delinquent taxes to Baltimore City.

(b) *Affidavit required.*

Beginning 60 days after the effective date of this section, any individual, organization, or corporation bidding or seeking to obtain the award for City contracts shall submit an affidavit attesting that all tax obligations have been met, and that no delinquent taxes are owed to Baltimore City.

(c) *Penalties for misrepresentation.*

Any individual, or representative of an organization or corporation who misrepresents his or its tax status, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 and/or imprisoned not more than 90 days.

(*City Code, 1976/83, art. 1, §17B.*) (*Ord. 87-1027.*)

§ 41-3. Contracts using tropical hardwood.(a) *Contracts prohibited.*

The City of Baltimore may not purchase any tropical hardwood species listed in subsection (b) of this section, nor may any City-sponsored event utilize these products, nor may City public works contractors utilize these products.

(b) *Tropical species prohibited.*

Tropical hardwood species include, but are not limited to, the following:

<i>Scientific Name</i>	<i>Common Name</i>
Vouacapoua Americana	Acapu
Pericopsis Elata	Afrormosia
Shorea Almon	Almon
Peltogyne Spp.	Amaranth
Guibourtia Ehie	Amazaque
Aningeria Spp.	Aningeria
Dipterocarpus Grandiflorus	Apitong
Ochroma Lagopus	Balsa
Virola Spp.	Banak
Anisoptera Thurifera	Bella Rosa
Guibourtia Arnoldiana	Benge
Detarium Senegalese	Boire
Guibourtia Demeusii	Bubinga
Prioria Copaifera	Cativo
Antiaris Africana	Chenchen
Dalbergia Retusa	Concobolo
Cordia Spp.	Cordia
Diospyros Spp.	Ebony
Aucoumea Klaineana	Gaboon
Chlorophora Excelsa	Iroko
Acacia Koa	Koa
Pterygota Macrocarpa	Koto
Shorea Negrosensis	Red Lauan
Pentacme Controta	White Lauan
Shorea Polysperma	Tanguile
Terminalia Superba	Limba
Aniba Duckei	Louro

Khaya Ivorensis	Africa Mahogany
Swietenia Macrophylla	Amer. Mahogany
Tieghemella Heckelii	Makore
Distemonanthus Benthamianus	Movingui
Pterocarpus Soyauxii	African Padauk <i>{Padauk}</i>
Pterocarpus Angolensis	Angola Padauk <i>{Padauk}</i>
Aspidosperma Spp.	Peroba
Peltogyne Spp.	Purpleheart
Gonystylus Spp.	Ramin
Dalbergia Spp.	Rosewood
Entandrophragama Cylindricum	Sapele
Shorea Philippinensis	Sonora
Tectona Grandis	Teak
Lovoa Trichilioides	Tigerwood
Millettia Laurentii	Wenge
Microberlinia Brazzavillensis	Zebrawood

(c) *Certifications.*

After the effective date of this section:

- (1) each wood vendor shall note on each invoice for wood products supplied *[the]* identity of the manufacturer of the products and that the material supplied is not tropical wood; and
- (2) each public works general contractor shall certify that no tropical hardwoods are being used by prime or subcontractors in the awarded project.

(d) *Exemptions.*

The Board of Estimates may exempt an item or type of product from the requirements of this section upon a showing that such item has no acceptable non-tropical wood equivalent or is required in a designated historic building.

(City Code, 1976/83, art. 1, §17C.) (Ord. 90-635; Ord. 15-435.)

SUBTITLES 42 TO 43
{RESERVED}

SUBTITLE 44
TANGIBLE PERSONAL PROPERTY

§ 44-1. Sale of tangible personal property.

(a) *Finance may sell.*

(1) The Department of Finance is hereby authorized to sell any tangible personal property belonging to the Mayor and City Council of Baltimore which is no longer needed for municipal purposes.

(2) Such sales may be either public or private and shall be made under such regulations as the Board of Estimates shall, from time to time, by resolution, adopt.

(b) *Proceeds.*

The proceeds derived from all such sales shall be accounted for as other revenue received by the Mayor and City Council of Baltimore.

(City Code, 1976/83, art. 1, §139.) (Ord. 69-355.)

SUBTITLE 45
ENERGY COSTS

§ 45-1. DGS to supervise.

(a) *Certification of rates.*

No bill for gas and electricity or steam furnished to the City may be paid by any department in the City unless the Department of General Services has certified the rate as correct.

(b) *Supervision of meters.*

The Department of General Services has general supervision of the gas, electric, and steam meters in all departments of the City.

(*City Code, 1950, art. 22, §20(4th sen.); 1966, art. 17, §20(4th sen.); 1976/83, art. 17, §19(5th sen.). (Ord. 46-590; Ord. 76-056; Ord. 15-435.)*)

§ 45-2. Annual energy consumption report.

(a) *Agency reports to Finance.*

(1) On or before January 1 of every year, each City agency shall provide the Department of Finance with an energy consumption report.

(2) This report shall state:

- (i) how the agency has complied to date with the criteria and performance measures established by the Commission on Sustainability;
- (ii) the amount budgeted for energy consumption in the current fiscal year;
- (iii) the amount budgeted for energy consumption in the next fiscal year; and
- (iv) a plan to reduce energy consumption in the next fiscal year in accordance with the criteria and performance measures established by the Commission on Sustainability.

(3) The amounts shall be stated in:

- (i) the units of energy billed by the sources, such as gallons, kilowatt-hours, or therms;
- (ii) the energy equivalent per year in the International System of Units (joules per year) or BTU's by each energy source;
- (iii) the cost of each type of energy; and
- (iv) the total cost of energy for each agency.

(b) *Finance report to Council.*

This information shall be transmitted by the Department of Finance to the City Council on or before March 1 of the same year.

(City Code, 1976/83, art. 1, §164A.) (Ord. 81-237; Ords. 07-488.)

SUBTITLE 46
{RESERVED}

SUBTITLE 47
MISCELLANEOUS CONTRACT PROVISIONS

§ 47-1. No Dumping Clause.

Every contract awarded by the City shall include a provision that:

- (1) the contractor's violation of any provision of City Health Title 7 {"Waste Control"}, Subtitle 6 {"Prohibited Disposal"}, constitutes a breach of the contract; and
- (2) the City may determine, in its discretion, whether the violation is a material breach warranting termination of the contract.

(Ord. 09-202.)

SUBTITLE 48
MISCELLANEOUS FEES

§ 48-1. Marriage license fees for domestic violence shelters.

(a) *Collection and remittance.*

Pursuant to State Family Law Article § 2-404(d), the Clerk of the Circuit Court shall:

- (1) collect an additional fee of \$75 for the issuance of a marriage license in Baltimore City, and
- (2) transmit the proceeds from this additional fee to the Mayor and City Council of Baltimore on a monthly basis.

(b) *Use of proceeds.*

- (1) The proceeds so transmitted shall be segregated in a special fund and available for appropriation for the sole purpose of operating domestic violence shelters which have a 24-hour intake ability.
- (2) The Director of Finance shall disburse the monies in the special fund as provided by the appropriation and by any contracts entered into for this purpose.

(c) *Reports.*

Any such contract shall provide for annual financial and operating reports to be made in writing and, if requested, by an appearance of a representative of the contractor before the Board of Estimates and/or the City Council or a designated subcommittee thereof.

(City Code, 1976/83, art. 5, §§13D and 13E.) (Ord. 83-986; Ord. 86-749; Ord. 82-739; Ord. 11-412.)

§ 48-2. Fees for copying, certifying, etc. records.

The Director of Finance shall charge and receive the following fees:

- (1) for affixing the City Seal to documents and papers — \$2 for each impression;
- (2) for authenticating copies of records — \$1;
- (3) for every search, and for every certificate to a copy — 25¢.

(City Code, 1950, art. 6, §11; 1966, art. 5, §10; 1976/83, art. 5, §10.) (Ord. 46-392; Ord. 65-658.)

§ 48-3. Penalty for bad checks.

(a) *In general.*

There is hereby imposed a charge of \$30 for each and every check or like written instrument which is not paid in full for any reason, other than any act of fault or neglect on the part of the

Mayor and City Council of Baltimore, by the financial institution upon which it is drawn when on first return indicates “No Funds” or “Account Closed” or when presented a second time for payment or dishonored regardless of reason (hereinafter designated as “worthless instrument”) on every person or other legal entity who presents any such worthless instrument to the Mayor and City Council of Baltimore or the Director of Finance of Baltimore City, or any of their agents or employees, in payment of any tax, charge, fee, assessment, or impost of any kind levied or imposed under any law, ordinance, rule, or regulation.

(b) *Additional charge for each bill.*

When the instrument is submitted in payment of more than 1 City bill, then this charge shall be imposed for each bill.

(c) *Collection; lien on property.*

Such charge(s) shall be collected by the Director of Finance of Baltimore City, and shall be a lien upon the property involved in any particular case and shall be recorded in the Tax Lien Record maintained by the Collection Division in all appropriate cases, in the same manner and to the same extent as the tax, charge, fee, assessment, or impost in connection with which the worthless instrument was presented in payment is collected and is a lien upon property and is recorded in the aforesaid Tax Lien Record.

(City Code, 1976/83, art. 1, §151.) (Ord. 71-1089; Ord. 81-224; Ord. 81-544; Ord. 90-521.)