

April 29, 2009

Jon Ruiz, City Manager
City of Eugene
777 Pearl Street, Room 105
Eugene, OR 97401

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Boutique Hotel
Requested by: City of Eugene

Dear Mr. Ruiz:

On April 6, 2009, you submitted a request on behalf of the City of Eugene (“City”), asking if the Prevailing Wage Rate law would apply to a proposed development project to build a “boutique hotel” located adjacent to the 5th Street Public Market in downtown Eugene. Sufficient information to make a determination was received on April 22, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Eugene Pearl, LLC, (“EP”) owns property in downtown Eugene and plans to build a 66-room hotel on this property.
2. The City will loan EP \$500,000 to be used “solely for payment of professional services for the design of the hotel, such as architectural and engineering fees incurred prior to commencement of construction.”
3. The State of Oregon may loan EP up to \$700,000 to purchase furniture, fixtures and equipment for this project. A definite amount of this loan was not provided.
4. No public agency will occupy or use any square footage of the finished project.

CONCLUSIONS OF LAW

1. The proposed project will be privately owned. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) or (C) is applicable for consideration for the proposed improvements.

2. OAR 839-025-0004(9)(a)(A) defines “directly used funds of a public agency” as “. . . any money loaned by a public agency . . . used as payment for all or part of a project.” Both the loan from the City and the loan from the State of Oregon meet the definition of “directly used funds of a public agency.”
3. ORS 279C.810(1)(a) lists what “funds of a public agency” does not include, but none of these items apply to the loans from the City and the State for this project.
4. If the State of Oregon loans EP \$250,000 or more for use on this project, \$750,000 or more of funds of a public agency will be used on this project. If this happens, the project will meet the definition of “public works” in ORS 279C.800(6)(a)(B).

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the proposed “boutique hotel” project located adjacent to the 5th Street Public Market in downtown Eugene, provided the State of Oregon loans Eugene Pearl LLC \$250,000 or more for use on this project.

This determination is based on the agency’s file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and HB 2140 Section 43 (Enrolled) OR Laws 2007. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator
Wage and Hour Division

Bureau of Labor and Industries
800 NE Oregon St., Suite 1045
Portland, Oregon 97232

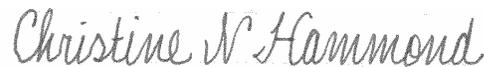
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: April 29, 2009

Brad Avakian, Commissioner
Bureau of Labor and Industries



Christine N. Hammond, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On April 29, 2009, I mailed the Prevailing Wage Rate Determination for the proposed “boutique hotel” project located adjacent to the 5th Street Public Market in downtown Eugene to the public agency associated with this project, as follows:

Jon Ruiz, City Manager
City of Eugene
777 Pearl Street, Room 105
Eugene, OR 97401-2793

Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries