



April 13, 2011

Ms. Bonnie Johnson
Bonnie Johnson Project Development Services
0630 K SW Nevada Street
Portland, OR 97219

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: McCoy Village Apartments, Portland
Requested by: Catholic Charities through its representative Bonnie Johnson

Dear Ms. Johnson:

On March 30, 2011, you submitted a request on behalf of Catholic Charities asking if the Prevailing Wage Rate law would apply to the proposed McCoy Village Apartments affordable housing project. Sufficient information to make a determination was received on April 6, 2011, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. McCoy Village is currently owned by Gladys McCoy Village Limited Partnership. McCoy Village GP, LLC is the General Partner of the Partnership. Caritas Housing Initiatives, LLC is the General Partner's sole manager/member. Caritas Housing Initiatives, LLC has three volunteer managers and its sole member is Catholic Charities.
2. McCoy Village is located at 4430 and 4506 NE MLK Blvd. in Portland. It is situated on two separate blocks and is constructed in eight three-story and four-story buildings. For purposes of this coverage determination, the property consists of two spaces. The first space, hereinafter referred to as "affordable housing space" consists of one, two, three, and four bedroom apartment units. It includes supportive space for apartment business, resident services delivery, and community gathering. There are parking garages for use by residents only. The second space, hereinafter referred to as "commercial space" consists of two commercial tenant spaces totaling 3027 square feet.

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3. Upon admission of a tax credit investor, McCoy Village GP, LLC will become the managing member of GMV Apartments Limited Partnership, with .01 percent ownership. Enterprise Community Investment, Inc. (ECI) will have a 99.99 percent ownership of the Limited Partnership. This purchase is anticipated to close on May 31, 2011.
4. Catholic Charities is in the process of executing a sixteen-month-old plan to separate and acquire 100% of the commercial space through the structure of condominium ownership of the commercial space. Catholic Charities anticipates taking ownership of the two commercial spaces on May 31, 2011, which is concurrent with the closing of the purchase of the affordable housing space property.
5. One of the commercial spaces is currently leased to Better People. Catholic Charities plans to execute a long-term lease with Better People when it takes ownership. Better People is an employment and counseling program and its mission to significantly reduce the rates of recidivism in the Portland metropolitan area. Better People serves the community and not solely the residents of McCoy Village.
6. The second commercial space is currently vacant. Catholic Charities plans to ensure that space will provide services to the low-income community in which the commercial space is located. Catholic Charities is considering using the space to make affordable childcare available to those in the community.
7. The McCoy Village project is a substantial rehabilitation of an existing Low Income Housing Project. The project will serve persons earning 0-50% of the Area Median Income. The project will remain affordable for a period of sixty years. The to-be-finalized contract between GMV Apartments Limited Partnership and LMC Construction, the General Contractor for the project, includes no improvements to the commercial spaces.
8. The proposed rehabilitation of the affordable housing space will use funds of a public agency as follows:
 - a. Oregon Housing and Community Services (Total: \$275,000.00)
 - i. \$200,000 – Trust Funds
 - ii. \$75,000 – Low Income Weatherization Funds
 - b. City of Portland – Portland Housing Bureau (Total: \$2,790,000.00)
 - i. \$1,500,000 – New Funds
 - ii. \$1,290,000 – Assumption of Existing Debt

9. A separate to-be-finalized contract for work related to the commercial spaces will be entered into between Catholic Charities and LMC Construction, the General Contractor for this project. Catholic Charities plans to use no public funds for its improvements to the commercial spaces. It is anticipated that work on the commercial spaces will start after work on the affordable housing space is completed. The vacant commercial space may be used as a staging area during work on the affordable housing space.
10. Both commercial spaces are connected to the affordable housing space. Both commercial spaces are street-level corner spaces. Both commercial spaces are in buildings that contain affordable housing space.

CONCLUSIONS OF LAW:

1. The McCoy Village Apartments project will be privately owned and will use more than \$750,000 in funds of a public agency. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) will apply to this project.
2. ORS 279C.827(2) allows the commissioner to divide a public works project, if appropriate, after applying the considerations set forth in ORS 279C.827(1)(c) and OAR 839-025-0310. Some factors used in making this determination include:
 - a. The physical separation of the project structures,
 - b. The timing of the work on project phases or structures
 - c. The continuity of project contractors and subcontractors working on project parts or phases,
 - d. The manner in which the public agency and the contractors administer and implement the project,
 - e. Whether a single public works project includes several types of improvements or structures, and
 - f. Whether the combined improvements or structures have an overall purpose or function.

The majority of factors considered weighs against dividing these projects. There is no physical separation of the affordable housing space and commercial space project structures. The affordable housing space includes eight buildings on two blocks with two commercial spaces located within. The timing of the projects is such that improvements on the commercial space will begin when improvements on the affordable housing space is completed. One of the commercial spaces may be used as a staging area during work on the affordable housing space. LMC Construction will be the General Contractor for both projects. Although less extensive work will be done on the commercial space, the work that will be done

is similar to the type that will be done throughout the affordable housing spaces. Finally, although the commercial spaces will serve the affordable housing residents, and serve Catholic Charities' mission, a long-term lease will be signed with Better People, a tenant that serves the community as a whole. Some facts support division of these spaces. Catholic Charities has planned to separate the spaces for some time. Its purpose in so doing is to ensure that the spaces would always provide services to the low-income community. Additionally, funds of a public agency will not be used on improvements to the commercial spaces and Catholic Charities' decision to separate the spaces was not to circumvent the application of prevailing wage rate law. However, these factors are not enough to weigh in favor of dividing these projects. Therefore, the affordable housing space project and the commercial space project should not be divided.

3. The McCoy Village Apartments Project includes both residential and commercial space and, as such, does not meet the definition of "residential construction" in ORS 279C.810(2)(d). Therefore, the exemption for residential construction that is privately owned and that predominantly provides affordable housing under ORS 279C.810(2)(d) will not apply to this project.

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 construction, reconstruction, major renovation and/or painting of the McCoy Village Apartments 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 ORS 279C.817. 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, OR 97232

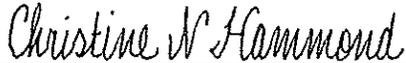
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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 13, 2011

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries


CHRISTINE N. HAMMOND,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

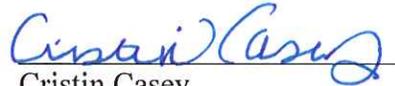
Certificate of Service

On April 13, 2011, I mailed the Prevailing Wage Rate Determination for the McCoy

Village Apartments Project to the requestor, as follows:

Bonnie Johnson
Project Development Services
0630 K SW Nevada Street
Portland, OR 97219

Certified Mail – Return Receipt Requested
Article #: 7010 1060 0000 4557 9320



Cristin Casey
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries