



January 5, 2012

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: Otesha Place
Requested by: Sabin Community Development Corporation through its
representative Bonnie Johnson

Dear Ms. Johnson:

On December 30, 2011, you submitted a request on behalf of Sabin Community Development asking if the Prevailing Wage Rate law would apply to the proposed Otesha Place housing project. Sufficient information to make a determination was received on January 4, 2012, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. Otesha Place is owned by Sabin Community Development Corporation ("Sabin CDC"). It was originally developed in 1998. Sabin CDC is a private non-profit corporation. Otesha Place is a three-story structure located at 1488 NE Alberta Street in Portland, Oregon. The property is suffering from building envelope construction defects and the housing portion of the building is currently uninhabitable. The project proposes substantial rehabilitation to the building structure.
2. Sabin CDC occupies approximately 1044 square feet of the ground floor. From this space, Sabin CDC provides on-site financial counseling services to Otesha Place residents. Otesha Place residents are also provided referral services to agencies that provide services to residents of low-income properties. Sabin CDC also owns fourteen single family low income rental houses. Rent paid by the tenants of these houses is hand-delivered to the Otesha Place offices each month.

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800 NE Oregon St. Suite 1045
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(971) 673-0761
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3. The remainder of the ground floor, plus the second and third stories, consists of eleven affordable housing units. Four units will serve occupants whose incomes are no greater than 30 percent of the area median and seven units will serve occupants whose incomes are no greater than 50 percent of the area median.
4. Sabin CDC is in the process of procuring financing through Portland Housing Bureau. The Portland Housing Bureau has tentatively approved financing in the amount of \$1,355,350 for completion of the necessary repairs at Otesha Place. The proposed rehabilitation will use funds of a public agency as follows:
 - a. City of Portland – Portland Housing Bureau - \$1,355,350

CONCLUSIONS OF LAW:

1. The Otesha Place 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. The prevailing wage rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. ORS 279C.810(2)(d). Here, the Otesha Place project is privately owned by Sabin CDC and all 11 units will be designated affordable housing. The issue is whether the project meets the definition of “residential construction” under ORS 279C.810(2)(d)(D). Here, Sabin CDC has represented that it accepts hand-delivered checks from tenants of fourteen other single family low income residences at its Otesha Place office, but that this is the only service it provides that is not in direct support of Otesha Place residents. As long as Sabin CDC provides no other commercial services, including administrative functions that are not in support of Otesha Place residents, then the proposed project will meet the definition of residential construction. Therefore, the prevailing wage rate laws will not apply to the 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 not apply to the proposed construction, reconstruction, major renovation and/or painting of the Otesha Place project. However, this determination may change if Sabin CDC provides additional services that are not in support of the Otesha Place residents.

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: January 5, 2012

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries

Christine N. Hammond

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

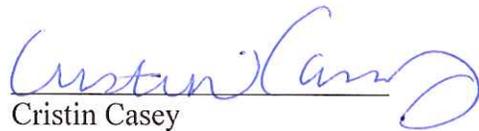
Certificate of Service

On January 5, 2012, I mailed the Prevailing Wage Rate Determination for the Otesha

Place 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 #: 7009 2820 0001 4829



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