



January 16, 2013

Lori J. Cooper, Deputy City Attorney
City of Medford
411 West 8th Street
Medford, OR 97501

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Mixed-use Development at 200 South Central Avenue
Requested by: City of Medford

Dear Ms. Cooper:

On January 10, 2013, you submitted a request on behalf of the City of Medford, asking if the Prevailing Wage Rate laws would apply to a proposed mixed-used development project. Sufficient information to make a determination was received on January 16, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The City of Medford (“the City”) owns property at 200 South Central Avenue in Medford, Oregon. The property is currently used as a parking lot operated by the City.
2. An unnamed private development company approached the City with a plan to build a deck over the parking lot, then build a mixed-use development on top of the deck. The private developer will own the deck and mixed-use development, and plans to lease or purchase the air rights above the city-owned parking lot for \$1.00 per year. If the air rights are leased, the length of the lease would be up to 50 years.
3. The proposed development will be one story, consisting of 5,000 square feet of office space, 6 one-bedroom apartments, and 15 two-bedroom apartments. The apartment occupants’ incomes will not be restricted to any limits, and therefore the apartments will not be considered affordable housing. The office space will not be leased to any public agency.

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4. The private developer will contract for all of the construction work to be done for the proposed project. The only agreement the City will enter into regarding this project will be an agreement outlining the lease or purchase of air rights above the city-owned parking lot. If any work needs to be done to the existing parking lot to accommodate the proposed mixed-use development, the private developer will be responsible to contract for and pay for such work.
5. The City will not manage or supervise the project, and the only restrictions placed on the private developer related to this project will be building code and zoning regulations.
6. The total project cost is expected to be approximately \$2,000,000, and will be paid for solely by the private developer. The City will not contribute any funds of a public agency toward this proposed project, and will not reimburse the private developer for any of the costs associated with this project.

CONCLUSIONS OF LAW

1. The proposed mixed-use development will not be carried on or contracted for by a public agency, and therefore, the proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(A).
2. The proposed mixed-use development will be privately owned, but will not use funds of any public agency, and therefore, the proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(B).
3. No public agency will occupy or use 25 percent or more of the square footage of the proposed mixed-use development, and therefore the proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(C).

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 mixed-use development project to be located at 200 South Central Avenue in Medford, Oregon.

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, Oregon 97232

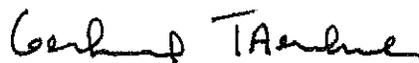
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: January 16, 2013

Brad Avakian, Commissioner
Bureau of Labor and Industries



Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On January 17, 2013, I mailed the Prevailing Wage Rate Determination for the proposed mixed-use development to be located at 200 South Central Avenue in Medford, Oregon, to the requestor, as follows:

Lori J. Cooper, Deputy City Attorney
City of Medford
411 West 8th Street
Medford, OR 97501



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