



Oregon

May 17, 2016

Bureau of Labor and Industries

Brad Avakian
Commissioner

Attn: Nick Sauvie
ROSE Community Development Corporation
5215 SE Duke Street
Portland, OR 97206

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Woody Guthrie Place
Requested by: ROSE Community Development Corporation

Dear Mr. Sauvie:

On May 5, 2016, you submitted a request on behalf of ROSE Community Development Corporation asking if the Prevailing Wage Rate law would apply to the Woody Guthrie Place New Construction project. Sufficient information to make a determination was received on May 13, 2016; therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. Portland Development Commission ("PDC") is a nonprofit public agency as defined in ORS 279C.800(5).
2. PDC currently owns property located on the southeast corner of SE 91st Avenue and Reedway Street (otherwise known as the Church Lots Property) in Portland, Oregon. The property is positioned in the Lents Town Center and contains approximately 32,536 square feet.
3. PDC will sell the entire property to two entities; ROSE Community Development Corporation ("ROSE CDC"), a nonprofit corporation, and Home Forward (formerly known as the Housing Authority of Portland), a public agency as defined in ORS 279C.800(5). The two entities created "WPG Apartments LLC" as a single-purpose entity to own Woody Guthrie Place ("WGP"). While both entities are members, ROSE CDC will have a 99% ownership interest and Home Forward will have a 1% interest in Woody Guthrie Place.
4. WGP will consist of all new construction in one building. The building will be four stories in height and will include a management office, an elevator, resident common spaces, and an on-site laundry facility. The project will include 30 parking spaces. The project will not include any commercial space.
5. WPG will consist of 64 rental apartment units. Sixteen of the units will be restricted to occupants with incomes no greater than 30% of the area median income. Twenty-one of the units will be restricted to occupants with incomes no greater than 80% of the area

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median income. The remaining twenty-six units will not have any income restrictions. One apartment unit will be restricted for a manager. Twenty-five percent of the units will be restricted to occupants with incomes no greater than 60 percent of the area median income.

6. The cost of the construction for the new building is approximately \$17,384,434. The project will use at least \$9,416,994 in funds of a public agency. Funding sources for the project will be provided by the seller, developer, and both public and private financing.
 - 1) Funds of a public agency include, but are not limited to:
 - a) Portland Development Commission Loans: \$6,941,994
 - b) Metro TOD Grant: \$400,000
 - c) Portland Housing Bureau (PHB): \$2,075,000
 - 2) Other funds total:
 - a) Senior Loan (HUD 221d 4): \$7,075,000
 - b) SDC Waiver: \$167,440
 - c) Deferred Developer Fee: \$475,000
 - d) Developer Equity: \$250,000
7. Work on the WGP project is expected to begin in March 2017.

CONCLUSIONS OF LAW:

1. The definition of "public works" under ORS 279C.800(6)(a)(B) applies to projects that are for the construction, reconstruction, major renovation or painting of a road, highway, building, structure or improvement of any type that uses \$750,000 or more of funds of a public agency. The Woody Guthrie Place (WGP) Apartment project will use at least \$9,416,994 in funds of a public agency; therefore, the definition of "public works" under ORS 279C.800(6)(a)(B) applies.
2. Pursuant to ORS 279C.810(2)(d), the Prevailing Wage Rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. Although this project will be privately owned as defined in ORS 279C.810(2)(d)(C)(ii), meets the definition of "residential construction" under ORS 279C.810(2)(d)(D), and provides for some affordable housing, the project does not "predominately" provide affordable housing as defined in ORS 279C.810(2)(d)(B) as less than 60 percent of the project will be restricted to occupants with incomes no greater than 60 percent of the area median income. Therefore, this exemption from the Prevailing Wage Rate laws 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 Woody Guthrie Place 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 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, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 order 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.

Date: May 17, 2016

Brad Avakian, Commissioner
Bureau of Labor and Industries

A handwritten signature in black ink, appearing to read "Gerhard Taeubel". The signature is written in a cursive style with a horizontal line underneath it.

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

Certificate of Service

On May 17, 2016, I mailed the Prevailing Wage Rate Determination for the Woody Guthrie Place Construction project to the requestor below:

Attn: Nick Sauvie
ROSE Community Development Corporation
5215 SE Duke Street
Portland, OR 97206

Certified Mail – Return Receipt Requested
Article #: 7013 2250 0000 3322 5692

Attn: Doug Blomgren
Bateman Seidel
888 SW Fifth Ave, Suite 1250
Portland, OR 97204

Certified Mail – Return Receipt Requested
Article #: 7013 2250 0000 332 5678

Attn: Terri Silvis
Cascade Management Inc.
28502 NE 67th Street
Camas, WA 98607

Certified Mail – Return Receipt Requested
Article #: 7013 2250 000 3322 5685



Monique Soria
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries