



CHRISTINA E. STEPHENSON
Labor Commissioner

May 24, 2023

Heather Hollingsworth
CENTRAL CITY CONCERN
C/O REAL ESTATE DEVELOPMENT
232 NW 6TH AVENUE
PORTLAND, OR 97209

Re: Determination Whether Project is Subject to Prevailing Wage Rate Laws

Project: RENOVATIONS TO BILTMORE HOTEL AND SALLY MCCRACKEN APARTMENTS

Ref: 23-1014

Requested by: Central City Concern

Dear Ms. Hollingworth:

On March 30, 2023, the Bureau of Labor and Industries received the request you submitted, asking if the Prevailing Wage Rate ("PWR") laws would apply to the RENOVATIONS TO BILTMORE HOTEL AND SALLY MCCRACKEN APARTMENTS project. Sufficient information to make a determination was received on May 23, 2023, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Central City Concern ("CCC"), a private non-profit entity, owns and operates the following two properties: the Biltmore Hotel and the Sally McCracken Apartments, located, respectively, at 310 NW 6th Avenue and 532 NW Everett Street in Portland, Oregon. CCC's proposed work at the two locations constitutes the project and is collectively referred to as the Renovations to Biltmore Hotel and Sally McCracken Apartments Project (the "Project").
2. The Project includes the following proposed work at the Biltmore Hotel: replacing siding, trim, veneer and windows, and installing new two new HVAC units for common corridor cooling within the building, along with a new electrical panel. The Project also includes the following proposed work at the Sally McCracken Apartments: replacing windows and installing in-unit HVAC cooling along with upgrades to the building's electrical capacity to accommodate unitized cooling.
3. The Biltmore Hotel is a three-story building consisting of 76 single-room occupancy units; each unit includes a sink, but no bathroom or kitchen. Shared bathroom and kitchen facilities are available. All units are reserved for households with incomes at or below forty percent of the area median family income ("MFI"). The Sally McCracken Apartments is a four-story building consisting of 95 single-room occupancy units; each unit includes a sink, but no bathroom or kitchen. Shared bathroom and kitchen facilities are available. All units are reserved for households with incomes at or below fifty percent of the MFI.
4. The Project will use the following funds of a public agency:
\$3,935,567 Portland Clean Energy Fund Grant



CONCLUSIONS OF LAW

1. The Project will be owned by a private entity and is therefore “privately owned” under ORS 279C.810(2)(d)(C).
2. The Project meets the definition of “affordable housing” in ORS 279C.810(2)(d)(A), as the Project will serve occupants whose incomes are not greater than 60 percent of the area median income. The Project will “predominantly” provide affordable housing, as 60 percent or more of the units will be for affordable housing. ORS 279C.810(2)(d)(B).
3. “Residential construction” is defined in ORS 279C.810(2)(d)(D) as construction, reconstruction, major renovation or painting of single-family houses or apartment buildings not more than four stories in height and all incidental items, such as site work, parking areas, utilities, streets, and sidewalks, pursuant to the U.S. Department of Labor’s “All Agency Memorandum No. 130: Application of the Standards of Comparison ‘Projects of a Similar Character’ Under Davis-Bacon and Related Acts,” dated March 17, 1978 (“USDOL AAM 130”).

The Project as described includes only single-room occupancy units that do not include kitchens, toilets or showers, more like a dormitory rather an apartment building.¹ Under USDOL AAM 130, dormitories are listed as an example of building construction, as opposed to residential construction. Because the Project’s buildings are more like dormitories than single-family homes or apartment buildings, the Project does not meet the definition of “residential construction” pursuant to ORS 279C.810(2)(d)(D).

4. While the Project is “privately owned” and “predominately provides affordable housing,” because it includes dormitory-like buildings, the Project does not meet the definition of “residential construction.” Therefore, the exemption from the PWR law under ORS 279C.810(2)(d) does not apply to the Project.
5. No other exemptions from the PWR laws under 279C.810 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 apply to the RENOVATIONS TO BILTMORE HOTEL AND SALLY MCCRACKEN APARTMENTS project.

This determination is based on the agency’s file as of the date of this determination. If any of the project information provided is incorrect or incomplete, this determination may no longer apply. If the project or project documents are modified or supplemented after the date of this determination, this determination may no longer apply. The commissioner may make a different determination if any of the project information is incomplete or incorrect, or if the project or project documents are modified or supplemented after the date of this determination. A new determination may be requested based on the modified or supplemented information or documentation.

¹See also, In the Matter of Blanchet House of Hospitality, Case No 11-10, Final Order of Commissioner Brad Avakian issued February 19, 2010.

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, 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 24, 2023

CHRISTINA E. STEPHENSON, Commissioner
Bureau of Labor and Industries



Laura van Enckevort
Acting Wage and Hour Administrator

Certificate of Service

On May 24, 2023, I mailed the Prevailing Wage Rate Determination for the RENOVATIONS TO BILTMORE HOTEL AND SALLY MCCRACKEN APARTMENTS project to the requestor, as follows:

Heather Hollingsworth
CENTRAL CITY CONCERN
C/O REAL ESTATE DEVELOPMENT
232 NW 6TH AVENUE
PORTLAND, OR 97209



Efrain Marquez
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries