



CHRISTINA E. STEPHENSON
Labor Commissioner

April 5, 2023

Rena Jimenez-Blount
Kantor Taylor PC
1200 5th Ave., UNIT 1910
Seattle, WA 98101

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

Project: CLEVELAND COMMONS

Ref: **23-0646**

Requested by: Kantor Taylor PC on behalf of Housing Impact PSH LLC

Dear Ms. Jimenez-Blount:

On March 2, 2023, the Bureau of Labor and Industries received the request you submitted on behalf of Housing Impact PSH LLC, asking if the Prevailing Wage Rate laws would apply to the Cleveland Commons project. Sufficient information to make a determination was received on April 4, 2023, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. NeighborImpact, a nonprofit entity, owns property located at 495 SE Cleveland Avenue in Bend, Oregon. Housing Impact PSH LLC (the "LLC") proposes to construct and own affordable housing at this location. The project is referred to as the Cleveland Commons project (the "Project").
2. The LLC has one member, Housing Impact LLC. The members of Housing Impact LLC are Central Oregon Regional Housing Authority dba Housing Works ("Housing Works"), a public agency under ORS 279C.800(5), with 49 percent ownership interest, and NeighborImpact, with 51 percent ownership interest.
3. At close of financing for the Project, the LLC will enter into a 65-year ground lease with NeighborImpact for the property on which the Project will be constructed.
4. The Project includes the construction of one three-story apartment building. The Project will include a total of 33 apartment units, made up of a mix of studio and one-bedroom units. The Project also includes parking spaces, property management offices, a lobby, a reception area, office space for services, community rooms, and a community kitchen. The "common space will either be used directly by the residents for everyday activities or meetings with supportive case managers and service providers." Services provided include "wraparound case management, development of independent living skills, community-building activities, 24/7 on-site peer support staff, as well as connections to physical and behavioral health care providers." Services will be provided by Shepherd's House Ministries, a local nonprofit entity. There will be no costs or fees to residents for uses of the common spaces or services. The Project does not include any commercial space.



5. All apartment units will be restricted to occupants with incomes no greater than 60 percent of the area median income.
6. The Project will use the following funds of a public agency:
\$8,000,669 Oregon Housing and Community Services PSH Funds
\$2,000,000 Deschutes County ARPA Funds
\$ 700,000 Loan - City of Bend

No private funds are anticated to be used for the Project.

CONCLUSIONS OF LAW

1. The Project meets the definition of "residential construction" in ORS 279C.810(2)(d)(D) as the Project includes the construction of an apartment building not more than four stories in height, and the Project does not include any commercial space.
2. The Project will be owned by a limited liability company in which Housing Works, a public agency under ORS 279C.800(5), is a minority member. The public agency will not be a majority owner in the limited liability company, and therefore, the Project meets the definition of "privately owned" in ORS 279C.810(2)(d)(C)(ii).
3. 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).
4. 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 predominantly provide affordable housing. Even if the Project meets the definition of "public works" under ORS 279C.800(6)(a), it will be exempt from the Prevailing Wage Rate laws.

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 CLEVELAND COMMONS 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.

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: April 5, 2023

CHRISTINA E. STEPHENSON, Commissioner
Bureau of Labor and Industries



Laura van Enckevort
Acting Wage and Hour Administrator

Certificate of Service

On April 5, 2023, I mailed the Prevailing Wage Rate Determination for the CLEVELAND COMMONS project to the requestor as follows:

Rena Jimenez-Blount
Kantor Taylor PC
1200 5th Ave., UNIT 1910
Seattle, WA 98101



Jolene Goodnight
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries