



October 23, 2013

Janene Edgerton, Property Manager  
City of Portland, Bureau of Internal Business Services  
Facilities Services  
1120 SW 5<sup>th</sup> Avenue, Suite 1204  
Portland, OR 97204

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: Perfect Pizza Tenant Improvements  
Requested by: City of Portland

Dear Ms. Edgerton:

On October 10, 2013, you submitted a request asking if the Prevailing Wage Rate laws would apply to the tenant improvements Perfect Pizza of Oregon, Inc. will perform on property owned by the City of Portland. Sufficient information to make a determination was received on October 22, 2013, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT

1. The City of Portland (“the City”) owns property located at 600 SW 4<sup>th</sup> Avenue. The building located at this address is known the 3<sup>rd</sup> & Alder Parking Garage. The building includes retail space on the ground floor.
2. The City has entered into a lease agreement with Perfect Pizza of Oregon, Inc. (“Perfect Pizza”) for ground floor space in the 3<sup>rd</sup> & Alder Parking Garage. The lease is for ten years, with two five-year options to renew. Perfect Pizza will lease 1,616 square feet, and will make all interior and exterior improvements necessary to convert the space to a pizza restaurant. Renovations will include taking out non-load bearing walls, constructing other walls to separate the kitchen from the rest of the restaurant, replacing lighting, applying an acid-stain finish to the concrete floors, and installing necessary plumbing to support the restaurant.
3. The lease between the City and Perfect Pizza requires that Perfect Pizza submit to the City’s Property Manager, and obtain the City’s written consent for, the following information related to the tenant improvements to be done: plans, specifications and work drawings detailing the alteration, construction or changes

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Salem, OR 97305-1268  
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to the property proposed by Perfect Pizza; the estimated cost for the work; and the names of the general contractors and major subcontractors, along with copies of contractors' and subcontractors' certificates of insurance and bonding. At any reasonable time, the City may inspect the quality and progress of tenant improvement work. The City must also approve exterior signage and sidewalk usage to ensure these meet restrictions imposed by the City on all businesses operating within the city limits, including those businesses occupying privately owned space.

4. The City will reimburse Perfect Pizza up to \$96,960 toward the cost of tenant improvements. The City will also pay any Systems Development Charges in excess of \$10,000.

### **CONCLUSIONS OF LAW**

1. The City will not have substantial control over Perfect Pizza's tenant improvements, nor will the City enter into a binding agreement for construction for any of the renovation work to be done. As such, the proposed project will not be carried on or contracted for by any public agency, and therefore does not meet the definition of "public works" under ORS 279C.800(6)(a)(A).
2. The proposed project is not privately owned, and no device, structure, or mechanism that uses solar radiation will be constructed or installed on the property. Therefore, the proposed project does not meet the definition of "public works" under ORS 279C.800(6)(a)(B), (C), or (D).
3. The proposed project will use funds of a public agency, but as the project does not meet the definition of "public works" under ORS 279C.800(6)(a), this fact alone does not trigger coverage of 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 Perfect Pizza Tenant Improvements 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 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

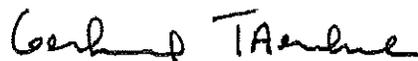
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: October 23, 2013

Brad Avakian, Commissioner  
Bureau of Labor and Industries



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

## Certificate of Service

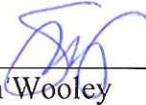
On October 23, 2013, I mailed the Prevailing Wage Rate Determination for the Perfect Pizza Tenant Improvements project to the requestor, as follows:

Janene Edgerton, Property Manager  
City of Portland, Bureau of Internal Business Services  
Facilities Services  
1120 SW 5<sup>th</sup> Avenue, Suite 1204  
Portland, OR 97204

Michael Jacobs, General Manager - SmartPark  
Portland Bureau of Transportation  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, OR 97204

Pamela Johnson  
Portland Development Commission  
222 NW 5<sup>th</sup> Avenue  
Portland, OR 97209

Dana and Winston Taylor  
Perfect Pizza of Oregon, Inc.  
14805 SE Monner Road  
Happy Valley, OR 97086



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