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May 6, 2019

Attorney General Karl Racine
Office of the Attorney General
441 4th St NW 1100 South
Washington, DC, 20001

Dear Attorney General Racine:

We write to request your opinion on whether the D.C. Department of Employment Services (DOES) has the authority under the District's First Source law to waive provisions of the Line Hotel tax abatement legislation.

In 2011, the D.C. Council approved legislation creating a 20-year tax abatement worth up to \$46 million for the Line Hotel, which is now D.C. Official Code § 47-4652. The law stipulates that in order to receive the taxpayer subsidy, the hotel must not only comply with the District's First Source and Certified Business Enterprise laws but meet specific hiring targets and other requirements. Here are the seven provisions outlined in the law:

1. Complying with the District's First Source and Certified Business Enterprise laws;
2. Having at least 51% of the construction hours worked by District residents, and hiring 342 full-time equivalent construction employees;
3. Having at least 51% of the permanent jobs in the hotel staffed by District residents, and 51% of those jobs filled by Ward 1 residents;
4. Reserving all apprenticeships for District residents, with a preference for Ward 1 residents;
5. Funding a job training program for District residents;
6. Performing an independent audit to make sure the hiring requirements are met; and
7. Providing at least 4,000 square feet for community or nonprofit incubator space.

The hotel received its final Certificate of Occupancy in 2018, signaling the end of the construction process. Since then, the District has been reviewing records provided by the hotel and its contractors to determine if the hotel met the requirements in the tax abatement legislation.

In recent meetings with the Director of DOES, we have learned that DOES determined that the Line Hotel did not meet several of the provisions in the law. According to DOES's audit, the agency found that the hotel only employed 273 District residents during the construction phase, did not have District workers work more than 51% of the construction hours, and did not reserve all of the apprenticeships for District residents, meaning that the hotel did not meet at least two of the seven provisions of the tax abatement. Given not all the provisions outlined in the law were met, we assert the Line Hotel is not eligible for the tax abatement.

Despite the lack of compliance with all provisions, however, the DOES Director informed us that the agency was still certifying to the Office of Tax and Revenue (OTR) that, pursuant to its authority under First Source, the agency found the hotel in compliance as long as the hotel paid \$600,000 to the District for resident job training. This payment would constitute "substitute compliance" towards the abatement's legislated provisions. Indeed, according to a letter the Director sent to OTR on Tuesday, April 30, the Director stated that "DOES found that the Hotel project made a good faith effort toward compliance." The letter further states that, "pursuant to D.C. Official Code § 2-219.03(e)(3)(A)(iii) [the District's First Source law], DOES found substituted compliance for the Hotel project."

We are concerned that, in effect, the Director is claiming the authority under the District's First Source law to waive unrelated sections of law and permit the Line Hotel to receive its tax abatement without meeting the legislated requirements. We do not deny § 2-219.03(e)(3)(A) allows the Director to waive certain provisions of First Source, in limited circumstances. However, we see no provision in the First Source law extending this waiver authority to other, unrelated legislative requirements, such as the other six provisions in the Line Hotel's tax abatement. In other words, we believe the Director may be able to find substitute compliance for the first part of § 47-4652(c)(1), which mandates compliance with First Source, but not (c)(2) through (c)(7).

Therefore, we would appreciate your legal opinion on the authority of DOES and/or the executive branch of D.C. government to use First Source law to waive provisions of law unrelated to First Source. As well, if there is the authority, please let us know who has the ability to use such authority.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elissa Silverman', with a stylized, cursive script.

Elissa Silverman
Chair, Committee on Labor and Workforce Development
At-Large Councilmember

A handwritten signature in black ink, appearing to read 'Brianne K. Nadeau', with a stylized, cursive script.

Brianne K. Nadeau
Chair, Committee on Human Services
Councilmember, Ward 1